

2009 SENATE FINANCE AND TAXATION

SB 2347

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2347

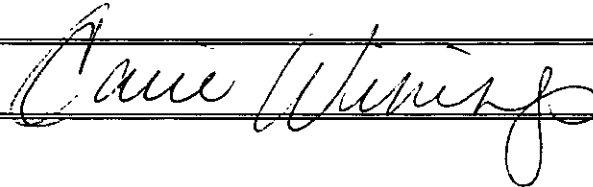
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 02/02/2009

Recorder Job Number: 8303 and 8304

Committee Clerk Signature



Minutes:

Vice Chairman Miller: Opened hearing on SB 2347.

Senator Dwight Cook, District 34: Testified as sponsor and in support of bill.

Simply makes sure that our current tax policy on digital products continues to be our current tax policy or existing tax policy unless for some reason the legislature should deem it important to change. What is our current tax policy and what are digital products? Current tax policy is that we don't tax it so the fiscal note is zero. It wasn't until recently that digital products have become very popular. It is a new world of products. I came across it in my world of streamline sales tax. It became quite an argument within streamlining as far as the proper process in the role that legislators should play in important tax policy such as our tax policy on digital products. It is to send a message that here in ND we do not tax it. This bill could have a significant impact on tax policy.

Vice Chairman Miller: In a nutshell it puts definition into code?

Chairman Cook: Yes it does.

4.05 Steve Kranz, Partner of Sutherland Law Firm, Washington DC: See Attachment #1 in support of this bill. He specializes in state and local taxation, with a focus on the taxation of digital products.

9.10 **Senator Hogue:** Explain to me for example, if someone downloads and purchases a song from a Wal-Mart site and assuming that they have a presence in ND, why couldn't ND tax that transaction? Second question, what incentive would Wal-Mart have to locate a server in ND.

Steve Kranz: With a company like Wal-Mart where you have an online presence and physical presence the state could require the seller to collect, but if they do not have presence then you legally cannot do that. The consumer is going to buy from the lowest priced company.

Chairman Cook: What if the company is from outside the country? Can we impose any tax or responsibility on them?

Steve Kranz: The same constitutional rules apply whether it is an out of state company or out of country unless they have physical presence here in the state.

11.48 **Chairman Cook:** If I was to buy something from a foreign country, somehow it has to get shipped into this country; it could face tariffs or something else. That doesn't exist with digital property and could this entire market moved out of our country?

Steve Kranz: It is possible. There are things that you need to operate as a digital company that are better available in the US.

Senator Dotzenrod: Do you find that what is happening with moving to digital products and data that there are some issues with competition and the viability of other industries that are competing with the digital.

Steve Kranz: said he really didn't get into that part of it. He said that he does see some of the publishing house shifting their focus to providing their products in different ways. An example of this is Amazon's Kindle, it is an electronic book. He said we tax TPP but we don't tax services in this country. He said more and more technology developed products are looking like services and from a tax policy stand point should they be taxed. This is all very difficult

from a tax stand point and it has prevented most states from going down the road to taxing services.

16.17 **Chairman Cook:** If the state was going to change their tax policy it would have to go through a public hearing process. One of the things that we see in digital property is all of a sudden having tax changes to it without going through the process. Do you think this process is good or necessary?

Steve Kranz: It is. The digital world has had a very difficult time trying to figure out where they can and cannot collect tax. There are eleven states that have statutory authority to tax digital products. There are 5 to 9 other states where the Department of Revenue has said we are going to declare these products taxable and we are going to do it in an audit. Digital vendors have become nervous about this. Having the certainty that ND has is good for the vendors.

19.50 **Todd Kranda, Attorney of Kelsh Law Firm, Verizon Wireless:** See Attachment #2 for testimony in support of the bill.

21.29 **Katie Moore Aitchison, Bismarck-Mandan Chamber of Commerce:** See Attachment #3 in support of bill.

22.30 **Senator Hogue:** Has the Bismarck Economic Development group looked at locating and establishing a digital library or data base here in Bismarck?

Katie Aitchison: It has been looked at.

Chairman Cook: Any further testimony?

Closed hearing on SB 2347.

Reopened hearing on bill for discussion. Job #8304

Senator Miller moved a Do Pass on SB 2347.

Senator Triplett seconded.

Roll call vote: 7-0-0

● Senator Cook will carry the bill.



FISCAL NOTE
Requested by Legislative Council
01/21/2009

Bill/Resolution No.: SB 2347

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						
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 2347 does not change the taxation of items delivered electronically, and therefore, has no fiscal impact.

