

FISCAL NOTE
Requested by Legislative Council
03/09/2017

Amendment to: SB 2298

- 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).*

Engrossed SB 2298 with House Amendments requires certain out-of-state sellers of taxable goods and services to collect and remit sales and use taxes.

- 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.*

Engrossed SB 2298 with House Amendments requires the collection and remittance of sales and use taxes by out-of-state sellers once a specified level of sales activity has been achieved in the state in a given calendar year. If enacted, this bill will become effective when allowed by the US Supreme Court. Depending on the timing of any eventual court action, this bill may result in additional sales and use taxes being remitted by remote sellers during the 2017-19 biennium. The possible additional state general fund and state aid distribution fund revenue that may result from enactment of this bill cannot be computed.

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: 03/10/2017

FISCAL NOTE
Requested by Legislative Council
02/14/2017

Amendment to: Engrossed SB 2298

- 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).*

Engrossed SB 2298 requires certain out-of-state sellers of taxable goods and services to collect and remit sales and use taxes.

- 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.*

Engrossed SB 2298 requires the collection and remittance of sales and use taxes by out-of-state sellers once a specified level of sales activity has been achieved in the state in a given calendar year. If enacted, this bill will become effective July 1, 2017 and may result in additional sales and use taxes being remitted by remote sellers during the 2017-19 biennium, if there is no legal challenge to the law. The possible additional state general fund and state aid distribution fund revenue that may result from enactment of this bill cannot be computed.

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: 02/15/2017

FISCAL NOTE
Requested by Legislative Council
01/20/2017

Bill/Resolution No.: SB 2298

- 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 2298 requires certain out-of-state sellers of taxable goods and services to collect and remit sales and use taxes.

- 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 2298 requires the collection and remittance of sales and use taxes by out-of-state sellers once a specified level of sales activity has been achieved in the state in a given calendar year. If enacted, this bill will become effective if the Quill case is overturned by the US Supreme Court or if there is congressional action. If neither of these happen, the bill becomes effective at the close of the 2017-19 biennium. Because of these contingencies, it is not possible to estimate the fiscal impact, if any, of 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: 02/07/2017

2017 SENATE FINANCE AND TAXATION

SB 2298

2017 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Lewis and Clark Room, State Capitol

Senate Bill 2298
2/8/2017
Job #: 28035

☐ 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 and a new section to chapter 57-40.2 of the North Dakota Century Code, relating to sales and use tax collection obligations of certain out-of-state sellers; and to provide a contingent effective date.

Minutes:

Attachments: 1, 1A, 2, 3, 3A, 3B, 3C, 4, 5, 6, 7

All Senators present.

Vice Chairman Bekkedahl: Opened the hearing on SB 2298.

Senator Dwight Cook, District 34, President of Streamline Sales Tax Governing Board:

(0:00:55-0:06:29) presented information on SB 2298. (Attachment #1 & #1A)

(0:06:30-0:07:52) presented information from Amazon.com (Attachment #2)

(0:07:55-0:10:55) Committee discussion on Quill, effective dates, and the limits that are being imposed for small seller thresholds.

(0:11:05-0:15:50) **Mike Rud, President, North Dakota Retail Association:** Handed out letters from Best Buy (#3A) and Sears (#3B) in support of SB 2298. Handed out testimony #3 with attachment #3C.

(0:15:55-0:00:00) Questions were asked about information from attachment #3C and other brick and mortar stores that are closing down.

(0:18:50-0:22:35) **Jeff Eckroth, President, Eckroth Music Company:** presented testimony #4 in support of SB 2298.

Discussion about show rooming was held.

(0:23:30-0:26:30) **Jeff Hinz, local hardware store owner, Chairman of North Dakota Retail Association:** presented testimony #5 in support of SB 2298.

(0:27:00-0:29:07) Brent Bogar, Greater North Dakota Chamber: presented testimony #6 in support of SB 2298.

(0:29:20-0:31:30) Blake Crosby: testimony #7 in support of SB 2298.

Chairman Cook: Do you see any records on what cities are losing in sales tax?

(0:32:10-0:35:26) Larry Syverson, North Dakota Township Officers Association: Not opposed to the bill in general, but is opposed to the collection of local taxes. Some online businesses only accept a 5-digit zip code and a 9-digit zip code is needed to define the correct taxing district.

Chairman Cook: They are most likely using incorrect software or voluntarily collecting and using the incorrect information. Information the tax department and they can be changed.

Myles Vosberg, Director, Tax Administration Division, Tax Commissioner's Office:

(0:35:30-0:37:52) One of the problems is that it relies on GIS data and if it's incorrect data given to us it has to be fixed. Will forward the information onto the company that provides the information.

(0:37:55-0:40:20) Discussion was held about the two sections of tax code. If you go out of state and purchase something and bring it back into North Dakota, it's considered a use tax. It also applies to out of state retailers. It's a fine line between sales tax and use tax. Complimentary to each other so that there are no gaps. We don't make the distinction on the reports; it could be either/or.

(0:40:21-0:42:55) Small seller threshold was discussed in details. Why the \$100,000 and 200 transactions, why not everything. Patterned after South Dakota, set some type of limit. Court cases have been the burden on the retailers, provides some relief for the smaller retailers that would be selling. Some sellers that are so small, the collection of the sales tax, would be a burden on the state, to go through the process of filing it and verifying. Ship and sell all over the world. Can't understand why can't submit to all 50 states.

(0:43:00-0:45:40) Discussion on things that are bought online that would be not subject to normal sales and use taxes, like tobacco or alcohol. Does this bill affect them, or are we not trying to collect them at all? Gross receipts for farm machinery and alcohol that are not collect in here, because for alcohol, collect sales, pay wholesale tax. Tobacco is different. We don't have that luxury; we don't have that kind of control. When it gets here you'd have to pay the sales tax.

(0:45:45-0:54:00) Donnita A. Wald, General Counsel, North Dakota Tax Department: Presented information concerning the Quill court case and the consequences of it being repealed.

Adjourned

2017 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

Senate Bill 2298
2/8/2017
Job #: 28060

☐ 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 and a new section to chapter 57-40.2 of the North Dakota Century Code, relating to sales and use tax collection obligations of certain out-of-state sellers; and to provide a contingent effective date.

Minutes:

Attachment #1

All Senators present. Committee work on SB 2298.

(0:00:15-0:01:33) Committee discussion on the bill and the proposed amendment to change the effective date. **(Attachment #1)**

Senator Laffen moved to adopt the amendment to change the effective day.

Vice Chairman Bekkedahl seconded.

A Voice Vote was taken and the motion passed. Amendment Adopted.

(0:02:30-0:04:10) Committee discussion on the implementation and effect of the bill once passed.

Senator Laffen moved a do pass, as amended.

Vice Chairman Bekkedahl seconded.

A Roll Call Vote was taken. 6 ayes, 0 nays, 0 absent.

Motion passed.

Senator Cook will carry the bill.

February 8, 2017

Ch
2/8/17

PROPOSED AMENDMENTS TO SENATE BILL NO. 2298

Page 1, line 3, replace "a contingent" with "an"

Page 2, line 9, remove "**CONTINGENT**"

Page 2, line 9, remove "becomes effective on the date the"

Page 2, remove lines 10 through 12

Page 2, line 13, replace "2019, whichever occurs first" with "is effective for taxable events
occurring after June 30, 2017"

Renumber accordingly

Date: _____
Roll Call Vote #: _____

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2298

Senate	Finance and Taxation	Committee
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☐ Subcommittee

Amendment LC# or Description: 17.0968.01001

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 Lassen Seconded By Bel Gedahl

[illegible]

Total (Yes) 1 No 1

Absent K. A. C. C. C.

Floor Assignment

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

Date: 2-8-17
Roll Call Vote #: 2

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2298

Senate _____ Finance and Taxation _____ Committee

☐ Subcommittee

Amendment LC# or Description: 17.0968.01001 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 Laffen Seconded By Bekkedahl

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

Total (Yes) 6 No 0

Absent 0

Floor Assignment Cook

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

REPORT OF STANDING COMMITTEE

SB 2298: 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 2298 was placed on the Sixth order on the calendar.

Page 1, line 3, replace "a contingent" with "an"

Page 2, line 9, remove "**CONTINGENT**"

Page 2, line 9, remove "becomes effective on the date the"

Page 2, remove lines 10 through 12

Page 2, line 13, replace "2019, whichever occurs first" with "is effective for taxable events occurring after June 30, 2017"

Renumber accordingly

2017 HOUSE FINANCE AND TAXATION

SB 2298

2017 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2298
3/8/2017
28884

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill relating to sales and use tax collection obligations of certain out of state sellers.

Minutes:

Attachments #1-12

Chairman Headland: Opened hearing on SB 2298.

