

HB 1309

Madame Chairman and Members of the Committee, my name is Rep. Ben Koppelman and I represent District 16. Thank you for the opportunity to introduce this bill to you committee.

HB1309 is a bill that would relieve contractors of the responsibility to pay *Use Tax* on items that they did not sell or buy. Since the contractor was not a party to the sale (not the buyer nor the seller), it would make sense to me that they should not be responsible for collecting or paying sales or use tax, just because they happened to touch an item. Here are two examples where this hidden tax on contractors might come into play:

- 1) A township, county, or city government buys a culvert or a fire hydrant and is not required to pay sales tax because of their tax-free status. They hire the local dirt and sitework contractor to install the culvert or hydrant. The contractor pays sales tax on all the gravel and other supplies that the contractor purchased to complete the install. The contractor gets paid for the labor and material provided by the political subdivision. After all of this, the state audits the contractor and then assesses the contractor *Use Tax* on the cost of the culvert or hydrant that was purchased by the political subdivision, even though the political subdivision is exempt from sales tax. In this example, the contractor has no way to recoup that money as he was already paid for his services.
- 2) A national restaurant franchise owner, based out of Texas, builds a location in North Dakota. He then purchases \$250,000 of kitchen equipment from a California based equipment supplier, and has it shipped to the North Dakota location. He then hires a North Dakota contractor to unload and install the kitchen equipment for \$6,000. Upon the completion of the install, the franchise owner then opens the restaurant. The contractor is then paid the agreed upon \$6,000. A year later, the tax department audits the restaurant and sees that the California based equipment supplier did not charge or remit sales tax on the transaction. Upon the audit completion, the Tax Department attempts to collect *Use Tax* due from the franchise owner or the equipment vendor, but neither will respond. The

Tax Department then notifies the installation contractor that since the parties to the sale (the buyer and seller) have not paid the **Use Tax** in the amount of \$12,500, that he would have to pay the tax. The installation contractor, which is a small business, then appeals the notice claiming that they were not party to the purchase of the kitchen equipment and have no way to know if tax was paid or not. The Tax Department follows up by informing them that due to the law, they owe the \$12,500 in tax anyway. Thus, a small business that charged \$6,000 to install kitchen equipment now must pay more than double that amount to the government just because they unloaded and installed the equipment.

These examples demonstrate the inequities of the law. It is fundamentally unfair to ask someone to pay a tax on an item that they neither bought nor sold just because the government hasn't successfully collected it from the parties involved. Surely, you would not expect an accountant who prepared an income tax return for a client to pay that clients income tax out-of-pocket just because they prepared the return, would you? The use tax provision that this bill is amending dates back to the early 1980's at a time when the political climate was much different than today. Obviously, this tax policy is inequitable and needs to be changed. I thank you for your time today and would ask that you give this bill a strong **Do-Pass** recommendation.