

Fifty-eighth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2095

Introduced by

Finance and Taxation Committee

(At the request of the Tax Commissioner)

1 A BILL for an Act to create and enact chapter 57-39.4 of the North Dakota Century Code,
2 relating to adoption of the streamlined sales and use tax agreement as adopted by member
3 states of the streamlined sales tax project; to repeal chapter 57-39.4 of the North Dakota
4 Century Code, relating to participation in multistate discussions and entering the streamlined
5 sales and use tax agreement; and to provide an effective date.

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

7 **SECTION 1.** Chapter 57-39.4 of the North Dakota Century Code is created and
8 enacted as follows:

9 **57-39.4-01. Adoption of streamlined sales and use tax agreement.** North Dakota
10 adopts the streamlined sales and use tax agreement as adopted November 12, 2002, by the
11 member states of the streamlined sales tax project. The entire agreement is adopted by
12 reference with the exception of article III, which is adopted as set out in this chapter.

13 **57-39.4-02. (301) State level administration.** Each member state shall provide state
14 level administration of sales and use taxes. The state level administration may be performed
15 by a member state's tax commission, department of revenue, or any other single entity
16 designated by state law. Sellers are only required to register with, file returns with, and remit
17 funds to the state level authority. Each member state shall provide for collection of any local
18 taxes and distribution of them to the appropriate taxing jurisdictions. Each member state shall
19 conduct, or authorize others to conduct on its behalf, all audits of the sellers registered under
20 the agreement for that state's tax and the tax of its local jurisdictions, and local jurisdictions
21 shall not conduct independent sales or use tax audits of sellers registered under the
22 agreement.

23 **57-39.4-03. (302) State and local tax bases.** Through December 31, 2005, if a
24 member state has local jurisdictions that levy a sales or use tax, all local jurisdictions in the

1 state shall have a common tax base. After December 31, 2005, the tax base for local
2 jurisdictions shall be identical to the state tax base unless otherwise prohibited by federal law.
3 This section does not apply to sales or use taxes levied on the retail sale or transfer of motor
4 vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

5 **57-39.4-04. (303) Seller registration.** Each member state shall participate in an
6 on-line sales and use tax registration system in cooperation with the other member states.

7 Under this system:

- 8 1. A seller registering under the agreement is registered in each of the member
9 states.
- 10 2. The member states agree not to require the payment of any registration fees or
11 other charges for a seller to register in a state in which the seller has no legal
12 requirement to register.
- 13 3. A written signature from the seller is not required.
- 14 4. An agent may register a seller under uniform procedures adopted by the member
15 states.
- 16 5. A seller may cancel its registration under the system at any time under uniform
17 procedures adopted by the governing board. Cancellation does not relieve the
18 seller of its liability for remitting to the proper states any taxes collected.

19 **57-39.4-05. (304) Notice for state tax changes.**

- 20 1. Each member state shall lessen the difficulties faced by sellers when there is a
21 change in a state sales or use tax rate or base by making a reasonable effort to do
22 all of the following:
 - 23 a. Provide sellers with as much advance notice as practicable of a rate change.
 - 24 b. Limit the effective date of a rate change to the first day of a calendar quarter.
 - 25 c. Notify sellers of legislative changes in the tax base and amendments to sales
26 and use tax rules and regulations.
- 27 2. Failure of a seller to receive notice or failure of a member state to provide notice or
28 limit the effective date of a rate change shall not relieve the seller of its obligation
29 to collect sales or use taxes for that member state.

30 **57-39.4-06. (305) Local rate and boundary changes.** Each member state that has
31 local jurisdictions that levy a sales or use tax shall:

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- 1 1. Provide that local rate changes will be effective only on the first day of a calendar
2 quarter after a minimum of sixty days' notice to sellers.
- 3 2. Apply local sales tax rate changes to purchases from printed catalogs wherein the
4 purchaser computed the tax based upon local tax rates published in the catalog
5 only on the first day of a calendar quarter after a minimum of one hundred twenty
6 days' notice to sellers.
- 7 3. For sales and use tax purposes only, apply local jurisdiction boundary changes
8 only on the first day of a calendar quarter after a minimum of sixty days' notice to
9 sellers.
- 10 4. Provide and maintain a data base that describes boundary changes for all taxing
11 jurisdictions. This data base shall include a description of the change and the
12 effective date of the change for sales and use tax purposes.
- 13 5. Provide and maintain a data base of all sales and use tax rates for all of the
14 jurisdictions levying taxes within the state. For the identification of states, counties,
15 cities, and parishes, codes corresponding to the rates must be provided according
16 to federal information processing standards as developed by the national institute
17 of standards and technology. For the identification of all other jurisdictions, codes
18 corresponding to the rates must be in the format determined by the governing
19 board.
- 20 6. Provide and maintain a data base that assigns each five-digit and nine-digit zip
21 code within a member state to the proper tax rates and jurisdictions. The state
22 must apply the lowest combined tax rate imposed in the zip code area if the area
23 includes more than one tax rate in any level of taxing jurisdictions. If a nine-digit
24 zip code designation is not available for a street address or if a seller is unable to
25 determine the nine-digit zip code designation of a purchaser after exercising due
26 diligence to determine the designation, the seller may apply the rate for the
27 five-digit zip code area. For the purposes of this section, there is a rebuttable
28 presumption that a seller has exercised due diligence if the seller has attempted to
29 determine the nine-digit zip code designation by utilizing software approved by the
30 governing board that makes this designation from the street address and the
31 five-digit zip code of the purchaser.

