

2009 SENATE FINANCE AND TAXATION

SB 2090

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2090

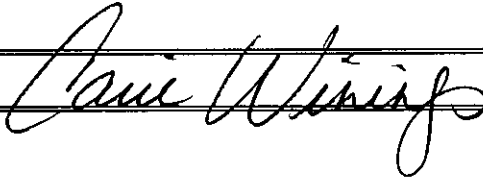
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 01/12/2009

Recorder Job Number: 6773

Committee Clerk Signature



Minutes:

Chairman Cook: Opened the hearing on SB 2090.

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

See Attachment #1 for testimony.

Chairman Cook: Any questions?

Senator Hogue: Do you get requests from persons from Montana that are on the low end, it excludes sales of under \$50, and I am wondering if someone has a refund coming of \$2 or \$3, do they make application for that?

Myles Vosberg: This is actually an exemption upon the time of purchase. When a Montana resident makes a purchase, if it qualifies, the retailer does not charge tax on that. There is no refund process. There is no fiscal note request at this time.

Chairman Cook: There should be one.

Myles Vosberg: There should be.

Chairman Cook: Do we do this for Canadians also?

Myles Vosberg: For Canadians there is a refund process.

Senator Dotzenrod: For those that live near the state line, Montana people, that use it regularly. Do they have to file? Or do they have a certificate with them?

Myles Vosberg: The retailers are provided with log sheets that are kept on file for audit purposes.

Chairman Cook: Do they have to show ID?

Myles Vosberg: Yes

Chairman Cook: Is it abused?

Myles Vosberg: Everything is abused here and there, but not widely.

Senator Anderson: New to me. Is there any person, or corporation in Montana that wouldn't qualify for this?

Myles Vosberg: Under the existing law, it is restricted to people or individuals. If this bill passes, if it is a pass-through type entity, a partnership, those individuals or owners of those entities would also be individuals that are residents of Montana to qualify.

Senator Anderson: Nothing is excluded that would be 100% Montana based?

Myles Vosberg: That is correct.

Chairman Cook: This applies to sales tax, so if they come over and buy liquor in North Dakota, do they pay the liquor tax?

Myles Vosberg: I need to check if it would apply to the gross receipts tax on liquor.

Senator Anderson: Does this have anything to do with motor vehicle?

Myles Vosberg: No

Senator Hogue: I heard you say that it would only apply to pass-through entities, but does chapter 57- 39, define person to pass-through entities only?

Myles Vosberg: The sales tax law does define person, and basically it includes all business entities, it would apply to domestic corporations, but in the case of pass-through, they would have to be Montana residents.

Senator Triplett: In terms of the log sheet, what advice do you give to retailers as to how to document if the purchaser is a resident of Idaho, but works for a Montana corporation?

Myles Vosberg: The entity needs to sign a form, and on that form it says that they certify that they are. We do not ask for proof at the time of purchase.

Chairman Cook: It is safe to assume that a lot of these corporations are businesses that have a sales tax exemption anyway?

Myles Vosberg: Probably not. I think it more applies to final users that are coming into North Dakota that are coming in to purchase goods for their own use. This exemption would not be needed for a Montana retailer that is buying or resale because they would fall under the resale exemption.

Senator Dotzenrod: How does this work for North Dakota residents. If I go to Montana to buy something that is not subject to sales tax do I have to pay taxes?

Myles Vosberg: That is correct. They have to pay the use tax.

Senator Dotzenrod: How do you know they made that purchase?

Myles Vosberg: In most cases we do not know. We do some things to track down goods shipped in North Dakota. With Montana it is difficult.

Bob Lamp, North Dakota Implement Dealers Association: See attachment #2 for testimony.

Chairman Cook: Any questions?

Discussion: A brief discussion occurred between Senator Dotzenrod, Chairman Cook, and Bob Lamp regarding why there is a difference of purchasing in North Dakota and Montana, delivery of an item and what that means. A sale in North Dakota is taxed by North Dakota. A sale in Montana is a Montana sale. If it is delivered to Montana, then it is a Montana sale.

Daniel Rouse, Legal Counsel to the Tax Commissioners Office: Answer to questions.

Alcohol Section in Tax Law and gross receipts section. There is a provision, 57-39.6-02 that states that if it is eligible for exemption under the sales tax chapter, it is eligible for the exemption under the alcohol beverage gross receipts tax. And it also applies to farm machinery.

Chairman Cook: Does Montana have sales tax on alcoholic beverages?

Daniel Rouse: I believe they have a gross receipts tax, but I will check on that for you.

Senator Dotzenrod: I understand that if you pick it up or whether it is delivered, you still are exempt. Am I wrong?