Senator Cook: Introduced bill. Distributed testimony. See attachments #1 and 2. North Dakota passed their first sales tax imposition in 1935, a 1% tax. It was done in the heat of the depression at a time when local government was broke. At that time, the state took over county welfare. In 1935, when people made purchases subject to sales tax, they weren't very far from their home. We had catalogs that we shopped from and those catalogs were shipped to a catalog store where we would have to pick up the merchandise and pay sales tax. As time evolved taxpayers are making purchases outside the state and having it shipped in. The sales tax is not being collected because sales tax imposition laws required the instate sellers to collect the sales tax. The first case that hit the Supreme Court addressing this issue was a company called National Bellas Hess in 1967. (See attachment #2) The Supreme Court ruled that Illinois could not require Bellas Hess to collect Illinois state sales tax because of the commerce clause. States continue to fight and figure out a way to try and get out of state sellers to collect sales tax. In 1992, the state of North Dakota took Quill to court. It went to the Supreme Court and overruled the commerce clause. They said state sales tax laws were so different and burdensome that they placed an undue burden on remote sellers. They told the states to correct their sales tax laws and remove the undue burden then go to Congress and ask them to make out of state sellers collect our sales tax. That started the streamline sales tax project. I drafted a bill in 2001 to get rid of local sales tax in North Dakota. I would still like to know today what it would cost us to get out of that but we have it. This will appeal the ability for local governments to impose their own sales tax. I believe we have removed the undue burden. We have simplified and created software where a remote seller can hire a state party software collector to collect and remit the sales tax all the way down to the local jurisdiction at no cost to the retailer. The Senate has passed a bill called the Main Street Fairness Act to give states the right to have out of state sellers collect and remit our sales tax. We cannot get the bill through the House. States have started losing patience with Congress and have started pursuing getting this issue back into the

Supreme Court. The first state to do so was Alabama and they did it by a decree of the Tax Commissioner, no legislative action whatsoever. She made an order that out of state sellers had to collect Alabama sales tax. She's getting sued and Alabama is going to the court. The second state was South Dakota and they implemented exactly the bill before us today. I copied this bill. South Dakota is on track to go to the Supreme Court to overturn Quill. Justice Kennedy, in the Supreme Court, made a comment in another Supreme Court ruling that it's time the Supreme Court revisit Quill. Whether you want out of state sellers to collect our sales tax or not, that is an issue you all will have to make. We've removed the burden on out of state sellers in streamline. When I first got involved in this I was collecting sales tax for three states; Minnesota, Wyoming, and North Dakota. It is a burden but the burden is now gone. If Congress would give us the right, that burden would be gone on the remote sellers that have to collect this sales tax. I'm afraid if it goes to the Supreme Court they will rule that the burden that existed in 1992 does not exist today, therefore, states have the right to mandate out of state sellers collect it. The burden will still be there. You won't have the requirement that states have to use certified service providers; software, to collect the sales tax. That is my fear. I'd rather see Congress pass it but states can't wait. You have this effort now of creating economic nexus. The economic nexus standard that we set in North Dakota is \$100,000 in sales or 200 transactions. If you reach that standard, then we declare you have economic nexus and you are required to collect our sales tax. Seventeen states this year are in legislation before their legislature creating an economic nexus. The issue is going to go to the Supreme Court if Congress does not pass it. This bill is intended to add North Dakota to the list of states that set an economic nexus standard. If we beat South Dakota, then so be it. This is a tough issue. It's the unfairness of the playing field we have today where brick and mortar companies are forced to collect and remit sales tax when their competitors are not. The competition is in the sales companies and they are growing exponentially. In West Acres, Macys and Sears are shutting down brick and mortar stores. I don't know what the landscape will look like in the future for retail but it will change. I don't know if this will stop the change but it will even the playing field. I would argue that if you don't think these out of state sellers should collect and remit our sales tax the right action then to take is to introduce a piece of legislation declaring that. We should introduce a piece of legislation saying North Dakota, if you're a company located outside our borders, you never have to collect our sales tax but I don't think we want to do that. That's the message we send when they don't send the message that you have to do that. This is an important issue with a lot of revenue being lost. To me this is simple about fairness.

Representative Hogan: How many states are part of the streamline sales tax compact?

Senator Cook: There are 24 states that are in the agreement. We have 3,300 remote sellers voluntarily collecting and remitting sales tax to all 24 states all the way down to the local jurisdictions.

Representative Steiner: What was Congress' hang-up with this? What kind of pressure are they getting?

Senator Cook: There's pressure from two companies that don't want it passed, EBay being the big one. One of the things they debate about with all of the congressional bills granting authority is a small business threshold. That debate has gone anywhere from \$1 million to \$5 million. A small business threshold is a point where you don't have to collect state sales

tax. It's a debate between two companies that are not really small businesses, it's a debate between Amazon and EBay.

Representative Mitskog: The streamline sales tax compact that we're part of, do you know why there are those that don't support our participation in that?

Senator Cook: It's not a compact. I don't know why they don't want us to belong to it. There are people that enjoy buying online and having it shipped to their door while avoiding sales tax. I bought some shoes online and went upstairs here to pay my use tax and they had no idea what to do. It's difficult to pay your use tax if a company doesn't do it, even if you want to pay it. The burden now is on us, the taxpayers. I suggest a line item on the income tax form where you can voluntarily remit your use tax that you owe.

Chairman Headland: Any other questions? Further testimony in support?

Mike Rud, President of North Dakota Retail Association: Distributed testimony in support (attachment #3) and also submitted testimony from Jeff Eckroth, President of Eckroth Music Co. (attachment #4) and Laura Bishop, Best Buy (attachment #5). Ended testimony at 21:47.

Chairman Headland: Regarding the software that's been available for 10 years, will that calculate the sales tax down to the local political subdivision if they have a local sales tax?

Mike Rud: To my understanding it will but there is probably someone here from the Tax Department to answer that.

Representative B. Koppelman: From your point of view, if that was our goal to be fair to remove that burden from the taxpayers, do you believe this bill would remove it?

Mike Rud: Yes I do. I think it would place it on the online out of state internet seller to collect and remit that sales tax to the state of North Dakota.

Representative Grueneich: How would we know if they are going to pay the sales tax?

Mike Rud: It would be a process we would have to work out. The state Tax Department would send out a notice saying this is taking place and you're now required to collect and remit the sales tax then submit it to the state of North Dakota.

Representative Ertelt: Who would you know to send it to? There's a high number of businesses who may do an online sale into the state.

Mike Rud: I think that would be something the Tax Department would work out. It would probably take some time to get a list of all those names but given the technology out there I don't think it would take that long to put the burden on those retailers and collect and remit that tax.

Chairman Headland: Is there further testimony in support of SB 2298?

Andy Peterson, Greater North Dakota Chamber: Brent Bogar distributed written testimony in support. See attachment #6. We believe online retailers have been able to take advantage of not remitting sales tax and this has given them a tax incentive that was never intended by the state. We also believe that this isn't a tax increase rather it is about tax fairness you're supposed to remit already.

Chairman Headland: Is there further testimony in support?

Blake Crosby, North Dakota League of Cities: Distributed written testimony in support. See attachment #7. Also distributed testimony from Keith Hunke, City Administrator in Bismarck (see attachment #8), City of Fargo (see attachment #9), and Maureen Storstad, City of Grand Forks (see attachment #10). I think it has been extremely fortunate that we've had Senator Cook who has been involved in this marketplace fairness act idea. He indicated it was North Dakota who got all the other states into this mess so I think it is our responsibility to try and make some corrections to that. We've seen online sales in 2016 account for more than in-store sales. Information indicates that more than one half of the population now shops online. It does come down to money; I think the state is losing \$30-40 million a year in online sales tax. Given our current revenue situation, I don't think that is something we should be passing up. Senator Cook also indicated that Congress is dragging their feet on this so for us to expect Congress to make a correction is not going to happen. This has to come before the Supreme Court just as Kennedy has indicated a willingness to address it one more time. I think North Dakota should be part of that process. We should be the ones appearing before the Supreme Court saying it is time for a change in that nexus litigation situation we had a few years ago. We would very much appreciate a do pass on SB 2298.

Chairman Headland: Further testimony in support?

Jeff Hinz, Kirkwood Ace Hardware: Distributed written testimony in support. See attachment #11. Ended testimony at 33.07.

Chairman Headland: Further testimony in support? Is there any opposition to SB 2298?

Rob Lindberg, Americans for Prosperity: Distributed written testimony in opposition. See attachment #12. We know this bill is unconstitutional as its written and is hoped to be applied today. The provisions of the bill are onerous on businesses, imposes record keeping, and businesses are forced to apply whether or not they fall within those requirements. They need to know whether their customers are going to in the future exceed 200 transactions in the state or exceed that dollar amount before its hit. It applies retroactively as well so if they hit 200 and they expected 190 in the year they have now not collected sales tax for everybody previously purchasing from them. It's ineffectual and not functional to the business as written. The state's fiscal note shows a zero in the estimate. A similar estimate was completed by Colorado identifying only \$200,000 of tax collections that would be gained by the state for their effort and they are seven times our population. Consumer choice has driven the shift of online sales. It's mostly about convenience, not price anymore. Two days shipping is more convenient than an hour long trip to the store. That's what's driving the change. This bill does very little to protect fairness or collect monies from the state and extremely difficult to enforce. There are other states doing it and it isn't a moral high ground. It won't benefit anything, it's simply an unnecessary effort by the state.

