

**FISCAL NOTE**  
**Requested by Legislative Council**  
**12/19/2014**

Amendment to: HB 1117

- 1 A. **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.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **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 1117 deals with the streamlined sales and use 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.*

There is no fiscal impact.

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 or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

**Name:** Kathryn L. Strombeck

**Agency:** Office of Tax Commissioner

**Telephone:** 328-3402

**Date Prepared:** 01/09/2015

**FISCAL NOTE**  
**Requested by Legislative Council**  
**12/19/2014**

Bill/Resolution No.: HB 1117

- 1 A. **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.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **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 1117 deals with the streamlined sales and use 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.*

There is no fiscal impact.

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 or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

**Name:** Kathryn L. Strombeck

**Agency:** Office of Tax Commissioner

**Telephone:** 328-3402

**Date Prepared:** 01/09/2015

**2015 HOUSE FINANCE AND TAXATION**

**HB 1117**

# 2015 HOUSE STANDING COMMITTEE MINUTES

## Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1117  
1/13/2015  
21887

- ☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

A Bill relating to administration of the streamlined sales and use tax agreement; relating to the definition of prepared food for sales tax purposes, the taxability matrix to be used for administration of the sales and use tax agreement, and the definition of prepared food for use tax purposes.

### Minutes:

Attachment #1

**Chairman Headland:** Opened hearing. Clerk read the title of the bill.

**Myles Vosberg, Director Tax Administration Division:** Introduced bill. Submitted written testimony. See attachment #1.

**Chairman Headland:** Can you give an explanation on the best practices?

**Myles Vosberg:** Streamlines have kind of shifted away from requiring states to do things or to change definitions and move towards providing a matrix of information for retailers so they can identify how states do certain things. There are "deal of the day" vouchers where customers can purchase a discounted voucher or ticket to purchase some product. States vary in the way they treat that. Some states will tax the entire amount that it was worth and some will tax the actual amount paid for the product, which North Dakota does. That practice is put on this matrix to see how all states treat this and then retailers can know how to act on that. We are in the process of looking at goods that are being returned to a retailer. In some states 100% of the purchase price has to be returned to the customer in order for them to get a refund of the tax. In some situations products can be returned but the retailer charges a restocking fee so they don't get 100% back. North Dakota gives 100% back. The ways to handle this are being identified and will be placed on this matrix. The governing board has the ability to look at the various options out there and see which one they like the best. The majority of the states think this is the best practice and this is the way it should be done or this is the way the governing board recommends this should be done. No one is required to adopt that practice but they are encouraged to do that.

**Chairman Headland:** Any questions? Any support to 1117? Any opposition to 1117? Seeing none we will close the hearing on 1117.

**Chairman Headland:** Discussion on this bill?

**Vice Chairman Owens:** This change codifies North Dakota's independence a little bit because it says we're like this and we're putting it into code. I think this is one of the best streamlines we've seen in a while.

**Representative Klein:** Made a motion for a Do Pass.

**Representative Strinden:** Seconded.

**Roll call vote:** 13 yes    0 no    1 absent

**Motion carries.**

**Representative Hatlestad will carry this bill.**

Date: 1-13-15  
Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1117**

House Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation: ☐ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Rep. Klein Seconded By Rep. Strinden

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN HEADLAND	✓		REP HAAK	✓	
VICE CHAIRMAN OWENS	✓		REP STRINDEN	✓	
REP DOCKTER	✓		REP MITSKOG	✓	
REP TOMAN	✓		REP SCHNEIDER	✓	
REP FROSETH	✓				
REP STEINER	✓				
REP HATLESTAD	✓				
REP KLEIN	✓				
REP KADING	✓				
REP TROTTIER	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Hatlestad

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



**REPORT OF STANDING COMMITTEE**

**HB 1117: Finance and Taxation Committee (Rep. Headland, Chairman)** recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1117 was placed on the Eleventh order on the calendar.

