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

SENATE BILL NO. 2089
(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

AN ACT to create and enact a new subsection to section 57-39.4-35 of the North Dakota Century Code, relating to certified automated system software requirements; to amend and reenact sections 57-05-08, 57-06-05, 57-06-06, 57-06-09, 57-06-12, and 57-33.2-07, subdivision d of subsection 26 of section 57-39.2-04, subsection 1 of section 57-39.2-12, section 57-39.4-04, subsections 6 and 7 of section 57-39.4-06, section 57-39.4-19, subsection 1 of section 57-39.4-23, subsection 3 of section 57-39.4-28, subdivision d of subsection 12 of section 57-40.2-04, and subsection 7 of section 57-40.2-07 of the North Dakota Century Code, relating to reports from centrally assessed property companies, tentative assessments of centrally assessed property, the annual meeting of the state board of equalization, the definition of supplies used for bladder dysfunction, the filing of sales tax returns, seller registration, the database of local taxing jurisdictions, uniform tax returns, notices of temporary exemption periods, the library of definitions to be used in the tax administration practices of the sales and use tax agreement, and the filing of use tax returns; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-05-08 of the North Dakota Century Code is amended and reenacted as follows:

57-05-08. Report by railroad corporation to ~~state~~ tax commissioner.

Each railroad corporation required to be assessed under the provisions of this chapter annually shall, on or before ~~April~~May first of each year, under oath of the presiding or other chief executive officer, make and file ~~on the form and~~ in the manner ~~as~~prescribed by the tax commissioner ~~may prescribe~~, a report containing the following information:

1. The name of the company;
2. The laws of ~~what~~the state or country organized, the date of original organization, the date of reorganization, consolidation, or merger, with specific reference to laws authorizing the same;
3. Location of its principal office;
4. The name of the place where its books, papers, and accounts are kept;
5. The name and post-office address of the president, secretary, treasurer, auditor, superintendent, general manager, and all other general officers;
6. The name and post-office address of the chief officer or managing agent of the company in North Dakota and of all other general officers residing in this state;
7. The total number of shares of capital stock;
8. The par value of the shares of the capital stock for the whole system, showing separately the amount authorized, amount issued, amount outstanding, and dividends paid thereon;
9. If ~~such~~the capital stock has no market value, the actual value on the dates and for the periods designated by the tax commissioner ~~of this state~~;

10. The funded debt of the company for the whole system and a detailed statement of all series of bonds, debentures, or other securities, forming a part of the funded debt, at par value, with the date of issue, maturity, rate of interest, and amount of interest for the preceding year;

11. The market value of each series of funded debt securities for the whole system on the dates and for the periods designated by the tax commissioner, and if the whole or a part of the funded debt has no market value, then ~~the~~its actual value ~~thereof~~ for the dates and periods as the tax commissioner may specify;

12. ~~Such~~The general description of the operative and nonoperative real estate of the company in North Dakota as would be sufficient in a conveyance thereof, under a judicial decree, to vest in the grantee all title and interest in and to the ~~said~~ property;

13. A description of the personal property of the company;

14. The number of miles [kilometers] of each main line of railroad, the number of miles [kilometers] of each branch line and sidetracks ~~thereof~~ within ~~the state of~~ North Dakota;

15. The entire gross earnings of the company from operation, expenses of operation, net earnings and income from operation, and the income from other sources, for the whole system, and in North Dakota, for the years or period the tax commissioner may request or specify, not exceeding five years;

16. The location of the property of the company within this state by counties, municipalities, and districts, in the manner and detail as the tax commissioner shall prescribe; and

17. Other facts and information as the tax commissioner may require ~~in the form of returns prescribed by the tax commissioner~~ or which the company may deem material ~~upon~~relating to the ~~question of~~ taxation of its property in this state.

SECTION 2. AMENDMENT. Section 57-06-05 of the North Dakota Century Code is amended and reenacted as follows:

57-06-05. Annual assessment.

The state board of equalization, at its annual meeting in ~~August~~July, shall assess the franchises and all operative property of power, gas, pipeline, and other companies, covered by this chapter, with reference to the value thereof on the first day of January of that year.

