

**Sixty-third Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 8, 2013**

SENATE BILL NO. 2090
(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

AN ACT to amend and reenact section 57-39.2-02.1, subsections 22 and 35 of section 57-39.2-04, sections 57-39.2-08.2 and 57-40.2-02.1, and subsections 10 and 18 of section 57-40.2-04 of the North Dakota Century Code, relating to sales and use tax on manufactured homes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

57-39.2-02.1. Sales tax imposed.

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.
 - 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.
2. ThereFor purposes of manufactured homes, as defined in section 41-09-02, there is imposed a tax of three percent upon the:
- a. grossGross receipts of retailers from all sales at retail of møbilemanufactured homes used for residential or business purposes, except as provided in subsection 35 of section 57-39.2-04; or
 - b. Dealer's cost to purchase the manufactured home if the manufactured home is sold in conjunction with installation in this state, and tax has not previously been paid under subdivision a.

Installation of a manufactured home includes any method established under section 54-21.3-08.

SECTION 2. AMENDMENT. Subsections 22 and 35 of section 57-39.2-04 of the North Dakota Century Code are amended and reenacted as follows:

- 22. Gross receipts from the leasing or renting of ~~factory~~ manufactured homes, ~~including mobile homes,~~ modular living units, or sectional homes, whether or not placed on a permanent foundation, for residential housing for periods of thirty or more consecutive days and the gross receipts from the leasing or renting of a hotel or motel room or tourist court accommodations occupied by the same person or persons for residential housing for periods of thirty or more consecutive days.
- 35. Gross receipts from the sale of a møbilemanufactured home ~~which~~that has been sold, bargained, exchanged, given away, or transferred by the person who first acquired it from a

retailer in a sale at retail and upon which the North Dakota sales tax has previously been imposed.

SECTION 3. AMENDMENT. Section 57-39.2-08.2 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-08.2. Sales tax to be added to purchase price and be a debt.

1. Except as otherwise provided in subsection 2, retailers shall add the tax imposed under this chapter, or the average equivalent thereof, to the sales price or charge, and when added, such tax constitutes a part of such price or charge, is a debt from the consumer or user to the retailer until paid, and is recoverable at law in the same manner as other debts.

A retailer shall determine the amount of tax charged to and received from each purchaser by use of a formula that applies the applicable tax rate to each taxable item or total purchase and the product must be carried to the third decimal place. Amounts of tax less than one-half of one cent must be disregarded and amounts of tax of one-half of one cent or more must be considered an additional cent of tax. When a local sales tax applies, the determination of tax charged to and received from each customer will be applied to the aggregated state and local taxes.

2. On retail sales of ~~mobile~~manufactured homes used for residential or business purposes, except as provided in subsection 35 of section 57-39.2-04, and ~~of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes,~~retailers shall add the tax imposed under this chapter, or the average equivalent thereof, to the sales price or charge, and when added, such tax constitutes a part of such price or charge, is a debt from the consumer or user to the retailer until paid, and is recoverable at law in the same manner as other debts. In adding such tax to the price or charge, retailers shall add to it three percent of such price or charge.

SECTION 4. AMENDMENT. Section 57-40.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-02.1. Use tax imposed.

1. Except as otherwise expressly provided in ~~subsection 2 for purchases of mobile homes used for residential or business purposes~~this chapter, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property purchased at retail for storage, use, or consumption in this state, at the rate of five percent of the purchase price of the property. Except as ~~limited by provided in~~ section 57-40.2-11, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property not originally purchased for storage, use, or consumption in this state at the rate of five percent of the fair market value of the property at the time it was brought into this state.
2. ~~An~~For purposes of manufactured homes, as defined in section 41-09-02, an excise tax is imposed on the storage, use, or consumption in this state of ~~mobile~~manufactured homes used for residential or business purposes, except as provided in subsection ~~19~~18 of section 57-40.2-04 purchased at retail for storage, use, or consumption in this state at the rate of three percent of the purchase price thereof. Except as ~~limited by provided in~~ section 57-40.2-11, and except as provided in subsection 35 of section 57-39.2-04, an excise tax is imposed on the storage, use, or consumption in this state of a ~~mobile~~manufactured home used for residential or business purposes at the rate of three percent of the fair market value of a ~~mobile~~manufactured home used for residential or business purposes at the time it was brought into this state. A manufactured home removed from North Dakota for installation in another state is not stored, used, or consumed in this state. Installation of a manufactured home includes any method established under section 54-21.3-08.
3. Repealed by S.L. 2007, ch. 529, § 7.

4. ~~In the case of a contract awarded for the construction of highways, roads, streets, bridges, and buildings prior to December 1, 1986, the contractor receiving the award shall be liable only for the sales or use tax at the rate of tax in effect on the date of contract.~~
5. An excise tax is imposed on the fair market value of sand or gravel severed when sand or gravel is not sold at retail as tangible personal property by the person severing the sand or gravel. If the sand or gravel is not sold at retail by the person severing the sand or gravel, it must be presumed until the contrary is shown by the commissioner or by the person severing the sand or gravel that the fair market value is eight cents per ton of two thousand pounds [907.18 kilograms]. If records are not kept as to the tonnage of sand or gravel severed from the soil, it must be presumed for the purpose of this chapter that one cubic yard [764.55 liters] of sand or gravel is equal to one and one-half tons [1360.78 kilograms] of sand or gravel.

SECTION 5. AMENDMENT. Subsections 10 and 18 of section 57-40.2-04 of the North Dakota Century Code are amended and reenacted as follows:

10. Gross receipts from the leasing, or renting, for residential housing, for periods of more than thirty consecutive days, of ~~factory~~ manufactured homes, ~~including mobile homes,~~ modular living units, or sectional homes, whether or not placed on a permanent foundation.
18. Gross receipts from the sale of a ~~mobile~~manufactured home ~~which~~that has been sold, bargained, exchanged, given away, or transferred by the person who first acquired it from a retailer in a sale at retail and upon which the North Dakota use tax has previously been imposed.

SECTION 6. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2013.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-third Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2090.

Senate Vote: Yeas 44 Nays 0 Absent 3

House Vote: Yeas 89 Nays 2 Absent 3

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2013.

Approved at _____ M. on _____, 2013.

Governor

Filed in this office this _____ day of _____, 2013,

at _____ o'clock _____ M.

Secretary of State