**2015 SENATE FINANCE AND TAXATION**

**HB 1117**

# 2015 SENATE STANDING COMMITTEE MINUTES

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

HB1117  
3/16/2015  
Job #24844

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature

*Alice Grove*

### Explanation or reason for introduction of bill/resolution:

Relating to administration of the streamlined sales and use tax agreement; relating to the definition of prepared food for sales tax purposes, the taxability matrix to be used for administration of the sales and use tax agreement, and the definition of prepared food for use tax purposes.

### Minutes:

Attachment #1

**Chairman Cook** opened the hearing on HB1117.

**Myles Vosberg, Office of State Tax Commissioner** -- appears and testifies in support of HB1117. **(Attachment #1)**

**Sen. Cook** -- This bill really identifies what the governing boards function is today. We drafted the original streamline language, uniformity. We passed it. Today the discussion is to what degree must a state change its codes to be uniform and to what degree is there common sense as to what best practices are and strive to do best practices, correct?

**Myles Vosberg** -- I would agree with that completely.

**Sen. Cook** -- And if you look at the federal legislation that's passed, there will be 2 ways for a state to obtain collection authority: (1) is to pass the streamline agreement and be a member state; and (2) is the one they are going to fight about in Congress and that is the minimum simplification requirements that non-member states would have to enact in their state to get the collection authority, correct?

**Myles Vosberg** -- That's correct.

**Sen. Cook** -- The other issue is the Papa Murphy's issue and I am a fan of Papa Murphy's. Just so you know what happened is that we all have language that defines "prepared food and groceries". Some states tax one and not the other. Wisconsin got a request for an interpretation as to whether or not this pizza is taxable under the definition or not, right?

**Myles Vosberg** -- It started in Wisconsin and then it came to our compliance review and interpretation committee.

**Sen. Cook** -- And you chaired the committee, right? Wisconsin said they wanted to tax it?

**Myles Vosberg** -- Right. All states have the same definition but there was different interpretations. What this actually did was provide an option for states to go either way.

**Sen. Cook** -- But it shows what really causes so much of a burden to people who have to collect and remit sales tax is that you can have identical language in the law and one state will interpret it one way and other states will interpret it another way.

**Myles Vosberg** -- Correct.

**Sen. Triplett** -- The language is being put in here to correct this misunderstanding but it confuses me. How do you define "additional cooking" as opposed to just reheating, if we are talking about Papa Murphy's we're baking it in an oven but that is just reheating, or maybe it's just heating?

**Myles Vosberg** -- There was a lot of discussion on that. What we are talking about here that requires cooking or additional cooking is that it wasn't cooked in the first place. If you had the same pizza and you cooked it and then the manufacturer freezes it that would be reheating it.

**Sen. Triplett** -- Aren't there a lot of frozen pizzas that are partially cooked? Aren't there other things that would apply other than Papa Murphy's?

**Myles Vosberg** -- That's interesting that that discussion didn't come up. We thought we pretty much covered it all. The biggest difference is the prepared food definition applies to a retailer that prepares and sells the food. Most of those products that you are talking about are manufactured somewhere and then sold to a retailer who sells the product. It probably doesn't come to play here.

**Sen. Cook** -- I buy a lot of Papa Murphy's. To me it is groceries. It's not prepared food and it should not be taxable.

**Sen. Dotzenrod** -- Frozen pizza is not taxable?

**Myles Vosberg**-- That's correct.

**Sen. Dotzenrod** -- On page 3, you refer there to sellers and certified service providers. There must be a definition somewhere. It's not in what we have in front of us.

**Myles Vosberg** -- There is. A certified service provider is a term unique to streamline and it is companies that have developed software and provide service to retailers to do all of their sales tax calculations and reporting for them. Streamline has an agreement with those certified service providers.

**Sen. Dotzenrod** -- And that term, certified service providers, is not a term that would normally be used to distinguish between online sales and the brick and mortar building. It's got nothing to do with that. It's more to do with how the taxes are calculated.

**Myles Vosberg** -- That's true. The most common use is for the online sellers but it could be brick and mortar stores as well.

**Sen. Dotzenrod** -- And there's another term that is used in here that must be defined elsewhere, governing board? They refer to that quite often in here and then the executive director of the governing board is referred to on page 4, line 22. What's the governing board?

