

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2096

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Operator's Signature

*Yuberead d. Lee*

Date

10-16-03

2003 SENATE FINANCE AND TAXATION

SB 2096

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10-16-03  
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2096

Senate Finance and Taxation Committee

☐ Conference Committee

Hearing Date January 29, 2003

Tape Number	Side A	Side B	Meter #
1		X	2,199-5479
Committee Clerk Signature <i>Mary Kay Wilson</i>			

Minutes:

Senator Urlacher opened the hearing on SB2096. All committee members are present. This bill relates to adopting the streamlined sales and use tax agreement.

Gary Anderson, Division Director for Sales and Special Use Taxes with the Office of State Tax Commissioner (mtr #2215) - SB2096 is a companion bill to SB2095. Written testimony is attached. SB2095 is the guide, SB2096 is what North Dakota has to do. Fiscal note is not correct. State Tax Commissioner requests the committee's favorable consideration of the bill.

Senator Tollefson (mtr #4285) - How could we pass the bill if we don't know the fiscal impact.

Mr. Anderson (mtr #4315) - I have same concerns, and that is why I thought it was important to set out the revenue effect that would be in place if it would be passed. These numbers show you what the future would hold.

Senator Tollefson (mtr #4363) - This seems like a blank check.

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Page 2

Senate Finance and Taxation Committee

Bill/Resolution Number SB2096

Hearing Date January 29, 2003

Mr. Anderson (mtr #4366) - If there are additional changes in the sales tax laws in the legislative session, it may have an effect on the fiscal note. Reference handout that showed legislative tracking of other states (exhibit 1).

Jim Newoutsky, Jamestown Businessman (mtr #4589) - Is neutral on the bill, referred to article by Janell Cole in Bismarck Tribune (exhibit 2). Local businesses lose sales due remote sellers.

Senator Wardner (mtr #4894) - Where is the group representing main street ND? This is a problem. Downtown business people are suffering.

Mr. Newoutsky (mtr #5001) - GNDA does not truly represent retailers.

Senator Urlacher - Testimony in opposition to SB2096

Curley Haugland (mtr #5081) - Wanted to point out the removal of the caps in the fiscal note.

Cities would be favor with removal of the caps. Maybe the Tax Department could give a new estimation.

Senator Urlacher (mtr #5232) - Every concerned entity involved in the makeup phase.

Mr. Haugland (mtr #5279) - Everyone is looking out for their own interest.

Sandy Clark, North Dakota Farm Bureau (mtr #5325) - We appreciate the handling of the tax on farm machinery. Are in support of how that tax was handled. Have a clearer understanding.

Senator Urlacher - Closed the hearing on SB2096.

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2096

Senate Finance and Taxation Committee

☐ Conference Committee

Hearing Date February 3, 2003

Tape Number	Side A	Side B	Meter #
2	X		5,510-6050
Committee Clerk Signature <i>Mary Kay Wilkey</i>			

Minutes:

Senator opened discussion on SB2096. All committee members present. Relates to the streamlined sales tax.

Senator Wardner - Moved a Do Pass on 2096. 2nd by Senator Nichols.

Senator Urlacher (mtr #5583) - Gave general information on SB2096, in favor of moving forward.

Senator Nichols (mtr #5746) - Mr. Haugland talked about sellers in state, but there are more buyers than sellers.

Senator Urlacher - Attorney General's opinion is taht this bill is constitutional. Call the roll.

Roll call vote for Do Pass and rerefer to Appropriations 6 yea, 0 nay, 0 absent.

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*10-16-03*  
Date

**FISCAL NOTE**  
Requested by Legislative Council  
02/13/2003

Amendment to: SB 2096

**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.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues					(\$552,000)	(\$48,000)
Expenditures						
Appropriations						

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

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2. Narrative:** Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

Engrossed SB 2096 changes the state's sales and use tax laws to conform to the streamlined sales and use tax agreement. The definitional changes contained in Eng. SB 2096 are estimated to reduce state revenues by \$600,000 for the 2005-07 biennium. (Note: the amendments that address trade-in allowances do not change the fiscal note.)

**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, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

Name:	Kathryn L. Strombeck	Agency:	Tax Dept.
Phone Number:	328-3402	Date Prepared:	02/14/2003

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10-16-03  
Date

**FISCAL NOTE**  
Requested by Legislative Council  
01/29/2003

**REVISION**

Bill/Resolution No.: SB 2096

**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.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues					(\$552,000)	(\$48,000)
Expenditures						
Appropriations						

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

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2. Narrative:** Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

SB 2096 changes the state's sales and use tax laws to conform to the streamlined sales and use tax agreement. The definitional changes contained in SB 2096 are estimated to reduce state revenues by \$600,000 for the 2005-07 biennium. (Note: the earlier version of this fiscal note assumed an earlier effective date.)

**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, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

Name:	Kathryn L. Strombeck	Agency:	Tax Dept.
Phone Number:	328-3402	Date Prepared:	01/29/2003

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Operator's Signature

Date

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/03/2003

Bill/Resolution No.: SB 2096

**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.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			(\$552,000)	(\$48,000)		
Expenditures						
Appropriations						

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

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2. Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

SB 2096 changes the state's sales and use tax laws to conform to the streamlined sales and use tax agreement. The definitional changes contained in SB 2096 are estimated to reduce state revenues by \$600,000 for the 2003-05 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, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

<b>Name:</b>	Kathryn L. Strombeck	<b>Agency:</b>	Tax Dept.
<b>Phone Number:</b>	328-3402	<b>Date Prepared:</b>	01/28/2003

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Operator's Signature

*10-16-03*  
Date



Date: 2.3.03  
Roll Call Vote #:

**2003 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2096**

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Re Passes and Repeals the Appropriations

Motion Made By Sen. Wardner Seconded By Sen. Nichols

Senators	Yes	No	Senators	Yes	No
Senator Urlacher - Chairman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Senator Nichols	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Senator Wardner - Vice Chairman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Senator Seymour	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Senator Syverson	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
Senator Tollefson	<input checked="" type="checkbox"/>	<input type="checkbox"/>			

Total (Yes) 6 No 0

Absent \_\_\_\_\_

Floor Assignment Senator Urlacher

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

REPORT OF STANDING COMMITTEE (410)  
February 4, 2003 4:22 p.m.

Module No: SR-21-1657  
Carrier: Urlacher  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**  
SB 2096: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends **DO PASS** and **BE REREFERRED** to the Appropriations Committee (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2096 was rereferred to the Appropriations Committee.

(2) DESK, (3) COMM

Page No. 1

SR-21-1657

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Operator's Signature

*10-16-03*  
Date

2003 SENATE APPROPRIATIONS

SB 2096

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Y. Herrera  
Operator's Signature

10-16-03  
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2096

Senate Appropriations Committee

☐ Conference Committee

Hearing Date 2-10-03

Tape Number	Side A	Side B	Meter #
1		XX	0-1088
Committee Clerk Signature <i>Sandra Dawson</i>			

Minutes: Chairman Holmberg opened the hearing to SB 2096. A bill relating to changes to conform ND sales and use tax. (Meter ) Senator Herb Urlacher, District 36: Proposed a late amendment (38187.0101- Exhibit 1) to SB 2096 and ask for the committees assistance to add this amendment to the bill. A copy of the amendment was passed out. (Meter 140) Chairman Holmberg stated there is a companion bill to this. (Meter 167) Gary Anderson, Division Director of Sales and Special Taxes, ND Office of State Tax Commissioner: See written testimony Exhibit 2. (Meter 414) Jerry Hjelmstad, ND League of Cities: Wanted to go on record in support of the bill. On section 2 of the bill relates to city and their ability to levy local sales tax. Understanding the bill is necessary for this bill to be pass in order for ND to conform to requirements to streamline sales and use tax agreement. In ND League of Cities has had a policy of feeling that this type of agreement is important in order to protect our local businesses and at this time not playing at a level playing field and forced to collect a tax that is not being collected on other type of sales, and the local businesses are the ones paying local property tax are

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*10-16-03*  
Date

Page 2  
Senate Appropriations Committee  
Bill/Resolution Number SB2096  
Hearing Date 2-10-03

providing employment in the city.(Meter 495) Chairman Holmberg: clarifies that the bill does not go into effect, gives the cities and local sales tax to adjust without having an impact at the present time. (Meter 511) Sandy Clark, ND Farm Bureau: See written testimony Exhibit 3. No questions were asked. There was a motion of adding the amendment from Senator Andrist and a seconded by Senator Thane. Amendments passed. A motion for a DO PASS as AMENDED was moved by Senator Thane and seconded by Senator Tallackson. Carrier to the floor returned to the Finance and Tax committee to Senator Urlacher. Closed the hearing to SB 2096.

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Operator's Signature

*10-16-03*  
Date

8187.0101

38187.0101  
Title.

Prepared by the Legislative Council staff for  
Senate Finance and Taxation Committee  
February 4, 2003

PROPOSED AMENDMENTS TO SENATE BILL NO. 2096

Page 23, after line 26, insert:

"57-39.5-01.1. Trade-in deduction. When tangible personal property is taken in trade or in a series of trades as a credit or partial payment of a retail sale taxable under this chapter, if the tangible personal property traded in will be subject to gross receipts taxes imposed by this chapter, sales taxes imposed by chapter 57-39.2, or motor vehicle excise taxes imposed by chapter 57-40.3, or if the tangible personal property traded in is used farm machinery or used irrigation equipment, the credit or trade-in value allowed by the retailer is not gross receipts."

Renumber accordingly

Page No. 1

38187.0101

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Date

Amendments

Date:  
Roll Call Vote #:

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

Senate Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass amendments

Motion Made By Andrist Seconded By Grindberg

Senators	Yes	No	Senators	Yes	No
Senator Holmberg, Chairman					
Senator Bowman, Vice Chair					
Senator Grindberg, Vice Chair					
Senator Andrist					
Senator Christmann					
Senator Kilzer					
Senator Krauter					
Senator Kringstad					
Senator Lindaas					
Senator Mathern					
Senator Robinson					
Senator Schobinger					
Senator Tallackson					
Senator Thane					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

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10-16-03  
Date

2096

Date: 2-10-03

Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

Senate Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass w/ amend

Motion Made By Andrist Seconded By Tallackson

Senators	Yes	No	Senators	Yes	No
Senator Holmberg, Chairman	✓				
Senator Bowman, Vice Chair		✓			
Senator Grindberg, Vice Chair	✓				
Senator Andrist	✓				
Senator Christmann					
Senator Kilzer	✓				
Senator Krauter					
Senator Kringstad	✓				
Senator Lindaas	✓				
Senator Mathern	✓				
Senator Robinson	✓				
Senator Schobinger		✓			
Senator Tallackson	✓				
Senator Thane	✓				

Total (Yes) 10 No 2

Absent 2

Floor Assignment F & T w/ Tallackson also carry amendment

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



REPORT OF STANDING COMMITTEE (410)  
February 11, 2003 3:52 p.m.

