

FISCAL NOTE
Requested by Legislative Council
01/23/2015

Amendment to: HB 1133

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed HB 1133 proposes changes to certain tax statutes for administrative purposes. There is no fiscal impact.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 328-3402

Date Prepared: 01/26/2015

FISCAL NOTE
Requested by Legislative Council
01/23/2015

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Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 328-3402

Date Prepared: 01/26/2015

FISCAL NOTE
Requested by Legislative Council
12/22/2014

Bill/Resolution No.: HB 1133

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Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 328-3402

Date Prepared: 01/09/2015

2015 HOUSE FINANCE AND TAXATION

HB 1133

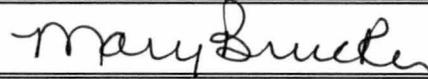
2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1133
1/13/2015
21889

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A Bill relating to minimum tax payments and refunds, offsets of overpaid local option taxes from future distributions, the effect of the expiration of the federal research tax credit on the state income tax credit for research and experimental expenditures, and exemptions from motor vehicle excise tax; relating to tax reporting of domestic wineries, domestic distilleries, and brewer taprooms, authority of the tax commissioner to adopt rules, offsets of restaurant, restaurant and lodging, and city motor vehicle rental taxes from future distributions, definition of tobacco products, taxation of tobacco products, estimated income tax requirements for corporations, articles taxed in other states or political subdivisions of other states, and establishing energy per volume equivalent of liquefied natural gas for special fuels tax purposes.

Minutes:

Attachment #1 and 2 (proposed amendment)

Chairman Headland: Opened hearing. Clerk read the title of the bill.

Myles Vosberg, Director Tax Administration Division: Introduced bill. Submitted written testimony. See attachments #1 and 2 (Proposed amendments dated January 13, 2015 by the Office of State Tax Commissioner).

Chairman Headland: In section 8 when you are referencing the change, do you think the language you have written into the bill leaves it open to interpretation by a future tax commissioner or tax commission employees that maybe would see similar other products such as electronic cigarettes as tobacco products?

Myles Vosberg: We didn't think so. We don't think that products that just have nicotine are tobacco products. We don't object if you want some further clarification but at this point we didn't think that was an issue.

Chairman Headland: We could easily incorporate language into this bill that simply spells out what it does not include, correct?

Myles Vosberg: We could. Right now the definition says it's all other tobacco products that are not defined in the law. We could add language saying specifically what it does not include.

Chairman Headland: With what I see from certain organizations out there that are looking to tax the vapor cigarettes as tobacco products, I think that it might be important to incorporate it into this amendment and into this legislation.

Myles Vosberg: If you want us to do that we can certainly do that.

Chairman Headland: I would like you to do that.

Representative Trottier: The current rate is 28 percent?

Myles Vosberg: The current rate for cigars and other tobacco products, other than snuff and chewing tobacco, is 28 percent. The snuff and the chewing tobacco are so many cents per ounce.

Chairman Headland: Further questions? Is there any testimony in support of 1133? Is there any opposition to 1133? Seeing none we will close the hearing on HB 1133.

2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1133
1/19/2015
22155

- Subcommittee
 Conference Committee

Committee Clerk Signature

Mary Brucker

Explanation or reason for introduction of bill/resolution:

A Bill relating to minimum tax payments and refunds, offsets of overpaid local option taxes from future distributions, the effect of the expiration of the federal research tax credit on the state income tax credit for research and experimental expenditures, and exemptions from motor vehicle excise tax; relating to tax reporting of domestic wineries, domestic distilleries, and brewer taprooms, authority of the tax commissioner to adopt rules, offsets of restaurant, restaurant and lodging, and city motor vehicle rental taxes from future distributions, definition of tobacco products, taxation of tobacco products, estimated income tax requirements for corporations, articles taxed in other states or political subdivisions of other states, and establishing energy per volume equivalent of liquefied natural gas for special fuels tax purposes.

Minutes:

Attachment #1

Chairman Headland: I had asked for an amendment for clarification. I asked what consists of a tobacco product and what is not considered a tobacco product and clarification language. There are some groups that are trying to tax non-tobacco products with a tobacco tax. I think that's what the amendment does but we can wait for Mr. Rouse to come down and explain it if you care to?

Chairman Headland: Committee, we can discuss this later.

Written testimony from Julie Ketchum, Director of Government Affairs for Waste Management, Inc. submitted. She was not present at the hearing but this testimony was distributed to committee members. See attachment #1.

2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1133
1/20/2015
22209

- Subcommittee
 Conference Committee

Committee Clerk Signature

Mary Bruecker

Explanation or reason for introduction of bill/resolution:

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Minutes:

Attached amendments #1 dated January 13, 2015

Chairman Headland: This is a tax department bill. I asked Dan Rouse for an amendment.

Representative Hatlestad: If there is nicotine involved, doesn't that make it a tobacco product?

Chairman Headland: No, not by the definition of what a tobacco product currently is and that's what we're trying to determine here. Nicotine is not just derived from tobacco. I think the vapor or electronic cigarettes are not derived from tobacco in any way. I believe this language is what's modeled in a definition in another bill dealing with these vapor products.

Representative Haak: Is this exempting a tax on these tobacco products?

Chairman Headland: It is not exempting anything; it's defining what is considered for tax purposes what a tobacco product is and in this case what is not a tobacco product.

Representative Hatlestad: We will not tax the e-cigarette as a tobacco product?

Chairman Headland: That is the intent.

Representative Froseth: There isn't a tax on the e-cigarettes now. I think there will be a bill coming that will put more tax on them. It will put the same restrictions to purchase e-

cigarettes as tobacco products. Presently there are no restrictions on who purchases them and how they're sold.

Chairman Headland: I would suspect it's just a normal sales tax. However, there is a movement that is clearly going to attempt to try and tax these as a tobacco product. When these products are not derived from tobacco we feel as policy that it's not a tobacco product. If there's a difference means for taxation then bring it to the committee for that policy issue. We are clarifying that a tobacco product is derived from tobacco and anything that is not derived from tobacco cannot be considered a tobacco product for tax purposes.

Representative Hatlestad: Where do we get our nicotine then? Is that a chemical lab creation?

Chairman Headland: I don't know where that is derived but I do know that it does not come specifically from tobacco.

Representative Klein: These amendments were put together by the tax department to be added to this?

Chairman Headland: That is correct. I requested a definition for clarification as to what is considered tobacco and what is not. The tobacco industry, in fairness, sell and market tobacco products and also are getting into a new line of business where they market these vapor products and such. They want clarification of what is considered tobacco and what is not. In fairness, they don't believe that since it's not a derivative from tobacco it should not be taxed as tobacco.

Representative Klein: With that I would move the amendment.

Chairman Headland: I think we need Dan Rouse from the tax department here to explain the amendment.

Chairman Headland: We are looking at amendments.

Dan Rouse, Legal Counsel for the Office of Tax Commissioner: Explained amendments. See attached amendments #1 dated January 13, 2015. This redefines the phrase "other tobacco products" on page 14 line nineteen. The purpose was to specifically clarify that this was not to include e-cigarettes, cigarillos, e-pipes, rather non-combustible products. This language is commonly used in the industry meaning no e-cigs. That was our understanding of your request and that is the purpose of that amendment.

Representative Hatlestad: Is nicotine derived from tobacco or from some chemistry lab somewhere?

Dan Rouse: It's my understanding that nicotine is primarily and historically derived from tobacco products. However, it is not limited to just coming from a tobacco product; it can be chemically manufactured.

Representative Hatlestad: If it primarily comes from tobacco, how can we say it's not a tobacco product? Would they have to prove the nicotine they have is not derived from tobacco in order to utilize this definition?

Dan Rouse: As it is written it is not clear. Further work may be necessary on that. I would like to visit with the tobacco coalition folks to see if they have any instructive language.

Myles Vosberg, Director of Tax Administration with the Office of State Tax Commissioner: My understanding is that you wanted a definition to exclude the electronic products. They are associated with nicotine so I think it's a matter of the definition you want.

Chairman Headland: I think the definition you provided here is the same definition being used in another bill.

Dan Rouse: That's correct. That's a little different from the direction you're asking.

Representative Hatlestad: A few people who've talked to me asked that if you're using nicotine how you cannot tax it as a tobacco product.

Chairman Headland: My response would be then how would we tax Nicorette, nicotine gum. Do we have a 28% tax on that? What are we trying to accomplish here?

Dan Rouse: I'd be happy to work with you to get you where you want to be.

Chairman Headland: I think we'll hold off on this until we see the results of the bill being heard in judiciary so we have some consistency in a definition.

Representative Froseth: Ask about the tax structure.

Chairman Headland: Today Representative Froseth was asking how we're taxing the vapor products; just a regular sales tax?

Dan Rouse: Yes, sir. It's treated as tangible personal property subject to sales tax as any other thing would be that's otherwise taxable.

Chairman Headland: We'll hold off on this particular amendment.

Representative Schneider: Could we request the tax department also prepare us an amendment with the other perspective too so we could look at an amendment that would include these products? Then we could have something to compare or choose from just in case we are in a leadership position with judiciary and we can help them out with their selections as well.

Chairman Headland: As an elected representative you are entitled to get any amendment drafted that you choose. At your request the tax department will try to accommodate your requests and follow your instructions to include in an amendment.

Representative Schneider: Thank you, Mr. Chairman.

Dan Rouse: I think that was part of the Genesis of the request for an amendment to clarify that. As I understood it, in its amended form as proposed to you in the original version of HB 1133 other tobacco products could be interpreted to mean a product such as an e-cigarette. If it bears further clarification to satisfy you I would be happy to provide that.

Representative Schneider: If you as an attorney think it would need further clarification then I would like to see how you would clarify that.

Dan Rouse: Yes ma'am.

Representative Hatlestad: I get the impression that this amendment will continue what we are now doing which is not taxing it as a tobacco product.

Chairman Headland: Correct. I believe that would be the end result. I asked for this amendment to get this clarified that we would continue that practice and not move to taxing it as a tobacco product.

Representative Toman: Do we currently tax rolling papers for rolling your own cigarettes at 28 percent?

Dan Rouse: I will have to defer to Myles on that.

Myles Vosberg: The papers only.

Vice Chairman Owens: We've got a lot to tax here if we're going to tax nicotine because apparently nicotine is contained in cauliflower, eggplant, potatoes, tomatoes, etc.

Representative Toman: Do you know what the milligrams are?

Vice Chairman Owens: One microgram of nicotine is the amount a smoker would absorb and about three hours in a room. There are a number of studies dealing with the effects they assumed nonsmokers with nicotine in their system got it from passive cigarette smoke which is what the tobacco Nazis want us to believe. They found it in common vegetables so they are basing it on micrograms of nicotine in a gram and eggplant is one hundred.

Chairman Headland: Thank you. I think you've made the point we were trying to get across here very articulately.

Dan Rouse: We are going to have one more set of amendments with something added that was overstricken that should not have been now that we are changing what we are doing.

Chairman Headland: We will wait for these updated amendments and will adjourn for the time being.

2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1133
1/21/2015
22320

- Subcommittee
 Conference Committee

Committee Clerk Signature

Mary Brucker

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Minutes:

Attachment #1 dated January 13, 2015 and #2 dated January 21, 2015

Chairman Headland: We were handed a new amendment from the tax department. I think we should have Dan Rouse here to explain it. See attached amendments #2 dated January 21, 2015.

Chairman Headland: We have this other amendment that I had drafted from January 13, 2015 we could talk about. See attachment #1.

Representative Klein: Which amendments are we looking at?

Chairman Headland: We will be looking at the amendment from January 13, 2015 while we're waiting for Dan Rouse. This attempts to define what other tobacco products do not include. We're open to discussion on this.

Representative Klein: Made a motion to move the amendments from January 13, 2015.

Representative Dockter: Seconded.

Representative Strinden: I not a person that believes in sin taxes and I'm kind of going to speak up for the big tobacco companies right now. We talk a lot about fairness in this committee and it seems to me that it is unfair to the pipe tobacco and chewing tobacco if

other products with the same drug that gets you addicted are not taxed in the same way? That's my concern with the definitions we've been talking about.

Chairman Headland: I would look at it in exactly the opposite fashion. When we are talking about a product that includes something we have a broad definition. Are we going to tax cauliflower and all the other vegetables that have nicotine in them as tobacco products as well?

Representative Strinden: That's an interesting idea. I would say that we should tax nicotine only at the level where it can become an addiction problem so we probably wouldn't include cauliflower and eggplant and all that. Those are just my thoughts. I'm not going to fight with anybody on this. I just don't think it's fair for the big tobacco when you get down to it.

Chairman Headland: I don't think you need to worry about big tobacco because they are the ones that are asking for us to define what products they have that are taxable as tobacco and what products they offer that are not.

Representative Froseth: To charge sales tax on electronic devices and equating the sales tax...if you pay \$4 for a pack of whatever and five of these pen like things you pay 5% state sales tax, \$.20, does that equate to the same as the \$.44 a pack state tax on a pack of cigarettes?

Representative Strinden: I had asked the American Lung Association the same question. A pack of cigarettes in North Dakota on average is about \$6.50 and it's taxed at \$.44 a pack so it's being taxed at about nine percent sales tax which is about three percent higher than most regular sales tax across the board. I think the rolling papers for cigarettes are taxed at regular sales tax because they don't include tobacco so I would think it would make sense to tax at the regular sales tax the pipes and things but the actual nicotine in them be taxed at the nicotine level.

Representative Froseth: We previously passed legislation to regulate the business of rolling cigarettes but the tobacco is bought in bulk and you pay the tax on the bulk rate like you do with chewing tobacco or something that is used to roll your own.

Representative Hatlestad: When I look at the product and see the word nicotine I believe it should be taxed as a tobacco product.

Representative Trottier: I know some people have been able to quit cigarettes using the e-cigarettes.

Chairman Headland: Seeing no more discussion we have a motion to adopt the amendments. All in favor say aye, nay. Amendment motion passes.

Dan Rouse, Legal Counsel for the Office of Tax Commissioner: Distributed amendments dated January 21, 2015. See attached amendments #1. The only change we made from the original version is on page five of that set of amendments. We inadvertently overstruck the language lines eight and nine. There are still some tobacco

products that have to be measured by weight. Since we modified the definition of other tobacco products we had to take that phrase out and emphasize that weight based computation is still necessary for snuff and chewing tobacco.

Chairman Headland: Does this amendment fit with the other amendment that was drafted that we just put on the bill?

Dan Rouse: We drafted that amendment at your request so we ensured that it augured well with the rest of the bill including the other amendments.

Representative Froseth: The description of the bill given by the Office of Tax Commissioner would still follow the amended version?

Dan Rouse: Yes, this was a tax geeky kind of change we had to make to make the law functional. We're happy to work with whoever is responsible for carrying this to the floor.

Representative Dockter: Made a motion to add the proposed amendments dated January 21, 2015 to HB 1133.

Representative Klein: Seconded.

Chairman Headland: All in favor of the proposed amendment say aye, same sign. Motion carries to adopt amendment from January 21, 2015.

Chairman Headland: We have the amended version of HB 1133 before us. What are your wishes?

Representative Froseth: Made a motion for a Do Pass.

Representative Klein: Seconded.

Chairman Headland: Discussion on amended HB 1133?

Representative Schneider: Just for clarification, now we've eliminated all electronic cigarette products from this regardless of whether the nicotine is as harmful as cigarettes?

Chairman Headland: We haven't removed anything. We've added language that defines them as something other than tobacco and for taxation purposes they would not be defined as tobacco.

Roll call vote: 10 yes 4 no 0 absent
Motion carries.

Representative Froseth will carry this bill.

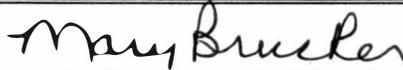
2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1133
1/26/2015
22553

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

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Minutes:

Chairman Headland: We got 1133 back because when the amendments from the tax department were put on by the committee when they were transcribed by legislative council some things were left out. I don't really think there's any action we have to do. Council is going to correct them and then they will go back to the floor.

2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1133

2/9/2015

23489

Subcommittee

Conference Committee

Committee Clerk Signature

Mary Brucker

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Minutes:

Attachment #1

Chairman Headland: Distributed amendments dated February 4, 2015 from the tax department. See attachment #1.

Representative Froseth: This bill doesn't have any amendments on it now, correct?

Chairman Headland: The amendments have been stripped off by the floor action so it's sitting in its original version. This amendment now would allow for corrections the tax department has asked for minus the change in the sales tax remittance of wineries and removes all reference to tobacco products otherwise it's the same amendment. I'm wondering if we will need both amendments so we will wait for Mr. Rouse to explain. Dan, do we need both amendments?

Dan Rouse, Legal counsel for the Office of State Tax Commissioner: No, those prior amendments do not exist in a legal sense. You have before you the February 4 amendments and only those.

Chairman Headland: They take out the policy change for our domestic wineries as well as all language associated with tobacco tax?

Dan Rouse: That's correct. They do two things; we wanted to bring domestic wineries and distilleries into a more regular cycle of reporting to us. They still don't have that much volume in North Dakota to report but we thought that as they continue to get bigger we would ask for it more in line with the three tier system. We can make due with the reporting as it is now annually; it was our wish list. Regarding the amendment that deals with tobacco, there are other tobacco bills out there and we would like to wait and see what they are before we go further with this. I know there was some confusion as to whether or not the e-cigarettes and similar products were defined as other tobacco products as the definition stands now. It is our considered opinion and our continued policy that we do not consider those to be other tobacco products. At this point in time we are following our standard practice which is to defer to you all to set our policy parameters. The government sets a structure then we follow suit so we would like to defer and see if the federal government is going to come up with anything. In the meantime the devices are still subject to a sales tax at the state and local levels.

Chairman Headland: I think everybody understands that. What do you want to do with this?

Representative Dockter: MADE A MOTION TO ADOPT THE AMENDMENTS DATED FEBRUARY 4, 2015.

Vice Chairman Owens: SECONDED.

VOICE VOTE: MOTION CARRIED.

Vice Chairman Owens: MADE A MOTION FOR A DO PASS AS AMENDED.

Representative Dockter: SECONDED.

ROLL CALL VOTE: 14 YES 0 NO 0 ABSENT
MOTION CARRIES.

Representative Froseth will carry this bill.

PROPOSED AMENDMENTS TO HOUSE BILL 1133

Page 4, line 19, after the period insert “Other tobacco products” do not include any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar noncombustible product, or device containing nicotine which employs a heating element, electronic circuit, or other electronic, chemical or mechanical means, regardless of shape or size, which can be used to produce vapor from nicotine in a solution or other form, or any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device.”

