

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

SENATE BILL NO. 2095
(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

AN ACT to create and enact chapter 57-39.4 of the North Dakota Century Code, relating to adoption of the streamlined sales and use tax agreement as adopted by member states of the streamlined sales tax project; to repeal chapter 57-39.4 of the North Dakota Century Code, relating to participation in multistate discussions and entering 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. Chapter 57-39.4 of the North Dakota Century Code is created and enacted as follows:

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

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

57-39.4-03. (302) State and local tax bases. Through December 31, 2005, if a member state has local jurisdictions that levy a sales or use tax, all local jurisdictions in the state shall have a common tax base. After December 31, 2005, the tax base for local jurisdictions shall be identical to the state tax base unless otherwise prohibited by federal law. This section does not apply to sales or use taxes levied on the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

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

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

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

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

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

1. Provide that local rate changes will be effective only on the first day of a calendar quarter after a minimum of sixty days' notice to sellers.
2. Apply local sales tax rate changes to purchases from printed catalogs wherein the purchaser computed the tax based upon local tax rates published in the catalog only on the first day of a calendar quarter after a minimum of one hundred twenty days' notice to sellers.
3. For sales and use tax purposes only, apply local jurisdiction boundary changes only on the first day of a calendar quarter after a minimum of sixty days' notice to sellers.
4. Provide and maintain a data base that describes boundary changes for all taxing jurisdictions. This data base shall include a description of the change and the effective date of the change for sales and use tax purposes.
5. Provide and maintain a data base of all sales and use tax rates for all of the jurisdictions levying taxes within the state. For the identification of states, counties, cities, and parishes, codes corresponding to the rates must be provided according to federal information processing standards as developed by the national institute of standards and technology. For the identification of all other jurisdictions, codes corresponding to the rates must be in the format determined by the governing board.
6. Provide and maintain a data base that assigns each five-digit and nine-digit zip code within a member state to the proper tax rates and jurisdictions. The state must apply the lowest combined tax rate imposed in the zip code area if the area includes more than one tax rate in any level of taxing jurisdictions. If a nine-digit zip code designation is not available for a street address or if a seller is unable to determine the nine-digit zip code designation of a purchaser after exercising due diligence to determine the designation, the seller may apply the rate for the five-digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller has exercised due diligence if the seller has attempted to determine the nine-digit zip code designation by utilizing software approved by the governing board that makes this designation from the street address and the five-digit zip code of the purchaser.
7. Participate with other member states in the development of an address-based system for assigning taxing jurisdictions. The system must meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act [4 U.S.C. Sec. 119]. The governing board may allow a member state to require sellers that register under this agreement to use an address-based system provided by that member state. If any member state develops an address-based assignment system pursuant to the Mobile

Telecommunications Sourcing Act, a seller may use that system in place of the system provided for in subsection 6.

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

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

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

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

1. No member state shall have multiple state sales and use tax rates on items of personal property or services after December 31, 2005, except that a member state may impose a single additional rate, which may be zero, on food and food ingredients and drugs as defined by state law pursuant to the agreement.
2. A member state that has local jurisdictions that levy a sales or use tax shall not have more than one local sales tax rate or more than one local use tax rate per local jurisdiction. If the local jurisdiction levies both a sales tax and use tax, the local rates must be identical.
3. The provisions of this section do not apply to sales or use taxes levied on 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.

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

1. Each member state shall agree to require sellers to source the retail sale of a product in accordance with section 57-39.4-11. The provisions of section 57-39.4-11 apply regardless of the characterization of a product as tangible personal property, a digital good, or a service. The provisions of section 57-39.4-11 only apply to determine a seller's obligation to pay or collect and remit a sales or use tax with respect to the seller's retail sale of a product. These provisions do not affect the obligation of a purchaser or lessee to remit tax on the use of the product to the taxing jurisdictions of that use.
2. Section 57-39.4-11 does not apply to sales or use taxes levied on the following:
 - a. The retail sale or transfer of watercraft, modular homes, manufactured homes, or mobile homes. These items must be sourced according to the requirements of each member state.
 - b. The retail sale, excluding lease or rental, of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in subsection 4 of section 57-39.4-11. The retail sale of these items shall be sourced according to the

requirements of each member state, and the lease or rental of these items must be sourced according to subsection 3 of section 57-39.4-11.