Daniel Rouse: As I understand it, if they take possession of it here, North Dakota sales tax applies. If it is delivered in Montana then it is exempt.

Senator Dotzenrod: What does delivery have to do with it?

Daniel Rouse: The problem with the current law is it was impossible for us to regard a corporation or a partnership, or an LLC as a tourist, or as a non-resident of North Dakota. So by clarifying that defining it as a person, it allowed us to more definitively to apply the North Dakota tax, and to apply to exemption if the purchase is completed in North Dakota.

Chairman Cook: Where the purchase happens is where the tax is or/ is not applied.

Senator Dotzenrod: So it does not matter where it takes place for a Montana resident?

Chairman Cook: If we change this law, neither way will be taxed. If we do not change this law, the tax would be owed by the Montana person who is making the purchase in North Dakota.

Senator Dotzenrod: I assume that most of the purchases that are taking place under this section that are currently tax free, the possession is taken in North Dakota, am I wrong?

Myles Vosberg: If the good is delivered to Montana, North Dakota laws do not apply. If the customer takes possession in North Dakota, under the existing law, a person would be exempt; however we are not recognizing a business entity, a corporation, a partnership, etc. If it passes it will include them.

Senator Hogue: This exemption seems to state that you have to be physically present in the state of North Dakota, because it applies to persons in the state, what about the Montana farmer/rancher who calls and wants parts, and never physically comes into the state, do they still get the exemption?

Myles Vosberg: Someone needs to come here to make the purchase. If they call and they send someone else, as long as the purchaser is from Montana it is tax exempt.

Chairman Cook: Further testimony in support? (No) Opposed? (No?) Neutral? (No)
Close the hearing on SB 2090.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2090

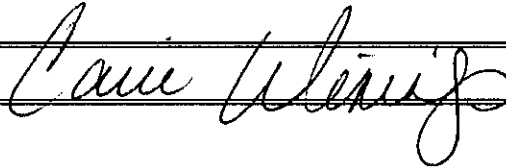
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 01/14/2009

Recorder Job Number: 6973

Committee Clerk Signature



Minutes:

Chairman Cook: Reopened the hearing on SB 2090, and asked for any discussion.

Senator Oehlke moved Do Pass.

Senator Triplett seconded.

Chairman Cook: Any discussion?

Senator Hogue: This would not help the folks in Minnesota come to North Dakota and receive a sales tax, because they otherwise impose a sales tax?

Chairman Cook: That is correct. Any other discussion?

A Roll Call vote was taken. **Yea: 7, Nay: 0, Absent: 0**

Senator Miller will carry the bill.

FISCAL NOTE
Requested by Legislative Council
03/05/2009

Amendment to: SB 2090

1A. **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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	(\$46,000)	(\$4,000)	(\$138,000)	(\$12,000)		
Expenditures						
Appropriations						

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

SB 2090 with House Amendments expands the existing sales tax exemption for Montana residents to include certain qualifying sales made to representatives of Montana businesses. Section 2 contains an emergency clause.

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.*

If enacted, SB 2090 with House Amendments is expected to reduce state general fund and state aid distribution fund revenues by \$50,000 in the current 2007-2009 biennium, and \$150,000 in the 2009-2011 biennium.

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 is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	03/06/2009

FISCAL NOTE
Requested by Legislative Council
01/12/2009

Bill/Resolution No.: SB 2090

1A. 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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			(\$138,000)	(\$12,000)		
Expenditures						
Appropriations						

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

SB 2090 expands the existing sales tax exemption for Montana residents to include certain qualifying sales made to representatives of Montana businesses.

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.*

If enacted, SB 2090 is expected to reduce state general fund and state aid distribution fund revenues by \$150,000 in the 2009-2011 biennium.

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 is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	01/14/2009

Date: 01/14/09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. : 2090

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Senator Oehlke Seconded By Senator Triplett

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman	✓		Sen. Arden Anderson	✓	
Sen. Joe Miller - Vice Chairman	✓		Sen. Jim Dotzenrod	✓	
Sen. David Hogue	✓		Sen. Constance Triplett	✓	
Sen. Dave Oehlke	✓				

Total: Yes 7 No 0

Absent 0

Floor Assignment Senator Miller

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

REPORT OF STANDING COMMITTEE

SB 2090: Finance and Taxation Committee (Sen. Cook, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2090 was placed on the Eleventh order on the calendar.

2009 SENATE APPROPRIATIONS

SB 2090

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2090

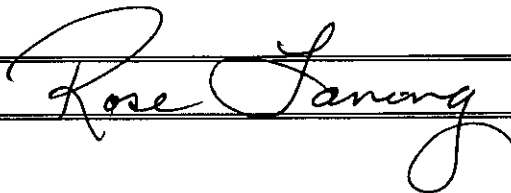
Senate Appropriations Committee

Check here for Conference Committee

Hearing Date: 01-27-09

Recorder Job Number: 7806

Committee Clerk Signature



Minutes:

Chairman Holmberg called the committee hearing to order at 9:00 in regards to SB 2090 concerning sales tax exemptions

Myles Vosberg, Director of Tax Administration for the Office of State Tax Commissioner.

