

July 2004

Introduced by

1 A BILL for an Act to create and enact chapter 57-39.7 of the North Dakota Century Code,
2 relating to a lodging gross receipts tax; to amend and reenact subsection 2 of section
3 11-09.1-05, sections 40-05.1-06 and 57-39.2-01, subdivision h of subsection 1 of section
4 57-39.2-02.1, subdivision d of subsection 2 of section 57-39.2-04.1, subsection 8 of section
5 57-39.4-16, section 57-40.2-01, subsection 2 of section 57-40.2-02.1, and sections 57-40.2-04
6 and 57-40.2-04.1 of the North Dakota Century Code, relating to sales and use tax amendments
7 to conform with the provisions of the Streamlined Sales Tax Act; to repeal section 57-39.2-03.8,
8 subsection 33 of section 57-39.2-04, and section 57-40.2-03.2 of the North Dakota Century
9 Code, relating to elimination of provisions in conflict with the Streamlined Sales Tax Act; to
10 provide an effective date; and to provide an expiration date.

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

12 **SECTION 1. AMENDMENT.** Subsection 2 of section 11-09.1-05 of the North Dakota
13 Century Code as effective after December 31, 2005, is amended and reenacted as follows:

14 2. Control its finances and fiscal affairs; appropriate money for its purposes, and
15 make payments of its debts and expenses; subject to the limitations of this section
16 levy and collect property taxes, sales and use taxes, farm machinery gross
17 receipts taxes, alcoholic beverage gross receipts taxes, motor vehicle fuels and
18 special fuels taxes, motor vehicle registration fees, and special assessments for
19 benefits conferred, for its public and proprietary functions, activities, operations,
20 undertakings, and improvements; contract debts, borrow money, issue bonds,
21 warrants, and other evidences of indebtedness; establish charges for any county or
22 other services to the extent authorized by state law, and establish debt and mill
23 levy limitations; provided, that all property in order to be subject to the assessment
24 provisions of this subsection must be assessed in a uniform manner as prescribed

by the state board of equalization and the state supervisor of assessments. A charter or ordinance or act of a governing body of a home rule county may not supersede any state law that determines what property or acts are subject to, or exempt from, ad valorem taxes. A charter or ordinance or act of the governing body of a home rule county may not supersede section 11-11-55.1 relating to the sixty percent petition requirement for improvements and of section 40-22-18 relating to the barring proceeding for improvement projects. After December 31, 2005, sales and use taxes, farm machinery gross receipts taxes, and alcoholic beverage gross receipts taxes levied under this chapter:

- a. Must conform in all respects with regard to the taxable or exempt status of items under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed at multiple rates with the exception of sales of electricity, piped natural or artificial gas, or other heating fuels delivered by the seller or the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.
- b. May not be newly imposed or changed except to be effective on the first day of a calendar quarterly period after a minimum of ninety days notice to the tax commissioner or, for purchases from printed catalogs, on the first day of a calendar quarter after a minimum of one hundred twenty days notice to the seller.
- c. May not be limited to apply to less than the full value of the transaction or item as determined for state sales and use tax, farm machinery gross receipts tax, or alcoholic beverage gross receipts tax purposes.
- d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1.

SECTION 2. AMENDMENT. Section 40-05.1-06 of the North Dakota Century Code as effective after December 31, 2005, is amended and reenacted as follows:

40-05.1-06 (Effective after December 31, 2005) Powers. From and after the filing with the secretary of state of a charter framed and approved in reasonable conformity with the provisions of this chapter, such city, and the citizens thereof, shall, if included in the charter and implemented through ordinances, have the following powers set out in this chapter:

1. To acquire, hold, operate, and dispose of property within or without the corporate limits, and exercise the right of eminent domain for such purposes.
2. To control its finances and fiscal affairs; to appropriate money for its purposes, and make payment of its debts and expenses; to levy and collect taxes, excises, fees, charges, and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings, and improvements; to contract debts, borrow money, issue bonds, warrants, and other evidences of indebtedness; to establish charges for any city or other services, and to establish debt and mill levy limitations, provided that all real and personal property in order to be subject to the assessment provisions of this subsection shall be assessed in a uniform manner as prescribed by the state board of equalization and the state supervisor of assessments. The authority to levy taxes under this subsection does not include authority to impose income taxes.
3. To fix the fees, number, terms, conditions, duration, and manner of issuing and revoking licenses in the exercise of its governmental police powers.
4. To provide for city officers, agencies, and employees, their selection, terms, powers, duties, qualifications, and compensation. To provide for change, selection, or creation of its form and structure of government including its governing body, executive officer, and city officers.
5. To provide for city courts, their jurisdiction and powers over ordinance violations, duties, administration, and the selection, qualifications, and compensation of their officers; however, the right of appeal from judgment of such courts shall not be in any way affected.
6. To provide for all matters pertaining to city elections, except as to qualifications of electors.
7. To provide for the adoption, amendment, and repeal of ordinances, resolutions, and regulations to carry out its governmental and proprietary powers and to provide for public health, safety, morals, and welfare, and penalties for a violation thereof.
8. To lay out or vacate streets, alleys, and public grounds, and to provide for the use, operation, and regulation thereof.