PROPOSED AMENDMENTS TO HOUSE BILL 1133

Page 1, line 8, replace "subsection 10" with "subsections 5, 6, 7, 10, 15, and 16,"

Page 1, line 8, replace the second "section" with "sections 57-36-02, 57-36-04, 57-36-05, 57-36-09, 57-36-09.1, 57-36-24,"

Page 1, line 8, after "57-36-25," insert "57-36-26, 57-36-28, 57-36-29, and 57-36-33"

Page 1, line 9, replace the second "section" with "sections 57-39.2-03.9, 57-40.2-03.2, and"

Page 1, line 14, after "corporations," insert "sales tax and use tax on tobacco products,"

Page 4, line 16, replace "Subsection" with "Subsections 5, 6, 7,"

Page 4, line 16, after "10" insert ", 15, and 16"

Page 4, line 17, replace "is" with "are"

Page 4, after line 17, insert:

5. "Consumer" means any person who has title to or possession of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products in storage, for use or other consumption in this state.
6. "Dealer" includes any person other than a distributor who is engaged in the business of selling cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff or other tobacco products, or any product of a cigarette-making machine.
7. "Distributor" includes any person engaged in the business of producing or manufacturing cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products, or importing into this state cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products, for the purpose of distribution and sale thereof to dealers and retailers."

Page 4, after line 19, insert:

15. "Storage" means any keeping or retention of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products for use or consumption in this state.
16. "Use" means the exercise of any right or power incidental to the ownership or possession of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products.

SECTION 9. AMENDMENT. Section 57-36-02 of the North Dakota Century Code is amended and reenacted as follows:

57-36-02. Distributors and dealers to be licensed. Each person engaged in the business of selling cigarettes, cigarette papers, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products in this state, including any distributor or dealer, must secure a license from the attorney general before engaging or continuing to engage in business. A separate application and license is required for each distributor at each outlet or place of business within the state, and a separate dealer's license is required for each retail outlet when a person owns or controls more than one place of business dealing in cigarettes, cigarette papers, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products. No retailer will be granted a distributor's license except a retailer who, in the usual course of business, performed a distributor's or wholesaler's function for at least one year prior to filing the license application. The application prescribed by the attorney general must include the name and address of the applicant, the address and place of business, the type of business, and other information as required for the proper administration of this chapter. Each application for a wholesale or distributor's outlet license must be accompanied by a fee of twenty-five dollars and a surety bond approved by the attorney general. Each application for a dealer's outlet license must be accompanied by a fee of fifteen dollars. A reinstatement fee of fifty dollars is required in addition to the annual license fee for each license renewal applied for after June thirtieth. The total reinstatement fee may not exceed five hundred dollars for any one licensee in any fiscal year. A distributor's license does not authorize the holder to make retail sales. Each license issued must be prominently displayed on the premises covered by the license.

SECTION 10. AMENDMENT. Section 57-36-04 of the North Dakota Century Code is amended and reenacted as follows:

57-36-04. Revocation of license - Penalty. The attorney general may revoke the license of any dealer or distributor for failure to comply with any of the provisions of this chapter, or any of the rules or regulations prescribed by the tax commissioner or the attorney general. When a license has been legally revoked, no license may be issued again to the licensee for a period of one year thereafter. A person may not sell any cigarettes, cigarette papers, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products after that person's license has been revoked as provided in this chapter.

SECTION 11. AMENDMENT. Section 57-36-05 of the North Dakota Century Code is amended and reenacted as follows:

57-36-05. Unlawful to sell without license. A dealer or distributor may not sell cigarettes, cigarette papers, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products in this state at wholesale or at retail unless a license has been issued to that dealer or distributor as prescribed by this chapter, and a person may not sell, offer for sale, or possess with the intent to sell, any cigarettes, cigarette papers, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products without such license.

SECTION 12. AMENDMENT. Section 57-36-09 of the North Dakota Century Code is amended and reenacted as follows:

57-36-09. Records to be kept by distributors and reports made - Penalty. Distributors shall keep records and make reports relating to purchases and sales of cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products made by them, and must be punished for failure so to do, as follows:

1. Each distributor who shall dispose of cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff or other tobacco products shall keep and preserve for one year all invoices of cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products purchased by the distributor and shall permit the state tax commissioner, and assistants, authorized agents, or representatives of the state tax commissioner, to inspect and examine all taxable merchandise, invoices, receipts, books, papers, and memoranda as may be deemed necessary by the state tax commissioner, and assistants, authorized agents, or representatives of the state tax commissioner in determining the amount of the tax as may be yet due. Each person selling or otherwise disposing of cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products as a distributor shall keep a record of all sales made within the state showing the name and address of the purchaser and the date of sale. For sales of other tobacco products, the records must also include the net weight in ounces, as listed by the manufacturer.

2. On or before the fifteenth day of each month, each licensed distributor, on such form as the state tax commissioner shall prescribe, shall report to the tax commissioner all purchases and sales of cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products made from or to any persons either within or without this state during the preceding month. For sales of other tobacco products, each licensed distributor shall also report to the tax commissioner the net weight in ounces, as listed by the manufacturer. The tax levied by this chapter is payable monthly and must be remitted to the tax commissioner by each licensed distributor on or before the fifteenth day of the month following the monthly period.

3. Any person failing to file any prescribed form or return or to pay any tax within the time required or permitted by this section is subject to a penalty of five percent of the amount of tax due or five dollars, whichever is greater, plus interest of one percent of the tax per month or fraction of a month of delay except the first month after the return or the tax became due. The tax commissioner, if satisfied that the delay was excusable, may waive all or any part of the penalty. The penalty must be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.

SECTION 13. AMENDMENT. Section 57-36-09.1 of the North Dakota Century Code is amended and reenacted as follows:

57-36-09.1. Warehouse - Record of deliveries and shipments. Records of all deliveries of shipments of cigarettes, cigars, pipe tobacco, chewing tobacco, and snuff, or other tobacco products from a licensed public warehouse to persons within this state must be kept by the warehouse and be available to the tax commissioner for inspection. They must show the name and address of the consignee, the date, the quantity of cigarettes, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products delivered, and such other information as the tax commissioner may require. These records must be preserved for one year from the date of delivery of the cigarettes, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products.

SECTION 14. AMENDMENT. Section 57-36-24 of the North Dakota Century Code is amended and reenacted as follows:

57-36-24. Exemptions. All gift cigarettes, snuff, cigars, pipe tobacco, chewing tobacco, and other tobacco products, not for resale, which are given to the North Dakota veterans' home or the North Dakota state hospital for distribution to the occupants thereof, are exempt from the excise taxes levied under this chapter."

Page 5, after line 28, insert:

"SECTION 16. AMENDMENT. Section 57-36-26 of the North Dakota Century Code is amended and reenacted as follows:

57-36-26. Cigars, pipe tobacco, chewing tobacco, snuff and other tobacco products - Excise tax payable by dealers - Reports - Penalties - Collection - Allocation of revenue.

1. There is levied and assessed, upon all cigars and pipe tobacco purchased in another state and brought into this state by a dealer for the purpose of sale at retail, an excise tax at the rate of twenty-eight percent of the wholesale purchase price and, upon all chewing tobacco, snuff, and other tobacco products purchased in another state and brought into this state by a dealer for the purpose of sale at retail, an excise tax at the rates indicated in section 57-36-25, at the time the products were brought into this state. For the purposes of this section, the term "wholesale purchase price" means the established price for which a manufacturer sells cigars or pipe tobacco to a distributor exclusive of any discount or other reduction. However, the dealer may elect to report and remit the tax on the cost price of the products to the dealer rather than on the wholesale purchase price. The proceeds of the tax, together with the forms of return and in accordance with any rules and regulations the tax commissioner may prescribe, must be remitted to the tax commissioner by the dealer on a monthly basis on or before the fifteenth day of the month following the monthly period for which it is paid. The tax commissioner shall have the authority to place any dealer on an annual remittance basis when in the judgment of the tax commissioner the operations of the dealer merit that remittance period. In addition, the tax commissioner shall have the authority to permit the consolidation of the filing of a dealer's return when the dealer has more than one location and thereby would be required to file more than one return.

2. If cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products have been subjected already to a tax by any other state in respect to their sale in an amount less than the tax imposed by this section, the provisions of this section apply, but at a rate measured by the difference only between the rate fixed in this section and the rate by which the previous tax upon the sale was computed. If the tax imposed in the other state is twenty percent of the wholesale purchase price or more, then no tax is due on the article. The provisions of this subsection apply only if the other state allows a tax credit with respect to the excise tax on cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products imposed by this state which is substantially similar in effect to the credit allowed by this subsection.

3. Any person failing to file any prescribed forms of return or to pay any tax within the time required by this section is subject to a penalty of five dollars or a sum equal to five percent of the tax due, whichever is greater, plus one percent of the tax for each month of delay or fraction thereof excepting the month within which the return was required to be filed or the tax became due. The tax commissioner, if satisfied that the delay was excusable, may waive all or any part of the penalty. The penalty must be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.

4. All moneys received by the tax commissioner under the provisions of this section must be transmitted to the state treasurer at the end of each month and deposited in the state treasury to the credit of the general fund.

SECTION 17. AMENDMENT. Section 57-36-28 of the North Dakota Century Code is amended and reenacted as follows:

57-36-28. Consumer's use tax - Cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products - Reports - Remittances.

1. A tax is imposed upon the use or storage by consumers of cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products in this state, and upon those consumers, at the rates indicated in section 57-36-25.
2. This tax does not apply if the tax imposed by section 57-36-25 or 57-36-26 has been paid and it does not apply to cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products exempt under section 57-36-24.
3. On or before the tenth day of each calendar quarter, every consumer who, during the preceding calendar quarter, has acquired title to or possession of cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products for use or storage in this state, upon which products the tax imposed by either section 57-36-25 or 57-36-26 has not been paid, shall file a return with the tax commissioner showing the quantity of such products so acquired. For sales of other tobacco products, the return must also include the net weight in ounces, as listed by the manufacturer. The return must be made upon a form furnished and prescribed by the tax commissioner and must contain such other information as the tax commissioner may require. The return must be accompanied by a remittance for the full unpaid tax liability shown by it.
4. As soon as practicable after any return is filed, the tax commissioner shall examine the return and correct it, if necessary, according to the tax commissioner's best judgment and information.
5. If any consumer required to pay the tax levied by this section fails to file a return or remit the tax as required, the tax commissioner shall make an assessment of tax against the consumer according to the tax commissioner's best judgment and information.
6. All of the provisions of this chapter relating to corrections of returns, deficiency assessments, protests, hearings, interest and penalties, and collections of taxes apply to consumers under this section.

SECTION 18. AMENDMENT. Section 57-36-29 of the North Dakota Century Code is amended and reenacted as follows:

57-36-29. Correction of errors.

1. If it appears that as a result of a mistake an amount of tax, penalty, or interest has been paid which was not due under the provisions of this chapter, then such amount becomes due under this chapter, and the amount must be credited or refunded to such person or firm by the tax commissioner.
2. Whenever a distributor destroys cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products accidentally, or intentionally, because of staleness or other unfitness for sale, a credit or refund must be given to the wholesaler under the terms and conditions prescribed by the tax commissioner.

SECTION 19. AMENDMENT. Section 57-36-33 of the North Dakota Century Code is amended and reenacted as follows:

57-36-33. Penalties for violation of chapter. Except as otherwise provided in this chapter:

1. Any person who violates any provision of this chapter is guilty of a class A misdemeanor.
2. All cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products in the possession of the person who violates any provision of this chapter, or in the place of business of the person, may be confiscated by the tax commissioner as provided under section 57-36-14 and forfeited to the state. Any cigarette-making machine that is maintained or operated in violation of sections 57-36-05.3, 57-36-05.4, or 57-36-06.1 must be confiscated by the tax commissioner and forfeited to the state in accordance with chapter 29-31.1.”

Page 5, line 8, remove the overstrike over “~~For purposes of this subsection, the tax on~~”

Page 5, line 8, replace “~~other tobacco products~~” with “snuff and chewing tobacco”

Page 5, line 8, remove the overstrike over “~~is computed based~~”

Page 5, line 9, remove the overstrike over “~~on the net weight as listed by the manufacturer.~~”

Page 6, after line 18, insert:

“**SECTION 22. AMENDMENT.** Section 57-39.2-03.9 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-03.9. Sales tax on tobacco products. Notwithstanding any other provision of law, the sales taxes imposed by this chapter apply to the gross receipts of retailers from all sales at retail of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products. For purposes of this section, “gross receipts” from the sale of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products includes any other taxes imposed on ~~such~~ the merchandise or its use or on the retail or other sale of ~~such~~ the merchandise.

SECTION 23. AMENDMENT. Section 57-40.2-03.2 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-03.2. Use tax on tobacco products. Notwithstanding any other provision of law, the use taxes imposed by this chapter apply to the storage, use, or consumption in this state of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products, provided that gross receipts from the sale ~~thereof~~ of pipe tobacco, chewing tobacco, snuff, and other tobacco products mean and include any other taxes imposed on ~~such~~ the merchandise or its use or on the retail or other sale ~~thereof~~ of the merchandise.”

Page 7, line 16, replace “10” with “20”

Page 7, line 16, replace “11” with “21”

Page 7, line 17, remove “8,”

Page 7, line 17, replace “”12” with “24”

Page 7, line 17, replace “13” with “25”

Page 7, line 18, after “7,” insert “8, 9, 10, 11, 12, 13, 14,”

Page 7, line 18, replace "9" with "15, 16, 17, 18, 19, 22, 23,"

Page 7, line 18, replace "14" with "26"

Renumber accordingly

January 21, 2015

8/1-20-15
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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1133

- Page 1, line 8, replace "subsection 10" with "subsections 5, 6, 7, 10, 15, and 16"
- Page 1, line 8, replace the second "section" with "sections 57-36-02, 57-36-04, 57-36-05, 57-36-09, 57-36-09.1, 57-36-24,"
- Page 1, line 8, after the fourth comma insert "57-36-26, 57-36-28, 57-36-29, and 57-36-33,"
- Page 1, line 9, replace the second "section" with "sections 57-39.2-03.9, 57-40.2-03.2, and"
- Page 1, line 14, after the first comma insert "sales tax and use tax on tobacco products,"
- Page 4, replace lines 16 through 19 with:

"SECTION 8. AMENDMENT. Subsections 5, 6, 7, 10, 15, and 16 of section 57-36-01 of the North Dakota Century Code are amended and reenacted as follows:

- 5. "Consumer" means any person who has title to or possession of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products in storage, for use or other consumption in this state.
- 6. "Dealer" includes any person other than a distributor who is engaged in the business of selling cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products, or any product of a cigarette-making machine.
- 7. "Distributor" includes any person engaged in the business of producing or manufacturing cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products, or importing into this state cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products, for the purpose of distribution and sale thereof to dealers and retailers.
- 10. "Other tobacco products" means ~~snuff and chewing tobacco~~ any product, not otherwise defined in this section, which is made up or composed of tobacco in whole or in part. "Other tobacco products" do not include any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar noncombustible product, or device containing nicotine which employs a heating element, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, which can be used to produce vapor from nicotine in a solution or other form, or any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device.
- 15. "Storage" means any keeping or retention of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products for use or consumption in this state.

16. "Use" means the exercise of any right or power incidental to the ownership or possession of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products.

SECTION 9. AMENDMENT. Section 57-36-02 of the North Dakota Century Code is amended and reenacted as follows:

57-36-02. Distributors and dealers to be licensed.

Each person engaged in the business of selling cigarettes, cigarette papers, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products in this state, including any distributor or dealer, must secure a license from the attorney general before engaging or continuing to engage in business. A separate application and license is required for each distributor at each outlet or place of business within the state, and a separate dealer's license is required for each retail outlet when a person owns or controls more than one place of business dealing in cigarettes, cigarette papers, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products. No retailer will be granted a distributor's license except a retailer who, in the usual course of business, performed a distributor's or wholesaler's function for at least one year prior to filing the license application. The application prescribed by the attorney general must include the name and address of the applicant, the address and place of business, the type of business, and other information as required for the proper administration of this chapter. Each application for a wholesale or distributor's outlet license must be accompanied by a fee of twenty-five dollars and a surety bond approved by the attorney general. Each application for a dealer's outlet license must be accompanied by a fee of fifteen dollars. A reinstatement fee of fifty dollars is required in addition to the annual license fee for each license renewal applied for after June thirtieth. The total reinstatement fee may not exceed five hundred dollars for any one licensee in any fiscal year. A distributor's license does not authorize the holder to make retail sales. Each license issued must be prominently displayed on the premises covered by the license.

SECTION 10. AMENDMENT. Section 57-36-04 of the North Dakota Century Code is amended and reenacted as follows:

57-36-04. Revocation of license - Penalty.

The attorney general may revoke the license of any dealer or distributor for failure to comply with any of the provisions of this chapter, or any of the rules or regulations prescribed by the tax commissioner or the attorney general. When a license has been legally revoked, no license may be issued again to the licensee for a period of one year thereafter. A person may not sell any cigarettes, cigarette papers, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products after that person's license has been revoked as provided in this chapter.

SECTION 11. AMENDMENT. Section 57-36-05 of the North Dakota Century Code is amended and reenacted as follows:

57-36-05. Unlawful to sell without license.

A dealer or distributor may not sell cigarettes, cigarette papers, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products in this state at wholesale or at retail unless a license has been issued to that dealer or distributor as prescribed by this chapter, and a person may not sell, offer for sale, or possess with the intent to sell,

any cigarettes, cigarette papers, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products without such license.

SECTION 12. AMENDMENT. Section 57-36-09 of the North Dakota Century Code is amended and reenacted as follows:

57-36-09. Records to be kept by distributors and reports made - Penalty.

Distributors shall keep records and make reports relating to purchases and sales of cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products made by them, and must be punished for failure so to do, as follows:

1. Each distributor who shall dispose of cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products shall keep and preserve for one year all invoices of cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products purchased by the distributor and shall permit the state tax commissioner, and assistants, authorized agents, or representatives of the state tax commissioner, to inspect and examine all taxable merchandise, invoices, receipts, books, papers, and memoranda as may be deemed necessary by the state tax commissioner, and assistants, authorized agents, or representatives of the state tax commissioner in determining the amount of the tax as may be yet due. Each person selling or otherwise disposing of cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products as a distributor shall keep a record of all sales made within the state showing the name and address of the purchaser and the date of sale. For sales of other tobacco products, the records must also include the net weight in ounces, as listed by the manufacturer.
2. On or before the fifteenth day of each month, each licensed distributor, on such form as the state tax commissioner shall prescribe, shall report to the tax commissioner all purchases and sales of cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products made from or to any persons either within or without this state during the preceding month. For sales of other tobacco products, each licensed distributor shall also report to the tax commissioner the net weight in ounces, as listed by the manufacturer. The tax levied by this chapter is payable monthly and must be remitted to the tax commissioner by each licensed distributor on or before the fifteenth day of the month following the monthly period.
3. Any person failing to file any prescribed form or return or to pay any tax within the time required or permitted by this section is subject to a penalty of five percent of the amount of tax due or five dollars, whichever is greater, plus interest of one percent of the tax per month or fraction of a month of delay except the first month after the return or the tax became due. The tax commissioner, if satisfied that the delay was excusable, may waive all or any part of the penalty. The penalty must be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.

SECTION 13. AMENDMENT. Section 57-36-09.1 of the North Dakota Century Code is amended and reenacted as follows:

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57-36-09.1. Warehouse - Record of deliveries and shipments.

