

September 2004

Introduced by

1 A BILL for an Act to create and enact sections 57-39.2-03.9, 57-39.5-05 and 57-39.6-05 and
2 chapter 57-39.7 of the North Dakota Century Code, relating to application of sales taxes to
3 tobacco products, use taxes and credits for storage, use, or consumption in this state of farm
4 machinery or alcoholic beverages, and a lodging gross receipts tax; to amend and reenact
5 subsection 2 of section 11-09.1-05, sections 40-05.1-06, 57-01-02.1, and 57-39.2-01,
6 subdivision h of subsection 1 of section 57-39.2-02.1, subdivision d of subsection 2 of section
7 57-39.2-04.1, subsection 8 of section 57-39.4-16, section 57-40.2-01, subsection 2 of section
8 57-40.2-02.1, and sections 57-40.2-03.2, 57-40.2-04, and 57-40.2-04.1 of the North Dakota
9 Century Code, relating to sales and use tax amendments to conform with the provisions of the
10 Streamlined Sales Tax Act; to repeal section 57-39.2-03.8 and subsection 33 of section
11 57-39.2-04 of the North Dakota Century Code, relating to elimination of provisions in conflict
12 with the Streamlined Sales Tax Act; to provide an effective date; and to provide an expiration
13 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, as effective after December 31, 2005, 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, farm machinery gross
20 receipts taxes, alcoholic beverage gross receipts taxes, motor vehicle fuels and
21 special fuels taxes, motor vehicle registration fees, and special assessments for
22 benefits conferred, for its public and proprietary functions, activities, operations,
23 undertakings, and improvements; contract debts, borrow money, issue bonds,
24 warrants, and other evidences of indebtedness; establish charges for any county or

other services to the extent authorized by state law, and establish debt and mill levy limitations; provided, that all property in order to be subject to the assessment provisions of this subsection must be assessed in a uniform manner as prescribed by the state board of equalization and the state supervisor of assessments. A charter or ordinance or act of a governing body of a home rule county may not supersede any state law that determines what property or acts are subject to, or exempt from, ad valorem taxes. A charter or ordinance or act of the governing body of a home rule county may not supersede section 11-11-55.1 relating to the sixty percent petition requirement for improvements and of section 40-22-18 relating to the barring proceeding for improvement projects. After December 31, 2005, sales and use taxes, farm machinery gross receipts taxes, and alcoholic beverage gross receipts taxes levied under this chapter:

- a. Must conform in all respects with regard to the taxable or exempt status of items under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed at multiple rates with the exception of sales of electricity, piped natural or artificial gas, or other heating fuels delivered by the seller or the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.
- b. May not be newly imposed or changed except to be effective on the first day of a calendar quarterly period after a minimum of ninety days notice to the tax commissioner or, for purchases from printed catalogs, on the first day of a calendar quarter after a minimum of one hundred twenty days notice to the seller.
- c. May not be limited to apply to less than the full value of the transaction or item as determined for state sales and use tax, farm machinery gross receipts tax, or alcoholic beverage gross receipts tax purposes.
- d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1.

After December 31, 2005, any portion of a charter or any portion of an ordinance or act of a governing body of a home rule county passed pursuant to a charter which does not conform to the requirements of this subsection is invalid to the extent that

it does not conform. The invalidity of a portion of a charter or ordinance or act of a governing body of a home rule county because it does not conform to this subsection does not affect the validity of any other portion of the charter or ordinance or act of a governing body of a home rule county or the eligibility for a refund under section 57-01-02.1. Any taxes imposed under this chapter on farm machinery, farm irrigation equipment, and farm machinery repair parts used exclusively for agricultural purposes, or on alcoholic beverages, which were in effect on December 31, 2005, become gross receipts taxes after December 31, 2005.

SECTION 2. AMENDMENT. Section 40-05.1-06 of the North Dakota Century Code, as effective after December 31, 2005, is amended and reenacted as follows:

40-05.1-06 (Effective after December 31, 2005) Powers. From and after the filing with the secretary of state of a charter framed and approved in reasonable conformity with the provisions of this chapter, such city, and the citizens thereof, shall, if included in the charter and implemented through ordinances, have the following powers set out in this chapter:

1. To acquire, hold, operate, and dispose of property within or without the corporate limits, and exercise the right of eminent domain for such purposes.
2. To control its finances and fiscal affairs; to appropriate money for its purposes, and make payment of its debts and expenses; to levy and collect taxes, excises, fees, charges, and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings, and improvements; to contract debts, borrow money, issue bonds, warrants, and other evidences of indebtedness; to establish charges for any city or other services, and to establish debt and mill levy limitations, provided that all real and personal property in order to be subject to the assessment provisions of this subsection shall be assessed in a uniform manner as prescribed by the state board of equalization and the state supervisor of assessments. The authority to levy taxes under this subsection does not include authority to impose income taxes.
3. To fix the fees, number, terms, conditions, duration, and manner of issuing and revoking licenses in the exercise of its governmental police powers.

