

# TAXATION

## CHAPTER 524

### SENATE BILL NO. 2244

(Senators Pomeroy, Anderson, Krebsbach, Lyson, Mathern)  
(Representative Myxter)

AN ACT to amend and reenact paragraph 2 of subdivision b of subsection 15 of section 57-02-08 and subsection 4 of section 57-02-27.2 of the North Dakota Century Code, relating to continuation of the farm residence exemption for the surviving spouse of a deceased farmer and the capitalization rate for valuation of agricultural property; and to provide an effective date.

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

<sup>219</sup> **SECTION 1. AMENDMENT.** Paragraph 2 of subdivision b of subsection 15 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

- (2) "Farmer" means an individual who normally devotes the major portion of time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products' unmanufactured state and has received annual net income from farming activities which is fifty percent or more of annual net income, including net income of a spouse if married, during any of the three preceding calendar years. ~~"Farmer"~~ For purposes of this paragraph, "farmer" includes a ~~"retired farmer" who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer the residence in which the person lives and for which the exemption is claimed.~~ "beginning"; ~~"Farmer"~~ includes a "beginning":
- (a) "Beginning farmer", which means an individual who has begun occupancy and operation of a farm within the three preceding calendar years; who normally devotes the major portion of time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products' unmanufactured state; and who does not have a history of farm income from farm operation for each of the three preceding calendar years.

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<sup>219</sup> Section 57-02-08 was also amended by section 1 of House Bill No. 1234, chapter 525, section 2 of Senate Bill No. 2201, chapter 529, section 1 of Senate Bill No. 2239, chapter 527, and section 1 of Senate Bill No. 2247, chapter 526.

- (b) "Retired farmer", which means an individual who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer the residence in which the person lives and for which the exemption is claimed.
- (c) "Surviving spouse of a farmer", which means the surviving spouse of an individual who is deceased, who at the time of death owned and occupied as a farmer the residence in which the surviving spouse lives and for which the exemption is claimed. The exemption under this subparagraph expires at the end of the fifth taxable year after the taxable year of death of an individual who at the time of death was an active farmer. The exemption under this subparagraph applies for as long as the residence is continuously occupied by the surviving spouse of an individual who at the time of death was a retired farmer.

<sup>220</sup> **SECTION 2. AMENDMENT.** Subsection 4 of section 57-02-27.2 of the North Dakota Century Code is amended and reenacted as follows:

4. To find the "capitalized average annual gross return", the average annual gross return must be capitalized by a rate that is a ten-year average of the gross agribank mortgage rate of interest for North Dakota, but the rate used for capitalization under this section may not be less than eight ~~and nine-tenths percent for taxable year 2005 and eight and three-tenths percent for taxable years after 2005 year 2009, seven and seven-tenths percent for taxable year 2010, and seven and four-tenths percent for taxable year 2011.~~ The ten-year average must be computed from the twelve years ending with the most recent year used under subdivision a of subsection 3, discarding the highest and lowest years, and the gross agribank mortgage rate of interest for each year must be determined in the manner provided in section 20.2032A-4(e)(1) of the United States treasury department regulations for valuing farm real property for federal estate tax purposes, except that the interest rate may not be adjusted as provided in section 20.2032A-4(e)(2).

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008, and section 1 of this Act applies to the surviving spouse of a deceased farmer regardless of whether death occurred before or after January 1, 2009, if the occupancy by the surviving spouse has been continuous and otherwise qualifies under this Act.

Approved April 22, 2009  
Filed April 23, 2009

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<sup>220</sup> Section 57-02-27.2 was also amended by section 2 of House Bill No. 1166, chapter 530, and section 1 of Senate Bill No. 2052, chapter 531.

**CHAPTER 525****HOUSE BILL NO. 1234**  
(Representatives Dosch, L. Meier)  
(Senator Dever)

AN ACT to amend and reenact subsection 22 of section 57-02-08 of the North Dakota Century Code, relating to the maximum amount of the property tax exemption for the home owned and occupied by a blind person; and to provide an effective date.

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

<sup>221</sup> **SECTION 1. AMENDMENT.** Subsection 22 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

22. All or any part of fixtures, buildings, and improvements upon any nonfarmland up to a taxable valuation of ~~five~~ seven thousand ~~two hundred~~ dollars, owned and occupied as a home by a blind person. Residential homes owned by the spouse of a blind person, or jointly owned by a blind person and spouse, shall also be exempt within the limits of this subsection as long as the blind person resides in the home. For purposes of this subsection, a blind person ~~shall be~~ is defined as one who is totally blind, has visual acuity of not more than 20/200 in the better eye with correction, or whose vision is limited in field so that the widest diameter subtends an angle no greater than twenty degrees. The exemption provided by this subsection extends to the entire building classified as residential, and owned and occupied as a residence by a person who qualifies for the exemption as long as the building contains no more than two apartments or rental units which are leased.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008.

Approved April 8, 2009  
Filed April 9, 2009

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<sup>221</sup> Section 57-02-08 was also amended by section 2 of Senate Bill No. 2201, chapter 529, section 1 of Senate Bill No. 2239, chapter 527, section 1 of Senate Bill No. 2244, chapter 524, and section 1 of Senate Bill No. 2247, chapter 526.

## CHAPTER 526

### SENATE BILL NO. 2247

(Senators J. Lee, Dever, Robinson)

(Representatives Berg, N. Johnson, Mueller)

AN ACT to amend and reenact subsections 35 through 42 of section 57-02-08 of the North Dakota Century Code, relating to property tax exemptions for new construction; and to provide an effective date.

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

<sup>222</sup> **SECTION 1. AMENDMENT.** Subsections 35 through 42 of section 57-02-08 of the North Dakota Century Code are amended and reenacted as follows:

35. Up to ~~seventy five~~ one hundred fifty thousand dollars of the true and full value of all new single-family and condominium and townhouse residential property, exclusive of the land on which it is situated, is exempt from taxation for the first two taxable years after the taxable year in which construction is ~~begun~~ completed and the residence is owned and occupied for the first time if all of the following conditions are met:
- a. The governing body of the city, for property within city limits, or the governing body of the county, for property outside city limits, has approved the exemption of the property by resolution. A resolution adopted under this subsection may be rescinded or amended at any time. The governing body of the city or county may limit or impose conditions upon exemptions under this subsection, including limitations on the time during which an exemption is allowed.
  - b. Special assessments and taxes on the property upon which the residence is situated are not delinquent.
  - e. ~~The first owner after the builder resides on the property, or the builder still owns the property. For purposes of this subsection, "builder" includes a person who builds that person's own residence.~~

~~For purposes of this subsection, "single family residential property" does not include condominium or townhouse property.~~

36. Up to ~~seventy five~~ seventy five thousand dollars of the true and full value of each unit of all new condominium and townhouse residential property, exclusive of the land on which it is situated, is exempt from taxation for the first two taxable years after the taxable year in which construction is begun if all of the following conditions are met:

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<sup>222</sup> Section 57-02-08 was also amended by section 1 of House Bill No. 1234, chapter 525, section 2 of Senate Bill No. 2201, chapter 529, section 1 of Senate Bill No. 2239, chapter 527, and section 1 of Senate Bill No. 2244, chapter 524.

- a. ~~The governing body of the city, for property within city limits, or the governing body of the county, for property outside city limits, has approved the exemption of the property by resolution. A resolution adopted under this subsection may be rescinded or amended at any time. The governing body of the city or county may limit or impose conditions upon exemptions under this subsection, including limitations on the time during which an exemption is allowed.~~
  - b. ~~Special assessments and taxes on the property upon which the condominium or townhouse is situated are not delinquent.~~
  - e. ~~The first owner, after the builder, who resides in the condominium or townhouse unit still owns the property.~~
- ~~37.~~ The governing body of the city, for property within city limits, or of the county, for property outside city limits, may grant a property tax exemption for the portion of fixtures, buildings, and improvements, used primarily to provide early childhood services by a corporation, limited liability company, or organization licensed under chapter 50-11.1 or used primarily as an adult day care center. However, this exemption is not available for property used as a residence.
- ~~38.~~ 37. a. A pollution abatement improvement. As used in this subsection, "pollution abatement improvement" means property, exclusive of land and improvements to the land such as ditching, surfacing, and leveling, that is:
- (1) Part of an agricultural or industrial facility which is used for or has for its ultimate purpose the prevention, control, monitoring, reducing, or eliminating of pollution by treating, pretreating, stabilizing, isolating, collecting, holding, controlling, measuring, or disposing of waste contaminants; or
  - (2) Part of an agricultural or industrial facility and required to comply with local, state, or federal environmental quality laws, rules, regulations, or standards.
- b. The exemption under this subsection applies only to that portion of the valuation of property attributable to the pollution abatement improvement on which construction or installation was commenced after December 31, 1992, and does not apply to the valuation of any property that is not a necessary component of the pollution abatement improvement. The governing body of the city, for property within city limits, or the governing board of the county, for property outside city limits, shall determine whether the property proposed for exemption is a pollution abatement improvement and may grant an exemption for the pollution abatement improvement based upon the requirements of this subsection.
- ~~39.~~ 38. The leasehold interest in property owned by the state which has been leased for pasture or grazing purposes or upon which payments in lieu of property taxes are made by the state.

- ~~40.~~ 39. Notwithstanding any other law, all property, including any possessory interest therein, relating to any waterworks, mains, and water distribution system leased to the state, or any agency or institution of the state, or to a private entity pursuant to subsection 5 of section 40-33-01, subsection 12 of section 61-24.5-09, or subsection 23 of section 61-35-12, which property is operated by, or providing services to, a municipality or other political subdivision or agency of the state, or its citizens.
- ~~41.~~ 40. Notwithstanding any other law, all property, including any possessory interest therein, relating to any sewage systems and facilities for the collection, treatment, purification, and disposal in a sanitary manner of sewage leased to the state, or any agency or institution of the state, or to a private entity pursuant to section 40-34-19 or subsection 23 of section 61-35-12, which property is operated by, or providing services to, a municipality or other political subdivision or agency of the state, or its citizens.
- ~~42.~~ 41. Notwithstanding any other law, all property, including any possessory interest therein, leased to a private entity pursuant to section 54-01-27, which property is operated by, or providing services to, the state or its citizens.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008.

Approved April 22, 2009  
Filed April 23, 2009

## CHAPTER 527

### SENATE BILL NO. 2239

(Senators Cook, Flakoll, Seymour)

(Representatives Boehning, Dosch, Glasheim)

AN ACT to create and enact a new subsection to section 57-02-08 of the North Dakota Century Code, relating to property tax assessments for new construction; and to provide an effective date.

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

<sup>223</sup> **SECTION 1.** A new subsection to section 57-02-08 of the North Dakota Century Code is created and enacted as follows:

- a. New single-family residential property, exclusive of the land on which it is situated, is exempt from assessment for the taxable year in which construction began and the next two taxable years, if the property remains owned by the builder, remains unoccupied, and all of the following conditions are met:
  - (1) The governing body of the city, for property within city limits, or the governing body of the county, for property outside city limits, has approved the exemption of property under this subsection by resolution. A resolution adopted under this subsection may be rescinded or amended at any time. The governing body of the city or county may limit or impose conditions upon exemptions under this subsection, including limitations on the time during which an exemption is allowed.
  - (2) Special assessments and taxes on the property upon which the residence is situated are not delinquent.
- b. A builder is eligible for exemption of no more than ten properties under this subsection in a taxable year within each jurisdiction that has approved the exemption under this subsection. For purposes of this subsection, "builder" includes an individual who builds that individual's own residence.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008.

Approved April 22, 2009  
Filed April 23, 2009

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<sup>223</sup> Section 57-02-08 was also amended by section 1 of House Bill No. 1234, chapter 525, section 2 of Senate Bill No. 2201, chapter 529, section 1 of Senate Bill No. 2244, chapter 524, and section 1 of Senate Bill No. 2247, chapter 526.

## CHAPTER 528

### SENATE BILL NO. 2402

(Senators Hogue, Horne, J. Lee)  
(Representatives Bellew, Berg)

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

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

**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 ~~ten~~ eighteen thousand dollars, a reduction of one hundred percent of the taxable valuation of the person's homestead up to a maximum reduction of ~~three~~ four thousand ~~three~~ five hundred ~~seventy-five~~ dollars of taxable valuation.
    - (2) If the person's income is in excess of ~~ten~~ eighteen thousand dollars and not in excess of ~~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~~ three thousand ~~seven~~ six hundred dollars of taxable valuation.
    - (3) If the person's income is in excess of ~~twelve~~ twenty thousand dollars and not in excess of ~~fourteen~~ twenty-two thousand dollars, a reduction of sixty percent of the taxable valuation of the person's homestead up to a maximum reduction of two thousand ~~twenty-five~~ seven hundred dollars of taxable valuation.

- (4) If the person's income is in excess of ~~fourteen~~ twenty-two thousand dollars and not in excess of ~~sixteen~~ twenty-four thousand dollars, a reduction of forty percent of the taxable valuation of the person's homestead up to a maximum reduction of one thousand ~~three~~ eight hundred ~~ifty~~ dollars of taxable valuation.
  - (5) If the person's income is in excess of ~~sixteen~~ twenty-four thousand dollars and not in excess of ~~seventeen~~ twenty-six 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~~ nine 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~~ seventy-five 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~~ four 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 or a written determination of disability from the social security administration.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008, for ad valorem property taxes and for taxable years beginning after December 31, 2009, for mobile home taxes.

Approved April 21, 2009  
Filed April 22, 2009

## CHAPTER 529

### SENATE BILL NO. 2201

(Senators Cook, Nelson, Nodland)  
(Representatives Drovdal, Mueller)

AN ACT to create and enact a new section to chapter 57-02 of the North Dakota Century Code and a new section to Senate Bill No. 2184, as approved by the sixty-first legislative assembly, relating to a property tax credit for disabled veterans and to declare Senate Bill No. 2184, as approved by the sixty-first legislative assembly, to be an emergency; to amend and reenact subsection 20 of section 57-02-08 and subdivision c of subsection 1 of section 57-55-10 of the North Dakota Century Code and section 2 of Senate Bill No. 2184, as approved by the sixty-first legislative assembly, relating to the property tax and mobile home tax exemptions for disabled veterans and the effective date of Senate Bill No. 2184, as approved by the sixty-first legislative assembly; to provide an appropriation; to provide an effective date; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 57-02 of the North Dakota Century Code is created and enacted as follows:

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

1. A disabled veteran of the United States armed forces with an armed forces service-connected disability of fifty percent or greater, who was discharged under honorable conditions or who has been retired from the armed forces of the United States, or the unremarried surviving spouse if the disabled veteran is deceased, is eligible for a credit applied against the first one hundred twenty thousand dollars of true and full valuation of the fixtures, buildings, and improvements of the person's homestead equal to the percentage of the disabled veteran's disability compensation rating for service-connected disabilities as certified by the department of veterans affairs for the purpose of applying for a property tax exemption.
2. If two disabled veterans are married to each other and living together, their combined credits may not exceed one hundred percent of one hundred twenty thousand dollars of true and full value of the fixtures, buildings, and improvements of the homestead. If a disabled veteran co-owns the homestead property with someone other than the disabled veteran's spouse, the credit is limited to that disabled veteran's interest in the fixtures, buildings, and improvements of the homestead, to a maximum amount calculated by multiplying one hundred twenty thousand dollars of true and full valuation by the disabled veteran's percentage of interest in the homestead property and multiplying the result by the applicant's certified disability percentage.
3. A disabled veteran or unremarried surviving spouse claiming a credit under this section for the first time shall file with the county auditor an affidavit showing the facts herein required, a description of the property,

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

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

approval of an application for abatement filed by a person because the credit provided for the homestead of a disabled veteran was not allowed in whole or in part.

<sup>224</sup> **SECTION 2. 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~~ department of veterans affairs, or the unmarried 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 unmarried surviving spouse if the veteran is deceased 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.~~
  - e. Any permanently and totally disabled person who is permanently confined to use of a wheelchair, or, if deceased, the unmarried 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 affidavit and certificate must be open for public inspection. After the initial filing of a claim for exemption under this~~

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<sup>224</sup> Section 57-02-08 was also amended by section 1 of House Bill No. 1234, chapter 525, section 1 of Senate Bill No. 2239, chapter 527, section 1 of Senate Bill No. 2244, chapter 524, and section 1 of Senate Bill No. 2247, chapter 526.

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. A person thereafter shall furnish to the assessor or other assessment officials when requested to do so any information that is believed will support the claim for exemption for a subsequent year.

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 qualifying owner 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.~~

<sup>225</sup> **SECTION 3. AMENDMENT.** Subdivision c of subsection 1 of section 57-55-10 of the North Dakota Century Code is amended and reenacted as follows:

- c. If it is owned and used as living quarters by a disabled veteran or unremarried surviving spouse who meets the requirements of subsection 20 of section 57-02-08 or section 1 of this Act.

**SECTION 4. AMENDMENT.** Section 2 of Senate Bill No. 2184, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable events occurring after ~~June~~ April 30, 2009.

**SECTION 5.** A new section to Senate Bill No. 2184, as approved by the sixty-first legislative assembly, is created and enacted as follows:

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

**SECTION 6. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$3,000,000, or so much of the sum as may be necessary, to the state tax commissioner for the purpose of paying the state reimbursement under the disabled veteran credit under section 1 of this Act, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 7. EFFECTIVE DATE.** Sections 1 through 3 of this Act are effective for taxable years beginning after December 31, 2008.

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<sup>225</sup> Section 57-55-10 was also amended by section 15 of House Bill No. 1301, chapter 327.

**SECTION 8. EMERGENCY.** Sections 4 and 5 of this Act are declared to be an emergency measure.

Approved April 30, 2009

Filed April 30, 2009

## CHAPTER 530

### HOUSE BILL NO. 1166

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

AN ACT to amend and reenact sections 57-02-27.1, 57-02-27.2, 57-02-38, and 57-12-09, subsection 4 of section 57-14-08, and section 57-20-03 of the North Dakota Century Code, relating to the deletion of obsolete dates and references for the purposes of valuation and assessment of agricultural lands, assessment of unplatted, undeveloped, and nonagricultural real property located outside of a city, and notice requirements for increased property tax assessments; 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 1984, all~~ 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 1984 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.

<sup>226</sup> **SECTION 2. AMENDMENT.** Section 57-02-27.2 of the North Dakota Century Code is amended and reenacted as follows:

#### **57-02-27.2. Valuation and assessment of agricultural lands.**

1. "True and full value" of agricultural lands must be their agricultural value for the purposes of sections 57-02-27, 57-02-27.1, 57-02-27.2, and 57-55-04. Agricultural value is defined as the "capitalized average annual gross return", except for inundated agricultural land. The "annual gross return" must be determined from crop share rent, cash rent, or a combination thereof reduced by estimated property taxes and crop marketing expenses incurred by farmland owners renting their lands on a cash or crop share basis.

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<sup>226</sup> Section 57-02-27.2 was also amended by section 1 of Senate Bill No. 2052, chapter 531, and section 2 of Senate Bill No. 2244, chapter 524.

2. For purposes of this section, "annual gross return" for cropland used for growing crops other than sugar beets and potatoes means thirty percent of annual gross income produced, "annual gross return" for cropland used for growing sugar beets and potatoes means twenty percent of annual gross income produced, and "annual gross return" for land used for grazing farm animals means twenty-five percent of an amount determined by the agricultural economics department of agribusiness and applied economics of North Dakota state university to represent the annual gross income potential of the land based upon the animal unit carrying capacity of the land.
3. The "average annual gross return" for each county must be determined as follows:
  - a. 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 agribusiness and applied economics 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. The agricultural economics department of agribusiness and applied economics 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. Divide the figure arrived at in subdivision b by eight.
4. To find the "capitalized average annual gross return", the average annual gross return must be capitalized by a rate that is a ten-year average of the gross agribank mortgage rate of interest for North Dakota, but the rate used for capitalization under this section may not be less than ~~eight and nine-tenths percent for taxable year 2005~~ and eight and three-tenths percent ~~for taxable years after 2005~~. The ten-year average must be computed from the twelve years ending with the most recent year used under subdivision a of subsection 3, discarding the highest and lowest years, and the gross agribank mortgage rate of interest for each year must be determined in the manner provided in section 20.2032A-4(e)(1) of the United States treasury department regulations for valuing farm real property for federal estate tax purposes, except that the interest rate may not be adjusted as provided in section 20.2032A-4(e)(2).
5. The agricultural economics department of agribusiness and applied economics of North Dakota state university shall compute annually an estimate of the average agricultural value per acre [.40 hectare] of agricultural lands on a statewide and on a countywide basis; shall compute the average agricultural value per acre [.40 hectare] for cropland, noncropland, and inundated agricultural land for each county;

and shall provide the tax commissioner with this information by December first of each year. Fifty percent of the annual gross income from irrigated cropland must be considered additional expense of production and may not be included in computation of the average agricultural value per acre [.40 hectare] for cropland for the county as determined by the agricultural economics department of agribusiness and applied economics. Before January first of each year, the tax commissioner shall provide to each county director of tax equalization these estimates of agricultural value for each county.

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 agribusiness and applied economics 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. 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 agribusiness and applied economics 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.
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 shall use soil type and soil classification data from detailed and general soil surveys.
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:

- 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.
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. AMENDMENT.** Section 57-02-38 of the North Dakota Century Code is amended and reenacted as follows:

**57-02-38. Units of real property for assessment.** In all assessment books and tax lists and in all proceedings for the collection of taxes and proceedings founded thereon, unplatted land and undeveloped land platted before March 30, 1981, not situated within the limits of an incorporated city must be described in subdivisions not exceeding quarter sections. Real property in the platted portion of a city or real property platted on or after March 30, 1981, that is located outside any city and is not agricultural property under the conditions set out in subsection 1 of section 57-02-01, must be assessed separately as to each lot; but when. When a building or structure covers two or more contiguous lots or parts of lots owned by the same person the assessment may not be entered separately as to each lot or part of lot, but the tract upon which the building is located must be described and assessed as one parcel. A block which has not been subdivided may be described, assessed, and taxed in a unit of one block. A failure to comply with the provisions of this section does not impair the validity of taxes.

**SECTION 4. AMENDMENT.** Section 57-12-09 of the North Dakota Century Code is amended and reenacted as follows:

**57-12-09. Notice of increased assessment to real estate owner.** When any assessor has increased the true and full valuation of any lot or tract of land or including any improvements thereon ~~to by three thousand dollars or more than and to ten percent or 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, mailed in writing to the property owner at the property owner's last-known address, or provided to the property owner by electronic mail directed with verification of receipt to an electronic mail address at which the property owner has consented to receive notice. Delivery of notice to a property owner under this section must be completed not fewer than fifteen days before the meeting of the local equalization board. The tax commissioner shall prescribe suitable forms for this notice and the notice must show the true and full value as defined by law of the property, including improvements, that the assessor used in making the assessment for the current year and for the year in which the last assessment was made and must also show the date prescribed by law for the meeting of the local equalization board of the assessment district in which the property is located and the meeting date of the county equalization board. The notice must be mailed or delivered at the expense of the assessment district for which the assessor is employed.

**SECTION 5. AMENDMENT.** Subsection 4 of section 57-14-08 of the North Dakota Century Code is amended and reenacted as follows:

4. When any special assessor has increased the true and full valuation of any lot or tract of land ~~together with~~ including any improvements to that lot or tract of land by ~~fifteen~~ three thousand dollars or more and to ten percent or more 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 special 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. The tax commissioner shall prescribe suitable forms for this notice and the notice must also show the true and full value as defined by law of the property, including improvements, that the special assessor used in making the reassessment and must also show the date prescribed by law for the meeting of the special board of equalization of the assessment district in which the property is located. ~~This Delivery of notice must be mailed or delivered to the property owner under this section must be completed at least ten fifteen days in advance of the meeting date of the special board of equalization and must be mailed or delivered~~ at the expense of the assessment district for which the special assessor is employed.

**SECTION 6. AMENDMENT.** Section 57-20-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-20-03. Form of tax list.** The tax list must be made out to correspond with the assessment books ~~as respects~~ with respect to ownership and description of property, with columns for the valuation and for the various items of tax included in the total amount of all taxes set down opposite such description of property. The amounts of special taxes must be entered in appropriate columns, but the general taxes may be shown by entering the rate of each tax at the head of the proper

column without extending the same, in which case a schedule of the rates of such taxes must be made on the first page of each tax list. The tax lists also must show, in a separate column, the years for which a tax lien has been foreclosed upon any piece or parcel ~~has been sold for taxes~~, if the same has not been redeemed or deeded for such taxes.

**SECTION 7. EFFECTIVE DATE.** Sections 3 and 4 of this Act are effective for taxable years beginning after December 31, 2008.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 531****SENATE BILL NO. 2052**

(Legislative Council)  
(Taxation Committee)

AN ACT to amend and reenact subsection 10 of section 57-02-27.2 of the North Dakota Century Code, relating to extension of the deadline for counties to implement use of soil survey data in agricultural property tax assessments; and to provide an effective date.

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

<sup>227</sup> **SECTION 1. AMENDMENT.** Subsection 10 of section 57-02-27.2 of the North Dakota Century Code is amended and reenacted as follows:

10. For any county that has not fully implemented use of soil type and soil classification data from detailed or general soil surveys for any taxable year after ~~2009~~ 2011, 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 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008.

Approved April 8, 2009  
Filed April 9, 2009

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<sup>227</sup> Section 57-02-27.2 was also amended by section 2 of House Bill No. 1166, chapter 530, and section 2 of Senate Bill No. 2244, chapter 524.

**CHAPTER 532****HOUSE BILL NO. 1382**  
(Representatives Onstad, S. Meyer)

AN ACT to amend and reenact section 57-06-03 of the North Dakota Century Code, relating to assessment of oil or gas pipeline property; and to provide an effective date.

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

<sup>228</sup> **SECTION 1. AMENDMENT.** Section 57-06-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-06-03. Operative property defined.** The term "operative property" means any and all property reasonably necessary for use by any company mentioned in section 57-06-02 exclusively in the operation and conduct of the particular kind of business engaged in by it. Any such property held under a contract for the purchase thereof must be considered for all purposes of taxation as the property of the company holding the same. Any such property, real or personal, held by any company under a rental lease must be assessed by the state board of equalization in the name of such company, if an agreement in writing between the owner thereof and such company is filed with the tax commissioner requesting that such leased property be so assessed. Whenever any property of a public utility company required to be assessed by the state board of equalization under the provisions of this chapter is used partly for operative purposes and partly for other purposes, either by the company or by others, all such property must be assessed by the state board of equalization as operative property of the company. Notwithstanding any other provision of law, all oil or gas pipeline property that is not exempt from ad valorem taxation is subject to assessment by the state board of equalization under this chapter.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2009.

Approved March 24, 2009  
Filed March 24, 2009

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<sup>228</sup> Section 57-06-03 was also amended by section 4 of Senate Bill No. 2297, chapter 539.

**CHAPTER 533****SENATE BILL NO. 2031**

(Legislative Council)  
(Energy Development and Transmission Committee)

AN ACT to amend and reenact section 57-06-14.1 of the North Dakota Century Code, relating to taxable valuation of centrally assessed wind turbine electric generators.

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

**SECTION 1. AMENDMENT.** Section 57-06-14.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-06-14.1. 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, ~~2014~~ 2015, must be valued at three percent of assessed value to determine taxable valuation of the property except:

1. 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~~ was executed after April 30, 2005, and before January 1, 2006, and ~~construction is~~ was completed 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 for the duration of the initial purchased power agreement for the generation unit; and
2. 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, 2006, and before January 1, ~~2014~~ 2015, must be valued at one and one-half percent of assessed value to determine taxable valuation of the property.

Approved March 19, 2009  
Filed March 19, 2009

**CHAPTER 534****HOUSE BILL NO. 1401**

(Representatives Koppelman, Brandenburg, Headland)  
(Senators Miller, Oehlke, Wanzek)

AN ACT to create and enact a new section to chapter 57-13 of the North Dakota Century Code, relating to limitations on the valuation of residential and commercial property as determined by the sales ratio study.

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

**SECTION 1.** A new section to chapter 57-13 of the North Dakota Century Code is created and enacted as follows:

**Residential and commercial property true and full value.** In equalizing valuation and assessment of property among assessment districts, the state board of equalization may not approve valuation and assessment in any taxing district in which the true and full value for residential and commercial property as assessed and equalized in that district exceeds the true and full value for those property classifications in that taxing district as determined by the sales ratio study.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 535****SENATE BILL NO. 2199**

(Senators Wardner, Cook, O'Connell)  
(Representatives Kaldor, Monson, Svedjan)

AN ACT to create a property tax relief sustainability fund; to create and enact two new subdivisions to subsection 3 of section 57-15-01.1 and chapter 57-64 of the North Dakota Century Code, relating to allocation of state funds to school districts for mill levy reduction grants; to amend and reenact sections 57-15-14, 57-15-31, and 57-38-30 and subsection 1 of section 57-38-30.3 of the North Dakota Century Code, relating to property tax levies of school districts, corporate income tax rates, and income tax rates for individuals, estates, and trusts; to repeal section 15.1-27-20.1 of the North Dakota Century Code, relating to the effect of the general fund levy of school districts on state aid allocations; to provide an appropriation; to provide for transfers; and to provide an effective date.

