2011 SENATE FINANCE AND TAXATION

SB 2216

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB 2216
1/24/2011
Job Number 13253

☐ Conference Committee

A. Rittmiller

Explanation or reason for introduction of bill/resolution:

Relating to a deduction from alcoholic beverage gross receipts taxes for operation of a smoke-free bar

Minutes: Written Testimony Attached

Chairman Cook opened the hearing on SB 2216.

Vice Chairman Miller – (See attachment A, introduction of SB 2216 and A1, amendment for SB 2216)

Chairman Cook – I believe about 2/3 of the bars in Bismarck are smoke-free now. Would they get this incentive?

Vice Chairman Miller – Yes they would.

Chairman Cook – For a decision they have already made?

Vice Chairman Miller – Yes

Vice Chairman Miller – Currently the only prohibition in the bill would be if the city banned smoking.

Chairman Cook – So all the bars in Fargo would not get this?

Vice Chairman Miller – They would not get the exemption.

Senator Triplett – How is that fair?

Vice Chairman Miller – It's not probably fair. I guess I see it as, if it's the will of the local municipality to do that, then it's not within their reason to have an exemption either. There is nothing stopping Fargo or Grand Forks from revisiting their policy and allowing the exemption.

Chairman Cook – Are you saying if the city of Fargo was to revisit their policy and remove the restriction that they presently have in place, and if a bar chose to stay smoke-free then they would qualify for the exemption?

Vice Chairman Miller – That would be how the bill would currently work.

Senator Dotzenrod – You came up with a percentage of 2.1 percentage points. This is not really a round number.

Vice Chairman Miller – I was thinking about 30%. That is what it equated to. If you think about 10% loss on going smoke-free, that is something I heard, I can't confirm or deny that, but I would think that the 2 points that you would be making up in your gross receipts that you would be able to keep, that would bring it down to 7% in that case. This allows for creativity, it's a different approach to encouraging smoke-free bars, and I think it's something we should consider. The fiscal note obviously is difficult to determine. No one knows how many people would take advantage of it.

Chairman Cook asked for further testimony in support of SB 2216.

Representative Kingsbury – I don't have any prepared testimony. I have previously introduced state wide no smoking bills. I'm certainly in favor of communities going smoke free. The state considers it the communities decision or right to have a smoke-free law and it seems like the towns and communities would rather have the state do it. That is what we hear. This has been thought of before, in bringing forth this deduction for going smoke-free on your premises. I know there is a problem here that will be addressed. On line 10 the deduction under this section does not apply to retailers whom bars are non-smoking by law. Cities who have a smoking ban, those bars would not be considered to get this rebate. It takes away the incentive for a community to go smoke-free. But, I am in favor of smoking bans on workplaces and would urge a do pass of SB 2216 with possible amendments.

Senator Burckhard – So you think the taxpayers should subsidize establishments to encourage them to go non-smoking?

Representative Kingsbury – It is a way of ensuring them that putting this restriction on them, that they won't lose revenue. There is studies that show that sometimes there is a lack of business for a little while but then they end up having an increase in revenue by going smoke-free.

Senator Burckhard – I'm not sure I got the yes or no there. Should taxpayers subsidize this?

Representative Kingsbury – I'd probably say no. I really think people should bite the bullet and make their own decision about doing this.

Chairman Cook - Representative Kingsbury I know you've been the champion of getting this state to be smoke-free but I just sit here after this and I can't help but think of what somebody from a foreign land might describe this great country we call America when it comes to some of our policy. When you look at tobacco, first we start by subsidizing the

tobacco farmers so that they continue to be profitable raising tobacco. Then we put labels on all of the packs of cigarettes saying how dangerous they are. Then we greatly tax the people who buy this product that is subsidized so the farmers can be profitable. Then we have all kinds of laws to ban the use in where you might use them, and now we are trying to incentivize bar owners not to let the people who buy this subsidized product with a high tax on it, not to use it there. I just wonder if somewhere along the line somebody might say we've lost our marbles. Maybe we should start with a subsidy and just take a look at this whole issue of tobacco and get some common sense in it. If you want to respond you are welcome to.

Representative Kingsbury – I guess it's all under the auspices of government.

Senator Triplett – Do you have the same interpretation of this bill as Senator Miller? Which is if we passed it, it would allow those communities that have already chosen to go smoke-free to reconsider their actions so that their local businesses could choose whether or not to take advantage of this?