- 1 9. To define offenses against private persons and property and the public health,
- 2 safety, morals, and welfare, and provide penalties for violations thereof.
- 3 10. To engage in any utility, business, or enterprise permitted by the constitution or not
- 4 prohibited by statute or to grant and regulate franchises therefor to a private
- 5 person, firm, corporation, or limited liability company.
- 6 11. To provide for zoning, planning, and subdivision of public or private property within
- 7 the city limits; to provide for such zoning, planning, and subdivision of public or
- 8 private property outside the city limits as may be permitted by state law.
- 9 12. To levy and collect franchise and license taxes for revenue purposes.
- 10 13. To exercise in the conduct of its affairs all powers usually exercised by a
- 11 corporation.
- 12 14. To fix the boundary limits of said city and the annexation and deannexation of
- 13 territory adjacent to said city except that such power shall be subject to, and shall
- 14 conform with the state law made and provided.
- 15 15. To contract with and receive grants from any other governmental entity or agency,
- 16 with respect to any local, state, or federal program, project, or works.
- 17 16. To impose registration fees on motor vehicles, farm machinery gross receipts
- 18 taxes, alcoholic beverage gross receipts taxes, or sales and use taxes in addition
- 19 to any other taxes imposed by law. After December 31, 2005, sales and use taxes
- 20 and gross receipts taxes levied under this chapter:
- 21 a. Must conform in all respects with regard to the taxable or exempt status of
- 22 items under chapters 57-39.2 and 57-40.2 and may not be imposed at
- 23 multiple rates with the exception of sales of electricity, piped natural or
- 24 artificial gas, or other heating fuels delivered by the seller or the retail sale or
- 25 transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured
- 26 homes, or mobile homes.
- 27 b. May not be newly imposed or changed except to be effective on the first day
- 28 of a calendar quarterly period after a minimum of ninety days notice to the tax
- 29 commissioner or, for purchases from printed catalogs, on the first day of a
- 30 calendar quarter after a minimum of one hundred twenty days notice to the
- 31 seller.

c. May not be limited to apply to less than the full value of the transaction or item as determined for state sales and use tax purposes.

d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1.

It is the intention of this chapter to grant and confirm to the people of all cities coming within its provisions the full right of self-government in both local and city matters within the powers enumerated herein. The statutes of the state of North Dakota, so far as applicable, shall continue to apply to home rule cities, except insofar as superseded by the charters of such cities or by ordinance passed pursuant to such charters. After December 31, 2005, any portion of a charter or any portion of an ordinance passed pursuant to a charter which does not conform to the requirements of subsection 16 is invalid to the extent that it does not conform. The invalidity of a portion of a charter or ordinance because it does not conform to subsection 16 does not affect the validity of any other portion of the charter or ordinance. Any taxes imposed under this chapter on farm machinery, farm irrigation equipment, and farm machinery repair parts used exclusively for agricultural purposes, or on alcoholic beverages, which were in effect on December 31, 2005, become gross receipts taxes after December 31, 2005.

SECTION 3. AMENDMENT. Section 57-39.2-01 of the North Dakota Century Code as effective after December 31, 2005, is amended and reenacted as follows:

57-39.2-01. (Effective after December 31, 2005) Definitions. The following words, terms, and phrases, when used in this chapter, have the meaning ascribed to them in this section, unless the context clearly indicates a different meaning:

1. "Business" includes any activity engaged in by any person or caused to be engaged in by the person with the object of gain, benefit or advantage, either direct or indirect.
2. "Certified service provider" means an agent certified under the agreement adopted under chapter 57-39.4 to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit taxes on its own purchases.
3. "Commissioner" means the tax commissioner of the state of North Dakota.
4. "Delivery charges" means charges by the seller for preparation and delivery to a location designated by the purchaser of personal property or services. For

purposes of this subsection, "preparation and delivery" includes transportation, shipping, postage, handling, crating, and packing. If shipment includes exempt property and taxable property, the seller should allocate the delivery charge by using a percentage based on:

- a. The total sales price of the taxable property compared to the total sales price of all property in the shipment; or
- b. The total weight of the taxable property compared to the total weight of all property in the shipment.

The seller must tax the percentage of the delivery charge allocated to the taxable property but does not have to tax the percentage allocated to the exempt property.

5. "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addresses on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address.

6. "Drug" means a compound, substance, or preparation and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages:

- a. Recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement of any of these publications;
- b. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or
- c. Intended to affect the structure or any function of the body.

- ~~6.~~ 7. "Farm machinery" means all vehicular implements and attachment units, designed and sold for direct use in planting, cultivating, or harvesting farm products or used in connection with the production of agricultural produce or products, livestock, or poultry on farms, which are operated, drawn, or propelled by motor or animal power. "Farm machinery" does not include vehicular implements operated wholly

by hand or a motor vehicle required to be registered under chapter 57-40.3. "Farm machinery" does not include machinery that may be used for other than agricultural purposes, including tires, farm machinery repair parts, tools, shop equipment, grain bins, feed bunks, fencing materials, and other farm supplies and equipment. For purposes of this subsection, "attachment unit" means any part or combination of parts having an independent function, other than farm machinery repair parts, which when attached or affixed to farm machinery is used exclusively for agricultural purposes.

