

Fifty-eighth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2096

Introduced by

Finance and Taxation Committee

(At the request of the Tax Commissioner)

1 A BILL for an Act to create and enact sections 57-39.2-29, 57-39.2-30, 57-39.2-31, and
2 57-39.2-32, chapters 57-39.5 and 57-39.6, a new subsection to section 57-40.2-01, and a new
3 subsection to section 57-40.2-02.1 of the North Dakota Century Code, relating to changes
4 necessary to conform North Dakota sales and use tax laws to the streamlined sales and use
5 tax agreement; to amend and reenact subsection 2 of section 11-09.1-05, subsection 16 of
6 section 40-05.1-06, sections 57-01-02.1, 57-39.2-01, and 57-39.2-02.1, subsections 7, 10, 11,
7 26, and 45 of section 57-39.2-04, sections 57-39.2-04.1, 57-39.2-05, and 57-39.2-08.2,
8 subsection 1 of section 57-39.2-14, subsection 4 of section 57-40.2-01, and subsection 14 of
9 section 57-40.2-04 of the North Dakota Century Code, relating to changes necessary to
10 conform North Dakota sales and use tax laws to the streamlined sales and use tax agreement;
11 to repeal sections 57-39.2-03.2 and 57-39.2-08.3 of the North Dakota Century Code, relating to
12 changes necessary to conform North Dakota sales and use tax laws to the streamlined sales
13 and use tax agreement; and to provide an effective date.

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

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

17 2. Control its finances and fiscal affairs; appropriate money for its purposes, and
18 make payments of its debts and expenses; subject to the limitations of this section
19 levy and collect property taxes, sales and use taxes, motor vehicle fuels and
20 special fuels taxes, motor vehicle registration fees, and special assessments for
21 benefits conferred, for its public and proprietary functions, activities, operations,
22 undertakings, and improvements; contract debts, borrow money, issue bonds,
23 warrants, and other evidences of indebtedness; establish charges for any county
24 or other services to the extent authorized by state law, and establish debt and mill

1 levy limitations; provided, that all property in order to be subject to the assessment
2 provisions of this subsection must be assessed in a uniform manner as prescribed
3 by the state board of equalization and the state supervisor of assessments. A
4 charter or ordinance or act of a governing body of a home rule county may not
5 supersede any state law that determines what property or acts are subject to, or
6 exempt from, ad valorem taxes. A charter or ordinance or act of the governing
7 body of a home rule county may not supersede section 11-11-55.1 relating to the
8 sixty percent petition requirement for improvements and of section 40-22-18
9 relating to the barring proceeding for improvement projects. After December 31,
10 2005, sales and use taxes levied under this chapter:

- 11 a. Must conform in all respects with regard to the taxable or exempt status of
12 items under chapters 57-39.2 and 57-40.2 and may not be imposed at
13 multiple rates with the exception of sales of electricity, piped natural or
14 artificial gas, or other heating fuels delivered by the seller or the retail sale or
15 transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured
16 homes, or mobile homes.
- 17 b. May not be newly imposed or changed except to be effective on the first day
18 of a calendar quarterly period after a minimum of ninety days notice to the tax
19 commissioner or, for purchases from printed catalogs, on the first day of a
20 calendar quarter after a minimum of one hundred twenty days notice to the
21 seller.
- 22 c. May not be limited to apply to less than the full value of the transaction or item
23 as determined for state sales and use tax purposes.
- 24 d. Must be subject to collection by the tax commissioner under an agreement
25 under section 57-01-02.1.

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

- 28 16. To impose registration fees on motor vehicles, or sales and use taxes in addition to
29 any other taxes imposed by law. After December 31, 2005, sales and use taxes
30 levied under this chapter:

- 1 a. Must conform in all respects with regard to the taxable or exempt status of
2 items under chapters 57-39.2 and 57-40.2 and may not be imposed at
3 multiple rates with the exception of sales of electricity, piped natural or
4 artificial gas, or other heating fuels delivered by the seller or the retail sale or
5 transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured
6 homes, or mobile homes.
- 7 b. May not be newly imposed or changed except to be effective on the first day
8 of a calendar quarterly period after a minimum of ninety days notice to the tax
9 commissioner or, for purchases from printed catalogs, on the first day of a
10 calendar quarter after a minimum of one hundred twenty days notice to the
11 seller.
- 12 c. May not be limited to apply to less than the full value of the transaction or item
13 as determined for state sales and use tax purposes.
- 14 d. Must be subject to collection by the tax commissioner under an agreement
15 under section 57-01-02.1.

16 **SECTION 3. AMENDMENT.** Section 57-01-02.1 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **57-01-02.1. Tax collection agreements with home rule cities or counties -**
19 **Limitations on city or county authority.**

- 20 1. The governing body of any incorporated city that has adopted the home rule
21 provisions of chapter 40-05.1; or of any county which has adopted the home rule
22 provisions of chapter 11-09.1, ~~and must enter a contract with~~ the tax commissioner
23 ~~are hereby authorized and empowered to enter into contractual agreements~~
24 ~~whereby~~ giving the tax commissioner has authority to collect any sales or use
25 taxes assessed by such incorporated city or county.
- 26 2. ~~It is the duty of the~~ The tax commissioner ~~to~~ shall deposit with the state treasurer
27 all money collected under a contract under this section and ~~to~~ accompany each
28 remittance with a certificate showing the city or county for which it was collected.
29 The state treasurer, monthly, shall pay to the auditors of ~~the several~~ cities or
30 counties the money to which ~~they~~ cities or counties are entitled under a contract
31 under this section.

1 3. ~~The agreements entered into~~ Contracts under this section ~~may also shall~~ provide
2 for an agreed amount to be allowed the tax commissioner for services ~~rendered in~~
3 ~~connection with such collections~~. Any sums collected for services rendered must
4 be paid to the state treasurer for deposit in the general fund.

5 4. A person required to collect and remit sales or use taxes may not be required to
6 register with, file returns with, or remit funds to anyone other than the tax
7 commissioner or the tax commissioner's authorized agent. A city or county may
8 not conduct an independent sales or use tax audit of a seller registered under the
9 agreement adopted under chapter 57-39.4.

