

**FISCAL NOTE**  
**Requested by Legislative Council**  
**12/23/2016**

Bill/Resolution No.: SB 2128

- 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.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 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.*

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 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).*

SB 2128 deals with the length of time records must be retained for sales tax purposes.

- 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 2128 provides consistency with regard to required record retention with the Tax Commissioner's policies for tax assessments and audits. There is no fiscal impact to this bill.

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:** 701.328.3402

**Date Prepared:** 01/02/2017

**2017 SENATE FINANCE AND TAXATION**

**SB 2128**

# 2017 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee  
Lewis and Clark Room, State Capitol

SB 2128  
1/4/2017  
Job # 26520

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Jana Bellamy*

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

A BILL for an Act to amend and reenact subsection 1 of section 57-39.2-10 and section 57-40.2-09 of the North Dakota Century Code, relating to record retention for sales and use tax purposes.

## Minutes:

Attachments 1

**Chairman Cook:** Opened hearing on SB 2128. All Senators were present

**Myles Vosberg, Director of the Tax Administration Division of the Tax Commissioner's Office:** See attachment #1 for testimony in support of the bill

**Senator Laffen:** Why not shorten the length that we ask to 3.3, rather than extend the 3.3 as explained to me.

**Myles Vosberg:** Would you like to do that. That would shorten our audit period, we do find deficiencies greater than 25% over 3 years. I don't have a figure on that, but it would be a substantial amount of money.

**Chairman Cook:** the only time it's 6 years is if you find the deficiency greater than 25%

**Myles Vosberg** – Correct, have 3 years and then a 25% deficiency or no return filed in order to go to years 4, 5, and 6. Have to audit to determine if a deficiency or not, have the right to audit for the 6-year period, but can only access last 3 years if 25% deficiency.

**Senator Dotzenrod:** Retailer submitting normal returns is audited, requirement from feds to retain records for 6 or 7 years,

**Myles Vosberg** – retailers probably not throwing them out after 3 years, needed for other purposes, asset purchase depreciation schedules and sales for income tax return and so on. Not a lot of impact, why audit 6 and record retention of 3.

## Chairman Cook:

Any other questions? Closed hearing on SB 2128

# 2017 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee  
Lewis and Clark Room, State Capitol

SB 2128  
1/9/2017  
Job # 26690

- Subcommittee  
 Conference Committee

Committee Clerk Signature



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

A BILL for an Act to amend and reenact subsection 1 of section 57-39.2-10 and section 57-40.2-09 of the North Dakota Century Code, relating to record retention for sales and use tax purposes.

## Minutes:

**Chairman Cook:** All Senators were present. SB 2128 – record retention. Questions? Will let it sit, kick it out by the end of the week. Familiarize opinions.

**Senator Laffen:** We currently have record retention of 3.3 years, audit ability of 6.3 years. Only require people to keep records for 3.3 years. Trying to align these two.

**Donnita A. Wald, General Counsel, North Dakota Tax Department:** That is correct.

**Senator Laffen:** What if we lowered the audit length instead of raising the record retention? What kind of chaos would that provide?

**Donnita Wald:** It would have a negative fiscal note on it. We have a lot of 25% underpayment. All other tax types have the understatement.

**Senator Dotzenrod:** It didn't change much because of the IRS rule; most people assume 7 years for auditing. Most of the business people, are always aware of the potential for an audit. Didn't see a change in the requirement.

**Chairman Cook:** Senator Laffen, Dee's answer to your question.

**Senator Laffen:** Yes, answers the question, still not sure how I'd vote.

**Chairman Cook:** Set it aside for a bit. Moving on.

# 2017 SENATE STANDING COMMITTEE MINUTES

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

Senate Bill 2128  
1/10/2017  
Job #: 26710

- Subcommittee  
 Conference Committee

Committee Clerk Signature



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

A BILL for an Act to amend and reenact subsection 1 of section 57-39.2-10 and section 57-40.2-09 of the North Dakota Century Code, relating to record retention for sales and use tax purposes.

## Minutes:

No attachments

**Chairman Cook:** All Senators present. Senate Bill 2128, Record retention.

**Committee Discussion:** The committee briefly discussed previous discussions about the bill.

**Vice Chairman Bekkedahl:** Moved a Do Pass

**Senator Dotzenrod:** Seconded

**A Roll Call Vote Was Taken:** 6 yeas, 0 nays, 0 absent.

**Motion Carried.**

**Senator Bekkedahl will carry the bill.**



Date: 1-10-17  
Roll Call Vote #: 1

2017 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2128

Senate 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 Bekkedahl Seconded By Dotzenrod

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook	✓		Senator Jim Dotzenrod	✓	
Vice Chair Brad Bekkedahl	✓				
Senator Lonnie J. Laffen	✓				
Senator Scott Meyer	✓				
Senator Jessica Unruh	✓				

Total (Yes) 6 No 0  
Absent 0  
Floor Assignment Bekkedahl

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

**REPORT OF STANDING COMMITTEE**

**SB 2128: Finance and Taxation Committee (Sen. Cook, Chairman)** recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2128 was placed on the Eleventh order on the calendar.



