

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1450

2007 HOUSE FINANCE AND TAXATION

HB 1450

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1450

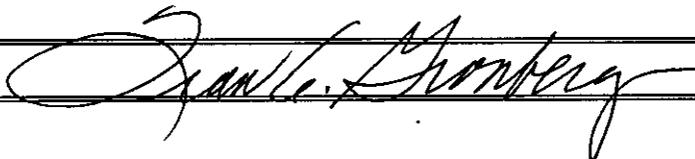
House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 2-5-07

Recorder Job Number: 2782

Committee Clerk Signature



Minutes:

**Chairman Belter:** Opened the hearing on HB 1450.

**Rep Wrangham:** (testimony attached)

**Bill Shalhoob, representing ND Chamber of Commerce:** We are in support of 1450 and in 2005 we were in support of language like this. This is a tax that should not be collected.

Retailers today are charged with not collecting many taxes. In fact in my business we do not collect taxes from anyone who hands us an e form - a tax exempt form. We take the tax off and do not collect the tax for goods and services. Besides the obvious of not collecting taxes that are not due, which is the right thing to do, we believe that it puts retailers at a competitive advantage with shopping out of state or over the internet.

**Rep Drovdal:** In the past you've been in support of the streamlined sales tax which puts the local merchants on a level playing field with those over the internet. This would take us out of compliance and out of the streamlined sales tax organization. Is that not a conflict?

**Shalhoob:** My understanding is that the guideline is 85% of compliance. I thought I was quoting Sen. Cook on that percentage. In light of Rep Wrangham I would like to see this change in the streamline sales tax so that we could do this.

**Rep Drovdal:** I agree with you that it would be nice if they would change it, but I will talk with Sen Cook to find out that percentage. My understanding that this has been debated a number of times and chances of changing it are pretty slim and so therefore it will put us out of substantial compliance and will take us out of streamlined sales tax. Does that change your position at all?

**Shalhoob:** We are on record as a long time supporter of the streamlined sales tax. I'd have to go back and visit with the legislative affairs committee to see where that puts us. I was hoping we could find a way to do this. It seems like the right thing to do.

**Curly Haugland:** I own and operate a company that is involved in remote selling. I have long been opposed to the streamlined sales tax project. I would like to support this particular bill it does appear to put ND in non conformity with the streamlined sales tax. We're currently dealing with a huge budget surplus. It would be an excellent time to unwind ourselves out of this streamlined sales tax project.

#### OPPOSITION

**Myles Vosberg, Director, Tax Administration, ND Office of State Tax Commissioner:**

(testimony attached)

**Rep Drovdal:** Currently under this system we have now there is an unlevel playing field for local merchants because people over the internet would probably offer the service of filling up the forms and submitting them for the customer. Is that not an option for the local merchant?

**Vosberg:** The retailer could certainly provide the forms to calculate the retail amount if they wanted to.

**Rep Wrangham:** First I'd like to clarify that this bill has nothing to do with whether we are members or not members of the streamlined sales tax. I don't understand the tax dept's

testimony not being neutral. If these 116 entities that presently have a local tax in ND all had a different percentage of tax rate, would streamline sales tax accept that?

**Vosberg:** Yes they would.

**Rep Wrangham:** Then why can't they accept the caps that the citizens of ND have put in place?

**Vosberg:** It was one of the very earliest concepts when the state business community got together to discuss these issues. It was one primary issues that they felt obligated to attach collections so there would be less burden on the retailers. The tax commission is not opposed to the concept of the caps.

**Rep Wrangham:** One way would be if local entities would open their home rule charters and ask their voters to remove the caps so that they could be in compliance with SSTP. Would you endorse that?

**Vosberg:** We wouldn't oppose that. I'm sure that there would be individuals that would oppose that. But the tax dept wouldn't oppose that.

**Rep Pinkerton:** How effective is streamlined sales tax when you collect taxes for catalogue sales?

**Vosberg:** We do have 1100 retailers that are registered so far that collect our taxes. Some of those are internet companies, some of them are just direct mail. We do anticipate that the number of retailers that participate will increase.

**Rep Pinkerton:** Is this strictly a voluntary program on the part of the retailers?

**Vosberg:** At this time it is voluntary.

**Rep Kelsh:** Is the state of ND receiving any sales tax revenue from direct commerce due to the streamline sales tax?

**Vosberg:** Yes.

**Rep Froseth:** Earlier there was a question raised about the percent of compliance - it was mentioned at 85% - do you know what that figure is?

**Vosberg:** There is no set percentage identified in the agreement. The agreement says that each member state must be in substantial compliance. It's questionable as to what that means, but as I said in testimony, this was one of the primary concerns of the agreement was to eliminate caps and thresholds. I am confident the other states would find us out of compliance if we did not.

**Rep Schmidt:** If we don't comply, what is the penalty?

**Vosberg:** We would get kicked out. There are provisions of states that are not in compliance.

**Rep Wrangham:** Could we make it voluntary to ask the consumer to pay what's over and above the cap?

**Vosberg:** I don't see how that would work.

**Rep Froseth:** Who determines if you are substantially out of compliance?

**Vosberg:** There is a governing board. Each state that is a member of the agreement has an appointed member. The states review each other's laws annually.