Module No: SR-26-2336  
Carrier: Uilacher  
Insert LC: 38187.0101 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2096: Appropriations Committee (Sen. Holmberg, Chairman) recommends  
**AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS**  
(10 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). SB 2096 was placed on the Sixth  
order on the calendar.

Page 23, after line 26, insert:

"57-39.5-01.1. Trade-in deduction. When tangible personal property is taken in  
trade or in a series of trades as a credit or partial payment of a retail sale taxable under  
this chapter, if the tangible personal property traded in will be subject to gross receipts  
taxes imposed by this chapter, sales taxes imposed by chapter 57-39.2, or motor  
vehicle excise taxes imposed by chapter 57-40.3, or if the tangible personal property  
traded in is used farm machinery or used irrigation equipment, the credit or trade-in  
value allowed by the retailer is not gross receipts."

Renumber accordingly

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*Yuberead d. Lee*

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10-16-03

2003 HOUSE FINANCE AND TAXATION

SB 2096

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Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2096

House Finance and Taxation Committee

☐ Conference Committee

Hearing Date March 11, 2003

Tape Number	Side A	Side B	Meter #
1	X		0.5
Committee Clerk Signature <i>Janice Stein</i>			

Minutes:

**REP. WES BELTER, CHAIRMAN** Called the hearing to order.

**SEN. DWIGHT COOK, DIST. 34.** Introduced the bill. Gave his comments on both SB 2095 and SB 2096. He stated he signed in as a Senator from Dist. 34 and a business owner and a tax collector. Gave his perspective as a business owner and tax collector. Related to a book he received from the Tax Department which gave him instructions on how to collect and remit sales tax. He stated, besides collecting sales tax for our state, he also had to collect for Minnesota and South Dakota, as he had customers located there. He related to an audit which he was involved in. He stated he paid sales tax money to Minnesota instead of North Dakota. He related to states who do not collect sales tax, stating it is because there are 45 different tax collections in as many different states, and testified there should only be one tax collection for every state.

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Page 2

House Finance and Taxation Committee

Bill/Resolution Number SB 2096

Hearing Date March 11, 2003

**REP. BELTER** The illustration you gave us with the different books, if these two bills were passed, we still wouldn't have any authority to collect the sales tax from the shoe company you related to.

**SEN. COOK** We would not have any authority whatsoever to mandate that shoe company or any other remote seller collects or remits our sales tax. I believe with the burden removed, they will voluntarily do so.

**REP. IVERSON** If this B. A. Mason Company would be located in New York or California, would they be part of this sales tax proposal?

**SEN. COOK** No they would not.

**REP. IVERSON** So, states that don't participate in this, companies could move there if they wanted to, and get around it. They could have nexus in those states and not be part of the streamlined sales tax?

**SEN. COOK** I believe that is correct. One of the latest states that has introduced this type of law, is the state of Montana, a state that does not have a sales tax, also, I believe California and New York are stepping to the table.

**REP. DROYDAL** Asked him to elaborate on the effective date.

**SEN. COOK** It would be January 1, 2006. Personally, I would hope as you deliberate on this bill, that you look at those effective dates and have a discussion with the tax commissioner. There is an extreme benefit, for the way this works, the first ten states, with twenty percent of the population in states that collect sales tax, will allow to form the governance of this process as it moves forward. I think there is a big advantage for North Dakota to be one of them. The implementing date being set where it is, is set to give us some time to work through this process,

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House Finance and Taxation Committee

Bill/Resolution Number SB 2096

Hearing Date March 11, 2003

however, I think it would keep us from being one of the original states. That is a question this committee and this legislative body should deliberate on, as to the merits of that decision.

**REP. DROVDAL** Asked him to respond to North Dakota sovereignty.

**SEN. COOK** Sovereign rights means we are in control. I believe we are fully in control here.

No other state can pass a law which affects what the citizens of North Dakota's taxes are. Maybe an analogy which can best answer that question and let us get a handle on how our sovereignty is, Century Code 39-10-08 in our motor vehicle title, requires every citizen in North Dakota to drive on the right side of the road. We have the sovereign right to change that, so every citizen would have to drive on the left side, but it isn't a smart thing to do. I compare that to sales tax simplification. We have the sovereign right to do what it is we want, but hopefully, we recognize the benefit, especially, with this changing world of commerce we live in which doesn't recognize state boundaries, just like highways don't. I believe we have the sovereign right to implement a simplified sales tax collection.

**REP. WINRICH** In response to the chairman's question regarding what would happen with the shoe company, you said we would not be in a position to mandate that they collect sales tax, even if this passes, however, a number of multistate sellers have volunteered to join in this compact, have they not?

**SEN. COOK** Yes, they have. The tax department could probably shed more light on that.

**REP. KELSH** If we adopted this, or entered into the compact, each state would still be responsible for conducting their own audit?

**SEN. COOK** No, I don't believe that is right. Remote sellers would be subjected to one audit.

**REP. KELSH** Who would be responsible for conducting the audit?

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House Finance and Taxation Committee

Bill/Resolution Number SB 2096

Hearing Date March 11, 2003

**SEN. COOK** Deferred the question to the tax department.

**REP. KELSH** Part of the presentation we saw earlier in the session by the tax department, North Dakota would have a sovereignty as to what was taxed, but would not have the sovereignty or ability to determine what that tax break would be on every product, each state would have to enter into an agreement that all products would have to be taxed at the same rate?

**SEN. COOK** That is misinformation going around. We would determine what our sales tax rate is. One thing we give up, is some flexibility, you will see that in this bill. We will only be able to have one rate. How that affects North Dakota, as we have seven percent on alcohol and three percent on farm machinery, and the rest of our tax rate is five percent. The solution to that is in the bill, when we move alcohol and farm machinery out of the sales tax definition. Each state determines what the sales tax rate is.

**REP. GROSZ** You touched on one of my concerns, holding harmless for the remote tax collector, are you comfortable with the way the bill is written, to hold those people harmless?

**SEN. COOK** Yes, I am comfortable with that. To hold harmless means, you are not going to be subjected to fines and penalties. You are subjected to an audit, to see that the proper tax is remitted to the proper state, but when I was audited, I was also subjected to a fine.

**REP. DAVID DROVDAL, DIST. 39** Testified in support of both SB 2095 and SB 2096. I come before you not only as a legislator but as a business person. I have also had the privilege of representing North Dakota for the last two years on the SSTP project, streamlined sales tax project. I have been filling out tax returns since about 1967. When I first got excited about remote sales, at that time it was catalog sales, I felt that I was not on a level playing field in my business. That is what got me going on the streamlined sales tax project. He stated he was asked

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to buy raffle tickets, and belong to all of the organizations in his community, and yet, he had to compete in these remote sales, all they had to do was send in a picture, and they didn't have to collect sales tax. That was the thorn in his side, then the internet came in and they didn't have to collect sales tax. Related to when he started in the legislature, there were all phone calls, now it is all e-mail. Now, he stated he has probably gotten two dozen phone calls, and a thousand or more e-mails. I got involved in this streamlined sales tax project because of this situation. Gave an explanation of the meetings he attended. He stated several retailers were at these meetings, because they are already doing business in multi states and already have this big burden of administration of the sales tax. The idea at the meetings was to simplify the taxes.

**REP. FROELICH** How will this affect the city of Bismarck with the 6% sales tax and the city of Williston with the 5% sales tax?

**REP. DROVDAL** Each city will have its own, they will be able to determine how much their tax is, or if they have a tax at all. They will follow the guidelines of the city, as far as definition goes, it is their choice. They can only have one rate.

**REP. BELTER** Some cities have a cap, where you only pay so much in sales tax, under this rule, that cap would not exist?

**REP. DROVDAL** That is correct, caps and holidays are not available under these rules. There were different ways we were working to address that, because some cities feel it is important.

**REP. IVERSON** Related to Article 3, section 302, lines 18, 19 and 20, read from the article.

**REP. DROVDAL** Stated that was not true, the cities can charge what they want.

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**REP. WINRICH** Stated the fiscal note is curious since it says there is no fiscal impact, what sort of projections did the committee have and what might be effective when this was implemented. What kind of gain in protective revenue are we anticipating?

**REP. DROYDAL** I am taking it out of the state and local tax revenue losses from e-commerce, it is really hard to justify that. They did come out with projections which were done in 1999, it shows projections in 2001, combined sales and local revenue losses were in 2001, 2006 and 2011. Take this a little bit tongue and cheek, it is not mandated, it is a voluntary system. In 2001, they showed a projected loss of 26.2 million dollars, 2006 76.4 million dollars and 2011 110.2 million dollars. If we wanted to make up that revenue in state tax, it would be about one percent more tax, the North Dakota retailers would have to collect to make up the difference.

**REP. GROSZ** You opened up by saying you wanted to be on a playing field with the catalog and internet sales, but this bill doesn't get you there if we can't mandate those companies collect the sales tax, how does this solve that issue, unless this is the first step of two, where the second step is actually mandating that all states have to go in to this compact and all sellers have to go in.

**REP. DROYDAL** I started out saying that's what got me on board, and I came around about 180 degrees, because I saw what was driving this, was the businesses themselves. If it makes it simpler for big businesses, it also makes it simpler for small North Dakota businesses to understand the system. It doesn't level the playing field on the fact that a lot of businesses will come on voluntarily. This state will never be able to mandate it ourselves, that is out of our control.

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**REP. GROSZ** I think we need some clarification then, if these large companies came to the table voluntarily, to see how the government is going to spend the tax, or did they come to the table because, if it is going to happen they want a say in how its going to happen.