Representative Kingsbury – In listening to that I guess I'd maybe have to ask Senator Miller again if that would be the community's option to do that. They certainly would be pressured to do that I would think.

Senator Triplett – Is that what you want to happen?

Chairman Cook – Do you think they should be restricted from being able to do that?

Representative Kingsbury – I really don't know how I feel about that.

Rudie Martinson, Executive Director, North Dakota Hospitality Association – I am standing in favor of SB 2216 just because I like the head space that Senator Miller and his co-sponsors are in, in terms of creating an incentive to go smoke-free rather than a regulation that mandates it. I do have members and retailers that are in areas that have been mandated to go smoke-free that are going to wonder why they are not getting a tax rebate under this bill and that could be sort of problematic. I am in favor of the overall concept and in favor of the approach to incentivize going smoke-free rather than punishing not being smoke-free.

Senator Dotzenrod – Does your organization have an official policy on the state wide smoking ban?

Rudie Martinson, Executive Director, North Dakota Hospitality Association – Our policy in the past has been and continues to be that the decision on whether or not to go smoke-free should rest with the individual business owner and individual retailer. I don't think this bill harms that at all, other than the areas where that individual decision has already been taken away from them.

Senator Oehlke – Do you have an idea how many places would participate in this?

Rudie Martinson, Executive Director, North Dakota Hospitality Association – That would be very hard to predict.

Chairman Cook asked for testimony opposed to SB 2216. No one came forward.

Chairman Cook asked for neutral testimony for SB 2216.

Jeanne Prom, Executive Director, Center for Tobacco Prevention and Control Policy – (See attached testimony B, neutral to SB 2216)

Senator Triplett – I understand people prepare testimony such as this in advance of the hearing but if you sat through the hearing and heard the conversation about the prime sponsors interpretation that this bill might actually encourage some local communities to rethink their smoke-free ordinances, does that alter your neutral position at all?

Jeanne Prom, Executive Director, Center for Tobacco Prevention and Control Policy – We certainly wouldn't want that consequence which seems unintended to occur, but I can see where it did. Again, we are for places becoming smoke-free. But we certainly aren't for promoting rescinding current policies that make every place smoke-free.

Senator Oehlke – You mention in here that the economic impact is either neutral or positive. From talking to bar owners who have changed, that's been my experience as well but I'd like to know if you've talked to every establishment that has gone smoke-free, or where do you get your facts?

Jeanne Prom, Executive Director, Center for Tobacco Prevention and Control Policy – There's studies of the economic impact based on tax receipts. There was a study done in Fargo and West Fargo. What it showed was no long term negative impact. There was a short term negative impact but the research indicates that there is more study that needs to be done to determine the economic impact of the recession which began just before the law took effect if Fargo and West Fargo.

Vice Chairman Miller – Is there any data or any way we can measure if there has been a closure of a bar due to temporary income loss? I've heard stories of bars that have closed down and they have credited the tobacco ban to that. Is there any data?

Jeanne Prom, Executive Director, Center for Tobacco Prevention and Control Policy – I'm not aware of any study but I do know that bars close and open all the time, whether they allow smoking or not. In most places in North Dakota we don't have smoke-free bars and bars are closing. Is that because they are smoking? I know in Fargo there's actually an application for a new bar license. They have the same number of bar licenses now as they did before the smoke-free bars policy took effect.

Vice Chairman Miller – The population of Fargo has exploded in the last decade. That must contribute to new bars opening too.

Jeanne Prom, Executive Director, Center for Tobacco Prevention and Control Policy – That may be true. I'm not an expert on the population growth in Fargo. However, the

smoke-free policy has been in place for 2 years so I'm not sure how quickly the bar license applications respond to increases in population. I don't know.