10 **SECTION 4. AMENDMENT.** Section 57-39.2-01 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **57-39.2-01. Definitions.** The following words, terms, and phrases, when used in this
13 chapter, have the meaning ascribed to them in this section, unless the context clearly indicates
14 a different meaning:

15 1. "Business" includes any activity engaged in by any person or caused to be
16 engaged in by the person with the object of gain, benefit or advantage, either direct
17 or indirect.

18 2. "Certified service provider" means an agent certified under the agreement adopted
19 under chapter 57-39.4 to perform all of the seller's sales and use tax functions,
20 other than the seller's obligation to remit taxes on its own purchases.

21 3. "Commissioner" means the tax commissioner of the state of North Dakota.

22 4. "Delivery charges" means charges by the seller for preparation and delivery to a
23 location designated by the purchaser of personal property or services. For
24 purposes of this subsection, "preparation and delivery" includes transportation,
25 shipping, postage, handling, crating, and packing.

26 5. "Drug" means a compound, substance, or preparation and any component of a
27 compound, substance, or preparation, other than food and food ingredients,
28 dietary supplements, or alcoholic beverages:

29 a. Recognized in the official United States pharmacopoeia, official homeopathic
30 pharmacopoeia of the United States, or official national formulary, or any
31 supplement of any of these publications;

- 1 b. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of
2 disease; or
- 3 c. Intended to affect the structure or any function of the body.
- 4 6. "Farm machinery" means all vehicular implements and attachment units, designed
5 and sold for direct use in planting, cultivating, or harvesting farm products or used
6 in connection with the production of agricultural produce or products, livestock, or
7 poultry on farms, which are operated, drawn, or propelled by motor or animal
8 power. "Farm machinery" does not include vehicular implements operated wholly
9 by hand or a motor vehicle required to be registered under chapter 57-40.3. "Farm
10 machinery" does not include machinery that may be used for other than
11 agricultural purposes, including tires, farm machinery repair parts, tools, shop
12 equipment, grain bins, feed bunks, fencing materials, and other farm supplies and
13 equipment. For purposes of this subsection, "attachment unit" means any part or
14 combination of parts having an independent function, other than farm machinery
15 repair parts, which when attached or affixed to farm machinery is used exclusively
16 for agricultural purposes.
- 17 7. "Farm machinery repair parts" means repair or replacement parts for farm
18 machinery that have a specific or generic part number assigned by the
19 manufacturer of the farm machinery. "Farm machinery repair parts" do not include
20 tires, fluid, gas, grease, lubricant, wax, or paint.
- 21 ~~8.~~ a. "Gross receipts" means the total amount of sales of retailers, valued in
22 money, whether received in money or otherwise. Provided, discounts for any
23 purposes allowed and taken on sales are not included, nor is the sale price of
24 property returned by customers when the full sale price is refunded either in
25 cash or by credit. Provided, further, when tangible personal property is taken
26 in trade or in a series of trades as a credit or part payment of a retail sale
27 taxable under this chapter, if the tangible personal property traded in will be
28 subject to the sales tax imposed by this chapter when sold, will be subject to
29 the motor vehicle excise tax imposed by chapter 57-40.3, or if the tangible
30 personal property traded in is used farm machinery or used irrigation
31 equipment, the credit or trade in value allowed by the retailer are not gross

1 ~~receipts. Provided, further, on all sales of retailers, valued in money, when~~
2 ~~the sales are made under a conditional sales contract, or under other forms of~~
3 ~~sale wherein the payment of the principal sum is to be extended over a period~~
4 ~~longer than sixty days from the date of sale that only the portion of the sale~~
5 ~~amount shall be accounted for, for the purpose of imposition of tax imposed~~
6 ~~by this chapter, as has actually been received in cash by the retailer during~~
7 ~~each quarterly period as defined herein. When a farm machine is purchased~~
8 ~~as a replacement for machinery which was stolen or totally destroyed, a credit~~
9 ~~or trade-in credit is allowed in an amount equal to the compensation received~~
10 ~~for the loss from an insurance company. The purchaser shall provide the~~
11 ~~seller with a notarized statement from the insurance company verifying that~~
12 ~~the original farm machine is a total loss and indicating the amount of~~
13 ~~compensation. The notarized statement must be retained by the seller to~~
14 ~~verify the amount of credit or trade-in credit allowed. "Gross receipts" also~~
15 ~~means, with respect to the leasing or renting of tangible personal property,~~
16 ~~the amount of consideration, valued in money, whether received in money or~~
17 ~~otherwise, received from the leasing or renting of only tangible personal~~
18 ~~property the transfer of title to which has not been subjected to a retail sales~~
19 ~~tax in this state. For the purpose of this chapter, gross receipts shall also~~
20 ~~include the total amount of sales of every clerk, auctioneer, agent, or factor~~
21 ~~selling tangible personal property owned by any other retailer. measure~~
22 ~~subject to sales tax and means the total amount of consideration, including~~
23 ~~cash, credit, property, and services, for which personal property or services~~
24 ~~are sold, leased, or rented, valued in money, whether received in money or~~
25 ~~otherwise, without any deduction for the following:~~
26 (1) The seller's cost of the property sold;
27 (2) The cost of materials used, labor or service costs, interest, losses, all
28 costs of transportation to the seller, all taxes imposed on the seller, and
29 any other expense of the seller;
30 (3) Charges by the seller for any services necessary to complete the sale,
31 other than delivery and installation charges;

- 1 (4) Delivery charges;
- 2 (5) The value of exempt personal property given to the purchaser when
- 3 taxable and exempt personal property have been bundled together and
- 4 sold by the seller as a single product or piece of merchandise; and
- 5 (6) Credit for any trade-in, as determined by state law.
- 6 b. "Gross receipts" also includes the total amount of sales of every clerk,
- 7 auctioneer, agent, or factor selling tangible personal property owned by any
- 8 other retailer.
- 9 c. "Gross receipts" does not include:
- 10 (1) Discounts, including cash, term, or coupons that are not reimbursed by
- 11 a third party, which are allowed by a seller and taken by a purchaser on
- 12 a sale;
- 13 (2) Interest, financing, and carrying charges from credit extended on the
- 14 sale of personal property or services, if the amount is separately stated
- 15 on the invoice, bill of sale, or similar document given to the purchaser;
- 16 (3) Any taxes legally imposed directly on the consumer that are separately
- 17 stated on the invoice, bill of sale, or similar documents given to the
- 18 purchaser; and
- 19 (4) The sale price of property returned by a customer when the full sale
- 20 price is refunded either in cash or credit. When tangible personal
- 21 property is taken in trade or in a series of trades as a credit or part
- 22 payment of a retail sale taxable under this chapter, if the tangible
- 23 personal property traded in will be subject to tax imposed by chapter
- 24 57-39.5 or 57-40.3 or if the tangible personal property traded in is used
- 25 farm machinery or used irrigation equipment, the credit or trade-in
- 26 value allowed by the retailer is not included in gross receipts of the
- 27 retailer.
- 28 9. "Lease or rental" means any transfer of possession or control of tangible personal
- 29 property for a fixed or indeterminate term for consideration. A lease or rental may
- 30 include future options to purchase or extend. "Lease or rental" does not include:

- 1 a. A transfer of possession or control of property under a security agreement or
2 deferred payment plan, which requires the transfer upon completion of the
3 required payments;
- 4 b. A transfer of possession or control of property under an agreement that
5 requires the transfer of title upon completion of required payments and
6 payment of an option price that does not exceed the greater of one hundred
7 dollars or one percent of the total required payments; or
- 8 c. Providing tangible personal property with an operator for a fixed or
9 indeterminate period of time. A condition of this exclusion is that the operator
10 is necessary for the equipment to perform as designed. For the purpose of
11 this subdivision, an operator must do more than maintain, inspect, or set up
12 the tangible personal property.

13 This definition will be applied only prospectively from the date of adoption and will
14 have no retroactive impact on existing leases or rentals.

- 15 4- 10. "Local governmental unit" means incorporated cities, counties, school districts, and
16 townships.
- 17 ~~5-~~ 11. "Person" includes any individual, firm, partnership, joint venture, association,
18 corporation, limited liability company, estate, business trust, receiver, or any other
19 group or combination acting as a unit and the plural as well as the singular
20 number.
- 21 12. "Prescription" means an order, formula, or recipe issued in any form of oral,
22 written, electronic, or other means of transmission by a person authorized by the
23 laws of this state to prescribe drugs.
- 24 ~~6-~~ 13. "Relief agency" means the state, any county, city and county, city or district
25 thereof, or an agency engaged in actual relief work.
- 26 7- 14. "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose
27 other than for resale, sublease, or subrental. "Retail sale" or "sale at retail"
28 includes the sale, including the leasing or renting, to a consumer or to any person
29 for any purpose, other than for processing or for resale, of tangible personal
30 property; the sale of steam, gas, and communication service to retail consumers or
31 users; the sale of vulcanizing, recapping, and retreading services for tires; the

1 furnishing of bingo cards; the ordering, selecting, or aiding a customer to select
2 any goods, wares, or merchandise from any price list or catalog, which the
3 customer might order, or be ordered for such customer to be shipped directly to
4 such customer; the sale or furnishing of hotel, motel, or tourist court
5 accommodations, tickets, or admissions to any place of amusement, athletic event,
6 or place of entertainment, including the playing of any machine for amusement or
7 entertainment in response to the use of a coin; and the sales of magazines and
8 other periodicals. By the term "processing" is meant any tangible personal
9 property including containers which it is intended, by means of fabrication,
10 compounding, manufacturing, producing, or germination shall become an integral
11 or an ingredient or component part of other tangible personal property intended to
12 be sold ultimately at retail. The sale of an item of tangible personal property for the
13 purpose of incorporating it in or attaching it to real property must be considered as
14 a sale of tangible personal property for a purpose other than for processing; the
15 delivery of possession within the state of North Dakota of tangible personal
16 property by a wholesaler or distributor to an out-of-state retailer who does not hold
17 a North Dakota retail sales tax permit or to a person who by contract incorporates
18 such tangible personal property into, or attaches it to, real property situated in
19 another state may not be considered a taxable sale if such delivery of possession
20 would not be treated as a taxable sale in that state. As used in this subsection, the
21 word "consumer" includes any hospital, infirmary, sanatorium, nursing home, home
22 for the aged, or similar institution that furnishes services to any patient or
23 occupant. The sale of an item of tangible personal property to a purchaser who
24 rents or leases it to a person under a finance leasing agreement over the term of
25 which the property will be substantially consumed must be considered a retail sale
26 if the purchaser elects to treat it as such by paying or causing the transferor to pay
27 the sales tax thereon to the commissioner on or before the last day on which
28 payments may be made without penalty as provided in section 57-39.2-12.

29 &. 15. "Retailer" or "seller" includes every person engaged in the business of leasing or
30 renting hotel, motel, or tourist court accommodations, and every person engaged
31 in the business of selling tangible goods, wares, or merchandise at retail, or

1 furnishing of steam, gas, and communication services, or tickets or admissions to
2 places of amusement, entertainment, and athletic events, including the playing of
3 any machine for amusement or entertainment in response to the use of a coin, or
4 magazines, or other periodicals; any organization licensed by the attorney general
5 to conduct bingo games pursuant to section 53-06.1-03; and includes any person
6 as herein defined who by contract or otherwise agrees to furnish for a
7 consideration a totally or partially finished product consisting in whole or in part of
8 tangible personal property subject to the sales tax herein provided, and all items of
9 tangible personal property entering into the performance of such contract as a
10 component part of the product agreed to be furnished under said contract shall be
11 subject to the sales tax herein provided and the sales tax thereon shall be
12 collected by the contractor from the person for whom the contract has been
13 performed in addition to the contract price agreed upon, and shall be remitted to
14 the state in the manner provided in this chapter; and shall include the state or any
15 municipality furnishing steam, gas, or communication service to members of the
16 public in its proprietary capacity. For the purpose of this chapter, retailer shall also
17 include every clerk, auctioneer, agent, or factor selling tangible personal property
18 owned by any other retailer. A retailer also includes every person who engages in
19 regular or systematic solicitation of a consumer market in this state by the
20 distribution of catalogs, periodicals, advertising flyers, or other advertising, or by
21 means of print, radio or television media, by mail, telegraphy, telephone, computer
22 data base, cable, optic, microwave, or other communication system.