**REP. DROVDAL** I think they were invited to participate. Everybody wanted this to work on a voluntary basis. If they aren't on board, it would never work. They had a vote on the definitions and everything, they were equal partners.

**GARY ANDERSON, DIV. DIRECTOR OF SALES & SPECIAL TAXES, NORTH**

**DAKOTA OFFICE OF THE STATE TAX COMMISSIONER** Testified in support of the bill. See attached written testimony plus streamlined sales tax system, together with a breakdown of the other states involved, and questions and answers relating to the streamlined sales tax system.

**REP. BELTER** Can cities still have their different rates of sales tax?

**GARY ANDERSON** Yes, the provision that Rep. Iverson was looking at, refers to common tax base. That is not the same as common tax rate. Tax base is the items you base your tax on. Tax rates is in a section on the following page. Cities have the ability to apply their own separate tax rate, but it indicates they have to have one tax rate. Grand Forks is the only city that currently has two tax rates. They have a one and three quarters percent and a quarter percent for restaurant, alcohol type entertainment tax, which they would have to bundle together with this bill. This will not change anything.

**REP. BELTER** For instance, if you buy a car in Fargo right now, the city sales tax is capped at \$25, if this passes, that cap would be removed, when you start talking about \$30,000 cars, thats a lot of money, now we are in a situation where, Fargo will have to figure out, is there such a way,

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where Fargo will have to say, we are not going to tax cars, or another scenerio is, we will have to develop some type of refund thing, which will create a lot of work for the taxpayer and the car dealer to get your money back?

**GARY ANDERSON** The car is not the best situation, because they are subject to the excise tax law, and that law is not affected by this agreement. This applies only to the North Dakota Sales & Use Tax Law.

**REP. BELTER** Let's use furniture.

**GARY ANDERSON** If you buy \$5,000 of furniture, and you pay one percent, you will pay \$50 on that. The city has an option, those are discussions the cities are having right now. They have to look at the fact, do they keep that \$50 or do they work some revenue neutral percentage, or do they look at a refund process. In the situation regarding large purchases, it will probably affect more of the larger cities in North Dakota. In the small communities, I am questioning that there will be a lot of sales over \$2,500. The implement dealer may already be exempt in those small communities.

**REP. KELSH** Sen. Cook said Montana didn't have a sales tax, why are they even joining the compact, if they don't have a sales tax?

**GARY ANDERSON** I don't have the answer. I am assuming one of the things that would be driving that is, Montana like most states, are experiencing budget shortfalls, they have looked at the sales tax in the last two or three sessions, they continue to look at that, it may be that somebody is looking ahead.

**REP. KELSH** Who is responsible for the auditing?

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**GARY ANDERSON** It still leaves a lot of responsibility on the state. We have main street businesses, which we will be auditing their businesses. We have out of state companies holding permits, those companies are not part of the agreement, they continue to be bonded by us. Part of the process of removing the \_\_\_\_\_ here is that the large remote sellers, provide an opportunity to move that responsibility to a third party, called a certified service provider. It would take away from that company of having to deal with the tax application at all. When you order something over the internet, when you punch in that order, it goes directly to the third party provider, who has the software to determine what the tax rate is, if it is taxable or not, what is the tax rate in each state or city, then it sends it back with your order. When you issue the payment with your credit card, the third party actually handles the money.

**REP. KELSH** Are you saying, there wouldn't be anymore audits, there would be a clarification process through a third party provider and that would be it?

**GARY ANDERSON** There would be audits of the third party provider or the remote sellers who are participating in it, and main street business who continue to have representation in North Dakota. We would still audit some of the remote sellers, that would probably be more restricted. There is nothing that would preclude North Dakota from auditing a remote seller. It would reduce the cost of auditing.

**REP. GROSZ** Your testimony in regard to the fiscal note, it was estimated that all state and local sales and use losses for internet sales in North Dakota in 2002, would reach 22 million and all remote sales ranged from 17 million to 50 million, however, the fiscal note showed no fiscal effect. Is this a way to increase taxes on people, or if everyone is paying through the use tax now, so there wouldn't be a fiscal effect?

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**GARY ANDERSON** In terms of increasing taxes on taxpayers, actually what the streamlined sales tax would do, in terms of bringing sellers to the table, the law already provides, and those taxes should be collected and paid. Right now the retailer should be collecting and paying, and if they don't the customer has a responsibility to pay it to the state. Right now, the tax being lost to the state, is not a tax increase, it is simply escaping right now.

Mr. Anderson went on to testify in support of SB 2096 at this point. See attached written testimony. Also read from the Attorney General's Opinion. Referred to the streamlined sales & use tax agreement page 40.

**REP. SCHMIDT** Referred to Section 23, there is an excise tax on sand & gravel, do we tax that now?

**GARY ANDERSON** Yes, we do. If you are buying sand and gravel, you have to pay a tax on the cost of that. If you own the land and you are a contractor, and you are taking sand and gravel from your own land, what that provision is speaking to, is that you would tax on 8 cents per ton, and that is the tax that would apply.

**REP. SCHMIDT** Stated he had someone in his district who owns a gravel pit, he was wondering why the state didn't charge sales tax on gravel. He does not know this.

**GARY ANDERSON** If he is a large producer of gravel and sells it, we probably have run into his customers more then him, I would be glad to visit with him and advise him. If he is selling it to the county or the township, it is exempt from the sales tax.

**CALVIN ROLFSON ON BEHALF OF THE NORTH DAKOTA RETAIL**

**ASSOCIATION** Testified in support of SB 2095 and SB 2096. See written testimony.

**CONNIE SPRYNCYNATYK, REPRESENTING THE NORTH DAKOTA LEAGUE OF**

**CITIES** Testified in support of the bill with some concerns. Submitted a handout relating to State Legislatures streamlining sales taxes. She stated the National League of Cities represents all 18,000 cities and towns across the country. She stated there is a league in each state, and they got together recently in regard to legislative action. She said she felt very proud that North Dakota is one of two, three or maybe four states that does not have a deficit. The smallest deficit was one billion dollars. In California it is something like thirty billion dollars. This streamlined sales tax project, will not get at that issue. It may allow the state to raise the same amount of revenue, and it may plug the leaks you have been hearing about, that will also be true for the cities. There are some issues regarding redemptions, which will have to be dealt with. There is the current cap that is missed in the community, however, there are mechanisms to get around that, possibly a rebate process, such as Canadians and Montanans do right now. The biggest issue is the local sales tax which is currently authorized under home rule. We will have to figure out how to get into the home rule charter. Having said that, we are still in favor of the bill.

With no further testimony, the hearing was closed.

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2096

House Finance and Taxation Committee

☐ Conference Committee

Hearing Date March 24, 2003

Tape Number	Side A	Side B	Meter #
1	X		17.6
Committee Clerk Signature <i>Janice Stein</i>			

Minutes:

**COMMITTEE ACTION**

**REP. GROSZ** Presented amendments # 38187.0201 to committee members.

These amendments would put the effective date at 2005 or when Congress allows the agreement with remote sellers, whichever is later.

**REP. WINRICH** Stated he would oppose the amendment, the streamlined sales tax implementation has many benefits for North Dakota merchants as well as attempting to capture some of the taxes that are due but not collected under current law. This is an attempt to put off implementation and implementation is not going to occur until after another legislative session anyway.

**REP. IVERSON** We cannot do it unless congress says we can, I will support the amendment.

**REP. DROVDAL** Stated we cannot collect out of state remote sales unless Congress says we can do it. This agreement just runs around it. This will take us away from the table.

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House Finance and Taxation Committee

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**REP. GROSZ** Made a motion to adopt the amendment as presented.

**REP. IVERSON** Second the motion.

**REP. SCHMIDT** Asked Rep. Grosz, if this amendment passes, this bill would not become law unless the federal government acts.

**REP. GROSZ** that is correct, if we pass SB 2095, we are still on the table, with SB 2096, we will keep our current tax code in tact until Congress acts.

**REP. SCHMIDT** Do we know that the U. S. Congress will enact this?

**REP. GROSZ** Stated he was not sure, as they just renewed the moratorium. It is my hope they never remove it.

**REP. WINRICH** The moratorium to which Rep. Grosz refers, is a moratorium on the taxation of internet access. It is not a moratorium on the collection of sales tax from remote sellers.

**MOTION FAILED TO ADOPT THE GROSZ AMENDMENTS.**

**REP. DROVDAL** Made a motion for a DO PASS

**REP. CLARK** Second the motion.

**REP. DROVDAL** Stated SB 2096 is not about remote sales tax collection. It is about our tax code in North Dakota. We established our tax codes back when there was only one entity that collected sales tax, and that was the state of North Dakota. We have since authorized a number of tax entities that can do tax codes. We are pretty lucky in North Dakota that they are following our lead on definitions and requirements. Our system is not friendly to our state, that is what SB 2096 does, it turns it around. The input is from businesses, how it can be business friendly, they are collecting for it. Gave an explanation of what retailers go through with the current system.

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**REP. BELTER** Responded, stated we do have the authority within the state to correct some of those problems. He felt that if we adopt SB 2096, we lose control. We become subjects of a group which is out of our control.

**REP. FROELICH** Referred to Page 11, line 5, asked whether everything is taxed

**RICK CLAYBURGH STATE TAX COMMISSIONER** Was in the room, responded to the question stating it is the current definition only a cleaner definition.

**REP. BELTER** Asked why the fiscal note shows a reduction of \$600,000 to state revenues.

**RICK CLAYBURGH** Some of the definition changes of the code, is regarding shipping issues plus a couple other refinements and they have offsets. He said for a more detailed answer, Gary Anderson, State Tax Department Staff would answer it.

**GARY ANDERSON, DIRECTOR OF SALES & SPECIAL TAXES, STATE TAX**

**DEPARTMENT** Answered, stating there were only a couple of areas which were affected by this bill. It will not be the next biennium, but the following biennium which will be affected. Gave a breakdown of the different items which would be taxable and which would not be taxable, gave the amounts which would change the revenues and why there could be a reduction of up to \$500,000 to \$600,000. He stated, if the streamlined agreement makes a recommendation of a definition, and this body does not care for it, you can back out of the streamlined agreement. If you look at the agreement, there aren't that many definitions which were created. North Dakota doesn't have many definitions that require changes, because North Dakota is consistent with most of the definitions they refined. It took three years to arrive at these definitions.

