

Sixty-second
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2238

Introduced by

Senators Cook, Oehlke, Triplett

Representatives Drovdal, S. Kelsh, Owens

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, 57-39.2-12.1, 57-39.5-04, 57-39.6-04, and 57-40.2-07.1 of the North Dakota
3 Century Code, relating to compensation allowable to retailers for expenses associated with the
4 collection, reporting, and remittance of state and local option sales, use, and gross receipts
5 taxes; and to provide an effective date.

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

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

9 2. Control its finances and fiscal affairs; appropriate money for its purposes, and make
10 payments of its debts and expenses; subject to the limitations of this section levy and
11 collect property taxes, sales and use taxes, farm machinery gross receipts taxes,
12 alcoholic beverage gross receipts taxes, motor vehicle fuels and special fuels taxes,
13 motor vehicle registration fees, and special assessments for benefits conferred, for its
14 public and proprietary functions, activities, operations, undertakings, and
15 improvements; contract debts, borrow money, issue bonds, warrants, and other
16 evidences of indebtedness; establish charges for any county or other services to the
17 extent authorized by state law; and establish debt and mill levy limitations.
18 Notwithstanding any authority granted under this chapter, all property must be
19 assessed in a uniform manner as prescribed by the state board of equalization and the
20 state supervisor of assessments and all taxable property must be taxed by the county
21 at the same rate unless otherwise provided by law. A charter or ordinance or act of a
22 governing body of a home rule county may not supersede any state law that
23 determines what property or acts are subject to, or exempt from, ad valorem taxes. A
24 charter or ordinance or act of the governing body of a home rule county may not

1 supersede section 11-11-55.1 relating to the sixty percent petition requirement for
2 improvements and of section 40-22-18 relating to the barring proceeding for
3 improvement projects. After December 31, 2005, sales and use taxes, farm machinery
4 gross receipts taxes, and alcoholic beverage gross receipts taxes levied under this
5 chapter:

- 6 a. Must conform in all respects with regard to the taxable or exempt status of items
7 under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed
8 at multiple rates with the exception of sales of electricity, piped natural or artificial
9 gas, or other heating fuels delivered by the seller or the retail sale or transfer of
10 motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or
11 mobile homes.
- 12 b. May not be newly imposed or changed except to be effective on the first day of a
13 calendar quarterly period after a minimum of ninety days' notice to the tax
14 commissioner or, for purchases from printed catalogs, on the first day of a
15 calendar quarter after a minimum of one hundred twenty days' notice to the
16 seller.
- 17 c. May not be limited to apply to less than the full value of the transaction or item as
18 determined for state sales and use tax, except for farm machinery gross receipts
19 tax purposes.
- 20 d. Must be subject to collection by the tax commissioner under an agreement under
21 section 57-01-02.1 and must be administered by the tax commissioner in
22 accordance with the relevant provisions of chapter 57-39.2, including reporting
23 and paying requirements, correction of errors, payment of refunds, and
24 application of penalty and interest.

25 After December 31, 2005, any portion of a charter or any portion of an ordinance or
26 act of a governing body of a home rule county passed pursuant to a charter which
27 does not conform to the requirements of this subsection or the retailer compensation
28 provisions of chapter 57-39.2 or 57-40.2 is invalid to the extent that it does not
29 conform. The invalidity of a portion of a charter or ordinance or act of a governing body
30 of a home rule county because it does not conform to this subsection does not affect
31 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.

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

40-05.1-06. 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, subject to chapter 32-15, 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. Notwithstanding any authority granted under this chapter, all property must be assessed in a uniform manner as prescribed by the state board of equalization and the state supervisor of assessments and all taxable property must be taxed by the city at the same rate unless otherwise provided by law. 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

- 1 of its form and structure of government, including its governing body, executive officer,
2 and city officers.
- 3 5. To provide for city courts, their jurisdiction and powers over ordinance violations,
4 duties, administration, and the selection, qualifications, and compensation of their
5 officers; however, the right of appeal from judgment of such courts shall not be in any
6 way affected.
- 7 6. To provide for all matters pertaining to city elections, except as to qualifications of
8 electors.
- 9 7. To provide for the adoption, amendment, and repeal of ordinances, resolutions, and
10 regulations to carry out its governmental and proprietary powers and to provide for
11 public health, safety, morals, and welfare, and penalties for a violation thereof.
- 12 8. To lay out or vacate streets, alleys, and public grounds, and to provide for the use,
13 operation, and regulation thereof.
- 14 9. To define offenses against private persons and property and the public health, safety,
15 morals, and welfare, and provide penalties for violations thereof.
- 16 10. To engage in any utility, business, or enterprise permitted by the constitution or not
17 prohibited by statute or to grant and regulate franchises therefor to a private person,
18 firm, corporation, or limited liability company.
- 19 11. To provide for zoning, planning, and subdivision of public or private property within the
20 city limits. To provide for such zoning, planning, and subdivision of public or private
21 property outside the city limits as may be permitted by state law.
- 22 12. To levy and collect franchise and license taxes for revenue purposes.
- 23 13. To exercise in the conduct of its affairs all powers usually exercised by a corporation.
- 24 14. To fix the boundary limits of said city and the annexation and deannexation of territory
25 adjacent to said city except that such power shall be subject to, and shall conform with
26 the state law made and provided.
- 27 15. To contract with and receive grants from any other governmental entity or agency, with
28 respect to any local, state, or federal program, project, or works.
- 29 16. To impose registration fees on motor vehicles, farm machinery gross receipts taxes,
30 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 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 purposes, except for farm machinery gross receipts tax.
- d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1 and must be administered by the tax commissioner in accordance with the relevant provisions of chapter 57-39.2, including reporting and paying requirements, correction of errors, payment of refunds, and application of penalty and interest.

