

FISCAL NOTE
Requested by Legislative Council
02/06/2019

Amendment to: HB 1158

- 1 A. **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.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **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 HB 1158 removes a requirement that purchasers owe state and local sales and use tax when a retailer has failed to charge the tax at the time of the sale.

- 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.*

Section 1 exempts purchasers from sales tax if the retailer failed to collect the sales tax and the transaction was less than \$5000.

Section 2 exempts entities from use tax it is not charged at the time of the transaction and if the transaction was less than \$5000.

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.*

As a result of the recent US Supreme Court decision in SD v. Wayfair, most household purchases will be subject to the statutory amount of sales tax collected at the point of sale, and will be unaffected by the provisions of this bill. Business purchases have historically been subject to sales tax auditing and additional use tax is frequently found to be due. This is still expected to occur even after the Wayfair decision, although use tax may be due less frequently post-Wayfair. Engrossed HB 1158, if enacted, would eliminate the audit collections for those business purchases under \$5000 on which the tax was not paid at the time of the purchase. This will result in a loss of state general fund and state aid distribution revenues, in an amount that cannot be determined.

- 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 or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn Strombeck

Agency: Office of Tax Commissioner

Telephone: 701.328.3402

Date Prepared: 02/07/2019

FISCAL NOTE
Requested by Legislative Council
01/07/2019

Bill/Resolution No.: HB 1158

- 1 A. **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.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties			
Cities			
School Districts			
Townships			

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

HB 1158 removes a requirement that purchasers owe state and local sales and use tax when a retailer has failed to charge the tax at the time of the sale.

- 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.*

Section 1 exempts purchasers from sales tax if the retailer failed to collect the sales tax and the transaction was less than \$50,000.

Section 2 exempts entities from use tax it is not charged at the time of the transaction and if the transaction was less than \$50,000.

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.*

As a result of the recent US Supreme Court decision in SD v. Wayfair, most household purchases will be subject to the statutory amount of sales tax collected at the point of sale, and will be unaffected by the provisions of this bill. Business purchases have historically been subject to sales tax auditing and additional use tax is frequently found to be due. This is still expected to occur even after the Wayfair decision, although use tax may be due less frequently post-Wayfair. HB 1158, if enacted, would eliminate the audit collections for those business purchases under \$50,000 on which the tax was not paid at the time of the purchase. This will result in a loss of state general fund and state aid distribution revenues, in an amount that cannot be determined.

- 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 or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn Strombeck

Agency: Office of Tax Commissioner

Telephone: 701.328.3402

Date Prepared: 01/13/2019

2019 HOUSE FINANCE AND TAXATION

HB 1158

2019 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1158
1/14/2019
30717

- Subcommittee
 Conference Committee

Committee Clerk: Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill relating to an exception to the payment of sales and use taxes; and to provide an effective date.

Minutes:

Attachment 1

Chairman Headland: Opened hearing on HB 1158.

Representative B. Koppelman: Introduced bill. Distributed written testimony, see attachment #1. Ended testimony at 6:30.

Representative Ertelt: Do you have any data that would let us know how many transactions are above the \$50,000?

Representative B. Koppelman: I had conversations with the tax department to attempt to calculate the fiscal note. I think they probably did those calculations but I don't possess them.

Chairman Headland: Can you site an example of a purchase that has fallen through the cracks?

Representative B. Koppelman: I'm a building contractor; I build commercial buildings for a trade. I submit receipts for purchases on everything from \$20 at a local hardware store to spending up to \$10,000 or more at a local lumber yard. For each purchase they are supposed to charge me sales tax, and in the construction trade we're not sales tax vendors because we're not selling a tangible product outside of real estate. I then figure out how much the sales tax rate would be. Then I write a check and send it to the state. This is the way it works for consumers and businesses. We have 1.5 full time employees in our office and we submit about 2,500 receipts a year. That just isn't practical. I try to hit the real big ones and review anything over \$10,000. True compliance is truly impossible unless you have a large staff.

Chairman Headland: With your example I'm assuming there are products being used that have been purchased out of state and probably not an online transaction. This bill would say that if North Dakota collects that tax then we're going to expect that out of state business to

know every local rate and what the tax burden would be in that political subdivision. Is that what this bill would do?

Representative B. Koppelman: In a sense, yes. Most out of state retailers that sell things here where the tax doesn't get charged, they have a physical presence in some state that has sales tax. For smaller business like boutiques or Pride of Dakota, they have a company called Square that has a national data base with tax rates, so they enter a zip code and the sales tax generates for them. Consumers can't buy Square or QuickBooks online and import their receipts in the other direction to check them.

Representative Steiner: Did you pick the \$50,000 threshold because you have numbers that verify it would relieve some of the burden from the majority of people or did you randomly pick that number?

