

FISCAL NOTE
Requested by Legislative Council
12/23/2016

Amendment to: SB 2129

- 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).*

The provisions of SB 2129 provide consistency and clarification among various tax statutes. There is no fiscal impact.

- 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.*

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: 01/04/2017

FISCAL NOTE
Requested by Legislative Council
12/23/2016

Bill/Resolution No.: SB 2129

- 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						

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- 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).*

The provisions of SB 2129 provide consistency and clarification among various tax statutes. There is no fiscal impact.

- 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.*

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.*

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Date Prepared: 01/04/2017

2017 SENATE FINANCE AND TAXATION

SB 2129

2017 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Lewis and Clark Room, State Capitol

Senate Bill 2129
1/4/2017
Job # 26523

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new section to chapter 57-39.2 of the North Dakota Century Code, relating to refunds for sales, use, farm machinery gross receipts, and alcoholic beverage gross receipts taxes; to amend and reenact subdivision ee of subsection 2 of section 12-60-24, sections 57-01-13 and 57-37.1-06, subsection 2 of section 57-39.2-11, and sections 57-39.2-27, 57-40.2-17, and 57-40.3-09 of the North Dakota Century Code, relating to criminal history record checks, alcoholic beverage gross receipts taxes, estate tax return filing requirements, sales and use taxes, and motor vehicle excise tax credits; to repeal section 57-39.2-24 of the North Dakota Century Code, relating to refunds for sales, use, farm machinery gross receipts, and alcoholic beverage gross receipts taxes; and to provide an effective date.

Minutes:

Attachment 1-2

Chairman Cook: Opened the hearing on SB 2129, All Senators 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.

Vice Chairman Bekkedahl: Role of finance commissioner, used to have in budget process, an estate tax revenue portion, and years ago got disbursements from state. Recently gotten zero dollars, does North Dakota not have an estate tax law?

Myles Vosberg: We still have an estate tax law, the way it works refers to amount of federal tax, credit applied, amount equaled North Dakota estate tax amount. None received since 2005, due to cancel of federal tax credit. Previously, estate tax was paid to state from federal, and then state distributed to counties and cities where property was located. North Dakota law says if federal return filed, state must be filed also. Estates prepare return, and no tax, no requirement to file return.

Myles Vosberg: continued testimony #1 in support at Section 4.

Chairman Cook: has no fiscal impact, but the bill has a stamp, fiscal note required.

Myles Vosberg: there was a fiscal note required, fiscal note will say no fiscal impact, it will be provided.

Chairman Cook: any other questions?

Senator Dotzenrod: All of the sections 5, 6, 7, 9, when you talk about the refund is issued, not will be, but is issued, rather than the retailer be required. What's in the bill and the sections, changing law to match what's currently done, rather than proposal to prefer a different way. Law doesn't match to how it's being done now, so let's change the laws.

Myles Vosberg: current law, says refunds need to be applied as a credit to future returns. If the tax isn't consumed, can be refunded. Easier and quicker to issue refund.

Chairman Cook: fiscal note received from clerk, why \$110 limit is no longer relevant.

Myles Vosberg: limit still applies, additional language applied to larger companies required at the time, now all companies are required. Striking out language is obsolete, no impact on the current 1.5% up to \$110.

Brady Pelton, Legislative Intern: handed out testimony #2, proposed amendment.

Chairman Cook: clean up amendment, adds a title to one of the bill sections. "claim for refund". Any other questions. Hearing closed on SB 2129.

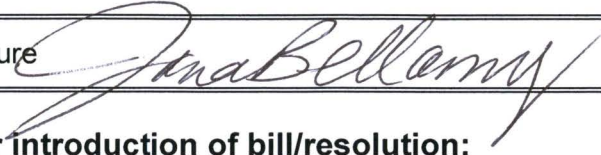
2017 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Lewis and Clark Room, State Capitol

Senate Bill 2129
1/9/2017
Job # 26691

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new section to chapter 57-39.2 of the North Dakota Century Code, relating to refunds for sales, use, farm machinery gross receipts, and alcoholic beverage gross receipts taxes; to amend and reenact subdivision ee of subsection 2 of section 12-60-24, sections 57-01-13 and 57-37.1-06, subsection 2 of section 57-39.2-11, and sections 57-39.2-27, 57-40.2-17, and 57-40.3-09 of the North Dakota Century Code, relating to criminal history record checks, alcoholic beverage gross receipts taxes, estate tax return filing requirements, sales and use taxes, and motor vehicle excise tax credits; to repeal section 57-39.2-24 of the North Dakota Century Code, relating to refunds for sales, use, farm machinery gross receipts, and alcoholic beverage gross receipts taxes; and to provide an effective date.

