



## States' Biofuels Statutes

### STATE OF NORTH DAKOTA

*This project was undertaken in partnership with the USDA Office of the Chief Economist, The Office of Energy Policy and New Uses. For information on the full project, visit [States' Biofuels Statutory Citations](#).*

*Current through the 2013 Legislative Session of the North Dakota General Assembly.*

#### **§ 57-39.2-04. (Effective through June 30, 2015) Exemptions**

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

1. Gross receipts from sales of tangible personal property which this state is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of North Dakota.
2. Gross receipts from the sales, furnishing, or service of passenger transportation service and gross receipts from the sales, furnishing, or service of freight transportation service when provided by a common carrier.
3. Repealed by S.L. 1971, ch. 567, § 1.
4. a. Gross receipts from sales of tickets, or admissions to state, county, district, and local fairs.  
  
b. Gross receipts from educational, religious, or charitable activities when the entire amount of net receipts is expended for educational, religious, or charitable purposes. The exemption specified in this subsection does not apply to:
  - (1) Gross receipts from taxable sales in excess of ten thousand dollars per event if the activities are held in a publicly owned facility; or
  - (2) Gross receipts from activities if the seller competes with retailers by maintaining inventory, conducting retail sales on a regular basis from a permanent or seasonal location, or soliciting sales from a website prepared for or maintained by the seller.
- c. Gross receipts derived by any public school district if such receipts are expended in accordance with section 15.1-07-10 or 15.1-07-11.

- d. Gross receipts of a nonprofit music or dramatic arts organization that is exempt from federal income taxation and is organized and operated for the presentation of live public performances of musical or theatrical works on a regular basis.
5. Gross receipts from sales of textbooks to regularly enrolled students of a private or public school and from sales of textbooks, yearbooks, and school supplies purchased by a private nonprofit elementary school, secondary school, or any other nonprofit institution of higher learning conducting courses of study similar to those conducted by public schools in this state.
6. Gross receipts from all sales otherwise taxable under this chapter made to the United States, an Indian tribe, or to any state, including the state of North Dakota, or any of the subdivisions, departments, agencies, or institutions of any state. A political subdivision of another state is exempt under this subsection only if a sale to a North Dakota political subdivision is treated as an exempt sale in that state. The governmental units exempted by this subsection must be issued a certificate of exemption by the commissioner and the certificate must be presented to each retailer whenever this exemption is claimed. For purposes of this subsection, an Indian tribe means a tribal government agency, instrumentality, or political subdivision that performs essential government functions and does not include business entities or agencies the primary purpose of which is to operate a business enterprise.
7. Gross receipts from the sale of drugs sold under a doctor's prescription.
8. Gross receipts from sales of adjuvants, agrichemical tank cleaners and foam markers, commercial fertilizers, fungicides, seed treatments, inoculants and fumigants, herbicides, and insecticides to agricultural or commercial vegetable producers and commercial applicators; chemicals used to preserve agricultural crops being stored; and seeds, roots, bulbs, and small plants to commercial users or consumers for planting or transplanting for commercial vegetable gardens or agricultural purposes.
9. Gross receipts from sales of oxygen sold to any person who purchases it upon the written order of a doctor for the person's own use for medical purposes.
10. Gross receipts from the sale of motor vehicles, farm machinery, alcoholic beverages, gasoline, insurance premiums, gaming tickets, or any other article or product, except as otherwise provided, upon which the state of North Dakota imposes a special tax.
11. Gross receipts from the sale of feed which is fed to poultry or livestock, including breeding stock and wool-bearing stock, for the purpose of producing eggs, milk, meat, fibers, or other products for human consumption and the gross receipts from the sale of feed purchased for the purpose of being fed to draft or fur-bearing animals. The word "feed" as used herein shall be construed to mean and include only salt, grains, hays, tankage, oyster shells, mineral supplements, limestone, molasses, beet pulp, meat and bone scraps, meal, drugs to be used as part of a feed ration, and other generally recognized animal feeds. The term "feed" includes drugs used as part of a feed ration, medicants, disinfectants, wormers, tonics, and like items.
12. Gross receipts from a sale otherwise taxable under this chapter made to a person from an adjoining state which does not impose or levy a retail sales tax, under the following conditions:

- a. The person is in the state of North Dakota for the express purpose of making a purchase.
- b. The person furnishes to the North Dakota retailer a certificate signed by the person in a form as the commissioner may prescribe reciting sufficient facts establishing the exempt status of the sale. Unless the certificate is furnished it must be presumed, until the contrary is shown, that the person was not in the state of North Dakota for the express purpose of making a purchase.
- c. The sale is fifty dollars or more.

