

Introduced by

Finance and Taxation Committee

(At the request of the Tax Commissioner)

1 A BILL for an Act to create and enact a new subsection to section 57-39.4-35 of the North
2 Dakota Century Code, relating to certified automated system software requirements; to amend
3 and reenact sections 57-05-08, 57-06-06, 57-06-09, 57-06-12, and 57-33.2-07, subdivision d of
4 subsection 26 of section 57-39.2-04, subsection 1 of section 57-39.2-12, subsections 6 and 7 of
5 section 57-39.4-06, subsection 1 of section 57-39.4-23, subsection 3 of section 57-39.4-28, and
6 subsection 7 of section 57-40.2-07 of the North Dakota Century Code, relating to reports from
7 centrally assessed property companies, tentative assessments of centrally assessed property,
8 the annual meeting of the state board of equalization, the definition of supplies used for bladder
9 dysfunction, the filing of sales tax returns, the database of local taxing jurisdictions, notices of
10 temporary exemption periods, the library of definitions to be used in the tax administration
11 practices of the sales and use tax agreement, and the filing of use tax returns; and to provide an
12 effective date.

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

14 **SECTION 1. AMENDMENT.** Section 57-05-08 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **57-05-08. Report by railroad corporation to state tax commissioner.**

17 Each railroad corporation required to be assessed under the provisions of this chapter
18 annually shall, on or before ~~April~~May first of each year, under oath of the presiding or other chief
19 executive officer, make and file ~~on the form and~~ in the manner as prescribed by the tax
20 commissioner ~~may prescribe~~, a report containing the following information:

- 21 1. The name of the company;
- 22 2. The laws of ~~what~~the state or country organized, the date of original organization, the
23 date of reorganization, consolidation, or merger, with specific reference to laws
24 authorizing the same;

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- 1 3. Location of its principal office;
- 2 4. The name of the place where its books, papers, and accounts are kept;
- 3 5. The name and post-office address of the president, secretary, treasurer, auditor,
- 4 superintendent, general manager, and all other general officers;
- 5 6. The name and post-office address of the chief officer or managing agent of the
- 6 company in North Dakota and of all other general officers residing in this state;
- 7 7. The total number of shares of capital stock;
- 8 8. The par value of the shares of the capital stock for the whole system, showing
- 9 separately the amount authorized, amount issued, amount outstanding, and dividends
- 10 paid thereon;
- 11 9. If ~~such~~the capital stock has no market value, the actual value on the dates and for the
- 12 periods designated by the tax commissioner ~~of this state~~;
- 13 10. The funded debt of the company for the whole system and a detailed statement of all
- 14 series of bonds, debentures, or other securities, forming a part of the funded debt, at
- 15 par value, with the date of issue, maturity, rate of interest, and amount of interest for
- 16 the preceding year;
- 17 11. The market value of each series of funded debt securities for the whole system on the
- 18 dates and for the periods designated by the tax commissioner, and if the whole or a
- 19 part of the funded debt has no market value, then ~~the~~its actual value thereof for the
- 20 dates and periods as the tax commissioner may specify;
- 21 12. ~~Such~~The general description of the operative and nonoperative real estate of the
- 22 company in North Dakota as would be sufficient in a conveyance thereof, under a
- 23 judicial decree, to vest in the grantee all title and interest in and to the ~~said~~ property;
- 24 13. A description of the personal property of the company;
- 25 14. The number of miles [kilometers] of each main line of railroad, the number of miles
- 26 [kilometers] of each branch line and sidetracks thereof ~~within the state of North~~
- 27 Dakota;
- 28 15. The entire gross earnings of the company from operation, expenses of operation, net
- 29 earnings and income from operation, and the income from other sources, for the whole
- 30 system, and in North Dakota, for the years or period the tax commissioner may
- 31 request or specify, not exceeding five years;

1 16. The location of the property of the company within this state by counties,
2 municipalities, and districts, in the manner and detail as the tax commissioner shall
3 prescribe; and

4 17. Other facts and information as the tax commissioner may require ~~in the form of returns~~
5 ~~prescribed by the tax commissioner~~ or which the company may deem material
6 upon relating to the question of taxation of its property in this state.