23 ~~9.~~ 16. "Sale" means any transfer of title or possession, exchange or barter, conditional or
24 otherwise, in any manner or by any means whatever, for a consideration, and
25 includes the furnishing or service of steam, gas, or communication, the furnishing
26 of bingo cards, the furnishing of hotel, motel, or tourist court accommodations, the
27 furnishing of tickets or admissions to any place of amusement, athletic event, or
28 place of entertainment, including the playing of any machine for amusement or
29 entertainment in response to the use of a coin, and sales of magazines and other
30 periodicals. Provided, the words "magazines and other periodicals" as used in this
31 subsection do not include newspapers nor magazines or periodicals that are

1 furnished free by a nonprofit corporation or organization to its members or because
2 of payment by its members of membership fees or dues.

3 17. "Sales tax" means the tax levied under section 57-39.2-02.1 or a conforming tax
4 imposed under home rule authority by a city or county.

5 18. "Tangible personal property" means personal property that can be seen, weighed,
6 measured, felt, or touched or that is in any other manner perceptible to the senses.

7 "Tangible personal property" includes electricity, gas, steam, and prewritten
8 computer software.

9 **SECTION 5. AMENDMENT.** Section 57-39.2-02.1 of the North Dakota Century Code
10 is amended and reenacted as follows:

11 **57-39.2-02.1. Sales tax imposed.**

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

18 a. Tangible personal property, consisting of goods, wares, or merchandise,
19 except mobile homes used for residential or business purposes ~~and new farm~~
20 ~~machinery and new irrigation equipment used exclusively for agricultural~~
21 ~~purposes.~~

22 b. The furnishing or service of communication services or steam other than
23 steam used for processing agricultural products.

24 c. Tickets or admissions to places of amusement or entertainment or athletic
25 events, including amounts charged for participation in an amusement,
26 entertainment, or athletic activity, and including the furnishing of bingo cards
27 and the playing of any machine for amusement or entertainment in response
28 to the use of a coin. The tax imposed by this section applies only to eighty
29 percent of the gross receipts collected from coin-operated amusement
30 devices.

31 d. Magazines and other periodicals.

- 1 e. The leasing or renting of a hotel or motel room or tourist court
2 accommodations.
- 3 f. The leasing or renting of tangible personal property the transfer of title to
4 which has not been subjected to a retail sales tax under this chapter or a use
5 tax under chapter 57-40.2.
- 6 g. Coal mined in this state and used for heating buildings, except for coal used
7 in agricultural processing or sugar beet refining plants.
- 8 h. Sale, lease, or rental of computer software and prewritten computer software,
9 including prewritten computer software delivered electronically or by load and
10 leave. For purposes of this subdivision:
- 11 (1) "Computer" means an electronic device that accepts information in
12 digital or similar form and manipulates it for a result based on a
13 sequence of instructions.
- 14 (2) "Computer software" means a set of coded instructions designed to
15 cause a computer or automatic data processing equipment to perform a
16 task.
- 17 (3) "Delivered electronically" means delivered from the seller to the
18 purchaser by means other than tangible storage media.
- 19 (4) "Electronic" means relating to technology having electrical, digital,
20 magnetic, wireless, optical, electromagnetic, or similar capabilities.
- 21 (5) "Load and leave" means delivery to the purchaser by use of a tangible
22 storage media when the tangible storage media is not physically
23 transferred to the purchaser.
- 24 (6) "Prewritten computer software" means computer software, including
25 prewritten upgrades, which is not designed and developed by the
26 author or other creator to the specifications of a specific purchaser.
27 The combining of two or more "prewritten computer software" programs
28 or prewritten portions thereof does not cause the combination to be
29 other than "prewritten computer software". "Prewritten computer
30 software" includes software designed and developed by the author or
31 other creator to the specifications of a specific purchaser when it is sold

1 to a person other than the purchaser. If a person modifies or enhances
2 "computer software" of which the person is not the author or creator,
3 the person is deemed to be the author or creator only of such person's
4 modifications or enhancements. "Prewritten computer software" or a
5 prewritten portion thereof that is modified or enhanced to any degree, if
6 such modification or enhancement is designed and developed to the
7 specifications of a specific purchaser, remains "prewritten computer
8 software". However, if there is a reasonable, separately stated charge
9 or an invoice or other statement of the price given to the purchaser for
10 such modification or enhancement, such modification or enhancement
11 shall not constitute "prewritten computer software".

12 2. There is imposed a tax of three percent upon the gross receipts of retailers from all
13 sales at retail of mobile homes used for residential or business purposes, except
14 as provided in subsection 35 of section 57-39.2-04, ~~and of new farm machinery~~
15 ~~and new irrigation equipment used exclusively for agricultural purposes, including~~
16 ~~the leasing or renting of new farm machinery and new irrigation equipment used~~
17 ~~exclusively for agricultural purposes within this state to consumers or users.~~

18 ~~3. In the case of a contract for the construction of highways, roads, streets, bridges,~~
19 ~~and buildings for which the bid was submitted prior to December 9, 1986, the~~
20 ~~contractor receiving the award is liable only for the sales or use tax at the rate of~~
21 ~~tax in effect on the date the bid was submitted.~~

22 **SECTION 6. AMENDMENT.** Subsection 7 of section 57-39.2-04 of the North Dakota
23 Century Code is amended and reenacted as follows:

24 7. Gross receipts from the sale, ~~by any drugstore,~~ of drugs sold under a doctor's
25 prescription.

26 **SECTION 7. AMENDMENT.** Subsection 10 of section 57-39.2-04 of the North Dakota
27 Century Code is amended and reenacted as follows:

28 10. Gross receipts from the sale of motor vehicles, farm machinery, alcoholic
29 beverages, gasoline, insurance premiums, gaming tickets, or any other article or
30 product, except as otherwise provided, upon which the state of North Dakota
31 imposes a special tax.

1 **SECTION 8. AMENDMENT.** Subsection 11 of section 57-39.2-04 of the North Dakota
2 Century Code is amended and reenacted as follows:

3 11. Gross receipts from the sale of feed which is fed to poultry or livestock, including
4 breeding stock and wool-bearing stock, for the purpose of producing eggs, milk,
5 meat, fibers, or other products for human consumption and the gross receipts from
6 the sale of feed purchased for the purpose of being fed to draft or fur-bearing
7 animals. The word "feed" as used herein shall be construed to mean and include
8 only salt, grains, hays, tankage, oyster shells, mineral supplements, limestone,
9 molasses, beet pulp, meat and bone scraps, meal, drugs to be used as part of a
10 feed ration, and other generally recognized animal feeds. The term "feed" ~~does~~
11 ~~not include~~ includes drugs ~~not~~ used as part of a feed ration, medicants,
12 disinfectants, wormers, tonics, and like items.