Records of all deliveries of shipments of cigarettes and cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products from a licensed public warehouse to persons within this state must be kept by the warehouse and be available to the tax commissioner for inspection. They must show the name and address of the consignee, the date, the quantity of cigarettes, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products delivered, and such other information as the tax commissioner may require. These records must be preserved for one year from the date of delivery of the cigarettes, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products.

SECTION 14. AMENDMENT. Section 57-36-24 of the North Dakota Century Code is amended and reenacted as follows:

57-36-24. Exemptions.

All gift cigarettes, snuff, cigars, pipe tobacco, chewing tobacco, and other tobacco products, not for resale, which are given to the North Dakota veterans' home or the North Dakota state hospital for distribution to the occupants thereof, are exempt from the excise taxes levied under this chapter."

Page 5, remove the overstrike over lines 8 and 9

Page 5, after line 28, insert:

"SECTION 16. AMENDMENT. Section 57-36-26 of the North Dakota Century Code is amended and reenacted as follows:

57-36-26. Cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products - Excise tax payable by dealers - Reports - Penalties - Collection - Allocation of revenue.

1. There is levied and assessed, upon all cigars and pipe tobacco purchased in another state and brought into this state by a dealer for the purpose of sale at retail, an excise tax at the rate of twenty-eight percent of the wholesale purchase price and, upon all chewing tobacco, snuff, and other tobacco products purchased in another state and brought into this state by a dealer for the purpose of sale at retail, an excise tax at the rates indicated in section 57-36-25, at the time the products were brought into this state. For the purposes of this section, the term "wholesale purchase price" means the established price for which a manufacturer sells cigars or pipe tobacco to a distributor exclusive of any discount or other reduction. However, the dealer may elect to report and remit the tax on the cost price of the products to the dealer rather than on the wholesale purchase price. The proceeds of the tax, together with the forms of return and in accordance with any rules and regulations the tax commissioner may prescribe, must be remitted to the tax commissioner by the dealer on a monthly basis on or before the fifteenth day of the month following the monthly period for which it is paid. The tax commissioner shall have the authority to place any dealer on an annual remittance basis when in the judgment of the tax commissioner the operations of the dealer merit that remittance period. In addition, the tax commissioner shall have the authority to permit the consolidation of the filing of a dealer's return when the dealer has more than one location and thereby would be required to file more than one return.

2. If cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products have been subjected already to a tax by any other state in respect to their sale in an amount less than the tax imposed by this section, the provisions of this section apply, but at a rate measured by the difference only between the rate fixed in this section and the rate by which the previous tax upon the sale was computed. If the tax imposed in the other state is twenty percent of the wholesale purchase price or more, then no tax is due on the article. The provisions of this subsection apply only if the other state allows a tax credit with respect to the excise tax on cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products imposed by this state which is substantially similar in effect to the credit allowed by this subsection.
3. Any person failing to file any prescribed forms of return or to pay any tax within the time required by this section is subject to a penalty of five dollars or a sum equal to five percent of the tax due, whichever is greater, plus one percent of the tax for each month of delay or fraction thereof excepting the month within which the return was required to be filed or the tax became due. The tax commissioner, if satisfied that the delay was excusable, may waive all or any part of the penalty. The penalty must be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.
4. All moneys received by the tax commissioner under the provisions of this section must be transmitted to the state treasurer at the end of each month and deposited in the state treasury to the credit of the general fund.

SECTION 17. AMENDMENT. Section 57-36-28 of the North Dakota Century Code is amended and reenacted as follows:

57-36-28. Consumer's use tax - Cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products - Reports - Remittances.

1. A tax is imposed upon the use or storage by consumers of cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products in this state, and upon those consumers, at the rates indicated in section 57-36-25.
2. This tax does not apply if the tax imposed by section 57-36-25 or 57-36-26 has been paid and it does not apply to cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products exempt under section 57-36-24.
3. On or before the tenth day of each calendar quarter, every consumer who, during the preceding calendar quarter, has acquired title to or possession of cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products for use or storage in this state, upon which products the tax imposed by either section 57-36-25 or 57-36-26 has not been paid, shall file a return with the tax commissioner showing the quantity of such products so acquired. For sales of other tobacco products, the return must also include the net weight in ounces, as listed by the manufacturer. The return must be made upon a form furnished and prescribed by the tax commissioner and must contain such other information as the tax commissioner may require. The return must be accompanied by a remittance for the full unpaid tax liability shown by it.

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4. As soon as practicable after any return is filed, the tax commissioner shall examine the return and correct it, if necessary, according to the tax commissioner's best judgment and information.
5. If any consumer required to pay the tax levied by this section fails to file a return or remit the tax as required, the tax commissioner shall make an assessment of tax against the consumer according to the tax commissioner's best judgment and information.
6. All of the provisions of this chapter relating to corrections of returns, deficiency assessments, protests, hearings, interest and penalties, and collections of taxes apply to consumers under this section.

SECTION 18. AMENDMENT. Section 57-36-29 of the North Dakota Century Code is amended and reenacted as follows:

57-36-29. Correction of errors.

1. If it appears that as a result of a mistake an amount of tax, penalty, or interest has been paid which was not due under the provisions of this chapter, then such amount becomes due under this chapter, and the amount must be credited or refunded to such person or firm by the tax commissioner.
2. Whenever a distributor destroys cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products accidentally, or intentionally, because of staleness or other unfitness for sale, a credit or refund must be given to the wholesaler under the terms and conditions prescribed by the tax commissioner.

SECTION 19. AMENDMENT. Section 57-36-33 of the North Dakota Century Code is amended and reenacted as follows:

57-36-33. Penalties for violation of chapter.

Except as otherwise provided in this chapter:

1. Any person who violates any provision of this chapter is guilty of a class A misdemeanor.
2. All cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products in the possession of the person who violates any provision of this chapter, or in the place of business of the person, may be confiscated by the tax commissioner as provided under section 57-36-14 and forfeited to the state. Any cigarette-making machine that is maintained or operated in violation of sections 57-36-05.3, 57-36-05.4, or 57-36-06.1 must be confiscated by the tax commissioner and forfeited to the state in accordance with chapter 29-31.1."

Page 6, after line 18, insert:

"SECTION 22. AMENDMENT. Section 57-39.2-03.9 of the North Dakota Century Code is amended and reenacted as follows:

January 21, 2015

2/1-2015
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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1133

Page 1, line 8, replace "subsection 10" with "subsections 5, 6, 7, 10, 15, and 16"

Page 1, line 8, replace the second "section" with "sections 57-36-02, 57-36-04, 57-36-05, 57-36-09, 57-36-09.1, 57-36-24,"

Page 1, line 8, after the fourth comma insert "57-36-26, 57-36-28, 57-36-29, and 57-36-33,"

Page 1, line 9, replace the second "section" with "sections 57-39.2-03.9, 57-40.2-03.2, and"

Page 1, line 14, after the first comma insert "sales tax and use tax on tobacco products,"

Page 4, replace lines 16 through 19 with:

"SECTION 8. AMENDMENT. Subsections 5, 6, 7, 10, 15, and 16 of section 57-36-01 of the North Dakota Century Code are amended and reenacted as follows:

5. "Consumer" means any person who has title to or possession of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products in storage, for use or other consumption in this state.
6. "Dealer" includes any person other than a distributor who is engaged in the business of selling cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products, or any product of a cigarette-making machine.
7. "Distributor" includes any person engaged in the business of producing or manufacturing cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products, or importing into this state cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products, for the purpose of distribution and sale thereof to dealers and retailers.
10. "Other tobacco products" means snuff and chewing tobacco any product, not otherwise defined in this section, which is made up or composed of tobacco in whole or in part. "Other tobacco products" do not include any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar noncombustible product, or device containing nicotine which employs a heating element, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, which can be used to produce vapor from nicotine in a solution or other form, or any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device.
15. "Storage" means any keeping or retention of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products for use or consumption in this state.

16. "Use" means the exercise of any right or power incidental to the ownership or possession of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products.

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SECTION 9. AMENDMENT. Section 57-36-02 of the North Dakota Century Code is amended and reenacted as follows:

57-36-02. Distributors and dealers to be licensed.

Each person engaged in the business of selling cigarettes, cigarette papers, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products in this state, including any distributor or dealer, must secure a license from the attorney general before engaging or continuing to engage in business. A separate application and license is required for each distributor at each outlet or place of business within the state, and a separate dealer's license is required for each retail outlet when a person owns or controls more than one place of business dealing in cigarettes, cigarette papers, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products. No retailer will be granted a distributor's license except a retailer who, in the usual course of business, performed a distributor's or wholesaler's function for at least one year prior to filing the license application. The application prescribed by the attorney general must include the name and address of the applicant, the address and place of business, the type of business, and other information as required for the proper administration of this chapter. Each application for a wholesale or distributor's outlet license must be accompanied by a fee of twenty-five dollars and a surety bond approved by the attorney general. Each application for a dealer's outlet license must be accompanied by a fee of fifteen dollars. A reinstatement fee of fifty dollars is required in addition to the annual license fee for each license renewal applied for after June thirtieth. The total reinstatement fee may not exceed five hundred dollars for any one licensee in any fiscal year. A distributor's license does not authorize the holder to make retail sales. Each license issued must be prominently displayed on the premises covered by the license.

SECTION 10. AMENDMENT. Section 57-36-04 of the North Dakota Century Code is amended and reenacted as follows:

57-36-04. Revocation of license - Penalty.

The attorney general may revoke the license of any dealer or distributor for failure to comply with any of the provisions of this chapter, or any of the rules or regulations prescribed by the tax commissioner or the attorney general. When a license has been legally revoked, no license may be issued again to the licensee for a period of one year thereafter. A person may not sell any cigarettes, cigarette papers, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products after that person's license has been revoked as provided in this chapter.

SECTION 11. AMENDMENT. Section 57-36-05 of the North Dakota Century Code is amended and reenacted as follows:

57-36-05. Unlawful to sell without license.

A dealer or distributor may not sell cigarettes, cigarette papers, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products in this state at wholesale or at retail unless a license has been issued to that dealer or distributor as prescribed by this chapter, and a person may not sell, offer for sale, or possess with the intent to sell,

any cigarettes, cigarette papers, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products without such license.

SECTION 12. AMENDMENT. Section 57-36-09 of the North Dakota Century Code is amended and reenacted as follows:

57-36-09. Records to be kept by distributors and reports made - Penalty.

Distributors shall keep records and make reports relating to purchases and sales of cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products made by them, and must be punished for failure so to do, as follows:

1. Each distributor who shall dispose of cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products shall keep and preserve for one year all invoices of cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products purchased by the distributor and shall permit the state tax commissioner, and assistants, authorized agents, or representatives of the state tax commissioner, to inspect and examine all taxable merchandise, invoices, receipts, books, papers, and memoranda as may be deemed necessary by the state tax commissioner, and assistants, authorized agents, or representatives of the state tax commissioner in determining the amount of the tax as may be yet due. Each person selling or otherwise disposing of cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products as a distributor shall keep a record of all sales made within the state showing the name and address of the purchaser and the date of sale. For sales of other tobacco products, the records must also include the net weight in ounces, as listed by the manufacturer.
2. On or before the fifteenth day of each month, each licensed distributor, on such form as the state tax commissioner shall prescribe, shall report to the tax commissioner all purchases and sales of cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products made from or to any persons either within or without this state during the preceding month. For sales of other tobacco products, each licensed distributor shall also report to the tax commissioner the net weight in ounces, as listed by the manufacturer. The tax levied by this chapter is payable monthly and must be remitted to the tax commissioner by each licensed distributor on or before the fifteenth day of the month following the monthly period.
3. Any person failing to file any prescribed form or return or to pay any tax within the time required or permitted by this section is subject to a penalty of five percent of the amount of tax due or five dollars, whichever is greater, plus interest of one percent of the tax per month or fraction of a month of delay except the first month after the return or the tax became due. The tax commissioner, if satisfied that the delay was excusable, may waive all or any part of the penalty. The penalty must be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.

SECTION 13. AMENDMENT. Section 57-36-09.1 of the North Dakota Century Code is amended and reenacted as follows:

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57-36-09.1. Warehouse - Record of deliveries and shipments.

Records of all deliveries of shipments of cigarettes and cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products from a licensed public warehouse to persons within this state must be kept by the warehouse and be available to the tax commissioner for inspection. They must show the name and address of the consignee, the date, the quantity of cigarettes, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products delivered, and such other information as the tax commissioner may require. These records must be preserved for one year from the date of delivery of the cigarettes, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products.

SECTION 14. AMENDMENT. Section 57-36-24 of the North Dakota Century Code is amended and reenacted as follows:

57-36-24. Exemptions.

All gift cigarettes, snuff, cigars, pipe tobacco, chewing tobacco, and other tobacco products, not for resale, which are given to the North Dakota veterans' home or the North Dakota state hospital for distribution to the occupants thereof, are exempt from the excise taxes levied under this chapter."

Page 5, remove the overstrike over line 8

Page 5, line 8, overstrike "other tobacco products" and insert immediately thereafter "snuff and chewing tobacco"

Page 5, remove the overstrike over line 9

Page 5, after line 28, insert:

"SECTION 16. AMENDMENT. Section 57-36-26 of the North Dakota Century Code is amended and reenacted as follows:

57-36-26. Cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products - Excise tax payable by dealers - Reports - Penalties - Collection - Allocation of revenue.

1. There is levied and assessed, upon all cigars and pipe tobacco purchased in another state and brought into this state by a dealer for the purpose of sale at retail, an excise tax at the rate of twenty-eight percent of the wholesale purchase price and, upon all chewing tobacco, snuff, and other tobacco products purchased in another state and brought into this state by a dealer for the purpose of sale at retail, an excise tax at the rates indicated in section 57-36-25, at the time the products were brought into this state. For the purposes of this section, the term "wholesale purchase price" means the established price for which a manufacturer sells cigars or pipe tobacco to a distributor exclusive of any discount or other reduction. However, the dealer may elect to report and remit the tax on the cost price of the products to the dealer rather than on the wholesale purchase price. The proceeds of the tax, together with the forms of return and in accordance with any rules and regulations the tax commissioner may prescribe, must be remitted to the tax commissioner by the dealer on a monthly basis on or before the fifteenth day of the month following the monthly period for which it is paid. The tax commissioner shall have the authority to place any dealer on an annual remittance basis when in the judgment of the tax commissioner the operations of the dealer merit that

remittance period. In addition, the tax commissioner shall have the authority to permit the consolidation of the filing of a dealer's return when the dealer has more than one location and thereby would be required to file more than one return.

2. If cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products have been subjected already to a tax by any other state in respect to their sale in an amount less than the tax imposed by this section, the provisions of this section apply, but at a rate measured by the difference only between the rate fixed in this section and the rate by which the previous tax upon the sale was computed. If the tax imposed in the other state is twenty percent of the wholesale purchase price or more, then no tax is due on the article. The provisions of this subsection apply only if the other state allows a tax credit with respect to the excise tax on cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products imposed by this state which is substantially similar in effect to the credit allowed by this subsection.
3. Any person failing to file any prescribed forms of return or to pay any tax within the time required by this section is subject to a penalty of five dollars or a sum equal to five percent of the tax due, whichever is greater, plus one percent of the tax for each month of delay or fraction thereof excepting the month within which the return was required to be filed or the tax became due. The tax commissioner, if satisfied that the delay was excusable, may waive all or any part of the penalty. The penalty must be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.
4. All moneys received by the tax commissioner under the provisions of this section must be transmitted to the state treasurer at the end of each month and deposited in the state treasury to the credit of the general fund.

SECTION 17. AMENDMENT. Section 57-36-28 of the North Dakota Century Code is amended and reenacted as follows:

57-36-28. Consumer's use tax - Cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products - Reports - Remittances.

1. A tax is imposed upon the use or storage by consumers of cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products in this state, and upon those consumers, at the rates indicated in section 57-36-25.
2. This tax does not apply if the tax imposed by section 57-36-25 or 57-36-26 has been paid and it does not apply to cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products exempt under section 57-36-24.
3. On or before the tenth day of each calendar quarter, every consumer who, during the preceding calendar quarter, has acquired title to or possession of cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products for use or storage in this state, upon which products the tax imposed by either section 57-36-25 or 57-36-26 has not been paid, shall file a return with the tax commissioner showing the quantity of such products so acquired. For sales of other tobacco products, the return must also include the net weight in ounces, as listed by the manufacturer. The return must be made upon a form furnished and prescribed by the tax commissioner and

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must contain such other information as the tax commissioner may require. The return must be accompanied by a remittance for the full unpaid tax liability shown by it.

4. As soon as practicable after any return is filed, the tax commissioner shall examine the return and correct it, if necessary, according to the tax commissioner's best judgment and information.
5. If any consumer required to pay the tax levied by this section fails to file a return or remit the tax as required, the tax commissioner shall make an assessment of tax against the consumer according to the tax commissioner's best judgment and information.
6. All of the provisions of this chapter relating to corrections of returns, deficiency assessments, protests, hearings, interest and penalties, and collections of taxes apply to consumers under this section.

SECTION 18. AMENDMENT. Section 57-36-29 of the North Dakota Century Code is amended and reenacted as follows:

57-36-29. Correction of errors.

1. If it appears that as a result of a mistake an amount of tax, penalty, or interest has been paid which was not due under the provisions of this chapter, then such amount becomes due under this chapter, and the amount must be credited or refunded to such person or firm by the tax commissioner.
2. Whenever a distributor destroys cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products accidentally, or intentionally, because of staleness or other unfitness for sale, a credit or refund must be given to the wholesaler under the terms and conditions prescribed by the tax commissioner.

SECTION 19. AMENDMENT. Section 57-36-33 of the North Dakota Century Code is amended and reenacted as follows:

57-36-33. Penalties for violation of chapter.

Except as otherwise provided in this chapter:

1. Any person who violates any provision of this chapter is guilty of a class A misdemeanor.
2. All cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products in the possession of the person who violates any provision of this chapter, or in the place of business of the person, may be confiscated by the tax commissioner as provided under section 57-36-14 and forfeited to the state. Any cigarette-making machine that is maintained or operated in violation of sections 57-36-05.3, 57-36-05.4, or 57-36-06.1 must be confiscated by the tax commissioner and forfeited to the state in accordance with chapter 29-31.1."

Page 6, after line 18, insert:

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"SECTION 22. AMENDMENT. Section 57-39.2-03.9 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-03.9. Sales tax on tobacco products.

Notwithstanding any other provision of law, the sales taxes imposed by this chapter apply to the gross receipts of retailers from all sales at retail of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products. For purposes of this section, "gross receipts" from the sale of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products includes any other taxes imposed on ~~such~~the merchandise or its use or on the retail or other sale of ~~such~~the merchandise.

SECTION 23. AMENDMENT. Section 57-40.2-03.2 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-03.2. Use tax on tobacco products.

Notwithstanding any other provision of law, the use taxes imposed by this chapter apply to the storage, use, or consumption in this state of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products, provided that gross receipts from the sale ~~thereof~~ of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products mean and include any other taxes imposed on ~~such~~the merchandise or its use or on the retail or other sale ~~thereof~~ of the merchandise."