13. Gross receipts from the sale of any motor vehicle taxable under the provisions of the motor vehicle excise tax laws of North Dakota. However, gross receipts from the rental of any motor vehicle for fewer than thirty days are not exempt but taxes imposed under home rule authority do not apply to such rentals.

14. Repealed by S.L. 1969, ch. 528, § 24.

15. Gross receipts from sales in which a contractor furnishes to the retailer a certificate which includes the contractor's license number assigned to the contractor under the provisions of chapter 43-07. Such certificate shall be in the form prescribed by the commissioner and shall be furnished by the contractor to the retailer each calendar year prior to the making of any purchases during such calendar year from the retailer without liability for paying the tax to the retailer. Any contractor furnishing such certificate must report and remit the tax to the commissioner on purchases taxable under this chapter made by the contractor in the same manner as retailers remit such tax under this chapter.

16. Gross receipts from the sale of newsprint and ink used in the publication of a newspaper.

17. Gross receipts from the sale of all services furnished by any hospital, infirmary, sanatorium, nursing home, basic care facility, or similar institution to any patient or occupant.

18. Repealed by S.L. 1973, ch. 480, § 6.

19. Repealed by S.L. 1971, ch. 555, § 3.

20. Gross receipts from the sale of food supplies to any public school, to any parochial or private nonprofit school conducting courses of study similar to those conducted by public schools in this state, or to any nonprofit organization, for use by the public, parochial, or private school or nonprofit organization in sponsoring or conducting a lunch program or programs in and for any such public, parochial, or private nonprofit school.

21. Gross receipts from the leasing or renting of motion picture film to motion picture exhibitors for exhibition if the sale of tickets or admissions to the exhibition of the film is subject to the sales tax imposed by this chapter.

22. Gross receipts from the leasing or renting of manufactured homes, modular living units, or sectional homes, whether or not placed on a permanent foundation, for residential housing for periods

of thirty or more consecutive days and the gross receipts from the leasing or renting of a hotel or motel room or tourist court accommodations occupied by the same person or persons for residential housing for periods of thirty or more consecutive days.

23. Food purchased by a student under a boarding contract with a college, university, fraternity, or sorority.

24. Gross receipts from all sales when made to an eligible facility or emergency medical services provider for the use or benefit of its patient or occupant. For the purposes of this subsection:

a. "Eligible facility" means any hospital, skilled nursing facility, intermediate care facility, or basic care facility licensed by the state department of health, or any assisted living facility licensed by the department of human services; and

b. "Emergency medical services provider" means an emergency medical services operation licensed by the state department of health under chapter 23-27.

25. Gross receipts from the sale of Bibles, hymnals, textbooks, and prayerbooks sold to nonprofit religious organizations.

26. Gross receipts from sales of prosthetic devices, durable medical equipment, mobility-enhancing equipment, or supplies for ostomy care or bladder dysfunction. For purposes of this subsection:

a. "Durable medical equipment" means equipment, not including mobility-enhancing equipment, for home use, including repair and replacement parts for such equipment, which:

- (1) Can withstand repeated use;
- (2) Is primarily and customarily used to serve a medical purpose;
- (3) Generally is not useful to a person in the absence of illness or injury; and
- (4) Is not worn in or on the body.

"Durable medical equipment" includes equipment and devices designed or intended for ostomy care and management and equipment and devices used exclusively for a person with bladder dysfunction. An exemption certificate is not required to obtain exemption. Repair and replacement parts as used in this definition include all components or attachments used in conjunction with the durable medical equipment. Repair and replacement parts do not include items which are for single patient use only.

b. "Mobility-enhancing equipment" means equipment, not including durable medical equipment sold under a doctor's written prescription, including repair and replacement parts for mobility-enhancing equipment, which:

- (1) Is primarily and customarily used to provide or increase the ability to move from one place to

another and which is appropriate for use either at home or in a motor vehicle;

