

**HOUSE BILL NO. 1055**

Introduced by

Representatives Sitte, Iverson, Pollert, Belter

Senators Wardner, Bowman

1 A BILL for an Act to amend and reenact sections 57-39.2-01, 57-39.5-03, and 57-40.2-01 and  
2 subsection 5 of section 57-40.3-01 of the North Dakota Century Code, relating to farm  
3 machinery gross receipts tax and sales, use, and motor vehicle excise tax exemptions for  
4 purchase of replacement property using the amount of insurance compensation for a motor  
5 vehicle or farm machinery that has been stolen or totally destroyed; and to provide an effective  
6 date.

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

8 **SECTION 1. AMENDMENT.** Section 57-39.2-01 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **57-39.2-01. (Effective through December 31, 2005) Definitions.** The following  
11 words, terms, and phrases, when used in this chapter, have the meaning ascribed to them in  
12 this section, unless the context clearly indicates a different meaning:

- 13 1. "Business" includes any activity engaged in by any person or caused to be  
14 engaged in by the person with the object of gain, benefit or advantage, either direct  
15 or indirect.
- 16 2. "Commissioner" means the tax commissioner of the state of North Dakota.
- 17 3. "Gross receipts" means the total amount of sales of retailers, valued in money,  
18 whether received in money or otherwise. Provided, discounts for any purposes  
19 allowed and taken on sales are not included, nor is the sale price of property  
20 returned by customers when the full sale price is refunded either in cash or by  
21 credit. ~~Provided, further, when~~
  - 22 a. When tangible personal property is taken in trade or in a series of trades as a  
23 credit or part payment of a retail sale taxable under this chapter, if the tangible  
24 personal property traded in will be subject to the sales tax imposed by this

1 chapter when sold, will be subject to the motor vehicle excise tax imposed by  
2 chapter 57-40.3, or if the tangible personal property traded in is used farm  
3 machinery or used irrigation equipment, the credit or trade-in value allowed by  
4 the retailer are not gross receipts. ~~Provided, further, on~~

5 b. On all sales of retailers, valued in money, when the sales are made under a  
6 conditional sales contract, or under other forms of sale wherein the payment  
7 of the principal sum is to be extended over a period longer than sixty days  
8 from the date of sale that only the portion of the sale amount shall be  
9 accounted for, for the purpose of imposition of tax imposed by this chapter, as  
10 has actually been received in cash by the retailer during each quarterly period  
11 as defined herein.

12 c. When a farm machine is purchased as a replacement for machinery which  
13 was stolen or totally destroyed, a credit or trade-in credit is allowed against  
14 one or more replacement purchases in ~~an~~ a cumulative amount equal to the  
15 compensation received for the loss from an insurance company. The  
16 purchaser shall provide the seller with a notarized statement from the  
17 insurance company verifying that the original farm machine is a total loss and  
18 indicating the amount of compensation. ~~The~~ If the full amount of the credit  
19 under this subdivision has not been used, the seller shall retain a copy of the  
20 notarized statement and, if the full amount of the credit has been used, the  
21 seller shall retain the original notarized statement ~~must be retained by the~~  
22 ~~seller~~ to verify the amount of credit or trade-in credit allowed.

23 d. "Gross receipts" also means, with respect to the leasing or renting of tangible  
24 personal property, the amount of consideration, valued in money, whether  
25 received in money or otherwise, received from the leasing or renting of only  
26 tangible personal property the transfer of title to which has not been subjected  
27 to a retail sales tax in this state.

28 e. For the purpose of this chapter, gross receipts shall also include the total  
29 amount of sales of every clerk, auctioneer, agent, or factor selling tangible  
30 personal property owned by any other retailer.