Testified in favor of SB 2090. (Written attached testimony # 1)

Chairman Holmberg requested the fiscal note for SB 2090. The fiscal note indicates that it would reduce state general fund and state aid distribution fund revenues by \$150,000 in the 2009-2011 biennium.

Senator Warner: This distinction between "person" – this is consistent within all the laws. "Person" refers to economic entities and the individual would be regarded as a person.

Myles Vosberg: Correct. There is a definition of person in the sales tax law which we will be following under these changes. The way the exemption is written in the law, it refers to any individual rather than a person. It also references that that individual must be coming to the state to make a purchase and not as a tourist. It's that language that we've reviewed is why we made the determination that the current law doesn't apply to business entities.

Matthew Larsgaard, North Dakota Implement Dealers Association

Testified in favor of SB 2090. (Written attached testimony # 2).

Senator Seymour: You say this is important to them. How many dollars is this important to them ?

Matthew Larsgaard: The fiscal note is \$150,000. In terms of dollars, it's hard to quantify. There are a lot of residual effects. When a used piece of farm machinery is sold, the salesman earns a commission. Income tax is paid by that individual. There is a relationship that is established between that farmer and that ND dealership. Service work will come in, and the technicians are paid. So it would be hard to give you a firm number.

Chairman Holmberg asked for any questions.

Senator Christmann: For **Myles Vosberg** - The sales tax exemption on parts and used equipment would apply to people regardless of where they are from, correct?

Myles Vosberg: That is correct.

Senator Christmann: So from the implement dealer's perspective, is new equipment purchases from people in Montana, who are incorporated, if they're individuals, they are fine, right?

Myles Vosberg: That is correct.

Senator Christmann: Is that the basis for the \$150,000 or what other groups of people would be impacted by this?

Myles Vosberg: The other biggest group would probably be the service companies that are dealing with the oil and gas industry. There is a lot of activity in the Williston basin on the Montana side, so they would be purchasing supplies, equipment, consumable items, etc.

Senator Christmann: During the process where they have to buy a lot of taxable supplies, if they set up their office in Sydney, then they can buy the supplies in Williston and be tax free, but if they set up their business, they have to pay the tax? I'm not talking about farm equipment.

First of all, it's not the location of the office. It is not the location of the property that determines whether ND law applies or not. So if you have a business operating in Montana and the goods are delivered to Montana, it's exempt regardless of who's making the purchase. The second point is that in order for our company to qualify for the exemption, they need to be a Montana resident. We're looking at that to be a Montana individual rather than a business entity that would be formed or incorporated in Montana and if it's a pass through entity with partners, those would be deemed to be Montana residents. If you have a corporation that incorporated in Delaware, and they are doing business in Montana, doesn't mean they would qualify for this exemption because they would not be considered a Montana resident.

Senator Krebsbach: Much of this if sold to business, it would be bought for re-sale, and if it were sold back in ND, they would have to collect the sales tax on it when they sold it.

Myles Vosberg: All sales for re-sale are already exempt, so when a retailer buys goods for their inventory and re-sale, they don't pay tax. Only the final consumer pays tax.

Senator Wardner thanked him for bringing up the bill because it has caused a lot of problems in Dickinson.

Chairman Holmberg asked for any additional questions or statements.

Chairman Holmberg closed the hearing on SB 2090.

V. Chair Grindberg moved Do Pass for SB 2090.

Senator Wardner 2nd the motion.

Chairman Holmberg called for a roll call vote on a DO PASS for SB 2090 and this would go back to Finance and Taxation.

Discussion:

Senator Christmann: Does this leave ND consumers at a disadvantage compared to Montana? Our people still have to pay the tax.

Chairman Holmberg: They don't have the tax if they're buying it in Montana.

Senator Christmann: So basically, we're just doing this to try to get them to come and buy here.

V. Chair Bowman: The offset to that is that if you can enhance them to come into ND and do business with them, you're making your profit on the part that you're selling them.

Consequently, you pay a payroll, and you employ people, and so the economics of business itself is beneficial to our state to bring those people in to do business.

A Roll Call vote was taken. Yea: 14 Nay: 0 Absent: 0

Senator Wardner offered to back it up if needed.

The bill goes back to Finance and Taxation so they will carry the bill.