Page 7, line 16, replace "10" with "20"

Page 7, line 16, replace "11" with "21"

Page 7, line 17, replace "8, 12," with "24"

Page 7, line 17, replace "13" with "25"

Page 7, line 18, after the fifth comma insert "8,"

Page 7, line 18, after the sixth comma insert "10, 11, 12, 13,"

Page 7, line 18, remove "and"

Page 7, line 18, after "14" insert ", 15, 16, 17, 18, 19, 22, 23, and 26"

Re-number accordingly

February 9, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1133

Page 1, remove line 7

Page 1, line 8, remove "5-01-21,"

Page 1, line 8, remove "subsection 10 of section 57-36-01, section 57-36-25,"

Page 1, line 10, remove "tax reporting of domestic wineries, domestic"

Page 1, line 11, remove "distilleries, and brewer taprooms,"

Page 1, line 13, remove "definition of tobacco products, taxation of tobacco products,"

Page 1, remove lines 18 through 24

Page 2, remove lines 1 through 29

Page 4, remove lines 16 through 30

Page 5, remove lines 1 through 28

Page 7, line 17, remove "8,"

Page 7, line 17, remove the second comma

Page 7, line 18, remove "9,"

Page 7, line 19, remove "Sections 1, 2, and 3 of this Act are effective for taxable years"

Page 7, remove line 20

Renumber accordingly

Date: 1-21-15
Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1133**

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: Definition amendment 1-13-15

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Klein Seconded By Rep. Dockter

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN HEADLAND			REP HAAK		
VICE CHAIRMAN OWENS			REP STRINDEN		
REP DOCKTER			REP MITSKOG		
REP TOMAN			REP SCHNEIDER		
REP FROSETH					
REP STEINER					
REP HATLESTAD					
REP KLEIN					
REP KADING					
REP TROTTIER					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Aye -
Nay - Motion carried.

Date: 1-21-15
 Roll Call Vote #: 2

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1133**

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: Jan. 21, 2015 amendment

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Dockter Seconded By Rep. Klein

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN HEADLAND			REP HAAK		
VICE CHAIRMAN OWENS			REP STRINDEN		
REP DOCKTER			REP MITSKOG		
REP TOMAN			REP SCHNEIDER		
REP FROSETH					
REP STEINER					
REP HATLESTAD					
REP KLEIN					
REP KADING					
REP TROTTIER					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Aye -
Nay - Motion carries.

Date: 1-21-15
Roll Call Vote #: 3

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1133**

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: Amendments from 1-13-15 + 1-21-15

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Froseth Seconded By Rep. Klein

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN HEADLAND	✓		REP HAAK		✓
VICE CHAIRMAN OWENS	✓		REP STRINDEN		✓
REP DOCKTER	✓		REP MITSKOG		✓
REP TOMAN	✓		REP SCHNEIDER		✓
REP FROSETH	✓				
REP STEINER	✓				
REP HATLESTAD	✓				
REP KLEIN	✓				
REP KADING	✓				
REP TROTTIER	✓				

Total (Yes) 10 No 4

Absent 0

Floor Assignment Rep. Froseth

If the vote is on an amendment, briefly indicate intent:

Date: 2-9-15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1133

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: Feb. 4, 2015 amendments

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Rep Dockter Seconded By Rep Owens

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN HEADLAND			REP HAAK		
VICE CHAIRMAN OWENS			REP STRINDEN		
REP DOCKTER			REP MITSKOG		
REP TOMAN			REP SCHNEIDER		
REP FROSETH					
REP STEINER					
REP HATLESTAD					
REP KLEIN					
REP KADING					
REP TROTTIER					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Voice Vote = Motion carries

Date: 2-9-15
 Roll Call Vote #: 2

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1133**

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: Feb. 4, 2015 amendments

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Owens Seconded By Rep. Dockter

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN HEADLAND	✓		REP HAAK	✓	
VICE CHAIRMAN OWENS	✓		REP STRINDEN	✓	
REP DOCKTER	✓		REP MITSKOG	✓	
REP TOMAN	✓		REP SCHNEIDER	✓	
REP FROSETH	✓				
REP STEINER	✓				
REP HATLESTAD	✓				
REP KLEIN	✓				
REP KADING	✓				
REP TROTTIER	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Froseth

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1133: Finance and Taxation Committee (Rep. Headland, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1133 was placed on the Sixth order on the calendar.

Page 1, line 8, replace "subsection 10" with "subsections 5, 6, 7, 10, 15, and 16"

Page 1, line 8, replace the second "section" with "sections 57-36-02, 57-36-04, 57-36-05, 57-36-09, 57-36-09.1, 57-36-24,"

Page 1, line 8, after the fourth comma insert "57-36-26, 57-36-28, 57-36-29, and 57-36-33,"

Page 1, line 9, replace the second "section" with "sections 57-39.2-03.9, 57-40.2-03.2, and"

Page 1, line 14, after the first comma insert "sales tax and use tax on tobacco products,"

Page 4, replace lines 16 through 19 with:

"SECTION 8. AMENDMENT. Subsections 5, 6, 7, 10, 15, and 16 of section 57-36-01 of the North Dakota Century Code are amended and reenacted as follows:

5. "Consumer" means any person who has title to or possession of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products in storage, for use or other consumption in this state.
6. "Dealer" includes any person other than a distributor who is engaged in the business of selling cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products, or any product of a cigarette-making machine.
7. "Distributor" includes any person engaged in the business of producing or manufacturing cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products, or importing into this state cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products, for the purpose of distribution and sale thereof to dealers and retailers.
10. "Other tobacco products" means ~~snuff and chewing tobacco~~ any product, not otherwise defined in this section, which is made up or composed of tobacco in whole or in part. "Other tobacco products" do not include any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar noncombustible product, or device containing nicotine which employs a heating element, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, which can be used to produce vapor from nicotine in a solution or other form, or any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device.
15. "Storage" means any keeping or retention of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products for use or consumption in this state.
16. "Use" means the exercise of any right or power incidental to the ownership or possession of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products.

SECTION 9. AMENDMENT. Section 57-36-02 of the North Dakota Century Code is amended and reenacted as follows:

57-36-02. Distributors and dealers to be licensed.

Each person engaged in the business of selling cigarettes, cigarette papers, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products in this state, including any distributor or dealer, must secure a license from the attorney general before engaging or continuing to engage in business. A separate application and license is required for each distributor at each outlet or place of business within the state, and a separate dealer's license is required for each retail outlet when a person owns or controls more than one place of business dealing in cigarettes, cigarette papers, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products. No retailer will be granted a distributor's license except a retailer who, in the usual course of business, performed a distributor's or wholesaler's function for at least one year prior to filing the license application. The application prescribed by the attorney general must include the name and address of the applicant, the address and place of business, the type of business, and other information as required for the proper administration of this chapter. Each application for a wholesale or distributor's outlet license must be accompanied by a fee of twenty-five dollars and a surety bond approved by the attorney general. Each application for a dealer's outlet license must be accompanied by a fee of fifteen dollars. A reinstatement fee of fifty dollars is required in addition to the annual license fee for each license renewal applied for after June thirtieth. The total reinstatement fee may not exceed five hundred dollars for any one licensee in any fiscal year. A distributor's license does not authorize the holder to make retail sales. Each license issued must be prominently displayed on the premises covered by the license.

SECTION 10. AMENDMENT. Section 57-36-04 of the North Dakota Century Code is amended and reenacted as follows:

57-36-04. Revocation of license - Penalty.

The attorney general may revoke the license of any dealer or distributor for failure to comply with any of the provisions of this chapter, or any of the rules or regulations prescribed by the tax commissioner or the attorney general. When a license has been legally revoked, no license may be issued again to the licensee for a period of one year thereafter. A person may not sell any cigarettes, cigarette papers, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products after that person's license has been revoked as provided in this chapter.

SECTION 11. AMENDMENT. Section 57-36-05 of the North Dakota Century Code is amended and reenacted as follows:

57-36-05. Unlawful to sell without license.

A dealer or distributor may not sell cigarettes, cigarette papers, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products in this state at wholesale or at retail unless a license has been issued to that dealer or distributor as prescribed by this chapter, and a person may not sell, offer for sale, or possess with the intent to sell, any cigarettes, cigarette papers, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products without such license.

SECTION 12. AMENDMENT. Section 57-36-09 of the North Dakota Century Code is amended and reenacted as follows:

57-36-09. Records to be kept by distributors and reports made - Penalty.

Distributors shall keep records and make reports relating to purchases and sales of cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products made by them, and must be punished for failure so to do, as follows:

1. Each distributor who shall dispose of cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products shall keep and preserve for one year all invoices of cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products purchased by the distributor and shall permit the state tax commissioner, and assistants, authorized agents, or representatives of the state tax commissioner, to inspect and examine all taxable merchandise, invoices, receipts, books, papers, and memoranda as may be deemed necessary by the state tax commissioner, and assistants, authorized agents, or representatives of the state tax commissioner in determining the amount of the tax as may be yet due. Each person selling or otherwise disposing of cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products as a distributor shall keep a record of all sales made within the state showing the name and address of the purchaser and the date of sale. For sales of other tobacco products, the records must also include the net weight in ounces, as listed by the manufacturer.
2. On or before the fifteenth day of each month, each licensed distributor, on such form as the state tax commissioner shall prescribe, shall report to the tax commissioner all purchases and sales of cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products made from or to any persons either within or without this state during the preceding month. For sales of other tobacco products, each licensed distributor shall also report to the tax commissioner the net weight in ounces, as listed by the manufacturer. The tax levied by this chapter is payable monthly and must be remitted to the tax commissioner by each licensed distributor on or before the fifteenth day of the month following the monthly period.
3. Any person failing to file any prescribed form or return or to pay any tax within the time required or permitted by this section is subject to a penalty of five percent of the amount of tax due or five dollars, whichever is greater, plus interest of one percent of the tax per month or fraction of a month of delay except the first month after the return or the tax became due. The tax commissioner, if satisfied that the delay was excusable, may waive all or any part of the penalty. The penalty must be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.

SECTION 13. AMENDMENT. Section 57-36-09.1 of the North Dakota Century Code is amended and reenacted as follows:

57-36-09.1. Warehouse - Record of deliveries and shipments.

Records of all deliveries of shipments of cigarettes ~~and, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products~~ from a licensed public warehouse to persons within this state must be kept by the warehouse and be available to the tax commissioner for inspection. They must show the name and address of the consignee, the date, the quantity of cigarettes, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products delivered, and such other information as the tax commissioner may require. These records must be preserved for one year from the date of delivery of the cigarettes, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products.

SECTION 14. AMENDMENT. Section 57-36-24 of the North Dakota Century Code is amended and reenacted as follows:

57-36-24. Exemptions.

All gift cigarettes, snuff, cigars, pipe tobacco, chewing tobacco, and other tobacco products, not for resale, which are given to the North Dakota veterans' home or the North Dakota state hospital for distribution to the occupants thereof, are exempt from the excise taxes levied under this chapter."

Page 5, remove the overstrike over lines 8 and 9

Page 5, after line 28, insert:

"SECTION 16. AMENDMENT. Section 57-36-26 of the North Dakota Century Code is amended and reenacted as follows:

57-36-26. Cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products - Excise tax payable by dealers - Reports - Penalties - Collection - Allocation of revenue.

1. There is levied and assessed, upon all cigars and pipe tobacco purchased in another state and brought into this state by a dealer for the purpose of sale at retail, an excise tax at the rate of twenty-eight percent of the wholesale purchase price and, upon all chewing tobacco, snuff, and other tobacco products purchased in another state and brought into this state by a dealer for the purpose of sale at retail, an excise tax at the rates indicated in section 57-36-25, at the time the products were brought into this state. For the purposes of this section, the term "wholesale purchase price" means the established price for which a manufacturer sells cigars or pipe tobacco to a distributor exclusive of any discount or other reduction. However, the dealer may elect to report and remit the tax on the cost price of the products to the dealer rather than on the wholesale purchase price. The proceeds of the tax, together with the forms of return and in accordance with any rules and regulations the tax commissioner may prescribe, must be remitted to the tax commissioner by the dealer on a monthly basis on or before the fifteenth day of the month following the monthly period for which it is paid. The tax commissioner shall have the authority to place any dealer on an annual remittance basis when in the judgment of the tax commissioner the operations of the dealer merit that remittance period. In addition, the tax commissioner shall have the authority to permit the consolidation of the filing of a dealer's return when the dealer has more than one location and thereby would be required to file more than one return.
2. If cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products have been subjected already to a tax by any other state in respect to their sale in an amount less than the tax imposed by this section, the provisions of this section apply, but at a rate measured by the difference only between the rate fixed in this section and the rate by which the previous tax upon the sale was computed. If the tax imposed in the other state is twenty percent of the wholesale purchase price or more, then no tax is due on the article. The provisions of this subsection apply only if the other state allows a tax credit with respect to the excise tax on cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products imposed by this state which is substantially similar in effect to the credit allowed by this subsection.
3. Any person failing to file any prescribed forms of return or to pay any tax within the time required by this section is subject to a penalty of five dollars or a sum equal to five percent of the tax due, whichever is greater, plus one percent of the tax for each month of delay or fraction thereof excepting the month within which the return was required to be filed or the tax became due. The tax commissioner, if satisfied that the delay was

excusable, may waive all or any part of the penalty. The penalty must be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.

4. All moneys received by the tax commissioner under the provisions of this section must be transmitted to the state treasurer at the end of each month and deposited in the state treasury to the credit of the general fund.

SECTION 17. AMENDMENT. Section 57-36-28 of the North Dakota Century Code is amended and reenacted as follows:

57-36-28. Consumer's use tax - Cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products - Reports - Remittances.

1. A tax is imposed upon the use or storage by consumers of cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products in this state, and upon those consumers, at the rates indicated in section 57-36-25.
2. This tax does not apply if the tax imposed by section 57-36-25 or 57-36-26 has been paid and it does not apply to cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products exempt under section 57-36-24.
3. On or before the tenth day of each calendar quarter, every consumer who, during the preceding calendar quarter, has acquired title to or possession of cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products for use or storage in this state, upon which products the tax imposed by either section 57-36-25 or 57-36-26 has not been paid, shall file a return with the tax commissioner showing the quantity of such products so acquired. For sales of other tobacco products, the return must also include the net weight in ounces, as listed by the manufacturer. The return must be made upon a form furnished and prescribed by the tax commissioner and must contain such other information as the tax commissioner may require. The return must be accompanied by a remittance for the full unpaid tax liability shown by it.
4. As soon as practicable after any return is filed, the tax commissioner shall examine the return and correct it, if necessary, according to the tax commissioner's best judgment and information.
5. If any consumer required to pay the tax levied by this section fails to file a return or remit the tax as required, the tax commissioner shall make an assessment of tax against the consumer according to the tax commissioner's best judgment and information.
6. All of the provisions of this chapter relating to corrections of returns, deficiency assessments, protests, hearings, interest and penalties, and collections of taxes apply to consumers under this section.

SECTION 18. AMENDMENT. Section 57-36-29 of the North Dakota Century Code is amended and reenacted as follows:

57-36-29. Correction of errors.

1. If it appears that as a result of a mistake an amount of tax, penalty, or interest has been paid which was not due under the provisions of this chapter, then such amount becomes due under this chapter, and the amount must be credited or refunded to such person or firm by the tax commissioner.

2. Whenever a distributor destroys cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products accidentally, or intentionally, because of staleness or other unfitness for sale, a credit or refund must be given to the wholesaler under the terms and conditions prescribed by the tax commissioner.

SECTION 19. AMENDMENT. Section 57-36-33 of the North Dakota Century Code is amended and reenacted as follows:

57-36-33. Penalties for violation of chapter.

Except as otherwise provided in this chapter:

1. Any person who violates any provision of this chapter is guilty of a class A misdemeanor.
2. All cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products in the possession of the person who violates any provision of this chapter, or in the place of business of the person, may be confiscated by the tax commissioner as provided under section 57-36-14 and forfeited to the state. Any cigarette-making machine that is maintained or operated in violation of sections 57-36-05.3, 57-36-05.4, or 57-36-06.1 must be confiscated by the tax commissioner and forfeited to the state in accordance with chapter 29-31.1."

Page 6, after line 18, insert:

"SECTION 22. AMENDMENT. Section 57-39.2-03.9 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-03.9. Sales tax on tobacco products.

Notwithstanding any other provision of law, the sales taxes imposed by this chapter apply to the gross receipts of retailers from all sales at retail of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products. For purposes of this section, "gross receipts" from the sale of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products includes any other taxes imposed on ~~such~~the merchandise or its use or on the retail or other sale of ~~such~~the merchandise.

SECTION 23. AMENDMENT. Section 57-40.2-03.2 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-03.2. Use tax on tobacco products.

Notwithstanding any other provision of law, the use taxes imposed by this chapter apply to the storage, use, or consumption in this state of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products, provided that gross receipts from the sale ~~thereof~~ cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products mean and include any other taxes imposed on ~~such~~the merchandise or its use or on the retail or other sale ~~thereof~~ the merchandise."

Page 7, line 16, replace "10" with "20"

Page 7, line 16, replace "11" with "21"

Page 7, line 17, replace "8, 12," with "24"

Page 7, line 17, replace "13" with "25"

Page 7, line 18, after the fifth comma insert "8,"

Page 7, line 18, after the sixth comma insert "10, 11, 12, 13,"

Page 7, line 18, remove "and"

Page 7, line 18, after "14" insert ", 15, 16, 17, 18, 19, 22, 23, and 26"

Re-number accordingly

REPORT OF STANDING COMMITTEE

HB 1133: Finance and Taxation Committee (Rep. Headland, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1133 was placed on the Sixth order on the calendar.

Page 1, line 8, replace "subsection 10" with "subsections 5, 6, 7, 10, 15, and 16"

Page 1, line 8, replace the second "section" with "sections 57-36-02, 57-36-04, 57-36-05, 57-36-09, 57-36-09.1, 57-36-24,"

Page 1, line 8, after the fourth comma insert "57-36-26, 57-36-28, 57-36-29, and 57-36-33,"

Page 1, line 9, replace the second "section" with "sections 57-39.2-03.9, 57-40.2-03.2, and"

Page 1, line 14, after the first comma insert "sales tax and use tax on tobacco products,"

Page 4, replace lines 16 through 19 with:

"SECTION 8. AMENDMENT. Subsections 5, 6, 7, 10, 15, and 16 of section 57-36-01 of the North Dakota Century Code are amended and reenacted as follows:

5. "Consumer" means any person who has title to or possession of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products in storage, for use or other consumption in this state.
6. "Dealer" includes any person other than a distributor who is engaged in the business of selling cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products, or any product of a cigarette-making machine.
7. "Distributor" includes any person engaged in the business of producing or manufacturing cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products, or importing into this state cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products, for the purpose of distribution and sale thereof to dealers and retailers.
10. "Other tobacco products" means ~~snuff and chewing tobacco~~ any product not otherwise defined in this section, which is made up or composed of tobacco in whole or in part. "Other tobacco products" do not include any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar noncombustible product, or device containing nicotine which employs a heating element, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, which can be used to produce vapor from nicotine in a solution or other form, or any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device.
15. "Storage" means any keeping or retention of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products for use or consumption in this state.
16. "Use" means the exercise of any right or power incidental to the ownership or possession of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products.

