

Introduced by

1 A BILL for an Act to create and enact a new section to chapter 57-39.2 of the North Dakota
2 Century Code, relating to a sales and use tax exemption for purchases made by a contractor,
3 subcontractor, or builder on behalf of an exempt entity; to amend and reenact section
4 57-40.2-03.3 of the North Dakota Century Code, relating to use tax on contractors; and to
5 provide an effective date.

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

7 **SECTION 1.** A new section to chapter 57-39.2 of the North Dakota Century Code is created
8 and enacted as follows:

9 **Exemption for materials acquired by a contractor on behalf of an exempt entity.**

- 10 1. A contractor licensed under chapter 43-07 which acquires tangible personal property
11 for use in the performance of a contract with an exempt entity is entitled to a sales and
12 use tax exemption for the acquisition of those items of tangible personal property. To
13 qualify for the exemption under this section, the contractor shall hold a valid sales tax
14 permit under this chapter, obtain a purchasing agent authorization letter from the
15 exempt entity, and obtain a copy of the exemption certificate issued to the exempt
16 entity by the commissioner before purchasing the tangible personal property.
- 17 2. If the contractor also is a retailer transacting retail sales of tangible personal property,
18 the exemption under this section applies to tangible personal property withdrawn from
19 inventory for use in a contract with an exempt entity if the contractor obtains from the
20 exempt entity a purchasing agent authorization letter and a copy of the exemption
21 certificate issued to the exempt entity by the commissioner before withdrawing the
22 tangible personal property from inventory.
- 23 3. The exemption under this section applies only to the extent the tangible personal
24 property becomes part of the improvement to real property in the performance of the

1 contract with the exempt entity and the exempt entity owns the real property upon the
2 completion of the contract.

3 4. For purposes of this section, "exempt entity" means an entity that has been issued a
4 sales and use tax exemption certificate from the commissioner for purchases made on
5 its own behalf. An "exempt entity" does not include a new or expanding business that
6 qualifies for an exemption on a specific expansion project.

7 **SECTION 2. 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. (Effective through June 30, 2017) 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;
- 6 d. Tangible personal property used to construct or expand a qualifying oil refinery as
7 authorized or approved for exemption by the tax commissioner under section
8 57-39.2-04.6;
- 9 e. Tangible personal property used to construct or expand a qualifying facility as
10 authorized or approved for exemption by the tax commissioner under section
11 57-39.2-04.10;
- 12 f. Tangible personal property used to construct or expand a qualifying facility as
13 authorized or approved for exemption by the tax commissioner under section
14 57-39.2-04.11;
- 15 g. Telecommunications infrastructure that is capable of providing
16 telecommunications service as authorized or approved for exemption by the
17 commissioner under chapter 57-39.2;
- 18 h. Materials used in compressing, gathering, collecting, storing, transporting, or
19 injecting carbon dioxide for use in enhanced recovery of oil or natural gas as
20 provided in section 57-39.2-04.14; or
- 21 i. Tangible personal property used to construct a qualifying fertilizer or chemical
22 processing facility as authorized or approved for exemption by the tax
23 commissioner under section 57-39.2-04.15.

24 **57-40.2-03.3. (Effective after June 30, 2017) Use tax on contractors.**

- 25 1. When a contractor or subcontractor uses tangible personal property in the
26 performance of that person's contract, or to fulfill contract or subcontract obligations,
27 whether the title to such property be in the contractor, subcontractor, contractee,
28 subcontractee, or any other person, or whether the titleholder of such property would
29 be subject to pay the sales or use tax, such contractor or subcontractor shall pay a
30 use tax at the rate prescribed by section 57-40.2-02.1 measured by the purchase price
31 or fair market value of such property, whichever is greater, unless such property has

1 been previously subjected to a sales tax or use tax by this state, and the tax due
2 thereon has been paid.

3 2. The provisions of this chapter pertaining to the administration of the tax imposed by
4 section 57-40.2-02.1, not in conflict with the provisions of this section, govern the
5 administration of the tax levied by this section.

6 3. ~~The tax imposed by this section does not apply to medical equipment purchased as~~
7 ~~tangible personal property by a hospital or by a long-term care facility as defined in~~
8 ~~section 50-10.1-01 and subsequently installed by a contractor into such hospital or~~
9 ~~facility.~~

10 4. The tax imposed by this section does not apply to:

11 a. Production equipment or tangible personal property as authorized or approved
12 for exemption by the tax commissioner under section 57-39.2-04.2;

13 b. Machinery, equipment, or other tangible personal property used to construct an
14 agricultural commodity processing facility as authorized or approved for
15 exemption by the tax commissioner under section 57-39.2-04.3 or 57-39.2-04.4;

16 c. Tangible personal property used to construct or expand a system used to
17 compress, process, gather, or refine gas recovered from an oil or gas well in this
18 state or used to expand or build a gas-processing facility in this state as
19 authorized or approved for exemption by the tax commissioner under section
20 57-39.2-04.5;

21 d. Tangible personal property used to construct or expand a qualifying oil refinery as
22 authorized or approved for exemption by the tax commissioner under section
23 57-39.2-04.6;

24 e. Tangible personal property used to construct or expand a qualifying facility as
25 authorized or approved for exemption by the tax commissioner under section
26 57-39.2-04.10;

27 f. Tangible personal property used to construct or expand a qualifying facility as
28 authorized or approved for exemption by the tax commissioner under section
29 57-39.2-04.11;

- 1 g. Materials used in compressing, gathering, collecting, storing, transporting, or
2 injecting carbon dioxide for use in enhanced recovery of oil or natural gas as
3 provided in section 57-39.2-04.14; or
- 4 h. Tangible personal property used to construct a qualifying fertilizer or chemical
5 processing facility as authorized or approved for exemption by the tax
6 commissioner under section 57-39.2-04.15; or
- 7 i. Tangible personal property purchased by an exempt entity or by a contractor
8 under section 1 of this Act and which is subsequently installed by a contractor
9 licensed under chapter 43-07. The exemption under this subdivision applies only
10 to the extent the tangible personal property becomes part of the improvement to
11 real property in the performance of the contract with the exemption entity and the
12 exempt entity owns the real property upon the completion of the contract.

13 **SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable events occurring after
14 June 30, 2017.