

TESTIMONY
HOUSE BILL 1513
HOUSE FINANCE AND TAXATION COMMITTEE
CHAIRPERSON CRAIG HEADLAND
JANUARY 30, 2023

Chairperson Headland and distinguished members of the House Finance and Taxation Committee, for the record my name is Stephen P. Astrup, Project and Regulatory Counsel for Hospice of the Red River Valley (HRRV) and I am joined by my colleague, Tracee Capron, Executive Director for HRRV, and Theresa Stahl, Director of Finance for HRRV. We are here today to provide testimony on House Bill 1513 and ask that you give this bill a **DO PASS** recommendation.

For purposes of the State sales and use tax laws, a construction contractor is generally considered a service provider, meaning it – rather than the real property owner for whom it works – is treated as the retail consumer of the building materials it incorporates into real property in performing a construction contract. Therefore, the construction contractor is responsible for paying sales tax or accruing and remitting use tax on purchases of building materials.

In the 2021 Legislative Session and the passage of House Bill 1309, provided that the general responsibility of a construction contractor to remit use tax on building materials in the performance of a contract “does not apply to a contractor...that does not enter into a contract for the purchase of building materials.” N.D.C.C. § 57-40.2-03.3(1). In essence, the Office of State Tax Commissioner has described the change, “[w]hen a contractor completes a labor-only contract, they will not be responsible for use tax on the [building materials] someone else provides that the contractor installs into real property. Sales or use tax is due from the person providing the [building materials].” Sales and Special Taxes Newsletter: 2021 Legislative Recap, N.D. Office of State Tax Commissioner (June 2021).

While the intent of this change was to restore the value of an exempt entity’s sales and use tax exemption in its dealings with a construction contractor, the reality of its positive effect has largely not been recognized in application. Under N.D.C.C. § 57-40.2-03.3(1) as revised in keeping with the Office of State Tax Commissioner’s description, if an exempt entity were to enter into a labor-only contract with a construction contractor, the construction contractor would have no responsibility in the ordinary course to accrue and remit use tax – and, as such, would have no tax cost that it could attempt to recoup from the exempt entity. Meanwhile, the exempt entity would assert its exemption and forgo paying sales tax or accruing and remitting use tax itself on its retail purchases of building materials that it would supply to the construction contractor.

It should be a logical extension of this law that an exempt entity be allowed to leverage its exemption without having to make the purchases of building materials incorporated and necessary in its construction project itself.

House Bill 1513 would help ensure building materials are purchased for an exempt entity's project are free from the taxes their exempt status allows and prevents exempt entities from being burdened with the unnecessary responsibility of having to purchase building materials, and assume the liability of those purchased building materials.

We acknowledge and recognize there is the potential for fraud and abuse in granting a construction contractor the ability to assert an exempt entity's sale and use tax exemption – as such, we would welcome oversight by the Office of the State Tax Commissioner is assuring these concerns are allayed and the integrity of the utilized sales and use tax exemptions will be maintained.

As you know, most nonprofit organizations qualify for exempt tax status. Nonprofit organizations play a vital role in building healthy communities by providing critical services that contribute to economic stability and are often the voice of the people they serve. In an era of growing needs and shrinking government resources, nonprofits are being asked to do more with less, placing an additional strain on their already limited resources. As a result, many nonprofits are starved for the kind of support that strengthen their operations, enable them to deliver their services more effectively and ultimately help create a stronger economy that is good for all sectors.

The passage of House Bill 1513 would allow nonprofit organizations desiring to establish a literal foundational base in North Dakota are allowed to focus on their mission focused initiatives and not on learning how to purchase construction materials. Please give House Bill 1513 a **DO PASS** recommendation.

This concludes my testimony. I am happy to answer any questions you may have. Should you have any questions subsequent to today's hearing, please feel free to contact me via phone (701) 356-1500 or via email at stephen.astrup@hrrv.org.

Respectfully Submitted,

Stephen P. Astrup, Project and Regulatory Counsel
Hospice of the Red River Valley