Representative B. Koppelman: That was a relatively arbitrary number. I tried to pick a number that would alleviate the nuisance of small transactions while at the same time not creating an incentive for somebody to go out of state and evade tax. Originally the bill didn't have a cap at all. When we decided if this would change people's behavior and make them more likely to evade our sales tax system the threshold was created.

Chairman Headland: Is it fair to expect that without any audit or mechanism in law to go after some out of state retailer who is not doing the online purpose, what's their incentive to remit the tax?

Representative B. Koppelman: I don't claim this system is any more perfect but I expect that audits of businesses can still happen. I think they can identify who the out of state retailers are that weren't doing what they were supposed to be doing in that sense. I believe that would give them more of a mechanism to attempt to go after them. I would presume there would be a similar concern with out of state income taxpayers.

Chairman Headland: Is there further testimony in support? Is there opposition? Are there any questions for the tax department?

Representative Ertelt: Do you have any data to the quantity of transactions?

Myles Vosberg, Tax Commissioner's Office: We don't know how many transactions are out there. In an audit we would only schedule transactions that may have a credit coming or be subject to tax.

Chairman Headland: Are we opening the state up to allowing out of state retailers that do business in this state to incentivize them not to remit sales tax due in North Dakota?

Myles Vosberg: The bill states that retailers who have \$100,000 in sales or more than 200 transactions here are required to register and collect the tax. We anticipate it's going to take a while to get all those folks on board. The way the bill is written they will still be required to collect. It's only if the retailer failed to collect or collect the wrong amount of tax where the tax would not be due by the purchaser here. It would cost us more to try an audit out of state

retailers to try and get tax that's not being collected. If there are transactions above \$50,000 that would be an additional burden for us to try and do that.

Chairman Headland: Any further questions? We will close the hearing on HB 1158.

2019 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1158
1/16/2019
30915

- Subcommittee
 Conference Committee

Committee Clerk: Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill relating to an exception to the payment of sales and use taxes; and to provide an effective date.

Minutes:

No attachments

Chairman Headland: I think we're opening ourselves up for the possibility of lost sales tax revenues. We'd be looking at transactions that are up to \$50,000. We need to discuss this.

Representative Ertelt: I agree with you in part. I was wondering if the bill sponsor would be willing to reduce that down to \$25,000. I'd be happy to submit that as an amendment.

Chairman Headland: \$25,000 is a lot of sales tax revenue to leave on the table as well. What happens if a contractor goes to Montana and buys his pipe at \$25,000 at a time then brings it back to the oil field? That lost revenue is going to pile up in a hurry.

Representative Ertelt: That situation actually exists today; relying on the good faith of the purchaser to submit that sales tax.

Chairman Headland: That's not true. Under the law today the purchaser is obligated for their revenue.

Representative Ertelt: Yes, he's obligated. We're relying on the good faith of the individual to file the taxes in that manner. This bill could exempt that individual from that liability and place it on the seller.

Chairman Headland: How are you going to collect the tax from a business that isn't located in the state?

Representative Ertelt: I don't see how it changes, they are still obligated to pay the tax. This is exempting anything under the \$25,000 if it were amended.

Chairman Headland: Who's going to pay the tax if it passes with your amendment?

Representative Ertelt: I'm not quite following you.

Representative B. Koppelman: I'm not opposed to reducing it to \$25,000. I'm trying to find the line in the sand and not cheat the system based on how much you can save on taxes. At the same token we don't have a nuisance to either an individual or a company. As an individual they aren't auditing right now, I don't think there is a problem with the \$50,000 cap but when you apply it to businesses I think your concern is valid. Five percent of \$25,000 is \$12,000, so unless you happen to live somewhere really close to Montana because it's not a great incentive for somebody living in Bismarck to go to Montana. You need to find a happy medium. You could make the case that as a business, if you're going to try and cheat the system, it could still be worth it at \$50,000 as a threshold. Right now the only way that tax is going to be paid by a business is if they decide to voluntarily pay it or if the tax department had a reason to audit that business.

Representative Mitskog: Representative B. Koppelman, how prevalent do you think this is since you're living in the valley?

Representative B. Koppelman: Are you asking how prevalent is the need for the bill or how prevalent is the likelihood that with the bill somebody would try cheat the system and drive to Montana?

Representative Mitskog: The second.

Representative B. Koppelman: I would say it's not ever going to happen with a \$25,000 cap from anybody in the valley because there is no advantage to cheat in Minnesota since taxes are just as high. The only way you're going to be exempt from paying their taxes is if you have a tax exemption certificate. It would only be an issue in a few communities that are close enough to Montana. Having the lower cap would eliminate nearly all the concerns that I can think of to the point the chairman was making.

