

Sixty-fourth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1243

Introduced by

Representatives B. Koppelman, Klein, Louser, Owens, Silbernagel, Streyle, Trottier

Senators Cook, Laffen, Larsen, Miller, Schaible

1 A BILL for an Act to create and enact a new section to chapter 57-39.2 and a new section to
2 chapter 57-39.5 of the North Dakota Century Code, relating to refunds of sales tax and farm
3 machinery gross receipts tax paid by a resident of an adjoining state; to amend and reenact
4 sections 57-39.2-28 and 57-39.6-02, and subdivision d of subsection 1 of section 57-40.6-14 of
5 the North Dakota Century Code, relating to refunds of sales tax paid by Canadian residents, the
6 alcoholic beverages gross receipts tax, and prepaid 911 fees paid by a resident of an adjoining
7 state; to repeal subsection 12 of section 57-39.2-04 of the North Dakota Century Code, relating
8 to refunds of sales tax paid by a resident of an adjoining state; and to provide an effective date.

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

10 **SECTION 1. AMENDMENT.** Section 57-39.2-28 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **57-39.2-28. Refunds for Canadian residents.**

13 The tax imposed under this chapter on gross receipts from sales made to a person who is a
14 resident of Canada may be refunded under the following conditions:

- 15 1. The Canadian resident was in North Dakota for the express purpose of making a
16 purchase, and not as a tourist.
- 17 2. The goods will be removed from North Dakota within thirty days of purchase and will
18 be used permanently outside North Dakota.
- 19 3. The Canadian resident applies ~~in writing to~~ in the manner prescribed by the
20 ~~commissioner on a form as the commissioner may prescribe~~ reciting sufficient facts
21 establishing the exempt status of the sale.
- 22 4. The qualifying sale is one in which the total gross receipts from each individual
23 transaction, which may involve one or more items, equals ~~twenty-five~~ one hundred
24 dollars or more of taxable products.

1 5. The refund is ~~fifteensixty~~sixty dollars or more. Qualifying sales may be accumulated for
2 periods not in excess of one calendar year in order to reach the ~~fifteensixty~~sixty dollar limit.

3 6. A claim for refund must be submitted to the commissioner on or before March thirty-first
4 following the calendar year of purchase.

5 7. Notwithstanding section 57-39.2-23, the commissioner may provide names and
6 addresses of Canadian residents claiming a North Dakota sales tax refund to the
7 director of the department of commerce division of tourism.

8 **SECTION 2.** A new section to chapter 57-39.2 of the North Dakota Century Code is created
9 and enacted as follows:

10 **Refunds for residents of an adjoining state.**

11 The tax imposed under this chapter on gross receipts from sales made to a person of an
12 adjoining state that does not impose or levy a retail sales tax may be refunded under the
13 following conditions:

14 1. The person was in North Dakota for the express purpose of making a purchase.

15 2. The goods will be removed from North Dakota within thirty days of purchase and will
16 be used permanently outside North Dakota.

17 3. The purchaser applies in the manner prescribed by the tax commissioner reciting
18 sufficient facts establishing the exempt status of the sale.

19 4. The qualifying sale is one in which the total gross receipts from each individual
20 transaction, which may involve one or more items, equals one hundred dollars or more
21 of taxable products.

22 5. The refund is sixty dollars or more. Qualifying sales may be accumulated for periods
23 not in excess of one calendar year in order to reach the sixty-dollar limit.

24 6. The refund application and supporting documentation are submitted to the tax
25 commissioner on or before March thirty-first following the calendar year of purchase.

26 **SECTION 3. AMENDMENT.** Section 57-39.5-02 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **57-39.5-02. Imposition - Exemptions.**

29 There is imposed a tax of three percent upon the gross receipts of retailers from all sales at
30 retail, including the leasing or renting, of farm machinery or irrigation equipment used
31 exclusively for agricultural purposes. Gross receipts from sales at retail of farm machinery or

1 irrigation equipment are exempted from the tax imposed by this chapter when the sale, lease, or
2 rental is made to a purchaser or lessor who is entitled to a sales and use tax exemption under
3 subsection 6 ~~or 12~~ of section 57-39.2-04 on otherwise taxable sales at retail. There are
4 specifically exempted from the tax imposed by this chapter the gross receipts from the sale,
5 lease, or rental of used farm machinery, farm machinery repair parts, used irrigation equipment,
6 or irrigation equipment repair parts used exclusively for agricultural purposes. For purposes of
7 this section, "used" means:

- 8 1. Tax under this chapter or chapter 57-39.2 or 57-40.2 has been paid on a previous
9 sale;
- 10 2. Tax under section 57-39.5-06 has been paid under a previous lease;
- 11 3. Originally purchased outside this state and previously owned by a farmer; or
- 12 4. Has been under rental for three years or more.