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

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

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

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

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation 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:	01/30/2009

Job #6 on tape

Date: 02/02/09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. : 2347

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 Sen. Miller Seconded By Sen. 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 Cook

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

REPORT OF STANDING COMMITTEE (410)
February 2, 2009 1:02 p.m.

Module No: SR-20-1397
Carrier: Cook
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2347: Finance and Taxation Committee (Sen. Cook, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2347 was placed on the Eleventh order on the calendar.

2009 HOUSE FINANCE AND TAXATION

SB 2347

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2347

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 03/04/09

Recorder Job Number: 10153

Committee Clerk Signature

Loui Engelson

Minutes:

Chairman Belter opened the hearing on SB 2347.

Sen. Dwight Cook: I am Dwight Cook, state senator from District 34 in Mandan. I ended my testimony on the previous bill (2325) with a statement that the whole process hopefully will eliminate litigation between the private sector, practitioners, tax attorneys and the public sector. That is the whole key to the purpose of streamlined sales tax. It has a lot to do with the burden that's placed on remote sellers, and that is, just exactly what is taxable and what is not. I think you heard some questions at the end of the hearing from Rep. Pinkerton regarding this complicated thing of computer software, the difference between service agreements and actual software and whether it's bundled or whether it's not. That's just an example of the types of conversations that continually go on in this world where we have tangible property that is taxed, and is it taxed or is it not taxed? Back in the 1930's, 1935, when North Dakota first introduced its sales tax imposition laws, things were really simple. That law, like the law of every state that introduced imposition laws for sales tax, it started with tangible personal property. The rest of the law defines what pieces of tangible personal property were exempt from it. That's how we did sales tax laws. Then we come along with services. The state started taxing services. So we had to separate services from tangible personal property.

Generally you will list the services that you tax. You don't start with saying you tax services and then you list those services that you don't, you do it exactly the opposite of tangible personal property. The other gadget that has been developed over the years is something called digital property. If you look at Section 18 of the previous bill (2325), you'll see that there's language in there that says a member state shall not include any product transferred electronically in its definition of tangible personal property. This became quite an issue in the governing board that streamlined sales tax as we started finding out that as this digital property started to exist out there, and you have manufacturers that are making it and marketing it, and they are questioning whether it's taxable or not. There wasn't state legislature that ever acted on it. Then you find the tax commissioner's office in a particular state all of the sudden said, "We're going to tax that." It was a great way of raising revenue without any legislative action taken on that piece of legislation. So we sit here on the governing board and we have the private sector folks from the digital world with products and they're saying, "You guys have to quit doing this." That's why you see that little piece of language in Section 18 of the previous bill that basically says digital is not part of tangible property. The bill you have before you takes that just one major step further. It's going to have no fiscal impact. It does not change the tax policy of North Dakota, but it sets in record the action of future legislatures. It sets in the state of North Dakota century code that if we are ever going to tax digital property, it will be because the legislature took action and said we should. It will give those who are affected by it, those who have to pay it, those who have to collect it, the same opportunity that anybody should have, and that's to sit here before a policy committee and argue yes or no on a decision that is decided. You will see in the bill the actual digital properties that we have come up with definitions to. If ever in the future we want to start taxing digital property, then it's going to be a decision made by the legislature. You will see as digital property continues to evolve and

develop, you will see more definitions that will define black lines of what this product actually is and what it is not so that you eliminate the litigation and the arguments of whether someone should be or should not be taxing something. It also has drawn a lot of attention around this country. I would have never guessed it. There's a little economic aspect of this bill. We're getting a lot of attention, and there could be a lot of opportunity for the state of North Dakota as we set ourselves apart. I am going to hand out some legislation from an attorney out of Washington, D.C. See Attachment #1, testimony before the Senate Finance and Taxation Committee.

Rep. Pinkerton: Do you find digital is only like media digital? Is it like movies or is it anything transferred electronically.

Sen. Cook: I think you could read the definition. It's defined as anything that's transferred electronically. I've defined it as something I can't touch. Digital is a product you could spend money upon. I understand there's digital real estate that you can buy.

Rep. Pinkerton: Products like software upgrade that we're buying and it's transferred electronically to us, and it would be considered digital and would not be subject to tax?

Sen. Cook: I think you might want to point that question to Myles Vosberg of the Tax Department to make sure you get the exact right answer. You will see that computer software is defined in the streamlined agreement, and it is allowed to be taxed there.

