

HOUSE BILL NO.

Introduced by

Representative Wrangham

1 A BILL for an Act to amend and reenact subsections 15, 16, and 17 of section 57-39.2-01 and
2 subsection 1 of section 57-39.2-02.1 of the North Dakota Century Code, relating to eliminating
3 sales taxes for coin-operated amusement or entertainment machines; and to provide an
4 effective date.

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

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

8 15. "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose
9 other than for resale, sublease, or subrental. "Retail sale" or "sale at retail"
10 includes the sale, including the leasing or renting, to a consumer or to any person
11 for any purpose, other than for processing or for resale, of tangible personal
12 property; the sale of steam, gas, and communication service to retail consumers or
13 users; the sale of vulcanizing, recapping, and retreading services for tires; the
14 furnishing of bingo cards; the ordering, selecting, or aiding a customer to select any
15 goods, wares, or merchandise from any price list or catalog, which the customer
16 might order, or be ordered for such customer to be shipped directly to such
17 customer; the sale or furnishing of hotel, motel, or tourist court accommodations,
18 tickets, or admissions to any place of amusement, athletic event, or place of
19 entertainment; ~~including the playing of any machine for amusement or~~
20 ~~entertainment in response to the use of a coin~~; and the sales of magazines and
21 other periodicals. By the term "processing" is meant any tangible personal
22 property including containers which it is intended, by means of fabrication,
23 compounding, manufacturing, producing, or germination shall become an integral
24 or an ingredient or component part of other tangible personal property intended to

1 be sold ultimately at retail. The sale of an item of tangible personal property for the
2 purpose of incorporating it in or attaching it to real property must be considered as
3 a sale of tangible personal property for a purpose other than for processing; the
4 delivery of possession within the state of North Dakota of tangible personal
5 property by a wholesaler or distributor to an out-of-state retailer who does not hold
6 a North Dakota retail sales tax permit or to a person who by contract incorporates
7 such tangible personal property into, or attaches it to, real property situated in
8 another state may not be considered a taxable sale if such delivery of possession
9 would not be treated as a taxable sale in that state. As used in this subsection, the
10 word "consumer" includes any hospital, infirmary, sanatorium, nursing home, home
11 for the aged, or similar institution that furnishes services to any patient or occupant.
12 The sale of an item of tangible personal property to a person under a finance
13 leasing agreement over the term of which the property will be substantially
14 consumed must be considered a retail sale if the purchaser elects to treat it as
15 such by paying or causing the transferor to pay the sales tax thereon to the
16 commissioner on or before the last day on which payments may be made without
17 penalty as provided in section 57-39.2-12.

18 16. "Retailer" or "seller" includes every person engaged in the business of leasing or
19 renting hotel, motel, or tourist court accommodations, and every person engaged in
20 the business of selling tangible goods, wares, or merchandise at retail, or
21 furnishing of steam, gas, and communication services, or tickets or admissions to
22 places of amusement, entertainment, and athletic events, ~~including the playing of~~
23 ~~any machine for amusement or entertainment in response to the use of a coin,~~ or
24 magazines, or other periodicals; any organization licensed by the attorney general
25 to conduct bingo games pursuant to section 53-06.1-03; and includes any person
26 as herein defined who by contract or otherwise agrees to furnish for a
27 consideration a totally or partially finished product consisting in whole or in part of
28 tangible personal property subject to the sales tax herein provided, and all items of
29 tangible personal property entering into the performance of such contract as a
30 component part of the product agreed to be furnished under said contract shall be
31 subject to the sales tax herein provided and the sales tax thereon shall be collected

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

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

23 **SECTION 2. AMENDMENT.** Subsection 1 of section 57-39.2-02.1 of the North Dakota
24 Century Code is amended and reenacted as follows:

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

- 1 a. Tangible personal property, consisting of goods, wares, or merchandise,
2 except mobile homes used for residential or business purposes.
- 3 b. The furnishing or service of communication services or steam other than
4 steam used for processing agricultural products.
- 5 c. Tickets or admissions to places of amusement or entertainment or athletic
6 events, including amounts charged for participation in an amusement,
7 entertainment, or athletic activity, and including the furnishing of bingo cards
8 ~~and the playing of any machine for amusement or entertainment in response~~
9 ~~to the use of a coin. The tax imposed by this section applies only to eighty~~
10 ~~percent of the gross receipts collected from coin-operated amusement~~
11 ~~devices.~~
- 12 d. Magazines and other periodicals.
- 13 e. The leasing or renting of a hotel or motel room or tourist court
14 accommodations.
- 15 f. The leasing or renting of tangible personal property the transfer of title to
16 which has not been subjected to a retail sales tax under this chapter or a use
17 tax under chapter 57-40.2.
- 18 g. Coal mined in this state and used for heating buildings, except for coal used in
19 agricultural processing or sugar beet refining plants.
- 20 h. Sale, lease, or rental of a computer and prewritten computer software,
21 including prewritten computer software delivered electronically or by load and
22 leave. For purposes of this subdivision:
- 23 (1) "Computer" means an electronic device that accepts information in
24 digital or similar form and manipulates it for a result based on a
25 sequence of instructions.
- 26 (2) "Computer software" means a set of coded instructions designed to
27 cause a computer or automatic data processing equipment to perform a
28 task.
- 29 (3) "Delivered electronically" means delivered from the seller to the
30 purchaser by means other than tangible storage media.

- 1 (4) "Electronic" means relating to technology having electrical, digital,
2 magnetic, wireless, optical, electromagnetic, or similar capabilities.
- 3 (5) "Load and leave" means delivery to the purchaser by use of a tangible
4 storage media when the tangible storage media is not physically
5 transferred to the purchaser.
- 6 (6) "Prewritten computer software" means computer software, including
7 prewritten upgrades, which is not designed and developed by the
8 author or other creator to the specifications of a specific purchaser.
9 The combining of two or more "prewritten computer software" programs
10 or prewritten portions thereof does not cause the combination to be
11 other than "prewritten computer software". "Prewritten computer
12 software" includes software designed and developed by the author or
13 other creator to the specifications of a specific purchaser when it is sold
14 to a person other than the purchaser. If a person modifies or enhances
15 "computer software" of which the person is not the author or creator,
16 the person is deemed to be the author or creator only of such person's
17 modifications or enhancements. "Prewritten computer software" or a
18 prewritten portion thereof that is modified or enhanced to any degree, if
19 such modification or enhancement is designed and developed to the
20 specifications of a specific purchaser, remains "prewritten computer
21 software". However, if there is a reasonable, separately stated charge
22 or an invoice or other statement of the price given to the purchaser for
23 such modification or enhancement, such modification or enhancement
24 shall not constitute "prewritten computer software".

25 **SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable events occurring after
26 June 30, 2007.