4. To provide for city officers, agencies, and employees, their selection, terms, powers, duties, qualifications, and compensation. To provide for change, selection, or creation of its form and structure of government including its governing body, executive officer, and city officers.
5. To provide for city courts, their jurisdiction and powers over ordinance violations, duties, administration, and the selection, qualifications, and compensation of their officers; however, the right of appeal from judgment of such courts shall not be in any way affected.
6. To provide for all matters pertaining to city elections, except as to qualifications of electors.
7. To provide for the adoption, amendment, and repeal of ordinances, resolutions, and regulations to carry out its governmental and proprietary powers and to provide for public health, safety, morals, and welfare, and penalties for a violation thereof.
8. To lay out or vacate streets, alleys, and public grounds, and to provide for the use, operation, and regulation thereof.
9. To define offenses against private persons and property and the public health, safety, morals, and welfare, and provide penalties for violations thereof.
10. To engage in any utility, business, or enterprise permitted by the constitution or not prohibited by statute or to grant and regulate franchises therefor to a private person, firm, corporation, or limited liability company.
11. To provide for zoning, planning, and subdivision of public or private property within the city limits; to provide for such zoning, planning, and subdivision of public or private property outside the city limits as may be permitted by state law.
12. To levy and collect franchise and license taxes for revenue purposes.
13. To exercise in the conduct of its affairs all powers usually exercised by a corporation.
14. To fix the boundary limits of said city and the annexation and deannexation of territory adjacent to said city except that such power shall be subject to, and shall conform with the state law made and provided.

- 1 15. To contract with and receive grants from any other governmental entity or agency,
2 with respect to any local, state, or federal program, project, or works.
- 3 16. To impose registration fees on motor vehicles, farm machinery gross receipts
4 taxes, alcoholic beverage gross receipts taxes, or sales and use taxes in addition
5 to any other taxes imposed by law. After December 31, 2005, sales and use taxes
6 and gross receipts taxes levied under this chapter:
- 7 a. Must conform in all respects with regard to the taxable or exempt status of
8 items under chapters 57-39.2 and 57-40.2 and may not be imposed at
9 multiple rates with the exception of sales of electricity, piped natural or
10 artificial gas, or other heating fuels delivered by the seller or the retail sale or
11 transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured
12 homes, or mobile homes.
- 13 b. May not be newly imposed or changed except to be effective on the first day
14 of a calendar quarterly period after a minimum of ninety days notice to the tax
15 commissioner or, for purchases from printed catalogs, on the first day of a
16 calendar quarter after a minimum of one hundred twenty days notice to the
17 seller.
- 18 c. May not be limited to apply to less than the full value of the transaction or item
19 as determined for state sales and use tax purposes.
- 20 d. Must be subject to collection by the tax commissioner under an agreement
21 under section 57-01-02.1.

22 It is the intention of this chapter to grant and confirm to the people of all cities coming
23 within its provisions the full right of self-government in both local and city matters within the
24 powers enumerated herein. The statutes of the state of North Dakota, so far as applicable,
25 shall continue to apply to home rule cities, except insofar as superseded by the charters of such
26 cities or by ordinance passed pursuant to such charters.

27 After December 31, 2005, any portion of a charter or any portion of an ordinance
28 passed pursuant to a charter which does not conform to the requirements of subsection 16 is
29 invalid to the extent that it does not conform. The invalidity of a portion of a charter or
30 ordinance because it does not conform to subsection 16 does not affect the validity of any other
31 portion of the charter or ordinance or the eligibility for a refund under section 57-01-02.1. Any

taxes imposed under this chapter on farm machinery, farm irrigation equipment, and farm machinery repair parts used exclusively for agricultural purposes, or on alcoholic beverages, which were in effect on December 31, 2005, become gross receipts taxes after December 31, 2005.

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

57-01-02.1. (Effective through December 31, 2005) Tax collection agreements with home rule cities or counties.

1. The governing body of any incorporated city that has adopted the home rule provisions of chapter 40-05.1, or of any county which has adopted the home rule provisions of chapter 11-09.1, and the tax commissioner are hereby authorized and empowered to enter into contractual agreements whereby the tax commissioner has authority to collect any sales or use taxes assessed by such incorporated city or county.
2. It is the duty of the tax commissioner to deposit with the state treasurer all money collected under this section and to accompany each remittance with a certificate showing the city or county for which it was collected. The state treasurer, monthly, shall pay to the auditors of the several cities or counties the money to which they are entitled under this section.
3. The agreements entered into under this section may also provide for an agreed amount to be allowed the tax commissioner for services rendered in connection with such collections. Any sums collected for services rendered must be paid to the state treasurer for deposit in the general fund.

(Effective after December 31, 2005) Tax collection agreements with home rule cities or counties - Limitations on city or county authority.

1. The governing body of any incorporated city that has adopted the home rule provisions of chapter 40-05.1 or of any county which has adopted the home rule provisions of chapter 11-09.1 must enter a contract with the tax commissioner giving the tax commissioner authority to collect any sales ~~or~~, use, or gross receipts taxes assessed by such incorporated city or county.