**REP. BELTER** Electricity isn't taxed?



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Hearing Date March 24, 2003

**GARY ANDERSON** Basically, it is carved out. You can do what you want with electricity, or mobile homes or motor vehicles, etc. Those are items that are carved out, you can do what you want with them.

**REP. GROSZ** Asked about the administrative rule process.

**GARY ANDERSON** As an administrative tax, I don't see a problem. A list is sent out which is taxable and not taxable.

**REP. GROSZ** Asked if water was taxed.

**GARY ANDERSON** Right now in North Dakota, water is taxable if purchased in containers less than a gallon. What the streamlined definition does, it moves water into the definition of food, and food products are exempt.

**MOTION FOR A DO PASS CARRIED** 7 YES 5 NO 2 ABSENT

**REP. DROVDAL** Was given the floor assignment.

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Date

Date: 3-24-03  
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2096

House FINANCE & TAXATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Rep. Drovdal Seconded By Rep. Clark

Representatives	Yes	No	Representatives	Yes	No
BELTER, CHAIRMAN		<u>L</u>			
DROVDAL, VICE-CHAIR	<u>L</u>				
CLARK	<u>L</u>				
FROELICH	<u>L</u>				
GROSZ		<u>L</u>			
HEADLAND		<u>L</u>			
IVERSON		<u>L</u>			
KELSH	<u>A</u>				
KLEIN	<u>L</u>				
NICHOLAS	<u>A</u>				
SCHMIDT	<u>L</u>				
WEILER		<u>L</u>			
WIKENHEISER	<u>L</u>				
WINRICH	<u>L</u>				

Total (Yes) 7 No 5

Absent 2

Floor Assignment Rep. Drovdal

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

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Operator's Signature Date

REPORT OF STANDING COMMITTEE (410)  
March 24, 2003 1:28 p.m.

Module No: HR-52-5562  
Carrier: Drovda  
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE  
SB 2096, as engrossed: Finance and Taxation Committee (Rep. Belter, Chairman)  
recommends DO PASS (7 YEAS, 5 NAYS, 2 ABSENT AND NOT VOTING).  
Engrossed SB 2096 was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-52-5562

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2003 TESTIMONY

SB 2096

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10-16-03  
Date

**Testimony before the Senate Finance and Taxation Committee  
Senate Bill 2096**

January 29, 2003

Prepared by Gary Anderson, Division Director of Sales & Special Taxes  
North Dakota Office of State Tax Commissioner  
Phone: 328-3471  
E-mail: [ganderson@state.nd.us](mailto:ganderson@state.nd.us)

Chairman Urlacher and Members of the Senate Finance and Taxation Committee.

**Introduction**

My name is Gary Anderson. I am the Division Director for Sales and Special Taxes, and I am here representing the North Dakota Office of State Tax Commissioner. Senate Bill 2096, which is a companion bill to Senate Bill 2095, is introduced at the Tax Commissioner's request.

**Purpose of bill**

Senate Bill 2096 provides for the changes in the tax laws that are necessary to bring North Dakota into compliance with provisions of the Streamlined Sales and Use Tax Agreement.

**Bill's provisions**

The bill amends existing law, creates new sections of law, and also creates new chapters of law. Although the effective date identified for this bill is after the 2003-2005 biennium, I will provide the committee with an approximate revenue impact relative to those sections of the bill that would affect state revenues as if the bill would be effective after June 30, 2003.

Section 1 of the bill amends the home rule provisions for a county by requiring that the county's sales and use tax base must be identical to the state's sales and use taxes

base; that a county may not impose more than one sales and use tax rate; that the imposition of a county tax or changes in the county tax occur on the first day of a calendar quarter after a minimum of ninety days notice to the tax commissioner; that no caps or thresholds may be applied to a sales transaction; and that the state tax commissioner be responsible for the collection of county sales and use taxes. Currently, the state tax commissioner provides administratively that the imposition of county sales and use taxes occur on the first day of a calendar quarter after a minimum of sixty to ninety days notice to the tax commissioner. The state tax commissioner currently oversees the administration for both of the counties imposing a county sales and use tax at this time. Neither county that currently imposes a sales or use tax applies multiple tax rates. The counties would have to remove any special exemptions they have in place in order to become identical to the state's tax base, and they would have to remove the threshold that currently exists on individual sales transactions under the provisions of Section 1.

Section 2 of the bill amends the home rule provisions for a city in the same manner as that described for a home rule county. All of the cities currently imposing a sales and use tax currently contract with the state tax commissioner. One of the 100 cities currently impose a multiple sales and use tax rate, which would not be allowed after December 31, 2005. In addition, those cities having special exemptions would have to remove these exemptions and maintain a tax base identical to the state's tax base, as well as removing the threshold that currently exists on individual sales transactions. The provisions of Section 2 do not impact the cities lodging and restaurant taxes provided under chapter 40-57.3.

Section 3 of the bill would make it mandatory that a city or county enter into a contract with the state tax commissioner to administer the tax laws. Existing law allows cities and counties to enter into an agreement with the state tax commissioner at their choosing. As indicated, all cities and counties currently imposing a sales and use tax contract with the state tax commissioner.

Section 4 of the bill creates or amends definitions for terms that are used in the sales tax law and include:

- (a) certified service provider
- (b) delivery charges
- (c) drug
- (d) farm machinery
- (e) farm machinery repair parts
- (f) gross receipts
- (g) lease or rental
- (h) prescription
- (i) retail sale or sale at retail
- (j) sales tax
- (k) tangible personal property

Under existing sales and use tax law, delivery charges are taxable in instances where title or possession is passed to the customer at destination. Sales and use tax does not currently apply to those transactions where titles to goods pass to the customer prior to actual delivery of the goods, meaning the customer owns the goods prior to shipment and is responsible for any losses incurred. Approximately two-thirds of the delivery

charges are currently subject to sales or use tax if the goods being purchased are also taxable. The definition of "gross receipts" includes the term delivery charge. This means that because the imposition of sales tax is on the gross receipts that all of the delivery charges would be subject to tax. The Streamlined Sales and Use Tax Agreement provides an option to include or exclude delivery charges from the definition of gross receipts. We have included delivery charges in the gross receipts, which would result in a positive revenue impact of approximately \$419,250 if the bill's effective date was after June 30, 2003, instead of the actual effective date after December 31, 2005.

Section 5 of the bill amends the imposition section by removing reference to farm machinery and irrigation equipment. It adds language to address the taxability of sales, leases or rentals of computer software and prewritten software and it provides for a housekeeping provision that repeals the language in subsection 3 that is no long relevant. Although definitions were added to define and reflect the imposition of sales tax on computer software and prewritten software, this is not an expansion of the sales tax law but a clarification that is provided by the Streamlined Sales and Use Tax Agreement. The sale of computer software and prewritten software has always been subject to North Dakota sales tax as a sale of tangible personal property.

Section 6 of the bill amends the language that pertains to an exemption on sales of prescription drugs for purposes of clarification.

Section 7 of the bill creates an exemption for the sale of motor vehicles, farm machinery, and alcoholic beverages. The reference to motor vehicles is simply a clarification, as motor vehicles are also addressed in subsection 13 of 57-39.2-04 of the sales tax exemption statute. However, the addition of farm machinery and alcoholic



beverages to the list of items exempt from sales tax is caused by the need to address the multiple sales tax rates that currently applies to both of these items under existing sales and use tax law. The Streamlined Sales and Use Tax Agreement does not allow multiple sales and use tax rates with the exception of a few specific items such as natural gas and new mobile homes. Because this exception did not include farm machinery or alcoholic beverages, Senate Bill 2096 addresses this concern by creating special "gross receipt" taxes that would apply on these two items at a rate equal to the current sales tax rate applying to each. These gross receipt taxes will be discussed later in my testimony.

Section 8 of the bill represents a housekeeping action. The existing language of the law is confusing and is continually misinterpreted by the reader. The proposed amendment clarifies the intent of the law.

Section 9 of the bill amends the existing exemption that applies to artificial devices individually designed and used by a disabled person, as well as addressing exemptions for additional items that are used as corrective devices for a portion of the body or equipment necessary for the use by disabled persons. The amendments add clarifying language this is representative of definitions provided by the Streamlined Sales and Use Tax Agreement. The terms "durable medical equipment, mobility-enhancing equipment, and prosthetic device" have been added to provide clarification in identifying the types of equipment and devices that are exempt. The terms, with the exception of repair and replacement parts, do not change the exemption provided. Because repair and replacement parts for these devices are currently taxable under existing law, there would be a revenue loss that would result by including the repair and replacement parts. In many instances the purchase of these repair and replacement parts are covered by

government payments. If the effective date of Senate Bill 2096 was after June 30, 2003, the estimated revenue loss would be less than \$5,000 for a biennium.

Section 10 of the bill amends the existing exemption in the sales tax law that applies to used farm machinery and farm machinery repair parts. Based on the explanation provided for the changes occurring in Section 7 of the bill, the changes again simply reflects an exemption for the sale or lease of all farm machinery and farm machinery repair parts in the sales tax law used for agricultural purpose.

Section 11 of the bill amends the existing exemption in the sales tax law that applies to food and food products. The language is amended to bring these terms into compliance with the definitions set out in the Streamlined Sales and Use Tax Law. The effect of these changes include:

- (a) the redefining of food and food products to read "food and food ingredients," which would include water, powdered drink mixes, coffee and coffee substitutes, tea, cocoa products, soft drinks containing greater than fifty percent fruit juice and products that were previously defined as candy but contain flour and do not require refrigeration (i.e., Trix bars, licorice. Water in quantities of less than a gallon, powdered drink mixes, coffee, and coffee substitutes, tea, cocoa products, soft drinks containing greater than seventy percent fruit juice and products previously identified as candy but containing flour are currently taxable. By including them in the food and food ingredients, a revenue loss is realized. The anticipated revenue loss if the bill's effective date was after June 30, 2003 on from sales of candy products that include flour and require no refrigeration

would be approximately \$162,500, on soft drinks that contain less than 50% fruit juice would be approximately \$65,000, and on other beverages as coffee, tea, cocoa products and water the anticipated revenue loss would be approximately \$487,500.00.