7 **SECTION 2. AMENDMENT.** Section 57-06-06 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **57-06-06. Reports of companies.**

10 Each company required to be assessed under the provisions of this chapter annually, on or
11 before the ~~fifteenth~~first day of ~~April~~May, under oath of the president or other chief executive
12 officer, and the secretary or treasurer or auditor or superintendent of ~~such~~the company, shall
13 make and file with the tax commissioner, in the ~~form~~manner prescribed by the tax commissioner
14 ~~may prescribe~~, a report containing the following information, so far as applicable to the
15 company making the report, as of January first of the year in which the report is furnished:

- 16 1. The name of the company.
- 17 2. The nature of the company, whether a person, association, corporation, or limited
18 liability company, and under the laws of ~~what~~the state or country organized, the date of
19 original organization, the date of reorganization, consolidation, or merger, with specific
20 reference to laws authorizing the same.
- 21 3. Location of its principal office.
- 22 4. The name of the place where its books, papers, and accounts are kept.
- 23 5. The name and post-office address of the president, secretary, treasurer, auditor,
24 superintendent, general manager, and all other general officers.
- 25 6. The name and post-office address of the chief officer or managing agent of the
26 company in North Dakota and of all other general officers residing in this state.
- 27 7. The total number of shares of capital stock.
- 28 8. The par value of the shares of the capital stock for the whole system, showing
29 separately the amount authorized, amount issued, amount outstanding, and dividends
30 paid thereon.

- 1 9. If the capital stock has no market value, the actual value on the dates and for the
2 periods designated by the tax commissioner ~~of this state~~.
- 3 10. The funded debt of the company for the whole system and a detailed statement of all
4 series of bonds, debentures, or other securities, forming a part of the funded debt, at
5 par value, with the date of issue, maturity, rate of interest, and amount of interest for
6 the preceding year.
- 7 11. The market value of each series of funded debt securities for the whole system on the
8 dates and for the periods designated by the tax commissioner, and if the whole or a
9 part of the funded debt has no market value, then ~~the~~its actual value ~~thereof~~ for the
10 dates and periods as the tax commissioner may specify.
- 11 12. The general description of the operative and nonoperative real estate of the company
12 in North Dakota as would be sufficient in a conveyance thereof, under a judicial
13 decree, to vest in the grantee all title and interest in and to the said property.
- 14 13. A description of the personal property of the company, including moneys and credits,
15 held by the company as a whole system, and the part ~~thereof~~of the property
16 apportioned to the line in North Dakota.
- 17 14. The whole length of the lines of the system operated by the company and the length of
18 the lines in North Dakota, whether operated as owner, lessee, or otherwise. The length
19 of the line operated for the whole system and in North Dakota shall be separately
20 reported.
- 21 15. The entire gross earnings of the company from operation, expenses of operation, net
22 earnings and income from operation, and the income from other sources, for the whole
23 system, and in North Dakota, for the years or period the tax commissioner may
24 request or specify, not exceeding five years.
- 25 16. The location of the property of the company within this state by counties,
26 municipalities, and districts, in the manner and detail as the tax commissioner shall
27 prescribe.
- 28 17. Other facts and information as the tax commissioner may require or which the
29 company may deem material relating to the taxation of its property in this state.

30 **SECTION 3. AMENDMENT.** Section 57-06-09 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **57-06-09. Penalty for failure to furnish report.**

2 If any company refuses or neglects to make the report required by this chapter, or refuses
3 or neglects to furnish any information requested, the tax commissioner shall obtain the best
4 information available on the facts necessary to be known in order to discharge the tax
5 commissioner's duties with respect to the valuation and assessment of the property of the
6 company. If any company fails to make the report required under this chapter on or before the
7 ~~fifteenth~~first day of ~~April~~May of any year, the state board of equalization shall add twenty
8 percent to the assessed value of the property of the company for that year; ~~but the tax-~~
9 ~~commissioner, upon written application received on or before the fifteenth day of April, may-~~
10 ~~grant an extension of time through the first day of May to file the required report.~~ If any company
11 fails to make the report required under this chapter on or before the first day of June of any
12 year, the state board of equalization shall add an additional ten percent to the assessed value of
13 the property of the company for that year. On or before the first day of June, for good cause
14 shown, the tax commissioner may waive all or any part of the penalty that attached under this
15 section.