2. The tax commissioner shall deposit with the state treasurer all money collected under a contract under this section and accompany each remittance with a certificate showing the city or county for which it was collected. The state treasurer, monthly, shall pay to the auditors of cities or counties the money to which cities or counties are entitled under a contract under this section.
3. Contracts under this section shall provide for an agreed amount to be allowed the tax commissioner for services. Any sums collected for services rendered must be paid to the state treasurer for deposit in the general fund.
4. A person required to collect and remit sales or use taxes may not be required to register with, file returns with, or remit funds to anyone other than the tax commissioner or the tax commissioner's authorized agent. A city or county may not conduct an independent sales or use tax audit of a seller registered under the agreement adopted under chapter 57-39.4.
5. A retailer shall collect city and county sales, use, and gross receipts taxes without regard to any cap or threshold on purchases provided by city or county ordinance, resolution, or charter and a taxpayer is eligible for refund from the tax commissioner of the difference between the amount of city and county sales, use, or gross receipts taxes paid and the amount that would have been due by application of a cap or threshold provided by city or county ordinance, resolution, or charter.

SECTION 4. AMENDMENT. Section 57-39.2-01 of the North Dakota Century Code, as effective after December 31, 2005, is amended and reenacted as follows:

57-39.2-01. (Effective after December 31, 2005) Definitions. The following words, terms, and phrases, when used in this chapter, have the meaning ascribed to them in this section, unless the context clearly indicates a different meaning:

1. "Business" includes any activity engaged in by any person or caused to be engaged in by the person with the object of gain, benefit or advantage, either direct or indirect.
2. "Certified service provider" means an agent certified under the agreement adopted under chapter 57-39.4 to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit taxes on its own purchases.

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

4. "Delivery charges" means charges by the seller for preparation and delivery to a location designated by the purchaser of personal property or services. For purposes of this subsection, "preparation and delivery" includes transportation, shipping, postage, handling, crating, and packing. If shipment includes exempt property and taxable property, the seller should allocate the delivery charge by using a percentage based on:

a. The total sales price of the taxable property compared to the total sales price of all property in the shipment; or

b. The total weight of the taxable property compared to the total weight of all property in the shipment.

The seller must tax the percentage of the delivery charge allocated to the taxable property but does not have to tax the percentage allocated to the exempt property.

5. "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addresses on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address.

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

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

b. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

c. Intended to affect the structure or any function of the body.

~~6.~~ 7. "Farm machinery" means all vehicular implements and attachment units, designed and sold for direct use in planting, cultivating, or harvesting farm products or used

in connection with the production of agricultural produce or products, livestock, or poultry on farms, which are operated, drawn, or propelled by motor or animal power. "Farm machinery" does not include vehicular implements operated wholly by hand or a motor vehicle required to be registered under chapter 57-40.3. "Farm machinery" does not include machinery that may be used for other than agricultural purposes, including tires, farm machinery repair parts, tools, shop equipment, grain bins, feed bunks, fencing materials, and other farm supplies and equipment. For purposes of this subsection, "attachment unit" means any part or combination of parts having an independent function, other than farm machinery repair parts, which when attached or affixed to farm machinery is used exclusively for agricultural purposes.

~~7.~~ 8. "Farm machinery repair parts" means repair or replacement parts for farm machinery that have a specific or generic part number assigned by the manufacturer of the farm machinery. "Farm machinery repair parts" do not include tires, fluid, gas, grease, lubricant, wax, or paint.

~~8.~~ 9. a. "Gross receipts" means the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- (1) The seller's cost of the property sold;
- (2) The cost of materials used, labor or service costs, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- (3) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- (4) Delivery charges;
- (5) The value of exempt personal property given to the purchaser when taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise; and
- (6) Credit for any trade-in, as determined by state law.

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

c. Providing tangible personal property with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subdivision, an operator must do more than maintain, inspect, or set up the tangible personal property.

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

~~10.~~ 11. "Local governmental unit" means incorporated cities, counties, school districts, and townships.

~~11.~~ 12. "Person" includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, business trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number.

~~12.~~ 13. "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a person authorized by the laws of this state to prescribe drugs.

~~13.~~ 14. "Relief agency" means the state, any county, city and county, city or district thereof, or an agency engaged in actual relief work.

~~14.~~ 15. "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrental. "Retail sale" or "sale at retail" includes the sale, including the leasing or renting, to a consumer or to any person for any purpose, other than for processing or for resale, of tangible personal property; the sale of steam, gas, and communication service to retail consumers or users; the sale of vulcanizing, recapping, and retreading services for tires; the furnishing of bingo cards; the ordering, selecting, or aiding a customer to select any goods, wares, or merchandise from any price list or catalog, which the customer might order, or be ordered for such customer to be shipped directly to such customer; the sale or furnishing of hotel, motel, or tourist court accommodations, tickets, or admissions to any place of amusement, athletic event, or place of entertainment, including the playing of any machine for amusement or entertainment in response to the use of a coin; and the sales of magazines and other periodicals. By the term "processing" is meant any tangible personal

property including containers which it is intended, by means of fabrication, compounding, manufacturing, producing, or germination shall become an integral or an ingredient or component part of other tangible personal property intended to be sold ultimately at retail. The sale of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property must be considered as a sale of tangible personal property for a purpose other than for processing; the delivery of possession within the state of North Dakota of tangible personal property by a wholesaler or distributor to an out-of-state retailer who does not hold a North Dakota retail sales tax permit or to a person who by contract incorporates such tangible personal property into, or attaches it to, real property situated in another state may not be considered a taxable sale if such delivery of possession would not be treated as a taxable sale in that state. As used in this subsection, the word "consumer" includes any hospital, infirmary, sanatorium, nursing home, home for the aged, or similar institution that furnishes services to any patient or occupant. The sale of an item of tangible personal property to a person under a finance leasing agreement over the term of which the property will be substantially consumed must be considered a retail sale if the purchaser elects to treat it as such by paying or causing the transferor to pay the sales tax thereon to the commissioner on or before the last day on which payments may be made without penalty as provided in section 57-39.2-12.