**2017 HOUSE FINANCE AND TAXATION**

**SB 2128**

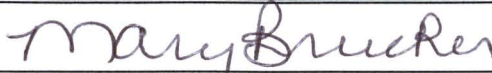
# 2017 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee  
Fort Totten Room, State Capitol

SB 2128  
2/13/2017  
28254

- Subcommittee  
 Conference Committee

Committee Clerk Signature



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

A bill relating to record retention for sales and use tax purposes.

## Minutes:

Attachment #1

**Chairman Headland:** Opened hearing on SB 2128.

**Myles Vosberg, Director Tax Administration Division, Office of State Tax Commissioner:** Distributed testimony. See attachment #1. Ended testimony at 4:15.

**Representative Hogan:** Have you had disputes in audits? Is this coming up from a situation or is it anticipatory?

**Myles Vosberg, Director Tax Administration Division, Office of State Tax Commissioner:** The law has been this way for many years. The dispute just came up this year. We were questioned by an accounting firm on why there was a difference between the records.

**Representative B. Koppelman:** This only pertains to businesses that hold a sales and use tax permit?

**Myles Vosberg, Director Tax Administration Division, Office of State Tax Commissioner:** Not necessarily because it also refers to those that don't file returns. Anyone that has an obligation, because it's in the use tax law to pay tax even though it may not hold a permit, would still be subject to this requirement.

**Representative B. Koppelman:** Anybody who has a business has things you keep for seven years for IRS auditing and such but there are many things you can dispose of after three taxable years. My concern with this language is that it would have a lot wider breath possibly than your typical people who are in the habit of selling things and the fact that anybody whoever buys anything could theoretically have to keep their records for twice as long. Is this your reading of it as well?

**Myles Vosberg, Director Tax Administration Division, Office of State Tax Commissioner:** Theoretically, I suppose that is true. We're really looking for businesses. We don't anticipate this will change things much because if you're a retailer in the business of selling things you would need to keep those records to support your sales. On your capital assets that you're purchasing, it will probably be on your depreciation schedule and those also you would need to keep for your income tax records. Those are the main records we're looking at here that would be subject to sales tax.

**Representative B. Koppelman:** For IRS you would need to keep your documents for three years, not seven. Most businesses are in the habit of keeping your receipts for a period of three taxable years prior. This would be a huge undertaking for many. I'm wondering if there's a way to tailor it more toward those that are in the business of selling things versus having anybody whoever buys and consumes be under the umbrella of this bill.

**Myles Vosberg, Director Tax Administration Division, Office of State Tax Commissioner:** We hadn't thought about doing that. We're looking for the sales records and the major capital assets that are acquired. I would be open to work on that but I'm not sure how we would do that.

**Chairman Headland:** This is a simple bill to put into statute the way you've been doing it for years. So why do we need to mess with it at all?

**Vice Chairman Dockter:** The IRS has a chart we have to go through every year. To say you only have to keep it three years is more complex than that. There are different years for different things. I don't think this is out of line because every year we have to shred and look at the list. It's a prudent practice for any business. I'd rather keep it longer than shorter because if you would get audited and you didn't have that information you'd really be in a hurt bag. I agree with the chairman; this is reasonable and is not out of line.

**Chairman Headland:** Is there further testimony in support of SB 2128? Is there any opposition? Seeing none we will close the hearing.

**Representative Hogan: MADE A MOTION FOR A DO PASS**

**Representative Steiner: SECONDED**

**Chairman Headland: Discussion?**

**ROLL CALL VOTE: 9 YES 4 NO 1 ABSENT**

**MOTION CARRIED**

**Representative Mitskog will carry this bill.**



Date: 2-13-17  
 Roll Call Vote #: 1

**2017 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2128**

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. Hogan Seconded By Rep. Steiner

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland	✓		Representative Hogan	✓	
Vice Chairman Dockter	✓	✓	Representative Mitskog	✓	
Representative Ertelt	✓	✓			
Representative Grueneich	✓				
Representative Hatlestad	✓				
Representative Howe	✓				
Representative Koppelman		✓			
Representative Olson		✓			
Representative Schobinger		✓			
Representative Steiner	✓				
Representative Toman	✓				
Representative Trottier	AB				

Total (Yes) 9 No 4

Absent 1

Floor Assignment Rep. Mitskog

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

**REPORT OF STANDING COMMITTEE**

**SB 2128: Finance and Taxation Committee (Rep. Headland, Chairman)** recommends **DO PASS** (9 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). SB 2128 was placed on the Fourteenth order on the calendar.

2017 TESTIMONY

SB 2128





**North Dakota State Tax Commissioner's  
Testimony before the Senate Finance and Taxation Committee  
Senate Bill 2128**

January 4, 2017

Prepared by Myles Vosberg, Director Tax Administration Division  
North Dakota Office of State Tax Commissioner  
Phone: 701-328-3471  
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**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 Senate Bill 2128, which extends the time period sales and use tax permit holders are required to preserve records needed to calculate the proper amount of sales and use tax liability for a reporting period.

