

**FIRST ENGROSSMENT
with Senate Amendments
ENGROSSED HOUSE BILL NO. 1245**

Introduced by

Representatives Dosch, D. Johnson, Maragos

Senators Hogue, Lyson, Wardner

1 A BILL for an Act to amend and reenact sections 40-57.3-01 and 40-57.3-01.1, subsection 1 of
2 section 57-39.2-02.1, and subsection 22 of section 57-39.2-04 of the North Dakota Century
3 Code, relating to city lodging tax and state sales tax application to hotel, motel, and tourist court
4 stays; and to provide an effective date.

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

6 **SECTION 1. AMENDMENT.** Section 40-57.3-01 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **40-57.3-01. City lodging tax - Imposition - Amount - Disposition.**

9 The governing body of any city may, by ordinance, impose a city tax, not to exceed two
10 percent, upon the gross receipts of retailers on the leasing or renting of hotel, motel, or tourist
11 court accommodations within the city for periods of ~~less than thirty~~ninety or fewer consecutive
12 calendar days ~~or one month~~. The tax imposed by this section shall be in addition to the state
13 sales tax on rental accommodations provided in chapter 57-39.2 and any city which imposes
14 the tax upon gross receipts described in this section shall deposit all proceeds in the city
15 visitors' promotion fund. Moneys deposited in the city visitors' promotion fund shall be spent
16 only as provided in this chapter. This chapter applies to all cities and does not limit the authority
17 of a home rule city to levy any taxes authorized by other provisions of law.

18 **SECTION 2. AMENDMENT.** Section 40-57.3-01.1 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **40-57.3-01.1. City lodging and restaurant tax - Imposition - Amount - Disposition -**
21 **Referral.**

22 In addition to the tax under section 40-57.3-01, the governing body of any city may, by
23 ordinance, impose a city tax, at a rate not to exceed one percent, upon the gross receipts of
24 retailers on the leasing or renting of hotel, motel, or tourist court accommodations within the city

1 for periods of ~~less than thirty~~ninety or fewer consecutive calendar days ~~or one month~~ and upon
2 the gross receipts of a restaurant from any sales of prepared food or beverages, not including
3 alcoholic beverages for consumption off the premises where purchased, which are subject to
4 state sales taxes. For purposes of this section, "restaurant" means any place where food is
5 prepared and intended for individual portion service for consumption on or off the premises and
6 "prepared" includes heating prepackaged food. Accommodations, food, and beverages may all,
7 each, or in any combination be subjected to the tax under this section, if all items in any
8 category which are taxable under state law are taxable, except as otherwise provided in this
9 section. The tax imposed under this section is in addition to state sales taxes on rental
10 accommodations and restaurant sales and any city which imposes the tax under this section
11 shall deposit all proceeds in the city visitors' promotion capital construction fund. Moneys
12 deposited in the city visitors' promotion capital construction fund shall be spent only as provided
13 in this chapter. An ordinance adopted under this section may not become effective sooner than
14 sixty days after it is adopted by the governing body of the city. The provisions of chapter 40-12
15 with regard to referral of ordinances apply to an ordinance adopted under this section except
16 that a petition to refer an ordinance adopted under this section must be presented to the
17 governing body of the municipality before four p.m. on the sixtieth day after the ordinance
18 described in the petition was adopted by the governing body of the municipality. Revenues from
19 a tax imposed under this section may not be pledged under section 40-57.3-03 to payment of
20 bonds or evidences of indebtedness until after the time has passed for filing a referral petition
21 against an ordinance under this section or, if a referral petition is filed, until after the referral
22 petition has been submitted to the vote of the electors of the municipality.

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

25 1. Except as otherwise expressly provided in subsection 2 for sales of mobile homes
26 used for residential or business purposes, and except as otherwise expressly provided
27 in this chapter, there is imposed a tax of five percent upon the gross receipts of
28 retailers from all sales at retail including the leasing or renting of tangible personal
29 property as provided in this section, within this state of the following to consumers or
30 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 for periods of ninety or fewer consecutive calendar days.
- 15 f. The leasing or renting of tangible personal property the transfer of title to which
16 has not been subjected to a retail sales tax under this chapter or a use tax under
17 chapter 57-40.2.
- 18 g. Sale, lease, or rental of a computer and prewritten computer software, including
19 prewritten computer software delivered electronically or by load and leave. For
20 purposes of this subdivision:
- 21 (1) "Computer" means an electronic device that accepts information in digital or
22 similar form and manipulates it for a result based on a sequence of
23 instructions.
- 24 (2) "Computer software" means a set of coded instructions designed to cause a
25 computer or automatic data processing equipment to perform a task.
- 26 (3) "Delivered electronically" means delivered from the seller to the purchaser
27 by means other than tangible storage media.
- 28 (4) "Electronic" means relating to technology having electrical, digital, magnetic,
29 wireless, optical, electromagnetic, or similar capabilities.

1 (5) "Load and leave" means delivery to the purchaser by use of a tangible
2 storage media when the tangible storage media is not physically transferred
3 to the purchaser.

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

22 h. A mandatory computer software maintenance contract for prewritten computer
23 software.

24 i. An optional computer software maintenance contract for prewritten computer
25 software that provides only software upgrades or updates or an optional
26 computer software maintenance contract for prewritten computer software that is
27 a bundled transaction and provides software upgrades or updates and support
28 services.

29 **SECTION 4. AMENDMENT.** Subsection 22 of section 57-39.2-04 of the North Dakota
30 Century Code is amended and reenacted as follows:

1 22. Gross receipts from the leasing or renting of factory manufactured homes, including
2 mobile homes, modular living units, or sectional homes, whether or not placed on a
3 permanent foundation, for residential housing for periods of thirty or more consecutive
4 days ~~and the gross receipts from the leasing or renting of a hotel or motel room or~~
5 ~~tourist court accommodations occupied by the same person or persons for residential~~
6 ~~housing for periods of thirty or more consecutive days.~~

7 **SECTION 5. EFFECTIVE DATE.** This Act is effective for taxable events occurring after
8 June 30, 2011.