

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
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DESCRIPTION

2380

2007 SENATE FINANCE AND TAXATION

SB 2380

2007 SENATE STANDING COMMITTEE MINUTES

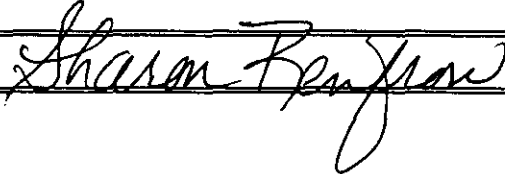
Bill/Resolution No. SB 2380

Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: January 30, 2007

Recorder Job Number: # 2315 & # 2319

Committee Clerk Signature 

Minutes:

Sen. Urlacher called the committee to order and opened the hearing on SB 2380.

Sen. Urlacher as prime sponsor of the bill appeared in support and referred to Miles Vosberg of the Tax Dept. to give explanation of the bill.

Miles Vosberg: Tax Dept. appeared in support with written testimony. (See attached)

Sen. Oehlke: Section 6 relates to differences in convenience stores and how sales tax is charged, is it that big of a deal?

Miles: this definition is to help prevent a type of scrutiny at the time of purchase.

Sen. Cook: is it not safe to say that just about everything in this bill that we've addressed is driven by the business community, those of us that have to collect and remit the tax and is motivated by the desire to make things black and white.

Miles: that's exactly right.

Sen. Tollefson: section 12 which allows florists to continue the origin based sourcing through 2007, what does that mean?

Miles: it's easier to calculate the tax on ND address than on where the flowers were actually being delivered to. We didn't want an exception to the destination based sourcing.

Sen. Triplett: why does such an excruciating level of detail need to be put in to law especially on this prepared food section, was there any thought given to putting those into administrative rules and does that accomplish the same objective of meeting with the expectation of the group or whether their required to put the excruciating level of detail into the law?

Miles: we thought it would go beyond what would be allowed under an interpretation of the rules.

Sen. Triplett: I agree but the 75% should be included in with the law, I would be a lot more comfortable if that kind of detail were put in Administrative Rules.

Miles: some cases do come down to that minute detail when it comes to challenges of the law.

Sen. Triplett: feels it should be put in administrative rules and not clutter up the Code.

Sen. Urlacher: I believe it's put in as an educational purpose.

Sen. Oehlke: I think the retailers are more comfortable with knowing exactly what is what and I would be more concerned with just general rules. Black and white rules.

Sen. Horne: what is a certified service provider?

Miles: is an entity that has developed very extensive software program so that they calculate the tax for all the transactions but they also take care of the responsibility of completing the required returns and remitting the tax to the Tax Dept., so it basically takes away the burden from the retailer and its all done by the certified service provider.

Curly Haugland: on behalf of himself appeared in opposition giving an example of his phone bill and being charged a 1 cent sales tax. The conflict is with privacy and that is what has to be sacrificed in order to make this system work.

Sen. Cook: you're suggesting then that States kind of let go of their sovereign right to be in control of their tax policy and let the Feds solve the problem?

Curly: if I understand it correctly, that's what we're doing here with this Stream Line bill.

Sen. Cook: then you're not understanding because that's the last thing we're doing here.

Sen. Anderson: so your saying it should be broader but don't you agree that this would have to be part of that whole broad concept that you've got, so the work is already being done?

Curly: I agree its part of a process to make taxation simpler but it doesn't get to the whole point, we need Congress to act before even this can be done. I'm suggesting we encourage Congress to do a little bit comprehensive work on taxation.

Sen. Triplett: do you object to the 9 digit zip code as an invasion of your privacy?

Curly: No

Sen. Cook: privacy I don't think is addressed in this bill, it has been a very important part in streamline, the minute you get on the internet or use your credit card, you are laying a trail out there of what you are purchasing. Privacy was protected in here, not necessarily driven by those who choose to go on the internet and give that information up, it was chosen to protect those who have the information. This actually strengthens privacy rather than weakens it.

Closed the hearing.

