

CHAPTER 57-40.3 MOTOR VEHICLE EXCISE TAX

57-40.3-01. Definitions.

As used in this chapter, except when the context clearly indicates a different meaning:

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 three thousand pounds [1360.77 kilograms] in weight when fully loaded with passengers and any cargo.
2. "Motor vehicle" includes every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, every trailer, semitrailer, park model trailer as defined in subsection 2 of section 57-55-10, off-highway vehicle, snowmobile, low-speed vehicle, and travel trailer for which a certificate of title is required to be obtained under chapter 39-05, but not including housetrailer or mobile homes.
3. "Off-highway vehicle" means off-highway vehicle as defined in section 39-29-01.
4. "Person" includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, business trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number.
5. "Purchase price" means the total amount paid for the motor vehicle whether received in money or otherwise. 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. 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 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.

6. "Purchaser" means any person owning or in possession of a motor vehicle who makes application to the director of the department of transportation for registration plates or a certificate of title for such vehicle.
7. "Registrar" means the director of the department of transportation of this state as provided by section 24-02-01.3, and who shall act as the agent of the state tax commissioner in administering this chapter.
8. "Sale", "sells", "selling", "purchase", "purchased", or "acquired" includes any transfer of title or ownership of a motor vehicle by way of gift, exchange or barter, or by any other manner or by any other means whatsoever for or without consideration.
9. "Semitrailer" includes every vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests upon or is carried by another motor vehicle and for which a certificate of title is required to be obtained pursuant to the provisions of chapter 39-05, except that it does not include a "housetrailer" or "mobile home".
10. "Snowmobile" means a self-propelled vehicle designed for travel on snow, ice, or a natural terrain and steered by skis or runners.
11. "Trailer" includes every vehicle without motive power designed to carry property or passengers wholly on its own structure and to be drawn by a motor vehicle and for which a certificate of title is required to be obtained pursuant to the provisions of chapter 39-05, except that it does not include a "housetrailer" or "mobile home".
12. "Travel trailer" means a mobile home or housetrailer designed to be towed behind a motor vehicle for recreational purposes and providing temporary sleeping quarters for people.
13. "Use" means the exercise by any person of any right or power over a motor vehicle incident to the ownership or possession of such a vehicle, except that it shall not include the sale or holding for sale of such a vehicle in the regular course of business.
14. "Vehicle" includes every device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by human power or animal power or used exclusively upon stationary rails or tracks.

57-40.3-02. Tax imposed.

There is hereby imposed an excise tax at the rate of five percent on the purchase price of any motor vehicle purchased or acquired either in or outside of the state of North Dakota for use on the streets and highways of this state and required to be registered under the laws of this state.

57-40.3-02.1. Tax imposed on motor vehicle lease.

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.
2. 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, originally leased outside this state and subsequently entering this state for use, any remaining receipts due or consideration to be given after the lessee brings the motor vehicle into this state are subject to tax as if the lessee had entered or exercised the lease, option

to renew, or similar provision, or combination thereof, for the first time in this state, notwithstanding section 57-40.3-09.

57-40.3-03. Separate and additional tax imposed.

Repealed by S.L. 1983, ch. 645, § 5.

57-40.3-03.1. Separate and additional tax imposed.

Repealed by I.M. approved November 2, 1976, S.L. 1977, ch. 593, § 6.

57-40.3-04. Exemptions.

There are specifically exempted from the provisions of this chapter and from computation of the amount of tax imposed by it the following:

1. Any motor vehicle acquired by, or leased and in the possession of, a resident disabled veteran under the provisions of Pub. L. 79-663 [38 U.S.C. 3901], a resident disabled veteran who has a one hundred percent service-connected disability as determined by the department of veterans' affairs, or a resident disabled veteran who has an extra-schedular rating to include individual unemployability that brings the veteran's total disability rating to one hundred percent as determined by the department of veterans' affairs who registers, or is eligible to register, the vehicle with a distinctive license plate issued by the department of transportation under subdivision j of subsection 2 of section 39-04-18. An unremarried surviving spouse who is receiving department of veterans' affairs dependency and indemnity compensation retains the exemption of the deceased, qualifying veteran in this subsection.
2. Any motor vehicle owned by or in possession of the federal or state government or a political subdivision thereof or a motor vehicle procured by or on behalf of the North Dakota lottery that is to be awarded as a prize in a game or promotion.
3. Motor carrier vehicles in excess of twenty thousand pounds [9071.85 kilograms] gross weight, whether owned or leased, engaged in interstate commerce but only to the extent their fleet miles outside North Dakota bear to their total fleet miles. For the purposes of this subsection, "fleet miles" means those miles reported in accordance with the international registration plan and must coincide with the mileage reporting period required by the plan. For the purposes of this subsection, "motor carrier vehicles" means any vehicles used upon public streets or highways for the purpose of transporting persons or property for commercial purposes. To claim this exemption, the motor carrier's vehicles must be both titled and registered in this state.
4. Any motor vehicle transferred without consideration to or from a person within thirty days prior to that person entering into the armed services of the United States or within thirty days after discharge therefrom or while serving in the armed services of the United States; provided the person certifies to the director of the department of transportation that the transfer is made only by reason of entering into, serving in, or being discharged from the armed services of the United States.
5.
 - a. A motor vehicle acquired by inheritance from, by bequest of, or operation of a trust created by a decedent who owned it;
 - b. The transfer of a motor vehicle that was previously titled or licensed in the name of an individual or in the names of two or more joint tenants and subsequently transferred without monetary consideration to one or more joint tenants, including a transfer into a trust in which one or more of the joint tenants is beneficiary or trustee;
 - c. The transfer of a motor vehicle by way of gift between a husband and wife, parent and child, or brothers and sisters, including a transfer into a trust in which the trustor and beneficiary occupy one of these relationships;
 - d. The transfer of a motor vehicle without monetary consideration into a trust in which the beneficiary is the person in whose name the motor vehicle was previously titled or licensed;

- e. The transfer of a motor vehicle to reflect a new name of the owner caused by a business reorganization in which the ownership of the reorganized business remains in the same person or persons as before the reorganization, if the title transfer is completed within one hundred eighty days from the effective date of the reorganization;
 - f. The transfer of a motor vehicle previously transferred under subdivision e which returns ownership to the previous owner; and
 - g. The transfer of a motor vehicle without monetary consideration from a revocable living trust to the trustor or to the spouse, child, or sibling of the trustor.
6. Motor vehicles transferred between a lessee and lessor; provided, that the lessee has been in continuous possession of such vehicle for a period of one year or longer, and further provided that the lessor has paid either the tax imposed under section 57-40.3-02 at the time of titling or licensing the vehicle in this state or the use tax imposed by chapter 57-40.2.
 7. Any motor vehicle in the possession of and used as a bus exclusively by a nonprofit senior citizens' or handicapped persons' corporation; provided, that such bus may not be used for commercial activities.
 8. Any motor vehicle that does not exceed ten thousand pounds [4535.92 kilograms] gross weight and which is acquired by, or leased and in the possession of, a permanently physically disabled, licensed driver who is restricted to operating only motor vehicles equipped with special controls to compensate for the disability, or by permanently physically disabled individuals who have either surrendered or who have been denied a driver's license because of a permanent physical disability, provided the individuals obtain from the director of the department of transportation or the director's authorized representative a statement that the individual has a restricted driver's license or has either surrendered or has not been issued a driver's license because of a permanent physical disability; a copy of the statement must be attached to the application for registration of the title to the motor vehicle for which the exemption from tax under this chapter is claimed. Any motor vehicle acquired subject to this exemption must be disposed of either by transfer to another permanently physically disabled person or by a trade-in on another exempt sale or by a transfer involving a sale subject to sales or use tax before another motor vehicle can be acquired subject to the benefits of this exemption clause.
 9. Any motor vehicle registered under chapter 39-04 for the first time by a person other than a manufacturer of motor vehicles, as defined in section 39-01-01, who assembled the motor vehicle for that person's own use.
 10. Motor vehicles acquired by, or leased and in the possession of, any parochial or private nonprofit school to be used for the transportation of students; provided, that to qualify a school must normally maintain a regular faculty and curriculum and must have a regularly organized body of students in attendance, and provided that the vehicles are not to be used for commercial activities.
 11. Any motor vehicle with a gross vehicle weight of at least a class six, seven, or eight chassis, purchased for installation or assembly of heavy duty equipment by a person engaged in the business of installing or assembling the equipment, which when completed forms an integral part of a vehicle, has limited marketability, and is not normally sold to the general public. This exemption applies only when the manufacturer's statement of origin is reassigned to the installer or assembler by a licensed new motor vehicle dealer on a form prescribed by the tax commissioner. The motor vehicle and installed equipment must be sold as a unit when completed. "Heavy duty equipment" includes fuel delivery tanks, refuse bodies, cranes, aerial bucket devices, bus bodies regardless of gross vehicle weight, and digger derricks.
 12. Motor vehicles acquired through purchase or gift by any nonprofit county and local historical societies that are exempt from federal income taxation under section 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. 501(c)(3)].
 13. Any motor vehicle acquired by, or leased and in the possession of, a resident who was a prisoner of war and who registers the vehicle with a distinctive license plate issued

by the department of transportation under subdivision o of subsection 2 of section 39-04-18. The owner or lessor of the motor vehicle who qualifies for the exemption under this subsection is entitled to a refund of taxes paid under this chapter on acquisition or leasing of the vehicle if the distinctive license plate was acquired not more than sixty days after acquisition or leasing of the vehicle.

