

**HOUSE BILL NO. 1117**

Introduced by

Finance and Taxation Committee

(At the request of the Tax Commissioner)

1 A BILL for an Act to create and enact section 57-39.4-33.4 of the North Dakota Century Code,  
2 relating to administration of the streamlined sales and use tax agreement; and to amend and  
3 reenact subsection 2 of section 57-39.2-04.1, section 57-39.4-29, and subsection 2 of section  
4 57-40.2-04.1 of the North Dakota Century Code, relating to the definition of prepared food for  
5 sales tax purposes, the taxability matrix to be used for administration of the sales and use tax  
6 agreement, and the definition of prepared food for use tax purposes.

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

8 **SECTION 1. AMENDMENT.** Subsection 2 of section 57-39.2-04.1 of the North Dakota  
9 Century Code is amended and reenacted as follows:

10 2. For purposes of this section:

- 11 a. "Alcoholic beverages" means beverages that are suitable for human consumption  
12 and contain one-half of one percent or more of alcohol by volume.
- 13 b. "Candy" means a preparation of sugar, honey, or other natural or artificial  
14 sweeteners in combination with chocolate, fruits, nuts, or other ingredients or  
15 flavoring in the form of bars, drops, or pieces. Candy does not include any  
16 preparation containing flour and does not require refrigeration.
- 17 c. "Dietary supplement" means any product, other than tobacco, intended to  
18 supplement the diet which contains one or more of the following dietary  
19 ingredients: a vitamin; a mineral; an herb or other botanical; an amino acid; a  
20 dietary substance for use by humans to supplement the diet by increasing the  
21 total dietary intake; an oral concentrate, metabolite, constitute, extract, or  
22 combination of any dietary ingredients described in this sentence and which is  
23 intended for ingestion in tablet, capsule, powder, soft gel, gel cap, or liquid form,  
24 or if not represented for use as a sole item of a meal or of a diet; and is required

1 to be labeled as a dietary supplement, identifiable by the supplemental facts box  
2 found on the label and as required pursuant to 21 CFR section 101.36.

3 d. "Prepared food" means:

4 (1) Food sold in a heated state or heated by the seller;

5 (2) Two or more food ingredients mixed or combined by the seller for sale as a  
6 single item; or

7 (3) Food sold with eating utensils provided by the seller, including plates,  
8 knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not  
9 include a container or packaging used to transport the food.

10 e. "Prepared food" does not mean:

11 (1) Food that is only cut, repackaged, or pasteurized by the seller.

12 (2) Eggs, fish, meat, poultry, and foods containing these raw animal foods  
13 requiring cooking by the consumer as recommended by the food and drug  
14 administration in chapter 3, part 401.11, of its food code so as to prevent  
15 foodborne illness.

16 (3) If sold without eating utensils provided by the seller:

17 (a) Food sold by a seller whose proper primary North American industry  
18 classification system classification is manufacturing in sector 311,  
19 except subsector 3118, bakeries.

20 (b) Food sold in an unheated state by weight or volume as a single item.

21 (c) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants,  
22 pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars,  
23 cookies, and tortillas.

24 (d) Food sold that ordinarily requires additional cooking, as opposed to  
25 just reheating, by the consumer prior to consumption.

26 f. "Soft drinks" means nonalcoholic beverages that contain natural or artificial  
27 sweeteners. "Soft drinks" does not include beverages that contain milk or milk  
28 products, soy, rice, or similar milk substitutes, or greater than fifty percent of  
29 vegetable or fruit juice by volume.

30 g. "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item  
31 that contains tobacco.

1       **SECTION 2. AMENDMENT.** Section 57-39.4-29 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **57-39.4-29. (328) Taxability matrix.**

4       1. a. To ensure uniform application of terms defined in part II and part III(B) of the  
5 library of definitions as adopted by the governing board under section 57-39.4-28,  
6 each member state shall complete a, to the best of its ability, section 1 of the  
7 taxability matrix adopted by the governing board.

8       b. To inform the general public of its practices regarding certain products,  
9 procedures, services, or transactions adopted by the governing board under  
10 section 57-39.4-33.4, each member state shall complete, to the best of its ability,  
11 section 2 of the taxability matrix.

12       2. The member state's entries in the matrix shall be provided and maintained in a  
13 database that is in a downloadable format approved by the governing board. A  
14 member state shall provide notice of changes in the taxability of the products or  
15 services listed in the taxability matrix as required by the governing board.

16       ~~2.3.~~ A member state shall relieve sellers and certified service providers from liability to the  
17 member state and its local jurisdictions for having charged and collected the incorrect  
18 amount of sales or use tax resulting from the seller or certified service provider relying  
19 on erroneous data provided by the member state in the taxability matrix. If a member  
20 state amends an existing provision of its taxability matrix, the member state shall, to  
21 the extent possible, relieve sellers and certified service providers from liability to the  
22 member state and its local jurisdictions until the first day of the calendar month that is  
23 at least thirty days after notice of change to a member state's taxability matrix is  
24 submitted to the governing board, provided the seller or certified service provider  
25 relied on the prior version of the taxability matrix.

