

2011 SENATE FINANCE AND TAXATION

SB 2172

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB 2172
1/18/2011
Job Number 13046

Conference Committee

A. R. Miller

Explanation or reason for introduction of bill/resolution:

Relating to a sales tax exemption for receipts from coin-operated amusement or entertainment machines

Minutes:

No Written Testimony

Chairman Cook opened the hearing on SB 2172.

Representative Wrangham, District 8 – This is about the same as the bill last year that this committee saw very favorably on. It ran in to a couple of problems in Appropriations I believe, and eventually in the Senate. It did not pass by one vote. Basically, many years ago, the legislature, when they were considering raising the sales tax from 4% to 5%, visited this issue and said 'yes we agree, you are right, this is a penalty tax that you businesses are paying. We are not going to penalize you anymore. We are not going to make you part of the 5%. We are going to leave it at 4%. They did that by putting the part in this bill, that looks kind of weird. Why do they only count 80% of the total? Because 80% of 5% is actually 4%. They recognized, at that time, that they would love to just give you the whole reduction but budget wouldn't allow it. The important thing that I think we need to remember in this, is that this is a tax that they cannot pass on. There is no physical way to, unless they increase their play from a quarter to fifty cents, to cover the tax. Thus, they wind up paying the consumers share of the sales tax. Sales tax should be paid by the consumer. They pay the income tax, they pay the taxes on the equipment when they buy it, they pay taxes on the parts, etc. Representative Wrangham went on to explain that the other thing that is important to remember is that vending machines are different than gaming machines. Gaming machines only take quarters. Vending machines take nickels and dimes as well so the price can be increased by a nickel or dime to cover that tax. Gaming machines cannot. Also, something purchased from a vending machine is a tangible product and is a sale, where gaming machines are a service much like a car wash.

Lowell Thomas, Modern Coin Equipment – I have been in the coin machine business at Modern Coin Equipment since the late 1960'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, So here I am again. We in the industry in North Dakota, are the only ones that cannot pass the sales tax on to the end consumer and we have to absorb it all. Our industry just deals with quarters. Our major source of income is from jukeboxes, pool tables, dart machines, and a

few video games. We pay the purchases, freight, and parts to maintain these games. We ask you to treat us like everybody else.

Rick LaFleur, President, North Dakota Coin Machine Operators Association – I am here in favor of SB 2172. I want to thank you for your past support and again, reiterate this is not about narrowing the sales tax. This is about trying to level the playing field for a business that simply cannot collect this tax. We certainly have had struggles in the industry. I don't need to go further than to tell you, since the last time we visited, we've lost about 25% of the manufacturing base for our industry just in the last 2 years. There is one piece of this I wanted to speak to today and that is individual cities. Many of them, not all of them, have exempted coin operated amusement from those taxes, simply because they recognized the fact that it can't be collected. I would hope, again, that you would have some favorable consideration.

Chairman Cook – I question whether or not a city can exempt you now, but we'll let the tax department clarify that.

Preston Obrigewitch, Badlands Music, Dickinson – I'm just starting in to this business and hope to continue it into a family business. This tax is one I did not anticipate when I was budgeting it. It is definitely a burden like it's been mentioned. It would be a great help if you would be in support of this.

Michael Brian, Owner, Dakota Music, Bismarck – I'm in my 37th year in this industry. I've seen a lot of ups and downs myself. I just want to emphasize one thing. When we talk about the coin mechanism, that goes from a quarter, the next increment is fifty cents. We started placing dart machines down in locations in 1981. About 4 years ago, we finally had an increase up to fifty cents. That is one penny per year, well below the consumer price index. We are dealing with blue collar workers and so it's fairly impossible for us to make any more increases. This tax has been quite a burden on our companies and particularly what's to come. A lot of cities, particularly in the eastern part of the state, have implemented smoking bans. These smoking bans, according to figures Representative Wrangham got from the tax department, cities like Fargo and Grand Forks, are experiencing 25% to 30% losses in revenues. For my colleagues in the eastern part of the state, this would be real beneficial for them. We are not asking for something that no one else is getting. We are just asking to be treated like everyone else. I know most of you voted in favor of this last session. I appreciate your vote, and I will hope you will continue to see our plate that we have here.

Chairman Cook asked for testimony opposed to SB 2172.

Keith Mangusson, North Dakota League of Cities – I think I was up here 2 years ago opposing this very bill. We are generally opposed to any further exemptions from sales tax. Please remember again, that the state may be flush with income, so it looks like a good thing. Cities are not flush with this income. Cities have to get their income some place and this would be a taking away. We are not asking for another tax in this case but it would be a 'taking away'.

