

TITLE 57 TAXATION

CHAPTER 57-01 TAX COMMISSIONER

57-01-01. Bond of tax commissioner. Repealed by S.L. 1999, ch. 113, § 24.

57-01-02. Powers and duties. The tax commissioner:

1. Shall perform all the duties imposed upon the tax commissioner by law.
2. Shall exercise general supervision over all assessors of general property or other taxes, over township, county, and city boards of equalization and over all other assessing officers, in the performance of their duties, to the end that all assessments of property be made relatively just and equal in compliance with the laws of the state.
3. Shall direct actions and prosecutions to be instituted to enforce the laws relating to the penalties, liabilities, and punishments of persons, officers of corporations, limited liability companies, public officers, and others, for failure or neglect to comply with the provisions of law governing the returns, assessments, and taxation of property, income, or other objects of taxation, cause complaints to be made against officers for neglect or refusal to comply with the law, and generally shall enforce all tax proceedings and revenue laws of the state in the proper courts.
4. May require state's attorneys of the several counties to assist in the commencement and prosecution of actions and proceedings for the violation of any laws in respect to assessment or taxation.
5. May require township, city, county, and other public officers to report information as to the assessment and collection of property and other taxes, receipts from licenses and other sources, the expenditure of public funds for all purposes, and such other information as may be needful in the administration of the tax laws, in such form and upon such blanks as the tax commissioner may prescribe.
6. May summon witnesses to appear and give testimony and produce books, records, papers, and documents relating to any matter which the tax commissioner or the state board of equalization may have authority to investigate or determine, and may cause the depositions of witnesses residing within or without the state, or temporarily absent therefrom, to be taken, upon notice to the interested parties, if any, in like manner as depositions of witnesses are taken in civil actions in the district court.
7. May require a reassessment of property in any county to be made in accordance with chapter 57-14, whenever that is deemed necessary, or may require county auditors to place on the assessment rolls property which may be discovered and which has not been taxed according to law.
8. Shall examine carefully all cases in which evasions or violations of the laws of assessment and taxation of property or other objects or subjects of taxation are alleged, complained of, or discovered, and shall ascertain wherein existing laws are defective or are administered improperly or negligently.
9. Shall submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04. The report must contain the biennial report of the state board of equalization.

10. Shall visit other states and confer with taxing officials and attend tax or other economic conferences or conventions, in person or by the tax commissioner's authorized agent.
11. Shall certify all levies, assessments, equalizations, or valuations made by the tax commissioner or the state board of equalization, not more than thirty days after the same have been made, or at periods otherwise provided by law.
12. May execute reciprocal agreements with the appropriate officials of any other state under which the tax commissioner may waive all or any part of the requirements imposed by the laws or statutes of this state upon those who use or consume in this state gasoline, other motor vehicle fuel, or special fuel upon which the tax has been paid to that other state; provided, that the officials of that other state grant the equivalent privileges with respect to gasoline, other motor vehicle fuel, or special fuel used in that other state upon which the tax has been paid to this state.
13. May maintain an accounting system that includes a special category of accounts designated as noncurrent accounts. The noncurrent accounts must be those accounts that are uncollectible as a matter of law or those accounts in which all reasonable collection efforts over a period of six years have produced no results. After examination by the state auditor, and upon the state auditor's recommendation for cause, specific accounts may be removed by the commissioner from noncurrent status and all records pertaining thereto immediately destroyed.
14. May waive, upon a showing of good cause, any and all tax due. A lien must have been filed against the debtor's property prior to the request for a waiver. The attorney general shall approve the waiver. Notwithstanding the provisions of this section, if a debtor and the internal revenue service enter into an offer in compromise pursuant to section 7122 of the Internal Revenue Code [26 U.S.C. 7122], as amended, the tax commissioner may reduce a debtor's individual income tax liability. However, if the federal offer in compromise, for any reason, is subsequently declared void by the internal revenue service, the debtor is liable for the original amount of tax due.
15.
 - a. May allow a taxpayer to elect to pay the tax liability to the state no later than the date the payment is required by law to be made in funds which are immediately available to the state on the date of payment. An election to pay the tax under this subdivision is binding until the taxpayer applies to the tax commissioner to rescind the election. Payment in immediately available funds may be made by wire transfer of funds through the federal reserve system or by any other means established by the commissioner which ensures the availability of the funds to the state on the date of payment. Evidence of the payment must be furnished to the commissioner on or before the due date of the tax as established by law. Failure to timely make the payment in immediately available funds or failure to provide evidence of payment in a timely manner subjects the taxpayer to penalty and interest as provided by law for delinquent or deficient tax payments.
 - b. May establish by rule periodic filing and payment dates that are subsequent to the dates otherwise established by law for any taxes collected by the commissioner in those instances in which the commissioner deems it to be in the best interest of the state, provided that the alternative date may not be later than the last day of the month in which the tax was otherwise due.
 - c. May adopt rules necessary for the administration of this subsection.
16. May participate in the treasury offset program administered by the United States department of treasury as prescribed by federal law and regulation. An amount equal to the amount of fees for participation in this program and any repayment of

