

**HOUSE BILL NO. 1117
with Senate Amendments
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Introduced by

Finance and Taxation Committee

(At the request of the Tax Commissioner)

1 A BILL for an Act to create and enact section 57-39.4-33.4 of the North Dakota Century Code,
2 relating to administration of the streamlined sales and use tax agreement; and to amend and
3 reenact subsection 2 of section 57-39.2-04.1, sections 57-39.4-29 and 57-39.4-31, and
4 subsection 2 of section 57-40.2-04.1 of the North Dakota Century Code, relating to the definition
5 of prepared food for sales tax purposes, the taxability matrix to be used for administration of the
6 sales and use tax agreement, the streamlined sales tax governing board and advisory council,
7 and the definition of prepared food for use tax purposes.

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

9 **SECTION 1. AMENDMENT.** Subsection 2 of section 57-39.2-04.1 of the North Dakota
10 Century Code is amended and reenacted as follows:

- 11 2. For purposes of this section:
- 12 a. "Alcoholic beverages" means beverages that are suitable for human consumption
13 and contain one-half of one percent or more of alcohol by volume.
- 14 b. "Candy" means a preparation of sugar, honey, or other natural or artificial
15 sweeteners in combination with chocolate, fruits, nuts, or other ingredients or
16 flavoring in the form of bars, drops, or pieces. Candy does not include any
17 preparation containing flour and does not require refrigeration.
- 18 c. "Dietary supplement" means any product, other than tobacco, intended to
19 supplement the diet which contains one or more of the following dietary
20 ingredients: a vitamin; a mineral; an herb or other botanical; an amino acid; a
21 dietary substance for use by humans to supplement the diet by increasing the
22 total dietary intake; an oral concentrate, metabolite, constitute, extract, or
23 combination of any dietary ingredients described in this sentence and which is
24 intended for ingestion in tablet, capsule, powder, soft gel, gel cap, or liquid form,

1 or if not represented for use as a sole item of a meal or of a diet; and is required
2 to be labeled as a dietary supplement, identifiable by the supplemental facts box
3 found on the label and as required pursuant to 21 CFR section 101.36.

4 d. "Prepared food" means:

5 (1) Food sold in a heated state or heated by the seller;

6 (2) Two or more food ingredients mixed or combined by the seller for sale as a
7 single item; or

8 (3) Food sold with eating utensils provided by the seller, including plates,
9 knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not
10 include a container or packaging used to transport the food.

11 e. "Prepared food" does not mean:

12 (1) Food that is only cut, repackaged, or pasteurized by the seller.

13 (2) Eggs, fish, meat, poultry, and foods containing these raw animal foods
14 requiring cooking by the consumer as recommended by the food and drug
15 administration in chapter 3, part 401.11, of its food code so as to prevent
16 foodborne illness.

17 (3) If sold without eating utensils provided by the seller:

18 (a) Food sold by a seller whose proper primary North American industry
19 classification system classification is manufacturing in sector 311,
20 except subsector 3118, bakeries.

21 (b) Food sold in an unheated state by weight or volume as a single item.

22 (c) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants,
23 pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars,
24 cookies, and tortillas.

25 (d) Food sold that ordinarily requires additional cooking, as opposed to
26 just reheating, by the consumer prior to consumption.

27 f. "Soft drinks" means nonalcoholic beverages that contain natural or artificial
28 sweeteners. "Soft drinks" does not include beverages that contain milk or milk
29 products, soy, rice, or similar milk substitutes, or greater than fifty percent of
30 vegetable or fruit juice by volume.

1 g. "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item
2 that contains tobacco.

3 **SECTION 2. AMENDMENT.** Section 57-39.4-29 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **57-39.4-29. (328) Taxability matrix.**

6 1. a. To ensure uniform application of terms defined in part II and part III(B) of the
7 library of definitions as adopted by the governing board under section 57-39.4-28,
8 each member state shall complete a. to the best of its ability, section 1 of the
9 taxability matrix adopted by the governing board.

10 b. To inform the general public of its practices regarding certain products,
11 procedures, services, or transactions adopted by the governing board under
12 section 57-39.4-33.4, each member state shall complete, to the best of its ability,
13 section 2 of the taxability matrix.

14 2. The member state's entries in the matrix shall be provided and maintained in a
15 database that is in a downloadable format approved by the governing board. A
16 member state shall provide notice of changes in the taxability of the products or
17 services listed in the taxability matrix as required by the governing board.

18 ~~2.3.~~ A member state shall relieve sellers and certified service providers from liability to the
19 member state and its local jurisdictions for having charged and collected the incorrect
20 amount of sales or use tax resulting from the seller or certified service provider relying
21 on erroneous data provided by the member state in the taxability matrix. If a member
22 state amends an existing provision of its taxability matrix, the member state shall, to
23 the extent possible, relieve sellers and certified service providers from liability to the
24 member state and its local jurisdictions until the first day of the calendar month that is
25 at least thirty days after notice of change to a member state's taxability matrix is
26 submitted to the governing board, provided the seller or certified service provider
27 relied on the prior version of the taxability matrix.

28 ~~3.4.~~ If a state levies sales and use tax on a specified digital product and provides an
29 exemption for an item within the definition of such specified digital product under
30 subsection 8 of section 57-39.4-33.1, such exemption must be noted in the taxability
31 matrix.

1 ~~4.5.~~ Each state that provides for a sales tax holiday under section 57-39.4-23 shall, in a
2 format approved by the governing board, give notice in the taxability matrix of the
3 products for which a tax exemption is provided.