Representative Hatlestad: In the height of the bill the story was that there were a lot of people from Idaho who would work in North Dakota for two or three weeks then go home. When they came back they had loads of lumber and things so they didn't need an incentive.

Representative B. Koppelman: I totally agree with that. The same concern you have by going to the Minot retailer and collecting from them is the same concern you'd have from someone going home every week outside of North Dakota and trying to get them to pay this. I don't think this bill enables it to happen more than it already was doing.

Representative Steiner: When we look at a tax it has to be fair, simple, and broad. Our taxes are volatile because we have income tax. I think this bill takes us in the wrong direction. I think we need to start taxing more things on sales tax and spreading it out. I don't agree with the bill. I think we should broaden the sales tax and not make more carve outs. I'm not ready to pass this bill out at this time.

Representative Hatlestad: With the passage of Wayfair decision do you now have the authority to go into Montana and inform them of the tax they owe?

Dee Wald, General Counsel for the Tax Commissioner's Office: Wayfair applies to those sellers who ship and have their product delivered into North Dakota who are selling out of state. That is different from what Representative B. Koppelman is talking about. If he goes into Montana or Minnesota and buys a living room set, then brings it back we really don't have any jurisdiction over that taxpayer to sue them and audit them because they weren't doing business in the state. It would be up to us to try and find the individual here. Those sellers that are delivering on an internet platform are required so we treat them like other retailers and are subject to audit and collecting the tax. I might anticipate that Wayfair wouldn't collect the tax on a purchase of less than \$50,000 on some of those we are getting pushback on.

Representative B. Koppelman: In the example you used with the living room set, how often do you audit people who've brought back items that were purchased online even if that retailer doesn't want to comply?

Dee Wald: I agree, it is definitely a compliance issue when people go out of state and bring back products they've purchased.

Representative B. Koppelman: How often do you audit individuals when they're buying items online within the state?

Dee Wald: We don't, we can't find them. They are not reporting. It's a difficult thing to do.

Chairman Headland: We're missing a couple members so I don't want to vote on this today.

2019 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1158
2/4/2019
32131

- Subcommittee
 Conference Committee

Committee Clerk: Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill relating to an exception to the payment of sales and use taxes; and to provide an effective date.

Minutes:

No attachments

Chairman Headland: My concern with this bill is that we could have \$50,000 loads of steel coming into the oil patch from Montana where those loads wouldn't have sales tax collections.

Representative B. Koppelman: I have a verbal amendment. On page 1 line 9 and on page 1 line 13 we would change the word "fifty" to "fifteen." The \$50,000 was an arbitrary number that I worked on with the Tax Department to find a threshold where the tax consequences were fairly minimal. If we have zero like we do now, then every individual has to look at every receipt they get to see if they were taxed correctly and that's not reasonable. By putting in a threshold that is much smaller I think the benefit of cheating the tax code would be small plus it would eliminate a good chunk of the receipts that a business would have to audit to make sure the tax was paid. **MADE A MOTION TO ADOPT THE AMENDMENT.**

Representative Hatlestad: SECONDED

Chairman Headland: I understand there are concerns with the use tax and how it's created a problem for contractors. I wish there was an easy way to fix it. I don't know that if we put this into code if it's going to encourage more people because they'll know they are not responsible for this \$15,000 or not.

Representative Kading: If I'm an oil company and I want to bring in steel beams then I can put in 100 different transactions for \$14,000 and not pay taxes.

Representative Mitskog: Could we have the Tax Department address that?

Charles Dendy, General Counsel for the Tax Department: In the way this is drafted now it says for a single transaction. I can't speak to what the business practices are that would be used but it would be possible. You could split it up into a bunch of little transactions and avoid tax.

Chairman Headland: That's a concern.

Representative B. Koppelman: The product gets purchased and delivered by oil companies. If the company that is selling them the steel is shipping it to North Dakota, they would bundle all those into one shipment. That entity selling within the state is responsible to pay the sales tax due. The only thing you're doing is taking the burden off the consumer from having to audit the person selling in the state who's illegally not taxing it. It's not saying every person who purchases under \$14,000 is tax free now. It's really not likely for someone to do a bunch of transactions because it's not worth the time. The tax on \$15,000 is about \$600-700 so it's not a huge problem. If the Tax Department ever audits you they're only going to look at the big transactions.

Chairman Headland: What ability does the state have to go after the business located out of state that sells products to collect that tax that they are responsible to pay?

Charles Dendy: At this point it's very difficult to pursue someone outside the state. We would have to go into their courts and utilize their system to pursue them which is difficult.

Representative Dockter: This streamline went into effect October 1, 2018.

