

TAXATION

CHAPTER 498

HOUSE BILL NO. 1450

(Representatives Wrangham, Bellew, Thoreson)
(Senator Krauter)

HOME RULE SALES TAX LIMITATIONS

AN ACT to amend and reenact section 57-01-02.1 of the North Dakota Century Code, relating to refunds by retailers of home rule sales and use taxes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-01-02.1 of the North Dakota Century Code is amended and reenacted as follows:

57-01-02.1. Tax collection agreements with home rule cities or counties - Limitations on city or county authority.

1. The governing body of any incorporated city that has adopted the home rule provisions of chapter 40-05.1 or of any county which has adopted the home rule provisions of chapter 11-09.1 must enter a contract with the tax commissioner giving the tax commissioner authority to collect any sales, use, or gross receipts taxes assessed by such incorporated city or county.
2. The tax commissioner shall deposit with the state treasurer all money collected under a contract under this section and accompany each remittance with a certificate showing the city or county for which it was collected. The state treasurer, monthly, shall pay to the auditors of cities or counties the money to which cities or counties are entitled under a contract under this section.
3. Contracts under this section shall provide for an agreed amount to be allowed the tax commissioner for services. Any sums collected for services rendered must be paid to the state treasurer for deposit in the general fund.
4. A person required to collect and remit sales or use taxes may not be required to register with, file returns with, or remit funds to anyone other than the tax commissioner or the tax commissioner's authorized agent. A city or county may not conduct an independent sales or use tax audit of a seller registered under the agreement adopted under chapter 57-39.4.
5. A retailer shall collect city and county sales and use taxes without regard to any cap or threshold on purchases provided by city or county ordinance, resolution, or charter and a taxpayer is eligible for refund from the tax commissioner of the difference between the amount of city

and county sales, use, or gross receipts taxes paid and the amount that would have been due by application of a cap or threshold provided by city or county ordinance, resolution, or charter. At the time of purchase, a retailer may provide to the purchaser a credit or refund equal to the refund amount eligible from the tax commissioner under this section, provided the total tax identified on all invoices, cash register receipts, or other sales documentation is an amount equal to the total tax calculated less the refund or credit provided.

6. The tax commissioner may adopt rules to implement this section.

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

Approved March 28, 2007
Filed March 28, 2007

CHAPTER 499**SENATE BILL NO. 2172**

(Senators G. Lee, Tollefson, Triplett)
(Representatives Belter, Froelich, Klemin)

**DISABLED VETERAN HOMESTEAD PROPERTY TAX
EXEMPTION**

AN ACT to amend and reenact subsection 20 of section 57-02-08 of the North Dakota Century Code, relating to the homestead property tax exemption for disabled veterans; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁴¹ **SECTION 1. AMENDMENT.** Subsection 20 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

20. Fixtures, buildings, and improvements up to the amount of valuation specified, when owned and occupied as a homestead, as hereinafter defined, by any of the following persons:
 - a. A paraplegic disabled veteran of the United States armed forces or any veteran who has been awarded specially adapted housing by the veterans' administration, or the unremarried surviving spouse if such veteran is deceased, for the first one hundred twenty thousand dollars of true and full valuation of the fixtures, buildings, and improvements.
 - b. A disabled veteran of the United States armed forces who was discharged under honorable conditions or who has been retired from the armed forces of the United States with an armed forces service-connected disability of fifty percent or greater, or the unremarried surviving spouse if the veteran is deceased, if the income of the veteran and the spouse, or if the veteran is deceased the income of the unremarried surviving spouse, in the calendar year prior to the year for which the exemption is claimed did not exceed the maximum amount of income provided in section 57-02-08.1 for receiving a homestead credit under that section exclusive of any compensation or pension for service-connected disability from the United States government for a percentage, equal to the percentage of the disabled veteran's certified rated service-connected disability, applied against the first one hundred twenty thousand dollars of true and full valuation of the fixtures, buildings, and improvements.
 - c. Any permanently and totally disabled person who is permanently confined to use of a wheelchair, or, if deceased, the unremarried

²⁴¹ Section 57-02-08 was also amended by section 3 of House Bill No. 1072, chapter 504.

surviving spouse of a permanently and totally disabled person. If the spouse of a permanently and totally disabled person owns the homestead or if it is jointly owned by them, the same reduction in assessed valuation applies as long as both reside thereon. The provisions of this subdivision do not reduce the liability for special assessments levied upon the homestead. The phrase "permanently confined to use of a wheelchair" means that the person cannot walk with the assistance of crutches or any other device and will never be able to do so and that a physician selected by the local governing board has so certified.

Any person claiming an exemption under this subsection for the first time shall file with the county auditor an affidavit showing the facts herein required and a description of the property and, in addition, a disabled veteran claiming exemption under subdivision b shall also file with the affidavit a certificate from the United States veterans' administration, or its successors, certifying to the amount of the disability; ~~the~~. The affidavit and certificate must be open for public inspection. ~~Any person shall thereafter furnish to the assessor or other assessment officials when requested to do so any information which is believed will support the claim for exemption for any subsequent year~~ After the initial filing of a claim for exemption under this subsection, the exemption is automatically renewed each following year but the veteran or veteran's unremarried surviving spouse must refile if that person sells the property or no longer claims it as a primary place of residence or if the veteran dies or receives a change in the percentage of the certified rated service-connected disability.

For purposes of this subsection, and except as otherwise provided in this subsection, "homestead" has the meaning provided in section 47-18-01 except that it also applies to any person who otherwise qualifies under the provisions of this subsection whether or not the person is the head of a family. The board of county commissioners is hereby authorized to cancel the unpaid taxes for any year in which the veteran has held title to the exempt property.

This subsection does not apply within a county in which a resolution approved by the board of county commissioners is in effect disallowing the exemption under this subsection for the taxable year.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2006.

Approved May 2, 2007
Filed May 3, 2007

CHAPTER 500**SENATE BILL NO. 2088**

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

HOMESTEAD TAX CREDIT DISABILITY DEFINITION

AN ACT to amend and reenact subsection 5 of section 57-02-08.1 of the North Dakota Century Code, relating to the definition of permanently and totally disabled for purposes of homestead property tax credit eligibility.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁴² **SECTION 1. AMENDMENT.** Subsection 5 of section 57-02-08.1 of the North Dakota Century Code is amended and reenacted as follows:

5. For the purposes of this section:
 - a. "Dependent" has the same meaning it has for federal income tax purposes.
 - b. "Homestead" has the same meaning as provided in section 47-18-01.
 - c. "Income" means income for the most recent complete taxable year from all sources, including the income of any dependent of the applicant, and including any county, state, or federal public assistance benefits, social security, or other retirement benefits, but excluding any federal rent subsidy, any amount excluded from income by federal or state law, and medical expenses paid during the year by the applicant or the applicant's dependent which is not compensated by insurance or other means.
 - d. "Medical expenses" has the same meaning as it has for state income tax purposes, except that for transportation for medical care the person may use the standard mileage rate allowed for state officer and employee use of a motor vehicle under section 54-06-09.
 - e. "Permanently and totally disabled" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve months as

²⁴² Section 57-02-08.1 was also amended by section 1 of Senate Bill No. 2032, chapter 520.

established by a certificate from a licensed physician or a written determination of disability from the social security administration.

Approved March 2, 2007
Filed March 2, 2007

CHAPTER 501**HOUSE BILL NO. 1071**

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

TAX LAW TECHNICAL CORRECTIONS

AN ACT to amend and reenact subsection 1 of section 11-10.1-01, section 57-02-08.2, subsections 3 and 6 of section 57-02-27.2, section 57-20-08, and subsection 3 of section 57-60-01 of the North Dakota Century Code, relating to removal of obsolete language, transfer of funds to the state medical center, appeals of determinations on inundated agricultural land applications, tax receipts filed with county auditors, and coal conversion facilities; and to repeal section 57-29-04 of the North Dakota Century Code, relating to tax sale certificates on state-acquired land.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 11-10.1-01 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~Prior to September 4, 1978, the~~ The board of county commissioners of each county in this state shall appoint a county director of tax equalization who must be qualified and experienced in property appraisals, familiar with assessment and equalization procedures and techniques, and who is the holder of a current certificate issued by the state supervisor of assessments. The state supervisor of assessments shall confer with representatives of the county commissioners, city governing bodies, state township officers association, and personnel at North Dakota state university to establish or revise the minimum requirements for attaining the certificate. Any person who is denied such certificate may appeal to the state tax commissioner for a hearing under the provisions of chapter 28-32.

SECTION 2. AMENDMENT. Section 57-02-08.2 of the North Dakota Century Code is amended and reenacted as follows:

57-02-08.2. Homestead credit - Certification.

1. Prior to the first of March 4, 1975, ~~and of each year thereafter,~~ the county auditor of each county shall certify to the state tax commissioner on forms prescribed by the state tax commissioner the name and address of each person for whom the homestead credit provided for in section 57-02-08.1 was allowed for the preceding year, the amount of exemption allowed, the total of the tax mill rates of all taxing districts, exclusive of any state mill rates, that was applied to other real estate in such taxing districts for the preceding year, and such other information as may be prescribed by the tax commissioner.
2. The tax commissioner shall audit such certifications, make such corrections as may be required, and certify to the state treasurer for payment to each county on or before the first of June 4, 1975, ~~and of each year thereafter,~~ the sum of the amounts computed by multiplying

the exemption allowed for each such homestead in the county for the preceding year by the total of the tax mill rates, exclusive of any state mill rates, that was applied to other real estate in such taxing districts for that year.

3. The county treasurer upon receipt of the payment from the state treasurer shall ~~forthwith~~ apportion and distribute it without delay to the county and to the local taxing districts of the county on the basis on which the general real estate tax for the preceding year is apportioned and distributed.
4. The tax commissioner shall annually certify to the state treasurer the amount computed by multiplying the exemption allowed for all homesteads in the state for the preceding year by one mill for deposit into the state medical center fund.
5. Supplemental certifications by the county auditor and by the state tax commissioner and supplemental payments by the state treasurer may be made after the dates prescribed ~~herein~~ in this section to make such corrections as may be necessary because of errors ~~therein~~ or because of approval of any application for abatement filed by a person because the exemption provided for in section 57-02-08.1 was not allowed in whole or in part.

²⁴³ **SECTION 3. AMENDMENT.** Subsections 3 and 6 of section 57-02-27.2 of the North Dakota Century Code are amended and reenacted as follows:

3. The "average annual gross return" for each county must be determined as follows:
 - a. ~~For taxable year 1999, total the annual gross returns for the nine years immediately preceding the current year for which data is available and discard the highest and lowest annual gross returns of the nine. For taxable year 2000 and thereafter, total~~ Total the annual gross returns for the ten years immediately preceding the current year for which data is available and discard the highest and lowest annual gross returns of the ten.
 - b. The agricultural economics department of North Dakota state university shall establish a base year index of prices paid by farmers using annual statistics on that topic compiled by the national agricultural statistics service for the seven-year period ending in 1995, discarding the highest and lowest years' indexes, and averaging the remaining five years' indexes. ~~For taxable year 1999, the agricultural economics department shall gather the national agricultural statistics service annual index of prices paid by farmers for the nine years ending with the most recent year used under subdivision a; discard the highest and lowest years' indexes, average the remaining seven years' indexes, and divide the resulting amount by the base year index of prices paid by~~

²⁴³ Section 57-02-27.2 was also amended by section 1 of House Bill No. 1303, chapter 503, and section 2 of House Bill No. 1303, chapter 503.

~~farmers. For taxable year 2000 and thereafter, the~~ The agricultural economics department shall gather the national agricultural statistics service annual index of prices paid by farmers for the ten years ending with the most recent year used under subdivision a, discard the highest and lowest years' indexes, average the remaining eight years' indexes, and divide the resulting amount by the base year index of prices paid by farmers. This amount must be divided into the amount determined under subdivision a.

c. ~~For taxable year 1998, divide the figure arrived at in subdivision b by six. For taxable year 1999, divide the figure arrived at in subdivision b by seven. For taxable year 2000 and thereafter, divide~~ Divide the figure arrived at in subdivision b by eight.

6. For purposes of this section, "inundated agricultural land" means property classified as agricultural property containing a minimum of ten contiguous acres if the value of the inundated land exceeds ten percent of the average agricultural value of noncropland for the county, which is inundated to an extent making it unsuitable for growing crops or grazing farm animals for two consecutive growing seasons or more, and which produced revenue from any source in the most recent prior year which is less than the county average revenue per acre for noncropland calculated by the agricultural economics department of North Dakota state university. Application for classification as inundated agricultural land must be made in writing to the township assessor or county director of tax equalization by March thirty-first of each year, ~~except that for the year 2001, the written application must be made within ninety days from March 16, 2001.~~ Before all or part of a parcel of property may be classified as inundated agricultural land, the board of county commissioners must approve that classification for that property for the taxable year. The agricultural value of inundated agricultural lands for purposes of this section must be determined by the agricultural economics department of North Dakota state university to be ten percent of the average agricultural value of noncropland for the county as determined under this section. Valuation of individual parcels of inundated agricultural land may recognize the probability that the property will be suitable for agricultural production as cropland or for grazing farm animals in the future. Determinations made under this subsection may be appealed through the informal equalization process and formal abatement process provided for in this title.

SECTION 4. AMENDMENT. Section 57-20-08 of the North Dakota Century Code is amended and reenacted as follows:

57-20-08. Tax receipts filed with county auditor - Copies retained and filed numerically by county treasurer. Upon the payment of any tax, if directed by the board of county commissioners, the county treasurer shall give to the county auditor a receipt therefor showing the name and post-office address of the person who paid the tax, the amount and date of payment, the land, lot, or other property upon which the tax is levied, according to the description on the tax list, or in some other sufficient manner, and the year or years for which the tax was levied. If for current taxes on real estate, the receipt must have written or stamped across its face "taxes for" (giving the year in figures) or "first installment taxes" (giving the year in figures) or "second installment taxes" (giving the year in figures), as the case may be. Each year's tax must be on a separate receipt. If the county treasurer has given notice of tax lien for land has been sold for taxes, either to a purchaser or to the

~~county, and the time for redemption from such sale and the tax lien has not expired been foreclosed, the receipt for such taxes must have written or stamped across the face "sold for taxes tax lien", with a statement of the years for which any of the real estate described therein has been sold for taxes and not redeemed is subject to a tax lien.~~ If directed by the board of county commissioners, the treasurer shall provide receipts at the end of each day to the county auditor, who shall file and preserve them in the auditor's office charging the treasurer with the amount thereof. A copy of each receipt must be preserved in the office of the county treasurer and filed in numerical order.

²⁴⁴ **SECTION 5. AMENDMENT.** Subsection 3 of section 57-60-01 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 6. REPEAL. Section 57-29-04 of the North Dakota Century Code is repealed.

Approved March 13, 2007
Filed March 14, 2007

²⁴⁴ Section 57-60-01 was also amended by section 3 of House Bill No. 1365, chapter 530.

CHAPTER 502**SENATE BILL NO. 2299**

(Senators Holmberg, Horne, Wardner)
(Representatives Boehning, Carlson, Ruby)

VACANT LOT VALUATION

AN ACT to amend and reenact section 57-02-27.1 of the North Dakota Century Code, relating to city governing body authority to adopt a standard of valuation that recognizes the supply of vacant lots; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-02-27.1 of the North Dakota Century Code is amended and reenacted as follows:

57-02-27.1. Property to be valued at true and full value. Beginning with the year 1981, all assessors and boards of equalization shall place the values of all items of taxable property at the true and full value of the property except as otherwise specifically provided by law, and the amount of taxes that may be levied on such property for the year 1981 and each year thereafter must be limited as provided in this chapter. For the purposes of sections 57-02-27, 57-02-27.1, 57-02-27.2, and 57-55-04, the term "true and full value" has the same meaning as provided in subsection 15 of section 57-02-01, except that "true and full value" of agricultural lands must be as determined pursuant to section 57-02-27.2.

The governing body of the city may establish valuations that recognize the supply of vacant lots available for sale.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2006.

Approved May 2, 2007
Filed May 3, 2007

CHAPTER 503**HOUSE BILL NO. 1303**

(Representatives Herbel, Drovdal)
(Senators Krauter, Olafson)

AGRICULTURAL PROPERTY ASSESSMENT

AN ACT to create and enact subsections 9 and 10 to section 57-02-27.2 of the North Dakota Century Code, relating to use of modifiers and soil surveys in agricultural property assessment; to amend and reenact subsections 7 and 8 of section 57-02-27.2 of the North Dakota Century Code, relating to use of soil surveys, modifiers, and actual use of agricultural property for property tax assessment purposes; to provide for a report to the legislative council; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁴⁵ **SECTION 1. AMENDMENT.** Subsections 7 and 8 of section 57-02-27.2 of the North Dakota Century Code are amended and reenacted as follows:

7. Before February first of each year, the county director of tax equalization in each county shall provide to all assessors within the county an estimate of the average agricultural value of agricultural lands within each assessment district. The estimate must be based upon the average agricultural value for the county adjusted by the relative values of lands within each assessment district compared to the county average. In determining the relative value of lands for each assessment district compared to the county average, the county director of tax equalization, ~~whenever possible,~~ shall use soil type and soil classification data from detailed and general soil surveys. ~~When such data cannot be used, the county director of tax equalization shall use whatever previous assessment data is best suited to the purpose.~~
8. Each local assessor shall determine the relative value of each assessment parcel within the assessor's jurisdiction and shall determine the agricultural value of each assessment parcel by adjusting the agricultural value estimate for the assessment district by the relative value of the parcel. Each parcel must then be assessed according to section 57-02-27. If either a local assessor or a township board of equalization develops an agricultural value for the lands in its assessment district differing substantially from the estimate provided by the county director of tax equalization, written evidence to support the change must be provided to the county director of tax equalization. In determining the relative value of each assessment parcel, the local assessor shall apply the following considerations, which are listed in descending order of significance to the assessment determination:

²⁴⁵ Section 57-02-27.2 was also amended by section 3 of House Bill No. 1071, chapter 501, and section 2 of House Bill No. 1303, chapter 503.

- a. Soil type and soil classification data from detailed or general soil surveys.
- b. The schedule of modifiers that must be used to adjust agricultural property assessments within the county as approved by the state supervisor of assessments under subsection 9.
- c. Actual use of the property for cropland or noncropland purposes by the owner of the parcel.

²⁴⁶ **SECTION 2.** Subsections 9 and 10 to section 57-02-27.2 of the North Dakota Century Code are created and enacted as follows:

9. Before February first of each year, the county director of tax equalization in each county shall provide to all assessors of agricultural property within the county a schedule of modifiers that must be used to adjust agricultural property assessments within the county and directions regarding how those modifiers must be applied by assessors. Before the schedule of modifiers is provided to assessors within the county, the county director of tax equalization shall obtain the approval of the state supervisor of assessments for use of the schedule within the county.
10. For any county that has not fully implemented use of soil type and soil classification data from detailed or general soil surveys for any taxable year after 2009, the tax commissioner shall direct the state treasurer to withhold five percent of that county's allocation each month from the state aid distribution fund under section 57-39.2-26.1 until that county has fully implemented use of soil type or soil classification data from detailed and general soil surveys. The amount withheld from the allocation must be withheld entirely from the portion of the allocation which may be retained by the county and may not reduce allocations to any political subdivisions within the county.

SECTION 3. REPORT TO LEGISLATIVE COUNCIL. During the 2007-08 interim, each county that has not fully implemented use of soil type and soil classification data from detailed and general soil surveys for property tax assessment purposes shall report to the legislative council the reason for failure to implement use of that information and the anticipated date when the county will have fully implemented use of that information.

SECTION 4. EFFECTIVE DATE. Sections 1 and 2 of this Act are effective for taxable years beginning after December 31, 2006.

Approved April 23, 2007
Filed April 24, 2007

²⁴⁶ Section 57-02-27.2 was also amended by section 3 of House Bill No. 1071, chapter 501, and section 1 of House Bill No. 1303, chapter 503.

CHAPTER 504**HOUSE BILL NO. 1072**

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

TAXABLE VALUATION OF WIND TURBINES

AN ACT to create and enact a new section to chapter 57-06 of the North Dakota Century Code, relating to taxable valuation of centrally assessed wind turbine electric generators; to amend and reenact subsection 4 of section 57-02-27, subsection 27 of section 57-02-08, and subsection 4 of section 57-06-02 of the North Dakota Century Code, relating to valuation of centrally assessed property, property exempt from taxation, and the definition of a power company; and to repeal section 57-02-27.3 of the North Dakota Century Code, relating to centrally assessed wind turbine electric generators.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 57-02-27 of the North Dakota Century Code is amended and reenacted as follows:

4. All centrally assessed property to be valued at ten percent of assessed value except as provided in section ~~57-02-27.3~~ 2 of this Act.

²⁴⁷ **SECTION 2.** A new section to chapter 57-06 of the North Dakota Century Code is created and enacted as follows:

Taxable valuation of centrally assessed wind turbine electric generators.

A centrally assessed wind turbine electric generation unit with a nameplate generation capacity of one hundred kilowatts or more, on which construction is completed before January 1, 2011, must be valued at three percent of assessed value to determine taxable valuation of the property. However, a centrally assessed wind turbine electric generation unit with a nameplate generation capacity of one hundred kilowatts or more, for which a purchased power agreement has been executed after April 30, 2005, and before January 1, 2006, and construction is begun after April 30, 2005, and before July 1, 2006, must be valued at one and one-half percent of assessed value to determine taxable valuation of the property and this reduced valuation applies for that property for the duration of the initial purchased power agreement for that generation unit.

²⁴⁸ **SECTION 3. AMENDMENT.** Subsection 27 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

27. Installations, machinery, and equipment of systems in new or existing buildings or structures, designed to provide heating or cooling or to

²⁴⁷ Section 57-06-14.1 was also amended by section 41 of House Bill No. 1018, chapter 18, and section 2 of House Bill No. 1317, chapter 505.

²⁴⁸ Section 57-02-08 was also amended by section 1 of Senate Bill No. 2172, chapter 499.

produce electrical or mechanical power, or any combination of these, or to store any of these, by utilization of solar, wind, or geothermal energy; provided, that if the solar, wind, or geothermal energy device is part of a system which uses other means of energy, only that portion of the total system directly attributable to solar, wind, or geothermal energy shall be exempt. Provided, however, that any exemptions granted by this subsection shall be valid for a five-year period following installation of any such system and apply only to locally assessed property. For the purposes of this subsection, solar or wind energy devices shall have the meaning provided in section 57-38-01.8; geothermal energy device means a system or mechanism or series of mechanisms designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, by a method which extracts or converts the energy naturally occurring beneath the earth's surface in rock structures, water, or steam.

SECTION 4. AMENDMENT. Subsection 4 of section 57-06-02 of the North Dakota Century Code is amended and reenacted as follows:

4. "Power company" means a company owning or holding, under lease or otherwise, any property in this state, including wind turbine electric generation units, and operating it for the purpose of furnishing or distributing electric light, electric power, or steam heat for public use.

SECTION 5. REPEAL. Section 57-02-27.3 of the North Dakota Century Code is repealed.

Approved April 4, 2007
Filed April 5, 2007

CHAPTER 505**HOUSE BILL NO. 1317**

(Representatives Brandenburg, Dahl, S. Kelsh, Kretschmar)
(Senators Erbele, Wanzek)

**WIND TURBINE TAXABLE VALUATION AND
DECOMMISSIONING**

AN ACT to create and enact a new section to chapter 49-02 of the North Dakota Century Code, relating to authority of the public service commission to adopt rules relating to decommissioning of commercial wind energy conversion facilities; to amend and reenact the new section to chapter 57-06 of the North Dakota Century Code as created by section 2 of House Bill No. 1072, as approved by the sixtieth legislative assembly, relating to centrally assessed wind turbine electric generators; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 49-02 of the North Dakota Century Code is created and enacted as follows:

Power of commission to establish rules to decommission wind energy conversion facilities. The commission may adopt rules governing the decommissioning of commercial wind energy conversion facilities. The rules may address:

1. The anticipated life of the project;
2. The estimated decommissioning costs in current dollars;
3. The method and schedule for updating the costs of the decommissioning and restoration;
4. The method of ensuring that funds will be available for decommissioning and restoration; and
5. The anticipated manner in which the project will be decommissioned and the site restored.

²⁴⁹ **SECTION 2. AMENDMENT.** The new section to chapter 57-06 of the North Dakota Century Code as created by section 2 of House Bill No. 1072, as approved by the sixtieth legislative assembly, is amended and reenacted as follows:

Taxable valuation of centrally assessed wind turbine electric generators. A centrally assessed wind turbine electric generation unit with a nameplate generation capacity of one hundred kilowatts or more on which construction is

²⁴⁹ Section 57-06-14.1 was created by section 2 of House Bill No. 1072, chapter 504; was also amended by section 41 of House Bill No. 1018, chapter 18.

completed before July 1, 2007, must be valued at the current assessed value to determine taxable valuation of the property. A centrally assessed wind turbine electric generation unit with a nameplate generation capacity of one hundred kilowatts or more, on which construction is completed after June 30, 2007, and before January 1, 2011, must be valued at ~~three~~ one and one-half percent of assessed value to determine taxable valuation of the property. However, a centrally assessed wind turbine electric generation unit with a nameplate generation capacity of one hundred kilowatts or more, for which ~~a purchased power agreement has been executed after April 30, 2005, and before January 1, 2006, and construction is begun after April 30, 2005, July 1, 2007, and before July 1, 2006, January 1, 2011,~~ must be valued at one and one-half percent of assessed value to determine taxable valuation of the property ~~and this reduced valuation applies for that property for the duration of the initial purchased power agreement for that generation unit.~~

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

Approved April 27, 2007
Filed April 30, 2007

CHAPTER 506**HOUSE BILL NO. 1073**

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

CARBON DIOXIDE PIPELINE PROPERTY VALUATION

AN ACT to amend and reenact section 57-06-17.2 of the North Dakota Century Code, relating to the exclusion of carbon dioxide pipeline property subject to payments in lieu of taxes from the valuation of property in taxing districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-06-17.2 of the North Dakota Century Code is amended and reenacted as follows:

57-06-17.2. Payments in lieu of taxes. Carbon dioxide pipeline property described in section 57-06-17.1 is subject to payments in lieu of property taxes during the time it is exempt from taxation under section 57-06-17.1. For the purpose of these payments, carbon dioxide pipeline property described in section 57-06-17.1 must be valued annually by the state board of equalization in the manner that other pipeline valuations are certified. The county auditor shall calculate taxes on the carbon dioxide pipeline property described in section 57-06-17.1 in the same manner that taxes are calculated on other pipeline property. Not later than December twenty-sixth of each year, each county auditor shall submit a statement of the amount of taxes that would have been assessed against carbon dioxide pipeline property, exempted under section 57-06-17.1, to the state treasurer for payment. The state treasurer shall make the required payment to each county not later than March first of the following year, and the county auditor shall distribute the payments to the political subdivisions in which the exempt pipeline property is located. Carbon dioxide pipeline property for which payments in lieu of taxes are required must be excluded from the valuation of property in the taxing district for purposes of determining the mill rate for the taxing district.

Approved March 30, 2007

Filed March 30, 2007

CHAPTER 507**HOUSE BILL NO. 1139**

(Representatives Vigesaa, Weisz)
(Senators Andrist, Warner)

FARM-TO-MARKET ROAD TAX LEVIES

AN ACT to amend and reenact subsection 4 of section 57-15-06.3 of the North Dakota Century Code, relating to county farm-to-market road tax levies; and to provide for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 57-15-06.3 of the North Dakota Century Code is amended and reenacted as follows:

4. ~~Any~~ Upon resolution of the board of county commissioners, any proceeds of a tax levy in excess of the amount needed to match federal funds in any year may be used by the county, at any time the proceeds may become available, for providing paved or any other type of road surfacing on, or for maintenance of, roads included within the county road program for which the tax levy was originally made or for any new project included in an amended program.

SECTION 2. RETROACTIVE APPLICATION. Section 1 of this Act is retroactive to apply to road programs that were the subject of elections held before August 1, 1987.

Approved March 12, 2007
Filed March 13, 2007

CHAPTER 508**HOUSE BILL NO. 1312**

(Representatives Conrad, Wolf)
(Senator Horne)

SCHOOL DISTRICT LEVY CORRECTION

AN ACT to create and enact section 57-15-63.1 of the North Dakota Century Code, relating to relevy by a school district of property taxes omitted by mistake; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 57-15-63.1 of the North Dakota Century Code is created and enacted as follows:

57-15-63.1. (Effective through December 31, 2011) Mistake in levy - Levy increase in later year - Levy reverts.

1. Notwithstanding sections 57-15-01.1 and 57-15-14, if a mistake occurred in the 2006 tax year which resulted in a reduction of twenty mills or more in the amount a school district intended to be levied, as of the October tenth deadline under section 57-15-31.1, not being levied and the mistake has been brought to the attention of the county auditor or county treasurer of any county with land in the school district by February 1, 2007, the taxing district may include the amount that was mistakenly not levied in the taxing district's budget and general fund levy for a single tax year, or spread among one or more tax years, in tax years 2007 through 2011.
2. If the resulting general fund levy for the tax year is above one hundred eighty-five mills, the taxing district need not comply with chapter 57-16.
3. After a tax year in which a taxing district's levy increase authority under this section is exhausted, the taxing district's general fund levy must revert to the general fund levy as it would have been determined without application of this section, plus any increase authorized by law or the taxing district may elect to apply subsection 5 to determine its general fund levy limitation.
4. Before any taxable year may be used as a "base year" under section 57-15-01.1 or a "prior school year" under section 57-15-14 and before any taxable year may be used as a basis for allocation of funds among school districts, any amount included in that taxable year's levy under this section must be deducted.
5. A school district that uses this section to determine its general fund levy may use the amount it intended to levy in the 2006 tax year as its "base year" under section 57-15-01.1 or as its "prior school year" under section 57-15-14.
6. In any allocation of funds among school districts in which the school district mill rate or levy in dollars is used, the 2006 tax year mill rate and

levy in dollars for a school district eligible for a levy increase under this section must be replaced by the mill rate and levy in dollars that would have been levied without the mistake and the 2007 through 2011 tax year mill rates and levies in dollars for a school district applying a levy increase under this section must be reduced to the amount of the mill rate and levy in dollars without the levy increase under this section. The school district shall notify the tax commissioner and superintendent of public instruction of the amount the correct 2006 tax year mill rate and levy in dollars would have been.

SECTION 2. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for taxable years beginning after December 31, 2006, and before January 1, 2012, and is thereafter ineffective.

Approved April 10, 2007
Filed April 11, 2007

CHAPTER 509**HOUSE BILL NO. 1446**

(Representatives Kaldor, Onstad, Vig)
(Senators Lindaas, Oehlke, Olafson)

TOWNSHIP EXCESS LEVY APPROVAL

AN ACT to amend and reenact section 57-17-06 of the North Dakota Century Code, relating to the amount of an excess levy that may be approved for townships; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-17-06 of the North Dakota Century Code is amended and reenacted as follows:

57-17-06. Limitation of amount of excess levy. No excess levy may be authorized under the provisions of this chapter in excess of fifty percent over and above the basic legal limitations prescribed in chapter 57-15, except that an excess levy may be authorized for a township up to one hundred percent over and above the basic legal limitations prescribed in chapter 57-15.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2006.

Approved April 12, 2007
Filed April 13, 2007

CHAPTER 510**HOUSE BILL NO. 1332**
(Representatives Wieland, Aarsvold)
(Senators Bowman, Triplett)**PROPERTY TAX DELINQUENCIES**

AN ACT to create and enact section 57-20-01.2 of the North Dakota Century Code, relating to waiver of penalties and interest on delinquent property taxes; to amend and reenact sections 15-08-19, 57-20-26, and 57-28-01 of the North Dakota Century Code, relating to the period of property tax delinquency before foreclosure of a tax lien; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-08-19 of the North Dakota Century Code is amended and reenacted as follows:

15-08-19. Taxation of and foreclosure of tax lien on property sold by state on deferred payment contract. Property contracted to be sold by the state is subject to taxation from the date of the contract, and the taxes assessed thereon must be collected and enforced in the same manner as taxes against other property. If the contract is not canceled or if the contract has been canceled and the period of redemption has not yet run, the property upon which taxes are delinquent is subject to foreclosure of tax lien. After ~~four~~ two years from the date the tax became due, and after notice of foreclosure has been given as required in title 57, on the date of foreclosure, the county shall acquire such rights and interests as belonged to the holder and owner of the contract issued under the provisions of this chapter and only such rights. The county may assign its rights and interest at any time, and the assignee shall have the rights given by this section to the county. No tax deed may be issued upon any tax sale certificate while the legal title to the lands remains in the state of North Dakota.

SECTION 2. Section 57-20-01.2 of the North Dakota Century Code is created and enacted as follows:

57-20-01.2. (Effective through October 1, 2011) Penalty and interest waiver. The board of county commissioners may establish a policy to waive all or part of penalties and interest on delinquent real estate taxes if the board of county commissioners believes the reduced period for foreclosure of tax liens under this Act creates a hardship for taxpayers. The board shall apply the policy uniformly to all taxpayers.

SECTION 3. AMENDMENT. Section 57-20-26 of the North Dakota Century Code is amended and reenacted as follows:

57-20-26. Treasurer to give notice of tax lien by mail. Between the first and fifteenth of November of each year, the county treasurer shall mail to each owner of any lot or tract of land for which taxes are delinquent a notice giving the legal description of that lot or tract and stating that the taxes are delinquent and constitute a lien against the property. The notice must advise the owner that unless the delinquent taxes and special assessments with penalty, simple interest at the

rate of twelve percent per annum from and after January first following the year in which the taxes become due and payable, and costs established under subsection 5 of section 57-28-04 are paid by October first of the ~~fourth~~ second year following the year in which the taxes became delinquent, the county auditor will foreclose on the tax lien and issue a tax deed to the county.

SECTION 4. AMENDMENT. Section 57-28-01 of the North Dakota Century Code is amended and reenacted as follows:

57-28-01. Notice of foreclosure of tax lien to be given. On or before June first in each year, the county auditor shall give notice of foreclosure of tax lien for all property for which ~~four~~ two or more years have passed since the tax became due.

