

**Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003**

SENATE BILL NO. 2096
(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

AN ACT to create and enact sections 57-39.2-29, 57-39.2-30, 57-39.2-31, and 57-39.2-32, chapters 57-39.5 and 57-39.6, a new subsection to section 57-40.2-01, and a new subsection to section 57-40.2-02.1 of the North Dakota Century Code, relating to changes necessary to conform North Dakota sales and use tax laws to the streamlined sales and use tax agreement; to amend and reenact subsection 2 of section 11-09.1-05, subsection 16 of section 40-05.1-06, sections 57-01-02.1, 57-39.2-01, and 57-39.2-02.1, subsections 7, 10, 11, 26, and 45 of section 57-39.2-04, sections 57-39.2-04.1, 57-39.2-05, and 57-39.2-08.2, subsection 1 of section 57-39.2-14, subsection 4 of section 57-40.2-01, and subsection 14 of section 57-40.2-04 of the North Dakota Century Code, relating to changes necessary to conform North Dakota sales and use tax laws to the streamlined sales and use tax agreement; to repeal sections 57-39.2-03.2 and 57-39.2-08.3 of the North Dakota Century Code, relating to changes necessary to conform North Dakota sales and use tax laws to the streamlined sales and use tax agreement; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 11-09.1-05 of the North Dakota Century Code is amended and reenacted as follows:

2. Control its finances and fiscal affairs; appropriate money for its purposes, and make payments of its debts and expenses; subject to the limitations of this section levy and collect property taxes, sales and use taxes, motor vehicle fuels and special fuels taxes, motor vehicle registration fees, and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings, and improvements; contract debts, borrow money, issue bonds, warrants, and other evidences of indebtedness; establish charges for any county or other services to the extent authorized by state law, and establish debt and mill levy limitations; provided, that all property in order to be subject to the assessment provisions of this subsection must be assessed in a uniform manner as prescribed by the state board of equalization and the state supervisor of assessments. A charter or ordinance or act of a governing body of a home rule county may not supersede any state law that determines what property or acts are subject to, or exempt from, ad valorem taxes. A charter or ordinance or act of the governing body of a home rule county may not supersede section 11-11-55.1 relating to the sixty percent petition requirement for improvements and of section 40-22-18 relating to the barring proceeding for improvement projects. After December 31, 2005, sales and use taxes levied under this chapter:
 - a. Must conform in all respects with regard to the taxable or exempt status of items under chapters 57-39.2 and 57-40.2 and may not be imposed at multiple rates with the exception of sales of electricity, piped natural or artificial gas, or other heating fuels delivered by the seller or the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.
 - b. May not be newly imposed or changed except to be effective on the first day of a calendar quarterly period after a minimum of ninety days notice to the tax commissioner or, for purchases from printed catalogs, on the first day of a calendar quarter after a minimum of one hundred twenty days notice to the seller.

- c. May not be limited to apply to less than the full value of the transaction or item as determined for state sales and use tax purposes.
- d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1.

SECTION 2. AMENDMENT. Subsection 16 of section 40-05.1-06 of the North Dakota Century Code is amended and reenacted as follows:

- 16. To impose registration fees on motor vehicles, or sales and use taxes in addition to any other taxes imposed by law. After December 31, 2005, sales and use taxes levied under this chapter:
 - a. Must conform in all respects with regard to the taxable or exempt status of items under chapters 57-39.2 and 57-40.2 and may not be imposed at multiple rates with the exception of sales of electricity, piped natural or artificial gas, or other heating fuels delivered by the seller or the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.
 - b. May not be newly imposed or changed except to be effective on the first day of a calendar quarterly period after a minimum of ninety days notice to the tax commissioner or, for purchases from printed catalogs, on the first day of a calendar quarter after a minimum of one hundred twenty days notice to the seller.
 - c. May not be limited to apply to less than the full value of the transaction or item as determined for state sales and use tax purposes.
 - d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1.

SECTION 3. AMENDMENT. Section 57-01-02.1 of the North Dakota Century Code is amended and reenacted as follows:

57-01-02.1. Tax collection agreements with home rule cities or counties - Limitations on city or county authority.