Chairman Headland: Actually it didn't because this is a use tax.

Representative Dockter: But one of the issues was streamlining though. I don't know if they're going to do more audits or not.

Representative Hatlestad: Would the purchase have to be an online transaction? If so, you would have the Supreme Court decision of Wayfair to go after somebody.

Charles Dendy: The remote seller collections that were instituted last session and became effective late last year still applies. The obligation on those out of state remote sellers if they meet the thresholds under that statute would still need to collect regardless of this \$15,000 limit. This would just come into play if the out of state company did not collect for some reason.

Chairman Headland: What are your wishes? Let's vote on the amendment.

VOICE VOTE: MOTION CARRIED

Chairman Headland: We have amended HB 1158. I respect what Representative B. Koppelman is trying to do with this legislation. There was a problem back in the 80s when the state was looking for revenue sources and they found a way to get the sales tax from somebody whether they were obligated to pay it or not. We've been trying to figure out a way out of that for some time. I'm not sure this is the way. I'm going to reject the bill.

Representative B. Koppelman: Every session we throw down a lot of things and wait for the magic token to land on our desk. We need to be willing to take steps to fix it. If there are other ideas to amend the bill we can amend the bill but we need to take care of these things.

I just threw this threshold number out there because I believe it does little damage to the state in total dollars and makes it much more workable.

Chairman Headland: That's a legitimate response. Any other discussion?

Representative Ertelt: MADE A MOTION FOR A DO PASS AS AMENDED

Representative B. Koppelman: SECONDED

Chairman Headland: Any further discussion?

ROLL CALL VOTE: 5 YES 9 NO 0 ABSENT

MOTION FAILED

Chairman Headland: Does someone want to take another run at this?

Representative Blum: MADE A MOTION FOR A DO NOT PASS AS AMENDED

Representative Mitskog: SECONDED

Chairman Headland: Discussion.

ROLL CALL VOTE: 8 YES 6 NO 0 ABSENT

MOTION CARRIED

Vice Chairman Grueneich will carry this bill.

2019 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1158
2/5/2019
32172

- Subcommittee
 Conference Committee

Committee Clerk: Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill relating to an exception to the payment of sales and use taxes; and to provide an effective date.

Minutes:

No attachments

Vice Chairman Grueneich: MADE A MOTION TO RECONSIDER

Representative Blum: SECONDED

VOICE VOTE: MOTION CARRIED

Chairman Headland: We have HB 1158 before us.

Vice Chairman Grueneich: The more we look at this the more we look at the fiscal note. I think it's something in the industry that needs to be addressed. **MADE A MOTION TO AMEND LINE 9 AND 13 CHANGING THE NUMBER FROM 15 TO 5.**

Representative B. Koppelman: SECONDED

Chairman Headland: Discussion.

Representative B. Koppelman: I appreciate the committee bringing this bill back. We started at a \$50,000 threshold and this takes it all the way down to a \$5,000. It may not take care of all the considerations the bill originally did but I believe it would give us the data we need so in the future if we want to go to a higher number we wouldn't worry so much about the fiscal note because it should be determined in a better fashion.

Chairman Headland: Any other discussion?

VOICE VOTE: MOTION CARRIED

Chairman Headland: We have amended HB 1158 before us.

Vice Chairman Grueneich: MADE A MOTION FOR A DO PASS AS AMENDED

Representative B. Koppelman: SECONDED

Representative Steiner: At \$5,000 the 5% sales tax is \$250 so anybody who owned \$250 or less would not have to keep receipts?

Representative B. Koppelman: That is the general idea. If a retailer did not charge them a tax or a proper tax, then they wouldn't have to audit the receipts for everything they purchased. The burden would be down to zero. This now allows them to sort out their expenses and check anything over \$5,000 to make sure the sales tax was correct.

Chairman Headland: Is there anything else?

ROLL CALL VOTE: 13 YES 1 NO 0 ABSENT

MOTION CARRIED

Vice Chairman Grueneich will carry this bill.

19.0634.02001
Title.03000

Adopted by the Finance and Taxation
Committee

February 4, 2019

DP 2/4/19

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1158

Page 1, line 9, replace "fifty" with "fifteen"

Page 1, line 13, replace "fifty" with "fifteen"

Renumber accordingly

19.0634.02002
Title.04000

DA 2/3/19
Adopted by the Finance and Taxation
Committee

February 5, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1158

Page 1, line 9, replace "fifty" with "five"

Page 1, line 13, replace "fifty" with "five"

Renumber accordingly

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1158**

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Koppelman Seconded By Rep. Hatlestad

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland			Representative Eidson		
Vice Chairman Grueneich			Representative Mitskog		
Representative Blum					
Representative Dockter					
Representative Ertelt					
Representative Fisher					
Representative Hatlestad					
Representative Kading					
Representative Koppelman					
Representative Steiner					
Representative Toman					
Representative Trottier					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

↓ *Voice Vote = Motion carries*
On page 1 lines 9 + 13 change 50 to 15.