SECTION 5. EFFECTIVE DATE - EXPIRATION DATE. Sections 1, 3, and 4 of this Act are effective for taxable years beginning after December 31, 2006. Property tax proceedings relating to property taxes due or delinquent for any taxable year prior to 2007 are subject to provisions of law that were in effect on December 31, 2006. Section 2 of this Act is effective through October 1, 2011, and is thereafter ineffective.

Approved April 5, 2007
Filed April 5, 2007

CHAPTER 511**HOUSE BILL NO. 1186**

(Representatives Aarsvold, Wall)
(Senators Heitkamp, Lindaas, Tallackson, Urlacher)

PROPERTY TAX PROTEST AND ABATEMENTS

AN ACT to amend and reenact sections 57-20-20, 57-20-21, and 57-23-06 of the North Dakota Century Code, relating to property taxes paid under protest and hearings on applications for abatement; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-20-20 of the North Dakota Century Code is amended and reenacted as follows:

57-20-20. Payment of tax under protest - Determination of uncontested amount. Any person against whom any tax is levied, or who may be required to pay the same, may pay such tax under protest to the county treasurer, by giving notice in writing to such treasurer at the time of payment, specifying the reasons for such protest, and thereafter, within sixty days, that person may apply in writing to the board of county commissioners for an abatement, adjustment, or refund of taxes thus paid, or any portion thereof, and if such application is rejected, in whole or in part, or if the board fails to act upon the person's application within sixty days, it shall notify the applicant of the disposition of the person's application and of the person's right to appeal as provided by law. The application to the board of county commissioners must show the post-office address of the taxpayer and notice to such address by registered or certified mail is sufficient service of the notice of rejection or approval of the taxpayer's application.

The uncontested amount of taxes paid under protest is the amount of taxes that would be payable if the application for abatement, adjustment, or refund is approved by the board of county commissioners as submitted.

SECTION 2. AMENDMENT. Section 57-20-21 of the North Dakota Century Code is amended and reenacted as follows:

57-20-21. Segregation of contested amount of taxes paid under protest. Whenever taxes have been paid under protest, the county treasurer shall deduct the uncontested amount of the taxes paid under protest as determined under section 57-20-20 and keep the contested amount of the money thus paid and collected in a separate fund known as "taxes paid under protest fund" and such moneys. The uncontested amount of taxes paid under protest may be allocated immediately as provided by law. The amount deposited in the taxes paid under protest fund may not be paid or disbursed to the state, to any fund of the county, nor to any local taxing district, until the period prescribed in section 57-20-20 has expired, and in case an action is commenced, the county treasurer shall retain the contested amount in such fund, until such action is finally determined; ~~that part or portion of the tax paid under protest which the plaintiff in the complaint contends is invalid or illegal.~~

SECTION 3. AMENDMENT. Section 57-23-06 of the North Dakota Century Code is amended and reenacted as follows:

57-23-06. Hearing on application.

1. Within ten days after receiving an application for abatement, the city auditor or the township clerk shall give the applicant a notice of a hearing to be held before the governing body of the city or township, or such other committee as it may designate, in which the assessed property is located. Said hearing must be set for no more than sixty days after the date of the notice of hearing, and in any event, must be held before the recommendations provided for in subsection 2 are made. The applicant may waive, in writing, the hearing before such governing body or designated committee at any time before the hearing. Any recommendations provided for in subsection 2 must be transmitted to the county auditor no more than thirty days after the date set for the hearing. The provisions of this subsection do not apply to applications for abatement pursuant to section 57-02-08.2.
2. At the next regular meeting of the board of county commissioners following the filing of an application for abatement or, if forthcoming, at the next regular meeting of the board of county commissioners following transmittal of the recommendations of the governing body of the municipality, the applicant may appear, in person or by a representative or attorney, and may present such evidence as may bear on the application. The applicant shall furnish any additional information or evidence requested by the board of county commissioners. The recommendations of the governing body of the municipality in which such assessed property is located must be endorsed upon or attached to every application for an abatement or refund, and the board of county commissioners shall give consideration to such recommendations. The board of county commissioners, by a majority vote, either shall approve or reject the application, in whole or in part. If rejected, in whole or in part, a written explanation of the rationale for the decision, signed by the chairman of the board, must be attached to the application, and a copy thereof must be mailed by the county auditor to the applicant at the post-office address specified in the application.
3. At a hearing before the board of county commissioners on an application for abatement, the applicant or the applicant's representative or attorney is limited to the relief claimed in the application for abatement submitted to the board of county commissioners. The applicant or applicant's representative or attorney may not submit evidence during a hearing on an application for abatement suggesting a lower valuation, a lower tax levy, or a different taxable status than was requested in the application for abatement submitted to the board of county commissioners.

SECTION 4. EFFECTIVE DATE. This Act is effective for property taxes paid under protest after July 31, 2007.

Approved March 7, 2007
Filed March 8, 2007

CHAPTER 512**SENATE BILL NO. 2091**

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

TAX RETURN DUE DATES

AN ACT to amend and reenact section 57-35.3-06, subsection 3 of section 57-38-31.1, subsection 2 of section 57-38-34, and section 57-38-63 of the North Dakota Century Code, relating to the due date for filing short period financial institutions tax and corporate income tax returns, composite returns filed by passthrough entities, and the due date for estimated tax payments by corporations for short-period tax years; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-35.3-06 of the North Dakota Century Code is amended and reenacted as follows:

57-35.3-06. Tax return. On or before April fifteenth of each year, the taxpayer shall file with the commissioner, on forms or in a manner prescribed by the commissioner, a report in writing under oath showing the amount of taxable income of the financial institution for the preceding calendar year. A return for a period of less than one year must be filed on or before April fifteenth, or on or before the date prescribed by the United States internal revenue service, whichever is later. If required by the commissioner, the return must be accompanied by a true copy of the federal income tax return of the taxpayer or by equivalent information in the form and manner prescribed by the commissioner. A true copy of the federal income tax return must be furnished to the commissioner by the taxpayer at any time after the taxpayer has filed the return required by this section if required by the commissioner before the expiration of the applicable period for assessment of additional tax liability under section 57-38-38. The commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that has the same validity and consequence as the actual signature and written declaration for a paper return. The commissioner may grant a reasonable extension of time for filing a return under the standards and terms applicable to other corporations under section 57-38-34.

SECTION 2. AMENDMENT. Subsection 3 of section 57-38-31.1 of the North Dakota Century Code is amended and reenacted as follows:

3. a. A passthrough entity shall withhold income tax, at the highest tax rate provided in section 57-38-30.3 for individuals, on the share of income of the entity distributed to each nonresident member and pay the withheld amount in the manner prescribed by the tax commissioner. The passthrough entity is liable to the state for the payment of the tax required to be withheld under this section and is not liable to any member for the amount withheld and paid over in compliance with this section. A member of a passthrough entity that is itself a passthrough entity (a lower-tier passthrough entity) is subject to this same requirement to withhold and pay over income tax on the share of income distributed by the lower-tier passthrough entity to each of its nonresident members. The tax

commissioner shall apply tax withheld and paid over by a passthrough entity on distributions to a lower-tier passthrough entity to the withholding required of that lower-tier passthrough entity.

- b. At the time of a payment made under this section, a passthrough entity shall deliver to the tax commissioner a return upon a form prescribed by the tax commissioner showing the total amounts paid or credited to its nonresident members, the amount withheld in accordance with this section, and any other information the tax commissioner may require. A passthrough entity shall furnish to its nonresident member annually, but not later than the fifteenth day of the third month after the end of its taxable year, a record of the amount of tax withheld on behalf of such member on a form prescribed by the tax commissioner.
- c. Notwithstanding subdivision a, a passthrough entity is not required to withhold tax for a nonresident member if:
 - (1) The member has a pro rata or distributive share of income of the passthrough entity from doing business in, or deriving income from sources within, this state of less than one thousand dollars per annual accounting period;
 - (2) The tax commissioner has determined by rule, ruling, or instruction that the member's income is not subject to withholding;
 - (3) The member elects to have the tax due paid as part of a composite return filed by the passthrough entity under subsection 2; or
 - (4) The entity is a publicly traded partnership as defined by section 7704(b) of the Internal Revenue Code which is treated as a partnership for the purposes of the Internal Revenue Code and which has agreed to file an annual information return reporting the name, address, taxpayer identification number, and other information requested by the tax commissioner of each unitholder with an income in the state in excess of five hundred dollars.
- d. A passthrough entity failing to file a return, or failing to withhold or remit the tax withheld, as required by this section, is subject to the provisions of section 57-38-45.

SECTION 3. AMENDMENT. Subsection 2 of section 57-38-34 of the North Dakota Century Code is amended and reenacted as follows:

2. Returns made on the basis of the calendar year must be filed on or before the fifteenth day of April following the close of the calendar year and returns made on the basis of a fiscal year must be filed on or before the fifteenth day of the fourth month following the close of the fiscal year. A return filed for a period of less than one year must be filed on or before April fifteenth, or on or before the date prescribed by the United States internal revenue service, whichever is later.

SECTION 4. AMENDMENT. Section 57-38-63 of the North Dakota Century Code is amended and reenacted as follows:

57-38-63. Due date for payment of estimated income tax. A taxpayer shall pay no less than one-quarter of the estimated tax to the tax commissioner on April fifteenth, June fifteenth, and September fifteenth of the taxable year, and January fifteenth of the following taxable year; provided, that a taxpayer having a taxable year other than a calendar year shall pay the estimated tax on the fifteenth day of the fourth, sixth, and ninth months of the taxable year, and the fifteenth day of the first month of the following taxable year. In the case of a tax year that is for a period of less than one year, and the short tax year ends prior to any remaining due dates under this section, the final estimated tax payment is due on the fifteenth day of the last month of the short tax year. In the case of a tax year that is for a period of less than one hundred twenty days, no estimated tax payment is due.

SECTION 5. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2006.

Approved March 2, 2007
Filed March 2, 2007

CHAPTER 513**HOUSE BILL NO. 1393**

(Representatives Froelich, Charging)
(Senator Marcellais)

INDIAN INCOME AND SALES TAX EXEMPTIONS

AN ACT to create and enact a new subdivision to subsection 1 of section 57-38-01.2, a new subdivision to subsection 2 of section 57-38-30.3, a new subsection to section 57-39.2-04, and a new subsection to section 57-40.3-04 of the North Dakota Century Code, relating to income tax exemptions and sales, use, and motor vehicle excise tax exemptions for enrolled tribal members; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁵⁰ **SECTION 1.** A new subdivision to subsection 1 of section 57-38-01.2 of the North Dakota Century Code is created and enacted as follows:

Reduced by the amount of income of a taxpayer, who resides within the boundaries of any reservation in this state and who is an enrolled member of a federally recognized Indian tribe, from activities or sources within the boundaries of any reservation in this state.

²⁵¹ **SECTION 2.** A new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Reduced by the amount of income of a taxpayer, who resides within the boundaries of any reservation in this state and who is an enrolled member of a federally recognized Indian tribe, from activities or sources within the boundaries of any reservation in this state.

²⁵² **SECTION 3.** A new subsection to section 57-39.2-04 of the North Dakota Century Code is created and enacted as follows:

Gross receipts from sales within the boundaries of any reservation in this state to an individual who resides within the boundaries of any

²⁵⁰ Section 57-38-01.2 was also amended by section 43 of House Bill No. 1018, chapter 18, and section 2 of House Bill No. 1091, chapter 89.

²⁵¹ Section 57-38-30.3 was also amended by section 46 of House Bill No. 1018, chapter 18, section 3 of House Bill No. 1091, chapter 89, section 2 of House Bill No. 1403, chapter 519, section 1 of House Bill No. 1412, chapter 523, section 8 of Senate Bill No. 2032, chapter 520, section 1 of Senate Bill No. 2079, chapter 522, and section 2 of Senate Bill No. 2082, chapter 521.

²⁵² Section 57-39.2-04 was also amended by section 3 of House Bill No. 1049, chapter 529, and section 5 of Senate Bill No. 2380, chapter 528.

reservation in this state and who is an enrolled member of a federally recognized Indian tribe.

²⁵³ **SECTION 4.** A new subsection to section 57-40.3-04 of the North Dakota Century Code is created and enacted as follows:

A motor vehicle acquired at any location within this state by an individual who resides within the boundaries of any reservation in this state and who is an enrolled member of a federally recognized Indian tribe.

SECTION 5. EFFECTIVE DATE. Sections 1 and 2 of this Act are effective for taxable years beginning after December 31, 2006. Sections 3 and 4 of this Act are effective for taxable events occurring after June 30, 2007.

Approved March 23, 2007
Filed March 23, 2007

²⁵³ Section 57-40.3-04 was also amended by section 1 of House Bill No. 1160, chapter 534, section 7 of Senate Bill No. 2101, chapter 450, and section 3 of Senate Bill No. 2113, chapter 337.

CHAPTER 514**HOUSE BILL NO. 1514**

(Representatives Monson, Nelson)
(Senator Olafson)

BIOMASS INCOME TAX CREDIT

AN ACT to amend and reenact section 57-38-01.8 of the North Dakota Century Code, relating to an income tax credit for geothermal, solar, wind, or biomass energy devices; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁵⁴ **SECTION 1. AMENDMENT.** Section 57-38-01.8 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.8. Income tax credit for installation of geothermal, solar, ~~or~~ wind, or biomass energy devices.

1. Any taxpayer filing a North Dakota income tax return pursuant to the provisions of this chapter may claim a credit for the cost of a geothermal, solar, ~~or~~ wind, or biomass energy device installed before January 1, 2011, in a building or on property owned or leased by the taxpayer in North Dakota. The credit provided in this section for a device installed before January 1, 2001, must be in an amount equal to five percent per year for three years, and for a device installed after December 31, 2000, must be in an amount equal to three percent per year for five years of the actual cost of acquisition and installation of the geothermal, solar, ~~or~~ wind, or biomass energy device and must be subtracted from any income tax liability of the taxpayer as determined pursuant to the provisions of this chapter.
2. For the purposes of this section:
 - a. "Biomass energy device" means a system using agricultural crops, wastes, or residues; wood or wood wastes or residues; animal wastes; landfill gas; or other biological sources to produce fuel or electricity.
 - b. "Geothermal energy device" means a system or mechanism or series of mechanisms designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, by a method which extracts or converts the energy naturally occurring beneath the earth's surface in rock structures, water, or steam.

²⁵⁴ Section 57-38-01.8 was also amended by section 1 of House Bill No. 1233, chapter 515, and section 1 of Senate Bill No. 2298, chapter 516.

- b. c. "Solar or wind energy device" means a system or mechanism or series of mechanisms designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, or to store any of these, by a method which converts the natural energy of the sun or wind.
3. If a geothermal, solar, ~~or wind,~~ or biomass energy device is a part of a system which uses other means of energy, only that portion of the total system directly attributable to the cost of the geothermal, solar, ~~or wind,~~ or biomass energy device may be included in determining the amount of the credit. The costs of installation may not include costs of redesigning, remodeling, or otherwise altering the structure of a building in which a geothermal, solar, ~~or wind,~~ or biomass energy device is installed.
 4. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity that installs a geothermal, solar, ~~or wind,~~ or biomass energy device in a building or on property owned or leased by the passthrough entity must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed with respect to the entity's investments must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.
 5. If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all of the corporations included in the North Dakota consolidated return.
 6. The credit allowed under this section may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be used as a credit carryover to each of the five succeeding taxable years.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2006.

Approved March 9, 2007
Filed March 12, 2007

CHAPTER 515**HOUSE BILL NO. 1233**

(Representatives Brandenburg, Charging, S. Kelsh, Monson)
(Senators Erbele, Wanzek)

WIND ENERGY TAX CREDIT ASSIGNMENT

AN ACT to amend and reenact section 57-38-01.8 of the North Dakota Century Code, relating to assignment of a wind energy device installation tax credit; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁵⁵ **SECTION 1. AMENDMENT.** Section 57-38-01.8 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.8. Income tax credit for installation of geothermal, solar, or wind energy devices.

1. Any taxpayer filing a North Dakota income tax return pursuant to the provisions of this chapter may claim a credit for the cost of a geothermal, solar, or wind energy device installed before January 1, 2011, in a building or on property owned or leased by the taxpayer in North Dakota. The credit provided in this section for a device installed before January 1, 2001, must be in an amount equal to five percent per year for three years, and for a device installed after December 31, 2000, must be in an amount equal to three percent per year for five years of the actual cost of acquisition and installation of the geothermal, solar, or wind energy device and must be subtracted from any income tax liability of the taxpayer as determined pursuant to the provisions of this chapter.
2. For the purposes of this section:
 - a. "Geothermal energy device" means a system or mechanism or series of mechanisms designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, by a method which extracts or converts the energy naturally occurring beneath the earth's surface in rock structures, water, or steam.
 - b. "Solar or wind energy device" means a system or mechanism or series of mechanisms designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, or to store any of these, by a method which converts the natural energy of the sun or wind.

²⁵⁵ Section 57-38-01.8 was also amended by section 1 of House Bill No. 1514, chapter 514, and section 1 of Senate Bill No. 2298, chapter 516.

3. If a geothermal, solar, or wind energy device is a part of a system which uses other means of energy, only that portion of the total system directly attributable to the cost of the geothermal, solar, or wind energy device may be included in determining the amount of the credit. The costs of installation may not include costs of redesigning, remodeling, or otherwise altering the structure of a building in which a geothermal, solar, or wind energy device is installed.
4. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity that installs a geothermal, solar, or wind energy device in a building or on property owned or leased by the passthrough entity must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed with respect to the entity's investments must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.
5. If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all of the corporations included in the North Dakota consolidated return.
6. The credit allowed under this section may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be used as a credit carryover to each of the five succeeding taxable years.
7. All or part of the unused credit allowed under this section may be sold, assigned, or otherwise transferred by the taxpayer to the purchaser of the power generated by the device as part of the consideration in a power purchase agreement, or to any North Dakota taxpayer that constructs or expands an electricity transmission line in North Dakota after August 1, 2007. The taxpayer receiving the assignment of the credit is entitled to claim the credit against that taxpayer's tax liability under this chapter beginning with the tax year in which the power purchase agreement or the tax credit purchase agreement was fully executed by the parties and the geothermal, solar, or wind energy device is installed. If the credit is transferred to an entity that constructs or expands transmission lines, the amount of credit claimed by that entity in any taxable year may not exceed the actual cost of acquisition and installation of the transmission lines constructed in North Dakota for that taxable year.
 - a. A purchaser of the tax credit must claim the credit beginning with the tax year in which the purchase agreement is fully executed by the parties and the geothermal, solar, or wind energy device is installed. A purchaser of a tax credit under this section has only the right to claim and use the credit under the terms that would have applied to the tax credit transferor, except that in the case of a credit that is sold, assigned, or otherwise transferred by the taxpayer to the tax credit transferor, the credit allowed under this section may not exceed sixty percent of the liability for tax of the tax credit purchaser under this chapter. This subsection does not limit

the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.

- b. The tax credit transferor may sell the credit to only one tax credit purchaser each taxable year. The tax credit purchaser may not sell, assign, or otherwise transfer the credit purchased under the purchase agreement.
- c. If the taxpayer elects to sell, assign, or otherwise transfer an excess credit under this subsection, the tax credit transferor and the tax credit purchaser shall file jointly with the tax commissioner a copy of the purchase agreement affecting the tax credit transfer and a statement containing the name, address, and taxpayer identification number of any party to the transfer; the total installed cost of the qualifying geothermal, solar, or wind energy device; the amount of the credit being transferred; the gross proceeds received by the transferor; and the tax year for which the credit may be claimed. The purchase agreement must state clearly the purchase price associated with the tax credit sold. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and confidentiality waiver must be filed within thirty days after the date the purchase agreement is fully executed. The tax commissioner may audit the returns and assess or issue refunds, notwithstanding any other time limitation prescribed under law which may have expired for the purchaser.
- d. If the amount of the credit available under this section is changed as a result of an amended return filed by the transferor or as the result of an audit conducted by the internal revenue service or the tax commissioner, the transferor shall report to the purchaser the adjusted credit amount within thirty days of the amended return or within thirty days of the final determination made by the internal revenue service or the tax commissioner. The tax credit purchaser shall file amended returns reporting the additional tax due or claiming a refund as provided in section 57-38-38 or 57-38-40.
- e. The total amount of credits that can be sold by all taxpayers is limited to three million dollars each biennium. This limit applies on the basis of the date of installation of the geothermal, solar, or wind energy device.
- f. Gross proceeds received under the purchase agreement by the tax credit transferor for the sale, assignment, or transfer of the tax credit must be allocated to North Dakota. The amount assigned under this subsection may not be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.
- g. Within four years after the date of the credit assignment, the tax commissioner may audit the returns of the credit transferor and the purchaser to verify the correctness of the amount of the transferred credit and, if necessary, assess the credit purchaser if additional

tax is found due. This subdivision does not limit or restrict any other time period prescribed in this chapter for the assessment of tax.

- h. The tax commissioner may adopt rules to permit verification of the validity, timeliness, and limitations on the sale of the tax credit transferred under this section.

SECTION 2. EFFECTIVE DATE. This Act is effective for geothermal, solar, or wind energy devices installed after December 31, 2006.

Approved April 27, 2007

Filed April 30, 2007

CHAPTER 516**SENATE BILL NO. 2298**

(Senators Klein, Erbele, Grindberg)
(Representatives Brandenburg, Headland, Pollert)

**ENERGY AND AGRICULTURAL PROCESSING
FACILITY TAX CREDITS**

AN ACT to create and enact a new subsection to section 57-38-01.8 and a new subsection to section 57-40.2-03.3 of the North Dakota Century Code, relating to the income tax credit for installation of geothermal, solar, or wind energy devices, a use tax exemption for purchases of power plant production equipment and related tangible personal property, and machinery or equipment and related tangible personal property used to construct an agricultural commodity processing facility; and to amend and reenact sections 57-39.2-04.2, 57-39.2-04.4, and 57-40.2-04.2 of the North Dakota Century Code, relating to the definition of power plants, removal of obsolete language, and applications for exemption from sales tax for tangible personal property used to construct agricultural commodity processing facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁵⁶ **SECTION 1.** A new subsection to section 57-38-01.8 of the North Dakota Century Code is created and enacted as follows:

For geothermal, solar, or wind energy devices installed after December 31, 2006, if ownership of a device is transferred at the time installation is complete and the device is fully operational, the purchaser of the device is eligible for the tax credit under this section. Subsequent purchasers of the device are not eligible for the tax credit.

²⁵⁷ **SECTION 2. AMENDMENT.** Section 57-39.2-04.2 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-04.2. (Effective through June 30, 2007) Reduced rate and exemption for power plant construction, production, environmental upgrade, and repowering equipment.

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

²⁵⁶ Section 57-38-01.8 was also amended by section 1 of House Bill No. 1233, chapter 515, and section 1 of House Bill No. 1514, chapter 514.

²⁵⁷ Section 57-39.2-04.2 was also amended by section 1 of House Bill No. 1365, chapter 530.

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

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

(Effective after June 30, 2007) Reduced rate and Sales tax exemption for power plant construction, production, environmental upgrade, and repowering equipment and oil refinery or gas processing plant environmental upgrade equipment.

1. As used in this section, unless the context otherwise requires:
 - a.
 - (1) "Environmental upgrade" means an investment greater than twenty-five million dollars or one hundred thousand dollars per megawatt of installed nameplate capacity, whichever is less, in machinery, equipment, and related facilities for reducing emissions or increasing efficiency at an existing power plant.
 - (2) "Environmental upgrade" for purposes of a process unit means an investment greater than one hundred thousand dollars in machinery, equipment, and related facilities for reducing emissions, increasing efficiency, or enhancing reliability of the equipment at a new or existing process unit.
 - b. "Operator" means any person owning, holding, or leasing a power plant or process unit.
 - c. "Power plant" means:
 - (1) An electrical generating plant, and all additions to the plant, which processes or converts lignite from its natural form into electrical power and which has at least one single electrical energy generation unit with a capacity of ~~one hundred~~ twenty five thousand kilowatts or more.
 - (2) A wind-powered electrical generating facility, on which construction is completed before January 1, 2011, and all additions to the facility, which provides electrical power through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.
 - (3) Any other type of electrical power generating facility excluding the types of power plants identified in paragraphs 1 and 2 which has a capacity of one hundred kilowatts or more and produces electricity for resale or for consumption in a business activity.
 - d. "Process unit" means an oil refinery or gas processing plant and all adjacent units that are utilized in the processing of crude oil or natural gas.
 - e. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.
 - f. "Repowering" means an investment of more than two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever is less, in an existing power plant

that modifies or replaces the process used for converting lignite coal from its natural form into electrical power.

2. Sales of production or environmental upgrade equipment used exclusively in power plants or repowering existing power plants or in processing units ~~that begin construction after June 30, 1994,~~ are exempt from the tax imposed by this chapter.
3. Sales of tangible personal property, other than production or environmental upgrade equipment, which is used in the construction of new power plants or to add environmental upgrades to existing power plants or repowering existing power plants or to add environmental upgrades to existing process units are exempt from the tax imposed by this chapter.
4. To receive the ~~reduced rate or~~ exemption at the time of purchase, the operator must receive from the commissioner a certificate that the tangible personal property or production equipment the operator intends to purchase qualifies for the ~~reduced rate or~~ exemption. If a certificate is not received prior to the purchase, the operator shall pay the applicable tax imposed by this chapter and apply to the commissioner for a refund.
5. If the tangible personal property or production equipment is purchased or installed by a contractor subject to the tax imposed by this chapter, the operator may apply for a refund of the difference between the amount remitted by the contractor and the ~~reduced rate or~~ exemption imposed or allowed by this section.

SECTION 3. AMENDMENT. Section 57-39.2-04.4 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-04.4. Sales tax exemption for materials used to construct agricultural commodity processing facility.

1. Gross receipts from sales of tangible personal property used to construct an agricultural commodity processing facility in this state are exempt from taxes under this chapter. To be exempt, the tangible personal property must be incorporated in the structure of the facility or used in the construction process to the point of having no residual economic value.
2. ~~The~~ To receive the exemption at the time of purchase, the owner of the facility must apply to receive from the commissioner for a refund of sales and use taxes paid by any contractor, subcontractor, or builder for which the sale or use is claimed as exempt under this section. Application for a refund must be made at the times and in the manner directed by the commissioner and must include sufficient information to permit the commissioner to verify the sales and use taxes paid and the exempt status of the sale or use certificate that the tangible personal property used to construct an agricultural commodity processing facility which the owner intends to purchase qualifies for the exemption. If a certificate is not received prior to the purchase, the owner shall pay the applicable tax imposed by this chapter and apply to the commissioner for a refund.

3. If the tangible personal property is purchased or installed by a contractor subject to the tax imposed by this chapter, the owner may apply for a refund of the difference between the amount remitted by the contractor and the exemption imposed or allowed by this section.

~~3.~~ 4. For purposes of this section, the following definitions apply:

- a. "Agricultural commodity processing facility" means buildings, structures, fixtures, and improvements used or operated primarily for the processing or production of marketable products from agricultural commodities. The term does not include a facility that provides only storage, cleaning, drying, or transportation of agricultural commodities.
- b. "Facility" means each part of the facility which is used in a process primarily for the processing of agricultural commodities, including receiving or storing agricultural commodities; transporting the agricultural commodities or product before, during, or after the processing; or packaging or otherwise preparing the product for sale or shipment.
- c. "Tangible personal property" does not include tools or machinery used to construct an agricultural commodity processing facility and does not include machinery or equipment exempted under section 57-39.2-04.3.

SECTION 4. A new subsection to section 57-40.2-03.3 of the North Dakota Century Code is created and enacted as follows:

The tax imposed by this section does not apply to:

- a. Production equipment or tangible personal property as authorized or approved for exemption by the commissioner under section 57-39.2-04.2; or
- b. Machinery, equipment, or other tangible personal property used to construct an agricultural commodity processing facility as authorized or approved for exemption by the commissioner under section 57-39.2-04.3 or 57-39.2-04.4.

²⁵⁸ **SECTION 5. AMENDMENT.** Section 57-40.2-04.2 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-04.2. (Effective through June 30, 2007) Reduced rate and exemption for power plant construction, production, environmental upgrade, and repowering equipment.

1. As used in this section, unless the context otherwise requires:

²⁵⁸ Section 57-40.2-04.2 was also amended by section 2 of House Bill No. 1365, chapter 530.

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

amount remitted by the contractor and the reduced rate or exemption imposed or allowed by this section.

(Effective after June 30, 2007) ~~Reduced rate~~ Use tax and exemption for power plant construction, production, environmental upgrade, and repowering equipment and oil refinery or gas processing plant environmental upgrade equipment.

1. As used in this section, unless the context otherwise requires:
 - a.
 - (1) "Environmental upgrade" means an investment greater than twenty-five million dollars or one hundred thousand dollars per megawatt of installed nameplate capacity, whichever is less, in machinery, equipment, and related facilities for reducing emissions or increasing efficiency at an existing power plant.
 - (2) "Environmental upgrade" for purposes of a process unit means an investment greater than one hundred thousand dollars in machinery, equipment, and related facilities for reducing emissions, increasing efficiency, or enhancing reliability of the equipment at a new or existing process unit.
 - b. "Operator" means any person owning, holding, or leasing a power plant or process unit.
 - c. "Power plant" means:
 - (1) An electrical generating plant, and all additions to the plant, which processes or converts lignite from its natural form into electrical power and which has at least one single electrical energy generation unit with a capacity of ~~one hundred~~ twenty fifty thousand kilowatts or more.
 - (2) A wind-powered electrical generating facility, on which construction is completed before January 1, 2011, and all additions to the facility, which provides electrical power through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.
 - (3) Any other type of electrical power generating facility excluding the types of power plants identified in paragraphs 1 and 2 which has a capacity of one hundred kilowatts or more and produces electricity for resale or for consumption in a business activity.
 - d. "Process unit" means an oil refinery or gas processing plant and all adjacent units that are utilized in the processing of crude oil or natural gas.
 - e. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.

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

Approved April 9, 2007

Filed April 10, 2007

CHAPTER 517**SENATE BILL NO. 2078**

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

FAMILY CARE INCOME TAX CREDIT

AN ACT to amend and reenact section 57-38-01.20 of the North Dakota Century Code, relating to the family care income tax credit; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-01.20 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.20. Credit for expenses of caring for certain family members.

1. An individual is entitled to a credit against the tax imposed under section 57-38-29 or 57-38-30.3 in the amount of qualified care expenses under this section paid by the individual for the care of a qualifying family member during the taxable year.
2. A qualifying family member is an individual who has taxable income of twenty thousand dollars or less or a married individual with taxable income of thirty-five thousand dollars or less, including that of the individual's spouse, for the taxable year. A qualifying family member must be related to the taxpayer by blood or marriage and either sixty-five years of age or older or ~~determined to be~~ is disabled by the ~~social security administration~~ as defined under title XVI of the federal Social Security Act.
3. a. Qualified care expenses include payments by the taxpayer for home health agency services, companionship services, personal care attendant services, homemaker services, adult day care, respite care, ~~health care equipment and supplies,~~ and other expenses for goods or services that are necessary to allow the ~~qualifying family member to avoid placement in a long-term care facility and which are~~ that are deductible medical expenses under the Internal Revenue Code. A qualified care expense must be:
 - (1) Provided to or for the benefit of the qualifying family member or to assist the taxpayer in caring for the qualifying family member;
 - (2) Provided by an organization or individual not related to the taxpayer or the qualifying family member; and
 - (3) Not compensated for by insurance or federal or state assistance programs.
- b. For purposes of this subsection, "companionship services" means services that provide fellowship, care, and protection for individuals

who, because of advanced age or physical or mental disabilities, cannot care for their own needs. Those services may include household work related to the care of the aged or disabled person, including meal preparation, bed making, washing of clothes, and other similar services, and may include the performance of general household work if that work does not exceed twenty percent of the total weekly hours worked. "Companionship services" does not include services relating to the care and protection of the aged or disabled which require and are performed by trained personnel, including a registered or practical nurse, and does not include services of individuals who provide care and protection for infants and young children who are not physically or mentally disabled.

4. The percentage amount of credit allowable under this section is:

- a. For a taxpayer whose taxable income does not exceed twenty-five thousand dollars, or thirty-five thousand dollars for a joint return, thirty percent of qualified elderly care expenses; or
- b. For a taxpayer whose taxable income exceeds twenty-five thousand dollars, or thirty-five thousand dollars for a joint return, the greater of:
 - (1) Twenty percent of qualified elderly care expenses; or
 - (2) Thirty percent of qualified elderly care expenses, minus one percent of those expenses for each two thousand dollars or fraction of two thousand dollars by which the taxable income of the taxpayer for the taxable year exceeds twenty-five thousand dollars, or thirty-five thousand dollars for a joint return.

5. The dollar amount of credit allowable under this section is:

- a. Reduced by one dollar for each dollar of the taxable income over fifty thousand dollars for a taxpayer whose taxable income exceeds fifty thousand dollars, or for a joint return, reduced by one dollar for each dollar of the taxable income over seventy thousand dollars for taxpayers whose taxable income exceeds seventy thousand dollars; and
- b. Limited to two thousand dollars per qualifying family member in a taxable year and to four thousand dollars total for two or more qualifying family members in a taxable year; ~~and~~
- e. ~~Prorated among multiple taxpayers who each contribute to qualified care expenses of the same qualified family member in a taxable year in the same proportion that their contributions bear to the total qualified care expenses paid by those taxpayers for that qualified family member. To the extent necessary to administer proration under this subdivision, the secrecy provisions of section 57-38-57 do not apply to disclosures necessary to advise taxpayers of how proration should have been computed.~~

6. A deduction or credit is not allowed under any other provision of this chapter with respect to any amount for which a credit is allowed under

this section. The credit allowed under this section may not be claimed as a carryback or carryforward and may not be refunded if the taxpayer has no tax liability.

7. In the case of a married individual filing a separate return, the percentage amount of credit under subsection 4 and the dollar amount of credit under subsection 5 are limited to one-half of the amounts indicated in those subsections.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2006.

