

2009 SENATE FINANCE AND TAXATION

SB 2365

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2365

Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 02/16/2009

Recorder Job Number: 9533

Committee Clerk Signature

*Cara Wining*

Minutes:

**Chairman Cook:** Opened hearing on SB 2365.

**Senator Dave Oehlke, District 15:** Testified as sponsor and in support of the bill. If you go to the car wash or the laundry mat and put a coin in the machine, there is no tax charged, but if you go to play an amusement machine the coin machine owners are charged a 4% tax. There really isn't anything comparable and it would be difficult to increase that quarter by 4%. The owner of the machine really cannot charge the tax on the machines – they would have to charge a whole quarter in addition to cover the tax. The environment has changed greatly as well. Pretty much most of them can be done at home and there are fewer users. Points out the fiscal note had been added.

3.00 **Senator Dwight Wrangham, District 8:** See Attachment # 1 for testimony as sponsor and in support of the bill.

6.08 **Lowell Thomas, Modern Coin Equipment:** See attachment #2 in support of the bill.

8.36 **Senator Hogue:** Can you tell me how some of the arcades that operates they use tokens instead of quarters. If you use tokens for those machines, are those games taxed?

**Lowell Thomas:** I do not operate any of those machines, so I am not sure on that.

**Chairman Cook:** I think the tax department can answer that.

9.55 **Mike O'Brien, Owner of Dakota Music and Amusement:** (Shows the standard front of a coin machine.) You cannot use one of the slots for a penny. It is a circuit board that is designed for a quarter only. The companies are not going to completely redesign the mechanism to take a penny just for the state of North Dakota. As for the tokens, I do have games that operate on those, and it is just a security thing and promotional thing. We are taxed on those as well. On the receipt that we check out with, the tokens are counted as quarters. The dart machine doors come off and the customers were very upset that we raised the fees from 25 cents to 50 cents to cover expenses. It has been 23 years since we have increased the price. We are still operating on the quarters as we did many years ago, and it is difficult to do that. It is just a fairness issue for us.

14.49 **Vice Chairman Miller:** Are you able to adjust the value that the quarter gives on a game?

**Mike O'Brien:** There are certain games we are allowed to do that with. You don't see the big arcades that you used to see and the usage is minimal and that would not change a lot.

**Senator Dotzenrod:** Do people in this business get audited; is there any way to know what happens really? There are no receipts at the time of sale.

**Mike O'Brien:** Yes we do quite often. Our company used to get audited about every other year. Now most operators keep receipts and keep track because of the expenses we have. Every quarter is recorded.

**Senator Anderson:** Are my figures correct. Each quarter under 4%, is that one tenth of 1 cent?

**Mike O'Brien:** Basically what we do if we go out and collect \$100 on a game, we pay 4% on that \$100. At the end of the month the tax items are added and remitted to the tax department.

**Chairman Cook:** The tax is 5% of 80% right?

**Mike O'Brien:** It is 80% of 5%; which is 4%.

**18.40 Rick LaFleur, President, North Dakota Coin Machine Operator Association:** See Attachment #3 in support of the bill.

**24.50 Myles Vosberg, Tax Department:** Appeared to answer questions by the committee.

**Chairman Cook:** Do they have a special license at all?

**Myles Vosberg:** There is a license for coin operated amusement through the Attorney General's office.

**Chairman Cook:** Any comments on the fiscal note?

**Myles Vosberg:** Not on the fiscal note. To make the bill clearer, you might want to have an additional amendment drafted to put an exemption in Section 4 of the law that lists the exemptions. We can draft that if you would like.

**Chairman Cook:** Would you do that?

**Myles Vosberg:** Yes.

**Senator Oehlke:** Those that testified talked about the decline, are you able to tell me if the business has been that significant?

**Myles Vosberg:** I am not sure. We could go back and look.

**Vice Chairman Miller:** Are you aware of any situation where there was an audit done and someone was shut down?

**Myles Vosberg:** Not that I am aware of. We do audit regularly the coin operated amusement businesses.

**Vice Chairman Miller:** I was wondering if it was difficult for the companies to gage their income and pay their taxes.