1 7. Participate with other member states in the development of an address-based
2 system for assigning taxing jurisdictions. The system must meet the requirements
3 developed pursuant to the federal Mobile Telecommunications Sourcing Act
4 [4 U.S.C. Sec. 119]. The governing board may allow a member state to require
5 sellers that register under this agreement to use an address-based system
6 provided by that member state. If any member state develops an address-based
7 assignment system pursuant to the Mobile Telecommunications Sourcing Act, a
8 seller may use that system in place of the system provided for in subsection 6.

9 **57-39.4-07. (306) Relief from certain liability.** Each member state shall relieve
10 sellers and certified service providers from liability to the member state and local jurisdictions
11 for having charged and collected the incorrect amount of sales or use tax resulting from the
12 seller or certified service provider relying on erroneous data provided by a member state on tax
13 rates, boundaries, or taxing jurisdiction assignments. A member state that provides an
14 address-based system for assigning taxing jurisdictions under subsection 7 of section
15 57-39.4-06 or under the federal Mobile Telecommunications Sourcing Act will not be required to
16 provide liability relief for errors resulting from the reliance on the information provided by the
17 member state under subsection 6 of section 57-39.4-06.

18 **57-39.4-08. (307) Data base requirements and exceptions.**

- 19 1. The electronic data bases provided for in subsections 4, 5, 6, and 7 of
20 section 57-39.4-06 shall be in a downloadable format approved by the governing
21 board.
- 22 2. The provisions of subsections 6 and 7 of section 57-39.4-06 do not apply when the
23 purchased product is received by the purchaser at the business location of the
24 seller.
- 25 3. The data bases provided by subsections 4, 5, and 6 of section 57-39.4-06 are not
26 a requirement of a state prior to entering into the agreement. The governing board
27 shall establish the effective dates for availability and use of the data bases.

28 **57-39.4-09. (308) State and local tax rates.**

- 29 1. No member state shall have multiple state sales and use tax rates on items of
30 personal property or services after December 31, 2005, except that a member

1 state may impose a single additional rate, which may be zero, on food and food
2 ingredients and drugs as defined by state law pursuant to the agreement.

3 2. A member state that has local jurisdictions that levy a sales or use tax shall not
4 have more than one local sales tax rate or more than one local use tax rate per
5 local jurisdiction. If the local jurisdiction levies both a sales tax and use tax, the
6 local rates must be identical.

7 3. The provisions of this section do not apply to sales or use taxes levied on
8 electricity, piped natural or artificial gas or other heating fuels delivered by the
9 seller, or the retail sale or transfer of motor vehicles, aircraft, watercraft, modular
10 homes, manufactured homes, or mobile homes.

11 **57-39.4-10. (309) Application of general sourcing rules and exclusions from the**
12 **rules.**

13 1. Each member state shall agree to require sellers to source the retail sale of a
14 product in accordance with section 57-39.4-11. The provisions of section
15 57-39.4-11 apply regardless of the characterization of a product as tangible
16 personal property, a digital good, or a service. The provisions of section
17 57-39.4-11 only apply to determine a seller's obligation to pay or collect and remit
18 a sales or use tax with respect to the seller's retail sale of a product. These
19 provisions do not affect the obligation of a purchaser or lessee to remit tax on the
20 use of the product to the taxing jurisdictions of that use.

21 2. Section 57-39.4-11 does not apply to sales or use taxes levied on the following:

22 a. The retail sale or transfer of watercraft, modular homes, manufactured
23 homes, or mobile homes. These items must be sourced according to the
24 requirements of each member state.

25 b. The retail sale, excluding lease or rental, of motor vehicles, trailers,
26 semitrailers, or aircraft that do not qualify as transportation equipment, as
27 defined in subsection 4 of section 57-39.4-11. The retail sale of these items
28 shall be sourced according to the requirements of each member state, and
29 the lease or rental of these items must be sourced according to subsection 3
30 of section 57-39.4-11.

- 1 c. Telecommunications services, as set out in section 57-39.4-16, shall be
2 sourced in accordance with section 57-39.4-15.