Approved March 7, 2007

Filed March 8, 2007

CHAPTER 518**SENATE BILL NO. 2363**

(Senators Horne, Flakoll, Mathern)
(Representatives N. Johnson, Kaldor, Kretschmar)

ENDOWMENT GIFTS INCOME TAX CREDIT

AN ACT to amend and reenact section 57-38-01.21 of the North Dakota Century Code, relating to an individual or corporate income tax credit for planned gifts to nonprofit organizations and contributions to qualified endowments held by nonprofit organizations; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-01.21 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.21. Planned gifts and qualified endowments credit - Definitions. For purposes of this section:

1. For purposes of this section:

- a. "Permanent, irrevocable fund" means a fund comprising cash, securities, mutual funds, or other investment assets established for a specific charitable, religious, educational, or eleemosynary purpose and invested for the production or growth of income, or both, which may either be added to principal or expended.
- b. "Planned gift" means an irrevocable contribution to a North Dakota qualified nonprofit organization or qualified endowment held by or for a North Dakota qualified nonprofit organization, when the contribution uses any of the following techniques that are authorized under the Internal Revenue Code:
 - (1) Charitable remainder unitrusts, as defined by 26 U.S.C. 664;
 - (2) Charitable remainder annuity trusts, as defined by 26 U.S.C. 664;
 - (3) Pooled income fund trusts, as defined by 26 U.S.C. 642(c)(5);
 - (4) Charitable lead unitrusts qualifying under 26 U.S.C. 170(f)(2)(B);
 - (5) Charitable lead annuity trusts qualifying under 26 U.S.C. 170(f)(2)(B);
 - (6) Charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);
 - (7) Deferred charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);

- (8) Charitable life estate agreements qualifying under 26 U.S.C. 170(f)(3)(B); or
- (9) Paid-up life insurance policies meeting the requirements of 26 U.S.C. 170.

"Planned gift" does not include a contribution using a charitable remainder unitrust or charitable remainder annuity trust unless the agreement provides that the trust may not terminate and beneficiaries' interest in the trust may not be assigned or contributed to the qualified endowment sooner than the earlier of the date of death of the beneficiaries or five years from the date of the contribution.

"Planned gift" does not include a deferred charitable gift annuity unless the payment of the annuity is required to begin within the life expectancy of the annuitant or of the joint life expectancies of the annuitants, if more than one annuitant, as determined using the actuarial tables used by the internal revenue service in determining federal charitable income tax deductions on the date of the contribution.

"Planned gift" does not include a charitable gift annuity or deferred charitable gift annuity unless the annuity agreement provides that the interest of the annuitant or annuitants in the gift annuity may not be assigned to the qualified nonprofit organization or qualified endowment sooner than the earlier of the date of death of the annuitant or annuitants or five years after the date of the contribution.

"Planned gift" does not include a charitable gift annuity or deferred charitable gift annuity unless the annuity is a qualified charitable gift annuity for federal income tax purposes.

b. c. "Qualified nonprofit organization endowment" means a permanent, irrevocable fund held by a North Dakota incorporated or established organization that is:

- (1) A tax-exempt organization under 26 U.S.C. 501(c), to which contributions qualify for a federal charitable income tax deduction; and qualified nonprofit organization; or
- (2) An organization that has an established business presence or situs in North Dakota A bank or trust company holding the fund on behalf of a qualified nonprofit organization.

e. (1) A contribution using a technique described in paragraph 4 or 2 of subdivision a is not a planned gift unless the trust agreement provides that the trust may not terminate and the beneficiaries' interest in the trust may not be assigned or contributed to the North Dakota qualified nonprofit organization sooner than the earlier of:

- (a) The date of death of the beneficiaries; or
- (b) Five years from the date of the contribution.

- (2) A contribution using the technique described in paragraph 7 of subdivision a is not a planned gift unless the payment of the annuity is required to begin within the life expectancy of the annuitant or of the joint life expectancies of the annuitants, if more than one annuitant, as determined using the actuarial tables used by the internal revenue service in determining federal charitable income tax deductions on the date of the contribution.
- (3) A contribution using a technique described in paragraph 6 or 7 of subdivision a is not a planned gift unless the annuity agreement provides that the interest of the annuitant or annuitants in the gift annuity may not be assigned to the North Dakota qualified nonprofit organization sooner than the earlier of:
 - (a) The date of death of the annuitant or annuitants; or
 - (b) Five years after the date of the contribution.
- (4) A contribution using a technique described in paragraph 6 or 7 of subdivision a is not a planned gift unless the annuity is a qualified charitable gift annuity.

d. "Qualified nonprofit organization" means a North Dakota incorporated or established tax-exempt organization under 26 U.S.C. 501(c) to which contributions qualify for federal charitable income tax deductions with an established business presence or situs in North Dakota.

2. An individual taxpayer is allowed a tax credit against the taxes tax imposed by section 57-38-29 or 57-38-30.3 in an amount equal to ~~twenty~~ forty percent of the present value of the aggregate amount of the charitable gift portion of planned gifts made by the taxpayer during the year to ~~any North Dakota a~~ qualified nonprofit organization or qualified endowment. The maximum credit that may be claimed by a taxpayer under this subsection for contributions made ~~from all sources~~ in a taxable year is ~~five ten thousand dollars, or twenty thousand dollars for married individuals filing a joint return~~. The credit allowed under this section may not exceed the taxpayer's income tax liability.

- a. ~~If this credit is claimed, the amount of the contribution upon which the credit is computed must be added to federal taxable income in computing North Dakota taxable income, but only to the extent that the contribution reduced federal taxable income.~~
- b. ~~The credit must be applied to the tax year in which the contribution is made and any unused portion of the credit may be carried forward for up to two taxable years.~~

3. A corporation is allowed a tax credit against the tax imposed by section 57-38-30 in an amount equal to forty percent of a charitable gift to a qualified endowment. The maximum credit that may be claimed by a corporation under this subsection for contributions made in a taxable year is ten thousand dollars. The credit allowed under this section may not exceed the corporate taxpayer's income tax liability.

4. An estate or trust is allowed a tax credit in an amount equal to forty percent of a charitable gift to a qualified endowment. The maximum credit allowed under this subsection for contributions made in a taxable year is ten thousand dollars. The allowable credit must be apportioned to the estate or trust and to its beneficiaries on the basis of the income of the estate or trust allocable to each, and the beneficiaries may claim their share of the credit against the tax imposed by section 57-38-29, 57-38-30, or 57-38-30.3. A beneficiary may claim the credit only in the beneficiary's taxable year in which the taxable year of the estate or trust ends. Subsections 6 and 7 apply to the estate or trust and its beneficiaries with respect to their respective shares of the apportioned credit.
5. A partnership, subchapter S corporation, or limited liability company treated like a partnership is entitled to a credit in an amount equal to forty percent of a charitable gift to a qualified endowment by the entity during the taxable year. The maximum credit allowed to the entity under this subsection for charitable gifts and planned gifts made in a taxable year is ten thousand dollars. The credit determined at the entity level must be passed through to the partners, shareholders, or members in the same proportion that the charitable contributions attributable to the charitable gifts and planned gifts under this section are distributed to the partners, shareholders, or members. The partner, shareholder, or member may claim the credit only in the partner's, shareholder's, or member's taxable year in which the taxable year of the partnership, subchapter S corporation, or limited liability company ends. Subsections 6 and 7 apply to the partner, shareholder, or member.
6. The amount of the contribution upon which an allowable credit is computed must be added to federal taxable income in computing North Dakota taxable income in the taxable year in which the credit is first claimed, but only to the extent that the contribution reduced federal taxable income.
7. An unused credit may be carried forward for up to three taxable years.
8. If a contribution for which a credit was claimed is recovered by the taxpayer, an amount equal to the credit claimed in all taxable years must be added to the tax due on the income tax return filed for the taxable year in which the recovery occurs. For purposes of subsection 4, this subsection applies if the estate or trust recovers the contribution and the estate or trust and its beneficiaries are liable for the additional tax due with respect to their respective shares of the apportioned credit. For purposes of subsection 5, this subsection applies if the partnership, subchapter S corporation, or limited liability company recovers the contribution, and the partner, shareholder, or member is liable for the additional tax due.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2006.

Approved April 17, 2007
Filed April 18, 2007

CHAPTER 519**HOUSE BILL NO. 1403**

(Representatives Onstad, DeKrey, D. Johnson, Weisz)
(Senators Klein, Taylor)

MICROBUSINESS INCOME TAX CREDIT

AN ACT to create and enact a new section to chapter 57-38 and a new subsection to section 57-38-30.3 of the North Dakota Century Code, relating to an individual and corporate income tax credit for operation of a microbusiness; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Microbusiness income tax credit.**1. For purposes of this section:**

- a. "Actively engaged" in the operation of a microbusiness means involvement on a continuous basis in the daily management and operation of the business.
- b. "Director" means the director of the department of commerce division of economic development and finance.
- c. "Economically viable small community" means a community with a population of at least one hundred but fewer than two thousand, which has one or more of the following:
 - (1) An active community economic development organization;
 - (2) An ongoing relationship with a regional or urban economic development organization; or
 - (3) An existing city sales tax, all or part of the revenue from which is dedicated to economic development.
- d. "Microbusiness" means a business employing five or fewer employees inside an economically viable small community.
- e. "New employment" means the amount by which the total compensation paid during the taxable year to North Dakota resident employees exceeds the total compensation paid to North Dakota resident employees in the taxable year before the application. For the purposes of calculating the increase in new employment, the employer may not include merit or equity based salary increases, cost of living adjustments, or any other increase in compensation not directly related to the hiring of new employees during the taxable year.

- f. "New investment" means the increase in the applicant's purchases of microbusiness buildings and depreciable personal property located in this state, not including vehicles required to be registered for operation on the roads and highways of this state, during the taxable year as compared with the previous taxable year. If the buildings or depreciable personal property is leased, the amount of new investment is the increase in average net annual rents multiplied by the number of years of the lease for which the taxpayer is bound, not exceeding ten years. For the purposes of calculating the increase in new investment, the employer may not include any increases in rents for property leased before the current taxable year. Only rents for leases completed in the current taxable year may be included.
2. The director shall accept an application for qualification as a microbusiness under this section from a taxpayer that is actively engaged in the operation of a microbusiness or that will establish a microbusiness in which the taxpayer will be actively engaged in or operating within the current or subsequent taxable year. The application must be on a form provided by the director and must contain:
 - a. A description of the microbusiness;
 - b. The projected income and expenditures of the microbusiness;
 - c. The market to be served by the microbusiness and the way the expansion addressed the market;
 - d. The amount of projected new investment or employment increases;
 - e. The projected improvement in income or creation of new self-employment or jobs in the area in which the microbusiness is located;
 - f. The nature of the applicant's engagement in the operation of the microbusiness; and
 - g. Any other document, plan, or specification required by the director.
3. A business may be certified by the director as a microbusiness if:
 - a. The applicant is actively engaged in the operation of the microbusiness or will be actively engaged in the operation of the microbusiness upon its establishment;
 - b. The applicant will make new investment or employment in the microbusiness;
 - c. The new investment or employment will create new income or jobs in the area in which the business is located;
 - d. The new business will not directly compete with any established business located within fifteen miles of the proposed new business;

- e. The new business will be located in an area determined by the director to be an economically viable small community located at least fifteen miles from the city limits of a city with a population of two thousand or more; and
 - f. The applicant is not closing or reducing its business operation in one area of the state and relocating substantially the same business operation in another area.
- 4. If the applicant meets the requirements of subsection 3, the director shall issue a certification letter to the microbusiness. The certification letter must include the certification effective date.
- 5. The director may not certify more than two hundred qualified businesses as a microbusiness.
- 6. A taxpayer that is certified as a microbusiness is entitled to tax credits against tax liability as determined under section 57-38-29, 57-38-30, or 57-38-30.3 equal to twenty percent of the taxpayer's new investment and new employment in the microbusiness during the taxable year. A taxpayer may not obtain more than ten thousand dollars in credits under this section over any combination of taxable years.
- 7. The credit under this section may not exceed a taxpayer's liability as determined under this chapter for the taxable year. Each year's unused credit amount may be carried forward for up to five taxable years.
- 8. The taxpayer only may claim the tax credit under this section by filing a form provided by the tax commissioner and attaching the microbusiness certification letter.
- 9. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.
- 10. The tax commissioner shall prepare a report for the director identifying the following aggregate amounts for the previous calendar year:
 - a. The actual amount of new investment and new employment in the previous calendar year which was reported by taxpayers certified as a microbusiness under this section; and
 - b. The tax credit claimed during the previous calendar year.
- 11. The report required by subsection 10 must be issued by January 1, 2009, and each January fifteenth thereafter. Information may not be included in the report which is protected by the state or federal confidentiality laws.

²⁵⁹ **SECTION 2.** A new subsection to section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

A taxpayer filing a return under this section is entitled to the microbusiness income tax credit provided under section 1 of this Act.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2006.

Approved April 17, 2007
Filed April 18, 2007

²⁵⁹ Section 57-38-30.3 was also amended by section 46 of House Bill No. 1018, chapter 18, section 3 of House Bill No. 1091, chapter 89, section 2 of House Bill No. 1393, chapter 513, section 1 of House Bill No. 1412, chapter 523, section 8 of Senate Bill No. 2032, chapter 520, section 1 of Senate Bill No. 2079, chapter 522, and section 2 of Senate Bill No. 2082, chapter 521.

CHAPTER 520**SENATE BILL NO. 2032**

(Legislative Council)
(Finance and Taxation Committee)

PROPERTY TAX RELIEF

AN ACT to create and enact three new sections to chapter 57-38 and three new subsections to section 57-38-30.3 of the North Dakota Century Code, relating to income tax marriage penalty relief, a homestead income tax credit, and a commercial property income tax credit; to amend and reenact sections 57-02-08.1, 57-12-09, 57-15-14, 57-20-07.1, and 57-55-04 of the North Dakota Century Code, relating to the homestead credit, notice of assessment increases, school district levy limitations, contents of property tax statements, payment of real estate taxes, and mobile home taxes; to provide an appropriation; to provide for a transfer; to provide for a legislative council study; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁶⁰ **SECTION 1. AMENDMENT.** Section 57-02-08.1 of the North Dakota Century Code is amended and reenacted as follows:

57-02-08.1. Homestead credit.

1. a. Any person sixty-five years of age or older or permanently and totally disabled, in the year in which the tax was levied, with an income that does not exceed the limitations of subdivision c is entitled to receive a reduction in the assessment on the taxable valuation on the person's homestead. An exemption under this subsection applies regardless of whether the person is the head of a family.
- b. The exemption under this subsection continues to apply if the person does not reside in the homestead and the person's absence is due to confinement in a nursing home, hospital, or other care facility, for as long as the portion of the homestead previously occupied by the person is not rented to another person.
- c. The exemption must be determined according to the following schedule:
 - (1) If the person's income is not in excess of ~~eight ten thousand five hundred~~ eight ten thousand three hundred seventy-five dollars, a reduction of one hundred percent of the taxable valuation of the person's homestead up to a maximum reduction of three thousand ~~thirty-eight~~ three hundred seventy-five dollars of taxable valuation.

²⁶⁰ Section 57-02-08.1 was also amended by section 1 of Senate Bill No. 2088, chapter 500.

- (2) If the person's income is in excess of ~~eight ten~~ eighteen thousand ~~five hundred~~ dollars and not in excess of ~~ten twelve~~ twenty thousand dollars, a reduction of eighty percent of the taxable valuation of the person's homestead up to a maximum reduction of two thousand ~~four seven~~ eight hundred ~~thirty~~ dollars of taxable valuation.
 - (3) If the person's income is in excess of ~~ten twelve~~ twenty thousand dollars and not in excess of ~~eleven fourteen~~ thirty thousand ~~five hundred~~ dollars, a reduction of sixty percent of the taxable valuation of the person's homestead up to a maximum reduction of ~~one two~~ eight hundred ~~twenty-three~~ twenty-five dollars of taxable valuation.
 - (4) If the person's income is in excess of ~~eleven fourteen~~ thirty thousand ~~five hundred~~ dollars and not in excess of ~~thirteen~~ thirty ~~sixteen~~ thousand dollars, a reduction of forty percent of the taxable valuation of the person's homestead up to a maximum reduction of one thousand ~~two three~~ eight hundred ~~fifteen~~ fifty dollars of taxable valuation.
 - (5) If the person's income is in excess of ~~thirteen sixteen~~ thirty thousand dollars and not in excess of ~~fourteen seventeen~~ thirty thousand ~~five hundred~~ dollars, a reduction of twenty percent of the taxable valuation of the person's homestead up to a maximum reduction of six hundred ~~eight~~ eight hundred ~~seventy-five~~ dollars of taxable valuation.
- d. Persons residing together, as spouses or when one or more is a dependent of another, are entitled to only one exemption between or among them under this subsection. Persons residing together, who are not spouses or dependents, who are coowners of the property are each entitled to a percentage of a full exemption under this subsection equal to their ownership interests in the property.
 - e. This subsection does not reduce the liability of any person for special assessments levied upon any property.
 - f. Any person claiming the exemption under this subsection shall sign a verified statement of facts establishing the person's eligibility.
 - g. A person is ineligible for the exemption under this subsection if the value of the assets of the person and any dependent residing with the person, excluding the unencumbered value of the person's residence that the person claims as a homestead, exceeds fifty thousand dollars, including the value of any assets divested within the last three years. For purposes of this subdivision, the unencumbered valuation of the homestead is limited to one hundred thousand dollars.
 - h. The assessor shall attach the statement filed under subdivision f to the assessment sheet and shall show the reduction on the assessment sheet.

- i. An exemption under this subsection terminates at the end of the taxable year of the death of the applicant.
 2.
 - a. Any person who would qualify for an exemption under subdivisions a and c of subsection 1 except for the fact that the person rents living quarters is eligible for refund of a portion of the person's annual rent deemed by this subsection to constitute the payment of property tax.
 - b. For the purpose of this subsection, twenty percent of the annual rent, exclusive of any federal rent subsidy and of charges for any utilities, services, furniture, furnishings, or personal property appliances furnished by the landlord as part of the rental agreement, whether expressly set out in the rental agreement, must be considered as payment made for property tax. When any part of the twenty percent of the annual rent exceeds four percent of the annual income of a qualified applicant, the applicant is entitled to receive a refund from the state general fund for that amount in excess of four percent of the person's annual income, but the refund may not be in excess of two hundred forty dollars. If the calculation for the refund is less than five dollars, a minimum of five dollars must be sent to the qualifying applicant.
 - c. Persons who reside together, as spouses or when one or more is a dependent of another, are entitled to only one refund between or among them under this subsection. Persons who reside together in a rental unit, who are not spouses or dependents, are each entitled to apply for a refund based on the rent paid by that person.
 - d. Each application for refund under this subsection must be made to the tax commissioner before the first day of June of each year by the person claiming the refund. The tax commissioner may grant an extension of time to file an application for good cause. The tax commissioner shall issue refunds to applicants.
 - e. This subsection does not apply to rents or fees paid by a person for any living quarters, including a nursing home licensed pursuant to section 23-16-01, if those living quarters are exempt from property taxation and the owner is not making a payment in lieu of property taxes.
 - f. A person may not receive a refund under this section for a taxable year in which that person received an exemption under subsection 1.
3. All forms necessary to effectuate this section must be prescribed, designed, and made available by the tax commissioner. The county directors of tax equalization shall make these forms available upon request.
4. A person whose homestead is a farm structure exempt from taxation under subsection 15 of section 57-02-08 may not receive any property tax credit under this section.
5. For the purposes of this section:

- a. "Dependent" has the same meaning it has for federal income tax purposes.
- b. "Homestead" has the same meaning as provided in section 47-18-01.
- c. "Income" means income for the most recent complete taxable year from all sources, including the income of any dependent of the applicant, and including any county, state, or federal public assistance benefits, social security, or other retirement benefits, but excluding any federal rent subsidy, any amount excluded from income by federal or state law, and medical expenses paid during the year by the applicant or the applicant's dependent which is not compensated by insurance or other means.
- d. "Medical expenses" has the same meaning as it has for state income tax purposes, except that for transportation for medical care the person may use the standard mileage rate allowed for state officer and employee use of a motor vehicle under section 54-06-09.
- e. "Permanently and totally disabled" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve months as established by a certificate from a licensed physician.

SECTION 2. AMENDMENT. Section 57-12-09 of the North Dakota Century Code is amended and reenacted as follows:

57-12-09. ~~Written notice~~ Notice of increased assessment to real estate owner. When any assessor has increased the true and full valuation of any lot or tract of land ~~together with~~ or any improvements thereon ~~by fifteen percent or more to more than ten percent more than the amount~~ of the last assessment, ~~written~~ notice of the amount of increase over the last assessment and the amount of the last assessment must be delivered in writing by the assessor to the property owner ~~or,~~ mailed in writing to the property owner at the property owner's last-known address ~~except that no notice need be delivered or mailed if the true and full valuation is increased by less than three thousand dollars, or provided to the property owner by electronic mail directed with verification of receipt to an electronic mail address at which the property owner has consented to receive notice. Delivery of notice to a property owner under this section must be completed not fewer than fifteen days before the meeting of the local equalization board.~~ The tax commissioner shall prescribe suitable forms for this notice and the notice must show the true and full value as defined by law of the property, including improvements, that the assessor used in making the assessment for the current year and for the year in which the last assessment was made and must also show the date prescribed by law for the meeting of the local equalization board of the assessment district in which the property is located and the meeting date of the county equalization board. The notice must be mailed or delivered ~~to the property owner at least ten days in advance of the meeting date of the local equalization board and must be mailed or delivered~~ at the expense of the assessment district for which the assessor is employed.

²⁶¹ **SECTION 3. AMENDMENT.** Section 57-15-14 of the North Dakota Century Code is amended and reenacted as follows:

57-15-14. Tax General fund levy limitations in school districts. The aggregate amount levied each year for the purposes listed in section 57-15-14.2 by any school district, except the Fargo school district, may not exceed the amount in dollars which the school district levied for the prior school year plus eighteen percent up to a general fund levy of one hundred eighty-five mills on the dollar of the taxable valuation of the district, except that:

1. In any school district having a total population in excess of four thousand according to the last federal decennial census:
 - a. There may be levied any specific number of mills that upon resolution of the school board has been submitted to and approved by a majority of the qualified electors voting upon the question at any regular or special school district election.
 - b. There is no limitation upon the taxes which may be levied if upon resolution of the school board of any such district the removal of the mill levy limitation has been submitted to and approved by a majority of the qualified electors voting at any regular or special election upon such question.
2. In any school district having a total population of less than four thousand, there may be levied any specific number of mills that upon resolution of the school board has been approved by fifty-five percent of the qualified electors voting upon the question at any regular or special school election.
3. After June 30, 2007, in any school district election for approval by electors of unlimited or increased levy authority under subsection 1 or 2, the ballot must specify the number of mills, the percentage increase in dollars levied, or that unlimited levy authority is proposed for approval, and the number of taxable years for which that approval is to apply. After June 30, 2007, approval by electors of unlimited or increased levy authority under subsection 1 or 2 may not be effective for more than ten taxable years.
4. In any school district in which the total assessed valuation of property has increased twenty percent or more over the prior year and in which as a result of that increase the school district is entitled to less in state aid payments provided in chapter 15.1-27 because of the deduction required in section 15.1-27-05, there may be levied any specific number of mills more in dollars than was levied in the prior year up to a general fund levy of one hundred eighty-five mills on the dollar of the taxable valuation of the school district. The additional levy authorized by this subsection may be levied for not more than two years because of any twenty percent or greater annual increase in assessed valuation. The total amount of revenue generated in excess of the eighteen percent

²⁶¹ Section 57-15-14 was also amended by section 47 of Senate Bill No. 2200, chapter 163.

increase which is otherwise permitted by this section may not exceed the amount of state aid payments lost as a result of applying the deduction provided in section 15.1-27-05 to the increased assessed valuation of the school district in a one-year period.

The question of authorizing or discontinuing such specific number of mills authority or unlimited taxing authority in any school district must be submitted to the qualified electors at the next regular election upon resolution of the school board or upon the filing with the school board of a petition containing the signatures of qualified electors of the district equal in number to ~~twenty ten~~ ten percent of the number of ~~persons enumerated in the school census for that district for the most recent year such census was taken, unless such census is greater than four thousand in which case only fifteen percent of the number of persons enumerated in the school census is required~~ electors who cast votes in the most recent election in the school district. However, not fewer than twenty-five signatures are required unless the district has fewer than twenty-five qualified electors, in which case the petition must be signed by not less than twenty-five percent of the qualified electors of the district. In those districts with fewer than twenty-five qualified electors, the number of qualified electors in the district must be determined by the county superintendent for such county in which such school is located. However, the approval of discontinuing either such authority does not affect the tax levy in the calendar year in which the election is held. The election must be held in the same manner and subject to the same conditions as provided in this section for the first election upon the question of authorizing the mill levy.

SECTION 4. AMENDMENT. Section 57-20-07.1 of the North Dakota Century Code is amended and reenacted as follows:

57-20-07.1. County treasurer to mail real estate tax statement. On or before December twenty-sixth of each year, the county treasurer shall mail a real estate tax statement to the owner of each parcel of real property at the owner's last-known address. The statement must be provided in a manner that allows the taxpayer to retain a printed record of the obligation for payment of taxes and special assessments as provided in the statement. If a parcel of real property is owned by more than one individual, the county treasurer shall send only one statement to one of the owners of that property. Additional copies of the tax statement will be sent to the other owners upon their request and the furnishing of their names and addresses to the county treasurer. ~~Such tax statements~~ The tax statement must include a dollar valuation of the true and full value as defined by law of the property and the total mill levy applicable. The tax statement must include, or be accompanied by a separate sheet, with three columns showing, for the taxable year to which the tax statement applies and the two immediately preceding taxable years, the property tax levy in dollars against the parcel by the county and school district and any city or township that levied taxes against the parcel. Failure of an owner to receive a statement will not relieve that owner of liability, nor extend the discount privilege past the February fifteenth deadline.

SECTION 5. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Marriage penalty credit.

1. A married couple filing a joint return under section 57-38-30.3 is allowed a credit of not to exceed three hundred dollars per couple as determined under this section. The tax commissioner shall adjust the maximum amount of the credit under this subsection each taxable year at the time

and rate adjustments are made to rate schedules under subdivision g of subsection 1 of section 57-38-30.3.

2. The credit under this section is the difference between the tax on the couple's joint North Dakota taxable income under the rates and income levels in subdivision b of subsection 1 of section 57-38-30.3 and the sum of the tax under the rates and income levels of subdivision a of subsection 1 of section 57-38-30.3 on the earned income of the lesser-earning spouse, and the tax under the rates and income levels of subdivision a of subsection 1 of section 57-38-30.3 on the couple's joint North Dakota taxable income, minus the earned income of the lesser-earning spouse.
3. The tax commissioner shall prepare and make available to taxpayers a comprehensive table showing the credit under this section at brackets of earnings of the lesser-earning spouse and joint taxable income. The brackets of earnings may not be more than two thousand dollars.
4. For a nonresident or part-year resident, the credit under this section must be adjusted based on the percentage calculated under subdivision f of subsection 1 of section 57-38-30.3.
5. For purposes of this section:
 - a. "Earned income" means the sum of the following, to the extent included in North Dakota taxable income:
 - (1) Earned income as defined in section 32(c)(2) of the Internal Revenue Code;
 - (2) Income received from a retirement pension, profit-sharing, stock bonus, or annuity plan; and
 - (3) Social security benefits as defined in section 86(d)(1) of the Internal Revenue Code.
 - b. "Earned income of the lesser-earning spouse" means the earned income of the spouse with the lesser amount of earned income for the taxable year minus the sum of:
 - (1) The amount for one exemption under section 151(d) of the Internal Revenue Code; and
 - (2) One-half of the amount of the standard deduction under section 63(c)(2)(A)(4) of the Internal Revenue Code.

SECTION 6. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Homestead income tax credit - Rules.

1. In addition to any other credit or deduction allowed by law for a homeowner, an individual is entitled to a credit against the tax imposed under section 57-38-29 or section 57-38-30.3 for taxable years 2007 and 2008 in the amount of ten percent of property taxes or mobile home taxes that became due during the income tax taxable year and are paid

which were levied against the individual's homestead in this state. For purposes of this section, "property taxes" does not include any special assessments.

2. For purposes of this section, "homestead" means the dwelling occupied by the individual as the individual's primary residence and, if that residence is in this state, any residential or agricultural property owned by that individual in this state.
3.
 - a. The amount of the credit under this section may not exceed one thousand dollars for married persons filing a joint return or five hundred dollars for a single individual or married individuals filing separate returns.
 - b. The amount of the credit under this section may not exceed the taxpayer's tax liability under this chapter.
4. The amount of the credit under subsection 3 in excess of the taxpayer's tax liability may be carried forward for up to five years or the taxpayer may request that the tax commissioner issue the taxpayer a certificate in the amount of the excess which may be used by the taxpayer against property or mobile home tax liability of the taxpayer during the ensuing taxable year by delivering the certificate to the county treasurer in which the taxable property or mobile home is subject to taxes. The county treasurer shall forward certificates redeemed in payment of a tax obligation under this section to the tax commissioner, who shall issue payment to the county in the amount of the certificates.
5. Persons owning property together are entitled to only one credit for a parcel of property between or among them under this section. Persons owning property together are each entitled to a percentage of the credit for a single individual under this section equal to their ownership interests in the property.
6. This section is not subject to subsection 1 or subsection 2 of section 57-38-45.
7. The tax commissioner shall adopt rules to provide for filing and verification of claims of credits under this section and for issuance and redemption of tax certificates under subsection 4.
8.
 - a. If, on November 15, 2008, the total amount of tax credits claimed under this section exceeds forty-seven million dollars, the tax commissioner shall reduce the rate of the credit under subsection 1. The adjusted credit rate must be calculated by the tax commissioner as follows:
 - (1) The tax commissioner shall determine the percentage by which the credits claimed under this section exceeds forty-seven million dollars.
 - (2) The difference between the number one and the amount calculated under subdivision a multiplied by ten percent is the adjusted credit rate for the 2008 taxable year.

- b. The tax commissioner shall report any adjustment under this subsection to the budget section of the legislative council for review.

SECTION 7. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Commercial property income tax credit - Rules.

1. In addition to any other credit or deduction allowed by law for a property owner, an individual or corporation is entitled to a credit against the tax imposed under sections 57-38-29, 57-39-30, or 57-38-30.3 for taxable years 2007 and 2008 in the amount of ten percent of property taxes or mobile home taxes that became due during the income tax taxable year and are paid which were levied against commercial property in this state. For purposes of this section, "property taxes" does not include any special assessments.
 - a. The amount of the credit under this section may not exceed one thousand dollars for any taxpayer.
 - b. The amount of the credit under this section may not exceed the taxpayer's tax liability under this chapter.
 - c. The amount of the credit under this section may not exceed one thousand dollars for married persons filing a joint return or five hundred dollars for a single individual or married individual filing separate returns.
2. The amount of the credit under subdivisions a and c of subsection 1 in excess of the taxpayer's tax liability may be carried forward for up to five years.
3. Persons owning property together are entitled to only one credit property between or among them under this section. Persons owning property together are each entitled to a percentage of the credit equal to their ownership interests in the property. Married individuals owning property together are each entitled to a percentage of the credit for a single individual under this section equal to their ownership interests in the property.
4. This section is not subject to subsection 1 or subsection 2 of section 57-38-45.
5. A passthrough entity entitled to the credit under this section shall allocate the amount of the credit allowed with respect to the entity's property at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.
6. The tax commissioner shall adopt rules to provide for filing and verification of claims under this section.
7. a. If, on November 15, 2008, the total amount of credits claimed under this section exceeds seven million dollars, the tax

commissioner shall reduce the cap that applies to the credit under subsection 1. The adjusted credit cap must be calculated by the tax commissioner as follows:

- (1) The tax commissioner shall determine the percentage by which the credits claimed under this section exceeds seven million dollars.
- (2) The difference between the number one and the amount calculated under paragraph 1 multiplied by the amount of the cap is the adjusted credit cap for the 2008 taxable year.

- b. The tax commissioner shall report any proposed adjustment under this subsection to the budget section of the legislative council for approval.

²⁶² **SECTION 8.** Three new subsections to section 57-38-30.3 of the North Dakota Century Code are created and enacted as follows:

A taxpayer filing a return under this section is entitled to the credit provided under section 5 of this Act.

A taxpayer filing a return under this section is entitled to the credit provided under section 6 of this Act.

A taxpayer filing a return under this section is entitled to the credit provided under section 7 of this Act.

SECTION 9. AMENDMENT. Section 57-55-04 of the North Dakota Century Code is amended and reenacted as follows:

57-55-04. Taxes - How determined - Disbursement. The director of tax equalization shall determine the tax for each mobile home by placing an evaluation on the mobile home based upon its assessed value and by adjusting the valuation of the mobile home by the percentage provided in section 57-02-27 to determine its taxable valuation under standards and guides determined by the state tax commissioner and applying that evaluation to the preceding year's total mill levies applying to property within the taxing district in which the mobile home is located. The county treasurer shall provide a tax statement for each mobile home subject to taxation under this chapter, including three columns showing, for the taxable year to which the tax statement applies and the two immediately preceding taxable years, the property tax levy in dollars against the mobile home by the county and school district and any city or township that levied taxes against the mobile home. If a mobile home is acquired or moved into this state during the calendar year and a tax permit has not been previously issued for such mobile home in this state for such year, the tax is determined by computing the remaining number of months of the current year to the nearest full month and multiplying that number by one-twelfth of

²⁶² Section 57-38-30.3 was also amended by section 46 of House Bill No. 1018, chapter 18, section 3 of House Bill No. 1091, chapter 89, section 2 of House Bill No. 1393, chapter 513, section 2 of House Bill No. 1403, chapter 519, section 1 of House Bill No. 1412, chapter 523, section 1 of Senate Bill No. 2079, chapter 522, and section 2 of Senate Bill No. 2082, chapter 521.

the amount which would be due for the full year. The taxes collected under this chapter must be disbursed in the same year they are collected and in the same manner as real estate taxes for the preceding year are disbursed.