Chairman Cook – Myles, just to clarify the state tax that the city must tax it also and it's only subject to the city sales tax, correct?

Myles Vosberg, North Dakota Tax Department – We talk about keeping the base equal for sales tax purposes. That is part of the streamline sales tax agreement. There is an exception in the agreement for coin operated vending, and we treated it as such, and so the cities can differ from the state.

Chairman Cook – That is the only exception?

Myles Vosberg, North Dakota Tax Department – One of the few.

Senator Oehlke – Myles, as I recall last session, the fiscal note was bigger.

Myles Vosberg, North Dakota Tax Department – I would have to go back and look but I do believe this is a slight increase from what we had last legislative session.

Chairman Cook- Myles, if the city can exempt it, if a state did not have it in it's sales tax base, a city could not add it to theirs, could they?

Myles Vosberg, North Dakota Tax Department – That is correct. There has to be state authority first.

No further action was taken.

Chairman Cook closed the hearing on SB 2172

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB 2172
2/2/2011
Job Number 13843

Conference Committee

A. Ritter Miller

Explanation or reason for introduction of bill/resolution:

Relating to a sales tax exemption for receipts from coin-operated amusement or entertainment machines

Minutes:

Committee Work

Chairman Cook – This is a tax exemption for coin-operated amusement and entertainment machines. This is a complete exemption of that tax.

Senator Oehlke – I move a Do Pass and rerefer to Appropriations.

Seconded by **Senator Hogue**.

Senator Dotzenrod – I was just going to comment to the committee that I think that the strongest argument that I heard to support this is that it puts the coin-operated machines in the same category as a laundry mat or a car wash. When I think of it in those terms I do think that there is enough similarity there so I'm willing to support the bill. That makes sense to exempt them.

Senator Oehlke – It's one thing to talk about someone going out and spending their money and paying a tax, but they are not. You're forcing the owner of the equipment to pay a fee, that's what you're doing here with the way the current program is, so I look at this as getting rid of that fee. They don't have any other control to control their expenses, the equipment still costs what the equipment costs.

Senator Dotzenrod – The person that is playing the coin-operated game, isn't seeing any difference in their taxes whether we pass this bill or not. It's the person running the company that is affected.

Senator Hogue – I think a more compelling case can be made for these folks than for the car wash operators because, one, you see very few coin-operated car washes anymore and two, you can't do a car wash for \$.50, they are all increments of \$2, \$3, and up, so they have a little more price to work with imposing that extra quarter where as a dart league or pool table, they don't.

Chairman Cook – Any other discussion? Ask the clerk to take the roll. (7-0-0)

Carried by **Senator Oehlke**.

FISCAL NOTE
 Requested by Legislative Council
 03/23/2011

Amendment to: Engrossed
 SB 2172

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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			(\$322,000)	(\$28,000)		
Expenditures						
Appropriations						

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

2009-2011 Biennium			2011-2013 Biennium			2013-2015 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).*

Eng. SB 2172 with House Amendments creates a sales and use tax exemption for gross receipts from coin-operated amusement machines effective July 1, 2012.

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, Eng. SB 2172 with House Amendments is expected to reduce state general fund and state aid distribution fund revenues beginning with FY 2013. The fiscal impact for the second year of the biennium is an estimated -\$350,000.

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:	03/24/2011

FISCAL NOTE
 Requested by Legislative Council
 02/21/2011

Amendment to: SB 2172

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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 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.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 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).*

Eng. SB 2172 creates a sales and use tax exemption for gross receipts from coin-operated amusement machines effective July 1, 2013.

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, Eng. SB 2172 is expected to reduce state general fund and state aid distribution fund revenues beginning with the 2013-15 biennium. We do not have a forecast for the 2013-15 biennium, but it is likely that the fiscal impact would be approx. -\$700,000 during that 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:	02/21/2011

FISCAL NOTE

Requested by Legislative Council
01/12/2011

Bill/Resolution No.: SB 2172

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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			(\$644,000)	(\$56,000)		
Expenditures						
Appropriations						

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

2009-2011 Biennium			2011-2013 Biennium			2013-2015 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 2172 creates a sales and use tax exemption for gross receipts from coin-operated amusement machines.