3 **57-39.4-11. (310) General sourcing rules.**

- 4 1. The retail sale, excluding lease or rental, of a product shall be sourced as follows:
- 5 a. When the product is received by the purchaser at a business location of the
6 seller, the sale is sourced to that business location.
- 7 b. When the product is not received by the purchaser at a business location of
8 the seller, the sale is sourced to the location where receipt by the purchaser,
9 or the purchaser's donee, designated as such by the purchaser, occurs,
10 including the location indicated by instructions for delivery to the purchaser or
11 donee, known to the seller.
- 12 c. When subdivisions a and b do not apply, the sale is sourced to the location
13 indicated by an address for the purchaser that is available from the business
14 records of the seller that are maintained in the ordinary course of the seller's
15 business when use of this address does not constitute bad faith.
- 16 d. When subdivisions a, b, and c do not apply, the sale is sourced to the location
17 indicated by an address for the purchaser obtained during the consummation
18 of the sale, including the address of a purchaser's payment instrument, if no
19 other address is available, when use of this address does not constitute bad
20 faith.
- 21 e. When none of the previous rules of subdivisions a, b, c, and d apply, including
22 the circumstance in which the seller is without sufficient information to apply
23 the previous rules, then the location will be determined by the address from
24 which tangible personal property was shipped, from which the digital good or
25 the computer software delivered electronically was first available for
26 transmission by the seller, or from which the service was provided,
27 disregarding for these purposes any location that merely provided the digital
28 transfer of the product sold.
- 29 2. The lease or rental of tangible personal property, other than property identified in
30 subsection 3 or 4, shall be sourced as follows:

- 1 a. For a lease or rental that requires recurring periodic payments, the first
2 periodic payment is sourced the same as a retail sale in accordance with the
3 provisions of subsection 1. Periodic payments made subsequent to the first
4 payment are sourced to the primary property location for each period covered
5 by the payment. The primary property location shall be as indicated by an
6 address for the property provided by the lessee that is available to the lessor
7 from its records maintained in the ordinary course of business, when use of
8 this address does not constitute bad faith. The property location shall not be
9 altered by intermittent use at different locations, such as use of business
10 property that accompanies employees on business trips and service calls.
- 11 b. For a lease or rental that does not require recurring periodic payments, the
12 payment is sourced the same as a retail sale in accordance with the
13 provisions of subsection 1.
- 14 c. This subsection does not affect the imposition or computation of sales or use
15 tax on leases or rentals based on a lump sum or accelerated basis, or on the
16 acquisition of property for lease.
- 17 3. The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not
18 qualify as transportation equipment, as defined in subsection 4, shall be sourced
19 as follows:
- 20 a. For a lease or rental that requires recurring periodic payments, each periodic
21 payment is sourced to the primary property location. The primary property
22 location shall be as indicated by an address for the property provided by the
23 lessee that is available to the lessor from its records maintained in the
24 ordinary course of business, when use of this address does not constitute bad
25 faith. This location shall not be altered by intermittent use at different
26 locations.
- 27 b. For a lease or rental that does not require recurring periodic payments, the
28 payment is sourced the same as a retail sale in accordance with the
29 provisions of subsection 1.

1 c. This subsection does not affect the imposition or computation of sales or use
2 tax on leases or rentals based on a lump sum or accelerated basis or on the
3 acquisition of property for lease.

4 4. The retail sale, including lease or rental, of transportation equipment shall be
5 sourced the same as a retail sale in accordance with the provisions of
6 subsection 1, notwithstanding the exclusion of lease or rental in subsection 1.

7 "Transportation equipment" means any of the following:

8 a. Locomotives and railcars that are utilized for the carriage of persons or
9 property in interstate commerce.

10 b. Trucks and truck-tractors with a gross vehicle weight rating of 10,001 pounds
11 [4535.92 kilograms] or greater, trailers, semitrailers, or passenger buses that
12 are:

13 (1) Registered through the international registration plan; and

14 (2) Operated under authority of a carrier authorized and certificated by the
15 United States department of transportation or another federal authority
16 to engage in the carriage of persons or property in interstate
17 commerce.

18 c. Aircraft that are operated by air carriers authorized and certificated by the
19 United States department of transportation or another federal or a foreign
20 authority to engage in the carriage of persons or property in interstate or
21 foreign commerce.

22 d. Containers designed for use on and component parts attached or secured on
23 the items set forth in subdivisions a, b, and c.

24 **57-39.4-12. (311) General sourcing definitions.** For the purposes of subsection 1 of
25 section 57-39.4-11, the terms "receive" and "receipt" mean:

26 1. Taking possession of tangible personal property;

27 2. Making first use of services; or

28 3. Taking possession or making first use of digital goods, whichever comes first. The
29 terms "receive" and "receipt" do not include possession by a shipping company on
30 behalf of the purchaser.

1 **57-39.4-13. (312) Multiple points of use.** Notwithstanding the provisions of section
2 57-39.4-11, a business purchaser that is not a holder of a direct pay permit that knows at the
3 time of its purchase of a digital good, computer software delivered electronically, or a service
4 that the digital good, computer software delivered electronically, or service will be concurrently
5 available for use in more than one jurisdiction shall deliver to the seller in conjunction with its
6 purchase a form disclosing this fact, called a multiple points of use exemption form.

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

22 **57-39.4-14. (313) Direct mail sourcing.**

- 23 1. Notwithstanding section 57-39.4-11, a purchaser of direct mail that is not a holder
24 of a direct pay permit shall provide to the seller in conjunction with the purchase
25 either a direct mail form or information to show the jurisdictions to which the direct
26 mail is delivered to recipients.
 - 27 a. Upon receipt of the direct mail form, the seller is relieved of all obligations to
28 collect, pay, or remit the applicable tax and the purchaser is obligated to pay
29 or remit the applicable tax on a direct pay basis. A direct mail form shall
30 remain in effect for all future sales of direct mail by the seller to the purchaser
31 until it is revoked in writing.