- (b) Clarification is provided by the use of the term "prepared food" which is defined by this section as (1) food sold in a heated state or heated by the seller; (2) two or more food ingredients mixed or combined by a retailer for sales a single items (excludes the manufacture and subsequent sale of products by bakeries, meat markets, etc); and (3) food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, and straws. Existing law currently regards all of these items to be subject to sales tax.

Section 12 of the bill amends the bad debt provision that applies to the seller of the tangible personal property. The existing bad debt provision is in compliance with the Streamlined Sales and Use Tax Agreement in respect to the seller's ability to receive a bad debt allowance. The amendment extends the authority to claim a bad debt to the certified service provider on behalf of the retailer they have contracted with to collect and report taxes. It should be noted that existing law and the proposed law does not extend the authority to claim a bad debt to any other third party.

Section 13 of the bill removes the bracket system currently used in determining the sales tax to apply on a sales transaction and instead provides the calculation of sales taxes on a transaction by calculating the tax to three decimal places and then rounding to the nearest whole cent as provided by the Streamlined Sales and Use Tax Agreement. If

the third decimal place were greater than four, the tax would be round up an additional cent of tax. It should be noted that many retailers utilizing electronic cash registers are ignoring the responsibility to use a bracket system and use the rounding process to determine tax. The costs to reprogram this equipment during rate changes, which includes city sales tax changes, becomes costly for the retailer as often times a service provider must complete the necessary programming changes. However, with the use of rounding, the necessary programming can be completed by the seller at no additional cost. Because we have often found retailers resorting to the rounding method, it is anticipated that there will not be a revenue impact from this proposed change.

Section 14 of the bill amends the administrative provisions for the registration of sales taxes to allow for a person registering to do so electronically and without a requirement to provide a signature. A recommendation include in the Streamlines Sales and Use Tax Agreement. It further provides that a remote seller voluntarily registering under the provisions of the Agreement and who does not have a physical presence in this state, will not create a responsibility for other taxes.

Section 15 of the bill defines the "sourcing" of purchases (where title passes) where the items purchased in one sales transaction may be directed to many different taxing jurisdictions. The Streamlines Sales and Use Tax Agreement references the use of a "multiple point of use" exemption allowing a seller to purchase the items tax free and then places the responsibility on the seller to remit the appropriate state and local sales and use taxes directly to the state once the deliveries have occurred. This is similar to the direct pay process used by large businesses having many purchases. They are currently

allowed under existing sales tax law in this state to purchase tax-free and then self-report their purchases directly to the state tax commissioner.

**Section 16** of the bill creates a specific provision for a conditional sales contract. This is not an addition to the sales tax law, as this same language was previously located in the definition of "gross receipts" (reference Section 4 of the bill). Because the definition of gross receipts was amended in Section 4 of the bill to be consistent with the language provided by the Streamlined Sales and Use Tax Agreement, the language was deleted and reinserted as a new section of the sales tax law, as provided by Section 16 of the bill.

**Section 17** of the bill creates a new provision of the law that provides a seller and a certified service provider with limited immunity from civil liability for collecting an incorrect amount of sales tax in instances where they might receive incorrect information from the tax commissioner regarding state and local tax rates, boundaries for local taxing jurisdictions, and taxing jurisdiction assignments. This provision is necessary to be in compliance with the Streamlined Sales & Use Tax Agreement.

**Section 18** of the bill creates a new provision that outlines the requirements of a certified service provider to maintain the confidentiality of information that may be obtained in providing their services to retailers. This provision is necessary to be in compliance with the Streamlined Sales & Use Tax Agreement.

**Section 19** of the bill creates a new tax chapter in the North Dakota Century Code. This new tax chapter is in response to the need to eliminate multiple tax rates as provided by the Streamlined Sales and Use Tax Agreement. In this case, the new chapter imposes a gross receipts tax of 3% on new farm machinery, and continues to provide an

exemption on used farm machinery and farm machinery repair parts. The new chapter carries over the replacement credit on new machinery that is stolen or destroyed, and also provides for the administration of the gross receipts tax in a manner similar to that previously provided for under the sales tax law. From both the customer and retailers point of view, the implementation of the gross receipts tax will be identical to the sales tax application. Basically the only change will involve a name change on the reporting form.

Section 20 of the bill also creates a new tax chapter in the North Dakota Century Code. This new tax chapter is in response to the need to eliminate multiple tax rates as provided by the Streamlined Sales & Use Tax Agreement. In this case, the new chapter imposes a gross receipts tax of 7% on the sale of alcoholic beverages. Like Section 19, this new chapter provides for the administration of the gross receipts tax in a manner similar to that previously provided for under the sales tax law. From both the customer and retailer's point of view, the implementation of the gross receipts tax will be identical to the sales tax application. Basically the only change will involve a name change on the reporting form. No programming or administrative changes by any of the parties involves, including the state tax commissioner will be required.

Section 21 of the bill amends the definition of "purchase price" in the use tax law. The definition is consistent with the definition provided by the Streamlined Sales & Use Tax Agreement.

Section 22 of the bill recognizes use tax under the home rule provisions for city and county.

Section 23 of the bill creates a new section regarding the imposition of sand and gravel, which was previously defined by similar language in the definition of "purchase price."

Section 24 of the bill amends the reference of applicable tax law as it applies to lease or rental.

Section 25 of the bill repeals reference to alcoholic beverages as taxable items under the sales and use tax laws.

Section 26 of the bill provides for an effective date after December 31, 2005.

#### Closing

The Tax Department did prepare a fiscal note for this bill. It is the department's opinion that Senate Bill 2096 will not have a fiscal effect for the 2003-2005 biennium, as the effective date of Senate Bill 2096 is after December 31, 2005.

Page 40 of Section VIII of the Streamlined Sales and Use Tax Agreement addresses entry by a state into the Agreement. It states in part, "... a state may apply to become a party to the Agreement by submitting a petition for membership and certificate of compliance to the governing board. . . The petitioning date of entry shall be a date on which all of the provisions necessary for the state to be in compliance with the Agreement are in place and effective." (As a note of reference, the governing board would be composed of representatives of those states that are in compliance with the Streamlined Sales and Use Tax Agreement. The governing board would administer the Agreement; that is they would be responsible for dealing with administrative questions concerning the Agreement, providing interpretations of the Agreement, and amending the provisions of the Agreement.)

Senate Bill 2095 would adopt the Streamlined Sales and Use Tax Agreement, and as mentioned during my testimony of Senate Bill 2095 will provide a guide for the state now and for the future in defining the areas of uniformity and areas of administrative efficiencies that would have to take place in order for North Dakota to become compliant with the Streamlined Sales and Use Tax Agreement. Senate Bill 2096 is the actual legislation that will provide the necessary changes in the state's tax laws to bring them into compliance with the Agreement after December 31, 2005. There are provisions in the Agreement that indicate that should the state make the necessary changes after June 30, 2003 and the local taxing jurisdictions after December 31, 2005 that a state may petition for entry prior to December 31, 2006.

The Tax Commissioner requests the committee's favorable consideration of this bill. Mr. Chairman, if the committee has any questions, I would be happy to respond to them at this time.



Exhibit 1

**2003 Streamlined Sales Tax Legislative Tracking**  
(Updated 01/28/03)

State	Year	Population	State Action	Comments
Alabama	2003	4,447,100	Drafting legislation	
Arkansas	2003	2,679,733	Drafting legislation	
Florida	2003	16,028,890	Drafting legislation	1-16-03 Senate Committee on Finance & Taxation Project Report recommending Florida come in to compliance
Idaho	2003	1,297,274	Sen. Andreason Drafting legislation	Legislative Hearing - Boise, 01/15/03
Illinois	2003	12,439,042	Sen. Rauschenberger	
Indiana	2003	6,090,782	Drafting legislation Sen. Borst	SB 0465 and HB 1815 have been introduced
Iowa	2003	2,926,300	Drafting legislation	
Kansas	2003	2,693,824	Drafting legislation Sen. Corbin	
Kentucky	2003	4,041,800	Drafting legislation	
Maine	2003	1,274,923	Drafting legislation	
Maryland	2004	5,307,886	Sen. Hogan & Del. Hixson	
Michigan	2003	9,955,829	Drafting legislation	
Missouri	2003	5,595,211	Drafting legislation	
Montana	2003	902,195	Sen. Kitzenberg	SB 224 to create a sales tax wing SSTIS Agreement
Nebraska	2003	1,715,369	Drafting legislation Sen. Landis	Introduced LB 282 Hearing on 01/24/03
Nevada	2003	1,998,257	Drafting legislation	

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State	Year	Population	State Sponsor	Hearings / Events
New Jersey	2003	8,424,354	Drafting legislation	
North Carolina	2003	8,067,673	Drafting legislation	
North Dakota	2003	643,756	Drafting completed Office of State Tax Commissioner	Introduced in two bills
Ohio	2003	11,353,100	Drafting legislation	
Oklahoma	2003	3,458,819	Drafting legislation Sen. Monson, Rep. Pope	
Pennsylvania	2003	12,300,670	Drafting legislation Rep. Stell	
South Carolina	2003	4,025,061	Drafting legislation	
South Dakota	2003	756,874	Drafting legislation Sen. McCracken, Rep. Smidt	Leg. Hearing - Pierre - 01/16/03 Bill introduced
Tennessee	2003	5,700,037	Drafting legislation Sen. Clabough	
Texas	2003	20,903,994	Drafting legislation Sen. Fraser, Sen. VandePutte	
Utah	2003	2,236,714	Drafting legislation Sen. Hillyard / Rep Harper	
Virginia	2004	7,100,702	Drafting legislation Sen. Hangar	Expected to pass resolution of intent for 2004
Washington	2003	5,908,684	Drafting Completed	
West Virginia	2003	1,813,077	Drafting legislation Del. Doyle	Leg. Hearing to educate Charleston - 01/28/03 (NCSL attending)
Wisconsin	2003	5,371,210	Drafting legislation Rep. Lehman / Sen. Panzer	

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State	Year	Population	State Source	Accession Number
Wyoming	2003	495,304	Drafting legislation Sen. Hines	

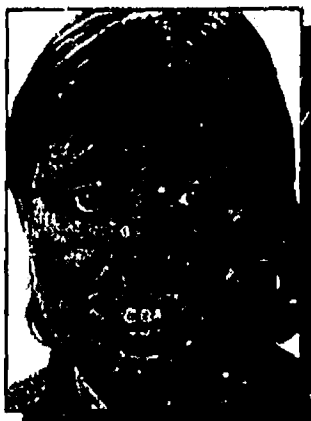
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10-16-03  
Date

# It's time to use or lose the 'use tax'

BISMARCK — North Dakota legislators are sure North Dakotans don't want higher taxes or



Janell  
Cole

new taxes. Lawmakers have been pledging we'll get through our revenue shortage without resorting to either.