- 1           4. "Local governmental unit" means incorporated cities, counties, school districts, and  
2           townships.
- 3           5. "Person" includes any individual, firm, partnership, joint venture, association,  
4           corporation, limited liability company, estate, business trust, receiver, or any other  
5           group or combination acting as a unit and the plural as well as the singular number.
- 6           6. "Relief agency" means the state, any county, city and county, city or district  
7           thereof, or an agency engaged in actual relief work.
- 8           7. "Retail sale" or "sale at retail" means the sale, including the leasing or renting, to a  
9           consumer or to any person for any purpose, other than for processing or for resale,  
10          of tangible personal property; the sale of steam, gas, and communication service to  
11          retail consumers or users; the sale of vulcanizing, recapping, and retreading  
12          services for tires; the furnishing of bingo cards; the ordering, selecting, or aiding a  
13          customer to select any goods, wares, or merchandise from any price list or catalog,  
14          which the customer might order, or be ordered for such customer to be shipped  
15          directly to such customer; the sale or furnishing of hotel, motel, or tourist court  
16          accommodations, tickets, or admissions to any place of amusement, athletic event,  
17          or place of entertainment including the playing of any machine for amusement or  
18          entertainment in response to the use of a coin; and the sales of magazines and  
19          other periodicals. By the term "processing" is meant any tangible personal  
20          property including containers which it is intended, by means of fabrication,  
21          compounding, manufacturing, producing, or germination shall become an integral  
22          or an ingredient or component part of other tangible personal property intended to  
23          be sold ultimately at retail. The sale of an item of tangible personal property for the  
24          purpose of incorporating it in or attaching it to real property must be considered as  
25          a sale of tangible personal property for a purpose other than for processing; the  
26          delivery of possession within the state of North Dakota of tangible personal  
27          property by a wholesaler or distributor to an out-of-state retailer who does not hold  
28          a North Dakota retail sales tax permit or to a person who by contract incorporates  
29          such tangible personal property into, or attaches it to, real property situated in  
30          another state may not be considered a taxable sale if such delivery of possession  
31          would not be treated as a taxable sale in that state. As used in this subsection, the

1 word "consumer" includes any hospital, infirmary, sanatorium, nursing home, home  
2 for the aged, or similar institution that furnishes services to any patient or occupant.  
3 The sale of an item of tangible personal property to a purchaser who rents or  
4 leases it to a person under a finance leasing agreement over the term of which the  
5 property will be substantially consumed must be considered a retail sale if the  
6 purchaser elects to treat it as such by paying or causing the transferor to pay the  
7 sales tax thereon to the commissioner on or before the last day on which payments  
8 may be made without penalty as provided in section 57-39.2-12.

9 8. "Retailer" includes every person engaged in the business of leasing or renting  
10 hotel, motel, or tourist court accommodations, and every person engaged in the  
11 business of selling tangible goods, wares, or merchandise at retail, or furnishing of  
12 steam, gas, and communication services, or tickets or admissions to places of  
13 amusement, entertainment, and athletic events including the playing of any  
14 machine for amusement or entertainment in response to the use of a coin, or  
15 magazines, or other periodicals; any organization licensed by the attorney general  
16 to conduct bingo games pursuant to section 53-06.1-03; and includes any person  
17 as herein defined who by contract or otherwise agrees to furnish for a  
18 consideration a totally or partially finished product consisting in whole or in part of  
19 tangible personal property subject to the sales tax herein provided, and all items of  
20 tangible personal property entering into the performance of such contract as a  
21 component part of the product agreed to be furnished under said contract shall be  
22 subject to the sales tax herein provided and the sales tax thereon shall be collected  
23 by the contractor from the person for whom the contract has been performed in  
24 addition to the contract price agreed upon, and shall be remitted to the state in the  
25 manner provided in this chapter; and shall include the state or any municipality  
26 furnishing steam, gas, or communication service to members of the public in its  
27 proprietary capacity. For the purpose of this chapter, retailer shall also include  
28 every clerk, auctioneer, agent, or factor selling tangible personal property owned  
29 by any other retailer. A retailer also includes every person who engages in regular  
30 or systematic solicitation of a consumer market in this state by the distribution of  
31 catalogs, periodicals, advertising flyers, or other advertising, or by means of print,

1 radio or television media, by mail, telegraphy, telephone, computer data base,  
2 cable, optic, microwave, or other communication system.

3 9. "Sale" means any transfer of title or possession, exchange or barter, conditional or  
4 otherwise, in any manner or by any means whatever, for a consideration, and  
5 includes the furnishing or service of steam, gas, or communication, the furnishing  
6 of bingo cards, the furnishing of hotel, motel, or tourist court accommodations, the  
7 furnishing of tickets or admissions to any place of amusement, athletic event, or  
8 place of entertainment including the playing of any machine for amusement or  
9 entertainment in response to the use of a coin, and sales of magazines and other  
10 periodicals. Provided, the words "magazines and other periodicals" as used in this  
11 subsection do not include newspapers nor magazines or periodicals that are  
12 furnished free by a nonprofit corporation or organization to its members or because  
13 of payment by its members of membership fees or dues.