refunds erroneously received is appropriated as a standing and continuing appropriation to the tax commissioner for payment of fees due under this program and any required repayments.

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

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

57-01-03. Office of commissioner. The office of the tax commissioner must be at the state capitol. The tax commissioner may appoint such deputies, employees, clerks, experts, and other persons as are necessary in maintaining the tax commissioner's office and performing duties for which the legislative assembly may appropriate funds.

57-01-04. Salary. The annual salary of the state tax commissioner is ninety thousand six hundred seventy-eight dollars through June 30, 2010, and ninety-five thousand two hundred twelve dollars thereafter.

57-01-05. State supervisor of assessments. The state tax commissioner shall appoint a supervisor of assessments who must be a person trained and experienced in property appraisals and familiar with assessment and equalization procedures and techniques. The supervisor of assessments serves at the pleasure of the state tax commissioner and office space must be furnished to the supervisor of assessments by the commissioner.

The supervisor of assessments shall perform the following duties under the direction of the tax commissioner:

1. The supervisor of assessments shall advise and give the various assessors in the state the necessary instructions and directions as to their duties under the laws of this state, to the end that a uniform assessment of all real and personal property in this state will be attained.
2. The supervisor of assessments shall assist and instruct the various assessors in this state in the use of soil reconnaissance surveys, land classification methods, in the preparation and proper use of land maps and record cards, in the proper classification of real and personal property, and in the determination of proper standards of value.
3. The supervisor of assessments may require the attendance of groups of assessors at meetings called by the supervisor of assessments for the purpose of giving them further assistance and instruction as to their duties.
4. The supervisor of assessments may make sales, market, and productivity studies and other studies of property assessments in the various counties and cities of this state for the purpose of properly advising the various assessors and directors of tax equalization in the state and for the purpose of recommending to the tax commissioner changes to be made by the state board of equalization in the performance of the equalization powers and duties prescribed for it by section 57-13-04. In any sales, market, and productivity study made according to section 57-01-06, the county directors of tax equalization or city assessors, as the case may be, are responsible for compiling a record of sales of property made in the county or city, and in conjunction with the county commissioners shall analyze the sales for the purpose of advising the state supervisor of assessments as to the value of using the sales in any such study. The compilations must be forwarded to the state supervisor of assessments with the findings of the county director of tax equalization, city assessors, and the board of county commissioners. In any county or city or any part thereof where the number of sales of properties is insufficient for making a sales, market, and productivity study, the county director of tax equalization or city assessor, as the case may be, in cooperation with the state supervisor of assessments or that person's assistants shall make appraisals of properties in order to determine the market value.
5. The supervisor of assessments shall cooperate with North Dakota state university in the development of a soil mapping program, a land classification system, valuation studies, and other matters relating to the assessment of property and shall provide for the use of such information and procedure at the earliest possible date by the assessors of this state.
6. The supervisor of assessments has general supervision of assessors and county directors of tax equalization pertaining to methods and procedures of assessment of all property and has authority to require all county directors of tax equalization to do any act necessary to obtain uniform methods and procedures of assessment.
7. The supervisor of assessments shall perform such other duties relating to assessment and taxation of property as the tax commissioner directs.

57-01-06. Sales, market, and productivity study - Contents not to be included. Any sales, market, and productivity study which may be made by the state tax commissioner may not include the following:

1. Property owned or used by public utilities.
2. Property classified as personal property.
3. A sale when the grantor and the grantee are of the same family or corporate affiliate, if known.

4. A sale which resulted as a settlement of an estate.
5. All sales to or from a government or governmental agency.
6. All forced sales, mortgage foreclosures, and tax sales.
7. All sales to or from religious, charitable, or nonprofit organizations.
8. All sales where there is an indicated change of use by the new owner.
9. All transfer of ownership of property for which is given a quitclaim deed.
10. Sales of property not assessable by law.
11. Agricultural lands of less than eighty acres [32.37 hectares].