~~15.~~ 16. "Retailer" or "seller" includes every person engaged in the business of leasing or renting hotel, motel, or tourist court accommodations, and every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or furnishing of steam, gas, and communication services, or tickets or admissions to places of amusement, entertainment, and athletic events, including the playing of any machine for amusement or entertainment in response to the use of a coin, or magazines, or other periodicals; any organization licensed by the attorney general to conduct bingo games pursuant to section 53-06.1-03; and includes any person as herein defined who by contract or otherwise agrees to furnish for a consideration a totally or partially finished product consisting in whole or in part of tangible personal property subject to the sales tax herein provided, and all items of

1 tangible personal property entering into the performance of such contract as a
2 component part of the product agreed to be furnished under said contract shall be
3 subject to the sales tax herein provided and the sales tax thereon shall be collected
4 by the contractor from the person for whom the contract has been performed in
5 addition to the contract price agreed upon, and shall be remitted to the state in the
6 manner provided in this chapter; and shall include the state or any municipality
7 furnishing steam, gas, or communication service to members of the public in its
8 proprietary capacity. For the purpose of this chapter, retailer shall also include
9 every clerk, auctioneer, agent, or factor selling tangible personal property owned
10 by any other retailer. A retailer also includes every person who engages in regular
11 or systematic solicitation of a consumer market in this state by the distribution of
12 catalogs, periodicals, advertising flyers, or other advertising, or by means of print,
13 radio or television media, by mail, telegraphy, telephone, computer data base,
14 cable, optic, microwave, or other communication system.

15 ~~16.~~ 17. "Sale" means any transfer of title or possession, exchange or barter, conditional or
16 otherwise, in any manner or by any means whatever, for a consideration, and
17 includes the furnishing or service of steam, gas, or communication, the furnishing
18 of bingo cards, the furnishing of hotel, motel, or tourist court accommodations, the
19 furnishing of tickets or admissions to any place of amusement, athletic event, or
20 place of entertainment, including the playing of any machine for amusement or
21 entertainment in response to the use of a coin, and sales of magazines and other
22 periodicals. Provided, the words "magazines and other periodicals" as used in this
23 subsection do not include newspapers nor magazines or periodicals that are
24 furnished free by a nonprofit corporation or organization to its members or because
25 of payment by its members of membership fees or dues.

26 ~~17.~~ 18. "Sales tax" means the tax levied under section 57-39.2-02.1 or a conforming tax
27 imposed under home rule authority by a city or county.

28 ~~18.~~ 19. "Tangible personal property" means personal property that can be seen, weighed,
29 measured, felt, or touched or that is in any other manner perceptible to the senses.
30 "Tangible personal property" includes electricity, water, gas, steam, and prewritten
31 computer software.

1 **SECTION 5. AMENDMENT.** Subdivision h of subsection 1 of section 57-39.2-02.1 of
2 the North Dakota Century Code, as effective after December 31, 2005, is amended and
3 reenacted as follows:

4 h. Sale, lease, or rental of a computer ~~software~~ and prewritten computer
5 software, including prewritten computer software delivered electronically or by
6 load and leave. For purposes of this subdivision:

- 7 (1) "Computer" means an electronic device that accepts information in
8 digital or similar form and manipulates it for a result based on a
9 sequence of instructions.
- 10 (2) "Computer software" means a set of coded instructions designed to
11 cause a computer or automatic data processing equipment to perform a
12 task.
- 13 (3) "Delivered electronically" means delivered from the seller to the
14 purchaser by means other than tangible storage media.
- 15 (4) "Electronic" means relating to technology having electrical, digital,
16 magnetic, wireless, optical, electromagnetic, or similar capabilities.
- 17 (5) "Load and leave" means delivery to the purchaser by use of a tangible
18 storage media when the tangible storage media is not physically
19 transferred to the purchaser.
- 20 (6) "Prewritten computer software" means computer software, including
21 prewritten upgrades, which is not designed and developed by the
22 author or other creator to the specifications of a specific purchaser.
23 The combining of two or more "prewritten computer software" programs
24 or prewritten portions thereof does not cause the combination to be
25 other than "prewritten computer software". "Prewritten computer
26 software" includes software designed and developed by the author or
27 other creator to the specifications of a specific purchaser when it is sold
28 to a person other than the purchaser. If a person modifies or enhances
29 "computer software" of which the person is not the author or creator,
30 the person is deemed to be the author or creator only of such person's
31 modifications or enhancements. "Prewritten computer software" or a

prewritten portion thereof that is modified or enhanced to any degree, if such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains "prewritten computer software". However, if there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute "prewritten computer software".

SECTION 6. Section 57-39.2-03.9 of the North Dakota Century Code is created and enacted as follows:

57-39.2-03.9. (Effective January 1, 2006) Sales tax on tobacco products.