Chairman Headland: How would you respond to the last presenter who says he has to collect the 6.5% on his hammer but if I go online and buy the hammer I don't?

Rob Lindberg: Most of your hammers are going to be bought at Walmart or Amazon.

Chairman Headland: Maybe a hammer wasn't a good example but I think you get the point.

Rob Lindberg: I think that going in and taking a half hour of a clerk or store owner's time isn't the right thing to do. We can't force that morality on people. They've been going in and out of stores since time began. People look for the cheapest price they can find and we can't force that type of ethical behavior.

Representative Mitskog: I came from a small town with very limited and dwindling retail presence. Our sales tax in our community plays a big role in funding economic development. Our flood mitigation project is augmenting infrastructure needs in our community. I recognize the convenience of online shopping but why should there be an advantage for a consumer to click a button from their couch at home and not have to pay sales tax that is so important to so many communities across our state?

Rob Lindberg: I think it goes back to is this effectual? If you look at Colorado and do that proportionally \$30,000 to a whole state to a small town there is very little that's going to be collected. If you just look at the functionality of somebody on Main Street in how they collect it versus somebody who wonders if they will hit 200 transactions in North Dakota, it isn't effectual. It comes down to convenience and options available in the city. The things that are being collected are probably more food and restaurant sales than what is being purchased online.

Representative Mitskog: I get that small towns can't offer the same things that are offered online. Regionally, Fargo is a major shopping area for North Dakotans and I am very concerned of what I witnessed the past year in Fargo by the closure of major retailers. There is a collapse and bankruptcies of several retailers. The collecting of data and tracking of sales is going to be difficult to do. Retailers and companies track consumers' every move and so to tell me that it's going to be difficult to track sales by consumers?

Rob Lindberg: I think to both of those questions, the size of the companies that are getting the bulk of transactions online is often paying sales tax already in the state. The shift is going away from the mall in Fargo. The person who is purchasing online is already paying state sales tax. If a company hits 200 transactions, they now have to pay for everything behind them as well. It can leave them in a lurch if we're talking about a small retailer that sends 200 transactions to North Dakota a year.

Representative B. Koppelman: Are you suggesting that if the small business threshold was to hold harmless below a certain level that would remove a lot of undue burden because that business would have qualified as a major retailer?

Rob Lindberg: That's one point of that but this is a national policy that has potential for difficulties with other states. There's no reason to get out ahead of this one without any

movement at all. There's no case coming to the Supreme Court immediately. Why get ahead for very little gain?

Chairman Headland: I think that gain is undeterminable.

Representative Howe: In your testimony you say that in addition to wasting taxpayers' dollars, can you expand on that?

Rob Lindberg: I think it's pretty easy to conceive the number of people that would be needed in Commissioner Rauschenberger's office to enforce this. With a net gain of \$30,000 or more it would be tough to justify having a full department of set of employees to enforce it.

Representative Howe: You don't have any data that it would indeed do that?

Rob Lindberg: The study I referred to in the \$200,000 is one done by the state of Colorado. They found they were going to collect about \$200,000 more because of the bill the pursued. The \$30,000 is a rough approximation.

Chairman Headland: How would you respond to the fact that every transaction or online purchase made by a North Dakota citizen is legally responsible to the tax to the state of North Dakota today?

Rob Lindberg: Tax policy has to be efficient to enforce. If someone is buying items over and over on the internet to save 6% versus other convenience decisions, then it's really not something the state can go after and chase every single retailer and resident to collect their tax. There's a reason we collect it at the store and not on the state income taxes at the end of the year.

Representative Schobinger: It sounds like you've done some research on this in other states. Can you tell us the tone of similar legislation to this in states that have Amazon distribution centers located within their state and how they interact with those?

Rob Lindberg: That's exactly what we have in North Dakota with the Amazon distributing center in Grand Forks. Any time that a retailer has a location in the state they are obligated to collect the tax just as they would if the person came to the distribution center and took it out the door. We have been doing that and we do that with every major retailer.

Representative Schobinger: Is that just on North Dakotans?

Rob Lindberg: To my knowledge they wouldn't. If they had a distribution center in Texas, then they likely would. For the bulk of sellers, they have locations in just about every state.

Representative Steiner: I am looking at your website and it says you want to fight for lower taxes which is number one. Is that why you're opposed to this bill because this in essence would change the tax field?

Rob Lindberg: Americans for Prosperity is a great proponent of lower tax burdens across the board but it's also an organization that fights very hard against over burdensome

regulation and government efforts that aren't going to move the ship anywhere. But focus more on the burden to an online retailer and also looking at the state taking a stance on this that doesn't actually bring benefit to the taxpayers in our calculations.

Chairman Headland: You mentioned we should wait for the federal government to do its job in passing legislation, Main Street Fairness Act. What's your national position of American's for Prosperity, are you supportive of that piece on the hill or do you stand in opposition there as well?

Rob Lindberg: I'm unfamiliar with the national position on it.

Chairman Headland: Is there further opposition to this bill? We have a few questions for our Tax Commissioner.

Vice Chairman Dockter: I know our fiscal note says it's undetermined. Do you have an idea of what we're losing as a state?

Ryan Rauschenberger, Tax Commissioner: We didn't put a number in the fiscal note because of the potential time it would take in court and for this to become the law of the land because of the Supreme Court issues. One hundred percent compliance may or may not happen in the biennium so we didn't want to depend on that number. A NCSL study done in 2014 based on 2012 that showed around \$30 million a year for North Dakota is lost because of online sales that are not collected. Based on Mr. Rud's testimony, instead of \$30 million you can gross that up to \$50 million now because in the last five years' online sales are much more prevalent than they were. That is not quantified in the fiscal note in an official number up top but that is what we based our estimations when asked. That is an estimate of those that are not collected. Those 3,300 that Senator Cook mentioned through streamline it's the rest of the world out there that you're purchasing from in the United States that we'd be looking at for compliance in this if it were to happen.

Chairman Headland: Has any North Dakota citizen that has shopped on line been up to the Tax Department to remit their check?

Ryan Rauschenberger: Last fiscal year we had \$93,000 voluntarily submitted so there is some compliance.

Vice Chairman Dockter: Do you have a number of what we collected from the companies that volunteered?

Ryan Rauschenberger: We can get those numbers for you.

Representative B. Koppelman: In the bill now what mechanisms do you have to enforce this new collection on those that don't have a physical presence in North Dakota?

Ryan Rauschenberger: Myles Vosberg has a lot of knowledge on certified service providers that is part of the whole congressional level. I'd like to turn that over to Myles to answer that question.

Representative B. Koppelman: In Mr. Rud's testimony he said that if this bill was enacted would remove the burden of remitting the taxes from the consumer and placing into that retailer. Is that true?

Ryan Rauschenberger: That is true. We would go after the retailer. Under current law we would not, we don't have the authority.

Representative B. Koppelman: If this would pass would that relieve the burden from the consumer?

Ryan Rauschenberger: Essentially it would go to that retailer. I can have Dee clarify any legal issues of my answer to that question.

Representative Schobinger: There's a flip side to this too where our folks are selling some items as well. Would it be the position of the state if this bill were to pass that we would immediately be remitting that sales tax outside as well? The state is taking a position that we need to remit that sales tax to folks that are making purchases outside the state I would think.

Ryan Rauschenberger: We are a destination based state. If they were selling outside the state it would be dependent on that state's law unless Congress would act and provide a uniform system for collection and remitting.

Myles Vosberg, Tax Commissioner's Office: Enforcement at the beginning will be tough because we don't know all the retailers out there. We will do newsletters and those that we know about we will contact and ask them to register and being collecting. The intent of this bill is to overturn Quill and that's what Senator Cook talked about. Wyoming passed this same bill this year and other states are acting. We will do what we can to contact those businesses that we are aware of that aren't collecting and will do notices on our website and those kinds of things.

Representative B. Koppelman: If you have a company based out of Colorado and they don't have a location in North Dakota, even if Quill was overturned eventually, short of a congressional law and Congress having the ability to regulate interstate commerce, what mechanisms do you have to go after the Colorado company who refuses to collect your tax?

Myles Vosberg: It's really no different than it is right now. There are a lot of retailers who don't have stores here but they may have sales representatives or service people here. We are always looking for those folks and the way we find a number of companies is through the audits that we're doing on the businesses that we know are here.

Representative Howe: Can you talk about the budgetary costs of enforcing this law?

Myles Vosberg: We don't see it costing 10s of millions of dollars. Right now we have 136 FTE positions and we'll probably be down to 125 after this biennium. At some point we may be looking for additional resources but it's not millions of dollars. If Quill is overturned or if there is federal legislation, there is going to be much better voluntary compliance of people coming forward and asking to register.

Representative Howe: You're saying the return that we're getting back would easily cover those costs?

Myles Vosberg: We think so. South Dakota passed their similar bill last year. They've been challenged. They are going to court but they've had retailers that have come forward and registered that don't have a physical presence and they've collected about \$700,000 at the beginning of the year.

Representative Schobinger: I lived in Tennessee for about seven years and they have a pretty healthy sales tax. I purchased some things from North Dakota while I was living there from Scheels and the Sioux Shop. When I purchased those items did they charge me North Dakota sales tax even though I was having them shipped in to Tennessee.