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 or the retailer compensation provisions of chapter 57-39.2 or 57-40.2 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 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.

SECTION 3. AMENDMENT. Section 57-39.2-12.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-12.1. Deduction to reimburse retailer for administrative expenses.

1. a. A retailer required registered to report and pay monthly remit sales, use, or gross receipts tax imposed under section 57-39.2-12 chapter 57-39.2, 57-39.5, 57-39.6, or 57-40.2 may deduct and retain one and one-half percent of the tax due. The aggregate of deductions allowed by this section and section 57-40.2-07.1 may not exceed eighty-five dollars per month. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 2 or 3 for the same period from the tax remitted to the tax commissioner compensation or a monetary allowance as provided in this subsection.
- b. The following three rates of compensation apply to the combined state and local options sales, use, and gross receipts taxes remitted for each month of activity included in a sales, use, or gross receipts tax return:
 - (1) Rate one applies to the first six thousand two hundred fifty dollars of tax.
 - (2) Rate two applies to tax amounts greater than six thousand two hundred fifty dollars but less than sixty-two thousand five hundred dollars of tax.
 - (3) Rate three applies to tax amounts greater than sixty-two thousand five hundred dollars but less than the maximum amount of tax.
 - (4) The maximum amount of tax for purposes of compensation is seven hundred fifty thousand dollars for each calendar month of activity unless the total state and local option sales, use, and gross receipts taxes collected in the previous twelve-month period ending June thirtieth exceed one billion dollars. If total state and local option taxes collected in the previous twelve-month period ending June thirtieth exceed one billion dollars, the

1 maximum amount of tax on which compensation may be claimed is one
2 million dollars for a calendar month of activity.

3 c. The tax commissioner shall calculate the three rates of compensation annually
4 based on the previous calendar year and the rates are effective July first of the
5 following year. The following formula must be used to calculate compensation
6 rates:

7 (1) The target amount of compensation for each twelve-month period ending
8 June thirtieth is equal to three-fourths of one percent of the total state and
9 local option sales, use, and gross receipts tax collected in the previous
10 calendar year excluding tax amounts that exceed the maximum tax amount
11 defined in paragraph 4 of subdivision b of subsection 1.

12 (2) Compensation rate two must be fifty percent of compensation rate one and
13 compensation rate three must be fifty percent of compensation rate two.

14 (3) The sum of compensation from rate one, rate two, and rate three must
15 equal the target amount of compensation.

16 (4) If the compensation formula calculates rate one to be less than one and
17 one-half percent, rate one must be adjusted to one and one-half percent,
18 but rates two and three may not be adjusted from the calculated rate.

19 2. A certified service provider that contracts with retailers to calculate, collect, and remit
20 tax due on behalf of retailers may deduct and retain from the tax remitted to the tax
21 commissioner compensation or a monetary allowance up to the amount approved by
22 the streamlined sales and use tax governing board effective June 1, 2006. The
23 compensation provided in this subsection applies only to tax remitted by certified
24 service providers on behalf of retailers that are remote sellers registered to collect
25 sales and use tax in this state under chapter 57-39.4. Certified service providers that
26 receive compensation under this subsection may not receive additional compensation
27 under subsection 1 or 3 for the same period.

28 3. A retailer that is a remote seller registered to collect sales and use tax under
29 chapter 57-39.4 and that uses a certified automated system to calculate, report, and
30 remit tax due under chapters 57-39.2, 57-39.4, and 57-40.2 may deduct and retain
31 compensation or a monetary allowance up to the amount approved by the streamlined

sales and use tax governing board during its December 2006 meeting. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 2 for the same period.

4. For purposes of this section, "remote seller" means a retailer that does not have an adequate physical presence to establish nexus in this state for sales and use tax purposes.

5. Compensation may not be deducted and retained under this section unless the tax due is paid within the time limitations under section 57-39.2-12 or 57-40.2-07 or chapter 57-39.4.

