

HOUSE BILL NO. 1133

Introduced by

Finance and Taxation Committee

(At the request of the Tax Commissioner)

1 A BILL for an Act to create and enact a new section to chapter 57-01, a new subsection to
2 section 57-01-02.1, a new subsection to section 57-38-30.5, and a new subsection to section
3 57-40.3-04 of the North Dakota Century Code, relating to minimum tax payments and refunds,
4 offsets of overpaid local option taxes from future distributions, the effect of the expiration of the
5 federal research tax credit on the state income tax credit for research and experimental
6 expenditures, and exemptions from motor vehicle excise tax; to amend and reenact
7 subsection 4 of section 5-01-17, subsection 4 of section 5-01-19, subsection 5 of section
8 5-01-21, sections 5-03-05 and 40-57.3-04, subsection 10 of section 57-36-01, section 57-36-25,
9 subsection 2 of section 57-38-62, section 57-40.2-11, and subsection 1 of section 57-43.2-02 of
10 the North Dakota Century Code, relating to tax reporting of domestic wineries, domestic
11 distilleries, and brewer taprooms, authority of the tax commissioner to adopt rules, offsets of
12 restaurant, restaurant and lodging, and city motor vehicle rental taxes from future distributions,
13 definition of tobacco products, taxation of tobacco products, estimated income tax requirements
14 for corporations, articles taxed in other states or political subdivisions of other states, and
15 establishing energy per volume equivalent of liquefied natural gas for special fuels tax
16 purposes; and to provide an effective date.

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

18 **SECTION 1. AMENDMENT.** Subsection 4 of section 5-01-17 of the North Dakota Century
19 Code is amended and reenacted as follows:

20 4. A domestic winery is subject to section 5-03-06 and shall report and pay
21 ~~annually~~quarterly to the tax commissioner the wholesaler taxes due on all wines sold
22 by the licensee at retail, including all wines shipped directly to consumers as set forth
23 in sections 5-03-07 and 57-39.6-02. The ~~annual~~quarterly wholesaler tax reports are
24 due ~~January~~on or before the fifteenth day of the year following the year sales were

1 ~~made next succeeding month.~~ When the fifteenth of ~~January~~day of the month falls on a
2 Saturday, Sunday, or legal holiday, the due date is the first working day thereafter. The
3 ~~report~~reports must provide such detail and be in a format as prescribed by the tax
4 commissioner. The tax commissioner may require that the ~~report~~reports be submitted
5 in an electronic format approved by the tax commissioner.

6 **SECTION 2. AMENDMENT.** Subsection 4 of section 5-01-19 of the North Dakota Century
7 Code is amended and reenacted as follows:

8 4. A domestic distillery is subject to section 5-03-06 and shall report and pay
9 ~~annually~~quarterly to the tax commissioner the wholesaler taxes due on all spirits sold
10 by the licensee at retail, including all spirits shipped directly to consumers as set forth
11 in sections 5-03-07 and 57-39.6-02. The ~~annual~~quarterly wholesaler tax reports are
12 due ~~January~~on or before the fifteenth day of the year ~~following the year sales were~~
13 ~~made next succeeding month.~~ When the fifteenth day of the month falls on a ~~Saturday,~~
14 ~~Sunday, or legal holiday,~~ the due date is the first working day after that day. The
15 ~~report~~reports must provide the detail and be in a format as prescribed by the tax
16 commissioner. The tax commissioner may require that the ~~report~~reports be submitted
17 in an electronic format approved by the tax commissioner.

18 **SECTION 3. AMENDMENT.** Subsection 5 of section 5-01-21 of the North Dakota Century
19 Code is amended and reenacted as follows:

20 5. A brewer taproom licensee is subject to section 5-03-06 and shall report and pay
21 ~~annually~~quarterly to the tax commissioner the wholesaler taxes due on all beer sold by
22 the licensee at retail or to a retail licensee, including all beer sold directly to consumers
23 as set forth in sections 5-03-07 and 57-39.6-02. The ~~annual~~quarterly wholesaler tax
24 reports are due ~~January~~on or before the fifteenth day of the year ~~following the year~~
25 ~~sales were made next succeeding month.~~ When the fifteenth of ~~January~~day of the
26 month falls on a Saturday, Sunday, or legal holiday, the due date is the first working
27 day after that day. The ~~report~~reports must provide the detail and be in a format as
28 prescribed by the tax commissioner. The tax commissioner may require the
29 ~~report~~reports be submitted in an electronic format approved by the tax commissioner.

30 **SECTION 4. AMENDMENT.** Section 5-03-05 of the North Dakota Century Code is amended
31 and reenacted as follows:

1 **5-03-05. Tax commissioner to adopt rules - Appeal.**

2 The state tax commissioner, pursuant to ~~under~~ chapter 28-32, shall adopt rules governing
3 retailers, ~~wholesalers~~ licensees, direct shippers, and manufacturers necessary to carry out the
4 provisions of this title and to ensure efficient collection of beer and liquor taxes. All decisions of
5 the state tax commissioner are subject to court review.