Myles Vosberg: I would guess they probably didn't unless they had some sort of physical presence in Tennessee. Generally, retailers have not been collecting unless they were required to because of some type of physical presence.

Representative Schobinger: So I probably didn't pay the 5% North Dakota sales tax when I bought a Sioux jersey or cap?

Myles Vosberg: If you had the goods delivered to Tennessee they would have been subject to Tennessee tax, not North Dakota tax. It is the point of destination is where the tax applies.

Representative Trottier: Wouldn't the fact that you can go back on the business if they didn't charge the sales tax?

Myles Vosberg: Definitely. There was testimony that said this bill was retroactive but it is not. If a seller had reached the threshold of the \$100,000 or the 200 transactions in the previous year then they need to collect this year so there is no retroactivity on this bill.

Representative Trottier: This also pertains to city sales tax?

Myles Vosberg: Yes.

Representative Trottier: It would be cumbersome for an out of state business that is shipping to know every individual city.

Myles Vosberg: There are systems that can handle that. In the streamline sales tax project, we have the certified service providers. We, the state, provide zip code tables to help identify a city that has a local tax and tax codes as well.

Representative Toman: In regards to Representative Schobinger's question, if he had gone to a hockey game and purchased some of those goods then went back to Tennessee he would only be liable for the North Dakota tax?

Myles Vosberg: Taxes are due at the point of purchase. If you take goods to another state with a higher rate. It normally doesn't apply to just personal goods where you're going from

one state to another. For a business if you have a piece of equipment you use in your business and you purchase it in North Dakota and pay 5% tax here and in Minnesota the rate is higher and you use that piece of equipment there you would owe the difference between our rate and their rate on the value of the equipment.

Representative Toman: This seems a little more complicated doing it this way rather than point of sale. Do you have any technical insight as to why we would be treating that differently than driving or flying somewhere to buy it? Why would we be doing a whole other form of taxation rather than following the point of sale for taxation?

Myles Vosberg: In an internet sale, catalog sale, or a remote sale transaction the point of delivery of goods is the point of taxation.

Representative Toman: Are we going back to the days of the Sears catalog, is that how we treated it then?

Myles Vosberg: The law has always been the point of sale as the point of taxation so that is not changing. We're really focusing on trying to get that retailer that doesn't have a physical presence to collect the tax. It is more complex.

Chairman Headland: Would it be fair to assume that once a retailer is registered in the state they would use available software that would calculate the sales tax where the point of sale is made and remit the tax to the state regardless of the number of transactions that are made or the amount?

Myles Vosberg: I think that's basically true. Once they're established and using the software then it's just a matter of collecting the tax and remitting it.

Chairman Headland: Are there any further questions? Closed hearing on SB 2298.

2017 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2298

3/8/2017

28918

☐ Subcommittee

☐ Conference Committee

Committee Clerk Signature

May Bruecker

Explanation or reason for introduction of bill/resolution:

A bill relating to sales and use tax collection obligations of certain out of state sellers.

Minutes:

No attachments

Chairman Headland: Let's have some discussion. We've received some handouts so if you want to take a few minutes to look at this.

Representative Steiner: Where do we find the fiscal note for the lawsuit that's inevitable? Are we putting \$1 million in for the lawsuit or are we just going to wait and see if we find ourselves in a lawsuit?

Chairman Headland: Are we going to be brought into the lawsuit?

Representative Steiner: Yes. The whole reason for the bill was to go to the Supreme Court and get a different ruling.

Chairman Headland: I thought South Dakota was already on the way there.

Representative Steiner: We were joining them.

Chairman Headland: Could someone from the Tax Department respond?

Dee Wald, General Counsel, Tax Commissioner's Office: The purpose of the bill is to kind of force Congress to move on the Main Street Fairness Act. There's a possibility we may be sued but there's a possibility we won't be sued because other states are going through the process. Right now Alabama, Wyoming, and South Dakota are currently litigating. It remains to be seen if we need any money to be sued. South Dakota has hired a law firm in Sioux Falls and it's not costing them that much.

Chairman Headland: Is it customary? Earlier this session we had the Attorney General speaking on the state lawsuit with the EPA on Waters of the US. We were the lead in that. I'm assuming South Dakota would be the lead on this. I asked if we were receiving any

funding from these other states that tag along and that's not the way it works. The lead in a case like this would be paying for it so I don't believe there would be a fiscal note.

Representative B. Koppelman: The difference is when you're suing the EPA and multiple states are joining, that's different than when someone comes in and sues you.

Dee Wald: What happened in Quill was a number of states were pursuing the same issue to overturn Bellas Hess. It was decided amongst the states and taxpayers that North Dakota would take the lead on that so the rest of them were held in abeyance. The same thing could happen here to waiting for the Supreme Court. South Dakota is ready to go when they come out of the shoot. Their legislators said to do it and do it now which is to file the lawsuit that is not in this bill.

Representative Hogan: In the event that South Dakota ends up in the Supreme Court, if we pass this bill would we do an amicus brief?

Dee Wald: The National Association of Attorneys General usually files those types of briefs on behalf of the state. The Multistate Tax Commission will file a brief in another state, typically, and we join those.

Representative Hogan: Typically, we wouldn't have a cost for doing that?

Dee Wald: No.

Chairman Headland: Are there any questions regarding the lawsuit or the draft?

Representative B. Koppelman: I went to Legislative Council after our committee meetings this morning. I think in the end the best thing that could probably happen is Congress could pass a law that sets this up. I like the fact that our constituents of the state who purchase online and who are currently on the hook for that could have relief from that. I think the fairness from the Main Street versus E-Commerce is something we should all want. I believe sales tax is a better tax than many of the other taxes we have. The concern I have is doing it for the sake of drawing us into a lawsuit. I asked Council if we could put something like this on the books and say if this happens then this goes into effect; if Congress passes a law permitting this or if it's permitted under the Supreme Court. I was told we could do that and there are two ways to do it; we could say that suspended language is good for so many years and if it doesn't happen in that time it goes away and the other option is to write the language and have it suspended in law indefinitely and if it happens 15 years from now it would go into effect. If we added that it would simply be under the implementation date of this. We could have the best of both worlds.

Dee Wald: The bill as introduced had a contingent effective date. It said the act became effective on the date the U.S. Supreme Court overturns Quill or otherwise confirming the state may constitutionally impose its sales or use tax on an out of state seller or June 30, 2019, whichever occurs first.

Chairman Headland: What was the rationale for the senate to change it?

Dee Wald: I wasn't there at the time they discussed the effective date.

Representative B. Koppelman: If we wanted that as a committee on the bill, we could put that back on and we wouldn't have to put "or June 2019" on there, we could just leave the first language you said and play the me too game if something happens.

Dee Wald: You can and that would keep us out of any legal action now.

Chairman Headland: It would keep us out of legal action but it really wouldn't push Congress then would it?

Dee Wald: There are 17 states that have bills doing the same thing before their legislatures. Some states have two or three different versions of it. It would be sending a message that we support that but not support the concept or fairness for the brick and mortar retailers and taking the burden off our consumers without actually going to court.

Representative Olson: Of the seven states that passed similar legislation, are they actually collecting sales taxes now from out of state vendors? How are they enforcing that?

Dee Wald: If we take South Dakota as an example, who is the first to pass legislation and is further along in their litigation, somebody registered with them and did a survey to ask that company if they were registering with them because of this bill and 137 did voluntarily complied. As of January there are \$681,000 additional taxes they've collected from those extra active licenses with that voluntary compliance. I don't know what Wyoming is doing but they will be litigating soon.

Chairman Headland: What will happen if they go to the Supreme Court and they don't change the decision? Will those taxes have to be returned somehow?

Dee Wald: No, because it's voluntary compliance. We keep those dollars but we would go back to waiting for Congress again.

Chairman Headland: That's probably the reason why the senate decided to change the date and try to collect some taxes.

Representative Hatlestad: A second motivation was revenue. If we leave it here we will start collecting that \$50 million or whatever it was.

Representative Olson: I'm concerned on the idea that if it is struck down and we've collected sales taxes that we would be liable to be forced to refund them.

Dee Wald: There's a doctrine called the Voluntary Tax Payment doctrine that if you voluntarily pay your taxes you can't get a refund for those. I'm assuming those retailers that voluntarily complied would keep filing and paying.

Representative Olson: Even though the law is telling them they have to do it you're saying it's voluntary that they have to do it.

Dee Wald: Right now we have about 1,000 retailers who are voluntarily registered under the streamlined sales tax. They don't have a physical presence here, they just collect the tax for us and send it in. There are those retailers who won't do that and they don't have to do that. If Quill wasn't overturned, we wouldn't have to give those retailers their money back.

Representative Ertelt: I shared the concerns of a gentleman who testified about companies who may not know whether or not they are going to be liable for the tax based on their previous calendar year and not knowing what they are selling in the current calendar year. I think we should look at that language in the bill and either consider striking "or the current calendar year" or just getting rid of the thresholds altogether. The small sellers will be in the position of collecting right away because they won't know. The threshold to me doesn't really do a whole lot of good because you don't necessarily know what you're going to sell in the next year or the current year.