SECTION 10. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$3,604,000, or so much of the sum as may be necessary, to the state tax commissioner for the purpose of enhanced funding for the expanded homestead tax credit as provided in this Act, for the biennium beginning July 1, 2007, and ending June 30, 2009.

SECTION 11. APPROPRIATION - TAX DEPARTMENT. There is appropriated from special funds, the sum of \$1,100,000, or so much of the sum as may be necessary, to the tax commissioner, for the purpose of implementing the provisions of this Act, for the biennium beginning July 1, 2007, and ending June 30, 2009.

SECTION 12. TRANSFER. During the biennium beginning July 1, 2007, and ending June 30, 2009, the director of the office of management and budget shall transfer \$115,000,000 from the permanent oil tax trust fund to the general fund.

SECTION 13. LEGISLATIVE COUNCIL STUDY. The legislative council shall study in each interim through 2012 the feasibility and desirability of property tax reform and providing property tax relief to taxpayers of the state, with the goal of reduction of each taxpayer's annual property tax bill to an amount that is not more than one and one-half percent of the true and full value of property, and including examination of the proper measure of education funding from local taxation and state resources and the variability of funding resources among taxing districts and examination of improved collection and reporting of property tax information to identify residency of property owners with minimized administrative difficulty. The legislative council shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the legislative assembly subsequent to each interim.

SECTION 14. EFFECTIVE DATE. Sections 1, 3, and 4 of this Act are effective for taxable years beginning after December 31, 2006. Section 9 of this Act is effective for taxable years beginning after December 31, 2007, for mobile home taxes. Section 2 of this Act is effective for taxable years beginning after December 31, 2007. Sections 5, 6, 7, and 8 of this Act are effective for taxable years beginning after December 31, 2006.

Approved May 1, 2007
Filed May 2, 2007

CHAPTER 521**SENATE BILL NO. 2082**

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

INCOME TAX CREDITS

AN ACT to amend and reenact subsections 1, 2, and 6 of section 57-38-04 and subsection 4 of section 57-38-30.3 of the North Dakota Century Code, relating to the credit for income taxes paid to another state; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1, 2, and 6 of section 57-38-04 of the North Dakota Century Code are amended and reenacted as follows:

1. a. Income from personal or professional services performed in this state by individuals must be assigned to this state regardless of the residence of the recipients of such income, except that income from such services performed within this state by an individual who resides and has the individual's place of abode in another state to which place of abode the individual customarily returns at least once a month must be excluded from the individual's income for the purposes of this chapter if such income is subject to an income tax imposed by the state in which the individual resides, provided that the state in which the individual resides allows a similar exclusion for income received from similar services performed in that state by residents of North Dakota.
 - b. Notwithstanding any other provision of this chapter, the compensation received from services performed within this state by an individual, who performs services for a common carrier engaged in interstate transportation and who resides and has the individual's place of abode to which the individual customarily returns at least once a month in another state, must be excluded from income to the extent that the income is subject to an income tax imposed by the state of the individual's residence; provided, that the state allows a similar exclusion of the compensation received by residents of North Dakota for similar services performed therein, or a credit against the tax imposed on the income of residents of this state that is substantially similar in effect. For purposes of this subdivision, the term an individual who performs services for a common carrier engaged in interstate transportation is limited to an individual who performs the services for a common carrier only during the course of making regular runs into North Dakota or from within North Dakota to outside North Dakota, or both, on the transportation system of the common carrier.
2. ~~Except as provided in subsection 1:~~

- a. Income received from personal or professional services performed by residents of this state, regardless of where such services are performed, and income received by residents of this state from intangible personal property must be assigned to this state. If a tax is paid to another state or territory of the United States or to the District of Columbia on any income assigned to this state under this subsection, a credit for any tax so paid may be deducted from the tax assessed under this chapter; provided, that this credit for such tax may not exceed the proportion of the tax otherwise due under this chapter that the amount of the taxpayer's adjusted gross income derived from sources in the other taxing jurisdiction bears to the taxpayer's adjusted gross income as computed pursuant to the Internal Revenue Code of 1954, as amended. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner.

- b. Notwithstanding any other provision of this chapter, the compensation received from services performed within this state by an individual, who performs services for a common carrier engaged in interstate transportation and who resides and has the individual's place of abode to which the individual customarily returns at least once a month in another state, shall be excluded from income to the extent that such income is subject to an income tax imposed by the state of the individual's residence; provided, that such state allows a similar exclusion of such compensation received by residents of North Dakota for similar services performed therein, or a credit against the tax imposed on the income of residents of this state that is substantially similar in effect. For the purposes of this subdivision, the words "an individual who performs services for a common carrier engaged in interstate transportation" must be limited to an individual who performs such services for a common carrier only during the course of making regular "runs" into North Dakota or from within North Dakota to outside North Dakota, or both, on the transportation system of the common carrier. A resident individual, estate, or trust is entitled to a credit against the tax imposed under this chapter equal to the amount of income tax paid for the taxable year to another state or territory of the United States or the District of Columbia on income derived from sources in those jurisdictions that is also taxable under this section. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner. For an individual, estate, or trust that is a resident of this state for the entire taxable year, the credit allowed under this subdivision may not exceed an amount equal to the tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction divided by total federal adjusted gross income less the amounts under subdivisions a and s of subsection 1 of section 57-38-01.2. For an individual, estate, or trust that is a resident of this state for only part of the taxable year, the credit allowed under this subdivision may not exceed the lesser of the following:

- (1) The tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from North Dakota sources less the amounts under this subsection.
 - (2) The tax paid to the other jurisdiction multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from sources in the other states.
6.
 - a. Income and gains received by a resident of this state from tangible property not employed in the business and from tangible property employed in the business of the taxpayer, if the business consists principally of the holding of the property and the collection of income and gains ~~therefrom~~ from the business, must be assigned to this state without regard to the situs of the property.
 - b. Income derived from business activity carried on by residents of this state, whether the business activity is conducted as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, must be assigned to this state without regard to where the business activity is conducted, and the provisions of chapter 57-38.1 do not apply. If the taxpayer believes the operation of this subdivision with respect to the taxpayer's income is unjust, the taxpayer may petition the tax commissioner who may allow use of another method of reporting income, including separate accounting.
 - c. If a tax is paid to another state or territory of the United States or to the District of Columbia on any income assigned to this state under this subsection, a credit for any tax so paid may be deducted from the tax assessed under this chapter; provided, that this credit for the tax may not exceed the proportion of the tax otherwise due under this chapter that the amount of the taxpayer's adjusted gross income derived from sources in the other taxing jurisdiction bears to the taxpayer's adjusted gross income as computed pursuant to the Internal Revenue Code of 1954, as amended. The tax commissioner may require written proof of the tax paid to another state. The required proof shall be provided in a form and manner as determined by the tax commissioner. A resident individual, estate, or trust is entitled to a credit against the tax imposed under this chapter equal to the amount of income tax paid for the taxable year to another state or territory of the United States or the District of Columbia on income derived from sources in those jurisdictions that is also subject to tax under this section. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner. For an individual, estate, or trust that is a resident of this state for the entire taxable year, the credit allowed under this subdivision may not exceed an amount equal to the tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction divided by total federal adjusted gross income less the amounts under subdivisions a and s of subsection 1 of

section 57-38-01.2. For an individual, estate, or trust that is a resident of this state for only part of the taxable year, the credit allowed under this subdivision may not exceed the lesser of the following:

- (1) The tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from North Dakota sources less the amounts under subdivisions a and b of subsection 2.
- (2) The tax paid to the other jurisdiction multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from sources in the other states.

²⁶³ **SECTION 2. AMENDMENT.** Subsection 4 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

4. a. A resident individual, estate, or trust ~~must be allowed~~ is entitled to a credit against the tax otherwise due imposed under this section for the amount of any income tax imposed on paid by the taxpayer for the taxable year by to another state or territory of the United States or the District of Columbia on income derived from sources therein and which in those jurisdictions that is also subject to tax under this section.
- b. ~~The credit provided under this subsection may not exceed the proportion of the tax otherwise due under this section that the amount of the taxpayer's adjusted gross income derived from sources in the other taxing jurisdiction bears to the taxpayer's federal adjusted gross income as reported on the taxpayer's federal income tax return. For an individual, estate, or trust that is a resident of this state for the entire taxable year, the credit allowed under this subsection may not exceed an amount equal to the tax imposed under this section multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction divided by federal adjusted gross income less the amounts under subdivisions a and b of subsection 2.~~
- c. For an individual, estate, or trust that is a resident of this state for only part of the taxable year, the credit allowed under this subsection may not exceed the lesser of the following:

²⁶³ Section 57-38-30.3 was also amended by section 46 of House Bill No. 1018, chapter 18, section 3 of House Bill No. 1091, chapter 89, section 2 of House Bill No. 1393, chapter 513, section 2 of House Bill No. 1403, chapter 519, section 1 of House Bill No. 1412, chapter 523, section 8 of Senate Bill No. 2032, chapter 520, and section 1 of Senate Bill No. 2079, chapter 522.

- (1) The tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from North Dakota sources less the amounts under subdivisions a and b of subsection 2.
 - (2) The tax paid to the other jurisdiction multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from sources in the other states.
- e. d. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2006.

Approved March 5, 2007
Filed March 6, 2007

CHAPTER 522

SENATE BILL NO. 2079

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

INCOME TAX CREDIT COMPUTATION

AN ACT to amend and reenact section 57-38-30.3 of the North Dakota Century Code, relating to the simplified method of computing tax for individual income tax purposes and the tax credit for unused federal alternative minimum tax; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁶⁴ **SECTION 1. AMENDMENT.** Section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

57-38-30.3. Simplified method of computing tax.

1. A tax is hereby imposed for each taxable year upon income earned or received in that taxable year by every resident and nonresident individual, estate, and trust. A taxpayer computing the tax under this section is only eligible for those adjustments or credits that are specifically provided for in this section. Provided, that for purposes of this section, any person required to file a state income tax return under this chapter, but who has not computed a federal taxable income figure, shall compute a federal taxable income figure using a pro forma return in order to determine a federal taxable income figure to be used as a starting point in computing state income tax under this section. The tax for individuals is equal to North Dakota taxable income multiplied by the rates in the applicable rate schedule in subdivisions a through d corresponding to an individual's filing status used for federal income tax purposes. For an estate or trust, the schedule in subdivision e must be used for purposes of this subsection.

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

If North Dakota taxable income is: Not over \$27,050 Over \$27,050 but not over \$65,550 Over \$65,550 but not over \$136,750 Over \$136,750 but not over \$297,350 Over \$297,350	The tax is equal to: 2.10% \$568.05 plus 3.92% of amount over \$27,050 \$2,077.25 plus 4.34% of amount over \$65,550 \$5,167.33 plus 5.04% of amount over \$136,750 \$13,261.57 plus 5.54% of amount over \$297,350
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- b. Married filing jointly and surviving spouse.

²⁶⁴ Section 57-38-30.3 was also amended by section 46 of House Bill No. 1018, chapter 18, section 3 of House Bill No. 1091, chapter 89, section 2 of House Bill No. 1393, chapter 513, section 2 of House Bill No. 1403, chapter 519, section 1 of House Bill No. 1412, chapter 523, section 8 of Senate Bill No. 2032, chapter 520, and section 2 of Senate Bill No. 2082, chapter 521.

If North Dakota taxable income is:	The tax is equal to:
Not over \$45,200	2.10%
Over \$45,200 but not over \$109,250	\$949.20 plus 3.92% of amount over \$45,200
Over \$109,250 but not over \$166,500	\$3,459.96 plus 4.34% of amount over \$109,250
Over \$166,500 but not over \$297,350	\$5,944.61 plus 5.04% of amount over \$166,500
Over \$297,350	\$12,539.45 plus 5.54% of amount over \$297,350

c. Married filing separately.

If North Dakota taxable income is:	The tax is equal to:
Not over \$22,600	2.10%
Over \$22,600 but not over \$54,625	\$474.60 plus 3.92% of amount over \$22,600
Over \$54,625 but not over \$83,250	\$1,729.98 plus 4.34% of amount over \$54,625
Over \$83,250 but not over \$148,675	\$2,972.31 plus 5.04% of amount over \$83,250
Over \$148,675	\$6,269.73 plus 5.54% of amount over \$148,675

d. Head of household.

If North Dakota taxable income is:	The tax is equal to:
Not over \$36,250	2.10%
Over \$36,250 but not over \$93,650	\$761.25 plus 3.92% of amount over \$36,250
Over \$93,650 but not over \$151,650	\$3,011.33 plus 4.34% of amount over \$93,650
Over \$151,650 but not over \$297,350	\$5,528.53 plus 5.04% of amount over \$151,650
Over \$297,350	\$12,871.81 plus 5.54% of amount over \$297,350

e. Estates and trusts.

If North Dakota taxable income is:	The tax is equal to:
Not over \$1,800	2.10%
Over \$1,800 but not over \$4,250	\$37.80 plus 3.92% of amount over \$1,800
Over \$4,250 but not over \$6,500	\$133.84 plus 4.34% of amount over \$4,250
Over \$6,500 but not over \$8,900	\$231.49 plus 5.04% of amount over \$6,500
Over \$8,900	\$352.45 plus 5.54% of amount over \$8,900

- f. For an individual who is not a resident of this state for the entire year, or for a nonresident estate or trust, the tax is equal to the tax otherwise computed under this subsection multiplied by a fraction in which:

- (1) The numerator is the federal adjusted gross income allocable and apportionable to this state; and
- (2) The denominator is the federal adjusted gross income from all sources reduced by the net income from the amounts specified in subdivisions a and b of subsection 2.

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

- g. For taxable years beginning after December 31, 2001, the tax commissioner shall prescribe new rate schedules that apply in lieu of the schedules set forth in subdivisions a through e. The new schedules must be determined by increasing the minimum and maximum dollar amounts for each income bracket for which a tax is imposed by the cost-of-living adjustment for the taxable year as determined by the secretary of the United States treasury for purposes of section 1(f) of the United States Internal Revenue Code of 1954, as amended. For this purpose, the rate applicable to each income bracket may not be changed, and the manner of applying the cost-of-living adjustment must be the same as that

used for adjusting the income brackets for federal income tax purposes.

2. For purposes of this section, "North Dakota taxable income" means the federal taxable income of an individual, estate, or trust as computed under the Internal Revenue Code of 1986, as amended, adjusted as follows:
 - a. Reduced by interest income from obligations of the United States and income exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
 - b. Reduced by the portion of a distribution from a qualified investment fund described in section 57-38-01 which is attributable to investments by the qualified investment fund in obligations of the United States, obligations of North Dakota or its political subdivisions, and any other obligation the interest from which is exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
 - c. Reduced by the amount equal to the earnings that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under chapter 57-35.3.
 - d. Reduced by thirty percent of the excess of the taxpayer's net long-term capital gain for the taxable year over the net short-term capital loss for that year, as computed for purposes of the Internal Revenue Code of 1986, as amended. The adjustment provided by this subdivision is allowed only to the extent the net long-term capital gain is allocated to this state.
 - e. Increased by the amount of a lump sum distribution for which income averaging was elected under section 402 of the Internal Revenue Code of 1986 [26 U.S.C. 402], as amended. This adjustment does not apply if the taxpayer received the lump sum distribution while a nonresident of this state and the distribution is exempt from taxation by this state under federal law.
 - f. Increased by an amount equal to the losses that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under chapter 57-35.3.
 - g. Reduced by the amount received by the taxpayer as payment for services performed when mobilized under title 10 United States Code federal service as a member of the national guard or reserve member of the armed forces of the United States. This subdivision does not apply to federal service while attending annual training, basic military training, or professional military education.
 - h. Reduced by income from a new and expanding business exempt from state income tax under section 40-57.1-04.
 - i. Reduced by interest and income from bonds issued under chapter 11-37.

- j. Reduced by up to ten thousand dollars of qualified expenses that are related to a donation by a taxpayer or a taxpayer's dependent, while living, of one or more human organs to another human being for human organ transplantation. A taxpayer may claim the reduction in this subdivision only once for each instance of organ donation during the taxable year in which the human organ donation and the human organ transplantation occurs but if qualified expenses are incurred in more than one taxable year, the reduction for those expenses must be claimed in the year in which the expenses are incurred. For purposes of this subdivision:
 - (1) "Human organ transplantation" means the medical procedure by which transfer of a human organ is made from the body of one person to the body of another person.
 - (2) "Organ" means all or part of an individual's liver, pancreas, kidney, intestine, lung, or bone marrow.
 - (3) "Qualified expenses" means lost wages not compensated by sick pay and unreimbursed medical expenses as defined for federal income tax purposes, to the extent not deducted in computing federal taxable income, whether or not the taxpayer itemizes federal income tax deductions.
 - k. Increased by the amount of the contribution upon which the credit under section 57-38-01.21 is computed, but only to the extent that the contribution reduced federal taxable income.
 - l. Reduced by the amount of any payment received by a veteran or beneficiary of a veteran under section 37-28-03 or 37-28-04.
3. Married individuals filing a joint federal income tax return shall file a joint state income tax return if the return is filed under this section. If separate federal income tax returns are filed, one spouse's state income tax return may be filed under this section and the other spouse's income tax return may be filed under the other provisions of this chapter.
4. a. A resident individual, estate, or trust must be allowed a credit against the tax otherwise due under this section for the amount of any income tax imposed on the taxpayer for the taxable year by another state or territory of the United States or the District of Columbia on income derived from sources therein and which is also subject to tax under this section.
- b. The credit provided under this subsection may not exceed the proportion of the tax otherwise due under this section that the amount of the taxpayer's adjusted gross income derived from sources in the other taxing jurisdiction bears to the taxpayer's federal adjusted gross income as reported on the taxpayer's federal income tax return.
- c. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner.

5. Individuals, estates, or trusts that file an amended federal income tax return changing their federal taxable income figure for a year for which an election to file state income tax returns has been made under this section shall file an amended state income tax return to reflect the changes on the federal income tax return.
6. The tax commissioner may prescribe procedures and guidelines to prevent requiring income that had been previously taxed under this chapter from becoming taxed again because of the provisions of this section and may prescribe procedures and guidelines to prevent any income from becoming exempt from taxation because of the provisions of this section if it would otherwise have been subject to taxation under the provisions of this chapter.
7. A taxpayer filing a return under this section is entitled to the ~~credit provided under section 57-38-01.20~~ following tax credits:
 - a. Family care tax credit under section 57-38-01.20.
 - b. Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.
 - c. Agricultural business investment tax credit under section 57-38.6-03.
 - d. Seed capital investment tax credit under section 57-38.5-03.
 - e. Planned gift tax credit under section 57-38-01.21.
 - f. Biodiesel fuel tax credits under sections 57-38-01.22 and 57-38-01.23.
8. A taxpayer filing a return under this section is entitled to the ~~exemptions or credits exemption~~ provided under ~~sections~~ section 40-63-04, ~~40-63-06, and 40-63-07.~~
9.
 - a. A taxpayer is entitled to a credit against the tax imposed by this section for any unused federal credit for prior year minimum tax. "Unused federal credit for prior year minimum tax" means the amount of the federal credit for prior year minimum tax attributable to federal alternative minimum tax included in the taxpayer's federal income tax liability for purposes of this section for taxable years beginning before January 1, 2001, reduced by the total amount of the federal credit for prior year minimum tax claimed on the taxpayer's federal income tax return for all taxable years beginning after December 31, 2000.
 - b. The credit under this subsection is equal to fourteen percent of the portion of the unused federal credit for prior year minimum tax claimed on the taxpayer's federal income tax return and may not exceed the taxpayer's tax liability under this section for the taxable year. For a nonresident taxpayer, the credit determined under this subsection must be multiplied by the percentage that the nonresident taxpayer's North Dakota adjusted gross income is of the nonresident's federal adjusted gross income.

- e. ~~The credit under this subsection is not allowed for taxable years beginning after December 31, 2004.~~
40. a. If an individual taxpayer engaged in a farming business elects to average farm income under section 1301 of the Internal Revenue Code [26 U.S.C. 1301], the taxpayer may elect to compute tax under this subsection. If an election to compute tax under this subsection is made, the tax imposed by subsection 1 for the taxable year must be equal to the sum of the following:
- (1) The tax computed under subsection 1 on North Dakota taxable income reduced by elected farm income.
 - (2) The increase in tax imposed by subsection 1 which would result if North Dakota taxable income for each of the three prior taxable years were increased by an amount equal to one-third of the elected farm income. However, if other provisions of this chapter other than this section were used to compute the tax for any of the three prior years, the same provisions in effect for that prior tax year must be used to compute the increase in tax under this paragraph. For purposes of applying this paragraph to taxable years beginning before January 1, 2001, the increase in tax must be determined by recomputing the tax in the manner prescribed by the tax commissioner.
- b. For purposes of this subsection, "elected farm income" means that portion of North Dakota taxable income for the taxable year which is elected farm income as defined in section 1301 of the Internal Revenue Code of 1986 [26 U.S.C. 1301], as amended, reduced by the portion of an exclusion claimed under subdivision d of subsection 2 that is attributable to a net long-term capital gain included in elected farm income.
- c. The reduction in North Dakota taxable income under this subsection must be taken into account for purposes of making an election under this subsection for any subsequent taxable year.
- d. The tax commissioner may prescribe rules, procedures, or guidelines necessary to administer this subsection.
44. 10. The tax commissioner may prescribe tax tables, to be used in computing the tax according to subsection 1, if the amounts of the tax tables are based on the tax rates set forth in subsection 1. If prescribed by the tax commissioner, the tables must be followed by every individual, estate, or trust determining a tax under this section.
- ~~42. An individual, estate, or trust is entitled to a credit against the tax determined under this section as calculated under section 57-38.6-03.~~
- ~~43. A taxpayer filing a return under this section is entitled to the credit provided under section 57-38.5-03.~~
- ~~44. An individual taxpayer filing a return under this section is entitled to the credit provided under section 57-38-01.21.~~

45. A taxpayer filing a return under this section is entitled to the credits provided under sections ~~57-38-01.22~~ and ~~57-38-01.23~~.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2006.

Approved March 7, 2007
Filed March 8, 2007

CHAPTER 523**HOUSE BILL NO. 1412**

(Representative N. Johnson)

TAX CREDITS TO PASSTHROUGH ENTITIES

AN ACT to create and enact a new subsection to section 57-38-30.3 and a new subsection to section 57-38-30.5 of the North Dakota Century Code, relating to the applicability of the research and experimental expenditures tax credit to a passthrough entity; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁶⁵ **SECTION 1.** A new subsection to section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

A taxpayer filing a return under this section is entitled to the credit provided under section 2 of this Act.

²⁶⁶ **SECTION 2.** A new subsection to section 57-38-30.5 of the North Dakota Century Code is created and enacted as follows:

A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity. An individual taxpayer may take the credit passed through under this subsection against the individual's state income tax liability under sections 57-38-29 and 57-38-30.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2006.

Approved March 12, 2007
Filed March 13, 2007

²⁶⁵ Section 57-38-30.3 was also amended by section 46 of House Bill No. 1018, chapter 18, section 3 of House Bill No. 1091, chapter 89, section 2 of House Bill No. 1393, chapter 513, section 2 of House Bill No. 1403, chapter 519, section 8 of Senate Bill No. 2032, chapter 520, section 1 of Senate Bill No. 2079, chapter 522, and section 2 of Senate Bill No. 2082, chapter 521.

²⁶⁶ Section 57-38-30.5 was also amended by section 47 of House Bill No. 1018, chapter 18.

CHAPTER 524**SENATE BILL NO. 2083**

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

**SEED CAPITAL AND AGRICULTURAL BUSINESS TAX
CREDIT AUDITING**

AN ACT to create and enact a new subsection to section 57-38-38 of the North Dakota Century Code, relating to the time period for auditing the seed capital investment tax credit and the agricultural business investment tax credit.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-38-38 of the North Dakota Century Code is created and enacted as follows:

For investments made under chapters 57-38.5 and 57-38.6 after December 31, 2002, the tax commissioner has four years after the due date of the return, or four years after the return was filed, whichever period expires later, to audit any seed capital investment tax credit or agricultural business investment tax credit claimed by a taxpayer and assess the tax if additional tax is found due. The provisions of this subsection do not limit or restrict any other time period prescribed in this section for the assessment of tax.

Approved May 1, 2007
Filed May 2, 2007

CHAPTER 525**SENATE BILL NO. 2224**

(Senators Grindberg, Dever, Hacker)
(Representatives Hawken, Keiser, Owens)

ANGEL FUND INVESTMENT TAX CREDIT

AN ACT to create and enact a new subsection to section 57-38.5-03 of the North Dakota Century Code, relating to the eligibility for the seed capital investment tax credit for investments made by an angel fund; to amend and reenact subsection 6 of section 57-38.5-01 of the North Dakota Century Code, relating to the definition of taxpayer for purposes of the seed capital investment tax credit; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 57-38.5-01 of the North Dakota Century Code is amended and reenacted as follows:

6. "Taxpayer" means an individual, estate, or trust or a corporation or, passthrough entity, or an angel fund. The term does not include a real estate investment trust.

²⁶⁷ **SECTION 2.** A new subsection to section 57-38.5-03 of the North Dakota Century Code is created and enacted as follows:

An angel fund that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section. The amount of the credit allowed with respect to an angel fund's investment in a qualified business must be determined at the angel fund level. The amount of the total credit determined at the angel fund level must be allowed to the investors in the angel fund in proportion to the investor's respective interests in the fund. An angel fund that is subject to the tax imposed under chapter 57-38 is not eligible for the investment tax credit under this chapter.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2006.

Approved April 30, 2007
Filed May 1, 2007

²⁶⁷ Section 57-38.5-03 was also amended by section 2 of Senate Bill No. 2084, chapter 526.

CHAPTER 526**SENATE BILL NO. 2084**

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

SEED CAPITAL INVESTMENT TAX CREDIT

AN ACT to amend and reenact sections 57-38.5-02 and 57-38.5-03 of the North Dakota Century Code, relating to certification of a qualified business and calculation of the seed capital investment tax credit; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38.5-02 of the North Dakota Century Code is amended and reenacted as follows:

57-38.5-02. Certification - Investment reporting by qualified businesses - Maximum investments in qualified businesses. ~~The director shall certify whether a business that has requested to become a qualified business meets the requirements of subsection 5 of section 57-38.5-01 and the certification must include the period of time the certification covers. The director shall establish the necessary forms and procedures for certifying qualified businesses. For investments made after December 31, 2004, the maximum aggregate amount of qualified investments a qualified business may receive is limited to five hundred thousand dollars under this chapter. The limitation on investments under this section may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.~~

1. The director shall certify whether a business that has requested to become a qualified business meets the requirements of subsection 5 of section 57-38.5-01. The director shall establish the necessary forms and procedures for certifying qualified businesses.
2. A qualified business may apply to the director for a recertification. Only one recertification is available to a qualified business. The application for recertification must be filed with the director within ninety days before the original certification expiry date. The recertification issued by the director must comply with the provisions of subsection 3.
3. A certification letter must be issued by the director to the qualified business. The certification letter must include:
 - a. The certification effective date.
 - b. The certification expiry date. The expiry date may not be more than four years from the certification effective date.
4. The maximum aggregate amount of qualified investments a qualified business may receive for all tax years is limited to five hundred thousand dollars under this chapter. The tax credit allowed on qualified investments in a qualified business must be allowed to taxpayers in the chronological order of the taxpayer's qualified investments as

determined from the forms filed under section 57-38.5-07. The limitation on investments under this subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.

²⁶⁸ **SECTION 2. AMENDMENT.** Section 57-38.5-03 of the North Dakota Century Code is amended and reenacted as follows:

57-38.5-03. Seed capital investment tax credit. If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability under section 57-38-29, 57-38-30, or 57-38-30.3. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount invested by the taxpayer in qualified businesses during the taxable year, subject to the following:

1. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount invested by the taxpayer in qualified businesses during the taxable year.
2. The aggregate maximum annual investment for which credit a taxpayer may obtain a tax credit claim under this section is not more than two hundred fifty thousand one hundred twelve thousand five hundred dollars. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.
2. In any taxable year, a taxpayer may claim no more than one-third of the credit under this section which is attributable to investments in a single taxable year.
3. Any amount of credit under this section subsection 1 not allowed because of the limitations limitation in this section subsection 2 may be carried forward for up to four taxable years after the taxable year in which the investment was made.
4. A passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and the amount of the credit allowed with respect to a passthrough entity's investment in a qualified business must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the members in proportion to their respective interests in the passthrough entity.
5. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purpose of this chapter if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested.

²⁶⁸ Section 57-38.5-03 was also amended by section 2 of Senate Bill No. 2224, chapter 525.

6. The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this section. An investment for which a credit is received under this section must remain in the business for at least three years. Investments placed in escrow do not qualify for the credit.
- 6- 7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business.
- 7- 8. A taxpayer who owns a controlling interest in the qualified business or ~~whose full-time professional activity is the operation of the business who receives more than fifty percent of the taxpayer's gross annual income from the qualified business~~ is not entitled to a credit under this section. A member of the immediate family of a taxpayer disqualified by this subsection is not entitled to the credit under this section. For purposes of this subsection, "immediate family" means the taxpayer's spouse, parent, sibling, or child or the spouse of any such person.
- 8- 9. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The commissioner has four years after the due date of the return or after the return was filed, whichever period expires later, to audit the credit and assess additional tax that may be found due to failure to comply with the provisions of this chapter. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest as provided under section 57-38-45, must be paid by the taxpayer.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2006, and for qualified businesses certified or recertified after December 31, 2006.

Approved March 7, 2007
Filed March 8, 2007

CHAPTER 527**SENATE BILL NO. 2081**

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

**AGRICULTURAL BUSINESS INVESTMENT TAX
CREDIT**

AN ACT to amend and reenact sections 57-38.6-01, 57-38.6-02, and 57-38.6-03 of the North Dakota Century Code, relating to definitions and to the certification of a qualified business and calculation of the agricultural business investment tax credit; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁶⁹ **SECTION 1. AMENDMENT.** Section 57-38.6-01 of the North Dakota Century Code is amended and reenacted as follows:

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

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

²⁶⁹ Section 57-38.6-01 was also amended by section 49 of House Bill No. 1018, chapter 18.

of this chapter, the definition of real property does not include any personal property that may become a fixture to the real property, as defined by chapter 41-09, which is added to the real property following investment of the real property in the qualified business.

5. "Taxpayer" means an individual, estate, trust, corporation, partnership, or limited liability company.

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

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

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

1. The director shall certify whether a business that has requested to become a qualified business meets the requirements of subsection 3 of section 57-38.6-01. The director shall establish the necessary forms and procedures for certifying qualified businesses.
2. A qualified business may apply to the director for a recertification. Only one recertification is available to a qualified business. The application for recertification must be filed with the director within ninety days before the original certification expiry date. The recertification issued by the director must comply with the provisions of subsection 3.
3. The director may not certify more than ten qualified businesses during each calendar year. This limitation does not apply to a qualified business that is seeking recertification during the calendar year.
4. A certification letter must be issued by the director to the qualified business. The certification letter must include:
 - a. The certification effective date.
 - b. The certification expiry date. The expiry date may not be more than four years from the certification effective date.

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

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

1. ~~The maximum annual credit a taxpayer may obtain under this section is fifty thousand dollars and no taxpayer may obtain more than two hundred fifty thousand dollars in credits under this section over any combination of taxable years. This subsection may not be interpreted to~~

limit additional investment by a taxpayer for which that taxpayer is not applying for a credit. The amount of the credit to which a taxpayer is entitled is thirty percent of the amount invested by the taxpayer in qualified businesses during the taxable year.

2. In any taxable year, a taxpayer may claim no more than fifty percent of the credit under this section which is attributable to qualified investments in a single taxable year. The amount of the credit allowed under this section for any taxable year may not exceed fifty percent of the taxpayer's tax liability as otherwise determined under chapter 57-38. The maximum annual credit a taxpayer may obtain under this section is fifty thousand dollars and no taxpayer may obtain more than two hundred fifty thousand dollars in credits under this section over any combination of taxable years. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.
3. Any amount of The credit under this section not allowed because of the limitations in this section may not exceed the liability for tax under chapter 57-38. If the amount of credit under this section exceeds the liability for tax, the excess may be carried forward for up to five ten taxable years after the taxable year in which the investment was made.
4. A partnership, subchapter S corporation, limited liability company that for tax purposes is treated like a partnership, or any other passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and, except for the tax liability limitation under subsection 2, the amount of the credit allowed with respect to the passthrough entity's investment in a qualified business must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the passthrough entity's owners, in proportion to their respective ownership interests in the passthrough entity.
5. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purposes of this chapter if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested.
6. The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this section. A qualified investment must be in the form of a purchase of ownership interests or the right to receive payment of dividends from the business. An investment for which a credit is received under this section must remain in the business for at least three years. An investment placed in escrow does not qualify for the credit.
- 6- 7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business. Real property that qualifies as an investment must be used in, and be an integral part of, the qualified business's North Dakota business operations.
8. If the investment is a contribution of real property:

- a. The value of the contribution may not exceed the appraised value as established by a licensed or certified appraiser licensed or certified under the requirements of sections 43-23.3-04, 43-23.3-04.1, 43-23.3-05, 43-23.3-06, 43-23.3-07, 43-23.3-08, 43-23.3-09, 43-23.3-10, 43-23.3-11, and 43-23.3-12.
 - b. The value of the contribution must be approved by the governing body of the qualified business applying the valuation standards set forth in subsection 3 of section 10-19.1-63.
 - c. The qualified business receiving the contribution of real property shall provide to the tax commissioner a copy of the appraised valuation, a copy of the governing body's resolution approving the value of the contribution, and a copy of the statement of full consideration within thirty days after the instrument transferring title to the real property is recorded with the register of deeds as provided in chapter 47-19.
 - d. A taxpayer making a contribution of real property is entitled to the tax credit in the taxable year in which the instrument transferring title to the real property is recorded with the register of deeds as provided in chapter 47-19.
7. 9. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest provided under section 57-38-45, must be paid by the taxpayer.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2006, and for qualified businesses certified or recertified after December 31, 2006.

