

HOUSE BILL NO.

Introduced by

Representative Sitte

1 A BILL for an Act to amend and reenact sections 57-39.2-01, 57-39.5-03, 57-40.2-01, and
2 subsection 5 of section 57-40.3-01 of the North Dakota Century Code, relating to sales, use,
3 and motor vehicle excise tax exemptions for purchase of replacement property using the
4 amount of insurance compensation for a motor vehicle or farm machinery that has been stolen
5 or totally destroyed; and to provide an effective date.

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

7 **SECTION 1. AMENDMENT.** Section 57-39.2-01 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **57-39.2-01. (Effective through December 31, 2005) Definitions.** The following
10 words, terms, and phrases, when used in this chapter, have the meaning ascribed to them in
11 this section, unless the context clearly indicates a different meaning:

- 12 1. "Business" includes any activity engaged in by any person or caused to be
13 engaged in by the person with the object of gain, benefit or advantage, either direct
14 or indirect.
- 15 2. "Commissioner" means the tax commissioner of the state of North Dakota.
- 16 3. "Gross receipts" means the total amount of sales of retailers, valued in money,
17 whether received in money or otherwise. Provided, discounts for any purposes
18 allowed and taken on sales are not included, nor is the sale price of property
19 returned by customers when the full sale price is refunded either in cash or by
20 credit.
 - 21 a. ~~Provided, further, when~~ When tangible personal property is taken in trade or
22 in a series of trades as a credit or part payment of a retail sale taxable under
23 this chapter, if the tangible personal property traded in will be subject to the
24 sales tax imposed by this chapter when sold, will be subject to the motor

- 1 vehicle excise tax imposed by chapter 57-40.3, or if the tangible personal
2 property traded in is used farm machinery or used irrigation equipment, the
3 credit or trade-in value allowed by the retailer are not gross receipts.
- 4 b. ~~Provided, further, on~~ On all sales of retailers, valued in money, when the
5 sales are made under a conditional sales contract, or under other forms of
6 sale wherein the payment of the principal sum is to be extended over a period
7 longer than sixty days from the date of sale that only the portion of the sale
8 amount shall be accounted for, for the purpose of imposition of tax imposed
9 by this chapter, as has actually been received in cash by the retailer during
10 each quarterly period as defined herein.
- 11 c. When a farm machine is purchased as a replacement for machinery which
12 was stolen or totally destroyed, a credit or trade-in credit is allowed against
13 one or more replacement purchases in an a cumulative amount equal to the
14 compensation received for the loss from an insurance company. The
15 purchaser shall provide the seller with a notarized statement from the
16 insurance company verifying that the original farm machine is a total loss and
17 indicating the amount of compensation. ~~The~~ If the full amount of the credit
18 under this subdivision has not been used, the retailer shall retain a copy of
19 the notarized statement and if the full amount of the credit has been used, the
20 original notarized statement must be retained by the seller to verify the
21 amount of credit or trade-in credit allowed.
- 22 d. "Gross receipts" also means, with respect to the leasing or renting of tangible
23 personal property, the amount of consideration, valued in money, whether
24 received in money or otherwise, received from the leasing or renting of only
25 tangible personal property the transfer of title to which has not been subjected
26 to a retail sales tax in this state.
- 27 e. For the purpose of this chapter, gross receipts shall also include the total
28 amount of sales of every clerk, auctioneer, agent, or factor selling tangible
29 personal property owned by any other retailer.
- 30 4. "Local governmental unit" means incorporated cities, counties, school districts, and
31 townships.