57-01-06.1. Statement of legislative intent concerning use of sales, market, and productivity studies. It is the intent of the legislative assembly that local assessors, county directors of tax equalization, and city, township, county, and state boards of equalization use the results of sales, market, and productivity studies as a guide in making assessments and in equalizing assessments of property in this state. The legislative assembly recognizes that sales of property alone provide insufficient information to make accurate judgments concerning the market value of property within the various counties of this state, particularly in view of the limited number of sales which occur within a given period of time in many counties, and that, in order to get an accurate picture of market value, consideration must be given to such factors as property appraisals, productivity, and current usage of property.

57-01-07. Review of sales, market, and productivity study by state tax commissioner - Appeal.

1. The state tax commissioner shall notify each county board of commissioners of a scheduled hearing of the sales, market, and productivity study before the state tax commissioner. Such notice must set forth the time and date and place of such hearing. After hearing objections to using certain sales in the study, the state tax commissioner is authorized to withdraw such sales that the state tax commissioner deems are not representative. Within thirty days after the close of such formal hearing, the state tax commissioner shall notify each county board of commissioners, in writing, as to the action taken as a result of such hearing. Within ten days after receiving such notice from the state tax commissioner, each board of county commissioners may appeal the decision of the state tax commissioner to the state board of equalization. Such board will review the findings of the state tax commissioner and render its final decision on such appeal.
2. No sale may be used in any sales, market, and productivity study until it has been verified by the state tax commissioner, the county supervisor of assessments, township supervisors, or the board of county commissioners or its agent that none of the exclusions set forth in section 57-01-06 have been used in the study.

57-01-08. County equalization fund payments - Sales assessment ratio - When effective. Omitted.

57-01-09. Tax commissioner's cash change fund authorized. For the purpose of promptly and efficiently accommodating taxpayers who make payments of taxes in person to the cashier in the state tax department, the tax commissioner may maintain, out of collections made, a cash fund in the cashier's office in an amount reasonably necessary for making change. The tax commissioner shall obtain the written approval of the director of the office of management and budget of the amount of money to be maintained in such cash change fund.

57-01-10. Tax manuals - Distribution. The state tax commissioner may prepare a manual or manuals in looseleaf form in which is compiled the provisions of any or several of the tax laws administered by the state tax commissioner with the rules, regulations, opinions, and other information relating to the administration of the particular law or laws included in each manual. The state tax commissioner may make each manual available for sale at a charge that will cover the cost of preparing and mailing it and also may prepare and have available for sale, at an amount sufficient to cover all costs, periodic supplements to each manual so as to provide the purchaser with current information relating to the interpretation and administration of the various tax laws the state tax commissioner administers.

All moneys received by the state tax commissioner from the sale of such manuals and the supplements for them must be transmitted by the state tax commissioner at the end of each month to the state treasurer for deposit by the state treasurer to the credit of the general fund.

57-01-11. Assessment of or determination of additional tax liability by tax commissioner - Hearing - Appeal. In any case in which the provisions of any tax law are administered by the tax commissioner and the tax is collected by the tax commissioner or the amount thereof is certified by the tax commissioner to any other official for collection and the law providing for such tax authorizes the tax commissioner to assess or determine a tax liability that is in addition to that reported by the taxpayer, the taxpayer has a right to a hearing before the tax commissioner on such assessment or determination and has a right to appeal to the courts from the decision of the tax commissioner on such hearing and all of the provisions of chapter 28-32 relating to proceedings before an administrative agency, including the right to appeal to the courts from the decision of the tax commissioner in such a proceeding, are applicable to and govern the notice of hearing, the hearing, and the right of appeal from the tax commissioner's decision thereon. Notwithstanding the provisions of any other law heretofore or hereafter enacted, it is the intent and purpose of this section to provide that in those circumstances hereinbefore described every taxpayer shall have both the right to a hearing before the tax commissioner and the right to appeal to the courts from the tax commissioner's decision on such hearing in accordance with the provisions of chapter 28-32 unless the provisions of any such law expressly provide that the decision of the tax commissioner is final or expressly provide that the provisions of chapter 28-32 are not applicable.

57-01-11.1. Reports on auditing enhancement program and settlement of tax assessments. Repealed by S.L. 1997, ch. 445, § 4.