Vicki Rosenau, City County Health District, Valley City – Being neutral on a technicality has to do with the fact that the concept, the purported concept of doing something legal, that doesn't create more harm than the good. Reducing exposure to second hand smoke is something that City County Health has been pretty heroically advocating for, for over a decade now. Am I neutral? Not really. If the bill were to be passed, in order to support our health promoting goals, it would have to have some major changes. We are convinced that the unintended consequence is a very harmful feature here. The unintended consequence would be that this actually creates a barrier to making any progress in increasing the number of public places and work places in North Dakota that do provide protection from toxic second hand smoke. In fact, if I understood the discussion correctly is that the current bars in Fargo, because they are covered by a good comprehensive model smoke-free protection law, wouldn't be able to take advantage of the rebate. Well that's a huge incentive for them to go back and harass their city commission and they to get that law repealed or watered down to the point where it has no health benefit. So that's the biggest problem with the language as it is written. However, another reason for being unhappy with it, it clearly is predicated on a false assumption. There's not one study that was not bought and paid for by the tobacco industry that shows anything other than either no change in sales tax receipts or sometimes a slight increase. The increase is not consistent so we don't run around screaming that, wow, go smoke-free, you'll get rich, but it could happen down the road because there are a few that have long term increased sales tax receipts. I'm sorry but the truth is, the studies that suggest otherwise are anecdotal, opinions, and that's after the people who are polled for their opinion have been brainwashed for many years by the tobacco industry. Therefore the idea that an incentive is better than a punishment, I have to testify against that concept. There is zero punishment attached to smoke-free comprehensive smoke-free laws for hospitality venues as well as other public places and other work places. That is what the science says.

No further action was taken.

Chairman Cook closed the hearing on SB 2216.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB 2216
1/24/2011
Job Number 13296

☐ Conference Committee

A. Riffmiller

Explanation or reason for introduction of bill/resolution:

Relating to a deduction from alcoholic beverage gross receipts taxes for operation of a smoke-free bar

Minutes: Committee Work

Chairman Cook opened discussion on SB 2216.

Vice Chairman Miller – In the amendments there is a line I would like to have omitted from the amendment.

Chairman Cook – Tell us what it is.

Vice Chairman Miller – Page 1 line 10 portion, it would be in the second sentence. It says a retailer is entitled to reimbursement of the taxes paid during the calendar year from the date the retailer became certified as a smoke-free bar and for those succeeding calendar year unless the retailer no longer maintains as a smoke-free bar. So it would omit 'or until applicable state or local law prohibits bar smoking. That would take care of that one line in the bill that some of the smoking groups were concerned with.

Chairman Cook – Do you want to then offer the amendments?

Vice Chairman Miller – I would offer the Miller amendments.

Seconded by **Senator Dotzenrod**.

Senator Dotzenrod – If we adopt these amendments as here modified, we still have a sentence then in the bill that says the deduction under this section does not apply to retailers in whose bar smoking is prohibited by law.

Vice Chairman Miller – We would have to take that out as well.

Chairman Cook – We have a motion to amend with these amendments first. We could further amend. Any other discussion on the amendments that were offered? All in favor signify by saying yea. That passes 5-0. Further amendments?

Vice Chairman Miller – Then I would amend lines 10 and 11. Remove the sentence; the deduction under this section does not apply to retailers in whose bar smoking is prohibited by law.

Chairman Cook – Is there a second?

Seconded by **Senator Dotzenrod**.

Chairman Cook – Discussion?

Senator Oehlke – What do you think the fiscal note on that would be?

Vice Chairman Miller – I would say my first estimate might have been off. It would probably be about $3 million. When you think about the gross receipts taxes. Make everyone eligible, of course there would be some bars that would not be eligible but I would think most of them would take advantage of it and there would be a few that wouldn't. So I would say that the fiscal note, because it's 30% of $10 million, that's the overall gross receipts, it couldn't be more than $3 million. It could be less.

Chairman Cook – I would buy that argument, that it's going to be right around $3 million.

Senator Dotzenrod – Every bar in the state will be able to request and get this 30% except those bars where there is smoking.

Vice Chairman Miller – Fargo has ban smoking, but every bar owner in Fargo would qualify now after the amendments.

Senator Oehlke – Who monitors it? If I'm a bar owner in, wherever, and I apply for the deduction and I didn't happen to have a smoke-free environment, who checks on me?

Vice Chairman Miller – I would say the bar would have to have a statement from the tax department and they would have to file for that. They are obviously going to have to post something because the Department of Health requires that you post 'this is a smoking bar' and things like that. If they were to have smoking, I think this would police its self. People from the community, other bar owners, would want to know what their competitors are doing. If there was somebody smoking, they would report it I would think.

Senator Oehlke – They only way they would know that is if they went to the tax department and asked to see the other bar owners tax return to see if they were trying to get the break that they didn't deserve.

Chairman Cook – Senator Oehlke, I'll give you my un-expertise answer to your question. First off, they go smoke-free, there's signage to make it clear that they are smoke-free. Secondly, there is a statement in here in the amendments that tax commissioner will ask, to report that they are. My guess is that the form that they are going to sign is going ot have some comment in there about perjury or punishable by this if you claim that you have it and really don't have it. Auditors go in those places too. I think that is the only way they are going to police it.