SECTION 3. AMENDMENT. Section 57-06-06 of the North Dakota Century Code is amended and reenacted as follows:

57-06-06. Reports of companies.

Each company required to be assessed under the provisions of this chapter annually, on or before the ~~fifteenth~~first day of ~~April~~May, under oath of the president or other chief executive officer, and the secretary or treasurer or auditor or superintendent of ~~such~~the company, shall make and file with the tax commissioner, in the ~~form~~manner prescribed by the tax commissioner ~~may prescribe~~, a report containing the following information, so far as applicable to the company making the report, as of January first of the year in which the report is furnished:

1. The name of the company.

2. The nature of the company, whether a person, association, corporation, or limited liability company, and under the laws of ~~what~~the state or country organized, the date of original organization, the date of reorganization, consolidation, or merger, with specific reference to laws authorizing the same.

3. Location of its principal office.

4. The name of the place where its books, papers, and accounts are kept.

5. The name and post-office address of the president, secretary, treasurer, auditor, superintendent, general manager, and all other general officers.

6. The name and post-office address of the chief officer or managing agent of the company in North Dakota and of all other general officers residing in this state.

7. The total number of shares of capital stock.

8. The par value of the shares of the capital stock for the whole system, showing separately the amount authorized, amount issued, amount outstanding, and dividends paid thereon.

9. If the capital stock has no market value, the actual value on the dates and for the periods designated by the tax commissioner ~~of this state~~.

10. The funded debt of the company for the whole system and a detailed statement of all series of bonds, debentures, or other securities, forming a part of the funded debt, at par value, with the date of issue, maturity, rate of interest, and amount of interest for the preceding year.

11. The market value of each series of funded debt securities for the whole system on the dates and for the periods designated by the tax commissioner, and if the whole or a part of the funded debt has no market value, then ~~the~~its actual value ~~thereof~~ for the dates and periods as the tax commissioner may specify.

12. The general description of the operative and nonoperative real estate of the company in North Dakota as would be sufficient in a conveyance thereof, under a judicial decree, to vest in the grantee all title and interest in and to the ~~said~~ property.

13. A description of the personal property of the company, including moneys and credits, held by the company as a whole system, and the part ~~thereof~~of the property apportioned to the line in North Dakota.

14. The whole length of the lines of the system operated by the company and the length of the lines in North Dakota, whether operated as owner, lessee, or otherwise. The length of the line operated for the whole system and in North Dakota shall be separately reported.

15. The entire gross earnings of the company from operation, expenses of operation, net earnings and income from operation, and the income from other sources, for the whole system, and in North Dakota, for the years or period the tax commissioner may request or specify, not exceeding five years.

16. The location of the property of the company within this state by counties, municipalities, and districts, in the manner and detail as the tax commissioner shall prescribe.

17. Other facts and information as the tax commissioner may require or which the company may deem material relating to the taxation of its property in this state.

SECTION 4. AMENDMENT. Section 57-06-09 of the North Dakota Century Code is amended and reenacted as follows:

57-06-09. Penalty for failure to furnish report.

If any company refuses or neglects to make the report required by this chapter, or refuses or neglects to furnish any information requested, the tax commissioner shall obtain the best information available on the facts necessary to be known in order to discharge the tax commissioner's duties with respect to the valuation and assessment of the property of the company. If any company fails to make the report required under this chapter on or before the ~~fifteenth~~first day of ~~April~~May of any year, the state board of equalization shall add twenty percent to the assessed value of the property of the

company for that year~~, but the tax commissioner, upon written application received on or before the fifteenth day of April, may grant an extension of time through the first day of May to file the required report~~. If any company fails to make the report required under this chapter on or before the first day of June of any year, the state board of equalization shall add an additional ten percent to the assessed value of the property of the company for that year. On or before the first day of June, for good cause shown, the tax commissioner may waive all or any part of the penalty that attached under this section.

SECTION 5. AMENDMENT. Section 57-06-12 of the North Dakota Century Code is amended and reenacted as follows:

57-06-12. Tentative assessment to be made and notice of hearing.

