



# North Dakota Legislative Council

Prepared for the Taxation Committee  
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## SALES TAX EXEMPTION FOR THE MANUFACTURE OF BIOLOGIC PRODUCTS STUDY - BACKGROUND MEMORANDUM

Section 45 of House Bill No. 1015 (2021) ([appendix](#)) provides for a study of providing a sales tax exemption for raw materials critical to the manufacturing process used to support biologic product generation, product impurity removal, chemical or physical product alteration, and analysis of in-process to final deliverable products.

### BACKGROUND

A sales tax exemption for materials used in the research and development of bioscience and biotechnology was proposed in House Bill No. 1456 (2021), which failed to pass, before being added as a study to House Bill No. 1015. House Bill No. 1456 would have provided a sales and use tax exemption for gross receipts from sales of tangible personal property purchased for the use, storage, or consumption directly and predominately in the research and development of bioscience and biotechnology. Bioscience was defined in the bill as the use of compositions, methods, and organisms in cellular and molecular research, development, and manufacturing processes in areas, including pharmaceuticals, medical therapeutics, medical diagnostics, medical devices, medical instruments, biochemistry, microbiology, veterinary medicine, plant biology, and agriculture and industrial, environmental, and homeland security applications of bioscience. Biotechnology was defined in the bill as the application of technologies to produce or modify products, to develop micro-organisms for specific uses, to identify targets for small pharmaceutical development, or to transform biological systems into useful processes or products. The term also was defined as the potential endpoints of the resulting products, processes, micro-organisms, or targets for improving human or animal health care outcomes. For purposes of the exemption, tangible personal property was defined to include capital equipment, instruments, apparatuses, inputs, and supplies used in laboratories, including microscopes, machines, glassware, chemical reagents, computers, computer software, and technical books and materials. The estimated fiscal impact of House Bill No. 1456 could not be determined during the 2021 legislative session.

Testimony provided on House Bill No. 1456 indicated the bioscience industry spans many markets, including manufacturing, services, and research activities. The bill received support from various economic development entities. Testimony provided by economic development entities indicated the exemption would help diversify the state's economy, aid in attracting new biotechnology firms to the state, and make firms already located in the state more competitive in the broader market. The bill also received support from the North Dakota Soybean Growers Association.

Testimony provided by the Bioscience Association of North Dakota indicated the state is home to the world's largest plasmid DNA manufacturing facility. The facility employs 500 employees, with an annual payroll of \$32.5 million per year, and is expected to grow to 1,000 employees by the end of 2021. Testimony indicated the average salary for the bioscience industry is \$65,000 per year and the exemption would create more jobs by attracting bioscience and biotechnology firms to the state. Testimony provided by a bioscience firm located in the state clarified the differences between traditional manufacturing processes and the manufacturing process used in the bioscience or biotechnology industry in regard to the application of existing manufacturing sales tax exemptions.

### SALES AND USE TAX IMPOSITION AND EXEMPTIONS

The application of sales and use tax is governed by North Dakota Century Code Chapters 57-39.2 and 57-40.2. A sales tax of 5 percent is imposed on the gross receipts of retailers for all sales at retail of tangible personal property. The tax is paid by the purchaser and collected and remitted by the retailer. Use tax, which also is imposed at a rate of 5 percent, is applied to tangible personal property purchased at retail for storage, use, or consumption in this state or tangible personal property purchased outside this state but later brought into this state. Use tax is applied to the purchase price of an item at the time of purchase, or to the fair market value of the item at the time it is brought into this state. Use tax must be paid directly by the person storing, using, or consuming the property in the state if the tax was not remitted by the retailer at the time of purchase.

A wide range of products, services, and activities are exempt from the imposition of sales and use tax. Exempt products range from small items, such as the ink used to print newspapers, to larger items, such as durable medical equipment. In addition to the exemptions available for individual items, various groups and entities, such as hospitals, schools, and state and federal governments, are exempt from paying sales and use tax on some, or all, of their purchases. Sales tax exemptions specific to manufacturing include the exemption provided in Section 57-39.2-04.3 for machinery or equipment used primarily for manufacturing or agricultural processing or solely for recycling.

## **SALES AND USE TAX EXEMPTIONS IN OTHER STATES**

Notable sales and use tax exemptions specifically targeting the bioscience and biotechnology industry include exemptions provided in Connecticut, Maine, Missouri, Texas, and Wisconsin.

### **Connecticut**

In Connecticut a sales and use tax exemption is provided for the sale, storage, use, or other consumption of machinery, equipment, tools, materials, supplies, and fuel used directly in the biotechnology industry.

### **Maine**

In Maine a sales and use tax exemption is provided for sales of machinery, equipment, instruments, and supplies used by the purchaser directly and primarily in biotechnology applications. Eligible equipment and supplies include microscopes, diagnostic testing materials, glassware, chemical reagents, computer software, and technical books and manuals.

### **Missouri**

In Missouri a sales and use tax exemption is provided for tangible personal property and utilities purchased for use or consumption directly or exclusively in the research and development of biotechnology and plant genomics products.

### **Texas**

In Texas a sales and use tax exemption is provided for tangible personal property sold to, stored, used, or consumed by a manufacturer. Exempt tangible personal property includes chemicals, catalysts, and other materials that are used during a manufacturing, processing, or fabrication operation to produce or induce a chemical or physical change, to remove impurities, or to make the product more marketable. Pharmaceutical biotechnology cleanrooms and equipment installed as part of the construction of a new facility also is exempt from sales and use tax.

### **Wisconsin**

In Wisconsin a sales and use tax exemption is provided for the sale, storage, use, or other consumption of machinery and equipment, including attachments, parts, and accessories, and other tangible personal property that is sold to a person engaged primarily in biotechnology. For purposes of qualifying for the exemption, the property must be consumed, destroyed, or otherwise lose its identity while being used exclusively and directly in qualified research.

## **RECENT LEGISLATION**

With the exception of House Bill No. 1456, no other recent legislation has been proposed in North Dakota relating to a sales tax exemption for materials used in the research and development of bioscience or biotechnology.

## **SUGGESTED STUDY APPROACH**

The committee may wish to proceed with the study by seeking input from various stakeholders, including the Bioscience Association of North Dakota, the Tax Department, economic development entities, bioscience and biotechnology industry leaders, and the public regarding the desirability of providing a sales tax exemption for raw materials critical to the manufacturing process used to support biologic product generation, product impurity removal, chemical or physical product alteration, and analysis of in-process to final deliverable products.

ATTACH:1