- 1. The governing body of any incorporated city that has adopted the home rule provisions of chapter 40-05.1; or of any county which has adopted the home rule provisions of chapter 11-09.1, ~~and must enter a contract with the tax commissioner are hereby authorized and empowered to enter into contractual agreements whereby~~ giving the tax commissioner has authority to collect any sales or use taxes assessed by such incorporated city or county.
- 2. ~~It is the duty of the~~ The tax commissioner ~~to shall~~ deposit with the state treasurer all money collected under a contract under this section and ~~to~~ accompany each remittance with a certificate showing the city or county for which it was collected. The state treasurer, monthly, shall pay to the auditors of ~~the several~~ cities or counties the money to which ~~they~~ cities or counties are entitled under a contract under this section.
- 3. ~~The agreements entered into~~ Contracts under this section ~~may also~~ shall provide for an agreed amount to be allowed the tax commissioner for services ~~rendered in connection with such collections.~~ Any sums collected for services rendered must be paid to the state treasurer for deposit in the general fund.
- 4. A person required to collect and remit sales or use taxes may not be required to register with, file returns with, or remit funds to anyone other than the tax commissioner or the tax commissioner's authorized agent. A city or county may not conduct an independent sales or use tax audit of a seller registered under the agreement adopted under chapter 57-39.4.

SECTION 4. AMENDMENT. Section 57-39.2-01 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-01. Definitions. The following words, terms, and phrases, when used in this chapter, have the meaning ascribed to them in this section, unless the context clearly indicates a different meaning:

1. "Business" includes any activity engaged in by any person or caused to be engaged in by the person with the object of gain, benefit or advantage, either direct or indirect.
2. "Certified service provider" means an agent certified under the agreement adopted under chapter 57-39.4 to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit taxes on its own purchases.
3. "Commissioner" means the tax commissioner of the state of North Dakota.
4. "Delivery charges" means charges by the seller for preparation and delivery to a location designated by the purchaser of personal property or services. For purposes of this subsection, "preparation and delivery" includes transportation, shipping, postage, handling, crating, and packing.
5. "Drug" means a compound, substance, or preparation and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages:
 - a. Recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement of any of these publications;
 - b. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or
 - c. Intended to affect the structure or any function of the body.
6. "Farm machinery" means all vehicular implements and attachment units, designed and sold for direct use in planting, cultivating, or harvesting farm products or used in connection with the production of agricultural produce or products, livestock, or poultry on farms, which are operated, drawn, or propelled by motor or animal power. "Farm machinery" does not include vehicular implements operated wholly by hand or a motor vehicle required to be registered under chapter 57-40.3. "Farm machinery" does not include machinery that may be used for other than agricultural purposes, including tires, farm machinery repair parts, tools, shop equipment, grain bins, feed bunks, fencing materials, and other farm supplies and equipment. For purposes of this subsection, "attachment unit" means any part or combination of parts having an independent function, other than farm machinery repair parts, which when attached or affixed to farm machinery is used exclusively for agricultural purposes.
7. "Farm machinery repair parts" means repair or replacement parts for farm machinery that have a specific or generic part number assigned by the manufacturer of the farm machinery. "Farm machinery repair parts" do not include tires, fluid, gas, grease, lubricant, wax, or paint.
- ~~8.~~ a. ~~"Gross receipts" means the total amount of sales of retailers, valued in money, whether received in money or otherwise. Provided, discounts for any purposes allowed and taken on sales are not included, nor is the sale price of property returned by customers when the full sale price is refunded either in cash or by credit. Provided, further, when tangible personal property is taken in trade or in a series of trades as a credit or part payment of a retail sale taxable under this chapter, if the~~

~~tangible personal property traded in will be subject to the sales tax imposed by this chapter when sold, will be subject to the motor vehicle excise tax imposed by chapter 57-40.3, or if the tangible personal property traded in is used farm machinery or used irrigation equipment, the credit or trade-in value allowed by the retailer are not gross receipts. Provided, further, on all sales of retailers, valued in money, when the sales are made under a conditional sales contract, or under other forms of sale wherein the payment of the principal sum is to be extended over a period longer than sixty days from the date of sale that only the portion of the sale amount shall be accounted for, for the purpose of imposition of tax imposed by this chapter, as has actually been received in cash by the retailer during each quarterly period as defined herein. When a farm machine is purchased as a replacement for machinery which was stolen or totally destroyed, a credit or trade-in credit is allowed in an amount equal to the compensation received for the loss from an insurance company. The purchaser shall provide the seller with a notarized statement from the insurance company verifying that the original farm machine is a total loss and indicating the amount of compensation. The notarized statement must be retained by the seller to verify the amount of credit or trade-in credit allowed. "Gross receipts" also means, with respect to the leasing or renting of tangible personal property, the amount of consideration, valued in money, whether received in money or otherwise, received from the leasing or renting of only tangible personal property the transfer of title to which has not been subjected to a retail sales tax in this state. For the purpose of this chapter, gross receipts shall also include the total amount of sales of every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer. measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:~~

