

Introduced by

Representatives Drovdal, Hatlestad, Kaldor

Senators Cook, Miller, Dotzenrod

1 A BILL for an Act to create and enact section 57-39.4-33.3 of the North Dakota Century Code,
2 relating to prohibited replacement taxes; to amend and reenact subsection 2 of section
3 11-09.1-05, subsection 16 of section 40-05.1-06, subsection 1 of section 57-39.2-02.1, sections
4 57-39.4-01, 57-39.4-02, 57-39.4-03, and 57-39.4-04, subsections 1 and 3 of section 57-39.4-09,
5 and sections 57-39.4-10, 57-39.4-11.1, 57-39.4-14, 57-39.4-14.1, 57-39.4-18, 57-39.4-19,
6 57-39.4-20, and 57-39.4-24 of the North Dakota Century Code, relating to the administration of
7 the streamlined sales and use tax agreement; to repeal chapter 57-39.3 of the North Dakota
8 Century Code, relating to fees in lieu of sales taxes; and to provide an effective date.

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

10 **SECTION 1. AMENDMENT.** Subsection 2 of section 11-09.1-05 of the North Dakota
11 Century Code is amended and reenacted as follows:

12 2. Control its finances and fiscal affairs; appropriate money for its purposes, and make
13 payments of its debts and expenses; subject to the limitations of this section levy and
14 collect property taxes, sales and use taxes, farm machinery gross receipts taxes,
15 alcoholic beverage gross receipts taxes, motor vehicle fuels and special fuels taxes,
16 motor vehicle registration fees, and special assessments for benefits conferred, for its
17 public and proprietary functions, activities, operations, undertakings, and
18 improvements; contract debts, borrow money, issue bonds, warrants, and other
19 evidences of indebtedness; establish charges for any county or other services to the
20 extent authorized by state law; and establish debt and mill levy limitations.
21 Notwithstanding any authority granted under this chapter, all property must be
22 assessed in a uniform manner as prescribed by the state board of equalization and the
23 state supervisor of assessments and all taxable property must be taxed by the county
24 at the same rate unless otherwise provided by law. A charter or ordinance or act of a

1 governing body of a home rule county may not supersede any state law that
2 determines what property or acts are subject to, or exempt from, ad valorem taxes. A
3 charter or ordinance or act of the governing body of a home rule county may not
4 supersede section 11-11-55.1 relating to the sixty percent petition requirement for
5 improvements and of section 40-22-18 relating to the barring proceeding for
6 improvement projects. After December 31, 2005, sales and use taxes, farm machinery
7 gross receipts taxes, and alcoholic beverage gross receipts taxes levied under this
8 chapter:

- 9 a. Must conform in all respects with regard to the taxable or exempt status of items
10 under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed
11 at multiple rates with the exception of sales of fuel used to power motor vehicles,
12 aircraft, locomotives, or watercraft, or to electricity, piped natural or artificial gas,
13 or other heating fuels delivered by the seller or the retail sale or transfer of motor
14 vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile
15 homes.
- 16 b. May not be newly imposed or changed except to be effective on the first day of a
17 calendar quarterly period after a minimum of ninety days' notice to the tax
18 commissioner or, for purchases from printed catalogs, on the first day of a
19 calendar quarter after a minimum of one hundred twenty days' notice to the
20 seller.
- 21 c. May not be limited to apply to less than the full value of the transaction or item as
22 determined for state sales and use tax, except for farm machinery gross receipts
23 tax purposes.
- 24 d. Must be subject to collection by the tax commissioner under an agreement under
25 section 57-01-02.1 and must be administered by the tax commissioner in
26 accordance with the relevant provisions of chapter 57-39.2, including reporting
27 and paying requirements, correction of errors, payment of refunds, and
28 application of penalty and interest.

29 After December 31, 2005, any portion of a charter or any portion of an ordinance or
30 act of a governing body of a home rule county passed pursuant to a charter which
31 does not conform to the requirements of this subsection is invalid to the extent that it

1 does not conform. The invalidity of a portion of a charter or ordinance or act of a
2 governing body of a home rule county because it does not conform to this subsection
3 does not affect the validity of any other portion of the charter or ordinance or act of a
4 governing body of a home rule county or the eligibility for a refund under section
5 57-01-02.1. Any taxes imposed under this chapter on farm machinery, farm irrigation
6 equipment, and farm machinery repair parts used exclusively for agricultural purposes,
7 or on alcoholic beverages, which were in effect on December 31, 2005, become gross
8 receipts taxes after December 31, 2005.

9 **SECTION 2. AMENDMENT.** Subsection 16 of section 40-05.1-06 of the North Dakota
10 Century Code is amended and reenacted as follows:

- 11 16. To impose registration fees on motor vehicles, farm machinery gross receipts taxes,
12 alcoholic beverage gross receipts taxes, or sales and use taxes in addition to any
13 other taxes imposed by law. After December 31, 2005, sales and use taxes and gross
14 receipts taxes levied under this chapter:
- 15 a. Must conform in all respects with regard to the taxable or exempt status of items
16 under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed
17 at multiple rates with the exception of sales of fuel used to power motor vehicles,
18 aircraft, locomotives, or watercraft, or to electricity, piped natural or artificial gas,
19 or other heating fuels delivered by the seller or the retail sale or transfer of motor
20 vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile
21 homes.
 - 22 b. May not be newly imposed or changed except to be effective on the first day of a
23 calendar quarterly period after a minimum of ninety days' notice to the tax
24 commissioner or, for purchases from printed catalogs, on the first day of a
25 calendar quarter after a minimum of one hundred twenty days' notice to the
26 seller.
 - 27 c. May not be limited to apply to less than the full value of the transaction or item as
28 determined for state sales and use tax purposes, except for farm machinery
29 gross receipts tax.
 - 30 d. Must be subject to collection by the tax commissioner under an agreement under
31 section 57-01-02.1 and must be administered by the tax commissioner in

1 accordance with the relevant provisions of chapter 57-39.2, including reporting
2 and paying requirements, correction of errors, payment of refunds, and
3 application of penalty and interest.