13 **SECTION 9. AMENDMENT.** Subsection 26 of section 57-39.2-04 of the North Dakota
14 Century Code is amended and reenacted as follows:

15 26. Gross receipts from sales of prosthetic devices, durable medical equipment, or
16 mobility-enhancing equipment. For purposes of this subsection:

17 a. "Durable medical equipment" means equipment, not including
18 mobility-enhancing equipment, for home use, including repair and
19 replacement parts for such equipment, which:

20 (1) Can withstand repeated use;

21 (2) Is primarily and customarily used to serve a medical purpose;

22 (3) Generally is not useful to a person in the absence of illness or injury;

23 and

24 (4) Is not worn in or on the body.

25 b. "Mobility-enhancing equipment" means equipment, not including durable
26 medical equipment, including repair and replacement parts for
27 mobility-enhancing equipment, which:

28 (1) Is primarily and customarily used to provide or increase the ability to

29 move from one place to another and which is appropriate for use either

30 at home or in a motor vehicle;

31 (2) Is not generally used by persons with normal mobility; and

- 1 (3) Does not include any motor vehicle or equipment on a motor vehicle
2 normally provided by a motor vehicle manufacturer.
- 3 c. "Prosthetic device" means a replacement, corrective, or supportive device,
4 including repair and replacement parts for such a device, worn on or in the
5 body to:
- 6 (1) Artificially replace a missing portion of the body;
7 (2) Prevent or correct a physical deformity or malfunction; or
8 (3) Support a weak or deformed portion of the body.
- 9 d. "Prosthetic device" and "durable medical equipment" include:
- 10 (1) Artificial devices individually designed, constructed, or altered solely for
11 the use of a particular disabled person so as to become a brace,
12 support, supplement, correction, or substitute for the bodily structure
13 including the extremities of the individual.
- 14 ~~b~~. (2) Artificial limbs, artificial eyes, hearing aids, and other equipment worn
15 as a correction or substitute for any functioning portion of the body.
- 16 ~~e~~. (3) Artificial teeth sold by a dentist.
- 17 ~~d~~. (4) Eyeglasses when especially designed or prescribed by an
18 ophthalmologist, physician, oculist, or optometrist for the personal use
19 of the owner or purchaser.
- 20 ~~e~~. (5) Crutches and wheelchairs for the use of disabled persons.
- 21 ~~f~~. (6) Equipment, including manual control units, van lifts, van door opening
22 units, and raised roofs, for attaching to or modifying a motor vehicle for
23 use by a permanently physically disabled person.
- 24 ~~g~~. (7) Equipment, including elevators, dumbwaiters, chair lifts, and bedroom
25 or bathroom lifts, whether or not sold for attaching to real property, for
26 use by a permanently physically disabled person in that person's
27 principal dwelling.
- 28 ~~h~~. (8) Equipment, including manual control units, for attaching to or modifying
29 motorized implements of husbandry for use by a permanently
30 physically disabled person.

- 1 i- (9) Devices and supplies designed or intended for ostomy care and
2 management to include collection devices, colostomy irrigation
3 equipment and supplies, skin barriers or skin protectors, and other
4 supplies especially designed for use of ostomates.
5 j- (10) Supplies, equipment, and devices to be used exclusively by a person
6 with bladder dysfunction, including catheters, collection devices,
7 incontinent pads and pants, and other items used for the care and
8 management of bladder dysfunction.

9 **SECTION 10. AMENDMENT.** Subsection 45 of section 57-39.2-04 of the North
10 Dakota Century Code is amended and reenacted as follows:

11 45. Gross receipts from the sale or lease of ~~used~~ farm machinery, farm machinery
12 repair parts, or ~~used~~ irrigation equipment used exclusively for agricultural
13 purposes. ~~For purposes of this subsection, "used" means:~~

- 14 a. ~~Tax under this chapter has been paid on a previous sale;~~
15 b. ~~Originally purchased outside this state and previously owned by a farmer; or~~
16 c. ~~Has been under lease or rental for three years or more.~~

17 **SECTION 11. AMENDMENT.** Section 57-39.2-04.1 of the North Dakota Century Code
18 is amended and reenacted as follows:

19 **57-39.2-04.1. Sales tax exemption for food and food products ingredients.** Gross
20 receipts from sales for human consumption of food and food products ~~including, but not limited~~
21 ~~to, cereal and cereal products, butter, cheese, milk and milk products, oleomargarine, meat and~~
22 ~~meat products, poultry and fish and other fresh and saltwater animal products, eggs and egg~~
23 ~~products, vegetables and vegetable products, fruit and fruit products, spices and salt, and~~
24 ~~sugar and sugar products when purchased by consumers for consumption off the premises~~
25 ~~where purchased, are exempt from the sales tax imposed by this chapter ingredients are~~
26 exempt from taxes imposed under this chapter. Gross receipts from sales for human
27 consumption of food and food products given, or to be given, as samples to consumers for
28 consumption on the premises of a food store are exempt from the sales tax imposed by this
29 chapter. ~~Purchases made with food coupons issued by the United States department of~~
30 ~~agriculture under the Food Stamp Act of 1977, as amended, are exempt from the tax imposed~~
31 ~~by this chapter pursuant to the Food Security Act of 1985.~~ For purposes of this section, "food

1 and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried,
2 or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for
3 taste or nutritional value.

4 1. For purposes of this section, "food" and "food products ingredients" do not include:

5 4. a. Alcoholic beverages or mixed drinks made from alcoholic beverages.

6 2. b. Candy or chewing gum.

7 3. c. Carbonated beverages Dietary supplements.

8 d. Prepared food.

9 4. e. Beverages commonly referred to as soft Soft drinks containing less than
10 seventy fifty percent fruit juice.

11 5. Powdered drink mixes.

12 6. Medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge,
13 or pill form sold as dietary supplements or adjuncts.

14 7. Coffee and coffee substitutes.

15 8. Tea.