Minutes:



Chairman Cook: All Senators present. SB 2129, Tax Department's housekeeping bill. Does a few things. There is an amendment that needs to go on for sure. No fiscal impact. The changes are intended to clarify language, codify administrative processes, or make current processes more consistent was the testimony with an explanation of every section.

Senator Dotzenrod: Motion to adopt the amendment.

Senator Laffen: Seconded.

Chairman Cook: Motion and a second. Committee discussion? A very simple amendment.

Voice Vote Taken: Unanimous.

Chairman Cook: We have before us, SB 2129 as amended.

Senator Laffen: Do Pass, as Amended

Senator Unruh: Seconded.

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

Motion Carried

Senator Laffen will carry the bill.

17.8085.01001
Title.02000

Adopted by the Finance and Taxation
Committee

January 9, 2017

ET
1-9-17
pg 1 of 1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2129

Page 5, after line 23, insert:

"Claim for refund."

Renumber accordingly

Date: 1-
Roll Call Vote #:

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES

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

Seconded By

[illegible]

Total (Yes) _____

No

Absent

Floor Assignment

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

Date: 1-9-17
Roll Call Vote #: 2

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2129

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 Laffen Seconded By Unruh

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook	<input checked="" type="checkbox"/>		Senator Jim Dotzenrod	<input checked="" type="checkbox"/>	
Vice Chair Brad Bekkedahl	<input checked="" type="checkbox"/>				
Senator Lonnie J. Laffen	<input checked="" type="checkbox"/>				
Senator Scott Meyer	<input checked="" type="checkbox"/>				
Senator Jessica Unruh	<input checked="" type="checkbox"/>				

Total (Yes) 6 No 0

Absent _____

Floor Assignment Laffen

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

REPORT OF STANDING COMMITTEE

SB 2129: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2129 was placed on the Sixth order on the calendar.

Page 5, after line 23, insert:

"Claim for refund."

Renumber accordingly

2017 HOUSE FINANCE AND TAXATION

SB 2129

2017 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2129
2/15/2017
28382

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Mary Brucher

Explanation or reason for introduction of bill/resolution:

A bill relating to refunds for sales, use, farm machinery gross receipts, and alcoholic beverage gross receipts taxes; relating to criminal history record checks, alcoholic beverage gross receipts taxes, estate tax return filing requirements, sales and use taxes, and motor vehicle excise tax credits; relating to sales and use tax, and motor vehicle excise tax credits; and relating to refunds for sales, use, farm machinery gross receipts, and alcoholic beverage gross receipts taxes.

Minutes:

Attachment #1

Chairman Headland: Opened hearing SB 2129.

Myles Vosberg, Director Tax Administration Division, Office of State Tax Commissioner: Introduced bill. Distributed testimony. See attachment #1. Ended testimony at 8:43.

Representative Olson: In section 1 with BCI checks, the change would be that rather than just people who are applying for a position it would be every employee who currently works for the Tax Department is subject as well as contractors?

Myles Vosberg, Director Tax Administration Division, Office of State Tax Commissioner: That is correct. In the past it's been OMB's recommendation and the State Auditor's recommendation that new employees have a background check but the IRS prefers that we do it to all employees. Every 10 years all of our employees will have a background check.

Representative Olson: Do you have an estimate of the increase in number of background checks your department would need to request on an annual basis?

Myles Vosberg, Director Tax Administration Division, Office of State Tax Commissioner: When we put this in we had about 76 employees who did not have a background check in the past. Starting right off the bat the first year, we would probably have those 76 assuming they are all still with us.

Chairman Headland: What is the cost of a background check to the department?

Myles Vosberg, Director Tax Administration Division, Office of State Tax Commissioner: Between the finger printing, the check by the attorney general's office, and BCI it's about \$60-65 per employee.

Chairman Headland: That will just be taken right out of the commissioner's budget?

Myles Vosberg, Director Tax Administration Division, Office of State Tax Commissioner: We didn't ask for additional funding for that so it will come out of our current operations.

