

**Sixty-third Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 8, 2013**

SENATE BILL NO. 2142
(Senators Cook, Oehlke, O'Connell)
(Representatives Drovdal, Nathe, Thoreson)

AN ACT to create and enact two new subsections to section 57-39.2-01 and a new section to chapter 57-39.2 of the North Dakota Century Code, relating to the definition of telecommunications company and telecommunications services and a sales and use tax exemption for equipment used in telecommunications infrastructure development; to amend and reenact section 57-40.2-03.3 of the North Dakota Century Code, relating to use tax exemption for telecommunications infrastructure purchased or installed by contractors; to provide for a retroactive effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new subsections to section 57-39.2-01 of the North Dakota Century Code are created and enacted as follows:

"Telecommunications company" means a person engaged in the furnishing of telecommunications service within this state.

"Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether the service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value-added. The term does not include:

- a. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where the purchaser's primary purpose for the underlying transaction is the processed data or information;
- b. Installation or maintenance of wiring or equipment on a customer's premises;
- c. Tangible personal property;
- d. Advertising, including directory advertising;
- e. Billing and collection services provided to third parties;
- f. Internet access service;
- g. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services include cable service as defined in 47 U.S.C. 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;
- h. Ancillary services; or

- i. Digital products delivered electronically, including software, music, video, reading materials, and ringtones.

SECTION 2. A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

Sales tax exemption for equipment used in telecommunications infrastructure development.

1. Gross receipts from sales of tangible personal property used to construct or expand telecommunications service infrastructure that is capable of providing telecommunications service in this state are exempt from taxes under this chapter. To be exempt, the tangible personal property must be incorporated into telecommunications infrastructure owned by a telecommunications company.
2. To receive the exemption at the time of purchase, the purchaser must receive from the tax commissioner a certificate stating that the tangible personal property qualifies for the exemption. If a certificate is not received before the purchase, then the telecommunications company shall pay the applicable tax imposed and apply to the tax commissioner for a refund of sales and use taxes paid for which the exemption is claimed under this section. If the tangible personal property is purchased or installed by a contractor subject to the tax imposed by this chapter, the telecommunications company may apply for a refund of the difference between the amount remitted by the contractor and the exemption imposed or allowed under this section. Application for a refund must be made at the times and in the manner directed by the tax commissioner and must include sufficient information to permit the tax commissioner to verify the sales and use taxes paid and the exempt status of the sale or use.

SECTION 3. AMENDMENT. Section 57-40.2-03.3 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-03.3. Use tax on contractors.

1. When a contractor or subcontractor uses tangible personal property in the performance of that person's contract, or to fulfill contract or subcontract obligations, whether the title to such property be in the contractor, subcontractor, contractee, subcontractee, or any other person, or whether the titleholder of such property would be subject to pay the sales or use tax, such contractor or subcontractor shall pay a use tax at the rate prescribed by section 57-40.2-02.1 measured by the purchase price or fair market value of such property, whichever is greater, unless such property has been previously subjected to a sales tax or use tax by this state, and the tax due thereon has been paid.
2. The provisions of this chapter pertaining to the administration of the tax imposed by section 57-40.2-02.1, not in conflict with the provisions of this section, govern the administration of the tax levied by this section.
3. The tax imposed by this section does not apply to medical equipment purchased as tangible personal property by a hospital or by a long-term care facility as defined in section 50-10.1-01 and subsequently installed by a contractor into such hospital or facility.
4. The tax imposed by this section does not apply to:
 - a. Production equipment or tangible personal property as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.2;
 - b. Machinery, equipment, or other tangible personal property used to construct an agricultural commodity processing facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.3 or 57-39.2-04.4;

- c. Tangible personal property used to construct or expand a system used to compress, process, gather, or refine gas recovered from an oil or gas well in this state or used to expand or build a gas-processing facility in this state as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.5; ~~or~~
- d. Tangible personal property used to construct ~~to~~ expand a qualifying oil refinery as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.6; or
- e. Telecommunications infrastructure that is capable of providing telecommunications service as authorized or approved for exemption by the commissioner under chapter 57-39.2.

SECTION 4. EFFECTIVE DATE. This Act is retroactively effective, to include purchases made after December 31, 2012.

SECTION 5. EXPIRATION DATE. This Act is effective through June 30, 2017, and after that date is ineffective.

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-third Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2142.

Senate Vote: Yeas 45 Nays 1 Absent 1

House Vote: Yeas 91 Nays 0 Absent 3

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2013.

Approved at _____ M. on _____, 2013.

Governor

Filed in this office this _____ day of _____, 2013,

at _____ o'clock _____ M.

Secretary of State