16 9. Cocoa or cocoa products.

17 f. Tobacco.

18 2. For purposes of this section:

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

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

26 c. "Dietary supplement" means any product, other than tobacco, intended to
27 supplement the diet which contains one or more of the following dietary
28 ingredients: a vitamin; a mineral; an herb or other botanical; an amino acid; a
29 dietary substance for use by humans to supplement the diet by increasing the
30 total dietary intake; an oral concentrate, metabolite, constitute, extract, or
31 combination of any dietary ingredients described in this sentence and which is

1 intended for ingestion in tablet, capsule, powder, soft gel, gel cap, or liquid
2 form, or if not represented for use as a sole item of a meal or of a diet; and is
3 required to be labeled as a dietary supplement, identifiable by the
4 supplemental facts box found on the label and as required pursuant to
5 21 CFR section 101.36.

6 d. "Prepared food" means:

- 7 (1) Food sold in a heated state or heated by the seller;
8 (2) Two or more food ingredients mixed or combined by the seller for sale
9 as a single item; or
10 (3) Food sold with eating utensils provided by the seller, including plates,
11 knives, forks, spoons, glasses, cups, napkins, or straws.

12 e. "Prepared food" does not mean:

- 13 (1) Food that is only cut, repackaged, or pasteurized by the seller.
14 (2) Eggs, fish, meat, poultry, and foods containing these raw animal foods
15 requiring cooking by the consumer as recommended by the food and
16 drug administration in chapter 3, part 401.11 of its food code so as to
17 prevent food-borne illness.
18 (3) If sold without eating utensils provided by the seller:
19 (a) Food sold by a seller whose proper primary North American
20 industry classification system classification is manufacturing in
21 sector 311, except subsector 3118, bakeries.
22 (b) Food sold in an unheated state by weight or volume as a single
23 item.
24 (c) Bakery items, including bread, rolls, buns, biscuits, bagels,
25 croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts,
26 muffins, bars, cookies, and tortillas.

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

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

3 **SECTION 12. AMENDMENT.** Section 57-39.2-05 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **57-39.2-05. Credit or refund for taxes paid on worthless accounts and**
6 **repossessions.**

- 7 1. Taxes paid on gross receipts represented by accounts found to be worthless and
8 actually charged off for income tax purposes may be credited upon subsequent
9 payment of the tax herein provided; provided, that if such accounts are hereafter
10 collected by the retailer, a tax must be paid upon the amount so collected. If a
11 retailer's filing responsibility has been assumed by a certified service provider, the
12 certified provider may claim on behalf of the retailer any bad debt allowance
13 provided under this section. The certified service provider shall credit or refund to
14 the retailer the full amount of any bad debt allowance or refund received under this
15 section.
- 16 2. If a retailer has remitted the sales tax due on the full amount of an installment
17 sales contract rather than on only the installment payments received ~~as provided in~~
18 ~~subsection 3 of section 57-39.2-04~~, the retailer may deduct as a credit against the
19 retailer's sales tax liability on the next return that the retailer is required to file the
20 amount of sales tax the retailer paid on the installment contract payments which
21 were not made by the purchaser of the merchandise sold under such contract;
22 such credit may be deducted by the retailer regardless of whether or not said
23 retailer has assigned the contract, provided, however, that if the retailer has
24 assigned the contract the retailer must have assigned it subject to an agreement to
25 repurchase the contract in the event of default by the purchaser under the contract
26 or subject to a guarantee that the payments under the contract would be made. In
27 the event such deduction exceeds the amount of sales tax due the state by the
28 retailer in the next regular return, such excess must be allowed as credit against
29 future sales tax due from the retailer. If in any case the credit, or any part of it,
30 cannot be utilized by the retailer because of a discontinuance of a business or for
31 other valid reasons, the amount thereof may be refunded to the retailer.

1 **SECTION 13. AMENDMENT.** Section 57-39.2-08.2 of the North Dakota Century Code
2 is amended and reenacted as follows:

3 **57-39.2-08.2. Sales tax to be added to purchase price and be a debt.**

4 1. Except as otherwise provided in subsection 2, retailers shall add the tax imposed
5 under this chapter, or the average equivalent thereof, to the sales price or charge,
6 and when added, such tax constitutes a part of such price or charge, is a debt from
7 the consumer or user to the retailer until paid, and is recoverable at law in the
8 same manner as other debts. ~~In adding such tax to the price or charge, retailers~~
9 ~~shall adopt the following bracket system for the application of the tax:~~

10	\$0.01 through \$0.15	no tax
11	\$0.16 through \$0.20	1¢ tax
12	\$0.21 through \$0.40	2¢ tax
13	\$0.41 through \$0.60	3¢ tax
14	\$0.61 through \$0.80	4¢ tax
15	\$0.81 through \$1.00	5¢ tax

16 ~~Each additional \$1.00 — 5¢ additional tax, or each additional 20¢ or fraction~~
17 ~~thereof over \$1.00 — 1¢ additional tax.~~

18 A retailer shall determine the amount of tax charged to and received from each
19 purchaser by use of a formula that applies the applicable tax rate to each taxable
20 item or total purchase and the product must be carried to the third decimal place.
21 Amounts of tax less than one-half of one cent must be disregarded and amounts of
22 tax of one-half of one cent or more must be considered an additional cent of tax.
23 When a local sales tax applies, the determination of tax charged to and received
24 from each customer will be applied to the aggregated state and local taxes.

25 2. On retail sales of mobile homes used for residential or business purposes, except
26 as provided in subsection 35 of section 57-39.2-04, and of farm machinery, farm
27 machinery repair parts, and irrigation equipment used exclusively for agricultural
28 purposes, retailers shall add the tax imposed under this chapter, or the average
29 equivalent thereof, to the sales price or charge, and when added, such tax
30 constitutes a part of such price or charge, is a debt from the consumer or user to
31 the retailer until paid, and is recoverable at law in the same manner as other debts.

