

# MICROFILM DIVIDER

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ROLL NUMBER

DESCRIPTION

1519

2007 HOUSE FINANCE AND TAXATION

HB 1519

# 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1519 A

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: January 29, 2007

Recorder Job Number: 2137

Committee Clerk Signature

*Mickie Schmidt*

Minutes:

Chairman Belter opened the hearing on HB 1519 and called the committee back to order.

**Rep. Al Carlson:** Some of the consequences are the same when I heard all of the testimony about all of the burdens being placed on businesses. That's why I should have one of my own I could talk about. The mystery relates to the perks who are eligible for refunds of City or County sales used their gross receipts tax.

The meat of the Bill starts on line 12 and it says; at the time of a sale for which a purchaser would be eligible for a City or County sales, use, or gross receipts tax refund by application of a cap or threshold provided by City or County ordinance, resolution, or Charter, the retailer shall provide the purchaser with a refund claim form prepared by the Tax Commissioner and, if the purchaser completes the refund claim form, the retailer shall file the refund claim form with the Tax Commissioner on behalf of the purchaser.

Do you understand when we implement a Streamline Sales Tax, and I'm sure on behalf of this guide that says Guide to a local option taxes by location. If you don't have it, you can get it, because it shows you on multiple pages of every community. I didn't make copies because I'm assuming you have this. It shows all the communities that have a cap and most of them are \$25 dollars on the sale. If a contractor that means that if that was at a 1% sales tax @ \$2500

dollars of purchases. Then I get a notice from the Tax Commissioner, and I'll read you this, you talk about burdens on businesses and over taxing and how people I believe are not claiming their refunds. It says; after September 30, all sellers in ND are required to charge equitable sales and County sales and use tax on total taxable sale and selling price without regard to any cap provided by the City or County ordinance, or resolution. So the State said you have a cap, it doesn't count anymore. However, the contractor, and this was mailed to the contractors, is eligible for a refund from the State Tax Commissioner for the difference between the amount of the City or County sales and use tax paid and the amount that would have been due by application of the cap provided by the City or County Ordinance, or resolution. It says, if you make purchases after September 30, 2005, you or I should review my purchase invoices to determine if the City or County sales tax was paid if the amount of the City sales tax paid in any transaction in most cases, is greater than the cap provided for by City or County, you are eligible for a refund of tax that will pay \_\_\_?\_\_\_ to the cap to determine how a cap applies please refer to the chart on the back side of this form.

This Bill is a mechanic Bill that requires them to have them sign something right on site and they mail it in.

**Representative Pinkerton:** That Bill came through the Political Sub committee and the retailer's required to give a copy of this each time that there's a sale.

**Rep. Al Carlson:** And this Bill requires that you mail it in after I've signed it. I would like to know from my perspective how many dollars have been collected that has not been asked to be returned to the public? I'm not sure the Tax Dept. can tell us that number, but I think it's a rather significant number, if you look at our sales and use taxes and how they have increased.

**Representative Wrangham:** Your last statement makes me wonder, are you saying that, if you're not aware of this cap or when you get your bill, when you purchased this material, it

includes money that you didn't owe above and beyond the cap. So when you pass that invoice on to your customer, are you going to base what you collect from your customer with the cap or without the cap or half of it or what?

**Rep. Al Carlson:** In most cases we pre-visit jobs and we just end up eating this, that's how it works. Unless we were smart enough to figure it in that we paid an extra tax on everything we purchased. It's amazing how many things on a house that we pay tax on. If you buy fixtures of any kind, a typical light fixture in some of my houses are \$5,000 dollars, which means that I'm \$2,500 dollars over the cap that I'm going to pay on the other part for light fixtures. We do 15 units in a year, I've got to go back and recalculate for every purchase over \$2,500 on 15 homes. So is that a waste of my time, absolutely! But is it worth going back to get the money? One of these days I've got to sit down and do all of those because there's no penalty time involved that I'm aware of.

**Representative Froelich:** Right now the burden falls on you to do all of this. But now, since we pass this Bill, it's going to go back onto the retailer.