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 2172 is expected to reduce state general fund and state aid distribution fund revenues by an estimated \$700,000 during the 2011-13 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:	01/17/2011

Date: 2-2-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2172

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Oehlke Seconded By Senator Hogue

Senators	Yes	No	Senators	Yes	No
Dwight Cook - Chairman	X		Jim Dotzenrod	X	
Joe Miller - Vice Chairman	X		Connie Triplett	X	
Randy Burckhard	X				
David Hogue	X				
Dave Oehlke	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Oehlke

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

REPORT OF STANDING COMMITTEE

SB 2172: Finance and Taxation Committee (Sen. Cook, Chairman) recommends DO PASS and BE REREFERRED to the Appropriations Committee (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2172 was rereferred to the Appropriations Committee.

2011 SENATE APPROPRIATIONS

SB 2172

2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

SB 2172
February 8, 2011
Job # 14177

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A bill relating to a sales tax exemption for receipts from coin-operated amusement or entertainment machines

Minutes:

Testimony attached - #1

Chairman Holmberg called the committee hearing to order on SB 2172. Roll call was taken. **Becky J. Keller** - Legislative Council, **Sheila Peterson** - OMB.

Chairman Holmberg – Stated that the bill came over to them this morning and they have seen this bill before, some hope to never see again.

Senator Dave Oehlke, State Senator, District 15: Sponsor of the bill.

This bill has been here each time he has been here and has been the sponsor of the bill. It's about amusements but getting to be not that funny. This tax was put on amusement devices when the State had financial problems and the State decided to put a tax on amusement devices. They were promised that this would come off eventually, it would be temporary and when the State got in better financial shape, they would get rid of it. They did reduce the tax once to twenty percent but there is still an eighty percent of a five percent tax on that quarter that goes into amusement devices. The problem is twofold; No other machine operated work like this. Examples: The car wash, no fee, Laundromat has no fee. This really amounts to a fee on the twenty five cents because there is no way they can add that tax onto that quarter that goes into that machine. The only way to recover more money is to put in another quarter. That's the way the machines work, they don't work on nickels or dimes they work on quarters. This is the 3rd time the bill is here. He said that he feels this is a fee and they already pay income tax. This industry has regressed in terms of the number of people playing these games but the maintenance costs haven't gone down. It would be nice to have a Do Pass.

Senator Wardner – Asked if they are paying the sales tax out of the quarter and then having to pay income tax on the quarter and so they are paying a tax on a tax.

Senator Oehlke – He said he believes that to be accurate. They would be able to deduct that from their income but when you start with your gross income, you would start with the quarter.

Senator Robinson - The question about how we compare to the region in this area, what is happening in other States in terms of these coin operated machines, do they have a tax in place or not.

Senator Oehlke – Said that he doesn't have that information.

Lowell Thomas, Minot Modern Coin Equipment: Testified in favor of SB 2172. No written testimony. He stated that he has been in the coin machine business with Modern Coin Equipment, since the sixties. He has testified in the past. He said that they are the only industry left in ND that can't pass on the sales tax to the consumer as required by law and have to absorb the total share. Our industry just deals in quarter increments, they are not into vending. All of their machines that were manufactured and built and so to them just deal in quarter increments. He also shared that their major source of income is from pool tables, darts, video games and juke boxes. Asking to be treated like everyone else and eliminate this tax and asking for Support of this bill.

Senator Bowman – Does every coin operated machine take just one or can you put two quarters in. There is a fixed cost to doing business and this tax in part of that cost. You said that they are not paying the tax but indirectly they are because their putting in an extra quarter. He went on to say that is you are in a business to make a profit, you know what you have to have to make that profit work. If you can continue to put quarters in evidentially, you will have enough quarters to cover that cost.

Lowell Thomas – If it's too much they are not going to pay to play the game. We can't raise a quarter to get a nickel. It doesn't work that way. In their pricing structure they ran darts for twenty five years at a quarter and just raised it to fifty cents two years ago. About Montana there is no sales tax on gaming.

Chairman Holmberg – Asked if his point was that the tax is there and they can only deal in increments of 25 cents with the machines that they use. Said the issue is there is no in between.

Lowell Thomas – He said that was correct.

Rick LaFleur, President, North Dakota Coin Operators Association: Testified in favor of SB 2172. Testimony attached - # 1

Senator Robinson – Why has the industry or manufacturer not responded? They can change it easily by way of computer technology.

Rick LaFleur – In the industry it is the past of least residence. A lot of people don't carry the change and don't necessarily want the change. It's on our side, not the vending side and we only deal with quarters. The manufactures in the cost effectiveness in building their games did not address adding those other features because of the cost associated with it. In the industry, we have lost 40% of the manufacturers in the last four years. They can't depend on the market to sell the video games because they are available in different forms.

Chairman Holmberg - Do you own the machines or are they leased from the manufacturer?