**Rep Belter closed the hearing**

# 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1450 B

## House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: February 5, 2007

Recorder Job Number: 2828

Committee Clerk Signature

*Michele Schmidt*

Minutes:

Chairman Belter opened the hearing on HB 1450. This is Rep. Wrangham's Bill.

**Representative Vig:** Just for clarification, HB's 1415 and 1298; HB 1298 is sales use and gross receipts tax and HB 1415 is Home Rule sales tax. What's the main difference between these?

**Chairman Belter:** What this Bill does is it caps the City sales tax. Most Cities have caps on how much tax you'd have to pay and most of them are at \$25.00. That would be the maximum you could pay on the purchase of any one item. That would go for the City sales tax. But because we belong to the Streamline Sales Tax, we can no longer impose those caps so the City has to charge the City Sales Tax on everything and then anything you pay over the \$25.00, you have to apply for a refund in order to get it back. So what this Bill does is impose those caps again, which would put us in violation of the Streamline Sales Tax Agreement, which means if we pass this, then Rep. Cook and Rep. Drovdal would have to be fast talkers at the next Streamline Sales Tax meeting, which they're capable of.

**Vice Chairman Drovdal:** We tried to talk fast and as you heard from the Tax Dept., we were not successful at it, so it would put us out of compliance.

**Chairman Belter:** So what are your wishes on 1450?

**Representative Wrangham:** I've just got a comment. I don't know what will happen, if they'll decide if we're in compliance or not. I think if they have the weight of the ND Legislature behind them when they go to negotiate, I think that will help a great deal. With that **I move a Do Pass.**

**Representative Brandenburg: Second it.**

**Vice Chairman Drovdal:** You can go any way you want on this. I wish we wouldn't have to take the cap off and it went to a rebate program instead of the way we did it before. It was the business community that asked us, it wasn't the Legislation. They said it was confusing. ND has 113 caps now and there are a number of different rates and caps just in this State. When you put that by the number over the nation that they have to deal with, it makes it hard and that's the reason they asked for it and it affects a small number, but they're important too.

We've tried to work this out a number of ways and I suggested a way and I would rather put more pressure on the Tax Dept. to go the other way like they do in the Montana exemptions. Unless a lot of people start leaning on them, the Tax Dept. isn't going to do that.

**Representative Grande:** There was a comment made by the Tax Dept. and I would like to have an idea. We are collecting from other States. Do we know what kind of income we're getting?

**Vice Chairman Drovdal:** I didn't ask them for those figures. We have volunteer businesses that are paying in. It's not other States. It's the volunteer businesses that are collecting our tax rates and submitting it to the State. There are 1100 businesses that are registered to the Streamline Sales Tax and they submit to the States that are members.

**Representative Pinkerton:** Just reading from the notes that we were given today, doesn't it say on page 2 that 1100 retailers across the country through SST, over 1.4 million dollars of ND and local taxes have been collected by these retailers in the past year. Approximately

\$400,000 of this tax revenue was new money. So what we're dealing with about, if we went out of compliance, would that mean it was used at 1.4 million dollars?

**Representative Wrangham:** \$400,000 is what I think you're talking about.

**Vice Chairman Drovdal:** If we were out of compliance, those 1100 retailers would not have to submit to the State of ND and neither would they have to collect it. If they collected it, we would have no way to enforce it.

**Representative Pinkerton:** Am I reading this right, that 1.4 million dollars is collected in the last year?

**Vice Chairman Drovdal:** Yes.

**Representative Pinkerton:** If we go out of compliance, would that 1.4 million dollars would be at risk?

**Representative Grande:** \$400,000 would be at risk.

**Representative Pinkerton:** They did 1 million the year before and 1.4 million this year, so we're up .4 million dollars?

**Chairman Belter:** I would read it as approximately \$400,000 which is new money voluntarily collected by these retailers. I'm not sure. I read it as \$400,000 as new money that should not have been collected. I wonder if that's the windfall because people didn't apply for the refund.

**Vice Chairman Drovdal:** No, if the people don't apply for the refund, it goes to the City or County.

**Chairman Belter:** Would it be a windfall for the Cities or Counties?

**Vice Chairman Drovdal:** If they collect it, but that isn't the \$400,000 dollars you're talking about.

**Representative Schmidt:** Does anybody tell the customers that they have a refund coming? Do they send out notices to let the citizens know they have a refund?

**Chairman Belter:** I would suspect in most cases, most people don't realize, but I'm sure some businesses probably do.

**Vice Chairman Drovdal:** In my discussion with the Tax Dept. they felt that in most cases these consumers knew about the local caps and I think we passed a Bill that would tell the retailers to have that form available for that customer and they can go on the internet and apply for it.

**Chairman Belter:** Any other discussion? **We have a motion for a Do Pass. Will the clerk read the roll; 4-y; 9-n; 1-absent. The motion fails.** I'd entertain a new motion.

**Representative Froseth:** I move a Do Not Pass.

**Vice Chairman Drovdal:** Second it.

**Chairman Belter:** Is there any discussion? If not will the clerk read the roll for a Do Not Pass.

**Representative Pinkerton:** Would there be a chance that we could amend this Bill to include their provision as the way they do it in Montana?