**Rep. Al Carlson:** The retailers have always been our tax collectors. Like it or not, we as a State have said that the retailers are going to collect the sales tax. The tax is collected and the tax is then sent back to the communities. That's how they do it. Now we're going to ask one more step in the system that says that you have to target this if it's over \$2,500 over the cap.

**Representative Wrangham:** When you're making this purchase you are in fact an end user just like customers until you resell it. Do you know is this thing that they send require resell?

**Rep. Al Carlson:** This one that I received says notice to all contractors, so I'm assuming that they went to everyone who had a contractor's license.

**Representative Froseth:** Wasn't there another method of doing this? Wouldn't it be just as simple if the retailer only charged up to that cap and added a line on the sales tax remittance form to include the non-taxable sales?

**Rep. Al Carlson:** I'm not sure about that but, caps are not allowed in the Streamline Sales Tax Agreement. So whether that's one way around it, I don't know and if that would be, that would be fine with me. My point is that when I buy lumber, I'm not standing at the counter with the retailer and getting my invoice. I call in my order, he ships it to my job site and I see my invoice 30 days later and there's many more just like me. So how do you do that Rep. Froseth? I'm not sure what the best method is, but I know that I'm paying more tax and I have the burden of trying to get it back.

**Chairman Belter:** Any other questions?

**Rep. Jim Kasper:** I will be brief because Rep. Carlson, as always, did a great job of explaining what's going on. I just want to make a comment about why we're in this dilemma. All of us here as Legislatures believe that we try to pass legislation that is fair and equitable to the people of ND and it does not impose a burden so that we overly burdensome in our business community or our Citizens. So the question is why are we in this dilemma where our citizens are over taxed and over paying? The answer in my opinion is that we have a system that we joined that caused the problems. Rep. Froseth asked the question about why doesn't the retailer just cap and not collect the tax beyond that. The answer is because it's Streamline Sales Tax law that we implemented here as a Legislature. So if we wanted it to let that retailer stop at the cap, we can't. We have given up the right as a State to have our own taxing authority because we've joined SST. That's what the genesis of this Bill is.

**Russ Hanson, Associated General Contractors:** testified in support; I'll be very brief. This is one issue that we have received the most calls on. Rep. Carlson did a very good job of

illustrating the process of the Contracting Industry and the issues that have been dealt to us. If there's a way to address this, we surely would be supportive of that. I would like to compliment the Tax Dept. They did inform us and they've had seminars with our industry and they did send that information to all of the contractors.

**Chairman Belter:** Any questions? Further testimony in support of 1519? Any opposition to 1519?

**Bob Lamp, Auto Implement Dealers Association of ND and the ND Implement Dealers Association:** testified in opposition; these are two trade associations of small businessmen from around the State of ND. I'm appearing before you on their behalf today because we don't like this Bill very much and particularly when we get to line 17 and 18 which puts the burden, filing for the refund on the shoulders of the retailer. I think it's important to say first of all, we want consumers to get all the refunds that they have coming, but we think there's a personal responsibility tied to that. And to switch that burden, and if you heard that big swooshing sound is taking responsibility from the purchaser and putting it on the shoulders of the retailer and we're not very fond of that. We think that the retailers should be the ones to decide what kind of services they want to provide for their purchasing customers. If those services are inadequate, there's a lot of competition out there where customers can go about wherever they want to. Rep. Carlson did a good job of explaining the Construction Industry and how it affects them, but I would suggest to the committee that there's all kinds of smaller transactions taken place all over this State everyday that might just get over the cap or just barely over it and it's not always a \$2,500 or \$3,000 rebate question. There are a couple of things in the Bill that are troublesome for us. One of them of course is the mandatory provision which seems to me to prohibit a customer from requesting a rebate. The Bill says that the retailer shall file, so my question on the Bill is; if I'm a consumer and I want to get a form to fill out myself and send it

in, can I do that or do I have to go through the retailer? The second concern that we have on the Bill is that there doesn't seem to be any minimum for refund on this, so the value of the refund maybe significant or it may be very small and for the retailer to have to send that form in on behalf of the consume, we think is that's switching your responsibility and we don't care for that very much. And just one final comment, Rep. Carlson indicated that they call in a lot of their orders, so I really don't know how they sell themselves, because they have to be there to fill out that form, if they're going to claim a refund. This concludes my testimony, thank you.