**Myles Vosberg** -- The governing board are the representatives from each state that vote on the agreement and make the decisions. Sen Cook is one of our representatives.

**Sen. Dotzenrod** -- The reason that I ask the question is that I didn't know if we had internal to our own state some board of some kind and you answered the question.

**Sen. Cook** -- Did you see the email that I sent to Mr. Walstad this morning?

**Myles Vosberg** -- No, I have not.

**Sen. Cook** -- It deals with our delegates to the governing board. Every state that has complied with the streamline agreement is a member of the governing board. They have to be recertified annually and the members of the governing board vote on that recertification to make sure that they are still in compliance. Each state gets 4 delegates to the governing board. They get 1 vote. North Dakota, since the very beginning, has been the only state where all 4 delegates are legislators. Some states have zero legislators as their delegates. I'd say most states are a mixture of legislators and tax commissioner-type folks. I have tried on many occasions to pass a bill or amend a bill that would allow the North Dakota tax commissioner to have 1 delegate and 1 less legislator. It always passes the Senate. It always fails in the House. Miles and Blaine go to every one of these meetings. They cannot sit at the table. I talked to the House majority leader this morning and I said you have never liked this in the past; it's time that you see the error in your thoughts and find some wisdom to agree. He says go ahead and amend the bill. I will be offering amendments that will change our delegation from 4 legislators to 3 legislators and 1 member chosen by the tax commissioner. Hopefully we can support that again. I used to enjoy these meetings but sometimes it's like watching paint dry.

**Sen. Triplett** -- So since they are not fun, you are going to make Myles go?

**Sen. Cook** -- Myles is always a big part. He just never was one of our delegates. (Meter 16:43-18:32).

No further testimony.

**Chairman Cook** closed the hearing on HB1117.

# 2015 SENATE STANDING COMMITTEE MINUTES

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

HB1117  
3/17/2015  
Job #25000

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature

*Alice Grove*

### Explanation or reason for introduction of bill/resolution:

Committee work.

### Minutes:

Attachment #1

**Chairman Cook** opened the committee work on HB1117.

**Sen. Cook -- (Attachment #1)** This is for the membership to the streamlined sales tax governing board: 2 members of the House of Representatives, 2 members of the Senate, appointed by the... We lost something here, Cole. Subsection 1 is supposed to say 3 members of the legislative assembly appointed by the chairman of legislative management and the tax commissioner or the tax commissioner's designee shall represent the state of North Dakota on the streamlined sales tax governing board. Section 2 and 3 has to do with the state local and advisory commissioner. Section 2 says they would be 2 members of the legislature, House and Senate member appointed to that. We don't need that language in code and it's been a long time since a legislator from North Dakota has attended a state, local and advisory commission meeting. All they do is advise the governing board. That's where all the study work is done. It's all the tax department, tax geeks, that go there. We don't need sections 2 and 3 at all. Do you understand the change that's missing here in subsection1? It's just got to be appointed by the chairman of the legislative management. I don't know how I missed that, Cole.

**Sen. Cook** --Is there a motion to put this amendment on the bill?

**Sen. Unruh** -- So moved.

**Sen. Bekkedahl** -- Seconded.

**Sen. Triplett** -- You mentioned something about this a day or two ago and it implied to me that, at least in recent years, all of the members appointed by the chair of legislative management have been members of the majority party and it occurs to me that maybe it would be appropriate, if we are going to have 3 members appointed by the chairman, that we should say at least 1 of whom shall be a member of the minority party.

**Sen. Cook** -- Senator Triplett we have had that discussion in the past as we've dealt with this issue every time I tried to get a member of the tax department on there, I don't have a problem with it but I guarantee you it's not going to pass. If we put it on there, the bill will go to a conference committee.

**Sen. Triplett** -- Why don't we just go through the motions? I will move to amend amendment #1 with the addition of the following words after appointed by the chairman of legislative management, 1 of whom shall be a member of the minority party.

**Sen. Dotzenrod** -- Seconded.

**Sen. Dotzenrod** -- Just for the record on this discussion I thought it was, just the way things were done, that there was an unwritten rule that when the committees were assembled and there were 10 people on the committee, that there was a pro-rata of party representation. Most of the committees I've seen in the legislature, they are just done that way. I don't know if we do it by rule or a policy we've been following.

