

2011 SENATE FINANCE AND TAXATION

SB 2202

2011 SENATE STANDING COMMITTEE MINUTES

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

SB 2202
2/1/2011
Job Number 13772

Conference Committee

A. R. Miller

Explanation or reason for introduction of bill/resolution:

Relating to the sales and use tax exemption for materials used in compressing, processing, gathering or refining gas, the sales and use tax exemption for materials used in construction or expansion of an oil refinery, and the use tax on contractors

Minutes:

Written Testimony Attached

Chairman Cook opened the hearing on SB 2202.

Senator Klein – I believe this bill allows for a sales tax exemption for something that we are currently doing but providing it at the second half at the end of the project. What we are attempting to do here is going to give the sales tax exemption on the front half so that the company does not have to pay it and then have it refunded from the tax department.

Myles Vosberg, Tax Department – (see attached testimony A in favor is SB 2202)

Ron Ness, North Dakota Petroleum Council – Seems like the tax department has a good idea here, and should make this a much smoother process and we support their concept.

Chairman Cook asked for testimony opposed to SB 2202. No one came forward.

Chairman Cook asked for neutral testimony for SB 2202. No one came forward.

No further action was taken.

Chairman Cook closed the hearing on SB 2202.

2011 SENATE STANDING COMMITTEE MINUTES

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

SB 2202
2/1/2011
Job Number 13774

Conference Committee

A. Bittmiller

Explanation or reason for introduction of bill/resolution:

Relating to the sales and use tax exemption for materials used in compressing, processing, gathering or refining gas, the sales and use tax exemption for materials used in construction or expansion of an oil refinery, and the use tax on contractors

Minutes:

Committee Work

Chairman Cook opened discussion on SB 2202.

Senator Triplett – It seems very straightforward and I would move a Do Pass.

Seconded by Vice Chairman Miller.

Chairman Cook – Ask the clerk to take the roll. (7-0-0)

Carried by Vice Chairman Miller.

FISCAL NOTE

Requested by Legislative Council
01/14/2011

Bill/Resolution No.: SB 2202

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).*

There is no net fiscal impact to SB 2202. The bill allows the owner/operator of an exempt project to pass the exemption through to the contractor.

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:	01/31/2011

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

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2202

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 Triplett Seconded By Senator Miller

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 Miller

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

REPORT OF STANDING COMMITTEE

SB 2202: Finance and Taxation Committee (Sen. Cook, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2202 was placed on the Eleventh order on the calendar.

2011 HOUSE FINANCE AND TAXATION

SB 2202

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2202
March 7, 2011
#15016

Conference Committee

Committee Clerk Signature

Mary Brucher

Explanation or reason for introduction of bill/resolution:

A bill relating to the sales and use tax exemption for materials used in compressing, processing, gathering, or refining gas, the sales and use tax exemption for materials used in construction or expansion of an oil refinery, and the use tax on contractors; and to provide an effective date.

Minutes:

See attached testimony #1

Senator Klein: Introduced bill. Support. The before you today redirects the way we provide the rebate on the sales tax exemption. Currently, we are doing it after a major project. This bill relates to gas compressing and processing and refineries and in case we do an oil refinery it would provide for them to have their tax exemption on the front end of the project rather than the back end. Our attempt here is as they are providing and getting their financing together they would know exactly where they stand as they move forward with the project.

Myles Vosberg, Director of the Tax Administration Division of the Office of State Tax Commissioner: Support. Please refer to attached testimony #1.

Representative Wayne Trottier: Does this eliminate all sales tax?

Myles Vosberg: This really doesn't change the exemption at all. The exemption currently applies to state and local taxes. All this does is allow contractors to purchase tax free up front and avoid a refund process.

Chairman Wesley R. Belter: No further testimony.

Representative Bette Grande: I move a DO PASS.

Representative Patrick Hatlestad: Seconded.

A roll call vote was taken: YES 12 NO 0 ABSENT 2
MOTION CARRIED FOR DO PASS.

Representative Bette Grande will carry SB 2202.

Date: 3-7-11
 Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 2202

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. Grande Seconded By Rep. Hatlestad

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

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Grande

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

REPORT OF STANDING COMMITTEE

SB 2202: Finance and Taxation Committee (Rep. Belter, Chairman) recommends DO PASS (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2202 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

SB 2202

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

SENATE BILL 2202

February 1, 2011

Chairman Cook, members of the Senate Finance and Taxation Committee, I am Myles Vosberg, Director of the Tax Administration Division of the Office of State Tax Commissioner and I am here today on behalf of the Commissioner to support Senate Bill 2202.