Date: 1-27-09

Roll Call Vote # 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2090

Senate Senate Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Sen Grindberg Seconded By Sen. Wardner

Senators	Yes	No	Senators	Yes	No
Sen. Ray Holmberg, Ch	✓		Sen. Tim Mathern	✓	
Sen. Tony S. Grindberg, VCh	✓		Sen. Aaron Krauter	✓	
Sen. Bill Bowman, VCh	✓		Sen. Larry J. Robinson	✓	
Sen. Randel Christmann	✓		Sen. John Warner	✓	
Sen. Rich Wardner	✓		Sen. Elroy N. Lindaas	✓	
Sen. Ralph L. Kilzer	✓		Sen. Tom Seymour	✓	
Sen. Tom Fischer	✓				
Sen. Karen K. Krebsbach	✓				

Total Yes 15 No 0

Absent ~~Sen Mathern~~

Floor Assignment Finance + Taxation

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

REPORT OF STANDING COMMITTEE (410)
January 27, 2009 11:13 a.m.

Module No: SR-16-1004
Carrier: Miller
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2090: Appropriations Committee (Sen. Holmberg, Chairman) recommends DO PASS
(14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2090 was placed on the
Eleventh order on the calendar.

2009 HOUSE FINANCE AND TAXATION

SB 2090

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2090 B

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: March 2, 2009

Recorder Job Number: #9953

Committee Clerk Signature

Mark Kiefe

Minutes:

Chairman Belter: Opened the hearing for SB 2090.

Rep Drovdal: I have a report here that you will all be surprised at how much the eastern part of the state has in Exempt Sales to Montana Residents. So it does benefit all of the state not just the western part of the state.

Rep Weiler: Why are they shopping here, it can't just be because they are getting this exempt sales tax break. So are we saying if we do not give them this sales tax break they are not going to shop here?

Chairman Belter: It is my understanding of this bill it is about the definition of the word person. The example is Montana Corporate Farm and they may not get equal treatment as a regular farm.

Rep Wrangham: I don't know when this went into place but the work person meaning individual or corporation has been around for a long time. I wonder if when this went into code they didn't purposely put who is a resident because they meant for this to be for the people not necessarily for a business.

Rep Grande: I don't think this was meant for does anything for the Eastern part of the state. This is an extremely important bill for the cities of Williston and Dickinson because when you cross over that boarder there is nothing in Montana for a long ways.

Rep Pinkerton: I would think that in Sidney area that they probably would have sugar beets they would probably drive to Fargo to buy specialized sugar beet equipment and take it back to Sidney. I do not have any disagreement that the intent was for individuals but I can't see that we put a business in a disadvantage just because the live in Montana.

Vice Chair Drovdal: Many people travel to other cities to shop and we don't exactly know why. It may be just to get out of town. To find the intend as it was passed along time ago is to go back to that time, but the Tax Department did state, a long time ago that up until 10 to 12 years ago that it was and then they went with the ruling that a person was not a business.

It also encourages big box stores to build in North Dakota instead of Montana, because you really can't find a Walmart or many of the Targets that are in Dickinson and Williston. It just gives us a level playing field.

Rep Brandenburg: I do think the farming industries that are large are making the implement businesses larger and having them grow their business base. They may go from state to state to sell a piece of equipment.

Rep Headland: It seems to me if they want to go back to the intent of the bill which will change how it is currently, will have a great impact on the a piece of equipment that is sold in Montana. Why would this be state wide if it was to help the border of Montana?

Chairman Belter: Well an exemption is always applied to the state.

Rep Headland: I think it should stay the way it is. If the implement dealers want this it should stay the way it is.

Chairman Belter: Not auditable

Rep Schmidt: When I look at the FN, they have done \$75,000 worth of business, which would be \$150,000 in two years. That isn't very much business in 2 years.

Vice Chair Drovdal: This is an additional sales. This is new sales that are currently not getting exemption.

Rep Schmidt: My idea is if we give them the exemption we will be getting more business.

Rep Froelich: My question is how does Wyoming, South Dakota does and other states handle this? If a Montana resident buys something in Minnesota and South Dakota and how do they handle that.

Chairman Belter: I am not sure. I would suspect that they do similar to North Dakota.

Rep Weiler: If you look at that FN, a third of the way down it says, SB 2090 expands the existing Sales Tax exemption from the residence of Montana (Inaudible). Currently the interpretation of the current law am I correct at assuming the interpretation from the Tax Department allow that it applies to just people and what they are trying to do is to change this so that certain business can come over and receive the tax exempt too.

Vice Chair Drovdal: That is right.

Rep Weiler: There is some discussion as to what the current law is. Currently the law they think it should only be individual people that should get this tax exemption.

Vice Chair Drovdal: If you look at the testimony from Matthew from the North Dakota Implement Dealers. The 3rd bullet point says that in 2008 the Tax Department made the determination that it should be only people. That was when the change occurred. Up to 2008 they did get the exemption.