Representative Hogan: Do all state agencies that have access to IRS federal tax information have to have background checks or just the Tax Department?

Myles Vosberg, Director Tax Administration Division, Office of State Tax Commissioner: I believe there are other bills this session that the IRS is requesting. I think Job Service is one where they have information shared in their agreements and they are also requesting the additional background checks.

Representative Hogan: Human Services would be a county expense and that's a pretty big operational system so that's a big change.

Dee Wald, General Counsel for the Tax Commissioner's Office: The information is exchanged between the state's Child Support Enforcement for Human Services. They also have language that provides for this. Any entity that gets federal tax information has to go through these background checks. We go through these annually by the IRS to make sure that we are complying with their publication 1075 which sets forth all the requirements to receive federal tax information.

Representative Hogan: And that would apply to Medicaid, TANIF, and all the benefit side too because they have access to tax information.

Dee Wald: I'm not sure they get that from the IRS. You have to attach a copy of your federal return with your income tax returns so that is not federal tax information, it is state tax information because we're requiring it. We're talking about information we receive directly from the IRS then it's federal tax information.

Chairman Headland: Is there further testimony in support of SB 2129? Is there opposition to SB 2129? Seeing none we will close the hearing.

Representative Hogan: MADE A MOTION FOR A DO PASS

Representative Steiner: SECONDED

Chairman Headland: Is there any discussion?

House Finance and Taxation Committee

SB 2129

February 15, 2017

Page 3

ROLL CALL VOTE: 12 YES 0 NO 2 ABSENT

MOTION CARRIED

Representative Hogan will carry this bill.

Date: 2-15-17
Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2129

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	AB				
Representative Grueneich	✓				
Representative Hatlestad	✓				
Representative Howe	✓				
Representative Koppelman	✓				
Representative Olson	✓				
Representative Schobinger	✓				
Representative Steiner	✓				
Representative Toman	✓				
Representative Trottier	AB				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Hogan

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

REPORT OF STANDING COMMITTEE

SB 2129, as engrossed: Finance and Taxation Committee (Rep. Headland, Chairman)
recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING).
Engrossed SB 2129 was placed on the Fourteenth order on the calendar.

2017 TESTIMONY

SB 2129



North Dakota State Tax Commissioner's Testimony before the Senate Finance and Taxation Committee Senate Bill 2129

January 4, 2017

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 Senate Bill 2129.

Background

This bill was introduced by the Tax Commissioner to address administrative issues encountered by our Department. These changes, which apply to alcohol gross receipts taxes, estate taxes, sales and use taxes, and motor vehicle excise tax will have no fiscal impact. The changes are intended to clarify language, codify administrative processes or make current processes more consistent with other similar taxes.

Explanation of bill

Section 1 of the bill amends North Dakota Century Code Chapter 12-60 regarding the Bureau of Criminal Investigation. Under current law, BCI will provide background check information on applicants for employment with the Tax Commissioner's Office if request by the Commissioner. Section 1 amends that law to state BCI will provide background check information at the Commissioner's request for all Tax Department employees and third party contractors with access to federal tax information. Any information provided to us by the IRS is federal tax information.

The Internal Revenue Service has requested increased background checks under the terms of information sharing agreements between the Department and the IRS. The terms of our information sharing agreements require our office to follow specific safeguard standards to protect all federal tax information from disclosure. Background checks on every employee and on contractors is a basic standard we must meet in order to continue receiving federal tax information from the IRS. Federal tax information provided by the IRS is critical to the success of various tax compliance programs administered by the Department and is also used in combating fraudulent income tax returns submitted to obtain invalid refunds.

Section 2 of the bill modifies the list of tax types that are authorized to be collected by a third party collection company. North Dakota Century Code § 57-01-13 authorizes the Commissioner to contract with third party collection companies to collect specified types of taxes that are past due from out-of-state companies and individuals. Section 2 adds alcoholic beverage gross receipts tax and removes business and corporation privilege taxes from the list of taxes that may be collected under contract with third party collection companies. The business and corporation privilege tax was repealed in 1981.

