

Sixtieth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1450

Introduced by

Representatives Wrangham, Bellew, Thoreson

Senator Krauter

1 A BILL for an Act to amend and reenact subsection 2 of section 11-09.1-05 and sections
2 40-05.1-06 and 57-01-02.1 of the North Dakota Century Code, relating to limitations on home
3 rule sales taxes; and to provide an effective date.

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

5 **SECTION 1. AMENDMENT.** Subsection 2 of section 11-09.1-05 of the North Dakota
6 Century Code is amended and reenacted as follows:

7 2. Control its finances and fiscal affairs; appropriate money for its purposes, and
8 make payments of its debts and expenses; subject to the limitations of this section
9 levy and collect property taxes, sales and use taxes, farm machinery gross receipts
10 taxes, alcoholic beverage gross receipts taxes, motor vehicle fuels and special
11 fuels taxes, motor vehicle registration fees, and special assessments for benefits
12 conferred, for its public and proprietary functions, activities, operations,
13 undertakings, and improvements; contract debts, borrow money, issue bonds,
14 warrants, and other evidences of indebtedness; establish charges for any county or
15 other services to the extent authorized by state law, and establish debt and mill
16 levy limitations; provided, that all property in order to be subject to the assessment
17 provisions of this subsection must be assessed in a uniform manner as prescribed
18 by the state board of equalization and the state supervisor of assessments. A
19 charter or ordinance or act of a governing body of a home rule county may not
20 supersede any state law that determines what property or acts are subject to, or
21 exempt from, ad valorem taxes. A charter or ordinance or act of the governing
22 body of a home rule county may not supersede section 11-11-55.1 relating to the
23 sixty percent petition requirement for improvements and of section 40-22-18
24 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, except for farm machinery gross receipts tax purposes.~~
- d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1.

After December 31, 2005, any portion of a charter or any portion of an ordinance or act of a governing body of a home rule county passed pursuant to a charter which does not conform to the requirements of this subsection is invalid to the extent that it does not conform. The invalidity of a portion of a charter or ordinance or act of a governing body of a home rule county because it does not conform to this subsection does not affect the validity of any other portion of the charter or ordinance or act of a governing body of a home rule county ~~or the eligibility for a refund under section 57-01-02.1.~~ 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.

1 **SECTION 2. AMENDMENT.** Section 40-05.1-06 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **40-05.1-06. Powers.** From and after the filing with the secretary of state of a charter
4 framed and approved in reasonable conformity with the provisions of this chapter, such city,
5 and the citizens thereof, shall, if included in the charter and implemented through ordinances,
6 have the following powers set out in this chapter:

- 7 1. To acquire, hold, operate, and dispose of property within or without the corporate
8 limits, and exercise the right of eminent domain for such purposes.
- 9 2. To control its finances and fiscal affairs; to appropriate money for its purposes, and
10 make payment of its debts and expenses; to levy and collect taxes, excises, fees,
11 charges, and special assessments for benefits conferred, for its public and
12 proprietary functions, activities, operations, undertakings, and improvements; to
13 contract debts, borrow money, issue bonds, warrants, and other evidences of
14 indebtedness; to establish charges for any city or other services, and to establish
15 debt and mill levy limitations, provided that all real and personal property in order to
16 be subject to the assessment provisions of this subsection shall be assessed in a
17 uniform manner as prescribed by the state board of equalization and the state
18 supervisor of assessments. The authority to levy taxes under this subsection does
19 not include authority to impose income taxes.
- 20 3. To fix the fees, number, terms, conditions, duration, and manner of issuing and
21 revoking licenses in the exercise of its governmental police powers.
- 22 4. To provide for city officers, agencies, and employees, their selection, terms,
23 powers, duties, qualifications, and compensation. To provide for change,
24 selection, or creation of its form and structure of government, including its
25 governing body, executive officer, and city officers.
- 26 5. To provide for city courts, their jurisdiction and powers over ordinance violations,
27 duties, administration, and the selection, qualifications, and compensation of their
28 officers; however, the right of appeal from judgment of such courts shall not be in
29 any way affected.
- 30 6. To provide for all matters pertaining to city elections, except as to qualifications of
31 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.
9. To define offenses against private persons and property and the public health, safety, morals, and welfare, and provide penalties for violations thereof.
10. To engage in any utility, business, or enterprise permitted by the constitution or not prohibited by statute or to grant and regulate franchises therefor to a private person, firm, corporation, or limited liability company.
11. To provide for zoning, planning, and subdivision of public or private property within the city limits. To provide for such zoning, planning, and subdivision of public or private property outside the city limits as may be permitted by state law.
12. To levy and collect franchise and license taxes for revenue purposes.
13. To exercise in the conduct of its affairs all powers usually exercised by a corporation.
14. To fix the boundary limits of said city and the annexation and deannexation of territory adjacent to said city except that such power shall be subject to, and shall conform with the state law made and provided.
15. To contract with and receive grants from any other governmental entity or agency, with respect to any local, state, or federal program, project, or works.
16. To impose registration fees on motor vehicles, farm machinery gross receipts taxes, alcoholic beverage gross receipts taxes, or sales and use taxes in addition to any other taxes imposed by law. After December 31, 2005, sales and use taxes and 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

1 retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes,
2 manufactured homes, or mobile homes.

3 b. May not be newly imposed or changed except to be effective on the first day
4 of a calendar quarterly period after a minimum of ninety days' notice to the tax
5 commissioner or, for purchases from printed catalogs, on the first day of a
6 calendar quarter after a minimum of one hundred twenty days' notice to the
7 seller.

8 c. ~~May not be limited to apply to less than the full value of the transaction or item~~
9 ~~as determined for state sales and use tax purposes, except for farm~~
10 ~~machinery gross receipts tax.~~

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

13 It is the intention of this chapter to grant and confirm to the people of all cities coming
14 within its provisions the full right of self-government in both local and city matters within the
15 powers enumerated herein. The statutes of the state of North Dakota, so far as applicable,
16 shall continue to apply to home rule cities, except insofar as superseded by the charters of such
17 cities or by ordinance passed pursuant to such charters.

18 After December 31, 2005, any portion of a charter or any portion of an ordinance
19 passed pursuant to a charter which does not conform to the requirements of subsection 16 is
20 invalid to the extent that it does not conform. The invalidity of a portion of a charter or
21 ordinance because it does not conform to subsection 16 does not affect the validity of any other
22 portion of the charter or ordinance ~~or the eligibility for a refund under section 57-01-02.1.~~ Any
23 taxes imposed under this chapter on farm machinery, farm irrigation equipment, and farm
24 machinery repair parts used exclusively for agricultural purposes, or on alcoholic beverages,
25 which were in effect on December 31, 2005, become gross receipts taxes after December 31,
26 2005.

27 **SECTION 3. AMENDMENT.** Section 57-01-02.1 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **57-01-02.1. Tax collection agreements with home rule cities or counties -**
30 **Limitations on city or county authority.**

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

25 **SECTION 4. EFFECTIVE DATE.** This Act is effective for taxable events occurring after

26 June 30, 2007.