- ~~(1) The seller's cost of the property sold;~~
 - ~~(2) The cost of materials used, labor or service costs, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;~~
 - ~~(3) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;~~
 - ~~(4) Delivery charges;~~
 - ~~(5) The value of exempt personal property given to the purchaser when taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise; and~~
 - ~~(6) Credit for any trade-in, as determined by state law.~~
- b. "Gross receipts" also includes the total amount of sales of every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer.
- c. "Gross receipts" does not include:
- (1) Discounts, including cash, term, or coupons that are not reimbursed by a third party, which are allowed by a seller and taken by a purchaser on a sale;
 - (2) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

- (3) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar documents given to the purchaser; and
- (4) The sale price of property returned by a customer when the full sale price is refunded either in cash or credit. When tangible personal property is taken in trade or in a series of trades as a credit or part payment of a retail sale taxable under this chapter, if the tangible personal property traded in will be subject to tax imposed by chapter 57-39.5 or 57-40.3 or if the tangible personal property traded in is used farm machinery or used irrigation equipment, the credit or trade-in value allowed by the retailer is not included in gross receipts of the retailer.

9. "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend. "Lease or rental" does not include:
- a. A transfer of possession or control of property under a security agreement or deferred payment plan, which requires the transfer upon completion of the required payments;
 - b. A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars or one percent of the total required payments; or
 - c. Providing tangible personal property with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subdivision, an operator must do more than maintain, inspect, or set up the tangible personal property.

This definition will be applied only prospectively from the date of adoption and will have no retroactive impact on existing leases or rentals.

- 4. 10. "Local governmental unit" means incorporated cities, counties, school districts, and townships.
- 5. 11. "Person" includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, business trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number.
- 12. "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a person authorized by the laws of this state to prescribe drugs.
- 6. 13. "Relief agency" means the state, any county, city and county, city or district thereof, or an agency engaged in actual relief work.
- 7. 14. "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrental. "Retail sale" or "sale at retail" includes the sale, including the leasing or renting, to a consumer or to any person for any purpose, other than for processing or for resale, of tangible personal property; the sale of steam, gas, and communication service to retail consumers or users; the sale of vulcanizing, recapping, and retreading services for tires; the furnishing of bingo cards; the ordering, selecting, or aiding a customer to select any goods, wares, or merchandise from any price list or catalog, which the customer might order, or be ordered for such customer to be shipped directly to such customer; the sale or furnishing of hotel, motel, or tourist court accommodations, 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 the sales of magazines and other

periodicals. By the term "processing" is meant 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. 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; 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. 15. "Retailer" or "seller" 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. 16. "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.

17. "Sales tax" means the tax levied under section 57-39.2-02.1 or a conforming tax imposed under home rule authority by a city or county.
18. "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, gas, steam, and prewritten computer software.

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

57-39.2-02.1. Sales tax imposed.

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 new farm machinery and new irrigation equipment used exclusively for agricultural purposes.~~
 - 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 including the furnishing of bingo cards 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.
 - 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. Coal mined in this state and used for heating buildings, except for coal used in agricultural processing or sugar beet refining plants.
 - h. Sale, lease, or rental of computer software 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".