Discussion –

Sen. Cook: this defines how a bundle transaction is actually treated, when it is treatable and when it is not. There is no FN on this, it doesn't change the taxes that are collected and with that I would Move a **DO PASS**, seconded by Sen. Triplett.

Sen. Anderson: it's the best we've got right now and in order to keep this thing moving we've got to go with it.

Sen. Triplett: reiterated that it would be better placed in the code.

Roll call vote: 7-0-0 Sen. Cook will carry the bill.

FISCAL NOTE

Requested by Legislative Council

01/23/2007

Bill/Resolution No.: SB 2380

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).*

SB 2380 changes certain components of the sales tax law to be in compliance with the streamlined sales tax agreement.

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.*

SB 2380 does not have a fiscal impact. Most of the changes reflect the way the sales tax is being administered now.

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.*

| | | | |
|----------------------|----------------------|-----------------------|----------------------------|
| Name: | Kathryn L. Strombeck | Agency: | Office of Tax Commissioner |
| Phone Number: | 328-3402 | Date Prepared: | 01/29/2007 |

Date: 1-30-07

Roll Call Vote #: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2300

Senate Finance & Tax Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen. Cook Seconded By Sen. Triplett

| Senators | Yes | No | Senators | Yes | No |
|----------------|-----|----|---------------|-----|----|
| Sen. Urlacher | ✓ | | Sen. Anderson | ✓ | |
| Sen. Tollefson | ✓ | | Sen. Horne | ✓ | |
| Sen. Cook | ✓ | | Sen. Triplett | ✓ | |
| Sen. Oehlke | ✓ | | | | |
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Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Cook

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

REPORT OF STANDING COMMITTEE

SB 2380: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2380 was placed on the Eleventh order on the calendar.

2007 HOUSE FINANCE AND TAXATION

SB 2380

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2380A/B

House Finance & Taxation Committee

Check here for Conference Committee

Hearing Date: 2/27/07

Recorder Job Number: 3928 (13.07-17.35), 3929

Committee Clerk Signature

D. Penrose

Minutes:

Rep. Belter: We will open the hearing on SB 2380. Clerk read title.

(Sen. Cook testified in 2381 and gave testimony for 2380 which is as follows)

Sen. Dwight Cook: This is the bill that deals with simplification. I just want to point to two sections in this bill to show you how this whole process works with relation between the governing board, creative control of the agreement and how various state legislatures have to react. If you look at section 3 in 2380, you will see a rather lengthy section that deals with something called bundle transactions. So what's a bundled transaction. If you buy a woven basket, that's tangible personal property and it's subject to sales tax in ND. If you buy fruit, that's groceries; it's not subject to sales tax. But what if you are going to buy your great-aunt a basket with fruit in it, and you can do that, it's called a bundled transaction. You have a transaction that has both tangible taxable personal property and tangible property that's non-taxable, and all this section 3 does is define, it's language that we have to have in code already to tell the merchants who have to collect and remit our sales tax how they treat that transaction, what section 3 does now, is reflect what all of these full member states are going to do together the same with bundled transactions. It has virtually no impact on revenue for the state of ND, and the taxpayers of the state will never know this bill is passed, I think, is a

safe example. Then if you go to the back page of the bill, you are going to see section 24.

Section 24 deals with multiple points of use. What's a multiple point of use. Let's say you buy software, you not only install it in your computer in Bismarck, but you install it in other company computers located in other cities or maybe even in another state. That would be multiple points of use. Prior to 2005, the streamline states amended the agreement to have common language for multiple points of use.

Rep. Belter: You said section 24.

Sen. Cook: Yes, section 24.

Rep. Belter: That is the repeal section.

Sen. Cook: Yes, the repeal section but it also deals with multiple points of use and what it does, is repeals what we did with the streamline agreement in 2005. In other words, we passed that, the implementing stage came up with the language in the agreement, all of the full member states put that into their own Century Code, and so far it's the only mistake we made. We're here two years later to apologize for that mistake and to repeal it. I wanted to point that out because it shows how the system works and again, Myles Vosberg will also testify.

