

Fifty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1379

Introduced by

Representatives Grosz, Delzer

Senators Freborg, Kringstad

1 A BILL for an Act to amend and reenact subsections 7, 8, and 9 of section 57-39.2-01 and
2 subsection 1 of section 57-39.2-02.1 of the North Dakota Century Code, relating to sales taxes
3 for playing machines for amusement or entertainment; and to provide an effective date.

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

5 **SECTION 1. AMENDMENT.** Subsections 7, 8, and 9 of section 57-39.2-01 of the 1995
6 Supplement to the North Dakota Century Code are amended and reenacted as follows:

7 7. "Retail sale" or "sale at retail" means the sale, including the leasing or renting, to a
8 consumer or to any person for any purpose, other than for processing or for resale,
9 of tangible personal property; the sale of steam, gas, and communication service
10 to retail consumers or users; the sale of vulcanizing, recapping, and retreading
11 services for tires; the furnishing of bingo cards; the ordering, selecting, or aiding a
12 customer to select any goods, wares, or merchandise from any price list or
13 catalog, which the customer might order, or be ordered for such customer to be
14 shipped directly to such customer; the sale or furnishing of hotel, motel, or tourist
15 court accommodations, tickets, or admissions to any place of amusement, athletic
16 event, or place of entertainment ~~including the playing of any machine for~~
17 ~~amusement or entertainment in response to the use of a coin~~; and the sales of
18 magazines and other periodicals. By the term "processing" is meant any tangible
19 personal property including containers which it is intended, by means of
20 fabrication, compounding, manufacturing, producing, or germination shall become
21 an integral or an ingredient, or component part of other tangible personal property
22 intended to be sold ultimately at retail. The sale of an item of tangible personal
23 property for the purpose of incorporating it in or attaching it to real property must
24 be considered as a sale of tangible personal property for a purpose other than for

processing; 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 sales tax permit 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" includes any hospital, infirmary, sanatorium, nursing home, home for the aged, or similar institution that furnishes services to any patient or occupant. The sale of an item of tangible personal property to a purchaser who rents or leases it 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.

8. "Retailer" includes every person engaged in the business of leasing or renting hotel, motel, or tourist court accommodations, and every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or furnishing of steam, gas, and communication services, or tickets or admissions to places of amusement, entertainment, and athletic events ~~including the playing of any machine for amusement or entertainment in response to the use of a coin,~~ or magazines, or other periodicals; any organization licensed by the attorney general to conduct bingo games pursuant to section 53-06.1-03; and includes any person as herein defined who by contract or otherwise agrees to furnish for a consideration a totally or partially finished product consisting in whole or in part of tangible personal property subject to the sales tax herein provided, and all items of tangible personal property entering into the performance of such contract as a component part of the product agreed to be furnished under said contract shall be subject to the sales tax herein provided and the sales tax thereon shall be collected by the contractor from the person for whom the contract has been performed in addition to the contract price agreed upon, and shall be remitted to

the state in the manner provided in this chapter; and shall include the state or any municipality furnishing steam, gas, or communication service to members of the public in its proprietary capacity. For the purpose of this chapter, retailer shall also include every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer. A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.

9. "Sale" means any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatever, for a consideration, and includes the furnishing or service of steam, gas, or communication, the furnishing of bingo cards, the furnishing of hotel, motel, or tourist court accommodations, the furnishing of tickets or admissions to any place of amusement, athletic event, or place of entertainment ~~including the playing of any machine for amusement or entertainment in response to the use of a coin~~, and sales of magazines and other periodicals. Provided, the words "magazines and other periodicals" as used in this subsection do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.

SECTION 2. 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 for sales of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural 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 the state of North Dakota of the following to consumers or users:

- 1 a. Tangible personal property, consisting of goods, wares, or merchandise,
2 except mobile homes used for residential or business purposes and farm
3 machinery, farm machinery repair parts, and irrigation equipment used
4 exclusively for agricultural purposes.
- 5 b. The furnishing or service of communication services or steam other than
6 steam used for processing agricultural products.
- 7 c. Tickets or admissions to places of amusement or entertainment or athletic
8 events, including amounts charged for participation in an amusement,
9 entertainment, or athletic activity, and including the furnishing of bingo cards
10 ~~and the playing of any machine for amusement or entertainment in response~~
11 ~~to the use of a coin. The tax imposed by this section applies only to eighty~~
12 ~~percent of the gross receipts collected from coin-operated amusement~~
13 ~~devices.~~
- 14 d. Magazines and other periodicals.
- 15 e. The leasing or renting of a hotel or motel room or tourist court
16 accommodations.
- 17 f. The leasing or renting of tangible personal property the transfer of title to
18 which has not been subjected to a retail sales tax under this chapter or a use
19 tax under chapter 57-40.2.

20 **SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable events occurring after

21 June 30, 1997.