The tax commissioner shall give ten days' notice ~~by mail~~in a manner determined by the tax commissioner to each company, or its representative in North Dakota, of the amount of its tentative assessment and the meeting of the state board of equalization on the second Tuesday of July, at which meeting each company is entitled to present evidence before the state board of equalization relating to the value of the property of the company.

SECTION 6. AMENDMENT. Section 57-33.2-07 of the North Dakota Century Code is amended and reenacted as follows:

57-33.2-07. Filing of reports with tax commissioner.

By June first of each year, each wind farm, wind generator, and generator of electricity from sources other than coal subject to the coal conversion tax and each transmission company, distribution company, and each company that is both a transmission company and a distribution company shall file with the tax commissioner ~~on a form~~, in a manner prescribed by the tax commissioner ~~any and all~~, a report containing the information required by the tax commissioner. The ~~form~~report must include a notice of a company's right to appeal its assessment to the state board of equalization before or at the ~~August~~July meeting of the state board of equalization. Required information includes:

1. a. The company name.

   b. Whether the company is an individual, partnership, association, cooperative, corporation, limited liability company, or other legal entity and the state or country and date of original organization and any reorganization, consolidation, or merger with references to specific laws authorizing ~~such~~those actions.

   c. The location of its principal office.

   d. The place where the company's books, papers, and accounts are kept.

   e. The name and mailing address of the president, secretary, treasurer, auditor, general manager, and all other general officers.

   f. The name and mailing address of the chief officer or managing agent and any general officers of the company who reside in this state.

2. A copy of each report filed with any county auditor under section 57-33.2-06.

3. A report on the megawatt-hours of electricity produced by wind generators and generators of electricity from sources other than coal in each county in the state and a map showing the location of each generator and its rated capacity, and all components of the collector system, if any.

4. A report on the megawatt-hours of electricity delivered for retail sale to consumers in each taxing district in each county during the most recently completed calendar year.

SECTION 7. AMENDMENT. Subdivision d of subsection 26 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

d. "Supplies for ostomy care or bladder dysfunction" includes:

(1) Supplies designed or intended for ostomy care and management, including collection devices, colostomy irrigation equipment and supplies, skin barriers or skin protectors, and other supplies especially designed for use of ostomates.

(2) Supplies to be used exclusively by a person with bladder dysfunction, including catheters, collection devices, incontinent pads and pants, adult diapers, and other items used for the care and management of bladder dysfunction. For the purposes of this paragraph:

(a) "Adult diapers" means diapers other than children's diapers.

(b) "Children's diapers" means diapers marketed to be worn by children.

(c) "Diaper" means an absorbent garment worn by humans who are incapable of, or have difficulty, controlling their bladder or bowel movements.

SECTION 8. AMENDMENT. Subsection 1 of section 57-39.2-12 of the North Dakota Century Code is amended and reenacted as follows:

1. The tax levied under this chapter is due and payable in quarterly installments on or before the last day of the month next succeeding each calendar quarterly period, except that if total sales subject to sales and use taxes for the preceding calendar year for any business which has been issued a sales tax permit equal or exceed three hundred thirty-three thousand dollars, the tax levied under this chapter is payable monthly on or before the last day of the next succeeding month. The tax commissioner may, upon request and for good cause shown, waive the requirement to file and remit monthly. The retailer shall pay the total tax due in the manner prescribed by the tax commissioner. Penalties and interest for failure to file a return, for filing an incorrect return, or for failure to pay the tax due are those prescribed in section 57-39.2-18. If the total of sales subject to the tax decreases below three hundred thirty-three thousand dollars for any succeeding year, the retailer may return to quarterly filing and payments. When there is a sale of any business by any retailer or when any business is discontinued by a retailer, the tax becomes due immediately prior to the sale or discontinuance of the business and if not paid within fifteen days thereafter it becomes delinquent and subject to the penalties provided in section 57-39.2-18. In the event of a business reorganization in which the ownership of the business organization remains in the same person or persons as prior to the reorganization, the total sales subject to sales and use taxes for the preceding calendar year for the business that was reorganized must be used to determine whether the tax is payable monthly under this subsection.

