

**SENATE BILL NO. 2349**

Introduced by

Senator Goetz

1 A BILL for an Act to amend and reenact subsection 7 of section 57-39.2-01 of the North Dakota  
2 Century Code, relating to sales and use tax treatment of delivery of property to a contractor for  
3 incorporation into real property in another state; and to provide an effective date.

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

5 **SECTION 1. AMENDMENT.** Subsection 7 of section 57-39.2-01 of the 1995  
6 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

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

18            **SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable events occurring after  
19            June 30, 1997.