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

**SECTION 1.** Two new subdivisions to subsection 3 of section 57-15-01.1 of the North Dakota Century Code are created and enacted as follows:

Increased, for a school district determining its levy limitation under this section, by the amount the school district's mill levy reduction grant under section 57-64-02 for the base year exceeds the amount of the school district's mill levy reduction grant under section 57-64-02 for the budget year.

Reduced for a school district determining its levy limitation under this section, by the amount the school district's mill levy reduction grant under section 57-64-02 for the budget year exceeds the amount of the school district's mill levy reduction grant under section 57-64-02 for the base year.

<sup>229</sup> **SECTION 2. AMENDMENT.** Section 57-15-14 of the North Dakota Century Code is amended and reenacted as follows:

**57-15-14. 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:

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<sup>229</sup> Section 57-15-14 was also amended by section 47 of House Bill No. 1400, chapter 175.

1. In any school district having a total population in excess of four thousand according to the last federal decennial census:
  - a. ~~There~~ 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~~ fewer 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~~ 2009, 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~~ 2009, 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. The authority for a levy of up to a specific number of mills under this section approved by electors of a school district before July 1, 2009, is terminated effective for taxable years after 2015. If the electors of a school district subject to this subsection have not approved a levy for taxable years after 2015 of up to a specific number of mills under this section by December 31, 2015, the school district levy limitation for subsequent years is subject to the limitations under section 57-15-01.1 or this section.
5. The authority for an unlimited levy approved by electors of a school district before July 1, 2009, is terminated effective for taxable years after 2015. If the electors of a school district subject to this subsection have not approved a levy of up to a specific number of mills under this section by December 31, 2015, the school district levy limitation for subsequent years is subject to the limitations under section 57-15-01.1 or this section.

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 ten percent of the number of 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 3. AMENDMENT.** Section 57-15-31 of the North Dakota Century Code is amended and reenacted as follows:

**57-15-31. Determination of levy.** The amount to be levied by any county, city, township, school district, park district, or other municipality authorized to levy taxes shall be computed by deducting from the amount of estimated expenditures for the current fiscal year as finally determined, plus the required reserve fund determined upon by the governing board from the past experience of the taxing district, the total of the following items:

1. The available surplus consisting of the free and unencumbered cash balance.
2. Estimated revenues from sources other than direct property taxes.
3. The total estimated collections from tax levies for previous years.
4. Such expenditures as are to be made from bond sources.
5. The amount of distributions received from an economic growth increment pool under section 57-15-61.
6. The estimated amount to be received from payments in lieu of taxes on a project under section 40-57.1-03.
7. The amount reported to a school district by the superintendent of public instruction as the school district's mill levy reduction grant for the year under section 57-64-02.

Allowance may be made for a permanent delinquency or loss in tax collection not to exceed five percent of the amount of the levy.

**SECTION 4. AMENDMENT.** Section 57-38-30 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-30. Imposition and rate of tax on corporations.** A tax is hereby imposed upon the taxable income of every domestic and foreign corporation which must be levied, collected, and paid annually as in this chapter provided:

1. a. For the first ~~three~~ twenty-five thousand dollars of taxable income, at the rate of two and ~~six-tenths~~ one-tenth percent.
- b. On all taxable income ~~above three~~ exceeding twenty-five thousand dollars and not in ~~excess of eight~~ exceeding fifty thousand dollars, at the rate of ~~four and one-tenth~~ five and twenty-five hundredths percent.
- c. On all taxable income ~~above eight~~ exceeding fifty thousand dollars and not in ~~excess of twenty thousand~~ dollars, at the rate of ~~five and six-tenths~~ six and four-tenths percent.

- d. On all taxable income above twenty thousand dollars and not in excess of thirty thousand dollars, at the rate of six and four-tenths percent.
- e. On all taxable income above thirty thousand dollars, at the rate of six and one-half percent.
2. A corporation that has paid North Dakota alternative minimum tax in years beginning before January 1, 1991, may carry over any alternative minimum tax credit remaining to the extent of the regular income tax liability of the corporation for a period not to exceed four taxable years.

<sup>230</sup> **SECTION 5. AMENDMENT.** Subsection 1 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

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

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

If North Dakota taxable income is:

Not over ~~\$27,050~~ \$33,950  
 Over ~~\$27,050~~ \$33,950 but not  
 over ~~\$65,550~~ \$82,250  
 Over ~~\$65,550~~ \$82,250 but not  
 over ~~\$136,750~~ \$171,550  
 Over ~~\$136,750~~ \$171,550 but not  
 over ~~\$297,350~~ \$372,950  
 Over ~~\$297,350~~ \$372,950

The tax is equal to:

~~2.40%~~ 1.84%  
~~\$568.05~~ \$624.68 plus ~~3.92%~~ 3.44%  
 of amount over ~~\$27,050~~ \$33,950  
~~\$2,077.25~~ \$2,286.20 plus ~~4.34%~~ 3.81%  
 of amount over ~~\$65,550~~ \$82,250  
~~\$5,167.33~~ \$5,688.53 plus ~~5.04%~~ 4.42%  
 of amount over ~~\$136,750~~ \$171,550  
~~\$13,264.57~~ \$14,590.41 plus ~~5.54%~~ 4.86%  
 of amount over ~~\$297,350~~ \$372,950

- b. Married filing jointly and surviving spouse.

If North Dakota taxable income is:

Not over ~~\$45,200~~ \$56,750

The tax is equal to:

~~2.40%~~ 1.84%

<sup>230</sup> Section 57-38-30.3 was also amended by section 2 of House Bill No. 1209, chapter 550, section 1 of House Bill No. 1256, chapter 551, section 1 of House Bill No. 1277, chapter 552, section 26 of House Bill No. 1324, chapter 545, and section 2 of Senate Bill No. 2388, chapter 549.

Over <del>\$45,200</del> <u>\$56,750</u> but not over <del>\$100,250</del> <u>\$137,050</u>	<del>\$949.20</del> <u>\$1,044.20</u> plus <del>3.92%</del> <u>3.44%</u> of amount over <del>\$45,200</del> <u>\$56,750</u>
Over <del>\$100,250</del> <u>\$137,050</u> but not over <del>\$166,500</del> <u>\$208,850</u>	<del>\$3,459.96</del> <u>\$3,806.52</u> plus <del>4.34%</del> <u>3.81%</u> of amount over <del>\$100,250</del> <u>\$137,050</u>
Over <del>\$166,500</del> <u>\$208,850</u> but not over <del>\$297,350</del> <u>\$372,950</u>	<del>\$5,944.64</del> <u>\$6,542.10</u> plus <del>5.04%</del> <u>4.42%</u> of amount over <del>\$166,500</del> <u>\$208,850</u>
Over <del>\$297,350</del> <u>\$372,950</u>	<del>\$12,539.46</del> <u>\$13,795.32</u> plus <del>5.54%</del> <u>4.86%</u> of amount over <del>\$297,350</del> <u>\$372,950</u>

c. Married filing separately.

If North Dakota taxable income is:

Not over <del>\$22,600</del> <u>\$28,375</u>	Over <del>\$22,600</del> <u>\$28,375</u> but not over <del>\$54,625</del> <u>\$68,525</u>
Over <del>\$54,625</del> <u>\$68,525</u> but not over <del>\$83,250</del> <u>\$104,425</u>	Over <del>\$83,250</del> <u>\$104,425</u> but not over <del>\$148,675</del> <u>\$186,475</u>
Over <del>\$148,675</del> <u>\$186,475</u>	

The tax is equal to:

<del>2.40%</del> <u>1.84%</u>	<del>\$474.60</del> <u>\$522.10</u> plus <del>3.92%</del> <u>3.44%</u> of amount over <del>\$22,600</del> <u>\$28,375</u>
<del>\$1,729.98</del> <u>\$1,903.26</u> plus <del>4.34%</del> <u>3.81%</u> of amount over <del>\$54,625</del> <u>\$68,525</u>	<del>\$2,072.34</del> <u>\$3,271.05</u> plus <del>5.04%</del> <u>4.42%</u> of amount over <del>\$83,250</del> <u>\$104,425</u>
<del>\$6,269.73</del> <u>\$6,897.66</u> plus <del>5.54%</del> <u>4.86%</u> of amount over <del>\$148,675</del> <u>\$186,475</u>	

d. Head of household.

If North Dakota taxable income is:

Not over <del>\$36,250</del> <u>\$45,500</u>	Over <del>\$36,250</del> <u>\$45,500</u> but not over <del>\$93,650</del> <u>\$117,450</u>
Over <del>\$93,650</del> <u>\$117,450</u> but not over <del>\$151,650</del> <u>\$190,200</u>	Over <del>\$151,650</del> <u>\$190,200</u> but not over <del>\$297,350</del> <u>\$372,950</u>
Over <del>\$297,350</del> <u>\$372,950</u>	

The tax is equal to:

<del>2.40%</del> <u>1.84%</u>	<del>\$761.25</del> <u>\$837.20</u> plus <del>3.92%</del> <u>3.44%</u> of amount over <del>\$36,250</del> <u>\$45,500</u>
<del>\$3,011.33</del> <u>\$3,312.28</u> plus <del>4.34%</del> <u>3.81%</u> of amount over <del>\$93,650</del> <u>\$117,450</u>	<del>\$5,528.53</del> <u>\$6,084.06</u> plus <del>5.04%</del> <u>4.42%</u> of amount over <del>\$151,650</del> <u>\$190,200</u>
<del>\$12,871.84</del> <u>\$14,161.61</u> plus <del>5.54%</del> <u>4.86%</u> of amount over <del>\$297,350</del> <u>\$372,950</u>	

e. Estates and trusts.

If North Dakota taxable income is:

Not over <del>\$1,800</del> <u>\$2,300</u>	Over <del>\$1,800</del> <u>\$2,300</u> but not over <del>\$4,250</del> <u>\$5,350</u>
Over <del>\$4,250</del> <u>\$5,350</u> but not over <del>\$6,500</del> <u>\$8,200</u>	Over <del>\$6,500</del> <u>\$8,200</u> but not over <del>\$8,900</del> <u>\$11,150</u>
Over <del>\$8,900</del> <u>\$11,150</u>	

The tax is equal to:

<del>2.40%</del> <u>1.84%</u>	<del>\$37.80</del> <u>\$42.32</u> plus <del>3.92%</del> <u>3.44%</u> of amount over <del>\$1,800</del> <u>\$2,300</u>
<del>\$133.84</del> <u>\$147.24</u> plus <del>4.34%</del> <u>3.81%</u> of amount over <del>\$4,250</del> <u>\$5,350</u>	<del>\$231.49</del> <u>\$255.83</u> plus <del>5.04%</del> <u>4.42%</u> of amount over <del>\$6,500</del> <u>\$8,200</u>
<del>\$352.45</del> <u>\$386.22</u> plus <del>5.54%</del> <u>4.86%</u> of amount over <del>\$8,900</del> <u>\$11,150</u>	

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

- (1) The numerator is the federal adjusted gross income allocable and apportionable to this state; and

- (2) The denominator is the federal adjusted gross income from all sources reduced by the net income from the amounts specified in subdivisions a and b of subsection 2.

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

- g. For taxable years beginning after December 31, ~~2004~~ 2009, 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.

**SECTION 6.** Chapter 57-64 of the North Dakota Century Code is created and enacted as follows:

**57-64-01. Definitions.** For purposes of this chapter:

1. "Combined education mill rate" means the combined number of mills levied by a school district for the general fund, high school tuition, and high school transportation.
2. "Qualifying school district" means a school district that meets the conditions and requirements of this chapter to receive a mill levy reduction grant.
3. "Weighted student unit" means weighted student unit as determined for the school district under chapter 15.1-27.

**57-64-02. Mill levy reduction allocation and grant.** Each qualifying school district in the state is entitled to a mill levy reduction allocation and grant as provided in this chapter, subject to legislative appropriation to the superintendent of public instruction.

1. The mill levy reduction allocation rate for each qualifying school district is equal to the payments to the school district based on the per student payment rate as determined for the school year under chapter 15.1-27.
2. The grant to a qualifying school district may not exceed the smallest of:
  - a. The allocation determined under subsection 1;
  - b. The taxable valuation of property in the school district in the previous taxable year times the number of mills determined by subtracting one hundred mills from the combined education mill rate of the school district for taxable year 2008; or



- a. The ballot measure must specify the number of mills for the general fund mill rate for which approval is sought.
- b. If a ballot measure for approval of authority to levy a specific number of mills is not approved by a majority of the electors of the school district voting on the question, the school district general fund levy limitation for subsequent years is subject to the limitations under section 57-15-01.1 or 57-15-14.

**57-64-04. Levy reduction priority.** In setting mill rates for qualified school districts, the county auditor shall apply funds allocated to a school district under this chapter for mill levy reduction first to reduce the number of mills levied for general fund purposes and, if allocation funds remain after the general fund mill rate is reduced to zero, the balance must be applied to reduce the high school tuition levy and then to reduce the high school transportation levy of the qualified school district.

**SECTION 7. Property tax relief sustainability fund.** The property tax relief sustainability fund is a special fund in the state treasury. Moneys in the fund may be spent, pursuant to legislative appropriations, for property tax relief programs.

<sup>231</sup> **SECTION 8. REPEAL.** Section 15.1-27-20.1 of the North Dakota Century Code is repealed.

**SECTION 9. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$295,000,000, or so much of the sum as may be necessary, to the superintendent of public instruction for the purpose of allocation of mill levy reduction grants to school districts under chapter 57-64, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 10. TRANSFER - PERMANENT OIL TAX TRUST FUND - GENERAL FUND.** The office of management and budget shall transfer the sum of \$295,000,000 from the permanent oil tax trust fund to the general fund on July 1, 2009.

**SECTION 11. TRANSFER - PERMANENT OIL TAX TRUST FUND - PROPERTY TAX RELIEF SUSTAINABILITY FUND.** The office of management and budget shall transfer the sum of \$295,000,000 from the permanent oil tax trust fund to the property tax relief sustainability fund on July 1, 2010.

**SECTION 12. EFFECTIVE DATE.** Sections 1, 2, 3, 4, and 5 of this Act are effective for taxable years beginning after December 31, 2008.

Approved April 30, 2009  
Filed April 30, 2009

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<sup>231</sup> Section 15.1-27-20.1 was also repealed by section 64 of House Bill No. 1400, chapter 175.

**CHAPTER 536****SENATE BILL NO. 2222**

(Senators Klein, Erbele, Taylor)  
(Representatives DeKrey, Kaldor)

AN ACT to amend and reenact section 57-15-28 of the North Dakota Century Code, relating to discontinuance of county emergency fund levies.

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

**SECTION 1. AMENDMENT.** Section 57-15-28 of the North Dakota Century Code is amended and reenacted as follows:

**57-15-28. Emergency fund - County.** The governing body of any county may levy a tax for emergency purposes not exceeding the limitation in subsection 22 of section 57-15-06.7. The emergency fund may not be considered in determining the budget or the amount to be levied for each fiscal year for normal tax purposes but must be shown in the budget as an "emergency fund" and may not be deducted from the budget as otherwise provided by law. Each county may create an emergency fund, and all taxes levied for emergency purposes by any county, when collected, must be deposited in the emergency fund, and must be used only for emergency purposes caused by the destruction or impairment of any county property necessary for the conduct of the affairs of the county, emergencies caused by nature or by the entry by a court of competent jurisdiction of a judgment for damages against the county. The emergency fund may not be used for any road construction or maintenance, except for repair of roads damaged by nature within sixty days preceding the determination to expend emergency funds, or for the purchase of road equipment; however, the emergency fund may be used to match federal funds appropriated to mitigate damage to roads related to a federally declared disaster that occurred more than sixty days preceding the determination. Any unexpended balance remaining in the emergency fund at the end of any fiscal year must be kept in the fund. When the amount of money in the emergency fund, plus the amount of money due the fund from outstanding taxes, equals the amount produced by a levy of five mills on the taxable valuation of property in a county with a population of thirty thousand or more, ~~or~~ ten mills on the taxable valuation of property in a county with a population of less than thirty thousand but more than five thousand, or fifteen mills on the taxable valuation of property in a county with a population of five thousand or fewer, the levy authorized by this section must be discontinued, and no further levy may be made until required to replenish the emergency fund.

Approved April 22, 2009

Filed April 23, 2009

**CHAPTER 537****HOUSE BILL NO. 1505**

(Representatives Conrad, Pinkerton, Wolf)  
(Senator Horne)

AN ACT to create and enact a new section to chapter 57-15 of the North Dakota Century Code, relating to relevy by a township 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.** A new section to chapter 57-15 of the North Dakota Century Code is created and enacted as follows:

**(Effective through December 31, 2013) Mistake in township levy - Levy increase in later year - Levy reverts.**

1. Notwithstanding section 57-15-01.1, 57-15-19, 57-15-19.4, or 57-15-19.6, if a mistake occurred in the 2008 tax year which resulted in a reduction of the amount intended and approved to be levied by a township, 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 by February 1, 2009, the township may include the amount that was mistakenly not levied in the township's levy for a single tax year, or spread among one or more tax years, in tax years 2009 through 2013.
2. If the resulting levy for the tax year exceeds limitations otherwise established by law, the township need not comply with chapter 57-17.
3. After a tax year in which a township's levy increase authority under this section is exhausted, the township's levy must revert to the levy as it would have been determined without application of this section, plus any increase authorized by law or the township may elect to apply subsection 5 to determine its levy limitation.
4. Before any taxable year may be used as a "base year" under section 57-15-01.1, any amount included in that taxable year's levy under this section must be deducted.
5. A township that uses this section to determine its levy may use the amount it intended to levy in the 2008 tax year as its "base year" under section 57-15-01.1.

**SECTION 2. EFFECTIVE DATE - EXPIRATION DATE.** This Act is effective for taxable years beginning after December 31, 2008, and before January 1, 2014, and is thereafter ineffective.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 538****HOUSE BILL NO. 1163**  
(Political Subdivisions Committee)  
(At the request of the State Treasurer)

AN ACT to amend and reenact section 57-33.1-08 of the North Dakota Century Code, relating to the transfer of transmission line tax revenues.

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

**SECTION 1. AMENDMENT.** Section 57-33.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**57-33.1-08. Allocation by state treasurer.** The state treasurer, ~~on or before~~ by July fifteenth ~~thirty-first~~ of each year, shall allocate all moneys received under the provisions of this chapter in the following manner:

1. During the first two years during which a cooperative operates an electrical energy generating plant, all of the annual revenue received from the taxation thereof in each county must be allocated to that county.
2. Thereafter, the first fifty thousand dollars of annual revenue received from the taxation of electrical energy generating plants located in each county, pursuant to subsection 1 of section 57-33.1-02, must be allocated one hundred percent to that county. The second fifty thousand dollars of annual revenue received from the taxation of electrical energy generating plants, pursuant to subsection 1 of section 57-33.1-02, located in each county must be allocated fifty percent to that county and fifty percent to the state general fund. All annual revenue in excess of one hundred thousand dollars received from the taxation of electrical energy generating plants, pursuant to subsection 1 of section 57-33.1-02, located in each county must be allocated twenty-five percent to that county and seventy-five percent to the state general fund.
3. All revenue derived from the taxation of transmission lines must be allocated as provided in subsection 2 of section 57-33.1-02.

Approved March 19, 2009  
Filed March 24, 2009

**CHAPTER 539****SENATE BILL NO. 2297**

(Senators Cook, Klein, Triplett)

(Representatives Belter, Monson, Mueller)

AN ACT to create and enact chapter 57-33.2 of the North Dakota Century Code, relating to taxation of generation, distribution, and transmission of electric power; to amend and reenact sections 10-13-04, 17-05-12, 49-21.1-01.1, 57-06-03, 57-06-17.3, and 57-60-06 of the North Dakota Century Code, relating to references to assessment and imposition of taxes against centrally assessed electric power companies and taxation of rural electric cooperatives and cooperative electrical generating plants; to repeal chapters 57-33 and 57-33.1 of the North Dakota Century Code, relating to taxation of rural electric cooperatives and cooperative electrical generating plants; to provide a penalty; to provide a continuing appropriation; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 10-13-04 of the North Dakota Century Code is amended and reenacted as follows:

**10-13-04. Members of electric cooperatives.** All persons who are not receiving central station service and who reside in rural areas proposed to be served by a cooperative organized under this chapter shall be eligible to membership in the cooperative. No person other than the incorporators shall be, become, or remain a member of a cooperative unless such person shall use or agree to use electrical energy or the facilities, supplies, equipment, and services furnished by a cooperative.

"Rural area" means any area not included within the boundaries of an incorporated city having a population in excess of twenty-five hundred inhabitants at the time a corporation or cooperative commences to operate electric facilities or to furnish electric energy in such an area, and includes both the farm and nonfarm population thereof. No change thereafter in the population of a rural area, as defined herein, regardless of the reason for such change, shall operate to affect in any way its status as a rural area for the purposes of this chapter ~~and of chapter 57-33.~~

An electric cooperative organized under this chapter may become a member of another such electric cooperative and may avail itself fully of the facilities and services thereof.

**SECTION 2. AMENDMENT.** Section 17-05-12 of the North Dakota Century Code is amended and reenacted as follows:

**17-05-12. Exemption from property taxes.** Transmission facilities built under this chapter are exempt from property taxes for a period determined by the authority not to exceed the first five taxable years of operation; after this initial period, transmission lines of two hundred thirty kilovolts or larger and the transmission lines' associated transmission substations remain exempt from property taxes but are subject to a per mile tax at the full per mile rate and subject to the same manner of imposition and allocation as the per mile tax imposed by ~~subsection 2 of section~~

~~57-33.1-02~~ 57-33.2-02 without application of the discounts provided in that ~~subsection~~ section.

**SECTION 3. AMENDMENT.** Section 49-21.1-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**49-21.1-01.1. Electricity transmission and distribution lines - Differentiation.** Except for purposes of transmission facility siting under chapter 49-22 and regulatory accounting including the determination of the demarcation between federal and state jurisdiction over transmission in interstate commerce and local distribution, for purposes of this title and ~~chapters 57-33 and 57-33.1~~ chapter 57-33.2, lines designed to operate at a voltage of 41.6 kilovolts or more are transmission lines, and lines designed to operate at a voltage less than 41.6 kilovolts are distribution lines.

<sup>232</sup> **SECTION 4. AMENDMENT.** Section 57-06-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-06-03. Operative property defined.** The term "operative property" means any and all property that is not exempt under this chapter by reason of an election filed under chapter 57-33.2 and which is reasonably necessary for use by any company mentioned in section 57-06-02 exclusively in the operation and conduct of the particular kind of business engaged in by it. Any such property held under a contract for the purchase thereof must be considered for all purposes of taxation as the property of the company holding the same. Any such property, real or personal, held by any company under a rental lease must be assessed by the state board of equalization in the name of such company, if an agreement in writing between the owner thereof and such company is filed with the tax commissioner requesting that such leased property be so assessed. Whenever any property of a public utility company required to be assessed by the state board of equalization under the provisions of this chapter is used partly for operative purposes and partly for other purposes, either by the company or by others, all such property that is not exempt under this chapter by reason of an election filed under chapter 57-33.2 must be assessed by the state board of equalization as operative property of the company.

**SECTION 5. AMENDMENT.** Section 57-06-17.3 of the North Dakota Century Code is amended and reenacted as follows:

**57-06-17.3. New transmission line property tax exemption.** A transmission line of two hundred thirty kilovolts or larger, and its associated transmission substations, which is not taxable under chapter 57-33.2 and is initially placed in service on or after October 1, 2002, is exempt from property taxes for the first taxable year after the line is initially placed in service, and property taxes as otherwise determined by law on the transmission line and its associated transmission substations must be reduced by:

1. Seventy-five percent for the second taxable year of operation of the transmission line.

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<sup>232</sup> Section 57-06-03 was also amended by section 1 of House Bill No. 1382, chapter 532.

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

After the fourth taxable year of operation of the transmission line, the transmission line and its associated transmission substations are exempt from property taxes and are subject to a tax at the rate of three hundred dollars per mile [1.61 kilometers] or fraction thereof of the line located in this state. The per mile tax imposed by this section applies to the transmission line and its associated transmission substations and is subject to the same manner of imposition and allocation as the tax imposed by subsection 2 of section 57-33.1-02 allocation among counties in the proportion that the miles of that transmission line in the county bears to the miles of that transmission line in the state. Revenues received by each county must be deposited in the county general fund.

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

**SECTION 6.** Chapter 57-33.2 of the North Dakota Century Code is created and enacted as follows:

**57-33.2-01. Definitions.** As used in this chapter:

1. "Collector system" means all property used or constructed to interconnect individual wind turbines within a wind farm into a common project, including step-up transformers, electrical collection equipment, collector substation transformers, and communication systems.
2. "Commissioner" means the state tax commissioner.
3. "Company" means an individual, partnership, corporation, limited liability company, limited liability partnership, cooperative, or any other organization or association engaged in generation, distribution, or transmission of electricity. A company subject to taxation under chapter 57-06, is not a "company" for purposes of this chapter unless it files an irrevocable election with the commissioner to be treated as a company under this chapter by October 1, 2009, for taxable periods after December 31, 2009; by October 1, 2010, for taxable periods after December 31, 2010; by October 1, 2011, for taxable periods after December 31, 2011; or by October 1, 2012, for taxable periods after December 31, 2012. Property subject to taxation under this chapter which is owned by a company that is otherwise taxable under chapter 57-06 which files an election under this chapter is exempt from taxation under chapter 57-06.
4. "Distribution company" means a company engaged in distribution of electricity for retail sale to consumers in this state through distribution lines. The term does not include a municipal electric utility operated under chapter 40-33 and that utility is not subject to taxes under section 57-33.2-03.

5. "Distribution line" means a line to transmit electricity which operates at a voltage of less than forty-one and six-tenths kilovolts.
6. "Retail sale" means transfer of electricity to the end-use consumer for consideration. The term does not include the sale of electricity to a coal conversion facility that became operational before January 1, 2009, and which is subject to taxation under chapter 57-60.
7. "Transmission company" means a company engaged in transmission of electricity through transmission lines.
8. "Transmission line" means a line to transmit electrical energy which operates at a voltage of forty-one and six-tenths kilovolts or more but does not include a line owned or operated by an agency or instrumentality of the United States government.
9. "Wind farm" means all property used or constructed for the purpose of producing electricity for commercial purposes utilizing the wind as an energy source and with a nameplate capacity of at least two thousand five hundred kilowatts. The term includes the collector system.
10. "Wind generator" means an individual wind turbine with a generation capacity of one hundred kilowatts or more which is connected to a transmission or distribution system.

**57-33.2-02. Transmission line mile tax - Exemption.** Transmission lines are subject to annual taxes per mile [1.61 kilometers] or fraction of a mile based on their nominal operating voltages on January first of each year, as follows:

1. For transmission lines that operate at a nominal operating voltage of less than fifty kilovolts, a tax of fifty dollars.
2. For transmission lines that operate at a nominal operating voltage of fifty kilovolts or more, but less than one hundred kilovolts, a tax of one hundred dollars.
3. For transmission lines that operate at a nominal operating voltage of one hundred kilovolts or more, but less than two hundred kilovolts, a tax of two hundred dollars.
4. For transmission lines that operate at a nominal operating voltage of two hundred kilovolts or more, but less than three hundred kilovolts, a tax of four hundred dollars.
5. For transmission lines that operate at a nominal operating voltage of three hundred kilovolts or more, a tax of six hundred dollars.
6. A transmission line initially placed in service after January 1, 2009, is exempt from transmission line taxes under this section for the first taxable year after the line is initially placed in service, and transmission line taxes under this section must be reduced by:
  - a. Seventy-five percent for the second taxable year of operation of the transmission line.

- b. Fifty percent for the third taxable year of operation of the transmission line.
- c. Twenty-five percent for the fourth taxable year of operation of the transmission line.

After the fourth taxable year of operation, such transmission lines are subject to the standard transmission line taxes under this section.

**57-33.2-03. Distribution taxes.** A distribution company is subject to a tax at the rate of one dollar per megawatt-hour for retail sale of electricity delivered to a consumer in this state during the calendar year. Distribution taxes under this section do not apply to the sale of electricity to any coal conversion facility that became operational before January 1, 2009, and which is subject to taxation under chapter 57-60.

**57-33.2-04. Wind generation taxation - Taxation of generation from sources other than coal - Taxation of coal generation not subject to coal conversion taxes.** Wind generators, including wind farms and associated collector systems, generators of electricity from sources other than coal owned by a company subject to taxation under this chapter, and generators of electricity from coal which are not subject to coal conversion taxes under chapter 57-60 are subject to taxes under this section.

1. Wind generators, wind farms, and associated collector systems are subject to taxes consisting of the following two components:
  - a. A tax of two dollars and fifty cents per kilowatt times the rated capacity of the wind generator.
  - b. A tax of one-half of one mill per kilowatt-hour of electricity generated by the wind generator during the taxable period.
2. Grid-connected generators that are part of a project with generation capacity of one hundred kilowatts or more not produced from coal or wind, or produced from coal and not subject to coal conversion taxes under chapter 57-60, are subject to taxes consisting of the following two components:
  - a. Fifty cents per kilowatt times the rated capacity of the generation unit.
  - b. One mill per kilowatt-hour of electricity generated by the production unit during the taxable period.