OK, then, let's get it from an old tax. A really old tax — so old most of us don't know it exists.

The Tax Department says the state treasury loses an estimated \$12- to \$20-million a year in

uncollected use taxes. That's \$24 million to \$40-plus million per biennium or about enough to run the offices of the governor, secretary of state, the legislative branch and the School for the Blind for two years.

It's almost enough for the governor's proposed teacher compensation increase and about double the shortfall in human services.

The use tax has been on the books since 1939, more than 63 years.

It says if you buy something in another state that has no sales tax or a lower sales tax than North Dakota, when you use it here, you are obligated to send the North Dakota tax commissioner the sales tax you would have paid if you had bought it here. That goes for purchases in the four states with no sales tax and Internet or mail order purchases. If you buy something in a state with a lower sales tax than ours, you're supposed to pay North Dakota the difference.

The state collects substantial use tax through business-to-business transactions and audits of businesses, but takes in next to nothing from individuals.

But it's no wonder we're all a bunch of scofflaws. The method of collecting use tax from individual North Dakotans is absolutely laughable. Buried in your state income tax instructions is an obscure notice that you should call the Tax Department and ask for the form if you think it might apply to you. Hahahahaha. See, I told you it was laughable.

You can also get the form at [www.state.nd.us/taxdpt/salesanduse/forms/use-tax.pdf](http://www.state.nd.us/taxdpt/salesanduse/forms/use-tax.pdf).

In a recent year, 57 people submitted individual use tax returns and paid \$16,000. The running joke is that all 57 work at the Tax Department.

No one suggests a big crackdown on individual use tax collections. But some legislators have suggested before that we put a line on the income tax form asking people to declare use tax owed. One was Sen. Aaron Krauter, D-Regent, who told us a few years ago he believes most North Dakotans would comply. Then educate us with public service announcements and other low-cost methods. Even if only half of us comply (as with seat belts), that's still substantial money.

A few days ago, we approached the interim taxation committee chairman, Sen. Rich Wardner, R-Dickinson, and the new Senate Appropriations chairman, Sen. Ray Holmberg, R-Grand Forks, with the idea. Both said a campaign to collect use taxes isn't anything they've previously thought about.

Maybe legislators should ask themselves, "Is there a way to collect this? And if we aren't (doing it), why is it there?" Holmberg said.

Wardner was surprised to hear the estimated loss the state is suffering.

"If we had it we wouldn't have a shortfall," he said. And he said lack of enforcement creates an unfair advantage for out-of-state sellers over North Dakota businesses.

"If we're not going to enforce it, let's get rid of it," he said. "But we still need to look at collecting this."

(Cole is the Sun's Capitol correspondent in Bismarck)

Exhibit 2  
Page 1062

*Yuberead d. Lee*  
Operator's Signature

10-16-03  
Date

## **North Dakota Loses Estimated \$12 to \$20 Million Dollars in Uncollected Taxes Each Year**

**That almost covers the Governor's  
proposed teachers compensation  
increase and about double the  
shortfall in Human Services**

***That's \$24 to \$40 Million per Biennium***

For over 63 years, since 1939, the 'use tax' has been on the books. The State collects substantial 'use tax' from business-to-business transactions but next to nothing from individuals. In a recent year 57 people submitted 'use tax' returns and paid \$16,000. *The joke is that all 57 of those people worked at the Tax Department.* Even if only half of us comply (as with seat belts), that's still a substantial money.

## **It's Time to Use or Lose the 'Use Tax'**

*Exhibit 2*

**Testimony before the Senate Appropriations Committee  
Senate Bill 2096**

February 10, 2003

Prepared by Gary Anderson, Division Director of Sales & Special Taxes  
North Dakota Office of State Tax Commissioner  
Phone: 328-3471  
E-mail: [ganderson@state.nd.us](mailto:ganderson@state.nd.us)

Chairman Holmberg and Members of the Senate Appropriations Committee.

**Introduction**

My name is Gary Anderson. I am the Division Director for Sales and Special Taxes, and I am here representing the North Dakota Office of State Tax Commissioner. Senate Bill 2096, which is a companion bill to Senate Bill 2095, is introduced at the Tax Commissioner's request.

**Purpose of bill**

Senate Bill 2096 provides for the changes in the tax laws that are necessary to bring North Dakota into compliance with provisions of the Streamlined Sales and Use Tax Agreement.

**Bill's provisions**

The bill amends existing law, creates new sections of law, and also creates new chapters of law. Although the effective date identified for this bill is after the 2003-2005 biennium, I will provide the committee with an approximate revenue impact relative to those sections of the bill that would affect state revenues as if the bill would be effective after June 30, 2003.

**Sections 1 and 2: Amend county and city home rule provisions**

- Requires local and state tax base to be identical
- Limits each city or county to one local rate and eliminates caps and thresholds
- Requires Tax Commissioner's Office to administer all local taxes
- Requires cities and counties to provide adequate notice to Tax Commissioner regarding changes or new local taxes.
- Allows new local taxes or rate changes to take effect only at the beginning of a calendar quarter
- Elimination of caps will provide for increase of local taxing jurisdictions tax collections

**Section 3:** Requires cities and counties imposing a local tax to contract with the Tax Commissioner to administer the local tax (currently all do so voluntarily).

**Section 4:** Amends definitions used in the sales and use tax law

- Most of the changes are for clarification and do not change the imposition of tax

- Defines a Certified Service Provider, which is a retailer's agent that contracts to calculate, collect and remit sales tax for a retailer.
- Defining delivery charges and including these charges in gross receipts will subject to sales tax all delivery charges associated with a taxable sale
- Will increase sales tax revenues by \$419,000 a year

**Section 5:** Add definitions related to sales of computer software and removes references to farm machinery and irrigation equipment sales.

- Definitions related to computer software will make North Dakota's definitions consistent with other member states, but will not change current imposition of tax.
- New farm machinery and irrigation equipment will continue to be taxed at 3 percent, but will be subject to a gross receipts tax under section 19.

**Section 6:** Clarifies but does not change the current exemption for prescription drugs.

**Section 7:** Adds language to the exemption from sales tax on farm machinery, alcoholic beverages and motor vehicles.

- Clarifies the exemption for motor vehicles, which are subject to motor vehicle excise tax.
- Exempts from sales tax farm machinery and alcoholic beverages, which will be subject to separate gross receipts taxes at the current sales tax rate.

**Section 8:** Clarifies language, which is frequently misinterpreted, in the current exemption for livestock feed.

**Section 9:** Clarifies the exemption for medical devices and equipment. The only change in this section is to expand the exemption to repair parts purchased for the exempt equipment. This exemption will reduce revenue by less than \$5,000 a year.

**Section 10:** Removes reference to used farm machinery and used irrigation equipment. All farm machinery and irrigation equipment will be exempt from sales tax, but new farm machinery and irrigation equipment will be subject to a 3 percent gross receipts tax in section 19.

**Section 11:** Amends definitions related to food products so North Dakota defines food in the same manner as all member states of the Streamlined Sales Tax Agreement.

- Exempts a few food products such as coffee, tea, cocoa, candy containing flour, and soft drinks containing between 50 and 70 percent fruit juice. The projected revenue loss will be \$715,000 a year.
- Clarifies the definition of prepared food. This definition will not change the current application of tax to prepared food, which remains subject to sales tax.

**Section 12:** Amends the bad debt provision that allows a retailer to get credit for sales tax remitted to the state when the retailer was unable to collect payment for the sale.

- Allows a certified service provider, who originally remitted the tax for the seller, to take a credit for uncollected accounts on behalf of the seller.

- Does not expand the current bad debt provision.

**Section 13:** Repeals the current bracket system with a simple rounding rule to calculate tax due on a sale.

**Section 14:** Allows a retailer that is voluntarily registering to collect sales tax to register electronically. Also states a company without a physical presence within the state that is voluntarily registering for sales tax will not create a liability for other tax types.

**Section 15:** Provides sourcing rules that identify which taxing jurisdiction's law applies to a transaction.

- Generally, a transaction is sourced or taxed where the purchaser takes possession of the goods.
- Allows direct pay and multiple points of use exemptions, which allows the purchaser to remit the tax directly to the state or states entitled to the tax rather than requiring the seller to collect and remit the tax.

**Section 16:** Accommodates the definition changes in section 4 by removing the language related to a conditional sales contract from the definition of gross receipts and creating a separate definition. This change makes North Dakota's definition consistent with the Streamlined Sales Tax agreement, but does not change our current imposition of tax.

**Section 17:** Provides a seller or certified service provider limited immunity from civil liability for collecting sales tax incorrectly when it relied on incorrect information provided by the Tax Commissioner.

**Section 18:** Requires a certified service provider to keep confidential all information obtained while performing services for a retailer.

**Section 19:** Creates a gross receipts tax of 3 percent on the sales of new farm machinery and irrigation parts. This tax replaces the sales tax and will be identical to the sales tax formally collected on these sales. Local taxing jurisdictions that currently impose local sales and use tax on new farm machinery and irrigation parts (54 of 100 cities and counties) will recognize a reduction in tax revenues unless they expand their ordinance to include gross receipts tax.

**Section 20:** Creates a gross receipts tax of 7 percent on the sales of alcoholic beverages. This tax replaces the sales tax and will be identical to the sales tax formally collected on sales of alcoholic beverage products. Local taxing jurisdictions that currently impose local sales and use tax on alcoholic beverages will recognize a reduction in tax revenues unless they expand their ordinance to include gross receipts tax.