Chairman Cook – All in favor if the second amendments signify by saying yea. We have before us SB 2216 as amended twice. Any further discussion?

Senator Dotzenrod – I think what we have in front of us now is a bill that says if you operate a bar and you are willing to go smoke-free we are going to pay you some money to do that.

Vice Chairman Miller – I wouldn't necessarily oppose your opinion but these are sales taxes that the bar owners collect. I think as far as a public policy stand point if we want smoke-free bars then this is the most business friendly way to do it as opposed to just demanding it.

Senator Dotzenrod – If at some future date, either through initiated measure or the legislature, a city wide ban was put in place, would it make sense for the legislature to remove this section from the law and put everyone back at 7%?

Vice Chairman Miller – Yes, there would be no point in having the law anymore.

Senator Burckhard – Can someone explain to me the 30%?

Chairman Cook – 2.1 percentage points of 7%

Senator Burckhard – I think 80% of my constituents would say 'why are you subsidizing this'? And would be very upset if we did this.

Vice Chairman Miller – I don't classify this as a subsidy. We are taxing people less is what we are doing. We are not subsidizing them. We are not handing them money. They are being taxed and now we are taxing them less.

Chairman Cook – You are allowing them to keep some of the taxes that their customers are paying.

Senator Oehlke – I would make a Do Not Pass as Amended motion.

Seconded by **Senator Burckhard**.

Chairman Cook – We will ask the clerk to take the roll. 6-1-0

Carried by **Senator Oehlke**.

FISCAL NOTE

Requested by Legislative Council
01/27/2011

Amendment to: SB 2216

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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 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.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 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).*

Eng. SB 2216 authorizes operators of drinking establishments that maintain a smoke-free bar to receive a refund of a portion of the state gross receipts taxes they collect from alcohol sales.

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.*

Eng. SB 2216 allows a retailer who maintains a smoke-free bar to receive a refund of 2.1% of the 7% gross receipts tax collected on the sale of alcoholic beverages sold for on-site consumption.

Generally, alcohol gross receipts tax collections from bars are approximately $10.3 million per year. A portion of that amount could be refunded to the retailer if Eng. SB 2216 is enacted, resulting in reduced general fund and state aid distribution fund revenues. The share that might be refunded to bar operators due to the provisions of this bill cannot be estimated as it is unknown which establishments will be smoke-free.

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:**	01/28/2011

FISCAL NOTE

Requested by Legislative Council
01/18/2011

Bill/Resolution No.: SB 2216

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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 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.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 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 2216 authorizes operators of certain drinking establishments that choose to maintain a smoke-free bar to retain a portion of the state gross receipts taxes they collect from alcohol sales.

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 2216 allows a retailer who voluntarily maintains a smoke-free bar to retain 2.1% of the 7% gross receipts tax collected on the sale of alcoholic beverages sold for on-site consumption.

Generally, alcohol gross receipts tax collections from bars are approximately $10.3 million per year. A portion of that amount could be retained by the retailer if SB 2216 is enacted, resulting in reduced general fund and state aid distribution fund revenues. The share that might be retained by bar operators due to the provisions of this bill cannot be estimated as it is unknown which establishments will be required by law to be smoke-free and which might voluntarily become smoke-free.

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:**	01/20/2011

Prepared by the OTC for
Senator Miller
January 24, 2011

PROPOSED AMENDMENTS TO SENATE BILL NO. 2216

Page 1, line 2, replace "deduction from" with "reimbursement of"

Page 1, line 7, replace "**Deduction to reimburse**" with "**Reimbursement to**"

Page 1, line 8, replace "may deduct and retain revenue from" with "is entitled to reimbursement of taxes paid equal to"

Page 1, line 10, after the period insert "To obtain reimbursement of the taxes paid, the retailer must certify to the tax commissioner that the retailer meets the requirements of this section and the date the bar operated by the retailer became smoke-free. A retailer is entitled to reimbursement of the taxes paid during the calendar year from the date the retailer became certified as smoke-free and for each succeeding calendar year unless the retailer no longer maintains its status as a smoke-free bar or until applicable state or local law prohibits bar smoking. On or before January 31, 2012, and each succeeding January 31, the tax commissioner shall issue a refund to the certified retailer the allowed reimbursement amount."