- 1 b. Upon receipt of information from the purchaser showing the jurisdictions to
2 which the direct mail is delivered to recipients, the seller shall collect the tax
3 according to the delivery information provided by the purchaser. In the
4 absence of bad faith, the seller is relieved of any further obligation to collect
5 tax on any transaction in which the seller has collected tax pursuant to the
6 delivery information provided by the purchaser.
- 7 2. If the purchaser of direct mail does not have a direct pay permit and does not
8 provide the seller with either a direct mail form or delivery information, as required
9 by subsection 1, the seller shall collect the tax according to subdivision e of
10 subsection 1 of section 57-39.4-11. Nothing in this subsection shall limit a
11 purchaser's obligation for sales or use tax to any state to which the direct mail is
12 delivered.
- 13 3. If a purchaser of direct mail provides the seller with documentation of direct pay
14 authority, the purchaser shall not be required to provide a direct mail form or
15 delivery information to the seller.

16 **57-39.4-15. (314) Telecommunications sourcing.**

- 17 1. Except for the defined telecommunications services in subsection 3, the sale of
18 telecommunications services sold on a call-by-call basis shall be sourced to each
19 level of taxing jurisdiction where the call originates and terminates in that
20 jurisdiction or each level of taxing jurisdiction where the call either originates or
21 terminates and in which the service address is also located.
- 22 2. Except for the defined telecommunications services in subsection 3, a sale of
23 telecommunications services sold on a basis other than a call-by-call basis is
24 sourced to the customer's place of primary use.
- 25 3. The sale of the following telecommunications services shall be sourced to each
26 level of taxing jurisdiction as follows:
- 27 a. A sale of mobile telecommunications services other than air-to-ground
28 radiotelephone service and prepaid calling service, is sourced to the
29 customer's place of primary use as required by the Mobile
30 Telecommunications Sourcing Act.

- 1 b. A sale of post-paid calling service is sourced to the origination point of the
2 telecommunications signal as first identified by either the seller's
3 telecommunications system, or information received by the seller from its
4 service provider, if the system used to transport such signals is not that of the
5 seller.
- 6 c. A sale of prepaid calling service is sourced in accordance with section
7 57-39.4-11. However, in the case of a sale of mobile telecommunications
8 services that is a prepaid telecommunications services, the rule provided in
9 subdivision e of subsection 1 of section 57-39.4-11 shall include as an option
10 the location associated with the mobile telephone number.
- 11 d. A sale of a private communication service is sourced as follows:
- 12 (1) Service for a separate charge related to a customer channel
13 termination point is sourced to each level of jurisdiction in which such
14 customer channel termination point is located.
- 15 (2) Service where all customer termination points are located entirely
16 within one jurisdiction or levels of jurisdiction is sourced in such
17 jurisdiction in which the customer channel termination points are
18 located.
- 19 (3) Service for segments of a channel between two customer channel
20 termination points located in different jurisdictions and which segment
21 of channel are separately charged is sourced fifty percent in each level
22 of jurisdiction in which the customer channel termination points are
23 located.
- 24 (4) Service for segments of a channel located in more than one jurisdiction
25 or levels of jurisdiction and which segments are not separately billed is
26 sourced in each jurisdiction based on the percentage determined by
27 dividing the number of customer channel termination points in such
28 jurisdiction by the total number of customer channel termination points.

29 **57-39.4-16. (315) Telecommunications sourcing definitions.** For the purpose of
30 section 57-39.4-15, the following definitions apply:

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- 1 1. "Air-to-ground radiotelephone service" means a radio service, as that term is
2 defined in 47 CFR 22.99, in which common carriers are authorized to offer and
3 provide radio telecommunications service for hire to subscribers in aircraft.
- 4 2. "Call-by-call basis" means any method of charging for telecommunications
5 services in which the price is measured by individual calls.
- 6 3. "Communications channel" means a physical or virtual path of communications
7 over which signals are transmitted between or among customer channel
8 termination points.
- 9 4. "Customer" means the person or entity that contracts with the seller of
10 telecommunications services. If the end user of telecommunications services is
11 not the contracting party, the end user of the telecommunications services is the
12 customer of the telecommunications services, but this sentence only applies for
13 the purpose of sourcing sales of telecommunications services under section
14 57-39.4-15. "Customer" does not include a reseller of telecommunications
15 services or for mobile telecommunications services of a serving carrier under an
16 agreement to serve the customer outside the home service provider's licensed
17 service area.
- 18 5. "Customer channel termination point" means the location where the customer
19 either inputs or receives the communications.
- 20 6. "End user" means the person who utilizes the telecommunications services. In the
21 case of an entity, "end user" means the individual who utilizes the services on
22 behalf of the entity.
- 23 7. "Home service provider" means the same as that term is defined in section 124(5)
24 of Public Law 106-252, Mobile Telecommunications Sourcing Act.
- 25 8. "Mobile telecommunications service" means the same as that term is defined in
26 section 124(5) of Public Law 106-252, Mobile Telecommunications Sourcing Act.
- 27 9. "Place of primary use" means the street address representative of where the
28 customer's use of the telecommunications services primarily occurs, which must
29 be the residential street address or the primary business street address of the
30 customer. In the case of mobile telecommunications services, "place of primary
31 use" must be within the licensed service area of the home service provider.