Chairman Belter: Further testimony in support of 2347.

Todd Kranda offered testimony on behalf of Stacy Sprinkle in support of SB 2347.

Mr. Kranda: My name is Todd Kranda. I am an attorney at the Kelsch firm over in Mandan. I am appearing before you today on behalf of Verison Wireless in support of 2347. What you are doing is simply codifying the way it is applied now. You're not taxing these digital products.

Having a clear tax policy so that if there is a point in the future that you decide to change that policy, there is a fair hearing before this body and a determination as to that change of policy.

Chairman Belter: Further testimony in support of 2347. Any opposition to 2347. Any neutral testimony to 2347. Any questions of the Tax Department.

Myles Vosberg: Myles Vosberg with the Tax Commissioner's Office. Just to respond to Rep. Pinkerton's question. Subsection d of both Section 1 and 2 indicates that the specified digital products may not be construed to include prewritten software. It references 57-39.2-02.1 which is the point in the law where we define prewritten computer software and impose tax on it. Prewritten computer software, although it's digital, is excluded from this exception.

Rep. Pinkerton: Is there some sort of model legislation that you are using here?

Mr. Vosberg: It is. The definition of specified digital products is a streamline definition.

Although this exemption is broader than that because it exempts the digital, the products delivered electronically including specified digital products themselves and other digital products as well. The only one that is excluded is the software.

Chairman Belter: Any other testimony on 2347? If not we'll close the hearing on SB 2347.

2009 HOUSE STANDING COMMITTEE MINUTES

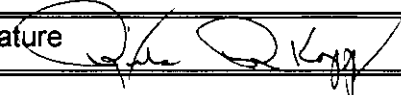
Bill/Resolution No. **SB 2347**

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: March 4, 2009

Recorder Job Number: 10156

Committee Clerk Signature 

Minutes:

Chairman Belter: Committee, what are your wishes on SB 2347?

Vice Chairman Drovdal: I move a "do pass".

Representative Kelsh: Second.

Chairman Belter: We have a motion for a "**do pass**" on **SB 2347** from Representative Drovdal and a second from Representative Kelsh. Any discussion? If not, will the clerk read the roll for a "**do pass**" on **SB 2347**. A roll call vote resulted in **11 ayes, 0 nays, 2 absent/not voting (Headland and Froelich)**. Representative Winrich will carry **SB 2347**.

Date: 3/4/09

Roll Call Vote #: _____

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2347

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 Drovdal Seconded By Kelsh

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) 11 No 0

Absent 2

Floor Assignment Rep Winrich

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

REPORT OF STANDING COMMITTEE

SB 2347: Finance and Taxation Committee (Rep. Belter, Chairman) recommends DO PASS (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2347 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

SB 2347

2
#1
Stephen P. Kranz
DIRECT LINE: 202.383.0267
E-mail: steve.kranz@sutherland.com

*Same given
to House.*

**Testimony to the Senate Finance and Taxation Committee
North Dakota Legislative Assembly
February 2, 2008**

In Favor of the Senate Bill (S.B.) 2347 (Digital Products Exemption)

Chairman Cook and Members of the Senate Finance and Taxation Committee, thank you for the opportunity to provide testimony in favor of S.B. 2347, which would codify the state's current sales tax exemption for digital products. My name is Steve Kranz; I'm a Partner at the Sutherland law firm in Washington, DC, where I specialize in state and local taxation, with a focus on the taxation of digital products. I have spent much of the last five years addressing the policy and technical issues associated with state taxation of digital products as the issue has been considered by the Streamlined Sales Tax Governing Board and various states. Through those discussions, I have come to understand the reasons that consumers and vendors of digital products support the proposed exemption; and the reasons why codifying the current exemption would be beneficial to North Dakota and its taxpayers.

S.B. 2347, in relevant part, clarifies existing North Dakota law and provides certainty for the state's taxpayers. Adoption of this legislation would set North Dakota apart from other states in the eyes of high-technology companies that sell digitally delivered products and services.

What are Digital Products?