Rep Weiler: Or the way they interpreted it. Would there be any reason to put an emergency clause on this?

Chairman Belter: I don't think so. Then the Tax Department knows the intent.

Rep Weiler: I am just wondering if these implement dealers and business in North Dakota are now operating on the new law the last year and one half if they would have to do that and not give an exemption to a business or corporation in Montana. If we give an emergency clause they would know to give the Tax exemption. I can check with the Tax Department to see if it is necessary.

Chairman Belter: Closed the hearing.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2090 A


House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: March 3, 2009

Recorder Job Number: #9927

Committee Clerk Signature



: Minutes:

Chairman Belter: Opened the hearing for SB 2090 A.

Myles Vosberg: I am the Director of Tax Administration for the Office of State Tax Commissioner.

Testimony Attachment #1

Rep Froelich: The persons in adjoining states does that mean strictly Montana?

Myles Vosberg: Montana is the only state that does not impose a state sales tax. So it only applies to them.

Matthew Larsgaard: I am here in behalf of the North Dakota Implement Dealers Association.

Testimony Attachment #2

Rep Drovdal: I would like the Tax Department to provide the committee with a report as to the exemptions currently being used by Montana residents in the state of North Dakota.

I think it would surprise the committee as to how broad that exemption is used all over the State of North Dakota.

Myles Vosberg: For clarification purposes, are you looking for types of exemptions that are available.

Rep Drovdal: I am looking for total exemptions of sales. Because the last time I looked at the report I was surprised at the amount that other cities allowed the eastern part of the state.

Myles Vosberg: You are asking for the dollars used all across the state. I know that at one time we did have that information but we no longer have that information. We use to ask more itemized detail of what exemption where taken. Now we ask for a total lump sum amount of the total non taxable sales reported.

Rep Drovdal: Could you go to the last time you have that information compiled and give us that?

Myles Vosberg: I will look and see what I can gather.

Chairman Belter: Closed the hearing on SB 2090.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2090**

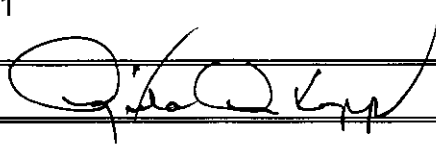
House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: March 3, 2009

Recorder Job Number: 10021

Committee Clerk Signature



Minutes:

Representative Weiler: Mr. Chairman, I had asked about putting an emergency clause on SB 2090. I was going to check with the Tax Department and Representative Drovdal did so.

Vice Chairman Drovdal: I happened to be talking to the Tax Department on the other bill I was looking at, SB 2060, so I happened to ask about the emergency clause. Their explanation is that even though we pass it and our intent would be that we wanted to go back to the way it was interpreted before January of 2008, they would not change their code until these bills go into effect on August 1. If we put the emergency clause on, then it would take effect as soon as the Governor signed it or whenever the emergency clause kicks in. The difference is that these businesses would be sitting out there having to charge sales tax the extra three months, knowing that it was going off. It would cause them some problems so the emergency clause was a very good idea from Representative Weiler. He was right on top of that.

Representative Weiler: First time for everything. It would add a small fiscal note to this biennium, but I don't know there is any reason to hold it up. I move that we put an emergency clause on SB 2090.

Chairman Belter: We have a motion from Representative Weiler to add the emergency clause to SB 2090 and a second from Representative Drovdal. **The motion to approve the emergency clause amendment carried by a voice vote.** What are your wishes on 2090?

We have a motion for a **“do pass as amended”** and rerefer to Appropriations from **Representative Weiler and a second from Representative Pinkerton.** Any discussion?

A roll call vote resulted in **12 ayes, 0 nays, 1 absent/not voting (Grande).** **Representative Schmidt will carry the bill.**

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2090

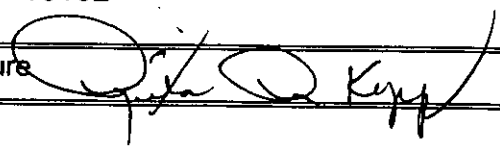
House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: March 4, 2009

Recorder Job Number: 10152

Committee Clerk Signature

A handwritten signature in black ink, appearing to read "D. Kopp", is written over a horizontal line that serves as a signature box. The signature is written in a cursive style.

Minutes:

Vice Chairman Drovdal: I received that copy and I will pass it out for your information. It may surprise you exactly where it all goes. It is pretty much every city in North Dakota has sales to Montana. For your information, we will pass that out. It will pertain to SB 2090.