14 **(Effective after December 31, 2005) Definitions.** The following words, terms, and  
15 phrases, when used in this chapter, have the meaning ascribed to them in this section, unless  
16 the context clearly indicates a different meaning:

- 17 1. "Business" includes any activity engaged in by any person or caused to be  
18 engaged in by the person with the object of gain, benefit or advantage, either direct  
19 or indirect.
- 20 2. "Certified service provider" means an agent certified under the agreement adopted  
21 under chapter 57-39.4 to perform all of the seller's sales and use tax functions,  
22 other than the seller's obligation to remit taxes on its own purchases.
- 23 3. "Commissioner" means the tax commissioner of the state of North Dakota.
- 24 4. "Delivery charges" means charges by the seller for preparation and delivery to a  
25 location designated by the purchaser of personal property or services. For  
26 purposes of this subsection, "preparation and delivery" includes transportation,  
27 shipping, postage, handling, crating, and packing.
- 28 5. "Drug" means a compound, substance, or preparation and any component of a  
29 compound, substance, or preparation, other than food and food ingredients, dietary  
30 supplements, or alcoholic beverages:

- 1           a.    Recognized in the official United States pharmacopoeia, official homeopathic  
2                    pharmacopoeia of the United States, or official national formulary, or any  
3                    supplement of any of these publications;
- 4           b.    Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of  
5                    disease; or
- 6           c.    Intended to affect the structure or any function of the body.
- 7        6.    "Farm machinery" means all vehicular implements and attachment units, designed  
8                    and sold for direct use in planting, cultivating, or harvesting farm products or used  
9                    in connection with the production of agricultural produce or products, livestock, or  
10                   poultry on farms, which are operated, drawn, or propelled by motor or animal  
11                   power. "Farm machinery" does not include vehicular implements operated wholly  
12                   by hand or a motor vehicle required to be registered under chapter 57-40.3. "Farm  
13                   machinery" does not include machinery that may be used for other than agricultural  
14                   purposes, including tires, farm machinery repair parts, tools, shop equipment, grain  
15                   bins, feed bunks, fencing materials, and other farm supplies and equipment. For  
16                   purposes of this subsection, "attachment unit" means any part or combination of  
17                   parts having an independent function, other than farm machinery repair parts,  
18                   which when attached or affixed to farm machinery is used exclusively for  
19                   agricultural purposes.
- 20        7.    "Farm machinery repair parts" means repair or replacement parts for farm  
21                   machinery that have a specific or generic part number assigned by the  
22                   manufacturer of the farm machinery. "Farm machinery repair parts" do not include  
23                   tires, fluid, gas, grease, lubricant, wax, or paint.
- 24        8.    a.    "Gross receipts" means the measure subject to sales tax and means the total  
25                   amount of consideration, including cash, credit, property, and services, for  
26                   which personal property or services are sold, leased, or rented, valued in  
27                   money, whether received in money or otherwise, without any deduction for the  
28                   following:
- 29                   (1)   The seller's cost of the property sold;

- 1 (2) The cost of materials used, labor or service costs, interest, losses, all
- 2 costs of transportation to the seller, all taxes imposed on the seller, and
- 3 any other expense of the seller;
- 4 (3) Charges by the seller for any services necessary to complete the sale,
- 5 other than delivery and installation charges;
- 6 (4) Delivery charges;
- 7 (5) The value of exempt personal property given to the purchaser when
- 8 taxable and exempt personal property have been bundled together and
- 9 sold by the seller as a single product or piece of merchandise; and
- 10 (6) Credit for any trade-in, as determined by state law.
- 11 b. "Gross receipts" also includes the total amount of sales of every clerk,
- 12 auctioneer, agent, or factor selling tangible personal property owned by any
- 13 other retailer.
- 14 c. "Gross receipts" does not include:
- 15 (1) Discounts, including cash, term, or coupons that are not reimbursed by
- 16 a third party, which are allowed by a seller and taken by a purchaser on
- 17 a sale;
- 18 (2) Interest, financing, and carrying charges from credit extended on the
- 19 sale of personal property or services, if the amount is separately stated
- 20 on the invoice, bill of sale, or similar document given to the purchaser;
- 21 (3) Any taxes legally imposed directly on the consumer that are separately
- 22 stated on the invoice, bill of sale, or similar documents given to the
- 23 purchaser; and
- 24 (4) The sale price of property returned by a customer when the full sale
- 25 price is refunded either in cash or credit. When tangible personal
- 26 property is taken in trade or in a series of trades as a credit or part
- 27 payment of a retail sale taxable under this chapter, if the tangible
- 28 personal property traded in will be subject to tax imposed by chapter
- 29 57-39.5 or 57-40.3 or if the tangible personal property traded in is used
- 30 farm machinery or used irrigation equipment, the credit or trade-in value
- 31 allowed by the retailer is not included in gross receipts of the retailer.