SECTION 9. AMENDMENT. Section 57-39.4-04 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-04. (303) Seller registration.

Each member state shall participate in an online sales and use tax registration system in cooperation with the other member states. Under this system:

1. A seller registering under the agreement ~~shall be registered~~may register in ~~each~~one or more of the ~~member~~ states utilizing the central registration system provided in article IV of the agreement.

2. A ~~model 2, model 3, or model 4 seller may elect to be registered in one or more states as a seller which anticipates making no sales into the state or states if it has not had sales into the~~

~~state or states for the preceding twelve months. This election does not relieve the seller of its agreement under section 401(B) to collect taxes on all sales into the states or its liability for remitting to the proper states any taxes collected~~certified service provider may require a seller registering under the agreement to register in all of the full-member states as a condition of receiving certified service provider services.

3. The member states agree not to require the payment of any registration fees or other charges for a seller ~~to register~~registering through the central registration system in a state in which the seller has no legal requirement to register.

4. A written signature from the seller is not required.

5. An agent may register a seller under uniform procedures adopted by the member states.

6. A seller may cancel its registration under the system at any time under uniform procedures adopted by the governing board. Cancellation does not relieve the seller of its liability for remitting to the proper states any taxes collected.

7. Nothing in this section shall be construed to relieve a seller of any legal obligation it may have under a state's laws to register in that state or its obligation to collect and remit taxes for at least thirty-six months in a state and meet all other requirements for amnesty set out in section 402 of the agreement in order to be eligible for amnesty in the state.

8. Whenever a state joins the agreement, sellers already registered under the agreement shall be ~~registered in the new~~notified by the governing board and the sellers may elect to also be registered in the new state ~~as follows:~~

   ~~a. Model 1 sellers will be automatically registered in such state.~~

   ~~b. Model 2, model 3, and model 4 sellers will be automatically registered in the new state but may elect to be registered as a seller which anticipates making no sales into the new state.~~

9. ~~Upon registration, the~~The governing board shall ~~provide to the seller~~make information available regarding the requirements and options for filing a simplified electronic return and for filing remittances in any member state. ~~Member states~~A member state may provide information to sellers concerning other tax return filing options in that state.

10. The governing board shall cause the system for registering under the agreement to include a feature that allows sellers registered under the agreement to update relevant registration data in the system and have such updated data provided to all ~~member~~affected states utilizing the system. The governing board shall establish conditions and procedures to allow states which are not members of the agreement to participate in the registration system.

SECTION 10. AMENDMENT. Subsections 6 and 7 of section 57-39.4-06 of the North Dakota Century Code are amended and reenacted as follows:

6. Provide and maintain a database that assigns the proper tax rates and jurisdictions to each five-digit and nine-digit zip code within a member state ~~to the proper tax rates and jurisdictions~~. The state must apply the lowest combined tax rate imposed in the zip code area if the area includes more than one tax rate in any level of taxing jurisdictions. If a nine-digit zip code designation is not available for a street address or if a seller or certified service provider is unable to determine the nine-digit zip code designation applicable to a ~~purchase~~transaction after exercising due diligence to determine the designation, the seller or certified service provider may apply the rate for the five-digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller or certified service provider has exercised due diligence if the seller has attempted to determine the ~~nine-digit zip code designation~~tax rate and jurisdiction by ~~utilizing~~using software approved by the governing board that makes this

~~designation~~assignment from the ~~street~~ address and ~~the five-digit~~ zip code information applicable to ~~a purchase~~the transaction.