**Section 21:** Modifies the definition of purchase price in the use tax law. This change will make our definition consistent with the Streamlined Sales and Use Tax Agreement, but will not affect the current application of use tax.



**Section 22:** Recognizes use tax imposed under a city or county home rule.

**Section 23:** Accommodates the definition change to purchase price in section 21 by removing the language related to the application of use tax on severed sand and gravel and creating a separate section. This change makes North Dakota's definition of purchase price consistent with the Streamlined Sales Tax agreement, but does not change our current imposition of tax.

**Section 24:** This section simply changes reference to another section that was renumbered in section 4 when new language was inserted into the law.

**Section 25:** Repeals references to alcoholic beverages, which will now be subject to a separate gross receipts tax rather than sales tax.

**Section 26:** Makes this bill effective for taxable events after December 31, 2005.

- Allows time to implement changes.
- No fiscal effect during the next biennium.

**Closing**

The Tax Department did prepare a fiscal note for this bill. It is the department's opinion that Senate Bill 2096 will not have a fiscal effect for the 2003-2005 biennium, as the effective date of Senate Bill 2096 is after December 31, 2005.

Page 40 of Section VIII of the Streamlined Sales and Use Tax Agreement addresses entry by a state into the Agreement. It states in part, "... a state may apply to become a party to the Agreement by submitting a petition for membership and certificate of compliance to the governing board. . . The petitioning date of entry shall be a date on which all of the provisions necessary for the state to be in compliance with the Agreement are in place and effective." Senate Bill 2096 is the actual legislation that will provide the necessary changes in the state's tax laws to bring them into compliance with the Agreement after December 31, 2005.

The Tax Commissioner requests the committee's favorable consideration of this bill. Mr. Chairman, if the committee has any questions, I would be happy to respond to them at this time.



**Administration:**  
1101 1<sup>st</sup> Ave N  
P.O. Box 2064  
Fargo, ND 58107  
701-298-2200 • 1-800-387-9668  
Fax: 701-298-2210

**State Headquarters:**  
4023 State St  
P.O. Box 2793  
Bismarck, ND 58502  
701-224-0330 • 1-800-932-8869  
Fax: 701-224-9485

**North Dakota Farm Bureau**

[www.ndfb.org](http://www.ndfb.org)

**Senate Appropriations Committee**

*February 10, 2003*

**Testimony presented by North Dakota Farm Bureau**

*presented by Sandy Clark, public policy team*

Good morning, Mr. Chairman and members of the committee. For the record my name is Sandy Clark and I represent the 26,000 family members of North Dakota Farm Bureau.

North Dakota Farm Bureau opposes SB2096 on several levels. Farm Bureau began studying this streamlined sales tax project last winter. We've read and asked questions.

Undoubtedly, this is a complicated issue and until now not a lot of information has been distributed to the public. This is a major change in tax policy in this state and it certainly does impact industry, consumers and retailers. NDFB urges you to proceed with extreme caution.

First, we have concern that participation in the streamlined sales tax program will malign state sovereignty. The agreement requires that each state have only one sales tax base rate. That alone has taken away North Dakota's right to have the multiple tax rates we have now.

If it did not infringe on state's rights, you wouldn't have to be considering all the changes you are today. This would be a one-page bill rather than two bills totaling 50 pages.

Furthermore, you are being asked to adopt an agreement that hasn't even been completed. Definitions of all goods and services are not yet written will take a great deal of time to conclude.

It also indicates that if you give a tax exemption, you must exempt everything within the definition of that product or none of it. You can't pick and choose within a definition

*One future. One voice.*

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Operator's Signature

*10-16-03*  
Date

Currently, these bills only require changes in the way you handle sales of new machinery and alcohol. Can you guarantee that will be the case in the future or will other products be effected as the definitions are completed?

As time goes on, the governing body of states can make changes to the agreement, with  $\frac{3}{4}$  of the states agreeing. With so many large states participating, we question how much clout North Dakota will have in that process.

Another major concern focuses on those home rule cities and counties that a local sales tax. Under this system, the caps on local sales tax would be removed. This will have a huge impact on those industries that have high inputs and big-ticket items, like agriculture. There will be several other industries negatively impacted, as well.

For instance, if you make a \$10,000 purchase, the sales tax might currently cap at \$25. Under this system, you would pay \$100. That will add up over time with all the purchases made by farmers and ranchers. The same will be true for **all** consumers on purchases of large ticket items.

We have read the Agreement between the states and have some concerns, as well.

NDFB is opposed to a section in the Agreement that states that purchasers of tax exempt products must be issued an identification number that shall be presented to the seller at the time of sale. I assume this means that all farmers and ranchers must have a personal ID#? This will be another form of cumbersome bureaucracy for ag producers.

There are several references to the fact that sellers must collect personal information from purchasers, but it doesn't necessarily just indicate name and address. Granted the Agreement has several provisions for privacy of how that information is used and protected and the Tax Department has access to that information now. But as time goes on, what's to stop the government from keeping track of what individual citizens are buying, when they're buying it and from whom?

Finally, NDFB also has to question if once this system is established, could it easily lead to a national sales tax structure, by simply requiring states to all charge the same sales tax rate?

Again this is a major change in tax policy and North Dakota Farm Bureau urges the Appropriations Committee to proceed with caution. Thank you for your consideration. I would be happy to entertain any questions you might have.

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10-16-03  
Date

**Testimony before the House Finance and Taxation Committee  
Senate Bill 2096**

March 11, 2003

Prepared by Gary Anderson, Division Director of Sales & Special Taxes  
North Dakota Office of State Tax Commissioner  
Phone: 328-3471  
E-mail: [ganderson@state.nd.us](mailto:ganderson@state.nd.us)

Chairman Belter and Members of the Senate Finance and Taxation Committee.

**Introduction**

My name is Gary Anderson. I am the Division Director for Sales and Special Taxes, and I am here representing the North Dakota Office of State Tax Commissioner. Senate Bill 2096, which is a companion bill to Senate Bill 2095, is introduced at the Tax Commissioner's request.

**Purpose of Bill**

Senate Bill 2096 provides for the changes in the tax laws that are necessary to bring North Dakota into compliance with provisions of the Streamlined Sales and Use Tax Agreement.

**Bill's provisions**

The bill amends existing law, creates new sections of law, and also creates new chapters of law. Although the effective date identified for this bill is after the 2003-2005 biennium, I will provide the committee with an approximate revenue impact relative to those sections of the bill that would affect state revenues as if the bill would be effective after June 30, 2003.

Section 1 of the bill amends the home rule provisions for a county by requiring that the county's sales and use tax base must be identical to the state's sales and use taxes base; that a county may not impose more than one sales and use tax rate; that the imposition of a county tax or changes in the county tax occur on the first day of a calendar quarter after a minimum of ninety days notice to the tax commissioner; that no caps or thresholds may be applied to a sales transaction; and that the state tax commissioner be responsible for the collection of county sales and use taxes. Currently, the state tax commissioner provides administratively that the imposition of county sales and use taxes occur on the first day of a calendar quarter after a minimum of sixty to ninety days notice to the tax commissioner. The state tax commissioner currently oversees the administration for both of the counties imposing a county sales and use tax at this time. Neither county that currently imposes a sales or use tax applies multiple tax rates. The counties would have to remove any special exemptions they have in place in order to become identical to the

state's tax base, and they would have to remove the threshold that currently exists on individual sales transactions under the provisions of Section 1.

Section 2 of the bill amends the home rule provisions for a city in the same manner as that described for a home rule county. All of the cities currently imposing a sales and use tax currently contract with the state tax commissioner. One of the 100 cities currently impose a multiple sales and use tax rate, which would not be allowed after December 31, 2005. In addition, those cities having special exemptions would have to remove these exemptions and maintain a tax base identical to the state's tax base, as well as removing the threshold that currently exists on individual sales transactions. The provisions of Section 2 do not impact the cities lodging and restaurant taxes provided under chapter 40-57.3.

Section 3 of the bill would make it mandatory that a city or county enter into a contract with the state tax commissioner to administer the tax laws. Existing law allows cities and counties to enter into an agreement with the state tax commissioner at their choosing. As indicated, all cities and counties currently imposing a sales and use tax contract with the state tax commissioner.

Section 4 of the bill creates or amends definitions for terms that are used in the sales tax law and include:

- (a) certified service provider
- (b) delivery charges
- (c) drug
- (d) farm machinery
- (e) farm machinery repair parts
- (f) gross receipts
- (g) lease or rental
- (h) prescription
- (i) retail sale or sale at retail
- (j) sales tax
- (k) tangible personal property

Under existing sales and use tax law, delivery charges are taxable in instances where title or possession is passed to the customer at destination. Sales and use tax does not currently apply to those transactions where titles to goods pass to the customer prior to actual delivery of the goods, meaning the customer owns the goods prior to shipment and is responsible for any losses incurred. Approximately two-thirds of the delivery charges are currently subject to sales or use tax if the goods being purchased are also taxable. The definition of "gross receipts" includes the term delivery charge. This means that because the imposition of sales tax is on the gross receipts that all of the delivery charges would be subject to tax. The Streamlined Sales and Use Tax Agreement provides an option to include or exclude delivery charges from the definition of gross receipts. We have included delivery charges in the gross receipts, which would result in a positive revenue impact of approximately \$419,250 if the bill's effective date was after June 30, 2003, instead of the actual effective date after December 31, 2005.

**Section 5** of the bill amends the imposition section by removing reference to farm machinery and irrigation equipment. It adds language to address the taxability of sales, leases or rentals of computer software and prewritten software and it provides for a housekeeping provision that repeals the language in subsection 3 that is no longer relevant. Although definitions were added to define and reflect the imposition of sales tax on computer software and prewritten software, this is not an expansion of the sales tax law but a clarification that is provided by the Streamlined Sales and Use Tax Agreement. The sale of computer software and prewritten software has always been subject to North Dakota sales tax as a sale of tangible personal property.

**Section 6** of the bill amends the language that pertains to an exemption on sales of prescription drugs for purposes of clarification.

**Section 7** of the bill creates an exemption for the sale of motor vehicles, farm machinery, and alcoholic beverages. The reference to motor vehicles is simply a clarification, as motor vehicles are also addressed in subsection 13 of 57-39.2-04 of the sales tax exemption statute. However, the addition of farm machinery and alcoholic beverages to the list of items exempt from sales tax is caused by the need to address the multiple sales tax rates that currently applies to both of these items under existing sales and use tax law.