Notwithstanding any other provision of law, the sales taxes imposed by this chapter apply to the gross receipts of retailers from all sales at retail of cigarettes, cigars, and other tobacco products. For purposes of this section, "gross receipts" from the sale of cigarettes, cigars and other tobacco products includes any other taxes imposed on such merchandise or its use or on the retail or other sale of such merchandise.

SECTION 7. AMENDMENT. Subdivision d of subsection 2 of section 57-39.2-04.1 of the North Dakota Century Code, as effective after December 31, 2005, is amended and reenacted as follows:

d. "Prepared food" means:

- (1) Food sold in a heated state or heated by the seller;
- (2) Two or more food ingredients mixed or combined by the seller for sale as a single item; or
- (3) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

SECTION 8. AMENDMENT. Subsection 8 of section 57-39.4-16 of the North Dakota Century Code, as effective after December 31, 2005, is amended and reenacted as follows:

8. "Mobile telecommunications service" means the same as that term is defined in section ~~124(5)~~ 124(7) of Public Law 106-252, Mobile Telecommunications Sourcing Act.

1 **SECTION 9.** Section 57-39.5-05 of the North Dakota Century Code is created and
2 enacted as follows:

3 **57-39.5-05. (Effective after December 31, 2005) Use tax and credit for taxes paid.**

- 4 1. A person who receives farm machinery for storage, use, or consumption in this
5 state is subject to tax on storage, use, or consumption of that farm machinery at
6 the rate imposed under section 57-39.5-02.
- 7 2. A person subject to taxes under subsection 1 who has paid taxes to another state
8 or political subdivision of a state as required by law on the purchase of the farm
9 machinery is entitled to a credit against the tax due under subsection 1 equal to the
10 lesser of the tax actually paid to the other state or political subdivision or the
11 amount of tax imposed under subsection 1.

12 **SECTION 10.** Section 57-39.6-05 of the North Dakota Century Code is created and
13 enacted as follows:

14 **57-39.6-05. (Effective after December 31, 2005) Use tax and credit for taxes paid.**

- 15 1. A person who receives alcoholic beverages for storage, use, or consumption in this
16 state is subject to tax on storage, use, or consumption of those alcoholic
17 beverages at the rate imposed under section 57-39.6-02.
- 18 2. A person subject to taxes under subsection 1 who has paid taxes to another state
19 or political subdivision of a state as required by law on the purchase of the
20 alcoholic beverages is entitled to a credit against the tax due under subsection 1
21 equal to the lesser of the tax actually paid to the other state or political subdivision
22 or the amount of tax imposed under subsection 1.

23 **SECTION 11.** Chapter 57-39.7 of the North Dakota Century Code is created and
24 enacted as follows:

25 **57-39.7-01. (Effective from January 1, 2006, through June 30, 2007) Imposition -**
26 **Exemptions.** There is imposed a tax of one percent upon the gross receipts of retailers from
27 all sales at retail within this state from the leasing or renting of hotel, motel, or tourist court
28 accommodations for periods of fewer than thirty consecutive days. The tax imposed under this
29 chapter does not apply to leasing or renting of bed and breakfast accommodations licensed
30 under chapter 23-09.1.

57-39.7-02. (Effective from January 1, 2006, through June 30, 2007)

Administration. The provisions of chapter 57-39.2, pertaining to the administration of the retail sales tax, including refund or credit, provided therein, not in conflict with the provisions of this chapter, govern the administration of the tax levied in this chapter.

57-39.7-03. (Effective from January 1, 2006, through June 30, 2007) Allocation of revenue. Revenue from the tax imposed by this chapter must not be considered to be a portion of sales, use, and motor vehicle excise tax collections under section 57-39.2-26.1. Revenue from the tax imposed by this chapter must be deposited in the state general fund.

SECTION 12. AMENDMENT. Section 57-40.2-01 of the North Dakota Century Code, as effective after December 31, 2005, is amended and reenacted as follows:

57-40.2-01. (Effective after December 31, 2005) Definitions. In this chapter, unless the context and subject matter otherwise require:

1. "Business", "commissioner", "farm machinery", "gross receipts", "lease or rental", "local governmental unit", "~~persons~~ person", "relief agency", "retail sale", "sale", and "tangible personal property", each has the meaning given to it in section 57-39.2-01.
2. Property used in "processing", as that term is used in subsection 9, means any tangible personal property including containers which it is intended, by means of fabrication, compounding, manufacturing, producing, or germination, shall become an integral or an ingredient or component part of other tangible personal property intended to be sold ultimately at retail. The purchase of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property must be considered as a purchase of tangible personal property for a purpose other than for processing.
3. "Purchase" means any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration. "Purchase" also means the severing of sand or gravel from the soil of this state.
4. "Purchase price" applies to the measure subject to use tax and has the same meaning as gross receipts as defined in section 57-39.2-01.
5. "Purchased at retail" includes, ~~but is not limited to:~~