Approved April 4, 2007
Filed April 5, 2007

CHAPTER 528**SENATE BILL NO. 2380**

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

STREAMLINED SALES TAX ADMINISTRATION

AN ACT to create and enact four new sections to chapter 57-39.4 of the North Dakota Century Code, relating to administration of the streamlined sales tax agreement; to amend and reenact subsection 2 of section 11-09.1-05, subsection 16 of section 40-05.1-06, section 57-39.2-01, subsection 1 of section 57-39.2-02.1, subsection 26 of section 57-39.2-04, sections 57-39.2-04.1, 57-39.4-01, 57-39.4-06, 57-39.4-07, and 57-39.4-08, subsection 1 of section 57-39.4-09, sections 57-39.4-10, 57-39.4-15, 57-39.4-16, 57-39.4-17, and 57-39.4-18, subsection 1 of section 57-39.4-20, subsection 12 of section 57-40.2-04, and section 57-40.2-04.1 of the North Dakota Century Code, relating to sales and use tax amendments necessary for compliance with the streamlined sales and use tax agreement; and to repeal sections 57-39.2-29 and 57-39.4-13 of the North Dakota Century Code, relating to administration of sourcing and multiple points of use rules for the streamlined sales tax agreement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁷⁰ **SECTION 1. AMENDMENT.** Subsection 2 of section 11-09.1-05 of the North Dakota Century Code is amended and reenacted as follows:

2. Control its finances and fiscal affairs; appropriate money for its purposes, and make payments of its debts and expenses; subject to the limitations of this section levy and collect property taxes, sales and use taxes, farm machinery gross receipts taxes, alcoholic beverage gross receipts taxes, motor vehicle fuels and special fuels taxes, motor vehicle registration fees, and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings, and improvements; contract debts, borrow money, issue bonds, warrants, and other evidences of indebtedness; establish charges for any county or other services to the extent authorized by state law, and establish debt and mill levy limitations; provided, that all property in order to be subject to the assessment provisions of this subsection must be assessed in a uniform manner as prescribed by the state board of equalization and the state supervisor of assessments. A charter or ordinance or act of a governing body of a home rule county may not supersede any state law that determines what property or acts are subject to, or exempt from, ad valorem taxes. A charter or ordinance or act of the governing body of a home rule county may not supersede section 11-11-55.1 relating to the sixty percent petition requirement for improvements and of section 40-22-18 relating to the barring

²⁷⁰ Section 11-09.1-05 was also amended by section 7 of Senate Bill No. 2214, chapter 293.

proceeding for improvement projects. After December 31, 2005, sales and use taxes, farm machinery gross receipts taxes, and alcoholic beverage gross receipts taxes levied under this chapter:

- a. Must conform in all respects with regard to the taxable or exempt status of items under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed at multiple rates with the exception of sales of electricity, piped natural or artificial gas, or other heating fuels delivered by the seller or the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.
- b. May not be newly imposed or changed except to be effective on the first day of a calendar quarterly period after a minimum of ninety days' notice to the tax commissioner or, for purchases from printed catalogs, on the first day of a calendar quarter after a minimum of one hundred twenty days' notice to the seller.
- c. May not be limited to apply to less than the full value of the transaction or item as determined for state sales and use tax, except for farm machinery gross receipts tax purposes.
- d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1 and must be administered by the tax commissioner in accordance with the relevant provisions of chapter 57-39.2, including reporting and paying requirements, correction of errors, payment of refunds, and application of penalty and interest.

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

²⁷¹ **SECTION 2. AMENDMENT.** Subsection 16 of section 40-05.1-06 of the North Dakota Century Code is amended and reenacted as follows:

16. To impose registration fees on motor vehicles, farm machinery gross receipts taxes, alcoholic beverage gross receipts taxes, or sales and use taxes in addition to any other taxes imposed by law. After

²⁷¹ Section 40-05.1-06 was also amended by section 20 of Senate Bill No. 2214, chapter 293.

December 31, 2005, sales and use taxes and gross receipts taxes levied under this chapter:

- a. Must conform in all respects with regard to the taxable or exempt status of items under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed at multiple rates with the exception of sales of electricity, piped natural or artificial gas, or other heating fuels delivered by the seller or the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.
- b. May not be newly imposed or changed except to be effective on the first day of a calendar quarterly period after a minimum of ninety days' notice to the tax commissioner or, for purchases from printed catalogs, on the first day of a calendar quarter after a minimum of one hundred twenty days' notice to the seller.
- c. May not be limited to apply to less than the full value of the transaction or item as determined for state sales and use tax purposes, except for farm machinery gross receipts tax.
- d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1 and must be administered by the tax commissioner in accordance with the relevant provisions of chapter 57-39.2, including reporting and paying requirements, correction of errors, payment of refunds, and application of penalty and interest.

²⁷² **SECTION 3. AMENDMENT.** Section 57-39.2-01 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-01. Definitions. The following words, terms, and phrases, when used in this chapter, have the meaning ascribed to them in this section, unless the context clearly indicates a different meaning:

1. "Bundled transaction" means the retail sale of two or more products, except real property and services to real property, where the products are otherwise distinct and identifiable, and the products are sold for one nonitemized price. A bundled transaction does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.
 - a. Distinct and identifiable products do not include:
 - (1) Packaging such as containers, boxes, sacks, bags, and bottles or other materials such as wrapping, labels, tags, and instruction guides that accompany the retail sale of the products and are incidental or immaterial to the retail sale. Examples of packaging that are incidental or immaterial

²⁷² Section 57-39.2-01 was also amended by section 3 of Senate Bill No. 2225, chapter 446.

- include grocery sacks, shoeboxes, drycleaning garment bags, and express delivery envelopes and boxes.
- (2) A product provided free of charge with the required purchase of another product. A product is provided free of charge if the sales price of the product purchased does not vary depending on the inclusion of the product provided free of charge.
- (3) Items included in the definition of gross receipts.
- b. The phrase "one nonitemized price" does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form, including an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.
- c. A transaction that otherwise meets the definition of a bundled transaction as defined in this section is not a "bundled transaction" if it is:
- (1) The retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service;
- (2) The retail sale of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service;
- (3) A transaction that includes taxable products and nontaxable products and the purchase price or sales price of the taxable products is de minimis.
- (a) "De minimis" means the seller's purchase price or sales price of the taxable products is ten percent or less of the total purchase price or sales price of the bundled products.
- (b) Sellers shall use either the purchase price or the sales price of the products to determine if the taxable products are de minimis. Sellers may not use a combination of the purchase price and sales price of the products to determine if the taxable products are de minimis.
- (c) Sellers shall use the full term of a service contract to determine if the taxable products are de minimis; or
- (4) The retail sale of exempt tangible personal property and taxable tangible personal property where:

- (a) The transaction includes food and food ingredients, drugs, durable medical equipment, mobility-enhancing equipment, over-the-counter drugs, prosthetic devices, or medical supplies; and
 - (b) If the seller's purchase price or sales price of the taxable tangible personal property is fifty percent or less of the total purchase price or sales price of the bundled tangible personal property. Sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the fifty percent determination for a transaction.
- ~~2.~~ 3. "Business" includes any activity engaged in by any person or caused to be engaged in by the person with the object of gain, benefit, or advantage, either direct or indirect.
- ~~3.~~ 4. "Certified automated system" means software certified under chapter 57-39.4 to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the state, and maintain a record of the transaction.
- ~~4.~~ 5. "Certified service provider" means an agent certified under the agreement adopted under chapter 57-39.4 to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit taxes on its own purchases.
- ~~5.~~ 6. "Commissioner" means the tax commissioner of the state of North Dakota.
- ~~6.~~ 7. "Delivery charges" means charges by the seller for preparation and delivery to a location designated by the purchaser of personal property or services. For purposes of this subsection, "preparation and delivery" includes transportation, shipping, postage, handling, crating, and packing. If shipment includes exempt property and taxable property, the seller should allocate the delivery charge by using a percentage based on:
 - a. The total sales price of the taxable property compared to the total sales price of all property in the shipment; or
 - b. The total weight of the taxable property compared to the total weight of all property in the shipment.The seller must tax the percentage of the delivery charge allocated to the taxable property but does not have to tax the percentage allocated to the exempt property.
- ~~7.~~ 8. "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addresses on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail"

does not include multiple items of printed material delivered to a single address.

- ~~6-~~ 8. "Drug" means a compound, substance, or preparation and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages:
- a. Recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement of any of these publications;
 - b. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or
 - c. Intended to affect the structure or any function of the body.
- ~~7-~~ 9. "Farm machinery" means all vehicular implements and attachment units, designed and sold for direct use in planting, cultivating, or harvesting farm products or used in connection with the production of agricultural produce or products, livestock, or poultry on farms, which are operated, drawn, or propelled by motor or animal power. "Farm machinery" does not include vehicular implements operated wholly by hand or a motor vehicle required to be registered under chapter 57-40.3. "Farm machinery" does not include machinery that may be used for other than agricultural purposes, including tires, farm machinery repair parts, tools, shop equipment, grain bins, feed bunks, fencing materials, and other farm supplies and equipment. For purposes of this subsection, "attachment unit" means any part or combination of parts having an independent function, other than farm machinery repair parts, which when attached or affixed to farm machinery is used exclusively for agricultural purposes.
- ~~8-~~ 10. "Farm machinery repair parts" means repair or replacement parts for farm machinery that have a specific or generic part number assigned by the manufacturer of the farm machinery. "Farm machinery repair parts" do not include tires, fluid, gas, grease, lubricant, wax, or paint.
- ~~9-~~ 11. a. "Gross receipts" means the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:
- (1) The seller's cost of the property sold;
 - (2) The cost of materials used, labor or service costs, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
 - (3) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
 - (4) Delivery charges; and

- (5) The value of exempt personal property given to the purchaser when taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise; and
 - (6) Credit for any trade-in, as determined by state law.
- b. "Gross receipts" also includes consideration received by the seller from third parties if:
- (1) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;
 - (2) The seller has an obligation to pass the price reduction or discount through to the purchaser;
 - (3) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and
 - (4) One of the following criteria is met:
 - (a) The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;
 - (b) The purchaser provides identification to the seller to show that the purchaser is a member of a group or organization entitled to a price reduction or discount however, a "preferred customer" card that is available to any patron does not constitute membership in such a group; or
 - (c) The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.
- c. "Gross receipts" also includes the total amount of sales of every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer.
- e. d. "Gross receipts" does not include:
- (1) Discounts, including cash, term, or coupons that are not reimbursed by a third party, which are allowed by a seller and taken by a purchaser on a sale;
 - (2) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the

amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

- (3) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar documents given to the purchaser; and
- (4) The sale price of property returned by a customer when the full sale price is refunded either in cash or credit. When tangible personal property is taken in trade or in a series of trades as a credit or part payment of a retail sale taxable under this chapter, if the tangible personal property traded in will be subject to tax imposed by chapter 57-39.5 or 57-40.3 or if the tangible personal property traded in is used farm machinery or used irrigation equipment, the credit or trade-in value allowed by the retailer is not included in gross receipts of the retailer.

~~40.~~ 12. "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend. "Lease or rental" does not include:

- a. A transfer of possession or control of property under a security agreement or deferred payment plan, which requires the transfer upon completion of the required payments;
- b. A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars or one percent of the total required payments; or
- c. Providing tangible personal property with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subdivision, an operator must do more than maintain, inspect, or set up the tangible personal property.

This definition will be applied only prospectively from the date of adoption and will have no retroactive impact on existing leases or rentals.

~~44.~~ 13. "Local governmental unit" means incorporated cities, counties, school districts, and townships.

~~42.~~ 14. "Person" includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, business trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number.

~~43.~~ 15. "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a person authorized by the laws of this state to prescribe drugs.

44. 16. "Relief agency" means the state, any county, city and county, city or district thereof, or an agency engaged in actual relief work.
45. 17. "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrental. "Retail sale" or "sale at retail" includes the sale, including the leasing or renting, to a consumer or to any person for any purpose, other than for processing or for resale, of tangible personal property; the sale of steam, gas, and communication service to retail consumers or users; the sale of vulcanizing, recapping, and retreading services for tires; the furnishing of bingo cards; the ordering, selecting, or aiding a customer to select any goods, wares, or merchandise from any price list or catalog, which the customer might order, or be ordered for such customer to be shipped directly to such customer; the sale or furnishing of hotel, motel, or tourist court accommodations, tickets, or admissions to any place of amusement, athletic event, or place of entertainment, including the playing of any machine for amusement or entertainment in response to the use of a coin; and the sales of magazines and other periodicals. By the term "processing" is meant any tangible personal property including containers which it is intended, by means of fabrication, compounding, manufacturing, producing, or germination shall become an integral or an ingredient or component part of other tangible personal property intended to be sold ultimately at retail. The sale of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property must be considered as a sale of tangible personal property for a purpose other than for processing; the delivery of possession within the state of North Dakota of tangible personal property by a wholesaler or distributor to an out-of-state retailer who does not hold a North Dakota retail sales tax permit or to a person who by contract incorporates such tangible personal property into, or attaches it to, real property situated in another state may not be considered a taxable sale if such delivery of possession would not be treated as a taxable sale in that state. As used in this subsection, the word "consumer" includes any hospital, infirmary, sanatorium, nursing home, home for the aged, or similar institution that furnishes services to any patient or occupant. The sale of an item of tangible personal property to a person under a finance leasing agreement over the term of which the property will be substantially consumed must be considered a retail sale if the purchaser elects to treat it as such by paying or causing the transferor to pay the sales tax thereon to the commissioner on or before the last day on which payments may be made without penalty as provided in section 57-39.2-12.
46. 18. "Retailer" or "seller" includes every person engaged in the business of leasing or renting hotel, motel, or tourist court accommodations, and every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or furnishing of steam, gas, and communication services, or tickets or admissions to places of amusement, entertainment, and athletic events, including the playing of any machine for amusement or entertainment in response to the use of a coin, or magazines, or other periodicals; any organization licensed by the attorney general to conduct bingo games pursuant to section 53-06.1-03; and includes any person as herein defined who by contract or otherwise agrees to furnish for a consideration a totally or partially finished product consisting in whole or in part of tangible personal property subject to the sales tax herein provided, and all items of

tangible personal property entering into the performance of such contract as a component part of the product agreed to be furnished under said contract shall be subject to the sales tax herein provided and the sales tax thereon shall be collected by the contractor from the person for whom the contract has been performed in addition to the contract price agreed upon, and shall be remitted to the state in the manner provided in this chapter; and shall include the state or any municipality furnishing steam, gas, or communication service to members of the public in its proprietary capacity. For the purpose of this chapter, retailer shall also include every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer. A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising fliers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.

47. 19. "Sale" means any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatever, for a consideration, and includes the furnishing or service of steam, gas, or communication, the furnishing of bingo cards, the furnishing of hotel, motel, or tourist court accommodations, the furnishing of tickets or admissions to any place of amusement, athletic event, or place of entertainment, including the playing of any machine for amusement or entertainment in response to the use of a coin, and sales of magazines and other periodicals. Provided, the words "magazines and other periodicals" as used in this subsection do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.
48. 20. "Sales tax" means the tax levied under section 57-39.2-02.1 or a conforming tax imposed under home rule authority by a city or county.
49. 21. "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, water, gas, steam, and prewritten computer software.

²⁷³ **SECTION 4. AMENDMENT.** Subsection 1 of section 57-39.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise expressly provided in subsection 2 for sales of mobile homes used for residential or business purposes, and except as otherwise expressly provided in this chapter, there is imposed a tax of five percent upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as provided in this section, within this state of the following to consumers or users:

²⁷³ Section 57-39.2-02.1 was also amended by section 1 of House Bill No. 1049, chapter 529, and section 4 of Senate Bill No. 2225, chapter 446.

- a. Tangible personal property, consisting of goods, wares, or merchandise, except mobile homes used for residential or business purposes and including bundled transactions consisting entirely of tangible personal property.
- b. The furnishing or service of communication services or steam other than steam used for processing agricultural products.
- c. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment, or athletic activity, and including the furnishing of bingo cards and the playing of any machine for amusement or entertainment in response to the use of a coin. The tax imposed by this section applies only to eighty percent of the gross receipts collected from coin-operated amusement devices.
- d. Magazines and other periodicals.
- e. The leasing or renting of a hotel or motel room or tourist court accommodations.
- f. The leasing or renting of tangible personal property the transfer of title to which has not been subjected to a retail sales tax under this chapter or a use tax under chapter 57-40.2.
- g. Coal mined in this state and used for heating buildings, except for coal used in agricultural processing or sugar beet refining plants.
- h. Sale, lease, or rental of a computer and prewritten computer software, including prewritten computer software delivered electronically or by load and leave. For purposes of this subdivision:
 - (1) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.
 - (2) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.
 - (3) "Delivered electronically" means delivered from the seller to the purchaser by means other than tangible storage media.
 - (4) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
 - (5) "Load and leave" means delivery to the purchaser by use of a tangible storage media when the tangible storage media is not physically transferred to the purchaser.
 - (6) "Prewritten computer software" means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more

"prewritten computer software" programs or prewritten portions thereof does not cause the combination to be other than "prewritten computer software". "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. If a person modifies or enhances "computer software" of which the person is not the author or creator, the person is deemed to be the author or creator only of such person's modifications or enhancements. "Prewritten computer software" or a prewritten portion thereof that is modified or enhanced to any degree, if such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains "prewritten computer software". However, if there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute "prewritten computer software".

²⁷⁴ **SECTION 5. AMENDMENT.** Subsection 26 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

26. Gross receipts from sales of prosthetic devices, durable medical equipment, mobility-enhancing equipment, or supplies for ostomy care or bladder dysfunction. For purposes of this subsection:

a. "Durable medical equipment" means equipment, not including mobility-enhancing equipment, for home use, including repair and replacement parts for such equipment, which:

- (1) Can withstand repeated use;
- (2) Is primarily and customarily used to serve a medical purpose;
- (3) Generally is not useful to a person in the absence of illness or injury; and
- (4) Is not worn in or on the body.

"Durable medical equipment" includes equipment and devices designed or intended for ostomy care and management and equipment and devices used exclusively for a person with bladder dysfunction. An exemption certificate is not required to obtain exemption.

b. "Mobility-enhancing equipment" means equipment, not including durable medical equipment sold under a doctor's written

²⁷⁴ Section 57-39.2-04 was also amended by section 3 of House Bill No. 1049, chapter 529, and section 3 of House Bill No. 1393, chapter 513.

prescription, including repair and replacement parts for mobility-enhancing equipment, which:

- (1) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either at home or in a motor vehicle;
- (2) Is not generally used by persons with normal mobility; and
- (3) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

"Mobility-enhancing equipment" includes crutches and wheelchairs for the use of disabled persons, equipment, including manual control units, van lifts, van door opening units, and raised roofs for attaching to or modifying a motor vehicle for use by a permanently physically disabled person, equipment, including elevators, dumbwaiters, chair lifts, and bedroom or bathroom lifts, whether or not sold for attaching to real property, for use by a permanently physically disabled person in that person's principal dwelling, and equipment, including manual control units, for attaching to or modifying motorized implements of husbandry for use by a permanently physically disabled person.

- c. "Prosthetic device" means a replacement, corrective, or supportive device sold under a doctor's written prescription, including repair and replacement parts for such a device, worn on or in the body to:

- (1) Artificially replace a missing portion of the body;
- (2) Prevent or correct a physical deformity or malfunction; or
- (3) Support a weak or deformed portion of the body.

"Prosthetic device" includes artificial devices individually designed, constructed, or altered solely for the use of a particular disabled person so as to become a brace, support, supplement, correction, or substitute for the bodily structure, including the extremities of the individual, artificial limbs, artificial eyes, hearing aids, and other equipment worn as a correction or substitute for any functioning portion of the body, artificial teeth sold by a dentist, and eyeglasses when especially designed or prescribed by an ophthalmologist, physician, oculist, or optometrist for the personal use of the owner or purchaser.

- d. "Supplies for ostomy care or bladder dysfunction" includes:

- (1) Supplies designed or intended for ostomy care and management, including collection devices, colostomy irrigation equipment and supplies, skin barriers or skin protectors, and other supplies especially designed for use of ostomates.
- (2) Supplies to be used exclusively by a person with bladder dysfunction, including catheters, collection devices,

incontinent pads and pants, and other items used for the care and management of bladder dysfunction.

SECTION 6. AMENDMENT. Section 57-39.2-04.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-04.1. Sales tax exemption for food and food ingredients. Gross receipts from sales for human consumption of food and food ingredients are exempt from taxes imposed under this chapter. Gross receipts from sales for human consumption of food and food products given, or to be given, as samples to consumers for consumption on the premises of a food store are exempt from the sales tax imposed by this chapter. For purposes of this section, "food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for taste or nutritional value.

1. For purposes of this section, "food" and "food ingredients" do not include:
 - a. Alcoholic beverages.
 - b. Candy or chewing gum.
 - c. Dietary supplements.
 - d. Prepared food.
 - e. Soft drinks containing ~~less than~~ fifty percent or less fruit juice.
 - f. Tobacco.
2. For purposes of this section:
 - a. "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.
 - b. "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavoring in the form of bars, drops, or pieces. Candy does not include any preparation containing flour and does not require refrigeration.
 - c. "Dietary supplement" means any product, other than tobacco, intended to supplement the diet which contains one or more of the following dietary ingredients: a vitamin; a mineral; an herb or other botanical; an amino acid; a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; an oral concentrate, metabolite, constitute, extract, or combination of any dietary ingredients described in this sentence and which is intended for ingestion in tablet, capsule, powder, soft gel, gel cap, or liquid form, or if not represented for use as a sole item of a meal or of a diet; and is required to be labeled as a dietary supplement, identifiable by the supplemental facts box found on the label and as required pursuant to 21 CFR section 101.36.

d. "Prepared food" means:

- (1) Food sold in a heated state or heated by the seller;
- (2) Two or more food ingredients mixed or combined by the seller for sale as a single item; or
- (3) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

e. "Prepared food" does not mean:

- (1) Food that is only cut, repackaged, or pasteurized by the seller.
- (2) Eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the food and drug administration in chapter 3, part 401.11, of its food code so as to prevent foodborne illness.
- (3) If sold without eating utensils provided by the seller:
 - (a) Food sold by a seller whose proper primary North American industry classification system classification is manufacturing in sector 311, except subsector 3118, bakeries.
 - (b) Food sold in an unheated state by weight or volume as a single item.
 - (c) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.

f. "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.

g. "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

3. For purposes of this section, "eating utensils provided by the seller" is determined as follows:

- a. Determine the prepared food ratio, where the numerator is the sum of food defined in paragraphs 1 and 2 of subdivision d of subsection 2 plus food when plates, bowls, glasses, or cups are necessary for the purchaser to receive the food and the denominator is all sales of food and food ingredients, including prepared food, candy, dietary supplements, and soft drinks. Alcoholic beverages are not included in either the numerator or denominator.

- b. If the prepared food ratio is seventy-five percent or less, utensils are provided by the seller if the seller's practice is to physically give or hand them to the purchaser, except plates, bowls, glasses, or cups necessary for the purchaser to receive the food need only be made available.
- c. If the prepared food ratio is greater than seventy-five percent, utensils are provided to the seller if they are made available to the purchaser. When sellers with a food ratio greater than seventy-five percent sell items that contain four or more servings packaged as one item and sold for a single price, the item does not become prepared food unless the seller's practice is to physically give or hand the purchaser utensils as in subdivision b. Serving size is determined by the label of the item sold. If no label is available, the seller will reasonably determine the number of servings.
- d. When a seller sells food items that have a utensil placed in a package by a person other than the seller and that person's North American industry classification system classification code is that of manufactures (sector 311), the seller shall not be considered to have provided the utensils except as in subdivisions b and c above. For any other packager with any other North American industry classification system classification code, the seller shall be considered to have provided the utensil.
- e. The prepared food ratio is to be calculated by the seller for each calendar or fiscal year not later than ninety days after the end of each year and based on the seller's data from the previous year.
- f. A single prepared food ratio will be determined annually and used for all of the seller's locations in the state.
- g. A new business shall make a good-faith estimate of the prepared food ratio for the first year and shall adjust its good-faith estimate after the first three months if the actual prepared food ratio is materially different than the estimate.

SECTION 7. AMENDMENT. Section 57-39.4-01 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-01. Adoption of streamlined sales and use tax agreement. North Dakota adopts the streamlined sales and use tax agreement as adopted November 12, 2002, by the member states of the streamlined sales tax project. The entire agreement is adopted by reference with the exception of ~~article~~ articles III and V, which ~~is~~ are adopted as set out in this chapter.

SECTION 8. AMENDMENT. Section 57-39.4-06 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-06. (305) Local rate and boundary changes. Each member state that has local jurisdictions that levy a sales or use tax shall:

1. Provide that local rate changes will be effective only on the first day of a calendar quarter after a minimum of sixty days' notice to sellers.

2. Apply local sales tax rate changes to purchases from printed catalogs wherein the purchaser computed the tax based upon local tax rates published in the catalog only on the first day of a calendar quarter after a minimum of one hundred twenty days' notice to sellers.
3. For sales and use tax purposes only, apply local jurisdiction boundary changes only on the first day of a calendar quarter after a minimum of sixty days' notice to sellers.
4. Provide and maintain a data base that describes boundary changes for all taxing jurisdictions. This data base shall include a description of the change and the effective date of the change for sales and use tax purposes.
5. Provide and maintain a data base of all sales and use tax rates for all of the jurisdictions levying taxes within the state. For the identification of states, counties, cities, and parishes, codes corresponding to the rates must be provided according to federal information processing standards as developed by the national institute of standards and technology. For the identification of all other jurisdictions, codes corresponding to the rates must be in the format determined by the governing board.
6. Provide and maintain a data base that assigns each five-digit and nine-digit zip code within a member state to the proper tax rates and jurisdictions. The state must apply the lowest combined tax rate imposed in the zip code area if the area includes more than one tax rate in any level of taxing jurisdictions. If a nine-digit zip code designation is not available for a street address or if a seller or certified service provider is unable to determine the nine-digit zip code designation ~~of applicable to a purchaser purchase~~ after exercising due diligence to determine the designation, the seller or certified service provider may apply the rate for the five-digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller or certified service provider has exercised due diligence if the seller has attempted to determine the nine-digit zip code designation by utilizing software approved by the governing board that makes this designation from the street address and the five-digit zip code ~~of the purchaser applicable to a purchase~~.
7. ~~Participate with other member states in~~ Have the development option of an providing address-based system boundary data base records for assigning taxing jurisdictions. The system and their associated rates which shall be in addition to the requirements of subsection 6. The data base records must be in the same approved format as the data base records under subsection 6 and must meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act [4 U.S.C.A. sec. 449 119(a)]. The governing board may allow a member state to require sellers that register under this agreement to use an address-based system data base provided by that member state. If any member state develops an address-based assignment system data base records pursuant to the Mobile Telecommunications Sourcing Act agreement, a seller or certified service provider may use that system those data base records in place of the system five-digit and nine-digit zip code data base records provided for in subsection 6. If a seller or certified service provider is unable to determine the applicable rate and jurisdiction using an address-based data base record after exercising

due diligence, the seller or certified service provider may apply the nine-digit zip code designation applicable to a purchase. If a nine-digit zip code designation is not available for a street address or if a seller or certified service provider is unable to determine the nine-digit zip code designation applicable to a purchase after exercising due diligence to determine the designation, the seller or certified service provider may apply the rate for the five-digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller or certified service provider has exercised due diligence if the seller or certified service provider has attempted to determine the tax rate and jurisdiction by utilizing software approved by the governing board that makes this assignment from the address and zip code information applicable to the purchase.

8. States which have met the requirements of subsection 6 may also elect to certify vendor-provided address-based data bases for assigning tax rates and jurisdictions. The data bases must be in the same approved format as the data base records under subsection 7 and must meet the requirements developed under the federal Mobile Telecommunications Sourcing Act [4 U.S.C.A. sec. 119(a)]. If a state certifies a vendor-provided address-based data base, a seller or certified service provider may use that data base in place of the data base provided for in subsection 6 or 7. Vendors providing address-based data bases may request certification of their data bases from the governing board. Certification by the governing board does not replace the requirement that the data bases be certified by the states individually.

SECTION 9. AMENDMENT. Section 57-39.4-07 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-07. (306) Relief from certain liability. Each member state shall relieve sellers and certified service providers using data bases under subsections 6, 7, and 8 of section 57-39.4-06 from liability to the member state and local jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting from the seller or certified service provider relying on erroneous data provided by a member state on tax rates, boundaries, or taxing jurisdiction assignments. ~~A~~ After providing adequate notice as determined by the governing board, a member state that provides an address-based ~~system~~ data base for assigning taxing jurisdictions under subsection 7 or 8 of section 57-39.4-06 ~~or under the federal Mobile Telecommunications Sourcing Act will not be required to provide~~ ~~may cease providing~~ liability relief for errors resulting from the reliance on the ~~information~~ data base provided by the member state under subsection 6 of section 57-39.4-06. If a seller demonstrates that requiring the use of the address-based data base would create an undue hardship, a member state and the governing board may extend the relief from liability to such seller for a designated period of time.

SECTION 10. AMENDMENT. Section 57-39.4-08 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-08. (307) Data base requirements and exceptions.

1. The electronic data bases provided for in subsections 4, 5, 6, and 7 of section 57-39.4-06 shall be in a downloadable format approved by the governing board. The data bases may be directly provided by the state or provided by a vendor as designated by the state. A data base provided by a vendor as designated by a state shall be applicable to

and subject to all provisions of sections 57-39.4-06 and 57-39.4-07 and this section. These data bases must be provided at no cost to the user of the data base.

2. The provisions of subsections 6 and 7 of section 57-39.4-06 do not apply when the purchased product is received by the purchaser at the business location of the seller.
3. The data bases provided by subsections 4, 5, ~~and 6, and 7~~ of section 57-39.4-06 are not a requirement of a state prior to entering into the agreement. The governing board shall establish the effective dates for availability and use of the data bases. A seller that did not have a requirement to register in a state prior to registering under this agreement or a certified service provider shall not be required to collect sales or use taxes for the state until the first day of the calendar quarter commencing more than sixty days after the state has provided the data bases required by subsections 4, 5, and 6 of section 57-39.4-06. Provided, for the initial implementation of the agreement, a certified service provider shall be required to collect sales and use taxes for each member state, subject to the provisions of the agreement, under the terms of the operating agreement entered into between the certified service provider and the governing board in order to provide adequate time for testing and loading of the data bases.

SECTION 11. AMENDMENT. Subsection 1 of section 57-39.4-09 of the North Dakota Century Code is amended and reenacted as follows:

1. No member state shall have multiple state sales and use tax rates on items of personal property or services ~~after December 31, 2005~~, except that a member state may impose a single additional rate, which may be zero, on food and food ingredients and drugs as defined by state law pursuant to the agreement.

²⁷⁵ **SECTION 12. AMENDMENT.** Section 57-39.4-10 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-10. (309) Application of general sourcing rules and exclusions from the rules.

1. Each member state shall agree to require sellers to source the retail sale of a product in accordance with section 57-39.4-11. The provisions of section 57-39.4-11 apply regardless of the characterization of a product as tangible personal property, a digital good, or a service. The provisions of section 57-39.4-11 only apply to determine a seller's obligation to pay or collect and remit a sales or use tax with respect to the seller's retail sale of a product. These provisions do not affect the obligation of a purchaser or lessee to remit tax on the use of the product to the taxing jurisdictions of that use.

²⁷⁵ Section 57-39.4-10 was also amended by section 26 of House Bill No. 1014, chapter 14.

2. Section 57-39.4-11 does not apply to sales or use taxes levied on the following:
 - a. The retail sale or transfer of watercraft, modular homes, manufactured homes, or mobile homes. These items must be sourced according to the requirements of each member state.
 - b. The retail sale, excluding lease or rental, of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in subsection 4 of section 57-39.4-11. The retail sale of these items shall be sourced according to the requirements of each member state, and the lease or rental of these items must be sourced according to subsection 3 of section 57-39.4-11.
 - c. Telecommunications services and ancillary services, as set out in section 57-39.4-16, and internet access service shall be sourced in accordance with section 57-39.4-15.
 - d. Until December 31, 2007, florist sales as defined by each member state. Prior to this date, these items must be sourced according to the requirements of each member state.

SECTION 13. AMENDMENT. Section 57-39.4-15 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-15. (314) Telecommunications sourcing.

1. Except for the defined telecommunications services in subsection 3, the sale of telecommunications services sold on a call-by-call basis shall be sourced to each level of taxing jurisdiction where the call originates and terminates in that jurisdiction or each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.
2. Except for the defined telecommunications services in subsection 3, a sale of telecommunications services sold on a basis other than a call-by-call basis is sourced to the customer's place of primary use.
3. The sale of the following telecommunications services shall be sourced to each level of taxing jurisdiction as follows:
 - a. A sale of mobile telecommunications services other than air-to-ground radiotelephone service and prepaid calling service, is sourced to the customer's place of primary use as required by the Mobile Telecommunications Sourcing Act.
 - b. A sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by either the seller's telecommunications system, or information received by the seller from its service provider, if the system used to transport such signals is not that of the seller.
 - c. A sale of prepaid calling service or a sale of a prepaid wireless calling service is sourced in accordance with section 57-39.4-11. However, in the case of a sale of ~~mobile telecommunications~~

~~services that are prepaid telecommunications services prepaid wireless calling service~~, the rule provided in subdivision e of subsection 1 of section 57-39.4-11 shall include as an option the location associated with the mobile telephone number.

d. A sale of a private communication service is sourced as follows:

- (1) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located.
- (2) Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located.
- (3) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segment of channel are separately charged is sourced fifty percent in each level of jurisdiction in which the customer channel termination points are located.
- (4) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.