~~7.~~ 8. "Farm machinery repair parts" means repair or replacement parts for farm machinery that have a specific or generic part number assigned by the manufacturer of the farm machinery. "Farm machinery repair parts" do not include tires, fluid, gas, grease, lubricant, wax, or paint.

~~8.~~ 9. a. "Gross receipts" means the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- (1) The seller's cost of the property sold;
- (2) The cost of materials used, labor or service costs, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- (3) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- (4) Delivery charges;
- (5) The value of exempt personal property given to the purchaser when taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise; and
- (6) Credit for any trade-in, as determined by state law.

b. "Gross receipts" also includes the total amount of sales of every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer.

1 c. "Gross receipts" does not include:

- 2 (1) Discounts, including cash, term, or coupons that are not reimbursed by
3 a third party, which are allowed by a seller and taken by a purchaser on
4 a sale;
- 5 (2) Interest, financing, and carrying charges from credit extended on the
6 sale of personal property or services, if the amount is separately stated
7 on the invoice, bill of sale, or similar document given to the purchaser;
- 8 (3) Any taxes legally imposed directly on the consumer that are separately
9 stated on the invoice, bill of sale, or similar documents given to the
10 purchaser; and
- 11 (4) The sale price of property returned by a customer when the full sale
12 price is refunded either in cash or credit. When tangible personal
13 property is taken in trade or in a series of trades as a credit or part
14 payment of a retail sale taxable under this chapter, if the tangible
15 personal property traded in will be subject to tax imposed by chapter
16 57-39.5 or 57-40.3 or if the tangible personal property traded in is used
17 farm machinery or used irrigation equipment, the credit or trade-in value
18 allowed by the retailer is not included in gross receipts of the retailer.

19 ~~9.~~ 10. "Lease or rental" means any transfer of possession or control of tangible personal
20 property for a fixed or indeterminate term for consideration. A lease or rental may
21 include future options to purchase or extend. "Lease or rental" does not include:

- 22 a. A transfer of possession or control of property under a security agreement or
23 deferred payment plan, which requires the transfer upon completion of the
24 required payments;
- 25 b. A transfer of possession or control of property under an agreement that
26 requires the transfer of title upon completion of required payments and
27 payment of an option price that does not exceed the greater of one hundred
28 dollars or one percent of the total required payments; or
- 29 c. Providing tangible personal property with an operator for a fixed or
30 indeterminate period of time. A condition of this exclusion is that the operator
31 is necessary for the equipment to perform as designed. For the purpose of

1 this subdivision, an operator must do more than maintain, inspect, or set up
2 the tangible personal property.

3 This definition will be applied only prospectively from the date of adoption and will
4 have no retroactive impact on existing leases or rentals.

5 ~~40.~~ 11. "Local governmental unit" means incorporated cities, counties, school districts, and
6 townships.

7 ~~44.~~ 12. "Person" includes any individual, firm, partnership, joint venture, association,
8 corporation, limited liability company, estate, business trust, receiver, or any other
9 group or combination acting as a unit and the plural as well as the singular number.

10 ~~42.~~ 13. "Prescription" means an order, formula, or recipe issued in any form of oral,
11 written, electronic, or other means of transmission by a person authorized by the
12 laws of this state to prescribe drugs.

13 ~~43.~~ 14. "Relief agency" means the state, any county, city and county, city or district
14 thereof, or an agency engaged in actual relief work.

15 ~~44.~~ 15. "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose
16 other than for resale, sublease, or subrental. "Retail sale" or "sale at retail"
17 includes the sale, including the leasing or renting, to a consumer or to any person
18 for any purpose, other than for processing or for resale, of tangible personal
19 property; the sale of steam, gas, and communication service to retail consumers or
20 users; the sale of vulcanizing, recapping, and retreading services for tires; the
21 furnishing of bingo cards; the ordering, selecting, or aiding a customer to select any
22 goods, wares, or merchandise from any price list or catalog, which the customer
23 might order, or be ordered for such customer to be shipped directly to such
24 customer; the sale or furnishing of hotel, motel, or tourist court accommodations,
25 tickets, or admissions to any place of amusement, athletic event, or place of
26 entertainment, including the playing of any machine for amusement or
27 entertainment in response to the use of a coin; and the sales of magazines and
28 other periodicals. By the term "processing" is meant any tangible personal
29 property including containers which it is intended, by means of fabrication,
30 compounding, manufacturing, producing, or germination shall become an integral
31 or an ingredient or component part of other tangible personal property intended to

1 be sold ultimately at retail. The sale of an item of tangible personal property for the
2 purpose of incorporating it in or attaching it to real property must be considered as
3 a sale of tangible personal property for a purpose other than for processing; the
4 delivery of possession within the state of North Dakota of tangible personal
5 property by a wholesaler or distributor to an out-of-state retailer who does not hold
6 a North Dakota retail sales tax permit or to a person who by contract incorporates
7 such tangible personal property into, or attaches it to, real property situated in
8 another state may not be considered a taxable sale if such delivery of possession
9 would not be treated as a taxable sale in that state. As used in this subsection, the
10 word "consumer" includes any hospital, infirmary, sanatorium, nursing home, home
11 for the aged, or similar institution that furnishes services to any patient or occupant.
12 The sale of an item of tangible personal property to a person under a finance
13 leasing agreement over the term of which the property will be substantially
14 consumed must be considered a retail sale if the purchaser elects to treat it as
15 such by paying or causing the transferor to pay the sales tax thereon to the
16 commissioner on or before the last day on which payments may be made without
17 penalty as provided in section 57-39.2-12.