SECTION 9. AMENDMENT. Section 57-36-02 of the North Dakota Century Code is amended and reenacted as follows:

57-36-02. Distributors and dealers to be licensed.

Each person engaged in the business of selling cigarettes, cigarette papers, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products in this state, including any distributor or dealer, must secure a license from the attorney general before engaging or continuing to engage in business. A separate application and license is required for each distributor at each outlet or place of business within the state, and a separate dealer's license is required for each retail outlet when a person owns or controls more than one place of business dealing in cigarettes, cigarette papers, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products. No retailer will be granted a distributor's license except a retailer who, in the usual course of business, performed a distributor's or wholesaler's function for at least one year prior to filing the license application. The application prescribed by the attorney general must include the name and address of the applicant, the address and place of business, the type of business, and other information as required for the proper administration of this chapter. Each application for a wholesale or distributor's outlet license must be accompanied by a fee of twenty-five dollars and a surety bond approved by the attorney general. Each application for a dealer's outlet license must be accompanied by a fee of fifteen dollars. A reinstatement fee of fifty dollars is required in addition to the annual license fee for each license renewal applied for after June thirtieth. The total reinstatement fee may not exceed five hundred dollars for any one licensee in any fiscal year. A distributor's license does not authorize the holder to make retail sales. Each license issued must be prominently displayed on the premises covered by the license.

SECTION 10. AMENDMENT. Section 57-36-04 of the North Dakota Century Code is amended and reenacted as follows:

57-36-04. Revocation of license - Penalty.

The attorney general may revoke the license of any dealer or distributor for failure to comply with any of the provisions of this chapter, or any of the rules or regulations prescribed by the tax commissioner or the attorney general. When a license has been legally revoked, no license may be issued again to the licensee for a period of one year thereafter. A person may not sell any cigarettes, cigarette papers, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products after that person's license has been revoked as provided in this chapter.

SECTION 11. AMENDMENT. Section 57-36-05 of the North Dakota Century Code is amended and reenacted as follows:

57-36-05. Unlawful to sell without license.

A dealer or distributor may not sell cigarettes, cigarette papers, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products in this state at wholesale or at retail unless a license has been issued to that dealer or distributor as prescribed by this chapter, and a person may not sell, offer for sale, or possess with the intent to sell, any cigarettes, cigarette papers, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products without such license.

SECTION 12. AMENDMENT. Section 57-36-09 of the North Dakota Century Code is amended and reenacted as follows:

57-36-09. Records to be kept by distributors and reports made - Penalty.

Distributors shall keep records and make reports relating to purchases and sales of cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products made by them, and must be punished for failure so to do, as follows:

1. Each distributor who shall dispose of cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products shall keep and preserve for one year all invoices of cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products purchased by the distributor and shall permit the state tax commissioner, and assistants, authorized agents, or representatives of the state tax commissioner, to inspect and examine all taxable merchandise, invoices, receipts, books, papers, and memoranda as may be deemed necessary by the state tax commissioner, and assistants, authorized agents, or representatives of the state tax commissioner in determining the amount of the tax as may be yet due. Each person selling or otherwise disposing of cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products as a distributor shall keep a record of all sales made within the state showing the name and address of the purchaser and the date of sale. For sales of other tobacco products, the records must also include the net weight in ounces, as listed by the manufacturer.
2. On or before the fifteenth day of each month, each licensed distributor, on such form as the state tax commissioner shall prescribe, shall report to the tax commissioner all purchases and sales of cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products made from or to any persons either within or without this state during the preceding month. For sales of other tobacco products, each licensed distributor shall also report to the tax commissioner the net weight in ounces, as listed by the manufacturer. The tax levied by this chapter is payable monthly and must be remitted to the tax commissioner by each licensed distributor on or before the fifteenth day of the month following the monthly period.
3. Any person failing to file any prescribed form or return or to pay any tax within the time required or permitted by this section is subject to a penalty of five percent of the amount of tax due or five dollars, whichever is greater, plus interest of one percent of the tax per month or fraction of a month of delay except the first month after the return or the tax became due. The tax commissioner, if satisfied that the delay was excusable, may waive all or any part of the penalty. The penalty must be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.

SECTION 13. AMENDMENT. Section 57-36-09.1 of the North Dakota Century Code is amended and reenacted as follows:

57-36-09.1. Warehouse - Record of deliveries and shipments.

Records of all deliveries of shipments of cigarettes ~~and, cigars, pipe tobacco,~~ chewing tobacco, snuff, or other tobacco products from a licensed public warehouse to persons within this state must be kept by the warehouse and be available to the tax commissioner for inspection. They must show the name and address of the consignee, the date, the quantity of cigarettes, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products delivered, and such other information as the tax commissioner may require. These records must be preserved for one year from the date of delivery of the cigarettes, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products.

SECTION 14. AMENDMENT. Section 57-36-24 of the North Dakota Century Code is amended and reenacted as follows:

57-36-24. Exemptions.

All gift cigarettes, snuff, cigars, pipe tobacco, chewing tobacco, and other tobacco products, not for resale, which are given to the North Dakota veterans' home or the North Dakota state hospital for distribution to the occupants thereof, are exempt from the excise taxes levied under this chapter."

Page 5, remove the overstrike over line 8

Page 5, line 8, overstrike "other tobacco products" and insert immediately thereafter "snuff and chewing tobacco"

Page 5, remove the overstrike over line 9

Page 5, after line 28, insert:

"SECTION 16. AMENDMENT. Section 57-36-26 of the North Dakota Century Code is amended and reenacted as follows:

57-36-26. Cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products - Excise tax payable by dealers - Reports - Penalties - Collection - Allocation of revenue.

1. There is levied and assessed, upon all cigars and pipe tobacco purchased in another state and brought into this state by a dealer for the purpose of sale at retail, an excise tax at the rate of twenty-eight percent of the wholesale purchase price and, upon all chewing tobacco, snuff, and other tobacco products purchased in another state and brought into this state by a dealer for the purpose of sale at retail, an excise tax at the rates indicated in section 57-36-25, at the time the products were brought into this state. For the purposes of this section, the term "wholesale purchase price" means the established price for which a manufacturer sells cigars or pipe tobacco to a distributor exclusive of any discount or other reduction. However, the dealer may elect to report and remit the tax on the cost price of the products to the dealer rather than on the wholesale purchase price. The proceeds of the tax, together with the forms of return and in accordance with any rules and regulations the tax commissioner may prescribe, must be remitted to the tax commissioner by the dealer on a monthly basis on or before the fifteenth day of the month following the monthly period for which it is paid. The tax commissioner shall have the authority to place any dealer on an annual remittance basis when in the judgment of the tax commissioner the operations of the dealer merit that remittance period. In addition, the tax commissioner shall have the authority to permit the consolidation of the filing of a dealer's return when the dealer has more than one location and thereby would be required to file more than one return.
2. If cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products have been subjected already to a tax by any other state in respect to their sale in an amount less than the tax imposed by this section, the provisions of this section apply, but at a rate measured by the difference only between the rate fixed in this section and the rate by which the previous tax upon the sale was computed. If the tax imposed in the other state is twenty percent of the wholesale purchase price or more, then no tax is due on the article. The provisions of this subsection apply only if the other state allows a tax credit with respect to the excise tax on cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products imposed by this state which is substantially similar in effect to the credit allowed by this subsection.

3. Any person failing to file any prescribed forms of return or to pay any tax within the time required by this section is subject to a penalty of five dollars or a sum equal to five percent of the tax due, whichever is greater, plus one percent of the tax for each month of delay or fraction thereof excepting the month within which the return was required to be filed or the tax became due. The tax commissioner, if satisfied that the delay was excusable, may waive all or any part of the penalty. The penalty must be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.
4. All moneys received by the tax commissioner under the provisions of this section must be transmitted to the state treasurer at the end of each month and deposited in the state treasury to the credit of the general fund.

SECTION 17. AMENDMENT. Section 57-36-28 of the North Dakota Century Code is amended and reenacted as follows:

57-36-28. Consumer's use tax - Cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products - Reports - Remittances.

1. A tax is imposed upon the use or storage by consumers of cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products in this state, and upon those consumers, at the rates indicated in section 57-36-25.
2. This tax does not apply if the tax imposed by section 57-36-25 or 57-36-26 has been paid and it does not apply to cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products exempt under section 57-36-24.
3. On or before the tenth day of each calendar quarter, every consumer who, during the preceding calendar quarter, has acquired title to or possession of cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products for use or storage in this state, upon which products the tax imposed by either section 57-36-25 or 57-36-26 has not been paid, shall file a return with the tax commissioner showing the quantity of such products so acquired. For sales of other tobacco products, the return must also include the net weight in ounces, as listed by the manufacturer. The return must be made upon a form furnished and prescribed by the tax commissioner and must contain such other information as the tax commissioner may require. The return must be accompanied by a remittance for the full unpaid tax liability shown by it.
4. As soon as practicable after any return is filed, the tax commissioner shall examine the return and correct it, if necessary, according to the tax commissioner's best judgment and information.
5. If any consumer required to pay the tax levied by this section fails to file a return or remit the tax as required, the tax commissioner shall make an assessment of tax against the consumer according to the tax commissioner's best judgment and information.
6. All of the provisions of this chapter relating to corrections of returns, deficiency assessments, protests, hearings, interest and penalties, and collections of taxes apply to consumers under this section.

SECTION 18. AMENDMENT. Section 57-36-29 of the North Dakota Century Code is amended and reenacted as follows:

57-36-29. Correction of errors.

1. If it appears that as a result of a mistake an amount of tax, penalty, or interest has been paid which was not due under the provisions of this chapter, then such amount becomes due under this chapter, and the amount must be credited or refunded to such person or firm by the tax commissioner.
2. Whenever a distributor destroys cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products accidentally, or intentionally, because of staleness or other unfitness for sale, a credit or refund must be given to the wholesaler under the terms and conditions prescribed by the tax commissioner.

SECTION 19. AMENDMENT. Section 57-36-33 of the North Dakota Century Code is amended and reenacted as follows:

57-36-33. Penalties for violation of chapter.

Except as otherwise provided in this chapter:

1. Any person who violates any provision of this chapter is guilty of a class A misdemeanor.
2. All cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products in the possession of the person who violates any provision of this chapter, or in the place of business of the person, may be confiscated by the tax commissioner as provided under section 57-36-14 and forfeited to the state. Any cigarette-making machine that is maintained or operated in violation of sections 57-36-05.3, 57-36-05.4, or 57-36-06.1 must be confiscated by the tax commissioner and forfeited to the state in accordance with chapter 29-31.1."

Page 6, after line 18, insert:

"SECTION 22. AMENDMENT. Section 57-39.2-03.9 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-03.9. Sales tax on tobacco products.

Notwithstanding any other provision of law, the sales taxes imposed by this chapter apply to the gross receipts of retailers from all sales at retail of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products. For purposes of this section, "gross receipts" from the sale of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products includes any other taxes imposed on ~~such~~the merchandise or its use or on the retail or other sale of ~~such~~the merchandise.

SECTION 23. AMENDMENT. Section 57-40.2-03.2 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-03.2. Use tax on tobacco products.

Notwithstanding any other provision of law, the use taxes imposed by this chapter apply to the storage, use, or consumption in this state of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products, provided that gross receipts from the sale ~~thereof~~ thereof cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products mean and include any other taxes imposed on ~~such~~the merchandise or its use or on the retail or other sale ~~thereof~~ of the merchandise."

Page 7, line 16, replace "10" with "20"

Page 7, line 16, replace "11" with "21"

Page 7, line 17, replace "8, 12," with "24"

Page 7, line 17, replace "13" with "25"

Page 7, line 18, after the fifth comma insert "8,"

Page 7, line 18, after the sixth comma insert "10, 11, 12, 13,"

Page 7, line 18, remove "and"

Page 7, line 18, after "14" insert ", 15, 16, 17, 18, 19, 22, 23, and 26"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1133: Finance and Taxation Committee (Rep. Headland, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1133 was placed on the Sixth order on the calendar.

Page 1, remove line 7

Page 1, line 8, remove "5-01-21,"

Page 1, line 8, remove "subsection 10 of section 57-36-01, section 57-36-25,"

Page 1, line 10, remove "tax reporting of domestic wineries, domestic"

Page 1, line 11, remove "distilleries, and brewer taprooms,"

Page 1, line 13, remove "definition of tobacco products, taxation of tobacco products,"

Page 1, remove lines 18 through 24

Page 2, remove lines 1 through 29

Page 4, remove lines 16 through 30

Page 5, remove lines 1 through 28

Page 7, line 17, remove "8,"

Page 7, line 17, remove the second comma

Page 7, line 18, remove "9,"

Page 7, line 19, remove "Sections 1, 2, and 3 of this Act are effective for taxable years"

Page 7, remove line 20

Renumber accordingly

2015 SENATE FINANCE AND TAXATION

HB 1133

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

HB1133
3/16/2015
Job #24843

- Subcommittee
 Conference Committee

Committee Clerk Signature

Alice Grove

Explanation or reason for introduction of bill/resolution:

Relating to minimum tax payments and refunds, offsets of overpaid local option taxes from future distributions, the effect of the expiration of the federal research tax credit on the state income tax credit for research and experimental expenditures, and exemptions from motor vehicle excise tax; relating to authority of the tax commissioner to adopt rules, offsets of restaurant, restaurant and lodging, and city motor vehicle rental taxes from future distributions, estimated income tax requirements for corporations, articles taxed in other states or political subdivisions of other states, and establishing energy per volume equivalent of liquefied natural gas for special fuels tax purposes, and to provide an effective date.

Minutes:

Attachments #1, #2

Chairman Cook opened the hearing on HB1133. All committee members present.

Myles Vosberg, Director, Tax Administration Division, N.D. Tax Commissioner -- appears and testifies in support of HB1133. **(Attachment #1)**

Proposed Amendments to Reengrossed HB1133 from Myles for Tax Commissioner (Attachment #2)

Sen. Cook -- Your tax department housecleaning bills didn't fare very well in the House?

Myles Vosberg -- It did not, in this case.

Sen. Cook -- Did you lose 2 of them over there?

Myles Vosberg -- No, just 1 housekeeping bill.

Sen. Cook -- Section 5 of the bill, for the R&E credit, how many North Dakota taxpayers use that credit?

Myles Vosberg -- I don't know. I could find that information out, if you like?

Sen. Cook -- If you would, and what is the total amount of the credit? Is it standard practice for us to tie our North Dakota tax policy to a section of federal code?

Myles Vosberg -- It is for income tax purposes.

Sen. Triplett -- About the bill failing in the House, what was their issue?

Myles Vosberg -- The portion that was not successful was regarding the statement of full consideration. There was confusion on what that did on the House side when it got to the floor and the individual that disagreed with that provision thought it was more than a housekeeping change. He thought it was inappropriate for a housekeeping bill. He commented that the other two sections were true housekeeping changes.

Sen. Triplett -- It got through the committee okay?

Myles Vosberg -- The committee recommended do pass and we had 1 individual on the floor that had concern with that particular provision.

Senator Triplett -- In section 9 you talk about the conversion factor for LNG changing. How were we doing it before?

Myles Vosberg -- Up to this point, there hasn't been LNG used for motor fuels and right now it is 1 for 1. Because of the energy value it's not really a fair comparison. Just like we do for the compressed natural gas; this is a conversion factor that is being adopted by numerous states to try to put the tax on an equal basis.

Sen. Dotzenrod -- On page 1, line 19, you are overstriking wholesalers so now this would be governing retailers, licensees; the reason you are overstriking wholesalers there is because they would be included in the term licensees?

Myles Vosberg -- That is correct. Over the years some new licenses' have come on that are not for wholesalers and so this just pulls them all in.

Sen. Cook -- I liked the statements of full consideration that we passed. Explain it again, the statements of full consideration. That had to do on real estate that was sold, correct?

Myles Vosberg -- I'm not good on property taxes. Dee testified on SB2068 and here is her testimony: the change proposed removes the requirement that statements of full consideration filed with the county recorder in the county in which the property is located also be filed with the tax commissioner. Under previous law if the deed did not contain the amount the property was sold for, the parties to the transaction were required to file a statement of full consideration with the county recorder and the state board of equalization. In the 2013 session the confidentiality of the statements of full consideration was removed. Because of this change the amount that the property was sold for is now contained on the deed and if recorded on this document, it is on the statement of full consideration. Therefore, due to the fact that these are now open records and the sales information is readily available to interested parties we no longer believe the requirement to file the statement of full consideration with the state board of equalization is necessary. The

information is available in other places. We are just trying to make it a little simpler and not require that duplicate filing with the state board of equalization. I think the individual thought there was a change in what the disclosure policy actually was which caused him concern.

Sen. Triplett -- Somebody thought that we were opening the records for the first time and didn't realize that they had been opened to public inspection previously.

Myles Vosberg -- I think that is correct, but I do not want to speak for the representative.

Sen. Cook -- It's not that serious an issue where you would want to jeopardize another bill.

Myles Vosberg --Probably not.

No further testimony.

Chairman Cook closed the hearing on HB1133.

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

HB1133
3/23/2015
Job #25234

- Subcommittee
 Conference Committee

Committee Clerk Signature

Alice Grove

Explanation or reason for introduction of bill/resolution:

Committee work

Minutes:

Chairman Cook opened the committee work on HB1133.

Sen. Cook -- Do we have amendments on this bill? We do.

Sen. Triplett -- I would move amendments 15.8063.04000 presented to the committee by Myles Vosberg.

Sen. Unruh -- Seconded.

Sen. Cook -- Anyone remember the bill number that these amendments were in?

Sen. Unruh -- 2068

Sen. Cook. That's right.

Sen. Cook -- All in favor of the amendments signify by saying aye. Carried.

Sen. Dotzenrod -- Was 2068, the bill that got killed over there, was that a technical corrections bill? They killed a technical corrections bill?

Sen. Unruh -- It is in the testimony of Myles Vosberg, after the explanation of the bill in front of us and it was a property tax housekeeping bill.

Sen. Cook -- Larry Klemin read one clause in it and read it the wrong way. It had to do with real estate, statements of full consideration. I think he just read it wrong.

We have before us HB1133, as amended.

Sen. Unruh -- Move a do pass.

Senate Finance and Taxation Committee

HB1133

March 23, 2015

Page 2

Sen. Bekkedahl -- Seconded

Sen. Cook -- We have before us HB1133, as amended.

Roll call vote 7-0-0. Carried.

Carrier: Sen. Unruh.

Chairman Cook closed the committee work on HB1133.

March 23, 2015

↑
3/23/15

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1133

Page 1, line 7, after "5-03-05" insert ", 40-57.1-04.4,"

Page 1, line 7, after the first comma insert "subsection 4 of section 57-02-27.2,"

Page 1, line 9, after the first comma insert "the tax lien of record clearance requirement for the new and expanding business income tax exemption,"

Page 1, line 10, after the comma insert "removal of obsolete language from provisions relating to the valuation and assessment of agricultural lands,"

Page 1, after line 21, insert:

"SECTION 2. AMENDMENT. Section 40-57.1-04.4 of the North Dakota Century Code is amended and reenacted as follows:

40-57.1-04.4. Tax lien of record clearance Clearance of tax obligations and tax liens of record.

