

Sixty-first
Legislative Assembly
of North Dakota

HOUSE BILL NO.

Introduced by

Representative Belter

1 A BILL for an Act to amend and reenact sections 57-39.2-02.1, 57-40.2-02.1, 57-40.3-02, and
2 57-40.5-02 of the North Dakota Century Code, relating to the rate of sales, use, motor vehicle
3 excise, and aircraft excise taxes; to provide an effective date; and to provide an an expiration
4 date.

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

6 **SECTION 1. AMENDMENT.** Section 57-39.2-02.1 of the North Dakota Century Code
7 is amended and reenacted as follows:

8 **57-39.2-02.1. Sales tax imposed.**

- 9 1. Except as otherwise expressly provided in subsection 2 for sales of mobile homes
10 used for residential or business purposes, and except as otherwise expressly
11 provided in this chapter, there is imposed a tax of five percent upon the gross
12 receipts of retailers from all sales at retail including the leasing or renting of
13 tangible personal property as provided in this section, within this state of the
14 following to consumers or users:
- 15 a. Tangible personal property, consisting of goods, wares, or merchandise,
16 except mobile homes used for residential or business purposes and including
17 bundled transactions consisting entirely of tangible personal property.
 - 18 b. The furnishing or service of communication services or steam other than
19 steam used for processing agricultural products.
 - 20 c. Tickets or admissions to places of amusement or entertainment or athletic
21 events, including amounts charged for participation in an amusement,
22 entertainment, or athletic activity and the playing of any machine for
23 amusement or entertainment in response to the use of a coin. The tax

- 1 imposed by this section applies only to eighty percent of the gross receipts
2 collected from coin-operated amusement devices.
- 3 d. Magazines and other periodicals.
- 4 e. The leasing or renting of a hotel or motel room or tourist court
5 accommodations.
- 6 f. The leasing or renting of tangible personal property the transfer of title to
7 which has not been subjected to a retail sales tax under this chapter or a use
8 tax under chapter 57-40.2.
- 9 g. 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 2. AMENDMENT.** Section 57-40.2-02.1 of the North Dakota Century Code
17 is amended and reenacted as follows:

18 **57-40.2-02.1. Use tax imposed.**

19 1. Except as otherwise expressly provided in subsection 2 for purchases of mobile
20 homes used for residential or business purposes, an excise tax is imposed on the
21 storage, use, or consumption in this state of tangible personal property purchased
22 at retail for storage, use, or consumption in this state, at the rate of five percent of
23 the purchase price of the property. Except as limited by section 57-40.2-11, an
24 excise tax is imposed on the storage, use, or consumption in this state of tangible
25 personal property not originally purchased for storage, use, or consumption in this
26 state at the rate of five percent of the fair market value of the property at the time it
27 was brought into this state.

28 2. An excise tax is imposed on the storage, use, or consumption in this state of
29 mobile homes used for residential or business purposes, except as provided in
30 subsection 19 of section 57-40.2-04 purchased at retail for storage, use, or
31 consumption in this state at the rate of three percent of the purchase price thereof.

1 Except as limited by section 57-40.2-11, and except as provided in subsection 35
2 of section 57-39.2-04, an excise tax is imposed on the storage, use, or
3 consumption in this state of a mobile home used for residential or business
4 purposes at the rate of three percent of the fair market value of a mobile home
5 used for residential or business purposes at the time it was brought into this state.

6 3. **(Repealed effective July 1, 2009)** An excise tax is imposed on the storage, use,
7 or consumption in this state of natural gas consumed by a final user at the rate of
8 one percent if sales tax has not been applied as provided by section 57-39.2-03.6.

9 4. In the case of a contract awarded for the construction of highways, roads, streets,
10 bridges, and buildings prior to December 1, 1986, the contractor receiving the
11 award shall be liable only for the sales or use tax at the rate of tax in effect on the
12 date of contract.

13 5. An excise tax is imposed on the fair market value of sand or gravel severed when
14 sand or gravel is not sold at retail as tangible personal property by the person
15 severing the sand or gravel. If the sand or gravel is not sold at retail by the person
16 severing the sand or gravel, it must be presumed until the contrary is shown by the
17 commissioner or by the person severing the sand or gravel that the fair market
18 value is eight cents per ton of two thousand pounds [907.18 kilograms]. If records
19 are not kept as to the tonnage of sand or gravel severed from the soil, it must be
20 presumed for the purpose of this chapter that one cubic yard [764.55 liters] of sand
21 or gravel is equal to one and one-half tons [1360.78 kilograms] of sand or gravel.

22 **SECTION 3. AMENDMENT.** Section 57-40.3-02 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **57-40.3-02. Tax imposed.** There is hereby imposed an excise tax at the rate of five
25 percent on the purchase price of any motor vehicle purchased or acquired either in or outside of
26 the state of North Dakota for use on the streets and highways of this state and required to be
27 registered under the laws of this state.

28 **SECTION 4. AMENDMENT.** Section 57-40.5-02 of the North Dakota Century Code is
29 amended and reenacted as follows:

30 **57-40.5-02. Tax imposed.** There is imposed an excise tax at the rate of five percent
31 on the purchase price of any aircraft purchased or acquired either in or outside of the state of

1 North Dakota or on the lease or rental cost of any aircraft, less fuel, if rented dry and required to
2 be registered under the laws of this state, except on aircraft or helicopters designed or modified
3 for exclusive use as agricultural aircraft for aerial application of agricultural chemicals,
4 insecticides, fungicides, growth regulators, pesticides, dusts, fertilizer, or other agricultural
5 materials, the excise tax is imposed at the rate of three percent on the purchase price of any
6 such aircraft purchased or acquired in or outside of this state, including the leasing or renting of
7 such agricultural aircraft to users for agricultural purposes.

8 **SECTION 5. EFFECTIVE DATE - EXPIRATION DATE.** This Act is effective for taxable
9 events occurring after June 30, 2009, through June 30, 2011, and is thereafter ineffective.