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

6 1. Except as otherwise expressly provided in subsection 2 for sales of mobile homes
7 used for residential or business purposes, and except as otherwise expressly provided
8 in this chapter, there is imposed a tax of five percent upon the gross receipts of
9 retailers from all sales at retail including the leasing or renting of tangible personal
10 property as provided in this section, within this state of the following to consumers or
11 users:

12 a. Tangible personal property, consisting of goods, wares, or merchandise, except
13 mobile homes used for residential or business purposes and including bundled
14 transactions consisting entirely of tangible personal property.

15 b. The furnishing or service of communication services including one-way and
16 two-way telecommunications services or steam other than steam used for
17 processing agricultural products.

18 c. Tickets or admissions to places of amusement or entertainment or athletic
19 events, including amounts charged for participation in an amusement,
20 entertainment, or athletic activity and the playing of any machine for amusement
21 or entertainment in response to the use of a coin. The tax imposed by this section
22 applies only to eighty percent of the gross receipts collected from coin-operated
23 amusement devices.

24 d. Magazines and other periodicals.

25 e. The leasing or renting of a hotel or motel room or tourist court accommodations.

26 f. The leasing or renting of tangible personal property the transfer of title to which
27 has not been subjected to a retail sales tax under this chapter or a use tax under
28 chapter 57-40.2.

29 g. Sale, lease, or rental of a computer and prewritten computer software, including
30 prewritten computer software delivered electronically or by load and leave. For
31 purposes of this subdivision:

- 1 (1) "Computer" means an electronic device that accepts information in digital or
2 similar form and manipulates it for a result based on a sequence of
3 instructions.
- 4 (2) "Computer software" means a set of coded instructions designed to cause a
5 computer or automatic data processing equipment to perform a task.
- 6 (3) "Delivered electronically" means delivered from the seller to the purchaser
7 by means other than tangible storage media.
- 8 (4) "Electronic" means relating to technology having electrical, digital, magnetic,
9 wireless, optical, electromagnetic, or similar capabilities.
- 10 (5) "Load and leave" means delivery to the purchaser by use of a tangible
11 storage media when the tangible storage media is not physically transferred
12 to the purchaser.
- 13 (6) "Prewritten computer software" means computer software, including
14 prewritten upgrades, which is not designed and developed by the author or
15 other creator to the specifications of a specific purchaser. The combining of
16 two or more "prewritten computer software" programs or prewritten portions
17 thereof does not cause the combination to be other than "prewritten
18 computer software". "Prewritten computer software" includes software
19 designed and developed by the author or other creator to the specifications
20 of a specific purchaser when it is sold to a person other than the purchaser.
21 If a person modifies or enhances "computer software" of which the person is
22 not the author or creator, the person is deemed to be the author or creator
23 only of such person's modifications or enhancements. "Prewritten computer
24 software" or a prewritten portion thereof that is modified or enhanced to any
25 degree, if such modification or enhancement is designed and developed to
26 the specifications of a specific purchaser, remains "prewritten computer
27 software". However, if there is a reasonable, separately stated charge or an
28 invoice or other statement of the price given to the purchaser for such
29 modification or enhancement, such modification or enhancement shall not
30 constitute "prewritten computer software".

- 1 h. A mandatory computer software maintenance contract for prewritten computer
2 software.
- 3 i. An optional computer software maintenance contract for prewritten computer software
4 that provides only software upgrades or updates or an optional computer software
5 maintenance contract for prewritten computer software that is a bundled transaction
6 and provides software upgrades or updates and support services.

7 **SECTION 4. AMENDMENT.** Section 57-39.4-01 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **57-39.4-01. Adoption of streamlined sales and use tax agreement.**

10 North Dakota adopts the streamlined sales and use tax agreement as adopted
11 November 12, 2002, and as may be amended by the member states of the streamlined sales
12 tax project. The entire agreement is adopted by reference with the exception of articles III and
13 V, which are adopted as set out in this chapter.

14 **SECTION 5. AMENDMENT.** Section 57-39.4-02 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **57-39.4-02. (301) State level administration.**

- 17 1. Each member state shall provide state level administration of sales and use taxes
18 subject to the agreement. The state level administration may be performed by a
19 member state's tax commission, department of revenue, or any other single entity
20 designated by state law. Sellers and purchasers are only required to register with, file
21 returns with, and remit funds to the state level authority. ~~Each~~The state level authority
22 of a member state shall provide for collection of any local taxes and distribution of
23 them to the appropriate taxing jurisdictions. Each memberThe state level authority
24 shall conduct, or authorize others may be authorized to conduct on its behalf, subject
25 to the provisions of subsection 2, all audits of the sellers registered under the
26 agreement and purchasers for that state's tax and the tax of its local jurisdictions, ~~and.~~
27 Except as provided in this chapter local jurisdictions shall not conduct independent
28 sales or use tax audits of sellers registered under the ~~agreement and purchasers.~~
29 2. If authorized by statute, nothing in this section prohibits the state level authority from
30 authorizing audits of taxpayers to be conducted or performed by others on behalf of
31 the state level authority provided:

- 1 a. The person is conducting the audit for all taxes due and not only for taxes due to
- 2 a specific local taxing jurisdiction;
- 3 b. The person is subject to the same confidentiality provisions and other protections
- 4 afforded to a taxpayer as a person working for the state level authority;
- 5 c. Absent fraud, a refund claim filed subsequent to the audit that covers part of the
- 6 audit period or mutual consent, the audit does not cover an audit period already
- 7 conducted by the state level authority or another person acting on its behalf; and
- 8 d. The audit is subject to the same administrative and appeal procedures granted to
- 9 audits conducted by the state level authority.