Representative B. Koppelman: The Tax Department said you wouldn't know in the current year. They said if you hit it one year, you are considered a vendor who has to submit reports from there forward starting with the next year. I thought that was a reassuring thing because I was worried people would be on the hook going retroactively.

Representative Ertelt: I heard that same response but the language in the bill doesn't read that way. On the first page, starting on line 11, it says "the seller shall follow all applicable procedures and requirements of law as if the seller has a physical presence in the state if the seller meets either of the following criteria in the previous calendar year or the current calendar year." They are required to pay that tax if they meet the criteria in the current year and they are going to know if they meet that criteria until they hit it.

Chairman Headland: Our attorney is shaking her head no.

Dee Wald: That is not how this is interpreted or written or will be applied. It says in January I start making sales into North Dakota and if I do that in that current year then the following month or year or quarter I have to start reporting on those sales that I make. They will know before they even have to file whether or not they've met the threshold. It's a look back pay forward type of process.

Vice Chairman Dockter: It's already being worked out in South Dakota.

Representative Hatlestad: Wouldn't we want to just remove it and if they sell it and tax it then sends the money. Then there is no confusion.

Dee Wald: All of the states are imposing this small seller threshold even the federal legislation does because we recognize that if you are a small seller that is quite of a burden for you to file and pay in this state. For the most part, \$100,000 or \$200,000 is a pretty good threshold. Congress is looking at millions of dollars and for North Dakota that would be awful. We wouldn't get anything under the federal act.

Representative Olson: How would we go about enforcing this? We can't interdict shipments at the border of sellers that are not collecting the sales tax. Are we going to sue

them in North Dakota and arrest them if they ever set foot here? Or if somebody is shipping direct from China? I don't know how we would go about enforcing this.

Dee Wald: We don't have any jurisdiction over China or Canada. In South Dakota, a Canadian company did register with them. We know who the big online retailers are but to find the rest of them we would have to do a lot of research and talk to other states and see who their online retailers are. We would post notices to enforce that. We have that authority in the law already to force someone to get a sales and use tax permit that are out of state. Quill said that an online retailer has enough nexus with the state so that with our due process we can haul them into our courts. We can't make them collect tax. We have mechanisms.

Representative Olson: Somebody who sells in the state has enough nexus to sue them in North Dakota court and politely ask them to appear although any actions taken against them by a court in North Dakota would be of no effect if they never entered into our agreement.

Dee Wald: If that occurred, we also have the ability to estimate tax due and assess them for non-filing. We have a lot of legal options available to us.

Representative Olson: What about an interstate compact of some kind? Is that something that has ever been looked at where we join together with other states and agree that if we have a vendor in our state who is shipping to your state and you have a sales tax then we agree that he owes you money or vice versa? That way we have some ability for the home state to hold the vendor accountable for our sales tax requirements.

Dee Wald: It would have to be nationwide because if you don't have a state in it someone could get double taxed. There is a bill in Congress that does the origin sourcing tax that would be if a sale comes out of North Dakota then that North Dakota retailer would collect the North Dakota tax or the tax of the other state. Right now most states are destination states so mechanically that would be very difficult I think.

Representative Schobinger: When I make a purchase at Walmart or somewhere else in North Dakota, does the total amount of sales tax I pay on that purchase get remitted to the state?

Dee Wald: Yes it does except for a small administrative fee we allow retailers to keep.

Representative Schobinger: Do you know the percent?

Dee Wald: I can't recall right now. I think there's a max of \$250. I can find that out for you.

Representative Schobinger: Is it the intent of the Tax Department to trade internet sales or these out of state retailers the same way based on the amount of purchases they do or collect in the state? Or would they be required to remit the 5% total?

Dee Wald: They would get the administrative expense fee. They would be treated like any other retailer in North Dakota and the retailers that are out of state that are currently collecting the tax.

Chairman Headland: If this legislation becomes law what happens to the streamline sales tax, is it gone?

Dee Wald: I don't think so. I think because the certified service providers, the software they currently have, would be helpful for a retailer if they became part of streamlined. You can reduce your burdens by using streamlined and register with streamlined. It wouldn't necessarily go away.

Chairman Headland: We'll still be subject to compliance issues with streamline sales tax in the future?

Dee Wald: We'll probably have a bill every session that makes a little tweak to that agreement.

Representative B. Koppelman: I had the intern print me off what they did in the senate. If I would have an amendment prepared I would also discuss the concept of Congress passing a law that makes it permissive because this seems to say that either the Supreme Court overturns Quill or finds another reason we can do this but if it doesn't come by way of the Supreme Court, if it comes by way of Congress does this language allow it to go into effect?

Dee Wald: If Congress passes a law that allows us to collect from online retailers we can administer that law and apply those rules without any statutory change because they'd be deemed a retailer.

Chairman Headland: Do we want to ask the senate what their reasons were? If not, I think we should try and act on this today.

Representative B. Koppelman: **MADE A MOTION TO ADOPT THE AMENDMENT.** Under section 3 of the bill, page 2 line 9, it would insert the word "contingent" before the words "effective date" and after that would read "This Act becomes effective..."

Representative Olson: **SECONDED**

Chairman Headland: Discussion on the proposed amendment?

Representative Hatlestad: When do we want to start collecting the tax? Do we want to potentially wait forever or do we want to do it now?

Representative Olson: It would be voluntary if anyone would collect sales tax on our behalf. The Supreme Court held that the reason in Quill this couldn't happen this way because of the complexity and the burden that would be imposed on small businesses and retailers across the country having to understand 9,000 different tax schemes with multiple types of items. I'm still concerned that the complexity issue hasn't been resolved. If the Supreme Court or this case changes then maybe there's been some development but I don't know that the question has been answered. I hate to put something in law that isn't enforceable like that.

Representative Hatlestad: We have organizations called CSPs that accumulated all that information in computer form. It's out there.

Representative Olson: Do they provide free consultation and implementation? Everybody has a different information system and it costs money.

Representative Hatlestad: I'm not sure what their fee schedule is. It's probably well within what they get for collecting the taxes.

Chairman Headland: Further comments on the proposed amendment?

ROLL CALL VOTE: 7 YES 6 NO 1 ABSENT
MOTION CARRIED

Chairman Headland: We have the amended bill before us.

Representative Toman: Are these tax dollars from internet sales uncollected or not collected by the state of North Dakota? If they are uncollected taxes how do we know that it is the exact amount or is it just perceived the state could be making that money?

Dee Wald: That is an estimate of what is not being collected. It's due but we don't have it. It's hard to find individuals who are getting Amazon boxes.

Representative Toman: How many of those companies are remitting sales tax from where they are headquartered? Is that not including that or is that part of the estimation?

Dee Wald: That is part of that estimation. Where they are not headquartered?

Representative Toman: Where they are headquartered.

Dee Wald: If you buy something from Massachusetts they will not charge you Massachusetts tax or North Dakota tax but you owe the North Dakota tax.

Representative Toman: MADE A MOTION FOR A DO NOT PASS AS AMENDED

Representative Schobinger: SECONDED

Chairman Headland: Discussion?

Representative Olson: I'm sensitive and sympathetic to the fact that we sort of have a reverse tariff system where out of state retailers can easily out compete in state retailers when it comes to tax. I don't know if this is a viable solution though either. I'm undecided on this right now. It seems like if this is the modern reality where we have the internet, people shipping stuff from all over the country, and you can find any item you want then the answer to a state that doesn't want its local vendors being out competed by out of state vendors who don't have to collect the same sales tax is to get rid of all the sales tax and get another revenue source. Then you solve the problem and you don't have to worry about collecting the sales tax from an out of state vendor.

Representative Mitskog: I'm respectful with your thoughts on sales tax but I would look to what your community just did with sales tax to help fund your flood mitigation. In Wahpeton sales tax is a fair way for everybody to pay rather than special assessments that force people out of their properties. There is a loss of revenue that is occurring. National retailers are going out of business and it is attributed to the online sales.

Representative Howe: I don't shop online very much. I didn't realize how much people shop online. I'm all for finding new ways to collect revenue for North Dakota. I don't know that this is a way to get people back to the brick and mortar stores. I think the main reason people shop online is for the convenience. I'm not sure how I'm going to vote on this motion.

Representative Trottier: This comes down to what is fair for North Dakota and I think this is fair for North Dakota to pass this.

Representative Schobinger: It looks like is already all in the works. If South Dakota is being sued and they are fighting this or we think Congress is doing something or the Supreme Court is going to overturn this, the fact that we had to put that in is telling us that if all of this happens I'm all for coming back and revisiting this at the time it happens. South Dakota doesn't have an income tax. I'm not saying I wouldn't vote for something like this but I think with the lawsuits in play and the fact that North Dakota has already been ruled against years ago on this type of thing and this is the reason I'm resisting the bill.

Chairman Headland: I'm going to resist the do not pass. If this was a new tax, then I would have some concerns. Actually this tax is supposed to be paid today by the purchaser. This will put the responsibility to collect that tax on the retailer just like we do for Main Street. The fairness issue is what it's about for me. I'm going to reject the do not pass.