- 1 5. "Person" includes any individual, firm, partnership, joint venture, association,
2 corporation, limited liability company, estate, business trust, receiver, or any other
3 group or combination acting as a unit and the plural as well as the singular number.
- 4 6. "Relief agency" means the state, any county, city and county, city or district
5 thereof, or an agency engaged in actual relief work.
- 6 7. "Retail sale" or "sale at retail" means the sale, including the leasing or renting, to a
7 consumer or to any person for any purpose, other than for processing or for resale,
8 of tangible personal property; the sale of steam, gas, and communication service to
9 retail consumers or users; the sale of vulcanizing, recapping, and retreading
10 services for tires; the furnishing of bingo cards; the ordering, selecting, or aiding a
11 customer to select any goods, wares, or merchandise from any price list or catalog,
12 which the customer might order, or be ordered for such customer to be shipped
13 directly to such customer; the sale or furnishing of hotel, motel, or tourist court
14 accommodations, tickets, or admissions to any place of amusement, athletic event,
15 or place of entertainment including the playing of any machine for amusement or
16 entertainment in response to the use of a coin; and the sales of magazines and
17 other periodicals. By the term "processing" is meant any tangible personal
18 property including containers which it is intended, by means of fabrication,
19 compounding, manufacturing, producing, or germination shall become an integral
20 or an ingredient or component part of other tangible personal property intended to
21 be sold ultimately at retail. The sale of an item of tangible personal property for the
22 purpose of incorporating it in or attaching it to real property must be considered as
23 a sale of tangible personal property for a purpose other than for processing; the
24 delivery of possession within the state of North Dakota of tangible personal
25 property by a wholesaler or distributor to an out-of-state retailer who does not hold
26 a North Dakota retail sales tax permit or to a person who by contract incorporates
27 such tangible personal property into, or attaches it to, real property situated in
28 another state may not be considered a taxable sale if such delivery of possession
29 would not be treated as a taxable sale in that state. As used in this subsection, the
30 word "consumer" includes any hospital, infirmary, sanatorium, nursing home, home
31 for the aged, or similar institution that furnishes services to any patient or occupant.

1 The sale of an item of tangible personal property to a purchaser who rents or
2 leases it to a person under a finance leasing agreement over the term of which the
3 property will be substantially consumed must be considered a retail sale if the
4 purchaser elects to treat it as such by paying or causing the transferor to pay the
5 sales tax thereon to the commissioner on or before the last day on which payments
6 may be made without penalty as provided in section 57-39.2-12.

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

1 9. "Sale" means any transfer of title or possession, exchange or barter, conditional or
2 otherwise, in any manner or by any means whatever, for a consideration, and
3 includes the furnishing or service of steam, gas, or communication, the furnishing
4 of bingo cards, the furnishing of hotel, motel, or tourist court accommodations, the
5 furnishing of tickets or admissions to any place of amusement, athletic event, or
6 place of entertainment including the playing of any machine for amusement or
7 entertainment in response to the use of a coin, and sales of magazines and other
8 periodicals. Provided, the words "magazines and other periodicals" as used in this
9 subsection do not include newspapers nor magazines or periodicals that are
10 furnished free by a nonprofit corporation or organization to its members or because
11 of payment by its members of membership fees or dues.

12 **(Effective after December 31, 2005) Definitions.** The following words, terms, and
13 phrases, when used in this chapter, have the meaning ascribed to them in this section, unless
14 the context clearly indicates 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, dietary
28 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 agricultural
11 purposes, including tires, farm machinery repair parts, tools, shop equipment, grain
12 bins, feed bunks, fencing materials, and other farm supplies and equipment. For
13 purposes of this subsection, "attachment unit" means any part or combination of
14 parts having an independent function, other than farm machinery repair parts,
15 which when attached or affixed to farm machinery is used exclusively for
16 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 measure subject to sales tax and means the total
22 amount of consideration, including cash, credit, property, and services, for
23 which personal property or services are sold, leased, or rented, valued in
24 money, whether received in money or otherwise, without any deduction for the
25 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 value
- 26 allowed by the retailer is not included in gross receipts of the retailer.
- 27 9. "Lease or rental" means any transfer of possession or control of tangible personal
- 28 property for a fixed or indeterminate term for consideration. A lease or rental may
- 29 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 10. "Local governmental unit" means incorporated cities, counties, school districts, and
16 townships.
- 17 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 number.
- 20 12. "Prescription" means an order, formula, or recipe issued in any form of oral,
21 written, electronic, or other means of transmission by a person authorized by the
22 laws of this state to prescribe drugs.
- 23 13. "Relief agency" means the state, any county, city and county, city or district
24 thereof, or an agency engaged in actual relief work.
- 25 14. "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose
26 other than for resale, sublease, or subrental. "Retail sale" or "sale at retail"
27 includes the sale, including the leasing or renting, to a consumer or to any person
28 for any purpose, other than for processing or for resale, of tangible personal
29 property; the sale of steam, gas, and communication service to retail consumers or
30 users; the sale of vulcanizing, recapping, and retreading services for tires; the
31 furnishing of bingo cards; the ordering, selecting, or aiding a customer to select any