Rick LaFleur – We own the equipment and we revenue share with the location. There is no territory it is all based on free enterprise. You make arrangements with someone who calls you.

Chairman Holmberg – If there was the technology from the manufacturers that would allow you to take nickels, you would have to buy that from the company.

Rick LaFleur - There is not one example out there on the amusement side but a quarter of a dollar.

Mike Norland, Nortana Music, Williston: Testified in favor of SB 2172. He wanted to speak on fairness. If the car washes and Laundromats, that use coins to provide a service, were paying the same tax, then everything would be fair. We are still paying the tax and others are not.

Preston Obrigewitsch, Owner, Badlands Music: Testified in favor of SB 2172. No written testimony. He asked for support on the bill. He said that they have to pay four to six percent of gross sales when they go into other towns.

Mike OBrien, Owner, Dakota Music, Bismarck, ND: Testified in favor of SB 2172. No written testimony. He said the tax is unfair to their industry. The sale tax is supposed to be collected from the consumer and passed on to the State it is not physically possible in their industry. It therefore becomes a gross tax on them.

Jerry Hjelmstad, ND League of Cities: Testified not in favor of SB 2172. No written testimony. He testified against this bill in the Senate finance and tax committee. He said that they do pay at a different rate, at eighty percent of the rate of the other sales tax. Out of 125 cities, forty have exempted the coin operator amusements.

Chairman Holmberg - closed the hearing on SB 2172.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee
Harvest Room, State Capitol

SB 2172
February 17, 2011
Job # 14705 (Meter starting at 71:06)

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A committee vote on SB 2172 – tax exemption for coin operated machines.

Minutes:

You may make reference to "attached testimony."

Chairman Holmberg said there is an amendment that has been prepared that would delay implementation. They would get their cut but it would not impact this biennium's budget.

Senator Krebsbach said this amendment delays the implementation of this bill until December of 2013. Therefore it would not impact this budget too greatly, but give them the guarantee that they will be excluded from having to pay tax on the coin operated machines. It was put on during the difficult times of the early 90s and they were promised year after year that when the revenues got better, it would be taken off. It's a fairness issue.

Senator Krebsbach moved Do Pass on amendment 11.0483.01001

Senator O'Connell seconded.

A Roll Call vote was taken. Yea: 13 Nay: 0 Absent: 0

Senator Krebsbach moved Do Pass as Amended on SB 2172

Senator Fischer seconded.

A Roll Call vote was taken. Yea: 13 Nay: 0 Absent: 0

Senator Oehlke will carry the bill.

11.0483.01001
Title.

Prepared by the Legislative Council staff for
Senator Krebsbach
February 16, 2011

PROPOSED AMENDMENTS TO SENATE BILL NO. 2172

Page 5, line 26, replace "2011" with "2013"

Renumber accordingly

Date: 2-17-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2172

Senate Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number 11.0483.01001

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Karen Krebsbach Seconded By O'Connell

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Warner	✓	
Senator Bowman	✓		Senator O'Connell	✓	
Senator Grindberg	✓		Senator Robinson	✓	
Senator Christmann	✓				
Senator Wardner	✓				
Senator Kilzer	✓				
Senator Fischer	✓				
Senator Krebsbach	✓				
Senator Erbele	✓				
Senator Wanzek	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment _____

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

Date: 2-17-11
 Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 2172

Senate Approp Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Rerefer to Appropriations Reconsider

Motion Made By Krebsbach Seconded By Fischer

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Warner	✓	
Senator Bowman	✓		Senator O'Connell	✓	
Senator Grindberg	✓		Senator Robinson	✓	
Senator Christmann	✓				
Senator Wardner	✓				
Senator Kilzer	✓				
Senator Fischer	✓				
Senator Krebsbach	✓				
Senator Erbele	✓				
Senator Wanzek	✓				

Total (Yes) 13 No 0

Absent _____

Floor Assignment Orlitzke talk to

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

REPORT OF STANDING COMMITTEE

SB 2172: Appropriations Committee (Sen. Holmberg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2172 was placed on the Sixth order on the calendar.

Page 5, line 26, replace "2011" with "2013"

Renumber accordingly

2011 HOUSE FINANCE AND TAXATION

SB 2172

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2172
March 16, 2011
#15515

Conference Committee

Committee Clerk Signature

Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill relating to a sales tax exemption for receipts from coin-operated amusement or entertainment machines; relating to a sales tax exemption for receipts from coin-operated amusement or entertainment machines; and to provide an effective date.

Minutes:

No attachments.