**Myles Vosberg:** I am not aware of any.

**Senator Hogue:** Can you give me a little history on why the legislature decided to tax the coin operated laundry and car washes differently than the amusement games? It seems like the larger ticket items like a car wash would have a little more flexibility than amusement games would.

**Myles Vosberg:** I think that North Dakota started taxing tangible items in general, and taxing certain services. One of those services being taxed was amusement and entertainment. I think that they felt this fell into that category.

**Senator Dotzenrod:** I was wondering about the issue of tangible property, and in this case we are taxing this why, it is not really tangible but I suppose you can argue that it is entertainment? The word tangible must mean something else when you look at this.

**Myles Vosberg:** That is correct. If you look in the bill at the section that is being changed, starting on page 3, section 2 that is the imposition section of the sales tax law and it identifies what is subject to tax and so subsection a there is the tangible personal property and then we add additional items.

31.00 **Senator Oehlke:** I Submit that car washes have become entertaining because all of the things they do to create interest.

**Senator Anderson:** Minot has exempted it from its local sales tax. Do you know if that is pretty standard with cities that have sales tax?

**Myles Vosberg:** I did check that before I came, and I believe there are 35 of the 103 cities that have exempted the coin operated amusement from their local tax. Normally the local and state must be consistent under streamline sales tax, but coin operated sales have been exempted from that.

**Chairman Cook:** Closed hearing on SB 2365.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2365

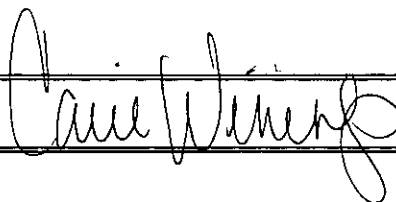
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 02/16/2009

Recorder Job Number: 9535

Committee Clerk Signature



Minutes:

**Chairman Cook:** Reopened discussion on SB 2365. Do we understand the amendments Myles Vosberg talked about in testimony?

**Senator Triplett:** Yes, they just say it straight up that it is just an exemption?

**Chairman Cook:** Yes.

**Senator Dotzenrod:** Do we do that with the car washes and the laundry mats? Do we specifically say that they are not subject to sales tax?

**Chairman Cook:** We don't have to, because it is not a sale of tangible property. Our section of sales tax law starts out with tangible property and then we list exemptions.

**Senator Triplett:** Can you explain in better detail why this is outside the boundaries of streamline sales tax?

**Chairman Cook:** One of the conditions of streamline sales tax is that all state tax bases and local tax bases have to be the same. This is the only exception to that rule.

**Senator Triplett:** So it was a specific exemption?

**Chairman Cook:** We specifically exempted it in the streamline sales tax. Coin operated amusement local taxes could differ from state.

**Chairman Cook:** Passes out the proposed amendments. (See Attachment #1)

**Senator Hogue:** So when you buy at the laundry mats your detergents from a coin operated machine that is taxed, but not the when you go to run the washer and dryer?

**Chairman Cook:** I would guess that is correct.

**Senator Dotzenrod:** Are vending machines that sell candy bars or something like that taxed?

**Vice Chairman Miller:** Yes, and that wouldn't be any different than buying Tide.

**Senator Triplett:** How did those folks get by the notion that there is not waving the tax for the customer, do they just assume the bar is 92 cents and the rest is tax?

**Chairman Cook:** They would have to work backwards and they are going to be audited and that is when it is going to show up whether they did it right or not.

**Senator Triplett:** So that would show up in their books as a sale for 92 cents and tax for the remainder?

**Chairman Cook:** Yes.

**Vice Chairman Miller:** Comment on vending machine sales due to convenience.

**Senator Triplett:** Just commented on the fact that it was not waived, it was just figured in.

**Chairman Cook:** These words on this amendment shows us where it is at, it may need some changes. 57-39.2-04 is the correct section of the law that deals with exemptions.

**Senator Triplett:** Moved the amendments.

**Vice Chairman Miller:** **Seconded.**

**Chairman Cook:** Discussion? (no)

**A voice vote was taken: 7 yeas, 0 nays, 0 absent.**

**Senator Dotzenrod:** I don't know how these guys make any money. If you look at what is going on with video games for home use they can't be making much.