**Rep. Brandenburg:** I understand your concerns and where you're at but isn't there a way to figure this out so that when there's a sales blade that hits the cap so the person who purchased that could buy... and a lot of people don't even know that it's there.

**Bob Lamp:** There was a Bill that was passed by the House , 1228, we stood silent on that Bill and that's the Bill that requires the retailers to have refund claim forms at their place of business that are available to the consumer at any time that goes over that cap. That could probably be an alternative.

**Representative Headland:** Is there a means for the consumer when he goes and makes his purchase on his sales slip, does it tell him whether that political sub has caps or not so that he knows that he has an opportunity to fill out a sheet that would give him that refund?

**Bob Lamp:** On your sales slip there is a separate entity for City or County tax, and it gives you the amount of that tax, it's separated from the State tax, so if a person is aware of that, if it goes over \$25.00, they are eligible for refund the information is there. Whether people are paying attention to it or not, I can't tell you that.

**Representative Headland:** So you just said there is that information available on every sales slip as to a Political Sub has a cap?

**Bob Lamp:** I didn't say if there's a tax spelled out as City Tax, spelled out on that receipt, then that would of course indicate that they have some kind of a tax at some level, whatever it is. I don't think it specifically states this is a separate sales tax and is eligible for refund.

**Vice Chairman Drovdal:** Currently ND has it one the books where a Montana resident can walk into just about any business across ND because the Montana exemptions come in from all across ND. And the retailer just ask the questions and looks at ID's and puts the amount and customer's name, it's just a form he puts in and he just keeps filling it out and deducts it when he files his report to the State quarterly. Wouldn't the retailer be able to handle a transaction similar to that for purchases over the \$25.00 dollar cap or he just identifies the persons name, address, the ticket number and the total amount of the sale which therefore would determine the amount over the cap and then when they end their quarter, just not pay that into the State. If a system like that was implemented, would your organization feel that your clientele could understand this?

**Bob Lamp:** I think there are lots of ways that we can do this. I don't know that the retailer know in the case of these refunds on City sales tax has the option of not sending that money in that they've collected. As far as I know...

**Vice Chairman Drovdal:** They know right now that I'm saying if we made this option available, would that be a burden on your retailers since they're already familiar with it on the Montana exemption?

**Bob Lamp:** If you have to do another step in this process, it's more work for the retailer. In some of these retail stores you have a continuous flow at these tills that people buying, buying, and buying and I don't know how you keep up.

**Vice Chairman Drovdal:** There's a lot bigger flow in Montana exemptions coming in at \$50.00 than there is in sales of \$2,500. And I'm surprised at your answer.

**Mike Rud represents the North Dakota Retailers Association:** testified in opposition; we did stand up and support HB 1228 saying that the retailers shall have the form at the disposal for the consumer if they so chose to have it. We do not stand up in support of HB1519, there has to be a limit in our estimation in terms of how much the retailers are responsible for here. I think some of the responsibility has to lie with purchasers as well. We feel the same way as the Auto people feel. Our end of the industry, we don't have a lot of people I wouldn't think that have given to that \$2,500 dollar area. So it's not as significant. But we will do all that we can to make the SST work and we will provide the form, but as I said again, there has to be a limit on how much the retailers asked to do here. The purchaser has to have some responsibility in this process.

**Representative Pinkerton:** Isn't there some way that retailers could use this as a marketing tool? Isn't there some way to satisfy both sides? If you have a retailer that's selling furniture or some lumber, is there some way that they could do that as an added service. We're always talking about the small retailers competing against large retailers.

**Mike Rud:** Do it as an added service?

**Representative Pinkerton:** I'd rather go to a lumber yard that does this automatically for me rather than go to a big chain lumber yard that may or may not do this through their cash register.