Senator Oehlke: Sponsor. Introduced bill. This amounts to it really being a fairness issue with amusement games. Basically there are two things that happen in this bill; if you play an amusement game and put a quarter in the slot you don't really think too much about it as the guy who owns the machine is going to pay a tax on that \$.25 as in income tax and that is true. You probably don't realize that he also pays an excise tax on that quarter and it makes it nearly impossible for him to retrieve that excise tax because there is no way to add \$.02 or \$.03 onto that machine. The only way to increase that money that goes into that machine is to double it and put in another quarter. Since the early 90s things have changed a lot in the amusement and games era. We now have Wii and Xbox and things so the competition has become pretty ferocious for that quarter. So it isn't really an excise tax anymore I think it has become a fee. We are charging these folks a fee on that \$.25 that goes into that machine of 80% of 5% and then it becomes a fairness issue because they also pay income tax on the money that they make off these machines and they have to maintain these machines. There is one change on the fiscal note that the senate appropriations made to this bill and that was to change the effective date. The very last line makes this effective the next biennium so the fiscal note would not apply until that time. I would hope that you would give this consideration.

Representative Dave Weiler: If you go to Space Aliens they use coins on all the games back there but they aren't quarters. Do they have to pay a tax on that at all?

Senator Oehlke: I believe that is treated the same way as putting a quarter in the machine. I could be wrong on that. That brings up another point and I'm glad you brought it up. If you go to the car wash or the coin laundry there isn't an excise tax on that quarter and they only pay on the income tax. If they don't have to pay income tax on those tokens or they don't have to pay the excise tax on those tokens then I think that's a good thing.

Representative Dave Weiler: Can you give me an example of the games used for amusement?

Senator Oehlke: It's actually the person that owns the game who pays the excise tax on that. It isn't the bar owner that has the dart machine or the pool table or something like that. The host tavern or whoever gets a commission off of that game.

Representative Dwight Wrangham: Co-sponsor on the bill. I just want to give you a little history on this. This has been around for a long time. In 1987 when the sales tax went from 4% to 5% the legislature decided that they were only going to tax this coin drop, the amount of money in the cash pan, at 4% and they weren't going to raise it to 5% because they recognized that this was an unfair tax. They told these coin machine operators that we can't get rid of it although we realize it's wrong so we are only going to levy on 80% of the coin drop which really left them at 4%. These small businessmen from North Dakota have been waiting this long and have tried three times to get this eliminated. The senate unanimously decided that it was time and I hope the house will do the same. I want to stress that we've heard a lot of tax bills for tax credits and tax exemptions all the way from income tax to sales tax to property tax. These business people aren't asking for any incentives they are just asking to stop being treated unfairly by paying a sales tax that they can't collect.

Representative Glen Froseth: These machines all have a license fee attached to them don't they? What does that fee amount to and who does it go to?

Representative Dwight Wrangham: There is an operator's license which I believe is \$1,100 a year for x number of machines and there may be a graduated scale for a very small operator. There is also a location license if a location has machines and just has machines in their establishment then they buy a location license and I think that might be \$120 a year. That goes to the Attorney General's office as a licensing fee. Local governments have elected in almost all cases to not charge the local sales tax on this either because they also recognized this was an unfair tax.

Lowell Thomas, Modern Coin Equipment, Minot: Support. We are the only industry left in North Dakota that cannot pass on the sales tax to the end consumer as requested by law. Not only are the Laundromats exempt, carwashes are exempt, and everybody else is exempt from us because we can't collect that tax. Our industry only deals in increments of a quarter. Our major source of income is from dart machines, pool tables, juke boxes, and some video games. This is a coin entry door on a machine (showed a coin entry door). As you can see it just takes quarters. We are not in the vending machine business. We cannot change our pricing in increments of nickels, it is strictly quarters, therefore, in our situation the sales tax cannot be passed on to anybody we absorb it all. You asked a question about tokens in these games and they are all taxed as a quarter. In April I turned sixty six. I paid in a long time for social security and I will get my first check back next month. On this deal that we are talking about here today I have paid in on this for a long time. I'm not asking for anything back all I'm asking today is that in this session I hope you finally will support SB 2172 and stop charging this unfair tax to our industry.

Representative Dave Weiler: You mentioned candy bar machines, they can raise it from \$.85 to \$.90 and they have to pay the tax out of that, correct?

Lowell Thomas: I don't know, I'm not in vending.

Representative Dave Weiler: As far as the date on this bill, were you involved in the drafting of this legislation? Why is the date put out for another two years? If it's to make it look like this isn't going to cost the state anything so then let's pass it and then in two more years it's going to start costing the state \$700,000. If it's a good idea, which I believe it is, then it should start right away and not wait two years. I just want your thoughts on that.