1. A project operator is not eligible for the income tax exemption under section 40-57.1-04 until a showing is made that the project operator has satisfied all state ~~and~~ local tax obligations and tax liens of record for delinquent property, income, income withholding, sales, or use taxes owed to the state or a political subdivision.
2. A certificate from the tax commissioner to the state board of equalization satisfies the requirement of subsection 1.
3. If the project operator is a corporation or a ~~limited liability~~ ~~company~~ ~~pass~~ ~~through~~ ~~entity~~ defined in section 57-38-01, any of its officers, governors, or managers charged with the responsibility for making either property, income, income withholding, sales, or use tax returns and payments are subject to the provisions of subsections 1 and 2 with respect to all state or local tax obligations and tax liens of record for delinquent property, income, income withholding, sales, or use taxes for which the individual is personally liable. If the project operator is a partnership, each general partner is subject to the provisions of subsections 1 and 2 with respect to all state or local tax obligations or tax liens of record for delinquent property, income, income withholding, sales, or use taxes for which the individual is personally liable."

Page 3, after line 7, insert:

"SECTION 6. AMENDMENT. Subsection 4 of section 57-02-27.2 of the North Dakota Century Code is amended and reenacted as follows:

4. To find the "capitalized average annual gross return", the average annual gross return must be capitalized by a rate that is a ten-year average of the gross agribank mortgage rate of interest for North Dakota, ~~but the rate used for capitalization under this section may not be less than eight percent for taxable year 2009, seven and seven tenths percent for taxable~~

~~year 2010, and seven and four tenths percent for taxable year 2011.~~ The ten-year average must be computed from the twelve years ending with the most recent year used under subdivision a of subsection 3, discarding the highest and lowest years, and the gross agribank mortgage rate of interest for each year must be determined in the manner provided in section 20.2032A-4(e)(1) of the United States treasury department regulations for valuing farm real property for federal estate tax purposes, except that the interest rate may not be adjusted as provided in section 20.2032A-4(e)(2)."

Page 4, line 27, after the second boldfaced period insert "Section 2 of this Act is effective for applications filed after June 30, 2015."

Page 4, line 27, replace "5" with "7"

Page 4, line 27, replace "6" with "8"

Page 4, line 28, replace "7" with "9"

Page 4, line 28, replace "8" with "10"

Page 4, line 29, remove "2,"

Page 4, line 29, after the fifth comma insert "5,"

Page 4, line 29, replace "9" with "11"

Page 4, line 29, replace "are" with "become"

Renumber accordingly

Date: 3-23-15

Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1133

Senate Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: 15.8063.04000

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Sen. Triplett Seconded By Sen. Unruh

Voice vote Aye. Carried

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook			Senator Jim Dotzenrod		
Vice Chairman Lonnie Laffen			Senator Connie Triplett		
Senator Brad Bekkedahl					
Senator Dave Oehlke					
Senator Jessica Unruh					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 3.23.15

Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1133

Senate Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: 15.8063.04001 Title .05000

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Refer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By: Sen. Unruh Seconded By Sen. Bekkedahl

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook	✓		Senator Jim Dotzenrod	✓	
Vice Chairman Lonnie Laffen	✓		Senator Connie Triplett	✓	
Senator Brad Bekkedahl	✓				
Senator Dave Oehlke	✓				
Senator Jessica Unruh	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Unruh

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1133, as reengrossed: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed HB 1133 was placed on the Sixth order on the calendar.

Page 1, line 7, after "5-03-05" insert ", 40-57.1-04.4,"

Page 1, line 7, after the first comma insert "subsection 4 of section 57-02-27.2,"

Page 1, line 9, after the first comma insert "the tax lien of record clearance requirement for the new and expanding business income tax exemption,"

Page 1, line 10, after the comma insert "removal of obsolete language from provisions relating to the valuation and assessment of agricultural lands,"

Page 1, after line 21, insert:

"SECTION 2. AMENDMENT. Section 40-57.1-04.4 of the North Dakota Century Code is amended and reenacted as follows:

40-57.1-04.4. Tax lien of record clearance Clearance of tax obligations and tax liens of record.

1. A project operator is not eligible for the income tax exemption under section 40-57.1-04 until a showing is made that the project operator has satisfied all state ~~and~~ local tax obligations and tax liens of record for delinquent property, income, income withholding, sales, or use taxes owed to the state or a political subdivision.
2. A certificate from the tax commissioner to the state board of equalization satisfies the requirement of subsection 1.
3. If the project operator is a corporation or a ~~limited liability company~~ passthrough entity defined in section 57-38-01, any of its officers, governors, or managers charged with the responsibility for making either property, income, income withholding, sales, or use tax returns and payments are subject to the provisions of subsections 1 and 2 with respect to all state or local tax obligations and tax liens of record for delinquent property, income, income withholding, sales, or use taxes for which the individual is personally liable. If the project operator is a partnership, each general partner is subject to the provisions of subsections 1 and 2 with respect to all state or local tax obligations or tax liens of record for delinquent property, income, income withholding, sales, or use taxes for which the individual is personally liable."

Page 3, after line 7, insert:

"SECTION 6. AMENDMENT. Subsection 4 of section 57-02-27.2 of the North Dakota Century Code is amended and reenacted as follows:

4. To find the "capitalized average annual gross return", the average annual gross return must be capitalized by a rate that is a ten-year average of the gross agribank mortgage rate of interest for North Dakota, ~~but the rate used for capitalization under this section may not be less than eight percent for taxable year 2009, seven and seven-tenths percent for taxable year 2010, and seven and four-tenths percent for taxable year 2011.~~ The ten-year average must be computed from the twelve years ending with the most recent year used under subdivision a of subsection 3, discarding the highest and lowest years, and the gross agribank mortgage rate of interest for each year must be determined in

the manner provided in section 20.2032A-4(e)(1) of the United States treasury department regulations for valuing farm real property for federal estate tax purposes, except that the interest rate may not be adjusted as provided in section 20.2032A-4(e)(2)."

Page 4, line 27, after the second boldfaced period insert "Section 2 of this Act is effective for applications filed after June 30, 2015."

Page 4, line 27, replace "5" with "7"

Page 4, line 27, replace "6" with "8"

Page 4, line 28, replace "7" with "9"

Page 4, line 28, replace "8" with "10"

Page 4, line 29, remove "2,"

Page 4, line 29, after the fifth comma insert "5,"

Page 4, line 29, replace "9" with "11"

Page 4, line 29, replace "are" with "become"

Renumber accordingly

2015 TESTIMONY

HB 1133



HB 1133
1-13-15
#1 p. 1

Testimony—

House Finance and Taxation Committee

House Bill 1133

January 13, 2015

Prepared by Myles Vosberg, Director Tax Administration Division
North Dakota Office of State Tax Commissioner
Phone: 701-328-3471
E-mail: msvosberg@nd.gov

Introduction

Good morning Chairman Headland and members of the House Finance and Taxation Committee. For the record, I am Myles Vosberg, Director of the Tax Administration Division of the Tax Commissioner's Office. I am here today on behalf of the Commissioner to testify in support of House Bill 1133.

Background

This bill was introduced by the Tax Commissioner to address administrative issues encountered by our Department. These changes, which apply to alcohol taxes, tobacco taxes, sales and use taxes, local sales and hospitality taxes, motor vehicle excise tax, and special fuels tax, will have no fiscal impact. The changes are intended to clarify language, codify administrative processes or make current processes more consistent with other similar taxes.

Explanation of bill

Sections 1, 2, and 3 of the bill change the return filing requirement for domestic wineries, domestic distilleries, and taproom breweries from annual to quarterly. This filing frequency is consistent with other businesses taxes and assists the Tax Commissioner with compliance processes.

Section 4 clarifies that the Tax Commissioner has rule making authority for all types of businesses that report and remit alcohol taxes. This section of the law has not been updated as new types of alcohol licenses have been added.

Sections 5 and 7 pertain to overpayment of local taxes to cities or counties. Section 5 states the Tax Commissioner has the ability to offset overpayments of tax against future distributions if too much city lodging or city restaurant & lodging taxes was remitted to a city. Overpayments are possible if there is an error in distribution or if retailers that collected tax in error refund tax to the customer and request a refund from the Tax Commissioner. Section 7 is the same as Section 5 except the taxes involved are city and county sales taxes. The new language in both sections authorizes the Tax Commissioner to consult with the city that has been overpaid to determine an appropriate time period to recover any overpayment.

Section 6 states that refunds or assessments may not be issued for amounts less than \$5 including any applicable penalty or interest. Section 6 will make this minimum threshold consistent across all tax types administered by the Tax Commissioner. Current law for income tax, motor fuel taxes and oil and gas severance taxes already contains this minimum threshold; however, other taxes including sales and use, alcohol, and cigarette and tobacco taxes, do not include the minimum threshold. Due to the cost of postage, writing checks, and preparing billing notices, the Commissioner’s current policy is to not bill any tax amount due less than \$5 and to not issue a refund check for any overpayment error of less than \$5 in instances where a return is corrected for errors.

Section 8 amends the definition of “other tobacco products” to clarify that all tobacco based products (except cigarettes) other than snuff and chewing tobacco are subject to a tobacco tax of 28 percent of the wholesale price. The current tobacco tax law separately defines “chewing tobacco” and “snuff”, but also defines “other tobacco products” to include only chewing tobacco and snuff. In reality “other tobacco products” include more products than just chewing tobacco and snuff. When the definition of other tobacco products was amended in 2001 in order to change the taxation of snuff and chewing tobacco from 28 percent of the wholesale price to a fixed number of cents per ounce, some of the essential language in the “other tobacco products” definition was omitted. Although the amendment successfully changed the basis of taxation on snuff and chewing tobacco, it also rendered the definition of other tobacco products somewhat incomplete. The proposed change in Section 8 essentially changes the definition of “other tobacco products” back to the pre-2001 definition, but still maintains the appropriate weight based tax on chewing tobacco and snuff. This definition change will not subject any new products to taxation. Other tobacco products do not include vape products, electronic cigarettes, or similar products that in some cases contain nicotine but no actual tobacco.



Section 9 clarifies that all “other tobacco products” under the revised definition are subject to a tobacco tax of 28 percent of the wholesale price. The amendment doesn’t change any tax rate or method of taxation. Its sole purpose is to make clear that tobacco products other than chewing tobacco and snuff are subject to the 28 percent tax rate.

I have amendments for your consideration that are related to the tobacco tax changes. When we drafted Sections 8 and 9 of House Bill 1133 we failed to incorporate this concept into other sections of the tobacco tax law. Although the proposed amendments to House Bill 1133 are quite lengthy, you will see that the changes only add chewing tobacco and snuff throughout the code to reflect that these products are no longer within the definition of other tobacco products.

Section 10 relates to the income tax credit for research and experimental expenditures (R&E). The current provisions in statute that allow for an income tax credit for R&E in North Dakota are currently tied to existence of the same federal credit provisions. In recent years, the federal R&E credit has been set to expire annually and has been included in a larger package of federal tax issues that usually get addressed for potential extension very late in the year. In some cases, extensions have been approved retroactively. In December, Congress again retroactively re-enacted the federal provisions to extend the existence of the credit, but only through December 31, 2014. Therefore, the existence of the North Dakota R&E credit after that date is uncertain. This section will maintain the existing North Dakota R&E credit regardless of the future extension or existence of the federal credit.

Section 11 relates to the amount of quarterly estimated income tax payments that are required to be made by a corporation. Prior to 2014, income tax withholding was not required for any income received by a corporation. However, the 2013 Legislature enacted a new requirement for income tax to be withheld on certain royalties received by nonresident individuals and business entities, including corporations, domiciled outside North Dakota. The change in this section allows for the tax withheld on behalf of a corporation to be included as part of its quarterly estimated payments. This treatment of withholding will be identical to how withholding is treated for individual income tax purposes.

Section 12 is a clarification in the use tax law. Under current law, when a business purchases and uses property in another state before bringing that property to North Dakota, the business is required to pay North Dakota use tax on the fair market value of the property, but credit is given for any tax that has been paid to the other state. The amendment clarifies that credit is provided only if the tax was legally due and paid to the other state.

Section 13 states that an insurance company that takes title to a vehicle in settlement of an insurance claim, is not subject to motor vehicle excise tax on the transfer. Many vehicles transferred under an insurance claim are not subject to tax simply because the vehicle is not able to be used on the roads and highways; but this amendment, which codifies current policy, will clarify that all vehicles transferred under an insurance claim are exempt from tax. This change has no impact on titling requirements with the Motor Vehicle Division of the Department of Transportation.

Section 14 identifies a conversion factor for liquefied natural gas (LNG) for purposes of calculating special fuels tax on LNG. The conversion factor is based on the energy ^{content}~~content~~ of LNG compared to other special fuels and is based on the same concept as the conversion factor for compressed natural gas currently found in the law.

Section 15 identifies the effective dates of all changes in the bill. Original Sections 10 and 11 (before amendment) related to income tax changes are effective for tax years beginning after December 31, 2014. The filing requirement changes for alcohol taxes found in Sections 1, 2, and 3 are effective for taxable periods after December 31, 2015. All other changes will be effective July 1, 2015.

Fiscal impact

The changes in House Bill 1133 have no fiscal impact.

Conclusion

The changes in House Bill 1133, including the proposed amendment offered by the Tax Commissioner, are intended to clarify the law, codify existing administrative practices, and make administrative practices more uniform among tax types. The Tax Commissioner respectfully requests that you give favorable consideration to House Bill 1133. Thank you for your consideration.



HB 1133
1-13-15
#2 p.1

Prepared by the
Office of State Tax Commissioner
January 13, 2015

PROPOSED AMENDMENTS TO HOUSE BILL 1133

Page 1, line 8, replace "subsection 10" with "subsections 5, 6, 7, 10, 15, and 16,"

Page 1, line 8, replace the second "section" with "sections 57-36-02, 57-36-04, 57-36-05, 57-36-09, 57-36-09.1, 57-36-24,"

Page 1, line 8, after "57-36-25," insert "57-36-26, 57-36-28, 57-36-29, and 57-36-33"

Page 1, line 9, replace the second "section" with "sections 57-39.2-03.9, 57-40.2-03.2, and"

Page 1, line 14, after "corporations," insert "sales tax and use tax on tobacco products,"

Page 4, line 16, replace "Subsection" with "Subsections 5, 6, 7,"

Page 4, line 16, after "10" insert ", 15, and 16"

Page 4, line 17, replace "is" with "are"

Page 4, after line 17, insert:

5. "Consumer" means any person who has title to or possession of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products in storage, for use or other consumption in this state.
6. "Dealer" includes any person other than a distributor who is engaged in the business of selling cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff or other tobacco products, or any product of a cigarette-making machine.
7. "Distributor" includes any person engaged in the business of producing or manufacturing cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products, or importing into this state cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products, for the purpose of distribution and sale thereof to dealers and retailers."

Page 4, after line 19, insert:

15. "Storage" means any keeping or retention of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products for use or consumption in this state.
16. "Use" means the exercise of any right or power incidental to the ownership or possession of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products.

SECTION 9. AMENDMENT. Section 57-36-02 of the North Dakota Century Code is amended and reenacted as follows:

#2 P. 2

57-36-02. Distributors and dealers to be licensed. Each person engaged in the business of selling cigarettes, cigarette papers, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products in this state, including any distributor or dealer, must secure a license from the attorney general before engaging or continuing to engage in business. A separate application and license is required for each distributor at each outlet or place of business within the state, and a separate dealer's license is required for each retail outlet when a person owns or controls more than one place of business dealing in cigarettes, cigarette papers, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products. No retailer will be granted a distributor's license except a retailer who, in the usual course of business, performed a distributor's or wholesaler's function for at least one year prior to filing the license application. The application prescribed by the attorney general must include the name and address of the applicant, the address and place of business, the type of business, and other information as required for the proper administration of this chapter. Each application for a wholesale or distributor's outlet license must be accompanied by a fee of twenty-five dollars and a surety bond approved by the attorney general. Each application for a dealer's outlet license must be accompanied by a fee of fifteen dollars. A reinstatement fee of fifty dollars is required in addition to the annual license fee for each license renewal applied for after June thirtieth. The total reinstatement fee may not exceed five hundred dollars for any one licensee in any fiscal year. A distributor's license does not authorize the holder to make retail sales. Each license issued must be prominently displayed on the premises covered by the license.

SECTION 10. AMENDMENT. Section 57-36-04 of the North Dakota Century Code is amended and reenacted as follows:

57-36-04. Revocation of license - Penalty. The attorney general may revoke the license of any dealer or distributor for failure to comply with any of the provisions of this chapter, or any of the rules or regulations prescribed by the tax commissioner or the attorney general. When a license has been legally revoked, no license may be issued again to the licensee for a period of one year thereafter. A person may not sell any cigarettes, cigarette papers, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products after that person's license has been revoked as provided in this chapter.

SECTION 11. AMENDMENT. Section 57-36-05 of the North Dakota Century Code is amended and reenacted as follows:

57-36-05. Unlawful to sell without license. A dealer or distributor may not sell cigarettes, cigarette papers, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products in this state at wholesale or at retail unless a license has been issued to that dealer or distributor as prescribed by this chapter, and a person may not sell, offer for sale, or possess with the intent to sell, any cigarettes, cigarette papers, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products without such license.

SECTION 12. AMENDMENT. Section 57-36-09 of the North Dakota Century Code is amended and reenacted as follows:

57-36-09. Records to be kept by distributors and reports made - Penalty. Distributors shall keep records and make reports relating to purchases and sales of cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products made by them, and must be punished for failure so to do, as follows:

#2 p. 3

1. Each distributor who shall dispose of cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff or other tobacco products shall keep and preserve for one year all invoices of cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products purchased by the distributor and shall permit the state tax commissioner, and assistants, authorized agents, or representatives of the state tax commissioner, to inspect and examine all taxable merchandise, invoices, receipts, books, papers, and memoranda as may be deemed necessary by the state tax commissioner, and assistants, authorized agents, or representatives of the state tax commissioner in determining the amount of the tax as may be yet due. Each person selling or otherwise disposing of cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products as a distributor shall keep a record of all sales made within the state showing the name and address of the purchaser and the date of sale. For sales of other tobacco products, the records must also include the net weight in ounces, as listed by the manufacturer.

2. On or before the fifteenth day of each month, each licensed distributor, on such form as the state tax commissioner shall prescribe, shall report to the tax commissioner all purchases and sales of cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products made from or to any persons either within or without this state during the preceding month. For sales of other tobacco products, each licensed distributor shall also report to the tax commissioner the net weight in ounces, as listed by the manufacturer. The tax levied by this chapter is payable monthly and must be remitted to the tax commissioner by each licensed distributor on or before the fifteenth day of the month following the monthly period.