10 **SECTION 6. AMENDMENT.** Section 57-39.4-03 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **57-39.4-03. (302) State and local tax bases.**

13 ~~Through December 31, 2005, if a member state has local jurisdictions that levy a sales or~~
14 ~~use tax, all local jurisdictions in the state shall have a common tax base. After December 31,~~
15 ~~2005, the~~The tax base for local jurisdictions shall be identical to the state tax base unless
16 otherwise prohibited by federal law. This section does not apply to sales or use taxes levied on
17 fuel used to power motor vehicles, aircraft, locomotives, or watercraft, or to electricity, piped
18 natural or artificial gas, or other fuels delivered by the seller and the retail sale or transfer of
19 motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

20 **SECTION 7. AMENDMENT.** Section 57-39.4-04 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **57-39.4-04. (303) Seller registration.**

23 Each member state shall participate in an on-line sales and use tax registration system in
24 cooperation with the other member states. Under this system:

- 25 1. A seller registering under the agreement ~~is~~shall be registered in each of the member
26 states.
- 27 2. A model 2, model 3, or model 4 seller may elect to be registered in one or more states
28 as a seller which anticipates making no sales into the state or states if it has not had
29 sales into the state or states for the preceding twelve months. This election does not
30 relieve the seller of its agreement under section 401(B) to collect taxes on all sales
31 into the states or its liability for remitting to the proper states any taxes collected.

1 3. The member states agree not to require the payment of any registration fees or other
2 charges for a seller to register in a state in which the seller has no legal requirement to
3 register.

4 ~~3.4.~~ A written signature from the seller is not required.

5 4.5. An agent may register a seller under uniform procedures adopted by the member
6 states.

7 ~~5.6.~~ A seller may cancel its registration under the system at any time under uniform
8 procedures adopted by the governing board. Cancellation does not relieve the seller of
9 its liability for remitting to the proper states any taxes collected.

10 7. Nothing in this section shall be construed to relieve a seller of any legal obligation it
11 may have under a state's laws to register in that state or its obligation to collect and
12 remit taxes for at least thirty-six months in a state and meet all other requirements for
13 amnesty set out in section 402 of the agreement in order to be eligible for amnesty in
14 the state.

15 8. Whenever a state joins the agreement, sellers registered under the agreement shall
16 be registered in the new state as follows:

17 a. Model 1 sellers will be automatically registered in such state.

18 b. Model 2, model 3, and model 4 sellers will be automatically registered in the new
19 state but may elect to be registered as a seller which anticipates making no sales
20 into the new state.

21 9. Upon registration, the governing board shall provide to the seller information regarding
22 the requirements and options for filing a simplified electronic return and for filing
23 remittances in any member state. Member states may provide information to sellers
24 concerning other tax return filing options in that state.

25 10. The governing board shall cause the system for registering under the agreement to
26 include a feature that allows sellers registered under the agreement to update relevant
27 registration data in the system and have such updated data provided to all member
28 states. The governing board shall establish conditions and procedures to allow states
29 which are not members of the agreement to participate in the registration system.

30 **SECTION 8. AMENDMENT.** Subsections 1 and 3 of section 57-39.4-09 of the North Dakota
31 Century Code are amended and reenacted as follows:

- 1 1. No member state shall have multiple state sales and use tax rates on items of
2 personal property or services, except that a member state may impose a single
3 additional rate, which may be zero, on food and food ingredients and drugs as defined
4 by state law ~~pursuant to~~ under the agreement. In addition, if federal law prohibits the
5 imposition of local tax on a product that is subject to state tax, the state may impose
6 an additional rate on the product, provided the rate achieves tax parity for similar
7 products.
- 8 3. The provisions of this section do not apply to sales or use taxes levied on fuel used to
9 power motor vehicles, aircraft, locomotives, or watercraft, or to electricity, piped natural
10 or artificial gas or other heating fuels delivered by the seller, or the retail sale or
11 transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes,
12 or mobile homes.

13 **SECTION 9. AMENDMENT.** Section 57-39.4-10 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **57-39.4-10. (309) Application of general sourcing rules and exclusions from the rules.**

- 16 1. Each member state shall agree to require sellers to source the retail sale of a product
17 in accordance with section 57-39.4-11 ~~or 57-39.4-11.1.~~ The ~~Except as provided in~~
18 section 57-39.4-11.1, the provisions of section 57-39.4-11 apply to all sales regardless
19 of the characterization of a product as tangible personal property, a digital good, or a
20 service. ~~The~~ Except as otherwise provided in the agreement, the provisions of
21 ~~section~~ sections 57-39.4-11 and 57-39.4-11.1 only apply to determine a seller's
22 obligation to pay or collect and remit a sales or use tax with respect to the seller's
23 retail sale of a product. These provisions do not affect the obligation of a purchaser or
24 lessee to remit tax on the use of the product to the taxing jurisdictions of that use.
- 25 2. ~~Section~~ Sections 57-39.4-11 ~~does~~ and 57-39.4-11.1 do not apply to sales or use taxes
26 levied on the following:
- 27 a. The retail sale or transfer of watercraft, modular homes, manufactured homes, or
28 mobile homes. These items must be sourced according to the requirements of
29 each member state.
- 30 b. The retail sale, excluding lease or rental, of motor vehicles, trailers, semitrailers,
31 or aircraft that do not qualify as transportation equipment, as defined in

1 subsection 4 of section 57-39.4-11. The retail sale of these items shall be
2 sourced according to the requirements of each member state, and the lease or
3 rental of these items must be sourced according to subsection 3 of section
4 57-39.4-11.

5 c. Telecommunications services and ancillary services, as set out in
6 section 57-39.4-16, and internet access service shall be sourced in accordance
7 with section 57-39.4-15.

8 d. Florist sales as defined by each member state. These sales must be sourced
9 according to the requirements of each member state.

10 e. The retail sale of products and services qualifying as direct mail must be sourced
11 in accordance with section 57-39.4-14.

12 **SECTION 10. AMENDMENT.** Section 57-39.4-11.1 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **57-39.4-11.1. (310.1) Election for origin-based sourcing.**

15 1. A member state that has local jurisdictions that levy or receive sales or use taxes may
16 elect to source the retail sale of tangible personal property and digital goods under the
17 provisions of this section in lieu of the provisions of subdivisions b, c, and d of
18 subsection 1 of section 57-39.4-11 if the state complies with subsection 3 of this
19 section and the only exception to section 57-39.4-11 is in subsection 2 of this section.