2. There is imposed a tax of three percent upon the gross receipts of retailers from all sales at retail of mobile homes used for residential or business purposes, except as provided in subsection 35 of section 57-39.2-04, ~~and of new farm machinery and new irrigation equipment used exclusively for agricultural purposes, including the leasing or renting of new farm machinery and new irrigation equipment used exclusively for agricultural purposes within this state to consumers or users.~~
3. ~~In the case of a contract for the construction of highways, roads, streets, bridges, and buildings for which the bid was submitted prior to December 9, 1986, the contractor receiving the award is liable only for the sales or use tax at the rate of tax in effect on the date the bid was submitted.~~

SECTION 6. AMENDMENT. Subsection 7 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

7. Gross receipts from the sale, ~~by any drugstore,~~ of drugs sold under a doctor's prescription.

SECTION 7. AMENDMENT. Subsection 10 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

10. Gross receipts from the sale of motor vehicles, farm machinery, alcoholic beverages, gasoline, insurance premiums, gaming tickets, or any other article or product, except as otherwise provided, upon which the state of North Dakota imposes a special tax.

SECTION 8. AMENDMENT. Subsection 11 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

11. Gross receipts from the sale of feed which is fed to poultry or livestock, including breeding stock and wool-bearing stock, for the purpose of producing eggs, milk, meat, fibers, or other products for human consumption and the gross receipts from the sale of feed purchased for the purpose of being fed to draft or fur-bearing animals. The word "feed" as used herein shall be construed to mean and include only salt, grains, hays, tankage, oyster shells, mineral supplements, limestone, molasses, beet pulp, meat and bone scraps, meal, drugs to be used as part of a feed ration, and other generally recognized animal feeds.

The term "feed" ~~does not include~~ includes drugs ~~not~~ used as part of a feed ration, medicants, disinfectants, wormers, tonics, and like items.

SECTION 9. AMENDMENT. Subsection 26 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

26. Gross receipts from sales of prosthetic devices, durable medical equipment, or mobility-enhancing equipment. For purposes of this subsection:
- a. "Durable medical equipment" means equipment, not including mobility-enhancing equipment, for home use, including repair and replacement parts for such equipment, which:
 - (1) Can withstand repeated use;
 - (2) Is primarily and customarily used to serve a medical purpose;
 - (3) Generally is not useful to a person in the absence of illness or injury; and
 - (4) Is not worn in or on the body.
 - b. "Mobility-enhancing equipment" means equipment, not including durable medical equipment, including repair and replacement parts for mobility-enhancing equipment, which:
 - (1) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either at home or in a motor vehicle;
 - (2) Is not generally used by persons with normal mobility; and
 - (3) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.
 - c. "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for such a device, worn on or in the body to:
 - (1) Artificially replace a missing portion of the body;
 - (2) Prevent or correct a physical deformity or malfunction; or
 - (3) Support a weak or deformed portion of the body.
 - d. "Prosthetic device" and "durable medical equipment" include:
 - (1) Artificial devices individually designed, constructed, or altered solely for the use of a particular disabled person so as to become a brace, support, supplement, correction, or substitute for the bodily structure including the extremities of the individual.
 - b- (2) Artificial limbs, artificial eyes, hearing aids, and other equipment worn as a correction or substitute for any functioning portion of the body.
 - e- (3) Artificial teeth sold by a dentist.
 - d- (4) Eyeglasses when especially designed or prescribed by an ophthalmologist, physician, oculist, or optometrist for the personal use of the owner or purchaser.
 - e- (5) Crutches and wheelchairs for the use of disabled persons.

- f. (6) Equipment, including manual control units, van lifts, van door opening units, and raised roofs, for attaching to or modifying a motor vehicle for use by a permanently physically disabled person.
- g. (7) Equipment, including elevators, dumbwaiters, chair lifts, and bedroom or bathroom lifts, whether or not sold for attaching to real property, for use by a permanently physically disabled person in that person's principal dwelling.
- h. (8) Equipment, including manual control units, for attaching to or modifying motorized implements of husbandry for use by a permanently physically disabled person.
- i. (9) Devices and supplies designed or intended for ostomy care and management to include collection devices, colostomy irrigation equipment and supplies, skin barriers or skin protectors, and other supplies especially designed for use of ostomates.
- j. (10) Supplies, equipment, and devices to be used exclusively by a person with bladder dysfunction, including catheters, collection devices, incontinent pads and pants, and other items used for the care and management of bladder dysfunction.