**Vice Chairman Drovdal:** I would like to do it, but a person should visit with the Tax Dept. before to listen to their objections and make sure that it can be done. We didn't have a hearing on it that way, but I think they could do it.

**Chairman Belter:** Would you want to withdraw your motion?

**Representative Froseth:** I will withdraw my motion.

**Representative Wrangham:** I think this would be an excellent move because if there is a way that we can amend this to where we don't take the money that the customer has it all, that's what we're after here.

**Vice Chairman Drovdal:** I'll withdraw my second it. I will call them and have them bring me an amendment.

**Chairman Belter:** We'll close the hearing on HB 1450.

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1450

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 2-7-07

Recorder Job Number: 2991

Committee Clerk Signature



Minutes:

**Vice Chair Drovdal** opened the hearing again on 1450 and passed out the proposed amendments to HB1450. (attachment #1)

**Rep Drovdal:** 1450 is Rep Wrangham's bill that failed. I think Rep Wrangham gave me permission to work on some language. What this does is guts it out - practically a hog house amendment - except for the last paragraph. Basically what it does is to allow the purchaser who pays the sales tax to give his credit to the retailer if the retailer chooses to and it's an option. And the retailer can use his credit when he pays his tax at the end of the month or the end of the quarter. Therefore there would be no need for a refund back to the state. The retailer is accustomed to working with this. It gives the tax commissioner the authority to make up the rules for the form. It's optional for the retailer to use it and it's optional for the purchaser.

**Rep Belter:** How many FTE's is this going to take?

**Miles Vosberg, State Tax Department:** This will actually reduce our burden because there should be less refund. The retailer can choose to handle it there. It's optional, not mandatory.

**Rep Drovdal moved the amendments**

**Rep Pinkerton seconded the motion**

**Discussion**

**Rep Owens:** I have been listening to the discussion about caps for two sessions. I was trying to figure out how in world the people wouldn't pay and two we wouldn't create a bureaucracy in the process. How is this going to affect streamlining?

**Rep Drovdal:** If we make it mandatory, it puts the cap back on and that's not allowed.

**Rep Owens:** That's what I was afraid you were going to say.

**Vosberg:** Like Rep Drovdal says, if it's "must" then we've put the cap back on and that would clearly put us out of compliance.

**Chairman Belter:** Don't other states have a similar situation to ND?

**Vosberg:** Arkansas has caps similar to ND. They are an associate member right now which means that they are not quite there. They are working on this right now. They are talking about using a refund approach like we did.

**Rep Weiler:** You use the term that you hope we can get streamline to agree with this. And my question, if we pass this and the senate passes this and the Governor signs it, it is law. At which point are we going to find out if streamline is going to accept this or not? That's question number one.

**Rep Drovdal:** We are approved as full associate members and every year they come in and make sure they we are in substantial compliance. If they find out that it is questionable, they will take it to the organizational government board and the governing board would look at it and make a ruling. Then there is a time period when we would have, 6 months I believe it is, the entire process would take about a year and a half, maybe up to two years.

**Rep Weiler:** My point is that if we do pass this into law and is this in effect going to boot us out of the streamline? Do we have the time - will we get booted out before next session or will we have the time next session to correct this?

**Rep Drovdal:** That's an opinion question and my opinion is yes. Someone else could give you the opposite opinion and neither one of us would have a lot of ground to stand on.

**Rep Weiler:** I am only questioning the timing so that we don't get booted out and not have the time to fix it. And I have one more question. I've never gotten an answer this session about the dollar amount. We've been in this streamlined sales tax since October 1, two years ago (2005). Can we get a dollar amount that has come into the state of ND? Do we have any information on this?

**Vosberg:** We do have those figures. We have roughly collected through December \$1.4M from all companies that have registered through the central registration system.

**Rep Weiler:** Is that number supposed to grow in the future or level off at a certain point? Because this is a whole new process, is the number supposed to grow to 4M or 5M in the future?

**Vosberg:** Certainly we expect it to grow.

**Rep Wrangham:** I would like to find an amendment where we don't collect the overage from the consumer. Unfortunately we haven't been able to do that. I don't know whether I can support this amendment or not. I need to think about it. Let's pass the original bill and we'll be back here before they can do anything.

**Rep Pinkerton:** Think real fast. Is there somewhere in here that the tax dept could be authorized to determine which retailers must supply notification. They could make a list of those retailer that normally would exceed the cap.

**Rep Drovdal:** We're not talking a lot - only sales over \$2500 and not farm machinery and not cars and all those things. So it's not a large number. I think this is a good option. We want to stay away from mandating anything to retailers.

**Rep Pinkerton:** If going out of streamline sales tax is an issue, couldn't there be a comment line on the bill that it must be acceptable to the streamline sales tax. Would that answer that question?

**Rep Drovdal:** I think we'll know by the time it gets to the Senate hearing. There are currently 14 members that are in full compliance and 5 or 6 associate members and they will be full members by the end of the year.

**Rep Owens:** I just want to clarify for the VC, while I think "must" would be great, I do agree with him in one fashion that I do think that even with "may" in there, I do believe that it will become a selling point for those large ticket items when the retailer say we can limit your tax because now I can just take your credit.

