

Introduced by

1 A BILL for an Act to create and enact a new section to chapter 57-39.2 of the North Dakota  
2 Century Code, relating to a sales and use tax exemption for purchases made by a contractor,  
3 subcontractor, or builder on behalf of an exempt entity; to amend and reenact section  
4 57-40.2-03.3 of the North Dakota Century Code, relating to use tax on contractors; and to  
5 provide an effective date.

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

7 **SECTION 1.** A new section to chapter 57-39.2 of the North Dakota Century Code is created  
8 and enacted as follows:

9 **Exemption for materials acquired by a contractor on behalf of an exempt entity.**

- 10 1. A contractor licensed under chapter 43-07 which acquires tangible personal property  
11 for use in the performance of a contract with an exempt entity is entitled to a sales and  
12 use tax exemption for the acquisition of those items of tangible personal property. To  
13 qualify for the exemption under this section, the contractor shall hold a valid sales tax  
14 permit under this chapter, obtain a purchasing agent authorization letter from the  
15 exempt entity, and obtain a copy of the exemption certificate issued to the exempt  
16 entity by the commissioner before purchasing the tangible personal property.
- 17 2. If the contractor also is a retailer transacting retail sales of tangible personal property,  
18 the exemption under this section applies to tangible personal property withdrawn from  
19 inventory for use in a contract with an exempt entity if the contractor obtains from the  
20 exempt entity a purchasing agent authorization letter and a copy of the exemption  
21 certificate issued to the exempt entity by the commissioner before withdrawing the  
22 tangible personal property from inventory.
- 23 3. The exemption under this section applies only to the extent the tangible personal  
24 property becomes part of the improvement to real property in the performance of the

1           contract with the exempt entity and the exempt entity owns the real property upon the  
2           completion of the contract.

3           4. For purposes of this section, "exempt entity" means an entity that has been issued a  
4           sales and use tax exemption certificate from the commissioner for purchases made on  
5           its own behalf. An "exempt entity" does not include a new or expanding business that  
6           qualifies for an exemption on a specific expansion project.

7           **SECTION 2. AMENDMENT.** Section 57-40.2-03.3 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9           **57-40.2-03.3. (Effective through June 30, 2017) Use tax on contractors.**

- 10           1. When a contractor or subcontractor uses tangible personal property in the  
11           performance of that person's contract, or to fulfill contract or subcontract obligations,  
12           whether the title to such property be in the contractor, subcontractor, contractee,  
13           subcontractee, or any other person, or whether the titleholder of such property would  
14           be subject to pay the sales or use tax, such contractor or subcontractor shall pay a  
15           use tax at the rate prescribed by section 57-40.2-02.1 measured by the purchase price  
16           or fair market value of such property, whichever is greater, unless such property has  
17           been previously subjected to a sales tax or use tax by this state, and the tax due  
18           thereon has been paid.
- 19           2. The provisions of this chapter pertaining to the administration of the tax imposed by  
20           section 57-40.2-02.1, not in conflict with the provisions of this section, govern the  
21           administration of the tax levied by this section.
- 22           3. The tax imposed by this section does not apply to medical equipment purchased as  
23           tangible personal property by a hospital or by a long-term care facility as defined in  
24           section 50-10.1-01 and subsequently installed by a contractor into such hospital or  
25           facility.
- 26           4. The tax imposed by this section does not apply to:
- 27           a. Production equipment or tangible personal property as authorized or approved  
28           for exemption by the tax commissioner under section 57-39.2-04.2;
- 29           b. Machinery, equipment, or other tangible personal property used to construct an  
30           agricultural commodity processing facility as authorized or approved for  
31           exemption by the tax commissioner under section 57-39.2-04.3 or 57-39.2-04.4;

