

Sixty-fourth  
Legislative Assembly  
of North Dakota

ENGROSSED SENATE BILL NO. 2096

Introduced by

Senators Cook, Armstrong, Flakoll

Representatives Louser, Streyle, Headland

1 A BILL for an Act to amend and reenact subsections 21, 22, and 23 of section 57-39.2-01 and  
2 subsection 1 of section 57-39.2-02.1 of the North Dakota Century Code, relating to elimination  
3 of sales taxes on sale of internet access services; and to provide an effective date.

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

5 **SECTION 1. AMENDMENT.** Subsections 21, 22, and 23 of section 57-39.2-01 of the North  
6 Dakota Century Code are amended and reenacted as follows:

7 21. "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other  
8 than for resale, sublease, or subrental. "Retail sale" or "sale at retail" includes the sale,  
9 including the leasing or renting, to a consumer or to any person for any purpose, other  
10 than for processing or for resale, of tangible personal property; the sale of steam, gas,  
11 and communication service, excluding internet access service, to retail consumers or  
12 users; the sale of vulcanizing, recapping, and retreading services for tires; the  
13 ordering, selecting, or aiding a customer to select any goods, wares, or merchandise  
14 from any price list or catalog, which the customer might order, or be ordered for such  
15 customer to be shipped directly to such customer; the sale or furnishing of hotel,  
16 motel, or tourist court accommodations, tickets, or admissions to any place of  
17 amusement, athletic event, or place of entertainment; and the sales of magazines and  
18 other periodicals. By the term "processing" is meant any tangible personal property,  
19 including containers which it is intended, by means of fabrication, compounding,  
20 manufacturing, producing, or germination shall become an integral or an ingredient or  
21 component part of other tangible personal property intended to be sold ultimately at  
22 retail. The sale of an item of tangible personal property for the purpose of  
23 incorporating it in or attaching it to real property must be considered as a sale of  
24 tangible personal property for a purpose other than for processing; the delivery of

1 possession within the state of North Dakota of tangible personal property by a  
2 wholesaler or distributor to an out-of-state retailer who does not hold a North Dakota  
3 retail sales tax permit or to a person who by contract incorporates such tangible  
4 personal property into, or attaches it to, real property situated in another state may not  
5 be considered a taxable sale if such delivery of possession would not be treated as a  
6 taxable sale in that state. As used in this subsection, the word "consumer" includes  
7 any hospital, infirmary, sanatorium, nursing home, home for the aged, or similar  
8 institution that furnishes services to any patient or occupant. The sale of an item of  
9 tangible personal property to a person under a finance leasing agreement over the  
10 term of which the property will be substantially consumed must be considered a retail  
11 sale if the purchaser elects to treat it as such by paying or causing the transferor to  
12 pay the sales tax thereon to the commissioner on or before the last day on which  
13 payments may be made without penalty as provided in section 57-39.2-12.

14 22. "Retailer" or "seller" includes every person engaged in the business of leasing or  
15 renting hotel, motel, or tourist court accommodations, and every person engaged in  
16 the business of selling tangible goods, wares, or merchandise at retail, or furnishing of  
17 steam, gas, and communication services, excluding internet access service, or tickets  
18 or admissions to places of amusement, entertainment, and athletic events, or  
19 magazines or other periodicals; and includes any person as herein defined who by  
20 contract or otherwise agrees to furnish for a consideration a totally or partially finished  
21 product consisting in whole or in part of tangible personal property subject to the sales  
22 tax herein provided, and all items of tangible personal property entering into the  
23 performance of such contract as a component part of the product agreed to be  
24 furnished under said contract shall be subject to the sales tax herein provided and the  
25 sales tax thereon shall be collected by the contractor from the person for whom the  
26 contract has been performed in addition to the contract price agreed upon, and shall  
27 be remitted to the state in the manner provided in this chapter; and shall include the  
28 state or any municipality furnishing steam, gas, or communication service to members  
29 of the public in its proprietary capacity. For the purpose of this chapter, retailer shall  
30 also include every clerk, auctioneer, agent, or factor selling tangible personal property  
31 owned by any other retailer. A retailer also includes every person who engages in

1 regular or systematic solicitation of a consumer market in this state by the distribution  
2 of catalogs, periodicals, advertising fliers, or other advertising, or by means of print,  
3 radio or television media, by mail, telegraphy, telephone, computer database, cable,  
4 optic, microwave, or other communication system.