The Streamlined Sales and Use Tax Agreement does not allow multiple sales and use tax rates with the exception of a few specific items such as natural gas and new mobile homes. Because this exception did not include farm machinery or alcoholic beverages, Senate Bill 2096 addresses this concern by creating special "gross receipt" taxes that would apply on these two items at a rate equal to the current sales tax rate applying to each. These gross receipt taxes will be discussed later in my testimony.

**Section 8** of the bill represents a housekeeping action. The existing language of the law is confusing and is continually misinterpreted by the reader. The proposed amendment clarifies the intent of the law.

**Section 9** of the bill amends the existing exemption that applies to artificial devices individually designed and used by a disabled person, as well as addressing exemptions for additional items that are used as corrective devices for a portion of the body or equipment necessary for the use by disabled persons. The amendments add clarifying language this is representative of definitions provided by the Streamlined Sales and Use Tax Agreement. The terms "durable medical equipment, mobility-enhancing equipment, and prosthetic device" have been added to provide clarification in identifying the types of equipment and devices that are exempt. The terms, with the exception of repair and replacement parts, do not change the exemption provided. Because repair and replacement parts for these devices are currently taxable under existing law, there would be a revenue loss that would result by including the repair and replacement parts. In many instances the purchase of these repair and replacement parts are covered by government payments. If the effective date of Senate Bill 2096 was after June 30, 2003, the estimated revenue loss would be less than \$5,000 for a biennium.

Section 10 of the bill amends the existing exemption in the sales tax law that applies to used farm machinery and farm machinery repair parts. Based on the explanation provided for the changes occurring in Section 7 of the bill, the changes again simply reflect an exemption for the sale or lease of all farm machinery and farm machinery repair parts in the sales tax law used for agricultural purpose.

Section 11 of the bill amends the existing exemption in the sales tax law that applies to food and food products. The language is amended to bring these terms into compliance with the definitions set out in the Streamlined Sales and Use Tax Law. The effect of these changes include:

- (a) the redefining of food and food products to read "food and food ingredients," which would include water, powdered drink mixes, coffee and coffee substitutes, tea, cocoa products, soft drinks containing greater than fifty percent fruit juice and products that were previously defined as candy but contain flour and do not require refrigeration (i.e., Trix bars, licorice). Water in quantities of less than a gallon, powdered drink mixes, coffee, and coffee substitutes, tea, cocoa products, soft drinks containing greater than seventy percent fruit juice and products previously identified as candy but containing flour are currently taxable. By including them in the food and food ingredients, a revenue loss is realized. The anticipated revenue loss if the bill's effective date was after June 30, 2003 on from sales of candy products that include flour and require no refrigeration would be approximately \$162,500, on soft drinks that contain less than 50% fruit juice would be approximately \$65,000, and on other beverages as coffee, tea, cocoa products and water the anticipated revenue loss would be approximately \$487,500.00.
- (b) Clarification is provided by the use of the term "prepared food" which is defined by this section as (1) food sold in a heated state or heated by the seller; (2) two or more food ingredients mixed or combined by a retailer for sales a single items (excludes the manufacture and subsequent sale of products by bakeries, meat markets, etc); and (3) food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, and straws. Existing law currently regards all of these items to be subject to sales tax.

Section 12 of the bill amends the bad debt provision that applies to the seller of the tangible personal property. The existing bad debt provision is in compliance with the Streamlined Sales and Use Tax Agreement in respect to the seller's ability to receive a bad debt allowance. The amendment extends the authority to claim a bad debt to the certified service provider on behalf of the retailer they have contracted with to collect and report taxes. It should be noted that existing law and the proposed law does not extend the authority to claim a bad debt to any other third party.

Section 13 of the bill removes the bracket system currently used in determining the sales tax to apply on a sales transaction and instead provides the calculation of sales taxes on a

transaction by calculating the tax to three decimal places and then rounding to the nearest whole cent as provided by the Streamlined Sales and Use Tax Agreement. If the third decimal place were greater than four, the tax would be round up an additional cent of tax. It should be noted that many retailers utilizing electronic cash registers are ignoring the responsibility to use a bracket system and use the rounding process to determine tax. The costs to reprogram this equipment during rate changes, which includes city sales tax changes, becomes costly for the retailer as often times a service provider must complete the necessary programming changes. However, with the use of rounding, the necessary programming can be completed by the seller at no additional cost. Because we have often found retailers resorting to the rounding method, it is anticipated that there will not be a revenue impact from this proposed change.

**Section 14** of the bill amends the administrative provisions for the registration of sales taxes to allow for a person registering to do so electronically and without a requirement to provide a signature. A recommendation include in the Streamlines Sales and Use Tax Agreement. It further provides that a remote seller voluntarily registering under the provisions of the Agreement and who does not have a physical presence in this state, will not create a responsibility for other taxes.

**Section 15** of the bill defines the "sourcing" of purchases (where title passes) where the items purchased in one sales transaction may be directed to many different taxing jurisdictions. The Streamlines Sales and Use Tax Agreement references the use of a "multiple point of use" exemption allowing a seller to purchase the items tax free and then places the responsibility on the seller to remit the appropriate state and local sales and use taxes directly to the state once the deliveries have occurred. This is similar to the direct pay process used by large businesses having many purchases. They are currently allowed under existing sales tax law in this state to purchase tax-free and then self-report their purchases directly to the state tax commissioner.

**Section 16** of the bill creates a specific provision for a conditional sales contract. This is not an addition to the sales tax law, as this same language was previously located in the definition of "gross receipts" (reference Section 4 of the bill). Because the definition of gross receipts was amended in Section 4 of the bill to be consistent with the language provided by the Streamlined Sales and Use Tax Agreement, the language was deleted and reinserted as a new section of the sales tax law, as provided by Section 16 of the bill.

**Section 17** of the bill creates a new provision of the law that provides a seller and a certified service provider with limited immunity from civil liability for collecting an incorrect amount of sales tax in instances where they might receive incorrect information from the tax commissioner regarding state and local tax rates, boundaries for local taxing jurisdictions, and taxing jurisdiction assignments. This provision is necessary to be in compliance with the Streamlined Sales & Use Tax Agreement.

**Section 18** of the bill creates a new provision that outlines the requirements of a certified service provider to maintain the confidentiality of information that may be obtained in



providing their services to retailers. This provision is necessary to be in compliance with the Streamlined Sales & Use Tax Agreement.

Section 19 of the bill creates a new tax chapter in the North Dakota Century Code. This new tax chapter is in response to the need to eliminate multiple tax rates as provided by the Streamlined Sales and Use Tax Agreement. In this case, the new chapter imposes a gross receipts tax of 3% on new farm machinery, and continues to provide an exemption on used farm machinery and farm machinery repair parts. The new chapter carries over the replacement credit on new machinery that is stolen or destroyed, and also provides for the administration of the gross receipts tax in a manner similar to that previously provided for under the sales tax law. From both the customer and retailers point of view, the implementation of the gross receipts tax will be identical to the sales tax application. Basically the only change will involve a name change on the reporting form.

Section 20 of the bill also creates a new tax chapter in the North Dakota Century Code. This new tax chapter is in response to the need to eliminate multiple tax rates as provided by the Streamlined Sales & Use Tax Agreement. In this case, the new chapter imposes a gross receipts tax of 7% on the sale of alcoholic beverages. Like Section 19, this new chapter provides for the administration of the gross receipts tax in a manner similar to that previously provided for under the sales tax law. From both the customer and retailer's point of view, the implementation of the gross receipts tax will be identical to the sales tax application. Basically the only change will involve a name change on the reporting form. No programming or administrative changes by any of the parties involves, including the state tax commissioner will be required.

Section 21 of the bill amends the definition of "purchase price" in the use tax law. The definition is consistent with the definition provided by the Streamlined Sales & Use Tax Agreement.

Section 22 of the bill recognizes use tax under the home rule provisions for city and county.

Section 23 of the bill creates a new section regarding the imposition of sand and gravel, which was previously defined by similar language in the definition of "purchase price."

Section 24 of the bill amends the reference of applicable tax law as it applies to lease or rental.

Section 25 of the bill repeals reference to alcoholic beverages as taxable items under the sales and use tax laws.

Section 26 of the bill provides for an effective date after December 31, 2005.

### Closing

The Tax Department did prepare a fiscal note for this bill. It is the department's opinion that Senate Bill 2096 will not have a fiscal effect for the 2003-2005 biennium, as the effective date of Senate Bill 2096 is after December 31, 2005.

Page 40 of Section VIII of the Streamlined Sales and Use Tax Agreement addresses entry by a state into the Agreement. It states in part, "... a state may apply to become a party to the Agreement by submitting a petition for membership and certificate of compliance to the governing board. . . The petitioning date of entry shall be a date on which all of the provisions necessary for the state to be in compliance with the Agreement are in place and effective." (As a note of reference, the governing board would be composed of representatives of those states that are in compliance with the Streamlined Sales and Use Tax Agreement. The governing board would administer the Agreement; that is they would be responsible for dealing with administrative questions concerning the Agreement, providing interpretations of the Agreement, and amending the provisions of the Agreement.)

Senate Bill 2095 would adopt the Streamlined Sales and Use Tax Agreement, and as mentioned during my testimony of Senate Bill 2095 will provide a guide for the state now and for the future in defining the areas of uniformity and areas of administrative efficiencies that would have to take place in order for North Dakota to become compliant with the Streamlined Sales and Use Tax Agreement. Senate Bill 2096 is the actual legislation that will provide the necessary changes in the state's tax laws to bring them into compliance with the Agreement after December 31, 2005. There are provisions in the Agreement that indicate that should the state make the necessary changes after June 30, 2003 and the local taxing jurisdictions after December 31, 2005 that a state may petition for entry prior to December 31, 2006.

Any future changes made to the Agreement that would require changes in North Dakota's sales and use tax laws will always require legislative change and approval by our legislative body.

The Tax Commissioner requests the committee's favorable consideration of this bill. Mr. Chairman, if the committee has any questions, I would be happy to respond to them at this time.

Yvonne J. Lee  
Operator's Signature

10-16-03  
Date