

Sixty-second  
Legislative Assembly  
of North Dakota

**HOUSE BILL NO. 1404**

Introduced by

Representatives Koppelman, Hatlestad, Steiner, S. Meyer

Senators Dever, J. Lee

1 A BILL for an Act to amend and reenact sections 57-39.2-02.1, 57-39.2-08.2, and 57-40.2-02.1  
2 of the North Dakota Century Code, relating to the rate of sales and use tax for modular homes;  
3 and to provide an effective date.

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

5 **SECTION 1. AMENDMENT.** Section 57-39.2-02.1 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **57-39.2-02.1. Sales tax imposed.**

8 1. Except as otherwise expressly provided in subsection 2 for sales of mobile homes and  
9 modular homes used for residential or business purposes, and except as otherwise  
10 expressly provided in this chapter, there is imposed a tax of five percent upon the  
11 gross receipts of retailers from all sales at retail including the leasing or renting of  
12 tangible personal property as provided in this section, within this state of the following  
13 to consumers or users:

14 a. Tangible personal property, consisting of goods, wares, or merchandise, except  
15 mobile homes used for residential or business purposes and including bundled  
16 transactions consisting entirely of tangible personal property.

17 b. The furnishing or service of communication services or steam other than steam  
18 used for processing agricultural products.

19 c. Tickets or admissions to places of amusement or entertainment or athletic  
20 events, including amounts charged for participation in an amusement,  
21 entertainment, or athletic activity and the playing of any machine for amusement  
22 or entertainment in response to the use of a coin. The tax imposed by this section  
23 applies only to eighty percent of the gross receipts collected from coin-operated  
24 amusement devices.

- 1           d.   Magazines and other periodicals.
- 2           e.   The leasing or renting of a hotel or motel room or tourist court accommodations.
- 3           f.   The leasing or renting of tangible personal property the transfer of title to which
- 4               has not been subjected to a retail sales tax under this chapter or a use tax under
- 5               chapter 57-40.2.
- 6           g.   Sale, lease, or rental of a computer and prewritten computer software, including
- 7               prewritten computer software delivered electronically or by load and leave. For
- 8               purposes of this subdivision:
- 9               (1)  "Computer" means an electronic device that accepts information in digital or
- 10               similar form and manipulates it for a result based on a sequence of
- 11               instructions.
- 12               (2)  "Computer software" means a set of coded instructions designed to cause a
- 13               computer or automatic data processing equipment to perform a task.
- 14               (3)  "Delivered electronically" means delivered from the seller to the purchaser
- 15               by means other than tangible storage media.
- 16               (4)  "Electronic" means relating to technology having electrical, digital, magnetic,
- 17               wireless, optical, electromagnetic, or similar capabilities.
- 18               (5)  "Load and leave" means delivery to the purchaser by use of a tangible
- 19               storage media when the tangible storage media is not physically transferred
- 20               to the purchaser.
- 21               (6)  "Prewritten computer software" means computer software, including
- 22               prewritten upgrades, which is not designed and developed by the author or
- 23               other creator to the specifications of a specific purchaser. The combining of
- 24               two or more "prewritten computer software" programs or prewritten portions
- 25               thereof does not cause the combination to be other than "prewritten
- 26               computer software". "Prewritten computer software" includes software
- 27               designed and developed by the author or other creator to the specifications
- 28               of a specific purchaser when it is sold to a person other than the purchaser.
- 29               If a person modifies or enhances "computer software" of which the person is
- 30               not the author or creator, the person is deemed to be the author or creator
- 31               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.

2. There is imposed a tax of three percent upon the gross receipts of retailers from all sales at retail of mobile homes and modular homes used for residential or business purposes, except as provided in subsection 35 of section 57-39.2-04. For purposes of this subsection, "modular home" means a factory-fabricated building unit to be incorporated into a modular structure to be used for residential or commercial purposes.

**SECTION 2. AMENDMENT.** Section 57-39.2-08.2 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.2-08.2. Sales tax to be added to purchase price and be a debt.**

1. Except as otherwise provided in subsection 2, retailers shall add the tax imposed under this chapter, or the average equivalent thereof, to the sales price or charge, and when added, such tax constitutes a part of such price or charge, is a debt from the consumer or user to the retailer until paid, and is recoverable at law in the same manner as other debts.

A retailer shall determine the amount of tax charged to and received from each purchaser by use of a formula that applies the applicable tax rate to each taxable item or total purchase and the product must be carried to the third decimal place. Amounts

of tax less than one-half of one cent must be disregarded and amounts of tax of one-half of one cent or more must be considered an additional cent of tax. When a local sales tax applies, the determination of tax charged to and received from each customer will be applied to the aggregated state and local taxes.

2. On retail sales of mobile homes and modular homes used for residential or business purposes, except as provided in subsection 35 of section 57-39.2-04, and of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes, retailers shall add the tax imposed under this chapter, or the average equivalent thereof, to the sales price or charge, and when added, such tax constitutes a part of such price or charge, is a debt from the consumer or user to the retailer until paid, and is recoverable at law in the same manner as other debts. In adding such tax to the price or charge, retailers shall add to it three percent of such price or charge.

**SECTION 3. AMENDMENT.** Section 57-40.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-40.2-02.1. Use tax imposed.**

1. Except as otherwise expressly provided in subsection 2 for purchases of mobile homes and modular homes used for residential or business purposes, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property purchased at retail for storage, use, or consumption in this state, at the rate of five percent of the purchase price of the property. Except as limited by section 57-40.2-11, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property not originally purchased for storage, use, or consumption in this state at the rate of five percent of the fair market value of the property at the time it was brought into this state.
2. An excise tax is imposed on the storage, use, or consumption in this state of mobile homes and modular homes used for residential or business purposes, except as provided in subsection 19 of section 57-40.2-04 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

1           this state of a mobile home and modular home used for residential or business  
2           purposes at the rate of three percent of the fair market value of athe mobile home or  
3           modular home used for residential or business purposes at the time it was brought into  
4           this state. For purposes of this subsection, "modular home" means a factory-fabricated  
5           building unit to be incorporated into a modular structure to be used for residential or  
6           commercial purposes.

7           3. Repealed by S.L. 2007, ch. 529, § 7.

8           4. In the case of a contract awarded for the construction of highways, roads, streets,  
9           bridges, and buildings prior to December 1, 1986, the contractor receiving the award  
10          shall be liable only for the sales or use tax at the rate of tax in effect on the date of  
11          contract.

12          5. An excise tax is imposed on the fair market value of sand or gravel severed when  
13          sand or gravel is not sold at retail as tangible personal property by the person severing  
14          the sand or gravel. If the sand or gravel is not sold at retail by the person severing the  
15          sand or gravel, it must be presumed until the contrary is shown by the commissioner  
16          or by the person severing the sand or gravel that the fair market value is eight cents  
17          per ton of two thousand pounds [907.18 kilograms]. If records are not kept as to the  
18          tonnage of sand or gravel severed from the soil, it must be presumed for the purpose  
19          of this chapter that one cubic yard [764.55 liters] of sand or gravel is equal to one and  
20          one-half tons [1360.78 kilograms] of sand or gravel.

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

22          June 30, 2011.