Renumber accordingly

Date: 1-24-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2216

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Miller Seconded By Senator Dotzenrod

Senators	Yes	No	Senators	Yes	No
Dwight Cook – Chairman			**Jim Dotzenrod**		
Joe Miller – Vice Chairman			**Connie Triplett**		
Randy Burckhard					
David Hogue					
Dave Oehlke					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Verbal vote 5-0

11.0111.02001
Title.03000

Adopted by the Finance and Taxation Committee

January 25, 2011

1-26-11

PROPOSED AMENDMENTS TO SENATE BILL NO. 2216

Page 1, line 2, replace "deduction from" with "reimbursement of"

Page 1, line 7, replace "**Deduction to reimburse**" with "**Reimbursement to**"

Page 1, line 8, replace "may deduct and retain revenue from" with "is entitled to reimbursement of taxes paid equal to"

Page 1, line 10, remove "The deduction under this section does"

Page 1, line 11, replace "not apply to retailers in whose bar smoking is prohibited by law." with "To obtain reimbursement of the taxes paid, the retailer shall certify to the tax commissioner that the retailer meets the requirements of this section and the date the bar operated by the retailer became smoke-free. A retailer is entitled to reimbursement of the taxes paid during the calendar year from the date the retailer became certified as smoke-free and for each succeeding calendar year unless the retailer no longer maintains its status as a smoke-free bar. On or before January 31, 2012, and each succeeding January thirty-first, the tax commissioner shall issue a refund to the certified retailer of the allowed reimbursement amount."

Renumber accordingly

Date: 1-24-11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2216

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Miller Seconded By Senator Dotzenrod

Senators	Yes	No	Senators	Yes	No
Dwight Cook – Chairman			**Jim Dotzenrod**		
Joe Miller – Vice Chairman			**Connie Triplett**		
Randy Burckhard					
David Hogue					
Dave Oehlke					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Verbal vote 6-0

Date: 1-24-11
Roll Call Vote # 3

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2216

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11.0111.02001

Action Taken: ☐ Do Pass ☒ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Oehlke Seconded By Senator Burckhard

Senators	Yes	No	Senators	Yes	No
Dwight Cook – Chairman	X		Jim Dotzenrod	X	
Joe Miller – Vice Chairman		X	Connie Triplett	X	
Randy Burckhard	X				
David Hogue	X				
Dave Oehlke	X				

Total (Yes) 6 No 1

Absent 0

Floor Assignment Senator Oehlke

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

REPORT OF STANDING COMMITTEE

SB 2216: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2216 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "deduction from" with "reimbursement of"

Page 1, line 7, replace "**Deduction to reimburse**" with "**Reimbursement to**"

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Renumber accordingly

2011 TESTIMONY

SB 2216

A

NORTH DAKOTA SENATE

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360

Senator Joe Miller
District 16
P.O. Box 151
Park River, ND 58270-0151
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COMMITTEES:
Finance and Taxation, Vice Chairman
Agriculture

Testimony before Senate Finance and Taxation on

SB 2216

Mr. Chairman and members of the committee, I introduce to you SB 2216. This bill is designed to provide a tax incentive for bars to go smoke-free.

We have often heard of attempts to ban smoking in bars and even witness some success in a few of the States larger cities. It is my belief that business owners should be left to make this decision on their own, not forced on them by the government.

Tobacco remains to be a legal product in North Dakota. Individuals are still able to make their own choices whether to smoke or not. I believe that so long as tobacco is legal to use, we must allow reasonable options for those that wish to consume this product.

This bill will create a more competitive atmosphere where by patrons that do not smoke will have many options available to them. Bar owners will be able to pass savings on to customers which should drive up sales.

There has often been a cost to going smoke-free. I have heard that some have incurred a ten percent loss in revenue due to the elimination of smoking. This would lessen that blow and help them stay competitive.

There has been a great deal of study on the negative effects of the smoking and second-hand smoke. I am not here to lend support or opposition to that information. I would simply suggest that there are people that wish to see more smoke-free establishments for the pure reason of choice and comfort. This is our opportunity to improve the cultural environment of our state without removing the virtue of liberty.

Prepared by the OTC for
Senator Miller
January 24, 2011

PROPOSED AMENDMENTS TO SENATE BILL NO. 2216

Page 1, line 2, replace "deduction from" with "reimbursement of"

Page 1, line 7, replace "**Deduction to reimburse**" with "**Reimbursement to**"

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Renumber accordingly

B

BreatheND

Saving Lives, Saving Money with Measure 3.