**Sen. Cook** -- I would think it's left up to leadership. You've got to find a place for everybody. It's ironic, again, that most of the opposition to streamline comes from republicans.

**Roll call vote on amendment to amend the 1<sup>st</sup> amendment. 2-5-0. Motion failed.**

**Sen. Cook** -- We have before us the original amendment, amendment #1.

**Roll call vote on amendment 1. 7-0-0. Carried**

**Sen. Cook** -- We have before us HB1117.

**Sen. Bekkedahl** -- Motion to give a do pass recommendation to HB1117, as amended.

**Sen. Unruh** -- Seconded

**Roll call vote on HB1117, as amended. 7-0-0. Carried.**

**Carrier: Sen. Cook**

Committee work closed.

March 17, 2015

TD  
3/17/15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1117

Page 1, line 3, replace the second "section" with "sections"

Page 1, line 3, replace the second comma with "and 57-39.4-31,"

Page 1, line 6, after the comma insert "the streamlined sales tax governing board and advisory council,"

Page 4, after line 3, insert:

"**SECTION 3. AMENDMENT.** Section 57-39.4-31 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.4-31. Membership of streamlined sales tax governing board and state and local advisory council.**

1. ~~Two~~ Three members of the ~~house of representatives and two members of the senate, legislative assembly~~ to be appointed by the chairman of the legislative management; and one member that is the tax commissioner or the tax commissioner's designee shall represent ~~the~~ this state of North Dakota on the streamlined sales tax governing board.
2. ~~One member of the house of representatives and one member of the senate, to be appointed by the chairman of the legislative management, shall represent the state of North Dakota on the streamlined sales tax state and local advisory council.~~
3. ~~The tax commissioner shall designate a member of the tax commissioner's staff to accompany and advise the members appointed under this section with regard to multistate discussions to review or revise the agreement or to conduct such other business as comes before the board or council.~~

Renumber accordingly



Date: 3.17.15Roll Call Vote #: 1

**2015 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1117**

Senate Finance and Taxation Committee☐ SubcommitteeAmendment LC# or Description: Amend #1 Amend it to add, 1 of whom shall be a member of the minority party.

Recommendation: ☒ Adopt Amendment  
☐ Do Pass    ☐ Do Not Pass    ☐ Without Committee Recommendation  
☐ As Amended    ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ \_\_\_\_\_Motion Made By Sen. Triplett Seconded By Sen. Dotzenrod

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook		✓	Senator Jim Dotzenrod	✓	
Vice Chairman Lonnie Laffen		✓	Senator Connie Triplett	✓	
Senator Brad Bekkedahl		✓			
Senator Dave Oehlke		✓			
Senator Jessica Unruh		✓			

Total (Yes) 2 No 5Absent 0

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

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

Date: 3.17.15Roll Call Vote #: 2

**2015 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1117**

Senate Finance and Taxation Committee☐ SubcommitteeAmendment LC# or Description: #1

Recommendation: ☒ Adopt Amendment  
☐ Do Pass    ☐ Do Not Pass    ☐ Without Committee Recommendation  
☐ As Amended    ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ \_\_\_\_\_Motion Made By Sen. Unruh Seconded By Sen. Bekkedahl

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook	✓		Senator Jim Dotzenrod	✓	
Vice Chairman Lonnie Laffen	✓		Senator Connie Triplett	✓	
Senator Brad Bekkedahl	✓				
Senator Dave Oehlke	✓				
Senator Jessica Unruh	✓				

Total (Yes) 7 No 0Absent 0

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

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

Date: 3.17.15Roll Call Vote #: 3

**2015 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO HB 1117**

Senate Finance and Taxation Committee☐ SubcommitteeAmendment LC# or Description: 15.8061.01002 Title .02000

Recommendation: ☐ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☒ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ \_\_\_\_\_Motion Made By Sen. Bekkedahl Seconded By Sen Unruh

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook	✓		Senator Jim Dotzenrod	✓	
Vice Chairman Lonnie Laffen	✓		Senator Connie Triplett	✓	
Senator Brad Bekkedahl	✓				
Senator Dave Oehlke	✓				
Senator Jessica Unruh	✓				

Total (Yes) 7 No 0Absent 0Floor Assignment Sen Cook

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

**REPORT OF STANDING COMMITTEE**

**HB 1117: Finance and Taxation Committee (Sen. Cook, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1117 was placed on the Sixth order on the calendar.

