

HOUSE BILL NO. 1236

Introduced by

Representatives Headland, Belter, Brandenburg, Silbernagel, Trottier

Senators Campbell, Cook, Klein, Miller, Wanzek

1 A BILL for an Act to create and enact section 57-39.5-06 of the North Dakota Century Code,
2 relating to payment of farm machinery gross receipts taxes under a lease agreement; to amend
3 and reenact sections 57-39.5-01, 57-39.5-01.1, and 57-39.5-02 of the North Dakota Century
4 Code, relating to farm machinery gross receipts tax application in lease or rental agreements
5 and what qualifies as used farm machinery for farm machinery gross receipts tax purposes; and
6 to provide an effective date.

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

8 **SECTION 1. AMENDMENT.** Section 57-39.5-01 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **57-39.5-01. Definitions.**

11 Words used in this chapter have the same meaning as provided in chapter 57-39.2. As
12 used in this chapter:

- 13 1. "Attachment unit" means any part or combination of parts having an independent
14 function, other than farm machinery repair parts, which when attached or affixed to
15 farm machinery is used exclusively for agricultural purposes.
- 16 2. "Farm machinery" means all vehicular implements and attachment units, designed and
17 sold for direct use in planting, cultivating, or harvesting farm products or used in
18 connection with the production of agricultural produce or products, livestock, or poultry
19 on farms, which are operated, drawn, or propelled by motor or animal power. "Farm
20 machinery" does not include vehicular implements operated wholly by hand or a motor
21 vehicle required to be registered under chapter 57-40.3. "Farm machinery" does not
22 include machinery that may be used for other than agricultural purposes, including
23 tires, farm machinery repair parts, tools, shop equipment, grain bins, feed bunks,
24 fencing materials, and other farm supplies and equipment.

1 3. "Lease" or "leasing" means an agreement with a term of more than eleven months,
2 between two persons for the possession and use of property and which may or may
3 not include provision for a transfer of ownership of the property.

4 4. "Rent" or "renting" means an agreement with a term of not more than eleven months,
5 between two persons for the possession and use of property and which does not
6 include provision for a transfer of ownership of the property.

7 **SECTION 2. AMENDMENT.** Section 57-39.5-01.1 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **57-39.5-01.1. Trade-in deduction.**

10 1. When tangible personal property is taken in trade or in a series of trades as a credit or
11 partial payment of a retail sale or lease agreement with the same lessor which is
12 taxable under this chapter, if the tangible personal property traded in will be subject to
13 gross receipts taxes imposed by this chapter, sales taxes imposed by chapter 57-39.2,
14 or motor vehicle excise taxes imposed by chapter 57-40.3, or if the tangible personal
15 property traded in is used farm machinery or used irrigation equipment, the credit or
16 trade-in value allowed by the retailer is not gross receipts.

17 2. Tangible personal property owned or leased and in possession of a farmer may be
18 used as a trade-in to reduce the taxable purchase price of farm machinery or irrigation
19 equipment used exclusively for agricultural purposes if:

20 a. The retailer selling farm machinery or irrigation equipment to a lessor, for the
21 purpose of leasing to a farmer, also purchases the machinery or equipment
22 owned or leased and in possession of the farmer. The purchase price paid by the
23 retailer for the equipment owned or leased and in the possession of a farmer is
24 the trade-in value for purposes of this section;

25 b. The retailer's sale of farm machinery or irrigation equipment to a lessor for the
26 purpose of leasing to a farmer and the retailer's purchase of equipment owned or
27 leased and in the possession of a farmer are documented by an invoice or other
28 documents prepared by the retailer to substantiate the trade-in relationship;

29 c. The lessor purchasing the farm machinery or irrigation equipment for the purpose
30 of leasing to a farmer pays the taxes imposed under this chapter on the purchase
31 price of the equipment less the trade-in value in subdivision a; and

1 d. The retailer and the lessor maintain records documenting compliance with the
2 requirements in subdivisions a, b, and c.

3 3. For purposes of this section, "farmer" means any person that leases farm machinery
4 as defined in this chapter or irrigation equipment to be used exclusively for agricultural
5 purposes.

6 **SECTION 3. AMENDMENT.** Section 57-39.5-02 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **57-39.5-02. Imposition - Exemptions.**

9 There is imposed a tax of three percent upon the gross receipts of retailers from all sales at
10 retail, including the leasing or renting, of farm machinery or irrigation equipment used
11 exclusively for agricultural purposes. Gross receipts from sales at retail of farm machinery or
12 irrigation equipment are exempted from the tax imposed by this chapter when the sale, lease, or
13 rental is made to a purchaser or lessor who is entitled to a sales and use tax exemption under
14 subsection 6 or 12 of section 57-39.2-04 on otherwise taxable sales at retail. There are
15 specifically exempted from the tax imposed by this chapter the gross receipts from the sale ~~of,~~
16 lease, or rental of used farm machinery, farm machinery repair parts, used irrigation equipment,
17 or irrigation equipment repair parts used exclusively for agricultural purposes. For purposes of
18 this section, "used" means:

- 19 1. Tax under this chapter or chapter 57-39.2 or 57-40.2 has been paid on a previous
20 sale;
- 21 2. Tax under section 57-39.5-06 has been paid under a previous lease;
- 22 3. Originally purchased outside this state and previously owned by a farmer; or
- 23 ~~3.4.~~ Has been under lease ~~or~~ rental for three years or more.

24 **SECTION 4.** Section 57-39.5-06 of the North Dakota Century Code is created and enacted
25 as follows:

26 **57-39.5-06. Payment of tax under lease agreement.**

27 At the time of entering a lease agreement for new farm machinery or irrigation equipment
28 subject to taxes under this chapter, the lessor ~~either shall collect and remit to the tax~~
29 ~~commissioner the full amount of tax due under this chapter based on the cumulative value of~~
30 ~~not less than three years of lease payments or include that amount in the payments due under~~
31 ~~the agreement and remit those amounts to the tax commissioner as they are collected. If a~~

1 ~~lease agreement is terminated before its scheduled termination under the agreement, the lessor~~
2 ~~shall collect and remit to the tax commissioner any remaining uncollected taxes due under the~~
3 ~~agreement.:~~

4 1. Pay the taxes imposed under this chapter on the purchase price of the equipment that
5 was purchased for the purpose of leasing;

6 2. On a lease with a term of three or more years, collect and remit to the commissioner
7 the full amount of tax due under this chapter based on the cumulative value of three
8 years of lease payments or collect the tax due on each lease payment under the
9 agreement for three years and remit those amounts to the tax commissioner as those
10 amounts are collected. If a lease agreement with a term of three years or more is
11 terminated before tax on three years of lease payments has been remitted, the lessor
12 shall collect and remit to the tax commissioner any remaining uncollected taxes on the
13 three-year period; or

14 3. On a lease with a term of less than three years, collect and remit to the commissioner
15 the full amount of tax due under this chapter on the cumulative value of the lease
16 payments or collect the tax due on each lease payment under the agreement for the
17 term of the lease and remit those amounts to the tax commissioner as those amounts
18 are collected. If a lease agreement with a term of less than three years is terminated
19 before the end of the lease, the lessor shall collect and remit to the tax commissioner
20 any remaining uncollected taxes on the full term of the lease.

21 **SECTION 5. EFFECTIVE DATE.** Sections 1 and 2 of this Act are effective for taxable
22 events occurring after June 30, 2013. Section 3 of this Act is effective for lease agreements
23 entered after June 30, 2013.