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

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

1. The retail sale, excluding lease or rental, of a product shall be sourced as follows:
 - a. When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.
 - b. When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser, or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller.
 - c. When subdivisions a and b do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.
 - d. When subdivisions a, b, and c do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.
 - e. When none of the previous rules of subdivisions a, b, c, and d apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.
2. The lease or rental of tangible personal property, other than property identified in subsection 3 or 4, shall be sourced as follows:
 - a. For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection 1. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.
 - b. For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection 1.
 - c. This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.
3. The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in subsection 4, shall be sourced as follows:

- a. For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations.
 - b. For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection 1.
 - c. This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis or on the acquisition of property for lease.
4. The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of subsection 1, notwithstanding the exclusion of lease or rental in subsection 1. "Transportation equipment" means any of the following:
- a. Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce.
 - b. Trucks and truck-tractors with a gross vehicle weight rating of 10,001 pounds [4535.92 kilograms] or greater, trailers, semitrailers, or passenger buses that are:
 - (1) Registered through the international registration plan; and
 - (2) Operated under authority of a carrier authorized and certificated by the United States department of transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.
 - c. Aircraft that are operated by air carriers authorized and certificated by the United States department of transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.
 - d. Containers designed for use on and component parts attached or secured on the items set forth in subdivisions a, b, and c.

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

1. Taking possession of tangible personal property;
2. Making first use of services; or
3. Taking possession or making first use of digital goods, whichever comes first. The terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

57-39.4-13. (312) Multiple points of use. Notwithstanding the provisions of section 57-39.4-11, 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 a 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 disclosing this fact, called 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 the consummation of the sale.
3. The multiple points of use exemption form will remain 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 a service that will be concurrently available for use in more than one jurisdiction.

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

1. Notwithstanding section 57-39.4-11, a purchaser of direct mail that is not a holder of a direct pay permit shall provide to the seller in conjunction with the purchase either a direct mail form or information to show the jurisdictions to which the direct mail is delivered to recipients.
 - a. Upon receipt of the direct mail form, the seller is relieved of all obligations to collect, pay, or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax on a direct pay basis. A direct mail form shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.
 - b. Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the seller shall collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction in which the seller has collected tax pursuant to the delivery information provided by the purchaser.
2. If the purchaser of direct mail does not have a direct pay permit and does not provide the seller with either a direct mail form or delivery information, as required by subsection 1, the seller shall collect the tax according to subdivision e of subsection 1 of section 57-39.4-11. Nothing in this subsection shall limit a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered.
3. If a purchaser of direct mail provides the seller with documentation of direct pay authority, the purchaser shall not be required to provide a direct mail form or delivery information to the seller.

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

1. Except for the defined telecommunications services in subsection 3, the sale of telecommunications services sold on a call-by-call basis shall be sourced to each level of taxing jurisdiction where the call originates and terminates in that jurisdiction or each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.
2. Except for the defined telecommunications services in subsection 3, a sale of telecommunications services sold on a basis other than a call-by-call basis is sourced to the customer's place of primary use.
3. The sale of the following telecommunications services shall be sourced to each level of taxing jurisdiction as follows:

- a. A sale of mobile telecommunications services other than air-to-ground radiotelephone service and prepaid calling service, is sourced to the customer's place of primary use as required by the Mobile Telecommunications Sourcing Act.
- b. A sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by either the seller's telecommunications system, or information received by the seller from its service provider, if the system used to transport such signals is not that of the seller.
- c. A sale of prepaid calling service is sourced in accordance with section 57-39.4-11. However, in the case of a sale of mobile telecommunications services that is a prepaid telecommunications services, the rule provided in subdivision e of subsection 1 of section 57-39.4-11 shall include as an option the location associated with the mobile telephone number.
- d. A sale of a private communication service is sourced as follows:
 - (1) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located.
 - (2) Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located.
 - (3) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segment of channel are separately charged is sourced fifty percent in each level of jurisdiction in which the customer channel termination points are located.
 - (4) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.

