

April 11, 2011

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1245

In lieu of the amendments adopted by the Senate as printed on pages 837 and 838 and pages 1345-1347 of the Senate Journal, Engrossed House Bill No. 1245 is amended as follows:

Page 1, line 1, replace the third "and" with ", subsection 1 of section 57-39.2-02.1, and"

Page 1, line 3, remove "of thirty days or more"

Page 1, line 11, remove the overstrike over "~~for periods of~~"

Page 1, line 11, after "~~thirty~~" insert "ninety or fewer"

Page 1, line 11, remove the overstrike over "~~consecutive calendar days~~"

Page 2, line 1, remove the overstrike over "~~for periods of~~"

Page 2, line 1, after "~~thirty~~" insert "ninety or fewer"

Page 2, line 1, remove the overstrike over "~~consecutive calendar days~~"

Page 2, after line 22, insert:

"SECTION 3. AMENDMENT. Subsection 1 of section 57-39.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise expressly provided in subsection 2 for sales of mobile homes used for residential or business purposes, and except as otherwise expressly provided in this chapter, there is imposed a tax of five percent upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as provided in this section, within this state of the following to consumers or users:
 - a. Tangible personal property, consisting of goods, wares, or merchandise, except mobile homes used for residential or business purposes and including bundled transactions consisting entirely of tangible personal property.
 - b. The furnishing or service of communication services or steam other than steam used for processing agricultural products.
 - c. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment, or athletic activity and the playing of any machine for amusement or entertainment in response to the use of a coin. The tax imposed by this section applies only to eighty percent of the gross receipts collected from coin-operated amusement devices.
 - d. Magazines and other periodicals.
 - e. The leasing or renting of a hotel or motel room or tourist court accommodations for periods of ninety or fewer consecutive calendar days.

- f. The leasing or renting of tangible personal property the transfer of title to which has not been subjected to a retail sales tax under this chapter or a use tax under chapter 57-40.2.
- g. Sale, lease, or rental of a computer 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".
- h. A mandatory computer software maintenance contract for prewritten computer software.
- i. An optional computer software maintenance contract for prewritten computer software that provides only software upgrades or updates or an optional computer software maintenance contract for prewritten

computer software that is a bundled transaction and provides software upgrades or updates and support services."

Page 2, line 28, overstrike "and the gross receipts from the leasing or renting of a hotel or motel room or"

Page 2, line 29, overstrike "tourist court accommodations"

Page 2, line 30, overstrike "for periods of thirty or more consecutive days"

Renumber accordingly