

Sixty-third
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2358

Introduced by

Senators Sinner, Grabinger, Triplett, Warner

Representatives Becker, Delmore

1 A BILL for an Act to amend and reenact subsection 2 of section 11-09.1-05, subsection 16 of
2 section 40-05.1-06, subsection 1 of section 57-39.2-02.1, subsection 1 of section 57-40.2-02.1,
3 and section 57-40.3-02 of the North Dakota Century Code, relating to a limitation on the rate of
4 sales, use, and gross receipts taxes imposed by a city or county under home rule authority and
5 a reduction in the rate of state sales, use, and motor vehicle excise taxes; and to provide an
6 effective date.

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

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

10 2. Control its finances and fiscal affairs; appropriate money for its purposes, and make
11 payments of its debts and expenses; subject to the limitations of this section levy and
12 collect property taxes, sales and use taxes, farm machinery gross receipts taxes,
13 alcoholic beverage gross receipts taxes, motor vehicle fuels and special fuels taxes,
14 motor vehicle registration fees, and special assessments for benefits conferred, for its
15 public and proprietary functions, activities, operations, undertakings, and
16 improvements; contract debts, borrow money, issue bonds, warrants, and other
17 evidences of indebtedness; establish charges for any county or other services to the
18 extent authorized by state law; and establish debt and mill levy limitations.
19 Notwithstanding any authority granted under this chapter, all property must be
20 assessed in a uniform manner as prescribed by the state board of equalization and the
21 state supervisor of assessments and all taxable property must be taxed by the county
22 at the same rate unless otherwise provided by law. A charter or ordinance or act of a
23 governing body of a home rule county may not supersede any state law that
24 determines what property or acts are subject to, or exempt from, ad valorem taxes. A

1 charter or ordinance or act of the governing body of a home rule county may not
2 supersede section 11-11-55.1 relating to the sixty percent petition requirement for
3 improvements and of section 40-22-18 relating to the barring proceeding for
4 improvement projects. After ~~December 31, 2005~~June 30, 2013, sales and use taxes,
5 farm machinery gross receipts taxes, and alcoholic beverage gross receipts taxes
6 levied under this chapter:

- 7 a. Must conform in all respects with regard to the taxable or exempt status of items
8 under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed
9 at multiple rates with the exception of sales of fuel used to power motor vehicles,
10 aircraft, locomotives, or watercraft, or to electricity, piped natural or artificial gas,
11 or other fuels delivered by the seller or the retail sale or transfer of motor
12 vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile
13 homes.
- 14 b. May not be newly imposed or changed except to be effective on the first day of a
15 calendar quarterly period after a minimum of ninety days' notice to the tax
16 commissioner or, for purchases from printed catalogs, on the first day of a
17 calendar quarter after a minimum of one hundred twenty days' notice to the
18 seller.
- 19 c. May not be limited to apply to less than the full value of the transaction or item as
20 determined for state sales and use tax, except for farm machinery gross receipts
21 tax purposes.
- 22 d. Must be subject to collection by the tax commissioner under an agreement under
23 section 57-01-02.1 and must be administered by the tax commissioner in
24 accordance with the relevant provisions of chapter 57-39.2, including reporting
25 and paying requirements, correction of errors, payment of refunds, and
26 application of penalty and interest.
- 27 e. May not be placed on the ballot for approval of a tax to be imposed after June 30,
28 2013, at a rate that, in combination with the rate of tax to be imposed by a city,
29 would make the consolidated rate of county and city taxes more than two percent
30 in any part of the county.

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

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

- 14 16. To impose registration fees on motor vehicles, farm machinery gross receipts taxes,
15 alcoholic beverage gross receipts taxes, or sales and use taxes in addition to any
16 other taxes imposed by law. After ~~December 31, 2005~~ June 30, 2013, sales and use
17 taxes and gross receipts taxes levied under this chapter:
- 18 a. Must conform in all respects with regard to the taxable or exempt status of items
19 under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed
20 at multiple rates with the exception of sales of fuel used to power motor vehicles,
21 aircraft, locomotives, or watercraft, or to electricity, piped natural or artificial gas,
22 or other fuels delivered by the seller or the retail sale or transfer of motor
23 vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile
24 homes.
 - 25 b. May not be newly imposed or changed except to be effective on the first day of a
26 calendar quarterly period after a minimum of ninety days' notice to the tax
27 commissioner or, for purchases from printed catalogs, on the first day of a
28 calendar quarter after a minimum of one hundred twenty days' notice to the
29 seller.

- 1 c. May not be limited to apply to less than the full value of the transaction or item as
2 determined for state sales and use tax purposes, except for farm machinery
3 gross receipts tax.
- 4 d. Must be subject to collection by the tax commissioner under an agreement under
5 section 57-01-02.1 and must be administered by the tax commissioner in
6 accordance with the relevant provisions of chapter 57-39.2, including reporting
7 and paying requirements, correction of errors, payment of refunds, and
8 application of penalty and interest.
- 9 e. May not be placed on the ballot for approval of a tax to be imposed after June 30,
10 2013, at a rate that, in combination with the rate of tax to be imposed by the
11 county, would make the consolidated rates of county and city taxes more than
12 two percent in any part of the county.

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 including one-way and
25 two-way telecommunications services or steam other than steam used for
26 processing agricultural products.
- 27 c. Tickets or admissions to places of amusement or entertainment or athletic
28 events, including amounts charged for participation in an amusement,
29 entertainment, or athletic activity.
- 30 d. Magazines and other periodicals.
- 31 e. The leasing or renting of a hotel or motel room or tourist court accommodations.

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

1 the specifications of a specific purchaser, remains "prewritten computer
2 software". However, if there is a reasonable, separately stated charge or an
3 invoice or other statement of the price given to the purchaser for such
4 modification or enhancement, such modification or enhancement shall not
5 constitute "prewritten computer software".

6 h. A mandatory computer software maintenance contract for prewritten computer
7 software.

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

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

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

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

26 **57-40.3-02. Tax imposed.**

27 There is hereby imposed an excise tax at the rate of fivefour and one-half percent on the
28 purchase price of any motor vehicle purchased or acquired either in or outside of the state of
29 North Dakota for use on the streets and highways of this state and required to be registered
30 under the laws of this state.

1 **SECTION 6. EFFECTIVE DATE.** Sections 3, 4, and 5 of this Act are effective for taxable
2 events occurring after September 30, 2013.