**57-33.2-05. Taxes in lieu of property taxes.** Taxes imposed by the state board of equalization under this chapter are taxes upon the privilege of doing business in this state and are in lieu of all real or personal property taxes levied by the state or any of its political subdivisions upon real or personal property to the extent the property is owned and used by a company in the operation and conduct of the business of generation or delivery of electricity through distribution or transmission lines. Taxes under this chapter are not in lieu of property taxes on the following:

1. Property taxes on land on which generation, transmission, or distribution buildings, structures, or improvements are located, including buildings,

structures, or improvements used for administrative purposes relating to generation, transmission, or distribution of electricity.

2. City franchise fees on public utilities.

This chapter does not abridge the power of a governing board of a city to franchise the construction and operation of a public utility.

**57-33.2-06. Transmission and distribution line location reports to county auditors.** By May first of each year, each transmission or distribution company shall file, with the county auditor of each county in which any of its transmission or distribution line is located, a report showing the length and nominal operating voltage of its transmission and distribution line within the county and within each taxing district within the county. Reports under this section must be based upon nominal operating voltage, ownership, and location of transmission and distribution lines as of January first of each year. Reports under this section must be prepared to distinguish transmission lines from distribution lines. By April first of each year, the county auditor shall provide each transmission or distribution company having a transmission or distribution line in the county with an accurate map of the county showing the boundaries of each taxing district in the county.

**57-33.2-07. Filing of reports with commissioner.** By May first of each year, each wind farm, wind generator, and generator of electricity from sources other than coal subject to the coal conversion tax and each transmission company, distribution company, and each company that is both a transmission company and a distribution company shall file with the commissioner on a form prescribed by the commissioner any and all information required by the commissioner. The form must include a notice of a company's right to appeal its assessment to the state board of equalization before or at the August meeting of the state board of equalization. Required information includes:

1. a. The company name.
  - b. Whether the company is an individual, partnership, association, cooperative, corporation, limited liability company, or other legal entity and the state or country and date of original organization and any reorganization, consolidation, or merger with references to specific laws authorizing such actions.
  - c. The location of its principal office.
  - d. The place where the company's books, papers, and accounts are kept.
  - e. The name and mailing address of the president, secretary, treasurer, auditor, general manager, and all other general officers.
  - f. The name and mailing address of the chief officer or managing agent and any general officers of the company who reside in this state.
2. A copy of each report filed with any county auditor under section 57-33.2-06.
  3. A report on the megawatt-hours of electricity produced by wind generators and generators of electricity from sources other than coal in

each county in the state and a map showing the location of each generator and its rated capacity, and all components of the collector system, if any.

4. A report on the megawatt-hours of electricity delivered for retail sale to consumers in each taxing district in each county during the most recently completed calendar year.

**57-33.2-08. Delinquent taxes - Penalty.** Taxes under this chapter are due January first for the preceding taxable year and are delinquent if not received by the commissioner by March first following the due date. If any amount of tax imposed by this chapter is not paid on or before March first, or if upon an additional audit an additional tax is found to be due, there must be added to the tax due a penalty at the rate of one percent of the tax due for each month or fraction of a month during the first year during which the tax remains unpaid, computed from March first. From and after January first of the year following the year in which the taxes become due and payable, simple interest at the rate of twelve percent per annum upon the principal of the unpaid taxes must be charged until the taxes and penalties are paid, with the interest charges to be prorated to the nearest full month for a fractional year of delinquency.

**57-33.2-09. Taxes paid on worthless accounts.** Distribution taxes paid from retail sales to accounts found to be worthless and charged off in accordance with generally accepted accounting principles may be credited against subsequent payment of taxes under section 57-33.2-03. If accounts that have been claimed as a credit under this section are later collected, a tax under section 57-33.2-03 must be paid on the amount collected.

**57-33.2-10. Powers of commissioner.** The commissioner may require any company subject to taxes imposed by this chapter to furnish any information the commissioner determines necessary to compute correctly the amount of the tax under this chapter. The commissioner may examine the books, records, and files of a company. The commissioner may conduct hearings and compel the attendance of witnesses and the production of books, records, and papers of any company or person and may make any investigation deemed necessary to obtain a full and complete disclosure of facts necessary to administer the tax under this chapter.

**57-33.2-11. Commissioner to audit reports and state board of equalization to assess tax.** The commissioner may audit reports of distribution companies and transmission companies not later than three years after the due date of the report, or three years after the report was filed, whichever period expires later. The state board of equalization shall assess the tax and, if any additional tax is found due, the commissioner shall notify the taxpayer in detail as to the reason for the increase.

**57-33.2-12. Deficiency, protest, and appeal.**

1. When the amount of taxes due is understated on a return because of a mathematical or clerical error, the commissioner shall notify the company of the error and the amount of additional taxes due. This notice is not a notice of deficiency and the company has no right to protest.
2. If upon an audit the commissioner finds additional taxes due, the commissioner shall notify the company and the state board of equalization of the deficiency in the tax amount. A notice of deficiency

must be sent to the company by first-class mail and must state the amount of additional taxes due and set forth the reasons for the increase.

3. A company has thirty days from the date of mailing of the notice of deficiency to file a written protest with the state board of equalization objecting to the assessment of additional taxes due. The protest must set forth the basis for the protest and any other information that may be required by the state board of equalization. If a company fails to file a written protest within the time provided, the amount of additional taxes stated in the notice of deficiency becomes finally and irrevocably fixed. If a company protests only a portion of the commissioner's finding, the portion that is not protested becomes finally and irrevocably fixed.
4. If a protest is filed, the state board of equalization shall reconsider the assessment of additional taxes due.
5. Within six months after the protest is filed, the state board of equalization shall mail to the company a notice of reconsideration and assessment which must respond to the company's protest and assess the amount of any additional taxes due. The amount set forth in that notice becomes finally and irrevocably fixed unless the company brings an action against the state in district court within six months of the mailing of the notice of reconsideration and assessment.

#### **57-33.2-13. Claims for credit or refund.**

1. A company may file a claim for credit or refund of an overpayment of any tax imposed by this chapter within six months after the due date of the return or within six months after the return was filed, whichever period expires later.
2. A claim for credit or refund must be made by filing with the commissioner an amended return, or other report as prescribed by the commissioner, accompanied by a statement outlining the specific grounds upon which the claim for credit or refund is based.
3. The commissioner shall notify the company if the state board of equalization disallows all or part of a claim for credit or refund. The decision of the state board of equalization denying a claim for credit or refund is final and irrevocable unless the company brings an action against the state in district court within six months of the mailing of the notice denying the claim for credit or refund.

**57-33.2-14. Preservation of records.** Every company required to make a return and pay any taxes under this chapter shall preserve records of retail sales as the commissioner may require. Every company shall preserve for a period of three years and three months all invoices and other records of electricity delivered to a consumer in this state. All of these books, invoices, and other records must be open to examination at any time by the commissioner or any duly authorized agent of the commissioner.

**57-33.2-15. Lien for tax.** The tax under this chapter constitutes a first and paramount lien in favor of the state of North Dakota upon all property and rights to property, whether real or personal, belonging to the taxpayer. The lien is subject to

collection, indexing, and other action in the manner provided in section 57-39.2-13 for sales tax liens.

**57-33.2-16. Corporate officer and limited liability company governor or manager liability.** If a corporation or limited liability company taxable under this chapter fails for any reason to file the required returns or pay the tax due, any of its officers, governors, or managers having control or supervision of, or charged with the responsibility for making, the returns and payments, are personally liable for the failure. The dissolution of a corporation or limited liability company does not discharge an officer's, a governor's, or a manager's liability for a prior failure of the corporation or limited liability company to make a return or remit the tax due. The sum due for such a liability may be assessed and collected under this chapter for the assessment and collection of other liabilities.

**57-33.2-17. Bond.** The commissioner may require a sufficient bond from any company charged with making and filing reports and payment of taxes under this chapter. Any required bond must run to the state of North Dakota and be conditioned upon making and filing of reports as required by law or rule and for prompt payment of all taxes justly due to the state under this chapter.

**57-33.2-18. Deposit of revenue - Report to treasurer.** The commissioner shall transfer revenue collected under this chapter to the state treasurer for deposit in the electric generation, transmission, and distribution tax fund. With each transfer under this section, the commissioner shall provide a report showing the information necessary for the state treasurer to allocate the revenue under section 57-33.2-19.

**57-33.2-19. Allocation - Continuing appropriation.** The electric generation, transmission, and distribution tax fund is appropriated as a continuing appropriation to the state treasurer for allocation and distribution to counties by April first of each year as provided in this section. The commissioner shall make the necessary allocations to the counties. The county auditors shall make the necessary allocations to the taxing districts.

- 1. Revenue from the tax on transmission lines under section 57-33.2-02 must be allocated among counties based on the mileage of transmission lines and the rates of tax on those lines within each county. Revenue received by a county for each size of transmission line under this subsection must be allocated one-third to the county and two-thirds among the county and other taxing districts in the county based on the mileage of that transmission line and the rates of tax that apply where that line is located within each taxing district. Revenue from that portion of a transmission line located in more than one taxing district must be allocated among those taxing districts in proportion to their respective most recent property tax mill rates that apply where the transmission line is located.**
- 2. Revenue from the distribution company tax under section 57-33.2-03 must be allocated fifty percent to the county in which the retail sale to which the tax applied was made and fifty percent among counties based on the mileage of the distribution company's distribution lines and the rate of tax on those lines within each county. Revenue received by the county under this subsection based on the location of retail sales must be allocated among taxing districts in the county based on the location of the retail sale and the most recent respective property tax levies in dollars within the taxing districts in which the retail sales occurred. Revenue received by a county under this subsection based on mileage**

of distribution lines must be allocated among the county and other taxing districts in the county based on the mileage of that distribution line and the rates of tax that apply to the land on which that line is located within each taxing district. Revenue from that portion of a distribution line located in more than one taxing district must be allocated among those taxing districts in proportion to their respective most recent property tax mill rates that apply to the land on which the distribution line is located.

3. Revenue from the generation taxes under section 57-33.2-04 must be allocated to the county in which the generator is located. Revenue received by the county under this subsection must be allocated among taxing districts in which the generator is located in proportion to their respective most recent property tax mill rates that apply to the land on which the wind farm and associated collector system, wind generator, or other generation unit is located.
4. For purposes of this section, "taxing district" means the state, county, and that portion of any political subdivision with authority to levy property taxes which is located within the county.

**57-33.2-20. Penalty.** If any company refuses or neglects to make the reports required by this chapter, or refuses or neglects to furnish any information requested, the commissioner shall use the best facts and estimates available to determine the tax due. The tax must be imposed upon the basis of that information. If any company fails to make the report required under this chapter on or before the first day of May of any year, the state board of equalization shall add a penalty of ten percent of the tax due for failure to make the required report which must be collected as a part of the tax, but the commissioner, upon application, may grant extensions of time within which the returns must be filed. For good cause shown, the commissioner may waive all or any part of the penalty that attached under this section.

**SECTION 7. 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.~~

**SECTION 8. REPEAL.** Chapters 57-33 and 57-33.1 of the North Dakota Century Code are repealed.

**SECTION 9. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2009.

Approved April 9, 2009  
Filed April 13, 2009

**CHAPTER 540****SENATE BILL NO. 2093**  
(Finance and Taxation Committee)  
(At the request of the State Treasurer)

AN ACT to amend and reenact section 57-34-05 of the North Dakota Century Code, relating to the transfer to counties of telecommunications carriers tax fund revenues.

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

**SECTION 1. AMENDMENT.** Section 57-34-05 of the North Dakota Century Code is amended and reenacted as follows:

**57-34-05. Deposit of tax revenues - Allocation to counties - Telecommunications carriers tax fund - Continuing appropriation.** Gross receipts tax revenues of up to eight million four hundred thousand dollars under this chapter must be deposited in a special fund in the state treasury, the telecommunications carriers tax fund. Gross receipts tax revenues under this chapter exceeding eight million four hundred thousand dollars must be deposited in the state general fund. The tax commissioner shall allocate moneys in the telecommunications carriers tax fund among counties in the same proportion that taxes paid by telecommunications carriers in locally assessed property taxes and taxes assessed under chapter 57-06 and this chapter in 1997 and received by taxing districts in the county bears to all taxes paid by telecommunications carriers in locally assessed property taxes and taxes assessed under chapter 57-06 and this chapter in 1997 and received by taxing districts in the state. The balance in the telecommunications carriers tax fund, not exceeding eight million four hundred thousand dollars, is appropriated as a standing and continuing appropriation to the tax commissioner for annual allocation to counties under this section. If gross receipts tax revenues available for allocation on the first day of March of any year are less than eight million four hundred thousand dollars, there is appropriated as a standing and continuing appropriation from the state general fund the amount that, when added to gross receipts tax revenues available for allocation from the telecommunications carriers tax fund results in allocation of eight million four hundred thousand dollars to counties per calendar year. On or before the first day of March of each year, the tax commissioner shall certify for payment to the state treasurer an amount determined to be due each county. The state treasurer shall remit the certified amount to the county treasurers according to the allocation made by the tax commissioner under this section not later than ~~the tenth working day in~~ March thirty-first of each year.

Approved March 19, 2009  
Filed March 19, 2009

## CHAPTER 541

### HOUSE BILL NO. 1086

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

AN ACT to amend and reenact subdivision g of subsection 2 of section 57-35.3-02, sections 57-38-30.5 and 57-38-32, subdivision c of subsection 1 of section 57-38-35.2, and section 57-38.1-17.1 of the North Dakota Century Code, relating to correction of statutory references for financial institution tax purposes, references to base period research expenses and the time period for claiming carryback for the research and experimental expenditure income tax credit, the corporate income tax return filing requirement, calculation of interest on refunds relating to the carryback of a tax credit, and the allocation of a gain or loss on the sale of a partnership interest; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subdivision g of subsection 2 of section 57-35.3-02 of the North Dakota Century Code is amended and reenacted as follows:

- g. An amount equal to the deduction for charitable contributions that would be allowed for federal income tax purposes under section 170 of the Internal Revenue Code if the percentage limitation of section 170(b)(2) of the Internal Revenue Code was applied in all relevant taxable periods to taxable income, rather than federal taxable income, but computed without regard to this subdivision ~~and that portion of subdivision a that refers to subdivision g of subsection 4 of section 57-38-01.3.~~ However, no deduction is allowable for a contribution if and to the extent that a credit is allowed for the contribution under section 57-35.3-05;

<sup>233</sup> **SECTION 2. AMENDMENT.** Section 57-38-30.5 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-30.5. Income tax credit for research and experimental expenditures.** A taxpayer is allowed a credit against the tax imposed under section 57-38-29, 57-38-30, or 57-38-30.3 for conducting qualified research in this state.

1. The amount of the credit for taxpayers that earned or claimed a credit under this section in taxable years beginning before January 1, 2007, is calculated as follows:
  - a. For the first taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable

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<sup>233</sup> Section 57-38-30.5 was also amended by section 27 of House Bill No. 1324, chapter 545.

- year in excess of the base ~~period research expenses amount~~ and equal to seven and one-half percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base ~~period research expenses amount~~.
- b. For the second taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base ~~period research expenses amount~~ and equal to eleven percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base ~~period research expenses amount~~.
  - c. For the third taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base ~~period research expenses amount~~ and equal to fourteen and one-half percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base ~~period research expenses amount~~.
  - d. For the fourth through the tenth taxable years beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base ~~period research expenses amount~~ and equal to eighteen percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base ~~period research expenses amount~~.
  - e. For the eleventh taxable year beginning after December 31, 2006, and for each subsequent taxable year in which the taxpayer conducts qualified research in this state, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base ~~period research expenses amount~~ and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base ~~period research expenses amount~~.
  - f. The maximum annual credit a taxpayer may obtain under this ~~section subsection~~ is two million dollars. Any credit amount earned in the taxable year in excess of two million dollars may not be carried back or forward as provided in subsection 7.
2. For taxpayers that have not earned or claimed a credit under this section in taxable years beginning before January 1, 2007, and which begin conducting qualified research in North Dakota in any of the first four taxable years beginning after December 31, 2006, the amount of the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base ~~period research expenses amount~~ and equal to twenty percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base ~~period research expenses amount~~.

- a. This rate applies through the tenth taxable year beginning after December 31, 2006.
  - b. For the eleventh taxable year beginning after December 31, 2006, and for each subsequent taxable year in which the taxpayer conducts qualified research in this state, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base ~~period research expenses amount~~ and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base ~~period research expenses amount~~.
3. For taxpayers that have not earned or claimed a credit under this section in taxable years beginning before January 1, 2007, and which begin conducting qualified research in North Dakota in any taxable year following the fourth taxable year beginning after December 31, 2006, the amount of the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base ~~period research expenses amount~~ and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base ~~period research expenses amount~~.
4. For purposes of this section:
- a. "~~Base period research expenses amount~~" means base ~~period research expenses amount~~ as defined in section 41(c) of the Internal Revenue Code [26 U.S.C. 41(c)], except it does not include research conducted outside the state of North Dakota.
  - b. "Director" means the director of the department of commerce division of economic development and finance.
  - c. "Primary sector business" means a qualified business that through the employment of knowledge or labor adds value to a product, process, or service.
  - d. "Qualified research" means qualified research as defined in section 41(d) of the Internal Revenue Code [26 U.S.C. 41(d)], except it does not include research conducted outside the state of North Dakota.
  - e. "Qualified research and development company" means a taxpayer that is a primary sector business with annual gross revenues of less than seven hundred fifty thousand dollars and which has not conducted new research and development in North Dakota.
  - f. "Qualified research expenses" means qualified research expenses as defined in section 41(b) of the Internal Revenue Code [26 U.S.C. 41(b)], except it does not include expenses incurred for basic research conducted outside the state of North Dakota.
5. The credit allowed under this section for the taxable year may not exceed the liability for tax under this chapter.

6. In the case of a taxpayer that is a partner in a partnership or a member in a limited liability company, the credit allowed for the taxable year may not exceed an amount separately computed with respect to the taxpayer's interest in the trade, business, or entity equal to the amount of tax attributable to that portion of the taxpayer's taxable income which is allocable or apportionable to the taxpayer's interest in the trade, business, or entity.
7. Except as provided in subsection 1, if the amount of the credit determined under this section for any taxable year exceeds the limitation under subsection 5, the excess may be used as a research credit carryback to each of the three preceding taxable years and a research credit carryover to each of the fifteen succeeding taxable years. The entire amount of the excess unused credit for the taxable year must be carried first to the earliest of the taxable years to which the credit may be carried and then to each successive year to which the credit may be carried and the amount of the unused credit which may be added under this subsection may not exceed the taxpayer's liability for tax less the research credit for the taxable year. A claim to carry back the credit under this section must be filed within three years of the due date or extended due date of the return for the taxable year in which the credit was earned.
8. A taxpayer that is certified as a qualified research and development company by the director may elect to sell, transfer, or assign all or part of the unused tax credit earned under this section. The director shall certify whether a taxpayer that has requested to become a qualified research and development company meets the requirements of subsection 4. The director shall establish the necessary forms and procedures for certifying qualifying research and development companies. The director shall issue a certification letter to the taxpayer and the tax commissioner. A tax credit can be sold, transferred, or assigned subject to the following:
  - a. A taxpayer's total credit assignment under this section may not exceed one hundred thousand dollars over any combination of taxable years.
  - b. If the taxpayer elects to assign or transfer an excess credit under this subsection, the tax credit transferor and the tax credit purchaser jointly shall file with the tax commissioner a copy of the purchase agreement and a statement containing the names, addresses, and taxpayer identification numbers of the parties to the transfer, the amount of the credit being transferred, the gross proceeds received by the transferor, and the taxable year or years for which the credit may be claimed. 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 waiver must be filed within thirty days after the date the purchase agreement is fully executed.
  - c. The purchaser of the tax credit shall claim the credit beginning with the taxable year in which the credit purchase agreement was fully executed by the parties. A purchaser of a tax credit under this

section has only such rights to claim and use the credit under the terms that would have applied to the tax credit transferor, except the credit purchaser may not carry back the credit as otherwise provided in this section. 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.

- d. The original purchaser of the tax credit may not sell, assign, or otherwise transfer the credit purchased under this section.
  - e. 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, and the tax commissioner may audit these returns and assess or issue refunds, even though other time periods prescribed in these sections may have expired for the purchaser.
  - f. Gross proceeds received by the tax credit transferor must be assigned to North Dakota. The amount assigned under this subsection cannot be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.
  - g. The tax commissioner has four years after the date of the credit assignment to 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 and timeliness of the transferred tax credit.
9. If a taxpayer acquires or disposes of the major portion of a trade or business or the major portion of a separate unit of a trade or business in a transaction with another taxpayer, the taxpayer's qualified research expenses and base period must be adjusted in the manner provided by section 41(f)(3) of the Internal Revenue Code [26 U.S.C. 41(f)(3)].
  10. 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 the corporations included in the North Dakota consolidated return. This section does not apply to tax credits received or purchased under subsection 8.
  11. An individual, estate, or trust that purchases a credit under this section is entitled to claim the credit against state income tax liability under section 57-38-29 or 57-38-30.3.

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

**SECTION 3. AMENDMENT.** Section 57-38-32 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-32. Duty of corporations to make returns.** Each corporation that receives income from the sources designated in section ~~57-38-30~~ **57-38-14**, whether or not required to file an income tax return pursuant to the provisions of the United States Internal Revenue Code of 1954, as amended, shall, unless exempted by the provisions of section 57-38-09, make a return in such form as the tax commissioner may prescribe, stating specifically such facts as the tax commissioner may require for the purpose of making any computation required by this chapter. Any corporation which is required to file a state income tax return but not required to compute a federal taxable income figure for federal income tax purposes is required to compute such a federal taxable income figure using a pro forma return pursuant to the provisions of the Internal Revenue Code of 1954, as amended, in order to determine a starting point for the computation of state income tax. Any foreign loan and investment company engaged in business in this state, and whose income in this state consists solely of income exempt from taxation under this chapter, need not file an annual report unless specially requested to do so by the tax commissioner, but may file in lieu thereof an affidavit claiming exemption under this chapter. The return must be signed by the president, vice president, treasurer, assistant treasurer, chief accounting officer, or any other officer duly authorized so to act and it and any other declaration, statement, or document required to be made must contain or be verified by a written declaration 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.

**SECTION 4. AMENDMENT.** Subdivision c of subsection 1 of section 57-38-35.2 of the North Dakota Century Code is amended and reenacted as follows:

- c. Interest on refunds arising from net operating loss carrybacks ~~or~~, capital loss carrybacks, or tax credit carrybacks accrues for payment from the due date of the return for the year, determined without regard to extensions of the time for filing, giving rise to the loss carryback, to the date of payment of the refund, except that no interest accrues if the refund payment is made within forty-five days of the date the amended return or claim is filed to claim the refund attributable to the ~~net operating loss or capital loss~~ carryback.

**SECTION 5. AMENDMENT.** Section 57-38.1-17.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.1-17.1. Gain or loss on the sale of a partnership.** Gain or loss on the sale of a partnership interest is allocable to this state in the ratio of the original

cost of partnership tangible property in the state to the original cost of partnership tangible property everywhere, determined at the time of the sale. In the event that more than fifty percent of the value of the assets of the partnership consist of intangibles, gain or loss from the sale of the partnership interest is allocated to this state in accordance with the ratio of total North Dakota income to total income of the partnership for its first full tax period immediately preceding the tax period of the partnership during which the partnership interest was sold. This section applies to the extent, that prior to the sale of the partnership interest, the partnership's income or loss constituted nonbusiness income.

**SECTION 6. EFFECTIVE DATE.** Section 2 of this Act is effective for tax credits earned after December 31, 2008. Section 4 is effective for amended returns filed after June 30, 2009.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 542****SENATE BILL NO. 2405**

(Senator Anderson)  
(Representatives Wall, Williams)

AN ACT to amend and reenact subdivision i of subsection 1 of section 57-38-01.3 of the North Dakota Century Code, relating to income tax treatment of the domestic reduction activities deduction for marketing cooperatives; and to provide an effective date.

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

<sup>234</sup> **SECTION 1. AMENDMENT.** Subdivision i of subsection 1 of section 57-38-01.3 of the North Dakota Century Code is amended and reenacted as follows:

- i. ~~Increased~~ Except for a cooperative described in this subsection, increased by the amount of the deduction allowable under section 199 of the Internal Revenue Code [26 U.S.C. 199], but only to the extent of the deduction taken to determine federal taxable income. For a cooperative that has elected to pass the deduction through to its patrons under section 199(d)(3), of the Internal Revenue Code [26 U.S.C. 199(d)(3)], the increase under this subsection does not include the amount passed through to its patrons.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years ending after April 30, 2009.

Approved April 22, 2009  
Filed April 23, 2009

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<sup>234</sup> Section 57-38-01.3 was also amended by section 1 of House Bill No. 1392, chapter 543, and section 1 of Senate Bill No. 2089, chapter 544.

**CHAPTER 543****HOUSE BILL NO. 1392**

(Representative Belter)  
(Senator Cook)

AN ACT to create and enact a new subdivision to subsection 1 of section 57-38-01.3 of the North Dakota Century Code, relating to an income tax deduction for actual distributions of an interest charge domestic international sales corporation without economic substance owned by individuals or passthrough entities; and to provide an effective date.

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

<sup>235</sup> **SECTION 1.** A new subdivision to subsection 1 of section 57-38-01.3 of the North Dakota Century Code is created and enacted as follows:

Reduced, for an interest charge domestic international sales corporation without economic substance owned by individuals or passthrough entities, by the amount of actual or deemed distributions of the interest charge domestic international sales corporation to its owners. For purposes of this subsection, "without economic substance" means, in the case of an interest charge domestic international sales corporation subject to Internal Revenue Code section 992, that the interest charge domestic international sales corporation has elected to use intercompany pricing rules of Internal Revenue Code section 994, rather than the Internal Revenue Code section 482 method. For purposes of this subsection, a passthrough entity means an entity that for the applicable tax year is treated as an S corporation under this chapter or a cooperative, general partnership, limited partnership, limited liability partnership, trust, or limited liability company that for the applicable tax year is not taxed as a corporation under this chapter.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008.

Approved April 21, 2009  
Filed April 22, 2009

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<sup>235</sup> Section 57-38-01.3 was also amended by section 1 of Senate Bill No. 2089, chapter 544, and section 1 of Senate Bill No. 2405, chapter 542.

**CHAPTER 544****SENATE BILL NO. 2089**  
(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

AN ACT to create and enact a new subdivision to subsection 1 of section 57-38-01.3 of the North Dakota Century Code, relating to the add-back of dividends paid by captive real estate investment trusts for income tax purposes; to repeal sections 57-02-24 and 57-02-25 of the North Dakota Century Code, relating to elimination of obsolete provisions relating to listing and assessment of severed coal and mineral interests; and to provide an effective date.

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

<sup>236</sup> **SECTION 1.** A new subdivision to subsection 1 of section 57-38-01.3 of the North Dakota Century Code is created and enacted as follows:

Increased by the amount of the dividends paid deduction otherwise allowed under section 857 of the Internal Revenue Code of 1986, as amended, if the real estate investment trust is a captive real estate investment trust.

(1) For purposes of this subdivision:

(a) "Captive real estate trust" means a real estate investment trust the shares or beneficial interests of which are not regularly traded on an established securities market, and more than fifty percent of the voting power or value of the beneficial interests or shares of the real estate investment trust are owned or controlled, directly, indirectly, or constructively, by a single entity that is:

[1] Treated as an association taxable as a corporation under the Internal Revenue Code of 1986, as amended; and

[2] Not exempt from federal income taxation under section 501(a) of the Internal Revenue Code of 1986, as amended.

(b) "Listed Australian property trust" means an Australian unit trust registered as a managed investment scheme under the Australian Corporations Act in which the principal class of units is listed on a recognized stock exchange in Australia, and is regularly traded on an established securities market, or an entity organized

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<sup>236</sup> Section 57-38-01.3 was also amended by section 1 of House Bill No. 1392, chapter 543, and section 1 of Senate Bill No. 2405, chapter 542.

as a trust, provided that a listed Australian property trust owns or controls, directly or indirectly, seventy-five percent or more of the voting power or value of the beneficial interests or shares of such trust.

(c) "Qualified foreign entity" means a corporation, trust, association, or partnership organized outside the laws of the United States, and which satisfies all of the following criteria:

[1] At least seventy-five percent of the entity's total asset value at the close of its taxable year is represented by real estate assets as defined in section 856(c)(5)(B) of the Internal Revenue Code of 1986, as amended, including shares or certificates of beneficial interest in any real estate investment trust, cash and cash equivalents, and United States government securities;

[2] The entity is not subject to tax on amounts distributed to its beneficial owners or is exempt from entity level taxation;

[3] The entity distributes at least eighty-five percent of its taxable income, as computed in the jurisdiction in which it is organized, to the holders of its shares or certificates of beneficial interest on an annual basis;

[4] Not more than ten percent of the voting power or value in the entity is held directly or indirectly or constructively by a single entity or individual, or the shares or beneficial interests of such entity are regularly traded on an established securities market; and

[5] The entity is organized in a country that has a tax treaty with the United States.

(d) "Real estate investment trust" has the meaning ascribed in section 856 of the Internal Revenue Code of 1986, as amended.

