

**SECOND ENGROSSMENT
with House Amendments**

Sixtieth
Legislative Assembly
of North Dakota

REENGROSSED SENATE BILL NO. 2225

Introduced by

Senators Grindberg, Bowman, Tollefson

Representatives S. Kelsh, Svedjan, Wrangham

1 A BILL for an Act to amend and reenact subsections 1 and 10 of section 53-06.1-01,
2 subsection 2 of section 53-06.1-12, subsections 15, 16, and 17 of section 57-39.2-01, section
3 57-39.2-02.1, and subsections 5, 6, and 7 of section 57-40.2-01 of the North Dakota Century
4 Code, relating to the excise tax upon gross proceeds of licensed gaming organizations for
5 bingo cards and elimination of sales and use taxes for bingo cards; and to provide an effective
6 date.

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

8 **SECTION 1. AMENDMENT.** Subsections 1 and 10 of section 53-06.1-01 of the North
9 Dakota Century Code are amended and reenacted as follows:

- 10 1. "Adjusted gross proceeds" means gross proceeds less cash prizes, cost of
11 merchandise prizes, ~~sales tax on bingo cards~~ excise tax, pull tab excise tax, and
12 federal excise tax imposed under section 4401 of the Internal Revenue Code [26
13 U.S.C. 4401].
- 14 10. "Gross proceeds" means all cash and checks received from conducting games
15 ~~and sales tax on bingo cards~~.

16 **SECTION 2. AMENDMENT.** Subsection 2 of section 53-06.1-12 of the North Dakota
17 Century Code is amended and reenacted as follows:

- 18 2. Except as provided in subsection 3, in addition to any other tax provided by law
19 and in place of sales or use taxes, there is imposed an excise tax of four and
20 one-half percent on the gross proceeds from the sale at retail of pull tabs and three
21 percent on the gross proceeds from the sale at retail of bingo cards to final users.
22 This includes pull tabs or bingo cards provided to a player in exchange for
23 redeemed winning pull tabs or bingo cards. The tax must be paid to the attorney
24 general when tax returns are filed.

1 **SECTION 3. AMENDMENT.** Subsections 15, 16, and 17 of section 57-39.2-01 of the
2 North Dakota Century Code are amended and reenacted as follows:

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

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

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

1 17. "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 **SECTION 4. AMENDMENT.** Section 57-39.2-02.1 of the North Dakota Century Code
13 is amended and reenacted as follows:

14 **57-39.2-02.1. Sales tax imposed.**

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

- 21 a. Tangible personal property, consisting of goods, wares, or merchandise,
22 except mobile homes used for residential or business purposes.
- 23 b. The furnishing or service of communication services or steam other than
24 steam used for processing agricultural products.
- 25 c. Tickets or admissions to places of amusement or entertainment or athletic
26 events, including amounts charged for participation in an amusement,
27 entertainment, or athletic activity, ~~and including the furnishing of bingo cards~~
28 and the playing of any machine for amusement or entertainment in response
29 to the use of a coin. The tax imposed by this section applies only to eighty
30 percent of the gross receipts collected from coin-operated amusement
31 devices.

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

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

13 2. There is imposed a tax of three percent upon the gross receipts of retailers from all
14 sales at retail of mobile homes used for residential or business purposes, except
15 as provided in subsection 35 of section 57-39.2-04.

16 **SECTION 5. AMENDMENT.** Subsections 5, 6, and 7 of section 57-40.2-01 of the
17 North Dakota Century Code are amended and reenacted as follows:

18 5. "Purchased at retail" includes:

- 19 a. The completion of the fabricating, compounding, or manufacturing of tangible
20 personal property by a person for storage, use, or consumption by that
21 person.
- 22 b. The furnishing of ~~binge cards~~, wares, ~~and~~ merchandise, and gas, when
23 furnished or delivered to consumers or users within this state, and the sale of
24 vulcanizing, recapping, and retreading services for tires.
- 25 c. The leasing or renting of tangible personal property, the sale, storage, use, or
26 consumption of which has not been previously subjected to a retail sales or
27 use tax in this state.
- 28 d. The purchase of magazines or other periodicals. Provided, the words
29 "magazines and other periodicals" as used in this subdivision do not include
30 newspapers nor magazines or periodicals that are furnished free by a

- 1 nonprofit corporation or organization to its members or because of payment
2 by its members of membership fees or dues.
- 3 e. The severance of sand or gravel from the soil.
- 4 f. The purchase, including the leasing or renting, of tangible personal property
5 from any bank for storage, use, or consumption.
- 6 g. The purchase of an item of tangible personal property by a purchaser who
7 rents or leases it to a person under a finance leasing agreement over the term
8 of which the property will be substantially consumed, if the purchaser elects to
9 treat it as being purchased at retail by paying or causing the transferor to pay
10 the use tax to the commissioner on or before the last day on which payments
11 may be made without penalty as provided in section 57-40.2-07.
- 12 6. "Retailer" includes every person engaged in the business of selling tangible
13 personal property for use within the meaning of this chapter, but, when in the
14 opinion of the commissioner, it is necessary for the efficient administration of this
15 chapter to regard any salesman, representative, trucker, peddler, or canvasser as
16 the agent of the dealer, distributor, supervisor, employer, or other person under
17 whom that person operates or from whom that person obtains the tangible
18 personal property sold by that person, whether that person is making sales in that
19 person's own behalf or in behalf of such dealer, distributor, supervisor, employer,
20 or other person, the commissioner may regard that person as such agent, and may
21 regard the dealer, distributor, supervisor, employer, or other person as a retailer for
22 the purposes of this chapter. ~~A retailer includes any organization licensed by the~~
23 ~~attorney general to conduct bingo games pursuant to section 53-06.1-03.~~ A
24 retailer also includes every person who engages in regular or systematic
25 solicitation of a consumer market in this state by the distribution of catalogs,
26 periodicals, advertising fliers, or other advertising, or by means of print, radio or
27 television media, by mail, telegraphy, telephone, computer data base, cable, optic,
28 microwave, or other communication system.
- 29 7. "Retailer maintaining a place of business in this state", or any like term, means any
30 retailer having or maintaining within this state, directly or by a subsidiary, an office,
31 distribution house, sales house, warehouse, or other place of business, or any

1 agent operating within this state under the authority of the retailer or its subsidiary,
2 whether such place of business or agent is located in the state permanently or
3 temporarily, or whether or not such retailer or subsidiary is authorized to do
4 business within this state. ~~It includes any organization licensed by the attorney~~
5 ~~general to conduct bingo games pursuant to section 53-06-1-03.~~ It also includes
6 every person who engages in regular or systematic solicitation of sales of tangible
7 personal property in this state by the distribution of catalogs, periodicals,
8 advertising fliers, or other advertising, by means of print, radio or television media,
9 or by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or
10 other communication system for the purpose of effecting retail sales of tangible
11 personal property.

12 **SECTION 6. EFFECTIVE DATE.** This Act is effective for taxable events occurring
13 after June 30, 2007.