- 1 10. "Post-paid calling service" means the telecommunications services obtained by
2 making a payment on a call-by-call basis either through the use of a credit card or
3 payment mechanism such as a bank card, travel card, credit card, or debit card, or
4 by charge made to which a telephone number which is not associated with the
5 origination or termination of the telecommunications services. A post-paid calling
6 service includes telecommunications services that would be a prepaid calling
7 service except it is not exclusively telecommunications services.
- 8 11. "Prepaid calling service" means the right to access exclusively telecommunications
9 services, which must be paid for in advance and which enables the origination of
10 calls using an access number or authorization code, whether manually or
11 electronically dialed, and that is sold in predetermined units or dollars of which the
12 number declines with use in a known amount.
- 13 12. "Private communication service" means telecommunications services that entitle
14 the customer to exclusive or priority use of a communications channel or group of
15 channels between or among termination points, regardless of the manner in which
16 such channel or channels are connected, and includes switching capacity,
17 extension lines, stations, and any other associated services that are provided in
18 connection with the use of such channel or channels.
- 19 13. "Service address" means:
- 20 a. The location of the telecommunications equipment to which a customer's call
21 is charged and from which the call originates or terminates, regardless of
22 where the call is billed or paid.
- 23 b. If the location in subdivision a is not known, service address means the
24 origination point of the signal of the telecommunications services first
25 identified by either the seller's telecommunications system or in information
26 received by the seller from its service provider, where the system used to
27 transport such signals is not that of the seller.
- 28 c. If the location in subdivisions a and b are not known, the service address
29 means the location of the customer's place of primary use.

30 **57-39.4-17. (316) Enactment of exemptions.**

- 1 1. A member state may enact a product-based exemption without restriction if the
2 agreement does not have a definition for the product or for a term that includes the
3 product. If the agreement has a definition for the product or for a term that
4 includes the product, a member state may exempt all items included within the
5 definition but shall not exempt only part of the items included within the definition
6 unless the agreement sets out the exemption for part of the items as an acceptable
7 variation.
- 8 2. A member state may enact an entity-based or a use-based exemption without
9 restriction if the agreement does not have a definition for the product whose use or
10 purchase by a specific entity is exempt or for a term that includes the product. If
11 the agreement has a definition for the product whose use or specific purchase is
12 exempt, a member state may enact an entity-based or a use-based exemption that
13 applies to that product as long as the exemption utilizes the agreement definition of
14 the product. If the agreement does not have a definition for the product whose use
15 or specific purchase is exempt but has a definition for a term that includes the
16 product, a member state may enact an entity-based or a use-based exemption for
17 the product without restriction.
- 18 3. For purposes of complying with the requirements in this section, the inclusion of a
19 product within the definition of tangible personal property is disregarded.

20 **57-39.4-18. (317) Administration of exemptions.**

- 21 1. Each member state shall observe the following provisions when a purchaser
22 claims an exemption:
 - 23 a. The seller shall obtain identifying information of the purchaser and the
24 reason for claiming a tax exemption at the time of the purchase as
25 determined by the governing board.
 - 26 b. A purchaser is not required to provide a signature to claim an exemption from
27 tax unless a paper exemption certificate is used.
 - 28 c. The seller shall use the standard form for claiming an exemption electronically
29 as adopted by the governing board.
 - 30 d. The seller shall obtain the same information for proof of a claimed exemption
31 regardless of the medium in which the transaction occurred.

- 1 e. A member state may utilize a system in which the purchaser exempt from the
2 payment of the tax is issued an identification number that shall be presented
3 to the seller at the time of the sale.
- 4 f. The seller shall maintain proper records of exempt transactions and provide
5 them to a member state when requested.
- 6 g. A member state shall administer use-based and entity-based exemptions
7 when practicable through a direct pay permit, an exemption certificate, or
8 another means that does not burden sellers.
- 9 2. Each member state shall relieve sellers that follow the requirements of this section
10 from any tax otherwise applicable if it is determined that the purchaser improperly
11 claimed an exemption and to hold the purchaser liable for the nonpayment of tax.
12 This relief from liability does not apply to a seller who fraudulently fails to collect
13 the tax or solicits purchasers to participate in the unlawful claim of an exemption.
- 14 **57-39.4-19. (318) Uniform tax returns.** Each member state shall:
- 15 1. Require that only one tax return for each taxing period for each seller be filed for
16 the member state and all the taxing jurisdictions within the member state.
- 17 2. Require that returns be due no sooner than the twentieth day of the month
18 following the month in which the transaction occurred.
- 19 3. Allow any model 1, model 2, or model 3 seller to submit its sales and use tax
20 returns in a simplified format that does not include more data fields than permitted
21 by the governing board. A member state may require additional informational
22 returns to be submitted not more frequently than every six months under a
23 staggered system developed by the governing board.
- 24 4. Allow any seller that is registered under the agreement, which does not have a
25 legal requirement to register in the member state, and is not a model 1, model 2, or
26 model 3 seller, to submit its sales and use tax returns as follows:
- 27 a. Upon registration, a member state shall provide to the seller the returns
28 required by that state.
- 29 b. A member state may require a seller to file a return any time within one year
30 of the month of initial registration and future returns may be required on an
31 annual basis in succeeding years.