Vice Chairman Dockter: I'm also going to reject the do not pass. There is software out there. There are 24 states that are part of this agreement and Congress still hasn't moved because of a couple companies, Amazon and EBay. I think this is good legislation and I think we should move it forward.

Chairman Headland: Is there further discussion?

ROLL CALL VOTE: 3 YES 10 NO 1 ABSENT
MOTION FAILED

Representative Steiner: MADE A MOTION FOR A DO PASS AS AMENDED

Vice Chairman Dockter: SECONDED

Chairman Headland: Discussion?

Vice Chairman Dockter: I think this is a good bill. I'm okay with the amendment. For the state we need to move forward with this bill.

Representative Steiner: No one likes taxes but sales tax is one of the fairer taxes that we have. I have never supported this before but with millennials coming up and with their need for convenience they also need to support sidewalks, streets, and things in our communities as well. If that convenience is the pressure on this, I believe we still need to see sales tax for all the programs they will expect us to support at this level and at the local level.

Representative B. Koppelman: I believe this amended version is the only one I can support. One of the discussions was that the original Supreme Court case was using for the commerce clause ties back to the Articles of Confederation that we had before the Constitution. You had a trade war between states which was almost like tariffing each state. I don't see this as being like that. This could be the equalizer. There is a lot of philosophies around consumption taxes or sales taxes that make sense and make them much better than property tax than income tax because it presumes that you have the ability to pay because you're buying something. If we believe that we owe it to ourselves to find a way to make it equal and this is probably the best we have.

Representative Schobinger: The sponsor of the bill said the language in here is exactly how South Dakota's reads. They are being challenged on that. I think North Dakota should stay silent on it until we would find out the results of that then at that time we take it up rather than putting the cart in front of the horse. I'm voting no.

Chairman Headland: Further discussion?

ROLL CALL VOTE: 9 YES 4 NO 1 ABSENT
MOTION CARRIED

Vice Chairman Dockter will carry this bill.

2017 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2298
3/29/2017
29781

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Mary Bruckner

Explanation or reason for introduction of bill/resolution:

A bill relating to sales and use tax collection obligations of certain out of state sellers.

Minutes:

No attachments

Chairman Headland: This bill was rereferred back to the committee. I respectfully ask for a motion.

Vice Chairman Dockter: MADE A MOTION TO RECONSIDER OUR ACTIONS

Representative Steiner: SECONDED

Chairman Headland: Discussion?

VOICE VOTE: MOTION CARRIED

Chairman Headland: We now have SB 2298 before us.

Vice Chairman Dockter: MADE A MOTION FOR A DO PASS AS AMENDED

Representative Steiner: SECONDED

Chairman Headland: Is there any discussion?

Vice Chairman Dockter: The only way this bill would take effect is if the Supreme Court would overturn. I still think this bill shows to small business owners in the state of North Dakota that we are supporting them.

Chairman Headland: Further discussion?

ROLL CALL VOTE: 10 YES 3 NO 1 ABSENT
MOTION CARRIED

Vice Chairman Dockter will carry this bill.

3/8/17 DE

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Title.03000

Adopted by the Finance and Taxation
Committee

March 8, 2017

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2298

Page 2, replace lines 9 and 10 with:

"SECTION 3. CONTINGENT EFFECTIVE DATE. This Act becomes effective on the date the United States Supreme Court issues an opinion overturning Quill v. North Dakota, 504 U.S. 298 (1992), or otherwise confirming a state may constitutionally impose its sales or use tax upon an out-of-state seller in circumstances similar to those specified in section 1 of this Act."

Renumber accordingly

Date: 3-8-17
Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2298

House Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: (17.0968.02001)
Section 3 p.2 line 9 insert "contingent"

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. Koppelman Seconded By Rep. Olson

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		✓			

Total (Yes) 7 No 6

Absent 1

Floor Assignment _____

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

Motion carried.

Date: 3-8-17
Roll Call Vote #: 2

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2298

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. Toman Seconded By Rep. Schobinger

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland		✓	Representative Hogan	A	✓
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		✓			

Total (Yes) 3 No 10

Absent 1

Floor Assignment _____

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

FAILED

Date: 3-8-17
Roll Call Vote #: 3

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2298

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. Steiner Seconded By Rep. Dockter

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland	✓		Representative Hogan	A ✓	
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	✓				

Total (Yes) 9 No 4

Absent 1

Floor Assignment Rep. Dockter

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

Date: 3-29-17
Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2298

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. Dockter 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					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice vote = Motion carried.

Date: 3-29-17
Roll Call Vote #: 2

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2298

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. Dockter 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	A				
Representative Schobinger	✓	✓			
Representative Steiner	✓	✓			
Representative Toman	✓	✓			
Representative Trottier	✓				

Total (Yes) 10 No 3

Absent 1

Floor Assignment Rep. Dockter

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

REPORT OF STANDING COMMITTEE

SB 2298, as engrossed: Finance and Taxation Committee (Rep. Headland, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2298 was placed on the Sixth order on the calendar.

Page 2, replace lines 9 and 10 with:

"SECTION 3. CONTINGENT EFFECTIVE DATE. This Act becomes effective on the date the United States Supreme Court issues an opinion overturning Quill v. North Dakota, 504 U.S. 298 (1992), or otherwise confirming a state may constitutionally impose its sales or use tax upon an out-of-state seller in circumstances similar to those specified in section 1 of this Act."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2298, as engrossed and amended: Finance and Taxation Committee (Rep. Headland, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2298, as amended, was placed on the Sixth order on the calendar.

Page 2, replace lines 9 and 10 with:

"SECTION 3. CONTINGENT EFFECTIVE DATE. This Act becomes effective on the date the United States Supreme Court issues an opinion overturning Quill v. North Dakota, 504 U.S. 298 (1992), or otherwise confirming a state may constitutionally impose its sales or use tax upon an out-of-state seller in circumstances similar to those specified in section 1 of this Act."

Renumber accordingly

2017 TESTIMONY

SB 2298

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SB 2298

Attachment # 1

MULTISTATEINSIDER

50-STATE GOVERNMENT RELATIONS COMMENTARY & INSIGHT

Economic Nexus is the Most Prevalent Type of Sales Tax Compliance Legislation This Year

MultiState Associates, Inc.

01/27/2017

Joe Crosby, Principal; Ryan Maness, Senior Policy Analyst & Tax Counsel; Liz Malm, Senior Policy Analyst & Economist

Last week, we identified the biggest tax issues which state legislatures will address in 2017. One of these issues is collection of sales and use taxes by remote (internet) sellers. Our prediction in this regard has thus far been borne out: as of January 27th, a total of 35 bills have been introduced in 17 states to promote broader collection of sales taxes which are already legally due and payable. A proposal in Wyoming has already passed the House and is expected to see action in the Senate next week.

The purpose of all of these bills is the same: to promote collection of sales taxes by as many sellers as possible (including remote sellers) in the absence of Congressional action. State legislators have pursued a variety of strategies to enhance compliance, which we've grouped into three broad categories (note that some bills have language that falls in more than one category):

1. Economic Nexus Bills. These bills set aside "physical presence" as the standard for state authority to require sellers to collect sales taxes. Instead of focusing on physical presence, these bills set a bright line sales thresholds (in dollars or number of transactions or both), with sellers exceeding these thresholds required to collect legally due and payable sales taxes. These measures were inspired initially by U.S. Supreme Court Justice Anthony Kennedy, who, in his concurring opinion in *DMA v. Brohl*, invited the legal system to present the Court with a case that would allow it to revisit its holding in *Quill*. However, some policymakers are also of the opinion that modern e-commerce can be distinguished from the facts in *Quill* and physical presence isn't the correct standard—after all, they argue, the internet wasn't even legally available for commercial activity when *Quill* was decided. Regardless, these proposals are generating new revenue in the two states which have already implemented economic nexus—Alabama and South Dakota—which is garnering notice from other states. So far, there are 17 active economic nexus bills, making this the most prevalent legislative strategy pursued.