(2) Is not generally used by persons with normal mobility; and

(3) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

“Mobility-enhancing equipment” includes crutches and wheelchairs for the use of disabled persons, equipment, including manual control units, van lifts, van door opening units, and raised roofs for attaching to or modifying a motor vehicle for use by a permanently physically disabled person, equipment, including elevators, dumbwaiters, chair lifts, and bedroom or bathroom lifts, whether or not sold for attaching to real property, for use by a permanently physically disabled person in that person’s principal dwelling, and equipment, including manual control units, for attaching to or modifying motorized implements of husbandry for use by a permanently physically disabled person.

c. “Prosthetic device” means a replacement, corrective, or supportive device sold under a doctor’s written prescription, including repair and replacement parts for such a device, worn on or in the body to:

(1) Artificially replace a missing portion of the body;

(2) Prevent or correct a physical deformity or malfunction; or

(3) Support a weak or deformed portion of the body.

“Prosthetic device” includes artificial devices individually designed, constructed, or altered solely for the use of a particular disabled person so as to become a brace, support, supplement, correction, or substitute for the bodily structure, including the extremities of the individual, artificial limbs, artificial eyes, hearing aids, and other equipment worn as a correction or substitute for any functioning portion of the body, artificial teeth sold by a dentist, and eyeglasses when especially designed or prescribed by an ophthalmologist, physician, oculist, or optometrist for the personal use of the owner or purchaser.

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, and other items used for the care and management of bladder dysfunction.

27. Gross receipts from the sale of electricity.

28. Gross receipts from the leasing or renting of any tangible personal property upon which a North Dakota sales tax or use tax has been paid or is payable.

29. Gross receipts from all sales otherwise taxable under this chapter when made to any nonprofit organization for meals, including the containers, packages, and materials used for wrapping food items, for delivery to persons who are confined to their homes by illness or incapacity, including senior citizens and disabled persons, for consumption by such shut-ins in their homes.

30. Gross receipts from all sales of recreational travel trailers not exceeding eight feet [2.44 meters] in width or thirty-two feet [9.75 meters] in length which are designed to be principally used as temporary vacation dwellings when made to persons who are residents of other states which impose excise taxes upon registration of such recreational travel trailers.

31. Gross receipts from the sale of money, including all legal tender coins and currency, and from the sale of precious metal bullion that has been refined to a purity of not less than nine hundred ninety-nine parts per one thousand and is in such form or condition that its value depends upon its precious metal content and not its form.

32. Gross receipts from sales to nonprofit voluntary health associations which are exempt from federal income tax under section 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. 501(c)(3)]. As used in this subsection, a voluntary health association is an organization recognized by the internal revenue service, the national health council, the state tax commissioner, and the North Dakota secretary of state as a nonprofit organization that is exempt under section 501(c)(3) of the United States Internal Revenue Code and meets the following requirements: It has been organized and operated exclusively in providing services for the purposes of preventing and alleviating human illness and injury. Methods used to obtain these goals would include education, research, community service, and direct patient services, income being derived solely from private donations with some exceptions of a minimal membership fee. Its members are not limited to only individuals, who themselves are licensed or otherwise legally authorized to render the same professional services as the organization. The disbursement of funds within a volunteer health association is to be controlled by a board of directors who work voluntarily and without pay.

33. Repealed by S.L. 2005, ch. 580, § 19.

34. Gross receipts from the sale of byproducts, arising from the processing of agricultural products, for use in the manufacture or generation of steam or electricity.

35. Gross receipts from the sale of a manufactured home that has been sold, bargained, exchanged, given away, or transferred by the person who first acquired it from a retailer in a sale at retail and upon which the North Dakota sales tax has previously been imposed.

36. Gross receipts from all sales of insulin in all its forms dispensed pursuant to the direction of a licensed physician, all sales of glucose usable for treatment of insulin reactions, all sales of urine and blood testing kits and materials, and all sales of insulin measuring and injecting devices, including insulin syringes and hypodermic needles.