**Rep Wrangham:** Could we alleviate the problem with caps if we said that city sales taxes are now use fees?

**Vosberg:** It won't work, because under home rule we only allow already existing taxes.

**Voice Vote on the proposed amendments**

**Passed with 1 no vote**

**Rep Pinkerton moved a Do Pass as Amended**

**Rep Brandenburg seconded the motion**

Page 5

House Finance and Tax Committee

Bill/Resolution No. HB 1450

Hearing Date: 2-7-07

**(yes) 12 (no) 2 (absent) 0**

**Carrier: Representative Drovdal**

Date: 2-5-07  
Roll Call Vote #: 1450 B #1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

House \_\_\_\_\_ Finance & Tax \_\_\_\_\_ Committee

Check here for Conference Committee

Legislative Council Amendment  
Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Rep Wrangham Seconded By Rep. Brandenburg

Representatives	Yes	No	Representatives	Yes	No
Chairman Belter	✓		Rep. Froelich		
Vice Chairman Drovdal		✓	Rep. Kelsh		✓
Rep. Brandenburg	✓		Rep. Pinkerton		✓
Rep. Froseth		✓	Rep. Schmidt		✓
Rep. Grande		✓	Rep. Vig	✓	
Rep. Headland		✓			
Rep. Owens		✓			
Rep. Weiler		✓			
Rep. Wrangham	✓				

Total (Yes) 4 No 9

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

Fails

Date: 2-5-07  
Roll Call Vote #: 1450 #2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

House Finance & Tax Committee

Check here for Conference Committee

Legislative Council Amendment  
Number \_\_\_\_\_

Action Taken Do Not Pass

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

Representatives	Yes	No	Representatives	Yes	No
Chairman Belter			Rep. Froelich		
Vice Chairman Drovdal			Rep. Kelsh		
Rep. Brandenburg			Rep. Pinkerton		
Rep. Froseth			Rep. Schmidt		
Rep. Grande			Rep. Vig		
Rep. Headland					
Rep. Owens					
Rep. Weiler					
Rep. Wrangham					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

*\* Withdrawn  
for Amendments*

PROPOSED AMENDMENTS TO HOUSE BILL 1450

Page 1, line 1, after "to" insert "create and enact a new subsection to section 57-01-02.1, relating to the promulgation of administrative rules by the tax commissioner, and to" and remove "2 of section 11-09.1-05 and sections"

Page 1, line 2, replace "40-05.1-06 and" with "5 of section" and replace "limitations on home" with "refunds by retailers of home rule sales and use taxes paid"

Page 1, line 3, remove "rule sales taxes"

Page 1, line 5, after "SECTION 1." remove "AMENDMENT.", replace "2" with "6" and replace "11-09.1-05" with "57-01-02.1"

Page 1, line 6, replace "amended and reenacted" with "created and enacted"

Page 1, after line 6, insert:

"6. The tax commissioner may prescribe rules and regulations not inconsistent with the provisions of this section for its detailed and efficient administration."

Page 1, remove lines 7 through 24

Page 2, remove lines 1 through 30

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 30

Page 5, remove lines 1 through 26

Page 5, line 27, replace "3" with "2" and after "AMENDMENT.", replace "Section" with "Subsection 5 of section"

Page 5, remove lines 29 and 30

Page 6, remove lines 1 through 18

Page 6, remove the overstrikes over lines 19 through 24

Page 6, line 24, after charter." insert "At the time of purchase, a retailer may provide to the purchaser a credit or refund equal to the refund amount eligible from the tax commissioner under this section, provided the total tax identified on all invoices, cash register receipts, or other sales documentation is an amount equal to the total tax calculated less the refund or credit provided."

Page 6, line 25, replace "4" with "3"

Renumber accordingly

Date: 2-7-07 AM -C  
Roll Call Vote #: 1450

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

House \_\_\_\_\_ Finance & Tax \_\_\_\_\_ Committee

Check here for Conference Committee

Legislative Council Amendment  
Number \_\_\_\_\_

Action Taken Do Pass As Amended

Motion Made By Rep. Pinkerton Seconded By Rep. Brandenburg

Representatives	Yes	No	Representatives	Yes	No
Chairman Belter	✓		Rep. Froelich	✓	✓
Vice Chairman Drovdal	✓		Rep. Kelsh	✓	
Rep. Brandenburg	✓		Rep. Pinkerton	✓	
Rep. Froseth	✓		Rep. Schmidt	✓	
Rep. Grande	✓		Rep. Vig	✓	
Rep. Headland	✓				
Rep. Owens	✓				
Rep. Weiler	✓				
Rep. Wrangham		✓			

Total (Yes) 12 No 2

Absent 0

Floor Assignment Rep. Drovdal

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

**REPORT OF STANDING COMMITTEE**

**HB 1450: Finance and Taxation Committee (Rep. Belter, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1450 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "subsection 2 of section 11-09.1-05 and sections" with "section"

Page 1, line 2, remove "40-05.1-06 and" and replace "limitations on home" with "refunds by retailers of home rule sales and use taxes"

Page 1, line 3, remove "rule sales taxes"

Page 1, remove lines 5 through 24

Page 2, remove lines 1 through 30

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 30

Page 5, remove lines 1 through 26

Page 6, remove the overstrike over lines 19 through 24 and insert immediately thereafter "At the time of purchase, a retailer may provide to the purchaser a credit or refund equal to the refund amount eligible from the tax commissioner under this section, provided the total tax identified on all invoices, cash register receipts, or other sales documentation is an amount equal to the total tax calculated less the refund or credit provided."