4 **SECTION 3. AMENDMENT.** Section 57-39.4-31 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **57-39.4-31. Membership of streamlined sales tax governing board ~~and state and local~~**
7 **~~advisory council.~~**

8 ~~1. Two~~Three members of the house of representatives and ~~two~~ members of the
9 ~~senate,~~legislative assembly to be appointed by the chairman of the legislative management,
10 ~~and one member that is the tax commissioner or the tax commissioner's designee shall~~
11 represent ~~the~~this state of North Dakota on the streamlined sales tax governing board.

12 ~~2. One member of the house of representatives and one member of the senate, to be~~
13 ~~appointed by the chairman of the legislative management, shall represent the state of~~
14 North Dakota on the streamlined sales tax ~~state and local~~ advisory council.

15 ~~3. The tax commissioner shall designate a member of the tax commissioner's staff to~~
16 ~~accompany and advise the members appointed under this section with regard to~~
17 ~~multistate discussions to review or revise the agreement or to conduct such other~~
18 ~~business as comes before the board or council.~~

19 **SECTION 4.** Section 57-39.4-33.4 of the North Dakota Century Code is created and
20 enacted as follows:

21 **57-39.4-33.4. Best Practices.**

22 ~~1. For purposes of this section, "best practices" means those practices adopted by the~~
23 ~~governing board as the best practices in administration of the sales and use taxes in~~
24 ~~the member states regarding certain identified products, procedures, services, or~~
25 ~~transactions.~~

26 ~~2. A majority vote of the entire governing board is required to approve a motion to adopt~~
27 ~~a best practices standard. The governing board shall provide public notice and~~
28 ~~opportunity for comment prior to voting on a motion to adopt a best practice.~~

29 ~~3. Best practices adopted by the governing board must be maintained in an appendix to~~
30 ~~the agreement.~~

1 4. Conformance by a member state to best practices adopted by the governing board is
2 voluntary and a state may not be found to be out of compliance with the agreement
3 because the effect of the state's laws, rules, regulations, and policies do not follow
4 each of the best practices adopted by the governing board.

5 5. A state shall complete the best practice matrix by the first day of the calendar month
6 that is at least thirty days after the date the governing board approves a best practice
7 and submits it to the executive director for posting on the governing board's website.

8 For subsequent best practices approved by the governing board, a state shall update
9 its best practice matrix by the first day of the calendar month that is at least thirty days
10 after the date the governing board approves a new best practice and submits it to the
11 executive director for posting on the governing board's website.

12 **SECTION 5. AMENDMENT.** Subsection 2 of section 57-40.2-04.1 of the North Dakota
13 Century Code is amended and reenacted as follows:

14 2. For purposes of this section:

15 a. "Alcoholic beverages" means beverages that are suitable for human consumption
16 and contain one-half of one percent or more of alcohol by volume.

17 b. "Candy" means a preparation of sugar, honey, or other natural or artificial
18 sweeteners in combination with chocolate, fruits, nuts, or other ingredients or
19 flavoring in the form of bars, drops, or pieces. Candy does not include any
20 preparation containing flour and that does not require refrigeration.

21 c. "Dietary supplement" means any product, other than tobacco, intended to
22 supplement the diet which contains one or more of the following dietary
23 ingredients: a vitamin; a mineral; an herb or other botanical; an amino acid; a
24 dietary substance for use by humans to supplement the diet by increasing the
25 total dietary intake; an oral concentrate, metabolite, constitute, extract, or
26 combination of any dietary ingredients described in this subdivision and which is
27 intended for ingestion in tablet, capsule, powder, soft gel cap, or liquid form, or if
28 not represented for use as a sole item of a meal or of a diet; and is required to be
29 labeled as a dietary supplement, identifiable by the supplemental facts box found
30 on the label and as required pursuant to 21 CFR 101.36.

31 d. "Prepared food" means:

- 1 (1) Food sold in a heated state or heated by the seller;
- 2 (2) Two or more food ingredients mixed or combined by the seller for sale as a
- 3 single item; or
- 4 (3) Food sold with eating utensils provided by the seller, including plates,
- 5 knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not
- 6 include a container or packaging used to transport the food.
- 7 e. "Prepared food" does not mean:
- 8 (1) Food that is only cut, repackaged, or pasteurized by the seller.
- 9 (2) Eggs, fish, meat, poultry, and foods containing these raw animal foods
- 10 requiring cooking by the consumer as recommended by the food and drug
- 11 administration in chapter 3, part 401.11, of its food code so as to prevent
- 12 foodborne illness.
- 13 (3) If sold without eating utensils provided by the seller:
- 14 (a) Food sold by a seller whose proper primary North American industry
- 15 classification system classification is manufacturing in sector 311,
- 16 except subsector 3118, bakeries.
- 17 (b) Food sold in an unheated state by weight or volume as a single item.
- 18 (c) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants,
- 19 pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars,
- 20 cookies, and tortillas.
- 21 (d) Food sold that ordinarily requires additional cooking, as opposed to
- 22 just reheating, by the consumer prior to consumption.
- 23 f. "Soft drinks" means nonalcoholic beverages that contain natural or artificial
- 24 sweeteners. "Soft drinks" does not include beverages that contain milk or milk
- 25 products, soy, rice, or similar milk substitutes, or greater than fifty percent of
- 26 vegetable or fruit juice by volume.
- 27 g. "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item
- 28 that contains tobacco.