

**Sixty-second Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2011**

HOUSE BILL NO. 1391
(Representatives Drovdal, Hatlestad, Kaldor)
(Senators Cook, Miller, Dotzenrod)

AN ACT to create and enact section 57-39.4-33.3 of the North Dakota Century Code, relating to prohibited replacement taxes; to amend and reenact subsection 2 of section 11-09.1-05, subsection 16 of section 40-05.1-06, subsection 1 of section 57-39.2-02.1, sections 57-39.4-01, 57-39.4-02, 57-39.4-03, and 57-39.4-04, subsections 1 and 3 of section 57-39.4-09, and sections 57-39.4-10, 57-39.4-11.1, 57-39.4-14, 57-39.4-14.1, 57-39.4-18, 57-39.4-19, 57-39.4-20, and 57-39.4-24 of the North Dakota Century Code, relating to the administration of the streamlined sales and use tax agreement; to repeal chapter 57-39.3 of the North Dakota Century Code, relating to fees in lieu of sales taxes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 11-09.1-05 of the North Dakota Century Code is amended and reenacted as follows:

2. Control its finances and fiscal affairs; appropriate money for its purposes, and make payments of its debts and expenses; subject to the limitations of this section levy and collect property taxes, sales and use taxes, farm machinery gross receipts taxes, alcoholic beverage gross receipts taxes, motor vehicle fuels and special fuels taxes, motor vehicle registration fees, and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings, and improvements; contract debts, borrow money, issue bonds, 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. Notwithstanding any authority granted under this chapter, all property must be assessed in a uniform manner as prescribed by the state board of equalization and the state supervisor of assessments and all taxable property must be taxed by the county at the same rate unless otherwise provided by law. 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 fuel used to power motor vehicles, aircraft, locomotives, or watercraft, or to 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, except for farm machinery gross receipts tax purposes.

- d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1 and must be administered by the tax commissioner in accordance with the relevant provisions of chapter 57-39.2, including reporting and paying requirements, correction of errors, payment of refunds, and application of penalty and interest.

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. Subsection 16 of section 40-05.1-06 of the North Dakota Century Code is amended and reenacted as follows:

16. To impose registration fees on motor vehicles, farm machinery gross receipts taxes, alcoholic beverage gross receipts taxes, or sales and use taxes in addition to any other taxes imposed by law. After December 31, 2005, sales and use taxes and 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 fuel used to power motor vehicles, aircraft, locomotives, or watercraft, or to 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 purposes, except for farm machinery gross receipts tax.
 - d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1 and must be administered by the tax commissioner in accordance with the relevant provisions of chapter 57-39.2, including reporting and paying requirements, correction of errors, payment of refunds, and application of penalty and interest.

SECTION 3. AMENDMENT. Subsection 1 of section 57-39.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise expressly provided in subsection 2 for sales of mobile homes used for residential or business purposes, and except as otherwise expressly provided in this chapter, there is imposed a tax of five percent upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as provided in this section, within this state of the following to consumers or users:
 - a. Tangible personal property, consisting of goods, wares, or merchandise, except mobile homes used for residential or business purposes and including bundled transactions consisting entirely of tangible personal property.

- b. The furnishing or service of communication services including one-way and two-way telecommunications services or steam other than steam used for processing agricultural products.
- c. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment, or athletic activity and the playing of any machine for amusement or entertainment in response to the use of a coin. The tax imposed by this section applies only to eighty percent of the gross receipts collected from coin-operated amusement devices.
- d. Magazines and other periodicals.
- e. The leasing or renting of a hotel or motel room or tourist court accommodations.
- f. The leasing or renting of tangible personal property the transfer of title to which has not been subjected to a retail sales tax under this chapter or a use tax under chapter 57-40.2.
- g. Sale, lease, or rental of a computer and prewritten computer software, including prewritten computer software delivered electronically or by load and leave. For purposes of this subdivision:
 - (1) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.
 - (2) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.
 - (3) "Delivered electronically" means delivered from the seller to the purchaser by means other than tangible storage media.
 - (4) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
 - (5) "Load and leave" means delivery to the purchaser by use of a tangible storage media when the tangible storage media is not physically transferred to the purchaser.
 - (6) "Prewritten computer software" means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more "prewritten computer software" programs or prewritten portions thereof does not cause the combination to be other than "prewritten computer software". "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. If a person modifies or enhances "computer software" of which the person is not the author or creator, the person is deemed to be the author or creator only of such person's 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".
- h. A mandatory computer software maintenance contract for prewritten computer software.

- i. An optional computer software maintenance contract for prewritten computer software that provides only software upgrades or updates or an optional computer software maintenance contract for prewritten computer software that is a bundled transaction and provides software upgrades or updates and support services.

SECTION 4. AMENDMENT. Section 57-39.4-01 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-01. Adoption of streamlined sales and use tax agreement.