**Chairman Cook:** Darts and pool that is what they are living on right now.

**Senator Anderson:** If something has been used up, it has been used up. Maybe this is one of those.

**Vice Chairman Miller:** The bulk of these fellows business is in bars and they have to pay rent for space in the bar for their machines.

**Senator Triplett:** I believe that is right.

**Senator Anderson:** I know there was a problem with these arcade type buildings which is probably gone now as far as the congregating point of troubled individuals that police had to frequent.

**Senator Dotzenrod:** I am in favor of the bill. The argument that the laundries and the car washes are exempt makes sense.

**Senator Dotzenrod: Moved a Do Pass.**

**Vice Chairman Miller: Seconded.**

**Chairman Cook:** Can I make a suggestion for the sake of where we are at in time, in order to keep this on the sixth order and send it right to appropriations, can I ask that we reconsider our action by which we amended this bill and take the amendment off and then that get offered in appropriations?

**All motions were withdrawn.**

**Senator Triplett: Motion to reconsider actions.**

**Senator Dotzenrod: Seconded.**


**A voice vote was taken: 7 yeas, 0 nays, 0 absent.**

**Senator Dotzenrod: Moved a Do Pass and Re-referred to Appropriations.**

**Senator Hogue: Seconded.**

**Chairman Cook: Discussion?**





**Senator Anderson:** This is an amusement thing and it is not a thrift store and I look at the \$51,000 being lost from state aid distribution and I have to vote against it.

**Chairman Cook:** Do you understand that that \$51,000 being lost is only lost to the cities that still elect to tax it? I think we heard 35 of the cities do not tax it.

**Senator Anderson:** That is correct for local tax, but they share in this amount.

**Chairman Cook:** You are correct.

**Senator Triplett:** How did this one escape our earlier deadline of getting things that needed to go to appropriations a couple of weeks ago?

**Chairman Cook:** That is a million dollar question. We just got the fiscal note this morning.

**Senator Triplett:** OK, then this thing should have been out of here?



**Chairman Cook:** Yes.

**A Roll Call Vote Was Taken: Yea 7, Nay 6, Absent 0.**

**Senator Oehlke will carry the bill.**



**FISCAL NOTE**  
 Requested by Legislative Council  
 02/19/2009

Amendment to: SB 2365

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
<b>Revenues</b>			(\$589,000)	(\$51,000)		
<b>Expenditures</b>						
<b>Appropriations</b>						

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).*

Engrossed SB 2365 creates a sales and use tax exemption for gross receipts from coin operated amusement devices.

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, Engrossed SB 2365 is expected to reduce state general fund and state aid distribution fund revenues by an estimated \$640,000 during the 2009-2011 biennium, as shown above.

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.*

<b>Name:</b>	Kathryn L. Strombeck	<b>Agency:</b>	Office of Tax Commissioner
<b>Phone Number:</b>	328-3402	<b>Date Prepared:</b>	02/19/2009

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/23/2009

Bill/Resolution No.: SB 2365

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
<b>Revenues</b>			(\$589,000)	(\$51,000)		
<b>Expenditures</b>						
<b>Appropriations</b>						

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 2365 creates a sales and use tax exemption for gross receipts from coin operated amusement devices.

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 2365 is expected to reduce state general fund and state aid distribution fund revenues by an estimated \$640,000 during the 2009-2011 biennium, as shown above.

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<b>Name:</b>	Kathryn L. Strombeck	<b>Agency:</b>	Office of Tax Commissioner
<b>Phone Number:</b>	328-3402	<b>Date Prepared:</b>	02/16/2009

#1

PROPOSEED AMENDMENTS TO SENATE BILL NO. 2365

Pg. 5, after line 19 insert:

**SECTION 3. AMENDMENT.** A new subsection to section 57-39.2-04 of the North Dakota Century Code is created and enacted as follows:

Gross receipts from the playing of any machine for amusement or entertainment in response to the use of a coin.