Historically, states have imposed sales and use tax on the sale of tangible personal property, but have generally exempted services from tax. For example, while shoes and furniture are subject to sales and use tax as sales of tangible personal property; accounting, medical, legal and consulting services are not subject to tax. Technological developments have created a category of intangibles that fall somewhere on the spectrum between tangible personal property and services. For instance, where photography once existed only in the tangible world, in the form of a printed photograph, digital images can be created, transferred, and manipulated without the involvement of a tangible component. Other services are experiencing similar revolutions; medical diagnosis and treatment can now be provided remotely through the electronic monitoring of blood sugar and insulin levels; GPS tracking of fleet location and logistics allows transportation companies to monitor and adjust their business to meet customer needs; vending machine inventory can be monitored remotely. These advances have raised questions about how to treat the intangible world; should the things being purchased be taxed as taxable tangible personal property, exempt as a service, or exempt as an intangible. These same issues exist when discussing electronically delivered movies, music and books. These digital products can be purchased from remote locations and are imbedded with service characteristics that

distinguish them from their tangible counterparts. S.B. 2347 would resolve the question in North Dakota by establishing a clear statutory exemption.

S.B. 2347 Clarifies Existing Law and Eliminates Uncertainty

The state's tax code does not currently impose tax on digital products and the Department of Revenue has indicated that such products are not taxed when sold into, or from, the state.¹ Unfortunately, not all digital vendors are aware of or understand this treatment. Adoption of a clear statutory exemption would eliminate uncertainty for businesses and would send the message that North Dakota is interested in further developing its high-tech business presence. Consumers benefit from S.B. 2347 as the legislation expressly protects their purchases from taxation, continuing the de facto exemption they have enjoyed to date.

S.B. 2347 Encourages High-Tech Investment in North Dakota

A number of other states have moved to raise revenue by imposing tax on digital products. In particular, taxes on digital products have recently been adopted by South Dakota, Nebraska, New Jersey, Tennessee, Utah and Indiana; taxes on digital products are part of the Governor's budget proposal in revenue-starved Wisconsin and New York; legislation has been introduced to impose such a tax in North Carolina and similar proposals are expected to be considered in California and Washington. While the tax falls directly on consumers, imposing a tax collection obligation on the vendor makes it unattractive for such companies to locate in or establish a presence in the state. Instead, vendors are encouraged to locate in tax-friendly jurisdictions and sell their products from servers located there. As other states move to impose tax on digital products, discouraging deployment of the infrastructure needed to support a digital marketplace, North Dakota should be reaching out to welcome them.

Taxing Digital Products Would Impair North Dakota's Business Climate

Were North Dakota to choose instead to impose sales tax on in-state businesses that produce or sell digital products, those businesses would be put at a disadvantage to companies located outside the state that cannot constitutionally be required to collect the tax. The impact would be that only consumers who buy digital products from companies in North Dakota would pay tax. Ultimately, consumers will shift their purchases to out-of-state companies offering the same products at lower costs. Taxing digital products would move North Dakota to the "do-not-call" list of states that are competing to attract high-tech business.

Legislation introduced in California that sought to impose tax on digital products did not pass based on this very concern. California Assembly Bill 1956 was unable to garner sufficient

¹ N.D. Sales Tax Newsletter, Vol. 28, No. 2 (6/1/2001).

support to make it out of the Assembly Revenue and Taxation Committee after California businesses expressed concern that their products would be subject to tax while the products of out-of-state companies would not.

Legislation introduced in Iowa that sought to impose tax on digital products was similarly unsuccessful when it came into conflict with the state's effort to attract Google as a high-tech vendor of digital content. Senate File 596 was unable to gain support after high-tech businesses expressed concern over the impact the bill would have on the state's business climate.

Digital Products Go "Green"

Digital products have revolutionized the ability of consumers in remote locations to access art, literature, movies, music and other online content. These products do not require consumers to drive long distances to access material that was historically available only in major metropolitan areas. These products are environmentally friendly, taking up a fraction of the carbon footprint of their tangible counterparts as a result of the elimination of packaging and transportation.

S.B. 2347 Conforms to the Streamlined Sales and Use Tax Agreement

S.B. 2347 is based in part on definitions found in the Streamlined Sales and Use Tax Agreement (the "Agreement"), the model sales tax law on which 22 states (including North Dakota) base much of their sales tax laws. The Agreement does not dictate how North Dakota or any other member state treat digital products for sales and use tax purposes. In fact, Section 103 of the Agreement specifically provides that it "shall not be construed as intending to influence a member state to impose a tax on or provide an exemption from tax for any item or service." Rather, the Agreement recognizes that digital products are distinct from tangible personal property and provides definitions for a state to use when it imposes tax or chooses to expressly exempt digital products from tax. Accordingly, the sales tax exemption that would be codified by S.B. 2347 is consistent with North Dakota's efforts to comply with the Agreement.