- 1           9. "Lease or rental" means any transfer of possession or control of tangible personal  
2           property for a fixed or indeterminate term for consideration. A lease or rental may  
3           include future options to purchase or extend. "Lease or rental" does not include:
- 4           a. A transfer of possession or control of property under a security agreement or  
5           deferred payment plan, which requires the transfer upon completion of the  
6           required payments;
- 7           b. A transfer of possession or control of property under an agreement that  
8           requires the transfer of title upon completion of required payments and  
9           payment of an option price that does not exceed the greater of one hundred  
10          dollars or one percent of the total required payments; or
- 11          c. Providing tangible personal property with an operator for a fixed or  
12          indeterminate period of time. A condition of this exclusion is that the operator  
13          is necessary for the equipment to perform as designed. For the purpose of  
14          this subdivision, an operator must do more than maintain, inspect, or set up  
15          the tangible personal property.
- 16          This definition will be applied only prospectively from the date of adoption and will  
17          have no retroactive impact on existing leases or rentals.
- 18          10. "Local governmental unit" means incorporated cities, counties, school districts, and  
19          townships.
- 20          11. "Person" includes any individual, firm, partnership, joint venture, association,  
21          corporation, limited liability company, estate, business trust, receiver, or any other  
22          group or combination acting as a unit and the plural as well as the singular number.
- 23          12. "Prescription" means an order, formula, or recipe issued in any form of oral,  
24          written, electronic, or other means of transmission by a person authorized by the  
25          laws of this state to prescribe drugs.
- 26          13. "Relief agency" means the state, any county, city and county, city or district  
27          thereof, or an agency engaged in actual relief work.
- 28          14. "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose  
29          other than for resale, sublease, or subrental. "Retail sale" or "sale at retail"  
30          includes the sale, including the leasing or renting, to a consumer or to any person  
31          for any purpose, other than for processing or for resale, of tangible personal



1 property; the sale of steam, gas, and communication service to retail consumers or  
2 users; the sale of vulcanizing, recapping, and retreading services for tires; the  
3 furnishing of bingo cards; the ordering, selecting, or aiding a customer to select any  
4 goods, wares, or merchandise from any price list or catalog, which the customer  
5 might order, or be ordered for such customer to be shipped directly to such  
6 customer; the sale or furnishing of hotel, motel, or tourist court accommodations,  
7 tickets, or admissions to any place of amusement, athletic event, or place of  
8 entertainment, including the playing of any machine for amusement or  
9 entertainment in response to the use of a coin; and the sales of magazines and  
10 other periodicals. By the term "processing" is meant any tangible personal  
11 property including containers which it is intended, by means of fabrication,  
12 compounding, manufacturing, producing, or germination shall become an integral  
13 or an ingredient or component part of other tangible personal property intended to  
14 be sold ultimately at retail. The sale of an item of tangible personal property for the  
15 purpose of incorporating it in or attaching it to real property must be considered as  
16 a sale of tangible personal property for a purpose other than for processing; the  
17 delivery of possession within the state of North Dakota of tangible personal  
18 property by a wholesaler or distributor to an out-of-state retailer who does not hold  
19 a North Dakota retail sales tax permit or to a person who by contract incorporates  
20 such tangible personal property into, or attaches it to, real property situated in  
21 another state may not be considered a taxable sale if such delivery of possession  
22 would not be treated as a taxable sale in that state. As used in this subsection, the  
23 word "consumer" includes any hospital, infirmary, sanatorium, nursing home, home  
24 for the aged, or similar institution that furnishes services to any patient or occupant.  
25 The sale of an item of tangible personal property to a person under a finance  
26 leasing agreement over the term of which the property will be substantially  
27 consumed must be considered a retail sale if the purchaser elects to treat it as  
28 such by paying or causing the transferor to pay the sales tax thereon to the  
29 commissioner on or before the last day on which payments may be made without  
30 penalty as provided in section 57-39.2-12.

- 1           15. "Retailer" or "seller" includes every person engaged in the business of leasing or  
2           renting hotel, motel, or tourist court accommodations, and every person engaged in  
3           the business of selling tangible goods, wares, or merchandise at retail, or  
4           furnishing of steam, gas, and communication services, or tickets or admissions to  
5           places of amusement, entertainment, and athletic events, including the playing of  
6           any machine for amusement or entertainment in response to the use of a coin, or  
7           magazines, or other periodicals; any organization licensed by the attorney general  
8           to conduct bingo games pursuant to section 53-06.1-03; and includes any person  
9           as herein defined who by contract or otherwise agrees to furnish for a  
10          consideration a totally or partially finished product consisting in whole or in part of  
11          tangible personal property subject to the sales tax herein provided, and all items of  
12          tangible personal property entering into the performance of such contract as a  
13          component part of the product agreed to be furnished under said contract shall be  
14          subject to the sales tax herein provided and the sales tax thereon shall be collected  
15          by the contractor from the person for whom the contract has been performed in  
16          addition to the contract price agreed upon, and shall be remitted to the state in the  
17          manner provided in this chapter; and shall include the state or any municipality  
18          furnishing steam, gas, or communication service to members of the public in its  
19          proprietary capacity. For the purpose of this chapter, retailer shall also include  
20          every clerk, auctioneer, agent, or factor selling tangible personal property owned  
21          by any other retailer. A retailer also includes every person who engages in regular  
22          or systematic solicitation of a consumer market in this state by the distribution of  
23          catalogs, periodicals, advertising flyers, or other advertising, or by means of print,  
24          radio or television media, by mail, telegraphy, telephone, computer data base,  
25          cable, optic, microwave, or other communication system.
- 26          16. "Sale" means any transfer of title or possession, exchange or barter, conditional or  
27          otherwise, in any manner or by any means whatever, for a consideration, and  
28          includes the furnishing or service of steam, gas, or communication, the furnishing  
29          of bingo cards, the furnishing of hotel, motel, or tourist court accommodations, the  
30          furnishing of tickets or admissions to any place of amusement, athletic event, or  
31          place of entertainment, including the playing of any machine for amusement or