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

28 15. "Retailer" or "seller" includes every person engaged in the business of leasing or
29 renting hotel, motel, or tourist court accommodations, and every person engaged in
30 the business of selling tangible goods, wares, or merchandise at retail, or
31 furnishing of steam, gas, and communication services, or tickets or admissions to

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

22 16. "Sale" means any transfer of title or possession, exchange or barter, conditional or
23 otherwise, in any manner or by any means whatever, for a consideration, and
24 includes the furnishing or service of steam, gas, or communication, the furnishing
25 of bingo cards, the furnishing of hotel, motel, or tourist court accommodations, the
26 furnishing of tickets or admissions to any place of amusement, athletic event, or
27 place of entertainment, including the playing of any machine for amusement or
28 entertainment in response to the use of a coin, and sales of magazines and other
29 periodicals. Provided, the words "magazines and other periodicals" as used in this
30 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 2. AMENDMENT.** Section 57-39.5-03 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **57-39.5-03. (Effective after December 31, 2005) Replacement of insured**
12 **machinery credit.** When new farm machinery is purchased as a replacement for machinery on
13 which the insurant has previously paid the gross receipts, sales, or use tax and which was
14 stolen or totally destroyed, a credit or trade-in credit is allowed in an amount equal to the
15 compensation received for the loss from the insurance company. The purchaser shall provide
16 the seller with a notarized statement from the insurance company verifying that the original farm
17 machinery was a total loss and indicating the amount of compensation. The notarized
18 statement must be retained by the seller to verify the amount of credit or trade-in credit allowed.

19 **SECTION 3. AMENDMENT.** Section 57-40.2-01 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **57-40.2-01. (Effective through December 31, 2005) Definitions.** In this chapter,
22 unless the context and subject matter otherwise require:

23 1. "Business", "commissioner", "gross receipts", "local governmental unit", "persons",
24 "relief agency", "retail sale", "sale", each has the meaning given to it in section
25 57-39.2-01.

26 2. Property used in "processing", as that term is used in subsection 9, means any
27 tangible personal property including containers which it is intended, by means of
28 fabrication, compounding, manufacturing, producing, or germination, shall become
29 an integral or an ingredient or component part of other tangible personal property
30 intended to be sold ultimately at retail. The purchase of an item of tangible
31 personal property for the purpose of incorporating it in or attaching it to real