7. Have the option of providing address-based boundary database records for assigning taxing jurisdictions and their associated rates which shall be in addition to the requirements of subsection 6. The database records must be in the same approved format as the database records under subsection 6 and must meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act [4 U.S.C. 119(a)]. The governing board may allow a member state to require sellers that register under this agreement to use an address-based database provided by that member state. If any member state develops address-based assignment database records pursuant to the agreement, a seller or certified service provider may use those database records in place of the five-digit and nine-digit zip code database records provided for in subsection 6. If a seller or certified service provider is unable to determine the applicable rate and jurisdiction using an address-based database record after exercising due diligence, the seller or certified service provider may apply the nine-digit zip code designation applicable to a ~~purchase~~transaction. If a nine-digit zip code designation is not available for a street address or if a seller or certified service provider is unable to determine the nine-digit zip code designation applicable to a ~~purchase~~transaction after exercising due diligence to determine the designation, the seller or certified service provider may apply the rate for the five-digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller or certified service provider has exercised due diligence if the seller or certified service provider has attempted to determine the tax rate and jurisdiction by ~~utilizing~~using software approved by the governing board that makes this assignment from the address and zip code information applicable to the ~~purchase~~transaction.

SECTION 11. AMENDMENT. Section 57-39.4-19 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-19. (318) Uniform tax returns.

Each member state shall:

1. Require that only a single tax return for each taxing period for each seller be filed for the member state to include all the taxing jurisdictions within the member state.

2. a. Require that returns be due no sooner than the twentieth day of the month following the month in which the transaction occurred.

   b. When the due date for a return falls on a Saturday or Sunday or legal holiday in the subject member state, the return shall be due on the next succeeding business day. If the return is filed in conjunction with a remittance and the remittance cannot be made under subdivision b of subsection 5 of section 57-39.4-20, the return shall be accepted as timely filed on the same day as the remittance under that subsection.

3. Make available to all sellers, whether or not registered under the agreement, except sellers of products qualifying for exclusion from the provisions of section 57-39.4-09 of this agreement, a simplified return that is filed electronically as follows:

   a. The simplified electronic return hereinafter SER shall be in a form approved by the governing board and shall contain only those fields approved by the governing board. The SER shall contain two parts. Part 1 shall contain information relating to remittances and allocations and part 2 shall contain information relating to exempt sales.

   b. Each member state must notify the governing board if it requires the submission of the part 2 information provided no state may require the submission of part 2 information from a model 4 seller which has no legal requirement to register in the state.

   c. Returns shall be required as follows:

(1) Certified service providers must file an SER in all member states in which the model 1 seller is registered under the agreement, on behalf of model 1 sellers. Certified service providers, on behalf of these sellers, shall file the audit reports provided for in article V of the rules and procedures of the agreement for the states, and in addition, shall be required to file part 1 of the SER each month for each member state in which the model 1 seller is registered under the agreement. A state shall allow a model 1 seller to file both part 1 and part 2 of the SER. A model 1 seller which chooses to file both part 1 and part 2 of the SER shall still be required to file the audit reports provided for in article V of the rules and procedures of the agreement.

(2) Model 2 and model 3 sellers must file an SER in all member states ~~other than states for which they have indicated that they anticipate making no sales~~in which they are registered under the agreement. These sellers shall file part 1 of the SER every month for all states in which they ~~anticipate making sales~~are registered under the agreement. These sellers ~~need not file part 2 information until January 1, 2012. After this date, they~~ shall have the following options for meeting their obligation to furnish part 2 information:

(a) File part 2 of the SER together with part 1 of the SER every month; or

(b) File part 2 of the SER at the same time part 1 of the SER for the month of December is due. Part 2 information filed under this option shall cover the month of December and all previous months of the same calendar year and shall only require annual and not monthly totals. The sellers shall only be required to file part 2 of the SER for any state which has notified the governing board that it will require the submission of the part 2 information under subdivision b.

(3) Every member state shall allow model 4 sellers to file an SER. The sellers shall file part 1 of the SER every month unless a state allows less frequent filing. Model 4 sellers which have a legal requirement to register in the state shall have the following options for meeting their obligation to furnish part 2 information:

(a) File part 2 of the SER together with part 1 of the SER; or

(b) File part 2 of the SER at the same time part 1 of the SER for the month of December is due. Part 2 information filed under this option shall cover the month of December and all previous months of the same calendar year and shall only require annual and not monthly totals.

These sellers shall only be required to file part 2 of the SER for any state which has notified the governing board that it will require the submission of the part 2 information under subdivision b.