(2) For the purposes of applying subparagraph a of paragraph 1, the following entities are not considered an association taxable as a corporation:

(a) A real estate investment trust other than a captive real estate investment trust;

(b) A qualified real estate investment trust subsidiary under subsection i of section 856 of the Internal Revenue Code of 1986, as amended, other than a qualified real estate investment trust subsidiary of a captive real estate investment trust;

- (c) A listed Australian property trust; and
  - (d) A qualified foreign entity.
- (3) A real estate investment trust that is intended to be regularly traded on an established securities market and that satisfies the requirements of sections 856(a)(5), 856(a)(6), and 856(h)(2) of the Internal Revenue Code of 1986, as amended, shall not be deemed a captive real estate investment trust within the meaning of this subdivision.
- (4) A real estate investment trust that does not become regularly traded on an established securities market within one year of the date on which it first became a real estate investment trust shall be deemed not to have been regularly traded on an established securities market, retroactive to the date it first became a real estate investment trust, and shall file an amended return reflecting the retroactive designation for any tax year or part-year occurring during its initial year of status as a real estate investment trust. For purposes of this subdivision, a real estate investment trust becomes a real estate investment trust on the first day that it has both met the requirements of section 856 of the Internal Revenue Code of 1986, as amended, and has elected to be treated as a real estate investment trust under section 856(c)(1) of the Internal Revenue Code of 1986, as amended.
- (5) For purposes of this subdivision, the constructive ownership rules of section 318(a) of the Internal Revenue Code of 1986, as amended, as modified by section 856(d)(5) of the Internal Revenue Code of 1986, as amended, apply in determining the ownership of stock, assets, or net profits of any person.

**SECTION 2. REPEAL.** Sections 57-02-24 and 57-02-25 of the North Dakota Century Code are repealed.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008.

Approved April 22, 2009  
Filed April 23, 2009

**CHAPTER 545****HOUSE BILL NO. 1324**

(Representatives Berg, Belter, Dosch, Weiler)  
(Senators Cook, Oehlke)

AN ACT to amend and reenact subsection 1 of section 6-09.8-01, subsection 4 of section 10-33-124, subsection 5 of section 11-37-08, sections 27-17-06 and 37-28-07, subsections 1 and 3 of section 40-63-04, section 40-63-06, subsection 4 of section 40-63-07, subsections 1 and 2 of section 57-38-01.7, subsections 1 and 4 of section 57-38-01.8, sections 57-38-01.14, 57-38-01.16, and 57-38-01.17, subsection 1 of section 57-38-01.20, subsections 2 and 4 of section 57-38-01.21, sections 57-38-01.22, 57-38-01.23, 57-38-01.24, 57-38-01.25, and 57-38-01.26, subsection 6 of section 57-38-01.27, subsection 1 of section 57-38-01.29, subsection 1 of section 57-38-01.30, section 57-38-04, subsection 2 of section 57-38-08.1, sections 57-38-30.3 and 57-38-30.5, subdivision b of subsection 1 of section 57-38-40, sections 57-38.5-03 and 57-38.6-03, and subsection 3 of section 57-51-15 of the North Dakota Century Code, relating to elimination of the optional long-form individual, estate, and trust income tax return and allocation of oil and gas gross production tax revenues to political subdivisions; to repeal sections 57-38-01.2, 57-38-01.18, 57-38-02, 57-38-06.1, 57-38-29, 57-38-29.2, 57-38-30.4, 57-38-67, 57-38-68, 57-38-69, and 57-38-70 of the North Dakota Century Code, relating to elimination of the optional long-form individual, estate, and trust income tax return; to provide for legislative council studies; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 6-09.8-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Beginning farmer" means ~~a person~~ an individual who qualifies as a beginning farmer under subsection 2 of section 57-38-67 who:
  - a. Is a resident of this state;
  - b. Receives more than half of that person's gross annual income from farming, unless the person initially commences farming during the year of the application under this chapter;
  - c. Intends to use any farmland to be purchased or rented for agricultural purposes;
  - d. Is adequately trained by education in the type of farming operation which the person wishes to begin on the purchased or rented land referred to in subdivision c through satisfactory participation in the adult farm management education program of the state board for career and technical education or an equivalent program approved by the agriculture commissioner; and
  - e. Has, including the net worth of any dependents and spouse, a net worth of less than one hundred thousand dollars, not including the

value of their equity in their principal residence, the value of one personal or family motor vehicle, and the value of their household goods, including furniture, appliances, musical instruments, clothing, and other personal belongings.

**SECTION 2. AMENDMENT.** Subsection 4 of section 10-33-124 of the North Dakota Century Code is amended and reenacted as follows:

4. a. ~~An individual or a~~ A corporation that buys membership in, or pays dues or contributes to, a nonprofit development corporation is entitled to an income tax credit against the tax liability under section 57-38-30 equal to twenty-five percent of the amount paid.
- b. This credit may not be claimed by ~~an individual who elects to file an income tax return under section 57-38-30.3~~ or by a corporation that is recognized as a subchapter S corporation under section 57-38-01.4.
- c. No taxpayer is entitled to more than two thousand dollars in total income tax credits under this section.
- d. The amount of the credit under this section in excess of the taxpayer's income tax liability may be carried forward for up to seven taxable years.

**SECTION 3. AMENDMENT.** Subsection 5 of section 11-37-08 of the North Dakota Century Code is amended and reenacted as follows:

5. Bonds issued by a commerce authority under this section are declared to be issued for an essential public government purpose, and together with interest and income on the bonds, are exempt from all individual and corporate taxes imposed under sections 57-35.3-03, ~~57-38-20,~~ 57-38-30, and 57-38-30.3.

**SECTION 4. AMENDMENT.** Section 27-17-06 of the North Dakota Century Code is amended and reenacted as follows:

**27-17-06. Immediate withdrawal of present active judges from judges retirement fund.**

1. From and after July 1, 1973, each judge of the supreme or district court serving on that date and each former judge of the supreme or district court, not receiving judicial retirement salary, may elect to withdraw the judge's previous contributions made pursuant to this chapter, and thereafter not participate in a judicial retirement program provided for by law. This option ceases to be available and may not be exercised after June 30, 1975. If a judge selects this option, the judge is entitled to receive the combined total of the following sums:
  - ~~4.~~ a. The entire amount of the judge's previous contributions made pursuant to this chapter, to be calculated to the date of election under this section; plus
  - ~~2.~~ b. An amount calculated by applying the vesting schedule set forth in section 54-52-11 to an amount equal to sixty percent of the judge's

individual contributions as calculated in subsection 1, plus earnings thereon as calculated in subsection 3; plus

3. c. An amount calculated by applying the figure .05625 to the periodic annual or partial annual balances in the individual judge's account during the judge's years of service prior to selecting the option provided by this section. The figure applied pursuant to this ~~subsection~~ subdivision must be compounded annually.
2. The total amounts received pursuant to this section may not be considered taxable income for the purposes of chapter 57-38 ~~and may be treated as an additional adjustment reducing the amount of taxable income in addition to those provided in section 57-38-01.2.~~ Selection of the option provided by this section must be made in writing to the director of the office of management and budget.

**SECTION 5. AMENDMENT.** Section 37-28-07 of the North Dakota Century Code is amended and reenacted as follows:

**37-28-07. Payments exempt from taxation and from execution - Assignments void - Debts to state and political subdivisions not deducted.** Payments under this chapter are exempt from all state and local taxes, including taxes determined under section ~~57-38-29~~ or 57-38-30.3, and from levy, garnishment, attachment, and sale on execution. Any pledge, mortgage, sale, assignment, or transfer of any right, claim, or interest in any claim or payment under this chapter is void and payment to the veteran may not be denied because of any sums owed to the state or any political subdivisions, except as provided in section 37-26-05.

<sup>237</sup> **SECTION 6. AMENDMENT.** Subsections 1 and 3 of section 40-63-04 of the North Dakota Century Code are amended and reenacted as follows:

1. An individual taxpayer who purchases or rehabilitates single-family residential property for the individual's primary place of residence as a zone project is exempt from up to ten thousand dollars of personal income tax liability as determined under section ~~57-38-29~~ or 57-38-30.3 for five taxable years beginning with the date of occupancy or completion of rehabilitation.
3. If the cost of a new business purchase or expansion of an existing business, approved as a zone project, exceeds seventy-five thousand dollars, and the business is located in a city with a population of not more than two thousand five hundred, an individual taxpayer may, in lieu of the exemption provided in subsection 2, elect to take an income tax exemption of up to two thousand dollars of personal income tax liability as determined under section ~~57-38-29~~ or 57-38-30.3. The election must be made on the taxpayer's zone project application. The election is irrevocable and binding for the duration of the exemptions provided in subsection 2 or this subsection. If no election is made on the zone project application, the taxpayer is only eligible for the exemption provided in subsection 2.

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<sup>237</sup> Section 40-63-04 was also amended by section 3 of Senate Bill No. 2060, chapter 353.

**SECTION 7. AMENDMENT.** Section 40-63-06 of the North Dakota Century Code is amended and reenacted as follows:

**40-63-06. Historic preservation and renovation tax credit.** A credit against state tax liability as determined under sections 57-35.3-03, ~~57-38-20~~, 57-38-30, and 57-38-30.3 is allowed for investments in the historic preservation or renovation of property within the renaissance zone. The amount of the credit is twenty-five percent of the amount invested, up to a maximum of two hundred fifty thousand dollars. The credit may be claimed in the year in which the preservation or renovation is completed. Any excess credit may be carried forward for a period of up to five taxable years.

<sup>238</sup> **SECTION 8. AMENDMENT.** Subsection 4 of section 40-63-07 of the North Dakota Century Code is amended and reenacted as follows:

4. A credit against state tax liability as determined under section 57-35.3-03, ~~57-38-20~~, 57-38-30, or 57-38-30.3 is allowed for investments in a renaissance fund organization. The amount of the credit is fifty percent of the amount invested in the renaissance fund organization during the taxable year. Any amount of credit which exceeds a taxpayer's tax liability for the taxable year may be carried forward for up to five taxable years after the taxable year in which the investment was made.

**SECTION 9. AMENDMENT.** Subsections 1 and 2 of section 57-38-01.7 of the North Dakota Century Code are amended and reenacted as follows:

1. At the election of the taxpayer, there must be allowed, subject to the applicable limitations provided in this subsection, as a credit against the income tax ~~imposed by this chapter~~ liability under section 57-38-30 for the taxable year, an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the year to nonprofit private institutions of higher education located within the state or to the North Dakota independent college fund.
  - a. ~~In the case of a taxpayer other than a corporation, the amount allowable as a credit under this subsection for any taxable year may not exceed forty percent of the taxpayer's total income tax under this chapter for the year, or two hundred fifty dollars, whichever is less.~~
  - b. ~~In the case of a corporation, the~~ The amount allowable as a credit under this subsection for any taxable year may not exceed twenty percent of the corporation's total income tax under this chapter for the year, or two thousand five hundred dollars, whichever is less.
2. At the election of the taxpayer, there must be allowed, subject to the applicable limitations provided in this subsection, as a credit against the income tax ~~imposed by this chapter~~ liability under section 57-38-30 for the taxable year, an amount equal to fifty percent of the aggregate

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<sup>238</sup> Section 40-63-07 was also amended by section 2 of House Bill No. 1428, chapter 354, and section 98 of House Bill No. 1436, chapter 482.

amount of charitable contributions made by the taxpayer during the year directly to nonprofit private institutions of secondary education, located within the state.

- a. ~~In the case of a taxpayer other than a corporation, the amount allowable as a credit under this subsection for any taxable year may not exceed forty percent of the taxpayer's total income tax under this chapter for the year, or two hundred fifty dollars, whichever is less.~~
- b. ~~In the case of a corporation, the~~ The amount allowable as a credit under this subsection for any taxable year may not exceed twenty percent of the corporation's total income tax under this chapter for the year, or two thousand five hundred dollars, whichever is less.

<sup>239</sup> **SECTION 10. AMENDMENT.** Subsections 1 and 4 of section 57-38-01.8 of the North Dakota Century Code are amended and reenacted as follows:

1. ~~Any~~ A taxpayer filing a North Dakota income tax return pursuant to the provisions of this chapter may claim a credit against the tax liability under section 57-38-30 for the cost of a geothermal, solar, 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, 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.
4. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity that installs a geothermal, solar, 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 corporate partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

**SECTION 11. AMENDMENT.** Section 57-38-01.14 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.14. No gain recognized on property subject to eminent domain sale or transfer.** If any private property, through the exercise of eminent domain, is involuntarily converted into property of either like or unlike kind, no gain, either ordinary or capital, may be recognized for corporate income tax purposes.

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<sup>239</sup> Section 57-38-01.8 was also amended by section 1 of Senate Bill No. 2033, chapter 546.

**SECTION 12. AMENDMENT.** Section 57-38-01.16 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.16. Income tax credit for employment of developmentally disabled or chronically mentally ill persons.** ~~Any A taxpayer filing an income tax return under this chapter, except a return on which liability is determined under section 57-38-30.3,~~ may claim a credit against the tax liability imposed under section 57-38-30 for a portion of the wages paid to a developmentally disabled or chronically mentally ill employee. The credit allowed under this section equals five percent of up to six thousand dollars in wages paid during the first twelve months of employment by the taxpayer for each developmentally disabled or chronically mentally ill employee of the taxpayer. Only wages actually paid during the taxpayer's taxable year may be considered for purposes of this section. An employee of a subcontractor is considered an employee of the contractor to the extent of any wages paid under the contract.

The total of credits allowed under this section may not exceed fifty percent of the taxpayer's liability under this chapter.

**SECTION 13. AMENDMENT.** Section 57-38-01.17 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.17. Credit for investments in development corporations.** ~~An individual, estate, trust, or A corporation is allowed, as a credit against a tax otherwise due under section 57-38-29 or 57-38-30,~~ the credit for buying membership in, or paying dues or contributions to, a certified nonprofit development corporation as provided in section 10-33-124.

**SECTION 14. AMENDMENT.** Subsection 1 of section 57-38-01.20 of the North Dakota Century Code is amended and reenacted as follows:

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.

**SECTION 15. AMENDMENT.** Subsections 2 and 4 of section 57-38-01.21 of the North Dakota Century Code are amended and reenacted as follows:

2. An individual is allowed a tax credit against the tax imposed by section ~~57-38-29 or~~ 57-38-30.3 in an amount equal to 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 a qualified nonprofit organization or qualified endowment. The maximum credit that may be claimed under this subsection for contributions made in a taxable year is 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.
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.

**SECTION 16. AMENDMENT.** Section 57-38-01.22 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.22. Income tax credit for blending of biodiesel fuel.** A fuel supplier licensed pursuant to section 57-43.2-05 who blends biodiesel fuel is entitled to a credit against tax liability determined under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 in the amount of five cents per gallon [3.79 liters] of biodiesel fuel of at least five percent blend, otherwise known as B5. For purposes of this section, "biodiesel" means fuel meeting the specifications adopted by the American society for testing and materials. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for the taxable year and each year's unused credit amount may be carried forward for up to five taxable years.

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

**SECTION 17. AMENDMENT.** Section 57-38-01.23 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.23. Income tax credit for biodiesel sales equipment costs.** A seller of biodiesel fuel is entitled to a credit against tax liability determined under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 in the amount of ten percent per year for five years of the biodiesel fuel seller's direct costs incurred after December 31, 2004, to adapt or add equipment to a facility, licensed under section 57-43.2-05, to enable the facility to sell diesel fuel containing at least two percent biodiesel fuel by volume. For purposes of this section, "biodiesel fuel" means fuel meeting the specifications adopted by the American society for testing and materials. The credit under this section may not exceed a taxpayer's liability as determined under this chapter for the taxable year and each year's unused credit amount may be carried forward for up to five taxable years. A biodiesel fuel seller is limited to fifty thousand dollars in the cumulative amount of credits under this section for all taxable years. A biodiesel fuel seller may not claim a credit under this section for any taxable year before the taxable year in which the facility begins selling biodiesel fuel containing at least two percent biodiesel fuel by volume, but eligible costs incurred before the taxable year sales begin may be claimed for purposes of the credit under this section for taxable years on or after the taxable year sales of biodiesel fuel begin.

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

**SECTION 18. AMENDMENT.** Section 57-38-01.24 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.24. Internship employment tax credit.**

1. A taxpayer that is an employer within this state is entitled to a credit as determined under this section against state income tax liability under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 for qualified compensation paid to an intern employed in this state by the taxpayer. To qualify for the credit under this section, the internship program must meet the following qualifications:
  - a. The intern must be an enrolled student in an institution of higher education or vocational technical education program who is seeking a degree or a certification of completion in a major field of study closely related to the work experience performed for the taxpayer;
  - b. The internship must be taken for academic credit or count toward the completion of a vocational technical education program;
  - c. The intern must be supervised and evaluated by the taxpayer; and
  - d. The internship position must be located in this state.
2. The amount of the credit to which a taxpayer is entitled is ten percent of the stipend or salary paid to a college intern employed by the taxpayer. A taxpayer may not receive more than three thousand dollars in total credits under this section for all taxable years combined.
  - a. The tax credit under this section applies to a stipend or salary for not more than five interns employed at the same time.
  - b. A partnership, subchapter S corporation, or limited liability company that for tax purposes is treated like a partnership that is entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

**SECTION 19. AMENDMENT.** Section 57-38-01.25 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-01.25. Workforce recruitment credit for hard-to-fill employment positions.** A taxpayer that is an employer in this state is entitled to a credit as determined under this section against state income tax liability under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 for costs the taxpayer incurred during the tax year to recruit and hire employees for hard-to-fill employment positions within this state for which the annual salary for the position meets or exceeds the state average wage.

1. The amount of the credit to which a taxpayer is entitled is five percent of the salary paid for the first twelve consecutive months to the employee hired for the hard-to-fill employment position. To qualify for the credit

under this section, the employee must be employed by the taxpayer in the hard-to-fill employment position for twelve consecutive months.

2. For purposes of this section:
  - a. "Extraordinary recruitment methods" means using all of the following:
    - (1) A person with the exclusive business purpose of recruiting employees and for which a fee is charged by that recruiter.
    - (2) An advertisement in a professional trade journal, magazine, or other publication, the main emphasis of which is providing information to a particular trade or profession.
    - (3) A web site, the sole purpose of which is to recruit employees and for which a fee is charged by the web site.
    - (4) Payment of a signing bonus, moving expenses, or nontypical fringe benefits.
  - b. "Hard-to-fill employment position" means a job that requires the employer to use extraordinary recruitment methods and for which the employer's recruitment efforts for the specific position have been unsuccessful for six consecutive calendar months.
  - c. "State average wage" means one hundred twenty-five percent of the state average wage published annually by job service North Dakota and which is in effect at the time the employee is hired.
3. The taxpayer may claim the credit in the first tax year beginning after the employee hired for the hard-to-fill position has completed the employee's first twelve consecutive months of employment in the hard-to-fill position with the taxpayer.
4. The credit under this section may not exceed a taxpayer's liability for the taxable year as determined under this chapter. Any amount of unused credit may be carried forward for up to four taxable years after the taxable year in which the credit could initially be claimed.
5. A partnership, subchapter S corporation, or limited liability company that for tax purposes is treated like a partnership that is entitled to the credit under this section must be considered to be the taxpayer for purposes of this section and the amount of the credit allowed must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the members in proportion to their respective interests in the passthrough entity.

<sup>240</sup> **SECTION 20. AMENDMENT.** Section 57-38-01.26 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>240</sup> Section 57-38-01.26 was also amended by section 1 of Senate Bill No. 2269, chapter 547.

**57-38-01.26. Angel fund investment tax credit.** A taxpayer is entitled to a credit against state income tax liability under section ~~57-38-29~~, 57-38-30, or 57-38-30.3 for an investment made in an angel fund that is incorporated in this state. The angel fund must be in compliance with the securities laws of this state for the investment to qualify for the tax credit under this section. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount invested by the taxpayer in an angel fund during the taxable year. The aggregate annual credit for which a taxpayer may obtain a tax credit is not more than forty-five thousand dollars. To be eligible for the credit, the investment must be at risk in the angel fund for at least three years. Investments placed in escrow do not qualify for the credit. The credit must be claimed in the taxable year in which the investment in the angel fund was received by the angel fund. The credit allowed may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the four succeeding taxable years. A taxpayer claiming a credit under this section may not claim any credit available to the taxpayer as a result of an investment made by the angel fund in a qualified business under chapter 57-38.5 or 57-38.6.

**SECTION 21. AMENDMENT.** Subsection 6 of section 57-38-01.27 of the North Dakota Century Code is amended and reenacted as follows:

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.

<sup>241</sup> **SECTION 22. AMENDMENT.** Subsection 1 of section 57-38-01.29 of the North Dakota Century Code is amended and reenacted as follows:

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 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.

<sup>242</sup> **SECTION 23. AMENDMENT.** Subsection 1 of section 57-38-01.30 of the North Dakota Century Code is amended and reenacted as follows:

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 section ~~57-38-29~~, 57-38-30, 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

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<sup>241</sup> Section 57-38-01.29 was also amended by section 98 of House Bill No. 1436, chapter 482, and section 1 of House Bill No. 1448, chapter 548.

<sup>242</sup> Section 57-38-01.30 was also amended by section 98 of House Bill No. 1436, chapter 482.

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.

**SECTION 24. AMENDMENT.** Section 57-38-04 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-04. Allocation and apportionment of gross income of individuals.** The gross income of individuals must be allocated and apportioned 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.
  - 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.

- b. 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 4 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.
3. Income and gains received from tangible property not employed in the business and from tangible property employed in the business of the taxpayer, if such business consists principally of the holding of such property and collection of income and gains therefrom, must be assigned to this state without regard to the residence of the recipient if such property has a situs within this state.
  4. Income derived from business activity carried on by an individual as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, must be assigned to this state without regard to the residence of the individual if the business activity is conducted wholly within this state. Income derived from gaming activity carried on in this state by an individual must be assigned to this state without regard to the residence of the individual.
  5. Whenever business activity is carried on partly within and partly without this state by a nonresident of this state as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, the entire income therefrom must be allocated to this state and to other states, according to the provisions of chapter 57-38.1, providing for allocation and apportionment of income of corporations doing business within and without this state.

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 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.
  - e. 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.
7. All other items of gross income must be assigned to the taxpayer's domicile.
8. The privileges granted nonresidents apply only when other states grant to the residents of North Dakota the same privilege.

This section applies to every income year beginning after December 31, 1956.

**SECTION 25. AMENDMENT.** Subsection 2 of section 57-38-08.1 of the North Dakota Century Code is amended and reenacted as follows:

2. Resident partners, limited to individuals, estates, and trusts, must report their entire distributive share to this state as provided in subdivision b of subsection 6 of section 57-38-04, and may claim a credit for taxes paid to another state on that portion of their distributive share attributable to and taxed by another state, as provided in subdivision e j of subsection 6 ~~1~~ of section ~~57-38-04~~ 57-38-30.3.

<sup>243</sup> **SECTION 26. 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 individual, estate, and trust income 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:	The tax is equal to:
Not over \$27,050	2.10%
Over \$27,050 but not over \$65,550	\$568.05 plus 3.92% of amount over \$27,050
Over \$65,550 but not over \$136,750	\$2,077.25 plus 4.34% of amount over \$65,550
Over \$136,750 but not over \$297,350	\$5,167.33 plus 5.04% of amount over \$136,750
Over \$297,350	\$13,261.57 plus 5.54% of amount over \$297,350

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<sup>243</sup> Section 57-38-30.3 was also amended by section 2 of House Bill No. 1209, chapter 550, section 1 of House Bill No. 1256, chapter 551, section 1 of House Bill No. 1277, chapter 552, section 5 of Senate Bill No. 2199, chapter 535, and section 2 of Senate Bill No. 2388, chapter 549.

## b. Married filing jointly and surviving spouse.

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.
  - h. The tax commissioner shall prescribe an optional simplified method of computing tax under this section that may be used by an individual taxpayer who is not entitled to claim an adjustment under subsection 2 or credit against income tax liability under subsection 7.
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.



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.
- 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.
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 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.
    - g. Internship employment tax credit under section 57-38-01.24.
    - h. Workforce recruitment credit under section 57-38-01.25.
    - i. Angel fund investment tax credit under section 57-38-01.26.
    - j. Microbusiness tax credit under section 57-38-01.27.
    - k. Marriage penalty credit under section 57-38-01.28.
    - l. Homestead income tax credit under section 57-38-01.29.

- m. Commercial property income tax credit under section 57-38-01.30.
  - n. Research and experimental expenditures under section 57-38-30.5.
8. A taxpayer filing a return under this section is entitled to the exemption provided under section 40-63-04.
9. 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.
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.

<sup>244</sup> **SECTION 27. AMENDMENT.** Section 57-38-30.5 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-30.5. Income tax credit for research and experimental expenditures.** A taxpayer is allowed a credit against the tax imposed under section ~~57-38-29~~, 57-38-30; or 57-38-30.3 for conducting qualified research in this state.

1. The amount of the credit for taxpayers that earned or claimed a credit under this section in taxable years beginning before January 1, 2007, is calculated as follows:
  - a. For the first taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to seven and one-half percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  - b. For the second taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eleven percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  - c. For the third taxable year beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to fourteen and one-half percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  - d. For the fourth through the tenth taxable years beginning after December 31, 2006, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eighteen percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  - e. For the eleventh taxable year beginning after December 31, 2006, and for each subsequent taxable year in which the taxpayer conducts qualified research in this state, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eight percent of all qualified research expenses for the taxable year more than one

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<sup>244</sup> Section 57-38-30.5 was also amended by section 2 of House Bill No. 1086, chapter 541.

- hundred thousand dollars in excess of the base period research expenses.
- f. The maximum annual credit a taxpayer may obtain under this section is two million dollars. Any credit amount earned in the taxable year in excess of two million dollars may not be carried back or forward as provided in subsection 7.
2. For taxpayers that have not earned or claimed a credit under this section in taxable years beginning before January 1, 2007, and which begin conducting qualified research in North Dakota in any of the first four taxable years beginning after December 31, 2006, the amount of the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to twenty percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
    - a. This rate applies through the tenth taxable year beginning after December 31, 2006.
    - b. For the eleventh taxable year beginning after December 31, 2006, and for each subsequent taxable year in which the taxpayer conducts qualified research in this state, the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  3. For taxpayers that have not earned or claimed a credit under this section in taxable years beginning before January 1, 2007, and which begin conducting qualified research in North Dakota in any taxable year following the fourth taxable year beginning after December 31, 2006, the amount of the credit is equal to twenty-five percent of the first one hundred thousand dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to eight percent of all qualified research expenses for the taxable year more than one hundred thousand dollars in excess of the base period research expenses.
  4. For purposes of this section:
    - a. "Base period research expenses" means base period research expenses as defined in section 41(c) of the Internal Revenue Code [26 U.S.C. 41(c)], except it does not include research conducted outside the state of North Dakota.
    - b. "Director" means the director of the department of commerce division of economic development and finance.
    - c. "Primary sector business" means a qualified business that through the employment of knowledge or labor adds value to a product, process, or service.

- d. "Qualified research" means qualified research as defined in section 41(d) of the Internal Revenue Code [26 U.S.C. 41(d)], except it does not include research conducted outside the state of North Dakota.
  - e. "Qualified research and development company" means a taxpayer that is a primary sector business with annual gross revenues of less than seven hundred fifty thousand dollars and which has not conducted new research and development in North Dakota.
  - f. "Qualified research expenses" means qualified research expenses as defined in section 41(b) of the Internal Revenue Code [26 U.S.C. 41(b)], except it does not include expenses incurred for basic research conducted outside the state of North Dakota.
5. The credit allowed under this section for the taxable year may not exceed the liability for tax under this chapter.
  6. In the case of a taxpayer that is a partner in a partnership or a member in a limited liability company, the credit allowed for the taxable year may not exceed an amount separately computed with respect to the taxpayer's interest in the trade, business, or entity equal to the amount of tax attributable to that portion of the taxpayer's taxable income which is allocable or apportionable to the taxpayer's interest in the trade, business, or entity.
  7. Except as provided in subsection 1, if the amount of the credit determined under this section for any taxable year exceeds the limitation under subsection 5, the excess may be used as a research credit carryback to each of the three preceding taxable years and a research credit carryover to each of the fifteen succeeding taxable years. The entire amount of the excess unused credit for the taxable year must be carried first to the earliest of the taxable years to which the credit may be carried and then to each successive year to which the credit may be carried and the amount of the unused credit which may be added under this subsection may not exceed the taxpayer's liability for tax less the research credit for the taxable year.
  8. A taxpayer that is certified as a qualified research and development company by the director may elect to sell, transfer, or assign all or part of the unused tax credit earned under this section. The director shall certify whether a taxpayer that has requested to become a qualified research and development company meets the requirements of subsection 4. The director shall establish the necessary forms and procedures for certifying qualifying research and development companies. The director shall issue a certification letter to the taxpayer and the tax commissioner. A tax credit can be sold, transferred, or assigned subject to the following:
    - a. A taxpayer's total credit assignment under this section may not exceed one hundred thousand dollars over any combination of taxable years.
    - b. If the taxpayer elects to assign or transfer an excess credit under this subsection, the tax credit transferor and the tax credit purchaser jointly shall file with the tax commissioner a copy of the

purchase agreement and a statement containing the names, addresses, and taxpayer identification numbers of the parties to the transfer, the amount of the credit being transferred, the gross proceeds received by the transferor, and the taxable year or years for which the credit may be claimed. 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 waiver must be filed within thirty days after the date the purchase agreement is fully executed.

