

## **ORDINANCE ENACTING A CITY SALES AND USE TAX**

Whereas the City Council of the City of Buffalo, North Dakota, wishes to enact a Sales & Use tax, be it ordained as follows:

### **City Sales and Use Tax**

Section 1	Definition
Section 2	Sales Tax Imposed
Section 3	Use Tax Imposed
Section 4	Exemptions
Section 5	Maximum Tax Imposed
Section 6	Tax Returns and Information Reports
Section 7	Tax Payments; Collections; Penalties
Section 8	Tax Administrator
Section 9	Corporate Officer Liability
Section 10	Deduction to Reimburse Retailer for Administrative Expenses
Section 11	Dedication of Tax Proceeds
Section 12	Penalties
Section 13	Tax Commencement
Section 14	Termination

### **Section 1. Definitions**

All terms defined in chapters 40-05.1, 57-39.2, 57-39.4, 57-39.5, 57-39.6, and 57-40.2 of the North Dakota Century Code (N.D.C.C.), including any future amendments, are adopted by reference. All references to the N.D.C.C. include amendments adopted by the North Dakota Legislative Assembly.

### **Section 2. Collection and Administration.**

Where not in conflict with the provisions of this Ordinance, the provisions of N.D.C.C. chapters 40-05.1, 57-39.2, 57-39.4, 57-39.5, 57-39.6, and 57-40.2, and all administrative rules adopted by the Tax Commissioner, pertaining to the collection and administration of the retail sales, use, and gross receipts tax, including provisions for liability, refund, penalty, interest or credit, govern the administration by the North Dakota Office of State Tax Commissioner (hereinafter "Tax Commissioner") of the taxes imposed by this Ordinance.

### **Section 3. Sales Tax Imposed**

Except as otherwise provided in this Chapter, a tax of two percent (2%) is imposed upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as provided in this section, within the corporate limits of the City of Buffalo, North Dakota, of the following to consumers or users:

1. Tangible personal property, consisting of goods, wares or merchandise, including mobile homes.
2. The furnishing or service of communication services or steam other than steam used for processing agriculture products.
3. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment, or athletic activity, and including the furnishing of bingo cards and playing of any machine for amusement or entertainment in response to the use of a coin. The tax imposed by this section applies only to eighty percent (80%) of the gross receipts collected from coin-operated amusement devices.
4. The leasing or renting of a hotel or motel or tourist court accommodations.
5. The leasing or renting of tangible personal property, the transfer of title to which has not been subjected to a retail sales or use tax under this chapter.
6. Sales of alcoholic beverages and tobacco products as defined in Section 57-39.2.-03.2 NDCC.
7. Furnishing and installment or attachment to real property in this state by a contractor or a subcontractor who is retailer of drapes, hardware for hanging drapes, or carpet for floor covering.
8. Sales through vending machines to the extent taxable by the State under Section 57-39.2-03.3 NDCC.

#### **Section 4. Use Tax Imposed**

Except as otherwise provided in this chapter, an excise tax of two percent (2%) is imposed on the storage, use, or consumption in the city of Buffalo on:

1. The purchase price of tangible personal property, including mobile homes purchased at retail for storage, use, or consumption within the city.
2. The fair market value of tangible personal property, including mobile homes, which was not originally purchased for storage, use or consumption in the city, at the time which it is brought into this city.
3. Alcoholic beverages and tobacco products, which are stored, used or consumed in this city, as, provided in Section 57-40.2-03.2 NDCC.
4. The purchase price of tangible personal property used by a contractor or subcontractor to fulfill a contract as defined in Section 57-40.2-03.3 NDCC. This tax applies only to bids submitted on or after the effective date of this chapter.

With respect to the purchase price of tangible personal property used by a contractor or subcontractor to fulfill a contract as defined in N.D.C.C. § 57-40.2-03.3, the tax imposed by this section applies only to bids submitted on or after the effective date of this Ordinance.

#### **Section 5. Gross Receipts of Alcoholic Beverages.**

Subject to the provisions of N.D.C.C. § 40-05.1-06, and except as otherwise provided in this Ordinance, a gross receipts tax of two percent is imposed upon all gross receipts from the sale of alcoholic beverages within the city. A person who receives

alcoholic beverages for storage, use, or consumption in this state is subject to tax on storage, use, or consumption of those alcoholic beverages at the rate of two percent.

## **Section 6. Gross Receipts of New Farm Machinery and New Farm Irrigation Equipment.**

Subject to the provisions of N.D.C.C. § 40-05.1-06, and except as otherwise provided in this Ordinance, a gross receipts tax of two percent is imposed upon all gross receipts from the sale of new farm machinery and new farm irrigation equipment within the city. A person who receives new farm machinery or new farm irrigation equipment for storage, use, or consumption in this state is subject to tax on storage, use, or consumption of that machinery and/or equipment at the rate of two percent.