North Dakota adopts the streamlined sales and use tax agreement as adopted November 12, 2002, and as may be amended by the member states of the streamlined sales tax project. The entire agreement is adopted by reference with the exception of articles III and V, which are adopted as set out in this chapter.

SECTION 5. AMENDMENT. Section 57-39.4-02 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-02. (301) State level administration.

1. Each member state shall provide state level administration of sales and use taxes subject to the agreement. The state level administration may be performed by a member state's tax commission, department of revenue, or any other single entity designated by state law. Sellers and purchasers are only required to register with, file returns with, and remit funds to the state level authority. ~~Each~~The state level authority of a member state shall provide for collection of any local taxes and distribution of them to the appropriate taxing jurisdictions. Each memberThe state level authority shall conduct, or authorize others may be authorized to conduct on its behalf, subject to the provisions of subsection 2, all audits of the sellers registered under the agreement and purchasers for that state's tax and the tax of its local jurisdictions, and. Except as provided in this chapter local jurisdictions shall not conduct independent sales or use tax audits of sellers registered under the agreement and purchasers.
2. If authorized by statute, nothing in this section prohibits the state level authority from authorizing audits of taxpayers to be conducted or performed by others on behalf of the state level authority provided:
 - a. The person is conducting the audit for all taxes due and not only for taxes due to a specific local taxing jurisdiction;
 - b. The person is subject to the same confidentiality provisions and other protections afforded to a taxpayer as a person working for the state level authority;
 - c. Absent fraud, a refund claim filed subsequent to the audit that covers part of the audit period or mutual consent, the audit does not cover an audit period already conducted by the state level authority or another person acting on its behalf; and
 - d. The audit is subject to the same administrative and appeal procedures granted to audits conducted by the state level authority.

SECTION 6. AMENDMENT. Section 57-39.4-03 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-03. (302) State and local tax bases.

~~Through December 31, 2005, if a member state has local jurisdictions that levy a sales or use tax, all local jurisdictions in the state shall have a common tax base. After December 31, 2005, the~~The tax base for local jurisdictions shall be identical to the state tax base unless otherwise prohibited by federal law. This section does not apply to sales or use taxes levied on fuel used to power motor vehicles, aircraft, locomotives, or watercraft, or to electricity, piped natural or artificial gas, or other fuels delivered

by the seller and the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

SECTION 7. AMENDMENT. Section 57-39.4-04 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-04. (303) Seller registration.

Each member state shall participate in an on-line sales and use tax registration system in cooperation with the other member states. Under this system:

1. A seller registering under the agreement ~~is~~shall be registered in each of the member states.
2. A model 2, model 3, or model 4 seller may elect to be registered in one or more states as a seller which anticipates making no sales into the state or states if it has not had sales into the state or states for the preceding twelve months. This election does not relieve the seller of its agreement under section 401(B) to collect taxes on all sales into the states or its liability for remitting to the proper states any taxes collected.
3. The member states agree not to require the payment of any registration fees or other charges for a seller to register in a state in which the seller has no legal requirement to register.
- ~~3.4.~~ A written signature from the seller is not required.
- ~~4.5.~~ An agent may register a seller under uniform procedures adopted by the member states.
- ~~5.6.~~ A seller may cancel its registration under the system at any time under uniform procedures adopted by the governing board. Cancellation does not relieve the seller of its liability for remitting to the proper states any taxes collected.
7. Nothing in this section shall be construed to relieve a seller of any legal obligation it may have under a state's laws to register in that state or its obligation to collect and remit taxes for at least thirty-six months in a state and meet all other requirements for amnesty set out in section 402 of the agreement in order to be eligible for amnesty in the state.
8. Whenever a state joins the agreement, sellers registered under the agreement shall be registered in the new state as follows:
 - a. Model 1 sellers will be automatically registered in such state.
 - b. Model 2, model 3, and model 4 sellers will be automatically registered in the new state but may elect to be registered as a seller which anticipates making no sales into the new state.
9. Upon registration, the governing board shall provide to the seller information regarding the requirements and options for filing a simplified electronic return and for filing remittances in any member state. Member states may provide information to sellers concerning other tax return filing options in that state.
10. The governing board shall cause the system for registering under the agreement to include a feature that allows sellers registered under the agreement to update relevant registration data in the system and have such updated data provided to all member states. The governing board shall establish conditions and procedures to allow states which are not members of the agreement to participate in the registration system.

SECTION 8. AMENDMENT. Subsections 1 and 3 of section 57-39.4-09 of the North Dakota Century Code are amended and reenacted as follows:

1. No member state shall have multiple state sales and use tax rates on items of personal property or services, except that a member state may impose a single additional rate, which may be zero, on food and food ingredients and drugs as defined by state law pursuant to the agreement. In addition, if federal law prohibits the imposition of local tax on a product that is subject to state tax, the state may impose an additional rate on the product, provided the rate achieves tax parity for similar products.
3. The provisions of this section do not apply to sales or use taxes levied on fuel used to power motor vehicles, aircraft, locomotives, or watercraft, or to 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.