18 ~~45.~~ 16. "Retailer" or "seller" includes every person engaged in the business of leasing or
19 renting hotel, motel, or tourist court accommodations, and every person engaged in
20 the business of selling tangible goods, wares, or merchandise at retail, or
21 furnishing of steam, gas, and communication services, or tickets or admissions to
22 places of amusement, entertainment, and athletic events, including the playing of
23 any machine for amusement or entertainment in response to the use of a coin, or
24 magazines, or other periodicals; any organization licensed by the attorney general
25 to conduct bingo games pursuant to section 53-06.1-03; and includes any person
26 as herein defined who by contract or otherwise agrees to furnish for a
27 consideration a totally or partially finished product consisting in whole or in part of
28 tangible personal property subject to the sales tax herein provided, and all items of
29 tangible personal property entering into the performance of such contract as a
30 component part of the product agreed to be furnished under said contract shall be
31 subject to the sales tax herein provided and the sales tax thereon shall be collected

by the contractor from the person for whom the contract has been performed in addition to the contract price agreed upon, and shall be remitted to the state in the manner provided in this chapter; and shall include the state or any municipality furnishing steam, gas, or communication service to members of the public in its proprietary capacity. For the purpose of this chapter, retailer shall also include every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer. A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.

~~46.~~ 17. "Sale" means any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatever, for a consideration, and includes the furnishing or service of steam, gas, or communication, the furnishing of bingo cards, the furnishing of hotel, motel, or tourist court accommodations, the furnishing of tickets or admissions to any place of amusement, athletic event, or place of entertainment, including the playing of any machine for amusement or entertainment in response to the use of a coin, and sales of magazines and other periodicals. Provided, the words "magazines and other periodicals" as used in this subsection do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.

~~47.~~ 18. "Sales tax" means the tax levied under section 57-39.2-02.1 or a conforming tax imposed under home rule authority by a city or county.

~~48.~~ 19. "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, water, gas, steam, and prewritten computer software.

SECTION 4. AMENDMENT. Subdivision h of subsection 1 of section 57-39.2-02.1 of the North Dakota Century Code as effective after December 31, 2005, is amended and reenacted as follows:

h. Sale, lease, or rental of a computer ~~software~~ and prewritten computer software, including prewritten computer software delivered electronically or by load and leave. For purposes of this subdivision:

- (1) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.
- (2) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.
- (3) "Delivered electronically" means delivered from the seller to the purchaser by means other than tangible storage media.
- (4) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (5) "Load and leave" means delivery to the purchaser by use of a tangible storage media when the tangible storage media is not physically transferred to the purchaser.
- (6) "Prewritten computer software" means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more "prewritten computer software" programs or prewritten portions thereof does not cause the combination to be other than "prewritten computer software". "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. If a person modifies or enhances "computer software" of which the person is not the author or creator, the person is deemed to be the author or creator only of such person's modifications or enhancements. "Prewritten computer software" or a prewritten portion thereof that is modified or enhanced to any degree, if such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains "prewritten computer

software". However, if there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute "prewritten computer software".

SECTION 5. AMENDMENT. Subdivision d of subsection 2 of section 57-39.2-04.1 of the North Dakota Century Code as effective after December 31, 2005, is amended and reenacted as follows:

d. "Prepared food" means:

- (1) Food sold in a heated state or heated by the seller;
- (2) Two or more food ingredients mixed or combined by the seller for sale as a single item; or
- (3) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

SECTION 6. AMENDMENT. Subsection 8 of section 57-39.4-16 of the North Dakota Century Code as effective after December 31, 2005, is amended and reenacted as follows:

8. "Mobile telecommunications service" means the same as that term is defined in section ~~424(5)~~ 124(7) of Public Law 106-252, Mobile Telecommunications Sourcing Act.

SECTION 7. Chapter 57-39.7 of the North Dakota Century Code is created and enacted as follows:

57-39.7-01. (Effective through June 30, 2007) Imposition - Exemptions. There is imposed a tax of one percent upon the gross receipts of retailers from all sales at retail within this state from the leasing or renting of hotel, motel, or tourist court accommodations for periods of fewer than thirty consecutive days. The tax imposed under this chapter does not apply to leasing or renting of bed and breakfast accommodations licensed under chapter 23-09.1.

57-39.7-02. (Effective through June 30, 2007) Administration. The provisions of chapter 57-39.2, pertaining to the administration of the retail sales tax, including refund or credit, provided therein, not in conflict with the provisions of this chapter, govern the administration of the tax levied in this chapter.