20 2. A member state may source retail sales, excluding lease or rental, of tangible personal
21 property or digital goods to the location where the order is received by the seller if:

22 a. The order is received in the same state by the seller where receipt of the product
23 by the purchaser or the purchaser's designated donee occurs;

24 b. The location where receipt of the product by the purchaser occurs is determined
25 under subdivisions b, c, and d of subsection 1 of section 57-39.4-11; and

26 c. At the time the order is received, the recordkeeping system of the seller used to
27 calculate the proper amount of sales or use tax to be imposed captures the
28 location where the order is received.

29 3. A member state electing to source sales under this section shall comply with all of the
30 following:

- 1 a. When the location where the order is received by the seller and the location
2 where the receipt of the product by the purchaser or the purchaser's designated
3 donee occurs as determined under subdivisions b, c, and d of subsection 1 of
4 section 57-39.4-11 are in different states, the sale must be sourced under the
5 provisions of section 57-39.4-11.
- 6 b. When the ~~product~~sale is sourced under this section to the location where the
7 order is received by the seller, only the sales tax for the location where the order
8 is received by the seller may be levied. No additional sales or use tax based on
9 the location where the product is delivered to the purchaser may be levied on that
10 sale. The purchaser shall not be entitled to any refund if the combined state and
11 local rate at the location where the product is received by the purchaser is lower
12 than the rate where the order is received by the seller.
- 13 c. A member state may not require a seller to use a recordkeeping system that
14 captures the location where the order is received to calculate the proper amount
15 of sales or use tax to be imposed.
- 16 d. A purchaser shall not have an additional liability to the state for tax, penalty, or
17 interest on a sale for which the purchaser remits tax to the seller in the amount
18 invoiced by the seller if the invoice amount is calculated at either the rate
19 applicable to the location where receipt by the purchaser occurs or at the rate
20 applicable to the location where the order is received by the seller. A purchaser
21 may rely on a written representation by the seller as to the location where the
22 order for the sale was received by the seller. When the purchaser does not have
23 a written representation by the seller as to the location where the order for the
24 sale was received by the seller, the purchaser may use the seller's business
25 address that is available from the purchaser's business records maintained in the
26 ordinary course of the purchaser's business to determine the rate applicable to
27 the location where the order was received.
- 28 e. The location where the order is received by or on behalf of the seller means the
29 physical location of a seller or third party such as an established outlet, office
30 location, or automated order receipt system operated by or on behalf of the seller,
31 where an order is initially received by or on behalf of the seller and not where the

1 order may be subsequently accepted, completed, or fulfilled. An order is received
2 when all of the information from the purchaser necessary to determine whether
3 the order can be accepted has been received by or on behalf of the seller. The
4 location from which a product is shipped must not be used in determining the
5 location where the order is received by the seller.

6 f. A member state must provide for direct pay permits under section 57-39.4-27 and
7 the requirements of this subsection. Purchasers that remit sales and use tax
8 under a direct pay permit shall remit tax at the rate in effect for the location where
9 receipt of the product by the purchaser occurs or the product is first used as
10 determined by state law. A member state may establish reasonable thresholds at
11 which the member state will consider direct pay applications, provided the
12 threshold must be based upon purchases with no distinction between taxable and
13 nontaxable purchases. The member state shall establish a process for
14 application for a direct pay permit as provided in this chapter. The member state
15 may require the direct pay permit applicant to demonstrate:

16 (1) An ability to comply with the sales and use tax laws of the state;

17 (2) A business purpose for seeking a direct pay permit and how the permit will
18 benefit tax compliance; and

19 (3) Proof of good standing under the tax laws of the state. The member state
20 shall review all permit applications in a timely manner. Notification of
21 authorization or denial must be received by applicants within one hundred
22 twenty days of application. The member state may not limit direct pay permit
23 applicants to businesses engaged in manufacturing or businesses that do
24 not know the ultimate use of the product at the time of the purchase.

25 g. When taxable services are sold with tangible personal property or digital products
26 under a single contract or in the same transaction, are billed on the same billing
27 statement, and because of the application of this section, would be sourced to
28 different jurisdictions, a member state shall elect either origin sourcing or
29 destination sourcing to determine a single situs for that transaction. The member
30 state election is required until the governing board adopts a uniform methodology
31 to address these sales.

1 h. A member state that elects to source the sale of tangible personal property and
2 digital goods under the provisions of this section shall inform the governing board
3 of the election.

4 4. Compliance with the provisions of this section satisfies a state's eligibility for
5 membership in this agreement as follows:

6 a. If a state is in substantial compliance with the provisions of this agreement other
7 than sourcing of sales of tangible personal property and digital goods as provided
8 in section 57-39.4-11, and elects to source sales of tangible personal property
9 and digital goods under this section, the state may become an associate member
10 state in the same manner as provided for states to become full member states
11 under article VIII of the agreement.

12 b. ~~On or after January 1, 2010, a~~ A state that becomes an associate member state
13 under this subsection shall automatically become a full member state, provided
14 that at least five states which are not full member states on December 31, 2007,
15 are determined to be in substantial compliance with the provisions of the
16 agreement other than sourcing sales of tangible personal property and digital
17 goods under section 57-39.4-11, and the state has notified the governing board of
18 an election under subdivision h of subsection 3 ~~of this section~~ to source sales
19 under this section and has been found to be in substantial compliance with the
20 provisions of this section.