- 1 c. In addition to the returns required in subdivision b, a member state may
2 require sellers to submit returns in the month following any month in which
3 they have accumulated state and local tax funds for the state in the amount of
4 one thousand dollars or more.
- 5 d. Participate with other member states in developing a more uniform sales and
6 use tax return that, when completed, would be available to all sellers.
- 7 e. Require, at each member state's discretion, all model 1, model 2, and model
8 3 sellers to file returns electronically. It is the intent of the member states that
9 all member states have the capability of receiving electronically filed returns
10 by January 1, 2004.

11 **57-39.4-20. (319) Uniform rules for remittance of funds.** Each member state shall:

- 12 1. Require only one remittance for each return except as provided in this subsection.
13 If any additional remittance is required, it may only be required from sellers that
14 collect more than thirty thousand dollars in sales and use taxes in the member
15 state during the preceding calendar year as provided herein. The amount of the
16 additional remittance shall be determined through a calculation method rather than
17 actual collections and shall not require the filing of an additional return.
- 18 2. Require, at each member state's discretion, all remittances from sellers under
19 model 1, model 2, and model 3 to be remitted electronically.
- 20 3. Allow for electronic payments by both automated clearinghouse credit and
21 automated clearinghouse debit.
- 22 4. Provide an alternative method for making same day payments if an electronic
23 funds transfer fails.
- 24 5. Provide that if a due date falls on a legal banking holiday in a member state, the
25 taxes are due to that state on the next succeeding business day.
- 26 6. Require that any data that accompanies a remittance be formatted using uniform
27 tax type and payment type codes approved by the governing board.

28 **57-39.4-21. (320) Uniform rules for recovery of bad debts.** Each member state shall
29 use the following to provide a deduction for bad debts to a seller. To the extent a member state
30 provides a bad debt deduction to any other party, the same procedures will apply. Each
31 member state shall:

- 1 1. Allow a deduction from taxable sales for bad debts. Any deduction taken that is
2 attributed to bad debts shall not include interest.
- 3 2. Utilize the federal definition of "bad debt" in 26 U.S.C. 166 as the basis for
4 calculating bad debt recovery. However, the amount calculated pursuant to
5 26 U.S.C. 166 shall be adjusted to exclude financing charges or interest, sales or
6 use taxes charged on the purchase price, uncollectible amounts on property that
7 remain in the possession of the seller until the full purchase price is paid, expenses
8 incurred in attempting to collect any debt, and repossessed property.
- 9 3. Allow bad debts to be deducted on the return for the period during which the bad
10 debt is written off as uncollectible in the claimant's books and records and is
11 eligible to be deducted for federal income tax purposes. For purposes of this
12 subsection, a claimant who is not required to file federal income tax returns may
13 deduct a bad debt on a return filed for the period in which the bad debt is written
14 off as uncollectible in the claimant's books and records and would be eligible for a
15 bad debt deduction for federal income tax purposes if the claimant was required to
16 file a federal income tax return.
- 17 4. Require that, if a deduction is taken for a bad debt and the debt is subsequently
18 collected in whole or in part, the tax on the amount so collected must be paid and
19 reported on the return filed for the period in which the collection is made.
- 20 5. Provide that, when the amount of bad debt exceeds the amount of taxable sales
21 for the period during which the bad debt is written off, a refund claim may be filed
22 within the member state's otherwise applicable statute of limitations for refund
23 claims. However, the statute of limitations shall be measured from the due date of
24 the return on which the bad debt could first be claimed.
- 25 6. When filing responsibilities have been assumed by a certified service provider,
26 allow the certified service provider to claim, on behalf of the seller, any bad debt
27 allowance provided by this section. The certified service provider must credit or
28 refund the full amount of any bad debt allowance or refund received to the seller.
- 29 7. Provide that, for the purposes of reporting a payment received on a previously
30 claimed bad debt, any payments made on a debt or account are applied first

1 proportionally to the taxable price of the property or service and the sales tax
2 thereon and secondly to interest, service charges, and any other charges.

3 8. When the books and records of the party claiming the bad debt allowance support
4 an allocation of the bad debts among the member states, permit the allocation.

5 **57-39.4-22. (321) Confidentiality and privacy protections under model 1.**

6 1. The purpose of this section is to set forth the member states' policy for the
7 protection of the confidentiality rights of all participants in the system and of the
8 privacy interests of consumers who deal with model 1 sellers.

9 2. As used in this section, the term "confidential taxpayer information" means all
10 information that is protected under a member state's laws, regulations, and
11 privileges, the term "personally identifiable information" means information that
12 identifies a person, and the term "anonymous data" means information that does
13 not identify a person.

14 3. The member states agree that a fundamental precept in model 1 is to preserve the
15 privacy of consumers by protecting their anonymity. With very limited exceptions,
16 a certified service provider shall perform its tax calculation, remittance, and
17 reporting functions without retaining the personally identifiable information of
18 consumers.