Thank you for considering these comments. I look forward to additional discussions on this important issue and am happy to answer any questions.



SB 2347 - Statement of Support
Submitted to the Senate Finance & Taxation Committee
By Verizon Wireless – February 2, 2009

Verizon Wireless would like to thank Chairman Cook and members of the Committee for the opportunity to express its support for SB 2347, a bill that would specifically exempt digital goods from sales taxes

The sales tax is intended to be a tax on the final consumption of a product. As such, the tax has historically been imposed upon tangible goods and states have established a structure that avoids taxing the inputs used to produce the tangible goods. However, the digital commerce marketplace is vastly different than the traditional tangible goods marketplace. While many states have sought to tax digital goods because they tax their tangible "counterpart," there are a whole host of complexities that would need to be addressed before a state should even consider whether it wants to impose a sales tax on digital goods

Digital commerce does not respect state boundaries. While the consumer may reside in North Dakota, the point where the actual transaction may take place can occur anywhere in cyber space. If the state were to consider taxing digital goods, the application of North Dakota's sales tax to such commerce would have to respect state boundaries. Until the federal Congress grants states the authority to require remote vendors to collect their sales tax, the only vendors that would be required to collect a tax on digital goods would be those that have a physical presence in the state placing them at a competitive disadvantage with those that have no presence in the state. This would likely shift consumers to purchase these items from remote vendors to avoid application of sales taxes to these transactions

As Mr. Kranz stated in his testimony, taxation of digital goods is not required to be in compliance with the Streamlined Sales and Use Tax Agreement. The state is free to decide whether it wishes to tax these products or not. As Mr. Kranz has identified, there are many sound policy reasons why the state should consider exempting digital goods from the sales tax and Verizon Wireless urges the state to pass SB 2347 to exempt these items from the state's sales tax.

Again, Verizon Wireless wants to thank the committee for the opportunity to submit this statement in support of SB 2347

Katie Moore Aitchison
Bismarck-Mandan Chamber of Commerce
February 2, 2008

Testimony on Senate Bill 2347

Chairman Cook and members of the committee, good morning. My name is Katie Moore Aitchison and I am here today representing the Bismarck-Mandan Chamber of Commerce. I am here speaking in support of Senate Bill 2347.

There is a distinct possibility that digital products could be taxed. With the revenue generation available and the rate of downloading that occurs, many states are getting on board with this idea. As of August 2008, there were 17 states taxing digital media. Right now, North Dakota is not one of them. The business community believes we should keep it this way. There are two main reasons for this.

One, with neighboring states like South Dakota taxing downloaded music and video, they are making themselves less attractive to computer-based businesses to locate within their state. By not imposing a tax on digital products, North Dakota essentially opens its doors to these businesses. And open doors can mean more money coming into our state, even if digital products are going out of state.

Two, if North Dakota was to decide to tax digital products, then knowing it would be brought through the legislature and go through the same process as so many other taxes do, makes sense. Suddenly having a sales tax imposed, because we can, is not necessarily the best way for a state to do business. Senate Bill 2347 does not change anything. It does not take away a revenue stream, but instead puts into place a safeguard against taxing something because no one ever said we could not.

North Dakota is in a unique situation right now. We have a surplus, while much of the nation is dealing with deficit. If we as a state can hold off on taxing items that currently are not, we become more attractive to companies and individuals looking to make a change in their live; those looking for more stability.

Then, if our state economy turns, there is still the option to relook at this tax and let the state decide where and how it will handle taxing digital products.

The Bismarck-Mandan Chamber urges you to support Senate Bill 2347 with a do pass recommendation. Thank you for your time. I stand for any questions.



February 2, 2009

The Honorable Dwight Cook
1408 17th Street SE
Mandan, ND 58554-4895

Re: Senate Bill 2347 Exemption of Digital Products - Support

Dear Senator Cook:

On behalf of the Technology Association of American (formerly the American Electronics Association) and its members, I am writing to express our strong support for Senate Bill 2347.

By exempting digital products from the North Dakota Century Code you have clearly demonstrated a commitment to growing your economy and supporting a favorable tax environment for the technology industry. Senate Bill 2347 will set your state apart from others and have a positive impact on your economy and an industry that is responsible for driving innovation, new product development, and the creation of high quality jobs. We are supportive of SB 2347 for the following reasons.

