

HOUSE BILL NO. 1546

Introduced by

Representatives Berg, B. Anderson, Heinert, Meier, Pyle, Swiontek, Wagner, Weisz

Senator Sorvaag

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 the state of North Dakota; 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 the state.**

- 10 1. A contractor licensed under chapter 43-07 which acquires tangible personal property
11 for use in the performance of a contract with the state of North Dakota, including a
12 department or agency of the state, is entitled to a sales and use tax exemption from
13 the state tax imposed under chapters 57-39.2 and 57-40.2 for the acquisition of those
14 items of tangible personal property. To qualify for the exemption under this section, the
15 contractor shall hold a valid sales tax permit under this chapter, obtain a purchasing
16 agent authorization letter from the state, and obtain a copy of the exemption certificate
17 issued to the state by the tax commissioner before purchasing the tangible personal
18 property.
- 19 2. If the contractor also is a retailer transacting retail sales of tangible personal property,
20 the exemption under this section applies to tangible personal property withdrawn from
21 inventory for use in a contract with the state if the contractor obtains from the state a
22 purchasing agent authorization letter and a copy of the exemption certificate issued to
23 the state by the commissioner before withdrawing the tangible personal property from
24 inventory.

- 1 3. The exemption under this section applies only to the extent the tangible personal
2 property becomes part of the improvement to real property in the performance of the
3 contract with the state and the state owns the real property and the property
4 improvements.
- 5 4. Notwithstanding any other provision of law, the exemption under this section does not
6 apply to a sales or use tax imposed under home rule authority by a city or county.

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. Use tax on contractors. (Effective through June 30, 2025)**

- 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 the property be in the contractor, subcontractor, contractee,
13 subcontractee, or any other person, or whether the titleholder of the property would be
14 subject to pay the sales or use tax, the contractor or subcontractor shall pay a use tax
15 at the rate prescribed by section 57-40.2-02.1 measured by the purchase price or fair
16 market value of such property, whichever is greater, unless the property has been
17 previously subjected to a sales tax or use tax by this state, and the tax due has been
18 paid. This section does not apply to a contractor or subcontractor that does not enter a
19 contract for the purchase of the tangible personal property.
- 20 2. The provisions of this chapter pertaining to the administration of the tax imposed by
21 section 57-40.2-02.1, not in conflict with the provisions of this section, govern the
22 administration of the tax levied by this section.
- 23 3. The tax imposed by this section does not apply to:
- 24 a. Production equipment or tangible personal property as authorized or approved
25 for exemption by the tax commissioner under section 57-39.2-04.2.
- 26 b. Machinery, equipment, or other tangible personal property used to construct an
27 agricultural commodity processing facility as authorized or approved for
28 exemption by the tax commissioner under section 57-39.2-04.3 or 57-39.2-04.4.
- 29 c. Tangible personal property used to construct or expand a system used to
30 compress, process, gather, or refine gas recovered from an oil or gas well in this
31 state or used to expand or build a gas-processing facility in this state as

- 1 authorized or approved for exemption by the tax commissioner under section
2 57-39.2-04.5.
- 3 d. Tangible personal property used to construct or expand a qualifying oil refinery as
4 authorized or approved for exemption by the tax commissioner under section
5 57-39.2-04.6.
- 6 e. Tangible personal property used to construct or expand a qualifying facility as
7 authorized or approved for exemption by the tax commissioner under section
8 57-39.2-04.10.
- 9 f. 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 57-39.2-04.11.
- 12 g. Materials used in compressing, gathering, collecting, storing, transporting, or
13 injecting carbon dioxide for use in enhanced recovery of oil or natural gas as
14 provided in section 57-39.2-04.14.
- 15 h. Tangible personal property used to construct a qualifying fertilizer or chemical
16 processing facility as authorized or approved for exemption by the tax
17 commissioner under section 57-39.2-04.15.
- 18 i. Tangible personal property used to construct a qualified straddle plant, a qualified
19 fractionator, or qualified associated infrastructure as authorized or approved for
20 exemption by the tax commissioner under section 57-39.2-04.16.
- 21 j. Tangible personal property as authorized or approved for exemption by the
22 tax commissioner as provided in section 57-39.2-04.21.
- 23 k. Tangible personal property as authorized or approved for exemption by the
24 tax commissioner as provided in section 57-39.2-04.20.
- 25 l. Raw materials, single-use product contact systems, and reagents used for
26 biologic manufacturing as authorized or approved for exemption by the
27 tax commissioner under section 57-39.2-04.19.
- 28 m. Tangible personal property used to construct, expand, or upgrade a facility that
29 refines renewable feedstock into sustainable aviation fuel as authorized or
30 approved by the tax commissioner under section 57-39.2-04.18.