1 entertainment in response to the use of a coin, and sales of magazines and other  
2 periodicals. Provided, the words "magazines and other periodicals" as used in this  
3 subsection do not include newspapers nor magazines or periodicals that are  
4 furnished free by a nonprofit corporation or organization to its members or because  
5 of payment by its members of membership fees or dues.

6 17. "Sales tax" means the tax levied under section 57-39.2-02.1 or a conforming tax  
7 imposed under home rule authority by a city or county.

8 18. "Tangible personal property" means personal property that can be seen, weighed,  
9 measured, felt, or touched or that is in any other manner perceptible to the senses.  
10 "Tangible personal property" includes electricity, gas, steam, and prewritten  
11 computer software.

12 **SECTION 2. AMENDMENT.** Section 57-39.5-03 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14 **57-39.5-03. (Effective after December 31, 2005) Replacement of insured**  
15 **machinery credit.** When new farm machinery is purchased as a replacement for machinery on  
16 which the insurant has previously paid the gross receipts, sales, or use tax and which was  
17 stolen or totally destroyed, a credit or trade-in credit is allowed against one or more  
18 replacement purchases in ~~an~~ a cumulative amount equal to the compensation received for the  
19 loss from the insurance company. The purchaser shall provide the seller with a notarized  
20 statement from the insurance company verifying that the original farm machinery was a total  
21 loss and indicating the amount of compensation. ~~The~~ If the full amount of the credit under this  
22 section has not been used, the seller shall retain a copy of the notarized statement and, if the  
23 full amount of the credit has been used, the seller shall retain the original notarized statement  
24 ~~must be retained by the seller~~ to verify the amount of credit or trade-in credit allowed.

25 **SECTION 3. AMENDMENT.** Section 57-40.2-01 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27 **57-40.2-01. (Effective through December 31, 2005) Definitions.** In this chapter,  
28 unless the context and subject matter otherwise require:

29 1. "Business", "commissioner", "gross receipts", "local governmental unit", "persons",  
30 "relief agency", "retail sale", "sale", each has the meaning given to it in section  
31 57-39.2-01.

- 1           2. Property used in "processing", as that term is used in subsection 9, means any  
2           tangible personal property including containers which it is intended, by means of  
3           fabrication, compounding, manufacturing, producing, or germination, shall become  
4           an integral or an ingredient or component part of other tangible personal property  
5           intended to be sold ultimately at retail. The purchase of an item of tangible  
6           personal property for the purpose of incorporating it in or attaching it to real  
7           property must be considered as a purchase of tangible personal property for a  
8           purpose other than for processing.
- 9           3. "Purchase" means any transfer of title or possession, exchange, or barter,  
10          conditional or otherwise, in any manner or by any means whatsoever, for a  
11          consideration. "Purchase" also means the severing of sand or gravel from the soil  
12          of this state.
- 13          4. "Purchase price" means the total amount for which tangible personal property is  
14          sold, leased, or rented, valued in money, whether paid in money or otherwise, but  
15          cash discounts and trade-ins allowed and taken on sales shall not be included.  
16          "Purchase price" also means, in those instances when sand or gravel is not sold at  
17          retail as tangible personal property by the person severing the sand or gravel, the  
18          fair market value of the sand or gravel severed. If the sand or gravel is not sold at  
19          retail by the person severing the sand or gravel, it must be presumed until the  
20          contrary is shown by the commissioner or by the person severing the sand or  
21          gravel that the fair market value is eight cents per ton of two thousand pounds  
22          [907.18 kilograms]. If records are not kept as to the tonnage of sand or gravel  
23          severed from the soil, it must be presumed for the purpose of this chapter that one  
24          cubic yard [764.55 liters] of sand or gravel is equal to one and one-half tons  
25          [1360.78 kilograms] of sand or gravel. When a farm machine is purchased as a  
26          replacement for machinery which was stolen or totally destroyed, a credit or  
27          trade-in credit is allowed against one or more replacement purchases in an a  
28          cumulative amount equal to the compensation received for the loss from the  
29          insurance company. The purchaser shall provide the seller with a notarized  
30          statement from the insurance company verifying that the original farm machine was  
31          a total loss and indicating the amount of compensation. ~~The~~ If the full amount of