- 1 property must be considered as a purchase of tangible personal property for a
2 purpose other than for processing.
- 3 3. "Purchase" means any transfer of title or possession, exchange, or barter,
4 conditional or otherwise, in any manner or by any means whatsoever, for a
5 consideration. "Purchase" also means the severing of sand or gravel from the soil
6 of this state.
- 7 4. "Purchase price" means the total amount for which tangible personal property is
8 sold, leased, or rented, valued in money, whether paid in money or otherwise, but
9 cash discounts and trade-ins allowed and taken on sales shall not be included.
10 "Purchase price" also means, in those instances when sand or gravel is not sold at
11 retail as tangible personal property by the person severing the sand or gravel, the
12 fair market value of the sand or gravel severed. If the sand or gravel is not sold at
13 retail by the person severing the sand or gravel, it must be presumed until the
14 contrary is shown by the commissioner or by the person severing the sand or
15 gravel that the fair market value is eight cents per ton of two thousand pounds
16 [907.18 kilograms]. If records are not kept as to the tonnage of sand or gravel
17 severed from the soil, it must be presumed for the purpose of this chapter that one
18 cubic yard [764.55 liters] of sand or gravel is equal to one and one-half tons
19 [1360.78 kilograms] of sand or gravel. When a farm machine is purchased as a
20 replacement for machinery which was stolen or totally destroyed, a credit or
21 trade-in credit is allowed in an amount equal to the compensation received for the
22 loss from the insurance company. The purchaser shall provide the seller with a
23 notarized statement from the insurance company verifying that the original farm
24 machine was a total loss and indicating the amount of compensation. The
25 notarized statement must be retained by the seller to verify the amount of credit or
26 trade-in credit allowed.
- 27 5. "Purchased at retail" includes, but is not limited to:
28 a. The completion of the fabricating, compounding, or manufacturing of tangible
29 personal property by a person for storage, use, or consumption by that
30 person.

- 1 b. The leasing or renting of tangible personal property, the sale, storage, use, or
2 consumption of which has not been previously subjected to a retail sales or
3 use tax in this state.
- 4 c. The purchase of magazines or other periodicals. Provided, the words
5 "magazines and other periodicals" as used in this subdivision do not include
6 newspapers nor magazines or periodicals that are furnished free by a
7 nonprofit corporation or organization to its members or because of payment
8 by its members of membership fees or dues.
- 9 d. The severance of sand or gravel from the soil.
- 10 e. The purchase, including the leasing or renting, of tangible personal property
11 from any bank for storage, use, or consumption.
- 12 f. The purchase of an item of tangible personal property by a purchaser who
13 rents or leases it to a person under a finance leasing agreement over the term
14 of which the property will be substantially consumed, if the purchaser elects to
15 treat it as being purchased at retail by paying or causing the transferor to pay
16 the use tax to the commissioner on or before the last day on which payments
17 may be made without penalty as provided in section 57-40.2-07.
- 18 6. "Retailer" includes every person engaged in the business of selling tangible
19 personal property for use within the meaning of this chapter, but, when in the
20 opinion of the commissioner, it is necessary for the efficient administration of this
21 chapter to regard any salesman, representative, trucker, peddler, or canvasser as
22 the agent of the dealer, distributor, supervisor, employer, or other person under
23 whom that person operates or from whom that person obtains the tangible
24 personal property sold by that person, whether that person is making sales in that
25 person's own behalf or in behalf of such dealer, distributor, supervisor, employer,
26 or other person, the commissioner may regard that person as such agent, and may
27 regard the dealer, distributor, supervisor, employer, or other person as a retailer for
28 the purposes of this chapter. A retailer includes any organization licensed by the
29 attorney general to conduct bingo games pursuant to section 53-06.1-03. A retailer
30 also includes every person who engages in regular or systematic solicitation of a
31 consumer market in this state by the distribution of catalogs, periodicals,

1 advertising flyers, or other advertising, or by means of print, radio or television
2 media, by mail, telegraphy, telephone, computer data base, cable, optic,
3 microwave, or other communication system.

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

18 8. "Tangible personal property" means:
19 a. Tangible goods, including the furnishing of bingo cards, wares, and
20 merchandise, and gas, when furnished or delivered to consumers or users
21 within this state, and the sale of vulcanizing, recapping, and retreading
22 services for tires.
23 b. The leasing or renting of tangible personal property, the sale, storage, use, or
24 consumption of which has not been previously subjected to a retail sales or
25 use tax in this state.
26 c. The purchase of magazines or other periodicals. Provided, the words
27 "magazines and other periodicals" as used in this subdivision do not include
28 newspapers nor magazines or periodicals that are furnished free by a
29 nonprofit corporation or organization to its members or because of payment
30 by its members of membership fees or dues.
31 d. The severance of sand or gravel from the soil.