Rep. Wrangham: You brought up the bundled thing, has the streamlined sales tax initiative, have they discussed bundling, which involves services which are not taxable plus tangible property which is. Are we all right with that in our Code the way it is, or do we need to change that too.

Sen. Cook: As we discussed, that is a very big part of section 3 and Myles Vosberg will give you the exact answer you need.

(Continued after SB 2381 finished)

Rep. Belter: We will continue the hearing on SB 2380.

Myles Vosberg, Director, Tax Administration, State Tax Commissioner's Office: (see attached testimony #1). In answer to Rep. Wrangham's question, it does include services as well as personal property, so the definition talks about products, whether that is tangible or service. So the definition does include all types of products and we can get into that further if you have additional questions. Section 24 was covered by Sen. Cook earlier.

Rep. Froseth: This seems like a lot of fine tuning and a lot of technical changes. Where did we get the original provisions of chapter 57-39, was that model legislation that we used to start with or how to find streamlined sales tax.

Myles Vosberg: 57-39.2 is the sales tax law.

Rep. Froseth: Was that model legislation originally that we started with.

Myles Vosberg: Each state started with their own law and made the required changes needed to comply with the provisions that were agreed in the streamlined agreement.

Rep. Drovdal: On the back page, in section 18 and 21, you stated that the ND constitution does not allow the Tax Commissioner's Office to waive the tax liability and ND does not require more than one payment. This does not change the ND requirement does it.

Myles Vosberg: That's correct. We've adopted the language specifically in our law, of the agreement, so even though these provisions will not affect us at this point, we felt that we needed to put it in there so that the entire sections would be included.

Rep. Drovdal: We heard earlier from Sen. Cook that one of the goals is simplification. When I listened to you going through the sections, it seemed like these are set up basically to make it easier on businesses who comply with the law, the sales tax laws.

Myles Vosberg: That's correct. Even though there are a number of changes, uniformity in itself makes it more simpler for the retailers that are doing their part.

Rep. Wrangham: In the section that deals with coupon certificates and I assume some rebates fit in there somewhere too, is there anything in this section that changes the way they're presently taxed or handled.

Myles Vosberg: It does not. We already use the existing policy that was developed by streamline, so although you put the language in our law, it doesn't change our policy.

Rep. Belter: Thank you. Further testimony in support. Testimony in opposition, or neutral.
We will close the hearing.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2380C

House Finance & Taxation Committee

Check here for Conference Committee

Hearing Date: 2/27/07

Recorder Job Number: 3989

Committee Clerk Signature *DP Mose*

Minutes:

Rep. Belter: We will take a look at SB 2380. What are the committee's wishes.

Rep. Drovdal: I move a Do Pass.

Rep. Headland: Second.

13 YES 1 NO 0 ABSENT

DO PASS

CARRIER: Rep. Drovdal

Date: 2-27-07
Roll Call Vote #: 2380

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

House _____ Finance & Tax _____ Committee

Check here for Conference Committee

Legislative Council Amendment
Number _____

Action Taken Do Pass

Motion Made By _____ Seconded By _____

| 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 | ✓ | | | | |
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Total (Yes) 13 No 1

Absent 0

Floor Assignment Rep. Drovdal

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

REPORT OF STANDING COMMITTEE (410)
February 28, 2007 8:40 a.m.

Module No: HR-38-4077
Carrier: Drovdal
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2380: Finance and Taxation Committee (Rep. Belter, Chairman) recommends DO PASS (13 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2380 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

SB 2380

Senate Finance and Taxation Committee

Senate Bill 2380

January 30, 2007

Prepared by Myles Vosberg, Director, Tax Administration
Office of State Tax Commissioner
Phone: 701-328-3471
E-mail: msvosberg@nd.gov

Good morning Chairman Urlacher and members of the Senate Finance and Taxation Committee. My name is Myles Vosberg and I am the Director of Tax Administration for the Office of State Tax Commissioner. I am here to testify in support of SB2380 and to explain the law changes in this bill, which will keep North Dakota in compliance with the Streamlined Sales Tax (SST) Agreement.

