



North Dakota Legislative Council

Prepared for the Tax Reform and Relief Advisory Committee
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ECONOMIC DEVELOPMENT TAX INCENTIVE STUDY - BIOLOGIC MANUFACTURING SALES TAX EXEMPTION

Pursuant to North Dakota Century Code Section 54-35-26, created by Senate Bill No. 2057 (2015), a variety of economic development tax incentives must be reviewed by a Legislative Management interim committee during each 6-year review period. The purpose of the review is to ensure economic development tax incentives are serving their intended purposes in a cost-effective and equitable manner. This memorandum is provided to assist in the review of the biologic manufacturing sales tax exemption and provides an explanation of the incentive, the perceived goals of the Legislative Assembly in creating the incentive, and the data and testimony that will be required to conduct an effective analysis of the incentive.

EXPLANATION OF THE BIOLOGIC MANUFACTURING SALES TAX EXEMPTION

Sections 57-39.2-04.19 and 57-40.2-03.3 exempt from sales and use tax gross receipts from sales of raw materials, single-use product contact systems, and reagents used directly for discovery, testing, screening, and production for biologic manufacturing in this state. For purposes of the exemption, biologic manufacturing means the manufacturing process used to support biologic product discovery, development, generation, product impurity removal, chemical or physical product alteration, and analysis of in-process products to final deliverable products which occurs exclusively within this state. Single-use product contact systems mean tubing, capsule filters, ion exchange membrane chromatography devices, mixers, bioreactors, sterile fluid containment bags, connection devices, and sampling receptacles. To receive the exemption at the time of purchase, the taxpayer must receive a certificate from the Tax Commissioner verifying the raw materials, single-use product contact systems, or reagents qualify for the exemption. The exemption expires on July 1, 2029.

Section 57-39.2-04.19 also requires each taxpayer that received the exemption to file a report with the Tax Commissioner containing information from the preceding calendar year, including the taxpayer's total sales and use tax liability exempted under the section, total gross payroll, total property taxes paid and square footage of buildings owned by the taxpayer, total North Dakota workforce safety and insurance premiums paid, North Dakota unemployment tax paid, and total state income tax withheld by the taxpayer. In the event a taxpayer fails to file this report, the Tax Commissioner is required to disallow the exemption and assess any sales and use tax due as final and irrevocably fixed. The information received by the Tax Commissioner from the taxpayer reports is summarized and provided to the Legislative Management in a written report due by June 1 of each year.

PERCEIVED GOALS OF THE LEGISLATIVE ASSEMBLY IN CREATING THE BIOLOGIC MANUFACTURING SALES TAX EXEMPTION

The sales and use tax exemption for raw materials, single-use product contact systems, and reagents used directly for discovery, testing, screening, and production for biologic manufacturing was enacted in 2023 with the passage of House Bill No. 1455. Upon a review of the legislative history for the bill, the perceived goal of the Legislative Assembly in creating the exemption was to strengthen the state's biologic manufacturing industry by offering a financial incentive that enhances the state's ability to retain existing companies and attract new investment, similar to incentives available in other states.

Testimony indicated biologic manufacturing is a high-impact industry, with significant competition among states to attract investment. Proponents of the bill noted the exemption would be expected to enhance the state's competitiveness by helping to retain current biologic manufacturing companies and encourage out-of-state companies to relocate, establish, or expand operations in North Dakota. The exemption was expected to reduce operational costs for biologic manufacturing companies, allowing greater investment in research and development. These investments could lead to improved technologies, improved products, and greater potential for the long-term success of the industry. The estimated fiscal impact of the exemption could not be determined during the 2023 legislative session.

DATA AND TESTIMONY REQUIRED TO CONDUCT AN EFFECTIVE ANALYSIS OF THE BIOLOGIC MANUFACTURING SALES TAX EXEMPTION

To effectively analyze the incentive, the committee may wish to collect data pertaining to the following items:

1. The number of claimants;
2. The fiscal impact of the incentive;
3. Employment opportunities, business growth, or diversity in the state's economy resulting from the availability of the incentive;
4. Negative impacts created as a result of the incentive; and
5. Benefits that flow to out-of-state concerns resulting from the incentive.

The committee also may wish to solicit testimony from:

1. The Department of Commerce;
2. The Tax Department;
3. The Economic Development Association of North Dakota; and
4. Biotechnology industry representatives.