1 **57-39.7-03. (Effective through June 30, 2007) Allocation of revenue.** Revenue from
2 the tax imposed by this chapter must not be considered to be a portion of sales, use, and motor
3 vehicle excise tax collections under section 57-39.2-26.1. Revenue from the tax imposed by
4 this chapter must be deposited in the state general fund.

5 **SECTION 8. AMENDMENT.** Section 57-40.2-01 of the North Dakota Century Code as
6 effective after December 31, 2005, is amended and reenacted as follows:

7 **57-40.2-01. (Effective after December 31, 2005) Definitions.** In this chapter, unless
8 the context and subject matter otherwise require:

- 9 1. "Business", "commissioner", "farm machinery", "gross receipts", "lease or rental",
10 "local governmental unit", "~~persons~~ person", "relief agency", "retail sale", "sale",
11 and "tangible personal property", each has the meaning given to it in section
12 57-39.2-01.
- 13 2. Property used in "processing", as that term is used in subsection 9, means any
14 tangible personal property including containers which it is intended, by means of
15 fabrication, compounding, manufacturing, producing, or germination, shall become
16 an integral or an ingredient or component part of other tangible personal property
17 intended to be sold ultimately at retail. The purchase of an item of tangible
18 personal property for the purpose of incorporating it in or attaching it to real
19 property must be considered as a purchase of tangible personal property for a
20 purpose other than for processing.
- 21 3. "Purchase" means any transfer of title or possession, exchange, or barter,
22 conditional or otherwise, in any manner or by any means whatsoever, for a
23 consideration. "Purchase" also means the severing of sand or gravel from the soil
24 of this state.
- 25 4. "Purchase price" applies to the measure subject to use tax and has the same
26 meaning as gross receipts as defined in section 57-39.2-01.
- 27 5. "Purchased at retail" includes, ~~but is not limited to:~~
28 a. The completion of the fabricating, compounding, or manufacturing of tangible
29 personal property by a person for storage, use, or consumption by that
30 person.

- 1 b. The furnishing of bingo cards, wares, and merchandise, and gas, when
2 furnished or delivered to consumers or users within this state, and the sale of
3 vulcanizing, recapping, and retreading services for tires.
- 4 c. The leasing or renting of tangible personal property, the sale, storage, use, or
5 consumption of which has not been previously subjected to a retail sales or
6 use tax in this state.
- 7 e- d. The purchase of magazines or other periodicals. Provided, the words
8 "magazines and other periodicals" as used in this subdivision do not include
9 newspapers nor magazines or periodicals that are furnished free by a
10 nonprofit corporation or organization to its members or because of payment
11 by its members of membership fees or dues.
- 12 ~~e-~~ e. The severance of sand or gravel from the soil.
- 13 e- f. The purchase, including the leasing or renting, of tangible personal property
14 from any bank for storage, use, or consumption.
- 15 f- g. The purchase of an item of tangible personal property by a purchaser who
16 rents or leases it to a person under a finance leasing agreement over the term
17 of which the property will be substantially consumed, if the purchaser elects to
18 treat it as being purchased at retail by paying or causing the transferor to pay
19 the use tax to the commissioner on or before the last day on which payments
20 may be made without penalty as provided in section 57-40.2-07.
- 21 6. "Retailer" includes every person engaged in the business of selling tangible
22 personal property for use within the meaning of this chapter, but, when in the
23 opinion of the commissioner, it is necessary for the efficient administration of this
24 chapter to regard any salesman, representative, trucker, peddler, or canvasser as
25 the agent of the dealer, distributor, supervisor, employer, or other person under
26 whom that person operates or from whom that person obtains the tangible
27 personal property sold by that person, whether that person is making sales in that
28 person's own behalf or in behalf of such dealer, distributor, supervisor, employer,
29 or other person, the commissioner may regard that person as such agent, and may
30 regard the dealer, distributor, supervisor, employer, or other person as a retailer for
31 the purposes of this chapter. A retailer includes any organization licensed by the

1 attorney general to conduct bingo games pursuant to section 53-06.1-03. A retailer
2 also includes every person who engages in regular or systematic solicitation of a
3 consumer market in this state by the distribution of catalogs, periodicals,
4 advertising flyers, or other advertising, or by means of print, radio or television
5 media, by mail, telegraphy, telephone, computer data base, cable, optic,
6 microwave, or other communication system.

- 7 7. "Retailer maintaining a place of business in this state", or any like term, means any
8 retailer having or maintaining within this state, directly or by a subsidiary, an office,
9 distribution house, sales house, warehouse, or other place of business, or any
10 agent operating within this state under the authority of the retailer or its subsidiary,
11 whether such place of business or agent is located in the state permanently or
12 temporarily, or whether or not such retailer or subsidiary is authorized to do
13 business within this state. It includes any organization licensed by the attorney
14 general to conduct bingo games pursuant to section 53-06.1-03. It also includes
15 every person who engages in regular or systematic solicitation of sales of tangible
16 personal property in this state by the distribution of catalogs, periodicals,
17 advertising flyers, or other advertising, by means of print, radio or television media,
18 or by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or
19 other communication system for the purpose of effecting retail sales of tangible
20 personal property.