1 **Use tax on contractors. (Effective after June 30, 2025, and through June 30, 2029)**

- 2 1. When a contractor or subcontractor uses tangible personal property in the
3 performance of that person's contract, or to fulfill contract or subcontract obligations,
4 whether the title to the property be in the contractor, subcontractor, contractee,
5 subcontractee, or any other person, or whether the titleholder of the property would be
6 subject to pay the sales or use tax, the contractor or subcontractor shall pay a use tax
7 at the rate prescribed by section 57-40.2-02.1 measured by the purchase price or fair
8 market value of such property, whichever is greater, unless the property has been
9 previously subjected to a sales tax or use tax by this state, and the tax due has been
10 paid. This section does not apply to a contractor or subcontractor that does not enter a
11 contract for the purchase of the tangible personal property.
- 12 2. The provisions of this chapter pertaining to the administration of the tax imposed by
13 section 57-40.2-02.1, not in conflict with the provisions of this section, govern the
14 administration of the tax levied by this section.
- 15 3. The tax imposed by this section does not apply to:
- 16 a. Production equipment or tangible personal property as authorized or approved
17 for exemption by the tax commissioner under section 57-39.2-04.2;
- 18 b. Machinery, equipment, or other tangible personal property used to construct an
19 agricultural commodity processing facility as authorized or approved for
20 exemption by the tax commissioner under section 57-39.2-04.3 or 57-39.2-04.4;
- 21 c. Tangible personal property used to construct or expand a system used to
22 compress, process, gather, or refine gas recovered from an oil or gas well in this
23 state or used to expand or build a gas-processing facility in this state as
24 authorized or approved for exemption by the tax commissioner under section
25 57-39.2-04.5;
- 26 d. Tangible personal property used to construct or expand a qualifying oil refinery as
27 authorized or approved for exemption by the tax commissioner under section
28 57-39.2-04.6;
- 29 e. Tangible personal property used to construct or expand a qualifying facility as
30 authorized or approved for exemption by the tax commissioner under section
31 57-39.2-04.10;

- 1 f. Tangible personal property used to construct or expand a qualifying facility as
2 authorized or approved for exemption by the tax commissioner under section
3 57-39.2-04.11;
- 4 g. Materials used in compressing, gathering, collecting, storing, transporting, or
5 injecting carbon dioxide for use in enhanced recovery of oil or natural gas as
6 provided in section 57-39.2-04.14;
- 7 h. Tangible personal property used to construct a qualifying fertilizer or chemical
8 processing facility as authorized or approved for exemption by the tax
9 commissioner under section 57-39.2-04.15; or
- 10 i. Tangible personal property used to construct a qualified straddle plant, a qualified
11 fractionator, or qualified associated infrastructure as authorized or approved for
12 exemption by the tax commissioner under section 57-39.2-04.16.
- 13 j. Tangible personal property as authorized or approved for exemption by the
14 tax commissioner as provided in section 57-39.2-04.21.
- 15 k. Tangible personal property as authorized or approved for exemption by the
16 tax commissioner as provided in section 57-39.2-04.20.
- 17 l. Raw materials, single-use product contact systems, and reagents used for
18 biologic manufacturing as authorized or approved for exemption by the
19 tax commissioner under section 57-39.2-04.19.
- 20 m. Tangible personal property purchased by the state of North Dakota, including a
21 department or agency of the state, or by a contractor under section 1 of this Act,
22 and which is subsequently installed by a contractor licensed under chapter 43-07.
23 The exemption under this subdivision applies only to the state tax imposed under
24 this chapter and to the extent the tangible personal property becomes part of the
25 improvement to real property in the performance of the contract with the state
26 and the state owns the real property and the property improvements.

27 **Use tax on contractors. (Effective after June 30, 2029)**

- 28 1. When a contractor or subcontractor uses tangible personal property in the
29 performance of that person's contract, or to fulfill contract or subcontract obligations,
30 whether the title to the property be in the contractor, subcontractor, contractee,
31 subcontractee, or any other person, or whether the titleholder of the property would be

1 subject to pay the sales or use tax, the contractor or subcontractor shall pay a use tax
2 at the rate prescribed by section 57-40.2-02.1 measured by the purchase price or fair
3 market value of such property, whichever is greater, unless the property has been
4 previously subjected to a sales tax or use tax by this state, and the tax due has been
5 paid. This section does not apply to a contractor or subcontractor that does not enter a
6 contract for the purchase of the tangible personal property.

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

10 3. 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;
- 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 used to construct a qualified straddle plant, a qualified
8 fractionator, or qualified associated infrastructure as authorized or approved for
9 exemption by the tax commissioner under section 57-39.2-04.16.
- 10 j. Tangible personal property as authorized or approved for exemption by the
11 tax commissioner as provided in section 57-39.2-04.21.
- 12 k. Tangible personal property as authorized or approved for exemption by the
13 tax commissioner as provided in section 57-39.2-04.20.
- 14 l. Tangible personal property purchased by the state of North Dakota, including a
15 department or agency of the state, or by a contractor under section 1 of this Act,
16 and which is subsequently installed by a contractor licensed under chapter 43-07.
17 The exemption under this subdivision applies only to the state tax imposed under
18 this chapter and to the extent the tangible personal property becomes part of the
19 improvement to real property in the performance of the contract with the state
20 and the state owns the real property and the property improvements.

21 **SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable events occurring after
22 June 30, 2025.