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

1. "Air-to-ground radiotelephone service" means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.
2. "Call-by-call basis" means any method of charging for telecommunications services in which the price is measured by individual calls.
3. "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.
4. "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications services is the customer of the telecommunications services, but this sentence only applies for the purpose of sourcing sales of telecommunications services under section 57-39.4-15. "Customer" does not include a reseller of telecommunications services or for mobile telecommunications services of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

5. "Customer channel termination point" means the location where the customer either inputs or receives the communications.
6. "End user" means the person who utilizes the telecommunications services. In the case of an entity, "end user" means the individual who utilizes the services on behalf of the entity.
7. "Home service provider" means the same as that term is defined in section 124(5) of Public Law 106-252, Mobile Telecommunications Sourcing Act.
8. "Mobile telecommunications service" means the same as that term is defined in section 124(5) of Public Law 106-252, Mobile Telecommunications Sourcing Act.
9. "Place of primary use" means the street address representative of where the customer's use of the telecommunications services primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider.
10. "Post-paid calling service" means the telecommunications services obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to which a telephone number which is not associated with the origination or termination of the telecommunications services. A post-paid calling service includes telecommunications services that would be a prepaid calling service except it is not exclusively telecommunications services.
11. "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.
12. "Private communication service" means telecommunications services that entitle the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.
13. "Service address" means:
 - a. The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.
 - b. If the location in subdivision a is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.
 - c. If the location in subdivisions a and b are not known, the service address means the location of the customer's place of primary use.

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

1. A member state may enact a product-based exemption without restriction if the agreement does not have a definition for the product or for a term that includes the product. If the agreement has a definition for the product or for a term that includes the product, a

member state may exempt all items included within the definition but shall not exempt only part of the items included within the definition unless the agreement sets out the exemption for part of the items as an acceptable variation.

2. A member state may enact an entity-based or a use-based exemption without restriction if the agreement does not have a definition for the product whose use or purchase by a specific entity is exempt or for a term that includes the product. If the agreement has a definition for the product whose use or specific purchase is exempt, a member state may enact an entity-based or a use-based exemption that applies to that product as long as the exemption utilizes the agreement definition of the product. If the agreement does not have a definition for the product whose use or specific purchase is exempt but has a definition for a term that includes the product, a member state may enact an entity-based or a use-based exemption for the product without restriction.
3. For purposes of complying with the requirements in this section, the inclusion of a product within the definition of tangible personal property is disregarded.

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

1. Each member state shall observe the following provisions when a purchaser claims an exemption:
 - a. The seller shall obtain identifying information of the purchaser and the reason for claiming a tax exemption at the time of the purchase as determined by the governing board.
 - b. A purchaser is not required to provide a signature to claim an exemption from tax unless a paper exemption certificate is used.
 - c. The seller shall use the standard form for claiming an exemption electronically as adopted by the governing board.
 - d. The seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurred.
 - e. A member state may utilize a system in which the purchaser exempt from the payment of the tax is issued an identification number that shall be presented to the seller at the time of the sale.
 - f. The seller shall maintain proper records of exempt transactions and provide them to a member state when requested.
 - g. A member state shall administer use-based and entity-based exemptions when practicable through a direct pay permit, an exemption certificate, or another means that does not burden sellers.
2. Each member state shall relieve sellers that follow the requirements of this section from any tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption and to hold the purchaser liable for the nonpayment of tax. This relief from liability does not apply to a seller who fraudulently fails to collect the tax or solicits purchasers to participate in the unlawful claim of an exemption.