BACKGROUND

Senate Bill 2202 addresses administrative processes relating to existing sales tax exemptions that apply to new or expanding businesses; however, the bill has no impact on the amount of exemption itself. The new or expanding businesses impacted by SB 2202 are businesses that gather, compress, and process casinghead gas produced in North Dakota and oil refineries.

Under current law, when a business builds or expands a system to gather, compress, or process gas (gas system) produced from oil and gas wells in North Dakota, the tangible personal property purchased to build or expand the gas system qualifies for a sales and use tax exemption. The same exemption is also available for building or expanding an oil refinery located in this state. The owner of a new or expanding gas system or oil refinery can avoid paying sales tax at the time of purchase on tangible personal property purchased for construction of the qualifying project if the owner applies to the Tax Commissioner's Office for approval before making the purchases. However, under current law, a contractor that purchases tangible personal property for the same qualifying project must pay tax on all the materials used in the construction process and the project owner must apply for a refund of the tax paid by the contractor. This refund process is costly and time consuming for the contractor who must provide copies of all material purchases to the project owner and to the project owner who must organize and summarize the data and submit it to the Tax Commissioner for review. Senate Bill 2202 will allow project owners that apply for exemption approval prior to construction to pass the exemption approval to their contractors allowing the contractors to purchase all project materials tax free and avoid the tax refund process.

During the 2007 legislative session, legislation similar to Senate Bill 2202 was approved for power plants and agricultural commodity processing facilities. Our experience with exempting contractors on preapproved power plant and ag commodity processing plant projects has been very positive. Now, we ask that the same process be allowed for gas systems and oil refineries.

Senate Bill 2202 has the following advantages in addition to eliminating the refund process associated with these projects:

- Reduces the cash outlay for the contractor and the project owner by the amount of tax that is due on the project materials. Reduced cash outlay means lower financing costs and overall lower project costs.
- Removes the requirement for contractors that bid jobs in a lump-sum manner to disclose the cost of materials consumed in a job by providing copies of material purchase invoices to the plant owner.
- Reduces the frequency of large local tax refunds from taxes that have been remitted to the local governments over an extended time during the construction phase of an exempt project. These refunds potentially create large fluctuations to city and county sales tax revenue streams.

EXPLANATION OF THE BILL

Senate Bill 2202 has two main components. The first component is to remove language in the existing sales tax exemptions that require the contractor to pay tax on all materials used in qualifying projects. Sections 1 and 2 of the bill make this change. Section 1 is the exemption for systems used to compress, process, gather or refine gas. Section 2 of the bill is the exemption for oil refineries. The second component of the bill, which is included in Section 3, removes the contractor's responsibility to remit use tax on materials used in qualifying gas system or oil refinery projects if the projects have been preapproved for exemption by the Tax Commissioner's Office. Under ordinary circumstances, contractors are the final users of tangible personal property used under a construction contract and are liable for tax on the materials upon use unless tax has already been paid on those materials.

ADDITIONAL CONSIDERATION

North Dakota Century Code § 57-39.2-04.7 provides a similar sales tax exemption for tangible personal property used to construct or expand telecommunications infrastructure owned by a telecommunications company. The current exemption expires on June 30, 2011.

Senate Bill 2171 removes the sunset provision and allows the exemption to continue. If Senate Bill 2171 is successful, our office requests that the exemption in N.D.C.C. 57-39.2-04.7 be amended into Senate Bill 2202, if possible, to allow contractors the ability to avoid the refund requirement for materials used in qualifying telecommunication infrastructure projects.

CONCLUSION

If adopted, the Senate Bill 2202 will streamline the administration of several sales tax exemptions granted to new and expanding industries. Allowing contractors to purchase and install materials tax free in instances where the Tax Commissioner has preapproved a sales tax exemption for a qualifying project reduces costs for the contractor, the project owner, and the Tax Commissioner with little or no additional risk that the exemption will be incorrectly applied. Therefore, we ask the committee for a do pass recommendation for adoption of SB2202. Thank you for your consideration.

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

SENATE BILL 2202

March 7, 2011

Chairman Belter, members of the House Finance and Taxation Committee, I am Myles Vosberg, Director of the Tax Administration Division of the Office of State Tax Commissioner and I am here today on behalf of the Commissioner to support Senate Bill 2202.

BACKGROUND

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Senate Bill 2202 has the following advantages in addition to eliminating the refund process associated with these projects:

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CONCLUSION

If adopted, the Senate Bill 2202 will streamline the administration of several sales tax exemptions granted to new and expanding industries. Allowing contractors to purchase and install materials tax free in instances where the Tax Commissioner has preapproved a sales tax exemption for a qualifying project reduces costs for the contractor, the project owner, and the Tax Commissioner with little or no additional risk that the exemption will be incorrectly applied. Therefore, we ask the committee for a do pass recommendation for adoption of SB2202. Thank you for your consideration.