Date: 02/16/09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. : 2365

Senate Finance and Taxation Committee

Check here for Conference Committee

*Amendment*

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

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By T Seconded By Miller

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					

*All in favor*

Total: Yes 2 No 0

Absent \_\_\_\_\_

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

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

Date: 02/16/09

Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. : 2365

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number Go to Appropriatus

Action Taken  Do Pass  Do Not Pass  Amended <sup>AS</sup>

Motion Made By Senator Dotzenrod Seconded By Senator Miller

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 \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

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

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

Date: 02/16/09

Roll Call Vote #: 3

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

2365

Senate Finance and Taxation Committee

Check here for Conference Committee

Reconsider All motions

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

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Senator Triplett Seconded By Senator Dotzenrod

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					

All in favor

Total: Yes 7 No 0

Absent \_\_\_\_\_

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

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

Date: 02/16/09

Roll Call Vote #: 4

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. : 2365

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number

Re Referred Appropriately

Action Taken

Do Pass  Do Not Pass  Amended

Motion Made By

Senator Dotzenrod

Seconded By

Senator Hogue

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 5 No 2

Absent 0

Floor Assignment Senator Oehlke

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



**REPORT OF STANDING COMMITTEE**

**SB 2365: Finance and Taxation Committee (Sen. Cook, Chairman) recommends DO PASS and BE REREFERRED to the Appropriations Committee (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2365 was rereferred to the Appropriations Committee.**

2009 SENATE APPROPRIATIONS

SB 2365

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2365

Senate Appropriations Committee

Check here for Conference Committee

Hearing Date: 02-17-09

Recorder Job Number: 9632

Committee Clerk Signature



Minutes:

**Chairman Holmberg** called the committee hearing to order at 9:30 am in reference to SB 2365 in regards to eliminating sales taxes for coin-operated amusement or entertainment machines

**Senator Oehlke, District 15** testified in favor of SB 2365 and explained the bill. He passed out one amendment. It would make the bill work better.(2.06)

**Chairman Holmberg** stated he did go and visit with the chairman of the Finance and Tax Committee. First of all they just got the fiscal note yesterday and secondly they said they couldn't find any arguments against it so they passed it on to us.

**Myles Vosberg, Director of Tax Administration, North Dakota Tax Commissioner's Office** explained the purpose of the amendment to the committee.(3.27)

**Senator Seymour** asked what is the history of this. Why would we do this?

**Myles Vosvberg** stated that the testimony during the hearing in Finance and Tax was because these machines only take quarters. If you have a quarter you basically have to double the price and you would have to increase the price by 50%. The volume of business has declined. They are asking for some assistance here by not having to pay the tax.

**Senator Krebsbach** I would like to testify as to why this is being requested.

**Senator Warner** asked if the machines that dispense an item, are they taxed. And if so, then which ones are not taxed?

**Myles Vosberg**, Right now under the existing law a machine that is coin operated for amusement is subject to tax. All the vending machines that dispense a product are subject to tax. Coin operated washer and dryer or car wash is not subject to tax. This bill would remove the tax from the amusement only.

**Senator Seymour** had questions about the amount of tokens it takes.

**Myles Vosberg**: In order for the machine operators to increase their price they can only increase in quarter increments because the machines only take quarters.

**Senator Mathern**: Are you saying a person that buys an apple out of a coin operated machine will pay tax, but if he plays a pin ball machine, he does not pay tax?

**Myles Vosberg**: That is correct.

**Senator Krebsbach District 40, Minot, ND** presented written testimony # 1 a letter from Lowell Thomas from Minot which states this is the only industry in ND that cannot pass on the sales tax to the end consumer and have to absorb the major share.

**Chairman Holmberg** stated we are done with the hearing. Do you want to do any action on this bill?

**Senator Wardner moved the amendment. Seconded by Senator Warner.** A voice vote was taken and it carried.

**SENATOR WARDNER MOVED A DO NOT PASS AS AMENDED. SECONDED BY VICE-CHAIRMAN BOWMAN. A ROLL CALL VOTE WAS TAKEN RESULTING IN 12 YEAS, 1 NAY, AND 1 ABSENT. SENATOR MATHERN WILL CARRY THE BILL.**