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

15 **SECTION 2. AMENDMENT.** Subsection 1 of section 57-39.2-02.1 of the North Dakota  
16 Century Code is amended and reenacted as follows:

- 17 1. Except as otherwise expressly provided in this chapter, there is imposed a tax of five  
18 percent upon the gross receipts of retailers from all sales at retail, including the leasing  
19 or renting of tangible personal property as provided in this section, within this state of  
20 the following to consumers or users:
- 21 a. Tangible personal property, consisting of goods, wares, or merchandise, and  
22 bundled transactions consisting entirely of tangible personal property.
  - 23 b. The furnishing or service of communication services, excluding internet access  
24 service but including one-way and two-way telecommunications services or  
25 steam other than steam used for processing agricultural products.
  - 26 c. Tickets or admissions to places of amusement or entertainment or athletic  
27 events, including amounts charged for participation in an amusement,  
28 entertainment, or athletic activity.
  - 29 d. Magazines and other periodicals.
  - 30 e. The leasing or renting of a hotel or motel room or tourist court accommodations.

1 f. The leasing or renting of tangible personal property the transfer of title to which  
2 has not been subjected to a retail sales tax under this chapter or a use tax under  
3 chapter 57-40.2.

4 g. Sale, lease, or rental of a computer and prewritten computer software, including  
5 prewritten computer software delivered electronically or by load and leave. For  
6 purposes of this subdivision:

7 (1) "Computer" means an electronic device that accepts information in digital or  
8 similar form and manipulates it for a result based on a sequence of  
9 instructions.

10 (2) "Computer software" means a set of coded instructions designed to cause a  
11 computer or automatic data processing equipment to perform a task.

12 (3) "Delivered electronically" means delivered from the seller to the purchaser  
13 by means other than tangible storage media.

14 (4) "Electronic" means relating to technology having electrical, digital, magnetic,  
15 wireless, optical, electromagnetic, or similar capabilities.

16 (5) "Load and leave" means delivery to the purchaser by use of a tangible  
17 storage media when the tangible storage media is not physically transferred  
18 to the purchaser.

19 (6) "Prewritten computer software" means computer software, including  
20 prewritten upgrades, which is not designed and developed by the author or  
21 other creator to the specifications of a specific purchaser. The combining of  
22 two or more "prewritten computer software" programs or prewritten portions  
23 thereof does not cause the combination to be other than "prewritten  
24 computer software". "Prewritten computer software" includes software  
25 designed and developed by the author or other creator to the specifications  
26 of a specific purchaser when it is sold to a person other than the purchaser.  
27 If a person modifies or enhances "computer software" of which the person is  
28 not the author or creator, the person is deemed to be the author or creator  
29 only of such person's modifications or enhancements. "Prewritten computer  
30 software" or a prewritten portion thereof that is modified or enhanced to any  
31 degree, if such modification or enhancement is designed and developed to

1                   the specifications of a specific purchaser, remains "prewritten computer  
2                   software". However, if there is a reasonable, separately stated charge or an  
3                   invoice or other statement of the price given to the purchaser for such  
4                   modification or enhancement, such modification or enhancement shall not  
5                   constitute "prewritten computer software".

6           h.    A mandatory computer software maintenance contract for prewritten computer  
7           software.

8           i.    An optional computer software maintenance contract for prewritten computer  
9           software that provides only software upgrades or updates or an optional  
10          computer software maintenance contract for prewritten computer software that is  
11          a bundled transaction and provides software upgrades or updates and support  
12          services.

13           **SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable events occurring after  
14    December 31, 2016.