- c. The purchaser of the tax credit shall claim the credit beginning with the taxable year in which the credit purchase agreement was fully executed by the parties. A purchaser of a tax credit under this section has only such rights to claim and use the credit under the terms that would have applied to the tax credit transferor, except the credit purchaser may not carry back the credit as otherwise provided in this section. 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.
  - d. The original purchaser of the tax credit may not sell, assign, or otherwise transfer the credit purchased under this section.
  - e. 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, and the tax commissioner may audit these returns and assess or issue refunds, even though other time periods prescribed in these sections may have expired for the purchaser.
  - f. Gross proceeds received by the tax credit transferor must be assigned to North Dakota. The amount assigned under this subsection cannot be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.
  - g. The tax commissioner has four years after the date of the credit assignment to 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 and timeliness of the transferred tax credit.
9. If a taxpayer acquires or disposes of the major portion of a trade or business or the major portion of a separate unit of a trade or business in

a transaction with another taxpayer, the taxpayer's qualified research expenses and base period must be adjusted in the manner provided by section 41(f)(3) of the Internal Revenue Code [26 U.S.C. 41(f)(3)].

10. 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 the corporations included in the North Dakota consolidated return. This section does not apply to tax credits received or purchased under subsection 8.
11. An individual, estate, or trust that purchases a credit under this section is entitled to claim the credit against state income tax liability under section ~~57-38-29~~ or 57-38-30.3.
12. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity. An individual taxpayer may take the credit passed through under this subsection against the individual's state income tax liability under ~~sections 57-38-29 and 57-38-30~~ section 57-38-30.3.

**SECTION 28. AMENDMENT.** Subdivision b of subsection 1 of section 57-38-40 of the North Dakota Century Code is amended and reenacted as follows:

- b. An individual who filed a return of income as a resident of this state and is assessed tax by another state or territory of the United States or the District of Columbia on that income after the time for filing a claim has expired under this section is entitled to a credit or refund for the amount of tax paid to the other jurisdiction, not including penalty or interest, as provided under subsection ~~2~~ ~~of section 57-38-04~~ 1 or ~~subsection 4~~ of section 57-38-30.3, notwithstanding the time limitations of this section. The claim for the credit or refund under this subdivision must be submitted to the commissioner within one year from the date the taxes were paid to the other jurisdiction. The taxpayer must submit sufficient proof to show entitlement to a credit or refund under this subdivision.

**SECTION 29. 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.

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 maximum annual credit a taxpayer may claim under this section is not more than 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.

3. Any amount of credit under subsection 1 not allowed because of the limitation in 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.
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.
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.
8. A taxpayer who owns a controlling interest in the qualified business or 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.
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.

10. 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 30. 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.~~

1. 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. 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. The credit under 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 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.

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.
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.

<sup>245</sup> **SECTION 31. AMENDMENT.** Subsection 3 of section 57-51-15 of the North Dakota Century Code as amended by House Bill No. 1304, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

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<sup>245</sup> Section 57-51-15 was also amended by section 1 of House Bill No. 1304, chapter 575.

3. The amount to which each county is entitled under subsection 2 must be allocated within the county so the first ~~four~~ five million ~~six~~ three hundred fifty thousand dollars is allocated under subsection 4 for each fiscal year and any amount received by a county exceeding ~~four~~ five million ~~six~~ three hundred fifty thousand dollars is credited by the county treasurer to the county infrastructure fund and allocated under subsection 5.

**SECTION 32. REPEAL.** Sections 57-38-01.2, 57-38-01.18, 57-38-02, 57-38-06.1, 57-38-29, 57-38-29.2, 57-38-30.4, 57-38-67, 57-38-68, 57-38-69, and 57-38-70 of the North Dakota Century Code are repealed.

**SECTION 33. LEGISLATIVE COUNCIL STUDY.** During the 2009-10 interim, the legislative council shall consider studying corporate income taxes, with emphasis on the Uniform Division of Income Tax Act and the apportionment formula applied to multistate corporations doing business in North Dakota and the impact of how other states have adjusted apportionment factors under the Act. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 34. LEGISLATIVE COUNCIL STUDY.** During the 2009-10 interim, the legislative council shall consider studying the feasibility and desirability of providing a homestead credit for all North Dakota residential property owners and occupants. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 35. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008, except section 31 of this Act, which is effective for taxable events occurring after June 30, 2009.

Approved May 19, 2009  
Filed May 19, 2009

**CHAPTER 546****SENATE BILL NO. 2033**

(Legislative Council)

(Energy Development and Transmission Committee)

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

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

<sup>246</sup> **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, 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, wind, or biomass energy device installed before January 1, ~~2014~~ 2015, 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, 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.
  - 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

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<sup>246</sup> Section 57-38-01.8 was also amended by section 10 of House Bill No. 1324, chapter 545.

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, 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, 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, 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, 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.
  - a. 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.
  - b. Any excess tax credits earned for wind energy devices installed after September 30, 2008, and before January 1, 2012, may be used as a credit carryover to each of the twenty succeeding taxable years.
  - c. For any tax credits for geothermal, solar, or biomass energy devices installed after September 30, 2008, and wind energy devices installed after December 31, 2011, the excess may be used as a credit carryover to each of the ten 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.
8. For geothermal, solar, wind, or biomass 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.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008.

Approved March 19, 2009  
Filed March 19, 2009

## CHAPTER 547

### SENATE BILL NO. 2269

(Senators Grindberg, Holmberg)  
(Representatives Dosch, Froseth)

AN ACT to amend and reenact section 57-38-01.26 of the North Dakota Century Code, relating to angel fund investment income tax credits; and to provide an effective date.

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

<sup>247</sup> **SECTION 1. AMENDMENT.** Section 57-38-01.26 of the North Dakota Century Code is amended and reenacted as follows:

#### **57-38-01.26. Angel fund investment tax credit.**

1. A taxpayer is entitled to a credit against state income tax liability under section 57-38-29, 57-38-30, or 57-38-30.3 for an investment made in an angel fund that is incorporated in this state. ~~The angel fund must be in compliance with the securities laws of this state for the investment to qualify for the tax credit under this section.~~ The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount invested by the taxpayer in an angel fund during the taxable year. The aggregate annual credit for which a taxpayer may obtain a tax credit is not more than forty-five thousand dollars.
2. To be eligible for the credit, the investment must be at risk in the angel fund for at least three years. Investments placed in escrow do not qualify for the credit. The credit must be claimed in the taxable year in which the investment in the angel fund was received by the angel fund. The credit allowed may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the four succeeding taxable years. A taxpayer claiming a credit under this section may not claim any credit available to the taxpayer as a result of an investment made by the angel fund in a qualified business under chapter 57-38.5 or 57-38.6.
3. An angel fund must:
  - a. Be a partnership, limited partnership, corporation, limited liability company, limited liability partnership, trust, or estate organized on a for-profit basis which is headquartered in this state.
  - b. Be organized for the purpose of investing in a portfolio of at least three early-stage and mid-stage private, nonpublicly traded enterprises with strong growth potential.

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<sup>247</sup> Section 57-38-01.26 was also amended by section 20 of House Bill No. 1324, chapter 545.

- c. Consist of at least six accredited investors as defined by securities and exchange commission regulation D, rule 501.
  - d. Not have more than twenty-five percent of its capitalized investment assets owned by an individual investor.
  - e. Have at least five hundred thousand dollars in commitments from accredited investors and that capital must be subject to call to be invested over an unspecified number of years to build a portfolio of investments in enterprises.
  - f. Be member-managed and the investor members or a designated board that includes investor members must make decisions as a group on which enterprises are worthy of investments.
  - g. Be certified as an angel fund that meets the requirements of this section by the department of commerce.
  - h. Be in compliance with the securities laws of this state.
4. Angel fund investors may be actively involved in the enterprises in which the angel fund invests but the angel fund may not invest in any enterprise if any one angel fund investor owns more than forty-nine percent of the ownership interests in the enterprise.
5. Investors in one angel fund may not receive more than five million dollars in aggregate credits under this section during the life of the angel fund but this provision may not be interpreted to limit additional investments in that angel fund.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008.

Approved April 8, 2009  
Filed April 9, 2009

## CHAPTER 548

### HOUSE BILL NO. 1448

(Representatives Drovdal, Belter, Froelich)  
(Senators Cook, Nodland, Triplett)

AN ACT to create and enact subsection 9 of section 57-38-01.29 of the North Dakota Century Code, relating to the homestead income tax credit for agricultural or commercial property; to provide an effective date; and to provide an expiration date.

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

<sup>248</sup> **SECTION 1.** Subsection 9 of section 57-38-01.29 of the North Dakota Century Code is created and enacted as follows:

9. a. For the first taxable year beginning after December 31, 2008, a person, trust, or estate is entitled to a credit against the tax imposed under section 57-38-29 or 57-39-30.3 in the amount of ten percent of the property tax paid by the taxpayer on agricultural or commercial property in this state for property tax years 2006 or 2007, or both. Agricultural or commercial property that was the basis for a credit received under subsection 1, 2, or 3 of this section by a person, estate, or trust in a previous income tax year may not be used to calculate the credit under this subsection. For purposes of this subsection, "property tax" does not include special assessments.
- b. The amount of the credit under this subsection may not exceed one thousand dollars for the 2006 or 2007 property tax that was paid for the agricultural or commercial property, with a maximum credit allowed under this subsection of two thousand dollars. The amount of the credit under this subsection may not exceed the taxpayer's tax liability and any unused credit may be carried forward for up to four tax years.
- c. A person, trust, or estate may not request a certificate for the credit allowed under this subsection.
- d. An estate, partnership, subchapter S corporation, limited liability company, or any other passthrough entity that owned and paid property tax on agricultural or commercial property described in this subsection must be considered the taxpayer for purposes of any credit limitation and the amount of the credit must be determined at the passthrough entity level. The amount of the 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.

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<sup>248</sup> Section 57-38-01.29 was also amended by section 22 of House Bill No. 1324, chapter 545, and section 98 of House Bill No. 1436, chapter 482.

**SECTION 2. EFFECTIVE DATE - EXPIRATION DATE.** This Act is effective for the 2009 tax year and is thereafter ineffective.

Approved April 21, 2009

Filed April 22, 2009

**CHAPTER 549****SENATE BILL NO. 2388**

(Senators Schneider, Hogue)

(Representative DeKrey)

AN ACT to create and enact a new section to chapter 57-38 and a new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code, relating to an income tax credit for an employer maintaining payment of salary and related retirement plan contributions for an employee called to active military duty as a member of a reserve or national guard component; 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:

**Employer tax credit for salary and related retirement plan contributions for mobilized employees.**

1. A taxpayer who is an employer in this state is entitled to a credit against tax liability as determined under section 57-38-29, 57-38-30, or 57-38-30.3 equal to twenty-five percent of the reduction in compensation that the taxpayer continues to pay during the taxable year to, or on behalf of, each employee of the taxpayer during the period that the employee is mobilized under title 10 of the United States Code as a member of a reserve or national guard component of the armed forces of the United States. The maximum credit allowed for each eligible employee is one thousand dollars. The amount of the tax credit may not exceed the amount of the taxpayer's state tax liability for the tax year and an excess credit may be carried forward for up to five taxable years. For the purposes of this subsection:
  - a. "Reduction in compensation" means the amount by which the pay received during the taxable year by the employee for service under title 10 of the United States Code is less than the total amount of salary and related retirement plan contributions that would have been paid by the taxpayer to the employee for the same time period had the employee not been mobilized.
  - b. "Related retirement plan contributions" means the portion of voluntary or matching contributions paid by the taxpayer into a defined contribution plan maintained by the taxpayer for the employee.
2. A partnership, subchapter S corporation, limited liability company treated like a passthrough entity, or any other similar passthrough entity that is an employer in this state must be considered to be a taxpayer for purposes of this section. The amount of the credit determined at the passthrough entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

<sup>249</sup> **SECTION 2.** A new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Employer tax credit for salary and related retirement plan contributions of mobilized employees under section 1 of this Act.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008.

Approved April 8, 2009

Filed April 9, 2009

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<sup>249</sup> Section 57-38-30.3 was also amended by section 2 of House Bill No. 1209, chapter 550, section 1 of House Bill No. 1256, chapter 551, section 1 of House Bill No. 1277, chapter 552, section 26 of House Bill No. 1324, chapter 545, and section 5 of Senate Bill No. 2199, chapter 535.

**CHAPTER 550****HOUSE BILL NO. 1209**

(Representatives Porter, Kreidt, Schneider)  
(Senators Cook, J. Lee, Robinson)

AN ACT to create and enact a new section to chapter 57-38 of the North Dakota Century Code, relating to a long-term care partnership plan individual income tax credit; to amend and reenact subsection 7 of section 57-38-30.3 of the North Dakota Century Code, relating to a long-term care partnership plan individual income tax credit; 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:

**Credit for premiums for long-term care partnership plan insurance coverage.** A credit against an individual's tax liability under this chapter is provided to each taxpayer in the amount of the premiums paid during the taxable year by the taxpayer for qualified long-term care partnership plan insurance coverage for the taxpayer or the taxpayer's spouse, or both. The credit under this section for each insured individual may not exceed two hundred fifty dollars in any taxable year. An individual who claims the credit under this section may not also claim the credit under section 57-38-29.2 for the same policy. For purposes of this section, "qualified long-term care partnership plan" is one that:

1. Is a qualified long-term care insurance policy, as defined in section 7702B(b) of the Internal Revenue Code of 1986, with an issue date on or after the date specified in an approved medicaid state plan amendment that provides for the disregard of assets;
2. Meets the requirements of the long-term care insurance model regulations and the long-term care insurance model act promulgated by the national association of insurance commissioners as adopted as of October 2000, or the insurance commissioner certifies that the policy meets those requirements; and
3. Is purchased by an individual who:
  - a. Has not attained age sixty-one as of the date of purchase, if the policy provides compound annual inflation protection;
  - b. Has attained age sixty-one but has not attained age seventy-six as of the date of purchase, if the policy provides some level of inflation protection; or
  - c. Has attained age seventy-six as of the date of purchase.

<sup>250</sup> **SECTION 2. AMENDMENT.** Subsection 7 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

7. A taxpayer filing a return under this section is entitled to the 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.
  - g. Internship employment tax credit under section 57-38-01.24.
  - h. Workforce recruitment credit under section 57-38-01.25.
  - i. Angel fund investment tax credit under section 57-38-01.26.
  - j. Microbusiness tax credit under section 57-38-01.27.
  - k. Marriage penalty credit under section 57-38-01.28.
  - l. Homestead income tax credit under section 57-38-01.29.
  - m. Commercial property income tax credit under section 57-38-01.30.
  - n. Research and experimental expenditures under section 57-38-30.5.
  - o. Long-term care partnership plan premiums income tax credit under section 1 of this Act.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008.

Approved April 21, 2009  
Filed April 22, 2009

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<sup>250</sup> Section 57-38-30.3 was also amended by section 1 of House Bill No. 1256, chapter 551, section 1 of House Bill No. 1277, chapter 552, section 26 of House Bill No. 1324, chapter 545, section 5 of Senate Bill No. 2199, chapter 535, and section 2 of Senate Bill No. 2388, chapter 549.

**CHAPTER 551****HOUSE BILL NO. 1256**  
(Representative Headland)

AN ACT to amend and reenact subdivision d of subsection 2 of section 57-38-30.3 of the North Dakota Century Code, relating to income tax treatment of qualified dividend income; and to provide an effective date.

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

<sup>251</sup> **SECTION 1. AMENDMENT.** Subdivision d of subsection 2 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

- d. Reduced by thirty percent of the excess of the taxpayer's net long-term capital gain and qualified dividend income that is taxed at the same rate as long-term capital gain for federal income tax purposes under Internal Revenue Code provisions in effect on December 31, 2008, 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 or qualified dividend is allocated to this state.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008.

Approved April 21, 2009  
Filed April 22, 2009

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<sup>251</sup> Section 57-38-30.3 was also amended by section 2 of House Bill No. 1209, chapter 550, section 1 of House Bill No. 1277, chapter 552, section 26 of House Bill No. 1324, chapter 545, section 5 of Senate Bill No. 2199, chapter 535, and section 2 of Senate Bill No. 2388, chapter 549.

**CHAPTER 552****HOUSE BILL NO. 1277**

(Representatives Porter, S. Kelsh, Weiler)  
(Senators Cook, Triplett, Wardner)

AN ACT to create and enact a new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code, relating to allowance of the income tax credit on the form ND-1 income tax return for installation of geothermal energy devices; and to provide an effective date.

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

<sup>252</sup> **SECTION 1.** A new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Geothermal energy device installation credit under section 57-38-01.8.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008, for geothermal energy devices installed after December 31, 2008.

Approved April 8, 2009

Filed April 9, 2009

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<sup>252</sup> Section 57-38-30.3 was also amended by section 2 of House Bill No. 1209, chapter 550, section 1 of House Bill No. 1256, chapter 551, section 26 of House Bill No. 1324, chapter 545, section 5 of Senate Bill No. 2199, chapter 535, and section 2 of Senate Bill No. 2388, chapter 549.

**CHAPTER 553****HOUSE BILL NO. 1489**

(Representatives Headland, Belter, Mueller)  
(Senators Dotzenrod, Miller, Wanzek)

AN ACT to amend and reenact section 57-38-30.6 of the North Dakota Century Code, relating to a corporate income tax credit for soybean and canola crushing facility equipment costs; to provide for a legislative council study; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-38-30.6 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-30.6. Corporate income tax credit for biodiesel production or soybean and canola crushing facility equipment costs.** A taxpayer is entitled to a credit against tax liability determined under section 57-38-30 in the amount of ten percent per year for five years of the taxpayer's direct costs incurred after December 31, 2002, to adapt or add equipment to retrofit an existing facility or ~~adapting~~ construction of a new facility in this state for the purpose of producing or blending diesel fuel containing at least two percent biodiesel fuel by volume or of the taxpayer's direct costs incurred after December 31, 2008, to adapt or add equipment to retrofit an existing facility or construction of a new facility in this state for the purpose of producing crushed soybeans or canola. For purposes of this section, "biodiesel" means fuel meeting the specifications adopted by the American society for testing and materials. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for the taxable year and each year's credit amount may be carried forward for up to five taxable years. A taxpayer is limited to two hundred fifty thousand dollars in the cumulative amount of credits under this section for all taxable years. A taxpayer may not claim a credit under this section for any taxable year before the taxable year in which the facility begins production or blending of diesel fuel containing at least two percent biodiesel fuel by volume or begins crushing soybeans or canola, but eligible costs incurred before the taxable year ~~production or,~~ blending, or crushing begins may be claimed for purposes of the credit under this section for taxable years on or after the taxable year ~~production or,~~ blending, or crushing begins.

**SECTION 2. LEGISLATIVE COUNCIL STUDY - INCENTIVES FOR VALUE-ADDED AGRICULTURE.** During the 2009-10 interim, the legislative council shall consider studying the availability of tax incentives, grant programs, and any other direct or indirect public subsidization designed to encourage and promote value-added agriculture and any public and private benefits that accrue as a result of such availability. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008.

Approved April 28, 2009  
Filed May 1, 2009

**CHAPTER 554****HOUSE BILL NO. 1088**

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

AN ACT to amend and reenact subsections 1 and 5 of section 57-38-57 and subsection 1 of section 57-39.2-23 of the North Dakota Century Code, relating to the confidentiality of income tax and sales and use tax returns and return information.

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

**SECTION 1. AMENDMENT.** Subsections 1 and 5 of section 57-38-57 of the North Dakota Century Code are amended and reenacted as follows:

1. a. Except ~~when otherwise directed by judicial order, or~~ as is otherwise specifically provided by law, the tax commissioner, the tax commissioner's deputies, agents, clerks, and other officers and employees, may not divulge nor make known, in any manner, whether or not any report or return required under this chapter has been filed, the amount of income, or any particulars set forth or disclosed in any report or return required under this chapter, including the copy or any portion thereof or information reflected in the taxpayer's federal income tax return that the tax commissioner may require to be attached to, furnished with, or included in the taxpayer's state income tax return. This provision may not be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns, and the items thereof, or the inspection by the attorney general or other legal representatives of the state of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted to recover any tax or any penalty imposed by this chapter. This section does not prohibit disclosure of the fact that a report or return required under this chapter has not been filed if the disclosure is made to further a tax investigation being conducted by the tax commissioner. Reports and returns must be preserved for three years and thereafter until the tax commissioner orders them to be destroyed.
- b. A court of competent jurisdiction may issue an order or subpoena directing the tax commissioner to disclose state tax return information to a local, state, or federal law enforcement official conducting a criminal investigation if the court determines that the facts submitted by the applicant satisfy the following:
  - (1) There is probable cause to believe that a specific criminal act has been committed and that the return or return information constitutes evidence of a criminal offense or may be relevant to a matter relating to the commission of the criminal offense;



- (2) The return or return information is sought exclusively for use in a criminal investigation or proceeding concerning such act; and
- (3) The information sought to be disclosed cannot reasonably be obtained under the circumstances, from another source.
- c. Before obtaining an order under this subsection, a law enforcement official may request information from the tax commissioner as to whether a taxpayer, which is the subject of a criminal investigation for which a return or return information is or may be relevant to the commission of a criminal offense, has complied with the requirements of this chapter. For purposes of this request, the tax commissioner is limited to stating that the taxpayer has or has not complied with these requirements.
- d. Except as required during court proceedings, tax return information disclosed to law enforcement under this section remains confidential during an active criminal investigation, after the investigation, after prosecution concludes, or until the time period for appeals has expired, whichever is later.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 555****HOUSE BILL NO. 1199**

(Representatives DeKrey, Dahl, R. Kelsch, Schneider)  
(Senators Holmberg, Klein)

AN ACT to amend and reenact subsection 1 of section 57-38.3-02 of the North Dakota Century Code, relating to setoff of income tax refund for debts owed to any fund or program administered by the insurance commissioner; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 57-38.3-02 of the North Dakota Century Code is amended and reenacted as follows:

1. "Claimant agency" means the department of human services, job service North Dakota, workforce safety and insurance, the insurance commissioner, the North Dakota guaranteed student loan program, the industrial commission acting as the state housing finance agency under chapter 54-17, a housing authority created under section 23-11-02, or the state court administrator on behalf of the state courts for purposes of court-ordered fines, fees, or costs due the state. On or before September first of each year, the state housing finance agency shall conduct an election by mail among housing authorities of the state and certify to the tax commissioner which housing authority received the greatest number of votes and is capable of compliance with the duties of a claimant agency under section 57-38.3-05. During the ensuing calendar year, the housing authority certified as selected under this subsection shall act as the claimant agency for all housing authorities for the purposes of submitting debtor information to the tax commissioner for fund transfers and for providing notice to the debtor as required by section 57-38.3-05.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2008.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 556****SENATE BILL NO. 2325**

(Senator Cook)

(Representatives Drovdal, Weiler)

AN ACT to create and enact three new subsections to section 57-39.2-01, subsection 9 to section 57-39.4-06, sections 57-39.4-11.1 and 57-39.4-14.1, subsection 4 to section 57-39.4-32, and sections 57-39.4-33.1 and 57-39.4-33.2 of the North Dakota Century Code, relating to the streamlined sales tax agreement; to amend and reenact subsection 1 of section 57-39.2-02.1, subsection 2 of section 57-39.2-04, subdivision a of subsection 26 of section 57-39.2-04, subdivision c of subsection 3 of section 57-39.2-04.1, section 57-39.4-05, subdivision d of subsection 2 of section 57-39.4-10, subsection 1 of section 57-39.4-11, subsection 4 of section 57-39.4-22, section 57-39.4-23, subsection 3 of section 57-39.4-28, sections 57-39.4-29 and 57-39.4-35, subsection 1 of section 57-40.2-01, subdivision a of subsection 12 of section 57-40.2-04, and subdivision c of subsection 3 of section 57-40.2-04.1 of the North Dakota Century Code, relating to the streamlined sales and use tax agreement; and to provide an effective date.

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

<sup>253</sup> **SECTION 1.** Three new subsections to section 57-39.2-01 of the North Dakota Century Code are created and enacted as follows:

"Computer software maintenance contract" is a contract that obligates a vendor of computer software to provide a customer with future updates or upgrades to computer software, support services with respect to computer software, or both.

"Mandatory computer software maintenance contract" is a computer software maintenance contract that the customer is obligated by contract to purchase as a condition to the retail sale of computer software.

"Optional computer software maintenance contract" is a computer software maintenance contract that the customer is not obligated to purchase as a condition to the retail sale of computer software.

**SECTION 2. 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

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<sup>253</sup> Section 57-39.2-01 was also amended by section 1 of House Bill No. 1289, chapter 557, and section 1 of Senate Bill No. 2040, chapter 558.

otherwise expressly provided in this chapter, there is imposed a tax of five percent upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as provided in this section, within this state of the following to consumers or users:

- a. Tangible personal property, consisting of goods, wares, or merchandise, except mobile homes used for residential or business purposes and including bundled transactions consisting entirely of tangible personal property.
- b. The furnishing or service of communication services 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 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. Sale, lease, or rental of a computer and prewritten computer software, including prewritten computer software delivered electronically or by load and leave. For purposes of this subdivision:
  - (1) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.
  - (2) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.
  - (3) "Delivered electronically" means delivered from the seller to the purchaser by means other than tangible storage media.
  - (4) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
  - (5) "Load and leave" means delivery to the purchaser by use of a tangible storage media when the tangible storage media is not physically transferred to the purchaser.

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

- h. A mandatory computer software maintenance contract for prewritten computer software.
- i. An optional computer software maintenance contract for prewritten computer software that provides only software upgrades or updates or an optional computer software maintenance contract for prewritten computer software that is a bundled transaction and provides software upgrades or updates and support services.

<sup>254</sup> **SECTION 3. AMENDMENT.** Subsection 2 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

2. Gross receipts from the sales, furnishing, or service of passenger transportation service and gross receipts from the sales, furnishing, or service of freight transportation service when provided by a common carrier ~~and title to the transported tangible personal property has passed from the seller to the purchaser.~~

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<sup>254</sup> Section 57-39.2-04 was also amended by section 2 of House Bill No. 1289, chapter 557, section 1 of Senate Bill No. 2035, chapter 562, section 1 of Senate Bill No. 2053, chapter 560, section 1 of Senate Bill No. 2090, chapter 561, section 4 of Senate Bill No. 2325, chapter 556, and section 1 of Senate Bill No. 2347, chapter 563.

<sup>255</sup> **SECTION 4. AMENDMENT.** Subdivision a of subsection 26 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

- 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. Repair and replacement parts as used in this definition include all components or attachments used in conjunction with the durable medical equipment. Repair and replacement parts do not include items which are for single patient use only.

**SECTION 5. AMENDMENT.** Subdivision c of subsection 3 of section 57-39.2-04.1 of the North Dakota Century Code is amended and reenacted as follows:

- c. If the prepared food ratio is greater than seventy-five percent, utensils are provided ~~to~~ by 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.

**SECTION 6. AMENDMENT.** Section 57-39.4-05 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>255</sup> Section 57-39.2-04 was also amended by section 2 of House Bill No. 1289, chapter 557, section 1 of Senate Bill No. 2035, chapter 562, section 1 of Senate Bill No. 2053, chapter 560, section 1 of Senate Bill No. 2090, chapter 561, section 3 of Senate Bill No. 2325, chapter 556, and section 1 of Senate Bill No. 2347, chapter 563.

**57-39.4-05. (304) Notice for state tax changes.**

1. Each member state shall lessen the difficulties faced by sellers when there is a change in a state sales or use tax rate or base by making a reasonable effort to do all of the following:
  - a. Provide sellers with as much advance notice as practicable of a rate change.
  - b. Limit the effective date of a rate change to the first day of a calendar quarter.
  - c. Notify sellers of legislative changes in the tax base and amendments to sales and use tax rules and regulations.
2. Failure of a seller to receive notice or failure of a member state to provide notice or limit the effective date of a rate change shall not relieve the seller of its obligation to collect sales or use taxes for that member state.
3. Each member state failing to provide for at least thirty days between the enactment of the statute providing for a rate change and the effective date of such rate change shall relieve the seller of liability for failing to collect tax at the new effective rate if:
  - a. The seller collected tax at the immediately preceding effective rate; and
  - b. The seller's failure to collect at the newly effective rate does not extend beyond thirty days after the date of enactment of the new rate.
4. Notwithstanding subsection 3, if the member state establishes that the seller fraudulently failed to collect at the new rate or solicits purchasers based on the immediately preceding effective rate, this relief does not apply.
5. Member states may provide for relief of liability for failing to collect tax as a result of a tax change beyond the liability relief required by subsection 3.

**SECTION 7.** Subsection 9 to section 57-39.4-06 of the North Dakota Century Code is created and enacted as follows:

9. Make databases provided under subsections 5, 6, 7, and 8 available to a seller, or certified service provider by the first day of the month prior to the first day of a calendar quarter. Databases must be in a format approved by the governing board and available on each state's website or other location determined by the governing board.