Page 1, line 3, replace the second "section" with "sections"

Page 1, line 3, replace the second comma with "and 57-39.4-31,"

Page 1, line 6, after the comma insert "the streamlined sales tax governing board and advisory council,"

Page 4, after line 3, insert:

**"SECTION 3. AMENDMENT.** Section 57-39.4-31 of the North Dakota Century Code is amended and reenacted as follows:

**~~57-39.4-31. Membership of streamlined sales tax governing board and state and local advisory council.~~**

- ~~1. Two~~Three members of the house of representatives and two members of the senate, legislative assembly to be appointed by the chairman of the legislative management, and one member that is the tax commissioner or the tax commissioner's designee shall represent ~~the~~this state of North Dakota on the streamlined sales tax governing board.
- ~~2. One member of the house of representatives and one member of the senate, to be appointed by the chairman of the legislative management, shall represent the state of North Dakota on the streamlined sales tax state and local advisory council.~~
- ~~3. The tax commissioner shall designate a member of the tax commissioner's staff to accompany and advise the members appointed under this section with regard to multistate discussions to review or revise the agreement or to conduct such other business as comes before the board or council.~~

Renumber accordingly

**2015 TESTIMONY**

**HB 1117**



HB 1117  
1-13-15  
#1 p. 1

## **Testimony—**

### **House Finance and Taxation Committee**

#### **House Bill 1117**

January 13, 2015

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

#### **Introduction**

Good morning Chairman Headland and members of the House Finance and Taxation Committee. For the record, I am Myles Vosberg, Director of the Tax Administration Division of the Tax Commissioner's Office. I am here today on behalf of the Commissioner to testify in support of House Bill 1117, which will maintain North Dakota's Compliance with the Streamlined Sales and Use Tax Agreement.

#### **Background**

North Dakota has participated in the Streamlined Sales Tax (SST) project since 2001 and has been a full member of the Streamlined Sales and Use Tax Agreement (SUTA) since 2005. We have requested law changes every session since 2003 to remain in compliance with the agreement. As you know, the SST project has been a joint effort of state and local governments, the business community, tax practitioners, and many trade associations to simplify the sales tax laws and reduce retailers' burden to collect state and local sales taxes in all member states.

North Dakota's approach to adopting the provisions of the SUTA into our law has been to adopt the entire agreement by reference in Section 1 of North Dakota Century Code Chapter 57-39.4 except for Articles III and V of the Agreement. Articles III and V of the agreement identify uniformity requirements states must follow to be in compliance with the agreement. The detailed language of each section of Articles III

and V has been adopted in the remaining sections of Chapter 57-39.4. The two amendments in this bill will maintain North Dakota's compliance with the Streamlined Sales and Use Tax Agreement; however, neither of the two amendments has a fiscal impact or changes the current administration of North Dakota's sales and use tax laws.

## Explanation of bill

Sections 1 and 4 of the bill modify the definition of prepared food. Section 1 is the sales tax law and Section 4 amends the same definition in the use tax law. The definition of prepared food is significant because North Dakota exempts from sales tax most grocery items, but imposes tax on prepared food, which consists primarily of food purchased at restaurants and a limited number of items heated or otherwise prepared and sold at convenience or grocery stores. Since our last legislative session, an inquiry was made to SST member states regarding foods that were prepared by the seller but that normally require cooking by the purchaser before consumption. The most common example of this type of product is a pizza where the retailer prepares the dough and adds all the toppings and other ingredients, but does not bake the product before it is sold. All SST member states have adopted the same prepared food definition; however, some member states considered these products as prepared food, but others, including North Dakota, do not. The proposed definition change in Sections 1 and 4 of the bill clarify that our law excludes these food products from the definition of prepared food. If we do not adopt this change, these food items that require cooking before consumption will be included in prepared food and subject to state and local sales tax, which is inconsistent with our current administration of the prepared food definition.