19 4. The governing board may certify a certified service provider only if that certified
20 service provider certifies that:

21 a. Its system has been designed and tested to ensure that the fundamental
22 precept of anonymity is respected;

23 b. That personally identifiable information is only used and retained to the extent
24 necessary for the administration of model 1 with respect to exempt
25 purchasers;

26 c. It provides consumers clear and conspicuous notice of its information
27 practices, including what information it collects, how it collects the information,
28 how it uses the information, how long, if at all, it retains the information and
29 whether it discloses the information to member states. Such notice shall be
30 satisfied by a written privacy policy statement accessible by the public on the
31 official web site of the certified service provider;

- 1 d. Its collection, use, and retention of personally identifiable information will be
2 limited to that required by the member states to ensure the validity of
3 exemptions from taxation that are claimed by reason of a consumer's status
4 or the intended use of the goods or services purchased; and
- 5 e. It provides adequate technical, physical, and administrative safeguards so as
6 to protect personally identifiable information from unauthorized access and
7 disclosure.
- 8 5. Each member state shall provide public notification to consumers, including their
9 exempt purchasers, of the state's practices relating to the collection, use, and
10 retention of personally identifiable information.
- 11 6. When any personally identifiable information that has been collected and retained
12 is no longer required for the purposes set forth in subdivision d of subsection 4,
13 such information shall no longer be retained by the member states.
- 14 7. When personally identifiable information regarding an individual is retained by or
15 on behalf of a member state, such state shall provide reasonable access by such
16 individual to the individual's own information in the state's possession and a right to
17 correct any inaccurately recorded information.
- 18 8. If anyone other than a member state, or a person authorized by that state's law or
19 the agreement, seeks to discover personally identifiable information, the state from
20 which the information is sought should make a reasonable and timely effort to
21 notify the individual of such request.
- 22 9. This privacy policy is subject to enforcement by member states' attorneys general
23 or other appropriate state government authority.
- 24 10. Each member states' laws and regulations regarding the collection, use, and
25 maintenance of confidential taxpayer information remain fully applicable and
26 binding. Without limitation, the agreement does not enlarge or limit the member
27 states' authority to:
- 28 a. Conduct audits or other review as provided under the agreement and state
29 law.
- 30 b. Provide records pursuant to a member state's freedom of information act,
31 disclosure laws with governmental agencies, or other regulations.

- 1 c. Prevent, consistent with state law, disclosures of confidential taxpayer
2 information.
- 3 d. Prevent, consistent with federal law, disclosures or misuse of federal return
4 information obtained under a disclosure agreement with the internal revenue
5 service.
- 6 e. Collect, disclose, disseminate, or otherwise use anonymous data for
7 governmental purposes.
- 8 11. This privacy policy does not preclude the governing board from certifying a
9 certified service provider whose privacy policy is more protective of confidential
10 taxpayer information or personally identifiable information than is required by the
11 agreement.

12 **57-39.4-23. (322) Sales tax holidays.**

- 13 1. If a member state allows for temporary exemption periods, commonly referred to
14 as sales tax holidays, the member state shall:
 - 15 a. Not apply an exemption after December 31, 2003, unless the items to be
16 exempted are specifically defined in the agreement and the exemptions are
17 uniformly applied to state and local sales and use taxes.
 - 18 b. Provide notice of the exemption period at least sixty days' prior to the first day
19 of the calendar quarter in which the exemption period will begin.
- 20 2. A member state may establish a sales tax holiday that utilizes price thresholds set
21 by such state and the provisions of the agreement on the use of thresholds shall
22 not apply to exemptions provided by a state during a sales tax holiday. In order to
23 provide uniformity, a price threshold established by a member state for exempt
24 items shall include only items priced below the threshold. A member state shall
25 not exempt only a portion of the price of an individual item during a sales tax
26 holiday.
- 27 3. The governing board shall establish procedures to provide uniformity for the
28 administrative issues involved with the implementation of a sales tax holiday.
29 These issues include:
 - 30 a. Treatment of layaway purchases;
 - 31 b. Exempt and nonexempt items that are packaged together;

- 1 c. Treatment of coupons or discounts;
- 2 d. Splitting of items normally sold together;
- 3 e. Treatment of rainchecks;
- 4 f. Exchanges;
- 5 g. Shipping and handling charges;
- 6 h. Service charges;
- 7 i. Restocking fees; and
- 8 j. Order date and back orders.

9 **57-39.4-24. (323) Caps and thresholds.**

- 10 1. Each member state shall:
 - 11 a. Not have caps or thresholds on the application of state sales or use tax rates
 - 12 or exemptions that are based on the value of the transaction or item after
 - 13 December 31, 2005. A member state may continue to have caps and
 - 14 thresholds until that date.
 - 15 b. Not have caps that are based on the application of the rates unless the
 - 16 member state assumes the administrative responsibility in a manner that
 - 17 places no additional burden on the retailer.
- 18 2. Each member state that has local jurisdictions that levy a sales or use tax shall not
- 19 place caps or thresholds on the application of local rates or use tax rates or
- 20 exemptions that are based on the value of the transaction or item after
- 21 December 31, 2005. A member state may continue to have caps and thresholds
- 22 until that date.
- 23 3. The provisions of this section do not apply to sales or use taxes levied on the retail
- 24 sale or transfer of motor vehicles, aircraft, watercraft, modular homes,
- 25 manufactured homes, or mobile homes or to instances when the burden of
- 26 administration has been shifted from the retailer.