Sections 1 and 2 of the bill add language to the county and city home rule laws and require the Tax Commissioner to use the relevant administration provisions within the state sales tax laws to administer all local sales and use taxes. The home rule provisions currently require cities and counties to contract with the Tax Commissioner to administer their local taxes, and up to this point, no political subdivision has created administrative processes that differ from the state. Sections 1 and 2 will ensure that the Tax Commissioner applies the same rules on both the state and local levels in regards to sales tax administration.

Section 3 adds new definitions for "bundled transactions" and "Certified automated system" and modifies the definition of "gross receipts."

- A "bundled transaction" is a transaction that includes two or more distinct and identifiable products for one non-itemized price. Although this definition is somewhat complex, it is necessary to help determine how to apply tax to a transaction that consists of taxable and nontaxable products that are sold for one lump-sum price. This definition does not change the way North Dakota taxes bundles of goods and services, but it more clearly defines when a bundle occurs and when the entire sales price may be subject to tax.

- A “certified automated system” is a software product that has been approved by each individual state that is a member of the SST governing board and is capable of calculating the correct state and local taxes for any transaction of a retailer.
- The new language in the definition of “gross receipts” identifies when payments made by third party may or may not be included in the purchase price subject to tax. Examples of third party payments are rebates and manufacturer’s coupons.

Section 4 relates to the bundled transaction definition and imposes tax on bundled transactions when the transaction consists entirely of tangible personal property. This language codifies current policy and is an important distinction from bundles of service and tangible personal property, in which the service provider pays tax on the cost of the property used to provide service but does not collect tax on the full selling price of the bundle.

Section 5 is a clean-up of language that was missed in our streamlined sales tax legislation last session. When we adopted the SST definitions of mobility enhancing equipment and prosthetic device we accidentally left out language that requires a doctor’s prescription to qualify for a tax exemption on the purchase. The exemption language prior to SST referred to products sold by doctors, sold under prescription, or referred to products that normally required a doctor’s order to obtain.

Section 6 clarifies the definition of prepared food and adopts additional language agreed to by the SST states after the Streamlined agreement became effective on October 1, 2005. The original definition of prepared food includes food that was sold with eating utensils *provided by the seller*, including plates, knives, forks, spoons, glasses, cups, napkins or straws. The additional language in the prepared food definition determines if the seller needs to make the utensils available to the customer or to actually hand the utensils to the customer to be considered *provided by the seller*. Although this is a minute detail for most of us, it is an important distinction for certain retailers including convenience stores, fast food restaurants, and grocery stores when determining if food is considered “prepared food” and therefore, subject to sales tax.

Sections 7 through 21 of HB2380 amend Chapter 57-39.4 of the Century Code, which adopts the entire Streamlined sales tax agreement and contains Articles III and V of the Agreement in detail. These provisions reflect actions that must be taken by the governing board states to be in compliance with the agreement. Briefly, these sections are as follows:

- **Section 7** states that North Dakota has adopted the SST agreement.
- **Section 8** requires states to provide address or zip code databases that may be used by Certified Service Providers (CSP) to determine the correct amount of tax in a transaction.
- **Section 9** provides relief from liability to CSPs when they rely on state provided data bases that contain incorrect information. Likewise, this section also allows states to cease providing relief of liability after the state has provided notice to the CSP regarding the error.
- **Section 10** allows states to use an outside vendor to provide the required databases and also allows a voluntary seller or a CSP 60 days after registration to begin collecting tax.
- **Section 11** is cleanup of a date that has passed and no longer applies.
- **Section 12** allows florists to continue origin based sourcing through 2007.
- **Section 13** requires sourcing of prepaid wireless calling service, internet access and telecommunication ancillary services to the place of primary use, which is the users home or business address.
- **Section 14** adds the definition of ancillary services and prepaid wireless calling service to the existing telecommunication definitions.
- **Section 15** requires that entity-based, use-based, and product-based exemptions be used correctly in conjunction with all definitions in the SST agreement. These rules help prevent states from using definitions or parts of definitions inappropriately.
- **Section 16** addresses the use of exemption certificates with drop-shipments, which are deliveries made by a third party supplier on behalf of a retailer.
- **Section 17** requires all member states to adopt the definition of bundled transaction, but clearly indicates that states are not restricted in the tax treatment of any bundled transaction except for bundles that include communication or internet access. North Dakota already has the required provisions in its laws to address bundles of communication or internet access services.
- **Section 18** requires states to provide purchasers relief from liability of penalty and interest if the purchaser or the seller's CSP relied on certain incorrect information provided by the state. This section also relieves liability for tax in the same situations

