

**Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019**

SENATE BILL NO. 2192
(Senators Bekkedahl, Meyer, Wardner)
(Representatives Lefor, Schreiber-Beck, Zubke)

AN ACT to create and enact chapter 11-09.2 of the North Dakota Century Code, relating to county lodging and restaurant tax; to amend and reenact subsections 21, 22, and 23 of section 57-39.2-01, subdivision e of subsection 1 of section 57-39.2-02.1, and subsection 22 of section 57-39.2-04 of the North Dakota Century Code, relating to references to tourist court accommodations; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 11-09.2 of the North Dakota Century Code is created and enacted as follows:

11-09.2-01. County lodging tax - Imposition - Amount - Disposition.

The board of county commissioners of any county, by ordinance, may impose a county tax, not to exceed two percent, upon the gross receipts of retailers on the leasing or renting of hotel, motel, or other accommodations within the county for periods of fewer than thirty consecutive calendar days or one month. The tax imposed by this section must be in addition to the state sales tax on rental accommodations provided in chapter 57-39.2. A county may not impose a county lodging tax under this section on the gross receipts of retailers located within the boundaries of a city within that county if the city has imposed a city lodging tax, or subsequently enacts and imposes a city lodging tax, under section 40-57.3-01. A county that imposes the tax in this section shall deposit all proceeds in the county visitors' promotion fund. Moneys deposited in the county visitors' promotion fund must be spent only as provided in this chapter. This chapter applies to all counties and does not limit the authority of a home rule county to levy any taxes authorized by other provisions of law.

11-09.2-02. County lodging and restaurant tax - Imposition - Amount - Disposition.

In addition to the tax under section 11-09.2-01, the board of county commissioners of any county, by ordinance, may impose a county tax, at a rate not to exceed one percent, upon the gross receipts of retailers on the leasing or renting of hotel, motel, or other accommodations within the county for periods of fewer than thirty consecutive calendar days or one month and upon the gross receipts of a restaurant from any sales of prepared food or beverages, not including alcoholic beverages for consumption off the premises where purchased, which are subject to state sales taxes. For purposes of this section, "restaurant" means any place where food is prepared and intended for individual portion service for consumption on or off the premises and "prepared" includes heating prepackaged food. Accommodations, food, and beverages may all, each, or in any combination be subject to the tax under this section, if all items in any category which are taxable under state law are taxable, except as otherwise provided in this section. The tax imposed under this section is in addition to state sales taxes on rental accommodations and restaurant sales, and county lodging taxes under section 11-09.2-01. A county may not impose a county lodging and restaurant tax under this section on the gross receipts of retailers located within the boundaries of a city within that county if the city has imposed a city lodging and restaurant tax, or subsequently enacts and imposes a city lodging and restaurant tax, under section 40-57.3-01.1, on the gross receipts from the same transaction. A county that imposes the tax under this section shall deposit all proceeds in the county visitors' promotion fund. Moneys deposited in the county visitors' promotion fund may be spent only as provided in this chapter.

11-09.2-03. County visitors' promotion fund - Establishment - Purpose.

The board of county commissioners of any county that imposes a county tax pursuant to section 11-09.2-01 or 11-09.2-02 shall establish a county visitors' promotion fund. The local destination

marketing organization shall serve as an advisory committee to the board of county commissioners in administering the proceeds from the taxes available to the county under this chapter. The moneys in the visitors' promotion fund must be used generally to promote, encourage, and attract visitors to come to the county and use the travel and tourism facilities within the county. The local destination marketing organization shall receive, plan, execute, and review the expenditure of proceeds from the visitors' promotion fund and report its activities annually to the board of county commissioners.

11-09.2-04. Budget - Contracts.

The board of county commissioners annually shall review the local destination marketing organization budget as proposed by the organization, if any, under which the organization operates. The board of county commissioners, in consultation with the local destination marketing organization, may contract with any person, firm, association, corporation, or limited liability company to carry out the purposes of the county visitors' promotion fund created under section 11-09.2-03.

11-09.2-05. Payment of tax - Collection by tax commissioner - Administrative expenses allowed - Rules.