Lowell Thomas: I was not involved in that. I testified at the Senate appropriations and then I was done. This was changed afterwards. I like your idea, especially as a 66 year old.

Representative Dave Weiler: If it's a good idea then it should start right away. We don't often come up with really good tax policy in the state so when we do we shouldn't set it out two years.

Representative Lonny B. Winrich: The effective date on this bill is July 1, 2013 so the fiscal note indicates \$700,000 as an approximation would be for the entire biennium. It's not an artificially deflated fiscal note it just delays the date. I don't know why but it certainly doesn't relate to any problem with the fiscal note.

Representative Dave Weiler: I understand that it is set out for two years. They did this so that there is no fiscal effect this biennium.

Representative Lonny B. Winrich: We still have the information we need to estimate the fiscal note, it's just not going to happen right away.

Rick Lafleur, Lafleur and Son and North Dakota Coin Machine Operators Association, Devils Lake: Support. I stand before you here today to talk to you a little bit about our industry. At one time we were the gateway to a lot of technology that you see out there today. Anything that is on your cell phone 20 years ago really was kind of like Pac Man or Asteroids or some of these other games that had a great deal of magnetism. Today that has largely been evaporated. We have a high degree of competition for people's attention based upon the new social media that all these young people here know about today. We have had to regroup and reinvent our industry and we've gotten our hands dirty coming back to the basics in becoming street operators and running pool and dart leagues and music which was the backbone of our business as it began. As a result of that we've had a great deal of contraction in the industry. In the last three years alone the evaporation of the manufacturing field has dropped by some 40 percent. All the big names that used to be the manufacturers that some of you may remember from playing pinball or some of those Midway, Bally, Williams, Gottlieb, etc, they are gone and no longer in business because of the fact that the revenue stream to support that manufacturing entity is no longer there. It's been a challenge but we're surviving and we're hard working. We go out and do the kinds of things that we know we can do and try to develop it but it's not a slam dunk, it's far from it. It takes a lot of ingenuity and a lot of effort. As you consider this bill

please just take a look at the fact that the extra tax, the 4% that we're paying, when you take that 4% of your revenue and remove it from the very top before you go out and try to pay all your other bills represents a huge number and it's often times more than the profit that you could expect to make. We want to continue to be survivors and this will allow us the ability to go out and support what we are currently doing and that is by offering a good service to our state through our taverns and other locations we have out there and there are certainly a lot of people involved in that. All the taxes are collected and the state tax department is diligent in keeping an eye on that. They've done a good job and have treated us with a great deal of respect over the many years. We would really appreciate that we don't have to pay that tax because it is really intended for the consumer to pay it. If we can get that relief it would go a long way to providing us with a future.

Representative Dwight Wrangham: AMOA is a national association of coin machine operators and Rick is on the board of directors of the national association. Recently at their convention and trade show in Las Vegas the trade magazine, Play Meter, which is the magazine in the trades, selected Rick as the Operator of the Year. It's for people who have dedicated a lot of work and education to the industry. Congratulations Rick!

Preston Obrigewitsch, President of Badlands Music: Support. I am new to this industry. I just purchased this in April and am approaching our one year anniversary and am excited about it. The sales tax that we pay is a slight burden as to the unfairness of it. It makes it tough in starting out because there are a lot of other expenses and if it were eliminated it would definitely help me out a lot to get the business paid for and to keep it going and try to be a successful businessman and hopefully someday pass it on to my children.

Jim Steen, Valley Video, Fargo: Support. When it comes to the cost to the state in terms of tax revenue in the event that you approve this sales tax that I don't pay throughout the year will not end up in my savings account, it will be spent on goods and services. We are all aware of the times we've had the last couple of years. My business has seen well over 25% reduction in revenues from current customer base in 2008 and 2009. I've recouped some of that loss by going out and getting more business. As a result of that a decision was made last year not to give a raise to any of my staff. I have nine people all with families who are supporting wives, children, etc. but it wasn't in the dollars. Is that all the fault of this? No but you will not lose all those tax revenues. I just purchased some equipment and the price of one game was \$13,000 which I paid a use tax on. The total purchase on the equipment for one location was just shy of \$47,000. This is just natural upkeep, it's not a new customer, and this is just the natural order of our business that we need to incur. We pay that sales tax for the purchase of that then the sales tax to the state. In these times it would make it easier to recoup an investment on that. I'm not going to put that money into my account we would give it to pay raises and we would grow and seek out new customers, buy more equipments, pay for goods and all of those will incur a tax. If I'm being redundant on what is on the bill my apologies but I wanted to make that point. My customers will also benefit. I know that we want to focus on what this will do for us but this will help everybody. If we make more money we will buy more equipment and get more revenue. Our customers would get a portion of that revenue so it will also help him. There will be a ripple effect helping a lot of people. This will mainly help us and that's why we're

here. We are here to help our industry and help our bottom line but this will help many other people we do business with.