1           the credit under this subsection has not been used, the seller shall retain a copy of  
2           the notarized statement and, if the full amount of the credit has been used, the  
3           seller shall retain the original notarized statement ~~must be retained by the seller~~ to  
4           verify the amount of credit or trade-in credit allowed.

- 5           5. "Purchased at retail" includes, but is not limited to:
- 6           a. The completion of the fabricating, compounding, or manufacturing of tangible  
7           personal property by a person for storage, use, or consumption by that  
8           person.
- 9           b. The leasing or renting of tangible personal property, the sale, storage, use, or  
10           consumption of which has not been previously subjected to a retail sales or  
11           use tax in this state.
- 12           c. The purchase of magazines or other periodicals. Provided, the words  
13           "magazines and other periodicals" as used in this subdivision do not include  
14           newspapers nor magazines or periodicals that are furnished free by a  
15           nonprofit corporation or organization to its members or because of payment  
16           by its members of membership fees or dues.
- 17           d. The severance of sand or gravel from the soil.
- 18           e. The purchase, including the leasing or renting, of tangible personal property  
19           from any bank for storage, use, or consumption.
- 20           f. The purchase of an item of tangible personal property by a purchaser who  
21           rents or leases it to a person under a finance leasing agreement over the term  
22           of which the property will be substantially consumed, if the purchaser elects to  
23           treat it as being purchased at retail by paying or causing the transferor to pay  
24           the use tax to the commissioner on or before the last day on which payments  
25           may be made without penalty as provided in section 57-40.2-07.
- 26           6. "Retailer" includes every person engaged in the business of selling tangible  
27           personal property for use within the meaning of this chapter, but, when in the  
28           opinion of the commissioner, it is necessary for the efficient administration of this  
29           chapter to regard any salesman, representative, trucker, peddler, or canvasser as  
30           the agent of the dealer, distributor, supervisor, employer, or other person under  
31           whom that person operates or from whom that person obtains the tangible

1 personal property sold by that person, whether that person is making sales in that  
2 person's own behalf or in behalf of such dealer, distributor, supervisor, employer,  
3 or other person, the commissioner may regard that person as such agent, and may  
4 regard the dealer, distributor, supervisor, employer, or other person as a retailer for  
5 the purposes of this chapter. A retailer includes any organization licensed by the  
6 attorney general to conduct bingo games pursuant to section 53-06.1-03. A retailer  
7 also includes every person who engages in regular or systematic solicitation of a  
8 consumer market in this state by the distribution of catalogs, periodicals,  
9 advertising flyers, or other advertising, or by means of print, radio or television  
10 media, by mail, telegraphy, telephone, computer data base, cable, optic,  
11 microwave, or other communication system.

12 7. "Retailer maintaining a place of business in this state", or any like term, means any  
13 retailer having or maintaining within this state, directly or by a subsidiary, an office,  
14 distribution house, sales house, warehouse, or other place of business, or any  
15 agent operating within this state under the authority of the retailer or its subsidiary,  
16 whether such place of business or agent is located in the state permanently or  
17 temporarily, or whether or not such retailer or subsidiary is authorized to do  
18 business within this state. It includes any organization licensed by the attorney  
19 general to conduct bingo games pursuant to section 53-06.1-03. It also includes  
20 every person who engages in regular or systematic solicitation of sales of tangible  
21 personal property in this state by the distribution of catalogs, periodicals,  
22 advertising flyers, or other advertising, by means of print, radio or television media,  
23 or by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or  
24 other communication system for the purpose of effecting retail sales of tangible  
25 personal property.

26 8. "Tangible personal property" means:  
27 a. Tangible goods, including the furnishing of bingo cards, wares, and  
28 merchandise, and gas, when furnished or delivered to consumers or users  
29 within this state, and the sale of vulcanizing, recapping, and retreading  
30 services for tires.