6. The tax commissioner may adopt rules to implement this section."

Renumber accordingly

2007 SENATE FINANCE AND TAXATION

HB 1450

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1450

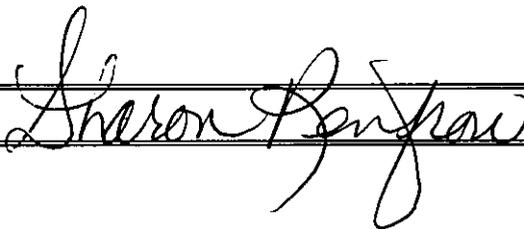
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: March 7, 2007

Recorder Job Number: # 4602

Committee Clerk Signature



Minutes:

**Sen. Urlacher** called the committee to order and opened the hearing on HB 1450 which relates to refunds by retailers of home rule sales and use taxes.

**Rep. Wrangham**, prime sponsor appeared with written testimony. (See attached)

**Rep. Drovdal**: appeared in support stating he is not a co sponsor but he is the vice-chair of the House Finance and Tax and we took a vote on the original bill and it did not pass and instead promoting a DNP, I asked to try to address this issue. Just for the fact it was in front of us told us that we do have demonstrate the resistance we have because of the caps being removed because of SSUTA which used to be the SS Streamline Sales Tax Project which is now the Streamline Sales and Use Tax Agreement. Streamline recognized the fact that those caps were voted in by the people and so instead of just saying you can't do anything with them by recognizing that they allowed us to do the rebate/refund and by them recognizing the ability of us to do that and the right to do that we went one step further. What this bill does that's before you now, is what it does is when the purchaser walks into that store, its his choice he can ask the retailer if that retailer will accept his credit that he's entitled to or this rebate that he's entitled to and if the merchant as a choice it can't be a must it has to be at his choice, other words it would go back into the cap. The retailer can say yes I'll accept your credit and

then when that retailer fills out his monthly or quarterly statement to the State Tax Dept. he subtracts that, he of course has to keep documentation of what the sale was, how much over that old cap would have been, who the customer was and he'll have to keep that just as a retailer currently has to keep his MT exemptions, sales tax exemptions from other businesses, the retailer knows how to deal with this.

**Sen. Tollefson:** so many of the cash handling or sales handling equipment in today's retailer stores are computerized, now I suppose they can be programmed so that they can automatically press the right key, give them credit for that or otherwise, isn't that problem, mechanically its not a problem for the retailer to handle that? The option?

**Rep. Drovdal:** I don't think it's a problem, this would cut down on the confusion

**Sen. Urlacher:** there is Canadian exemptions as well isn't there?

**Answer:** yes

**Sen. Urlacher:** there's a number of states over a time here now that has changed their legislation or adjusted their legislation before they came into compliance as they adjust their own tax policy, is that a correct statement?

**Answer:** that is correct.

**Sen. Horne:** if I go in and make this purchase that Rep. Wrangham was talking about and the cap is at \$25 and the SST says you can't cap, who gets the extra \$5, is that the City or the State or where does that go?

**Answer:** if the consumer does not request the \$5 or whatever the rebate is back it goes to the City. The goal is to get the money back to where it belongs and that's to the purchaser.

**Sen. Horne:** so this could be an extra revenue enhancement for local cities then if people don't request it back or the retailers don't refund it, the cities could benefit from this whole thing.

**Answer:** that is true and that's why we want to make this whole system as easy as possible because the whole goal is not to raise taxes.

**Sen. Oehlke:** it looks like the whole difference between the two versions is the may or the must, am I simplifying that too much?

**Answer:** if you put must on there, it's my feeling and some others that would take us out of agreement with which is what the original bill would have done also.

**Brian Kramer:** NDFB appeared in support stating that having to avoid waiting to get the refund is great, should get right away at the retailers store would be a much more efficient system.

**Miles Vosberg:** Tax Dept. We opposed the original version and so we drafted the amendment which is the bill you have before you. Also gave a handout of Sales & Use Tax Refund Caps as of 1-1-2007.

**Sen. Urlacher:** the cities or counties, the county cap is equal to the city tax in most cases? Or they don't have 2 different caps do they?

**Answer:** there are 2 different caps, if you have a city within a county that also has a tax.

**Sen. Triplett:** can you tell us generally what percentage of the total local sales taxes collected in the zone of the camps?

**Answer:** that is difficult to tell, in 2006 we had roughly 90 million dollars of collections of local tax and since streamline has gone into place, which is roughly 1 ½ yrs now, we have refunded 1 1/2 million dollars and there's probably close to another 1 ½ million dollars of credits that we've allowed retailers to take on their returns rather than apply for a refund, so we are at about 3 million dollars that we've refunded but that's in a 1 ½ yrs time.