21 ~~e. This section shall be fully effective for all purposes on or after January 1, 2010,~~
22 ~~provided at least five states which are not full member states on December 31,~~
23 ~~2007, have been found to be in substantial compliance with the provisions of the~~
24 ~~agreement other than sourcing sales of tangible personal property and digital~~
25 ~~goods under section 57-39.4-11 and have notified the governing board of an~~
26 ~~election under subdivision h of subsection 3 of this section to source sales under~~
27 ~~this section and have been found to be in substantial compliance with the~~
28 ~~provisions of this section. States electing to source sales under this section after~~
29 ~~that time may become full member states if all other requirements for~~
30 ~~membership are satisfied.~~

1 **SECTION 11. AMENDMENT.** Section 57-39.4-14 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **57-39.4-14. (313) Direct mail sourcing.**

4 1. ~~Notwithstanding section 57-39.4-11, a purchaser of direct mail that is not a holder of a~~
5 ~~direct pay permit shall provide to the seller in conjunction with the purchase either a~~
6 ~~direct mail form or information to show the jurisdictions to which the direct mail is~~
7 ~~delivered to recipients.~~

8 a. ~~Upon receipt of the direct mail form, the seller is relieved of all obligations to~~
9 ~~collect, pay, or remit the applicable tax and the purchaser is obligated to pay or~~
10 ~~remit the applicable tax on a direct pay basis. A direct mail form shall remain in~~
11 ~~effect for all future sales of direct mail by the seller to the purchaser until it is~~
12 ~~revoked in writing.~~

13 b. ~~Upon receipt of information from the purchaser showing the jurisdictions to which~~
14 ~~the direct mail is delivered to recipients, the seller shall collect the tax according~~
15 ~~to the delivery information provided by the purchaser. In the absence of bad faith,~~
16 ~~the seller is relieved of any further obligation to collect tax on any transaction in~~
17 ~~which the seller has collected tax pursuant to the delivery information provided by~~
18 ~~the purchaser.~~

19 2. ~~If the purchaser of direct mail does not have a direct pay permit and does not provide~~
20 ~~the seller with either a direct mail form or delivery information, as required by~~
21 ~~subsection 1, the seller shall collect the tax according to subdivision e of subsection 1~~
22 ~~of section 57-39.4-11. Nothing in this subsection shall limit a purchaser's obligation for~~
23 ~~sales or use tax to any state to which the direct mail is delivered.~~

24 3. ~~If a purchaser of direct mail provides the seller with documentation of direct pay~~
25 ~~authority, the purchaser shall not be required to provide a direct mail form or delivery~~
26 ~~information to the seller.~~For purposes of this section:

27 a. "Advertising and promotional direct mail" means:

28 (1) Printed material that meets the definition of direct mail, in appendix C, part I
29 of the agreement; and

30 (2) The primary purpose of which is to attract public attention to a product,
31 person, business, or organization, or to attempt to sell, popularize, or secure

1 financial support for a product, person, business, or organization. As used in
2 this subsection, the word "product" means tangible personal property, a
3 product transferred electronically, or a service.

4 b. "Other direct mail" means any direct mail that is not advertising and promotional
5 direct mail regardless of whether advertising and promotional direct mail is
6 included in the same mailing. The term includes:

7 (1) Transactional direct mail that contains personal information specific to the
8 addressee, including invoices, bills, statements of account, and payroll
9 advices;

10 (2) Any legally required mailings, including privacy notices, tax reports, and
11 stockholder reports; and

12 (3) Other nonpromotional direct mail delivered to existing or former
13 shareholders, customers, employees, or agents, including newsletters and
14 informational pieces.

15 Other direct mail does not include the development of billing information or
16 the provision of any data processing service that is more than incidental.

17 2. Notwithstanding sections 57-39.4-11 and 57-39.4-11.1, the following provisions apply
18 to sales of advertising and promotional direct mail:

19 a. A purchaser of advertising and promotional direct mail may provide the seller with
20 either:

21 (1) A direct pay permit;

22 (2) A streamlined sales and use tax agreement certificate of exemption claiming
23 direct mail or other written statement approved, authorized, or accepted by
24 the state; or

25 (3) Information showing the jurisdictions to which the advertising and
26 promotional direct mail is to be delivered to recipients.

27 b. If the purchaser provides the permit, certificate, or statement referred to in this
28 subsection, the seller, in the absence of bad faith, is relieved of all obligations to
29 collect, pay, or remit any tax on any transaction involving advertising and
30 promotional direct mail to which the permit, certificate, or statement applies. The
31 purchaser shall source the sale to the jurisdictions to which the advertising and

- 1 promotional direct mail is to be delivered to the recipients and shall report and
2 pay any applicable tax due.
- 3 c. If the purchaser provides the seller information showing the jurisdictions to which
4 the advertising and promotional direct mail is to be delivered to recipients, the
5 seller shall source the sale to the jurisdictions to which the advertising and
6 promotional direct mail is to be delivered and shall collect and remit the
7 applicable tax. In the absence of bad faith, the seller is relieved of any further
8 obligation to collect any additional tax on the sale of advertising and promotional
9 direct mail where the seller has sourced the sale according to the delivery
10 information provided by the purchaser.
- 11 d. If the purchaser does not provide the seller with any of the items listed in this
12 subsection, the sale shall be sourced according to subdivision e of subsection 1
13 of section 57-39.4-11. The state to which the advertising and promotional direct
14 mail is delivered may disallow credit for tax paid on sales sourced under this
15 paragraph.
- 16 3. Notwithstanding sections 57-39.4-11 and 57-39.4-11.1, the following provisions apply
17 to sales of other direct mail:
- 18 a. Except as otherwise provided in this paragraph, sales of other direct mail are
19 sourced in accordance with subdivision c of subsection 1 of section 57-39.4-11.
- 20 b. A purchaser of other direct mail may provide the seller with either:
- 21 (1) A direct pay permit; or
22 (2) A streamlined sales and use tax agreement certificate of exemption claiming
23 direct mail or other written statement approved, authorized, or accepted by
24 the state.
- 25 c. If the purchaser provides the permit, certificate, or statement referred to in this
26 subsection, the seller, in the absence of bad faith, is relieved of all obligations to
27 collect, pay, or remit any tax on any transaction involving other direct mail to
28 which the permit, certificate, or statement applies. Notwithstanding subdivision a,
29 the sale shall be sourced to the jurisdictions to which the other direct mail is to be
30 delivered to the recipients and the purchaser shall report and pay any applicable
31 tax due.