- 1           b. The leasing or renting of tangible personal property, the sale, storage, use, or  
2           consumption of which has not been previously subjected to a retail sales or  
3           use tax in this state.
- 4           c. The purchase of magazines or other periodicals. Provided, the words  
5           "magazines and other periodicals" as used in this subdivision do not include  
6           newspapers nor magazines or periodicals that are furnished free by a  
7           nonprofit corporation or organization to its members or because of payment  
8           by its members of membership fees or dues.
- 9           d. The severance of sand or gravel from the soil.
- 10          9. "Use" means the exercise by any person of any right or power over tangible  
11          personal property incident to the ownership or possession of that property,  
12          including the storage, use, or consumption of that property in this state, except that  
13          it does not include processing, or the sale of that property in the regular course of  
14          business. "Use" also means the severing of sand or gravel from the soil of this  
15          state for use within or outside this state.

16           **(Effective after December 31, 2005) Definitions.** In this chapter, unless the context  
17 and subject matter otherwise require:

- 18          1. "Business", "commissioner", "gross receipts", "local governmental unit", "persons",  
19          "relief agency", "retail sale", "sale", each has the meaning given to it in section  
20          57-39.2-01.
- 21          2. Property used in "processing", as that term is used in subsection 9, means any  
22          tangible personal property including containers which it is intended, by means of  
23          fabrication, compounding, manufacturing, producing, or germination, shall become  
24          an integral or an ingredient or component part of other tangible personal property  
25          intended to be sold ultimately at retail. The purchase of an item of tangible  
26          personal property for the purpose of incorporating it in or attaching it to real  
27          property must be considered as a purchase of tangible personal property for a  
28          purpose other than for processing.
- 29          3. "Purchase" means any transfer of title or possession, exchange, or barter,  
30          conditional or otherwise, in any manner or by any means whatsoever, for a

- 1 consideration. "Purchase" also means the severing of sand or gravel from the soil  
2 of this state.
- 3 4. "Purchase price" applies to the measure subject to use tax and has the same  
4 meaning as gross receipts as defined in section 57-39.2-01.
- 5 5. "Purchased at retail" includes, but is not limited to:
- 6 a. The completion of the fabricating, compounding, or manufacturing of tangible  
7 personal property by a person for storage, use, or consumption by that  
8 person.
- 9 b. The leasing or renting of tangible personal property, the sale, storage, use, or  
10 consumption of which has not been previously subjected to a retail sales or  
11 use tax in this state.
- 12 c. The purchase of magazines or other periodicals. Provided, the words  
13 "magazines and other periodicals" as used in this subdivision do not include  
14 newspapers nor magazines or periodicals that are furnished free by a  
15 nonprofit corporation or organization to its members or because of payment  
16 by its members of membership fees or dues.
- 17 d. The severance of sand or gravel from the soil.
- 18 e. The purchase, including the leasing or renting, of tangible personal property  
19 from any bank for storage, use, or consumption.
- 20 f. The purchase of an item of tangible personal property by a purchaser who  
21 rents or leases it to a person under a finance leasing agreement over the term  
22 of which the property will be substantially consumed, if the purchaser elects to  
23 treat it as being purchased at retail by paying or causing the transferor to pay  
24 the use tax to the commissioner on or before the last day on which payments  
25 may be made without penalty as provided in section 57-40.2-07.
- 26 6. "Retailer" includes every person engaged in the business of selling tangible  
27 personal property for use within the meaning of this chapter, but, when in the  
28 opinion of the commissioner, it is necessary for the efficient administration of this  
29 chapter to regard any salesman, representative, trucker, peddler, or canvasser as  
30 the agent of the dealer, distributor, supervisor, employer, or other person under  
31 whom that person operates or from whom that person obtains the tangible



1 personal property sold by that person, whether that person is making sales in that  
2 person's own behalf or in behalf of such dealer, distributor, supervisor, employer,  
3 or other person, the commissioner may regard that person as such agent, and may  
4 regard the dealer, distributor, supervisor, employer, or other person as a retailer for  
5 the purposes of this chapter. A retailer includes any organization licensed by the  
6 attorney general to conduct bingo games pursuant to section 53-06.1-03. A retailer  
7 also includes every person who engages in regular or systematic solicitation of a  
8 consumer market in this state by the distribution of catalogs, periodicals,  
9 advertising flyers, or other advertising, or by means of print, radio or television  
10 media, by mail, telegraphy, telephone, computer data base, cable, optic,  
11 microwave, or other communication system.

12 7. "Retailer maintaining a place of business in this state", or any like term, means any  
13 retailer having or maintaining within this state, directly or by a subsidiary, an office,  
14 distribution house, sales house, warehouse, or other place of business, or any  
15 agent operating within this state under the authority of the retailer or its subsidiary,  
16 whether such place of business or agent is located in the state permanently or  
17 temporarily, or whether or not such retailer or subsidiary is authorized to do  
18 business within this state. It includes any organization licensed by the attorney  
19 general to conduct bingo games pursuant to section 53-06.1-03. It also includes  
20 every person who engages in regular or systematic solicitation of sales of tangible  
21 personal property in this state by the distribution of catalogs, periodicals,  
22 advertising flyers, or other advertising, by means of print, radio or television media,  
23 or by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or  
24 other communication system for the purpose of effecting retail sales of tangible  
25 personal property.