37. Gross receipts from the sale of any aircraft taxable under the provisions of chapter 57-40.5.
38. Gross receipts from all sales of air carrier transportation property subject to ad valorem property taxation pursuant to the provisions of chapters 57-06, 57-07, 57-08, 57-13, and 57-32.
39. Gross receipts from sales of tangible personal property consisting of flight simulators or mechanical or electronic equipment for use in association with a flight simulator.
40. Gross receipts from sales of tickets or admissions to, or sales made at, an annual church supper or bazaar held in a publicly owned facility. For purposes of this subsection, “annual” means occurring not more than once in any calendar year.
41. Gross receipts from the initial sale of beneficiated coal.
42. Gross receipts from electronic gaming devices licensed by the attorney general under chapter 53-06.1.
43. Gross receipts from all sales made to a nonprofit medical research institute. For purposes of this subsection, “nonprofit medical research institute” means an institute that is a member of the association of independent research institutes, which is not a private foundation, and which is recognized by the internal revenue service as having exempt status under 26 U.S.C. 501(c)(3).
44. Gross receipts from all sales of coal that is exempt from the coal severance tax.
45. Gross receipts from the sale or lease of farm machinery, farm machinery repair parts, irrigation equipment, or irrigation equipment repair parts used exclusively for agricultural purposes.
46. Gross receipts from sales of tangible personal property purchased by a charitable organization to be awarded as a prize in a raffle conducted in accordance with law if the winner of the tangible personal property will be subject to sales or use taxes upon receiving the property.
47. Gross receipts from the sale of lottery tickets under chapter 53-12.1.
48. Gross receipts from all sales of tangible personal property purchased by a commerce authority and made a part of the infrastructure of a commerce authority, otherwise taxable under this chapter, if the personal property is placed within the geographic boundaries of the political subdivisions that created the commerce authority and is necessary and directly services infrastructure needs of the commerce authority. The commissioner shall issue a certificate of exemption to a political subdivision exempted by this subsection, and the political subdivision shall present the certificate of exemption to each retailer whenever the exemption is claimed.
49. Gross receipts from sales of carbon dioxide used for enhanced recovery of oil or natural gas.
50. Gross receipts from the sale at retail of hydrogen to power an internal combustion engine or fuel cell and equipment used directly and exclusively in production and storage of the hydrogen by a hydrogen generation facility in this state. For purposes of this subsection, “storage” means stationary

and portable hydrogen containers or pressure vessels, piping, tubing, fittings, gaskets, controls, valves, gauges, pressure regulators, safety relief devices, and other accessories intended for hydrogen storage containers or pressure vessels.

51. Gross receipts from the sale of equipment to a facility, licensed under section 57-43.2-05, to enable the facility to sell diesel fuel containing at least two percent biodiesel or green diesel fuel as defined under section 57-43.2-01 by volume.

52. Gross receipts from sales within the boundaries of any reservation in this state to an individual who resides within the boundaries of any reservation in this state and who is an enrolled member of a federally recognized Indian tribe.

53. Gross receipts from sales of natural gas or sales of fuels used for heating purposes.

54. Gross receipts from the sale of items delivered electronically, including specified digital products. For purposes of this subsection:

a. "Specified digital products" means:

(1) "Digital audio-visual works" which means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any;

(2) "Digital audio works" which means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones; and

(3) "Digital books" which means works that are generally recognized in the ordinary and usual sense as books.

b. For purposes of the definition of "specified digital products", "transferred electronically" means obtained by the purchaser by means other than tangible storage media.

c. For purposes of the definition of "digital audio work", "ringtones" means digitized sound files that are downloaded onto a device and which may be used to alert the customer with respect to a communication.

d. "Specified digital products" may not be construed to include prewritten computer software as that term is defined in subdivision g of subsection 1 of section 57-39.2-02.1.

55. Gross receipts from memberships, admissions, and entrance fees to activities and events organized and operated by nonprofit social and recreation clubs organized under section 501(c)(7) of the Internal Revenue Code [26 U.S.C. 501(c)(7)] and operated solely by nonsalaried officers and staff.

56. Gross receipts from the sale of any potash or byproducts taxable under chapter 57-65.

57. Gross receipts from coin-operated amusement or entertainment machines.



58. Gross receipts from sales of liquefied natural gas used for agricultural, industrial, or railroad purposes as defined in section 57-43.2-01.