SECTION 9. AMENDMENT. Section 57-39.4-10 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-10. (309) Application of general sourcing rules and exclusions from the rules.

1. Each member state shall agree to require sellers to source the retail sale of a product in accordance with section 57-39.4-11 or 57-39.4-11.1. The ~~Except as provided in section 57-39.4-11.1, the provisions of section 57-39.4-11 apply to all sales~~ regardless of the characterization of a product as tangible personal property, a digital good, or a service. The ~~Except as otherwise provided in the agreement, the provisions of section~~ sections 57-39.4-11 and 57-39.4-11.1 only apply to determine a seller's obligation to pay or collect and remit a sales or use tax with respect to the seller's retail sale of a product. These provisions do not affect the obligation of a purchaser or lessee to remit tax on the use of the product to the taxing jurisdictions of that use.
2. ~~Section~~ Sections 57-39.4-11 and 57-39.4-11.1 do not apply to sales or use taxes levied on the following:
 - a. The retail sale or transfer of watercraft, modular homes, manufactured homes, or mobile homes. These items must be sourced according to the requirements of each member state.
 - b. The retail sale, excluding lease or rental, of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in subsection 4 of section 57-39.4-11. The retail sale of these items shall be sourced according to the requirements of each member state, and the lease or rental of these items must be sourced according to subsection 3 of section 57-39.4-11.
 - c. Telecommunications services and ancillary services, as set out in section 57-39.4-16, and internet access service shall be sourced in accordance with section 57-39.4-15.
 - d. Florist sales as defined by each member state. These sales must be sourced according to the requirements of each member state.
 - e. The retail sale of products and services qualifying as direct mail must be sourced in accordance with section 57-39.4-14.

SECTION 10. AMENDMENT. Section 57-39.4-11.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-11.1. (310.1) Election for origin-based sourcing.

1. A member state that has local jurisdictions that levy or receive sales or use taxes may elect to source the retail sale of tangible personal property and digital goods under the provisions of this section in lieu of the provisions of subdivisions b, c, and d of subsection 1 of section

57-39.4-11 if the state complies with subsection 3 of this section and the only exception to section 57-39.4-11 is in subsection 2 of this section.

2. A member state may source retail sales, excluding lease or rental, of tangible personal property or digital goods to the location where the order is received by the seller if:
 - a. The order is received in the same state by the seller where receipt of the product by the purchaser or the purchaser's designated donee occurs;
 - b. The location where receipt of the product by the purchaser occurs is determined under subdivisions b, c, and d of subsection 1 of section 57-39.4-11; and
 - c. At the time the order is received, the recordkeeping system of the seller used to calculate the proper amount of sales or use tax to be imposed captures the location where the order is received.

3. A member state electing to source sales under this section shall comply with all of the following:
 - a. When the location where the order is received by the seller and the location where the receipt of the product by the purchaser or the purchaser's designated donee occurs as determined under subdivisions b, c, and d of subsection 1 of section 57-39.4-11 are in different states, the sale must be sourced under the provisions of section 57-39.4-11.
 - b. When the product sale is sourced under this section to the location where the order is received by the seller, only the sales tax for the location where the order is received by the seller may be levied. No additional sales or use tax based on the location where the product is delivered to the purchaser may be levied on that sale. The purchaser shall not be entitled to any refund if the combined state and local rate at the location where the product is received by the purchaser is lower than the rate where the order is received by the seller.
 - c. A member state may not require a seller to use a recordkeeping system that captures the location where the order is received to calculate the proper amount of sales or use tax to be imposed.
 - d. A purchaser shall not have an additional liability to the state for tax, penalty, or interest on a sale for which the purchaser remits tax to the seller in the amount invoiced by the seller if the invoice amount is calculated at either the rate applicable to the location where receipt by the purchaser occurs or at the rate applicable to the location where the order is received by the seller. A purchaser may rely on a written representation by the seller as to the location where the order for the sale was received by the seller. When the purchaser does not have a written representation by the seller as to the location where the order for the sale was received by the seller, the purchaser may use the seller's business address that is available from the purchaser's business records maintained in the ordinary course of the purchaser's business to determine the rate applicable to the location where the order was received.
 - e. The location where the order is received by or on behalf of the seller means the physical location of a seller or third party such as an established outlet, office location, or automated order receipt system operated by or on behalf of the seller, where an order is initially received by or on behalf of the seller and not where the order may be subsequently accepted, completed, or fulfilled. An order is received when all of the information from the purchaser necessary to determine whether the order can be accepted has been received by or on behalf of the seller. The location from which a product is shipped must not be used in determining the location where the order is received by the seller.