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

7 **(Effective after December 31, 2005) Definitions.** In this chapter, unless the context
8 and subject matter otherwise require:

- 9 1. "Business", "commissioner", "gross receipts", "local governmental unit", "persons",
10 "relief agency", "retail sale", "sale", each has the meaning given to it in section
11 57-39.2-01.
- 12 2. Property used in "processing", as that term is used in subsection 9, means any
13 tangible personal property including containers which it is intended, by means of
14 fabrication, compounding, manufacturing, producing, or germination, shall become
15 an integral or an ingredient or component part of other tangible personal property
16 intended to be sold ultimately at retail. The purchase of an item of tangible
17 personal property for the purpose of incorporating it in or attaching it to real
18 property must be considered as a purchase of tangible personal property for a
19 purpose other than for processing.
- 20 3. "Purchase" means any transfer of title or possession, exchange, or barter,
21 conditional or otherwise, in any manner or by any means whatsoever, for a
22 consideration. "Purchase" also means the severing of sand or gravel from the soil
23 of this state.
- 24 4. "Purchase price" applies to the measure subject to use tax and has the same
25 meaning as gross receipts as defined in section 57-39.2-01.
- 26 5. "Purchased at retail" includes, but is not limited to:
- 27 a. The completion of the fabricating, compounding, or manufacturing of tangible
28 personal property by a person for storage, use, or consumption by that
29 person.

- 1 b. The leasing or renting of tangible personal property, the sale, storage, use, or
2 consumption of which has not been previously subjected to a retail sales or
3 use tax in this state.
- 4 c. The purchase of magazines or other periodicals. Provided, the words
5 "magazines and other periodicals" as used in this subdivision do not include
6 newspapers nor magazines or periodicals that are furnished free by a
7 nonprofit corporation or organization to its members or because of payment
8 by its members of membership fees or dues.
- 9 d. The severance of sand or gravel from the soil.
- 10 e. The purchase, including the leasing or renting, of tangible personal property
11 from any bank for storage, use, or consumption.
- 12 f. The purchase of an item of tangible personal property by a purchaser who
13 rents or leases it to a person under a finance leasing agreement over the term
14 of which the property will be substantially consumed, if the purchaser elects to
15 treat it as being purchased at retail by paying or causing the transferor to pay
16 the use tax to the commissioner on or before the last day on which payments
17 may be made without penalty as provided in section 57-40.2-07.
- 18 6. "Retailer" includes every person engaged in the business of selling tangible
19 personal property for use within the meaning of this chapter, but, when in the
20 opinion of the commissioner, it is necessary for the efficient administration of this
21 chapter to regard any salesman, representative, trucker, peddler, or canvasser as
22 the agent of the dealer, distributor, supervisor, employer, or other person under
23 whom that person operates or from whom that person obtains the tangible
24 personal property sold by that person, whether that person is making sales in that
25 person's own behalf or in behalf of such dealer, distributor, supervisor, employer,
26 or other person, the commissioner may regard that person as such agent, and may
27 regard the dealer, distributor, supervisor, employer, or other person as a retailer for
28 the purposes of this chapter. A retailer includes any organization licensed by the
29 attorney general to conduct bingo games pursuant to section 53-06.1-03. A retailer
30 also includes every person who engages in regular or systematic solicitation of a
31 consumer market in this state by the distribution of catalogs, periodicals,

1 advertising flyers, or other advertising, or by means of print, radio or television
2 media, by mail, telegraphy, telephone, computer data base, cable, optic,
3 microwave, or other communication system.