- 21 8. ~~"Tangible personal property" means:~~

- 22 a. ~~Tangible goods, including the furnishing of bingo cards, wares, and~~
23 ~~merchandise, and gas, when furnished or delivered to consumers or users~~
24 ~~within this state, and the sale of vulcanizing, recapping, and retreading~~
25 ~~services for tires.~~
- 26 b. ~~The leasing or renting of tangible personal property, the sale, storage, use, or~~
27 ~~consumption of which has not been previously subjected to a retail sales or~~
28 ~~use tax in this state.~~
- 29 c. ~~The purchase of magazines or other periodicals. Provided, the words~~
30 ~~"magazines and other periodicals" as used in this subdivision do not include~~
31 ~~newspapers nor magazines or periodicals that are furnished free by a~~

~~nonprofit corporation or organization to its members or because of payment
by its members of membership fees or dues.~~

~~d. The severance of sand or gravel from the soil.~~

9. "Use" means the exercise by any person of any right or power over tangible personal property incident to the ownership or possession of that property, including the storage, use, or consumption of that property in this state, except that it does not include processing, or the sale of that property in the regular course of business. "Use" also means the severing of sand or gravel from the soil of this state for use within or outside this state.

~~40.~~ 9. "Use tax" means the tax levied under section 57-40.2-02.1 or imposed under home rule authority by a city or county.

SECTION 9. AMENDMENT. Subsection 2 of section 57-40.2-02.1 of the North Dakota Century Code as effective after December 31, 2005, is amended and reenacted as follows:

2. An excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes, except as provided in subsection 19 of section 57-40.2-04; ~~and of new farm machinery and new irrigation equipment used exclusively for agricultural purposes~~ purchased at retail for storage, use, or consumption in this state at the rate of three percent of the purchase price thereof. Except as limited by section 57-40.2-11, and except as provided in subsection 35 of section 57-39.2-04, an excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes ~~and of new farm machinery and new irrigation equipment used exclusively for agricultural purposes not originally purchased for storage, use, or consumption in this state~~ at the rate of three percent of the fair market value of mobile homes used for residential or business purposes ~~and of new farm machinery and new irrigation equipment used exclusively for agricultural purposes~~ at the time it was brought into this state.

SECTION 10. AMENDMENT. Section 57-40.2-04 of the North Dakota Century Code as effective after December 31, 2005, is amended and reenacted as follows:

1 **57-40.2-04. (Effective after December 31, 2005) Exemptions.** This chapter hereby is
2 declared to be an independent and separate tax law but complementary to the retail sales tax
3 laws of this state provided for by chapter 57-39.2 and does not apply to:

- 4 1. Any tangible personal property or taxable service upon the sale of which the retail
5 sales tax imposed by chapter 57-39.2 has been collected by a retailer holding the
6 permit prescribed by section 57-39.2-14.
- 7 2. Tangible personal property brought into this state by a nonresident thereof for that
8 person's own storage, use, or consumption while temporarily within this state,
9 except that such property is not exempt if brought into this state for storage, use, or
10 consumption in the conduct of a trade, occupation, business, or profession.
- 11 3. Any motor vehicle either subject to or expressly exempted from the motor vehicle
12 excise taxes imposed by chapter 57-40.3.
- 13 4. Tangible personal property upon which the state now imposes and collects a
14 special tax, whether in the form of license tax, stamp tax, or otherwise.
- 15 5. Railway cars and locomotives used in interstate commerce, and tangible personal
16 property which becomes a component part thereof.
- 17 6. Newsprint and ink actually used in the publication of a newspaper.
- 18 7. Repealed by S.L. 1981, ch. 582, § 3.
- 19 8. Gross receipts from the leasing or renting of motion picture film to motion picture
20 exhibitors for exhibition in this state if the sale of the tickets or admissions to the
21 exhibition of the film is subject to the sales tax imposed by chapter 57-39.2.
- 22 9. Adjuvants required by the chemical label for application of a product warranty,
23 commercial fertilizers, fungicides, seed treatments, inoculants and fumigants,
24 herbicides and insecticides used by agricultural or commercial vegetable producers
25 and commercial applicators; chemicals used to preserve agricultural crops being
26 stored; and seeds, roots, bulbs, and small plants used by commercial users or
27 consumers for planting or transplanting for commercial vegetable gardens or
28 agricultural purposes.
- 29 10. Gross receipts from the leasing, or renting, for residential housing, for periods of
30 more than thirty consecutive days, of factory manufactured homes, including

mobile homes, modular living units, or sectional homes, whether or not placed on a permanent foundation.

