Sixty-fourth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2015

HOUSE BILL NO. 1133
(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

AN ACT to create and enact a new section to chapter 57-01, a new subsection to section 57-01-02.1, a new subsection to section 57-38-30.5, and a new subsection to section 57-40.3-04 of the North Dakota Century Code, relating to minimum tax payments and refunds, offsets of overpaid local option taxes from future distributions, the effect of the expiration of the federal research tax credit on the state income tax credit for research and experimental expenditures, and exemptions from motor vehicle excise tax; to amend and reenact sections 5-03-05, 40-57.1-04.4, and 40-57.3-04, subsection 4 of section 57-02-27.2, subsection 2 of section 57-38-62, section 57-40.2-11, and subsection 1 of section 57-43.2-02 of the North Dakota Century Code, relating to authority of the tax commissioner to adopt rules, the tax lien of record clearance requirement for the new and expanding business income tax exemption, offsets of restaurant, restaurant and lodging, and city motor vehicle rental taxes from future distributions, removal of obsolete language from provisions relating to the valuation and assessment of agricultural lands, estimated income tax requirements for corporations, articles taxed in other states or political subdivisions of other states, and establishing energy per volume equivalent of liquefied natural gas for special fuels tax purposes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-03-05 of the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 2. AMENDMENT. Section 40-57.1-04.4 of the North Dakota Century Code is amended and reenacted as follows:

40-57.1-04.4. ~~Tax lien of record clearance~~Clearance of tax obligations and tax liens of record.

1. A project operator is not eligible for the income tax exemption under section 40-57.1-04 until a showing is made that the project operator has satisfied all state ~~and~~or local tax obligations and tax liens of record for delinquent property, income, income withholding, sales, or use taxes owed to the state or a political subdivision.

2. A certificate from the tax commissioner to the state board of equalization satisfies the requirement of subsection 1.

3. If the project operator is a corporation or a ~~limited liability company~~passthrough entity defined in section 57-38-01, any of its officers, governors, or managers charged with the responsibility for making either property, income, income withholding, sales, or use tax returns and payments are subject to the provisions of subsections 1 and 2 with respect to all state or local tax obligations and tax liens of record for delinquent property, income, income withholding, sales, or use taxes for which the individual is personally liable. If the project operator is a partnership, each general partner is subject to the provisions of subsections 1 and 2 with respect to all state or local tax obligations or tax liens of record for delinquent property, income, income withholding, sales, or use taxes for which the individual is personally liable.

SECTION 3. AMENDMENT. Section 40-57.3-04 of the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 4. A new section to chapter 57-01 of the North Dakota Century Code is created and enacted as follows:

Minimum refunds and collections.

1. Except as otherwise provided in this title, a refund may not be made by the tax commissioner to any taxpayer unless the amount to be refunded, including interest, is at least five dollars. The tax commissioner shall transfer any amount that is not refunded to a taxpayer under this subsection to the state treasurer for deposit in the same manner as other revenue relating to the tax being administered.

2. A remittance of tax need not be made and any assessment or collection of tax may not be made unless the amount is at least five dollars, including penalties and interest.

SECTION 5. A new subsection to section 57-01-02.1 of the North Dakota Century Code is created and enacted as follows:

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

SECTION 6. 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 percent for taxable 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 7. A new subsection to section 57-38-30.5 of the North Dakota Century Code is created and enacted as follows:

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

SECTION 8. AMENDMENT. Subsection 2 of section 57-38-62 of the North Dakota Century Code is amended and reenacted as follows:

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

   a. ~~Ninety~~An amount which, when added to the corporation's withholding, equals ninety percent of the corporation's current taxable year's net tax liability.

   b. ~~One~~An amount which, when added to the corporation's withholding, equals one hundred percent of the corporation's net tax liability for the immediately preceding taxable year.

SECTION 9. AMENDMENT. Section 57-40.2-11 of the North Dakota Century Code is amended and reenacted as follows:

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

If tax has been paid on any article or tangible personal property ~~has been subjected already to a tax by~~in any other state or political subdivision thereof in respect to its sale or use in an amount less than the tax imposed by this chapter, the provisions of this chapter apply, but ~~at a rate measured by~~in an amount equal to the difference ~~only~~ between the ~~rate fixed in~~tax imposed by this chapter and the ~~rate by which the previous tax upon the sale or use was computed~~tax paid in the other state or political subdivision thereof. If the tax ~~imposed~~paid in ~~such~~the other state or political subdivision thereof is the same or more, then no tax is due on such article. The provisions of this section apply only if such other state or political subdivision thereof allows a tax credit with respect to the retail sales and use taxes imposed by this state which is substantially similar in effect to the credit allowed by this section. The tax commissioner may require the taxpayer to provide written proof from the other state or political subdivision that the tax was legally due and paid.

SECTION 10. A new subsection to section 57-40.3-04 of the North Dakota Century Code is created and enacted as follows:

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

SECTION 11. AMENDMENT. Subsection 1 of section 57-43.2-02 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in this chapter, an excise tax of twenty-three cents per gallon [3.79 liters] is imposed on the sale or delivery of all special fuel sold or used in this state. For

the purpose of determining the tax upon compressed natural gas and liquefied natural gas under this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas, and one and seven-tenths gallons [6.44 liters] of liquefied natural gas is equal to one gallon [3.79 liters] of other special fuel.

SECTION 12. EFFECTIVE DATE. Section 2 of this Act is effective for applications filed after June 30, 2015. Sections 7 and 8 of this Act are effective for taxable years beginning after December 31, 2014. Sections 9 and 10 of this Act are effective for taxable periods beginning after June 30, 2015. Sections 1, 3, 4, 5, and 11 of this Act become effective on July 1, 2015.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-fourth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1133.

House Vote:	Yeas 87	Nays 0	Absent 7
Senate Vote:	Yeas 46	Nays 0	Absent 1

Chief Clerk of the House

Received by the Governor at 10:44 A.M. on April 8, 2015.

Approved at 1:44 P.M. on April 9, 2015.

Governor

Filed in this office this 9th day of April, 2015,

at 4:37 o'clock P M.

Secretary of State