**Sen. Oehlke:** how many retailers have a significant problem dealing with multiple locations?

**Answer:** 3 counties right now that impose local taxes, Walsh, Steele and Williams's counties,

**Mike Rud:** ND Retailers Assoc. appeared in support stating I've visited with a few marketers and they don't see a lot of trouble with 1450 and the amendments that are on there in terms of the retailer offering the refund right at the point of sale so we would support 1450.

**Sen. Urlacher:** it could be a sales promotion technique, could it not?

**Answer:** I would agree with you, I think it could be something that maybe someone wants to offer that another business doesn't and it could be a good show of appreciation towards the customer to give them the money up front so they don't have to run through the paper trail with it, so yes we support it and would do our best to back it if it came to that.

Closed the hearing.

**Sen. Cook:** on this particular issue the caps if you have the Tax Dept and the retailers together with a solution that will work, I think it shows great effort on both parts and I make a **Motion for DO PASS**, seconded by Sen. Horne.

Roll call vote: 7-0-0      Sen. Cook will carry the bill.

Date: 3-7-07

Roll Call Vote #: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1450

Senate Finance & Tax Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO Pass

Motion Made By Sen. Cook Seconded By Sen. Horne

Senators	Yes	No	Senators	Yes	No
Sen. Urlacher	✓		Sen. Anderson	✓	
Sen. Tollefson	✓		Sen. Horne	✓	
Sen. Cook	✓		Sen. Triplett	✓	
Sen. Oehlke	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Cook

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

**REPORT OF STANDING COMMITTEE (410)**  
March 8, 2007 2:03 p.m.

**Module No: SR-44-4768**  
**Carrier: Cook**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1450, as engrossed: Finance and Taxation Committee (Sen. Cook, Chairman)**  
recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
Engrossed HB 1450 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

HB 1450

HB 1450 A

2-5-07 AM

#1

Testimony HB 1450 By Representative Dwight Wrangham

2/5/07

HB 1450 removes the century code language that circumvents local sales tax caps; caps which were put in place by the voters in virtually all local entities that instituted local sales tax. In most cases the cap was \$25. The cap limited the amount of sales tax a retailer would collect from the consumer. For instance, if a customer made a purchase of \$3000 and the local sales tax is 1 percent the total local sales tax would be \$30. However, the voters had put in place a cap of \$25, thus the retailer would only collect \$25.

In the 2005 legislative session HB 1043 included language which requires the retailer to ignore the caps which were put in place by the local voters. If the same \$3000 purchase is made after the implementation of HB1043 the retailer would be required to collect \$30 instead of the actual owed tax of \$25. HB1043 put in place a mechanism by which a citizen can apply to the tax commissioner for a refund of the dollars collected above and beyond the actual tax due.

What happens to the dollars that are collected but not owed by the customer? If the customer does not file for a refund they go to the local entity. How much does it amount to? No one knows. There is no reporting requirement for the retailers to separate the actual tax collected from the amount that was actually due.

This whole procedure is inherently wrong. It should be against the law for any entity, public or private, to take from a customer money the customer does not owe, not inform them they took it and return the money to the rightful owner only if the rightful owner finds out they took it, and then fills out a form and produces proof that the money is theirs. It is just not right.

I think everyone can see this practice is an injustice to the citizens of North Dakota. So, why did we pass HB 1043. It was passed to put us in compliance with the Streamline Sales Tax Project. The Streamline Sales Tax Project would not recognize our caps.

HB 1450 removes from the century code, the language that forces retailers to collect money the customer does not owe. Will HB1450 put us out of compliance with SSTP? Maybe. The alternative is for SSTP to recognize our citizen imposed caps. Another option would be for the local sales tax entities to open their home rule charters and ask the voters to remove the caps. If the voters do not removed the caps we should not circumvent their legal right.

The SSTP seeks to increase the amount of taxes paid by North Dakota citizens. I am not convinced, with the current ending fund balance, we should be looking for more ways to collect taxes from North Dakotans.

Please support HB 1450. It is the right thing to do.

HB 1450-A

2-5-07 Am

# 2

## Testimony

### House Finance and Taxation Committee

### House Bill 1450

February 5, 2007

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

Good morning, Chairman Belter and members of the committee. My name is Myles Vosberg and I am Director of Tax Administration at the Office of State Tax Commissioner. I am here in opposition to House Bill 1450, which will amend the city and county home rule statutes to require retailers to calculate caps or maximum amounts of local tax that may be collected on a sale.

The Tax Commissioner's Office does not object to the concept of local tax caps; however, North Dakota will undoubtedly be found out of compliance with the Streamlined Sales Tax Agreement if retailers are required to calculate and collect local tax on only a portion of a transaction that exceeds a specified dollar level. One of the basic concepts of the Streamlined Sales Tax Agreement was to simplify tax collection of retailers by eliminating any caps and thresholds on transactions. Local tax caps are particularly difficult for both in-state and out-of-state retailers that deliver goods to many locations within our state.

Currently, there are one hundred thirteen cities and 3 counties that impose a local sales tax in North Dakota. One-hundred and five of these political subdivisions limit the amount of tax that may apply to a transaction. Prior to October of 2005, retailers making sales in North Dakota were required to calculate the cap, when applicable, and collect only the maximum amount specified. However, the Tax Commissioner's Office and the legislative members of the Streamlined Sales Tax Implementing States requested legislation that would require retailers to collect tax without regard to the caps and allow the Tax Commissioner's Office to refund local tax to purchasers in excess of the cap amount. This change along with other

legislation allowed North Dakota to become a member of the Streamlined Sales Tax (SST) Governing Board.