57-39.4-19. (318) Uniform tax returns. Each member state shall:

1. Require that only one tax return for each taxing period for each seller be filed for the member state and all the taxing jurisdictions within the member state.
2. Require that returns be due no sooner than the twentieth day of the month following the month in which the transaction occurred.

3. Allow any model 1, model 2, or model 3 seller to submit its sales and use tax returns in a simplified format that does not include more data fields than permitted by the governing board. A member state may require additional informational returns to be submitted not more frequently than every six months under a staggered system developed by the governing board.
4. Allow any seller that is registered under the agreement, which does not have a legal requirement to register in the member state, and is not a model 1, model 2, or model 3 seller, to submit its sales and use tax returns as follows:
 - a. Upon registration, a member state shall provide to the seller the returns required by that state.
 - b. A member state may require a seller to file a return any time within one year of the month of initial registration and future returns may be required on an annual basis in succeeding years.
 - c. In addition to the returns required in subdivision b, a member state may require sellers to submit returns in the month following any month in which they have accumulated state and local tax funds for the state in the amount of one thousand dollars or more.
 - d. Participate with other member states in developing a more uniform sales and use tax return that, when completed, would be available to all sellers.
 - e. Require, at each member state's discretion, all model 1, model 2, and model 3 sellers to file returns electronically. It is the intent of the member states that all member states have the capability of receiving electronically filed returns by January 1, 2004.

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

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

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

1. Allow a deduction from taxable sales for bad debts. Any deduction taken that is attributed to bad debts shall not include interest.

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

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

1. The purpose of this section is to set forth the member states' policy for the protection of the confidentiality rights of all participants in the system and of the privacy interests of consumers who deal with model 1 sellers.
2. As used in this section, the term "confidential taxpayer information" means all information that is protected under a member state's laws, regulations, and privileges, the term "personally identifiable information" means information that identifies a person, and the term "anonymous data" means information that does not identify a person.
3. The member states agree that a fundamental precept in model 1 is to preserve the privacy of consumers by protecting their anonymity. With very limited exceptions, a certified service provider shall perform its tax calculation, remittance, and reporting functions without retaining the personally identifiable information of consumers.
4. The governing board may certify a certified service provider only if that certified service provider certifies that:

- a. Its system has been designed and tested to ensure that the fundamental precept of anonymity is respected;
 - b. That personally identifiable information is only used and retained to the extent necessary for the administration of model 1 with respect to exempt purchasers;
 - c. It provides consumers clear and conspicuous notice of its information practices, including what information it collects, how it collects the information, how it uses the information, how long, if at all, it retains the information and whether it discloses the information to member states. Such notice shall be satisfied by a written privacy policy statement accessible by the public on the official web site of the certified service provider;
 - d. Its collection, use, and retention of personally identifiable information will be limited to that required by the member states to ensure the validity of exemptions from taxation that are claimed by reason of a consumer's status or the intended use of the goods or services purchased; and
 - e. It provides adequate technical, physical, and administrative safeguards so as to protect personally identifiable information from unauthorized access and disclosure.
5. Each member state shall provide public notification to consumers, including their exempt purchasers, of the state's practices relating to the collection, use, and retention of personally identifiable information.
 6. When any personally identifiable information that has been collected and retained is no longer required for the purposes set forth in subdivision d of subsection 4, such information shall no longer be retained by the member states.
 7. When personally identifiable information regarding an individual is retained by or on behalf of a member state, such state shall provide reasonable access by such individual to the individual's own information in the state's possession and a right to correct any inaccurately recorded information.
 8. If anyone other than a member state, or a person authorized by that state's law or the agreement, seeks to discover personally identifiable information, the state from which the information is sought should make a reasonable and timely effort to notify the individual of such request.
 9. This privacy policy is subject to enforcement by member states' attorneys general or other appropriate state government authority.
 10. Each member states' laws and regulations regarding the collection, use, and maintenance of confidential taxpayer information remain fully applicable and binding. Without limitation, the agreement does not enlarge or limit the member states' authority to:
 - a. Conduct audits or other review as provided under the agreement and state law.
 - b. Provide records pursuant to a member state's freedom of information act, disclosure laws with governmental agencies, or other regulations.
 - c. Prevent, consistent with state law, disclosures of confidential taxpayer information.
 - d. Prevent, consistent with federal law, disclosures or misuse of federal return information obtained under a disclosure agreement with the internal revenue service.
 - e. Collect, disclose, disseminate, or otherwise use anonymous data for governmental purposes.