6. The deduction allowed retailers or certified service providers by this section is to reimburse retailers directly or indirectly for expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying information to the tax commissioner upon request.

SECTION 4. AMENDMENT. Section 57-39.5-04 of the North Dakota Century Code is amended and reenacted as follows:

57-39.5-04. Administration.

The provisions of chapter 57-39.2 pertaining to administration of the retail sales tax, including provisions for refund, credits, retailer compensation, or adoption of rules, not in ~~compliance~~conflict with this chapter or federal law, govern the administration of the gross receipts tax imposed in this chapter.

SECTION 5. AMENDMENT. Section 57-39.6-04 of the North Dakota Century Code is amended and reenacted as follows:

57-39.6-04. Administration.

The provisions of chapter 57-39.2, pertaining to administration of the retail sales tax, including provisions for refund, credits, retailer compensation, or adoption of rules, not in conflict with this chapter or federal law, govern the administration of the gross receipts tax imposed in this chapter.

SECTION 6. AMENDMENT. Section 57-40.2-07.1 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-07.1. Deduction to reimburse retailer for administrative expenses.

1.
 - a. A retailer required registered to report and pay monthly remit sales, use, or gross receipts tax imposed under section 57-40.2-07 chapter 57-39.2, 57-39.5, 57-39.6, or 57-40.2 may deduct and retain one and one-half percent of the tax due. The aggregate of deductions allowed by this section and section 57-39.2-12.1 may not exceed eighty-five dollars per month. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 2 or 3 for the same period from the tax remitted to the tax commissioner compensation or a monetary allowance as provided in this subsection.
 - b. The following three rates of compensation apply to the combined state and local options sales, use, and gross receipts taxes remitted for each month of activity included in a sales, use, or gross receipts tax return:
 - (1) Rate one applies to the first six thousand two hundred fifty dollars of tax.
 - (2) Rate two applies to tax amounts greater than six thousand two hundred fifty dollars but less than sixty-two thousand five hundred dollars of tax.
 - (3) Rate three applies to tax amounts greater than sixty-two thousand five hundred dollars but less than the maximum amount of tax.
 - (4) The maximum amount of tax for purposes of compensation is seven hundred fifty thousand dollars for each calendar month of activity unless the total state and local option sales, use, and gross receipts taxes collected in the previous twelve-month period ending June thirtieth exceed one billion dollars. If total state and local option taxes collected in the previous twelve-month period ending June thirtieth exceed one billion dollars, the maximum amount of tax on which compensation may be claimed is one million dollars for a calendar month of activity.
 - c. The tax commissioner shall calculate the three rates of compensation annually based on the previous calendar year and the rates are effective July first of the following year. The following formula must be used to calculate compensation rates:

(1) The target amount of compensation for each twelve-month period ending June thirtieth is equal to three-fourths of one percent of the total state and local option sales, use, and gross receipts tax collected in the previous calendar year excluding tax amounts that exceed the maximum tax amount defined in paragraph 4 of subdivision b of subsection 1.

(2) Compensation rate two must be fifty percent of compensation rate one and compensation rate three shall be fifty percent of compensation rate two.

(3) The sum of compensation from rate one, rate two, and rate three must equal the target amount of compensation.

(4) If the compensation formula calculates rate one to be less than one and one-half percent, rate one must be adjusted to one and one-half percent, but rates two and three may not be adjusted from the calculated rate.

2. A certified service provider that contracts with retailers to calculate, collect, and remit tax due on behalf of retailers may deduct and retain from the tax remitted to the tax commissioner compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board effective June 1, 2006. The compensation provided in this subsection applies only to tax remitted by certified service providers on behalf of retailers that are remote sellers registered to collect sales and use tax in this state under chapter 57-39.4. Certified service providers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 3 for the same period.

3. A retailer that is a remote seller registered to collect sales and use tax under chapter 57-39.4 and that uses a certified automated system to calculate, report, and remit tax due under chapters 57-39.2, 57-39.4, and 57-40.2 may deduct and retain compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board during its December 2006 meeting. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 2 for the same period.

4. For purposes of this section, "remote seller" means a retailer that does not have an adequate physical presence to establish nexus in this state for sales and use tax purposes.

1 5. Compensation may not be deducted and retained under this section unless the tax
2 due is paid within the time limitations under section 57-39.2-12 or 57-40.2-07 or
3 chapter 57-39.4.

4 6. The deduction allowed retailers or certified service providers by this section is to
5 reimburse retailers directly or indirectly for expenses incurred in keeping records,
6 preparing and filing returns, remitting the tax, and supplying information to the tax
7 commissioner upon request.

8 **SECTION 7. EFFECTIVE DATE.** This Act is effective for taxable events occurring after
9 December 31, 2012.