4. The sale of internet access service is sourced to the customer's place of primary use.

5. The sale of an ancillary service is sourced to the customer's place of primary use.

SECTION 14. AMENDMENT. Section 57-39.4-16 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-16. (315) Telecommunications sourcing definitions. For the purpose of section 57-39.4-15, the following definitions apply:

1. "Air-to-ground radiotelephone service" means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.
2. "Ancillary services" means services that are associated with or incidental to the provision of telecommunications services, including detailed telecommunications billing, directory assistance, vertical service, and voice mail services.
3. "Call-by-call basis" means any method of charging for telecommunications services in which the price is measured by individual calls.

- ~~3-~~ 4. "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.
- ~~4-~~ 5. "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications services is the customer of the telecommunications services, but this sentence only applies for the purpose of sourcing sales of telecommunications services under section 57-39.4-15. "Customer" does not include a reseller of telecommunications services or for mobile telecommunications services of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.
- ~~5-~~ 6. "Customer channel termination point" means the location where the customer either inputs or receives the communications.
- ~~6-~~ 7. "End user" means the person who utilizes the telecommunications services. In the case of an entity, "end user" means the individual who utilizes the services on behalf of the entity.
- ~~7-~~ 8. "Home service provider" means the same as that term is defined in section 124(5) of Public Law 106-252, Mobile Telecommunications Sourcing Act.
- ~~8-~~ 9. "Mobile telecommunications service" means the same as that term is defined in section 124(7) of Public Law 106-252, Mobile Telecommunications Sourcing Act.
- ~~9-~~ 10. "Place of primary use" means the street address representative of where the customer's use of the telecommunications services primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider.
- ~~10-~~ 11. "Post-paid calling service" means the telecommunications services obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to which a telephone number which is not associated with the origination or termination of the telecommunications services. A post-paid calling service includes telecommunications services, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively telecommunications services.
- ~~11-~~ 12. "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.
13. "Prepaid wireless calling service" means a telecommunication 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 for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount.

~~42-~~ 14. "Private communication service" means telecommunications services that entitle 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.

~~43-~~ 15. "Service address" means:

- a. The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.
- b. If the location in subdivision a is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.
- c. If the location in subdivisions a and b are not known, the service address means the location of the customer's place of primary use.

SECTION 15. AMENDMENT. Section 57-39.4-17 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-17. (316) Enactment of exemptions. A member state shall enact entity-based, use-based, and product-based exemptions in accordance with the provisions of this section and utilize common definitions in accordance with the provisions of section 57-39.4-28 and the agreement.

1. A member state may enact a product-based exemption without restriction if the agreement does not have a definition for the product or for a term that includes the product. If the agreement has a definition for the product or for a term that includes the product, a member state may exempt all items included within the definition but shall not exempt only part of the items included within the definition unless the agreement sets out the exemption for part of the items as an acceptable variation.
 - a. A member state may enact a product-based exemption for a product if the agreement has a definition for such product and the member state utilizes in the exemption the product definition in a manner consistent with the agreement and section 57-39.4-28.
 - b. A member state may enact a product-based exemption exempting all items included within a definition in the agreement but shall not exempt specific items included within the product definition unless the product definition sets out an exclusion for such item.

2. A member state may enact an entity-based or a use-based exemption for a product without restriction if the agreement does not have a definition for the product whose use or purchase by a specific entity is exempt or for a term that includes the product. If the agreement has a definition for the product whose use or specific purchase is exempt, a
 - a. A member state may enact an entity-based or a use-based exemption that applies to that product as long as the exemption utilizes the agreement definition of the product. If the agreement does not have a definition for the product whose use or specific purchase is exempt but has a definition for a term that includes the product, a member state may enact an entity-based or a use-based exemption for the product without restriction for a product if the agreement has a definition for such product and the member state utilizes in the exemption the product definition in a manner consistent with the agreement and section 57-39.4-28.
 - b. A member state may enact an entity-based exemption for an item if the agreement does not have a definition for such items but has a definition for a product that includes such item.
 - c. A member state may not enact a use-based exemption for an item which effectively constitutes a product-based exemption if the agreement has a definition for a product that includes such item.
 - d. A member state may enact a use-based exemption for an item if the agreement has a definition for a product that includes such item, if not prohibited in subdivision c of this subsection and if consistent with a definition in the agreement.
3. For purposes of complying with the requirements in this section, the inclusion of a product within the definition of tangible personal property is disregarded.

SECTION 16. AMENDMENT. Section 57-39.4-18 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-18. (317) Administration of exemptions.

1. Each member state shall observe the following provisions when a purchaser claims an exemption:
 - a. The seller shall obtain identifying information of the purchaser and the reason for claiming a tax exemption at the time of the purchase as determined by the governing board.
 - b. A purchaser is not required to provide a signature to claim an exemption from tax unless a paper exemption certificate is used.
 - c. The seller shall use the standard form for claiming an exemption electronically as adopted by the governing board.
 - d. The seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurred.

- e. A member state may utilize a system in which the purchaser exempt from the payment of the tax is issued an identification number that shall be presented to the seller at the time of the sale.
 - f. The seller shall maintain proper records of exempt transactions and provide them to a member state when requested.
 - g. A member state shall administer use-based and entity-based exemptions when practicable through a direct pay permit, an exemption certificate, or another means that does not burden sellers.
 - h. In the case of drop shipment sales, member states must allow a third-party vendor, drop shipper, to claim a resale exemption based on an exemption certificate by its customer or reseller or any other acceptable information available to the third-party vendor evidencing qualification for a resale exemption, regardless of whether the customer or reseller is registered to collect and remit sales and use tax in the state where the sale is sourced.
2. Each member state shall relieve sellers that follow the requirements of this section from ~~any~~ the tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption and to hold the purchaser liable for the nonpayment of tax. This relief from liability does not apply to a seller who fraudulently fails to collect the tax ~~or~~; to a seller who solicits purchasers to participate in the unlawful claim of an exemption; to a seller who accepts an exemption certificate when the purchaser claims an entity-based exemption when the subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller and the state in which that location resides provides an exemption certificate that clearly and affirmatively indicates grayed out exemption reason types on the uniform form and posting it on a state's web site is an indicator that the claimed exemption is not available in that state.
 3. Each state shall relieve a seller of the tax otherwise applicable if the seller obtains a fully completed exemption certificate or captures the relevant data elements required under the agreement within ninety days subsequent to the date of sale.
 - a. If the seller has not obtained an exemption certificate or all relevant data elements as provided by this section, the seller may, within one hundred twenty days subsequent to a request for substantiation by a member state, either prove that the transaction was not subject to tax by other means or obtain a fully completed exemption certificate from the purchaser, taken in good faith. For purposes of this section, member states may continue to apply their own standards of good faith until such time as a uniform standard for good faith is defined in the agreement.
 - b. Nothing in this section shall affect the ability of member states to require purchasers to update exemption certificate information or to reapply with the state to claim certain exemptions.
 - c. Notwithstanding the aforementioned, each member state shall relieve a seller of the tax otherwise applicable if it obtains a blanket

exemption certificate for a purchaser with which the seller has a recurring business relationship. States may not request from the seller renewal of blanket certificates or updates of exemption certificate information or data elements when there is a recurring business relationship between the buyer and seller. For purposes of this section, a recurring business relationship exists when a period of no more than twelve months elapses between sales transactions.

SECTION 17. A new section to chapter 57-39.4 of the North Dakota Century Code is created and enacted as follows:

(330) Bundled transactions.

1. A member state shall adopt and utilize to determine tax treatment, the core definition for a "bundled transaction" in the agreement.
2. Member states are not restricted in their tax treatment of bundled transactions except as otherwise provided in the agreement. Member states are not restricted in their ability to treat some bundled transactions differently from other bundled transactions.
3. In the case of a bundled transaction that includes any of the following: telecommunication service, ancillary service, internet access, or audio or video programming service:
 - 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, but not limited to, nontax purposes.
 - b. If the price is attributable to products that are subject to tax at different tax rates, the total price may be treated as attributable to the products subject to tax at the highest tax rate unless the provider can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to tax at the lower rate from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, nontax purposes.
 - c. The provisions of this section shall apply unless otherwise provided by federal law.

SECTION 18. A new section to chapter 57-39.4 of the North Dakota Century Code is created and enacted as follows:

(331) Relief from certain liability for purchasers.

1. A member state shall relieve a purchaser from liability for penalty to that member state and its local jurisdictions for having failed to pay the correct amount of sales or use tax in the following circumstances:

- a. A purchaser's seller or certified service provider relied on erroneous data provided by that member state on tax rates, boundaries, taxing jurisdiction assignments, or in the taxability matrix completed under section 57-39.4-29.
 - b. A purchaser holding a direct pay permit relied on erroneous data provided by that member state on tax rates, boundaries, taxing jurisdiction assignments, or in the taxability matrix completed by that member state under section 57-39.4-29.
 - c. A purchaser relied on erroneous data provided by that member state in the taxability matrix completed by that member state under section 57-39.4-29.
 - d. A purchaser using data bases under subsections 6, 7, and 8 of section 57-39.4-06 relied on erroneous data provided by that member state on tax rates, boundaries, or taxing jurisdiction assignments. After providing adequate notice as determined by the governing board, a member state that provides an address-based data base for assigning taxing jurisdictions under subsection 7 or 8 of section 57-39.4-06 may cease providing liability relief for errors resulting from the reliance on the data base provided by the member state under the provisions of subsection 6 of section 57-39.4-06.
2. Except when prohibited by a member state's constitution, a member state shall also relieve a purchaser from liability for tax and interest to that member state and its local jurisdictions for having failed to pay the correct amount of sales or use tax in the circumstances described in subsection 1, provided that with respect to reliance on the taxability matrix completed by that member state under section 57-39.4-29, such relief is limited to the state's erroneous classification in the taxability matrix of terms included in the agreement as "taxable", "exempt", "included in sales price", "excluded from sales price", "included in the definition", or "excluded from the definition".
 3. For purposes of this section, the term "penalty" means an amount imposed for noncompliance that is not fraudulent, willful, or intentional which is in addition to the correct amount of sales or use tax and interest.
 4. A member state may allow relief on terms and conditions more favorable to a purchaser than the terms required by this section.

SECTION 19. A new section to chapter 57-39.4 of the North Dakota Century Code is created and enacted as follows:

(501) Certification of service providers and automated systems.

1. The governing board shall certify automated systems and service providers to aid in the administration of sale and use tax collections.
2. The governing board may certify a person as a certified service provider if the person meets all of the following requirements:
 - a. The person uses a certified automated system;

- b. The person integrates its certified automated system with the system of a seller for whom the person collects tax so that the tax due on a sale is determined at the time of the sale;
 - c. The person agrees to remit the taxes it collects at the time and in the manner specified by the member states;
 - d. The person agrees to file returns on behalf of the sellers for whom it collects tax;
 - e. The person agrees to protect the privacy of tax information it obtains in accordance with section 57-39.4-22; and
 - f. The person enters into a contract with the member states and agrees to comply with the terms of the contract.
3. The governing board may certify a software program as a certified automated system if the governing board determines that the program meets all of the following requirements:
- a. It determines the applicable state and local sales and use tax rate for a transaction, in accordance with sections 57-39.4-10 through 57-39.4-17, inclusive;
 - b. It determines whether an item is exempt from tax;
 - c. It determines the amount of tax to be remitted for each taxpayer for a reporting period;
 - d. It can generate reports and returns as required by the governing board; and
 - e. It can meet any other requirement set by the governing board.

The governing board may establish one or more sales tax performance standards for model 3 sellers that meet the eligibility criteria set by the governing board and that developed a proprietary system to determine the amount of sales and use tax due on transactions.

SECTION 20. A new section to chapter 57-39.4 of the North Dakota Century Code is created and enacted as follows:

(502) State review and approval of certified automated system software and certain liability relief.

1. Each member state shall review software submitted to the governing board for certification as a certified automated system as provided for in this chapter. Such review shall include a review to determine that the program adequately classifies the state's product-based exemptions. Upon completion of the review, the state shall certify to the governing board its acceptance of the classifications made by the system.
2. Each member state shall relieve certified service providers and model 2 sellers from liability to the member state and local jurisdictions for not collecting sales or use taxes resulting from the certified service provider

or model 2 seller relying on the certification provided by the member state.

3. Each member state shall provide relief from liability to certified service providers for not collecting sales and use taxes in the same manner as provided to sellers under the provisions of section 57-39.4-18.
4. The governing board and the member states shall not be responsible for classification of an item or transaction within the product-based exemptions certified. The relief from liability provided in this section shall not be available for a certified service provider or model 2 seller that has incorrectly classified an item or transaction into a product-based exemption certified by a member state. This subsection shall not apply to the individual listing of items or transactions within a product definition approved by the governing board or the member states.
5. A member state determines that an item or transaction is incorrectly classified as to its taxability, it shall notify the certified service provider or model 2 seller of the incorrect classification. The certified service provider or model 2 seller shall have ten days to revise the classification after receipt of notice from the member state of the determination. Upon expiration of the ten days, the certified service provider or model 2 seller shall be liable for the failure to collect the correct amount of sales or use taxes due and owing to the member state.

SECTION 21. AMENDMENT. Subsection 1 of section 57-39.4-20 of the North Dakota Century Code is amended and reenacted as follows:

1. Require only one remittance for each return except as provided in this subsection. If any additional remittance is required, it may only be required from sellers that collect more than thirty thousand dollars in sales and use taxes in the member state during the preceding calendar year as provided herein. The state shall allow the amount of ~~the~~ any additional remittance ~~shall~~ to be determined through a calculation method rather than actual collections ~~and~~. Any additional remittances shall not require the filing of an additional return.

SECTION 22. AMENDMENT. Subsection 12 of section 57-40.2-04 of the North Dakota Century Code is amended and reenacted as follows:

12. Gross receipts from sales of prosthetic devices, durable medical equipment, or mobility-enhancing equipment. For purposes of this subsection:
 - a. "Durable medical equipment" means equipment, not including mobility-enhancing equipment, for home use, including repair and replacement parts for such equipment, which:
 - (1) Can withstand repeated use;
 - (2) Is primarily and customarily used to serve a medical purpose;
 - (3) Generally is not useful to a person in the absence of illness or injury; and

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

"Durable medical equipment" includes equipment and devices designed or intended for ostomy care and management and equipment and devices used exclusively for a person with bladder dysfunction. An exemption certificate is not required to obtain exemption.

- b. "Mobility-enhancing equipment" means equipment not including durable medical equipment sold under a doctor's written prescription, including repair and replacement parts for mobility-enhancing equipment, which:

- (1) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either at home or in a motor vehicle;
- (2) Is not generally used by a person with normal mobility; and
- (3) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

"Mobility-enhancing equipment" includes crutches and wheelchairs for the use of disabled persons, equipment, including manual control units, van lifts, van door opening units, and raised roofs for attaching to or modifying a motor vehicle for use by a permanently physically disabled person, equipment, including elevators, dumbwaiters, chair lifts, and bedroom or bathroom lifts, whether or not sold for attaching to real property, for use by a permanently physically disabled person in that person's principal dwelling, and equipment, including manual control units, for attaching to or modifying motorized implements of husbandry for use by a permanently physically disabled person.

- c. "Prosthetic device" means a replacement, corrective, or supportive device sold under a doctor's written prescription, including repair and replacement parts for such a device, worn on or in the body to:

- (1) Artificially replace a missing portion of the body;
- (2) Prevent or correct a physical deformity or malfunction; or
- (3) Support a weak or deformed portion of the body.

"Prosthetic device" includes artificial devices individually designed, constructed, or altered solely for the use of a particular disabled person so as to become a brace, support, supplement, correction, or substitute for the bodily structure, including the extremities of the individual, artificial limbs, artificial eyes, hearing aids, and other equipment worn as a correction or substitute for any functioning portion of the body, artificial teeth sold by a dentist, and eyeglasses when especially designed or prescribed by an ophthalmologist, physician, oculist, or optometrist for the personal use of the owner or purchaser.

- d. "Supplies for ostomy care or bladder dysfunction" includes:

- (1) Supplies designed or intended for ostomy care and management, including collection devices, colostomy irrigation equipment and supplies, skin barriers or skin protectors, and other supplies especially designed for use of ostomates.
- (2) Supplies to be used exclusively by a person with bladder dysfunction, including catheters, collection devices, incontinence pads and pants, and other items used for the care and management of bladder dysfunction.

SECTION 23. AMENDMENT. Section 57-40.2-04.1 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-04.1. Use tax exemption for food and food ingredients. Gross receipts from sales for human consumption of food and food ingredients are exempt from taxes imposed under this chapter. Gross receipts from sales for human consumption of food and food products given, or to be given, as samples to consumers for consumption on the premises of a food store are exempt from taxes imposed by this chapter. For purposes of this section, "food" and "food ingredients" mean substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, which are sold for ingestion or chewing by humans and are consumed for taste or nutritional value.

1. For purposes of this section, "food" and "food ingredients" do not include:
 - a. Alcoholic beverages.
 - b. Candy or chewing gum.
 - c. Dietary supplements.
 - d. Prepared food.
 - e. Soft drinks containing ~~less than~~ fifty percent or less fruit juice.
 - f. Tobacco.
2. For purposes of this section:
 - a. "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.
 - b. "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavoring in the form of bars, drops, or pieces. Candy does not include any preparation containing flour and that does not require refrigeration.
 - c. "Dietary supplement" means any product, other than tobacco, intended to supplement the diet which contains one or more of the following dietary ingredients: a vitamin; a mineral; an herb or other botanical; an amino acid; a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; an oral

concentrate, metabolite, constitute, extract, or combination of any dietary ingredients described in this subdivision and which is intended for ingestion in tablet, capsule, powder, soft gel cap, or liquid form, or if not represented for use as a sole item of a meal or of a diet; and is required to be labeled as a dietary supplement, identifiable by the supplemental facts box found on the label and as required pursuant to 21 CFR 101.36.

d. "Prepared food" means:

- (1) Food sold in a heated state or heated by the seller;
- (2) Two or more food ingredients mixed or combined by the seller for sale as a single item; or
- (3) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

e. "Prepared food" does not mean:

- (1) Food that is only cut, repackaged, or pasteurized by the seller.
- (2) Eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the food and drug administration in chapter 3, part 401.11, of its food code so as to prevent foodborne illness.
- (3) If sold without eating utensils provided by the seller:
 - (a) Food sold by a seller whose proper primary North American industry classification system classification is manufacturing in sector 311, except subsector 3118, bakeries.
 - (b) Food sold in an unheated state by weight or volume as a single item.
 - (c) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.

f. "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.

g. "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

3. For purposes of this section, "eating utensils provided by the seller" is determined as follows:

- a. Determine the prepared food ratio, where the numerator is the sum of food defined in paragraphs 1 and 2 of subdivision d of subsection 2 plus food when plates, bowls, glasses, or cups are necessary for the purchaser to receive the food and the denominator is all sales of food and food ingredients, including prepared food, candy, dietary supplements, and soft drinks. Alcoholic beverages are not included in either the numerator or denominator.
- b. If the prepared food ratio is seventy-five percent or less, utensils are provided by the seller if the seller's practice is to physically give or hand them to the purchaser, except plates, bowls, glasses, or cups necessary for the purchaser to receive the food need only be made available.
- c. If the prepared food ratio is greater than seventy-five percent, utensils are provided to the seller if they are made available to the purchaser. When sellers with a food ratio greater than seventy-five percent sell items that contain four or more servings packaged as one item and sold for a single price, the item does not become prepared food unless the seller's practice is to physically give or hand the purchaser utensils as in subdivision b. Serving size is determined by the label of the item sold. If no label is available, the seller will reasonably determine the number of servings.
- d. When a seller sells food items that have a utensil placed in a package by a person other than the seller and that person's North American industry classification system classification code is that of manufactures (sector 311), the seller shall not be considered to have provided the utensils except as in subdivisions b and c. For any other packager with any other North American industry classification system classification code, the seller shall be considered to have provided the utensil.
- e. The prepared food ratio is to be calculated by the seller for each calendar or fiscal year not later than ninety days after the end of each year and based on the seller's data from the previous year.
- f. A single prepared food ratio will be determined annually and used for all of the seller's locations in the state.
- g. A new business shall make a good-faith estimate of the prepared food ratio for the first year and shall adjust its good-faith estimate after the first three months if the actual prepared food ratio is materially different than the estimate.

SECTION 24. REPEAL. Sections 57-39.2-29 and 57-39.4-13 of the North Dakota Century Code are repealed.

Approved March 9, 2007
Filed March 12, 2007

CHAPTER 529**HOUSE BILL NO. 1049**

(Representatives Carlson, Delzer, Dosch, Kasper, Thoreson, Weiler)

HEATING FUEL TAX EXEMPTION

AN ACT to create and enact a new subsection to section 57-39.2-04 of the North Dakota Century Code, relating to a sales and use tax exemption for sales of natural gas and other fuels for heating purposes; to amend and reenact subsection 1 of section 57-39.2-02.1, section 57-39.2-03.6, subsection 44 of section 57-39.2-04, subsection 3 of section 57-40.2-02.1, and section 57-43.2-02.3 of the North Dakota Century Code, relating to a sales and use tax exemption for coal sold for use as heating fuel and a special fuels tax rate reduction and exemption for sales of natural gas and for special fuels sold for use as heating fuel; to repeal section 57-39.2-03.6 and subsection 3 of section 57-40.2-02.1 of the North Dakota Century Code, relating to the imposition and rate of sales and use taxes on sales of natural gas; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁷⁶ **SECTION 1. AMENDMENT.** Subsection 1 of section 57-39.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise expressly provided in subsection 2 for sales of mobile homes used for residential or business purposes, and except as otherwise expressly provided in this chapter, there is imposed a tax of five percent upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as provided in this section, within this state of the following to consumers or users:
 - a. Tangible personal property, consisting of goods, wares, or merchandise, except mobile homes used for residential or business purposes.
 - b. The furnishing or service of communication services or steam other than steam used for processing agricultural products.
 - c. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment, or athletic activity, and including the furnishing of bingo cards and the playing of any machine for amusement or entertainment in response to the use of a coin. The tax imposed by this section applies only to eighty percent of the gross receipts collected from coin-operated amusement devices.

²⁷⁶ Section 57-39.2-02.1 was also amended by section 4 of Senate Bill No. 2225, chapter 446, and section 4 of Senate Bill No. 2380, chapter 528.

- d. Magazines and other periodicals.
- e. The leasing or renting of a hotel or motel room or tourist court accommodations.
- f. The leasing or renting of tangible personal property the transfer of title to which has not been subjected to a retail sales tax under this chapter or a use tax under chapter 57-40.2.
- g. ~~Coal mined in this state and used for heating buildings, except for coal used in agricultural processing or sugar beet refining plants.~~
- h. Sale, lease, or rental of a computer and prewritten computer software, including prewritten computer software delivered electronically or by load and leave. For purposes of this subdivision:
 - (1) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.
 - (2) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.
 - (3) "Delivered electronically" means delivered from the seller to the purchaser by means other than tangible storage media.
 - (4) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
 - (5) "Load and leave" means delivery to the purchaser by use of a tangible storage media when the tangible storage media is not physically transferred to the purchaser.
 - (6) "Prewritten computer software" means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more "prewritten computer software" programs or prewritten portions thereof does not cause the combination to be other than "prewritten computer software". "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. If a person modifies or enhances "computer software" of which the person is not the author or creator, the person is deemed to be the author or creator only of such person's modifications or enhancements. "Prewritten computer software" or a prewritten portion thereof that is modified or enhanced to any degree, if such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains "prewritten computer software". However, if there is a reasonable, separately stated charge or an invoice or other statement of

the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute "prewritten computer software".

SECTION 2. AMENDMENT. Section 57-39.2-03.6 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-03.6. Sales tax rate on natural gas sales. Notwithstanding any other provisions of this chapter, the rate of the tax imposed under this chapter upon the gross receipts of retailers from all sales at retail of natural gas to retail consumers or users is ~~four one percent from January 1, 1993, through December 31, 1993; three percent from January 1, 1994, through December 31, 1994; and two percent after December 31, 1994.~~

²⁷⁷ **SECTION 3. AMENDMENT.** Subsection 44 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

44. Gross receipts from all sales of coal ~~used in agricultural processing or sugar beet refining plants located within this state~~ that is exempt from the coal severance tax.

SECTION 4. A new subsection to section 57-39.2-04 of the North Dakota Century Code is created and enacted as follows:

Gross receipts from sales of natural gas or sales of fuels used for heating purposes.

SECTION 5. AMENDMENT. Subsection 3 of section 57-40.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

3. An excise tax is imposed on the storage, use, or consumption in this state of natural gas consumed by a final user at the rate of ~~four one percent from January 1, 1993, through December 31, 1993; three percent from January 1, 1994, through December 31, 1994; and two percent after December 31, 1994,~~ if sales tax has not been applied as provided by section 57-39.2-03.6.

SECTION 6. AMENDMENT. Section 57-43.2-02.3 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-02.3. Exemptions.

1. Special fuel commonly known as diesel fuel which is dyed for federal fuel tax exemption purposes and sold for ~~use as heating fuel or for an agricultural, industrial, or railroad purpose~~ is exempt from the special fuel tax imposed by section 57-43.2-02 at the time the fuel is sold to the consumer and is subject instead to the tax imposed by section 57-43.2-03. Special fuel known as diesel fuel which is dyed for federal fuel tax exemption purposes and sold for use as heating fuel is exempt from the special fuel tax imposed by section 57-43.2-02 and subject to a

²⁷⁷ Section 57-39.2-04 was also amended by section 3 of House Bill No. 1393, chapter 513, and section 5 of Senate Bill No. 2380, chapter 528.

tax at a rate of two cents per gallon under section 57-43.2-03 from January 1, 2008, through June 30, 2009, and after that date is exempt from the special fuel tax imposed by sections 57-43.2-02 and 57-43.2-03. Fuel purchased for use in a licensed motor vehicle is not exempt from the tax imposed by section 57-43.2-02.

2. Special fuel, other than diesel fuel, sold for use as heating fuel or for an agricultural, industrial, or railroad purpose is exempt from the special fuel tax imposed by section 57-43.2-02 at the time the fuel is sold to the consumer and is subject instead to the tax imposed by section 57-43.2-03. Propane sold for use as heating fuel is exempt from the special fuel tax imposed by section 57-43.2-02 and subject to a tax at a rate of one percent under section 57-43.2-03 from January 1, 2008, through June 30, 2009, and thereafter is exempt from the special fuel tax imposed by sections 57-43.2-02 and 57-43.2-03 at the time the fuel is sold to the consumer. Special fuel, other than diesel fuel and propane, sold for use as heating fuel is exempt from the special fuel tax imposed by section 57-43.2-02 and subject to a tax at a rate of two cents per gallon under section 57-43.2-03 from January 1, 2008, through June 30, 2009, and thereafter is exempt from the special fuel tax imposed by sections 57-43.2-02 and 57-43.2-03 at the time the fuel is sold to the consumer. Fuel purchased for use in a licensed motor vehicle is not exempt from the tax imposed by section 57-43.2-02.
3. A consumer purchasing special fuel for a use in which it becomes an ingredient or a component part of tangible personal property intended to be sold ultimately at retail is exempt from the tax imposed by section 57-43.2-02 and is not subject to the tax imposed by section 57-43.2-03.

SECTION 7. REPEAL. Section 57-39.2-03.6 and subsection 3 of section 57-40.2-02.1 of the North Dakota Century Code are repealed.

SECTION 8. EFFECTIVE DATE. Sections 1, 2, 3, 5, and 6 of this Act are effective for taxable events occurring after December 31, 2007. Sections 4 and 7 of this Act are effective for taxable events occurring after June 30, 2009.

Approved April 30, 2007
Filed May 1, 2007

CHAPTER 530**HOUSE BILL NO. 1365**

(Representatives Belter, Kerzman)

(Senators Christmann, O'Connell)

COAL CONVERSION FACILITY TAXES

AN ACT to amend and reenact sections 57-39.2-04.2 and 57-40.2-04.2, subsections 3 and 11 of section 57-60-01, subsections 2, 3, and 5 of section 57-60-02, sections 57-60-06 and 57-60-07, and subsection 1 of section 57-60-14 of the North Dakota Century Code, relating to the definition of power plant, repowering, and coal conversion facility for sales, use, and privilege tax purposes, the imposition of taxes on coal conversion facilities, the powers of the tax commissioner, and allocation of revenue from coal conversion facilities; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁷⁸ **SECTION 1. AMENDMENT.** Section 57-39.2-04.2 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-04.2. (Effective through June 30, 2007) Reduced rate and exemption for power plant construction, production, environmental upgrade, and repowering equipment.

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

²⁷⁸ Section 57-39.2-04.2 was also amended by section 2 of Senate Bill No. 2298, chapter 516.

through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.

- d. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.
 - e. "Repowering" means an investment of more than two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever is less, in an existing power plant that modifies or replaces the process used for converting lignite coal from its natural form into electrical power.
2. Sales of production or environmental upgrade equipment that is delivered on or after January 1, 2007, and used exclusively in power plants or repowering existing power plants that begin construction after June 30, 1991, are exempt from the tax imposed by this chapter.
 3. Sales of tangible personal property, other than production or environmental upgrade equipment, which is used in the construction of new power plants or to add environmental upgrades to existing power plants or repowering existing power plants are exempt from the tax imposed by this chapter.
 4. To receive the reduced rate or exemption at the time of purchase, the operator must receive from the commissioner a certificate that the tangible personal property or production equipment the operator intends to purchase qualifies for the reduced rate or exemption. If a certificate is not received prior to the purchase, the operator shall pay the applicable tax imposed by this chapter and apply to the commissioner for a refund.
 5. If the tangible personal property or production equipment is purchased or installed by a contractor subject to the tax imposed by this chapter, the operator may apply for a refund of the difference between the amount remitted by the contractor and the reduced rate or exemption imposed or allowed by this section.

(Effective after June 30, 2007) Reduced rate and exemption for power plant construction, production, environmental upgrade, and repowering equipment and oil refinery or gas processing plant environmental upgrade equipment.

1. As used in this section, unless the context otherwise requires:
 - a. (1) "Environmental upgrade" means an investment greater than twenty-five million dollars or one hundred thousand dollars per megawatt of installed nameplate capacity, whichever is less, in machinery, equipment, and related facilities for reducing emissions or increasing efficiency at an existing power plant.
 - (2) "Environmental upgrade" for purposes of a process unit means an investment greater than one hundred thousand dollars in machinery, equipment, and related facilities for

reducing emissions, increasing efficiency, or enhancing reliability of the equipment at a new or existing process unit.

- b. "Operator" means any person owning, holding, or leasing a power plant or process unit.
 - c. "Power plant" means:
 - (1) An electrical generating plant, and all additions to the plant, which processes or converts ~~lignite coal~~ lignite coal from its natural form into electrical power and which has at least one single electrical energy generation unit with a capacity of one hundred twenty thousand kilowatts or more.
 - (2) A wind-powered electrical generating facility, on which construction is completed before January 1, 2011, and all additions to the facility, which provides electrical power through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.
 - d. "Process unit" means an oil refinery or gas processing plant and all adjacent units that are utilized in the processing of crude oil or natural gas.
 - e. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.
 - f. "Repowering" means an investment of more than two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever is less, in an existing power plant that modifies or replaces the process used for converting ~~lignite~~ lignite coal from its natural form into electrical power.
2. Sales of production or environmental upgrade equipment that is delivered on or after January 1, 2007, and used exclusively in power plants or repowering existing power plants or in processing units ~~that begin construction after June 30, 1994,~~ are exempt from the tax imposed by this chapter.
 3. Sales of tangible personal property, other than production or environmental upgrade equipment, which is used in the construction of new power plants or to add environmental upgrades to existing power plants or repowering existing power plants or to add environmental upgrades to existing process units are exempt from the tax imposed by this chapter.
 4. To receive the reduced rate or exemption at the time of purchase, the operator must receive from the commissioner a certificate that the tangible personal property or production equipment the operator intends to purchase qualifies for the reduced rate or exemption. If a certificate is not received prior to the purchase, the operator shall pay the applicable tax imposed by this chapter and apply to the commissioner for a refund.

5. If the tangible personal property or production equipment is purchased or installed by a contractor subject to the tax imposed by this chapter, the operator may apply for a refund of the difference between the amount remitted by the contractor and the reduced rate or exemption imposed or allowed by this section.

²⁷⁹ **SECTION 2. AMENDMENT.** Section 57-40.2-04.2 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-04.2. (Effective through June 30, 2007) Reduced rate and exemption for power plant construction, production, environmental upgrade, and repowering equipment.

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

²⁷⁹ Section 57-40.2-04.2 was also amended by section 5 of Senate Bill No. 2298, chapter 516.

2. Sales of production or environmental upgrade equipment that is delivered on or after January 1, 2007, and used exclusively in power plants or repowering existing power plants that begin construction after June 30, 1994, are exempt from the tax imposed by this chapter.
3. Sales of tangible personal property, other than production or environmental upgrade equipment, which is used in the construction of new power plants or to add environmental upgrades to existing power plants or repowering existing power plants are exempt from the tax imposed by this chapter.
4. To receive the reduced rate or exemption at the time of purchase, the operator must receive from the commissioner a certificate that the tangible personal property or production equipment the operator intends to purchase qualifies for the reduced rate or exemption. If a certificate is not received prior to the purchase, the operator shall pay the applicable tax imposed by this chapter and apply to the commissioner for a refund.
5. If the tangible personal property or production equipment is purchased or installed by a contractor subject to the tax imposed by this chapter, the operator may apply for a refund of the difference between the amount remitted by the contractor and the reduced rate or exemption imposed or allowed by this section.

(Effective after June 30, 2007) Reduced rate and exemption for power plant construction, production, environmental upgrade, and repowering equipment and oil refinery or gas processing plant environmental upgrade equipment.