Mike Obrien, Dakota Music, Bismarck: Support. I will try and answer some of your questions that have come up during today's testimonies. Representative Weiler had asked if the bar owners pay this tax and they do. If we have \$100 in the cash pan we take the tax off the top which is required by the state. Then we share the revenues with the remaining portion. This not only helps the operators but it will help the bowling alleys and the tavern owners because they will save from that tax also. There's not an operator here representing our industry this morning that wouldn't mind giving the state the sales tax if we could collect it just like every other business. We still have to do the paperwork and file our tax preparations with the state the only difference is we can't collect the money. Congratulations to Mr. Lafleur. He has worked very hard in the state and the national level to try and make small businesses continue to grow and I think that is what we are asking you here. Representative Wrangham and I were partners back in 1981 and that's how he and I became involved in the political arena. We've been up here for 30 years trying to get this unfair tax straightened out. Hopefully this will be the last time we bother you and hopefully it will be the last time you bother us. Representative Weiler also asked why put off this tax and that's a very good question. We feel that this is an unfair tax on our industry. We would love for this thing to end this July. We're tired of coming up here after 30 years we are willing to take anything you give us. That's the reason we accepted the date change but hopefully we can move forward and get on to doing what we do best and that is operating our businesses.

Representative Dave Weiler: When you brought this bill in it had a date of July 1, 2011, correct?

Mike Obrien: Correct. It would have been the normal process of your bills which would come due July 1.

Representative Dave Weiler: My concern with this date is that right now we seem to be doing pretty good as a state and so if we put this bill into effect right away I think we have a pretty good chance at it, however, if we come back here in two years and some things turn south they are going to take a look at this and say well here's another \$700,000 we could cut out. I would like your comment on that please.

Mike Obrien: I guess I really don't know how to answer this question. If you want to change the date back to the original date then I have no problem with that. If you want to hammer it out in a conference committee and come up with a different date, I don't know how this process works so I'm not sure how you do this. Please don't throw us under the bus and screw the whole process up because we are happy with the date we have now but we'd be a lot happier with the date sooner.

Representative Steven L. Zaiser: To the best of your understanding the Senate amended this bill to push it back a couple years, correct?

Mike Obrien: It was the appropriations committee that changed this.

Representative Dwight Wrangham: It was my understanding that the Senate appropriations made that change because they didn't want to affect the Governor's budget for this coming biennium.

Chairman Wesley R. Belter: When I think of coin operated machines I think of pinball games. Do the machines all fall under this or are there different classes of machines?

Myles Vosberg, Tax Commissioner's Office: Yes, all those machines are considered amusement. If you are buying a product that you're getting out of the machine that would be a vending machine but anything that you just get such as music or darts they are considered amusement machines.

Chairman Wesley R. Belter: Some of those might be a quarter or a buck.

Myles Vosberg: I think all the machines take quarters but they may take multiple quarters.

Representative Steven L. Zaiser: There are those machines and I don't know how many quarters they take but they have this scoop that picks up some teddy bear or some silly little prize and sometimes you get nothing so is that considered in this class as amusement games?

Myles Vosberg: Yes, we would look at that as amusement.

Chairman Wesley R. Belter: No further testimony. Closed hearing on SB 2172.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2172
March 21, 2011
#15725

Conference Committee

Committee Clerk Signature

Mary Brucher

Explanation or reason for introduction of bill/resolution:

A bill relating to a sales tax exemption for receipts from coin-operated amusement or entertainment machines; relating to a sales tax exemption for receipts from coin-operated amusement or entertainment machines; and to provide an effective date.

Minutes:

See attached amendments.

Representative Dwight Wrangham: Distributed and reviewed the amendments. See attached amendments. **I would move the amendments 02001.**

Representative Steven L. Zaiser: Seconded.

Representative Dave Weiler: It looks like by moving it to 2012 so previously it would have no fiscal effect but now with it starting July 1, 2012 it would have a \$350,000 note for the 2013 biennium, is that correct?

Representative Dwight Wrangham: You are correct.