- f. A member state must provide for direct pay permits under section 57-39.4-27 and the requirements of this subsection. Purchasers that remit sales and use tax under a direct pay permit shall remit tax at the rate in effect for the location where receipt of the product by the purchaser occurs or the product is first used as determined by state law. A member state may establish reasonable thresholds at which the member state will consider direct pay applications, provided the threshold must be based upon purchases with no distinction between taxable and nontaxable purchases. The member state shall establish a process for application for a direct pay permit as provided in this chapter. The member state may require the direct pay permit applicant to demonstrate:
- (1) An ability to comply with the sales and use tax laws of the state;
 - (2) A business purpose for seeking a direct pay permit and how the permit will benefit tax compliance; and
 - (3) Proof of good standing under the tax laws of the state. The member state shall review all permit applications in a timely manner. Notification of authorization or denial must be received by applicants within one hundred twenty days of application. The member state may not limit direct pay permit applicants to businesses engaged in manufacturing or businesses that do not know the ultimate use of the product at the time of the purchase.
- g. When taxable services are sold with tangible personal property or digital products under a single contract or in the same transaction, are billed on the same billing statement, and because of the application of this section, would be sourced to different jurisdictions, a member state shall elect either origin sourcing or destination sourcing to determine a single situs for that transaction. The member state election is required until the governing board adopts a uniform methodology to address these sales.
- h. A member state that elects to source the sale of tangible personal property and digital goods under the provisions of this section shall inform the governing board of the election.
4. Compliance with the provisions of this section satisfies a state's eligibility for membership in this agreement as follows:
- a. If a state is in substantial compliance with the provisions of this agreement other than sourcing of sales of tangible personal property and digital goods as provided in section 57-39.4-11, and elects to source sales of tangible personal property and digital goods under this section, the state may become an associate member state in the same manner as provided for states to become full member states under article VIII of the agreement.
 - b. ~~On or after January 1, 2010, a~~ state that becomes an associate member state under this subsection shall automatically become a full member state, provided that at least five states which are not full member states on December 31, 2007, are determined to be in substantial compliance with the provisions of the agreement other than sourcing sales of tangible personal property and digital goods under section 57-39.4-11, and the state has notified the governing board of an election under subdivision h of subsection 3 ~~of this section~~ to source sales under this section and has been found to be in substantial compliance with the provisions of this section.
 - c. ~~This section shall be fully effective for all purposes on or after January 1, 2010, provided at least five states which are not full member states on December 31, 2007, have been found to be in substantial compliance with the provisions of the agreement other than sourcing sales of tangible personal property and digital goods under section 57-39.4-11 and have notified the governing board of an election under subdivision h of subsection 3 of this section to source sales under this section and have been found to be in~~

~~substantial compliance with the provisions of this section. States electing to source sales under this section after that time may become full member states if all other requirements for membership are satisfied.~~

SECTION 11. AMENDMENT. Section 57-39.4-14 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-14. (313) Direct mail sourcing.

1. ~~Notwithstanding section 57-39.4-11, a purchaser of direct mail that is not a holder of a direct pay permit shall provide to the seller in conjunction with the purchase either a direct mail form or information to show the jurisdictions to which the direct mail is delivered to recipients.~~
 - a. ~~Upon receipt of the direct mail form, the seller is relieved of all obligations to collect, pay, or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax on a direct pay basis. A direct mail form shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.~~
 - b. ~~Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the seller shall collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction in which the seller has collected tax pursuant to the delivery information provided by the purchaser.~~
2. ~~If the purchaser of direct mail does not have a direct pay permit and does not provide the seller with either a direct mail form or delivery information, as required by subsection 1, the seller shall collect the tax according to subdivision e of subsection 1 of section 57-39.4-11. Nothing in this subsection shall limit a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered.~~
3. ~~If a purchaser of direct mail provides the seller with documentation of direct pay authority, the purchaser shall not be required to provide a direct mail form or delivery information to the seller.~~

For purposes of this section:

 - a. "Advertising and promotional direct mail" means:
 - (1) Printed material that meets the definition of direct mail, in appendix C, part I of the agreement; and
 - (2) The primary purpose of which is to attract public attention to a product, person, business, or organization, or to attempt to sell, popularize, or secure financial support for a product, person, business, or organization. As used in this subsection, the word "product" means tangible personal property, a product transferred electronically, or a service.
 - b. "Other direct mail" means any direct mail that is not advertising and promotional direct mail regardless of whether advertising and promotional direct mail is included in the same mailing. The term includes:
 - (1) Transactional direct mail that contains personal information specific to the addressee, including invoices, bills, statements of account, and payroll advices;
 - (2) Any legally required mailings, including privacy notices, tax reports, and stockholder reports; and
 - (3) Other nonpromotional direct mail delivered to existing or former shareholders, customers, employees, or agents, including newsletters and informational pieces.

Other direct mail does not include the development of billing information or the provision of any data processing service that is more than incidental.