March 3, 2009

VR
3/3/09

PROPOSED AMENDMENTS TO SENATE BILL NO. 2090

Page 1, line 3, after "state" insert "; and to declare an emergency"

Page 1, after line 18, insert:

"SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Date: March 3, 2009

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2090

House FINANCE AND TAXATION Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Wesler Seconded By Drovdal

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter			Representative Froelich		
Vice Chairman David Drovdal			Representative Kelsh		
Representative Brandenburg			Representative Pinkerton		
Representative Froseth			Representative Schmidt		
Representative Grande			Representative Winrich		
Representative Headland					
Representative Weiler					
Representative Wrangham					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Emergency Clause
Motion Carried

Date: March 3, 2009

Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2090

House FINANCE AND TAXATION Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Weiler Seconded By Pinkerton

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	/		Representative Froelich	/	
Vice Chairman David Drovda	/		Representative Kelsh	/	
Representative Brandenburg	/		Representative Pinkerton	/	
Representative Froseth	/		Representative Schmidt	/	
Representative Grande			Representative Winrich	/	
Representative Headland	/				
Representative Weiler	/				
Representative Wrangham	/				

Total (Yes) 12 No 0

Absent 1 (Grande)

Floor Assignment Rep. Schmidt

If the vote is on an amendment, briefly indicate intent:
Refer to Approp.

REPORT OF STANDING COMMITTEE

SB 2090: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2090 was placed on the Sixth order on the calendar.

Page 1, line 3, after "state" insert "; and to declare an emergency"

Page 1, after line 18, insert:

"SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2009 HOUSE APPROPRIATIONS

SB 2090

2009 HOUSE STANDING COMMITTEE MINUTES

SB 2090

House Appropriations Committee

Check here for Conference Committee

Hearing Date: March 9, 2009

Recorder Job Number: 10508, 10510

Committee Clerk Signature

Holly N. Sand

Minutes:

Chm. Svedjan opened the hearing on SB 2090.

Rep. David Drovdal, District 39, approached the podium to speak on SB 2090. This bill

addresses an issue brought forth by the Tax Department. Back in 1967 we passed an

exemption for the Montana residents who come to ND to shop. Since that time it's been

assumed that the language "non-resident" meant people who came from Montana would be

exempt. In January 2008, the Tax Department ruled that that definition meant a non-resident

with a heart beating. It didn't included corporations, partners, businesses, and so on. This bill is

before us so we can define what the intent was. Our intent for the past forty years was that if

they came from Montana and they took the product back to Montana and met the other

qualifications that they were exempt from ND sales tax. The House Finance and Tax

Committee agreed that we wanted to change that from "non-resident" to "person" because a

person could be a corporation or a business or an entity such as that. Our intent is that if they

come from Montana and meet the other qualifications such as they were taking the product

back to Montana and it was over \$50 in value, they would be exempt.

Chm. Svedjan: You also amended it with an Emergency Clause? (2:35)

Rep. Drovdal: That's correct. We put the Emergency Clause to cause less confusion to our

businesses.

Chm. Svedjan: The Fiscal Note shows a \$46,000 impact to the General Fund in this biennium and \$138,000 projected for 09-11, General Fund only.

Rep. Drovdal: That's correct.

Chm. Svedjan: This is an expansion, but only to the extent that it may involve corporations or other non-heart beating entities.

Rep. Drovdal: It's an expansion but it's actually just interpreting back to what we originally did for the first forty years.

Rep. Wald: If I'm from Montana and I take four people out to dinner in Williston is that a sale?
(3:46)

Rep. Drovdal: They would pay the tax because they were consuming the product in North Dakota and not being taken back to Montana to use. If there is a resident of Montana who has a cabin in North Dakota and they buy products to take to the cabin, the products are taxable, even though they are Montana residents because it's being used in North Dakota.

Chm. Svedjan: The difference is whether or not you carry something back to your home state.
(4:38)

Rep. Drovdal: That's correct.

Rep. Klein moved a Do Pass to SB 2090. Rep. Berg seconded the motion.

Rep. Wald: Do we still have the Canadian exemption? Why wouldn't we change it for them?
(6:06)

Chm. Svedjan: We still do have the Canadian exemption.

Rep. Wald: Then why wouldn't we make the same change for Canadians?

Rep. Skarphol: Do they not have to apply for their refund? Isn't it a different mechanism?

Chm. Svedjan: It is a different mechanism.

Rep. Drovdal: The Canadians pay the tax here and take the receipt and file it back. The mechanism is different. In Montana, they ask for the exemption at the point of sale and sign a slip and show their residency. Whether the wording in Century Code that deals with Canadian exemption, that ruling has not come up. They specified this Montana exemption.

The Do Pass motion carried by a roll call vote of 20 yeas, 1 nay and 4 absent and not voting. Rep. Schmidt will carry the bill.