Representative Dave Weiler: I am going to support the motion for a Do Pass simply because I think this is a tax that is long overdue that is somewhat of an unfair tax and I think it's time.

Representative Steven L. Zaiser: I concur with Representative Weiler because I've known Mr. Lafleur for many years and he works hard and I think it's an unfair tax. If we think this is unfair then I think we should fix it now.

Representative Shirley Meyer: When you are at Space Aliens and the kids get tickets and trade them in is there sales tax charged on them?

Representative Dave Weiler: I asked that same question during the committee hearing. Yes, the person that owns that machine has to pay taxes on that. If you put in a dollar you get four tokens. It's based on how much you put into the machine. They have to pay an amusement tax on that.

Representative Shirley Meyer: But not to the consumer it would be to the guy selling the tokens?

Representative Dave Weiler: No, not to the consumer.

Representative Steven L. Zaiser: It is for that specific location which is why it is a tax. If it were good any place then it wouldn't be but it would only be good at say Space Aliens or a car wash that has tokens.

Vice Chairman Craig Headland: I know the gentleman who testified in support of the bill as it came from the senate said they just wanted anything after 30 years of fighting for it. Is there any fear in your mind that the senate might look at this unfavorably and decide to kill this bill?

Representative Dwight Wrangham: That's a really tough question. The Senate Finance and Tax voted it out unanimously in 1987 when they thought it was an unfair tax. I'm hoping that we get a concurrence over there. If we wind up in a conference committee I hope we are able to prevail at least with what was originally sent over to us.

Representative Steven L. Zaiser: I feel relatively confident because the committee was supportive as well as the entire senate when they voted in their assembly.

Vice Chairman Craig Headland: You have before you amendment 02001 what does the committee wish to do?

Representative Patrick Hatlestad: I make a motion for a DO PASS AS AMENDED.

Representative Bette Grande: Seconded.

A roll call vote was taken: YES 13 NO 0 ABSENT 1
MOTION CARRIED FOR DO PASS AS AMENDED.

Representative Steven L. Zaiser will carry SB 2172.

11.0483.02001
Title.03000

Prepared by the Legislative Council staff for
Representative Wrangham
March 18, 2011

VK
3/21/11

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2172

Page 5, line 26, replace "2013" with "2012"

Renumber accordingly

Date: 3-21-11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2172

House Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
.02001
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Wrangham Seconded By Rep. Zaiser

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter			Scot Kelsh		
Vice Chair. Craig Headland			Shirley Meyer		
Glen Froseth			Lonny B. Winrich		
Bette Grande			Steven L. Zaiser		
Patrick Hatlestad					
Mark S. Owens					
Roscoe Streyle					
Wayne Trotter					
Dave Weiler					
Dwight Wrangham					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

VOICE VOTE

MOTION CARRIED

Date: 3-21-11
Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2172

House Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Rerefer to Appropriations Reconsider

Motion Made By Rep. Hatlestad Seconded By Rep. Grande

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	✓		Scot Kelsh	✓	
Vice Chair. Craig Headland	✓		Shirley Meyer	✓	
Glen Froseth	✓		Lonny B. Winrich	✓	
Bette Grande	✓		Steven L. Zaiser	✓	
Patrick Hatlestad	✓				
Mark S. Owens	✓				
Roscoe Streyle	✓				
Wayne Trottier	✓				
Dave Weiler	✓				
Dwight Wrangham	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Zaiser

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

REPORT OF STANDING COMMITTEE

SB 2172, as engrossed: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2172 was placed on the Sixth order on the calendar.

Page 5, line 26, replace "2013" with "2012"

Renumber accordingly

2011 TESTIMONY

SB 2172

February 8, 2011

Members of the Senate Appropriations Committee

I want to thank you all for the work you are doing on behalf of the State. We are fortunate to have one of the most accessible forms of government found anywhere. We have a lot to be thankful for.

I would like to ask you to vote yes on Senate bill 2172.

Coin machine operators are currently paying a tax they cannot collect. Other businesses which have the same constraints on collecting this tax are not required to collect it. Laundromats and Car Washes.

We as operators are asking for the removal of sales tax we are paying for the customer. This tax is truly a gross revenue tax; a gross revenue tax is a very difficult burden for any business to absorb on top of all of the other expenses.

The financial condition of our industry is not good. The losses of the appeal of coin operated video games coupled with the smoking bans have narrowed our customer base.

Senate bill 2172 will bring if passed equal and fair treatment to the only industry which has been asked to pay the sales tax for the customer while sister like-kind business do not.

Thank you.

Respectfully yours,

Rick LaFleur
President
North Dakota Coin Machine Operators Association