- 1 4. a. This section applies to a transaction characterized under state law as the sale of
2 services only if the service is an integral part of the production and distribution of
3 printed material that meets the definition of direct mail.
- 4 b. This section does not apply to any transaction that includes the development of
5 billing information or the provision of any data processing service that is more
6 than incidental regardless of whether advertising and promotional direct mail is
7 included in the same mailing.
- 8 c. If a transaction is a "bundled transaction" that includes advertising and
9 promotional direct mail, this section shall apply only if the primary purpose of the
10 transaction is the sale of products or services that meet the definition of
11 advertising and promotional direct mail.
- 12 d. Nothing in this section shall limit any purchaser's:
- 13 (1) Obligation for sales or use tax to any state to which the direct mail is
14 delivered;
- 15 (2) Right under local, state, federal, or constitutional law, to a credit for sales or
16 use taxes legally due and paid to other jurisdictions; or
- 17 (3) Right to a refund of sales or use taxes overpaid to any jurisdiction.
- 18 e. This section applies for purposes of uniformly sourcing direct mail transactions
19 and does not impose requirements on states regarding the taxation of products
20 that meet the definition of direct mail or to the application of sales for resale or
21 other exemptions.

22 **SECTION 12. AMENDMENT.** Section 57-39.4-14.1 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **57-39.4-14.1. (313.1) Election for origin-based direct mail sourcing.**

- 25 1. Notwithstanding sections 57-39.4-11, 57-39.4-11.1, and 57-39.4-14, a member state
26 may elect to source the sale of all direct mail delivered or distributed from a location
27 within the state and delivered or distributed to a location within the state under this
28 section.
- 29 2. If the purchaser provides the seller with a direct pay permit or ~~an exemption certificate~~
30 ~~claiming direct mail~~ a streamlined sales and use tax agreement certificate of exemption
31 claiming direct mail or other written statement approved, authorized, or accepted by

1 ~~the state, the seller, in the absence of bad faith,~~ is relieved of all obligations to collect,
2 pay, or remit the applicable tax ~~and the~~on any transaction involving direct mail. The
3 purchaser ~~is obligated to pay or remit the~~must report and pay any applicable tax ~~on a~~
4 ~~direct pay basis. An exemption certificate claiming direct mail~~due. A streamlined sales
5 and use tax agreement certificate of exemption claiming direct mail shall remain in
6 effect for all future sales of direct mail by the seller to the purchaser until it is revoked
7 in writing.

8 3. Except as provided in ~~subsections~~subsections 2 and this subsection, 3, and 4, the
9 seller shall collect the tax according to subdivision e of subsection 1 of section
10 57-39.4-11. To the extent the seller knows that a portion of the sale of direct mail will
11 be delivered or distributed to a location in another state, the seller shall collect the tax
12 on that portion according to section 57-39.4-14.

13 4. Notwithstanding subsection 3, a seller may elect to use the provisions of section
14 57-39.4-14 to source all sales of advertising and promotional direct mail.

15 5. Nothing in this section limits a purchaser's obligation for sales or use tax to any state
16 to which the direct mail is delivered, except that a purchaser whose direct mail is
17 sourced under subsection 3 shall owe no additional sales or use tax to that state
18 based on where the purchaser uses or delivers the direct mail in the state.

19 ~~5.6.~~ A member state that elects to source the sale of direct mail under the provisions of this
20 section shall inform the governing board in writing at least sixty days prior to the
21 beginning of the calendar quarter ~~such~~this election begins.

22 **SECTION 13. AMENDMENT.** Section 57-39.4-18 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **57-39.4-18. (317) Administration of exemptions.**

25 1. Each member state shall observe the following provisions when a purchaser claims an
26 exemption:

27 a. The seller shall obtain identifying information of the purchaser and the reason for
28 claiming a tax exemption at the time of the purchase as determined by the
29 governing board.

30 b. A purchaser is not required to provide a signature to claim an exemption from tax
31 unless a paper exemption certificate is used.

- 1 c. The seller shall use the standard form for claiming an exemption electronically as
2 adopted by the governing board.
- 3 d. The seller shall obtain the same information for proof of a claimed exemption
4 regardless of the medium in which the transaction occurred.
- 5 e. A member state may utilize a system in which the purchaser exempt from the
6 payment of the tax is issued an identification number that shall be presented to
7 the seller at the time of the sale.
- 8 f. The seller shall maintain proper records of exempt transactions and provide them
9 to a member state when requested.
- 10 g. A member state shall administer use-based and entity-based exemptions when
11 practicable through a direct pay permit, an exemption certificate, or another
12 means that does not burden sellers.
- 13 h. In the case of drop shipment sales, member states must allow a third-party
14 vendor, drop shipper, to claim a resale exemption based on an exemption
15 certificate by its customer or reseller or any other acceptable information
16 available to the third-party vendor evidencing qualification for a resale exemption,
17 regardless of whether the customer or reseller is registered to collect and remit
18 sales and use tax in the state where the sale is sourced.
- 19 2. Each member state shall relieve sellers that follow the requirements of this section
20 from the tax otherwise applicable if it is determined that the purchaser improperly
21 claimed an exemption and to hold the purchaser liable for the nonpayment of tax. This
22 relief from liability does not apply to a seller who fraudulently fails to collect the tax; to
23 a seller who solicits purchasers to participate in the unlawful claim of an exemption; to
24 a seller who accepts an exemption certificate when the purchaser claims an
25 entity-based exemption when the subject of the transaction sought to be covered by
26 the exemption certificate is actually received by the purchaser at a location operated
27 by the seller and the state in which that location resides provides an exemption
28 certificate that clearly and affirmatively indicates ~~graying out exemption reason types~~
29 ~~on the uniform form and posting it on a state's web site is an indicator~~ that the claimed
30 exemption is not available in that state. Graying out exemption reason types on the
31 uniform form and posting it on a state's website is an indicator.

