# Sixty-fourth Legislative Assembly of North Dakota
# In Regular Session Commencing Tuesday, January 6, 2015

SENATE BILL NO. 2094
(Senators Sorvaag, Burckhard, Laffen)
(Representatives Guggisberg, Kading, Schmidt)

AN ACT to amend and reenact section 57-39.2-04.3 of the North Dakota Century Code, relating to a sales tax exemption for molds used in manufacturing; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-39.2-04.3 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.2-04.3. Sales tax exemption for manufacturing or recycling machinery and equipment and primary sector business computer and telecommunications equipment.**

1. Gross receipts from sales of machinery or equipment used directly in manufacturing of tangible personal property for wholesale, retail, or lease are exempt from taxes under this chapter. To be exempt, the machinery or equipment must be used in a new manufacturing plant or in a physical or economic expansion of an existing manufacturing plant. Purchase of replacement machinery or equipment is not exempt unless it results in a physical or economic expansion of the plant.

2. Gross receipts from sales of machinery or equipment used directly in recycling of tangible personal property are exempt from taxes under this chapter. To be exempt, the machinery or equipment must be used in a new recycling facility or in physical or economic expansion of an existing recycling facility. Purchase of replacement machinery or equipment is not exempt unless it results in a physical or economic expansion of the facility.

3. Gross receipts from sales of computer and telecommunications equipment that is an integral part of a new primary sector business or a physical or economic expansion of a primary sector business are exempt from taxes under this chapter. Purchase of replacement equipment is not exempt under this subsection.

4. To qualify for exemption at the time of purchase, the <u>customer,</u> manufacturer, recycler, or primary sector business must receive from the commissioner a certificate stating that the machinery or equipment qualifies for the exemption. If a certificate is not received before the purchase, the <u>customer,</u> manufacturer, recycler, or primary sector business must pay the tax and apply to the commissioner for a refund.

5. If the machinery or equipment is purchased or installed by a contractor subject to tax under this chapter, the manufacturer, recycler, or primary sector business must apply for a refund of the amount remitted by the contractor.

6. For purposes of this section, the following definitions apply:

   a. "Economic expansion" means an increase in production volume, employment, or the types of products that can be manufactured or recycled.

   b. "Equipment":

      (1) <u>For purposes of a customer, means a mold purchased by a customer and used directly by a manufacturer in the manufacturing process;</u>

(2) For purposes of a manufacturer or recycler, means any tangible personal property other than machinery used directly in the manufacturing or recycling process; and

~~(2)~~(3) For purposes of a primary sector business other than manufacturing or recycling, means telecommunications equipment and computer equipment, printers, and software that are an integral part of the operations of the primary sector business.

c. "Machinery" means mechanical devices purchased or constructed by the manufacturer or recycler, or its agent, and used directly in manufacturing or recycling operations at any time from the initial stage where the raw material is first received at the plant site through the completion of the product, including packaging and all processes prior to transportation of the product from the site. The term includes electrical, mechanical, and electronic components that are part of machinery and necessary for a machine to produce its effect or result and environmental control equipment required to maintain certain levels of humidity or temperature in a special and limited area of the manufacturing facility where the regulation is essential for production to occur. The term includes computer equipment that controls or monitors the functions of machinery used directly in the manufacturing operations.

d. "Machinery" and "equipment":

(1) For purposes of a manufacturer or recycler, do not include handtools, buildings, or transportation equipment not used directly in manufacturing or recycling; machines and equipment used primarily in administrative, accounting, sales, or other nonmanufacturing segments of the business; any property that becomes a part of the manufactured or recycled product; or any other equipment or machinery not used directly in manufacturing or recycling; and

(2) For purposes of a primary sector business other than manufacturing or recycling, do not include equipment that is not an integral part of the operations of the primary sector business.

e. "Manufacturing", in addition to the meaning ordinarily ascribed to it, means the processing of agricultural products, including registered and certified seed, but does not include mining, refining, extracting oil and gas, or the generation of electricity.

f. "Primarily" means more than fifty percent of the time the machinery or equipment is used.

g. "Primary sector business" means an individual, corporation, limited liability company, partnership, or association that through the employment of knowledge or labor adds value to a product, process, or service which results in the creation of new wealth and which has been certified by the department of commerce division of economic development and finance to be qualified under this subdivision.

h. "Recycling" means collecting or recovering material that would otherwise be solid waste and performing all or part of the process in which the material becomes a raw material for manufacturing or becomes a product for sale at retail or wholesale.

i. "Used directly" with respect to manufacturing means used primarily in the actual production, processing, fabrication, or assembly of raw materials, or partially finished materials, into the form in which the product is finalized, packaged, and ready for market. The term also means:

(1) To effect a direct physical change upon the tangible personal property.

(2) To guide or measure a direct physical change upon the property when the function is an integral and essential part of tuning, verifying, or aligning the component parts of the tangible personal property.

(3) To test or measure the property on the production line or at a site in the location of production.

(4) To transport, convey, or handle the tangible personal property during the manufacturing.

(5) To package the product for sale and shipment.

(6) To conduct research and development and design activities related to the manufacturing process of the plant.

"Used directly" with respect to recycling means used solely in processing, compacting, altering, transporting, or otherwise affecting material as a part of the recycling process.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2015.

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-fourth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2094.

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| Senate Vote: | Yeas 47 | Nays 0 | Absent 0 |
| House Vote: | Yeas 59 | Nays 32 | Absent 3 |

Secretary of the Senate

Received by the Governor at 8:22A. M. on March 18, 2015.

Approved at 1:50P. M. on March 19, 2015.

Governor

Filed in this office this 19th day of March, 2015,

at 4:03 o'clock P. M.

Secretary of State