- 1           c. Tangible personal property used to construct or expand a system used to  
2           compress, process, gather, or refine gas recovered from an oil or gas well in this  
3           state or used to expand or build a gas-processing facility in this state as  
4           authorized or approved for exemption by the tax commissioner under section  
5           57-39.2-04.5;
- 6           d. Tangible personal property used to construct or expand a qualifying oil refinery as  
7           authorized or approved for exemption by the tax commissioner under section  
8           57-39.2-04.6;
- 9           e. Tangible personal property used to construct or expand a qualifying facility as  
10          authorized or approved for exemption by the tax commissioner under section  
11          57-39.2-04.10;
- 12          f. Tangible personal property used to construct or expand a qualifying facility as  
13          authorized or approved for exemption by the tax commissioner under section  
14          57-39.2-04.11;
- 15          g. Telecommunications infrastructure that is capable of providing  
16          telecommunications service as authorized or approved for exemption by the  
17          commissioner under chapter 57-39.2;
- 18          h. Materials used in compressing, gathering, collecting, storing, transporting, or  
19          injecting carbon dioxide for use in enhanced recovery of oil or natural gas as  
20          provided in section 57-39.2-04.14; or
- 21          i. Tangible personal property used to construct a qualifying fertilizer or chemical  
22          processing facility as authorized or approved for exemption by the tax  
23          commissioner under section 57-39.2-04.15.

24       **57-40.2-03.3. (Effective after June 30, 2017) Use tax on contractors.**

- 25       1. When a contractor or subcontractor uses tangible personal property in the  
26       performance of that person's contract, or to fulfill contract or subcontract obligations,  
27       whether the title to such property be in the contractor, subcontractor, contractee,  
28       subcontractee, or any other person, or whether the titleholder of such property would  
29       be subject to pay the sales or use tax, such contractor or subcontractor shall pay a  
30       use tax at the rate prescribed by section 57-40.2-02.1 measured by the purchase price  
31       or fair market value of such property, whichever is greater, unless such property has

1           been previously subjected to a sales tax or use tax by this state, and the tax due  
2           thereon has been paid.

3           2. The provisions of this chapter pertaining to the administration of the tax imposed by  
4           section 57-40.2-02.1, not in conflict with the provisions of this section, govern the  
5           administration of the tax levied by this section.

6           3. ~~The tax imposed by this section does not apply to medical equipment purchased as~~  
7           ~~tangible personal property by a hospital or by a long-term care facility as defined in~~  
8           ~~section 50-10.1-01 and subsequently installed by a contractor into such hospital or~~  
9           ~~facility.~~

10          4. The tax imposed by this section does not apply to:

11           a. Production equipment or tangible personal property as authorized or approved  
12           for exemption by the tax commissioner under section 57-39.2-04.2;

13           b. Machinery, equipment, or other tangible personal property used to construct an  
14           agricultural commodity processing facility as authorized or approved for  
15           exemption by the tax commissioner under section 57-39.2-04.3 or 57-39.2-04.4;

16           c. Tangible personal property used to construct or expand a system used to  
17           compress, process, gather, or refine gas recovered from an oil or gas well in this  
18           state or used to expand or build a gas-processing facility in this state as  
19           authorized or approved for exemption by the tax commissioner under section  
20           57-39.2-04.5;

21           d. Tangible personal property used to construct or expand a qualifying oil refinery as  
22           authorized or approved for exemption by the tax commissioner under section  
23           57-39.2-04.6;

24           e. Tangible personal property used to construct or expand a qualifying facility as  
25           authorized or approved for exemption by the tax commissioner under section  
26           57-39.2-04.10;

27           f. Tangible personal property used to construct or expand a qualifying facility as  
28           authorized or approved for exemption by the tax commissioner under section  
29           57-39.2-04.11;

- 1           g. Materials used in compressing, gathering, collecting, storing, transporting, or  
2           injecting carbon dioxide for use in enhanced recovery of oil or natural gas as  
3           provided in section 57-39.2-04.14; or
- 4           h. Tangible personal property used to construct a qualifying fertilizer or chemical  
5           processing facility as authorized or approved for exemption by the tax  
6           commissioner under section 57-39.2-04.15; or
- 7           i. Tangible personal property purchased by an exempt entity or by a contractor  
8           under section 1 of this Act and which is subsequently installed by a contractor  
9           licensed under chapter 43-07. The exemption under this subdivision applies only  
10          to the extent the tangible personal property becomes part of the improvement to  
11          real property in the performance of the contract with the exemption entity and the  
12          exempt entity owns the real property upon the completion of the contract.

13           **SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable events occurring after  
14   June 30, 2017.