

**FIRST ENGROSSMENT  
with Senate Amendments  
ENGROSSED HOUSE BILL NO. 1245**

Introduced by

Representatives Dosch, D. Johnson, Maragos

Senators Hogue, Lyson, Wardner

1 A BILL for an Act to amend and reenact sections 40-57.3-01 and 40-57.3-01.1 and subsection 1  
2 of section 57-39.2-02.1 of the North Dakota Century Code, relating to city lodging tax and state  
3 sales tax application to hotel, motel, and tourist court stays; and to provide an effective date.

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

5 **SECTION 1. AMENDMENT.** Section 40-57.3-01 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **40-57.3-01. City lodging tax - Imposition - Amount - Disposition.**

8 The governing body of any city may, by ordinance, impose a city tax, not to exceed two  
9 percent, upon the gross receipts of retailers on the leasing or renting of hotel, motel, or tourist  
10 court accommodations within the city for periods of ~~less than thirty~~ninety or fewer consecutive  
11 calendar days ~~or one month~~. The tax imposed by this section shall be in addition to the state  
12 sales tax on rental accommodations provided in chapter 57-39.2 and any city which imposes  
13 the tax upon gross receipts described in this section shall deposit all proceeds in the city  
14 visitors' promotion fund. Moneys deposited in the city visitors' promotion fund shall be spent  
15 only as provided in this chapter. This chapter applies to all cities and does not limit the authority  
16 of a home rule city to levy any taxes authorized by other provisions of law.

17 **SECTION 2. AMENDMENT.** Section 40-57.3-01.1 of the North Dakota Century Code is  
18 amended and reenacted as follows:

19 **40-57.3-01.1. City lodging and restaurant tax - Imposition - Amount - Disposition -**  
20 **Referral.**

21 In addition to the tax under section 40-57.3-01, the governing body of any city may, by  
22 ordinance, impose a city tax, at a rate not to exceed one percent, upon the gross receipts of  
23 retailers on the leasing or renting of hotel, motel, or tourist court accommodations within the city  
24 for periods of ~~less than thirty~~ninety or fewer consecutive calendar days ~~or one month~~ and upon

1 the gross receipts of a restaurant from any sales of prepared food or beverages, not including  
2 alcoholic beverages for consumption off the premises where purchased, which are subject to  
3 state sales taxes. For purposes of this section, "restaurant" means any place where food is  
4 prepared and intended for individual portion service for consumption on or off the premises and  
5 "prepared" includes heating prepackaged food. Accommodations, food, and beverages may all,  
6 each, or in any combination be subjected to the tax under this section, if all items in any  
7 category which are taxable under state law are taxable, except as otherwise provided in this  
8 section. The tax imposed under this section is in addition to state sales taxes on rental  
9 accommodations and restaurant sales and any city which imposes the tax under this section  
10 shall deposit all proceeds in the city visitors' promotion capital construction fund. Moneys  
11 deposited in the city visitors' promotion capital construction fund shall be spent only as provided  
12 in this chapter. An ordinance adopted under this section may not become effective sooner than  
13 sixty days after it is adopted by the governing body of the city. The provisions of chapter 40-12  
14 with regard to referral of ordinances apply to an ordinance adopted under this section except  
15 that a petition to refer an ordinance adopted under this section must be presented to the  
16 governing body of the municipality before four p.m. on the sixtieth day after the ordinance  
17 described in the petition was adopted by the governing body of the municipality. Revenues from  
18 a tax imposed under this section may not be pledged under section 40-57.3-03 to payment of  
19 bonds or evidences of indebtedness until after the time has passed for filing a referral petition  
20 against an ordinance under this section or, if a referral petition is filed, until after the referral  
21 petition has been submitted to the vote of the electors of the municipality.

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

- 24 1. Except as otherwise expressly provided in subsection 2 for sales of mobile homes  
25 used for residential or business purposes, and except as otherwise expressly provided  
26 in this chapter, there is imposed a tax of five percent upon the gross receipts of  
27 retailers from all sales at retail including the leasing or renting of tangible personal  
28 property as provided in this section, within this state of the following to consumers or  
29 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.

1 (5) "Load and leave" means delivery to the purchaser by use of a tangible  
2 storage media when the tangible storage media is not physically transferred  
3 to the purchaser.

4 (6) "Prewritten computer software" means computer software, including  
5 prewritten upgrades, which is not designed and developed by the author or  
6 other creator to the specifications of a specific purchaser. The combining of  
7 two or more "prewritten computer software" programs or prewritten portions  
8 thereof does not cause the combination to be other than "prewritten  
9 computer software". "Prewritten computer software" includes software  
10 designed and developed by the author or other creator to the specifications  
11 of a specific purchaser when it is sold to a person other than the purchaser.  
12 If a person modifies or enhances "computer software" of which the person is  
13 not the author or creator, the person is deemed to be the author or creator  
14 only of such person's modifications or enhancements. "Prewritten computer  
15 software" or a prewritten portion thereof that is modified or enhanced to any  
16 degree, if such modification or enhancement is designed and developed to  
17 the specifications of a specific purchaser, remains "prewritten computer  
18 software". However, if there is a reasonable, separately stated charge or an  
19 invoice or other statement of the price given to the purchaser for such  
20 modification or enhancement, such modification or enhancement shall not  
21 constitute "prewritten computer software".

22 h. A mandatory computer software maintenance contract for prewritten computer  
23 software.

24 i. An optional computer software maintenance contract for prewritten computer  
25 software that provides only software upgrades or updates or an optional  
26 computer software maintenance contract for prewritten computer software that is  
27 a bundled transaction and provides software upgrades or updates and support  
28 services.

29 **SECTION 4. EFFECTIVE DATE.** This Act is effective for taxable events occurring after  
30 June 30, 2011.