

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~~limitation of
3 the rate of home rule sales, use, or excise taxes; to amend and reenact subsection 1 of section
4 57-39.2-02.1, subsection 1 of section 57-40.2-02.1, and sections 57-40.3-02 and 57-40.5-02 of
5 the North Dakota Century Code, relating to reduction of the rate of sales, use, motor vehicle
6 excise, and 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~~Rate restriction.**

11 ~~1. A home rule county may not impose a new or extend or increase any existing home rule~~
12 ~~sales, use, or excise tax after June 30, 2011, without receiving approval from the legislative~~
13 ~~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.~~at a rate exceeding one-half of one percent. Sales and use

22 taxes or gross receipts taxes levied under this chapter before July 1, 2011, at a

23 rate exceeding one-half of one percent may continue to be imposed at the rate in

24 effect on June 30, 2011, until the expiration of the period for which the tax rate in

1 excess of one-half of one percent was approved but may not thereafter be
2 reimposed at a rate exceeding one-half of one percent.

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

5 **Sales, use, and excise taxes - ~~Legislative approval~~Rate restriction.**

6 ~~1.~~ A home rule city may not impose a new or extend or increase any existing home rule
7 sales, use, or excise tax after June 30, 2011, ~~without receiving approval from the legislative~~
8 ~~assembly under this section.~~

9 ~~2.~~ ~~Before the governing body of a city may request legislative approval of a sales, use, or~~
10 ~~excise tax, the governing body shall adopt a resolution indicating its approval of the~~
11 ~~tax. The resolution, which must accompany the request for legislative approval, must~~
12 ~~include:~~

13 ~~a.~~ ~~Information regarding how the revenue generated by the tax will be used;~~

14 ~~b.~~ ~~The estimated annual revenue that will be raised by the tax; and~~

15 ~~c.~~ ~~If the tax is dedicated for a particular purpose, the estimated length of time the~~
16 ~~tax will be in effect.~~ at a rate exceeding one and one-half percent. Sales and use
17 taxes or gross receipts taxes levied under this chapter before July 1, 2011, at a
18 rate exceeding one and one-half percent may continue to be imposed at the rate
19 in effect on June 30, 2011, until the expiration of the period for which the tax rate
20 in excess of one and one-half percent was approved but may not thereafter be
21 reimposed at a rate exceeding one and one-half percent.

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

- 24 1. Except as otherwise expressly provided in subsection 2 for sales of mobile homes
25 used for residential or business purposes, and except as otherwise expressly provided
26 in this chapter, there is imposed a tax of ~~five~~four and one-half percent upon the gross
27 receipts of retailers from all sales at retail including the leasing or renting of tangible
28 personal property as provided in this section, within this state of the following to
29 consumers or users:

- 1 a. Tangible personal property, consisting of goods, wares, or merchandise, except
2 mobile homes used for residential or business purposes and including bundled
3 transactions consisting entirely of tangible personal property.
- 4 b. The furnishing or service of communication services or steam other than steam
5 used for processing agricultural products.
- 6 c. Tickets or admissions to places of amusement or entertainment or athletic
7 events, including amounts charged for participation in an amusement,
8 entertainment, or athletic activity and the playing of any machine for amusement
9 or entertainment in response to the use of a coin. The tax imposed by this section
10 applies only to eighty percent of the gross receipts collected from coin-operated
11 amusement devices.
- 12 d. Magazines and other periodicals.
- 13 e. The leasing or renting of a hotel or motel room or tourist court accommodations.
- 14 f. The leasing or renting of tangible personal property the transfer of title to which
15 has not been subjected to a retail sales tax under this chapter or a use tax under
16 chapter 57-40.2.
- 17 g. Sale, lease, or rental of a computer and prewritten computer software, including
18 prewritten computer software delivered electronically or by load and leave. For
19 purposes of this subdivision:
- 20 (1) "Computer" means an electronic device that accepts information in digital or
21 similar form and manipulates it for a result based on a sequence of
22 instructions.
- 23 (2) "Computer software" means a set of coded instructions designed to cause a
24 computer or automatic data processing equipment to perform a task.
- 25 (3) "Delivered electronically" means delivered from the seller to the purchaser
26 by means other than tangible storage media.
- 27 (4) "Electronic" means relating to technology having electrical, digital, magnetic,
28 wireless, optical, electromagnetic, or similar capabilities.
- 29 (5) "Load and leave" means delivery to the purchaser by use of a tangible
30 storage media when the tangible storage media is not physically transferred
31 to the purchaser.

1 (6) "Prewritten computer software" means computer software, including
2 prewritten upgrades, which is not designed and developed by the author or
3 other creator to the specifications of a specific purchaser. The combining of
4 two or more "prewritten computer software" programs or prewritten portions
5 thereof does not cause the combination to be other than "prewritten
6 computer software". "Prewritten computer software" includes software
7 designed and developed by the author or other creator to the specifications
8 of a specific purchaser when it is sold to a person other than the purchaser.
9 If a person modifies or enhances "computer software" of which the person is
10 not the author or creator, the person is deemed to be the author or creator
11 only of such person's modifications or enhancements. "Prewritten computer
12 software" or a prewritten portion thereof that is modified or enhanced to any
13 degree, if such modification or enhancement is designed and developed to
14 the specifications of a specific purchaser, remains "prewritten computer
15 software". However, if there is a reasonable, separately stated charge or an
16 invoice or other statement of the price given to the purchaser for such
17 modification or enhancement, such modification or enhancement shall not
18 constitute "prewritten computer software".

- 19 h. A mandatory computer software maintenance contract for prewritten computer
20 software.
- 21 i. An optional computer software maintenance contract for prewritten computer
22 software that provides only software upgrades or updates or an optional
23 computer software maintenance contract for prewritten computer software that is
24 a bundled transaction and provides software upgrades or updates and support
25 services.

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

- 28 1. Except as otherwise expressly provided in subsection 2 for purchases of mobile
29 homes used for residential or business purposes, an excise tax is imposed on the
30 storage, use, or consumption in this state of tangible personal property purchased at
31 retail for storage, use, or consumption in this state, at the rate of fivefour and one-half

1 percent of the purchase price of the property. Except as limited by section 57-40.2-11,
2 an excise tax is imposed on the storage, use, or consumption in this state of tangible
3 personal property not originally purchased for storage, use, or consumption in this
4 state at the rate of ~~five~~four and one-half percent of the fair market value of the property
5 at the time it was brought into this state.

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

8 **57-40.3-02. Tax imposed.**

9 There is hereby imposed an excise tax at the rate of ~~five~~four and one-half percent on the
10 purchase price of any motor vehicle purchased or acquired either in or outside of the state of
11 North Dakota for use on the streets and highways of this state and required to be registered
12 under the laws of this state.

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

15 **57-40.5-02. Tax imposed.**

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

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