

**HOUSE BILL NO. 1437**

Introduced by

Representatives Wrangham, Trottier, Winrich

1 A BILL for an Act to create and enact a new section to chapter 11-09.1 and a new section to  
2 chapter 40-05.1 of the North Dakota Century Code, relating to legislative approval of home rule  
3 sales, use, or excise taxes; to amend and reenact subsection 1 of section 57-39.2-02.1,  
4 subsection 1 of section 57-40.2-02.1, and sections 57-40.3-02 and 57-40.5-02 of the North  
5 Dakota Century Code, relating to reduction of the rate of sales, use, motor vehicle excise, and  
6 aircraft excise taxes; and to provide an effective date.

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

8 **SECTION 1.** A new section to chapter 11-09.1 of the North Dakota Century Code is created  
9 and enacted as follows:

10 **Sales, use, and excise taxes - Legislative approval.**

- 11 1. A home rule county may not impose a new or extend or increase any existing home  
12 rule sales, use, or excise tax after June 30, 2011, without receiving approval from the  
13 legislative assembly under this section.
- 14 2. Before the board of county commissioners of a county may request legislative  
15 approval of a sales, use, or excise tax, the board shall adopt a resolution indicating its  
16 approval of the tax. The resolution, which must accompany the request for legislative  
17 approval, must include:
- 18 a. Information regarding how the revenue generated by the tax will be used;  
19 b. The estimated annual revenue that will be raised by the tax; and  
20 c. If the tax is dedicated for a particular purpose, the estimated length of time the  
21 tax will be in effect.

22 **SECTION 2.** A new section to chapter 40-05.1 of the North Dakota Century Code is created  
23 and enacted as follows:

1        **Sales, use, and excise taxes - Legislative approval.**

- 2        1. A home rule city may not impose a new or extend or increase any existing home rule  
3        sales, use, or excise tax after June 30, 2011, without receiving approval from the  
4        legislative assembly under this section.
- 5        2. Before the governing body of a city may request legislative approval of a sales, use, or  
6        excise tax, the governing body shall adopt a resolution indicating its approval of the  
7        tax. The resolution, which must accompany the request for legislative approval, must  
8        include:
- 9        a. Information regarding how the revenue generated by the tax will be used;  
10       b. The estimated annual revenue that will be raised by the tax; and  
11       c. If the tax is dedicated for a particular purpose, the estimated length of time the  
12       tax will be in effect.

13        **SECTION 3. AMENDMENT.** Subsection 1 of section 57-39.2-02.1 of the North Dakota  
14 Century Code is amended and reenacted as follows:

- 15        1. Except as otherwise expressly provided in subsection 2 for sales of mobile homes  
16        used for residential or business purposes, and except as otherwise expressly provided  
17        in this chapter, there is imposed a tax of ~~five~~four and one-half percent upon the gross  
18        receipts of retailers from all sales at retail including the leasing or renting of tangible  
19        personal property as provided in this section, within this state of the following to  
20        consumers or users:
- 21        a. Tangible personal property, consisting of goods, wares, or merchandise, except  
22        mobile homes used for residential or business purposes and including bundled  
23        transactions consisting entirely of tangible personal property.
- 24        b. The furnishing or service of communication services or steam other than steam  
25        used for processing agricultural products.
- 26        c. Tickets or admissions to places of amusement or entertainment or athletic  
27        events, including amounts charged for participation in an amusement,  
28        entertainment, or athletic activity and the playing of any machine for amusement  
29        or entertainment in response to the use of a coin. The tax imposed by this section  
30        applies only to eighty percent of the gross receipts collected from coin-operated  
31        amusement devices.