Date: 3/9/09
 Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 2090

Page 42

Full House Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken No Pass

Motion Made By Klein Seconded By Berg

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan	✓				
Vice Chairman Kempenich					
Rep. Skarphol	✓		Rep. Kroeber	✓	
Rep. Wald	✓		Rep. Onstad	✓	
Rep. Hawken	✓		Rep. Williams	✓	
Rep. Klein	✓				
Rep. Martinson	✓				
Rep. Delzer		✓	Rep. Glassheim	✓	
Rep. Thoreson	✓		Rep. Kaldor		
Rep. Berg	✓		Rep. Meyer	✓	
Rep. Dosch	✓				
Rep. Pollert	✓		Rep. Ekstrom	✓	
Rep. Bellew	✓		Rep. Kerzman	✓	
Rep. Kreidt			Rep. Metcalf		
Rep. Nelson	✓				
Rep. Wieland	✓				

Total (Yes) 20 No 1

Absent 4

Floor Assignment Schmidt

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

REPORT OF STANDING COMMITTEE (410)
March 10, 2009 9:25 a.m.

Module No: HR-42-4418
Carrier: Schmidt
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2090: Appropriations Committee (Rep. Svedjan, Chairman) recommends DO PASS
(20 YEAS, 1 NAY, 4 ABSENT AND NOT VOTING). SB 2090 was placed on the
Fourteenth order on the calendar.

2009 TESTIMONY

SB 2090

#1

TESTIMONY OF THE OFFICE OF STATE TAX COMMISSIONER
BEFORE THE
SENATE FINANCE AND TAXATION COMMITTEE

*Same given
to Sen. Leppig
& House Finance
& Taxation*

SENATE BILL 2090

January 12, 2009

Chairman Cook, members of the Senate Finance and Taxation Committee, I am Myles Vosberg, Director of Tax Administration for the Office of State Tax Commissioner and I am here today on behalf of the Tax Commissioner to introduce Senate Bill 2090.

Senate Bill 2090 relates to the sales tax exemption currently available to Montana residents in N.D.C.C. § 57-39.2-04. Montana is the only "adjoining state" that does not impose a sales and use tax. During the early years of this exemption, the Tax Commissioner's Office interpreted the definition of nonresident to include people but not businesses entities. Over time, the interpretation of this exemption evolved to include both people and business entities.

In 2007, Department personnel questioned that application of the exemption. After further review of the statutory language, the Tax Commissioner's Office changed back to the original administration of the exemption, and made this change effective January 1, 2008. In effect, the exemption was limited to natural persons, not business entities.

We have received numerous comments on this policy change. Because of the current statutory language and these comments, we are now asking the Legislature to clarify the exemption by proposing statutory changes to reflect how the exemption had been administered prior to the policy change.

In summary, if this bill is enacted, the exemption will be available to "a person from an adjoining state." As used in this law, "persons" will mean natural persons, Montana corporations, and other business entities when the owners, partners, or members are individual Montana residents or domestic Montana corporations.

Thank you for your consideration of this bill. I will be happy to respond to questions you may have.

**Montana Sales Tax Exemption
Exempt Sales Reported by Retailer Location
Calendar Year 2004**

City Location of Retailer	Exempt Sales to Montana Residents
ALAMO	40,544
ALEXANDER	56,805
ANTLER	4,625
ARNEGARD	5,947
BEACH	7,104,398
BELFIELD	31,621
BERTHOLD	1,910
BEULAH	1,186
BISMARCK	2,893,473
BOTTINEAU	1,325
BOWDON	952
BOWMAN	1,597,421
BURLINGTON	15,717
CARTWRIGHT	9,729
COLUMBUS	4,042
COOPERSTOWN	28,859
CROSBY	55,171
DAVENPORT	6,726
DEVILS LAKE	18,798
DICKINSON	5,225,176
EAST FAIRVIEW	70,418
EDGELEY	19,493
ELGIN	3,200
ELLEDALE	141
FARGO	3,868,196
GARRISON	893
GLADSTONE	2,360
GLENBURN	19,991
GLEN ULLIN	481
GOLVA	254,172
GRAND FORKS	148,880
GRASSY BUTTE	4,762
GRENORA	67,057
HARVEY	3,205
HAZEN	55,310
HEBRON	1,292
HETTINGER	3,165
JAMESTOWN	50,603
KENMARE	247,652
KILLDEER	348,367
LAKOTA	8,525
LANGDON	6,064
LANSFORD	3,600
LIGNITE	297,936
LINCOLN	405
MANDAN	891,816