11. This privacy policy does not preclude the governing board from certifying a certified service provider whose privacy policy is more protective of confidential taxpayer information or personally identifiable information than is required by the agreement.

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

1. If a member state allows for temporary exemption periods, commonly referred to as sales tax holidays, the member state shall:
 - a. Not apply an exemption after December 31, 2003, unless the items to be exempted are specifically defined in the agreement and the exemptions are uniformly applied to state and local sales and use taxes.
 - b. Provide notice of the exemption period at least sixty days' prior to the first day of the calendar quarter in which the exemption period will begin.
2. A member state may establish a sales tax holiday that utilizes price thresholds set by such state and the provisions of the agreement on the use of thresholds shall not apply to exemptions provided by a state during a sales tax holiday. In order to provide uniformity, a price threshold established by a member state for exempt items shall include only items priced below the threshold. A member state shall not exempt only a portion of the price of an individual item during a sales tax holiday.
3. The governing board shall establish procedures to provide uniformity for the administrative issues involved with the implementation of a sales tax holiday. These issues include:
 - a. Treatment of layaway purchases;
 - b. Exempt and nonexempt items that are packaged together;
 - c. Treatment of coupons or discounts;
 - d. Splitting of items normally sold together;
 - e. Treatment of rainchecks;
 - f. Exchanges;
 - g. Shipping and handling charges;
 - h. Service charges;
 - i. Restocking fees; and
 - j. Order date and back orders.

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

1. Each member state shall:
 - a. Not have caps or thresholds on the application of state sales or use tax rates or exemptions that are based on the value of the transaction or item after December 31, 2005. A member state may continue to have caps and thresholds until that date.
 - b. Not have caps that are based on the application of the rates unless the member state assumes the administrative responsibility in a manner that places no additional burden on the retailer.
2. Each member state that has local jurisdictions that levy a sales or use tax shall not place caps or thresholds on the application of local rates or use tax rates or exemptions that are

based on the value of the transaction or item after December 31, 2005. A member state may continue to have caps and thresholds until that date.

3. The provisions of this section do not apply to sales or use taxes levied on the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes or to instances when the burden of administration has been shifted from the retailer.

57-39.4-25. (324) Rounding.

1. After December 31, 2005, each member state shall adopt a rounding algorithm that meets the following criteria:
 - a. Tax computation must be carried to the third decimal place; and
 - b. The tax must be rounded to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four.
2. Each state shall allow sellers to elect to compute the tax due on a transaction on an item or an invoice basis and shall allow the rounding rule to be applied to the aggregated state and local taxes. No member state shall require a seller to collect tax based on a bracket system.

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

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

57-39.4-27. (326) Direct pay permits. Each member state shall provide for a direct pay authority that allows the holder of a direct pay permit to purchase otherwise taxable goods and services without payment of tax to the supplier at the time of purchase. The holder of the direct pay permit will make a determination of the taxability and then report and pay the applicable tax due directly to the tax jurisdiction. Each state can set its own limits and requirements for the direct pay permit. The governing board shall advise member states when setting state direct pay limits and requirements and shall consider use of the model direct payment permit regulation as developed by the task force on EDI audit and legal issues for tax administration.

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

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

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

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

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

1. For a rate increase, the new rate shall apply to the first billing period starting on or after the effective date.
2. For a rate decrease, the new rate shall apply to bills rendered on or after the effective date.

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

SECTION 3. EFFECTIVE DATE. Section 1 of 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. 2095.

Senate Vote: Yeas 36 Nays 9 Absent 2

House Vote: Yeas 65 Nays 26 Absent 3

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