**SECTION 8. AMENDMENT.** Subdivision d of subsection 2 of section 57-39.4-10 of the North Dakota Century Code is amended and reenacted as follows:

- d. ~~Until December 31, 2009, florist~~ Florist sales as defined by each member state. ~~Prior to this date, these items~~ These sales must be sourced according to the requirements of each member state.

**SECTION 9. AMENDMENT.** Subsection 1 of section 57-39.4-11 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~The~~ Except as provided in section 57-39.4-11.1, a retail sale, excluding lease or rental, of a product shall be sourced as follows:
  - a. When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.
  - b. When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser, or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller.
  - c. When subdivisions a and b do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.
  - d. When subdivisions a, b, and c do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.
  - e. When none of the previous rules of subdivisions a, b, c, and d apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.

**SECTION 10.** Section 57-39.4-11.1 of the North Dakota Century Code is created and enacted as follows:

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

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

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

order may be subsequently accepted, completed, or fulfilled. An order is received when all of the information necessary to determine whether the order can be accepted has been received by or on behalf of the seller. The location from which a product is shipped must not be used in determining the location where the order is received by the seller.

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

member state in the same manner as provided for states to become full member states under article VIII of the agreement.

- b. On or after January 1, 2010, a state that becomes an associate member state under this subsection shall automatically become a full member state, provided that at least five states which are not full member states on December 31, 2007, are determined to be in substantial compliance with the provisions of the agreement other than sourcing sales of tangible personal property and digital goods under section 57-39.4-11, and the state has notified the governing board of an election under subdivision h of subsection 3 of this section to source sales under this section and has been found to be in substantial compliance with the provisions of this section.
- c. This section shall be fully effective for all purposes on or after January 1, 2010, provided at least five states which are not full member states on December 31, 2007, have been found to be in substantial compliance with the provisions of the agreement other than sourcing sales of tangible personal property and digital goods under section 57-39.4-11 and have notified the governing board of an election under subdivision h of subsection 3 of this section to source sales under this section and have been found to be in substantial compliance with the provisions of this section. States electing to source sales under this section after that time may become full member states if all other requirements for membership are satisfied.

**SECTION 11.** Section 57-39.4-14.1 of the North Dakota Century Code is created and enacted as follows:

**57-39.4-14.1. (313.1) Election for origin-based direct mail sourcing.**

1. Notwithstanding sections 57-39.4-11, 57-39.4-11.1, and 57-39.4-14, a member state may elect to source the sale of all direct mail delivered or distributed from a location within the state and delivered or distributed to a location within the state under this section.
2. If the purchaser provides the seller with a direct pay permit or an exemption certificate claiming direct mail, the seller is relieved of all obligations to collect, pay, or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax on a direct pay basis. An exemption certificate claiming direct mail shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.
3. Except as provided in subsection 2 and this subsection, the seller shall collect the tax according to subsection 1 of section 57-39.4-11. To the extent the seller knows that a portion of the sale of direct mail will be delivered or distributed to a location in another state, the seller shall collect the tax on that portion according to section 57-39.4-14.
4. Nothing in this section limits a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered, except that a purchaser whose direct mail is sourced under subsection 3 shall owe no additional sales or use tax to that state based on where the purchaser uses or delivers the direct mail in the state.

5. A member state that elects to source the sale of direct mail under the provisions of this section shall inform the governing board in writing at least sixty days prior to the beginning of the calendar quarter such election begins.

**SECTION 12. AMENDMENT.** Subsection 4 of section 57-39.4-22 of the North Dakota Century Code is amended and reenacted as follows:

4. The governing board may certify a certified service provider only if that certified service provider certifies that:
  - a. Its system has been designed and tested to ensure that the fundamental precept of anonymity is respected;
  - b. ~~That personally~~ Personally identifiable information is only used and retained to the extent necessary for the administration of model 1 with respect to exempt purchasers and for proper identification of taxing jurisdictions;
  - c. It provides consumers clear and conspicuous notice of its information practices, including what information it collects, how it collects the information, how it uses the information, how long, if at all, it retains the information and whether it discloses the information to member states. Such notice shall be satisfied by a written privacy policy statement accessible by the public on the official web site of the certified service provider;
  - d. ~~Its~~ The collection, use, and retention of personally identifiable information will be limited to that required by the member states to ensure the validity of exemptions from taxation that are claimed by reason of a consumer's status or the intended use of the goods or services purchased and for documentation of the correct assignment of taxing jurisdictions; and
  - e. It provides adequate technical, physical, and administrative safeguards so as to protect personally identifiable information from unauthorized access and disclosure.

**SECTION 13. AMENDMENT.** Section 57-39.4-23 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.4-23. (322) Sales tax holidays.**

1. If a member state allows for temporary exemption periods, commonly referred to as sales tax holidays, the member state shall:
  - a. Not apply an exemption ~~after December 31, 2003,~~ unless the items to be exempted are specifically defined in the agreement part II or part III(B) of the library of definitions and the exemptions are uniformly applied to state and local sales and use taxes.
  - b. Provide notice of the exemption period at least sixty days prior to the first day of the calendar quarter in which the exemption period will begin.

- c. Not apply an entity-based or use-based exemption except a member state may limit a product-based exemption to items purchased for personal or nonbusiness use.
  - d. Not require a seller to obtain an exemption certificate or other certification from a purchaser for items to be exempted during a sales tax holiday.
2. A member state may establish a sales tax holiday that utilizes price thresholds set by such state and the provisions of the agreement on the use of thresholds shall not apply to exemptions provided by a state during a sales tax holiday. In order to provide uniformity, a price threshold established by a member state for exempt items shall include only items priced below the threshold. A member state shall not exempt only a portion of the price of an individual item during a sales tax holiday.
3. ~~The governing board shall establish procedures to provide uniformity for the administrative issues involved with the implementation of a sales tax holiday. These issues include:~~
  - a. ~~Treatment of layaway purchases;~~
  - b. ~~Exempt and nonexempt items that are packaged together;~~
  - c. ~~Treatment of coupons or discounts;~~
  - d. ~~Splitting of items normally sold together;~~
  - e. ~~Treatment of rainchecks;~~
  - f. ~~Exchanges;~~
  - g. ~~Shipping and handling charges;~~
  - h. ~~Service charges;~~
  - i. ~~Restocking fees; and~~
  - j. Order date and back orders. The following procedures are to be used by member states in administering a sales tax holiday exemption:
    - a. Layaway sales. A sale of eligible property under a layaway sale qualifies for exemption if:
      - (1) Final payment on a layaway order is made by, and the property is given to, the purchaser during the exemption period; or
      - (2) The purchaser selects the property and the retailer accepts the order for the item during the exemption period, for immediate delivery upon full payment, even if delivery is made after the exemption period.

- b. Bundled sales. Member states will follow the same procedure during the sales tax holiday as agreed upon for handling a bundled sale at other times.
- c. Discounts and coupons. A discount by a seller reduces the sales price of the property and the discounted sales price determines whether the sales price is within a sales tax holiday price threshold of a member state. A coupon that reduces the sales price is treated as a discount if the seller is not reimbursed for the coupon amount by a third party. If a discount applies to the total amount paid by a purchaser rather than to the sales price of a particular item and the purchaser has purchased both eligible property and taxable property, the seller shall allocate the discount based on the total sales prices of the taxable property compared to the total sales prices of all property sold in that same transaction.
- d. Splitting of items normally sold together. Items that are normally sold as a single unit must continue to be sold in that manner and cannot be priced separately and sold as individual items in order to obtain a sales tax holiday.
- e. Rainchecks. A raincheck is a means to allow a customer to purchase an item at a certain price at a later time because the particular item was out of stock. Eligible property that is purchased during the exemption period with use of a raincheck qualifies for the exemption regardless of when the raincheck was issued. Issuance of a raincheck during the exemption period does not qualify eligible property for the exemption if the property is purchased after the exemption period.
- f. Exchanges. The procedure for an exchange of eligible property purchased during a sales tax holiday is as follows:
  - (1) If a customer purchases an item of eligible property during the exemption period, and later exchanges the item for a similar eligible item, even if a different size, different color, or other feature, no additional tax is due if the exchange is made after the exemption period.
  - (2) If a customer purchases an item of eligible property during the exemption period, and returns the item and receives credit on the purchase of a different item after the exemption period, the appropriate sales tax is due on the sale of the newly purchased item.
  - (3) If a customer purchases an item of eligible property before the exemption period, returns the item, and receives credit on the purchase of a different item of eligible property during the exemption period, no sales tax is due on the sale of the new item if the new item is purchased during the exemption period.
- g. Delivery charges. Delivery charges, including shipping, handling, and service charges, are part of the sales price of eligible property unless a member state defines "sales price" to exclude such charges. For the purpose of determining a sales tax holiday price

threshold, if all the property in a shipment qualifies as eligible property and the sales price for each item in the shipment is within the sales tax holiday price threshold, the seller does not have to allocate the delivery charge to determine if the price threshold is exceeded and the shipment will be considered a sale of eligible products. If the shipment includes eligible property and taxable property, including an eligible item with a sales price in excess of the price threshold, the seller should allocate the delivery charge by using:

- (1) A percentage based on the total sales prices of the taxable property compared to the total sales prices of all property in the shipment; or
  - (2) A percentage based on 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 is not required to tax the percentage allocated to the eligible property.
- h. Order date and back orders. For the purpose of a sales tax holiday, eligible property qualifies for exemption if:
- (1) The item is both delivered to and paid for by the customer during the exemption period; or
  - (2) The customer orders and pays for the item and the seller accepts the order during the exemption period for immediate shipment, even if delivery is made after the exemption period. For purposes of this subsection, the seller accepts an order when the seller has taken action to fill the order for immediate shipment. Actions to fill an order include placement of an "in date" stamp on a mail order or assignment of an "order number" to a telephone order. An order is for immediate shipment when the customer does not request delayed shipment. An order is for immediate shipment notwithstanding that the shipment may be delayed because of a backlog of orders or because stock is currently unavailable to or on back order by the seller.
- i. Returns. For a sixty-day period immediately after the sales tax holiday exemption period, when a customer returns an item that would qualify for the exemption, no credit for or refund of sales tax shall be given unless the customer provides a receipt or invoice that shows tax was paid, or the seller has sufficient documentation to show that tax was paid on the specific item. This sixty day period is solely for the purpose of designating a time period during which the customer must provide documentation that shows that sales tax was paid on returned merchandise. The sixty-day period does not require the seller to change the seller's policy on the time period during which the seller will accept returns.
- j. Different time zones. The time zone of the seller's location determines the authorized time period for a sales tax holiday when the purchaser is located in one time zone and a seller is located in another.

**SECTION 14. AMENDMENT.** Subsection 3 of section 57-39.4-28 of the North Dakota Century Code is amended and reenacted as follows:

3. Except as specifically provided in ~~section 57-39.4-15~~ sections 57-39.4-17 and 57-39.4-33.1, and the library of definitions, a member state shall impose a sales or use tax on all products or services included within each part II or part III(B) definition or exempt from sales or use tax all products or services within each definition. The requirements of this section shall only apply to part III(B) definitions to the extent such definitions are used in the administration of a sales tax holiday.

**SECTION 15. AMENDMENT.** Section 57-39.4-29 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.4-29. (328) Taxability matrix.**

1. To ensure uniform application of terms defined in part II and part III(B) of the library of definitions, each member state shall complete a taxability matrix adopted by the governing board. The member state's entries in the matrix shall be provided and maintained in a data base that is in a downloadable format approved by the governing board. A member state shall provide notice of changes in the taxability of the products or services listed in the taxability matrix as required by the governing board.
2. A member state shall relieve sellers and certified service providers from liability to the member state and its 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 the member state in the taxability matrix.
3. If a state levies sales and use tax on a specified digital product and provides an exemption for an item within the definition of such specified digital product under subsection 8 of section 57-39.4-33.1, such exemption must be noted in the taxability matrix.
4. Each state that provides for a sales tax holiday under section 57-39.4-23 shall, in a format approved by the governing board, give notice in the taxability matrix of the products for which a tax exemption is provided.

**SECTION 16.** Subsection 4 to section 57-39.4-32 of the North Dakota Century Code is created and enacted as follows:

4. In the case of a transaction that includes an "optional computer software maintenance contract" for prewritten computer software and the state otherwise has not specifically imposed tax on the retail sale of computer software maintenance contracts, the following provisions apply:
  - a. If an optional computer software maintenance contract only obligates the vendor to provide upgrades and updates, it will be characterized as a sale of prewritten computer software.
  - b. If an optional computer software maintenance contract only obligates the vendor to provide support services, it will be characterized as a sale of services.

- c. If an optional computer software maintenance contract is a bundled transaction in which both taxable and nontaxable or exempt products that are not separately itemized on the invoice or similar billing document, the contract shall be characterized as all taxable.

**SECTION 17.** Section 57-39.4-33.1 of the North Dakota Century Code is created and enacted as follows:

**57-39.4-33.1. (332) Specified digital products.**

1. A member state shall not include "specified digital products", "digital audiovisual works", "digital audio works", or "digital books" within its definition of "ancillary services", "computer software", "telecommunication services", or "tangible personal property". This restriction applies whether the "specified digital product" is sold to a purchaser who is an end user or to a purchaser with less than the right of permanent use granted by the seller, or use by the purchaser which is conditioned upon continued payment from the purchaser. Until January 1, 2010, the exclusion of "specified digital products" from the definition of "tangible personal property" does not affect the classification of products transferred electronically that are not included within the definition of "specified digital products" as being included in, or excluded from, the definition of "tangible personal property".
2. For purposes of subsection 3 of section 57-39.4-28 and the taxability matrix, "digital audiovisual works", "digital audio works", and "digital books" are separate definitions.
3. If a state imposes a sales or use tax on products transferred electronically separately from its imposition of tax on "tangible personal property", the state will not be required to use the terms "specified digital product", "digital audiovisual works", "digital audio works", or "digital books", or enact an additional or separate sales or use tax on any "specified digital product".
4. For purposes of the agreement:
  - a. A statute imposing a tax on "specified digital products", "digital audiovisual works", "digital audio works", or "digital books" and, after January 1, 2010, a tax on any other product transferred electronically must be construed as only imposing the tax on a sale to a purchaser who is an end user unless the statute specifically imposes and separately enumerates the tax on a sale to a purchaser who is not an end user. For purposes of this section, an "end user" includes any person other than a person who receives by contract a product transferred electronically for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution, or exhibition of the product, in whole or in part, to another person or persons. A person who purchases products transferred electronically, or the code for specified digital products for the purpose of giving away such products or code shall not be considered to have engaged in the distribution or redistribution of such products or code and shall be treated as an end user.

- b. A statute imposing a tax on "specified digital products", "digital audiovisual works", "digital audio works", or "digital books" and, after January 1, 2010, on any other product transferred electronically must be construed as only imposing tax on a sale with the right of permanent use granted by the seller unless the statute specifically imposes and separately enumerates the tax on a sale with the right of less than permanent use granted by the seller. For purposes of this section "permanent" means perpetual or for an indefinite or unspecified length of time. A right of permanent use shall be presumed to have been granted unless the agreement between the seller and the purchaser specifies or the circumstances surrounding the transaction suggest or indicate that the right to use terminates on the occurrence of a condition subsequent.
- c. A statute imposing a tax on "specified digital products", "digital audiovisual works", "digital audio works", or "digital books" and, after January 1, 2010, on any other product transferred electronically shall be construed as only imposing tax on a sale which is not conditioned upon continued payment from the purchaser unless the statute specifically imposes and separately enumerates the tax on a sale which is conditioned upon continued payment from the purchaser.
- d. A member state which imposes a sales or use tax on the sale of a product transferred electronically to a person other than the end user or on a sale with the right of less than permanent use granted by the seller or which is conditioned upon continued payment from the purchaser shall so indicate in its taxability matrix in a format approved by the governing board.
- 5. Nothing in this section or the definition of "specified digital products" shall limit a state's right to impose a sales or use tax or exempt from sales or use tax any products or services that are outside the definition of "specified digital products".
- 6. A state may treat a subscription to products transferred electronically differently than a nonsubscription purchase of such product. For purposes of this section, "subscription" means an agreement with a seller that grants a consumer the right to obtain products transferred electronically from within one or more product categories having the same tax treatment, in a fixed quantity or for a fixed period of time, or both.
- 7. The tax treatment of a "digital code" shall be the same as the tax treatment of the "specified digital product" or product transferred electronically to which the "digital code" relates. The retail sale of the "digital code" shall be considered the transaction for purposes of the agreement. For purposes of this section, "digital code" means a code, which provides a purchaser with a right to obtain one or more such products having the same tax treatment. A "digital code" may be obtained by any means, including e-mail or by tangible means regardless of its designation as "song code", "video code", or "book code".

8. Notwithstanding the provisions of section 57-39.4-17, a member state may provide a product-based exemption for specific items within the definition of "specified digital products", provided the items which are not transferred electronically must also be granted a product-based exemption by the member state.
9. For purposes of this section and section 57-39.4-33.2, the term "transferred electronically" means obtained by the purchaser by means other than tangible storage media.

**SECTION 18.** Section 57-39.4-33.2 of the North Dakota Century Code is created and enacted as follows:

**57-39.4-33.2. (333) Use of specified digital products.** A member state shall not include any product transferred electronically in its definition of "tangible personal property". "Ancillary services", "computer software", and "telecommunication services" are excluded from the phrase "products transferred electronically".

**SECTION 19. AMENDMENT.** Section 57-39.4-35 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.4-35. (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~~ accurately reflects the taxability of the product categories included in the program. Upon ~~completion of the review~~ approval by the state, the state shall certify to the governing board its acceptance of the ~~classifications made by the system~~ determination of the taxability of the product categories included in the program.
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~~ product categories 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~~ product category 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 If 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 20. AMENDMENT.** Subsection 1 of section 57-40.2-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Business", "certified automated system", "certified service provider", "commissioner", "computer software contract", "farm machinery", "gross receipts", "lease or rental", "local governmental unit", "mandatory computer software maintenance contract", "optional computer software maintenance contract", "person", "relief agency", "retail sale", "sale", and "tangible personal property", each has the meaning given to it in section 57-39.2-01.

<sup>256</sup> **SECTION 21. AMENDMENT.** Subdivision a of subsection 12 of section 57-40.2-04 of the North Dakota Century Code is amended and reenacted as follows:

- 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. Repair and replacement parts as used in this definition include all components or attachments used in conjunction with the durable medical equipment. Repair and replacement parts do not include items which are for single patient use only.

**SECTION 22. AMENDMENT.** Subdivision c of subsection 3 of section 57-40.2-04.1 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>256</sup> Section 57-40.2-04 was also amended by section 2 of Senate Bill No. 2347, chapter 563.

- c. If the prepared food ratio is greater than seventy-five percent, utensils are provided ~~to~~ by 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.

**SECTION 23. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2009.

Approved March 19, 2009  
Filed March 19, 2009

**CHAPTER 557****HOUSE BILL NO. 1289**  
(Representatives DeKrey, Onstad)  
(Senators Taylor, Wanzek)

AN ACT to create and enact a new subsection to section 57-39.2-01 of the North Dakota Century Code, relating to definition of irrigation equipment repair parts; to amend and reenact subsection 45 of section 57-39.2-04 and section 57-39.5-02 of the North Dakota Century Code, relating to an exemption from sales, use, and farm machinery gross receipts taxes for sales of irrigation equipment repair parts used exclusively for agricultural purposes; and to provide an effective date.

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

<sup>257</sup> **SECTION 1.** A new subsection to section 57-39.2-01 of the North Dakota Century Code is created and enacted as follows:

"Irrigation equipment repair parts" means repair or replacement parts for irrigation equipment which have a specific or generic part number assigned by the manufacturer of the irrigation equipment. The term does not include tires, fluid, gas, grease, lubricant, wax, or paint.

<sup>258</sup> **SECTION 2. AMENDMENT.** Subsection 45 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

45. Gross receipts from the sale or lease of farm machinery, farm machinery repair parts, ~~or irrigation equipment,~~ or irrigation equipment repair parts used exclusively for agricultural purposes.

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

**57-39.5-02. Imposition - Exemptions.** There is imposed a tax of three percent upon the gross receipts of retailers from all sales at retail, including the leasing or renting, of farm machinery or irrigation equipment used exclusively for agricultural purposes. Gross receipts from sales at retail of farm machinery or irrigation equipment are exempted from the tax imposed by this chapter when the sale, lease, or rental is made to a purchaser or lessor who is entitled to a sales and use tax exemption under subsection 6 or 12 of section 57-39.2-04 on otherwise taxable sales at retail. There are specifically exempted from the tax imposed by this

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<sup>257</sup> Section 57-39.2-01 was also amended by section 1 of Senate Bill No. 2040, chapter 558, and section 1 of Senate Bill No. 2325, chapter 556.

<sup>258</sup> Section 57-39.2-04 was also amended by section 1 of Senate Bill No. 2035, chapter 562, section 1 of Senate Bill No. 2053, chapter 560, section 1 of Senate Bill No. 2090, chapter 561, section 3 of Senate Bill No. 2325, chapter 556, section 4 of Senate Bill No. 2325, chapter 556, and section 1 of Senate Bill No. 2347, chapter 563.

chapter the gross receipts from the sale or lease of used farm machinery, farm machinery repair parts, ~~or~~ used irrigation equipment, or irrigation equipment repair parts used exclusively for agricultural purposes. For purposes of this section, "used" means:

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

**SECTION 4. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2009.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 558****SENATE BILL NO. 2040**

(Legislative Council)  
(Industry, Business, and Labor Committee)

AN ACT to create and enact two new subsections to section 57-39.2-01 and a new section to chapter 57-39.2 of the North Dakota Century Code, relating to the definition of telecommunications company and telecommunications service and to a sales and use tax exemption for equipment used in telecommunications infrastructure development; and to provide an expiration date.

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

<sup>259</sup> **SECTION 1.** Two new subsections to section 57-39.2-01 of the North Dakota Century Code are created and enacted as follows:

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

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

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

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<sup>259</sup> Section 57-39.2-01 was also amended by section 1 of House Bill No. 1289, chapter 557, and section 1 of Senate Bill No. 2325, chapter 556.

- g. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services include cable service as defined in 47 U.S.C. 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;
- h. Ancillary services; or
- i. Digital products delivered electronically, including software, music, video, reading materials, and ringtones.

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

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

1. Gross receipts from sales of tangible personal property used to construct or expand telecommunications service infrastructure in this state are exempt from taxes under this chapter. To be exempt, the tangible personal property must be incorporated into telecommunications service infrastructure owned by a telecommunications company.
2. To qualify for exemption at the time of purchase, a telecommunications company must receive a certificate from the commissioner stating that the property qualifies for the exemption. If a certificate is not received before the purchase or the purchase is made by a contractor, subcontractor, or builder, the telecommunications company must apply to the commissioner for a refund of sales and use taxes paid for which the exemption is claimed 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.

**SECTION 3. EXPIRATION DATE.** This Act is effective through June 30, 2011, and after that date is ineffective.

Approved April 23, 2009  
Filed April 23, 2009

## CHAPTER 559

### HOUSE BILL NO. 1082 (Finance and Taxation Committee) (At the request of the Tax Commissioner)

AN ACT to amend and reenact section 57-39.2-03.3, subsection 1 of section 57-40.3-01, subsection 4 of section 57-40.3-11, subsections 12, 13, 16, and 18 of section 57-43.1-01, subsection 2 of section 57-43.1-02, section 57-43.1-05, subsections 16, 17, and 20 of section 57-43.2-01, and subsection 2 of section 57-43.2-02 of the North Dakota Century Code, relating to sales tax on sales through vending machines, the definition of low-speed vehicle and the time for audit and protest for motor vehicle excise tax purposes, motor vehicle fuel tax definitions, the motor vehicle fuel tax and special fuels tax imposed on fuels produced by a refiner, and minimum refunds for motor vehicle fuel tax purposes; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-39.2-03.3 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.2-03.3. Sales tax on sales through vending machines.** ~~Beginning July 1, 1969, gross~~ Gross receipts from the sale of tangible personal property costing sixteen cents or more sold through a coin-operated vending machine are subject to the sales tax imposed by chapter 57-39.2, and gross receipts from the sale of tangible personal property costing fifteen cents or less sold through a coin-operated vending machine are specifically exempted from the provisions of this chapter.

<sup>260</sup> **SECTION 2. AMENDMENT.** Subsection 1 of section 57-40.3-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Low-speed vehicle" means a four-wheeled vehicle that is able to attain a speed, upon a paved surface, of more than twenty miles per hour [32 kilometers per hour] in one mile [1.6 kilometers] and not more than twenty-five miles per hour [40 kilometers per hour] in one mile [1.6 kilometers] and may not exceed one three thousand five hundred pounds [680.39 1360.77 kilograms] in ~~unloaded~~ weight when fully loaded with passengers and any cargo.

**SECTION 3. AMENDMENT.** Subsection 4 of section 57-40.3-11 of the North Dakota Century Code is amended and reenacted as follows:

4. If upon audit the tax commissioner determines that a motor vehicle excise tax has not been paid or an additional tax is due, the tax commissioner shall give notice of determination of the tax due to the person liable for the tax. The notice of determination must be given no later than three years from the date the motor vehicle was purchased,

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<sup>260</sup> Section 57-40.3-01 was also amended by section 1 of House Bill No. 1131, chapter 567, and section 1 of Senate Bill No. 2184, chapter 568.

acquired, or the date the vehicle was required to be titled or registered with the director of the department of transportation, whichever is later. If it is determined that the motor vehicle excise tax due is twenty-five percent or more above the amount that had been paid, the notice of determination must be given no later than six years from the date the motor vehicle was purchased, acquired, or the date the vehicle was required to be titled or registered with the director of the department of transportation, whichever is later. The notice of determination of tax due fixes the tax finally and irrevocably unless within ~~fifteen~~ thirty days of the date of the notice the person against whom the tax is assessed applies to the tax commissioner for a hearing under chapter 28-32 or unless the tax commissioner reduces the liability relating to assessments on the tax commissioner's own motion. The provisions of chapter 57-39.2 not in conflict with the provisions of this chapter govern the administration of the tax levied in this chapter.

**SECTION 4. AMENDMENT.** Subsections 12, 13, 16, and 18 of section 57-43.1-01 of the North Dakota Century Code are amended and reenacted as follows:

12. "Import" means the delivery of motor vehicle fuel across the boundaries of this state from a place of origin outside this state by a refiner, supplier, ~~or~~ distributor, or consumer.
13. "Importer" means a refiner, supplier, ~~or~~ distributor, or consumer who imports motor vehicle fuel into this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
16. "Licensed motor vehicle" means any motor vehicle required to be licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack moving unit.
18. "Motor vehicle fuel" means all products commonly or commercially known or sold as gasoline, including casinghead and absorption or natural gasoline, regardless of their classifications or uses, and any liquid which, when subjected to distillation in accordance with the standard method of test for distillation of gasoline, naphtha, kerosene, and similar petroleum products (American society for testing materials designation D-86), shows not less than ten percent distilled (recovered) below three hundred forty-seven degrees Fahrenheit [175 degrees Celsius] and not less than ninety-five percent distilled (recovered) below four hundred sixty-four degrees Fahrenheit [240 degrees Celsius] but does not include aviation fuel or fuel used as a component of or additive to another product when the use is not intended to result in combustion. It includes agriculturally derived alcohol blended with gasoline, used in a pure state, or if blended with another agriculturally derived liquid.

**SECTION 5. AMENDMENT.** Subsection 2 of section 57-43.1-02 of the North Dakota Century Code is amended and reenacted as follows:

2. A refiner, supplier, or distributor shall remit the tax imposed by this section on motor vehicle fuel used, on the wholesale distribution of motor vehicle fuel to a retailer, and on direct sales of motor vehicle fuel to a consumer.

**SECTION 6. AMENDMENT.** Section 57-43.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**57-43.1-05. Claim for refund - Limitation on filing.** A For all motor vehicle fuel purchases during a calendar year, a refund claim must be filed, for all motor vehicle fuel purchases during a calendar year, on or after January first and before July first of the next year following the year during which the purchase was made, or the claim for refund is barred unless the commissioner grants an extension of time for cause. However, any claim for refund may be filed in the calendar year of motor vehicle fuel purchase when:

1. The business is being discontinued;
2. No further purchases subject to fuel tax refund will be made in the remainder of the calendar year; or
3. The claim for refund exceeds four hundred dollars.

No claim for refund may be made or approved unless the amount of the claim is ~~in excess of~~ at least five dollars.

**SECTION 7. AMENDMENT.** Subsections 16, 17, and 20 of section 57-43.2-01 of the North Dakota Century Code are amended and reenacted as follows:

16. "Import" means the delivery of special fuel across the boundaries of this state from a place of origin outside this state by a refiner, supplier, ~~or distributor, or consumer.~~
17. "Importer" means a refiner, supplier, ~~or distributor, or consumer~~ who imports special fuel into this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
20. "Licensed motor vehicle" means any motor vehicle required to be licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack moving unit.

**SECTION 8. AMENDMENT.** Subsection 2 of section 57-43.2-02 of the North Dakota Century Code is amended and reenacted as follows:

2. A refiner, supplier, distributor, or retailer shall remit the tax imposed by this section on special fuel used and on direct sales of special fuel to a customer.