6 **SECTION 5. AMENDMENT.** Section 40-57.3-04 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **40-57.3-04. Payment of tax - Collection by tax commissioner - Administrative**
9 **expenses allowed - Rules.**

10 The taxes imposed under this chapter are due and payable at the same time the taxpayer is
11 required to file a return under chapter 57-39.2 and must be collected and administered by the
12 state tax commissioner in accordance with the relevant provisions of chapter 57-39.2. The
13 taxpayer shall add the taxes imposed under this chapter to the sales, lease, or rental price and
14 shall collect the tax from the consumer. A retailer may not advertise or hold out or state to the
15 public, or to any consumer, directly or indirectly, that the taxes or any part of the taxes imposed
16 under this chapter shall be assumed, absorbed, or refunded by the taxpayer. The amount the
17 tax commissioner remits monthly to each city as taxes collected for that city's visitors' promotion
18 fund and visitors' promotion capital construction fund must be reduced by three percent as an
19 administrative fee necessary to defray the cost of collecting the taxes and the expenses incident
20 to collection. The administrative fee must be deposited in the general fund in the state treasury.
21 The tax commissioner shall adopt rules necessary for the administration of this chapter. The
22 penalties and liabilities provided in sections 57-39.2-18 and 57-39.2-18.1 specifically apply to
23 the filing of returns and administration of the taxes imposed under this chapter. The taxes
24 imposed under this chapter are not taxes subject to chapter 57-39.4. The tax commissioner may
25 offset future distributions of a tax imposed and collected under this chapter if there was a
26 previous overpayment of the tax distributed to the city. The tax commissioner, after consulting
27 the appropriate local political subdivision, may determine the offset amount and time period for
28 recovery of the overpayment of the tax distribution.

29 **SECTION 6.** A new section to chapter 57-01 of the North Dakota Century Code is created
30 and enacted as follows:

1 **Minimum refunds and collections.**

- 2 1. Except as otherwise provided in this title, a refund may not be made by the tax
3 commissioner to any taxpayer unless the amount to be refunded, including interest, is
4 at least five dollars. The tax commissioner shall transfer any amount that is not
5 refunded to a taxpayer under this subsection to the state treasurer for deposit in the
6 same manner as other revenue relating to the tax being administered.
7 2. A remittance of tax need not be made and any assessment or collection of tax may not
8 be made unless the amount is at least five dollars, including penalties and interest.

9 **SECTION 7.** A new subsection to section 57-01-02.1 of the North Dakota Century Code is
10 created and enacted as follows:

11 The tax commissioner may offset future distributions of a city's or county's tax imposed
12 and collected under chapters 40-05.1 or 11-09.1 if there was a previous overpayment
13 of the tax distributed to that city or county. The tax commissioner, after consulting the
14 appropriate local political subdivision, may determine the offset amount and time
15 period for recovery of the overpayment of the tax distribution.

16 **SECTION 8. AMENDMENT.** Subsection 10 of section 57-36-01 of the North Dakota
17 Century Code is amended and reenacted as follows:

- 18 10. "Other tobacco products" means ~~snuff and chewing tobacco~~ any product, not otherwise
19 defined in this section, which is made up or composed of tobacco in whole or in part.

20 **SECTION 9. AMENDMENT.** Section 57-36-25 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **57-36-25. Cigars and pipe tobacco - Excise tax on wholesale purchase price -**
23 **~~Other~~Snuff, chewing tobacco, and other tobacco products - Excise tax on weight -**
24 **Penalty - Reports - Collection - Allocation of revenue.**

- 25 1. There is hereby levied and assessed upon all cigars and pipe tobacco sold in this
26 state an excise tax at the rate of twenty-eight percent of the wholesale purchase price
27 at which such cigars and pipe tobacco are purchased by distributors. For the purposes
28 of this section, the term "wholesale purchase price" shall mean the established price
29 for which a manufacturer sells cigars or pipe tobacco to a distributor exclusive of any
30 discount or other reduction.