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1158

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Ertelt Seconded By Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland		✓	Representative Eidson		✓
Vice Chairman Grueneich		✓	Representative Mitskog		✓
Representative Blum		✓			
Representative Dockter	✓				
Representative Ertelt	✓				
Representative Fisher	✓				
Representative Hatlestad		✓			
Representative Kading		✓			
Representative Koppelman	✓				
Representative Steiner	✓	✓			
Representative Toman	✓				
Representative Trottier		✓			

Total (Yes) 5 No 9

Absent 0

Floor Assignment _____

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

FAILED

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1158**

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: 19.0634.02001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Blum Seconded By Rep. Mitskog

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland	✓		Representative Eidson	✓	
Vice Chairman Grueneich	✓		Representative Mitskog	✓	
Representative Blum	✓				
Representative Dockter		✓			
Representative Ertelt		✓			
Representative Fisher		✓			
Representative Hatlestad	✓				
Representative Kading	✓				
Representative Koppelman		✓			
Representative Steiner		✓			
Representative Toman		✓			
Representative Trottier	✓				

Total (Yes) 8 No 6

Absent 0

Floor Assignment Rep. Grueneich

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

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1158**

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
- Other Actions: Reconsider _____

Motion Made By Rep. Grueneich Seconded By Rep. Blum

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland			Representative Eidson		
Vice Chairman Grueneich			Representative Mitskog		
Representative Blum					
Representative Dockter					
Representative Ertelt					
Representative Fisher					
Representative Hatlestad					
Representative Kading					
Representative Koppelman					
Representative Steiner					
Representative Toman					
Representative Trottier					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice Vote = Motion carried

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1158**

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: Lines 9 + 13 change 15 to 5

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Grueneich Seconded By Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland			Representative Eidson		
Vice Chairman Grueneich			Representative Mitskog		
Representative Blum					
Representative Dockter					
Representative Ertelt					
Representative Fisher					
Representative Hatlestad					
Representative Kading					
Representative Koppelman					
Representative Steiner					
Representative Toman					
Representative Trottier					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

↓ Voice Vote = Motion Carried
 In lines 9 + 13 change 15 to 5.

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1158

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: 19.0634.02002

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Grueneich Seconded By Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland		✓	Representative Eidson	✓	
Vice Chairman Grueneich	✓		Representative Mitskog	✓	
Representative Blum	✓				
Representative Dockter	✓				
Representative Ertelt	✓				
Representative Fisher	✓				
Representative Hatlestad	✓				
Representative Kading	✓				
Representative Koppelman	✓				
Representative Steiner	✓				
Representative Toman	✓				
Representative Trottier	✓				

Total (Yes) 13 No 1

Absent 0

Floor Assignment Rep. Grueneich

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

REPORT OF STANDING COMMITTEE

HB 1158: Finance and Taxation Committee (Rep. Headland, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). HB 1158 was placed on the Sixth order on the calendar.

Page 1, line 9, replace "fifty" with "five"

Page 1, line 13, replace "fifty" with "five"

Renumber accordingly

2019 SENATE FINANCE AND TAXATION

HB 1158

2019 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

HB 1158
3/13/2019
Job #33670

- Subcommittee
 Conference Committee

Committee Clerk: Alicia Larsgaard

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new subsection to section 57-39.2-12 and a new subsection to section 57-40.2-06 of the North Dakota Century Code, relating to an exception to the payment of sales and use taxes; and to provide an effective date.

Minutes:

Attachments: 2

Chairman Cook: Called the hearing to order on HB 1158.

Representative Ben Koppelman, District 16, West Fargo: Introduced the bill. See attachment #1. **(2:47)** How many of you have gone and purchased something at a big box retailer? Maybe some of you have purchased an appliance and had it delivered to your house. If you added those receipts up over the course of a year, a lot of us just take a Walmart receipt and throw it in the garbage when we are done buying Kleenexes and such. Under law, technically, if they screw up in their computer, we are responsible for catching that and sending it into the state. Very few people do that. Since we do not enforce it individually, in my opinion, it is silly that we have it in our law. **(3:40)** Continued reading from testimony.

(5:53) Chairman Cook: I owned a small business and I can guarantee you, I never threw away a receipt. I kept them all for tax purposes. I made sure everything I purchased was not for resale but for the use of that small business and the seller collected the sales tax. I had no burden from it. Do you purchase quite a bit of stuff over \$5,000?