**Mike Rud:** I'm sure that that could be possible. Again I think that it would boil down to preference and terms of what a marketer would want to do and to what extent they would want to take that in terms of bringing business into their facility. I guess if they chose to do that on behalf of the purchaser, then more power to them but, I guess our stance overall, the majority of our marketers, our Mom and Pop operations in the retail, this could get pretty burdensome in terms of if they'd have to do it.

**Representative Wrangham:** following up on what Rep. Pinkerton's line of thought there... there is a lot of retailer that give up a lot of customers. Do you think the customer would be flattered and happy with you if you told him you were going to take some money that you didn't owe him but if you sign some papers, he'll give it back to us? Do you think that'll be a positive or a negative?

**Mike Rud:** I'm sure that would be pretty much of a positive, people would be happy if you were going to do that work for them, but again I just you know, again, go back to what kind of retail operations we have in our association. It's a lot of Mom and Pops and a lot of this would get to be a lot of extra work and some of this has to lie with the purchaser if they want this refund, then they need to do the appropriate work in a lot of our marketers eyes.

**Chairman Belter:** Further testimony in opposition of HB 1519? Any neutral testimony? Tax Dept., I have a question. I know that in order to comply with the SST, I believe like the 33% tax on farm equipment, did we change it to a use tax instead of sales tax or how did we change the terminology?

**Myles Vosberg, Tax Dept.:** We did change, we pulled the farm machinery. One of the other requirements the SST is it can only have one tax break, so we pulled farm machinery out of gross receipts tax because it's not sales tax under our sales tax law. It doesn't create any problems with SST. In addition to that, because it's not part of the sales tax, we don't require the Implement Dealers to cap a local tax. There is a local tax on farm machinery.

**Chairman Belter:** I'm not following you. The customer is paying the sales tax on the gross receipts tax, aren't they?

**Myles Vosberg:** If a City or County had imposed a tax and not exempted farm machinery which some of them have done, we do allow them to cap the tax at the \$25.00 or whatever that particular localities cap is. A farmer buying a piece of farm machinery is subject to the tax

would not have to go through this refund process. The gross receipts tax rather than the sales tax were still allowed under SST to allow those transactions to be capped for local tax purposes.

**Representative Wrangham:** Is there some way we can change this tax that we're talking about? The sales tax where we're forced not to recognize the caps? Is there any way that we cannot collect that money and still remain under SST?

**Myles Vosberg:** I don't know how we could do that. These transactions are subject to sales tax. There isn't anything particularly unique about them, like that category on sales, like the farm machinery, and we did the same thing with the alcohol because that was @ 7%, that's also a gross receipts tax. This covers the spectrum of all transactions out there and so we really wouldn't have a way of distinguishing these transactions.

**Representative Wrangham:** Could you give us some idea of why SST won't recognize that fact that our Cities have caps?

**Myles Vosberg:** It's because of the burden that's been placed on the retailer. And the whole idea behind the SST was to try to ease the burden of the retailers so that out of State retailers that currently are not required to collect tax because they won't have matched this on a physical presence here within the State. They voluntarily register through the SST system and collect the tax on our behalf and therefore it would be a benefit to the locals and to the State. It makes the competition more even between in State and out State retailers because they were always collecting the tax.

**Representative Wrangham:** But as we simplify this, each online or whoever is making the sale through SST can recognize the difference of a percentage rate, ¼ % difference in a percentage rate from Mandan to Bismarck, so why couldn't they recognize the cap at the same time?

**Myles Vosberg:** I agree with you 100%. We made that argument, our Rep. and Sen. that represented ND at the SST meetings. But we didn't have enough clout in order to carry that argument.

**Representative Wrangham:** I don't know how to ask this. How hard did we try?

**Myles Vosberg:** We tried hard. The problem is they were open Tuesday. If it was a bigger issue and it was more common in more of the State, perhaps it would have been easier to persuade them.

**Representative Headland:** Is there information available on every sales slip to the consumer that makes the purchase in relationship to caps? If a consumers passing through a Town that had the cap and he's unaware of it, does that sales slip tell him that there is a cap and he has a means to get back his overpayment of sales tax.