## **Section 7. Exemptions**

There are specifically exempted from the provisions of this chapter and from the computation of the amount of tax imposed by it the following:

1. All sales, storage, use, or consumption of tangible personal property, which are exempt from imposition, and computation of the sales or use tax of the State of North Dakota are specifically exempt from the provision of this chapter.

Sales to contractors that are exempt pursuant to subsection 15 of N.D.C.C. § 57-39.2-04 shall be exempt from any city sales tax, but contractors shall be subject to the city use tax on those items used within the city that would be taxed pursuant to N.D.C.C. § 57-40.2-03.3 on which the city sales tax has not previously been paid.

## **Section 8. Maximum Tax Imposed**

No single transaction by the taxpayer from any one customer involving one or more items is subject to a tax in excess of \$25.00.

## **Section 9. Tax Returns and Information Reports**

The tax administrator is authorized to create, publish, and to require the use of, such tax return forms and information reports as are necessary to administer the tax provided for herein. To the extent feasible, these forms shall incorporate or be integrated with the returns and reports required by the State Tax Commissioner under Sections 57-39.2 and 57-40.2 NDCC.

## **Section 10. Tax Payments; Collections; Penalties**

The tax imposed herein shall be paid and collected as nearly as practical in accordance with the payment, collection and penalty provisions of Chapters 57-39.2 and 57-40.2 NDCC.

## **Section 11. Tax Administrator**

The tax administrator shall be the city auditor. However, the city auditor is authorized to contract with the ND State Tax Commissioner to enforce this chapter, subject to confirmation

of the contract by the city commission. If the contract is made and confirmed, the tax administrator shall be the ND State Tax Commissioner as long as the contract remains in force.

### **Section 12. Corporate Officer Liability**

Officers of any corporation required to remit taxes imposed by this chapter are personally liable for the failure of the corporation to file required returns or remit required payments. The dissolution of a corporation shall not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The tax, penalty, and interest due may be assessed and collected pursuant to the provisions adopted by this chapter.

### **Section 13. Deduction to Reimburse Retailer for Administrative Expenses**

1. A retailer who pays the tax due hereunder within the time limitations prescribed may deduct and retain three percent (3%) of the tax due.
2. The aggregate of deductions allowed by this section may not exceed Two Hundred Fifty and No/100 Dollars (\$250.00) per quarterly period for each business location required to remit sales tax hereunder.
3. The deduction allowed retailers by this section is to reimburse retailers for expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying information to the auditor and commission upon request.

### **Section 14. Dedication of Tax Proceeds**

All revenues raised and collected under this article, less administrative expenses, shall be placed in a separate sales and use tax fund which shall be dedicated exclusively as follows.

Of the first one percent (1%) collected shall be allocated in the following ways:

1. Job Development Authority (JDA) – 75%
2. The City of Buffalo – 25%

Of the second one percent (1%) collected shall be allocated in the following ways:

1. Sewer Rehabilitation Project – 100%

### **Section 15. Penalties**

1. If any person fails to file a return or corrected return or to pay any tax within the time required by this chapter or, if upon audit, is found to owe additional tax, such person shall be subject to a penalty as established in Section 57-39.2-18(1) of the North Dakota Century Code. The Municipal Court of the City of Buffalo or any other court of competent jurisdiction may impose such penalty.
2. The certificate of the auditor, or where applicable, the North Dakota State Tax Commissioner to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this chapter, shall be prima facie evidence thereof.
3. Any person failing to comply with any of the provisions of this chapter or failing to remit within the time herein provided the tax due or any use, sale or purchase of tangible personal property subject to said sales and use tax shall, in addition to penalties imposed hereinabove, be subject to a fine, upon conviction in the municipal court, not to exceed Five Hundred Dollars (\$500.00).

**Section 16. Tax Commencement**

The taxes imposed herein shall apply to sales and uses from and after the 1<sup>st</sup> day of July, 2012.

**Section 17. Termination**

This ordinance shall be in full force and effect from and after its final passage, approval and publication.

\_\_\_\_\_  
Mayor Michael Mjor (Signed in office)

State of North Dakota  
City of Buffalo, North Dakota

The foregoing instrument was filed for record in my office on the \_\_\_\_\_ at \_\_\_\_\_ PM and was recorded in the Ordinance Book.

\_\_\_\_\_  
Harmony Venburg (Signed in office)  
City Auditor

First Reading: 8/6/2012  
Second Reading: 9/6/2012  
Publication: 1/1/2013