57-01-12. Approval of refunds by tax commissioner. Repealed by S.L. 1983, ch. 639, § 2.

57-01-12.1. Application of refunds and credits. All refunds and credits for overpayment to any taxpayer may be applied to the payment of any taxpayer's delinquent or unpaid taxes, including penalties and interest, or delayed until the taxpayer's delinquent returns have been filed and all taxes due thereon, including penalties and interest, have been paid. This provision is applicable as to all taxes that are administered and collected by the tax commissioner and is effective for all refunds and credits determined payable or due a taxpayer after December 31, 1978.

57-01-13. (Contingent expiration date - See note) Collection of delinquent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, telecommunications carriers, income, and business and corporation privilege taxes.

1. Notwithstanding the secrecy and confidential information provisions in chapters 57-38, 57-39.2, and 57-40.2, the tax commissioner may, for the purpose of collecting delinquent North Dakota sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, telecommunications carriers, income, or business and corporation privilege taxes due from a taxpayer not residing or domiciled in this state, contract with any collection or credit agency, within or without the state, for the collection of the delinquent sales, use, motor vehicle fuels,

special fuels, importer for use, aviation fuel, motor vehicle excise, telecommunications carriers, income, or business and corporation privilege taxes, including penalties and interest thereon. For purposes of this section, a delinquent tax is defined as a tax liability that is due and owing for a period longer than six months and for which the taxpayer has been given at least three notices in writing requesting payment. The notices must be sent by first-class mail to the taxpayer at the taxpayer's last-known mailing address. The third notice must be sent with a copy of an affidavit of mailing. If the tax commissioner has assigned a delinquent tax liability pursuant to this section, subsequent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, telecommunications carriers, income, or business and corporation privilege taxes that become due from the same taxpayer may be assigned immediately and without further notice to the taxpayer, so long as the originally assigned liability has not been fully collected.

2. a. Fees for services, reimbursement, or any other remuneration to a collection or credit agency must be based on the amount of tax, penalty, and interest actually collected. Each contract entered into between the tax commissioner and the collection or credit agency must provide for the payment of fees for the services, reimbursements, or other remuneration not in excess of fifty percent of the amount of delinquent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, income, or business and corporation privilege taxes, including penalties and interest actually collected.
 - b. All funds collected by the collection or credit agency must be remitted to the tax commissioner monthly from the date of collection from a taxpayer. Forms to be used for the remittances must be prescribed by the tax commissioner. The tax commissioner shall transfer the funds to the state treasurer for deposit in the state general fund. An amount equal to the amount of fees for services, reimbursement, or any other remuneration to the collection or credit agency as set forth in the contract authorized by this section is appropriated as a standing and continuing appropriation to the tax commissioner for payment of fees due under the contract.
 - c. Before entering into a contract, the tax commissioner shall require a bond from the collection or credit agency not in excess of ten thousand dollars, guaranteeing compliance with the terms of the contract.
3. A collection or credit agency entering into a contract with the tax commissioner for the collection of delinquent taxes pursuant to this section thereby agrees that it is doing business in this state for the purposes of the North Dakota income tax and business and corporation privilege tax laws.

(Contingent effective date - See note) Collection of delinquent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, telecommunications carriers, income, and business and corporation privilege taxes.

1. Notwithstanding the secrecy and confidential information provisions in chapters 57-38 and 57-39.2, the tax commissioner may, for the purpose of collecting delinquent North Dakota sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, telecommunications carriers, income, or business and corporation privilege taxes due from a taxpayer not residing or domiciled in this state, contract with any collection or credit agency, within or without the state, for the collection of the delinquent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, telecommunications carriers, income, or business and corporation privilege taxes, including penalties and interest thereon. For purposes of this section, a delinquent tax is defined as a tax liability that is due and owing for a period longer than six months and for which the taxpayer has been given at least three notices in writing requesting payment. The

notices must be sent by regular mail to the taxpayer at the taxpayer's last-known mailing address. The third notice must be sent with a copy of an affidavit of mailing. If the tax commissioner has assigned a delinquent tax liability pursuant to this section, subsequent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, income, or business and corporation privilege taxes that become due from the same taxpayer may be assigned immediately and without further notice to the taxpayer, so long as the originally assigned liability has not been fully collected.