**Chairman Holmberg** closed the hearing on SB 2365.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2365

Page 1, line 1, after "to" insert "create and enact a new subsection to section 57-39.2-04 of the North Dakota Century Code, relating to an exemption from sales tax for receipts from coin-operated amusement or entertainment machines; to"

Page 1, line 2, replace "eliminating" with "an exemption from"

Page 1, line 3, replace "taxes" with "tax" and after "for" insert "receipts from"

Page 5, after line 19, insert:

**"SECTION 3.** A new subsection to section 57-39.2-04 of the North Dakota Century Code is created and enacted as follows:

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

Renumber accordingly

Date: 2/17

Roll Call Vote # 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2365

Senate Senate Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number Amendment # 90869.01TX

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Wardner Seconded By Warner

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

Total Yes Voice Vote Yes No \_\_\_\_\_

Absent \_\_\_\_\_

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

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

Date: \_\_\_\_\_  
Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2365

Senate \_\_\_\_\_ Committee \_\_\_\_\_

Check here for Conference Committee

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

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Wardner Seconded By Bowman

Representatives	Yes	No	Representatives	Yes	No
Senator Fischer	✓		Senator Warner	✓	
Senator Christmann	✓		Senator Robinson	✓	
Senator Krebsbach		✓	Senator Krauter	✓	
Senator Bowman	✓		Senator Lindaas	✓	
Senator Kilzer	✓		Senator Mathern	✓	
Senator Grindberg	✓		Senator Seymour	✓	
Senator Wardner	✓				
Chairman Holmberg	✓				

Total Yes 13 No 1

Absent 0

Floor Assignment Mathern

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

DNP

**REPORT OF STANDING COMMITTEE**

SB 2365: Appropriations Committee (Sen. Holmberg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (13 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2365 was placed on the Sixth order on the calendar.

Page 1, line 1, after "to" insert "create and enact a new subsection to section 57-39.2-04 of the North Dakota Century Code, relating to an exemption from sales tax for receipts from coin-operated amusement or entertainment machines; to"

Page 1, line 2, replace "eliminating" with "an exemption from"

Page 1, line 3, replace "taxes" with "tax" and after "for" insert "receipts from"

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

Renumber accordingly



2009 TESTIMONY

SB 2365

#1  
TESTIMONY on SB 2365 BY DWIGHT WRANGHAM

In 1987 the legislature was contemplating an increase in the sales tax from 4 to 5 %. These small businessmen, coin operated amusement machine operators of ND, came to the legislature and pleaded to be taken out from under the unfair burden of paying a sales tax that they cannot collect or pass on to the consumer. The legislature understood their dilemma and sympathized with them but said with the budget constraints they were under they could not reduce any tax revenues. They did however put in place the language on page 4 lines 6 - 7 & 8. "The tax imposed by this section applies only to 80% of the gross receipts collected from coin operated amusement devises." This language effectively kept their tax at 4 % and prevented the increase to 5%. Legislators further stated come back when we are not in a budget crunch.

They are back and asking for relief from this unjust tax. Like coin operated laundry mats and car washes the amusement machine operators do not sell a tangible product and cannot collect the tax from the consumer. The difference is laundry mats and car washes are not required to pay this tax. Amusement machine operators are required to pay this gross revenue tax or gross income tax disguised as a sales tax.

Like most ND small independent businessmen these guys are proud hard workers. They find it hard to beg. But they need your help. The industry has seen rough times. Pinball machines are a thing of the past; video games are played at home. Expenses are going up and revenues are going down. They can no longer carry this unfair tax burden.

#2

North Dakota State Senators

*Same to Senate apparatus*

This was my testimony on February 16, 2009 regarding Senate Bill 2365.

My name is Lowell Thomas, Minot and I have been in the Coin Machine business at Modern Coin Equipment since the late 60's. I have testified about this subject in the past and have been told more than once to come back when the state is in good shape and so here I am.

What I am referring too is that we are the only industry left in North Dakota that cannot pass on the sales tax to the end consumer and have to absorb the major share.

Our industry only deals in increments of .25's whether in coin form or bill form. Our major source of income comes from jukeboxes-pool tables-dart machines and some video games. Our coin acceptors only accept 25's which I demonstrated and the manufactures do not allocate for pennies-nickels or dimes and definitely do not have any inclination to do so.