2. Notwithstanding sections 57-39.4-11 and 57-39.4-11.1, the following provisions apply to sales of advertising and promotional direct mail:
 - a. A purchaser of advertising and promotional direct mail may provide the seller with either:
 - (1) A direct pay permit;
 - (2) A streamlined sales and use tax agreement certificate of exemption claiming direct mail or other written statement approved, authorized, or accepted by the state; or
 - (3) Information showing the jurisdictions to which the advertising and promotional direct mail is to be delivered to recipients.
 - b. If the purchaser provides the permit, certificate, or statement referred to in this subsection, the seller, in the absence of bad faith, is relieved of all obligations to collect, pay, or remit any tax on any transaction involving advertising and promotional direct mail to which the permit, certificate, or statement applies. The purchaser shall source the sale to the jurisdictions to which the advertising and promotional direct mail is to be delivered to the recipients and shall report and pay any applicable tax due.
 - c. If the purchaser provides the seller information showing the jurisdictions to which the advertising and promotional direct mail is to be delivered to recipients, the seller shall source the sale to the jurisdictions to which the advertising and promotional direct mail is to be delivered and shall collect and remit the applicable tax. In the absence of bad faith, the seller is relieved of any further obligation to collect any additional tax on the sale of advertising and promotional direct mail where the seller has sourced the sale according to the delivery information provided by the purchaser.
 - d. If the purchaser does not provide the seller with any of the items listed in this subsection, the sale shall be sourced according to subdivision e of subsection 1 of section 57-39.4-11. The state to which the advertising and promotional direct mail is delivered may disallow credit for tax paid on sales sourced under this paragraph.
3. Notwithstanding sections 57-39.4-11 and 57-39.4-11.1, the following provisions apply to sales of other direct mail:
 - a. Except as otherwise provided in this paragraph, sales of other direct mail are sourced in accordance with subdivision c of subsection 1 of section 57-39.4-11.
 - b. A purchaser of other direct mail may provide the seller with either:
 - (1) A direct pay permit; or
 - (2) A streamlined sales and use tax agreement certificate of exemption claiming direct mail or other written statement approved, authorized, or accepted by the state.
 - c. If the purchaser provides the permit, certificate, or statement referred to in this subsection, the seller, in the absence of bad faith, is relieved of all obligations to collect, pay, or remit any tax on any transaction involving other direct mail to which the permit, certificate, or statement applies. Notwithstanding subdivision a, the sale shall be sourced to the jurisdictions to which the other direct mail is to be delivered to the recipients and the purchaser shall report and pay any applicable tax due.
4.
 - a. This section applies to a transaction characterized under state law as the sale of services only if the service is an integral part of the production and distribution of printed material that meets the definition of direct mail.

- b. This section does not apply to any transaction that includes the development of billing information or the provision of any data processing service that is more than incidental regardless of whether advertising and promotional direct mail is included in the same mailing.
- c. If a transaction is a "bundled transaction" that includes advertising and promotional direct mail, this section shall apply only if the primary purpose of the transaction is the sale of products or services that meet the definition of advertising and promotional direct mail.
- d. Nothing in this section shall limit any purchaser's:
 - (1) Obligation for sales or use tax to any state to which the direct mail is delivered;
 - (2) Right under local, state, federal, or constitutional law, to a credit for sales or use taxes legally due and paid to other jurisdictions; or
 - (3) Right to a refund of sales or use taxes overpaid to any jurisdiction.
- e. This section applies for purposes of uniformly sourcing direct mail transactions and does not impose requirements on states regarding the taxation of products that meet the definition of direct mail or to the application of sales for resale or other exemptions.

SECTION 12. AMENDMENT. Section 57-39.4-14.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-14.1. (313.1) Election for origin-based direct mail sourcing.

1. Notwithstanding sections 57-39.4-11, 57-39.4-11.1, and 57-39.4-14, a member state may elect to source the sale of all direct mail delivered or distributed from a location within the state and delivered or distributed to a location within the state under this section.
2. If the purchaser provides the seller with a direct pay permit or ~~an exemption certificate claiming direct mail~~ a streamlined sales and use tax agreement certificate of exemption claiming direct mail or other written statement approved, authorized, or accepted by the state, the seller, in the absence of bad faith, is relieved of all obligations to collect, pay, or remit the applicable tax and the on any transaction involving direct mail. The purchaser is obligated to pay or remit the must report and pay any applicable tax on a direct pay basis. An exemption certificate claiming direct mail due. A streamlined sales and use tax agreement certificate of exemption claiming direct mail shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.
3. Except as provided in ~~subsections~~ subsections 2 and this subsection, 3, and 4, the seller shall collect the tax according to subdivision e of subsection 1 of section 57-39.4-11. To the extent the seller knows that a portion of the sale of direct mail will be delivered or distributed to a location in another state, the seller shall collect the tax on that portion according to section 57-39.4-14.
4. Notwithstanding subsection 3, a seller may elect to use the provisions of section 57-39.4-14 to source all sales of advertising and promotional direct mail.
5. Nothing in this section limits a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered, except that a purchaser whose direct mail is sourced under subsection 3 shall owe no additional sales or use tax to that state based on where the purchaser uses or delivers the direct mail in the state.
- 5-6. A member state that elects to source the sale of direct mail under the provisions of this section shall inform the governing board in writing at least sixty days prior to the beginning of the calendar quarter ~~sueh~~ this election begins.