Representative Koppelman: Yes. We are really diligent in determining, not only what is tax paid but we do our best to make sure it was the right jurisdictional tax. As a small business owner, I have to admit, every time I go to Menards or have stuff delivered from them that is smaller than that \$5,000, I do not go and look at the percent.

Chairman Cook: They are always going to put the right rate on at Menards at the cash register.

Representative Koppelman: That is not necessarily true. Often, their delivery address that the driver uses is not always the same as the cash register's receipt. I have caught that a few times on purchases over \$5,000. Most of those purchase under \$5,000 would have it done

correctly at the cash register. You have to sort through all of them to find the one or two that they do not. Those of us that do work that is not in a fixed location, have it much different. If you own a printing company and everything comes to one doorstep, you probably know what the tax rate is at your door. You might even know what it is at the vendor's door. Our office is one tax jurisdiction as well as our shop and job site. If you do work across the state, you probably have dozens of tax jurisdictions.

Chairman Cook: We are talking about purchases made from someone who doesn't collect ND sales tax.

Representative Koppelman: Correct:

Chairman Cook: That would be an out of state company.

Representative Koppelman: This is not talking about the out of state company. This is talking about who does not need to collect on purchases below \$5,000. The bill doesn't address out of state business.

Chairman Cook: The bill addresses people who do not collect ND sales tax.

Representative Koppelman: And it says they are not responsible to pay use tax.

Chairman Cook: You as the buyer are responsible to pay the use tax. The seller you buy it from that does not collect the sales tax has to be an out of state business. If they are an in state business and they are selling, they are required by law to collect sales tax.

Representative Koppelman: I would contend and maybe the Tax Department can correct me if I am wrong. There is a dual liability. If local, in-state business does not charge you tax like they should have, there is a dual responsibility for collection of that tax. As the consumer, I am equally responsible to pay the use tax as they are equally responsible for correcting the error they made by not charging me sales tax. I am trying to make that unilateral on those purchases under \$5,000 to those that have a sales tax permit and are in the business of dealing with sales and use tax.

Chairman Cook: Further testimony in support? Testimony opposed?

Bill Wocken, ND League of Cities: Testified in opposition of the bill. See attachment #2.

Mike Rude, ND Retail Association: Testified in opposition of the bill. Bill said everything. We oppose this. We see a potential major drain and a process where people could probably by-pass paying sales and use tax in the state of ND by purchasing out of state. We are concerned from a business standpoint and we ask for a do not pass recommendation.

Chairman Cook: Any further testimony opposed? Myles can you come up here?

Chairman Cook: You have an out of state company that doesn't make the \$100,000 threshold and they are not required to collect out tax.

Myles Vosberg: Testified neutrally for the bill. That is correct.

Chairman Cook: If Rep. Koppelman was to do business with that company, that is the type of sales he is trying to exempt.

Myles Vosberg: Correct. If the purchase were under \$5,000.

Chairman Cook: Every ND business he might buy from is required to collect and remit our tax.

Myles Vosberg: Correct.

Chairman Cook: If they make an error in the tax calculation, who is responsible for that tax?

Myles Vosberg: I think Representative Koppelman is correct. Both would be liable. If we audited that retailer, we would assess that tax they failed to collect. If we audited the purchaser, we would also assess that tax due in that case. Under the use tax law, it says you are responsible for tax and you get credit for any tax you previously paid.

Senator Dotzenrod: I sometimes get a little unclear between the distinction of sales and use tax. Is tires a use tax?

Chairman Cook: Excise.

Myles Vosberg: A lot of the time they will identify the federal excise tax the retailer has to pay.

Senator Dotzenrod: ND sales tax comes in addition to that excise tax.

Myles Vosberg: If you purchase tires from a ND seller, they would be collecting sales tax from you on that purchase.

Senator Dotzenrod: And excise tax

Myles Vosberg: No. A federal excise tax is required to be paid by either the manufacturer or the retailer. They then just pass it on. They are identifying that as a cost to themselves.

Senator Dotzenrod: In your business, how do you make the distinction?

Myles Vosberg: If you look at the use tax laws, there are two components to use tax. If you have an out of state retailer and they deliver into ND, they are required to collect that tax. Technically, that is a use tax. Whereas, the retailer that is in ND that is required to collect that tax from their customer is a sales tax. The other component of use tax is if you as a purchaser go to MT and purchase something without paying tax because they do not have a sales tax there and bring it back into ND, you are subject to tax and that is a use tax.

Senator Dotzenrod: In the MT example, are there any dollar thresholds. If you buy something in MT for \$5, there is probably not a realistic expectation that you are going to find someone to pay the 25 cents.

Myles Vosberg: There is nothing listed in the statute that says it is a minimum of a certain dollar amount. We do have a general statute that says a payment of under \$5 is not due. Technically, you could apply it to that.