This is why we are exempt from the Minot city sales tax. It cannot be passed on to the end consumer.

Now refer to the North Dakota Office of the State Tax Commissioner's September 08 sales tax newsletter. Back page—**Retailers May Not Absorb Tax.** North Dakota sales tax law requires retailers to collect from the purchaser all sales tax due on a retail sale. Retailers are prohibited from advertising or promoting in any manner that they will absorb or waive sales tax, pay tax for a purchaser, or refund any tax that is legally due on the transaction.

We keep saying this tax is totally unfair to our industry. We pay sales tax on the purchase, freight, and parts to maintain and apparently are operating illegally by absorbing this sales tax.

Please treat us like everyone else and eliminate this tax.

Thank you,

Lowell N. Thomas  
Modern Coin Equipment Co., Inc.  
701-721-3721



# Sales Tax Newsletter

News and developments

A publication of the Tax Administration Division

*Cory Fong*  
Tax Commissioner

## NEW OR AMENDED LOCAL TAXES

The Office of State Tax Commissioner administers all local sales, use and gross receipts taxes imposed in North Dakota. The following local tax changes will become effective October 1, 2008.

The city of **Langdon** has increased its local sales, use and gross receipts tax from 1 to 2 percent. In addition, the city ordinance increased the maximum tax (refund cap) from \$25 to \$50 per transaction. All other provisions of the ordinance remain the same effective October 1, 2008.

The city of **Napoleon** has increased its local sales, use and gross receipts tax from 1 to 2 percent. In addition, the city ordinance raised the maximum tax (refund cap) from \$25 to \$50 per transaction. All other provisions of the ordinance remain the same effective October 1, 2008.

The maximum tax amount (refund cap) allows purchasers to obtain a refund of the local tax paid to the retailer in excess of the cap amount. When retailers collect the entire local tax on the selling price and the local tax exceeds the refund cap, purchasers may apply to the Tax Commissioner for a refund or credit of the excess amount. Retailers may elect to collect the total tax amount or collect up to the cap amount, but must be consistent in the method they choose.

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The city of **Cooperstown** imposed a 1% city lodging tax effective October 1, 2008. Additional information has been mailed to Cooperstown lodging facilities. The city lodging tax applies to the rental of hotel, motel, and tourist court accommodations and is in addition to the state 5 percent sales tax and Cooperstown's local 1½ percent local sales tax.

For a complete listing of all local taxes imposed in North Dakota, see our *Local Option Taxes by Location* guideline. The guideline is available on our website or by mail upon request. ☺

## SCHOOL PHOTOGRAPHS

Sales of photographs are sales of tangible personal property subject to sales tax under North Dakota law. Many professional photographers contract with schools to photograph school children and make those photographs available for sale to the children or their parents.

If the school acts as a collection agency for the photographer by collecting the sales proceeds from the students or parents and paying the photographer for the sales with a school check or warrant, the school is making the purchase of the photographs. Because both public and private schools are exempt from paying sales tax, the photographer is not required to collect sales tax on these transactions. To document the exempt transaction, the photographer must obtain a copy of the school's exemption certificate and maintain the certificate in its files.

If students, parents, or school affiliated groups pay the photographer directly for the photographs, the sales are taxable and the seller must collect all applicable state and local sales tax. ☺



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## SALES TAX SEMINARS FOR FALL 2008

The Office of State Tax Commissioner will present two sales tax seminars this fall. The first seminar will be presented with the South Dakota Department of Revenue and the second with the Minnesota Department of Revenue. The seminars will focus on the similarities and differences in each state's sales and use tax laws. The seminar with South Dakota includes a separate segment for contractors and includes discussion regarding South Dakota's contractor's excise tax.