if a state's constitution allows relief from paying tax. North Dakota's constitution does not allow the Tax Commissioner's Office to waive a tax liability.

- **Sections 19 and 20** require each member state to review and certify that Certified Service Providers and Certified Automated Systems are calculating taxes correctly and meeting standards set by the Governing Board.
- **Section 21** establishes standards as to when a state may require more than one tax payment during a reporting period. North Dakota does not require more than one payment.

Sections 22 and 23 are the same changes in the use tax law as Sections 5 and 6 in the sales tax law. The changes modify the definitions of mobility enhancing equipment, prosthetic device, and prepared food.

Section 24 is the repeal of the Multiple Point of Use (MPU) exemption certificate. The MPU certificate process required purchasers of software and services that will be concurrently available for use in multiple states to allocate the tax using any reasonable method and remit the tax directly to the states where the software or services will be received. The MPU process was difficult for many purchasers of software and services. Based on requests from the business community, the states agreed to repeal the MPU exemption process and develop rules to assist sellers and purchasers in reporting the tax due on these products.

No fiscal impact is anticipated with the changes in SB2380. Most of the changes relate to administrative provisions of the sales and use tax laws. Definitions included in this bill, although not in the current sales tax law, are already administered in a manner that is consistent with the streamlined sales tax agreement.

The Tax Commissioner's Office asks for a "do pass" recommendation on SB2380. I will be happy to answer any questions you may have. Thank you.

SB 2380 A

#1 2-27-07 AM

House Finance and Taxation Committee

Senate Bill 2380

February 27, 2007

Prepared by Myles Vosberg, Director, Tax Administration
Office of State Tax Commissioner
Phone: 701-328-3471
E-mail: msvosberg@nd.gov

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- A “certified automated system” is a software product that has been approved by each individual state that is a member of the SST governing board and is capable of calculating the correct state and local taxes for any transaction of a retailer.
- The new language in the definition of “gross receipts” identifies when payments made by third party may or may not be included in the purchase price subject to tax. Examples of third party payments are rebates and manufacturer’s coupons. Again, this definition will not change the taxability of third party payments, but will modify our definition of gross receipts to the language in the SST agreement.

Section 4 relates to the bundled transaction definition and imposes tax on bundled transactions when the transaction consists entirely of tangible personal property. This language codifies current policy and is an important distinction from bundles of service and tangible personal property, in which the service provider pays tax on the cost of the property used to provide service but does not collect tax on the full selling price of the bundle.

Section 5 is a clean-up of language that was missed in our streamlined sales tax legislation last session. When we adopted the SST definitions of mobility enhancing equipment and prosthetic device we accidentally left out language that requires a doctor’s prescription to qualify for a tax exemption on the purchase. The exemption language prior to SST referred to products sold by doctors, sold under prescription, or referred to products that normally required a doctor’s order to obtain.

Section 6 clarifies the definition of prepared food and adopts additional language agreed to by the SST states after the Streamlined agreement became effective on October 1, 2005. The original definition of prepared food includes food that was sold with eating utensils *provided by the seller*, including plates, knives, forks, spoons, glasses, cups, napkins or straws. The additional language in the prepared food definition determines if the seller needs to make the utensils available to the customer or to actually hand the utensils to the customer to be considered *provided by the seller*. Although this is a minute detail for most of us, it is an important distinction for certain retailers including convenience stores, fast food restaurants, and grocery stores when determining if food is considered “prepared food” and therefore, subject to sales tax.

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