Section 3 eliminates the requirement to file a North Dakota estate tax return if no estate tax is due. North Dakota's estate tax imposition is based on an outdated federal tax law that provides a state credit allowable against the federal estate tax. Prior to federal law changes, the federal credit was equal to the amount of North Dakota estate tax due. The state tax credit is no longer available under federal law, therefore, North Dakota estate tax is no longer due. Unless the federal law is amended to again provide for a state tax credit, North Dakota will not receive estate tax under our current law. However, even though North Dakota receives no estate tax, the requirement to file a North Dakota estate tax return still exists. If an estate is required to file a federal estate tax return our law requires a North Dakota estate tax return as well. Section 3 does not repeal our estate tax law, but it eliminates the requirement to file an estate tax return with the Tax Department. Should the federal tax credit ever be implemented again, estate tax would be due in North Dakota and the estate tax return would be required.

Section 4 removes obsolete language in the sales tax law regarding compensation available to retailers filing sales tax returns. Current law allows all retailers to retain 1½ percent of the sales tax due on a return up to \$110. The obsolete language formally applied to large retailers that were required to file monthly sales tax returns and, at that time, were the only retailers eligible for compensation. Because all sales tax permit holders are now eligible for compensation, this language no longer applies.

Sections 5, 6, 7 and 9 clarify the language that currently addresses over collection of sales tax by a retailer that is later refunded to the purchaser. After the retailer refunds tax collected in error to the purchaser, the retailer may file an amended return to recoup the tax refunded to its customer. Section 5 of the bill is a rewrite of N.D.C.C. § 57-39.2-24, which is repealed in Section 9 of the bill. The purpose of Section 5 is to clarify that only the retailer who originally collected tax and remitted it to the Tax Commissioner may file an amended return and apply for a refund of the overpaid tax. Current law provides that a retailer who over collected tax and later refunded the excess tax to the purchaser must take a credit on a future return or returns to recoup the tax refunded to a customer. The Department's current administrative policy is to require the retailer to file an amended return for all periods tax was over collected. After processing the amended returns, a refund is issued to the retailer rather than requiring the retailer to take credit on future returns. The refund process reimburses the retailer more quickly than applying credit on a future return and also makes verifying the overpayment easier for the Department. Section 6 of the bill removes the language regarding credits for over collected sales tax and adds new language requiring amended returns and refund claims instead. Section 7 makes the same change as Section 6, but in the use tax law.

Section 8 addresses credit for motor vehicle excise tax paid in another state. If a vehicle originally purchased in another state is subject to a motor vehicle excise tax or other similar tax in the state of purchase, North Dakota will allow credit for the tax paid in the other state against any tax that is due upon titling and licensing the vehicle in North Dakota. The amendment in Section 8 is to clarify that the tax must be legally due and paid in the other state in order for credit to apply in North Dakota. A similar amendment was made in the use tax law last session, but we failed to make the change in the motor vehicle excise tax law.

Section 10 makes all the changes in SB 2129 effective July 1, 2017.

Fiscal impact

Senate Bill 2129 will have no fiscal impact on state or local sales and use tax revenue.

Conclusion

The changes in Senate Bill 2129 are intended to clarify the law, codify existing administrative practices, and make administrative practices more uniform among tax types. The Tax Commissioner respectfully requests that you give favorable consideration to Senate Bill 2129. Thank you for your consideration.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2129

Page 5, after line 23, insert:

"Claim for refund."

Renumber accordingly

1-9-2017 Amendment #1
Proposed by Leg. Council
Staff

DRAFT PROPOSED AMENDMENTS TO SENATE BILL NO. 2129
(Prepared by Legislative Intern Brady Pelton at the request of Legislative Council Staff)

Page 5, after line 23, insert:

"Claim for refund."

Renumber accordingly



#1
2-15-17
SB2129

North Dakota State Tax Commissioner's Testimony before the House Finance and Taxation Committee Senate Bill 2129

February 15, 2017

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 Senate Bill 2129.

Background

This bill was introduced by the Tax Commissioner to address administrative issues encountered by our Department. These changes, which apply to alcohol gross receipts taxes, estate taxes, sales and use taxes, and motor vehicle excise tax will have no fiscal impact. The changes are intended to clarify the law, remove obsolete language, and make current processes more consistent between similar tax types.

Explanation of bill

Section 1 of the bill amends North Dakota Century Code Chapter 12-60 regarding the Bureau of Criminal Investigation. Under current law, BCI will provide background check information on applicants for employment with the Tax Commissioner's Office if request by the Commissioner. Section 1 amends that law to state BCI will provide background check information at the Commissioner's request for all Tax Department employees and third party contractors with access to federal tax information. Any information provided to us by the IRS is federal tax information.