Testimony
Senate Bill 2216
Senate Finance and Taxation Committee
10:30 a.m., Monday, January 24, 2011
North Dakota Tobacco Prevention and Control Executive Committee

Good morning Chairman Cook and members of the Senate Finance and Tax Committee. My name is Jeanne Prom and I am the executive director of the Center for Tobacco Prevention and Control Policy, the office created by the Executive Committee. I am here to provide testimony that takes a neutral position on SB 2216 relating to a tax deduction incentive for smoke-free bars.

The Executive Committee supports all public places becoming smoke-free. This, of course, includes bars. Scientific and economic studies of smoke-free bars show overwhelmingly positive impacts on health without negative effects on bar revenues. Specifically, smoke-free policies save lives and save money by reducing heart disease and cancer, the #1 and #2 killers of North Dakotans, accounting for 2,663 deaths here in 2009 (NDDOH).

I will share three examples of the impact smoke-free policies have on health and bar revenues.

First, studies show that eliminating smoking in bars and other public places reduces heart attacks and encourages smokers to quit. Heart disease is one of the leading causes of death of North Dakotans 15 and older. Heart disease is the #1 cause of death of residents 65 and older. In reviewing recent North Dakota Medicare data, we know that the median Medicare payment for treating a heart attack made to Altru Hospital in Grand Forks, Medcenter One in Bismarck and Trinity in Minot, ranges from $5,358 to $11,956 per person (USDHSS, 2010, Hospital Compare). In addition to Medicare costs, in North Dakota, 10 percent of all smoking-caused healthcare expenditures are paid by the taxpayer through the state's Medicaid program. Annual smoking-related Medicaid costs are $47 million per year in North Dakota.

Second, studies show that smoke-free policies protect people from secondhand smoke and there is no safe level of exposure to secondhand smoke. In fact, the most recent Surgeon General's Report released last month states that even a brief exposure to secondhand smoke can cause irreparable damage to a person's DNA, which can cause that person to be predisposed to cancer. Cancer is one of the leading causes of death among North Dakotans age 5 and older. Cancer is the #1 cause of death of state residents age 45 to 64.

Third, studies of sales tax data where smoke-free policies including bars have been enacted show no long-term negative effect on bar revenues. The economic impact of smoke-free bar policies is either neutral or positive.

This information highlights the impact of smoke-free bars as reported in peer-reviewed science and economic journals. The North Dakota Tobacco Prevention and Control Executive Committee is required to implement science-based, proven effective approaches to reduce tobacco use, called Best Practices by the U.S. Centers for Disease Control and Prevention. In review of the literature, it is unclear if optional tax incentives for places to be smoke-free provide a net positive gain for either public health or the economy, as compared with smoke-free laws that affect the entire population and reduce tobacco use and its healthcare costs. The optional tax incentive has not been identified as a Best Practice.

In discussing this bill, I would like the committee to consider the following:

- Evidence shows that laws without tax breaks protecting bar workers and patrons from secondhand smoke make good health and economic sense without any tax break. What is the underlying premise of offering a tax incentive? If it is the idea that a tax break is needed to offset some kind of economic loss, then that premise is not supported by the evidence.

- It appears that only bars that have opted to be smoke-free are affected. On lines 10-11 of the bill, it states: "The deduction under this section does not apply to retailers in whose bar smoking is prohibited by law." Presumably, bars in cities that have smoke-free ordinances covering bars (Fargo, West Fargo, Napoleon and Grand Forks) would not benefit from this tax deduction. Is this a double standard? Does this provision also provide a disincentive for other cities and the state to exercise their statutory authority to pass local and state laws to make all places, including bars, smoke-free? In effect, does this provide a de facto limit on, or pre-emption of, local control?

- Is the tax incentive perpetual? What might occur if the incentive ends? Would bars allow smoking again?

- Is this approach the best state governmental approach available, in that it is proven to be the most efficient and cost-effective way to protect citizens from secondhand smoke in all places where smoking is still allowed? Does it create a reasonable amount of effort for compliance and enforcement?

To summarize, making all public places -- including bars -- smoke-free will reduce smoking and smoking-caused heart disease and cancer. Heart disease and cancer are the two leading causes of death in North Dakota, costing taxpayers millions of dollars annually through tax-funded healthcare programs. Tobacco use is a huge problem and requires solutions equal in scale. It is unclear that Senate Bill 2216 provides a public health solution. Therefore, the North Dakota Tobacco Prevention and Control Executive Committee is neutral on this bill as written.

I thank you for your thoughtful consideration of this bill and the health and economic evidence of the benefits of smoke-free laws. I am happy to answer any questions.