SECTION 13. AMENDMENT. Section 57-39.4-18 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-18. (317) Administration of exemptions.

1. Each member state shall observe the following provisions when a purchaser claims an exemption:
 - a. The seller shall obtain identifying information of the purchaser and the reason for claiming a tax exemption at the time of the purchase as determined by the governing board.
 - b. A purchaser is not required to provide a signature to claim an exemption from tax unless a paper exemption certificate is used.
 - c. The seller shall use the standard form for claiming an exemption electronically as adopted by the governing board.
 - d. The seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurred.
 - e. A member state may utilize a system in which the purchaser exempt from the payment of the tax is issued an identification number that shall be presented to the seller at the time of the sale.
 - f. The seller shall maintain proper records of exempt transactions and provide them to a member state when requested.
 - g. A member state shall administer use-based and entity-based exemptions when practicable through a direct pay permit, an exemption certificate, or another means that does not burden sellers.
 - h. In the case of drop shipment sales, member states must allow a third-party vendor, drop shipper, to claim a resale exemption based on an exemption certificate by its customer or reseller or any other acceptable information available to the third-party vendor evidencing qualification for a resale exemption, regardless of whether the customer or reseller is registered to collect and remit sales and use tax in the state where the sale is sourced.
2. Each member state shall relieve sellers that follow the requirements of this section from the tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption and to hold the purchaser liable for the nonpayment of tax. This relief from liability does not apply to a seller who fraudulently fails to collect the tax; to a seller who solicits purchasers to participate in the unlawful claim of an exemption; to a seller who accepts an exemption certificate when the purchaser claims an entity-based exemption when the subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller and the state in which that location resides provides an exemption certificate that clearly and affirmatively indicates ~~graying out exemption reason types on the uniform form and posting it on a state's web site is an indicator~~ that the claimed exemption is not available in that state. Graying out exemption reason types on the uniform form and posting it on a state's website is an indicator.
3. Each state shall relieve a seller of the tax otherwise applicable if the seller obtains a fully completed exemption certificate or captures the relevant data elements required under the agreement within ninety days subsequent to the date of sale. A member state may provide for a period longer than ninety days for the seller to obtain the necessary information.
- ~~a.4.~~ If the seller has not obtained an exemption certificate or all relevant data elements as provided by this section, a member state shall provide the seller ~~may, within~~with one hundred twenty

days subsequent to a request for substantiation by a member state, to either prove that the transaction was not subject to tax by other means or obtain a:

- a. A fully completed exemption certificate from the purchaser, taken in good faith. For purposes of this section, member states may continue to apply their own standards of good faith until such time as a uniform standard for good faith is defined in the agreement which means that the seller obtain a certificate that claims an exemption that was statutorily available on the date of the transaction in the jurisdiction where the transaction is sourced, could be applicable to the item being purchased, and is reasonable for the purchaser's type of business; or
- b. Other information establishing that the transaction was not subject to the tax. A member state may provide for a period longer than one hundred twenty days for sellers to obtain the necessary information.
- c. If the seller obtains the information described in this subsection, the member state shall relieve the seller of any liability for the tax on the transaction unless it is discovered through the audit process that the seller had knowledge or had reason to know at the time such information was provided that the information relating to the exemption claimed was materially false or the seller otherwise knowingly participated in activity intended to purposefully evade the tax that is properly due on the transaction. The state must establish that the seller had knowledge or had reason to know at the time the information was provided that the information was materially false.

~~b.5.~~ Nothing in this section shall affect the ability of member states to require purchasers to update exemption certificate information or to reapply with the state to claim certain exemptions.

~~c.6.~~ Notwithstanding the aforementioned, eachEach member state shall relieve a seller of the tax otherwise applicable if it obtains a blanket exemption certificate ~~for~~from a purchaser with which the seller has a recurring business relationship. ~~States~~Notwithstanding the provisions of subsection 5, a member state may not request from the seller renewal of blanket certificates or updates of exemption certificate information or data elements when there is a recurring business relationship between the buyer and seller. For purposes of this section, a recurring business relationship exists when a period of no more than twelve months elapses between sales transactions.

7. Each state shall post on its website the uniform paper exemption certificate, streamlined sales and use tax exemption certificate, as revised and adopted by the governing board, with any applicable graying out of nonapplicable exemption types under subsection 2.

SECTION 14. AMENDMENT. Section 57-39.4-19 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-19. (318) Uniform tax returns.