13 **SECTION 4.** A new section to chapter 57-39.5 of the North Dakota Century Code is created
14 and enacted as follows:

15 **Sales to residents of an adjoining state.**

16 The gross receipts from sales, which are otherwise taxable under this chapter or chapter
17 57-39.2 or 57-40.6, made to a person who is a resident of an adjoining state that does not
18 impose or levy a farm machinery gross receipts tax, are exempt if:

- 19 1. The retailer's gross receipts from sales of farm machinery and irrigation equipment
20 during the preceding calendar year are seventy-five percent or more of the retailer's
21 total receipts.
- 22 2. The retailer makes an election to not collect the farm machinery gross receipts tax on
23 sales of farm machinery and irrigation equipment as provided in this section.
 - 24 a. The election must be made on a form prescribed by the tax commissioner, and
25 must be filed with the tax commissioner on or before January first of the year the
26 election will apply. An election is binding for subsequent calendar years unless
27 the retailer's gross receipts for the preceding calendar year fail to meet the
28 threshold in subsection 1 or the retailer notifies the tax commissioner that it is
29 opting out of the election effective for the following calendar year. The tax
30 commissioner may revoke the election for failure to comply with the requirements
31 of this section.

1 b. A retailer that does not have a valid election in effect shall collect the tax as
2 provided in chapter 57-39.2 and this chapter, and any purchaser of farm
3 machinery and irrigation equipment may apply for a refund of the tax paid under
4 the following conditions:

- 5 (1) The person was in North Dakota for the express purpose of making a
6 purchase.
- 7 (2) The goods will be removed from North Dakota within thirty days of purchase
8 and will be used permanently outside North Dakota.
- 9 (3) The purchaser applies in the manner prescribed by the tax commissioner
10 reciting sufficient facts establishing the exempt status of the sale.
- 11 (4) The qualifying sale is one in which the total gross receipts from each
12 individual transaction, which may involve one or more items, equals one
13 hundred dollars or more of taxable products.
- 14 (5) The refund is sixty dollars or more. Qualifying sales may be accumulated for
15 periods not in excess of one calendar year in order to reach the sixty dollar
16 limit.
- 17 (6) The refund application and supporting documentation are submitted to the
18 tax commissioner on or before March thirty first following the calendar year
19 of purchase.

20 c. The election must be applied to all purchasers who are persons residing in an
21 adjoining state that does not impose or levy a farm machinery gross receipts tax.

- 22 3. The adjoining state does not impose or levy a farm machinery gross receipts tax.
- 23 4. The person was in North Dakota for the express purpose of making a purchase.
- 24 5. The goods will be removed from North Dakota within thirty days of purchase and will
25 be used permanently outside North Dakota.
- 26 6. The qualifying sale is one in which the total gross receipts from each individual
27 transaction, which may involve one or more items, equals one hundred dollars or more
28 of taxable products.
- 29 7. The person furnishes to the retailer a signed affidavit, prescribed by the tax
30 commissioner, reciting sufficient facts establishing the exempt status of the sale. By

1 March thirty-first, the retailer shall file a report of the previous calendar year's exempt
2 farm machinery sales, in a form and manner approved by the tax commissioner.

3 **SECTION 5. AMENDMENT.** Section 57-39.6-02 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **57-39.6-02. Gross receipts tax on alcoholic beverages - Exemption.**

6 There is imposed a tax of seven percent on the gross receipts of retailers from all sales at
7 retail of alcoholic beverages. Gross receipts from sales at retail of alcoholic beverages are
8 exempted from the tax imposed by this chapter when the sale is made to a purchaser who is
9 entitled to a sales and use tax exemption under subsection 6 ~~or 12~~ of section 57-39.2-04 on
10 otherwise taxable sales. Purchasers may claim a refund of the tax imposed under this chapter if
11 the purchaser meets the refund requirements and complies with the procedures under section
12 57-39.2-28 or section 2 of this Act.

13 **SECTION 6. AMENDMENT.** Subdivision d of subsection 1 of section 57-40.6-14 of the
14 North Dakota Century Code is amended and reenacted as follows:

15 d. Gross receipts from sales at retail of prepaid wireless services are exempt from
16 the prepaid wireless emergency 911 fee imposed by this section when the sale is
17 made to a person entitled to a sales and use tax exemption under subsection 6
18 ~~or 12~~ of section 57-39.2-04 or section 4 of this Act. Purchasers may claim a
19 refund of the tax imposed under this chapter if a retailer does not make an
20 election under section 4 of this Act, or if the purchaser meets the refund
21 requirements and complies with the procedures under section 2 of this Act.

22 **SECTION 7. REPEAL.** Subsection 12 of section 57-39.2-04 of the North Dakota Century
23 Code is repealed.

24 **SECTION 8. EFFECTIVE DATE.** This Act is effective for taxable purchases made after
25 December 31, 2015.