16 **SECTION 4. AMENDMENT.** Section 57-06-12 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **57-06-12. Tentative assessment to be made and notice of hearing.**

19 The tax commissioner shall give ten days' notice ~~by mail~~in a manner determined by the tax
20 commissioner to each company, or its representative in North Dakota, of the amount of its
21 tentative assessment and the meeting of the state board of equalization on the second Tuesday
22 of July, at which meeting each company is entitled to present evidence before the state board of
23 equalization relating to the value of the property of the company.

24 **SECTION 5. AMENDMENT.** Section 57-33.2-07 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **57-33.2-07. Filing of reports with tax commissioner.**

27 By June first of each year, each wind farm, wind generator, and generator of electricity from
28 sources other than coal subject to the coal conversion tax and each transmission company,
29 distribution company, and each company that is both a transmission company and a distribution
30 company shall file with the tax commissioner ~~on a form,~~ in a manner prescribed by the tax
31 ~~commissioner~~ any and all, a report containing the information required by the tax commissioner.

1 The ~~form~~report must include a notice of a company's right to appeal its assessment to the state
2 board of equalization before or at the ~~August~~July meeting of the state board of equalization.

3 Required information includes:

- 4 1. a. The company name.
- 5 b. Whether the company is an individual, partnership, association, cooperative,
6 corporation, limited liability company, or other legal entity and the state or country
7 and date of original organization and any reorganization, consolidation, or merger
8 with references to specific laws authorizing ~~such~~those actions.
- 9 c. The location of its principal office.
- 10 d. The place where the company's books, papers, and accounts are kept.
- 11 e. The name and mailing address of the president, secretary, treasurer, auditor,
12 general manager, and all other general officers.
- 13 f. The name and mailing address of the chief officer or managing agent and any
14 general officers of the company who reside in this state.
- 15 2. A copy of each report filed with any county auditor under section 57-33.2-06.
- 16 3. A report on the megawatt-hours of electricity produced by wind generators and
17 generators of electricity from sources other than coal in each county in the state and a
18 map showing the location of each generator and its rated capacity, and all components
19 of the collector system, if any.
- 20 4. A report on the megawatt-hours of electricity delivered for retail sale to consumers in
21 each taxing district in each county during the most recently completed calendar year.

22 **SECTION 6. AMENDMENT.** Subdivision d of subsection 26 of section 57-39.2-04 of the
23 North Dakota Century Code is amended and reenacted as follows:

- 24 d. "Supplies for ostomy care or bladder dysfunction" includes:
 - 25 (1) Supplies designed or intended for ostomy care and management, including
26 collection devices, colostomy irrigation equipment and supplies, skin
27 barriers or skin protectors, and other supplies especially designed for use of
28 ostomates.
 - 29 (2) Supplies to be used exclusively by a person with bladder dysfunction,
30 including catheters, collection devices, incontinent pads and pants, adult

- 1 diapers, and other items used for the care and management of bladder
2 dysfunction. For the purposes of this paragraph:
3 (a) "Adult diapers" means diapers other than children's diapers.
4 (b) "Children's diapers" means diapers marketed to be worn by children.
5 (c) "Diaper" means an absorbent garment worn by humans who are
6 incapable of, or have difficulty, controlling their bladder or bowel
7 movements.

8 **SECTION 7. AMENDMENT.** Subsection 1 of section 57-39.2-12 of the North Dakota
9 Century Code is amended and reenacted as follows:

- 10 1. The tax levied under this chapter is due and payable in quarterly installments on or
11 before the last day of the month next succeeding each calendar quarterly period,
12 except that if total sales subject to sales and use taxes for the preceding calendar year
13 for any business which has been issued a sales tax permit equal or exceed three
14 hundred thirty-three thousand dollars, the tax levied under this chapter is payable
15 monthly on or before the last day of the next succeeding month. The tax commissioner
16 may, upon request and for good cause shown, waive the requirement to file and remit
17 monthly. The retailer shall pay the total tax due in the manner prescribed by the tax
18 commissioner. Penalties and interest for failure to file a return, for filing an incorrect
19 return, or for failure to pay the tax due are those prescribed in section 57-39.2-18. If
20 the total of sales subject to the tax decreases below three hundred thirty-three
21 thousand dollars for any succeeding year, the retailer may return to quarterly filing and
22 payments. When there is a sale of any business by any retailer or when any business
23 is discontinued by a retailer, the tax becomes due immediately prior to the sale or
24 discontinuance of the business and if not paid within fifteen days thereafter it becomes
25 delinquent and subject to the penalties provided in section 57-39.2-18. In the event of
26 a business reorganization in which the ownership of the business organization
27 remains in the same person or persons as prior to the reorganization, the total sales
28 subject to sales and use taxes for the preceding calendar year for the business that
29 was reorganized must be used to determine whether the tax is payable monthly under
30 this subsection.