City Location of Retailer	Exempt Sales to Montana Residents
MEDORA	19,945
MENOKEN	1,096
MICHIGAN	50,300
MINOT	4,550,876
MOHALL	840
MOTT	50
NEWBURG	4,990
NEW ENGLAND	157,829
NEW SALEM	150
NEW TOWN	64
NORWICH	2,000
OAKES	7,222
PARSHALL	51,783
PINGREE	4,611
PLAZA	313
POWERS LAKE	165
RAY	201,391
RHAME	2,012
RICHARDTON	8,334
RIVERDALE	44
ROGERS	73,750
ROLLA	4,892
ROSS	300,909
RUGBY	905
ST JOHN	5,250
SENTINEL BUTTE	18,591
STANLEY	58,930
TAYLOR	795
TIOGA	615,553
TRENTON	1,006
TURTLE LAKE	156,875
UNDERWOOD	772
VALLEY CITY	1,668
WAHPETON	67,248
WALCOTT	1,901
WALHALLA	2,332
WASHBURN	3,995
WATFORD CITY	749,009
W FARGO	75,276
WESTHOPE	52
WHEELLOCK	2,906
WILDROSE	1,339
WILLISTON	41,998,834
ZAHL	1,005
OUT-OF-STATE	6,401,327

Prepared by Office of State Tax Commissioner
March 3, 2009

#2
TESTIMONY
SENATE BILL 2090
SENATE FINANCE & TAXATION
JANUARY 12, 2009

Mr. Chairman and members of the committee. My name is Bob Lamp and I am appearing in support of Senate Bill 2090 on behalf of the North Dakota Implement Dealers Association. The members of this association are the 125 farm equipment dealers throughout North Dakota.

- Senate Bill 2090 addresses a long standing tax law in Section 57-39.2-04, Subsection 1 that has been critical to farm equipment dealers particularly those in the western half of North Dakota.
- The Montana sales tax exemption exists for the sole purpose of leveling the playing field for North Dakota companies who do business with people in Montana.
- On January 1, 2008, the Tax Department made a determination that only individuals in Montana qualified for this tax exemption. Apparently the terms "resident" and "tourist" were interpreted to exclude corporate entities since corporations can be neither a resident nor tourist. This determination eliminated the tax exemption for corporate farming operations in Montana purchasing new farm machinery in North Dakota.
- Prior to this change, corporate farming operations were eligible for the tax exemption based on the definition of "person" in Section 57-39.2-01, Subsection 14. This section of the Century Code defines person in the following manner: "includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, business trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number."
- From this definition, it seems clear that the legislative intent at the time of enactment of this section of the Code was inclusive of the entities listed in the definition.
- It is important to remember that these amendments only change who is eligible for the tax exemption. All of the other criteria (in the state for the express purpose of making a purchase; furnishing a certificate to the retailer establishing the exempt status of the sale; sale of \$50 or more) remains in tact.
- Mr. Chairman and committee members. This bill is very important to our farm equipment dealers. We urge your favorable consideration of Senate Bill 2090.

Robert L Lamp
North Dakota Implement Dealers Association

TESTIMONY
SENATE BILL 2090
SENATE APPROPRIATIONS
JANUARY 27, 2009

*Same given
to House Finance
& Taxation.*

Mr. Chairman and members of the committee. My name is Matthew Larsgaard and I am appearing before you today in support of Senate Bill 2090 on behalf of the North Dakota Implement Dealers Association which consists of approximately 125 farm equipment dealers throughout North Dakota.

- Senate Bill 2090 addresses a long standing tax law in Section 57-39.2-04, Subsection 1 that has been critical to farm equipment dealers particularly those in the western half of North Dakota.
- The Montana sales tax exemption exists for the sole purpose of leveling the playing field for North Dakota companies who do business with people in Montana.
- On January 1, 2008, the Tax Department made a determination that only individuals in Montana qualified for this tax exemption. Apparently the terms "resident" and "tourist" were interpreted to exclude corporate entities since corporations can be neither a resident nor tourist. This determination eliminated the tax exemption for corporate farming operations in Montana purchasing new farm machinery in North Dakota.
- Prior to this change, corporate farming operations were eligible for the tax exemption based on the definition of "person" in Section 57-39.2-01, Subsection 14. This section of the Century Code defines person in the following manner: "includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, business trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number."
- From this definition, it seems clear that the legislative intent at the time of enactment of this section of the Code was inclusive of the entities listed in the definition.
- It is important to remember that these amendments only change who is eligible for the tax exemption. All of the other criteria (in the state for the express purpose of making a purchase; furnishing a certificate to the retailer establishing the exempt status of the sale; sale of \$50 or more) remains intact.
- Mr. Chairman and committee members. This bill is very important to our farm equipment dealers. We urge your favorable consideration of Senate Bill 2090.

Matthew C. Larsgaard
North Dakota Implement Dealers Association