**Myles Vosberg:** There aren't any of the receipts that I'm aware of that would say they can see the cap. In some cases the City or the County taxes list them separately and sometimes it's combined. We've not required that the local tax be identified separately. So in Bismarck for example you had a receipt, it's probably going to show 6% sales tax. This is a combination of the State and City tax.

**Representative Headland:** So then really, the consumer, to place the burden on the consumer when he has no idea of what kind of tax the Political Sub puts on. It's kind of impossible for him to know if he has a tax rebate coming back.

**Myles Vosberg:** We try to make consumers aware. We try to make the retailer aware and so on. But no doubt some cases, they're not aware.

**Representative Brandenburg:** Could the Tax Dept. provide some of those caps to the committee and me so we can understand where those caps are at?

**Myles Vosberg:** Certainly.

**Vice Chairman Drovdal:** I know the answer to this but I think the rest of the committee should know this. If a consumer goes straight over the \$25.00 cap where he could get a refund and he doesn't, where does the money go?

**Myles Vosberg:** The money goes to the City.

**Chairman Belter:** Could you get us figures on how much of a windfall this has been to the Cities?

**Myles Vosberg:** We have no idea and have no way of knowing how much. We can tell you how much the refund is and the amount of credit that they have taken to a certain extent on returns, but as far as what's not been requested, we really have no way of knowing?

**Chairman Belter:** Is there any other testimony on 1519? If not, we'll close the hearing on HB1519.

# 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1519 B

## House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: January 31, 2007

Recorder Job Number: 2373

Committee Clerk Signature *Mickie Schmidt*

### Minutes:

Chairman Belter opened the hearing on HB 1519 This Bill requires the retailer to do the city sales tax refund. What are the committee's wishes?

**Representative Wrangham: I would move a Do Not Pass.**

**Representative Owens: Second it.**

**Chairman Belter:** Is there any discussion? Will the clerk read the roll; 11-y, 1-n, 2-absent;  
Rep. Wrangham will carry HB 1519. Closed the hearing on HB 1519.

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/18/2007

Bill/Resolution No.: HB 1519

**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.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

HB 1519 requires retailers to provide refund claim forms for customers eligible for city and/or county sales tax refunds.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

HB 1519 requires retailers to furnish the refund claim forms, and to mail the completed forms on behalf of the taxpayer. This will cost retailers some postage expense. If additional refund claims are generated as a result of this legislation, there may be a reduction in city sales taxes as well. Because refunds of tax revenues in excess of the caps are available to customers under current law, it is not possible to estimate how significant these changes may be in terms of additional refunds issued.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

<b>Name:</b>	Kathryn L. Strombeck	<b>Agency:</b>	Office of Tax Commissioner
<b>Phone Number:</b>	328-3402	<b>Date Prepared:</b>	01/25/2007

Date: 1-31-07 Am  
Roll Call Vote #: 1519

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

House Finance & Tax Committee

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

Action Taken Do Not Pass

Motion Made By Rep. Wrangham Seconded By Rep. Owens

Representatives	Yes	No	Representatives	Yes	No
Chairman Belter	✓		Rep. Froelich		
Vice Chairman Drovdal	✓		Rep. Kelsh	✓	
Rep. Brandenburg	✓		Rep. Pinkerton	✓	
Rep. Froseth	✓		Rep. Schmidt	✓	
Rep. Grande			Rep. Vig	✓	
Rep. Headland	✓				
Rep. Owens	✓				
Rep. Weiler		✓			
Rep. Wrangham	✓				

Total (Yes) 11 No 1

Absent 2

Floor Assignment Rep. Wrangham

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

**REPORT OF STANDING COMMITTEE (410)**  
February 1, 2007 3:16 p.m.

**Module No: HR-22-1840**  
**Carrier: Wrangham**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1519: Finance and Taxation Committee (Rep. Belter, Chairman) recommends DO NOT PASS (11 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). HB 1519 was placed on the Eleventh order on the calendar.**