3. Any person failing to file any prescribed form or return or to pay any tax within the time required or permitted by this section is subject to a penalty of five percent of the amount of tax due or five dollars, whichever is greater, plus interest of one percent of the tax per month or fraction of a month of delay except the first month after the return or the tax became due. The tax commissioner, if satisfied that the delay was excusable, may waive all or any part of the penalty. The penalty must be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.

SECTION 13. AMENDMENT. Section 57-36-09.1 of the North Dakota Century Code is amended and reenacted as follows:

57-36-09.1. Warehouse - Record of deliveries and shipments. Records of all deliveries of shipments of cigarettes, cigars, pipe tobacco, chewing tobacco, and snuff, or other tobacco products from a licensed public warehouse to persons within this state must be kept by the warehouse and be available to the tax commissioner for inspection. They must show the name and address of the consignee, the date, the quantity of cigarettes, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products delivered, and such other information as the tax commissioner may require. These records must be preserved for one year from the date of delivery of the cigarettes, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products.

SECTION 14. AMENDMENT. Section 57-36-24 of the North Dakota Century Code is amended and reenacted as follows:

57-36-24. Exemptions. All gift cigarettes, snuff, cigars, pipe tobacco, chewing tobacco, and other tobacco products, not for resale, which are given to the North Dakota veterans' home or the North Dakota state hospital for distribution to the occupants thereof, are exempt from the excise taxes levied under this chapter."

#2 P. 4

Page 4, line 20, replace "9" with "15"

Page 5, after line 28, insert:

"SECTION 16. AMENDMENT. Section 57-36-26 of the North Dakota Century Code is amended and reenacted as follows:

57-36-26. Cigars, pipe tobacco, chewing tobacco, snuff and other tobacco products - Excise tax payable by dealers - Reports - Penalties - Collection - Allocation of revenue.

1. There is levied and assessed, upon all cigars and pipe tobacco purchased in another state and brought into this state by a dealer for the purpose of sale at retail, an excise tax at the rate of twenty-eight percent of the wholesale purchase price and, upon all chewing tobacco, snuff, and other tobacco products purchased in another state and brought into this state by a dealer for the purpose of sale at retail, an excise tax at the rates indicated in section 57-36-25, at the time the products were brought into this state. For the purposes of this section, the term "wholesale purchase price" means the established price for which a manufacturer sells cigars or pipe tobacco to a distributor exclusive of any discount or other reduction. However, the dealer may elect to report and remit the tax on the cost price of the products to the dealer rather than on the wholesale purchase price. The proceeds of the tax, together with the forms of return and in accordance with any rules and regulations the tax commissioner may prescribe, must be remitted to the tax commissioner by the dealer on a monthly basis on or before the fifteenth day of the month following the monthly period for which it is paid. The tax commissioner shall have the authority to place any dealer on an annual remittance basis when in the judgment of the tax commissioner the operations of the dealer merit that remittance period. In addition, the tax commissioner shall have the authority to permit the consolidation of the filing of a dealer's return when the dealer has more than one location and thereby would be required to file more than one return.

2. If cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products have been subjected already to a tax by any other state in respect to their sale in an amount less than the tax imposed by this section, the provisions of this section apply, but at a rate measured by the difference only between the rate fixed in this section and the rate by which the previous tax upon the sale was computed. If the tax imposed in the other state is twenty percent of the wholesale purchase price or more, then no tax is due on the article. The provisions of this subsection apply only if the other state allows a tax credit with respect to the excise tax on cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products imposed by this state which is substantially similar in effect to the credit allowed by this subsection.

3. Any person failing to file any prescribed forms of return or to pay any tax within the time required by this section is subject to a penalty of five dollars or a sum equal to five percent of the tax due, whichever is greater, plus one percent of the tax for each month of delay or fraction thereof excepting the month within which the return was required to be filed or the tax became due. The tax commissioner, if satisfied that the delay was excusable, may waive all or any part of the penalty. The penalty must be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.

4. All moneys received by the tax commissioner under the provisions of this section must be transmitted to the state treasurer at the end of each month and deposited in the state treasury to the credit of the general fund.

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SECTION 17. AMENDMENT. Section 57-36-28 of the North Dakota Century Code is amended and reenacted as follows:

57-36-28. Consumer's use tax - Cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products - Reports - Remittances.

1. A tax is imposed upon the use or storage by consumers of cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products in this state, and upon those consumers, at the rates indicated in section 57-36-25.
2. This tax does not apply if the tax imposed by section 57-36-25 or 57-36-26 has been paid and it does not apply to cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products exempt under section 57-36-24.
3. On or before the tenth day of each calendar quarter, every consumer who, during the preceding calendar quarter, has acquired title to or possession of cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products for use or storage in this state, upon which products the tax imposed by either section 57-36-25 or 57-36-26 has not been paid, shall file a return with the tax commissioner showing the quantity of such products so acquired. For sales of other tobacco products, the return must also include the net weight in ounces, as listed by the manufacturer. The return must be made upon a form furnished and prescribed by the tax commissioner and must contain such other information as the tax commissioner may require. The return must be accompanied by a remittance for the full unpaid tax liability shown by it.
4. As soon as practicable after any return is filed, the tax commissioner shall examine the return and correct it, if necessary, according to the tax commissioner's best judgment and information.
5. If any consumer required to pay the tax levied by this section fails to file a return or remit the tax as required, the tax commissioner shall make an assessment of tax against the consumer according to the tax commissioner's best judgment and information.
6. All of the provisions of this chapter relating to corrections of returns, deficiency assessments, protests, hearings, interest and penalties, and collections of taxes apply to consumers under this section.

SECTION 18. AMENDMENT. Section 57-36-29 of the North Dakota Century Code is amended and reenacted as follows:

57-36-29. Correction of errors.

1. If it appears that as a result of a mistake an amount of tax, penalty, or interest has been paid which was not due under the provisions of this chapter, then such amount becomes due under this chapter, and the amount must be credited or refunded to such person or firm by the tax commissioner.
2. Whenever a distributor destroys cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products accidentally, or intentionally, because of staleness or other unfitness for sale, a credit or refund must be given to the wholesaler under the terms and conditions prescribed by the tax commissioner.

SECTION 19. AMENDMENT. Section 57-36-33 of the North Dakota Century Code is amended and reenacted as follows:

57-36-33. Penalties for violation of chapter. Except as otherwise provided in this chapter:

#2p. 6

1. Any person who violates any provision of this chapter is guilty of a class A misdemeanor.
2. All cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products in the possession of the person who violates any provision of this chapter, or in the place of business of the person, may be confiscated by the tax commissioner as provided under section 57-36-14 and forfeited to the state. Any cigarette-making machine that is maintained or operated in violation of sections 57-36-05.3, 57-36-05.4, or 57-36-06.1 must be confiscated by the tax commissioner and forfeited to the state in accordance with chapter 29-31.1."

Page 5, line 29, replace "10" with 20"

Page 6, line 6, replace "11" with "21"

Page 6, after line 18, insert:

"SECTION 22. AMENDMENT. Section 57-39.2-03.9 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-03.9. Sales tax on tobacco products. Notwithstanding any other provision of law, the sales taxes imposed by this chapter apply to the gross receipts of retailers from all sales at retail of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products. For purposes of this section, "gross receipts" from the sale of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products includes any other taxes imposed on ~~such~~ the merchandise or its use or on the retail or other sale of ~~such~~ the merchandise.

SECTION 23. AMENDMENT. Section 57-40.2-03.2 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-03.2. Use tax on tobacco products. Notwithstanding any other provision of law, the use taxes imposed by this chapter apply to the storage, use, or consumption in this state of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products, provided that gross receipts from the sale ~~thereof~~ of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products mean and include any other taxes imposed on ~~such~~ the merchandise or its use or on the retail or other sale ~~thereof~~ of the merchandise."

Page 6, line 19, replace "12" with "24"

Page 7, line 4, replace "13" with "25"

Page 7, line 8, replace "14" with 26"

Page 7, line 16, replace "15" with "27"

Page 7, line 16, replace "10" with "20"

Page 7, line 16, replace "11" with 21"

Page 7, line 17, remove "8,"

#2 p. 7

Page 7, line 17, replace "12" with "24"

Page 7, line 17, replace "13" with "25"

Page 7, line 18, after "7," insert "8, 9, 10, 11, 12, 13, 14,"

Page 7, line 18, replace "9" with "15, 16, 17, 18, 19, 22, 23,"

Page 7, line 18, replace "14" with "26"

Renumber accordingly

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#1 p.1

January 16, 2015

To: Chairman Headland and Members of the House Finance and Taxation Committee
North Dakota 2015 Legislature

RE: HOUSE BILL NO. 1133

For the record, my name is Julie Ketchum and I am the Director of Government Affairs for Waste Management Inc. I am submitting this letter with my thank you for the opportunity to provide these comments on HB 1133 which was heard by your committee on January 13, 2015. Unfortunately I was unable to attend and provide this testimony at the hearing. I would respectfully request your consideration before any action is taken.

Waste Management operates the largest fleet of Heavy Duty Natural Gas trucks in North America – with over 4,100 trucks on the road as of January 2015, and over 70 natural gas fueling stations.

As the use of Compressed Natural Gas (CNG) and Liquefied Natural Gas (LNG) grows in the U.S., states have been developing policy to clarify how to measure this fuel for purposes of sales and taxes. Although commonly accepted forms of measurement have been developed, because of the complexities associated with energy value and varied uses, there is no single form of measurement for all natural gas measurement. The National Conference on Weights and Measures (NCWM) adopted a common form of measurement (“gasoline gallon equivalent”) for CNG back in 1994, but many states continue to adopt variations of these measurements for both CNG and LNG. The application of incorrect equivalencies can create conflicting and unfair methods of taxation if not implemented correctly.

The language within HB 1133 at page 9, lines 8-15, Section 14, introduces a new form of measurement of LNG that has no precedent in other states and does not represent an accurate conversion of natural gas. As an example, the current IRS language taxes CNG at 126.67 cubic feet per GGE while the proposed language in this bill uses 120 cubic feet per DGE. Diesel fuel has more energy per gallon than gasoline, so one needs approximately 144 cubic feet of natural gas to replace a gallon of diesel. This means that the \$0.23 per 120 cubic feet actually translates to approximately \$0.276 per DGE, a significant economic penalty to using CNG compared to diesel.

We do not suggest using cubic feet as a form of measurement; however, if the State did decide to stay with this measurement, the language in HB 1133 would need to increase the number for CNG from 120 cubic feet per DGE to 144 cubic feet per gallon of special fuel.

Waste Management advocates that states use the commonly accepted NCWM form of measurement of 5.66 pounds of compressed natural gas for a gasoline gallon equivalent (GGE) and 6.06 pounds of liquefied natural gas for a diesel gallon equivalent (DGE). Waste Management suggests that the state amend the paragraph within HB 1133 as highlighted below:

“SECTION 14. AMENDMENT. Subsection 1 of section 57-43.2-02 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in this chapter, an excise tax of twenty-three cents per gallon [3.79 liters] is imposed on the sale or delivery of all special fuel sold or used in this state. For

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#1 p. 2

the purpose of determining the tax upon compressed natural gas and liquefied natural gas under this section, ~~one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel~~ a gasoline gallon equivalent (GGE) of CNG would be defined as 5.66 pounds of CNG; a diesel gallon equivalent (DGE) of LNG would be defined as 6.06 pounds of LNG. "

Alternatively, the State could convert CNG and LNG to DGEs, and the Section 14 would be amended as follows:

"SECTION 14. AMENDMENT. Subsection 1 of section 57-43.2-02 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in this chapter, an excise tax of twenty-three cents per gallon [3.79 liters] is imposed on the sale or delivery of all special fuel sold or used in this state. For the purpose of determining the tax upon compressed natural gas and liquefied natural gas under this section, ~~one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel~~ 6.28 lbs per gallon of special fuel would be used for CNG and 6.06 lbs per gallon for LNG."

Waste Management suggests that the State mirrors measurement language being developed in other states, we have provided in our suggested amendment(s).

Should you have any questions, please don't hesitate to call me.

Sincerely,

Julie Ketchum
Director of Government Affairs
Waste Management Inc
651/334-4309

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1-20-15
#1

Prepared for
The House Finance and Taxation Committee
January 13, 2015

PROPOSED AMENDMENTS TO HOUSE BILL 1133

Page 4, line 19, after the period insert "“Other tobacco products” do not include any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar noncombustible product, or device containing nicotine which employs a heating element, electronic circuit, or other electronic, chemical or mechanical means, regardless of shape or size, which can be used to produce vapor from nicotine in a solution or other form, or any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device.”

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(1-~~20~~³¹-15)
(#1)

Prepared for
The House Finance and Taxation Committee
January 13, 2015

PROPOSED AMENDMENTS TO HOUSE BILL 1133

Page 4, line 19, after the period insert ““Other tobacco products” do not include any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar noncombustible product, or device containing nicotine which employs a heating element, electronic circuit, or other electronic, chemical or mechanical means, regardless of shape or size, which can be used to produce vapor from nicotine in a solution or other form, or any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device.”

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1-21-15
#2 p. 1

Prepared by the
Office of State Tax Commissioner
January 21, 2015

PROPOSED AMENDMENTS TO HOUSE BILL 1133

Page 1, line 8, replace "subsection 10" with "subsections 5, 6, 7, 10, 15, and 16,"

Page 1, line 8, replace the second "section" with "sections 57-36-02, 57-36-04, 57-36-05, 57-36-09, 57-36-09.1, 57-36-24,"

Page 1, line 8, after "57-36-25," insert "57-36-26, 57-36-28, 57-36-29, and 57-36-33"

Page 1, line 9, replace the second "section" with "sections 57-39.2-03.9, 57-40.2-03.2, and"

Page 1, line 14, after "corporations," insert "sales tax and use tax on tobacco products,"

Page 4, line 16, replace "Subsection" with "Subsections 5, 6, 7,"

Page 4, line 16, after "10" insert ", 15, and 16"

Page 4, line 17, replace "is" with "are"

Page 4, after line 17, insert:

5. "Consumer" means any person who has title to or possession of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products in storage, for use or other consumption in this state.
6. "Dealer" includes any person other than a distributor who is engaged in the business of selling cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff or other tobacco products, or any product of a cigarette-making machine.
7. "Distributor" includes any person engaged in the business of producing or manufacturing cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products, or importing into this state cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products, for the purpose of distribution and sale thereof to dealers and retailers."

Page 4, after line 19, insert:

15. "Storage" means any keeping or retention of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products for use or consumption in this state.
16. "Use" means the exercise of any right or power incidental to the ownership or possession of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products.

SECTION 9. AMENDMENT. Section 57-36-02 of the North Dakota Century Code is amended and reenacted as follows:

#2.p.2

57-36-02. Distributors and dealers to be licensed. Each person engaged in the business of selling cigarettes, cigarette papers, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products in this state, including any distributor or dealer, must secure a license from the attorney general before engaging or continuing to engage in business. A separate application and license is required for each distributor at each outlet or place of business within the state, and a separate dealer's license is required for each retail outlet when a person owns or controls more than one place of business dealing in cigarettes, cigarette papers, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products. No retailer will be granted a distributor's license except a retailer who, in the usual course of business, performed a distributor's or wholesaler's function for at least one year prior to filing the license application. The application prescribed by the attorney general must include the name and address of the applicant, the address and place of business, the type of business, and other information as required for the proper administration of this chapter. Each application for a wholesale or distributor's outlet license must be accompanied by a fee of twenty-five dollars and a surety bond approved by the attorney general. Each application for a dealer's outlet license must be accompanied by a fee of fifteen dollars. A reinstatement fee of fifty dollars is required in addition to the annual license fee for each license renewal applied for after June thirtieth. The total reinstatement fee may not exceed five hundred dollars for any one licensee in any fiscal year. A distributor's license does not authorize the holder to make retail sales. Each license issued must be prominently displayed on the premises covered by the license.

SECTION 10. AMENDMENT. Section 57-36-04 of the North Dakota Century Code is amended and reenacted as follows:

57-36-04. Revocation of license - Penalty. The attorney general may revoke the license of any dealer or distributor for failure to comply with any of the provisions of this chapter, or any of the rules or regulations prescribed by the tax commissioner or the attorney general. When a license has been legally revoked, no license may be issued again to the licensee for a period of one year thereafter. A person may not sell any cigarettes, cigarette papers, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products after that person's license has been revoked as provided in this chapter.

SECTION 11. AMENDMENT. Section 57-36-05 of the North Dakota Century Code is amended and reenacted as follows:

57-36-05. Unlawful to sell without license. A dealer or distributor may not sell cigarettes, cigarette papers, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products in this state at wholesale or at retail unless a license has been issued to that dealer or distributor as prescribed by this chapter, and a person may not sell, offer for sale, or possess with the intent to sell, any cigarettes, cigarette papers, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products without such license.

SECTION 12. AMENDMENT. Section 57-36-09 of the North Dakota Century Code is amended and reenacted as follows:

57-36-09. Records to be kept by distributors and reports made - Penalty. Distributors shall keep records and make reports relating to purchases and sales of cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products made by them, and must be punished for failure so to do, as follows:

#2 p.3

1. Each distributor who shall dispose of cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff or other tobacco products shall keep and preserve for one year all invoices of cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products purchased by the distributor and shall permit the state tax commissioner, and assistants, authorized agents, or representatives of the state tax commissioner, to inspect and examine all taxable merchandise, invoices, receipts, books, papers, and memoranda as may be deemed necessary by the state tax commissioner, and assistants, authorized agents, or representatives of the state tax commissioner in determining the amount of the tax as may be yet due. Each person selling or otherwise disposing of cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products as a distributor shall keep a record of all sales made within the state showing the name and address of the purchaser and the date of sale. For sales of other tobacco products, the records must also include the net weight in ounces, as listed by the manufacturer.

2. On or before the fifteenth day of each month, each licensed distributor, on such form as the state tax commissioner shall prescribe, shall report to the tax commissioner all purchases and sales of cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products made from or to any persons either within or without this state during the preceding month. For sales of other tobacco products, each licensed distributor shall also report to the tax commissioner the net weight in ounces, as listed by the manufacturer. The tax levied by this chapter is payable monthly and must be remitted to the tax commissioner by each licensed distributor on or before the fifteenth day of the month following the monthly period.

3. Any person failing to file any prescribed form or return or to pay any tax within the time required or permitted by this section is subject to a penalty of five percent of the amount of tax due or five dollars, whichever is greater, plus interest of one percent of the tax per month or fraction of a month of delay except the first month after the return or the tax became due. The tax commissioner, if satisfied that the delay was excusable, may waive all or any part of the penalty. The penalty must be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.

SECTION 13. AMENDMENT. Section 57-36-09.1 of the North Dakota Century Code is amended and reenacted as follows:

57-36-09.1. Warehouse - Record of deliveries and shipments. Records of all deliveries of shipments of cigarettes, cigars, pipe tobacco, chewing tobacco, and snuff, or other tobacco products from a licensed public warehouse to persons within this state must be kept by the warehouse and be available to the tax commissioner for inspection. They must show the name and address of the consignee, the date, the quantity of cigarettes, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products delivered, and such other information as the tax commissioner may require. These records must be preserved for one year from the date of delivery of the cigarettes, snuff, cigars, pipe tobacco, chewing tobacco, or other tobacco products.