Chairman Cook: If I go to MN and buy a new suit and bring it into ND, do I have to pay tax on that?

Myles Vosberg: Yes, because MN does not impose a sales tax.

Chairman Cook: Any further testimony? Hearing none, we will close the hearing on HB 1158.

2019 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

HB 1158
3/19/2019
Job #33927

- Subcommittee
 Conference Committee

Committee Clerk: Alicia Larsgaard

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new subsection to section 57-39.2-12 and a new subsection to section 57-40.2-06 of the North Dakota Century Code, relating to an exception to the payment of sales and use taxes; and to provide an effective date.

Minutes:

Attachments: 0

Chairman Cook: Called the committee to order on HB 1158.

Chairman Cook: This would exempt a purchaser from purchasing something from someone not required to collect and remit our sales tax. The purchaser would be free of any use tax responsibility.

Senator Dotzenrod: It sounds like a good idea to make a certain category of sellers quite popular. Such as sellers that do not seek to get that sales tax paid that would become more popular because they would have an incentive themselves and the buyer would also have an incentive.

Chairman Cook: Maybe their sales would go up so quickly that they would go over the \$100,000 threshold.

Senator Patten: Moved a Do Not Pass on HB 1158.

Senator Unruh: Seconded.

Chairman Cook: Any Discussion?

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent

Motion Carried.

Senator Cook will carry the bill.

Date: 3-19-19
 Roll Call Vote #: 1

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1158**

Senate Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Patten Seconded By Unruh

Senators	Yes	No	Senators	Yes	No
Chairman Cook	✓		Senator Dotzenrod	✓	
Vice Chairman Kannianen	✓				
Senator Meyer	✓				
Senator Patten	✓				
Senator Unruh	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment COOK

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

REPORT OF STANDING COMMITTEE

HB 1158, as engrossed: Finance and Taxation Committee (Sen. Cook, Chairman)
recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1158 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

HB 1158

#1
HB 1158
1-14-19
P. 1/1

HB 1158

Mr. Chairman and members of the Finance and Taxation Committee, my name is Rep. Ben Koppelman of District 16, and I thank you for the opportunity to introduce this bill in front of your committee.

HB 1158 is a bill that would take the burden of **sales and use tax** off of the backs of most consumers, and leave the responsibility to collect and remit sales and use tax solely with the **Retailer/ Seller**. Only on large purchases would the consumer be responsible to remit use tax if sales tax was not collected by the Retailer.

After the South Dakota v. Wayfair decision came down from the U.S. Supreme Court essentially reversing most of the restrictions of the previous precedent of Quill Corp. v. North Dakota, North Dakota started to collect sales tax from out of state retailers due to trigger legislation passed during the 2017 legislative session. That bill included a threshold to when out of state retailers needed to get a ND sales tax permit and start remitting sales tax on purchases that came to rest in the state. Starting this last fall, the state started seeing an increase in revenue due to compliance with the 2017 law, and as a result, I believe that it is the time to remove the burden from the consumer.

Retailers are the best suited to collect and remit the tax, since they have sales tax permits that require reporting and remittance on a regular basis already in other states and now ND as well. In addition, nearly all retailers that would meet the threshold of our law, own or lease software and hardware that do all of the calculating for them. This is a far cry from the time and ability the average citizen of our state or the average small business with only one or two employees working in the office has to comply with the current law.

Although I am told that individual taxpayer use tax audits are not typically conducted by the Tax Department, the law technically requires all individuals to "audit" all receipts for all purchases to ensure that not only sales tax was charged, but that it was charged at the proper rate base on where it was purchased or delivered. If it was not charged, then individual must remit a use tax payment of the same amount as what the sales tax should have been. This is unfair and definitely impractical to expect this of our citizens, especially since they don't possess the software that retailers do to keep track of and calculate such tax.

Businesses, both large and small alike, that are not retailers or sales tax permit holders **do** get routinely audited for sales and use tax. Just like individuals, they too are expected to "audit" each receipt to see if the proper tax was paid, and if not remit that amount to the state. This can be thousands of receipts for some companies that may only have a couple of employees, and like individuals, they don't possess the technology to track tax due and jurisdiction for all of these purchases other than manual inspection and recording. This is why we have a threshold in the bill of \$50,000. Non-retail businesses can more easily track large purchases manually since there is likely much fewer of them. This threshold also ensures that for large purchases, there is not an incentive created for business owners to travel out of state to purchase these items and avoid our sales tax all together.

I believe this reform is long overdue, and in the aftermath of the South Dakota v. Wayfair decision, it comes at a much smaller cost. It is time that we reduce the burden on our citizens and small businesses by creating police that would focus the efforts of the Tax Department on out of state retailer compliance rather than consumer/ small business use tax submission.