SECTION 10. AMENDMENT. Subsection 45 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

45. Gross receipts from the sale or lease of ~~used~~ farm machinery, farm machinery repair parts, or ~~used~~ irrigation equipment used exclusively for agricultural purposes. ~~For purposes of this subsection, "used" means:~~
- a. ~~Tax under this chapter has been paid on a previous sale;~~
 - b. ~~Originally purchased outside this state and previously owned by a farmer; or~~
 - c. ~~Has been under lease or rental for three years or more.~~

SECTION 11. AMENDMENT. Section 57-39.2-04.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-04.1. Sales tax exemption for food and food products ingredients. ~~Gross receipts from sales for human consumption of food and food products including, but not limited to, cereal and cereal products, butter, cheese, milk and milk products, oleomargarine, meat and meat products, poultry and fish and other fresh and saltwater animal products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices and salt, and sugar and sugar products when purchased by consumers for consumption off the premises where purchased, are exempt from the sales tax imposed by this chapter ingredients are exempt from taxes imposed under this chapter. Gross receipts from sales for human consumption of food and food products given, or to be given, as samples to consumers for consumption on the premises of a food store are exempt from the sales tax imposed by this chapter. Purchases made with food coupons issued by the United States department of agriculture under the Food Stamp Act of 1977, as amended, are exempt from the tax imposed by this chapter pursuant to the Food Security Act of 1985. For purposes of this section, "food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for taste or nutritional value.~~

1. For purposes of this section, "food" and "food products ingredients" do not include:
 1. a. ~~Alcoholic beverages or mixed drinks made from alcoholic beverages.~~
 2. b. Candy or chewing gum.

3. ~~c. Carbonated beverages~~ Dietary supplements.
- d. Prepared food.
4. ~~e. Beverages commonly referred to as soft~~ Soft drinks containing less than ~~seventy~~ fifty percent fruit juice.
5. ~~Powdered drink mixes.~~
6. ~~Medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, or pill form sold as dietary supplements or adjuncts.~~
7. ~~Coffee and coffee substitutes.~~
8. ~~Tea.~~
9. ~~Cocoa or cocoa products.~~
- f. Tobacco.
2. For purposes of this section:
 - a. "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.
 - b. "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavoring in the form of bars, drops, or pieces. Candy does not include any preparation containing flour and does not require refrigeration.
 - c. "Dietary supplement" means any product, other than tobacco, intended to supplement the diet which contains one or more of the following dietary ingredients: a vitamin; a mineral; an herb or other botanical; an amino acid; a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; an oral concentrate, metabolite, constitute, extract, or combination of any dietary ingredients described in this sentence and which is intended for ingestion in tablet, capsule, powder, soft gel, gel cap, or liquid form, or if not represented for use as a sole item of a meal or of a diet; and is required to be labeled as a dietary supplement, identifiable by the supplemental facts box found on the label and as required pursuant to 21 CFR section 101.36.
 - d. "Prepared food" means:
 - (1) Food sold in a heated state or heated by the seller;
 - (2) Two or more food ingredients mixed or combined by the seller for sale as a single item; or
 - (3) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws.
 - e. "Prepared food" does not mean:
 - (1) Food that is only cut, repackaged, or pasteurized by the seller.
 - (2) Eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the food and drug administration in chapter 3, part 401.11 of its food code so as to prevent food-borne illness.
 - (3) If sold without eating utensils provided by the seller:

- (a) Food sold by a seller whose proper primary North American industry classification system classification is manufacturing in sector 311, except subsector 3118, bakeries.
- (b) Food sold in an unheated state by weight or volume as a single item.
- (c) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.
- f. "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.
- g. "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

SECTION 12. AMENDMENT. Section 57-39.2-05 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-05. Credit or refund for taxes paid on worthless accounts and repossessions.