14. Any motor vehicle acquired by a charitable organization to be awarded as a prize in a raffle conducted in accordance with law if upon registration the motor vehicle will be subject to taxes under this chapter or the motor vehicle is registered in another state.
15. A motor vehicle acquired at any location within this state by an individual who resides within the boundaries of any reservation in this state and who is an enrolled member of a federally recognized Indian tribe.
16. A motor vehicle originally manufactured for use as an ambulance, when purchased by the operator of an emergency medical services operation licensed under chapter 23-27.
17. Motor vehicles registered in another state or territory, if the motor vehicle is registered in this state under section 39-04-18.2.

57-40.3-05. Purchaser to furnish motor vehicle purchaser's certificate to director of the department of transportation.

Any person purchasing a motor vehicle and any person acquiring a motor vehicle by way of gift from a husband or wife, parent or child, or from a brother or sister shall complete a motor vehicle purchaser's certificate in such form and manner as may be prescribed by the director of the department of transportation, showing a complete description of the motor vehicle, the seller's name and address, the buyer's name and address, the full purchase price of the vehicle, trade-in allowance and description of the trade-in, if any, whether the vehicle was the subject of a gift, and any other information that the director of the department of transportation may require.

57-40.3-05.1. Seller to furnish motor vehicle seller's certificate to purchaser.

Repealed by S.L. 1997, ch. 497, § 4.

57-40.3-06. Presentation of motor vehicle purchaser's certificate to director.

No title or license registration may be issued by the director of the department of transportation for a motor vehicle purchased or acquired by way of gift from a husband or wife, parent or child, or from a brother or sister unless and until the applicant therefor attaches a properly executed motor vehicle purchaser's certificate to the application for title or license registration. If a license application is made for a motor vehicle that has been previously licensed in this state and the applicant for license is the same person in whose name the license registration had previously been issued, the motor vehicle purchaser's certificate need not be submitted to the director.

57-40.3-07. Title or license registration not to be issued unless tax paid.

No title or license registration shall be issued by the director of the department of transportation for the ownership or operation of any motor vehicle to any applicant for title or license registration unless the tax imposed by this chapter shall be paid by the applicant to the director of the department of transportation except:

1. For those vehicles which have been previously licensed and the applicant for license registration is the same person in whose name the license registration had previously been issued.
2. For those vehicles transferred by way of gift between a husband and wife, parent and child, or brothers and sisters.
3. For those vehicles which have been previously licensed and the applicant for license registration is the same business organization to which the license registration had been issued but the name of which has been changed through incorporation or other

- reorganization in business structure but the ownership of which remains in the same person or persons as prior to the reorganization.
4. For vehicles which have been previously licensed and are transferred between a member of a general or limited partnership and the partnership at the time the partnership is established or terminated, between a stockholder of a corporation and the corporation at the time the corporation is organized or liquidated, or between a member of a limited liability company and the limited liability company at the time the limited liability company is organized or terminated.
 5. For a vehicle leased and registered or licensed in another state by a nonresident individual who is stationed as a member of the armed services of the United States in this state, the vehicle is exempt from tax imposed under this chapter and registration in this state must be issued upon application and payment of appropriate registration fees.

57-40.3-07.1. Lien for failure to pay tax.

1. Whenever any taxpayer liable to pay a tax or penalty imposed refuses or neglects to pay it, the amount, including any interest, penalty, or addition to such tax, together with the costs that may accrue, is a lien in favor of the state upon all property and rights to property, whether real or personal, belonging to the taxpayer. In the case of property in which a deceased taxpayer held an interest as joint tenant or otherwise with right of survivorship at the time of death, the lien continues as a lien against the property of the survivor or survivors to the extent of the deceased taxpayer's interest therein, which interest must be determined by dividing the value of the entire property at the time of the taxpayer's death by the number of joint tenants or persons interested therein. The lien attaches at the time the tax becomes due and payable and continues until the liability for such amount is satisfied.
2. Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in the state, prior to the commissioner filing in the central indexing system maintained by the secretary of state, a notice of the lien provided for in this section, takes free of, or has priority over, the lien.
3. The commissioner shall index in the central indexing system the following data:
 - a. The name of the taxpayer.
 - b. The name "State of North Dakota" as claimant.
 - c. The date and time the notice of lien was indexed.
 - d. The amount of the lien.