- 1 2. There is levied and assessed upon snuff, chewing tobacco, and all other tobacco
2 products sold in this state an excise tax at the following rates:
- 3 a. Upon each can or package of snuff, sixty cents per ounce and a proportionate tax
4 at the like rate on all fractional parts of an ounce.
- 5 b. On chewing tobacco, sixteen cents per ounce and a proportionate tax at the like
6 rate on all fractional parts of an ounce.
- 7 c. On other tobacco products, twenty-eight percent of the wholesale purchase price.
8 ~~For purposes of this subsection, the tax on other tobacco products is computed based~~
9 ~~on the net weight as listed by the manufacturer.~~
- 10 3. The proceeds of the taxes imposed under this section, together with such forms of
11 return and in accordance with such rules and regulations as the tax commissioner may
12 prescribe, shall be remitted to the tax commissioner by the distributor on a calendar
13 quarterly basis on or before the fifteenth day of the month following the quarterly
14 period for which paid. The tax commissioner shall, however, have authority to
15 prescribe monthly returns upon the request of the licensee distributor and such returns
16 accompanied with remittance shall be filed before the fifteenth day of the month
17 following the month for which the returns are filed.
- 18 4. Any person failing to file any prescribed form or return or to pay any tax within the time
19 required or permitted by this section is subject to a penalty of five percent of the
20 amount of tax due or five dollars, whichever is greater, plus interest of one percent of
21 the tax per month or fraction of a month of delay except the first month after the return
22 or the tax became due. The tax commissioner, if satisfied that the delay was
23 excusable, may waive all or any part of the penalty. The penalty must be paid to the
24 tax commissioner and disposed of in the same manner as are other receipts under this
25 chapter.
- 26 5. All moneys received by the tax commissioner under the provisions of this section shall
27 be transmitted to the state treasurer at the end of each month and deposited in the
28 state treasury to the credit of the general fund.

29 **SECTION 10.** A new subsection to section 57-38-30.5 of the North Dakota Century Code is
30 created and enacted as follows:

1 For any taxable year in which the federal research tax credit provisions of section 41
2 of the Internal Revenue Code are ineffective, the provisions of section 41 of the
3 Internal Revenue Code [26 U.S.C. 41] referenced in this section have the same
4 meaning and application as provided in section 41 of the Internal Revenue Code, as
5 amended through the most recent taxable year in which the provisions were in effect.

6 **SECTION 11. AMENDMENT.** Subsection 2 of section 57-38-62 of the North Dakota Century
7 Code is amended and reenacted as follows:

8 2. A corporation shall, at the time prescribed in this chapter, pay estimated tax for the
9 current taxable year if the corporation's estimated tax can reasonably be expected to
10 exceed five thousand dollars and if the corporation's net tax liability for the
11 immediately preceding taxable year exceeded five thousand dollars. If payment of
12 estimated tax is required, the corporation shall, at the time prescribed in this chapter,
13 pay the lesser of the following:

- 14 a. ~~Ninety~~An amount which, when added to the corporation's withholding, equals
15 ninety percent of the corporation's current taxable year's net tax liability.
16 b. ~~One~~An amount which, when added to the corporation's withholding, equals one
17 hundred percent of the corporation's net tax liability for the immediately preceding
18 taxable year.

19 **SECTION 12. AMENDMENT.** Section 57-40.2-11 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **~~57-40.2-11. Articles taxed~~Tax paid on articles in other states or political subdivisions**
22 **of other states.**

23 If ~~tax has been paid on~~ any article or tangible personal property ~~has been subjected already~~
24 ~~to a tax by~~in any other state or political subdivision thereof in respect to its sale or use in an
25 amount less than the tax imposed by this chapter, the provisions of this chapter apply, but at a
26 ~~rate measured by~~in an amount equal to the difference only between the rate fixed in tax imposed
27 by this chapter and the rate by which the previous tax upon the sale or use was computed~~tax~~
28 paid in the other state or political subdivision thereof. If the tax ~~imposed~~paid in such ~~the~~ other
29 state or political subdivision thereof is the same or more, then no tax is due on such article. The
30 provisions of this section apply only if such other state or political subdivision thereof allows a
31 tax credit with respect to the retail sales and use taxes imposed by this state which is

1 substantially similar in effect to the credit allowed by this section. The tax commissioner may
2 require the taxpayer to provide written proof from the other state or political subdivision that the
3 tax was legally due and paid.

4 **SECTION 13.** A new subsection to section 57-40.3-04 of the North Dakota Century Code is
5 created and enacted as follows:

6 Any damaged motor vehicle transferred to an insurance company in the settlement of
7 an insurance claim.

8 **SECTION 14. AMENDMENT.** Subsection 1 of section 57-43.2-02 of the North Dakota
9 Century Code is amended and reenacted as follows:

10 1. Except as otherwise provided in this chapter, an excise tax of twenty-three cents per
11 gallon [3.79 liters] is imposed on the sale or delivery of all special fuel sold or used in
12 this state. For the purpose of determining the tax upon compressed natural gas and
13 liquefied natural gas under this section, one hundred twenty cubic feet [3.40 cubic
14 meters] of compressed natural gas, and one and seven-tenths gallons [6.44 liters] of
15 liquefied natural gas is equal to one gallon [3.79 liters] of other special fuel.

16 **SECTION 15. EFFECTIVE DATE.** Sections 10 and 11 of this Act are effective for taxable
17 years beginning after December 31, 2014. Sections 8, 12, and 13 of this Act are effective for
18 taxable periods beginning after June 30, 2015. Sections 4, 5, 6, 7, 9, and 14 of this Act are
19 effective on July 1, 2015. Sections 1, 2, and 3 of this Act are effective for taxable years
20 beginning after December 31, 2015.