To date, over 1,100 retailers across the country have registered through the SST central registration system to collect state and local sales taxes in North Dakota. Over \$1.4 million dollars of North Dakota and local taxes have been collected by these retailers in the past year. Approximately \$400,000 of this tax revenue was new money voluntarily collected by these retailers. Reversing 2005 legislation to again require retailers to calculate local tax caps will bring our state out of substantial compliance with the SST agreement and the retailers that volunteered to collect our taxes will no longer collect on our behalf.

The SST agreement is in its infancy and we ask that you allow North Dakota to continue to participate in this worthwhile compact. I ask that you allow the Tax Commissioner to continue to work to educate the taxpaying public of the potential refunds available to them. Purchasers have three years to request a refund of tax paid in excess of a cap. Only sixteen months have passed since the earliest transactions were impacted by the refund provisions. We believe over time, our residents will become familiar with the refunds available and our administrative process.

The attached table is a listing of the local taxes in place as of January 1, 2007. The table lists the tax rate, the refund cap amount, and the size of transaction that must occur before the refund cap applies at each location. The summary at the bottom of page 3 of the table demonstrates the number of different cap and transaction amounts that a retailer must build into its accounting or cash register system when required to cap the local tax collected.

Thank you for your time. I will be happy to answer any questions you may have.

Chairman Urlacher and members of the Finance and Tax Committee

I want to explain why I introduced HB1450, why I would like you to consider amending it back to the original bill and why the bill, as it is before you now, is a step in the right direction.

HB 1450 as originally introduced removes the Streamline Sales Tax Project century code language that circumvents local sales tax law. In other words it restores the rights of our citizens to be taxed in accordance with the local sales tax laws as they have approved by a vote. Voters approved local sales tax with a cap.

The supporters of the Streamline Sales Tax Project say, if we recognize caps, and do not collect taxes over and above the amount owed, we will be out of compliance with SSTP and The Streamline Sales Tax Project will kick us out. I question whether they will kick us out. They are having enough trouble getting states to join. I would like this assembly to pass HB 1450 as originally submitted. That restores our citizen's rights. Then let SSTP decide if they want to kick us out or accept our citizens decision to have caps on local sales tax. SSTP can recognize a different tax rate for each of our local taxing entities. Why can't they recognize a cap in those entities as well????

I am not necessarily opposed to our membership in SSTP. However, I have had, and I do have, a lot of heartburn over taking excess sales tax money from our citizens; money the citizen does not owe, we do not inform them we are taking the money and we return the money to the rightful owner only if the rightful owner finds out we toke it, and then fills out a form and produces proof that they should get the money back. These are the facts. It is just not right. Please consider passing HB 1450 as originally introduced and re-instate the caps; put the ball in SSTP's court, and see if they can find a way to recognize the caps.

If you cannot do that, this hoghouse amendment which replaces my bill, is a step in the right direction. This amendment states the retailer **may** offer to accomadate the citizen and not take the undue tax dollars at the point of sale. If this amendment had said the retailer **must** accomadate the citizen and not take the undue tax dollars, I would support the amendment without reservation.

Since the engrossed bill, states may, instead of shall or must, it will be up to the retailer to decide whether or not to collect the excess tax dollars. I ask you to consider the original bill and ask SSTP, one more time, to recognize our caps and not overcharge our citizens.

If you cannot do that I ask that you support this engrossed version. It is a step in the right direction.

I would be very willing to try answering any questions you may have.

Sales and Use Tax Refund Caps  
As of January 1, 2007

City or County	Tax Rate	Refund cap	Purchase Required to Reach Refund Cap
Aneta	1.00%	\$25.00	\$2,500.00
Ashley	1.00%	25.00	2,500.00
Beach	1.00%	25.00	2,500.00
Belfield	1.00%	25.00	2,500.00
Berthold	1.00%	25.00	2,500.00
Beulah	1.00%	25.00	2,500.00
Bismarck	1.00%	25.00	2,500.00
Bottineau	2.00%	50.00	2,500.00
Bowman	1.00%	25.00	2,500.00
Buffalo	1.00%	25.00	2,500.00
Cando	1.00%	25.00	2,500.00
Carrington	1.00%	25.00	2,500.00
Carson	1.00%	25.00	2,500.00
Casselton	1.00%	25.00	2,500.00
Cavalier	1.50%	37.50	2,500.00
Cooperstown	1.00%	25.00	2,500.00
Crosby	1.00%	25.00	2,500.00
Devils Lake	1.50%	25.00	1,666.67
Dickinson	1.50%	37.50	2,500.00
Drake	1.00%	None	N/A
Drayton	1.00%	25.00	2,500.00
Dunseith	1.00%	25.00	2,500.00
Edgeley	2.00%	None	N/A
Edinburg	1.00%	25.00	2,500.00
Elgin	1.00%	25.00	2,500.00
Ellendale	1.00%	25.00	2,500.00
Enderlin	1.00%	25.00	2,500.00
Fairmount	1.00%	None	N/A
Fargo	1.00%	25.00	2,500.00
Finley	1.00%	25.00	2,500.00
Fort Ransom	1.00%	25.00	2,500.00
Gackle	1.00%	None	N/A
Garrison	2.00%	50.00	2,500.00
Glen Ullin	1.00%	25.00	2,500.00
Grafton	1.00%	25.00	2,500.00
Grand Forks	1.75%	43.75	2,500.00
Grenora	1.00%	25.00	2,500.00
Gwinner	1.00%	None	N/A
Halliday	1.00%	25.00	2,500.00
Hankinson	1.00%	25.00	2,500.00
Hannaford	1.00%	50.00	5,000.00
Harvey	1.00%	25.00	2,500.00
Hatton	1.00%	25.00	2,500.00