- a. The completion of the fabricating, compounding, or manufacturing of tangible personal property by a person for storage, use, or consumption by that person.
- b. The furnishing of bingo cards, wares, and merchandise, and gas, when furnished or delivered to consumers or users within this state, and the sale of vulcanizing, recapping, and retreading services for tires.
- c. The leasing or renting of tangible personal property, the sale, storage, use, or consumption of which has not been previously subjected to a retail sales or use tax in this state.
- ~~e.~~ d. The purchase of magazines or other periodicals. Provided, the words "magazines and other periodicals" as used in this subdivision do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.
- ~~e.~~ e. The severance of sand or gravel from the soil.
- ~~e.~~ f. The purchase, including the leasing or renting, of tangible personal property from any bank for storage, use, or consumption.
- ~~f.~~ g. The purchase of an item of tangible personal property by a purchaser who rents or leases it to a person under a finance leasing agreement over the term of which the property will be substantially consumed, if the purchaser elects to treat it as being purchased at retail by paying or causing the transferor to pay the use tax to the commissioner on or before the last day on which payments may be made without penalty as provided in section 57-40.2-07.
6. "Retailer" includes every person engaged in the business of selling tangible personal property for use within the meaning of this chapter, but, when in the opinion of the commissioner, it is necessary for the efficient administration of this chapter to regard any salesman, representative, trucker, peddler, or canvasser as the agent of the dealer, distributor, supervisor, employer, or other person under whom that person operates or from whom that person obtains the tangible personal property sold by that person, whether that person is making sales in that person's own behalf or in behalf of such dealer, distributor, supervisor, employer,

or other person, the commissioner may regard that person as such agent, and may regard the dealer, distributor, supervisor, employer, or other person as a retailer for the purposes of this chapter. A retailer includes any organization licensed by the attorney general to conduct bingo games pursuant to section 53-06.1-03. A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.

7. "Retailer maintaining a place of business in this state", or any like term, means any retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent operating within this state under the authority of the retailer or its subsidiary, whether such place of business or agent is located in the state permanently or temporarily, or whether or not such retailer or subsidiary is authorized to do business within this state. It includes any organization licensed by the attorney general to conduct bingo games pursuant to section 53-06.1-03. It also includes every person who engages in regular or systematic solicitation of sales of tangible personal property in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, by means of print, radio or television media, or by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system for the purpose of effecting retail sales of tangible personal property.

8. ~~"Tangible personal property" means:~~

- a. ~~Tangible goods, including the furnishing of bingo cards, wares, and merchandise, and gas, when furnished or delivered to consumers or users within this state, and the sale of vulcanizing, recapping, and retreading services for tires.~~
- b. ~~The leasing or renting of tangible personal property, the sale, storage, use, or consumption of which has not been previously subjected to a retail sales or use tax in this state.~~

e. ~~The purchase of magazines or other periodicals. Provided, the words "magazines and other periodicals" as used in this subdivision do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.~~

d. ~~The severance of sand or gravel from the soil.~~

9. "Use" means the exercise by any person of any right or power over tangible personal property incident to the ownership or possession of that property, including the storage, use, or consumption of that property in this state, except that it does not include processing, or the sale of that property in the regular course of business. "Use" also means the severing of sand or gravel from the soil of this state for use within or outside this state.

~~10.~~ 9. "Use tax" means the tax levied under section 57-40.2-02.1 or imposed under home rule authority by a city or county.

SECTION 13. AMENDMENT. Subsection 2 of section 57-40.2-02.1 of the North Dakota Century Code, as effective after December 31, 2005, is amended and reenacted as follows:

2. An excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes, except as provided in subsection 19 of section 57-40.2-04, ~~and of new farm machinery and new irrigation equipment used exclusively for agricultural purposes~~ purchased at retail for storage, use, or consumption in this state at the rate of three percent of the purchase price thereof. Except as limited by section 57-40.2-11, and except as provided in subsection 35 of section 57-39.2-04, an excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes ~~and of new farm machinery and new irrigation equipment used exclusively for agricultural purposes not originally purchased for storage, use, or consumption in this state~~ at the rate of three percent of the fair market value of mobile homes used for residential or business purposes ~~and of new farm machinery and new irrigation equipment used exclusively for agricultural purposes~~ at the time it was brought into this state.

SECTION 14. AMENDMENT. Section 57-40.2-03.2 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-03.2. Use tax on ~~alcoholic beverages and tobacco products.~~

Notwithstanding any other provision of law, the use taxes imposed by this chapter apply to the storage, use, or consumption in this state of ~~alcoholic beverages as defined in section 5-01-01, whether mixed or unmixed at the time of sale or thereafter, and whether sold for consumption on the premises or through off-sale outlets for consumption off the premises, and cigarettes, cigars, and other tobacco products, provided that gross receipts from the sale thereof mean and include any other taxes imposed on such merchandise or its use or on the retail or other sale thereof. Notwithstanding any other provision of law, there is imposed a tax of seven percent on the storage, use, or consumption in this state of alcoholic beverages, which is in lieu of and not in addition to any other tax imposed by this chapter.~~

SECTION 15. AMENDMENT. Section 57-40.2-04 of the North Dakota Century Code, as effective after December 31, 2005, is amended and reenacted as follows:

57-40.2-04. (Effective after December 31, 2005) Exemptions. This chapter hereby is declared to be an independent and separate tax law but complementary to the retail sales tax laws of this state provided for by chapter 57-39.2 and does not apply to:

1. Any tangible personal property or taxable service upon the sale of which the retail sales tax imposed by chapter 57-39.2 has been collected by a retailer holding the permit prescribed by section 57-39.2-14.
2. Tangible personal property brought into this state by a nonresident thereof for that person's own storage, use, or consumption while temporarily within this state, except that such property is not exempt if brought into this state for storage, use, or consumption in the conduct of a trade, occupation, business, or profession.
3. Any motor vehicle either subject to or expressly exempted from the motor vehicle excise taxes imposed by chapter 57-40.3.
4. Tangible personal property upon which the state now imposes and collects a special tax, whether in the form of license tax, stamp tax, or otherwise.
5. Railway cars and locomotives used in interstate commerce, and tangible personal property which becomes a component part thereof.
6. Newsprint and ink actually used in the publication of a newspaper.