**SECTION 9. EFFECTIVE DATE.** Section 3 of this Act is effective for assessments of motor vehicle excise tax issued after June 30, 2009. Sections 4, 5, 7, and 8 of this Act are effective for taxable periods beginning after June 30, 2009. Section 6 of this Act is effective for refund claims made after June 30, 2009.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 560****SENATE BILL NO. 2053**  
(Legislative Council)  
(Tribal and State Relations Committee)

AN ACT to amend and reenact subsection 6 of section 57-39.2-04 of the North Dakota Century Code, relating to a sales and use tax exemption for purchases by an Indian tribe; and to provide an effective date.

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

<sup>261</sup> **SECTION 1. AMENDMENT.** Subsection 6 of section 57-39.2-04 of the North Dakota Century Code, as effective after June 30, 2009, is amended and reenacted as follows:

6. Gross receipts from all sales otherwise taxable under this chapter made to the United States, an Indian tribe, or to any state, including the state of North Dakota, or any of the subdivisions, departments, agencies, or institutions of any state. A political subdivision of another state is exempt under this subsection only if a sale to a North Dakota political subdivision is treated as an exempt sale in that state. The governmental units exempted by this subsection must be issued a certificate of exemption by the commissioner and the certificate must be presented to each retailer whenever this exemption is claimed. For purposes of this subsection, an Indian tribe means a tribal government agency, instrumentality, or political subdivision that performs essential government functions and does not include business entities or agencies the primary purpose of which is to operate a business enterprise.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2009.

Approved April 8, 2009  
Filed April 9, 2009

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<sup>261</sup> Section 57-39.2-04 was also amended by section 2 of House Bill No. 1289, chapter 557, section 1 of Senate Bill No. 2035, chapter 562, section 1 of Senate Bill No. 2090, chapter 561, section 3 of Senate Bill No. 2325, chapter 556, section 4 of Senate Bill No. 2325, chapter 556, and section 1 of Senate Bill No. 2347, chapter 563.

**CHAPTER 561****SENATE BILL NO. 2090**  
(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

AN ACT to amend and reenact subsection 12 of section 57-39.2-04 of the North Dakota Century Code, relating to sales and use tax imposed on purchases made in North Dakota by persons from an adjoining state; and to declare an emergency.

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

<sup>262</sup> **SECTION 1. AMENDMENT.** Subsection 12 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

12. Gross receipts from a sale otherwise taxable under this chapter made to a person ~~who is a resident of~~ from an adjoining state which does not impose or levy a retail sales tax under the following conditions:
  - a. The ~~nonresident~~ person is in the state of North Dakota for the express purpose of making a purchase ~~and not as a tourist~~.
  - b. The ~~nonresident~~ person furnishes to the North Dakota retailer a certificate signed by the ~~nonresident~~ person in a form as the commissioner may prescribe reciting sufficient facts establishing the exempt status of the sale. Unless the certificate is furnished it must be presumed, until the contrary is shown, that the ~~nonresident~~ person was not in the state of North Dakota for the express purpose of making a purchase.
  - c. The sale is fifty dollars or more.

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

Approved April 22, 2009  
Filed April 23, 2009

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<sup>262</sup> Section 57-39.2-04 was also amended by section 2 of House Bill No. 1289, chapter 557, section 1 of Senate Bill No. 2035, chapter 562, section 1 of Senate Bill No. 2053, chapter 560, section 3 of Senate Bill No. 2325, chapter 556, section 4 of Senate Bill No. 2325, chapter 556, and section 1 of Senate Bill No. 2347, chapter 563.

**CHAPTER 562****SENATE BILL NO. 2035**

(Legislative Council)

(Energy Development and Transmission Committee)

AN ACT to amend and reenact subsection 41 of section 57-39.2-04, subsection 1 of section 57-39.2-04.2, subsection 1 of section 57-40.2-04.2, and section 57-61-01.4 of the North Dakota Century Code, relating to sales and use tax exemptions for beneficiated coal and equipment for certain power plants and a coal severance tax exemption for beneficiated coal or beneficiated coal used to produce steam that is used in certain plants; to provide for a study and a report to the legislative council; to provide an effective date; and to provide an expiration date.

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

<sup>263</sup> **SECTION 1. AMENDMENT.** Subsection 41 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

41. Gross receipts from the initial sale of beneficiated coal ~~taxed under chapter 57-60.~~

<sup>264</sup> **SECTION 2. AMENDMENT.** Subsection 1 of section 57-39.2-04.2 of the North Dakota Century Code is amended and reenacted as follows:

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.

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<sup>263</sup> Section 57-39.2-04 was also amended by section 2 of House Bill No. 1289, chapter 557, section 1 of Senate Bill No. 2053, chapter 560, section 1 of Senate Bill No. 2090, chapter 561, section 3 of Senate Bill No. 2325, chapter 556, section 4 of Senate Bill No. 2325, chapter 556, and section 1 of Senate Bill No. 2347, chapter 563.

<sup>264</sup> Section 57-39.2-04.2 was also amended by section 1 of Senate Bill No. 2032, chapter 564.

- b. "Operator" means any person owning, holding, or leasing a power plant or process unit.
- c. "Power plant" means:
  - (1) An electrical generating plant, and all additions to the plant, which processes or converts coal ~~from~~ in its natural form or beneficiated coal into electrical power and which has at least one single electrical energy generation unit with a capacity of fifty thousand kilowatts or more.
  - (2) A wind-powered electrical generating facility, on which construction is completed before January 1, 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 coal ~~from~~ in its natural form or beneficiated coal into electrical power.

<sup>265</sup> **SECTION 3. AMENDMENT.** Subsection 1 of section 57-40.2-04.2 of the North Dakota Century Code is amended and reenacted as follows:

- 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.

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<sup>265</sup> Section 57-40.2-04.2 was also amended by section 2 of Senate Bill No. 2032, chapter 564.

- (2) "Environmental upgrade" for purposes of a process unit means an investment greater than one hundred thousand dollars in machinery, equipment, and related facilities for reducing emissions, increasing efficiency, or enhancing reliability of the equipment at a new or existing process unit.
- b. "Operator" means any person owning, holding, or leasing a power plant or process unit.
- c. "Power plant" means:
- (1) An electrical generating plant, and all additions to the plant, which processes or converts coal ~~from~~ in its natural form or beneficiated coal into electrical power and which has at least one single electrical energy generation unit with a capacity of fifty thousand kilowatts or more.
  - (2) A wind-powered electrical generating facility, on which construction is completed before January 1, 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 coal ~~from~~ in its natural form or beneficiated coal into electric power.

**SECTION 4. AMENDMENT.** Section 57-61-01.4 of the North Dakota Century Code is amended and reenacted as follows:

**57-61-01.4. Severance and sales and use tax exemptions for coal used in certain plants.** No state severance tax may be imposed on coal used in, or coal used to produce steam that is used in, agricultural commodity processing or sugar beet refining plants facilities as defined in subsection 4 of section 57-39.2-04.4 located within North Dakota or adjacent states or any facility owned by the state or a political subdivision of the state. No state severance tax may be imposed on coal purchased for improvement through the process of coal beneficiation defined in subsection 2 of section 57-60-01 which is subsequently used in, or used to produce

steam that is used in, agricultural commodity processing facilities located within North Dakota or adjacent states or any facility owned by the state or a political subdivision of the state. The coal mine owner or operator shall require the person purchasing the coal to certify that amount of coal purchased for use in agricultural commodity processing or sugar beet refining purposes. Coal exempted from the severance tax by this section is not subject to sales and use taxes facilities or for beneficiation and subsequent use in agricultural commodity processing facilities or any facility owned by the state or a political subdivision of the state or to produce steam that is used in any of those facilities.

**SECTION 5. TAX COMMISSIONER STUDY - LEGISLATIVE COUNCIL REPORT.**

1. During the 2009-11 and 2011-13 bienniums, the tax commissioner shall conduct a cost-benefit analysis of the coal severance tax exemption authorized under section 57-61-01.4.
2. The tax commissioner shall report the findings and recommendations of the analysis to an interim committee designated by the legislative council during the 2013-14 interim.
3. The report must be based upon information available to the tax commissioner and must include an analysis of the costs and benefits to the state and the taxpayers who qualify for the exemption under section 57-61-01.4.
4. The tax commissioner shall establish the procedure by which the tax commissioner will compile the data and the format in which the tax commissioner will provide this data to the interim committee.
5. The tax commissioner may use confidential tax information filed by or on behalf of a person pursuant to a tax law of this state to compile this report. Confidential tax information must be provided to the interim committee in a manner that will not divulge information specific to any taxpayer.

**SECTION 6. EFFECTIVE DATE - EXPIRATION DATE.** Sections 1 through 4 of this Act are effective for taxable events occurring after June 30, 2009, and before July 1, 2015, and are thereafter ineffective.

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 563****SENATE BILL NO. 2347**

(Senator Cook)

(Representatives Drovdal, Weiler)

AN ACT to create and enact a new subsection to section 57-39.2-04 and a new subsection to section 57-40.2-04 of the North Dakota Century Code, relating to gross receipts from the sale of items delivered electronically; and to provide an effective date.

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

<sup>266</sup> **SECTION 1.** A new subsection to section 57-39.2-04 of the North Dakota Century Code is created and enacted as follows:

Gross receipts from the sale of items delivered electronically, including specified digital products. For purposes of this subsection:

- a. "Specified digital products" means:
  - (1) "Digital audio-visual works" which means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any;
  - (2) "Digital audio works" which means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones; and
  - (3) "Digital books" which means works that are generally recognized in the ordinary and usual sense as books.
- b. For purposes of the definition of "specified digital products", "transferred electronically" means obtained by the purchaser by means other than tangible storage media.
- c. For purposes of the definition of "digital audio work", "ringtones" means digitized sound files that are downloaded onto a device and which may be used to alert the customer with respect to a communication.

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<sup>266</sup> Section 57-39.2-04 was also amended by section 2 of House Bill No. 1289, chapter 557, section 1 of Senate Bill No. 2035, chapter 562, section 1 of Senate Bill No. 2053, chapter 560, section 1 of Senate Bill No. 2090, chapter 561, section 3 of Senate Bill No. 2325, chapter 556, and section 4 of Senate Bill No. 2325, chapter 556.

- d. "Specified digital products" may not be construed to include prewritten computer software as that term is defined in subdivision g of subsection 1 of section 57-39.2-02.1.

<sup>267</sup> **SECTION 2.** A new subsection to section 57-40.2-04 of the North Dakota Century Code is created and enacted as follows:

Gross receipts from the sale of items delivered electronically, including specified digital products. For purposes of this subsection:

- a. "Specified digital products" means:
- (1) "Digital audio-visual works" which means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any;
  - (2) "Digital audio works" which means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones; and
  - (3) "Digital books" which means works that are generally recognized in the ordinary and usual sense as books.
- b. For purposes of the definition of "specified digital products", "transferred electronically" means obtained by the purchaser by means other than tangible storage media.
- c. For purposes of the definition of "digital audio works", "ringtones" means digitized sound files that are downloaded onto a device and which may be used to alert the customer with respect to a communication.
- d. "Specified digital products" may not be construed to include prewritten computer software as that term is defined in subdivision g of subsection 1 of section 57-39.2-02.1.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2009.

Approved March 19, 2009  
Filed March 19, 2009

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<sup>267</sup> Section 57-40.2-04 was also amended by section 21 of Senate Bill No. 2325, chapter 556.

**CHAPTER 564****SENATE BILL NO. 2032**

(Legislative Council)

(Energy Development and Transmission Committee)

AN ACT to amend and reenact subsections 1 and 3 of section 57-39.2-04.2 and subsections 1 and 3 of section 57-40.2-04.2 of the North Dakota Century Code, relating to the exemption from sales and use tax for materials used in the construction or expansion of a wind-powered facility; and to provide an effective date.

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

<sup>268</sup> **SECTION 1. AMENDMENT.** Subsections 1 and 3 of section 57-39.2-04.2 of the North Dakota Century Code are amended and reenacted as follows:

1. As used in this section, unless the context otherwise requires:
  - a. (1) "Environmental upgrade" means an investment greater than twenty-five million dollars or one hundred thousand dollars per megawatt of installed nameplate capacity, whichever is less, in machinery, equipment, and related facilities for reducing emissions or increasing efficiency at an existing power plant.
  - (2) "Environmental upgrade" for purposes of a process unit means an investment greater than one hundred thousand dollars in machinery, equipment, and related facilities for reducing emissions, increasing efficiency, or enhancing reliability of the equipment at a new or existing process unit.
  - b. "Operator" means any person owning, holding, or leasing a power plant or process unit.
  - c. "Power plant" means:
    - (1) An electrical generating plant, and all additions to the plant, which processes or converts coal from its natural form into electrical power and which has at least one single electrical energy generation unit with a capacity of fifty thousand kilowatts or more.
    - (2) A wind-powered electrical generating facility, on which construction is completed before January 1, ~~2014~~ 2015, and all additions to the facility, which provides electrical power through wind generation and which has at least one single

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<sup>268</sup> Section 57-39.2-04.2 was also amended by section 2 of Senate Bill No. 2035, chapter 562.

electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.

- (3) Any other type of electrical power generating facility excluding the types of power plants identified in paragraphs 1 and 2 which has a capacity of one hundred kilowatts or more and produces electricity for resale or for consumption in a business activity.
  - d. "Process unit" means an oil refinery or gas processing plant and all adjacent units that are utilized in the processing of crude oil or natural gas.
  - e. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.
  - f. "Repowering" means an investment of more than two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever is less, in an existing power plant that modifies or replaces the process used for converting coal from its natural form into electrical power.
3. Sales of tangible personal property, other than production or environmental upgrade equipment, which is used in the construction of new power plants or to expand existing power plants or to add environmental upgrades to existing power plants or repowering existing power plants or to add environmental upgrades to existing process units are exempt from the tax imposed by this chapter.

<sup>269</sup> **SECTION 2. AMENDMENT.** Subsections 1 and 3 of section 57-40.2-04.2 of the North Dakota Century Code are amended and reenacted as follows:

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.

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<sup>269</sup> Section 57-40.2-04.2 was also amended by section 3 of Senate Bill No. 2035, chapter 562.

- b. "Operator" means any person owning, holding, or leasing a power plant or process unit.
  - c. "Power plant" means:
    - (1) An electrical generating plant, and all additions to the plant, which processes or converts coal from its natural form into electrical power and which has at least one single electrical energy generation unit with a capacity of fifty thousand kilowatts or more.
    - (2) A wind-powered electrical generating facility, on which construction is completed before January 1, ~~2014~~ 2015, and all additions to the facility, which provides electrical power through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.
    - (3) Any other type of electrical power generating facility excluding the types of power plants identified in paragraphs 1 and 2 which has a capacity of one hundred kilowatts or more and produces electricity for resale or for consumption in a business activity.
  - d. "Process unit" means an oil refinery or gas processing plant and all adjacent units that are utilized in the processing of crude oil or natural gas.
  - e. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.
  - f. "Repowering" means an investment of more than two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever is less, in an existing power plant that modifies or replaces the process used for converting coal from its natural form into electric power.
3. Sales of tangible personal property, other than production or environmental upgrade equipment, which is used in the construction of new power plants or to expand existing power plants or to add environmental upgrades to existing power plants or repowering existing power plants or to add environmental upgrades to existing process units are exempt from the tax imposed by this chapter.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2009.

Approved March 19, 2009  
Filed March 19, 2009

## CHAPTER 565

### SENATE BILL NO. 2037

(Legislative Council)

(Energy Development and Transmission Committee)

AN ACT to amend and reenact section 57-39.2-04.5 of the North Dakota Century Code, relating to a sales and use tax exemption for materials used in compressing, processing, gathering, or refining of gas; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-39.2-04.5 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Gross receipts from sales of tangible personal property used in compressing, processing, gathering, or refining of to construct or expand a system used to compress, process, gather, or refine gas recovered from an oil or gas well in this state or used to expand or build a gas-processing facility in this state are exempt from taxes under this chapter 57-39.2. To be exempt, the tangible personal property must be incorporated into a system used to compress, process, gather, or refine gas. Tangible personal property used to replace an existing system to compress, process, gather, or refine gas does not qualify for exemption under this section unless the replacement creates an expansion of the system.
2. To receive the exemption under this section at the time of purchase, the owner of the gas compressing, processing, gathering, or refining system must receive from the tax commissioner a certificate that the tangible personal property used qualifies for exemption. If a certificate is not received before the purchase, the owner shall pay the applicable tax imposed by this chapter and apply to the tax commissioner for a refund.
3. The If the tangible personal property is purchased and installed by a contractor subject to the tax imposed by this chapter, the owner of the tangible personal property gas compressing, processing, gathering, or refining system must apply to the tax commissioner for a refund of sales and use taxes paid by any contractor, subcontractor, or builder for which the sales 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 tax commissioner and must include sufficient information to permit the tax commissioner to verify the sales and use taxes paid and the exempt status of the sale or use.
3. All of the provisions of chapter 57-39.2 and 57-40.2 apply to the exemption under this section.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2009.

Approved April 8, 2009

Filed April 9, 2009

**CHAPTER 566****HOUSE BILL NO. 1083**  
(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

AN ACT to amend and reenact subsection 1 of section 57-39.2-12 of the North Dakota Century Code, relating to the due date for sales tax returns in odd-numbered years; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 57-39.2-12 of the North Dakota Century Code is amended and reenacted as follows:

1. The tax levied under this chapter is due and payable in quarterly installments on or before the last day of the month next succeeding each calendar quarterly period, except that if total sales subject to sales and use taxes for the preceding calendar year for any business which has been issued a sales tax permit equal or exceed three hundred thirty-three thousand dollars, the tax levied under this chapter is payable monthly on or before the last day of the next succeeding month; ~~except tax collected during May in each odd-numbered year is payable on or before the twenty-second day of June of that year.~~ The retailer shall pay the total tax due in the manner prescribed by the commissioner. Penalties and interest for failure to file a return, for filing an incorrect return, or for failure to pay the tax due are those prescribed in section 57-39.2-18. If the total of sales subject to the tax decreases below three hundred thirty-three thousand dollars for any succeeding year, the retailer may return to quarterly filing and payments. When there is a sale of any business by any retailer or when any business is discontinued by a retailer, the tax becomes due immediately prior to the sale or discontinuance of the business and if not paid within fifteen days thereafter it becomes delinquent and subject to the penalties provided in section 57-39.2-18. In the event of a business reorganization in which the ownership of the business organization remains in the same person or persons as prior to the reorganization, the total sales subject to sales and use taxes for the preceding calendar year for the business that was reorganized must be used to determine whether the tax is payable monthly under this subsection.

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

Approved April 21, 2009  
Filed April 22, 2009

**CHAPTER 567****HOUSE BILL NO. 1131**

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

AN ACT to amend and reenact subsection 5 of section 57-40.3-01 and subsection 1 of section 57-40.3-02.1 of the North Dakota Century Code, relating to the motor vehicle excise tax definition of purchase price of a motor vehicle and the tax imposed on motor vehicle leases with nominal consideration; and to provide an effective date.

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

<sup>270</sup> **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.~~ For a leased vehicle that is stolen or totally destroyed, the credit may not 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

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<sup>270</sup> Section 57-40.3-01 was also amended by section 2 of House Bill No. 1082, chapter 559, and section 1 of Senate Bill No. 2184, chapter 568.

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.

**SECTION 2. AMENDMENT.** Subsection 1 of section 57-40.3-02.1 of the North Dakota Century Code is amended and reenacted as follows:

1. With respect to any lease for a term of one year or more of a motor vehicle with an actual vehicle weight of ten thousand pounds [4535.92 kilograms] or less, all receipts due or consideration given or contracted to be given at the initiation of the lease and for the entire period of the lease, option to renew, or similar provision, or combination thereof, are deemed to have been paid or given and are subject to tax. Any tax due must be collected as provided in section 57-40.3-12 as of the date of first payment under the lease, option to renew, or similar provision, or combination thereof, or as of the date of registration under chapter 39-05. Lease consideration, when all or part of the lease is a gift or other agreement for nominal value, also includes the average value of similar motor vehicle leases established by standards and guides as determined by the director of the department of transportation.

**SECTION 3. EFFECTIVE DATE.** Section 2 of this Act is effective for motor vehicle leases or options to renew occurring after June 30, 2009.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 568****SENATE BILL NO. 2184**

(Senators Olafson, Krauter)  
(Representatives Belter, D. Johnson, Kaldor, Vigesaa)

AN ACT to amend and reenact subsection 5 of section 57-40.3-01 of the North Dakota Century Code, relating to exclusion of motor vehicle manufacturers' incentives or discounts from motor vehicle excise taxes; and to provide an effective date.

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

<sup>271</sup> **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~~. The purchase price excludes the amount of a manufacturer's incentive or discount that reduces the amount paid by the purchaser to the seller at the time of purchase. If 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

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<sup>271</sup> Section 57-40.3-01 was also amended by section 2 of House Bill No. 1082, chapter 559, and section 1 of House Bill No. 1131, chapter 567.

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.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2009.

Approved April 8, 2009  
Filed April 9, 2009

## CHAPTER 569

### HOUSE BILL NO. 1412

(Representatives Brandenburg, J. Kelsh, Kretschmar, Vigesaa)  
(Senators Erbele, Taylor)

AN ACT to amend and reenact section 57-40.6-02 of the North Dakota Century Code, relating to the fee imposed for emergency services communications; to provide for a legislative council study; and to provide an expiration date.

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

<sup>272</sup> **SECTION 1. 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 assessed communications service - Procedure.** The governing body of a county or city may impose a fee on 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 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,

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<sup>272</sup> Section 57-40.6-02 was also amended by section 30 of Senate Bill No. 2324, chapter 180.

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, 2007, on telephone exchange access service is extended to all assessed communications services and remains in effect until changed under this section.
8. Political subdivisions within an intrastate multicounty public safety answering point may exceed the maximum fee of one dollar to an amount not to exceed one dollar and fifty cents. The governing body of the political subdivision may increase the fee by resolution subject to a vote in that political subdivision at the next general election.

**SECTION 2. LEGISLATIVE COUNCIL STUDY - EMERGENCY SERVICES COMMUNICATION.** During the 2009-10 interim, the legislative council shall consider studying the equity of the 911 fee structure, including consideration of fees, taxes, assessments for services, equity of services, and payments among residents within service areas; fee collection methods; and current and future funding of emergency services communications in the state. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 3. EXPIRATION DATE.** Section 1 of this Act is effective through June 30, 2012, and after that date is ineffective.

Approved May 1, 2009  
Filed May 5, 2009

## CHAPTER 570

### HOUSE BILL NO. 1135 (Political Subdivisions Committee) (At the request of the Adjutant General)

AN ACT to amend and reenact section 57-40.6-12 of the North Dakota Century Code, relating to membership of the emergency services communications coordinating committee.

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

<sup>273</sup> **SECTION 1. AMENDMENT.** Section 57-40.6-12 of the North Dakota Century Code is amended and reenacted as follows:

#### **57-40.6-12. Emergency services communications coordinating committee - Membership - Duties.**

1. The governing body of a city or county, which adopted a fee on 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 emergency services communications coordinating committee. The committee is composed of ~~three~~ four members, one appointed by the North Dakota 911 association, one appointed by the North Dakota association of counties, one appointed by the chief information officer of the state, and one appointed by the adjutant general to represent the division of state radio.
2. The 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~~

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<sup>273</sup> Section 57-40.6-12 was also amended by section 92 of House Bill No. 1436, chapter 482.

- d. Periodically evaluate chapter 57-40.6 and recommend changes to the legislative council; and
  - e. Serve as the governmental body to coordinate plans for implementing emergency 911 services and internet protocol enabled emergency applications for 911.
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.

Approved April 8, 2009

Filed April 9, 2009

**CHAPTER 571****SENATE BILL NO. 2375**

(Senators Stenehjelm, Klein, Triplett)  
(Representatives Berg, Boe, Porter)

AN ACT to create and enact a new section to chapter 57-43.2 of the North Dakota Century Code, relating to use of dyed special fuels by cities.

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

**SECTION 1.** A new section to chapter 57-43.2 of the North Dakota Century Code is created and enacted as follows:

**Dyed special fuel use by a city.** A city that has computerized fuel dispensing equipment that allows tracking of fuel usage by its vehicles shall report to the tax commissioner, on a form prescribed by the commissioner, the highway and nonhighway use of dyed special fuels dispensed through that equipment. The city shall pay taxes under this chapter appropriate for that usage.

Approved March 19, 2009  
Filed March 19, 2009

**CHAPTER 572****SENATE BILL NO. 2224**

(Senators Olafson, Miller, Triplett)  
(Representatives Ruby, Schmidt, Weiler)

AN ACT to create and enact a new section to chapter 57-43.2 of the North Dakota Century Code, relating to refund of special fuels taxes on fuels used for a refrigeration unit on a truck; and to provide an effective date.

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

**SECTION 1.** A new section to chapter 57-43.2 of the North Dakota Century Code is created and enacted as follows:

**Refund of tax for fuel used for a refrigeration unit on a truck.** A consumer who buys or uses any special fuel for a refrigeration unit that has a separate supply tank on a truck or trailer on which the special fuels tax imposed under section 57-43.2-02 has been paid may file a claim for a refund with the tax commissioner. The tax imposed under section 57-43.2-03 must be deducted from the refund.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2009.

Approved April 21, 2009  
Filed April 23, 2009

**CHAPTER 573****SENATE BILL NO. 2338**

(Senators Nething, Seymour, Wardner)  
(Representatives Gruchalla, Kempenich, Weiler)

AN ACT to amend and reenact section 57-43.2-19 of the North Dakota Century Code, relating to deposit of special fuels excise taxes paid by railroads in a special fund; to provide an appropriation; to provide an effective date; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Section 57-43.2-19 of the North Dakota Century Code is amended and reenacted as follows:

**57-43.2-19. Transfer, deposit, and distribution of funds.** All taxes, license fees, penalties, and interest collected under this chapter must be transferred to the state treasurer who shall deposit moneys in a highway tax distribution fund, except all special fuels excise taxes collected on sales of diesel fuel to a railroad under section 57-43.2-03 of up to one million six hundred thousand dollars per biennium must be transferred to the state treasurer who shall deposit the moneys in the highway-rail grade crossing safety projects fund. The highway tax distribution fund must be distributed in the manner as prescribed by section 54-27-19.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the highway-rail grade crossing safety projects fund in the state treasury, not otherwise appropriated, the sum of \$1,600,000, or so much of the sum as may be necessary, and from federal highway traffic safety funds, the sum of \$900,000, or so much of the sum as may be necessary, to the department of transportation for funding of grants for highway-rail grade crossing safety projects, including grants for reduction of associated special assessments, in this state, for the biennium beginning July 1, 2009, and ending June 30, 2011. By August 1, 2011, the state treasurer shall transfer any unexpended and unobligated balance in the highway-rail grade safety projects fund to the highway tax distribution fund.

Grants under this section by the department of transportation for highway-rail grade crossing safety projects are subject to the following requirements:

1. A political subdivision must file an application with the department of transportation for a grant.
2. A political subdivision grant applicant must provide ten percent matching funds for the project costs but no local matching funds are required for a highway-rail grade crossing on a state highway.
3. Grant funds may be allocated for development of railroad quiet zones, installation or upgrading of active warning devices, resurfacing crossings, building of grade separations, and other costs associated with these improvements.
4. An applicant for grant approval for development of a railroad quiet zone shall provide the department of transportation a copy of the notice of

intent filed with the federal railroad administration regarding establishment of a proposed quiet zone and copies of any subsequent filings with or orders from the federal railroad administration relating to the notice of intent.

5. Grants for a single crossing may not exceed \$75,000 and grants for all crossings within a city may not exceed a cumulative amount of \$225,000.

**SECTION 3. EFFECTIVE DATE - EXPIRATION DATE.** Section 1 of this Act is effective for taxable events occurring after June 30, 2009, and before July 1, 2011, and is thereafter ineffective.

Approved April 24, 2009  
Filed April 29, 2009

**CHAPTER 574****SENATE BILL NO. 2413**

(Senators Wardner, O'Connell, Bowman)  
(Representatives Kempenich, Skarphol, Wald)

AN ACT to create and enact a new section to chapter 57-51 of the North Dakota Century Code, relating to an oil and gas gross production tax exemption for certain gas to generate electricity; to amend and reenact section 38-08-06.4 and subsection 7 of section 49-02-25 of the North Dakota Century Code, relating to flaring of gas and renewable electricity and recycled energy; and to provide an effective date.

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

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

**38-08-06.4. Flaring of gas restricted - Imposition of tax - Payment of royalties - Industrial commission authority.** As permitted under rules of the industrial commission, gas produced with crude oil from an oil well may be flared during a one-year period from the date of first production from the well; ~~or until June 30, 1986, for wells in production prior to July 1, 1985.~~ Thereafter, flaring of gas from the well must cease and the well must ~~either~~ be capped ~~or~~ connected to a gas gathering line, or equipped with an electrical generator that consumes at least seventy-five percent of the gas from the well. An electrical generator and its attachment units to produce electricity from gas must be considered to be personal property for all purposes. For a well operated in violation of this section, the producer shall pay royalties to royalty owners upon the value of the flared gas and shall also pay gross production tax on the flared gas at the rate imposed under section 57-51-02.2. The industrial commission may enforce this section and, for each well operator found to be in violation of this section, may determine the value of flared gas for purposes of payment of royalties under this section and its determination is final. A producer may obtain an exemption from this section from the industrial commission upon application and a showing that connection of the well to a natural gas gathering line is economically infeasible at the time of the application or in the foreseeable future or that a market for the gas is not available and that equipping the well with an electrical generator to produce electricity from gas is economically infeasible.