2. Expanded Nexus Bills. These bills aim to extend the physical presence standard to the existing constitutional limit. Many non-practitioners mistakenly believe that "physical presence" means that a retailer must have a store or a distribution center or own some other real estate in a state to be subject to sales tax collection. They may have heard of *Quill*, but they probably haven't read it. And it's unlikely

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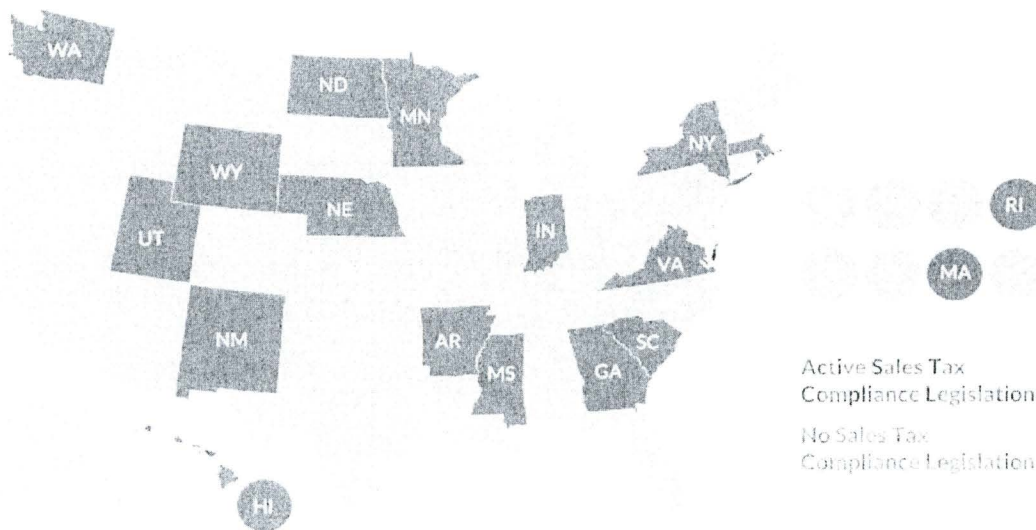
they're aware of related cases such as *Scripto v. Carson* or *Tyler Pipe v. Washington*. The bottom line is that "physical presence" isn't clear; yes, it includes ownership of real estate, but it also has been interpreted to extend to activities of affiliates, agents, and others who are acting on behalf of or in conjunction with the remote/internet seller. Examples of these "expanded nexus" bills include affiliate nexus, click-through nexus, and drop ship nexus. This category also includes extending the imposition of a sales tax collection obligation to new economic actors, such as online marketplaces (assuming they have physical presence in the state; if they do not, then the bill falls under economic nexus). So far, there are 15 active expanded nexus bills in state legislatures.

3. Non-Nexus Collection Bills. Other sales tax compliance bills that don't address the nexus question often require out of state sellers to inform their buyers about the responsibility to pay sales tax on their purchases, typically with an annual mailer. We have seen this policy appear in several states so far this year (6 bills), both as part of standalone legislation and incorporated into larger legislative packages. In light of the fact that the Supreme Court let stand the 10th Circuit Court's holding that these statutes are constitutionally permissible, it's likely we'll see more of them again this year.

Check out the map below to see which states are currently considering sales tax compliance legislation in 2017.

2017 Update: Sales Tax Compliance Legislation

MULTISTATE



The table below provides details on each of these bills, including status, category, and a brief summary. We know that new introductions in Maryland, Massachusetts (both as part of a stand alone filing and the governor's budget proposal), and Ohio are imminent. We will continue to provide updates in future blog posts as additional bills are introduced and as the bills below move through the legislative process.

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	Bill	Category	Status	Summary
Arkansas	SB 140	Economic Nexus	Introduced	Changes state sales tax nexus rules to establish that out of state sellers have presence in the state if their gross revenues within the state are in excess of \$100,000 or if they complete 200 discrete transactions within the state. Expands sales tax nexus to require out of state sellers to remit sales tax on in state purchases if the seller has more than \$250,000 worth of annual sales into the state or more than 200 discrete sales. Further requires sellers who do not qualify under the above formulation to inform in state purchasers annually about their responsibility to pay sales tax on their purchases.
Georgia	HB 61	Economic Nexus & Reporting Requirement	Introduced	Limits state sales tax nexus rules by establishing what does NOT qualify as an instate affiliate. Specifically, casual sales, utilizing non-affiliate third party call centers, and the activities of a person without physical presence in the State if the person and the person's affiliates have less than \$100,000 of gross receipts do not establish presence.
Hawaii	HB 345	Economic Nexus	Introduced	Limits state sales tax nexus rules by establishing what does NOT qualify as an instate affiliate. Specifically, casual sales, utilizing non-affiliate third party call centers, and the activities of a person without physical presence in the State if the person and the person's affiliates have less than \$100,000 of gross receipts do not establish presence.
Hawaii	SB 620	Economic Nexus	Introduced	Limits state sales tax nexus rules by establishing what does NOT qualify as an instate affiliate. Specifically, casual sales, utilizing non-affiliate third party call centers, and the activities of a person without physical presence in the State if the person and the person's affiliates have less than \$100,000 of gross receipts do not establish presence.
Hawaii	SB 622	Economic Nexus	Introduced	Limits state sales tax nexus rules by establishing what does NOT qualify as an instate affiliate. Specifically, casual sales, utilizing non-affiliate third party call centers, and the activities of a person without physical presence in the State if the person and the person's affiliates have less than \$100,000 of gross receipts do not establish presence.
Hawaii	HB 398	Reporting Requirement	Introduced	Requires retailers or vendors that are not located in the state and not required to pay or collect general excise or use tax for sales to send certain information to purchasers in the state and further requires retailers or vendors to submit an annual report to the department of taxation.
Hawaii	SB 161	Reporting Requirement	Introduced	Requires retailers or vendors that are not located in the state and not required to pay or collect general excise or use tax for sales to send certain information to

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				<p>purchasers in the state and further requires retailers or vendors to submit an annual report to the department of taxation.</p> <p>Provides that if a purchaser is physically present at a retail merchant's location when a product is purchased and the purchaser requests delivery of the product to a location outside Indiana, the sale is considered to be made at the business location of the sale and subject to the state sales tax, unless the purchaser presents proof during the consummation of the sale that the purchaser resides outside Indiana.</p>
Indiana	HB 1158	Expanded Nexus	Introduced	<p>Provides that an out of state seller must collect the state sales tax if: (1) the seller's gross revenue from sales into Indiana in a calendar year exceeds \$100,000; or (2) the seller makes sales into Indiana in more than 200 separate transactions.</p>
Indiana	SB 545	Economic Nexus	Introduced	<p>Instructs the tax commissioner to prepare the government for the collection of sales taxes on remote and foreign sales to the fullest extent that federal law allows.</p>
Massachusetts	SD 259	Expanded Nexus	Draft	<p>Changing state sales tax nexus standards to require tax collection by remote/out of state sellers if the seller employs an in state agent, affiliate, or marketplace provider who facilitates sales.</p>
Minnesota	SF 45	Expanded Nexus	Introduced	<p>Redefines "doing business in the state", for sales tax purposes, to stipulate that out of state sellers have presence in the state if the seller's total sales into the state exceed \$250,000.</p>
Mississippi	HB 480	Economic Nexus	Introduced	<p>Amends definition of "retailer" and "doing business in the state" to establish that an out of state seller has sales tax nexus if they employ or contract with an in state agent who facilitates the sale of tangible personal property.</p>
Mississippi	HB 688	Expanded Nexus	Introduced	<p>Expands sales tax nexus standard to establish that an out of state seller has presence within the state if the seller employs an agent inside the state who facilitates the seller's commercial activity.</p>
Mississippi	SB 2414	Expanded Nexus	Introduced	<p>Establishes an affiliate nexus standard for the state sales tax, whereby a seller will be assumed to have nexus with Mississippi if they contract with an in-state resident for customer referrals.</p>
Mississippi	SB 2008	Expanded Nexus	Introduced	

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Mississippi	HB 1304	Economic Nexus	Introduced	Expands sales tax nexus standard to include out of state sellers who make more than \$250,000 worth of sales into the state.
Nebraska	LB 44	Economic Nexus & Reporting Requirement	Introduced	Adopt the Remote Seller Sales Tax Collection Act, which would require remote or internet sellers to remit sales tax if they have more than 200 discrete sales into the state or if their in-state sales exceed \$100,000. Further requires remote sellers to send notifications to all instate buyers detailing all of the purchases that they made with the seller and informing of them of their responsibility to pay tax on these transactions.
Nebraska	LB 564	Economic Nexus & Reporting Requirement	Introduced	Adopt the Remote Seller Sales Tax Collection Act, which would require remote or internet sellers to remit sales tax if they have more than 200 discrete sales into the state or if their in-state sales exceed \$25,000. Further requires remote sellers to send notifications to all instate buyers detailing all of the purchases that they made with the seller and informing of them of their responsibility to pay tax on these transactions.
Mexico	SB 123	Expanded Nexus	Introduced	Establishing that an out of state seller has presence in the state if they retain an instate affiliate or agent, so long as their sales into the state total more than \$100,000
New Mexico	HB 202	Economic Nexus & Expanded Nexus	Introduced	Establishes that an out of state seller is not deemed to have physical presence for sales tax purposes if they and any affiliates have less than one hundred thousand dollars (\$100,000) of gross receipts in the state. Further provides that an out of state seller's gross receipts also include any sales realized from a multi-vendor marketplace platform.
New York	A 3009 (Budget)	Expanded Nexus	Introduced	Expanding state sales tax nexus rules to require "marketplace providers" to collect sales taxes associated with out of state sales
New York	S 2009 (Budget)	Expanded Nexus	Introduced	Expanding state sales tax nexus rules to require "marketplace providers" to collect sales taxes associated with out of state sales
North Dakota	SB 2298	Economic Nexus	Introduced	Requires remote sellers to collect the sales tax is their annual sales into the state are valued at more than \$100,000 or if they have more than 200 discrete sales into the state.