Sections 2 and 3 of the bill adopt an approach to disclosing current administrative practices related to sales and use taxes. Since its inception, one of the primary goals of the Streamlined Sales and Use Tax Agreement has been to create uniform definitions and administrative practices across state lines wherever possible to ease retailers' responsibility to collect taxes. Now that uniformity has been established in many areas, efforts have moved towards asking states to document and disclose administrative practices that are not uniform among states. The SST disclosure process consists of identifying processes where disclosure would be beneficial to retailers, identifying states' similarities and differences in the processes, developing a concise description of the practices, requiring each member state to identify its practice, and posting the results to the member state's taxability matrix. The taxability matrix is a standardized document posted on the Internet that identifies if a SST member state taxes or exempts certain defined

products and also discloses specified administrative practices. Each state's matrix is posted on the Streamlined Sales Tax Governing Board website so that all member state's responses can be found in one location. Each member state also creates a link from its tax agency website to the Governing Board website so the matrix is easy to find and use.

The new language in Section 2 of the bill requires North Dakota, as a member SST state, to complete and post to the Tax Commissioner's website the standardized taxability matrix. The new language of Section 2 also states that North Dakota will relieve a retailer or Certified Service Provider (CSP) that acts as an agent for the retailer from tax liability if the retailer or CSP failed to collect tax due because it relied on incorrect or outdated information in the taxability matrix.

Section 3 of the bill states that SST Governing Board will identify which administrative practices it considers as a "best practice." States are encouraged to implement best practices, but are not required to do so to be in compliance with the SUTA. To date, the taxability matrix includes disclosure regarding 1) application of tax on vouchers (deal of the day transactions), and 2) application of credit for tax paid to another state when goods were purchased in one state and subsequently moved to another state. The "best practices" concept was finalized in late 2014 and no best practices have been identified to date.

### **Fiscal impact**

The changes in House Bill 1117 have no fiscal impact.

### **Conclusion**

Although the two amendments addressed in HB1117 have no substantive impacts on the administration of North Dakota sales and use taxes, approval of the bill will maintain North Dakota's compliance with Streamline Sales and Use Tax Agreement. The Tax Commissioner's Office respectfully requests favorable consideration on House Bill 1117. Thank you.





## **North Dakota State Tax Commissioner's Testimony before the Senate Finance and Taxation Committee House Bill 1117**

March 16, 2015

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

### **Introduction**

Good morning Chairman Cook and members of the Senate Finance and Taxation Committee. For the record, I am Myles Vosberg, Director of the Tax Administration Division of the Tax Commissioner's Office. I am here today on behalf of the Commissioner to testify in support of House Bill 1117, which will maintain North Dakota's Compliance with the Streamlined Sales and Use Tax Agreement.

### **Background**

North Dakota has participated in the Streamlined Sales Tax (SST) project since 2001 and has been a full member of the Streamlined Sales and Use Tax Agreement (SUTA) since 2005. We have requested law changes every session since 2003 to remain in compliance with the agreement. As you know, the SST project has been a joint effort of state and local governments, the business community, tax practitioners, and many trade associations to simplify the sales tax laws and reduce retailers' burden to collect state and local sales taxes in all member states.

North Dakota's approach to adopting the provisions of the SUTA into our law has been to adopt the entire agreement by reference in Section 1 of North Dakota Century Code Chapter 57-39.4 except for Articles III and V of the Agreement. Articles III and V of the agreement identify uniformity requirements states must follow to be in compliance with the agreement. The detailed language of each section of Articles III

1.2  
HB 1117  
3.16.15

and V has been adopted in the remaining sections of Chapter 57-39.4. The two amendments in this bill will maintain North Dakota's compliance with the Streamlined Sales and Use Tax Agreement; however, neither of the two amendments has a fiscal impact or changes the current administration of North Dakota's sales and use tax laws.