**SECTION 2. AMENDMENT.** Subsection 7 of section 49-02-25 of the North Dakota Century Code is amended and reenacted as follows:

7. Recycled energy systems producing electricity from currently unused waste heat resulting from combustion or other processes into electricity and which do not use an additional combustion process. The term does not include any system whose primary purpose is the generation of electricity unless the generation system consumes wellhead gas that would otherwise be flared, vented, or wasted.

**SECTION 3.** A new section to chapter 57-51 of the North Dakota Century Code is created and enacted as follows:

**Exemption of gas for electrical generation at well site.** Gas burned at the well site to power an electrical generator that consumes at least seventy-five percent of the gas from the well is exempt from the tax under section 57-51-02.2.

**SECTION 4. EFFECTIVE DATE.** Section 3 of this Act is effective for taxable events occurring after June 30, 2009.

Approved April 22, 2009

Filed April 23, 2009

## CHAPTER 575

### HOUSE BILL NO. 1304

(Representatives Skarphol, Hatlestad, Wald)  
(Senators Lyson, Wardner)

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 taxes; and to provide an effective date.

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

<sup>274</sup> **SECTION 1. AMENDMENT.** Section 57-51-15 of the North Dakota Century Code is amended and reenacted as follows:

**57-51-15. 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~~:
  - a. 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~~ eight 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~~;
  - b. Allocate five hundred thousand dollars per fiscal year to each city in an oil-producing county which has a population of seven thousand five hundred or more and more than two percent of its private covered employment engaged in the mining industry, according to data compiled by job service North Dakota. The allocation under this subdivision must be doubled if the city has more than seven and one-half percent of its private covered employment engaged in the mining industry, according to data compiled by job service North Dakota; and
  - c. Credit the remaining revenues to the state general fund.
2. After deduction of the amount provided in subsection 1, annual revenue collected under this chapter from oil and gas produced in each county must be allocated as follows:
  - a. The first ~~one~~ two 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 the county.

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<sup>274</sup> Section 57-51-15 was also amended by section 31 of House Bill No. 1324, chapter 545.



~~county road and bridge, farm-to-market and federal-aid road, and county road purposes. Any and 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 infrastructure fund and allocated under subsection 5.~~

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

- ~~3- 4.~~ a. ~~Forty-five percent of all revenues as may by the legislative assembly be allocated to any county hereunder for allocation under this subsection must be credited by the county treasurer to the county general fund. However, the allocation to a county under this subdivision must be credited to the state general fund if during that fiscal year the county does not levy a total of at least ten mills for combined levies for county road and bridge, farm-to-market and federal-aid road, and county road purposes.~~
- b. ~~Thirty-five percent of all revenues allocated to any county for allocation under this subsection 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.~~

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

- (1) The first three hundred fifty thousand dollars is apportioned entirely among school districts in the county.

- (2) The next three hundred fifty thousand dollars is apportioned seventy-five percent among school districts in the county and twenty-five percent to the county infrastructure fund.
  - (3) The next two hundred sixty-two thousand five hundred dollars is apportioned two-thirds among school districts in the county and one-third to the county infrastructure fund.
  - (4) The next one hundred seventy-five thousand dollars is apportioned fifty percent among school districts in the county and fifty percent to the county infrastructure fund.
  - (5) Any remaining amount is apportioned to the county infrastructure fund except from that remaining amount the following amounts are apportioned among school districts in the county:
    - (a) Four hundred ninety thousand dollars, for counties having a population of three thousand or fewer.
    - (b) Five hundred sixty thousand dollars, for counties having a population of more than three thousand and fewer than six thousand.
    - (c) Seven hundred thirty-five thousand dollars, for counties having a population of six thousand or more.
- c. Twenty percent of all revenues allocated to any county hereunder for allocation under this subsection must be paid apportioned no less than quarterly by the state treasurer to the incorporated cities of the county. Apportionment among cities under this subsection must be based upon the population of each incorporated city according to the last official decennial federal census. A city may not receive an allocation for a fiscal year under this subsection and subsection 5 which totals more than seven hundred fifty 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~~ 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 subdivision~~ 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.

- e. 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 eight hundred percent. If a city receives a direct allocation under subsection 1, the allocation to that city under this subsection is limited to sixty percent of the amount otherwise determined for that city under this subsection and the amount exceeding this limitation must be reallocated among the other cities in the county.
5. a. Forty-five percent of all revenues allocated to a county infrastructure fund under subsections 3 and 4 must be credited by the county treasurer to the county general fund. However, the allocation to a county under this subdivision must be credited to the state general fund if during that fiscal year the county does not levy a total of at least ten mills for combined levies for county road and bridge, farm-to-market and federal aid road, and county road purposes.
- b. Thirty-five percent of all revenues allocated to the county infrastructure fund under subsections 3 and 4 must be allocated by the board of county commissioners to or for the benefit of townships in the county on the basis of applications by townships for funding to offset oil and gas development impact to township roads or other infrastructure needs or applications by school districts for repair or replacement of school district vehicles necessitated by damage or deterioration attributable to travel on oil and gas development-impacted roads. An organized township is not eligible for an allocation of funds under this subdivision unless during that fiscal year that township levies at least ten mills for township purposes. For unorganized townships within the county, the board of county commissioners may expend an appropriate portion of revenues under this subdivision to offset oil and gas development impact to township roads or other infrastructure needs in those townships. The amount deposited during each calendar year in the county infrastructure fund which is designated for allocation under this subdivision and which is unexpended and unobligated at the end of the calendar year must be transferred by the county treasurer to the county road and bridge fund for use on county road and bridge projects.
- c. Twenty percent of all revenues allocated to any county infrastructure fund under subsections 3 and 4 must be allocated by the county treasurer no less than quarterly to the incorporated cities of the county. Apportionment among cities under this subsection must be based upon the population of each incorporated city according to the last official decennial federal census. A city may not receive an allocation for a fiscal year under this subsection and subsection 4 which totals more than seven hundred fifty dollars per capita. Once this per capita limitation has been reached, all excess funds to which a city would otherwise be

entitled must be deposited instead in that county's general fund. If a city receives a direct allocation under subsection 1, the allocation to that city under this subsection is limited to sixty percent of the amount otherwise determined for that city under this subsection and the amount exceeding this limitation must be reallocated among the other cities in the county.

6. Within sixty days after the end of each fiscal year, the board of county commissioners of each county that has received an allocation under this section shall file a report for the fiscal year with the tax commissioner, in a format prescribed by the tax commissioner, showing:
  - a. The amount received by the county in its own behalf, the amount of those funds expended for each purpose to which funds were devoted, and the share of county property tax revenue expended for each of those purposes, and the amount of those funds unexpended at the end of the fiscal year; and
  - b. The amount available in the county infrastructure fund for allocation to or for the benefit of townships or school districts, the amount allocated to each organized township or school district and the amount expended from each such allocation by that township or school district, the amount expended by the board of county commissioners on behalf of each unorganized township for which an expenditure was made, and the amount available for allocation to or for the benefit of townships or school districts which remained unexpended at the end of the fiscal year.

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

In developing the format for reports under this subsection, the tax commissioner shall consult the energy development impact office and at least two county auditors from oil-producing counties.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2009.

Approved May 4, 2009  
Filed May 4, 2009

**CHAPTER 576****SENATE BILL NO. 2034**

(Legislative Council)

(Energy Development and Transmission Committee)

AN ACT to amend and reenact subsection 5 of section 57-51.1-03 of the North Dakota Century Code, relating to exemption from oil extraction tax on tertiary recovery projects that use carbon dioxide.

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

<sup>275</sup> **SECTION 1. AMENDMENT.** Subsection 5 of section 57-51.1-03 of the North Dakota Century Code is amended and reenacted as follows:

5. a. The incremental production from a secondary recovery project which has been certified as a qualified project by the industrial commission after July 1, 1991, is exempt from any taxes imposed under this chapter for a period of five years from the date the incremental production begins.
- b. The incremental production from a tertiary recovery project that does not use carbon dioxide and which has been certified as a qualified project by the industrial commission subsequent to June 30, 1994, is exempt from any taxes imposed under this chapter for a period of ten years from the date the incremental production begins. Incremental production from a tertiary recovery project that uses carbon dioxide and which has been certified as a qualified project by the industrial commission is exempt from any taxes imposed under this chapter from the date the incremental production begins.
- c. For purposes of this subsection, incremental production is defined in the following manner:
  - (1) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where there has not been a secondary recovery project, incremental production means the difference between the total amount of oil produced from the unit during the secondary recovery project and the amount of primary production from the unit. For purposes of this paragraph, primary production means the amount of oil which would have been produced from the unit if the secondary recovery project had not been commenced. The industrial commission shall determine the amount of primary production in a manner which conforms to

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<sup>275</sup> Section 57-51.1-03 was also amended by section 1 of House Bill No. 1235, chapter 577.

the practice and procedure used by the commission at the time the project is certified.

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

The industrial commission shall determine the amount of primary production in a manner which conforms to the practice and procedure used by the commission at the time the project is certified.

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

**CHAPTER 577****HOUSE BILL NO. 1235**

(Representatives Skarphol, Froseth, Wald)  
(Senators Bowman, O'Connell, Wardner)

AN ACT to amend and reenact subsection 9 of section 57-51.1-03 of the North Dakota Century Code, relating to an oil extraction tax rate reduction for horizontal wells; 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:**

<sup>276</sup> **SECTION 1. AMENDMENT.** Subsection 9 of section 57-51.1-03 of the North Dakota Century Code is amended and reenacted as follows:

9. The first seventy-five thousand barrels or the first four million five hundred thousand dollars of gross value at the well, whichever is less, of oil produced during the first eighteen months after completion, from a horizontal well drilled and completed in the Bakken formation after June 30, 2007, and before July 1, 2008 April 30, 2009, is subject to a reduced tax rate of two percent of the gross value at the well of the oil extracted under this chapter. A well eligible for a reduced tax rate under this subsection is eligible for the exemption for horizontal wells under subsection 3, if the exemption under subsection 3 is effective during all or part of the first twenty-four months after completion. The rate reduction under this subsection becomes effective on the first day of the month following a month for which the average price of a barrel of crude oil is less than fifty-five dollars. The rate reduction under this subsection becomes ineffective on the first day of the month following a month in which the average price of a barrel of crude oil exceeds seventy dollars. If the rate reduction under this subsection is effective on the date of completion of a well, the rate reduction applies to production from that well for up to eighteen months after completion, subject to the other limitations of this subsection. If the rate reduction under this subsection is ineffective on the date of completion of a well, the rate reduction under this subsection does not apply to production from that well at any time.

**SECTION 2. EFFECTIVE DATE - EXPIRATION DATE.** This Act is effective for wells drilled and completed after April 30, 2009. However, if on May 1, 2009, the exemptions under subsection 3 of section 57-51.1-03 have been reinstated, this Act does not become effective until the first day of the month when the exemptions under subsection 3 of section 57-51.1-03 become ineffective, by operation of the trigger price provision in subsection 3 of section 57-51.1-03. This Act is effective for taxable events occurring through June 30, 2012, and is thereafter ineffective.

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<sup>276</sup> Section 57-51.1-03 was also amended by section 1 of Senate Bill No. 2034, chapter 576.

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

Approved April 28, 2009

Filed April 29, 2009

**CHAPTER 578****HOUSE BILL NO. 1164**

(Government and Veterans Affairs Committee)  
(At the request of the State Treasurer)

AN ACT to amend and reenact section 57-51.1-07 of the North Dakota Century Code, relating to the transfer of oil extraction tax revenues.

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

**SECTION 1. AMENDMENT.** Section 57-51.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**57-51.1-07. Allocation of moneys in oil extraction tax development fund.** Moneys deposited in the oil extraction tax development fund must be ~~apportioned quarterly~~ transferred monthly by the state treasurer as follows:

1. Twenty percent must be allocated and credited to the sinking fund established for payment of the state of North Dakota water development bonds, southwest pipeline series, and any moneys in excess of the sum necessary to maintain the accounts within the sinking fund and for the payment of principal and interest on the bonds must be credited to a special trust fund, to be known as the resources trust fund. The resources trust fund must be established in the state treasury and the funds therein must be deposited and invested as are other state funds to earn the maximum amount permitted by law which income must be deposited in the resources trust fund. The principal and income of the resources trust fund may be expended only pursuant to legislative appropriation and are available to:
  - a. The state water commission for planning for and construction of water-related projects, including rural water systems. These water-related projects must be those which the state water commission has the authority to undertake and construct pursuant to chapter 61-02; and
  - b. The industrial commission for the funding of programs for development of energy conservation and renewable energy sources; for studies for development of cogeneration systems that increase the capacity of a system to produce more than one kind of energy from the same fuel; for studies for development of waste products utilization; and for the making of grants and loans in connection therewith.
2. Twenty percent must be allocated as provided in section 24 of article X of the Constitution of North Dakota.
3. Sixty percent must be allocated and credited to the state's general fund for general state purposes.

Approved March 19, 2009  
Filed March 24, 2009

**CHAPTER 579****HOUSE BILL NO. 1140**

(Government and Veterans Affairs Committee)  
(At the request of the State Treasurer)

AN ACT to amend and reenact section 57-51.1-07.2 of the North Dakota Century Code, relating to the transfer of oil and gas gross production tax and oil extraction tax revenues.

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

**SECTION 1. AMENDMENT.** Section 57-51.1-07.2 of the North Dakota Century Code is amended and reenacted as follows:

**57-51.1-07.2. (Contingent repeal - See note) Permanent oil tax trust fund - Deposits - Interest - Adjustment of distribution formula.** ~~All revenue deposited in the general fund during a biennium~~ The state treasurer shall deposit seventy-one million dollars of revenue derived from taxes imposed on oil and gas under chapters 57-51 and 57-51.1 which exceeds into the general fund. Revenue exceeding seventy-one million dollars must be transferred deposited by the state treasurer to a special fund in the state treasury known as in the permanent oil tax trust fund. The state treasurer shall transfer interest ~~Interest earnings of the permanent oil tax trust fund must be credited to the general fund at the end of each fiscal year.~~ Interest earnings of the permanent oil tax trust fund must be credited to the general fund at the end of each fiscal year. The principal of the permanent oil tax trust fund may not be expended except upon a two-thirds vote of the members elected to each house of the legislative assembly.

If the distribution formulas under chapter 57-51 or 57-51.1 are amended effective after June 30, 1997, the director of the budget shall adjust the seventy-one million dollar amount in this section by the same percentage increase or decrease in the amount of revenue allocable to the general fund after the change in the allocation formula, and transfers to the permanent oil tax trust fund shall thereafter be made using that adjusted figure so that the dollar amount of the transfers to the permanent oil tax trust fund is not increased or decreased merely because of changes in the distribution formulas.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 580****HOUSE BILL NO. 1126**  
(Natural Resources Committee)  
(At the request of the State Treasurer)

AN ACT to amend and reenact section 57-51.1-07.3 of the North Dakota Century Code, relating to the transfer of oil and gas gross production tax and oil extraction tax revenues.

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

<sup>277</sup> **SECTION 1. AMENDMENT.** Section 57-51.1-07.3 of the North Dakota Century Code is amended and reenacted as follows:

**57-51.1-07.3. Oil and gas research fund - Deposits - Continuing appropriation.** There is established a special fund in the state treasury to be known as the oil and gas research fund. ~~Two percent of the state's share of the oil and gas gross production tax and oil extraction tax revenues, up to three million dollars per biennium, must be deposited into the oil and gas research fund. The state treasurer shall transfer into the oil and gas research fund two percent of the state's share of the oil and gas production tax and the oil extraction tax revenues for the previous three months.~~ Before depositing oil and gas gross production tax and oil extraction tax revenues in the general fund or the permanent oil tax trust fund, two percent of the revenues must be deposited monthly into the oil and gas research fund, up to three million dollars per biennium. All moneys deposited in the oil and gas research fund and interest on all such moneys are appropriated as a continuing appropriation to the council to be used for purposes stated in chapter 54-17.6.

Approved April 8, 2009  
Filed April 9, 2009

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<sup>277</sup> Section 57-51.1-07.3 was also amended by section 1 of Senate Bill No. 2051, chapter 581.

**CHAPTER 581****SENATE BILL NO. 2051**

(Legislative Council)  
(Taxation Committee)

AN ACT to amend and reenact section 57-51.1-07.3 of the North Dakota Century Code, relating to oil and gas research fund deposits; and to provide for a legislative council study.

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

<sup>278</sup> **SECTION 1. AMENDMENT.** Section 57-51.1-07.3 of the North Dakota Century Code is amended and reenacted as follows:

**57-51.1-07.3. Oil and gas research fund - Deposits - Continuing appropriation.** There is established a special fund in the state treasury to be known as the oil and gas research fund. Two percent of the state's share of the oil and gas gross production tax and oil extraction tax revenues, up to ~~three~~ four million dollars per biennium, must be deposited into the oil and gas research fund. The state treasurer shall transfer into the oil and gas research fund two percent of the state's share of the oil and gas production tax and the oil extraction tax revenues for the previous three months. All moneys deposited in the oil and gas research fund and interest on all such moneys are appropriated as a continuing appropriation to the council to be used for purposes stated in chapter 54-17.6.

**SECTION 2. LEGISLATIVE COUNCIL STUDY.** During the 2009-10 interim, the legislative council shall consider studying impact and taxation issues relating to production of mineral resources in North Dakota, specifically including:

1. Development of relatively new industries for extraction and production of minerals such as uranium, potash, and other minerals not previously produced on a significant economic scale;
2. Environmental, economic, and governmental impact of mineral production;
3. Infrastructure maintenance and development relating to mineral production;
4. Employment opportunities and issues relating to mineral production;
5. Comparison of mineral tax structures in North Dakota and other states; and
6. Water supplies and demands relating to mineral production.

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<sup>278</sup> Section 57-51.1-07.3 was also amended by section 1 of House Bill No. 1126, chapter 580.

The legislative council shall reports it findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved April 24, 2009  
Filed April 29, 2009

**CHAPTER 582****SENATE BILL NO. 2088**  
(Finance and Taxation Committee)  
(At the request of the State Treasurer)

AN ACT to repeal section 57-51.1-07.4 of the North Dakota Century Code, relating to transfer of oil and gas gross production tax and oil extraction tax revenues.

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

<sup>279</sup> **SECTION 1. REPEAL.** Section 57-51.1-07.4 of the North Dakota Century Code is repealed.

Approved April 8, 2009  
Filed April 9, 2009

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<sup>279</sup> Section 57-51.1-07.4 was also amended by section 4 of House Bill No. 1394, chapter 170.

**CHAPTER 583****SENATE BILL NO. 2221**

(Senators Cook, Christmann, O'Connell)  
(Representatives Belter, Heller, Pinkerton)

AN ACT to create and enact a new subsection to section 57-60-01 and section 57-60-02.1 of the North Dakota Century Code, relating to a credit against privilege taxes on coal conversion facilities for carbon dioxide capture; to amend and reenact section 57-60-03 of the North Dakota Century Code, relating to measurement and recording of carbon dioxide capture; and to provide an effective date.

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

<sup>280</sup> **SECTION 1.** A new subsection to section 57-60-01 of the North Dakota Century Code is created and enacted as follows:

"Carbon dioxide capture" means removal of carbon dioxide emissions from a coal conversion facility.

- a. For electrical generating plants, carbon dioxide captured is measured using the stack emissions of carbon dioxide from the facility as reported by the continuous emission monitoring system, in compliance with environmental protection agency rules in 40 CFR 75. The percentage reduction is determined by:
- (1) Determining the total carbon dioxide produced from the facility before the capture of carbon dioxide;
  - (2) Subtracting the stack emissions of carbon dioxide from the facility; and
  - (3) Dividing the result of paragraph 2 by the result of paragraph 1 and multiplying by one hundred, which results in the percentage of carbon dioxide captured.
- b. For coal gasification facilities, the carbon dioxide captured is determined by:
- (1) Determining the total carbon input to the facility by multiplying the percentage of carbon content in the coal fed to the facility, determined from the average of coal analysis for the taxing period, times the total tons of coal fed to the facility for the taxing period.
  - (2) Determining the amount of nonemissions carbon by multiplying the percentage of carbon content in all

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<sup>280</sup> Section 57-60-01 was also amended by section 1 of Senate Bill No. 2036, chapter 584.

hydrocarbon products, except carbon dioxide, leaving the facility times the tons of hydrocarbon products leaving the facility for the taxing period.

- (3) Subtracting the result under paragraph 2 from the result under paragraph 1 and multiplying the result times 3.667 to convert the amount of tons of carbon to tons of carbon dioxide, which results in the total tons of carbon dioxide emissions without capture.
- (4) The amount of carbon dioxide captured for the taxing period measured by a flow meter and converted to tons.
- (5) Dividing the result of paragraph 4 by the result from paragraph 3 and multiplying by one hundred, which results in the percentage of carbon dioxide captured.

**SECTION 2.** Section 57-60-02.1 of the North Dakota Century Code is created and enacted as follows:

**57-60-02.1. Carbon dioxide capture credit - Reporting requirement.** A coal conversion facility that achieves a twenty percent capture of carbon dioxide emissions during a taxable period after December 31, 2009, is entitled to a twenty percent reduction in the state general fund share of the tax imposed under section 57-60-02 during that taxable period. The facility is entitled to an additional reduction of one percent of the state general fund share of the tax imposed under section 57-60-02 for every additional two percentage points of its capture of carbon dioxide emissions. A maximum fifty percent reduction of the state general fund share of the tax imposed under section 57-60-02 is allowed for eighty percent or more capture of carbon dioxide emissions. A coal conversion facility may receive the reduction in coal conversion tax under this section for ten years from the date of first capture of carbon dioxide emission or for ten years from the date the coal conversion facility is eligible to receive the credit.

The operator of a coal conversion facility that receives a credit under this section shall report annually to the legislative council. The report must include:

1. An overview of the carbon dioxide capture project.
2. A status report on the current state of the carbon dioxide capture project, including data on the amount of carbon dioxide produced from the facility before the carbon dioxide capture project and the current carbon dioxide produced and captured from the facility.
3. Any recent changes to enhance the carbon dioxide capture system.
4. Information on the status of federal law and regulations related to the carbon dioxide capture project, including any benefits from the project realized by the operator under federal law and regulations.

**SECTION 3. AMENDMENT.** Section 57-60-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-60-03. Measurement and recording of synthetic natural gas, byproducts, beneficiated coal, or electricity produced and carbon dioxide capture.** The production of synthetic natural gas, byproducts, beneficiated coal, or

electrical power and data necessary to determine the amount of carbon dioxide captured must be measured at the place of production or generation, and any person subject to the imposition of the taxes provided by this chapter shall maintain devices to measure and record the cumulative periodic totals of synthetic natural gas, byproducts, beneficiated coal, and electrical power generated and data necessary to determine the amount of carbon dioxide captured. Any person subject to the taxes imposed by this chapter shall maintain accurate records of the daily and monthly totals of synthetic natural gas, beneficiated coal, and electrical power generated and subject to such taxes and data necessary to determine the amount of carbon dioxide captured. On or before October first of each year, the operator of any coal gasification plant shall file a report with the state health officer listing the quantity of byproducts produced during the year ending June thirtieth of that year. The commissioner shall have access to such records at reasonable times and places.

**SECTION 4. EFFECTIVE DATE.** This Act is effective for taxable events occurring after December 31, 2009.

Approved April 22, 2009  
Filed April 23, 2009

**CHAPTER 584****SENATE BILL NO. 2036**

(Legislative Council)  
(Energy Development and Transmission Committee)

AN ACT to amend and reenact subsection 11 of section 57-60-01 and subsection 2 of section 57-60-02 of the North Dakota Century Code, relating to the definition of repowering and exemptions from taxes on coal conversion facilities; and to provide an effective date.

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

<sup>281</sup> **SECTION 1. AMENDMENT.** Subsection 11 of section 57-60-01 of the North Dakota Century Code is amended and reenacted as follows:

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 coal ~~from~~ in its natural form or beneficiated coal into electric power.

**SECTION 2. AMENDMENT.** Subsection 2 of section 57-60-02 of the North Dakota Century Code is 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 energy generating ~~plants~~ units that begin construction or complete repowering 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~~ unit. The board of county commissioners may, by resolution, grant to the operator of an electrical generating plant located within the county 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~~ unit. 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 unit of the coal conversion facility for which the partial or complete exemption has been granted. Notwithstanding section 57-60-14, any tax collected from a ~~plant~~ unit 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

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<sup>281</sup> Section 57-60-01 was also amended by section 1 of Senate Bill No. 2221, chapter 583.

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.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2009.

Approved April 8, 2009  
Filed April 9, 2009

**CHAPTER 585****SENATE BILL NO. 2377**

(Senators Dotzenrod, Triplett)

AN ACT to amend and reenact subdivision b of subsection 2 of section 57-62-02 of the North Dakota Century Code, relating to allocation of money in the coal development fund.

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

<sup>282</sup> **SECTION 1. AMENDMENT.** Subdivision b of subsection 2 of section 57-62-02 of the North Dakota Century Code is amended and reenacted as follows:

- b. If the tipple of a currently active coal mining operation in a county is within fifteen miles [24.14 kilometers] of another county in which no coal is mined, the revenue from the production not exceeding the production limitation in a calendar year which is apportioned from that coal mining operation according to this subsection must be allocated, subject to the definitions of terms and the requirements in paragraph 4, as provided in this subdivision. For purposes of this subdivision, the production limitation is three million eight hundred thousand tons [3447302.02 metric tons] through calendar year 1995, three million six hundred thousand tons [3265865.07 metric tons] in calendar years 1996 and 1997, and three million four hundred thousand tons [3084428.12 metric tons] in calendar years after 1997. Revenue from production exceeding the production limitation in a calendar year from that coal mining operation must be allocated only within the coal-producing county under subdivision a. Allocations under this subdivision must be made as follows:
  - (1) Thirty percent must be paid by the state treasurer to the incorporated cities of the coal-producing county and to any city of a non-coal-producing county when any portion of the city lies within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation in the coal-producing county, based upon the population of each incorporated city according to the last official regular or special federal census or the census taken in accordance with the provisions of chapter 40-02 in case of a city incorporated subsequent to such census.
  - (2) Forty percent must be divided by the state treasurer between the general fund of the coal-producing county and the general fund of any non-coal-producing county when any portion of the latter county lies within fifteen miles [24.14

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<sup>282</sup> Section 57-62-02 was also amended by section 24 of House Bill No. 1015, chapter 15.

kilometers] of the tippel of the currently active coal mining operation in the coal-producing county. The non-coal-producing county portion must be based upon the ratio which the assessed valuation of all quarter sections of land in that county, any portion of which lies within fifteen miles [24.14 kilometers] of the tippel of the currently active coal mining operation, bears to the combined assessed valuations of all land in the coal-producing county and the quarter sections of land in the non-coal-producing county within fifteen miles [24.14 kilometers] of the tippel of the currently active coal mining operation. The county director of tax equalization of the coal-producing county shall certify to the state treasurer the number of quarter sections of land in the non-coal-producing counties which lie at least in part within fifteen miles [24.14 kilometers] of the tippel of the currently active coal mining operation and their assessed valuations.

- (3) Thirty percent must be apportioned by the state treasurer to school districts within the coal-producing county and to school districts in adjoining non-coal-producing counties when a portion of those school districts' land includes any of the quarter sections of land certified by the director of tax equalization to the state treasurer to be eligible to share county funds as provided for in paragraph 2. The county superintendent of the non-coal-producing counties shall certify to the state treasurer the number of students actually residing on these quarter sections lying outside the coal-producing county and each school district in non-coal-producing counties shall receive a portion of the money under this paragraph based upon the ratio of the number of children residing on quarter sections of that school district within the fifteen-mile [24.14-kilometer] radius of the tippel of a currently active coal mining operation to the total number of schoolchildren from the coal-producing county combined with all the schoolchildren certified to be living on quarter sections within fifteen miles [24.14 kilometers] of the tippel of the currently active coal mining operation in the coal-producing county.
- (4) For the purposes of this ~~subsection~~ subdivision:
  - (a) The terms "currently active coal mining operation in a county", "currently active coal mining operation in the coal-producing county", and "currently active coal mining operation" mean a coal mining operation that produced more than one hundred fifty thousand tons [136077.71 metric tons] of coal in a coal-producing county during the prior quarterly period.
  - (b) The term "coal-producing county" means a county in which more than one hundred fifty thousand tons [136077.71 metric tons] of coal were mined in the prior quarterly period.

- (c) The term "another county in which no coal is mined" means a county in which not more than seventy-five thousand tons [68038.86 metric tons] of coal were mined in the prior quarterly period.
- (d) The terms "non-coal-producing county" and "non-coal-producing counties" mean any county in which not more than seventy-five thousand tons [68038.86 metric tons] of coal were mined in the prior quarterly period.
- (e) In computing each amount to be paid as provided in paragraph 1, 2, or 3 for coal severance tax revenue from coal mined during a monthly period, the state treasurer shall deduct from the allocation the amount of coal severance tax revenue, if any, that the governmental body in the non-coal-producing county received from the coal mined in the non-coal-producing county during the same monthly period.

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