The notice of lien is effective as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a recorder may be indexed in the central indexing system without changing its original priority as to property in the county where the lien was filed. The commissioner is exempt from the payment of fees otherwise provided by law for the indexing or the satisfaction of the lien.

4. Upon payment of the tax relative to which the commissioner has indexed notice in the central indexing system, the commissioner shall index a satisfaction of the lien in the central indexing system.
5. The attorney general, upon the request of the tax commissioner, shall bring an action at law or in equity without bond to enforce payment of any taxes and any penalties, or to foreclose the lien in the manner provided for mortgages on real or personal property, and in such action shall have the assistance of the state's attorney of the county in which the action is pending. The foregoing remedies of the state are cumulative and no action taken by the tax commissioner or attorney general may be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law.

57-40.3-08. Presumption.

For the purpose of the proper administration of this chapter and to prevent evasion of the tax, the following presumptions apply:

1. Evidence that a motor vehicle was sold for delivery in this state is prima facie evidence that it was sold for use in this state.
2. When an application for registration plates or for a certificate of title for a motor vehicle is received by the director of the department of transportation within thirty days of the date it was purchased or acquired by the purchaser, it must be presumed, until the contrary is shown by the purchaser, that it was purchased or acquired for use on the streets and highways of this state. This presumption applies whether or not such vehicle was previously titled or registered in another state.

57-40.3-09. Credit for excise tax paid in other states - Reciprocity.

If any motor vehicle has been subjected already to a sales tax, use tax, or motor vehicle excise tax by 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 the difference only between the rate fixed in this chapter and the rate by which the previous tax paid in the other state, or political subdivision thereof, upon the sale or use was computed. If the rate of tax imposed in such other state, or political subdivision thereof, is the same or more than the rate of tax imposed by this chapter, then no tax is due on such motor vehicle. The provisions of this section apply only if such other state, or political subdivision thereof, allows a credit with respect to the excise tax imposed by this chapter which is substantially similar in effect to the credit allowed by this section. For purposes of this section, "state" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

57-40.3-10. Transfer of revenue.

All moneys collected and received under this chapter must be transmitted monthly by the director of the department of transportation to the state treasurer to be transferred and credited to the general fund.

57-40.3-11. Penalties.

1. Any person who violates any of the provisions of this chapter is guilty of a class B misdemeanor.
2. Any person who submits a false or fraudulent motor vehicle purchaser's certificate, or who fails to submit the certificate, is subject to a penalty of five percent of the true amount of the tax which was due or five dollars, whichever is greater, plus one percent of such tax for each month or fraction thereof subsequent to the month in which the motor vehicle purchaser's certificate was due or the false or fraudulent motor vehicle purchaser's certificate was furnished to the director of the department of transportation. Such penalty must be paid to either the tax commissioner or the director of the department of transportation and disposed of pursuant to the provisions of section 57-40.3-10. The tax commissioner, if satisfied that the failure to submit or the delay was excusable, may waive, and if paid, refund all or any part of such penalty and interest. Unpaid penalties may be enforced in the same manner as the tax imposed by this chapter.
3. Whenever a person, including any motor vehicle dealer, has collected from a person acquiring a motor vehicle, a motor vehicle excise tax in excess of the amount prescribed or due under this chapter, and if the person does not refund the excessive tax collected to the person who remitted it, the person who collected the tax shall pay it to the tax commissioner in the quarterly period in which the excessive collection occurred. The penalty and interest provisions of this section apply beginning at the termination of each reporting period.
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, 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 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.

57-40.3-12. Director to act as agent of tax commissioner in administration of motor vehicle use tax.

The state tax commissioner is charged with the administration of this chapter. The tax commissioner may prescribe all rules and regulations, not inconsistent with the provisions of this chapter, necessary and advisable for the proper and efficient administration of this chapter. The collection of this motor vehicle excise tax must be carried out by the director of the department of transportation who shall act as the agent of the state tax commissioner and who is subject to all rules and regulations, not inconsistent with the provisions of this chapter, that may be prescribed by the tax commissioner. The provisions of this chapter may not be construed as preventing the collection of motor vehicle excise taxes by the tax commissioner when additional motor vehicle excise taxes are determined by the tax commissioner to be due for a lease, option to renew, or similar provision, or combination thereof, as provided under section 57-40.3-02.1 and in the course of any audit carried on by the tax commissioner. The director of the department of transportation shall furnish sufficient information to the tax commissioner, relating to all license or title applications for mobile homes or housetrailer purchased outside of the state of North Dakota for use in this state, to enable the tax commissioner to collect use tax on such mobile homes or housetrailer.