Model 4 sellers which elect not to file an SER shall file returns in the form under schedules afforded to sellers not registered under the agreement according to the requirements of each member state.

(4) ~~No later than January 1, 2013, every~~Every member state shall allow sellers not registered under the agreement that are registered in the state to file an SER. These sellers shall file part 1 of the SER every month unless a state allows less frequent filing and shall have the following options for meeting their obligation to furnish part 2 information:

(a) File part 2 of the SER together with part 1 of the SER; or

(b) File part 2 of the SER at the same time part 1 of the SER for the month of December is due. Part 2 information filed under this option shall cover the month of December and all previous months of the same calendar year and shall only require annual and not monthly totals.

These sellers shall only be required to file part 2 of the SER for any state which has notified the governing board that it will require the submission of the part 2 information under subdivision b.

d. A state which requires the submission of part 2 information under paragraph 2 may provide an exemption from this requirement to a seller under terms and conditions set out by the state.

e. A state may require a seller which elects to file an SER to give at least three months' notice of the seller's intent to discontinue filing an SER.

4. ~~Not require the filing of a return from a seller registered under the agreement which has indicated at the time of registration that it anticipates making no sales which would be sourced to the state under the agreement. A seller shall lose this exemption upon making any taxable sales into the state and shall file a return in the month following the sale. A state may, but is not required to, allow a seller to regain such filing exemption upon such terms and conditions as the state may impose.~~

~~5.~~ Adopt web services as the standardized transmission process that allows for receipt of uniform tax returns and other formatted information as approved by the governing board. The process must provide for the filing of separate returns for multiple legal entities in a single transmission for each state and will not include any requirement for manual entry or input by the seller of any of the aforementioned information. This process will allow a certified service provider, tax preparer, or any other authorized person to file returns for more than one seller in a single electronic transmission. However, sellers filing returns for multiple legal entities may only do so for affiliated legal entities.

~~6.~~5. Give notice to a seller registered under this agreement which has no legal requirement to register in the state, of a failure to file a required return and a minimum of thirty days to file thereafter prior to establishing a liability amount for taxes based solely on the seller's failure to timely file a return provided a member state may establish a liability amount for taxes based solely on the seller's failure to timely file a return if such seller has a history of nonfiling or late filing.

~~7.~~6. Nothing in this section shall prohibit a state from allowing additional return options or the filing of returns less frequently.

SECTION 12. AMENDMENT. Subsection 1 of section 57-39.4-23 of the North Dakota Century Code is amended and reenacted as follows:

1. If a member state allows for temporary exemption periods, commonly referred to as sales tax holidays, the member state shall:

a. Not apply an exemption unless the items to be exempted are specifically defined in part II or part III(B) of the library of definitions and the exemptions are uniformly applied to state and local sales and use taxes.

b. Provide notice of the exemption period at least sixty days prior to the first day of the calendar ~~quarter~~month in which the exemption period will begin.

c. Not apply an entity-based or use-based exemption except a member state may limit a product-based exemption to items purchased for personal or nonbusiness use.

d. Not require a seller to obtain an exemption certificate or other certification from a purchaser for items to be exempted during a sales tax holiday.

SECTION 13. AMENDMENT. Subsection 3 of section 57-39.4-28 of the North Dakota Century Code is amended and reenacted as follows:

3. Except as specifically provided in sections 57-39.4-17 and 57-39.4-33.1, and the library of definitions, a member state shall impose a sales or use tax on all products or services included within each part II or part III(B) definition or exempt from sales or use tax all products or services within each definition, including all products and services listed in the rules, appendices, and interpretive opinions adopted by the governing board. The requirements of this section shall only apply to part III(B) definitions to the extent such definitions are used in the administration of a sales tax holiday. A member state is not in compliance with the agreement if the member state excludes any product or service that is included within a product definition or includes a product or service that is excluded from a product definition.