SECTION 14. AMENDMENT. Section 57-36-24 of the North Dakota Century Code is amended and reenacted as follows:

57-36-24. Exemptions. All gift cigarettes, snuff, cigars, pipe tobacco, chewing tobacco, and other tobacco products, not for resale, which are given to the North Dakota veterans' home or the North Dakota state hospital for distribution to the occupants thereof, are exempt from the excise taxes levied under this chapter."

#7
2p.4

Page 5, after line 28, insert:

"**SECTION 16. AMENDMENT.** Section 57-36-26 of the North Dakota Century Code is amended and reenacted as follows:

57-36-26. Cigars, pipe tobacco, chewing tobacco, snuff and other tobacco products - Excise tax payable by dealers - Reports - Penalties - Collection - Allocation of revenue.

1. There is levied and assessed, upon all cigars and pipe tobacco purchased in another state and brought into this state by a dealer for the purpose of sale at retail, an excise tax at the rate of twenty-eight percent of the wholesale purchase price and, upon all chewing tobacco, snuff, and other tobacco products purchased in another state and brought into this state by a dealer for the purpose of sale at retail, an excise tax at the rates indicated in section 57-36-25, at the time the products were brought into this state. For the purposes of this section, the term "wholesale purchase price" means the established price for which a manufacturer sells cigars or pipe tobacco to a distributor exclusive of any discount or other reduction. However, the dealer may elect to report and remit the tax on the cost price of the products to the dealer rather than on the wholesale purchase price. The proceeds of the tax, together with the forms of return and in accordance with any rules and regulations the tax commissioner may prescribe, must be remitted to the tax commissioner by the dealer on a monthly basis on or before the fifteenth day of the month following the monthly period for which it is paid. The tax commissioner shall have the authority to place any dealer on an annual remittance basis when in the judgment of the tax commissioner the operations of the dealer merit that remittance period. In addition, the tax commissioner shall have the authority to permit the consolidation of the filing of a dealer's return when the dealer has more than one location and thereby would be required to file more than one return.

2. If cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products have been subjected already to a tax by any other state in respect to their sale in an amount less than the tax imposed by this section, the provisions of this section apply, but at a rate measured by the difference only between the rate fixed in this section and the rate by which the previous tax upon the sale was computed. If the tax imposed in the other state is twenty percent of the wholesale purchase price or more, then no tax is due on the article. The provisions of this subsection apply only if the other state allows a tax credit with respect to the excise tax on cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products imposed by this state which is substantially similar in effect to the credit allowed by this subsection.

3. Any person failing to file any prescribed forms of return or to pay any tax within the time required by this section is subject to a penalty of five dollars or a sum equal to five percent of the tax due, whichever is greater, plus one percent of the tax for each month of delay or fraction thereof excepting the month within which the return was required to be filed or the tax became due. The tax commissioner, if satisfied that the delay was excusable, may waive all or any part of the penalty. The penalty must be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.

4. All moneys received by the tax commissioner under the provisions of this section must be transmitted to the state treasurer at the end of each month and deposited in the state treasury to the credit of the general fund.

#p. 5

SECTION 17. AMENDMENT. Section 57-36-28 of the North Dakota Century Code is amended and reenacted as follows:

57-36-28. Consumer's use tax - Cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products - Reports - Remittances.

1. A tax is imposed upon the use or storage by consumers of cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products in this state, and upon those consumers, at the rates indicated in section 57-36-25.
2. This tax does not apply if the tax imposed by section 57-36-25 or 57-36-26 has been paid and it does not apply to cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products exempt under section 57-36-24.
3. On or before the tenth day of each calendar quarter, every consumer who, during the preceding calendar quarter, has acquired title to or possession of cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products for use or storage in this state, upon which products the tax imposed by either section 57-36-25 or 57-36-26 has not been paid, shall file a return with the tax commissioner showing the quantity of such products so acquired. For sales of other tobacco products, the return must also include the net weight in ounces, as listed by the manufacturer. The return must be made upon a form furnished and prescribed by the tax commissioner and must contain such other information as the tax commissioner may require. The return must be accompanied by a remittance for the full unpaid tax liability shown by it.
4. As soon as practicable after any return is filed, the tax commissioner shall examine the return and correct it, if necessary, according to the tax commissioner's best judgment and information.
5. If any consumer required to pay the tax levied by this section fails to file a return or remit the tax as required, the tax commissioner shall make an assessment of tax against the consumer according to the tax commissioner's best judgment and information.
6. All of the provisions of this chapter relating to corrections of returns, deficiency assessments, protests, hearings, interest and penalties, and collections of taxes apply to consumers under this section.

SECTION 18. AMENDMENT. Section 57-36-29 of the North Dakota Century Code is amended and reenacted as follows:

57-36-29. Correction of errors.

1. If it appears that as a result of a mistake an amount of tax, penalty, or interest has been paid which was not due under the provisions of this chapter, then such amount becomes due under this chapter, and the amount must be credited or refunded to such person or firm by the tax commissioner.
2. Whenever a distributor destroys cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products accidentally, or intentionally, because of staleness or other unfitness for sale, a credit or refund must be given to the wholesaler under the terms and conditions prescribed by the tax commissioner.

SECTION 19. AMENDMENT. Section 57-36-33 of the North Dakota Century Code is amended and reenacted as follows:

57-36-33. Penalties for violation of chapter. Except as otherwise provided in this chapter:

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1. Any person who violates any provision of this chapter is guilty of a class A misdemeanor.
2. All cigarettes, cigarette papers, cigars, pipe tobacco, chewing tobacco, snuff, or other tobacco products in the possession of the person who violates any provision of this chapter, or in the place of business of the person, may be confiscated by the tax commissioner as provided under section 57-36-14 and forfeited to the state. Any cigarette-making machine that is maintained or operated in violation of sections 57-36-05.3, 57-36-05.4, or 57-36-06.1 must be confiscated by the tax commissioner and forfeited to the state in accordance with chapter 29-31.1."

Page 5, line 8, remove the overstrike over "For purposes of this subsection, the tax on"

Page 5, line 8, replace "~~other tobacco products~~" with "snuff and chewing tobacco"

Page 5, line 8, remove the overstrike over "~~is computed based~~"

Page 5, line 9, remove the overstrike over "~~on the net weight as listed by the manufacturer.~~"

Page 6, after line 18, insert:

"SECTION 22. AMENDMENT. Section 57-39.2-03.9 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-03.9. Sales tax on tobacco products. Notwithstanding any other provision of law, the sales taxes imposed by this chapter apply to the gross receipts of retailers from all sales at retail of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products. For purposes of this section, "gross receipts" from the sale of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products includes any other taxes imposed on ~~such~~ the merchandise or its use or on the retail or other sale of ~~such~~ the merchandise.

SECTION 23. AMENDMENT. Section 57-40.2-03.2 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-03.2. Use tax on tobacco products. Notwithstanding any other provision of law, the use taxes imposed by this chapter apply to the storage, use, or consumption in this state of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products, provided that gross receipts from the sale ~~thereof~~ of cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, and other tobacco products mean and include any other taxes imposed on ~~such~~ the merchandise or its use or on the retail or other sale ~~thereof~~ of the merchandise."

Page 7, line 16, replace "10" with "20"

Page 7, line 16, replace "11" with "21"

Page 7, line 17, remove "8,"

Page 7, line 17, replace ""12" with "24"

Page 7, line 17, replace "13" with "25"

Page 7, line 18, after "7," insert "8, 9, 10, 11, 12, 13, 14,"

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p. 2
}

Page 7, line 18, replace "9" with "15, 16, 17, 18, 19, 22, 23,"

Page 7, line 18, replace "14" with "26"

Renumber accordingly

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Prepared by the
Office of State Tax Commissioner
February 4, 2015

PROPOSED AMENDMENTS TO HOUSE BILL 1133

Page 1, remove line 7

Page 1, line 8, remove "5-01-21,"

Page 1, line 8, remove "subsection 10 of section 57-36-01, section 57-36-25,"

Page 1, line 10, remove ""tax reporting of domestic wineries, domestic"

Page 1, line 11, remove "distilleries, and brewer taprooms,"

Page 1, line 13, remove "definition of tobacco products, taxation of tobacco products,"

Page 1, remove lines 18 through 24

Page 2, remove lines 1 through 29

Page 4, remove lines 16 through 30

Page 5, remove lines 1 through 28

Page 7, line 17, remove "8,"

Page 7, line 18, remove "9,"

Page 7, line 19, remove "Sections 1, 2, and 3 of this Act are effective for taxable years"

Page 7, remove line 20

Renumber accordingly



North Dakota State Tax Commissioner's Testimony before the Senate Finance and Taxation Committee House Bill 1133

March 16, 2015

Prepared by Myles Vosberg, Director Tax Administration Division
North Dakota Office of State Tax Commissioner
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Introduction

Good morning Chairman Cook and members of the Senate Finance and Taxation Committee. For the record, I am Myles Vosberg, Director of the Tax Administration Division of the Tax Commissioner's Office. I am here today on behalf of the Commissioner to testify in support of House Bill 1133.

Background

This bill was introduced by the Tax Commissioner to address administrative issues encountered by our Department. These changes, which apply to alcohol taxes, sales and use taxes, local sales and hospitality taxes, income taxes, motor vehicle excise tax, and special fuels tax, will have no fiscal impact. The changes are intended to clarify language, codify administrative processes or make current processes more consistent with other similar taxes.

Near the end of my testimony, I will also introduce an amendment for your consideration that contains two items that were originally included in a property tax housekeeping bill, Senate Bill 2068.

Explanation of bill

Section 1 clarifies that the Tax Commissioner has rule making authority for all types of businesses that report and remit alcohol taxes. This section of the law has not been updated as new types of alcohol licenses have been added.

Sections 2 and 4 pertain to overpayment of local taxes to cities or counties. Section 2 states the Tax Commissioner has the ability to offset overpayments of tax against future distributions if too much

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city lodging or city restaurant & lodging taxes was remitted to a city. Overpayments are possible if there is an error in distribution or if retailers that collected tax in error refund tax to the customer and request a refund from the Tax Commissioner. Section 4 is the same as Section 2 except the taxes involved are city and county sales taxes. The new language in both sections authorizes the Tax Commissioner to consult with the city that has been overpaid to determine an appropriate time period to recover any overpayment.

Section 3 states that refunds or assessments may not be issued for amounts less than \$5 including any applicable penalty or interest. Section 3 will make this minimum threshold consistent across all tax types administered by the Tax Commissioner. Current law for income tax, motor fuel taxes and oil and gas severance taxes already contains this minimum threshold; however, other taxes including sales and use, alcohol, and cigarette and tobacco taxes, do not include the minimum threshold. Due to the cost of postage, writing checks, and preparing billing notices, the Commissioner's current policy is to not bill any tax amount due less than \$5 and to not issue a refund check for any overpayment error of less than \$5 in instances where a return is corrected for errors.

Section 5 relates to the income tax credit for research and experimental expenditures (R&E). The current provisions in statute that allow for an income tax credit for R&E in North Dakota are currently tied to existence of the same federal credit provisions. In recent years, the federal R&E credit has been set to expire annually and has been included in a larger package of federal tax issues that usually get addressed for potential extension very late in the year. In some cases, extensions have been approved retroactively. In December, Congress again retroactively re-enacted the federal provisions to extend the existence of the credit, but only through December 31, 2014. Therefore, the existence of the North Dakota R&E credit after that date is uncertain. This section will maintain the existing North Dakota R&E credit regardless of the future extension or existence of the federal credit.

Section 6 relates to the amount of quarterly estimated income tax payments that are required to be made by a corporation. Prior to 2014, income tax withholding was not required for any income received by a corporation. However, the 2013 Legislature enacted a new requirement for income tax to be withheld on certain royalties received by nonresident individuals and business entities, including corporations, domiciled outside North Dakota. The change in this section allows for the tax withheld on behalf of a corporation to be included as part of its quarterly estimated payments. This treatment of withholding will be identical to how withholding is treated for individual income tax purposes.

Section 7 is a clarification in the use tax law. Under current law, when a business purchases and

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uses property in another state before bringing that property to North Dakota, the business is required to pay North Dakota use tax on the fair market value of the property, but credit is given for any tax that has been paid to the other state. The amendment clarifies that credit is provided only if the tax was legally due and paid to the other state.

Section 8 states that an insurance company that takes title to a vehicle in settlement of an insurance claim, is not subject to motor vehicle excise tax on the transfer. Many vehicles transferred under an insurance claim are not subject to tax simply because the vehicle is not able to be used on the roads and highways; but this amendment, which codifies current policy, will clarify that all vehicles transferred under an insurance claim are exempt from tax. This change has no impact on titling requirements with the Motor Vehicle Division of the Department of Transportation.

Section 9 identifies a conversion factor for liquefied natural gas (LNG) for purposes of calculating special fuels tax on LNG. The conversion factor is based on the energy content of LNG compared to other special fuels and is based on the same concept as the conversion factor for compressed natural gas currently found in the law.

Section 10 identifies the effective dates of the amendments in the bill. Sections 5 and 6 related to income tax changes are effective for tax years beginning after December 31, 2014. Sections 7 and 8 are effective for taxable events occurring after June 30, 2015. All other changes will be effective July 1, 2015.

Fiscal impact

The changes in House Bill 1133 including the requested amendment have no fiscal impact.

Amendment

The proposed amendment contains two sections from Senate Bill 2068, which was the Tax Commissioner's property tax housekeeping bill. The bill was not successful in the House because of questions regarding a change to the filing requirements for a Statements of Full Consideration. That suggested change in not included in this amendment.

In the first part of the amendment, which will become Section 2 of the Bill, we propose one substantive change and a number of housekeeping changes. We are proposing a change to the tax clearance requirements for the New and Expanding Business Exemption, adding a requirement that the applicant for the exemption have no tax liens, but to also require that the applicant not have any state tax

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debts, even though a lien has not yet been filed. This is accomplished by adding the word “obligations” where tax liens are referenced throughout N.D.C.C. § 40-57.1-04.4.

The Office of State Tax Commissioner believes that if an applicant has any state tax debt the applicant should be ineligible for the five year income tax exemption. We are requesting this change because the SBOE recently encountered a situation in which the applicant for the exemption owed a substantial amount of state taxes. But, because a tax lien had not yet been filed, the applicant met the statutory tax clearance requirement and qualified for the exemption.

The other housekeeping change requested in Section 2 clarifies that the applicant may not have any income tax withholding liabilities. Currently, our interpretation and application of this section is that the use of the word “income” includes the income withholding tax because this tax is contained within the income tax laws in N.D.C.C. ch. 57-38. We have not had this interpretation challenged, but believe this change will clarify the tax clearance requirement for applicants who are not familiar with our state tax laws.

Finally, in subsection 3 of N.D.C.C. § 40-57.1-04.4, we are making the language consistent with our current definition of “passthrough entity” in the income tax law. If you recall, in the Tax Department’s 2013 housekeeping bill, we consolidated the list of all types of pass-through entities into one definition in the income tax chapter. For example, the definition of pass-through includes entities such as S-corporations, limited partnerships, limited liability companies, limited liability limited partnerships, and other pass-through entities that may be developed in the future. By referencing 57-38-01, any time there is a change to the definition of pass-through entity for income tax purposes, the new and expanding business exemption definition automatically “piggybacks” on that change.

The part of the proposed amendment related to tax clearances for new and expanding businesses will become effective for all applications filed after June 30, 2015.

The second part of the amendment, which will become Section 6 of the Bill, simply removes obsolete date references to the capitalization rate for the valuation and assessment of agricultural property.

Conclusion

The changes in House Bill 1133, including the proposed amendment offered by the Tax Commissioner, are intended to clarify the law, codify existing administrative practices, and make administrative practices more uniform among tax types. The Tax Commissioner respectfully requests that you give favorable consideration to House Bill 1133. Thank you for your consideration.

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Prepared by the Office
of State Tax Commissioner for the
Senate Finance and Taxation Committee
March 16, 2015

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1133

Page 1, line 7, after "5-03-05" insert ", 40-57.1-04.4,"

Page 1, line 7, after the first comma insert "subsection 4 of section 57-02-27.2,"

Page 1, line 9, after the first comma insert "the tax lien of record clearance requirement for the new and expanding business income tax exemption,"

Page 1, line 10, after the first comma insert "removal of obsolete language from provisions relating to the valuation and assessment of agricultural lands,"

Page 1, after line 21, insert:

"SECTION 2. AMENDMENT. Section 40-57.1-04.4 of the North Dakota Century Code is amended and reenacted as follows:

40-57.1-04.4. ~~Tax lien of record clearance~~ Clearance of tax obligations and tax liens of record.

1. A project operator is not eligible for the income tax exemption under section 40-57.1-04 until a showing is made that the project operator has satisfied all state ~~and or~~ local tax obligations and tax liens of record for delinquent property, income, income withholding, sales, or use taxes owed to the state or a political subdivision.
2. A certificate from the tax commissioner to the state board of equalization satisfies the requirement of subsection 1.
3. If the project operator is a corporation or a ~~limited liability company~~ passthrough entity defined in section 57-38-01, any of its officers, governors, or managers charged with the responsibility for making either property, income, income withholding, sales, or use tax returns and payments are subject to the provisions of subsections 1 and 2 with respect to all state or local tax obligations and tax liens of record for delinquent property, income, income withholding, sales, or use taxes for which the individual is personally liable. If the project operator is a partnership, each general partner is subject to the provisions of subsections 1 and 2 with respect to all state or local tax obligations and tax liens of record for delinquent property, income, income withholding, sales, or use taxes for which the individual is personally liable."

Page 3, after line 7, insert:

“SECTION 6. AMENDMENT. Subsection of section 57-02-27.2 of the North Dakota Century Code is amended and reenacted as follows:

4. To find the “capitalized average annual gross return”, the average annual gross return must be capitalized by a rate that is a ten-year average of the gross agribank mortgage rate of interest for North Dakota, ~~but the rate used for capitalization under this section may not be less than eight percent for taxable year 2009, seven and seven-tenths percent for taxable year 2010, and seven and four-tenths percent for taxable year 2011.~~ The ten-year average must be computed from the twelve years ending with the most recent year used under subdivision a of subsection 3, discarding the highest and lowest years, and the gross agribank mortgage rate of interest for each year must be determined in the manner provided in section 20.2032A-4(e)(1) of the United States treasury department regulations for valuing farm real property for federal estate tax purposes, except that the interest rate may not be adjusted as provided in section 20.2032A-4(e)(2).”

Page 4, line 27, after the second period insert “Section 2 of this Act is effective for applications filed after June 30, 2015.”

Page 4, line 27, replace “5” with “7”

Page 4, line 27, replace “6” with “8”

Page 4, line 28, replace “7” with “9”

Page 4, line 28, replace “8” with “10”

Page 4, line 29, remove “2,”

Page 4, line 29, after the fifth comma insert “5,”

Page 4, line 29, replace “9” with “11”

Renumber accordingly