11. Bibles, hymnals, textbooks, and prayerbooks used by nonprofit religious organizations.

12. Gross receipts from sales of prosthetic devices, durable medical equipment, or mobility-enhancing equipment. For purposes of this subsection:

a. "Durable medical equipment" means equipment, not including mobility-enhancing equipment, for home use, including repair and replacement parts for such equipment, which:

(1) Can withstand repeated use;

(2) Is primarily and customarily used to serve a medical purpose;

(3) Generally is not useful to a person in the absence of illness or injury;
and

(4) Is not worn in or on the body.

b. "Mobility-enhancing equipment" means equipment not including durable medical equipment, including repair and replacement parts for mobility-enhancing equipment, which:

(1) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either at home or in a motor vehicle;

(2) Is not generally used by a person with normal mobility; and

(3) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

c. "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for such a device, worn on or in the body to:

(1) Artificially replace a missing portion of the body;

(2) Prevent or correct a physical deformity or malfunction; or

(3) Support a weak or deformed portion of the body.

d. "Prosthetic device" and "durable medical equipment" include:

- 1 (1) Artificial devices individually designed, constructed, or altered solely for
2 the use of a particular crippled person so as to become a brace,
3 support, supplement, correction, or substitute for the bodily structure
4 including the extremities of the individual.
- 5 ~~b-~~ (2) Artificial limbs, artificial eyes, hearing aids, and other equipment worn
6 as a correction or substitute for any functioning portion of the body.
- 7 ~~e-~~ (3) Artificial teeth sold by a dentist.
- 8 ~~d-~~ (4) Eyeglasses when especially designed or prescribed by an
9 ophthalmologist, physician, oculist, or optometrist for the personal use
10 of the owner or purchaser.
- 11 ~~e-~~ (5) Crutches and wheelchairs for the use of invalids and crippled persons.
- 12 ~~f-~~ (6) Equipment, including manual control units, van lifts, van door opening
13 units, and raised roofs, for attaching to or modifying a motor vehicle for
14 use by a permanently physically disabled person.
- 15 ~~g-~~ (7) Equipment, including elevators, dumbwaiters, chair lifts, and bedroom
16 or bathroom lifts, whether or not sold for attaching to real property, for
17 use by a permanently physically disabled person in that person's
18 principal dwelling.
- 19 ~~h-~~ (8) Equipment, including manual control units, for attaching to or modifying
20 motorized implements of husbandry for use by permanently physically
21 disabled persons.
- 22 (9) Devices and supplies designed or intended for ostomy care and
23 management, including collection devices, colostomy irrigation
24 equipment and supplies, skin barriers or skin protectors, and other
25 supplies especially designed for use of ostomates.
- 26 (10) Supplies, equipment, and devices to be used exclusively by a person
27 with bladder dysfunction, including catheters, collection devices,
28 incontinence pads and pants, and other items used for the care and
29 management of bladder dysfunction.
- 30 13. Purchases of electricity.

- 1 14. The leasing or renting of any tangible personal property upon which a North
2 Dakota sales tax or use tax has been paid pursuant to the election of the purchaser
3 pursuant to subsection ~~44~~ 15 of section 57-39.2-01 or subsection 5 of section
4 57-40.2-01.
- 5 15. Any tangible personal property or service which would be exempt from the retail
6 sales tax pursuant to an express exemption provided in chapter 57-39.2 if it were
7 purchased in North Dakota.
- 8 16. Gross receipts from the sale of money including all legal tender coins and
9 currency.
- 10 17. Gross receipts from sales to nonprofit voluntary health associations which are
11 exempt from federal income tax under section 501(c)(3) of the United States
12 Internal Revenue Code [26 U.S.C. 501(c)(3)]. As used in this subsection, a
13 voluntary health association is an organization recognized by the internal revenue
14 service, the national health council, the state tax commissioner, and the North
15 Dakota secretary of state as a nonprofit organization that is exempt under section
16 501(c)(3) of the United States Internal Revenue Code and meets the following
17 requirements: It has been organized and operated exclusively in providing
18 services for the purposes of preventing and alleviating human illness and injury.
19 Methods used to obtain these goals would include education, research, community
20 service, and direct patient services, income being derived solely from private
21 donations with some exceptions of a minimal membership fee. Its members are
22 not limited to only individuals who themselves are licensed or otherwise legally
23 authorized to render the same professional services as the organization. The
24 disbursement of funds within a volunteer health association is to be controlled by a
25 board of directors who work voluntarily and without pay.
- 26 18. ~~Gross receipts from all sales of water, except water sold in containers of less than~~
27 ~~one gallon [3.79 liters] volume.~~
- 28 ~~19.~~ Gross receipts from the sale of a mobile home which has been sold, bargained,
29 exchanged, given away, or transferred by the person who first acquired it from a
30 retailer in a sale at retail and upon which the North Dakota use tax has previously
31 been imposed.

1 ~~20.~~ 19. The donation by a retailer of tangible personal property to an organization exempt
2 from federal income tax under section 501(c)(3) of the United States Internal
3 Revenue Code [26 U.S.C. 501(c)(3)].

4 ~~24.~~ 20. Air carrier transportation property subject to ad valorem property taxation pursuant
5 to the provisions of chapters 57-06, 57-07, 57-08, 57-13, and 57-32.

6 ~~22.~~ 21. Tangible personal property consisting of flight simulators or mechanical or
7 electronic equipment for use in association with a flight simulator.

8 ~~23.~~ 22. Gross receipts from the initial sale of beneficiated coal.

9 ~~24.~~ 23. Gross receipts from electronic games of chance licensed by the attorney general
10 under chapter 53-06.1.