The Internal Revenue Service has requested increased background checks under the terms of information sharing agreements between the Department and the IRS. The terms of our information sharing agreements require our office to follow specific safeguard standards to protect all federal tax information from disclosure. Background checks on every employee and on contractors is a basic standard we must meet in order to continue receiving federal tax information from the IRS. Federal tax information provided by the IRS is critical to the success of various tax compliance programs administered by the Department and is also used in combating fraudulent income tax returns submitted to obtain invalid refunds.

Section 2 of the bill modifies the list of tax types that are authorized to be collected by a third party collection company. North Dakota Century Code § 57-01-13 authorizes the Commissioner to contract with third party collection companies to collect specified types of taxes that are past due from out-of-state companies and individuals. Section 2 adds alcoholic beverage gross receipts tax and removes business and corporation privilege taxes from the list of taxes that may be collected under contract with third party collection companies. The business and corporation privilege tax was repealed in 1981.

Section 3 eliminates the requirement to file a North Dakota estate tax return if no estate tax is due. North Dakota's estate tax imposition is based on an obsolete federal tax law that provides a state credit allowable against the federal estate tax. Prior to federal law changes, the federal credit allowed was the amount of estate tax paid to North Dakota. The state tax credit is no longer available under federal law, therefore, North Dakota estate tax is no longer due. However, even though North Dakota receives no estate tax, the requirement to file a North Dakota estate tax return still exists. If an estate is required to file a federal estate tax return, our law requires a North Dakota estate tax return as well. Section 3 does not repeal our estate tax law, but it eliminates the requirement to file an estate tax return with the Tax Department. Should the federal tax credit ever be implemented again, estate tax would be due in North Dakota and the estate tax return would be required.

Section 4 removes obsolete language in the sales tax law regarding compensation available to retailers filing sales tax returns. Current law allows all retailers to retain 1½ percent of the state sales tax due on a return up to \$110. The obsolete language formally applied to large retailers that were required to file monthly sales tax returns and, at that time, were the only retailers eligible for compensation. Because all sales tax permit holders are now eligible for compensation, this language no longer applies.

#1
2-15-17
SB 2129

Sections 5, 6, 7 and 9 clarify the language that currently addresses over collection of sales tax by a retailer that is later refunded to the purchaser. After the retailer refunds tax collected in error to the purchaser, the retailer may file an amended return to recoup the tax refunded to its customer. Section 5 of the bill is a rewrite of N.D.C.C. § 57-39.2-24, which is repealed in Section 9 of the bill. The purpose of Section 5 is to clarify that only the retailer who originally collected tax and remitted it to the Tax Commissioner may file an amended return and apply for a refund of the overpaid tax. Current law provides that a retailer who over collected tax and later refunded the excess tax to the purchaser must take a credit on a future return or returns to recoup the tax refunded to a customer. If the retailer discontinues operations or cannot use the credit for other reasons, the excess tax may be refunded to the retailer. The Department's current administrative policy is to require the retailer to file an amended return for all periods tax was over collected. Normally, a refund is issued to the retailer rather than requiring the retailer to take credit on future returns because it is often difficult for the retailer to utilize the credit in a timely manner. The refund process reimburses the retailer more quickly than applying credit on future returns and also makes processing the adjustment more efficient for the Department. Section 6 of the bill removes the language regarding credits for over collected sales tax and adds new language requiring amended returns and refund claims instead. Section 7 makes the same change as Section 6, but in the use tax law.

Section 8 addresses credit for motor vehicle excise tax paid in another state. If a vehicle originally purchased in another state is subject to a motor vehicle excise tax or other similar tax in the state of purchase, North Dakota will allow credit for the tax paid in the other state against any tax that is due upon titling and licensing the vehicle in North Dakota. The amendment in Section 8 is to clarify that the tax must be legally due and paid in the other state in order for credit to apply in North Dakota. A similar amendment was made in the use tax law last session, but we failed to make the change in the motor vehicle excise tax law.

Section 10 makes all the changes in SB 2129 effective July 1, 2017.

Fiscal impact

Senate Bill 2129 will have no fiscal impact on state or local sales and use tax revenue.

Conclusion

The changes in Senate Bill 2129 are intended to clarify the law, remove obsolete language, and make administrative practices more uniform among tax types. The Tax Commissioner respectfully requests favorable consideration on Senate Bill 2129. Thank you.