26       ~~3.4.~~ If a state levies sales and use tax on a specified digital product and provides an  
27 exemption for an item within the definition of such specified digital product under  
28 subsection 8 of section 57-39.4-33.1, such exemption must be noted in the taxability  
29 matrix.

1     4.5. Each state that provides for a sales tax holiday under section 57-39.4-23 shall, in a  
2             format approved by the governing board, give notice in the taxability matrix of the  
3             products for which a tax exemption is provided.

4             **SECTION 3.** Section 57-39.4-33.4 of the North Dakota Century Code is created and  
5 enacted as follows:

6             **57-39.4-33.4. Best Practices.**

- 7             1. For purposes of this section, "best practices" means those practices adopted by the  
8             governing board as the best practices in administration of the sales and use taxes in  
9             the member states regarding certain identified products, procedures, services, or  
10            transactions.
- 11            2. A majority vote of the entire governing board is required to approve a motion to adopt  
12            a best practices standard. The governing board shall provide public notice and  
13            opportunity for comment prior to voting on a motion to adopt a best practice.
- 14            3. Best practices adopted by the governing board must be maintained in an appendix to  
15            the agreement.
- 16            4. Conformance by a member state to best practices adopted by the governing board is  
17            voluntary and a state may not be found to be out of compliance with the agreement  
18            because the effect of the state's laws, rules, regulations, and policies do not follow  
19            each of the best practices adopted by the governing board.
- 20            5. A state shall complete the best practice matrix by the first day of the calendar month  
21            that is at least thirty days after the date the governing board approves a best practice  
22            and submits it to the executive director for posting on the governing board's website.  
23            For subsequent best practices approved by the governing board, a state shall update  
24            its best practice matrix by the first day of the calendar month that is at least thirty days  
25            after the date the governing board approves a new best practice and submits it to the  
26            executive director for posting on the governing board's website.

27            **SECTION 4. AMENDMENT.** Subsection 2 of section 57-40.2-04.1 of the North Dakota  
28 Century Code is amended and reenacted as follows:

- 29            2. For purposes of this section:
- 30            a. "Alcoholic beverages" means beverages that are suitable for human consumption  
31            and contain one-half of one percent or more of alcohol by volume.

- 1           b. "Candy" means a preparation of sugar, honey, or other natural or artificial  
2           sweeteners in combination with chocolate, fruits, nuts, or other ingredients or  
3           flavoring in the form of bars, drops, or pieces. Candy does not include any  
4           preparation containing flour and that does not require refrigeration.
- 5           c. "Dietary supplement" means any product, other than tobacco, intended to  
6           supplement the diet which contains one or more of the following dietary  
7           ingredients: a vitamin; a mineral; an herb or other botanical; an amino acid; a  
8           dietary substance for use by humans to supplement the diet by increasing the  
9           total dietary intake; an oral concentrate, metabolite, constitute, extract, or  
10          combination of any dietary ingredients described in this subdivision and which is  
11          intended for ingestion in tablet, capsule, powder, soft gel cap, or liquid form, or if  
12          not represented for use as a sole item of a meal or of a diet; and is required to be  
13          labeled as a dietary supplement, identifiable by the supplemental facts box found  
14          on the label and as required pursuant to 21 CFR 101.36.
- 15          d. "Prepared food" means:  
16           (1) Food sold in a heated state or heated by the seller;  
17           (2) Two or more food ingredients mixed or combined by the seller for sale as a  
18           single item; or  
19           (3) Food sold with eating utensils provided by the seller, including plates,  
20           knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not  
21           include a container or packaging used to transport the food.
- 22          e. "Prepared food" does not mean:  
23           (1) Food that is only cut, repackaged, or pasteurized by the seller.  
24           (2) Eggs, fish, meat, poultry, and foods containing these raw animal foods  
25           requiring cooking by the consumer as recommended by the food and drug  
26           administration in chapter 3, part 401.11, of its food code so as to prevent  
27           foodborne illness.  
28           (3) If sold without eating utensils provided by the seller:  
29           (a) Food sold by a seller whose proper primary North American industry  
30           classification system classification is manufacturing in sector 311,  
31           except subsector 3118, bakeries.

- 1 (b) Food sold in an unheated state by weight or volume as a single item.
- 2 (c) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants,
- 3 pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars,
- 4 cookies, and tortillas.
- 5 (d) Food sold that ordinarily requires additional cooking, as opposed to
- 6 just reheating, by the consumer prior to consumption.
- 7 f. "Soft drinks" means nonalcoholic beverages that contain natural or artificial
- 8 sweeteners. "Soft drinks" does not include beverages that contain milk or milk
- 9 products, soy, rice, or similar milk substitutes, or greater than fifty percent of
- 10 vegetable or fruit juice by volume.
- 11 g. "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item
- 12 that contains tobacco.