

**SENATE BILL NO. 2142
with House Amendments
SENATE BILL NO. 2142**

Sixty-third
Legislative Assembly
of North Dakota

Introduced by

Senators Cook, Oehlke, O'Connell

Representatives Drovdal, Nathe, Thoreson

1 A BILL for an Act to create and enact two new subsections to section 57-39.2-01 and a new
2 section to chapter 57-39.2 of the North Dakota Century Code, relating to the definition of
3 telecommunications company and telecommunications services and a sales and use tax
4 exemption for equipment used in telecommunications infrastructure development; to amend and
5 reenact section 57-40.2-03.3 of the North Dakota Century Code, relating to use tax exemption
6 for telecommunications infrastructure purchased or installed by contractors; to provide for a
7 retroactive effective date; and to provide an expiration date.

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

9 **SECTION 1.** Two new subsections to section 57-39.2-01 of the North Dakota Century Code
10 are created and enacted as follows:

11 "Telecommunications company" means a person engaged in the furnishing of
12 telecommunications service within this state.

13 "Telecommunications service" means the electronic transmission, conveyance, or
14 routing of voice, data, audio, video, or any other information or signals to a point, or
15 between or among points. The term includes such transmission, conveyance, or
16 routing in which computer processing applications are used to act on the form, code,
17 or protocol of the content for purposes of transmission, conveyance, or routing without
18 regard to whether the service is referred to as voice over internet protocol services or
19 is classified by the federal communications commission as enhanced or value-added.

20 The term does not include:

21 a. Data processing and information services that allow data to be generated,
22 acquired, stored, processed, or retrieved and delivered by an electronic

- 1 transmission to a purchaser where the purchaser's primary purpose for the
2 underlying transaction is the processed data or information;
3 b. Installation or maintenance of wiring or equipment on a customer's premises;
4 c. Tangible personal property;
5 d. Advertising, including directory advertising;
6 e. Billing and collection services provided to third parties;
7 f. Internet access service;
8 g. Radio and television audio and video programming services, regardless of the
9 medium, including the furnishing of transmission, conveyance, and routing of
10 such services by the programming service provider. Radio and television audio
11 and video programming services include cable service as defined in 47 U.S.C.
12 522(6) and audio and video programming services delivered by commercial
13 mobile radio service providers, as defined in 47 CFR 20.3;
14 h. Ancillary services; or
15 i. Digital products delivered electronically, including software, music, video, reading
16 materials, and ringtones.

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

19 **Sales tax exemption for equipment used in telecommunications infrastructure**
20 **development.**

- 21 1. Gross receipts from sales of tangible personal property used to construct or expand
22 telecommunications service infrastructure that is capable of providing
23 telecommunications service in this state are exempt from taxes under this chapter. To
24 be exempt, the tangible personal property must be incorporated into
25 telecommunications infrastructure owned by a telecommunications company.
26 2. To receive the exemption at the time of purchase, the purchaser must receive from the
27 tax commissioner a certificate stating that the tangible personal property qualifies for
28 the exemption. If a certificate is not received before the purchase, then the
29 telecommunications company shall pay the applicable tax imposed and apply to the
30 tax commissioner for a refund of sales and use taxes paid for which the exemption is
31 claimed under this section. If the tangible personal property is purchased or installed

1 by a contractor subject to the tax imposed by this chapter, the telecommunications
2 company may apply for a refund of the difference between the amount remitted by the
3 contractor and the exemption imposed or allowed under this section. Application for a
4 refund must be made at the times and in the manner directed by the tax commissioner
5 and must include sufficient information to permit the tax commissioner to verify the
6 sales and use taxes paid and the exempt status of the sale or use.

7 **SECTION 3. AMENDMENT.** Section 57-40.2-03.3 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **57-40.2-03.3. Use tax on contractors.**

- 10 1. When a contractor or subcontractor uses tangible personal property in the
11 performance of that person's contract, or to fulfill contract or subcontract obligations,
12 whether the title to such property be in the contractor, subcontractor, contractee,
13 subcontractee, or any other person, or whether the titleholder of such property would
14 be subject to pay the sales or use tax, such contractor or subcontractor shall pay a
15 use tax at the rate prescribed by section 57-40.2-02.1 measured by the purchase price
16 or fair market value of such property, whichever is greater, unless such property has
17 been previously subjected to a sales tax or use tax by this state, and the tax due
18 thereon has been paid.
- 19 2. The provisions of this chapter pertaining to the administration of the tax imposed by
20 section 57-40.2-02.1, not in conflict with the provisions of this section, govern the
21 administration of the tax levied by this section.
- 22 3. The tax imposed by this section does not apply to medical equipment purchased as
23 tangible personal property by a hospital or by a long-term care facility as defined in
24 section 50-10.1-01 and subsequently installed by a contractor into such hospital or
25 facility.
- 26 4. The tax imposed by this section does not apply to:
- 27 a. Production equipment or tangible personal property as authorized or approved
28 for exemption by the tax commissioner under section 57-39.2-04.2;
- 29 b. Machinery, equipment, or other tangible personal property used to construct an
30 agricultural commodity processing facility as authorized or approved for
31 exemption by the tax commissioner under section 57-39.2-04.3 or 57-39.2-04.4;

- 1 c. Tangible personal property used to construct or expand a system used to
2 compress, process, gather, or refine gas recovered from an oil or gas well in this
3 state or used to expand or build a gas-processing facility in this state as
4 authorized or approved for exemption by the tax commissioner under section
5 57-39.2-04.5; ~~or~~
- 6 d. Tangible personal property used to construct ~~to~~ expand a qualifying oil refinery
7 as authorized or approved for exemption by the tax commissioner under section
8 57-39.2-04.6; or
- 9 e. Telecommunications infrastructure that is capable of providing
10 telecommunications service as authorized or approved for exemption by the
11 commissioner under chapter 57-39.2.

12 **SECTION 4. EFFECTIVE DATE.** This Act is retroactively effective, to include purchases
13 made after December 31, 2012.

14 **SECTION 5. EXPIRATION DATE.** This Act is effective through June 30, 2017, and after that
15 date is ineffective.