Each member state shall:

1. Require that only ~~one~~a single tax return for each taxing period for each seller be filed for the member state ~~and to include~~ all the taxing jurisdictions within the member state.
2.
 - a. Require that returns be due no sooner than the twentieth day of the month following the month in which the transaction occurred.
 - b. When the due date for a return falls on a Saturday or Sunday or legal holiday in the subject member state, the return shall be due on the next succeeding business day. If the return is filed in conjunction with a remittance and the remittance cannot be made under subdivision b of subsection 5 of section 57-39.4-20, the return shall be accepted as timely filed on the same day as the remittance under that subsection.

3. ~~Allow any model 1, model 2, or model 3 seller to submit its sales and use tax returns in a simplified format that does not include more data fields than permitted by the governing board. A member state may require additional informational returns to be submitted not more frequently than every six months under a staggered system developed by the governing board. Make available to all sellers, whether or not registered under the agreement, except sellers of products qualifying for exclusion from the provisions of section 57-39.4-09 of this agreement, a simplified return that is filed electronically as follows:~~
 - a. The simplified electronic return hereinafter SER shall be in a form approved by the governing board and shall contain only those fields approved by the governing board. The SER shall contain two parts. Part 1 shall contain information relating to remittances and allocations and part 2 shall contain information relating to exempt sales.
 - b. Each member state must notify the governing board if it requires the submission of the part 2 information provided no state may require the submission of part 2 information from a model 4 seller which has no legal requirement to register in the state.
 - c. Returns shall be required as follows:
 - (1) Certified service providers must file a SER in all member states on behalf of model 1 sellers. Certified service providers, on behalf of these sellers, shall file the audit reports provided for in article V of the rules and procedures of the agreement for the states, and in addition, shall be required to file part 1 of the SER each month for each member state. A state shall allow a model 1 seller to file both part 1 and part 2 of the SER. A model 1 seller which chooses to file both part 1 and the part 2 of SER shall still be required to file the audit reports provided for in article V of the rules and procedures of the agreement.
 - (2) Model 2 and model 3 sellers must file a SER in all member states other than states for which they have indicated that they anticipate making no sales. These sellers shall file part 1 of the SER every month for all states in which they anticipate making sales. These sellers need not file part 2 information until January 1, 2012. After this date, they shall have the following options for meeting their obligation to furnish part 2 information:
 - (a) File part 2 of the SER together with part 1 of the SER every month; or
 - (b) File part 2 of the SER at the same time part 1 of the SER for the month of December is due. Part 2 information filed under this option shall cover the month of December and all previous months of the same calendar year and shall only require annual and not monthly totals. The sellers shall only be required to file part 2 of the SER for any state which has notified the governing board that it will require the submission of the part 2 information under subdivision b.
 - (3) Every member state shall allow model 4 sellers to file a SER. The sellers shall file part 1 of the SER every month unless a state allows less frequent filing. Model 4 sellers which have a legal requirement to register in the state shall have the following options for meeting their obligation to furnish part 2 information:
 - (a) File part 2 of the SER together with part 1 of the SER; or
 - (b) File part 2 of the SER at the same time part 1 of the SER for the month of December is due. Part 2 information filed under this option shall cover the month of December and all previous months of the same calendar year and shall only require annual and not monthly totals.

These sellers shall only be required to file part 2 of the SER for any state which has notified the governing board that it will require the submission of the part 2 information under subdivision b.

Model 4 sellers which elect not to file a SER shall file returns in the form under schedules afforded to sellers not registered under the agreement according to the requirements of each member state.

(4) No later than January 1, 2013, every member state shall allow sellers not registered under the agreement that are registered in the state to file a SER. These sellers shall file part 1 of the SER every month unless a state allows less frequent filing and shall have the following options for meeting their obligation to furnish part 2 information:

(a) File part 2 of the SER together with part 1 of the SER; or

(b) File part 2 of the SER at the same time part 1 of the SER for the month of December is due. Part 2 information filed under this option shall cover the month of December and all previous months of the same calendar year and shall only require annual and not monthly totals.

These sellers shall only be required to file part 2 of the SER for any state which has notified the governing board that it will require the submission of the part 2 information under subdivision b.

d. A state which requires the submission of part 2 information under paragraph 2 may provide an exemption from this requirement to a seller under terms and conditions set out by the state.

e. A state may require a seller which elects to file a SER to give at least three months' notice of the seller's intent to discontinue filing a SER.

4. ~~Allow any seller that is registered under the agreement, which does not have a legal requirement to register in the member state, and is not a model 1, model 2, or model 3 seller, to submit its sales and use tax returns as follows:~~

~~a. Upon registration, a member state shall provide to the seller the returns required by that state.~~

~~b. A member state may require a seller to file a return any time within one year of the month of initial registration and future returns may be required on an annual basis in succeeding years.~~

~~e. In addition to the returns required in subdivision b, a member state may require sellers to submit returns in the month following any month in which they have accumulated state and local tax funds for the state in the amount of one thousand dollars or more.~~

~~d. Participate with other member states in developing a more uniform sales and use tax return that, when completed, would be available to all sellers.~~

~~e. Require, at each member state's discretion, all model 1, model 2, and model 3 sellers to file returns electronically. It is the intent of the member states that all member states have the capability of receiving electronically filed returns by January 1, 2004. Not require the filing of a return from a seller registered under the agreement which has indicated at the time of registration that it anticipates making no sales which would be sourced to the state under the agreement. A seller shall lose this exemption upon making any taxable sales into the state and shall file a return in the month following the sale. A state may, but~~

is not required to, allow a seller to regain such filing exemption upon such terms and conditions as the state may impose.