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

18 8. "Tangible personal property" means:

- 19 a. Tangible goods, including the furnishing of bingo cards, wares, and
20 merchandise, and gas, when furnished or delivered to consumers or users
21 within this state, and the sale of vulcanizing, recapping, and retreading
22 services for tires.
- 23 b. The leasing or renting of tangible personal property, the sale, storage, use, or
24 consumption of which has not been previously subjected to a retail sales or
25 use tax in this state.
- 26 c. The purchase of magazines or other periodicals. Provided, the words
27 "magazines and other periodicals" as used in this subdivision do not include
28 newspapers nor magazines or periodicals that are furnished free by a
29 nonprofit corporation or organization to its members or because of payment
30 by its members of membership fees or dues.
- 31 d. The severance of sand or gravel from the soil.

- 1 9. "Use" means the exercise by any person of any right or power over tangible
2 personal property incident to the ownership or possession of that property,
3 including the storage, use, or consumption of that property in this state, except that
4 it does not include processing, or the sale of that property in the regular course of
5 business. "Use" also means the severing of sand or gravel from the soil of this
6 state for use within or outside this state.
- 7 10. "Use tax" means the tax levied under section 57-40.2-02.1 or imposed under home
8 rule authority by a city or county.

9 **SECTION 4. AMENDMENT.** Subsection 5 of section 57-40.3-01 of the North Dakota
10 Century Code is amended and reenacted as follows:

- 11 5. "Purchase price" means the total amount paid for the motor vehicle whether
12 received in money or otherwise; provided, however, that when a motor vehicle or
13 other tangible personal property that will be subject to a sales or use tax imposed
14 by chapter 57-39.2 or 57-40.2 when sold or used is taken in trade as a credit or as
15 part payment on a motor vehicle taxable under this chapter, the credit or trade-in
16 value allowed by the person selling the motor vehicle shall be deducted from the
17 total selling price to establish the purchase price of the vehicle being sold and the
18 trade-in allowance allowed by the seller on a motor vehicle accepted as a trade-in
19 shall constitute the purchase price of a motor vehicle accepted as a trade-in. If a
20 motor vehicle is purchased by an owner who has had a motor vehicle stolen or
21 totally destroyed, a credit or trade-in credit shall be allowed in an amount not to
22 exceed the total amount the purchaser has been compensated by an insurance
23 company for the loss but not to exceed the total amount of motor vehicle excise tax
24 paid. The purchaser must provide the director of the department of transportation
25 with a notarized statement from the insurance company verifying the fact that the
26 original vehicle was a total loss and stating the amount compensated by the
27 insurance company for the loss. The statement from the insurance company must
28 accompany the purchaser's application for a certificate of title for the replacement
29 vehicle. In instances in which a licensed motor vehicle dealer places into the
30 dealer's service a new vehicle for the purpose of renting, leasing, or dealership
31 utility service, the reasonable value of the vehicle replaced shall be included as

1 trade-in value provided the vehicle replaced has been subject to motor vehicle
2 excise tax under section 57-40.3-02 and if the new vehicle is properly registered
3 and licensed. "Purchase price" when the motor vehicle is acquired by gift or by
4 any other transfer for a nominal or no monetary consideration also includes the
5 average value of similar motor vehicles, established by standards and guides as
6 determined by the director of the department of transportation. "Purchase price"
7 when a motor vehicle is manufactured by a person who registers it under the laws
8 of this state means the manufactured cost of such motor vehicle and manufactured
9 cost means the amount expended for materials, labor, and other properly allocable
10 costs of manufacture except that, in the absence of actual expenditures for the
11 manufacture of a part or all of the motor vehicle, manufactured cost means the
12 reasonable value of the completed motor vehicle.

13 **SECTION 5. EFFECTIVE DATE.** Sections 1,3, and 4 of this Act are effective for
14 property stolen or totally destroyed after June 30, 2004. Section 2 of this Act is effective for
15 property stolen or totally destroyed after December 21,2005.