**Credits:** S.L. 1967, ch. 459, § 4; S.L. 1967, ch. 460, § 2; S.L. 1969, ch. 472, § 3; S.L. 1969, ch. 520, § 1; S.L. 1969, ch. 521, § 1; S.L. 1969, ch. 522, § 1; S.L. 1969, ch. 523, § 1; S.L. 1969, ch. 528, § 24; S.L. 1971, ch. 176, § 2; S.L. 1971, ch. 555, § 3; S.L. 1971, ch. 567, § 1; S.L. 1971, ch. 568, § 1; S.L. 1971, ch. 569, § 1; S.L. 1971, ch. 570, § 1; S.L. 1971, ch. 571, § 1; S.L. 1971, ch. 572, § 1; S.L. 1973, ch. 479, § 1; S.L. 1973, ch. 480, §§ 1, 6; S.L. 1973, ch. 481, § 1; S.L. 1975, ch. 546, § 1; S.L. 1975, ch. 547, § 1; S.L. 1975, ch. 548, § 1; S.L. 1975, ch. 549, § 1; S.L. 1975, ch. 550, § 1; S.L. 1975, ch. 551, § 1; S.L. 1977, ch. 543, § 1; S.L. 1977, ch. 544, § 2; S.L. 1977, ch. 545, § 1; S.L. 1977, ch. 546, § 1; Init. Measure, approved Nov. 2, 1976; S.L. 1977, ch. 593, § 4; S.L. 1979, ch. 598, § 6; S.L. 1979, ch. 615, § 2; S.L. 1979, ch. 616, § 1; S.L. 1979, ch. 617, § 1; S.L. 1979, ch. 618, § 1; S.L. 1981, ch. 598, § 3; S.L. 1981, ch. 601, § 2; S.L. 1981, ch. 602, § 2; S.L. 1981, ch. 603, § 1; S.L. 1981, ch. 604, § 1; S.L. 1981, ch. 605, §§ 1, 2; S.L. 1983, ch. 592, § 6; S.L. 1983, ch. 644, § 2; S.L. 1983, ch. 647, § 2; S.L. 1987, ch. 670, § 2; S.L. 1987, ch. 709, § 1; S.L. 1987, ch. 710, § 1; S.L. 1987, ch. 711, § 1; S.L. 1989, ch. 170, § 8; S.L. 1989, ch. 317, § 13; S.L. 1989, ch. 717, § 1; S.L. 1989, ch. 718, § 1; S.L. 1989, ch. 719, § 1; S.L. 1991, ch. 677, § 1; S.L. 1991, ch. 678, § 1; S.L. 1993, ch. 562, § 1; S.L. 1993, ch. 563, § 1; S.L. 1993, ch. 564, § 1; S.L. 1995, ch. 243, § 2; S.L. 1997, ch. 496, § 2; S.L. 1997, ch. 497, § 1; S.L. 1999, ch. 164, § 11; S.L. 2001, ch. 534, § 3; S.L. 2001, ch. 535, § 3; S.L. 2001, ch. 536, § 2; S.L. 2001, ch. 537, § 1; S.L. 2003, ch. 96, § 21; S.L. 2003, ch. 454, § 6; S.L. 2003, ch. 524, § 5; S.L. 2003, ch. 536, § 1; S.L. 2003, ch. 539, §§ 6 to 10; S.L. 2005, ch. 15, § 40; S.L. 2005, ch. 94, § 5; S.L. 2005, ch. 470, § 7; S.L. 2005, ch. 571, §§ 1, 2; S.L. 2005, ch. 572, § 1; S.L. 2005, ch. 573, § 1; S.L. 2005, ch. 574, § 3; S.L. 2005, ch. 575, § 1; S.L. 2005, ch. 580, §§ 7, 19; S.L. 2005, ch. 582, § 2; S.L. 2007, ch. 513, § 3, eff. July 1, 2007; S.L. 2007, ch. 528, § 5, eff. July 1, 2007; S.L. 2007, ch. 529, §§ 3, 4, eff. July 1, 2009; S.L. 2009, ch. 556, §§ 3, 4, eff. July 1, 2009; S.L. 2009, ch. 557, § 2, eff. July 1, 2009; S.L. 2009, ch. 560, § 1, eff. July 1, 2009; S.L. 2009, ch. 561, § 1, eff. Apr. 23, 2009; S.L. 2009, ch. 562, § 1, eff. July 1, 2009; S.L. 2009, ch. 563, § 1, eff. July 1, 2009; S.L. 2011, ch. 460, § 13, eff. July 1, 2011; S.L. 2011, ch. 465, § 3, eff. July 1, 2012; S.L. 2011, ch. 466, § 1, eff. July 1, 2011; S.L. 2011, ch. 467, § 1, eff. April 27, 2011; S.L. 2011, ch. 468, § 1, eff. July 1, 2011; S.L. 2011, ch. 486, § 2, eff. July 1, 2011; S.L. 2013, ch. 458, § 2, eff. July 1, 2013; S.L. 2013, ch. 459, § 1, eff. July 1, 2013.