1 **SECTION 8. AMENDMENT.** Subsections 6 and 7 of section 57-39.4-06 of the North Dakota
2 Century Code are amended and reenacted as follows:

3 6. Provide and maintain a database that assigns the proper tax rates and jurisdictions to
4 each five-digit and nine-digit zip code within a member state ~~to the proper tax rates~~
5 ~~and jurisdictions~~. The state must apply the lowest combined tax rate imposed in the
6 zip code area if the area includes more than one tax rate in any level of taxing
7 jurisdictions. If a nine-digit zip code designation is not available for a street address or
8 if a seller or certified service provider is unable to determine the nine-digit zip code
9 designation applicable to a ~~purchase~~transaction after exercising due diligence to
10 determine the designation, the seller or certified service provider may apply the rate
11 for the five-digit zip code area. For the purposes of this section, there is a rebuttable
12 presumption that a seller or certified service provider has exercised due diligence if the
13 seller has attempted to determine the ~~nine-digit zip code designation~~tax rate and
14 jurisdiction by ~~utilizing~~using software approved by the governing board that makes this
15 designation~~assignment~~ from the street address and the ~~five-digit zip code~~ information
16 applicable to a ~~purchase~~the transaction.

17 7. Have the option of providing address-based boundary database records for assigning
18 taxing jurisdictions and their associated rates which shall be in addition to the
19 requirements of subsection 6. The database records must be in the same approved
20 format as the database records under subsection 6 and must meet the requirements
21 developed pursuant to the federal Mobile Telecommunications Sourcing Act [4 U.S.C.
22 119(a)]. The governing board may allow a member state to require sellers that register
23 under this agreement to use an address-based database provided by that member
24 state. If any member state develops address-based assignment database records
25 pursuant to the agreement, a seller or certified service provider may use those
26 database records in place of the five-digit and nine-digit zip code database records
27 provided for in subsection 6. If a seller or certified service provider is unable to
28 determine the applicable rate and jurisdiction using an address-based database record
29 after exercising due diligence, the seller or certified service provider may apply the
30 nine-digit zip code designation applicable to a ~~purchase~~transaction. If a nine-digit zip
31 code designation is not available for a street address or if a seller or certified service

1 provider is unable to determine the nine-digit zip code designation applicable to a
2 ~~purchase~~transaction after exercising due diligence to determine the designation, the
3 seller or certified service provider may apply the rate for the five-digit zip code area.
4 For the purposes of this section, there is a rebuttable presumption that a seller or
5 certified service provider has exercised due diligence if the seller or certified service
6 provider has attempted to determine the tax rate and jurisdiction by ~~utilizing~~using
7 software approved by the governing board that makes this assignment from the
8 address and zip code information applicable to the ~~purchase~~transaction.

9 **SECTION 9. AMENDMENT.** Subsection 1 of section 57-39.4-23 of the North Dakota
10 Century Code is amended and reenacted as follows:

- 11 1. If a member state allows for temporary exemption periods, commonly referred to as
12 sales tax holidays, the member state shall:
 - 13 a. Not apply an exemption unless the items to be exempted are specifically defined
14 in part II or part III(B) of the library of definitions and the exemptions are uniformly
15 applied to state and local sales and use taxes.
 - 16 b. Provide notice of the exemption period at least sixty days prior to the first day of
17 the calendar ~~quarter~~month in which the exemption period will begin.
 - 18 c. Not apply an entity-based or use-based exemption except a member state may
19 limit a product-based exemption to items purchased for personal or nonbusiness
20 use.
 - 21 d. Not require a seller to obtain an exemption certificate or other certification from a
22 purchaser for items to be exempted during a sales tax holiday.

