

Sixty-third  
Legislative Assembly  
of North Dakota

**HOUSE BILL NO. 1419**

Introduced by

Representatives Wieland, Headland, Klein, K. Koppelman, Owens, Thoreson

Senator Klein

1 A BILL for an Act to amend and reenact subsection 21 of section 57-39.2-01 of the North  
2 Dakota Century Code, relating to sales tax application to tangible personal property delivered to  
3 out-of-state purchasers for incorporation into or attachment to real property in another state;  
4 and to provide an effective date.

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

6 **SECTION 1. AMENDMENT.** Subsection 21 of section 57-39.2-01 of the North Dakota  
7 Century Code is amended and reenacted as follows:

8 21. "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other  
9 than for resale, sublease, or subrental.

10 a. "Retail sale" or "sale at retail" includes ~~the~~:

11 (1) The sale, including the leasing or renting, to a consumer or to any person  
12 for any purpose, other than for processing or for resale, of tangible personal  
13 property; ~~the~~

14 (2) The sale of steam, gas, and communication service to retail consumers or  
15 users; ~~the~~

16 (3) The sale of vulcanizing, recapping, and retreading services for tires; ~~the~~

17 (4) The ordering, selecting, or aiding a customer to select any goods, wares, or  
18 merchandise from any price list or catalog, which the customer might order,  
19 or be ordered for such customer to be shipped directly to such customer;  
20 ~~the~~

21 (5) The sale or furnishing of hotel, motel, or tourist court accommodations; ~~;~~

22 (6) The sale of tickets; or admissions to any place of amusement, athletic  
23 event, or place of entertainment; and ~~the~~

(7) The sales of magazines and other periodicals. By the term "processing" is meant

b. "Processing" means any tangible personal property, including containers, which it is intended, by means of fabrication, compounding, manufacturing, producing, or germination shall become an integral or an ingredient or component part of other tangible personal property intended to be sold ultimately at retail.

c. The sale of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property must be considered as a sale of tangible personal property for a purpose other than for processing or resale; the

d. (1) The delivery of possession within the state of North Dakota of tangible personal property by a wholesaler or distributor to an out-of-state retailer who does not hold a ~~North Dakota retail~~ valid sales tax permit in any state or to a person who by contract incorporates such tangible personal property into, or attaches it to, real property situated in another state may not be considered a taxable sale if such delivery of possession would not be treated as a taxable sale in that state. ~~As used in this subsection, the word "consumer"~~

(2) ~~(a)~~ The delivery of possession outside the state of North Dakota of tangible personal property by a North Dakota wholesaler or distributor to an out-of-state person who by contract with the North Dakota wholesaler or distributor incorporates such tangible personal property into, or attaches it to, real property situated in another state is not a taxable sale if such delivery of possession would be treated as a taxable sale in that state. For purposes of this ~~subparagraph~~ paragraph, delivery of possession outside the state of North Dakota of tangible personal property by a North Dakota wholesaler or distributor to an out-of-state person who by contract incorporates such tangible personal property into, or attaches it to, real property situated in another state is the conclusion of the sales transaction for purposes of this chapter.

~~(b) The delivery of possession outside the state of North Dakota of tangible personal property by a North Dakota wholesaler or distributor~~

~~to an out-of-state purchaser is a taxable sale if the North Dakota  
wholesaler or distributor is a licensed contractor in the state of  
delivery and incorporates such tangible personal property into, or  
attaches it to, real property situated in that state unless such delivery  
of possession would be treated as a taxable sale in that state~~

e. "Consumer" includes any hospital, infirmary, sanatorium, nursing home, home for  
the aged, or similar institution that furnishes services to any patient or occupant.

f. The sale of an item of tangible personal property to a person under a finance  
leasing agreement over the term of which the property will be substantially  
consumed must be considered a retail sale if the purchaser elects to treat it as  
such by paying or causing the transferor to pay the sales tax thereon to the  
commissioner on or before the last day on which payments may be made without  
penalty as provided in section 57-39.2-12.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable events occurring after  
June 30, 2013.