2. a. Fees for services, reimbursement, or any other remuneration to a collection or credit agency must be based on the amount of tax, penalty, and interest actually collected. Each contract entered into between the tax commissioner and the collection or credit agency must provide for the payment of fees for the services, reimbursements, or other remuneration not in excess of fifty percent of the amount of delinquent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, income, or business and corporation privilege taxes, including penalties and interest actually collected.
 - b. All funds collected, less the fees for collection services, as provided in the contract, must be remitted to the tax commissioner monthly from the date of collection from a taxpayer. Forms to be used for the remittances must be prescribed by the tax commissioner.
 - c. Before entering into a contract, the tax commissioner shall require a bond from the collection or credit agency not in excess of ten thousand dollars, guaranteeing compliance with the terms of the contract.
3. A collection or credit agency entering into a contract with the tax commissioner for the collection of delinquent taxes pursuant to this section thereby agrees that it is doing business in this state for the purposes of the North Dakota income tax and business and corporation privilege tax laws.

57-01-14. Tax information furnished by United States secretary of the treasury - Penalty for disclosure. Except as authorized by the United States Internal Revenue Code of 1954, it is unlawful for the state tax commissioner or any of the commissioner's employees or legal representatives to disclose to any person any return or return information opened to inspection by or disclosed by the United States secretary of the treasury pursuant to section 6103 of the United States Internal Revenue Code of 1954 [26 U.S.C. 6103] to the state tax commissioner or any of the commissioner's employees or legal representatives for the administration of the tax laws administered by the state tax commissioner. For the purposes of this section, the terms "return" and "return information" have the same meanings as are provided in section 6103 of the United States Internal Revenue Code of 1954 [26 U.S.C. 6103], and "state tax commissioner" and "any of the commissioner's employees or legal representatives" include a former state tax commissioner and a former employee or legal representative of the state tax commissioner. Any person who violates this section is guilty of a class C felony as provided in section 12.1-13-01.

57-01-15. Use of tax information to administer tax laws. For the purpose of properly administering the tax laws of this state, information filed by or on behalf of a person with the tax commissioner pursuant to a tax law of this state and any other information relating to that person which was either obtained by the tax commissioner pursuant to that tax law or furnished to the tax commissioner pursuant to section 6103 of the United States Internal Revenue Code of 1954 [26 U.S.C. 6103] may be used by the tax commissioner to determine or enforce the tax liability, if any, of that person under any other tax law of this state that is administered by the tax commissioner.

57-01-16. Extension of period of time to make assessments. If the tax commissioner issues a subpoena to a taxpayer, the period of time for making an assessment against that taxpayer is automatically extended by a period equal to the time between the issuance of the

subpoena to final resolution. Final resolution occurs when a court dismisses the subpoena or the taxpayer complies with the subpoena.

57-01-17. Failure to complete return or supply information. If the tax commissioner is of the opinion that any taxpayer has failed to include in a return as filed, or to provide during the course of an audit, information necessary to determine a North Dakota tax liability, the tax commissioner may require from the taxpayer an amended return or supplementary information as is necessary to properly and accurately determine a taxpayer's North Dakota tax liability, in the form prescribed by the tax commissioner. If the taxpayer fails to file the amended return or to furnish the supplementary information, the tax commissioner, after thirty days' notice, may determine the North Dakota tax liability from the best information available and assess any tax due, including interest and penalty. The taxpayer may protest the determination under the protest procedure provided for the type of tax assessed.

57-01-18. Disclosure of name and address by state tax commissioner. Notwithstanding the secrecy and confidential information provisions of this title, for the purpose of properly administering the tax laws of this state, name and address information filed on returns by or on behalf of a person with the tax commissioner pursuant to a tax law of this state, obtained by the tax commissioner pursuant to that tax law, or furnished to the tax commissioner under section 6103 of the Internal Revenue Code [26 U.S.C. 6103] may be provided by the tax commissioner to the United States postal service or a national change-of-address vendor authorized by the United States postal service, for the sole purpose of obtaining proper and correct address information on that person.

57-01-19. Claim of unconstitutionality - Refund or credit of taxes paid. Notwithstanding any provision relating to claims for refund or credit of state taxes paid contained in title 57, any claim for a refund or credit of taxes paid based upon a claim that the tax or any provision thereof is unconstitutional under the federal or state constitution must be made within one hundred eighty days of the due date of the return or payment of the tax, whichever occurs first, for which the refund or credit is claimed. A claim for refund or credit of taxes paid before January 1, 2005, based upon a claim that the tax or any provision thereof is unconstitutional that is not filed with the commissioner before July 1, 2005, must be denied. This section does not apply to ad valorem property taxes.