7. Repealed by S.L. 1981, ch. 582, § 3.

8. Gross receipts from the leasing or renting of motion picture film to motion picture exhibitors for exhibition in this state if the sale of the tickets or admissions to the exhibition of the film is subject to the sales tax imposed by chapter 57-39.2.

9. Adjuvants required by the chemical label for application of a product warranty, commercial fertilizers, fungicides, seed treatments, inoculants and fumigants, herbicides and insecticides used by agricultural or commercial vegetable producers and commercial applicators; chemicals used to preserve agricultural crops being stored; and seeds, roots, bulbs, and small plants used by commercial users or consumers for planting or transplanting for commercial vegetable gardens or agricultural purposes.

10. Gross receipts from the leasing, or renting, for residential housing, for periods of more than thirty consecutive days, of factory manufactured homes, including mobile homes, modular living units, or sectional homes, whether or not placed on a permanent foundation.

11. Bibles, hymnals, textbooks, and prayerbooks used by nonprofit religious organizations.

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

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

(1) Can withstand repeated use;

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

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

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

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

- (1) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either at home or in a motor vehicle;
- (2) Is not generally used by a person with normal mobility; and
- (3) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

c. "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for such a device, worn on or in the body to:

- (1) Artificially replace a missing portion of the body;
- (2) Prevent or correct a physical deformity or malfunction; or
- (3) Support a weak or deformed portion of the body.

d. "Prosthetic device" and "durable medical equipment" include:

- (1) Artificial devices individually designed, constructed, or altered solely for the use of a particular crippled person so as to become a brace, support, supplement, correction, or substitute for the bodily structure including the extremities of the individual.

~~b.~~ (2) Artificial limbs, artificial eyes, hearing aids, and other equipment worn as a correction or substitute for any functioning portion of the body.

~~c.~~ (3) Artificial teeth sold by a dentist.

~~d.~~ (4) Eyeglasses when especially designed or prescribed by an ophthalmologist, physician, oculist, or optometrist for the personal use of the owner or purchaser.

~~e.~~ (5) Crutches and wheelchairs for the use of invalids and crippled persons.

~~f.~~ (6) Equipment, including manual control units, van lifts, van door opening units, and raised roofs, for attaching to or modifying a motor vehicle for use by a permanently physically disabled person.

~~g.~~ (7) Equipment, including elevators, dumbwaiters, chair lifts, and bedroom or bathroom lifts, whether or not sold for attaching to real property, for use by a permanently physically disabled person in that person's principal dwelling.

- ~~h.~~ (8) Equipment, including manual control units, for attaching to or modifying motorized implements of husbandry for use by permanently physically disabled persons.
- (9) Devices and supplies designed or intended for ostomy care and management, including collection devices, colostomy irrigation equipment and supplies, skin barriers or skin protectors, and other supplies especially designed for use of ostomates.
- (10) Supplies, equipment, and devices to be used exclusively by a person with bladder dysfunction, including catheters, collection devices, incontinence pads and pants, and other items used for the care and management of bladder dysfunction.
13. Purchases of electricity.
14. The leasing or renting of any tangible personal property upon which a North Dakota sales tax or use tax has been paid pursuant to the election of the purchaser pursuant to subsection ~~14~~ 15 of section 57-39.2-01 or subsection 5 of section 57-40.2-01.
15. Any tangible personal property or service which would be exempt from the retail sales tax pursuant to an express exemption provided in chapter 57-39.2 if it were purchased in North Dakota.
16. Gross receipts from the sale of money including all legal tender coins and currency.
17. Gross receipts from sales to nonprofit voluntary health associations which are exempt from federal income tax under section 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. 501(c)(3)]. As used in this subsection, a voluntary health association is an organization recognized by the internal revenue service, the national health council, the state tax commissioner, and the North Dakota secretary of state as a nonprofit organization that is exempt under section 501(c)(3) of the United States Internal Revenue Code and meets the following requirements: It has been organized and operated exclusively in providing services for the purposes of preventing and alleviating human illness and injury. Methods used to obtain these goals would include education, research, community

service, and direct patient services, income being derived solely from private donations with some exceptions of a minimal membership fee. Its members are not limited to only individuals who themselves are licensed or otherwise legally authorized to render the same professional services as the organization. The disbursement of funds within a volunteer health association is to be controlled by a board of directors who work voluntarily and without pay.