**Background**

North Dakota Century Code § 57-39.2-15 provides the Tax Commissioner authority to audit the books and records of businesses that sell and purchase taxable goods and services to determine if the correct amount of sales and use tax has been reported and remitted to the state. If the Tax Commissioner determines that an incorrect amount of sales or use tax has been remitted to the state, the Commissioner must issue a notice of determination to the person liable for the tax. The notice must be provided not later than three years from the due date of the sales tax return or the date the return was filed, whichever is later. However, N.D.C.C. § 57-39.2-15 also states that if no return was filed or an audit determines the tax deficiency is more than 25 percent of the tax reported on a return, the Commissioner has six years to provide a notice of determination for the deficiency.

The issue we are addressing in Senate Bill 2128 is that other sections within the sales and use tax laws require sales tax permit holders to preserve records regarding sales and purchase activities for only three years and three months. As a result, there is a discrepancy between the Commissioner's time frame to audit and make assessments of unpaid tax and the retailer's requirement to retain records for those same reporting periods under audit.

### **Explanation of bill**

Section 1 of the bill expands the records retention requirement of all retailers from three years and three months to six years and three months. Section 2 of the bill creates the same records retention requirements in the use tax law, chapter 57-40.2. These changes will require sales and use tax permit holders to retain records for all reporting periods subject to audit. The changes in Senate Bill 2128 will not change current tax administration policy, but it will eliminate potential disagreements resulting from a records retention period that is shorter than the potential audit period.

### **Fiscal impact**

Senate Bill 2128 will have no fiscal impact on state or local sales and use tax revenue.

### **Conclusion**

The proposed changes in Senate Bill 2128 are simple, but will reduce the possibility of disagreement over sales and purchase records subject to review. The Tax Commissioner's Office respectfully requests favorable consideration on Senate Bill 2128. Thank you.





#1  
2-13-17  
SB 2128

## North Dakota State Tax Commissioner's Testimony before the House Finance and Taxation Committee Senate Bill 2128

February 13, 2017

Prepared by Myles Vosberg, Director Tax Administration Division  
North Dakota Office of State Tax Commissioner  
Phone: 701-328-3471  
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### 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 Senate Bill 2128, which extends the time period sales and use tax permit holders are required to preserve records necessary to calculate the proper amount of sales and use tax liability for a reporting period.

### Background

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#1  
2-13-17  
SB 2128

The issue we are addressing in Senate Bill 2128 is that other sections within the sales and use tax laws require sales tax permit holders to preserve records regarding sales and purchase activities for only three years and three months. As a result, there is a discrepancy between the Commissioner's time frame to audit and make assessments of unpaid tax and the retailer's requirement to retain records for those same reporting periods under audit.

### **Explanation of bill**

Section 1 of the bill expands the records retention requirement of all retailers from three years and three months to six years and three months. Section 2 of the bill creates the same records retention requirements in the use tax law, chapter 57-40.2. These changes will require sales and use tax permit holders to retain records for all reporting periods subject to audit. The changes in Senate Bill 2128 will not change current tax administration policy, but it will eliminate potential disagreements resulting from a records retention period that is shorter than the potential audit period.

### **Fiscal impact**

Senate Bill 2128 will have no fiscal impact on state or local sales and use tax revenue.

### **Conclusion**

The proposed changes in Senate Bill 2128 are simple, but will reduce the possibility of disagreement over sales and purchase records subject to review. The Tax Commissioner's Office respectfully requests favorable consideration on Senate Bill 2128. Thank you.



#1  
2-13-17  
SB 2128

**57-39.2-15. Failure to file return - Incorrect return.**

If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient, the commissioner shall determine the amount of tax due from any information as the commissioner may be able to obtain, and, if necessary, may estimate the tax on the basis of external indices, such as number of employees of the person concerned, rentals paid by the person, the person's stock on hand, and other factors. ***The commissioner shall give notice of the determination to the person liable for the tax. If the determination of tax due relates to an incorrect or insufficient return filed by a taxpayer, notice of the determination must be given not later than three years after the last day on which the return was due or three years after the return was filed, whichever period expires later; if it is determined upon audit that the tax due was twenty-five percent or more above the amount reported on a return, notice of determination of tax due must be given not later than six years after the last day on which the return was due or six years after the return was filed, whichever is later. Notice of determination of tax due for any reporting period for which a taxpayer failed to file a return must be given not later than six years after the due date of the return*** but if fraudulent information is given in a return or the failure to file a return is due to the fraudulent intent or willful attempt of the taxpayer in any manner to evade the tax, the time limitation herein provided for giving notice of the determination of tax due does not apply. The determination of tax due fixes the tax finally and irrevocably unless the person against whom it is assessed, within thirty days after the giving of notice of the determination, protests the determination under rules adopted by the commissioner and under chapter 28-32.