23 **SECTION 10. AMENDMENT.** Subsection 3 of section 57-39.4-28 of the North Dakota
24 Century Code is amended and reenacted as follows:

- 25 3. Except as specifically provided in sections 57-39.4-17 and 57-39.4-33.1, and the
26 library of definitions, a member state shall impose a sales or use tax on all products or
27 services included within each part II or part III(B) definition or exempt from sales or
28 use tax all products or services within each definition, including all products and
29 services listed in the rules, appendices, and interpretive opinions adopted by the
30 governing board. The requirements of this section shall only apply to part III(B)
31 definitions to the extent such definitions are used in the administration of a sales tax

1 holiday. A member state is not in compliance with the agreement if the member state
2 excludes any product or service that is included within a product definition or includes
3 a product or service that is excluded from a product definition.

4 **SECTION 11.** A new subsection to section 57-39.4-35 of the North Dakota Century Code is
5 created and enacted as follows:

6 For purposes of this section:

7 a. "Certify a product category" means the state reviews the product category and
8 determines that the taxability of a product properly included in that product
9 category is consistent with that state's laws. The state certifies that the taxability
10 is based only on:

11 (1) The product-based exemptions or impositions provided by state law;

12 (2) The specific description provided by the seller or certified service provider;
13 and

14 (3) Not requiring either the purchaser or seller to produce documentation to
15 claim the exemption.

16 b. (1) "Product category" means:

17 (a) Terms specifically defined in appendix C, part II or part III of the
18 agreement, such as clothing, durable medical equipment, food, drugs,
19 soft drinks, and disaster preparedness supplies;

20 (b) Subcategories of terms specifically defined in subparagraph a that
21 may be taxed differently than the product category as a whole, such
22 as oxygen delivery equipment, kidney dialysis equipment, prewritten
23 computer software delivered electronically, and prepared food that
24 requires additional cooking by the consumer;

25 (c) Terms representing groups of like products that do not fall within
26 subparagraphs a or b, such as other digital products, building
27 materials, furniture, or motor vehicles; and

28 (d) Subcategories of subparagraph c that are taxed differently than the
29 product category as a whole, such as printed materials, newspapers,
30 and catalogs.

1 (2) The term does not include any individual product that properly falls within
2 any product category in a state, such as shirts, reusable thermometers,
3 ultrasound machines, bread, tables, chairs, automobiles, or motorcycles,
4 unless the individual product is taxed differently than any other products
5 within that product category; or "tangible personal property".

6 **SECTION 12. AMENDMENT.** Subsection 7 of section 57-40.2-07 of the North Dakota
7 Century Code is amended and reenacted as follows:

8 7. If total sales and purchases subject to sales and use taxes for the preceding calendar
9 year equal or exceed three hundred thirty-three thousand dollars, the tax levied by this
10 chapter is payable monthly on or before the last day of the next succeeding month.
11 The tax commissioner may, upon request and for good cause shown, waive the
12 requirement to file and remit monthly. The amount of monthly tax payable, manner of
13 payment, filing of the return, penalty, and waiver of penalty must be that prescribed in
14 subsection 1 of section 57-39.2-12. Penalty and interest for failure to file a return or
15 corrected return or to pay the tax imposed must be that prescribed in section
16 57-40.2-15. If a person is required to file more than one return pursuant to this section,
17 the monthly payment requirement applies separately to each return. If total sales and
18 purchases subject to sales and use taxes for any succeeding calendar year decrease
19 below three hundred thirty-three thousand dollars, a person may return to quarterly
20 installments. In the event of a business reorganization in which the ownership of the
21 business organization remains in the same person or persons as prior to the
22 reorganization, the total sales subject to sales and use taxes for the preceding
23 calendar year for the business that was reorganized must be used to determine
24 whether the tax is payable monthly under this section.

25 **SECTION 13. EFFECTIVE DATE.** Sections 1, 2, 3, 4, and 5 of this Act are effective for
26 taxable years beginning after December 31, 2018.

27 **SECTION 14. EFFECTIVE DATE.** Sections 7 and 12 of this Act are effective for sales and
28 use tax returns due after July 31, 2019.