26 8. "Tangible personal property" means:  
27 a. Tangible goods, including the furnishing of bingo cards, wares, and  
28 merchandise, and gas, when furnished or delivered to consumers or users  
29 within this state, and the sale of vulcanizing, recapping, and retreading  
30 services for tires.

- 1           b. The leasing or renting of tangible personal property, the sale, storage, use, or  
2           consumption of which has not been previously subjected to a retail sales or  
3           use tax in this state.
- 4           c. The purchase of magazines or other periodicals. Provided, the words  
5           "magazines and other periodicals" as used in this subdivision do not include  
6           newspapers nor magazines or periodicals that are furnished free by a  
7           nonprofit corporation or organization to its members or because of payment  
8           by its members of membership fees or dues.
- 9           d. The severance of sand or gravel from the soil.
- 10          9. "Use" means the exercise by any person of any right or power over tangible  
11          personal property incident to the ownership or possession of that property,  
12          including the storage, use, or consumption of that property in this state, except that  
13          it does not include processing, or the sale of that property in the regular course of  
14          business. "Use" also means the severing of sand or gravel from the soil of this  
15          state for use within or outside this state.
- 16          10. "Use tax" means the tax levied under section 57-40.2-02.1 or imposed under home  
17          rule authority by a city or county.

18           **SECTION 4. AMENDMENT.** Subsection 5 of section 57-40.3-01 of the North Dakota  
19 Century Code is amended and reenacted as follows:

- 20          5. "Purchase price" means the total amount paid for the motor vehicle whether  
21          received in money or otherwise; provided, however, that when a motor vehicle or  
22          other tangible personal property that will be subject to a sales or use tax imposed  
23          by chapter 57-39.2 or 57-40.2 when sold or used is taken in trade as a credit or as  
24          part payment on a motor vehicle taxable under this chapter, the credit or trade-in  
25          value allowed by the person selling the motor vehicle shall be deducted from the  
26          total selling price to establish the purchase price of the vehicle being sold and the  
27          trade-in allowance allowed by the seller on a motor vehicle accepted as a trade-in  
28          shall constitute the purchase price of a motor vehicle accepted as a trade-in. If a  
29          motor vehicle is purchased by an owner who has had a motor vehicle stolen or  
30          totally destroyed, a credit or trade-in credit shall be allowed against one or more  
31          replacement motor vehicle purchases in ~~an~~ a cumulative amount not to exceed the

1 total amount the purchaser has been compensated by an insurance company for  
2 the loss but not to exceed the total amount of motor vehicle excise tax paid. The  
3 purchaser must provide the director of the department of transportation with a  
4 notarized statement from the insurance company verifying the fact that the original  
5 vehicle was a total loss and stating the amount compensated by the insurance  
6 company for the loss. The statement from the insurance company must  
7 accompany the purchaser's application for a certificate of title for the replacement  
8 vehicle. If the full amount of the credit under this subsection has not been used,  
9 the director of the department of transportation shall record on the face of the  
10 notarized statement the necessary information to identify the partial use of the  
11 credit and shall retain a copy and return the original to the purchaser. In instances  
12 in which a licensed motor vehicle dealer places into the dealer's service a new  
13 vehicle for the purpose of renting, leasing, or dealership utility service, the  
14 reasonable value of the vehicle replaced shall be included as trade-in value  
15 provided the vehicle replaced has been subject to motor vehicle excise tax under  
16 section 57-40.3-02 and if the new vehicle is properly registered and licensed.  
17 "Purchase price" when the motor vehicle is acquired by gift or by any other transfer  
18 for a nominal or no monetary consideration also includes the average value of  
19 similar motor vehicles, established by standards and guides as determined by the  
20 director of the department of transportation. "Purchase price" when a motor  
21 vehicle is manufactured by a person who registers it under the laws of this state  
22 means the manufactured cost of such motor vehicle and manufactured cost means  
23 the amount expended for materials, labor, and other properly allocable costs of  
24 manufacture except that, in the absence of actual expenditures for the manufacture  
25 of a part or all of the motor vehicle, manufactured cost means the reasonable value  
26 of the completed motor vehicle.

27 **SECTION 5. EFFECTIVE DATE.** This Act is effective for property stolen or totally  
28 destroyed after June 30, 2004. Section 2 of this Act is effective for property stolen or totally  
29 destroyed for which replacement property is purchased after December 31, 2005.