11 **SECTION 11. AMENDMENT.** Section 57-40.2-04.1 of the North Dakota Century Code
12 is amended and reenacted as follows:

13 **57-40.2-04.1. Use tax exemption for food and food products.** Gross receipts from
14 sales for human consumption of food and food ~~products including, but not limited to, cereal and~~
15 ~~cereal products, butter, cheese, milk and milk products, oleomargarine, meat and meat~~
16 ~~products, poultry and fish and other fresh and saltwater animal products, eggs and egg~~
17 ~~products, vegetables and vegetable products, fruit and fruit products, spices and salt, and sugar~~
18 ~~and sugar products when purchased by consumers for consumption off the premises where~~
19 ~~purchased, are exempt from the use tax imposed by chapter 57-40.2. Gross receipts from~~
20 ~~sales for human consumption of food and food products given, or to be given, as samples to~~
21 ~~consumers for consumption on the premises of a food store are exempt from the use tax~~
22 ~~imposed by this chapter. Purchases made with food coupons issued by the United States~~
23 ~~department of agriculture under the Food Stamp Act of 1977, as amended, are exempt from the~~
24 ~~tax imposed by this chapter pursuant to the Food Security Act of 1985. For purposes of this~~
25 ~~section, "food" and "food products" do not include: ingredients are exempt from taxes imposed~~
26 ~~under this chapter. Gross receipts from sales for human consumption of food and food~~
27 ~~products given, or to be given, as samples to consumers for consumption on the premises of a~~
28 ~~food store are exempt from taxes imposed by this chapter. For purposes of this section, "food"~~
29 ~~and "food ingredients" mean substances, whether in liquid, concentrated, solid, frozen, dried, or~~
30 ~~dehydrated form, which are sold for ingestion or chewing by humans and are consumed for~~
31 ~~taste or nutritional value.~~

1. For purposes of this section, "food" and "food ingredients" do not include:
 - ~~a. Alcoholic beverages or mixed drinks made from alcoholic beverages.~~
 - ~~b. Candy or chewing gum.~~
 - ~~3. Carbonated beverages.~~
 - ~~4. Beverages commonly referred to as soft drinks containing less than seventy percent fruit juice.~~
 - ~~5. Powdered drink mixes.~~
 - ~~6. Medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, or pill form sold as dietary supplements or adjuncts.~~
 - ~~7. Coffee and coffee substitutes.~~
 - ~~8. Tea.~~
 - ~~9. Cocoa or cocoa products.~~
 - c. Dietary supplements.
 - d. Prepared food.
 - e. Soft drinks containing less than fifty percent fruit juice.
 - f. Tobacco.
2. For purposes of this section:
 - a. "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.
 - b. "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavoring in the form of bars, drops, or pieces. Candy does not include any preparation containing flour and that does not require refrigeration.
 - c. "Dietary supplement" means any product, other than tobacco, intended to supplement the diet which contains one or more of the following dietary ingredients: a vitamin; a mineral; an herb or other botanical; an amino acid; a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; an oral concentrate, metabolite, constitute, extract, or combination of any dietary ingredients described in this subdivision and which is intended for ingestion in tablet, capsule, powder, soft gel cap, or liquid form,

1 or if not represented for use as a sole item of a meal or of a diet; and is
2 required to be labeled as a dietary supplement, identifiable by the
3 supplemental facts box found on the label and as required pursuant to
4 21 CFR 101.36.

5 d. "Prepared food" means:

- 6 (1) Food sold in a heated state or heated by the seller;
7 (2) Two or more food ingredients mixed or combined by the seller for sale
8 as a single item; or
9 (3) Food sold with eating utensils provided by the seller, including plates,
10 knives, forks, spoons, glasses, cups, napkins, or straws. A plate does
11 not include a container or packaging used to transport the food.

12 e. "Prepared food" does not mean:

- 13 (1) Food that is only cut, repackaged, or pasteurized by the seller.
14 (2) Eggs, fish, meat, poultry, and foods containing these raw animal foods
15 requiring cooking by the consumer as recommended by the food and
16 drug administration in chapter 3, part 401.11 of its food code so as to
17 prevent food-borne illness.
18 (3) If sold without eating utensils provided by the seller:
19 (a) Food sold by a seller whose proper primary North American
20 industry classification system classification is manufacturing in
21 sector 311, except subsector 3118, bakeries.
22 (b) Food sold in an unheated state by weight or volume as a single
23 item.
24 (c) Bakery items, including bread, rolls, buns, biscuits, bagels,
25 croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts,
26 muffins, bars, cookies, and tortillas.

27 f. "Soft drinks" means nonalcoholic beverages that contain natural or artificial
28 sweeteners. "Soft drinks" does not include beverages that contain milk or
29 milk products, soy, rice, or similar milk substitutes, or greater than fifty percent
30 of vegetable or fruit juice by volume.

1 g. "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other
2 item that contains tobacco.

3 **SECTION 12. REPEAL.** Section 57-39.2-03.8, subsection 33 of section 57-39.2-04,
4 and section 57-40.2-03.2 of the North Dakota Century Code are repealed.

5 **SECTION 13. EFFECTIVE DATE - EXPIRATION DATE.** This Act is effective for
6 taxable events occurring after December 31, 2005. Section 7 of this Act is effective for taxable
7 events occurring through December 31, 2007, and is thereafter ineffective.