- 1 3. Each state shall relieve a seller of the tax otherwise applicable if the seller obtains a
2 fully completed exemption certificate or captures the relevant data elements required
3 under the agreement within ninety days subsequent to the date of sale. A member
4 state may provide for a period longer than ninety days for the seller to obtain the
5 necessary information.
- 6 a. 4. If the seller has not obtained an exemption certificate or all relevant data
7 elements as provided by this section, a member state shall provide the seller
8 ~~may, within~~with one hundred twenty days subsequent to a request for
9 substantiation by a member state, to either prove that the transaction was not
10 ~~subject to tax by other means or obtain a:~~
- 11 a. A fully completed exemption certificate from the purchaser, taken in good faith-
12 ~~For purposes of this section, member states may continue to apply their own-~~
13 ~~standards of good faith until such time as a uniform standard for good faith is-~~
14 ~~defined in the agreement which means that the seller obtain a certificate that~~
15 claims an exemption that was statutorily available on the date of the transaction
16 in the jurisdiction where the transaction is sourced, could be applicable to the
17 item being purchased, and is reasonable for the purchaser's type of business; or
- 18 b. Other information establishing that the transaction was not subject to the tax. A
19 member state may provide for a period longer than one hundred twenty days for
20 sellers to obtain the necessary information.
- 21 c. If the seller obtains the information described in this subsection, the member
22 state shall relieve the seller of any liability for the tax on the transaction unless it
23 is discovered through the audit process that the seller had knowledge or had
24 reason to know at the time such information was provided that the information
25 relating to the exemption claimed was materially false or the seller otherwise
26 knowingly participated in activity intended to purposefully evade the tax that is
27 properly due on the transaction. The state must establish that the seller had
28 knowledge or had reason to know at the time the information was provided that
29 the information was materially false.

1 3. ~~Allow any model 1, model 2, or model 3 seller to submit its sales and use tax returns in-~~
2 ~~a simplified format that does not include more data fields than permitted by the~~
3 ~~governing board. A member state may require additional informational returns to be~~
4 ~~submitted not more frequently than every six months under a staggered system~~
5 ~~developed by the governing board.~~Make available to all sellers, whether or not
6 registered under the agreement, except sellers of products qualifying for exclusion
7 from the provisions of section 57-39.4-09 of this agreement, a simplified return that is
8 filed electronically as follows:

9 a. The simplified electronic return hereinafter SER shall be in a form approved by
10 the governing board and shall contain only those fields approved by the
11 governing board. The SER shall contain two parts. Part 1 shall contain
12 information relating to remittances and allocations and part 2 shall contain
13 information relating to exempt sales.

14 b. Each member state must notify the governing board if it requires the submission
15 of the part 2 information provided no state may require the submission of part 2
16 information from a model 4 seller which has no legal requirement to register in
17 the state.

18 c. Returns shall be required as follows:

19 (1) Certified service providers must file a SER in all member states on behalf of
20 model 1 sellers. Certified service providers, on behalf of these sellers, shall
21 file the audit reports provided for in article V of the rules and procedures of
22 the agreement for the states, and in addition, shall be required to file part 1
23 of the SER each month for each member state. A state shall allow a model 1
24 seller to file both part 1 and part 2 of the SER. A model 1 seller which
25 chooses to file both part 1 and the part 2 of SER shall still be required to file
26 the audit reports provided for in article V of the rules and procedures of the
27 agreement.

28 (2) Model 2 and model 3 sellers must file a SER in all member states other than
29 states for which they have indicated that they anticipate making no sales.
30 These sellers shall file part 1 of the SER every month for all states in which
31 they anticipate making sales. These sellers need not file part 2 information

1 until January 1, 2012. After this date, they shall have the following options
2 for meeting their obligation to furnish part 2 information:

- 3 (a) File part 2 of the SER together with part 1 of the SER every month; or
4 (b) File part 2 of the SER at the same time part 1 of the SER for the
5 month of December is due. Part 2 information filed under this option
6 shall cover the month of December and all previous months of the
7 same calendar year and shall only require annual and not monthly
8 totals. The sellers shall only be required to file part 2 of the SER for
9 any state which has notified the governing board that it will require the
10 submission of the part 2 information under subdivision b.

- 11 (3) Every member state shall allow model 4 sellers to file a SER. The sellers
12 shall file part 1 of the SER every month unless a state allows less frequent
13 filing. Model 4 sellers which have a legal requirement to register in the state
14 shall have the following options for meeting their obligation to furnish part 2
15 information:

- 16 (a) File part 2 of the SER together with part 1 of the SER; or
17 (b) File part 2 of the SER at the same time part 1 of the SER for the
18 month of December is due. Part 2 information filed under this option
19 shall cover the month of December and all previous months of the
20 same calendar year and shall only require annual and not monthly
21 totals.

22 These sellers shall only be required to file part 2 of the SER for any
23 state which has notified the governing board that it will require the
24 submission of the part 2 information under subdivision b.

25 Model 4 sellers which elect not to file a SER shall file returns in the
26 form under schedules afforded to sellers not registered under the
27 agreement according to the requirements of each member state.

- 28 (4) No later than January 1, 2013, every member state shall allow sellers not
29 registered under the agreement that are registered in the state to file a SER.
30 These sellers shall file part 1 of the SER every month unless a state allows

1 less frequent filing and shall have the following options for meeting their
2 obligation to furnish part 2 information:

- 3 (a) File part 2 of the SER together with part 1 of the SER; or
4 (b) File part 2 of the SER at the same time part 1 of the SER for the
5 month of December is due. Part 2 information filed under this option
6 shall cover the month of December and all previous months of the
7 same calendar year and shall only require annual and not monthly
8 totals.

9 These sellers shall only be required to file part 2 of the SER for any state
10 which has notified the governing board that it will require the submission of
11 the part 2 information under subdivision b.

12 d. A state which requires the submission of part 2 information under paragraph 2
13 may provide an exemption from this requirement to a seller under terms and
14 conditions set out by the state.

15 e. A state may require a seller which elects to file a SER to give at least three
16 months' notice of the seller's intent to discontinue filing a SER.