Sales and Use Tax Refund Caps  
As of January 1, 2007

City or County	Tax Rate	Refund cap	Purchase Required to Reach Refund Cap
Hazelton	1.00%	35.00	3,500.00
Hazen	1.00%	25.00	2,500.00
Hettinger	1.00%	25.00	2,500.00
Hillsboro	2.00%	50.00	2,500.00
Hoople	1.00%	25.00	2,500.00
Hope	1.00%	25.00	2,500.00
Jamestown	2.00%	50.00	2,500.00
Kenmare	1.00%	25.00	2,500.00
Killdeer	1.50%	37.50	2,500.00
Kulm	1.00%	25.00	2,500.00
Lakota	1.00%	None	N/A
Lamoure	1.50%	25.00	1,666.67
Langdon	1.00%	25.00	2,500.00
Larimore	1.00%	25.00	2,500.00
Lidgerwood	1.00%	25.00	2,500.00
Linton	2.00%	None	N/A
Lisbon	1.00%	25.00	2,500.00
Maddock	1.50%	25.00	1,666.67
Mandan	1.00%	25.00	2,500.00
Mayville	2.00%	50.00	2,500.00
McClusky	1.00%	25.00	2,500.00
McVile	1.00%	25.00	2,500.00
Medora	2.50%	\$25/item	N/A
Michigan	1.50%	25.00	1,666.67
Milnor	1.50%	25.00	1,666.67
Minnewaukan	1.50%	None	N/A
Minot	2.00%	\$50/customer/retailer/day	N/A
Mohall	1.00%	25.00	2,500.00
Mott	1.50%	25.00	1,666.67
Munich	1.00%	25.00	2,500.00
Napoleon	1.00%	25.00	2,500.00
Neche	1.00%	25.00	2,500.00
New England	1.00%	25.00	2,500.00
New Leipzig	1.00%	25.00	2,500.00
New Rockford	1.00%	25.00	2,500.00
Northwood	1.50%	37.50	2,500.00
Oakes	1.50%	25.00	1,666.67
Oxbow	1.00%	None	N/A
Page	1.00%	25.00	2,500.00
Park River	2.00%	25.00	1,250.00
Pembina	1.00%	25.00	2,500.00
Portland	2.00%	50.00	2,500.00
Powers Lake	1.00%	25.00	2,500.00

Sales and Use Tax Refund Caps  
As of January 1, 2007

City or County	Tax Rate	Refund cap	Purchase Required to Reach Refund Cap
Reeder	1.00%	25.00	2,500.00
Regent	1.00%	25.00	2,500.00
Richardton	1.00%	25.00	2,500.00
Rolla	1.50%	25.00	1,666.67
Rollette	1.00%	25.00	2,500.00
Rugby	1.00%	25.00	2,500.00
Scranton	1.00%	25.00	2,500.00
St. John	1.00%	25.00	2,500.00
Stanley	1.00%	25.00	2,500.00
Steele	1.00%	25.00	2,500.00
Steele County	1.00%	25.00	2,500.00
Strasburg	1.00%	25.00	2,500.00
Tioga	1.00%	25.00	2,500.00
Tower City	1.00%	25.00	2,500.00
Towner	1.00%	25.00	2,500.00
Turtle Lake	1.00%	25.00	2,500.00
Underwood	1.50%	None	N/A
Valley City	1.50%	25.00	1,666.67
Velva	1.00%	25.00	2,500.00
Wahpeton	1.50%	25.00	1,666.67
Walhalla	1.00%	25.00	2,500.00
Walsh County	0.25%	25.00	10,000.00
Washburn	1.00%	25.00	2,500.00
Watford City	1.00%	25.00	2,500.00
West Fargo	1.00%	25.00	2,500.00
Williams County	0.50%	12.50	2,500.00
Williston	2.00%	50.00	2,500.00
Wilton	1.00%	25.00	2,500.00
Wimbledon	1.00%	25.00	2,500.00
Wishek	1.00%	None	N/A

Cap Amounts:

No cap	11
\$12.50 cap	1
\$25 cap	88
\$35 cap	1
\$37.50 cap	4
\$43.75 cap	1
\$50 cap	8
\$25/item cap	1
\$50/customer/day cap	1
	<u>116</u>

Sale Level to Reach Cap:

No limit	11
\$10,000	1
\$5,000	1
\$3,500	1
\$2,500	89
\$1666.67	10
\$1,250	1
\$1,000/item	1
\$2,500/customer/day	1
	<u>116</u>