SECTION 14. A new subsection to section 57-39.4-35 of the North Dakota Century Code is created and enacted as follows:

For purposes of this section:

a. "Certify a product category" means the state reviews the product category and determines that the taxability of a product properly included in that product category is consistent with that state's laws. The state certifies that the taxability is based only on:

(1) The product-based exemptions or impositions provided by state law;

(2) The specific description provided by the seller or certified service provider; and

(3) Not requiring either the purchaser or seller to produce documentation to claim the exemption.

b. (1) "Product category" means:

(a) Terms specifically defined in appendix C, part II or part III of the agreement, such as clothing, durable medical equipment, food, drugs, soft drinks, and disaster preparedness supplies;

(b) Subcategories of terms specifically defined in subparagraph a that may be taxed differently than the product category as a whole, such as oxygen delivery equipment, kidney dialysis equipment, prewritten computer software delivered electronically, and prepared food that requires additional cooking by the consumer;

(c) Terms representing groups of like products that do not fall within subparagraphs a or b, such as other digital products, building materials, furniture, or motor vehicles; and

(d) Subcategories of subparagraph c that are taxed differently than the product category as a whole, such as printed materials, newspapers, and catalogs.

(2) The term does not include any individual product that properly falls within any product category in a state, such as shirts, reusable thermometers, ultrasound machines, bread, tables, chairs, automobiles, or motorcycles, unless the individual product is taxed differently than any other products within that product category; or "tangible personal property".

SECTION 15. AMENDMENT. Subdivision d of subsection 12 of section 57-40.2-04 of the North Dakota Century Code is amended and reenacted as follows:

d. "Supplies for ostomy care or bladder dysfunction" includes:

(1) Supplies designed or intended for ostomy care and management, including collection devices, colostomy irrigation equipment and supplies, skin barriers or skin protectors, and other supplies especially designed for use of ostomates.

(2) Supplies to be used exclusively by a person with bladder dysfunction, including catheters, collection devices, incontinence pads and pants, adult diapers, and other items used for the care and management of bladder dysfunction. For the purposes of this paragraph:

(a) "Adult diapers" means diapers other than children's diapers.

(b) "Children's diapers" means diapers marketed to be worn by children.

(c) "Diaper" means an absorbent garment worn by humans who are incapable of, or have difficulty, controlling their bladder or bowel movements.

SECTION 16. AMENDMENT. Subsection 7 of section 57-40.2-07 of the North Dakota Century Code is amended and reenacted as follows:

7. If total sales and purchases subject to sales and use taxes for the preceding calendar year equal or exceed three hundred thirty-three thousand dollars, the tax levied by this chapter is payable monthly on or before the last day of the next succeeding month. The tax commissioner may, upon request and for good cause shown, waive the requirement to file and remit monthly. The amount of monthly tax payable, manner of payment, filing of the return, penalty, and waiver of penalty must be that prescribed in subsection 1 of section 57-39.2-12. Penalty and interest for failure to file a return or corrected return or to pay the tax imposed must be that prescribed in section 57-40.2-15. If a person is required to file more than one return pursuant to this section, the monthly payment requirement applies separately to each return. If total sales and purchases subject to sales and use taxes for any succeeding calendar year decrease below three hundred thirty-three thousand dollars, a person may return to quarterly installments. In the event of a business reorganization in which the ownership of the business organization remains in the same person or persons as prior to the reorganization, the total sales subject to sales and use taxes for the preceding calendar year for the business that was reorganized must be used to determine whether the tax is payable monthly under this section.

SECTION 17. EFFECTIVE DATE. Sections 1, 2, 3, 4, 5, and 6 of this Act are effective for taxable years beginning after December 31, 2018.

SECTION 18. EFFECTIVE DATE. Sections 8 and 16 of this Act are effective for sales and use tax returns due after July 31, 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. 2089.

Senate Vote:	Yeas 47	Nays 0	Absent 0
House Vote:	Yeas 84	Nays 5	Absent 5

Secretary of the Senate

Received by the Governor at 11:09 AM. on April 4, 2019.

Approved at 2:28 PM. on April 8, 2019.

Governor

Filed in this office this 9th day of April, 2019,

at 9:48 o'clock A. M.

Secretary of State