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

- (2) A wind-powered electrical generating facility, on which construction is completed before January 1, 2011, and all additions to the facility, which provides electrical power through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.
 - d. "Process unit" means an oil refinery or gas processing plant and all adjacent units that are utilized in the processing of crude oil or natural gas.
 - e. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.
 - f. "Repowering" means an investment of more than two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever is less, in an existing power plant that modifies or replaces the process used for converting ~~ignite~~ coal from its natural form into electric power.
2. Sales of production or environmental upgrade equipment that is delivered on or after January 1, 2007, and used exclusively in power plants or repowering existing power plants or in process units that begin construction after June 30, 1994, are exempt from the tax imposed by this chapter.
 3. Sales of tangible personal property, other than production or environmental upgrade equipment, which is used in the construction of new power plants or to add environmental upgrades to existing power plants or repowering existing power plants or to add environmental upgrades to existing process units are exempt from the tax imposed by this chapter.
 4. To receive the reduced rate or exemption at the time of purchase, the operator must receive from the commissioner a certificate that the tangible personal property or production equipment the operator intends to purchase qualifies for the reduced rate or exemption. If a certificate is not received prior to the purchase, the operator shall pay the applicable tax imposed by this chapter and apply to the commissioner for a refund.
 5. If the tangible personal property or production equipment is purchased or installed by a contractor subject to the tax imposed by this chapter, the operator may apply for a refund of the difference between the amount remitted by the contractor and the reduced rate or exemption imposed or allowed by this section.

²⁸⁰ **SECTION 3. AMENDMENT.** Subsections 3 and 11 of section 57-60-01 of the North Dakota Century Code are amended and reenacted as follows:

²⁸⁰ Section 57-60-01 was also amended by section 5 of House Bill No. 1071, chapter 501.

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

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

SECTION 4. AMENDMENT. Subsections 2, 3, and 5 of section 57-60-02 of the North Dakota Century Code are amended and reenacted as follows:

2. For electrical generating plants, the tax is at a rate of sixty-five one-hundredths of one mill times sixty percent of the installed capacity of each unit times the number of hours in the taxable period. All electrical generating plants that begin construction or ~~completed~~ complete repowering ~~after June 30, 1994,~~ are exempt from eighty-five percent of the tax imposed by this subsection for five years from the date of the first taxable production or from the date of the first taxable production after repowering from the plant. The board of county commissioners may, by resolution, grant to the operator of an electrical generating plant located within the county ~~which begins construction after June 30, 1994,~~ partial or complete exemption from the remaining fifteen percent of the tax imposed by this subsection for a period not exceeding five years from the date of the first taxable production or from the date of the first taxable production after repowering from the plant. If a board of county commissioners grants a partial or complete exemption for a specific coal conversion facility under this subsection, the provisions of subsection 2 of section 57-60-14 do not apply as that subsection relates to revenue from the specific coal conversion facility for which the partial or complete exemption has been granted. Notwithstanding section 57-60-14, any tax collected from a plant subject to the exemption provided by this subsection must be allocated entirely to the county for allocation as provided in section 57-60-15. If a unit is incapable of generating electricity for eighteen consecutive months, the tax on that unit for taxable periods beginning after the eighteenth month

must be reduced by the ratio that the cost of repair of the unit bears to the original cost of the unit. This reduced rate remains in effect until the unit is capable of generating electricity.

3. For electrical generating plants, in addition to the tax imposed by subsection 2, there is a tax at the rate of twenty-five one-hundredths of one mill on each kilowatt hour of electricity produced for the purpose of sale. For all electrical generating plants that begin construction or ~~completed complete~~ repowering ~~after June 30, 1994~~, the production from the plants is exempt from the tax imposed by this subsection for five years from the date of the first taxable production or from the date of the first taxable production after repowering from the plant.
5.
 - a. For all coal conversion facilities, other than electrical generating plants, the production from the facilities is exempt from eighty-five percent of the tax imposed by this section for a period of five years from the date of first taxable production from the facility ~~or for a period of five years from April 20, 1987, whichever is later~~. The operator of each facility applying for exemption under this subsection shall certify to the tax commissioner the date of first taxable production of the facility.
 - b. The board of county commissioners may, by resolution, grant to the operator of a coal conversion facility, other than an electrical generating plant, located within the county a partial or complete exemption from the remaining fifteen percent of tax imposed by this section for a period not exceeding five years from the date of the first taxable production from the facility. Notwithstanding the provisions of section 57-60-14, any tax collected which is based upon the production of a facility subject to the exemption provided by this subsection must be allocated entirely to the county for allocation as provided in section 57-60-15. ~~If a board of county commissioners grants a partial or complete exemption for a specific coal conversion facility under this subsection, the provisions of subsection 2 of section 57-60-14 do not apply as that subsection relates to revenue from the specific coal conversion facility for which the partial or complete exemption has been granted.~~

SECTION 5. AMENDMENT. Section 57-60-06 of the North Dakota Century Code is amended and reenacted as follows:

57-60-06. Property classified and exempted from ad valorem taxes - In lieu of certain other taxes - Credit for certain other taxes. Each coal conversion facility must be classified as personal property and is exempt from all ad valorem taxes except for taxes on the land on which such facility is located. The taxes imposed by this chapter are in lieu of ad valorem taxes on the property so classified as personal property. The taxes imposed by this chapter are also in lieu of those taxes imposed by chapters 57-33 and 57-33.1 on cooperative electrical generating plants that qualify as coal conversion facilities as defined in this chapter for gross receipts derived from the operation of such plants ~~on or after July 1, 1975~~. ~~Each cooperative electrical generating plant shall receive a credit against the taxes imposed by this chapter for any taxes imposed pursuant to chapters 57-33 and 57-33.1 and payable after July 1, 1975. Such credit applies only for such taxes actually paid and must be applied against the taxes imposed by this chapter in the years in which such payments are made.~~

SECTION 6. AMENDMENT. Section 57-60-07 of the North Dakota Century Code is amended and reenacted as follows:

57-60-07. Powers of commissioner. The commissioner has power to require any person subject to the taxes imposed by this chapter to furnish any additional information deemed by the commissioner to be necessary for the purpose of correctly computing the amount of the tax, and to examine the books, records, and files of such person, and has power to conduct hearings and compel the attendance of witnesses, the production of books, records, and papers of any person, and full authority to make any investigation or hold any inquest deemed necessary to a full and complete disclosure of the true facts as to the amount of production or generation from any coal ~~development~~ conversion plant, and as to the rendition thereof for taxing purposes.

²⁸¹ **SECTION 7. AMENDMENT.** Subsection 1 of section 57-60-14 of the North Dakota Century Code is amended and reenacted as follows:

1. The state treasurer shall no less than quarterly allocate all moneys received from all coal conversion facilities in each county pursuant to the provisions of this chapter ~~and moneys received for those taxes for which a credit is allowed pursuant to section 57-60-06, notwithstanding the provisions of section 57-33.1-08,~~ fifteen percent to the county and eighty-five percent to the state general fund, except moneys received from the tax imposed by subsection 3 of section 57-60-02 and through December 31, 2009, the first \$41,666.67 each month from the tax imposed by subsections 1 and 4 of section 57-60-02, which must be deposited in the state general fund.

SECTION 8. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 30, 2007
Filed March 30, 2007

²⁸¹ Section 57-60-14 was also amended by section 1 of House Bill No. 1093, chapter 546.

CHAPTER 531**HOUSE BILL NO. 1074**

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

SPECIAL EVENT VENDOR REPORTING

AN ACT to create and enact a new section to chapter 57-39.2 of the North Dakota Century Code, relating to the information reporting responsibilities of special events promoters or organizers under the sales tax laws; to amend and reenact subsection 1 of section 57-39.2-23 of the North Dakota Century Code, relating to the confidentiality of sales and use tax information; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Responsibilities of special events promoters - Penalty.

1. A promoter or organizer of a special event at which ten or more special event vendors participate shall, within twenty days following a special event, provide to the tax commissioner a list identifying each participating special event vendor. The list must be in the form and manner prescribed by the tax commissioner and must contain the name and sales tax permit number of each special vendor. Records must be retained by the promoter or organizer to the same extent as all transactions involving sales or use tax as provided in section 57-39.2-10. For purposes of this section:
 - a. "Promoter" or "organizer" means a person or entity that organizes or promotes a special event that results in the rental, occupation, or use of a structure, lot, tract of land, motor vehicle, sample or display case, table, or any other similar items for the provision of displays, promotional activities, or sale of tangible personal property or services by special event vendors.
 - b. "Special event" means an entertainment, amusement, recreation, or marketing event that occurs at a single location on a recurring or irregular basis and where sales, displays, or promotional activities occur. Special events include auto shows, boat shows, gun shows, sport shows, knife shows, home shows, craft shows, flea markets, carnivals, circuses, bazaars, fairs, and art or other merchandise displays or exhibits.
 - c. "Special event vendor" means a person or entity making sales, providing displays, or otherwise engaging in promotional activities at a special event.
2. A special event does not include an event that is organized for the exclusive benefit of a nonprofit organization if all of the net proceeds of

the retail sales of all vendors at the event inure to the benefit of a nonprofit organization.

3. A promoter or organizer of a special event who fails or refuses to comply with this section may be subject to a penalty of two hundred fifty dollars per event, which amount may be waived by the tax commissioner for good cause shown.

SECTION 2. AMENDMENT. Subsection 1 of section 57-39.2-23 of the North Dakota Century Code is amended and reenacted as follows:

1. The commissioner or ~~a person~~ an individual having an administrative duty under this chapter may not divulge or make known in any manner whatever the business affairs, operations, or information obtained from any person under any reporting requirement of this chapter, or by an investigation of any person, corporation, or limited liability company in the discharge of official duty, or the amount or sources of income, profits, losses, expenditures, or any particulars set forth or disclosed in any return, or permit any return or copy or any book containing any abstract of particulars to be seen or examined by any ~~person~~ individual.

Approved March 7, 2007

Filed March 8, 2007

CHAPTER 532**SENATE BILL NO. 2381**

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

REIMBURSEMENT FOR SALES TAX COLLECTIONS

AN ACT to amend and reenact sections 57-39.2-12.1 and 57-40.2-07.1 of the North Dakota Century Code, relating to reimbursements to retailers for administrative expenses associated with sales and use tax collection and remittance; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

57-39.2-12.1. Deduction to reimburse retailer for administrative expenses.

1. A retailer ~~who pays the tax due required to report and pay monthly under section 57-39.2-12 or chapter 57-39.4 within the time limitations prescribed~~ may deduct and retain one and one-half percent of the tax due. A retailer that is a remote seller that, through a certified service provider or by other means, pays the tax due within the time limitations under section 57-39.2-12 or chapter 57-39.4 on taxable sales made before July 1, 2007, may deduct and retain one and one-half percent of the tax due or such lower percentage as agreed in the compensation or monetary allowance agreement as approved by the streamlined sales and use tax governing board. The limitation of subsection 2 does not apply to the amount a retailer who is a remote seller is allowed to deduct and retain under this subsection. For purposes of this subsection, "remote seller" means a retailer that does not have an adequate physical presence to establish nexus in this state for sales tax purposes. The aggregate of deductions allowed by this section and section 57-40.2-07.1 may not exceed eighty-five dollars per month. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 2 or 3 for the same period.
2. The aggregate of deductions allowed by this section and section 57-40.2-07.1 may not exceed eighty-five dollars per month for permit holders filing on a monthly basis for each business location which has been issued a sales or use tax permit by the commissioner. A certified service provider that contracts with retailers to calculate, collect, and remit tax due on behalf of retailers may deduct and retain from the tax remitted to the tax commissioner compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board effective June 1, 2006. The compensation provided in this subsection applies only to tax remitted by certified service providers on behalf of retailers that are remote sellers registered to collect sales and use tax in this state under chapter 57-39.4. Certified service providers that receive compensation under this subsection may

not receive additional compensation under subsection 1 or 3 for the same period.

3. The deduction allowed retailers by this section is to reimburse retailers for expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying information to the commissioner upon request. A retailer that is a remote seller registered to collect sales and use tax under chapter 57-39.4 and that uses a certified automated system to calculate, report, and remit tax due under chapters 57-39.2, 57-39.4, and 57-40.2 may deduct and retain compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board during its December 2006 meeting. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 2 for the same period.
4. For purposes of this section, "remote seller" means a retailer that does not have an adequate physical presence to establish nexus in this state for sales and use tax purposes.
5. Compensation may not be deducted and retained under this section unless the tax due is paid within the time limitations under section 57-39.2-12 or 57-40.2-07 or chapter 57-39.4.
6. The deduction allowed retailers or certified service providers by this section is to reimburse retailers directly or indirectly for expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying information to the tax commissioner upon request.

SECTION 2. AMENDMENT. Section 57-40.2-07.1 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-07.1. Deduction to reimburse retailer for administrative expenses.

1. A retailer who pays the tax due required to report and pay monthly under section 57-40.2-07 or chapter 57-39.4 within the time limitations prescribed may deduct and retain one and one-half percent of the tax due. A retailer that is a remote seller that, through a certified service provider or by other means, pays the tax due within the time limitations under section 57-39.2-12 or chapter 57-39.4 on taxable sales made before July 1, 2007, may deduct and retain one and one-half percent of the tax due or such lower percentage as agreed in the compensation or monetary allowance agreement as approved by the streamlined sales and use tax governing board. The limitation of subsection 2 does not apply to the amount a retailer who is a remote seller is allowed to deduct and retain under this subsection. For purposes of this subsection, "remote seller" means a retailer that does not have an adequate physical presence to establish nexus in this state for sales tax purposes. The aggregate of deductions allowed by this section and section 57-39.2-12.1 may not exceed eighty-five dollars per month. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 2 or 3 for the same period.

2. The aggregate of deductions allowed by this section and section 57-39.2-12.1 may not exceed eighty-five dollars per month for permit holders filing on a monthly basis for each business location which has been issued a sales or use tax permit by the commissioner. A certified service provider that contracts with retailers to calculate, collect, and remit tax due on behalf of retailers may deduct and retain from the tax remitted to the tax commissioner compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board effective June 1, 2006. The compensation provided in this subsection applies only to tax remitted by certified service providers on behalf of retailers that are remote sellers registered to collect sales and use tax in this state under chapter 57-39.4. Certified service providers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 3 for the same period.
3. The deduction allowed retailers by this section is to reimburse retailers for expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying information to the commissioner upon request. A retailer that is a remote seller registered to collect sales and use tax under chapter 57-39.4 and that uses a certified automated system to calculate, report, and remit tax due under chapters 57-39.2, 57-39.4, and 57-40.2 may deduct and retain compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board during its December 2006 meeting. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 2 for the same period.
4. For purposes of this section, "remote seller" means a retailer that does not have an adequate physical presence to establish nexus in this state for sales and use tax purposes.
5. Compensation may not be deducted and retained under this section unless the tax due is paid within the time limitations under section 57-39.2-12 or 57-40.2-07 or chapter 57-39.4.
6. The deduction allowed retailers or certified service providers by this section is to reimburse retailers directly or indirectly for expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying information to the tax commissioner upon request.

SECTION 3. EFFECTIVE DATE. This Act becomes effective July 1, 2007.

Approved March 9, 2007
Filed March 12, 2007

CHAPTER 533**SENATE BILL NO. 2086**

(Transportation Committee)

(At the request of the Tax Commissioner)

MOTOR VEHICLE EXCISE TAX LOSS STATEMENTS

AN ACT to amend and reenact subsection 5 of section 57-40.3-01 of the North Dakota Century Code, relating to use of total loss statements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 57-40.3-01 of the North Dakota Century Code is amended and reenacted as follows:

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

by a person who registers it under the laws of this state means the manufactured cost of such motor vehicle and manufactured cost means the amount expended for materials, labor, and other properly allocable costs of manufacture except that, in the absence of actual expenditures for the manufacture of a part or all of the motor vehicle, manufactured cost means the reasonable value of the completed motor vehicle.

Approved March 5, 2007
Filed March 6, 2007

CHAPTER 534**HOUSE BILL NO. 1160**

(Representatives Uglem, Belter, DeKrey, Kerzman, Vigesaa)
(Senator Mathern)

AMBULANCE EXCISE TAX EXEMPTION

AN ACT to create and enact a new subsection to section 57-40.3-04 and a new subsection to section 57-40.5-03 of the North Dakota Century Code, relating to motor vehicle excise tax and aircraft excise tax exemptions for ambulances and air ambulances purchased by emergency medical services operations; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁸² **SECTION 1.** A new subsection to section 57-40.3-04 of the North Dakota Century Code is created and enacted as follows:

A motor vehicle originally manufactured for use as an ambulance, when purchased by the operator of an emergency medical services operation licensed under chapter 23-27.

SECTION 2. A new subsection to section 57-40.5-03 of the North Dakota Century Code is created and enacted as follows:

Aircraft for use as an air ambulance, when purchased by the operator of an emergency medical services operation licensed under chapter 23-27.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 18, 2007
Filed April 18, 2007

²⁸² Section 57-40.3-04 was also amended by section 4 of House Bill No. 1393, chapter 513, section 7 of Senate Bill No. 2101, chapter 450, and section 3 of Senate Bill No. 2113, chapter 337.

CHAPTER 535**SENATE BILL NO. 2169**

(Senators Wardner, Taylor)
(Representatives Carlson, Delmore)

EMERGENCY SERVICES COMMUNICATION FEES

AN ACT to amend and reenact sections 57-40.6-01, 57-40.6-02, 57-40.6-03, 57-40.6-04, 57-40.6-05, 57-40.6-06, 57-40.6-08, 57-40.6-10, and 57-40.6-12 of the North Dakota Century Code, relating to the application, collection, and use of emergency services communication fees; to repeal section 57-40.6-11 of the North Dakota Century Code, relating to a report on all standards and guidelines; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

57-40.6-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

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

- ~~3-~~ 6. "FCC order" means federal communications commission order 94-102 [961 Federal Register 40348] and any other FCC order that affects the provision of wireless enhanced 911 service.
7. "Prepaid wireless service" means wireless service that is activated in advance by payment for a finite dollar amount of service or for a finite set of minutes that terminates either upon use by a customer and delivery by the wireless provider of an agreed-upon amount of service corresponding to the total dollar amount paid in advance or within a certain period of time following the initial purchase or activation, unless the customer makes additional payments.
- ~~4-~~ 8. "Public safety answering point" or "PSAP" means a communications facility or combination of facilities operated on a twenty-four-hour basis which first receives 911 calls from persons in a 911 service area and which, as appropriate, may directly dispatch public safety services or extend, transfer, or relay 911 calls to appropriate public safety agencies.
- ~~5-~~ 9. "Subscriber service address" means, for purposes of wire line subscribers, the address where the telephone subscriber's wire line telephone device is used and, for purposes of wireless subscribers, the place of primary use, as that term is defined in ~~the Mobile Telecommunications Sourcing Act [Pub. L. 106-252; 4 U.S.C. 124(b)]~~ section 57-34.1-02.
- ~~6-~~ 10. "Telephone access line" means the principal access to the telephone company's switched network, including an outward dialed trunk or access register.
- ~~7-~~ 11. "Telephone exchange access service" means service to any wire line telephone access line identified by a unique telephone number that provides local wire line access to the telecommunications network to a service subscriber and which enables the subscriber to access the emergency services communications system by dialing the digits 9-1-1 on the subscriber's telephone device.
- ~~8-~~ 12. "Unpublished" means information that is not published or available from directory assistance.
13. "Voice over internet protocol service" means a service that enables real-time two-way voice communications; requires a broadband connection from the user's location; requires internet protocol-compatible customer premises equipment; and permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.
- ~~9-~~ 14. "Wireless access line" means each active wireless and prepaid wireless telephone number assigned to a commercial mobile radio service subscriber, including end users of resellers.
- ~~10-~~ 15. "Wireless enhanced 911 service" means the service required to be provided by wireless service providers pursuant to the FCC order.
- ~~11-~~ 16. "Wireless service" means commercial mobile radio service as defined in 47 U.S.C. 332(d)(1) and includes:

- a. Services commonly referred to as wireless; and
- b. Services provided by any wireless real-time two-way voice communication device, including radio-telephone communications used in:
 - (1) Cellular telephone service;
 - (2) Personal communications service; or
 - (3) The functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, personal communications service, or a network radio access line.

42- 17. "Wireless service provider" means any entity authorized by the federal communications commission to provide wireless service within the state of North Dakota.

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

57-40.6-02. Authority of counties or cities to impose fee on telephone exchange access service and on wireless assessed communications service - Procedure. The governing body of a county or city may impose a fee on ~~the use of telephone exchange access service and on the use of wireless service~~ all assessed communications services in accordance with the following requirements:

1. The governing body shall adopt a resolution that proposes the adoption of the fee permitted under this section. The resolution must specify an effective date for the fee which is no more than two years before the expected implementation date of the emergency services communication system to be funded by the fee. The resolution must include a provision for submitting the proposed fee to the electors of the county or city before the imposition of the fee is effective. The resolution must specify a fee that does not exceed one dollar per month per telephone access line and per wireless access line communication connection and must be applied equally upon all assessed communications services.
2. The question of the adoption of the fee must be submitted on a ballot on which the ballot title of the proposition includes the maximum monthly rate of the proposed fee authorized under subsection 1. The question of the adoption of the fee may be submitted to electors at a general, primary, or special election or at a school district election if the boundaries of the school district are coterminous with the boundaries of the governing body adopting the resolution proposing the adoption of the fee. The fee is not effective unless it is approved by a majority of the electors voting on the proposition. The ballot must be worded so that a "yes" vote authorizes imposition of the fee for an initial six-year period.
3. If the electors have approved imposition of a fee under this section before July 1, 2005, and the governing body of the city or county has not implemented that fee by June 30, 2005, the approval by the electors remains valid until the fee is implemented and, upon implementation,

the fee may be imposed for a six-year period and is subject to reimposition under subsection 4.

4. Any political subdivision that desires to increase the fee, subject to the limitations in subsection 1, before the end of the six-year term, must use the same ballot procedure originally used to authorize the fee. The new ballot question may apply to only the proposed increase and not to the original amount or the original term. If the increase is approved, the new amount may be collected for the balance of the original six-year term. If the fee authorized by this section is approved by the electors, the fee may be reimposed for six additional years without resubmitting the question to the electors.
5. In any geographic area, only one political subdivision may impose the fee and imposition must be based on the subscriber service address.
6. In the interest of public safety, where the subscriber's telephone exchange access service boundary and the boundary of the political subdivision imposing the fee do not coincide, and where all of the political subdivisions within the subscriber's telephone exchange access service boundary have not complied with subsection 1, and where a majority of the E911 subscribers within the subscriber's telephone exchange access service boundary have voted for the fee, a telephone exchange access service subscriber whose subscriber service address is outside the political subdivision may receive E911 services by signing a contract agreement with the political subdivision providing the emergency services communication system. The telephone exchange access service provider may collect an additional fee, equal in amount to the basic fee on those subscribers within the exchange boundary. The additional fee amounts collected must be remitted as provided in this chapter.
7. A fee imposed under this section before August 1, ~~2004~~, may be 2007, on telephone exchange access service is extended to all wireless service at each subscriber service address within the area in which the fee is imposed only if that extension of the fee has been approved by a majority vote of the governing body of the city or county upon at least thirty days' prior notice in the official newspaper of the city or county that the governing body will consider the issue or by majority vote of the electors of the city or county voting on the question upon placement of the question on the ballot by the governing body of the city or county at a regular or special city or county election assessed communications services.

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

57-40.6-03. Payment of fee by telephone exchange access service and wireless assessed communications service subscriber or customer. The resolution imposing a fee under section 57-40.6-02 must include a requirement that the telephone exchange access service provider and the wireless assessed communications service provider shall collect the fee from the subscriber or customer of the service. In its

1. For prepaid wireless service, the provider shall remit the monthly fee authorized by section 57-40.6-02 based either upon each active prepaid

wireless telephone associated with this state for each active prepaid wireless telephone customer that has a sufficient positive balance as of the last day of each month or upon a two percent assessment on the gross revenue received from the sale of prepaid wireless services each month. The provider shall remit the fee in a manner consistent with the provider's existing operating or technological abilities, including by customer address, location associated with the wireless telephone number, or reasonable allocation method based upon other relevant data. The fee amount or an equivalent number of minutes may be reduced from the prepaid customer's account. However, collection of the fee in the manner of a reduction of value or minutes from the prepaid customer's account does not constitute a reduction in the sales price for purposes of taxes that are collected at the point of sale.

2. For assessed communications service that involves a monthly billing, in the billing statement or invoice to the subscriber, the telephone exchange access service provider and the wireless service provider shall state the amount of the fee separately.

SECTION 4. AMENDMENT. Section 57-40.6-04 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-04. Fee collection procedure. A resolution adopted under section 57-40.6-02 must include adequate procedures for the administration and collection of the fee, including a provision for reimbursement to the telephone exchange access service provider and the wireless service provider for the actual costs of administration in collection of the fee. An assessed communications service provider may retain the actual costs of administration in collection of the fee, not to exceed five percent of the fee collected. The resolution must also include a provision that the fee proceeds must be paid by the telephone exchange access service provider and the wireless assessed communications service provider within thirty days after it is collected from the subscriber or customer unless the provider has fewer than ten subscribers or customers in a jurisdiction, in which case the provider may pay the proceeds quarterly.

SECTION 5. AMENDMENT. Section 57-40.6-05 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-05. Restriction on use of fee proceeds. The governing body may not use the proceeds of the fee imposed under section 57-40.6-02 solely for any purpose other than as provided in this section.

1. Within twenty-four months after the extension of the fee to wireless access lines under subsection 6 of section 57-40.6-02, the governing body shall request enhanced 911 service from all wireless carriers providing service as of that date within the governing body's jurisdiction.
2. The governing body shall hold the portion of the revenues from the fee on wireless service unexpended in a separate fund until such time as the governing body makes a request for wireless enhanced 911 service or adopts a statement certifying that it is capable of receiving and utilizing wireless enhanced 911 service, whichever is earlier, provided that those revenues may not be expended until the agreements required under subsection 3 have been executed.

3. ~~The governing body or its designee shall enter into agreements directly with each wireless service provider for only that provider's services necessary to implement, maintain, and operate wireless enhanced 911 service as provided by law. A governing body may not reimburse a wireless service provider for tower construction or for the extension of a wireless service provider's infrastructure which is not directly related to providing wireless enhanced 911 service.~~
4. ~~Revenues in excess of the obligations incurred under the agreements specified by this section, as determined on a monthly basis, may only be used for implementing, maintaining, or operating the emergency services communication system and may enter into agreements to effectuate the same.~~
5. ~~The governing body or its designee shall deposit the fee proceeds in a separate fund and keep records to show all expenditures for wireless service providers separately from expenditures for telephone exchange access service providers from the fee proceeds.~~

SECTION 6. AMENDMENT. Section 57-40.6-06 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-06. Data base. Any telephone exchange access service provider providing emergency 911 service shall provide current customer names, addresses, and telephone numbers to each 911 coordinator, ~~the coordinator's designee,~~ or public safety answering point within each 911 system. Information provided under this section must be provided in accordance with the transactional record disclosure requirements of the federal Electronics Communications Privacy Act of 1986, 18 U.S.C. 2703(c)(1)(B)(iii), and in a manner that identifies the names and telephone numbers that are unpublished. The provider shall report data base information regarding new service or a change of service within two business days of the actual service change unless a longer period is permitted by the jurisdiction. The provider shall report data base information regarding dropped service at least monthly.

SECTION 7. AMENDMENT. Section 57-40.6-08 of the North Dakota Century Code is amended and reenacted as follows:

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

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

damages as a result of issuing or following the instructions, unless issuing or following the instructions constitutes willful and wanton misconduct or gross negligence.

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

SECTION 8. AMENDMENT. Section 57-40.6-10 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-10. Standards and guidelines.

1. The governing body of the local governmental unit with jurisdiction over an emergency 911 telephone system shall be or shall designate a governing committee of the emergency 911 telephone system which shall:
 - a. Designate a 911 coordinator.
 - b. Enter written agreements with participating organizations and agencies.
 - c. Designate lines of authority.
 - d. Provide for a written plan for rural addressing, if applicable, which has been coordinated with the local postal authorities. After January 1, 1993, a rural plan must conform to the modified burkle addressing plan. A plan in use before this date does not have to conform with the modified burkle addressing plan. If implemented, all rural addressing signs must comply with the manual on uniform traffic control devices standards.
 - e. Provide for an update of the emergency 911 telephone system's data base annually by obtaining current records from the appropriate telecommunications company.
 - f. Define a records retention plan for all printed and recorded records in accordance with jurisdictional requirements.
 - g. Encourage that coin-free dialing is available for 911 calls.
 - h. Define a mechanism to differentiate between emergency 911 telephone calls from other calls.
 - i. Provide for written operating procedures.
 - j. Require the public safety answering point that initially receives an emergency call to be responsible for handling that call. If a transfer of an emergency call is made to a secondary public safety answering point, the initial public safety answering point may not disconnect from the three-way call unless mutually agreed upon by the two public safety answering point dispatchers. Upon this agreement, the secondary public safety answering point becomes responsible for the call.

- k. Beginning June 1, 2002, ensure that the closest available emergency medical service is dispatched to the scene of medical emergencies regardless of city, county, or district boundaries. The state department of health shall provide emergency 911 telephone systems with necessary geographical information to assist in the implementation of this subdivision.
 - l. Ensure that fee proceeds collected under this chapter are expended in accordance with guidelines developed pursuant to section 57-40.6-12 and implement an accounting system sufficient to meet the requirements of section 57-40.6-05.
2. The governing committee may:
 - a. Require appropriate liability protection.
 - b. Create a user advisory board.
 - c. Conduct an annual statistical evaluation of services.
 - d. Publish an annual financial report in the official county newspaper.
3. An emergency 911 telephone system must access and dispatch the following services:
 - a. Law enforcement.
 - b. Fire service.
 - c. Emergency medical service.
4. An emergency 911 telephone system may access and dispatch the following services:
 - a. Poison control.
 - b. Suicide prevention.
 - c. Emergency management.
 - d. Any other related service in subsection 3 or 4.
5. The governing committee of an emergency 911 telephone system shall provide that that system:
 - a. Provides twenty-four-hour, seven-day-a-week coverage.
 - b. Dispatches and communicates with service identified in subsection 3.
 - c. Records all incoming 911 calls and related radio and telephone communications.
 - d. Provides alternate measures in the event of an emergency 911 telephone system failure, including an alternate public safety answering point seven-digit number.

- e. Ensures an adequate grade of service that is statistically based by population to assure access to an emergency 911 telephone system.
 - f. Does not accept one-way call-in alarms or devices.
 - g. Provides access to an emergency 911 telephone system through specialized telecommunications equipment as defined under section 54-44.8-01.
6. An emergency 911 telephone system may:
- a. Locate the emergency caller utilizing electronic equipment.
 - b. Provide a mechanism for investigating false or prank calls.
7. An emergency 911 telephone system must include at least one public safety answering point.
8. A cellular 911 call must be routed to the appropriate 911 public safety answering point.
9. An emergency 911 telephone call must be answered by a dispatcher who has completed training through an association of public safety communications officials course or equivalent course. An emergency 911 dispatch center is required to offer emergency medical dispatch instructions on all emergency medical calls. Prearrival instructions must be offered by a dispatcher who has completed an emergency medical dispatch course approved by the division of emergency health services. Prearrival medical instructions may be given through a mutual aid agreement.

SECTION 9. AMENDMENT. Section 57-40.6-12 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-12. Reports of coordination of public safety answering points coverage Emergency services communications coordinating committee - Membership - Duties.

1. The governing body of a city or county, which adopted a fee on ~~telephone exchange access service and wireless service assessed communications services~~ under this chapter, shall make an annual report of the income, expenditures, and status of its emergency services communication system. The annual report must be submitted to the ~~division of state radio and to the public safety answering points emergency services communications~~ coordinating committee. The committee is composed of three members, one appointed by the North Dakota 911 association, one appointed by the North Dakota association of counties, and one appointed by the adjutant general to represent the division of state radio.
2. The ~~public safety answering points coordinating~~ committee shall:
 - a. Recommend to the legislative council changes to the operating standards for emergency services communications, including training or certification standards for dispatchers;

- b. Develop guidelines regarding the allowable uses of the fee revenue collected under this chapter;
 - c. Request, receive, and compile reports from each governing body on the use of the proceeds of the fee imposed under this chapter, analyze the reports with respect to the guidelines, file its report with the legislative council by November first of each even-numbered year regarding the use of the fee revenue, and recommend to the legislative assembly the appropriate maximum fee allowed by section 57-40.6-02; and
 - d. Periodically evaluate chapter 57-40.6 and recommend changes to the legislative council.
 3. The committee may initiate and administer statewide agreements among the governing bodies of the local governmental units with jurisdiction over an emergency 911 telephone system to coordinate the procurement of equipment and services, fund the research, administration, and activities of the committee, and contract for the necessary staff support for committee activities.

SECTION 10. REPEAL. Section 57-40.6-11 of the North Dakota Century Code is repealed.

SECTION 11. LEGISLATIVE COUNCIL STUDY - E911 FEES PAID ON PREPAID WIRELESS. The legislative council shall consider studying, during the 2007-08 interim, the feasibility and desirability of collecting emergency 911 fees on the sale of prepaid wireless services. The study must include an evaluation of methods by which E911 fees may be collected from end users and purchasers of prepaid wireless services on an equitable, efficient, competitively neutral, and nondiscriminatory basis and a review of whether the collection of fees on prepaid wireless services would constitute an efficient use of public funds, given the technological and practical considerations of collecting the fees. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

Approved April 9, 2007
Filed April 10, 2007

CHAPTER 536**SENATE BILL NO. 2087**

(Transportation Committee)
(At the request of the Tax Commissioner)

E85 AND BIODIESEL DEFINITIONS

AN ACT to create and enact a new subsection to section 57-43.1-01 and a new subsection to section 57-43.2-01 of the North Dakota Century Code, relating to the definitions of E85 and biodiesel for motor vehicles fuels and special fuels tax purposes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-43.1-01 of the North Dakota Century Code is created and enacted as follows:

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

SECTION 2. A new subsection to section 57-43.2-01 of the North Dakota Century Code is created and enacted as follows:

"Biodiesel, designated B100" means a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oil or animal fats that meets ASTM specification D 6751.

SECTION 3. EFFECTIVE DATE. This Act becomes effective on July 1, 2007.