1. Taxes paid on gross receipts represented by accounts found to be worthless and actually charged off for income tax purposes may be credited upon subsequent payment of the tax herein provided; provided, that if such accounts are hereafter collected by the retailer, a tax must be paid upon the amount so collected. If a retailer's filing responsibility has been assumed by a certified service provider, the certified provider may claim on behalf of the retailer any bad debt allowance provided under this section. The certified service provider shall credit or refund to the retailer the full amount of any bad debt allowance or refund received under this section.
2. If a retailer has remitted the sales tax due on the full amount of an installment sales contract rather than on only the installment payments received ~~as provided in subsection 3 of section 57-39.2-04,~~ the retailer may deduct as a credit against the retailer's sales tax liability on the next return that the retailer is required to file the amount of sales tax the retailer paid on the installment contract payments which were not made by the purchaser of the merchandise sold under such contract; such credit may be deducted by the retailer regardless of whether or not said retailer has assigned the contract, provided, however, that if the retailer has assigned the contract the retailer must have assigned it subject to an agreement to repurchase the contract in the event of default by the purchaser under the contract or subject to a guarantee that the payments under the contract would be made. In the event such deduction exceeds the amount of sales tax due the state by the retailer in the next regular return, such excess must be allowed as credit against future sales tax due from the retailer. If in any case the credit, or any part of it, cannot be utilized by the retailer because of a discontinuance of a business or for other valid reasons, the amount thereof may be refunded to the retailer.

SECTION 13. 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.

~~In adding such tax to the price or charge, retailers shall adopt the following bracket system for the application of the tax:~~

\$0.01 through \$0.15	no tax
\$0.16 through \$0.20	1¢ tax
\$0.21 through \$0.40	2¢ tax
\$0.41 through \$0.60	3¢ tax
\$0.61 through \$0.80	4¢ tax
\$0.81 through \$1.00	5¢ tax

~~Each additional \$1.00 — 5¢ additional tax, or each additional 20¢ or fraction thereof over \$1.00 — 1¢ additional tax.~~

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 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 14. AMENDMENT. Subsection 1 of section 57-39.2-14 of the North Dakota Century Code is amended and reenacted as follows:

1. A person may not engage in or transact business as a retailer within this state unless a permit or permits shall have been issued to that person as hereinafter prescribed. Every person desiring to engage in or conduct business as a retailer within this state shall file with the commissioner an application for a permit or permits. Every application for such a permit shall be made upon a form prescribed by the commissioner and shall set forth the name under which the applicant transacts or intends to transact business, the location of the applicant's place or places of business, and such other information as the commissioner may require. The application shall be signed by the owner if a natural person; in the case of an association, partnership, or limited liability company, by a member or partner thereof; and in the case of a corporation, by an executive officer thereof or some person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of that person's authority. Any person registering under the agreement adopted under chapter 57-39.4 shall register in this state. Any person who is registered under the agreement is not required to sign the application and may register through an agent. Any person who is registered under such agreement may cancel its registration at any time but is liable for remitting any sales taxes collected before cancellation. Registration under the agreement and collection of tax does not in and of itself create nexus for other taxes or fees imposed by this state.

SECTION 15. Section 57-39.2-29 of the North Dakota Century Code is created and enacted as follows:

57-39.2-29. Sourcing - Multiple points of use exemption. Sourcing of retail sales, leases, or rentals must be determined in accordance with the provisions of the agreement adopted under chapter 57-39.4. Notwithstanding any other provisions of law or the sourcing provisions of the agreement adopted under chapter 57-39.4, a business purchaser that is not a holder of a direct pay permit that knows at the time of its purchase of a digital good, computer software delivered electronically, or service that the digital good, computer software delivered electronically, or service will be concurrently available for use in more than one jurisdiction shall deliver to the seller in conjunction with its purchase a form prescribed by the commissioner disclosing this fact, referred to as a multiple points of use exemption form.

1. Upon receipt of the multiple points of use exemption form, the seller is relieved of all obligation to collect, pay, or remit the applicable tax and the purchaser shall be obligated to collect, pay, or remit the applicable tax on a direct pay basis.
2. A purchaser delivering the multiple points of use exemption form may use any reasonable, but consistent and uniform, method of apportionment that is supported by the purchaser's business records as they exist at the time of consumption of the sale.
3. The multiple points of use exemption form remains in effect for all future sales by the seller to the purchaser, except as to the subsequent sale's specific apportionment that is governed by the principle of subsection 2 and the facts existing at the time of the sale, until it is revoked in writing.
4. A holder of a direct pay permit shall not be required to deliver a multiple points of use exemption form to the seller. A direct pay permit holder shall follow the provisions of subsection 2 in apportioning the tax due on a digital good or service that will be concurrently available for use in more than one jurisdiction.