27 **57-39.4-25. (324) Rounding.**

- 28 1. After December 31, 2005, each member state shall adopt a rounding algorithm
- 29 that meets the following criteria:
 - 30 a. Tax computation must be carried to the third decimal place; and

- 1 b. The tax must be rounded to a whole cent using a method that rounds up to
2 the next cent whenever the third decimal place is greater than four.
- 3 2. Each state shall allow sellers to elect to compute the tax due on a transaction on
4 an item or an invoice basis and shall allow the rounding rule to be applied to the
5 aggregated state and local taxes. No member state shall require a seller to collect
6 tax based on a bracket system.

7 **57-39.4-26. (325) Customer refund procedures.**

- 8 1. This section applies when a state allows a purchaser to seek a return of
9 over-collected sales or use taxes from the seller.
- 10 2. Nothing in this section shall either require a state to provide, or prevent a state
11 from providing, a procedure by which a purchaser may seek a refund directly from
12 the state arising out of sales or use taxes collected in error by a seller from the
13 purchaser. Nothing in this section shall operate to extend any person's time to
14 seek a refund of sales or use taxes collected or remitted in error.
- 15 3. This section provides the first course of remedy available to purchasers seeking a
16 return of over-collected sales or use taxes from the seller. A cause of action
17 against the seller for the over-collected sales or use taxes does not accrue until a
18 purchaser has provided written notice to a seller and the seller has had sixty days
19 to respond. Such notice to the seller must contain the information necessary to
20 determine the validity of the request.
- 21 4. In connection with a purchaser's request from a seller of over-collected sales or
22 use taxes, a seller shall be presumed to have a reasonable business practice, if in
23 the collection of such sales or use taxes, the seller uses either a provider or a
24 system, including a proprietary system, which is certified by the state and has
25 remitted to the state all taxes collected less any deductions, credits, or collection
26 allowances.

27 **57-39.4-27. (326) Direct pay permits.** Each member state shall provide for a direct
28 pay authority that allows the holder of a direct pay permit to purchase otherwise taxable goods
29 and services without payment of tax to the supplier at the time of purchase. The holder of the
30 direct pay permit will make a determination of the taxability and then report and pay the
31 applicable tax due directly to the tax jurisdiction. Each state can set its own limits and

1 requirements for the direct pay permit. The governing board shall advise member states when
2 setting state direct pay limits and requirements and shall consider use of the model direct
3 payment permit regulation as developed by the task force on EDI audit and legal issues for tax
4 administration.

5 **57-39.4-28. (327) Library of definitions.** Each member state shall utilize common
6 definitions as provided in this section. The terms defined are set out in the library of definitions,
7 in appendix C of the agreement adopted by section 57-39.4-01. A member state shall adhere
8 to the following principles:

- 9 1. If a term defined in the library of definitions appears in a member state's sales and
10 use tax statutes or administrative rules or regulations, the member state shall
11 enact or adopt the library definition of the term in its statutes or administrative rules
12 or regulations in substantially the same language as the library definition.
- 13 2. A member state shall not use a library definition in its sales or use tax statutes or
14 administrative rules or regulations that is contrary to the meaning of the library
15 definition.
- 16 3. Except as specifically provided in section 57-39.4-15 and the library of definitions,
17 a member state shall impose a sales or use tax on all products or services
18 included within each definition or exempt from sales or use tax all products or
19 services within each definition.

20 **57-39.4-29. (328) Taxability matrix.**

- 21 1. To ensure uniform application of terms defined in the library of definitions, each
22 member state shall complete a taxability matrix adopted by the governing board.
23 The member state's entries in the matrix shall be provided and maintained in a
24 data base that is in a downloadable format approved by the governing board. A
25 member state shall provide notice of changes in the taxability of the products or
26 services listed in the taxability matrix as required by the governing board.
- 27 2. A member state shall relieve sellers and certified service providers from liability to
28 the member state and its local jurisdictions for having charged and collected the
29 incorrect amount of sales or use tax resulting from the seller or certified service
30 provider relying on erroneous data provided by the member state in the taxability
31 matrix.

1 **57-39.4-30. (329) Effective date for rate changes.** Each member state shall provide
2 that the effective date of rate changes for services covering a period starting before and ending
3 after the statutory effective date shall be as follows:

4 1. For a rate increase, the new rate shall apply to the first billing period starting on or
5 after the effective date.

6 2. For a rate decrease, the new rate shall apply to bills rendered on or after the
7 effective date.

8 **SECTION 2. REPEAL.** Chapter 57-39.4 of the North Dakota Century Code, as it exists
9 on July 31, 2003, is repealed.

10 **SECTION 3. EFFECTIVE DATE.** Section 1 of this Act is effective for taxable events
11 occurring after December 31, 2005.