Approved March 7, 2007
Filed March 8, 2007

CHAPTER 537**HOUSE BILL NO. 1138**

(Representatives Vigesaa, Drovdal, Haas, Metcalf, Uglen)
(Senator Klein)

EMERGENCY SERVICES VEHICLE TAX REFUNDS

AN ACT to create and enact a new section to chapter 57-43.1, a new section to chapter 57-43.2, and a new section to chapter 57-43.3 of the North Dakota Century Code, relating to motor vehicle excise tax, special fuels tax, and aviation fuel tax refunds for fuels purchased by emergency medical services operations; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-43.1 of the North Dakota Century Code is created and enacted as follows:

Refund to emergency medical services operation. Upon application to the commissioner, the operator of an emergency medical services operation licensed under chapter 23-27 is entitled to a refund of taxes paid under this chapter for motor vehicle fuel purchased and used by the emergency medical services operation. The refund provided for in this section is not subject to reduction for deposit in the agricultural fuel tax fund, the ethanol production incentive fund, or the agricultural research fund.

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

Refund to emergency medical services operation. Upon application to the commissioner, the operator of an emergency medical services operation licensed under chapter 23-27 is entitled to a refund of taxes paid under this chapter for special fuel purchased and used by the emergency medical services operation.

SECTION 3. A new section to chapter 57-43.3 of the North Dakota Century Code is created and enacted as follows:

Refund to emergency medical services operation. Upon application to the commissioner, the operator of an emergency medical services operation licensed under chapter 23-27 is entitled to a refund of taxes paid under this chapter for aviation fuel purchased and used by the emergency medical services operation.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2007.

Approved April 23, 2007

Filed April 24, 2007

CHAPTER 538**SENATE BILL NO. 2089**

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

MOTOR VEHICLE FUEL TAX REFUND CLAIM FORMS

AN ACT to amend and reenact section 57-43.1-04 of the North Dakota Century Code, relating to the form of a claim for refund of motor vehicle fuels tax paid.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-43.1-04 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-04. Form of claim for refund. A refund claim must be on a form furnished by the commissioner and must have a written declaration by the claimant that it is made under the penalties of perjury. The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return. The refund claim must ~~state indicate~~ that the motor vehicle fuel was used or is to be used by the claimant other than in a licensed motor vehicle, the purpose or type of project for which the motor vehicle fuel was used, and such other information as the commissioner requires. The original invoices or sales tickets proving the purchase of motor vehicle fuel on which the refund is claimed must be attached to the refund claim. The invoices or sales tickets must include the seller's name and address, the date the fuel was purchased, the type of product, the number of gallons [liters] of motor vehicle fuel purchased, ~~the state tax as a separate item or a statement that the state tax is included in the price,~~ and the name of the claimant. If the original invoices or sales tickets are lost, the claimant may substitute duplicate invoices or sales tickets plus a separate affidavit on forms prescribed by the commissioner. A certified history of purchases detailing required information may be accepted by the commissioner in lieu of original sales invoices or sales tickets. A supplier, distributor, or retailer is prohibited from preparing a refund claim for the consumer.

Approved March 2, 2007
Filed March 2, 2007

CHAPTER 539**SENATE BILL NO. 2085**

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

FUELS TAX REPORTING REQUIREMENTS

AN ACT to amend and reenact subsection 2 of section 57-43.1-16, subsection 1 of section 57-43.1-26, subsection 2 of section 57-43.2-11, subsection 1 of section 57-43.2-21, and subsection 1 of section 57-43.3-26 of the North Dakota Century Code, relating to monthly reporting requirements for motor vehicle fuel and special fuel refiners, suppliers, distributors, importers, and exporters and motor vehicle fuel, special fuel, and aviation fuel inventory gain or loss reporting requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 57-43.1-16 of the North Dakota Century Code is amended and reenacted as follows:

2. The report to the commissioner must be on a form prescribed and furnished by the commissioner. The commissioner may require that all or part of the report be submitted in an electronic format approved by the commissioner, provided the person required to file the report is able to use an electronic format. The report must contain the information as required by the commissioner, including:
 - a. A detailed schedule of motor vehicle fuel refined, purchased, imported, and exported.
 - b. A detailed schedule of motor vehicle fuel sold to a person eligible to purchase the motor vehicle fuel without the tax imposed by this chapter.
 - c. A detailed schedule of motor vehicle fuel sold tax-paid for resale, including a list of persons who purchased the motor vehicle fuel for resale.
 - d. The total number of gallons of motor vehicle fuel sold and used subject to the tax imposed by this chapter.
 - e. The number of gallons of motor vehicle fuel sold tax-exempt to a qualified consumer.
 - f. The number of gallons of motor vehicle fuel in physical inventory at the beginning of the calendar month, the number of gallons in physical inventory at the close of the calendar month, and any gains or losses experienced.

SECTION 2. AMENDMENT. Subsection 1 of section 57-43.1-26 of the North Dakota Century Code is amended and reenacted as follows:

1. A supplier or distributor shall take a physical inventory reading of all motor vehicle fuel located in a terminal, underground tank, aboveground tank, railcar, storage tank of a truck, and the storage tank of a bulk delivery truck on a ~~regular~~ monthly basis and shall report the physical readings, inventory gains, and inventory losses to the commissioner ~~in increments not to exceed a twelve-month period~~. The inventory reconciliation must include motor vehicle fuel at retail locations and motor vehicle fuel stored in a barrel, drum, or other receptacle.

SECTION 3. AMENDMENT. Subsection 2 of section 57-43.2-11 of the North Dakota Century Code is amended and reenacted as follows:

2. The report to the commissioner must be on a form prescribed and furnished by the commissioner. The commissioner may require that all or part of the report be submitted in an electronic format approved by the commissioner, provided the person required to file the report is able to use an electronic format. The report must contain such information as required by the commissioner, including:
 - a. A detailed schedule of special fuel refined, purchased, imported, and exported.
 - b. A detailed schedule of special fuel sold to a person eligible to purchase the special fuel without the tax imposed by this chapter.
 - c. A detailed schedule of special fuel sold tax-paid to a person for resale, including a list of persons who purchased the special fuel for resale.
 - d. The total number of gallons of special fuel sold and used subject to tax imposed by this chapter.
 - e. The number of gallons of special fuel sold tax-exempt to a qualified consumer.
 - f. The number of gallons of special fuel in physical inventory at the beginning of the calendar month, the number of gallons in physical inventory at the close of the calendar month, and any gains or losses experienced.

SECTION 4. AMENDMENT. Subsection 1 of section 57-43.2-21 of the North Dakota Century Code is amended and reenacted as follows:

1. A supplier or distributor shall take a physical inventory reading of all special fuel located in a terminal, underground tank, aboveground tank, railcar, storage tank of a truck, and the storage tank of a bulk delivery truck on a ~~regular~~ monthly basis and shall report the physical readings, inventory gains, and inventory losses to the commissioner ~~in increments not to exceed a twelve-month period~~. The inventory reconciliation must include special fuel at retail locations and special fuel stored in a barrel, drum, or other receptacle.

SECTION 5. AMENDMENT. Subsection 1 of section 57-43.3-26 of the North Dakota Century Code is amended and reenacted as follows:

1. A supplier or distributor shall take a physical inventory reading of all aviation fuel located in a terminal, underground tank, aboveground tank, railcar, storage tank of a truck, and the storage tank of a bulk delivery truck on a ~~regular~~ monthly basis and shall report the physical readings, inventory gains, and inventory losses to the commissioner ~~in increments not to exceed a twelve-month period~~. The inventory reconciliation must include aviation fuel at retail locations and aviation fuel stored in a barrel, drum, or other receptacle. The supplier or distributor with retail locations is exempt from the provisions of subsection 2.

Approved March 2, 2007
Filed March 2, 2007

CHAPTER 540**HOUSE BILL NO. 1348**

(Representatives Wall, Belter, Damschen, Williams)
(Senators Anderson, Wanzek)

SPECIAL FUELS SPECIAL EXCISE TAX

AN ACT to amend and reenact subsection 1 of section 57-43.2-03 of the North Dakota Century Code, relating to the special fuels special excise tax; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-43.2-03 of the North Dakota Century Code, as effective after June 30, 2007, is amended and reenacted as follows:

1. Except as otherwise provided in this chapter, a special excise tax of two percent is imposed on all sales of propane and a tax of four cents per gallon is imposed on all sales of diesel fuel and other special fuels, which are exempted from the tax imposed under section 57-43.2-02.

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

Approved April 11, 2007
Filed April 13, 2007

CHAPTER 541**HOUSE BILL NO. 1279**

(Representatives Kempenich, Headland, Solberg, Weiler)
(Senators Krauter, Wanzek)

SHALLOW GAS TAX EXEMPTION EXTENDED

AN ACT to amend and reenact sections 57-51-01 and 57-51-02.4 of the North Dakota Century Code, relating to eliminating the expiration date of the shallow gas gross production tax exemption; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-51-01 of the North Dakota Century Code is amended and reenacted as follows:

57-51-01. (Effective through June 30, 2007) Definitions. As used in this chapter:

1. "Barrel of oil" means forty-two United States gallons of two hundred thirty-one cubic inches per gallon computed at a temperature of sixty degrees Fahrenheit [158.99 liters computed at a temperature of 15.56 degrees Celsius].
2. "Commissioner" means the state tax commissioner.
3. "Field" means the geographic area underlaid by one or more pools, as defined by the industrial commission.
4. "Gas" means natural gas and casinghead gas.
5. "Oil" means petroleum, crude oil, mineral oil, and casinghead gasoline.
6. "Person" includes partnership, corporation, limited liability company, association, fiduciary, trustee, and any combination of individuals.
7. "Posted price" means the price specified in publicly available posted price bulletins or other public notices, net of any adjustments for quality and location.
8. "Shallow gas" means gas produced from a gas well completed in or producing from a shallow gas zone, as certified to the tax commissioner by the industrial commission.
9. "Shallow gas zone" means a strata or formation, including lignite or coal strata or seam, located above the depth of five thousand feet [1524 meters] below the surface, or located more than five thousand feet [1524 meters] below the surface but above the top of the Rierdon formation, from which gas is or may be produced.
10. "Transportation costs" means the costs incurred for transporting oil established in accordance with the first applicable of the following methods:

- a. Actual costs incurred under the arm's-length contract between the producer and the transporter of oil.
- b. An applicable common carrier rate established and filed with the North Dakota public service commission, or the appropriate federal jurisdictional agency.
- c. When no common carrier rate would be applicable, the transportation costs are those reasonable costs associated with the actual operating and maintenance expenses, overhead costs directly attributable and allocable to the operation and maintenance, and either depreciation and a return on undepreciated capital investment, or a cost equal to a return on the investment in the transportation system, as determined by the commissioner.

(Effective after June 30, 2007) Definitions. As used in this chapter:

1. "Barrel of oil" means forty-two United States gallons of two hundred thirty-one cubic inches per gallon computed at a temperature of sixty degrees Fahrenheit [158.89 liters computed at a temperature of 15.56 degrees Celsius].
2. "Commissioner" means the state tax commissioner.
3. "Field" means the geographic area underlaid by one or more pools, as defined by the industrial commission.
4. "Gas" means natural gas and casinghead gas.
5. "Oil" means petroleum, crude oil, mineral oil, and casinghead gasoline.
6. "Person" includes partnership, corporation, limited liability company, association, fiduciary, trustee, and any combination of individuals.
7. "Posted price" means the price specified in publicly available posted price bulletins or other public notices, net of any adjustments for quality and location.
8. "Transportation costs" means the costs incurred for transporting oil established in accordance with the first applicable of the following methods:
 - a. Actual costs incurred under the arm's-length contract between the producer and the transporter of oil.
 - b. An applicable common carrier rate established and filed with the North Dakota public service commission, or the appropriate federal jurisdictional agency.
 - c. When no common carrier rate would be applicable, the transportation costs are those reasonable costs associated with the actual operating and maintenance expenses, overhead costs directly attributable and allocable to the operation and maintenance, and either depreciation and a return on undepreciated capital investment, or a cost equal to a return on the

~~investment in the transportation system, as determined by the commissioner.~~

SECTION 2. AMENDMENT. Section 57-51-02.4 of the North Dakota Century Code is amended and reenacted as follows:

57-51-02.4. (Effective through June 30, 2007) Shallow gas - Gross production tax exemption. Shallow gas produced during the first twenty-four months of production from and after the date of first sales of gas from a well completed or recompleted in a shallow gas zone after June 30, 2003, is exempted from the gross production tax levied under section 57-51-02.2. Gas produced from such a well during testing prior to well completion or connection to a pipeline is also exempt from the gross production tax.

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

Approved April 5, 2007
Filed April 5, 2007

CHAPTER 542**HOUSE BILL NO. 1044**

(Representatives Drovdal, Grande, Kempenich)
(Senators Lyson, Warner)

OIL TAX REVENUE ALLOCATION

AN ACT to amend and reenact section 57-51-15 of the North Dakota Century Code, relating to allocation of oil and gas gross production tax revenues; to provide for application; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁸³ **SECTION 1. AMENDMENT.** Section 57-51-15 of the North Dakota Century Code is amended and reenacted as follows:

57-51-15. (Effective through June 30, 2007) Apportionment and use of proceeds of tax. The gross production tax provided for in this chapter must be apportioned as follows:

1. First the tax revenue collected under this chapter equal to one percent of the gross value at the well of the oil and one-fifth of the tax on gas must be deposited with the state treasurer, who shall credit thirty-three and one-third percent of the revenues to the oil and gas impact grant fund, but not in an amount exceeding five million dollars per biennium, including any amounts otherwise appropriated for oil and gas impact grants for the biennium by the legislative assembly, and who shall credit the remaining revenues to the state general fund.
2. The first one million dollars of annual revenue after the deduction of the amount provided for in subsection 1 from oil or gas produced in any county must be allocated seventy-five percent to that county and twenty-five percent to the state general fund. The second one million dollars of annual revenue after the deduction of the amount provided for in subsection 1 from oil or gas produced in any county must be allocated fifty percent to that county and fifty percent to the state general fund. All annual revenue after the deduction of the amount provided for in subsection 1 above two million dollars from oil or gas produced in any county must be allocated twenty-five percent to that county and seventy-five percent to the state general fund. However, the amount to which each county is entitled pursuant to this subsection must be limited based upon the population of the county according to the last official decennial federal census as follows:
 - a. Counties having a population of three thousand or less shall receive no more than three million nine hundred thousand dollars for each fiscal year.

²⁸³ Section 57-51-15 was also amended by section 1 of Senate Bill No. 2178, chapter 543.

- b. Counties having a population of over three thousand but less than six thousand shall receive no more than four million one hundred thousand dollars for each fiscal year.
- c. Counties having a population of six thousand or more shall receive no more than four million six hundred thousand dollars for each fiscal year.

Any allocations for any county pursuant to this subsection which exceed the applicable limitation for that county as provided in subdivisions a through c must be deposited instead in the state's general fund.

- 3. Forty-five percent of all revenues as may by the legislative assembly be allocated to any county hereunder must be credited by the county treasurer to the county general fund. Thirty-five percent of all revenues allocated to any county must be apportioned by the county treasurer no less than quarterly to school districts within the county on the average daily attendance distribution basis, as certified to the county treasurer by the county superintendent of schools. However, no school district may receive in any single academic year an amount under this subsection greater than the county average per student cost multiplied by seventy percent, then multiplied by the number of students in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. Provided, however, that in any county in which the average daily attendance or the school census, whichever is greater, is fewer than four hundred, the county is entitled to one hundred twenty percent of the county average per student cost multiplied by the number of students in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. Once this level has been reached through distributions under this subsection, all excess funds to which the school district would be entitled as part of its thirty-five percent share must be deposited instead in the county general fund. The county superintendent of schools of each oil-producing county shall certify to the county treasurer by July first of each year the amount to which each school district is limited pursuant to this subsection. As used in this subsection, "average daily attendance" means the average daily attendance for the school year immediately preceding the certification by the county superintendent of schools required by this subsection. Twenty percent of all revenues allocated to any county hereunder must be paid no less than quarterly by the state treasurer to the incorporated cities of the county based upon the population of each incorporated city according to the last official decennial federal census. However, no city may receive in any fiscal year an amount under this subsection greater than five hundred dollars per capita. Once this level has been reached through distributions under this subsection, all excess funds to which any city would be entitled except for this limitation must be deposited instead in that county's general fund. Provided, however, that in determining the population of any city in which total employment increases by more than two hundred percent seasonally due to tourism, the population of that city for purposes of determining the per capita limitation in this section must be increased by adding to the population of the city as determined by the last official decennial federal census a number to be determined as follows:

- a. Seasonal employees of state and federal tourist facilities within five miles [8.05 kilometers] of the city must be included by adding the months all such employees were employed during the prior year and dividing by twelve.
- b. Seasonal employees of all private tourist facilities within the city and seasonal employees employed by the city must be included by adding the months all such employees were employed during the prior year and dividing by twelve.
- c. The number of visitors to the tourist attraction within the city or within five miles [8.05 kilometers] of the city which draws the largest number of visitors annually must be included by taking the smaller of either of the following:
 - (1) The total number of visitors to that tourist attraction the prior year divided by three hundred sixty-five; or
 - (2) Four hundred twenty.

(Effective after June 30, 2007) Apportionment and use of proceeds of tax. The gross production tax provided for in this chapter must be apportioned as follows:

1. First the tax revenue collected under this chapter equal to one percent of the gross value at the well of the oil and one-fifth of the tax on gas must be deposited with the state treasurer who shall credit thirty-three and one-third percent of the revenues to the oil and gas impact grant fund, but not in an amount exceeding six million dollars per biennium, including any amounts otherwise appropriated for oil and gas impact grants for the biennium by the legislative assembly, and who shall credit the remaining revenues to the state general fund.
2. The first one million dollars of annual revenue after the deduction of the amount provided for in subsection 1 from oil or gas produced in any county must be allocated to that county. The second one million dollars of annual revenue after the deduction for the amount provided for in subsection 1 from oil and gas produced in any county must be allocated seventy-five percent to that county and twenty-five percent to the state general fund. The ~~second~~ third one million dollars of annual revenue after the deduction of the amount provided for in subsection 1 from oil or gas produced in any county must be allocated fifty percent to that county and fifty percent to the state general fund. All annual revenue after the deduction of the amount provided for in subsection 1 above ~~two~~ three million dollars from oil or gas produced in any county must be allocated twenty-five percent to that county and seventy-five percent to the state general fund. However, the amount to which each county is entitled pursuant to this subsection must be limited based upon the population of the county according to the last official decennial federal census as follows:
 - a. Counties having a population of three thousand or less shall receive no more than three million nine hundred thousand dollars for each fiscal year.

- b. Counties having a population of over three thousand but less than six thousand shall receive no more than four million one hundred thousand dollars for each fiscal year.
- c. Counties having a population of six thousand or more shall receive no more than four million six hundred thousand dollars for each fiscal year.

Any allocations for any county pursuant to this subsection which exceed the applicable limitation for that county as provided in subdivisions a through c must be deposited instead in the state's general fund.

- 3. Forty-five percent of all revenues as may be by the legislative assembly be allocated to any county hereunder must be credited by the county treasurer to the county general fund. Thirty-five percent of all revenues allocated to any county must be apportioned by the county treasurer no less than quarterly to school districts within the county on the average daily attendance distribution basis, as certified to the county treasurer by the county superintendent of schools. However, no school district may receive in any single academic year an amount under this subsection greater than the county average per student cost multiplied by seventy percent, then multiplied by the number of students in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. Provided, however, that in any county in which the average daily attendance or the school census, whichever is greater, is fewer than four hundred, the county is entitled to one hundred twenty percent of the county average per student cost multiplied by the number of students in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. Once this level has been reached through distributions under this subsection, all excess funds to which the school district would be entitled as part of its thirty-five percent share must be deposited instead in the county general fund. The county superintendent of schools of each oil-producing county shall certify to the county treasurer by July first of each year the amount to which each school district is limited pursuant to this subsection. As used in this subsection, "average daily attendance" means the average daily attendance for the school year immediately preceding the certification by the county superintendent of schools required by this subsection. Twenty percent of all revenues allocated to any county hereunder must be paid no less than quarterly by the state treasurer to the incorporated cities of the county based upon the population of each incorporated city according to the last official decennial federal census. However, no city may receive in any fiscal year an amount under this subsection greater than five hundred dollars per capita. Once this level has been reached through distributions under this subsection, all excess funds to which any city would be entitled except for this limitation must be deposited instead in that county's general fund. Provided, however, that in determining the population of any city in which total employment increases by more than two hundred percent seasonally due to tourism, the population of that city for purposes of determining the per capita limitation in this section must be increased by adding to the population of the city as determined by the last official decennial federal census a number to be determined as follows:

- a. Seasonal employees of state and federal tourist facilities within five miles [8.05 kilometers] of the city must be included by adding the months all such employees were employed during the prior year and dividing by twelve.
- b. Seasonal employees of all private tourist facilities within the city and seasonal employees employed by the city must be included by adding the months all such employees were employed during the prior year and dividing by twelve.
- c. The number of visitors to the tourist attraction within the city or within five miles [8.05 kilometers] of the city which draws the largest number of visitors annually must be included by taking the smaller of either of the following:
 - (1) The total number of visitors to that tourist attraction the prior year divided by three hundred sixty-five; or
 - (2) Four hundred twenty.

SECTION 2. APPLICATION. Notwithstanding the provisions of section 57-51.1-07.2, the director of the budget may not consider the enactment of this Act to be an amendment of the distribution formula under chapter 57-51 and the director of the budget may not adjust the seventy-one million dollar amount under section 57-51.1-07.2 due to enactment of this Act.

SECTION 3. EFFECTIVE DATE. This Act is effective for allocation of gross production taxes occurring after July 31, 2008.

Approved May 1, 2007
Filed May 2, 2007

CHAPTER 543**SENATE BILL NO. 2178**

(Senators Bowman, Lyson, O'Connell)

(Representatives S. Meyer, Skarphol)

OIL AND GAS TAX APPORTIONMENT

AN ACT to amend and reenact subsections 2 and 3 of section 57-51-15 of the North Dakota Century Code, relating to apportionment of oil and gas gross production tax revenues; to repeal section 57-51.1-07.2 of the North Dakota Century Code, relating to the permanent oil tax trust fund; to provide for a legislative council study; to provide for application; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁸⁴ **SECTION 1. AMENDMENT.** Subsections 2 and 3 of section 57-51-15 of the North Dakota Century Code, as effective after June 30, 2007, are amended and reenacted as follows:

2. The first one million dollars of annual revenue after the deduction of the amount provided for in subsection 1 from oil or gas produced in any county must be allocated seventy-five percent to that county and twenty-five percent to the state general fund. The second one million dollars of annual revenue after the deduction of the amount provided for in subsection 1 from oil or gas produced in any county must be allocated fifty percent to that county and fifty percent to the state general fund. All annual revenue after the deduction of the amount provided for in subsection 1 above two million dollars from oil or gas produced in any county must be allocated twenty-five percent to that county and seventy-five percent to the state general fund. However, the amount to which each county is entitled pursuant to this subsection must be limited based upon the population of the county according to the last official decennial federal census as follows:
 - a. Counties having a population of three thousand or less shall receive no more than three million nine hundred thousand dollars for each fiscal year; however, a county may receive up to four million nine hundred thousand dollars under this subdivision for each fiscal year if during that fiscal year the county levies a total of at least ten mills for combined levies for county road and bridge, farm-to-market and federal-aid road, and county road purposes. Any amount received by a county exceeding three million nine hundred thousand dollars under this subdivision is not subject to allocation under subsection 3 but must be credited by the county treasurer to the county general fund.

²⁸⁴ Section 57-51-15 was also amended by section 1 of House Bill No. 1044, chapter 542.

- b. Counties having a population of over three thousand but less than six thousand shall receive no more than four million one hundred thousand dollars for each fiscal year; however, a county may receive up to five million one hundred thousand dollars under this subdivision for each fiscal year if during that fiscal year the county levies a total of at least ten mills for combined levies for county road and bridge, farm-to-market and federal-aid road, and county road purposes. Any amount received by a county exceeding four million one hundred thousand dollars under this subdivision is not subject to allocation under subsection 3 but must be credited by the county treasurer to the county general fund.
- c. Counties having a population of six thousand or more shall receive no more than four million six hundred thousand dollars for each fiscal year; however, a county may receive up to five million six hundred thousand dollars under this subdivision for each fiscal year if during that fiscal year the county levies a total of ten mills or more for combined levies for county road and bridge, farm-to-market and federal-aid road, and county road purposes. Any amount received by a county exceeding four million six hundred thousand dollars under this subdivision is not subject to allocation under subsection 3 but must be credited by the county treasurer to the county general fund.

Any allocations for any county pursuant to this subsection which exceed the applicable limitation for that county as provided in subdivisions a through c must be deposited instead in the state's general fund.

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

be paid no less than quarterly by the state treasurer to the incorporated cities of the county based upon the population of each incorporated city according to the last official decennial federal census. ~~However, no city may receive in any fiscal year an amount under this subsection greater than five hundred dollars per capita.~~ Once this level has been reached through distributions under this subsection, all excess funds to which any city would be entitled except for this limitation must be deposited instead in that county's general fund. Provided, however, that in determining the population of any city in which total employment increases by more than two hundred percent seasonally due to tourism, the population of that city for purposes of determining the per capita limitation in this section must be increased by adding to the population of the city as determined by the last official decennial federal census a number to be determined as follows:

- a. Seasonal employees of state and federal tourist facilities within five miles [8.05 kilometers] of the city must be included by adding the months all such employees were employed during the prior year and dividing by twelve.
- b. Seasonal employees of all private tourist facilities within the city and seasonal employees employed by the city must be included by adding the months all such employees were employed during the prior year and dividing by twelve.
- c. The number of visitors to the tourist attraction within the city or within five miles [8.05 kilometers] of the city which draws the largest number of visitors annually must be included by taking the smaller of either of the following:
 - (1) The total number of visitors to that tourist attraction the prior year divided by three hundred sixty-five; or
 - (2) Four hundred twenty.

SECTION 2. REPEAL. Section 57-51.1-07.2 of the North Dakota Century Code is repealed.

SECTION 3. LEGISLATIVE COUNCIL STUDY. The legislative council shall study, during the 2007-08 interim, allocation of oil and gas tax revenues to or for the benefit of political subdivisions with emphasis on determining whether allocations sufficiently address oil and gas development infrastructure impact to political subdivisions. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

SECTION 4. APPLICATION. Notwithstanding the provisions of section 57-51.1-07.2, the director of the budget may not consider the enactment of this Act to be an amendment of the distribution formula under chapter 57-51 and the director of the budget may not adjust the seventy-one million dollar amount under section 57-51.1-07.2 due to enactment of this Act.

SECTION 5. EFFECTIVE DATE. Sections 1 and 4 of this Act are effective for allocations of oil and gas gross production tax revenues occurring after June 30, 2007. Section 2 of this Act becomes effective on the date that the proposed new section to article X of the Constitution of North Dakota as contained in House Concurrent Resolution No. 3045, as agreed to by the sixtieth legislative assembly and approved by the electors, becomes effective.

Approved May 2, 2007
Filed May 3, 2007

CHAPTER 544**SENATE BILL NO. 2397**

(Senators Wardner, Lyson, O'Connell)
(Representatives Belter, Onstad, Wieland)

OIL EXTRACTION TAX RATE REDUCTION

AN ACT to create and enact a new subsection to section 57-51.1-03 of the North Dakota Century Code, relating to an oil extraction tax rate reduction for oil produced from new horizontal wells drilled and completed in the Bakken formation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-51.1-03 of the North Dakota Century Code is created and enacted as follows:

The first seventy-five thousand barrels of oil produced during the first eighteen months after completion, from a horizontal well drilled and completed in the Bakken formation after June 30, 2007, and before July 1, 2008, is subject to a reduced tax rate of two percent of the gross value at the well of the oil extracted under this chapter. A well eligible for a reduced tax rate under this subsection is eligible for the exemption for horizontal wells under subsection 3, if the exemption under subsection 3 is effective during all or part of the first twenty-four months after completion.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on July 1, 2007.

Approved April 9, 2007
Filed April 10, 2007

CHAPTER 545**SENATE BILL NO. 2419**

(Senator Stenehjem)

(Representative Berg)

(Approved by the Delayed Bills Committee)

TRIBAL OIL AND GAS TAX AGREEMENTS

AN ACT to create and enact chapter 57-51.2 of the North Dakota Century Code, relating to agreements with the Three Affiliated Tribes to share revenue from state taxes on oil and gas production within the boundaries of the Fort Berthold Reservation; to provide an effective date; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 57-51.2 of the North Dakota Century Code is created and enacted as follows:

57-51.2-01. Authority to enter agreements. The governor, in consultation with the tax commissioner, may enter agreements with the Three Affiliated Tribes relating to taxation and regulation of oil and gas exploration and production within the boundaries of the Fort Berthold Reservation.

57-51.2-02. Agreement requirements. An agreement under this chapter is subject to the following:

1. The only taxes subject to agreement are the state's oil and gas gross production and oil extraction taxes attributable to production from wells located within the exterior boundaries of the Fort Berthold Reservation.
2. The state's oil and gas gross production tax under chapter 57-51 must apply to all wells located within the Fort Berthold Reservation.
3. The state's oil extraction tax under chapter 57-51.1 as applied to oil and gas production attributable to trust lands on the Fort Berthold Reservation may not exceed six and one-half percent but may be reduced through negotiation between the governor and the Three Affiliated Tribes.
4. Any exemptions for oil and gas production from trust lands under chapters 57-51 and 57-51.1 do not apply to production within the boundaries of the Fort Berthold Reservation except as otherwise provided in the agreement.
5. The allocation of revenue from oil and gas production taxes on the Fort Berthold Reservation must be as follows:
 - a. Production attributable to trust lands. All revenues and exemptions from all oil and gas gross production and oil extraction taxes attributable to production from trust lands on the Fort Berthold Reservation must be evenly divided between the tribe and the state.

- b. All other production. The tribe must receive twenty percent of the total oil and gas gross production taxes collected from all production attributable to nontrust lands on the Fort Berthold Reservation in lieu of the application of the Three Affiliated Tribes' fees and taxes related to production on such lands. The state must receive the remainder.
 - c. The state's share of the revenue as divided in subdivisions a and b is subject to distribution among political subdivisions as provided in chapters 57-51 and 57-51.1.
6. An oil or gas well that is drilled and completed during the time of an agreement under this chapter must be subject to the terms of the agreement for the life of the well.
 7. The Three Affiliated Tribes must agree not to impose a tribal tax or any fee on future production of oil and gas on the Fort Berthold Reservation during the term of the agreement.
 8. To address situations in which the tax commissioner refunds taxes to a taxpayer, the agreement must allow the tax commissioner to offset future distributions to the tribe.
 9. The tax commissioner must retain authority to administer and enforce chapters 57-51 and 57-51.1 as applied to wells subject to any agreement authorized by this chapter.
 10. An oil or gas well that is drilled and completed during the time an agreement under this chapter is in effect is subject to state regulatory provisions for the life of the well in addition to any other applicable regulatory provisions.
 11. The federal district court for the western division of North Dakota is the venue for any dispute arising from a revenue-sharing agreement between the state and the Three Affiliated Tribes.

57-51.2-03. Statutory inconsistencies superseded. This chapter supersedes any inconsistent provisions of chapters 57-51 and 57-51.1 and any inconsistent provisions of state law relating to regulatory provisions and state law relating to oil and gas exploration and production and administration of those provisions.

57-51.2-04. Reports. After entering an agreement under this chapter the governor shall file a report with the legislative council describing the agreement's negotiations and terms and thereafter shall file biennial reports with the legislative council describing the agreement's implementation and any difficulties in its implementation.

57-51.2-05. Inapplicability of chapter 54-40.2. Chapter 54-40.2 does not apply to any agreement entered under chapter 57-51.2.

SECTION 2. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for oil production after June 30, 2007. This Act is ineffective after June 30, 2009, unless by that date the governor's office notifies the tax commissioner and legislative council that an agreement has been entered with the Three Affiliated Tribes under chapter 57-51.2.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved May 4, 2007
Filed May 4, 2007

CHAPTER 546**HOUSE BILL NO. 1093**

(Finance and Taxation Committee)
(At the request of the Industrial Commission)

COAL CONVERSION TAX ALLOCATION

AN ACT to amend and reenact subsection 1 of section 57-60-14 of the North Dakota Century Code, relating to allocation of the privilege tax on coal conversion facilities to the lignite research fund; to provide legislative intent; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁸⁵ **SECTION 1. AMENDMENT.** Subsection 1 of section 57-60-14 of the North Dakota Century Code is amended and reenacted as follows:

1. The state treasurer shall no less than quarterly allocate all moneys received from all coal conversion facilities in each county pursuant to the provisions of this chapter and moneys received for those taxes for which a credit is allowed pursuant to section 57-60-06, notwithstanding the provisions of section 57-33.1-08, fifteen percent to the county and eighty-five percent to the state general fund, except moneys received from the tax imposed by subsection 3 of section 57-60-02 and through December 31, 2009, the first \$41,666.67 each month from the tax imposed by subsections 1 and 4 of section 57-60-02, which must be deposited in the state general fund. From July 1, 2007, through June 30, 2009, three and one-half percent of all funds allocated to the state general fund pursuant to this chapter must be allocated to the lignite research fund and after June 30, 2009, five percent of all funds allocated to the state general fund pursuant to this chapter must be allocated to the lignite research fund, for the purposes defined in section 57-61-01.5.

SECTION 2. LEGISLATIVE INTENT - LIGNITE LITIGATION. It is the intent of the legislative assembly that \$500,000 of the amount allocated to the lignite research fund in section 1 of this Act is to be used to pay for fees associated with lignite litigation that may be brought by the state to protect and promote the continued development of lignite resources. If activities associated with the litigation are not initiated by January 1, 2009, the \$500,000 must be returned to the general fund.

SECTION 3. EXPIRATION DATE. Except as otherwise provided in this Act, this Act is effective through July 31, 2018, and after that date is ineffective.

Approved April 30, 2007
Filed May 1, 2007

²⁸⁵ Section 57-60-14 was also amended by section 7 of House Bill No. 1365, chapter 530.