- **SB 2347 Encourages High-Tech Investment in North Dakota:** This legislation sends the message that North Dakota wants to encourage high-tech investment and create jobs in the state. Recently, a few states have moved to expand their tax base to include digital products. This type of action is short-sited as taxing digital goods and services does not just impact the consumer marketplace. This type of tax policy factors into the large Internet datacenter investment decisions being made today by many leading technology companies. A policy that seeks to impose a tax on digital goods and services will likely have a negative impact on a state economy as companies gravitate to states that have rejected such a tax. By explicitly exempting these products, North Dakota would provide companies with the certainty they need when making investment decisions.
- **SB 2347 Complies with the Streamlined Sales and Use Tax Agreement:** While it is important that states maintain compliance with the SST Agreement, taxing digital products is not a requirement. The Streamlined Sales and Use Tax Agreement is about states adopting uniform definitions, but leaves the decision of taxability to the states. In fact, Section 103 of the Agreement specifically provides that it "shall not be construed as intending to influence a member state to impose a tax on or provide an exemption from tax for any item or service." It is up to the State Legislature to adopt good tax policy, which you have demonstrated by introducing SB 2347.

The North Dakota legislature should strongly support the exemption of digital products from tax. The state's tax code does not currently impose tax on digital products. Adoption of a clear statutory exemption would eliminate uncertainty for businesses and consumers and would further demonstrate North Dakota's commitment to growing its high-tech industry.

AeA, formerly the American Electronics Association and the Information Technology Association of America (ITAA) merged on January 1, 2009 to create The Technology Association of America, which now comprises the broadest membership of technology companies in the country. Combined, the associations represent approximately 1,500 technology companies, including firms of all sizes doing business in the public and commercial sectors of the economy. They are dedicated to helping members top and bottom line by providing access to capital and business opportunities, as well as offering select business services, networking programs, standards development, market forecasts and research. The resulting organization also offers the industry's largest advocacy organization speaking on behalf of the technology sector in Washington and the state capitals as well as providing international representation in Europe (Brussels) and Asia (Beijing). Alliances with more than 40 local and regional associations representing approximately 16,000 companies through an agreement with The Technology Councils of North America (TECNA) and with nearly 70 national associations around the world belonging to the World Information and Technology Services Alliance (WITSA) complete the industry's only grassroots to global advocacy network.

Thank you for the opportunity to submit our comments. We look forward to further supporting your efforts. I can be reached at 630-613-7174, and AeA's Tax Counsel, Ms. Marie Lee, can be reached at 202-682-4448.

Respectfully submitted,



Ed Longanecker
Executive Director, AeA
630-613-7174 / ed_longanecker@aeanet.org



Stacy Sprinkle

SB 2347 - Statement of Support
Submitted to the House Finance & Taxation Committee
By Verizon Wireless - March 4, 2009

Verizon Wireless would like to thank Chairman Belter and members of the Committee for the opportunity to express its support for SB 2347, a bill that would specifically exempt digital goods from sales taxes. Verizon Wireless would also like to thank and commend Sen. Cook for his leadership in supporting this measure.

The sales tax is intended to be a tax on the final consumption of a product. As such, the tax has historically been imposed upon tangible goods and states have established a structure that avoids taxing the inputs used to produce the tangible goods. However, the digital commerce marketplace is vastly different than the traditional tangible goods marketplace. While many states have sought to tax digital goods because they tax their tangible "counterpart," there are a whole host of complexities that would need to be addressed before a state should even consider whether it wants to impose a sales tax on digital goods.

Digital commerce does not respect state boundaries. While the consumer may reside in North Dakota, the point where the actual transaction may take place can occur anywhere in cyber space. If the state were to consider taxing digital goods, the application of North Dakota's sales tax to such commerce would have to respect state boundaries. Until the federal Congress grants states the authority to require remote vendors to collect their sales tax, the only vendors that would be required to collect a tax on digital goods would be those that have a physical presence in the state placing them at a competitive disadvantage with those that have no presence in the state. This would likely shift consumers to purchase these items from remote vendors to avoid application of sales taxes to these transactions.

In testimony that has been submitted by others, taxation of digital goods is not required to be in compliance with the Streamlined Sales and Use Tax Agreement. The state is free to decide whether it wishes to tax these products or not. Additionally, as others have identified, there are many sound policy reasons why the state should consider exempting digital goods from the sales tax and Verizon Wireless urges the state to pass SB 2347 to specifically exempt these items from the state's sales tax.

Again, Verizon Wireless wants to thank the committee for the opportunity to submit this statement in support of SB 2347.