## Explanation of bill

Sections 1 and 4 of the bill modify the definition of prepared food. Section 1 is the sales tax law and Section 4 amends the same definition in the use tax law. The definition of prepared food is significant because North Dakota exempts from sales tax most grocery items, but imposes tax on prepared food, which consists primarily of food purchased at restaurants and a limited number of items heated or otherwise prepared and sold at convenience or grocery stores. Since our last legislative session, an inquiry was made to SST member states regarding foods that were prepared by the seller but that normally require cooking by the purchaser before consumption. The most common example of this type of product is a pizza where the retailer prepares the dough and adds all the toppings and other ingredients, but does not bake the product before it is sold. All SST member states have adopted the same prepared food definition; however, some member states considered these products as prepared food, but others, including North Dakota, do not. The proposed definition change in Sections 1 and 4 of the bill clarify that our law excludes these food products from the definition of prepared food. If we do not adopt this change, these food items that require cooking before consumption will be included in prepared food and subject to state and local sales tax, which is inconsistent with our current administration of the prepared food definition.

Sections 2 and 3 of the bill adopt an approach to disclosing current administrative practices related to sales and use taxes. Since its inception, one of the primary goals of the Streamlined Sales and Use Tax Agreement has been to create uniform definitions and administrative practices across state lines wherever possible to ease retailers' responsibility to collect taxes. Now that uniformity has been established in many areas, efforts have moved towards asking states to document and disclose administrative practices that are not uniform among states. The SST disclosure process consists of identifying processes where disclosure would be beneficial to retailers, identifying states' similarities and differences in the processes, developing a concise description of the practices, requiring each member state to identify its practice, and posting the results to the member state's taxability matrix. The taxability matrix is a standardized document posted on the Internet that identifies if a SST member state taxes or exempts certain defined

products and also discloses specified administrative practices. Each state's matrix is posted on the Streamlined Sales Tax Governing Board website so that all member state's responses can be found in one location. Each member state also creates a link from its tax agency website to the Governing Board website so the matrix is easy to find and use.

The new language in Section 2 of the bill requires North Dakota, as a member SST state, to complete and post to the Tax Commissioner's website the standardized taxability matrix. The new language of Section 2 also states that North Dakota will relieve a retailer or Certified Service Provider (CSP) that acts as an agent for the retailer from tax liability if the retailer or CSP failed to collect tax due because it relied on incorrect or outdated information in the taxability matrix.

Section 3 of the bill states that SST Governing Board will identify which administrative practices it considers as a "best practice." States are encouraged to implement best practices, but are not required to do so to be in compliance with the SUTA. To date, the taxability matrix includes disclosure regarding 1) application of tax on vouchers (deal of the day transactions), and 2) application of credit for tax paid to another state when goods were purchased in one state and subsequently moved to another state. The "best practices" concept was finalized in late 2014 and no best practices have been identified to date.

### **Fiscal impact**

The changes in House Bill 1117 have no fiscal impact.

### **Conclusion**

Although the two amendments addressed in HB1117 have no substantive impacts on the administration of North Dakota sales and use taxes, approval of the bill will maintain North Dakota's compliance with Streamline Sales and Use Tax Agreement. The Tax Commissioner's Office respectfully requests favorable consideration on House Bill 1117. Thank you.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1117

#1  
~~3.18.15~~  
3.17.15

AMENDMENT #1

---

Page 1, line 3, replace the second "section" with "sections"

Page 1, line 3, after the second comma insert "57-39.4-31,"

Page 4, after line 3, insert:

"SECTION 3. AMENDMENT. Section 57-39.4-31 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.4-31. Membership of streamlined sales tax governing board and state and local advisory council.**

1. ~~Two~~Three members of the house of representatives and two members of the ~~senate~~legislative assembly and the tax commissioner or the tax commissioner's designee, shall represent the state of North Dakota on the streamlined sales tax governing board.
2. ~~One member of the house of representatives and one member of the senate, to be appointed by the chairman of the legislative management, shall represent the state of North Dakota on the streamlined sales tax state and local advisory council.~~
3. ~~The tax commissioner shall designate a member of the tax commissioner's staff to accompany and advise the members appointed under this section with regard to multistate discussions to review or revise the agreement or to conduct such other business as comes before the board or council."~~

Renumber accordingly