The taxes imposed under this chapter are due and payable at the same time the taxpayer is required to file a return under chapter 57-39.2 and must be collected and administered by the tax commissioner in the manner provided in chapter 57-39.2. The taxpayer shall add the taxes imposed under this chapter to the sales, lease, or rental price and shall collect the tax from the consumer. A retailer may not advertise or hold out or state to the public, or to any consumer, directly or indirectly, that the taxes or any part of the taxes imposed under this chapter are assumed, absorbed, or refunded by the taxpayer. The amount the tax commissioner remits monthly to each county as taxes collected for that county's visitors' promotion fund must be reduced by three percent as an administrative fee necessary to defray the cost of collecting the taxes and the expenses incident to collection. The administrative fee must be deposited in the general fund in the state treasury. The tax commissioner shall adopt rules necessary for the administration of this chapter. The penalties and liabilities provided in sections 57-39.2-18 and 57-39.2-18.1 specifically apply to the filing of returns and administration of the taxes imposed under this chapter. The taxes imposed under this chapter are not taxes subject to chapter 57-39.4. The tax commissioner may offset future distributions of a tax imposed and collected under this chapter if a previous overpayment of the tax was distributed to the county. The tax commissioner, after consulting the appropriate county official, may determine the offset amount and time period for recovery of the overpayment of the tax distribution.

SECTION 2. AMENDMENT. Subsections 21, 22, and 23 of section 57-39.2-01 of the North Dakota Century Code are amended and reenacted as follows:

21. "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrental. "Retail sale" or "sale at retail" includes the sale, including the leasing or renting, to a consumer or to any person for any purpose, other than for processing or for resale, of tangible personal property; the sale of steam, gas, and communication service, excluding internet access service, to retail consumers or users; the sale of vulcanizing, recapping, and retreading services for tires; the ordering, selecting, or aiding a customer to select any goods, wares, or merchandise from any price list or catalog, which the customer might order, or be ordered for such customer to be shipped directly to such customer; the sale or furnishing of hotel, motel, or ~~tourist court~~ other accommodations, tickets, or admissions to any place of amusement, athletic event, or place of entertainment; and the sales of magazines and other periodicals. By the term "processing" is meant any tangible personal property, including containers which it is intended, by means of fabrication, compounding, manufacturing, producing, or germination shall become an integral or an ingredient or component part of other tangible personal property intended to be sold ultimately at retail. The sale of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property must be considered as a sale of tangible personal property for a purpose other than for processing; the delivery of possession within the state of North Dakota of tangible personal property by a wholesaler or distributor to an out-of-state retailer who does

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

22. "Retailer" or "seller" includes every person engaged in the business of leasing or renting hotel, motel, or ~~tourist court~~other accommodations, and every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or furnishing of steam, gas, and communication services, excluding internet access service, or tickets or admissions to places of amusement, entertainment, and athletic events, or magazines or other periodicals; and includes any person as herein defined who by contract or otherwise agrees to furnish for a consideration a totally or partially finished product consisting in whole or in part of tangible personal property subject to the sales tax herein provided, and all items of tangible personal property entering into the performance of such contract as a component part of the product agreed to be furnished under said contract shall be subject to the sales tax herein provided and the sales tax thereon shall be collected by the contractor from the person for whom the contract has been performed in addition to the contract price agreed upon, and shall be remitted to the state in the manner provided in this chapter; and shall include the state or any municipality furnishing steam, gas, or communication service to members of the public in its proprietary capacity. For the purpose of this chapter, retailer shall also include every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer. A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising fliers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer database, cable, optic, microwave, or other communication system.
23. "Sale" means any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatever, for a consideration, and includes the furnishing or service of steam, gas, or communication, excluding internet access service, the furnishing of hotel, motel, or ~~tourist court~~other accommodations, the furnishing of tickets or admissions to any place of amusement, athletic event, or place of entertainment, and sales of magazines and other periodicals. Provided, the words "magazines and other periodicals" as used in this subsection do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.

SECTION 3. AMENDMENT. Subdivision e of subsection 1 of section 57-39.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

- e. The leasing or renting of a hotel or motel room or ~~tourist court~~other accommodations.

SECTION 4. AMENDMENT. Subsection 22 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

22. Gross receipts from the leasing or renting of manufactured homes, modular living units, or sectional homes, whether or not placed on a permanent foundation, for residential housing for periods of thirty or more consecutive days and the gross receipts from the leasing or renting of a hotel or motel room or ~~tourist court~~other accommodations occupied by the same person or persons for residential housing for periods of thirty or more consecutive days.

SECTION 5. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2019.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2192.

Senate Vote: Yeas 44 Nays 2 Absent 1

House Vote: Yeas 51 Nays 41 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2019.

Approved at _____ M. on _____, 2019.

Governor

Filed in this office this _____ day of _____, 2019,

at _____ o'clock _____ M.

Secretary of State