SECTION 16. Section 57-39.2-30 of the North Dakota Century Code is created and enacted as follows:

57-39.2-30. Conditional sales contract. For purposes of the tax imposed by this chapter, on any sale made under a conditional sales contract or under other forms of sale in which the payment of the principle sum is extended over a period longer than sixty days from the date of sale, only the portion of the sale amount that has actually been received in cash by the retailer during each reporting period is subject to the tax imposed by this chapter during that reporting period.

SECTION 17. Section 57-39.2-31 of the North Dakota Century Code is created and enacted as follows:

57-39.2-31. Seller and certified service provider limited immunity. A seller or certified service provider is immune from civil liability for charging and collecting the incorrect amount of sales or use tax in reliance on incorrect information provided by the tax commissioner regarding tax rates, boundaries, or taxing jurisdiction assignments. The tax commissioner will not be required to provide liability relief for errors resulting from the reliance on an address-based system for assigning tax jurisdictions as provided under the agreement adopted under chapter 57-39.4.

SECTION 18. Section 57-39.2-32 of the North Dakota Century Code is created and enacted as follows:

57-39.2-32. Confidentiality of information obtained by certified service providers. A certified service provider or any agent, employee, or other person acting under the authority of a certified service provider may not divulge or make known in any manner whatsoever the business affairs, operations, or information obtained by the certified service provider in the discharge of its duties under this chapter.

SECTION 19. Chapter 57-39.5 of the North Dakota Century Code is created and enacted as follows:

57-39.5-01. Definitions. Words used in this chapter have the same meaning as provided in chapter 57-39.2. As used in this chapter:

1. "Attachment unit" means any part or combination of parts having an independent function, other than farm machinery repair parts, which when attached or affixed to farm machinery is used exclusively for agricultural purposes.
2. "Farm machinery" means all vehicular implements and attachment units, designed and sold for direct use in planting, cultivating, or harvesting farm products or used in connection with the production of agricultural produce or products, livestock, or poultry on farms, which are operated, drawn, or propelled by motor or animal power. "Farm machinery" does not include vehicular implements operated wholly by hand or a motor vehicle required to be registered under chapter 57-40.3. "Farm machinery" does not include machinery that may be used for other than agricultural purposes, including tires, farm machinery repair parts, tools, shop equipment, grain bins, feed bunks, fencing materials, and other farm supplies and equipment.

57-39.5-01.1. Trade-in deduction. When tangible personal property is taken in trade or in a series of trades as a credit or partial payment of a retail sale taxable under this chapter, if the tangible personal property traded in will be subject to gross receipts taxes imposed by this chapter, sales taxes imposed by chapter 57-39.2, or motor vehicle excise taxes imposed by chapter 57-40.3, or if the tangible personal property traded in is used farm machinery or used irrigation equipment, the credit or trade-in value allowed by the retailer is not gross receipts.

57-39.5-02. Imposition - Exemptions. There is imposed a tax of three percent upon the gross receipts of retailers from all sales at retail, including the leasing or renting, of farm machinery or irrigation equipment used exclusively for agricultural purposes. Gross receipts from sales at retail of farm machinery or irrigation equipment are exempted from the tax imposed by this chapter when the sale, lease, or rental is made to a purchaser or lessor who is entitled to a sales and use tax exemption under subsection 6 or 12 of section 57-39.2-04 on otherwise taxable sales at retail. There are specifically exempted from the tax imposed by this chapter the gross receipts from the sale or lease of used farm machinery, farm machinery repair parts, or used irrigation equipment used exclusively for agricultural purposes. For purposes of this section, "used" means:

1. Tax under this chapter or chapter 57-39.2 or 57-40.2 has been paid on a previous sale;
2. Originally purchased outside this state and previously owned by a farmer; or
3. Has been under lease or rental for three years or more.

57-39.5-03. Replacement of insured machinery credit. When new farm machinery is purchased as a replacement for machinery on which the insurer has previously paid the gross receipts, sales, or use tax and which was stolen or totally destroyed, a credit or trade-in credit is allowed in an amount equal to the compensation received for the loss from the insurance company. The purchaser shall provide the seller with a notarized statement from the insurance company verifying that the original farm machinery was a total loss and indicating the amount of compensation. The notarized statement must be retained by the seller to verify the amount of credit or trade-in credit allowed.

57-39.5-04. Administration. The provisions of chapter 57-39.2 pertaining to administration of the retail sales tax, including provisions for refund, credits, or adoption of rules, not in compliance with this chapter or federal law, govern the administration of the gross receipts tax imposed in this chapter.