17 4. ~~Allow any seller that is registered under the agreement, which does not have a legal~~
18 ~~requirement to register in the member state, and is not a model 1, model 2, or model 3~~
19 ~~seller, to submit its sales and use tax returns as follows:~~

20 a. ~~Upon registration, a member state shall provide to the seller the returns required~~
21 ~~by that state.~~

22 b. ~~A member state may require a seller to file a return any time within one year of~~
23 ~~the month of initial registration and future returns may be required on an annual~~
24 ~~basis in succeeding years.~~

25 c. ~~In addition to the returns required in subdivision b, a member state may require~~
26 ~~sellers to submit returns in the month following any month in which they have~~
27 ~~accumulated state and local tax funds for the state in the amount of one-~~
28 ~~thousand dollars or more.~~

29 d. ~~Participate with other member states in developing a more uniform sales and use~~
30 ~~tax return that, when completed, would be available to all sellers.~~

1 e. ~~Require, at each member state's discretion, all model 1, model 2, and model 3~~
2 ~~sellers to file returns electronically. It is the intent of the member states that all~~
3 ~~member states have the capability of receiving electronically filed returns by~~
4 ~~January 1, 2004. Not require the filing of a return from a seller registered under~~
5 ~~the agreement which has indicated at the time of registration that it anticipates~~
6 ~~making no sales which would be sourced to the state under the agreement. A~~
7 ~~seller shall lose this exemption upon making any taxable sales into the state and~~
8 ~~shall file a return in the month following the sale. A state may, but is not required~~
9 ~~to, allow a seller to regain such filing exemption upon such terms and conditions~~
10 ~~as the state may impose.~~

11 5. Adopt a standardized transmission process to allow for receipt of uniform tax returns
12 and other formatted information as approved by the governing board. The process
13 must provide for the filing of separate returns for multiple legal entities in a single
14 transmission for each state and will not include any requirement for manual entry or
15 input by the seller of any of the aforementioned information. This process will allow a
16 certified service provider, tax preparer, or any other authorized person to file returns
17 for more than one seller in a single electronic transmission. However, sellers filing
18 returns for multiple legal entities may only do so for affiliated legal entities.

19 6. Give notice to a seller registered under this agreement which has no legal requirement
20 to register in the state, of a failure to file a required return and a minimum of thirty days
21 to file thereafter prior to establishing a liability amount for taxes based solely on the
22 seller's failure to timely file a return provided a member state may establish a liability
23 amount for taxes based solely on the seller's failure to timely file a return if such seller
24 has a history of nonfiling or late filing.

25 7. Nothing in this section shall prohibit a state from allowing additional return options or
26 the filing of returns less frequently.

27 **SECTION 15. AMENDMENT.** Section 57-39.4-20 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **57-39.4-20. (319) Uniform rules for remittance of funds.**

30 Each member state shall:

- 1 1. Require only one remittance for each return except as provided in this subsection. If
2 any additional remittance is required, it may only be required from sellers that collect
3 more than thirty thousand dollars in sales and use taxes in the member state during
4 the preceding calendar year as provided ~~herein~~in the agreement. The state shall allow
5 the amount of any additional remittance to be determined through a calculation
6 method rather than actual collections. Any additional remittances shall not require the
7 filing of an additional return.
- 8 2. Require, at each member state's discretion, all remittances ~~from sellers under~~
9 ~~model 1, model 2, and model 3~~in payment of taxes reported on the approved
10 simplified return format to be remitted electronically.
- 11 3. Allow for electronic payments by all remitters by both automated clearinghouse credit
12 and automated clearinghouse debit.
- 13 4. Provide an alternative method for making same day payments if an electronic funds
14 transfer fails.
- 15 5.
 - 16 a. Provide that if a due date for a payment falls on a Saturday, Sunday, or legal
17 banking holiday in a member state, the ~~taxes are~~payment, including any related
18 payment voucher information, is due to that state on the next succeeding
19 business day.
 - 20 b. Additionally, if the federal reserve bank is closed on a due date that prohibits a
21 person from being able to make a payment by automated clearinghouse debit or
22 credit, that payment shall be accepted as timely if made on the next day the
23 federal reserve bank is open.
- 24 6. Require that any data that accompanies a remittance be formatted using uniform tax
25 type and payment type codes approved by the governing board.
- 26 7. Adopt a standardized transmission process approved by the governing board that
27 allows for the remittance in a SER of a single bulk payment for taxes reported on
28 multiple SERs by affiliated entities, certified service providers, or preparers. Each state
29 shall comply with this provision no later than two years after the governing board
30 approves such a standardized transmission process.

31 **SECTION 16. AMENDMENT.** Section 57-39.4-24 of the North Dakota Century Code is
amended and reenacted as follows:

1 **57-39.4-24. (323) Caps and thresholds.**

2 1. ~~Each~~No member state shall:may

1 a. ~~Not~~ have caps or thresholds on the application of state sales or use tax rates or
2 exemptions that are based on the value of the transaction or item ~~after~~
3 December 31, 2005. ~~A member state may continue to have caps and thresholds~~
4 until that date.

5 b. ~~Not~~or have caps that are based on the application of the rates unless the
6 member state assumes the administrative responsibility in a manner that places
7 no additional burden on the retailer.

8 2. ~~Each~~No member state that has local jurisdictions that levy a sales or use tax shall
9 ~~not~~may place caps or thresholds on the application of local rates or use tax rates or
10 exemptions that are based on the value of the transaction or item ~~after December 31,~~
11 2005. ~~A member state may continue to have caps and thresholds until that date.~~

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

16 4. For states that have a cap or threshold on clothing before January 1, 2006, the
17 provisions of this section do not apply to sales or use tax thresholds for exemptions
18 that are based on the value of "essential clothing" except as provided in the library of
19 definitions.

20 **SECTION 17.** Section 57-39.4-33.3 of the North Dakota Century Code is created and
21 enacted as follows:

22 **57-39.4-33.3. (334) Replacement tax prohibited.**

23 No state may have a prohibited replacement tax on any product defined in part II or
24 part III(B) of the library of definitions which has the effect of avoiding the intent of this
25 agreement.

26 **SECTION 18. EFFECTIVE DATE.** This Act is effective for taxable events occurring after
27 June 30, 2011.

28 **SECTION 19. REPEAL.** Chapter 57-39.3 of the North Dakota Century Code is repealed.