5. Adopt a standardized transmission process to allow for receipt of uniform tax returns and other formatted information as approved by the governing board. The process must provide for the filing of separate returns for multiple legal entities in a single transmission for each state and will not include any requirement for manual entry or input by the seller of any of the aforementioned information. This process will allow a certified service provider, tax preparer, or any other authorized person to file returns for more than one seller in a single electronic transmission. However, sellers filing returns for multiple legal entities may only do so for affiliated legal entities.
6. Give notice to a seller registered under this agreement which has no legal requirement to register in the state, of a failure to file a required return and a minimum of thirty days to file thereafter prior to establishing a liability amount for taxes based solely on the seller's failure to timely file a return provided a member state may establish a liability amount for taxes based solely on the seller's failure to timely file a return if such seller has a history of nonfiling or late filing.
7. Nothing in this section shall prohibit a state from allowing additional return options or the filing of returns less frequently.

SECTION 15. AMENDMENT. Section 57-39.4-20 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-20. (319) Uniform rules for remittance of funds.

Each member state shall:

1. Require only one remittance for each return except as provided in this subsection. If any additional remittance is required, it may only be required from sellers that collect more than thirty thousand dollars in sales and use taxes in the member state during the preceding calendar year as provided herein in the agreement. The state shall allow the amount of any additional remittance to be determined through a calculation method rather than actual collections. Any additional remittances shall not require the filing of an additional return.
2. Require, at each member state's discretion, all remittances ~~from sellers under model 1, model 2, and model 3~~ in payment of taxes reported on the approved simplified return format to be remitted electronically.
3. Allow for electronic payments by all remitters by both automated clearinghouse credit and automated clearinghouse debit.
4. Provide an alternative method for making same day payments if an electronic funds transfer fails.
5.
 - a. Provide that if a due date for a payment falls on a Saturday, Sunday, or legal banking holiday in a member state, ~~the taxes are payment, including any related payment voucher information, is~~ due to that state on the next succeeding business day.
 - b. Additionally, if the federal reserve bank is closed on a due date that prohibits a person from being able to make a payment by automated clearinghouse debit or credit, that payment shall be accepted as timely if made on the next day the federal reserve bank is open.
6. Require that any data that accompanies a remittance be formatted using uniform tax type and payment type codes approved by the governing board.

7. Adopt a standardized transmission process approved by the governing board that allows for the remittance in a SER of a single bulk payment for taxes reported on multiple SERs by affiliated entities, certified service providers, or preparers. Each state shall comply with this provision no later than two years after the governing board approves such a standardized transmission process.

SECTION 16. AMENDMENT. Section 57-39.4-24 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-24. (323) Caps and thresholds.

1. ~~Each~~No member state shall:may
 - a. ~~Not~~ have caps or thresholds on the application of state sales or use tax rates or exemptions that are based on the value of the transaction or item ~~after December 31, 2005. A member state may continue to have caps and thresholds until that date.~~
 - b. ~~Not~~or have caps that are based on the application of the rates unless the member state assumes the administrative responsibility in a manner that places no additional burden on the retailer.
2. ~~Each~~No member state that has local jurisdictions that levy a sales or use tax shall ~~not~~may place caps or thresholds on the application of local rates or use tax rates or exemptions that are based on the value of the transaction or item ~~after December 31, 2005. A member state may continue to have caps and thresholds until that date.~~
3. The provisions of this section do not apply to sales or use taxes levied on the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes or to instances when the burden of administration has been shifted from the retailer.
4. For states that have a cap or threshold on clothing before January 1, 2006, the provisions of this section do not apply to sales or use tax thresholds for exemptions that are based on the value of "essential clothing" except as provided in the library of definitions.

SECTION 17. Section 57-39.4-33.3 of the North Dakota Century Code is created and enacted as follows:

57-39.4-33.3. (334) Replacement tax prohibited.

No state may have a prohibited replacement tax on any product defined in part II or part III(B) of the library of definitions which has the effect of avoiding the intent of this agreement.

SECTION 18. REPEAL. Chapter 57-39.3 of the North Dakota Century Code is repealed.

SECTION 19. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2011.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-second Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1391.

House Vote: Yeas 54 Nays 38 Absent 2

Senate Vote: Yeas 46 Nays 0 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2011.

Approved at _____ M. on _____, 2011.

Governor

Filed in this office this _____ day of _____, 2011,

at _____ o'clock _____ M.

Secretary of State