

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

HOUSE BILL NO. 1424  
(Representatives Pollert, Weisz, Mueller)  
(Senators Klein, Miller, Wanzek)

AN ACT to amend and reenact subsection 8 of section 57-39.2-04, sections 57-39.2-12.1, 57-39.5-04, and 57-39.6-04, subsection 9 of section 57-40.2-04, and section 57-40.2-07.1 of the North Dakota Century Code, relating to compensation allowable to retailers for expenses associated with the collection, reporting, and remittance of state sales, use, and gross receipts taxes and the sales and use tax exemption for chemicals used for agricultural purposes; to provide an effective date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Subsection 8 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

8. Gross receipts from sales of adjuvants ~~required by the chemical label for application of a product warranty, agricultural tank cleaners and foam markers,~~ commercial fertilizers, fungicides, seed treatments, inoculants and fumigants, herbicides, and insecticides to agricultural or commercial vegetable producers and commercial applicators; chemicals used to preserve agricultural crops being stored; and seeds, roots, bulbs, and small plants to commercial users or consumers for planting or transplanting for commercial vegetable gardens or agricultural purposes.

**SECTION 2. AMENDMENT.** Section 57-39.2-12.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.2-12.1. Deduction to reimburse retailer for administrative expenses.**

1. A retailer ~~required~~ registered to report and ~~pay monthly~~ remit sales, use, or gross receipts tax imposed under section 57-39.2-12 ~~chapter 57-39.2, 57-39.5, 57-39.6, or 57-40.2~~ may deduct and retain one and one-half percent of the tax due. The aggregate of deductions allowed by this section and section 57-40.2-07.1 may not exceed ~~eighty-five~~ ninety-three dollars ~~and seventy-five cents per month~~ return. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 2 or 3 for the same period.
2. A certified service provider that contracts with retailers to calculate, collect, and remit tax due on behalf of retailers may deduct and retain from the tax remitted to the tax commissioner compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board effective June 1, 2006. The compensation provided in this subsection applies only to tax remitted by certified service providers on behalf of retailers that are remote sellers registered to collect sales and use tax in this state under chapter 57-39.4. Certified service providers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 3 for the same period.
3. A retailer that is a remote seller registered to collect sales and use tax under chapter 57-39.4 and that uses a certified automated system to calculate, report, and remit tax due under chapters 57-39.2, 57-39.4, and 57-40.2 may deduct and retain compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board during its December 2006 meeting. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 2 for the same period.
4. For purposes of this section, "remote seller" means a retailer that does not have an adequate physical presence to establish nexus in this state for sales and use tax purposes.

5. Compensation may not be deducted and retained under this section unless the tax due is paid within the time limitations under section 57-39.2-12 or 57-40.2-07 or chapter 57-39.4.
6. The deduction allowed retailers or certified service providers by this section is to reimburse retailers directly or indirectly for expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying information to the tax commissioner upon request.

**SECTION 3. AMENDMENT.** Section 57-39.5-04 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.5-04. Administration.**

The provisions of chapter 57-39.2 pertaining to administration of the retail sales tax, including provisions for refund, credits, retailer compensation, or adoption of rules, not in ~~compliance~~conflict with this chapter or federal law, govern the administration of the gross receipts tax imposed in this chapter.

**SECTION 4. AMENDMENT.** Section 57-39.6-04 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.6-04. Administration.**

The provisions of chapter 57-39.2, pertaining to administration of the retail sales tax, including provisions for refund, credits, retailer compensation, or adoption of rules, not in conflict with this chapter or federal law, govern the administration of the gross receipts tax imposed in this chapter.

**SECTION 5. AMENDMENT.** Subsection 9 of section 57-40.2-04 of the North Dakota Century Code is amended and reenacted as follows:

9. ~~Adjuvants required by the chemical label for application of a product warranty, agricultural tank cleaners and foam markers, commercial fertilizers, fungicides, seed treatments, inoculants and fumigants, herbicides and insecticides used by agricultural or commercial vegetable producers and commercial applicators; chemicals used to preserve agricultural crops being stored; and seeds, roots, bulbs, and small plants used by commercial users or consumers for planting or transplanting for commercial vegetable gardens or agricultural purposes.~~

**SECTION 6. AMENDMENT.** Section 57-40.2-07.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-40.2-07.1. Deduction to reimburse retailer for administrative expenses.**

1. A retailer ~~required~~registered to report and ~~pay monthly~~remit sales, use, or gross receipts tax imposed under ~~section 57-40.2-07~~chapter 57-39.2, 57-39.5, 57-39.6, or 57-40.2 may deduct and retain one and one-half percent of the tax due. The aggregate of deductions allowed by this section and section 57-39.2-12.1 may not exceed ~~eighty-five~~ninety-three dollars and ~~seventy-five cents~~per month~~return~~. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 2 or 3 for the same period.
2. A certified service provider that contracts with retailers to calculate, collect, and remit tax due on behalf of retailers may deduct and retain from the tax remitted to the tax commissioner compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board effective June 1, 2006. The compensation provided in this subsection applies only to tax remitted by certified service providers on behalf of retailers that are remote sellers registered to collect sales and use tax in this state under chapter 57-39.4. Certified service providers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 3 for the same period.
3. A retailer that is a remote seller registered to collect sales and use tax under chapter 57-39.4 and that uses a certified automated system to calculate, report, and remit tax due under

chapters 57-39.2, 57-39.4, and 57-40.2 may deduct and retain compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board during its December 2006 meeting. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 2 for the same period.

4. For purposes of this section, "remote seller" means a retailer that does not have an adequate physical presence to establish nexus in this state for sales and use tax purposes.
5. Compensation may not be deducted and retained under this section unless the tax due is paid within the time limitations under section 57-39.2-12 or 57-40.2-07 or chapter 57-39.4.
6. The deduction allowed retailers or certified service providers by this section is to reimburse retailers directly or indirectly for expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying information to the tax commissioner upon request.

**SECTION 7. EFFECTIVE DATE.** Sections 2, 3, 4, and 6 of this Act are effective for taxable events occurring after December 31, 2011.

**SECTION 8. EMERGENCY.** This Act is declared to be an emergency measure.

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Speaker of the House

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President of the Senate

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Chief Clerk of the House

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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. 1424.

House Vote:    Yeas 74            Nays 19            Absent 1

Senate Vote:    Yeas 47            Nays 0            Absent 0

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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.

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Secretary of State