Thank you for your time and I request a Do-Pass recommendation on this bill.

3/13 HB 1158 #1 pg.1

HB 1158

Mr. Chairman and members of the Finance and Taxation Committee, my name is Rep. Ben Koppelman of District 16, and I thank you for the opportunity to introduce this bill in front of your committee.

HB 1158 is a bill that would take the burden of **sales and use tax** off of the backs of consumers on routine purchases, and leave the responsibility to collect and remit sales and use tax solely with the **Retailer/ Seller on those purchases**. Only on larger purchases would the consumer be responsible to remit use tax if sales tax was not collected by the Retailer.

After the *South Dakota v. Wayfair* decision came down from the U.S. Supreme Court essentially reversing most of the restrictions of the previous precedent of *Quill Corp. v. North Dakota*, North Dakota started to collect sales tax from out of state retailers due to trigger legislation passed during the 2017 legislative session. That bill included a threshold to when out of state retailers needed to get a ND sales tax permit and start remitting sales tax on purchases that came to rest in the state. Last fall, the state started seeing an increase in revenue due to compliance with the 2017 law, and as a result, I believe that it is the time to remove the day to day burden from the consumer.

Retailers are the best suited to collect and remit the tax, since they have sales tax permits that require reporting and remittance on a regular basis already in other states and now ND as well. In addition, nearly all retailers that would meet the threshold of our law, own or lease software and hardware that do all of the calculating for them. This is a far cry from the time and ability the average citizen of our state or the average small business with only one or two employees working in the office has to comply with the current law.

Although I am told that individual taxpayer use tax audits are not typically conducted by the Tax Department, the law technically requires all individuals to “audit” all receipts for all purchases to ensure that not only sales tax was charged, but that it was charged at the proper rate base on where it was purchased or delivered. If it was not charged, then individual must remit a use tax payment of the same amount as what the sales tax should have been. This is unfair and definitely impractical to expect this of our citizens, especially since they don’t possess the software that retailers do to keep track of and calculate such tax.

Businesses, both large and small alike, that are not retailers or sales tax permit holders **do** get routinely audited for sales and use tax. Just like individuals, they too are expected to “audit” each receipt to see if the proper tax was paid, and if not remit that amount to the state. This can be thousands of receipts for some companies that may only have a couple of employees, and like individuals, they don’t possess the technology to track the amount of tax due in each jurisdiction for all of these purchases other than manual inspection and recording. This is why we have a purchase threshold in the bill of \$5,000. Non-retail businesses can more easily track large purchases manually since there is likely much fewer of them. This threshold also ensures that for large purchases, there is not an incentive created for business owners to travel out of state to purchase these items and avoid our sales tax all together.

I believe this reform is long overdue, and in the aftermath of the *South Dakota v. Wayfair* decision, it comes at a much smaller cost. It is time that we reduce the burden on our citizens and small businesses by creating policy that would focus the efforts of the Tax Department on out of state retailer compliance rather than consumer/ small business usetax submission.

Thank you for your time and I request a Do-Pass recommendation on this bill.

3/13 HB 1158 #2 pg.1

Testimony in Opposition to House Bill 1158
March 13, 2019
Senate Finance and Tax Committee
Bill Wocken on behalf of the North Dakota League of Cities

Good Afternoon Mr. Chairman and members of the Senate Finance and Taxation Committee. For the record, my name is Bill Wocken and I am testifying today in opposition to House Bill 1158 on behalf of the North Dakota League of Cities.

House Bill 1158 seeks to exempt a person from payment of sales and use taxes if tax was not collected on a purchase of less than \$5,000.00. The bill exempts purchases not intended to be used in North Dakota but which were eventually used in a construction project in this state.

This bill opens the door to sizeable reductions in sales and use tax collections. Use tax is paid by a contractor based on the value of items installed in a construction project if sales tax has not been collected on those items. House Bill 1158 exempts materials from the payment of sales or use tax if the retailer does not collect the tax or the materials were originally not purposed for use within the state. The amended bill limits these exemptions to purchases of less than \$5,000.00 but it does not limit the number of \$5,000 transactions which could be exempted for a specific project.

It seems likely a contractor could purchase materials from a location that does not charge sales tax in multiple \$5,000 increments and avoid all sales and use taxes. This would certainly not be helpful to North Dakota or its resident suppliers.

The North Dakota League of Cities is concerned that this bill may have significant unintended consequences for the state. We wonder about the fiscal impacts of this legislation and any effect the bill may have on the streamline sales tax agreements. These concerns move the League of Cities to request a Do Not Pass recommendation for House Bill 1158.