- 1           d. Magazines and other periodicals.
- 2           e. The leasing or renting of a hotel or motel room or tourist court accommodations.
- 3           f. The leasing or renting of tangible personal property the transfer of title to which
- 4           has not been subjected to a retail sales tax under this chapter or a use tax under
- 5           chapter 57-40.2.
- 6           g. Sale, lease, or rental of a computer and prewritten computer software, including
- 7           prewritten computer software delivered electronically or by load and leave. For
- 8           purposes of this subdivision:
- 9           (1) "Computer" means an electronic device that accepts information in digital or
- 10           similar form and manipulates it for a result based on a sequence of
- 11           instructions.
- 12           (2) "Computer software" means a set of coded instructions designed to cause a
- 13           computer or automatic data processing equipment to perform a task.
- 14           (3) "Delivered electronically" means delivered from the seller to the purchaser
- 15           by means other than tangible storage media.
- 16           (4) "Electronic" means relating to technology having electrical, digital, magnetic,
- 17           wireless, optical, electromagnetic, or similar capabilities.
- 18           (5) "Load and leave" means delivery to the purchaser by use of a tangible
- 19           storage media when the tangible storage media is not physically transferred
- 20           to the purchaser.
- 21           (6) "Prewritten computer software" means computer software, including
- 22           prewritten upgrades, which is not designed and developed by the author or
- 23           other creator to the specifications of a specific purchaser. The combining of
- 24           two or more "prewritten computer software" programs or prewritten portions
- 25           thereof does not cause the combination to be other than "prewritten
- 26           computer software". "Prewritten computer software" includes software
- 27           designed and developed by the author or other creator to the specifications
- 28           of a specific purchaser when it is sold to a person other than the purchaser.
- 29           If a person modifies or enhances "computer software" of which the person is
- 30           not the author or creator, the person is deemed to be the author or creator
- 31           only of such person's modifications or enhancements. "Prewritten computer

1 software" or a prewritten portion thereof that is modified or enhanced to any  
2 degree, if such modification or enhancement is designed and developed to  
3 the specifications of a specific purchaser, remains "prewritten computer  
4 software". However, if there is a reasonable, separately stated charge or an  
5 invoice or other statement of the price given to the purchaser for such  
6 modification or enhancement, such modification or enhancement shall not  
7 constitute "prewritten computer software".

8 h. A mandatory computer software maintenance contract for prewritten computer  
9 software.

10 i. An optional computer software maintenance contract for prewritten computer  
11 software that provides only software upgrades or updates or an optional  
12 computer software maintenance contract for prewritten computer software that is  
13 a bundled transaction and provides software upgrades or updates and support  
14 services.

15 **SECTION 4. AMENDMENT.** Subsection 1 of section 57-40.2-02.1 of the North Dakota  
16 Century Code is amended and reenacted as follows:

- 17 1. Except as otherwise expressly provided in subsection 2 for purchases of mobile  
18 homes used for residential or business purposes, an excise tax is imposed on the  
19 storage, use, or consumption in this state of tangible personal property purchased at  
20 retail for storage, use, or consumption in this state, at the rate of fivefour and one-half  
21 percent of the purchase price of the property. Except as limited by section 57-40.2-11,  
22 an excise tax is imposed on the storage, use, or consumption in this state of tangible  
23 personal property not originally purchased for storage, use, or consumption in this  
24 state at the rate of fivefour and one-half percent of the fair market value of the property  
25 at the time it was brought into this state.

26 **SECTION 5. AMENDMENT.** Section 57-40.3-02 of the North Dakota Century Code is  
27 amended and reenacted as follows:

28 **57-40.3-02. Tax imposed.**

29 There is hereby imposed an excise tax at the rate of fivefour and one-half percent on the  
30 purchase price of any motor vehicle purchased or acquired either in or outside of the state of

1 North Dakota for use on the streets and highways of this state and required to be registered  
2 under the laws of this state.

3 **SECTION 6. AMENDMENT.** Section 57-40.5-02 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **57-40.5-02. Tax imposed.**

6 There is imposed an excise tax at the rate of ~~five~~four and one-half percent on the purchase  
7 price of any aircraft purchased or acquired either in or outside of the state of North Dakota or on  
8 the lease or rental cost of any aircraft, less fuel, if rented dry and required to be registered  
9 under the laws of this state, except on aircraft or helicopters designed or modified for exclusive  
10 use as agricultural aircraft for aerial application of agricultural chemicals, insecticides,  
11 fungicides, growth regulators, pesticides, dusts, fertilizer, or other agricultural materials, the  
12 excise tax is imposed at the rate of three percent on the purchase price of any such aircraft  
13 purchased or acquired in or outside of this state, including the leasing or renting of such  
14 agricultural aircraft to users for agricultural purposes.

15 **SECTION 7. EFFECTIVE DATE.** This Act is effective for taxable events occurring after  
16 June 30, 2011.