1 In adding such tax to the price or charge, retailers shall add to it three percent of
2 such price or charge.

3 **SECTION 14. AMENDMENT.** Subsection 1 of section 57-39.2-14 of the North Dakota
4 Century Code is amended and reenacted as follows:

5 1. A person may not engage in or transact business as a retailer within this state
6 unless a permit or permits shall have been issued to that person as hereinafter
7 prescribed. Every person desiring to engage in or conduct business as a retailer
8 within this state shall file with the commissioner an application for a permit or
9 permits. Every application for such a permit shall be made upon a form prescribed
10 by the commissioner and shall set forth the name under which the applicant
11 transacts or intends to transact business, the location of the applicant's place or
12 places of business, and such other information as the commissioner may require.
13 The application shall be signed by the owner if a natural person; in the case of an
14 association, partnership, or limited liability company, by a member or partner
15 thereof; and in the case of a corporation, by an executive officer thereof or some
16 person specifically authorized by the corporation to sign the application, to which
17 shall be attached the written evidence of that person's authority. Any person
18 registering under the agreement adopted under chapter 57-39.4 shall register in
19 this state. Any person who is registered under the agreement is not required to
20 sign the application and may register through an agent. Any person who is
21 registered under such agreement may cancel its registration at any time but is
22 liable for remitting any sales taxes collected before cancellation. Registration
23 under the agreement and collection of tax does not in and of itself create nexus for
24 other taxes or fees imposed by this state.

25 **SECTION 15.** Section 57-39.2-29 of the North Dakota Century Code is created and
26 enacted as follows:

27 **57-39.2-29. Sourcing - Multiple points of use exemption.** Sourcing of retail sales,
28 leases, or rentals must be determined in accordance with the provisions of the agreement
29 adopted under chapter 57-39.4. Notwithstanding any other provisions of law or the sourcing
30 provisions of the agreement adopted under chapter 57-39.4, a business purchaser that is not a
31 holder of a direct pay permit that knows at the time of its purchase of a digital good, computer

1 software delivered electronically, or service that the digital good, computer software delivered
2 electronically, or service will be concurrently available for use in more than one jurisdiction shall
3 deliver to the seller in conjunction with its purchase a form prescribed by the commissioner
4 disclosing this fact, referred to as a multiple points of use exemption form.

5 1. Upon receipt of the multiple points of use exemption form, the seller is relieved of
6 all obligation to collect, pay, or remit the applicable tax and the purchaser shall be
7 obligated to collect, pay, or remit the applicable tax on a direct pay basis.

8 2. A purchaser delivering the multiple points of use exemption form may use any
9 reasonable, but consistent and uniform, method of apportionment that is supported
10 by the purchaser's business records as they exist at the time of consumption of the
11 sale.

12 3. The multiple points of use exemption form remains in effect for all future sales by
13 the seller to the purchaser, except as to the subsequent sale's specific
14 apportionment that is governed by the principle of subsection 2 and the facts
15 existing at the time of the sale, until it is revoked in writing.

16 4. A holder of a direct pay permit shall not be required to deliver a multiple points of
17 use exemption form to the seller. A direct pay permitholder shall follow the
18 provisions of subsection 2 in apportioning the tax due on a digital good or service
19 that will be concurrently available for use in more than one jurisdiction.

20 **SECTION 16.** Section 57-39.2-30 of the North Dakota Century Code is created and
21 enacted as follows:

22 **57-39.2-30. Conditional sales contract.** For purposes of the tax imposed by this
23 chapter, on any sale made under a conditional sales contract or under other forms of sale in
24 which the payment of the principle sum is extended over a period longer than sixty days from
25 the date of sale, only the portion of the sale amount that has actually been received in cash by
26 the retailer during each reporting period is subject to the tax imposed by this chapter during that
27 reporting period.

28 **SECTION 17.** Section 57-39.2-31 of the North Dakota Century Code is created and
29 enacted as follows:

30 **57-39.2-31. Seller and certified service provider limited immunity.** A seller or
31 certified service provider is immune from civil liability for charging and collecting the incorrect

1 amount of sales or use tax in reliance on incorrect information provided by the tax
2 commissioner regarding tax rates, boundaries, or taxing jurisdiction assignments. The tax
3 commissioner will not be required to provide liability relief for errors resulting from the reliance
4 on an address-based system for assigning tax jurisdictions as provided under the agreement
5 adopted under chapter 57-39.4.

6 **SECTION 18.** Section 57-39.2-32 of the North Dakota Century Code is created and
7 enacted as follows:

8 **57-39.2-32. Confidentiality of information obtained by certified service providers.**

9 A certified service provider or any agent, employee, or other person acting under the authority
10 of a certified service provider may not divulge or make known in any manner whatsoever the
11 business affairs, operations, or information obtained by the certified service provider in the
12 discharge of its duties under this chapter.

13 **SECTION 19.** Chapter 57-39.5 of the North Dakota Century Code is created and
14 enacted as follows:

15 **57-39.5-01. Definitions.** Words used in this chapter have the same meaning as
16 provided in chapter 57-39.2. As used in this chapter:

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

30 **57-39.5-01.1. Trade-in deduction.** When tangible personal property is taken in trade
31 or in a series of trades as a credit or partial payment of a retail sale taxable under this chapter,

1 if the tangible personal property traded in will be subject to gross receipts taxes imposed by this
2 chapter, sales taxes imposed by chapter 57-39.2, or motor vehicle excise taxes imposed by
3 chapter 57-40.3, or if the tangible personal property traded in is used farm machinery or used
4 irrigation equipment, the credit or trade-in value allowed by the retailer is not gross receipts.

5 **57-39.5-02. Imposition - Exemptions.** There is imposed a tax of three percent upon
6 the gross receipts of retailers from all sales at retail, including the leasing or renting, of farm
7 machinery or irrigation equipment used exclusively for agricultural purposes. Gross receipts
8 from sales at retail of farm machinery or irrigation equipment are exempted from the tax
9 imposed by this chapter when the sale, lease, or rental is made to a purchaser or lessor who is
10 entitled to a sales and use tax exemption under subsection 6 or 12 of section 57-39.2-04 on
11 otherwise taxable sales at retail. There are specifically exempted from the tax imposed by this
12 chapter the gross receipts from the sale or lease of used farm machinery, farm machinery
13 repair parts, or used irrigation equipment used exclusively for agricultural purposes. For
14 purposes of this section, "used" means:

- 15 1. Tax under this chapter or chapter 57-39.2 or 57-40.2 has been paid on a previous
16 sale;
- 17 2. Originally purchased outside this state and previously owned by a farmer; or
- 18 3. Has been under lease or rental for three years or more.