SECTION 20. Chapter 57-39.6 of the North Dakota Century Code is created and enacted as follows:

57-39.6-01. Definitions. Words used in this chapter have the same meaning as in chapter 57-39.2. For purposes of this chapter:

1. "Alcoholic beverage" means any liquid suitable for drinking by human beings, which contains one-half of one percent or more of alcohol by volume. This includes beverages whether mixed or unmixed at the time of sale or thereafter and whether sold for consumption on the premises or through off-sale outlets for consumption off the premises.
2. "Gross receipts", in addition to the meaning provided in chapter 57-39.2, includes the full retail purchase price, including any taxes imposed on such merchandise or its use or on the retail or other sale of the merchandise, excluding taxes imposed under this chapter.

57-39.6-02. Gross receipts tax on alcoholic beverages - Exemption. There is imposed a tax of seven percent on the gross receipts of retailers from all sales at retail of alcoholic beverages. Gross receipts from sales at retail of alcoholic beverages are exempted from the tax imposed by this chapter when the sale is made to a purchaser who is entitled to a sales and use tax exemption under subsection 6 or 12 of section 57-39.2-04 on otherwise taxable sales.

57-39.6-03. Gross receipts tax inclusion in purchase price. Taxes imposed by this chapter may be included in the purchase price of the alcoholic beverages.

57-39.6-04. Administration. The provisions of chapter 57-39.2, pertaining to administration of the retail sales tax, including provisions for refund, credits, or adoption of rules, not in conflict with this chapter or federal law, govern the administration of the gross receipts tax imposed in this chapter.

SECTION 21. AMENDMENT. Subsection 4 of section 57-40.2-01 of the North Dakota Century Code is amended and reenacted as follows:

4. ~~"Purchase price" means the total amount for which tangible personal property is sold, leased, or rented, valued in money, whether paid in money or otherwise, but cash discounts and trade ins allowed and taken on sales shall not be included. "Purchase price" also means, in those instances when sand or gravel is not sold at retail as tangible personal property by the person severing the sand or gravel, the fair market value of the sand or gravel severed. If the sand or gravel is not sold at retail by the person severing the sand or gravel, it must be presumed until the contrary is shown by the commissioner or by the person severing the sand or gravel that the fair market value is eight cents per ton of two thousand pounds [907.18 kilograms]. If records are not kept as to the tonnage of sand or gravel severed from the soil, it must be presumed for the purpose of this chapter that one cubic yard [764.55 liters] of sand or gravel is equal to one and one half tons [1360.78 kilograms] of sand or gravel. When a farm machine is purchased as a replacement for machinery which was stolen or totally destroyed, a credit or trade-in credit is allowed in an amount equal to the compensation received for the loss from the insurance company. The purchaser shall provide the seller with a notarized statement from the insurance company verifying that the original farm machine was a total loss and indicating the amount of compensation. The notarized statement must be retained by the seller to verify the amount of credit or trade-in credit allowed applies to the measure subject to use tax and has the same meaning as gross receipts as defined in section 57-39.2-01.~~

SECTION 22. A new subsection to section 57-40.2-01 of the North Dakota Century Code is created and enacted as follows:

"Use tax" means the tax levied under section 57-40.2-02.1 or imposed under home rule authority by a city or county.

SECTION 23. A new subsection to section 57-40.2-02.1 of the North Dakota Century Code is created and enacted as follows:

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

SECTION 24. AMENDMENT. Subsection 14 of section 57-40.2-04 of the North Dakota Century Code is amended and reenacted as follows:

14. The leasing or renting of any tangible personal property upon which a North Dakota sales tax or use tax has been paid pursuant to the election of the purchaser pursuant to subsection 7 14 of section 57-39.2-01 or subsection 5 of section 57-40.2-01.

SECTION 25. REPEAL. Sections 57-39.2-03.2 and 57-39.2-08.3 of the North Dakota Century Code are repealed.

SECTION 26. EFFECTIVE DATE. This Act is effective for taxable events occurring after December 31, 2005.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2096.

Senate Vote: Yeas 36 Nays 9 Absent 2

House Vote: Yeas 54 Nays 38 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,

at _____ o'clock _____ M.

Secretary of State