There is no charge for the seminars, but please pre-register if you plan to attend because space is limited. The seminar schedule is as follows:

- **South Dakota/North Dakota Border Workshop, Wednesday, October 15, 2008**
  - o Registration begins at 8:00 a.m.
  - o Sales tax seminar 8:30 a.m. – 12:00 p.m.
  - o Contractor's workshop 1:00 p.m. – 3:00 p.m.
  - o Located in the lower level meeting room of West Acres Shopping Mall, Fargo, ND
  - o To register, go to [www.state.sd.us/revenue](http://www.state.sd.us/revenue), call the South Dakota Department of Revenue at 800-829-9188 or call the North Dakota Tax Commissioner's Office at 701-328-3475.
- **Minnesota/North Dakota Border Workshop, Tuesday, October 28, 2008**
  - o Registration begins at 8:30 a.m.
  - o Sales tax seminar 9:00 a.m. – 12:30 p.m.
  - o Located in the lower level meeting room of West Acres Shopping Mall, Fargo, ND
  - o To register, call the Minnesota Department of Revenue at 651-297-4213 or the North Dakota Tax Commissioner's Office at 701-328-3475. ☺

North Dakota sales tax law requires retailers to collect from the purchaser all sales tax due on a retail sale.

## INTERSTATE TRUCKING COMPANIES

We continue to receive questions from retailers regarding out-of-state trucking companies that purchase parts, tires, accessories and other merchandise in North Dakota using a direct pay permit or an exemption certificate issued by their home state. These out-of-state certificates are not acceptable in North Dakota. Transportation companies are the final users of parts, tires, accessories and other related products purchased in North Dakota; therefore, these items are fully taxable here. No exemption certificate is available to in-state or out-of-state trucking companies to exempt purchases of these items when the items are consumed in the transportation business. ☺

## RETAILERS MAY NOT ABSORB TAX

North Dakota sales tax law requires retailers to collect from the purchaser all sales tax due on a retail sale. Retailers are prohibited from advertising or promoting in any manner that they will absorb or waive sales tax, pay tax for a purchaser, or refund any tax that is legally due on the transaction. ☺

## TAXPAYER ASSISTANCE

If you have questions regarding sales tax or about correspondence received from our office, the following information will be helpful in ensuring that your call or visit to our office is completed in a speedy and efficient manner:

- For Streamlined Sales and Use Tax information and updates on our web site [www.nd.gov/tax](http://www.nd.gov/tax), click on *Sales and Use*, then click on *Streamlined Sales & Use* on the drop down list. The information includes up-to-date rate and boundary tables.
- If you have general sales tax questions, please call our Sales and Special Taxes Compliance Section at 701.328.1246.
- If calling our office about correspondence you have received, please call the number that is listed on the correspondence, and have a copy of the correspondence available when you call.
- When calling our office, please note the name of the person assisting with your question in the event you will have any follow-up questions later.
- Instead of calling or visiting our office, you may also e-mail us at [salestax@nd.gov](mailto:salestax@nd.gov). ☺

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## Testimony on Senate Bill 2365

### Chairman Cook and members of the committee:

**Thank you** for the opportunity to discuss the sales tax bill before you today. As our industry continues to try to find the bottom of the market, we have seen a vast exodus of the major manufactures which provided the infrastructure which we based coin operated routes on. The day of the coin operated video game and their respective manufacturers is over, pushed out by the very technology they enjoyed, by powerful home systems, X box, We, etc. Gone from the familiar landscape is Atari, Bally, Williams, Gottlieb, Konami. Simply put, these profit centers are gone.

**Restrictive laws** placed by communities and pondered by the state will also greatly impact our profitability with smoking bans giving a 25 - 30% decline in gross revenues reported by the industry thought the nation. Coin machine operators own and operate the equipment in locations sharing the revenue with the location owners.

**Sales tax which is noncollectable** on the operation of the coin operated machine is being paid by the owner, it simply cannot be passed on to the consumer. Coin operated amusement games operate on a quarter, pricing cannot be incremented by a nickel or other amount as in other machines dispensing product. Sales tax is also paid on the purchase of the machine.

**With tax which is like a gross income tax** it is effectively a franchise fee. The state has recognized this noncollectable tax for laundromats and car washes, we ask you for the same consideration, especially at a time when our industry cannot afford the burden which no one else is being asked to pay.

Respectfully submitted

Richard LaFleur  
LaFleur & Son  
Devils Lake

President North Dakota Coin Machine Operators Association  
Board member Amusement and Music Operators of America