19 **57-39.5-03. Replacement of insured machinery credit.** When new farm machinery
20 is purchased as a replacement for machinery on which the insurant has previously paid the
21 gross receipts, sales, or use tax and which was stolen or totally destroyed, a credit or trade-in
22 credit is allowed in an amount equal to the compensation received for the loss from the
23 insurance company. The purchaser shall provide the seller with a notarized statement from the
24 insurance company verifying that the original farm machinery was a total loss and indicating the
25 amount of compensation. The notarized statement must be retained by the seller to verify the
26 amount of credit or trade-in credit allowed.

27 **57-39.5-04. Administration.** The provisions of chapter 57-39.2 pertaining to
28 administration of the retail sales tax, including provisions for refund, credits, or adoption of
29 rules, not in compliance with this chapter or federal law, govern the administration of the gross
30 receipts tax imposed in this chapter.

1 **SECTION 20.** Chapter 57-39.6 of the North Dakota Century Code is created and
2 enacted as follows:

3 **57-39.6-01. Definitions.** Words used in this chapter have the same meaning as in
4 chapter 57-39.2. For purposes of this chapter:

5 1. "Alcoholic beverage" means any liquid suitable for drinking by human beings,
6 which contains one-half of one percent or more of alcohol by volume. This
7 includes beverages whether mixed or unmixed at the time of sale or thereafter and
8 whether sold for consumption on the premises or through off-sale outlets for
9 consumption off the premises.

10 2. "Gross receipts", in addition to the meaning provided in chapter 57-39.2, includes
11 the full retail purchase price, including any taxes imposed on such merchandise or
12 its use or on the retail or other sale of the merchandise, excluding taxes imposed
13 under this chapter.

14 **57-39.6-02. Gross receipts tax on alcoholic beverages - Exemption.** There is
15 imposed a tax of seven percent on the gross receipts of retailers from all sales at retail of
16 alcoholic beverages. Gross receipts from sales at retail of alcoholic beverages are exempted
17 from the tax imposed by this chapter when the sale is made to a purchaser who is entitled to a
18 sales and use tax exemption under subsection 6 or 12 of section 57-39.2-04 on otherwise
19 taxable sales.

20 **57-39.6-03. Gross receipts tax inclusion in purchase price.** Taxes imposed by this
21 chapter may be included in the purchase price of the alcoholic beverages.

22 **57-39.6-04. Administration.** The provisions of chapter 57-39.2, pertaining to
23 administration of the retail sales tax, including provisions for refund, credits, or adoption of
24 rules, not in conflict with this chapter or federal law, govern the administration of the gross
25 receipts tax imposed in this chapter.

26 **SECTION 21. AMENDMENT.** Subsection 4 of section 57-40.2-01 of the North Dakota
27 Century Code is amended and reenacted as follows:

28 4. ~~"Purchase price" means the total amount for which tangible personal property is~~
29 ~~sold, leased, or rented, valued in money, whether paid in money or otherwise, but~~
30 ~~cash discounts and trade-ins allowed and taken on sales shall not be included.~~

31 ~~"Purchase price" also means, in those instances when sand or gravel is not sold at~~

1 ~~retail as tangible personal property by the person severing the sand or gravel, the~~
2 ~~fair market value of the sand or gravel severed. If the sand or gravel is not sold at~~
3 ~~retail by the person severing the sand or gravel, it must be presumed until the~~
4 ~~contrary is shown by the commissioner or by the person severing the sand or~~
5 ~~gravel that the fair market value is eight cents per ton of two thousand pounds~~
6 ~~[907.18 kilograms]. If records are not kept as to the tonnage of sand or gravel~~
7 ~~severed from the soil, it must be presumed for the purpose of this chapter that one~~
8 ~~cubic yard [764.55 liters] of sand or gravel is equal to one and one half tons~~
9 ~~[1360.78 kilograms] of sand or gravel. When a farm machine is purchased as a~~
10 ~~replacement for machinery which was stolen or totally destroyed, a credit or~~
11 ~~trade in credit is allowed in an amount equal to the compensation received for the~~
12 ~~loss from the insurance company. The purchaser shall provide the seller with a~~
13 ~~notarized statement from the insurance company verifying that the original farm~~
14 ~~machine was a total loss and indicating the amount of compensation. The~~
15 ~~notarized statement must be retained by the seller to verify the amount of credit or~~
16 ~~trade in credit allowed~~ applies to the measure subject to use tax and has the same
17 meaning as gross receipts as defined in section 57-39.2-01.

18 **SECTION 22.** A new subsection to section 57-40.2-01 of the North Dakota Century
19 Code is created and enacted as follows:

20 "Use tax" means the tax levied under section 57-40.2-02.1 or imposed under home
21 rule authority by a city or county.

22 **SECTION 23.** A new subsection to section 57-40.2-02.1 of the North Dakota Century
23 Code is created and enacted as follows:

24 An excise tax is imposed on the fair market value of sand or gravel severed when
25 sand or gravel is not sold at retail as tangible personal property by the person
26 severing the sand or gravel. If the sand or gravel is not sold at retail by the person
27 severing the sand or gravel, it must be presumed until the contrary is shown by the
28 commissioner or by the person severing the sand or gravel that the fair market
29 value is eight cents per ton of two thousand pounds [907.18 kilograms]. If records
30 are not kept as to the tonnage of sand or gravel severed from the soil, it must be

1 presumed for the purpose of this chapter that one cubic yard [764.55 liters] of sand
2 or gravel is equal to one and one-half tons [1360.78 kilograms] of sand or gravel.

3 **SECTION 24. AMENDMENT.** Subsection 14 of section 57-40.2-04 of the North
4 Dakota Century Code is amended and reenacted as follows:

5 14. The leasing or renting of any tangible personal property upon which a North
6 Dakota sales tax or use tax has been paid pursuant to the election of the
7 purchaser pursuant to subsection ~~7~~ 14 of section 57-39.2-01 or subsection 5 of
8 section 57-40.2-01.

9 **SECTION 25. REPEAL.** Sections 57-39.2-03.2 and 57-39.2-08.3 of the North Dakota
10 Century Code are repealed.

11 **SECTION 26. EFFECTIVE DATE.** This Act is effective for taxable events occurring
12 after December 31, 2005.