18. ~~Gross receipts from all sales of water, except water sold in containers of less than one gallon [3.79 liters] volume.~~

~~19.~~ Gross receipts from the sale of a mobile home which has been sold, bargained, exchanged, given away, or transferred by the person who first acquired it from a retailer in a sale at retail and upon which the North Dakota use tax has previously been imposed.

~~20.~~ 19. The donation by a retailer of tangible personal property to an organization exempt from federal income tax under section 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. 501(c)(3)].

~~21.~~ 20. Air carrier transportation property subject to ad valorem property taxation pursuant to the provisions of chapters 57-06, 57-07, 57-08, 57-13, and 57-32.

~~22.~~ 21. Tangible personal property consisting of flight simulators or mechanical or electronic equipment for use in association with a flight simulator.

~~23.~~ 22. Gross receipts from the initial sale of beneficiated coal.

~~24.~~ 23. Gross receipts from electronic games of chance licensed by the attorney general under chapter 53-06.1.

SECTION 16. AMENDMENT. Section 57-40.2-04.1 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-04.1. Use tax exemption for food and food products. Gross receipts from sales for human consumption of food and food ~~products including, but not limited to, cereal and cereal products, butter, cheese, milk and milk products, oleomargarine, meat and meat products, poultry and fish and other fresh and saltwater animal products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices and salt, and sugar and sugar products when purchased by consumers for consumption off the premises where~~ purchased, are exempt from the use tax imposed by chapter 57-40.2. Gross receipts from

~~sales for human consumption of food and food products given, or to be given, as samples to consumers for consumption on the premises of a food store are exempt from the use tax imposed by this chapter. Purchases made with food coupons issued by the United States department of agriculture under the Food Stamp Act of 1977, as amended, are exempt from the tax imposed by this chapter pursuant to the Food Security Act of 1985. For purposes of this section, "food" and "food products" do not include: ingredients are exempt from taxes imposed under this chapter. Gross receipts from sales for human consumption of food and food products given, or to be given, as samples to consumers for consumption on the premises of a food store are exempt from taxes imposed by this chapter. For purposes of this section, "food" and "food ingredients" mean substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, which are sold for ingestion or chewing by humans and are consumed for taste or nutritional value.~~

1. For purposes of this section, "food" and "food ingredients" do not include:
 - ~~a. Alcoholic beverages or mixed drinks made from alcoholic beverages.~~
 - ~~b. Candy or chewing gum.~~
 - ~~c. Carbonated beverages.~~
 - ~~d. Beverages commonly referred to as soft drinks containing less than seventy percent fruit juice.~~
 - ~~e. Powdered drink mixes.~~
 - ~~f. Medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, or pill form sold as dietary supplements or adjuncts.~~
 - ~~g. Coffee and coffee substitutes.~~
 - ~~h. Tea.~~
 - ~~i. Cocoa or cocoa products.~~
 - c. Dietary supplements.
 - d. Prepared food.
 - e. Soft drinks containing less than fifty percent fruit juice.
 - f. Tobacco.
2. For purposes of this section:

- 1 a. "Alcoholic beverages" means beverages that are suitable for human
2 consumption and contain one-half of one percent or more of alcohol by
3 volume.
- 4 b. "Candy" means a preparation of sugar, honey, or other natural or artificial
5 sweeteners in combination with chocolate, fruits, nuts, or other ingredients or
6 flavoring in the form of bars, drops, or pieces. Candy does not include any
7 preparation containing flour and that does not require refrigeration.
- 8 c. "Dietary supplement" means any product, other than tobacco, intended to
9 supplement the diet which contains one or more of the following dietary
10 ingredients: a vitamin; a mineral; an herb or other botanical; an amino acid; a
11 dietary substance for use by humans to supplement the diet by increasing the
12 total dietary intake; an oral concentrate, metabolite, constitute, extract, or
13 combination of any dietary ingredients described in this subdivision and which
14 is intended for ingestion in tablet, capsule, powder, soft gel cap, or liquid form,
15 or if not represented for use as a sole item of a meal or of a diet; and is
16 required to be labeled as a dietary supplement, identifiable by the
17 supplemental facts box found on the label and as required pursuant to
18 21 CFR 101.36.
- 19 d. "Prepared food" means:
- 20 (1) Food sold in a heated state or heated by the seller;
21 (2) Two or more food ingredients mixed or combined by the seller for sale
22 as a single item; or
23 (3) Food sold with eating utensils provided by the seller, including plates,
24 knives, forks, spoons, glasses, cups, napkins, or straws. A plate does
25 not include a container or packaging used to transport the food.
- 26 e. "Prepared food" does not mean:
- 27 (1) Food that is only cut, repackaged, or pasteurized by the seller.
28 (2) Eggs, fish, meat, poultry, and foods containing these raw animal foods
29 requiring cooking by the consumer as recommended by the food and
30 drug administration in chapter 3, part 401.11, of its food code so as to
31 prevent food-borne illness.

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

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

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

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

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

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

SECTION 17. REPEAL. Section 57-39.2-03.8 and subsection 33 of section 57-39.2-04 of the North Dakota Century Code are repealed.

SECTION 18. EFFECTIVE DATE - EXPIRATION DATE. Section 11 of this Act is effective for taxable events occurring from January 1, 2006, through June 30, 2007, and is thereafter ineffective. The remainder of this Act is effective for taxable events occurring after December 31, 2005.