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de Island	HB 5175 (Budget)	Expanded Nexus	Introduced	Requires "marketplace providers" to collect and remit sales taxes associated with purchases made from out of state sellers.
South Carolina	SB 214	Expanded Nexus	Introduced	Presumes sales tax nexus if an out of state seller contracts with an in-state agent to refer potential customers to the seller.
Utah	SB 110	Economic Nexus	Introduced	Requires remote sellers to collect the sales tax if they had sales equaling more than \$100,000 or more within the state or if they store/use/consume tangible personal property stored or electronically transferred in the state.
Utah	SB 101	Economic Nexus	Introduced	Requires remote sellers to collect the sales tax if they had sales equaling more than \$100,000 or more within the state or if they store/use/consume tangible personal property stored or electronically transferred in the state.
Utah	SB 83	Reporting Requirement	Introduced	Requires out of state sellers to notify buyers of their responsibility to remit sales tax on their purchases.
Virginia	HB 1500 (Budget)	Expanded Nexus	Introduced	Establishing that having inventory in Virginia is sufficient to establish nexus for sales tax purposes
Virginia	SB 900	Expanded Nexus	Introduced	Establishing that having inventory in Virginia is sufficient to establish nexus for sales tax purposes
Virginia	HB 2058	Expanded Nexus	Introduced	Provides that storage of inventory in the Commonwealth is sufficient nexus to require out-of-state businesses to collect sales and use tax on sales to customers in the Commonwealth.
Virginia	SB 962	Expanded Nexus	Introduced	Provides that storage of inventory in the Commonwealth is sufficient nexus to require out-of-state businesses to collect sales and use tax on sales to customers in the Commonwealth.
Washington	HB 1549	Economic Nexus	Introduced	Establishes that a company has economic nexus with the state if they have more than \$267,000 worth of receipts within the state.
Washington	SB 5112	Economic Nexus	Introduced	Establishes that a company has economic nexus with the state if they have more than \$267,000 worth of receipts within the state.
Wyoming	HB 19	Economic Nexus	Passed First Chamber	Changes state sales tax nexus rules to provide that remote sellers must collect the state tax if their in-state sales exceed \$100,000 or if they make 200 or more separate sale. The bill also provides a provision to protect sellers from liability of these policies are later deemed to be unlawful.

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SB 2298
National Bellas Hess v. Illinois - Wikipedia

Attachment # 1A pg1

National Bellas Hess v. Illinois

From Wikipedia, the free encyclopedia

In **National Bellas Hess v. Department of Revenue**, 386 U.S. 753, 87 S.Ct. 1389 (1967), the Supreme Court ruled that a mail order reseller was not required to collect sales tax unless it had some physical contact with the state.

Background

National Bellas Hess was a mail order seller of various consumer products. Its principal place of business was in Missouri. It owned no tangible property in Illinois and had no sales outlets, representatives, telephone listing, or solicitors in that state. It did not advertise there by radio, television, billboards, or newspapers. It mailed catalogues to customers throughout the United States, including Illinois. Orders for merchandise were mailed to appellant's Missouri plant, and goods were sent to customers by mail or common carrier. The State of Illinois attempted to force National Bellas Hess to collect a use tax from its customers.

Ruling

The Commerce Clause prohibits a State from imposing the duty of use tax collection and payment upon a seller whose only connection with customers in the State is by common carrier or by mail. The court stated that "the Court has never held that a State may impose the duty of use tax collection and payment upon a seller whose only connection with customers in the State is by common carrier or the United States mail." The opinion cited *Miller Brothers Co. v. Maryland*, 347 U.S. 340.

In 1992, the Supreme Court in *Quill Corp. v. North Dakota* issued an order overruling part of the case. The court held that "Thus, to the extent that this Court's decisions have indicated that the Clause requires a physical presence in a State, they are overruled." That case slightly distinguished itself from *Bellas Hess* by ruling that physical presence was not necessary for a state to impose a duty to collect under the Due Process Clause of the US Constitution, but physical presence was still necessary for a state's use tax on a foreign vendor under the Dormant Commerce Clause of the US Constitution.

The Court stated "In this case, the Supreme Court of North Dakota declined to follow *Bellas Hess* because "the tremendous social, economic, commercial, and legal innovations" of the past quarter-century have rendered its holding "obsole [te]." [cite omitted] we must either reverse the State Supreme Court or overrule *Bellas Hess*. While we agree with much of the state court's reasoning, we take the former course. *Quill Corp. v. N. Dakota By & Through Heitkamp*, 504 U.S. 298, 301-02 (1992).

External links

National Bellas Hess v. Department of Revenue



Supreme Court of the United States

Argued February 23, 1967

Decided May 8, 1967

Full case name *National Bellas Hess v. Department of Revenue*

Citations 386 U.S. 753 (<https://supreme.justia.com/us/386/753/case.html>) (*more*)
87 S.Ct. 1389

Court membership

Chief Justice

Earl Warren

Associate Justices

Hugo Black · William O. Douglas
Tom C. Clark · John M. Harlan II
William J. Brennan, Jr. · Potter Stewart
Byron White · Abe Fortas

Case opinions

Majority Stewart, joined by Warren, Clark, Harlan, Brennan, White

Dissent Fortas, joined by Black, Douglas

Overruled by

Quill Corp. v. North Dakota

2/8/2017

SB2298

Attachment #2 pg1



AMAZON.COM ANNOUNCES FOURTH QUARTER SALES UP 22% TO \$43.7 BILLION

SEATTLE—(BUSINESS WIRE) February 2, 2017—Amazon.com, Inc. (NASDAQ: AMZN) today announced financial results for its fourth quarter ended December 31, 2016.

Operating cash flow increased 38% to \$16.4 billion for the trailing twelve months, compared with \$11.9 billion for the trailing twelve months ended December 31, 2015. Free cash flow increased to \$9.7 billion for the trailing twelve months, compared with \$7.3 billion for the trailing twelve months ended December 31, 2015. Free cash flow less lease principal repayments increased to \$5.7 billion for the trailing twelve months, compared with \$4.7 billion for the trailing twelve months ended December 31, 2015. Free cash flow less finance lease principal repayments and assets acquired under capital leases increased to \$3.9 billion for the trailing twelve months, compared with \$2.5 billion for the trailing twelve months ended December 31, 2015.

Common shares outstanding plus shares underlying stock-based awards totaled 497 million on December 31, 2016, compared with 490 million one year ago.

Fourth Quarter 2016

Net sales increased 22% to \$43.7 billion in the fourth quarter, compared with \$35.7 billion in fourth quarter 2015. Excluding the \$558 million unfavorable impact from year-over-year changes in foreign exchange rates throughout the quarter, net sales increased 24% compared with fourth quarter 2015.

Operating income increased 13% to \$1.3 billion in the fourth quarter, compared with operating income of \$1.1 billion in fourth quarter 2015.

Net income was \$749 million in the fourth quarter, or \$1.54 per diluted share, compared with net income of \$482 million, or \$1.00 per diluted share, in fourth quarter 2015.

Full Year 2016

Net sales increased 27% to \$136.0 billion, compared with \$107.0 billion in 2015. Excluding the \$550 million unfavorable impact from year-over-year changes in foreign exchange rates throughout the year, net sales increased 28% compared with 2015.

Operating income was \$4.2 billion, compared with operating income of \$2.2 billion in 2015.

Net income was \$2.4 billion, or \$4.90 per diluted share, compared with net income of \$596 million, or \$1.25 per diluted share, in 2015.

“Our Prime team’s customer obsession kept them busy in 2016,” said Jeff Bezos, Amazon founder and CEO. “Prime members can now choose from over 50 million items with free two-day shipping — up 73% since 2015. Prime Video is now available in more than 200 countries and territories. Prime Now added 18 new cities, which means millions more members now get one and two hour delivery. New benefits were also added to the list, like Prime Reading, Audible Channels for Prime, Twitch Prime and more. And customers noticed — tens of millions of new paid members joined the program in just this past year.”

Highlights

- Amazon announced that it will create more than 100,000 new, full-time, full-benefit jobs in the U.S. over the next 18 months, and will include positions across the country for all types of experience, education, and skill levels.

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SB 2298

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pg 2

- Fulfillment by Amazon (FBA) delivered more than two billion units on behalf of sellers in 2016, and the number of active sellers using FBA grew more than 70%. Using the FBA service, Amazon sellers from more than 130 countries fulfilled orders to customers in 185 countries.
- In 2016, there were over 100,000 sellers with sales of more than \$100,000 selling on Amazon.
- In the fourth quarter, FBA units represented more than 55% of total third-party units.
- Amazon introduced Amazon Go in Seattle, a new kind of store with no checkout required. With Just Walk Out Shopping, customers simply take the products they want, and go. Our checkout-free shopping experience is made possible by the same types of technologies used in self-driving cars: computer vision, sensor fusion, and deep learning.
- In 2016, the U.S. Prime program added Prime Reading, Twitch Prime, Audible Channels for Prime, and the Prime Photo Family Vault as new Prime-exclusive digital benefits.
- Prime members engaged with the Prime digital benefits at a voracious rate, more than doubling the number of video, music, and reading activities compared to 2015.
- Amazon introduced Prime Video to customers in more than 200 countries and territories around the globe, giving customers access to unlimited streaming of Amazon's popular and award-winning Original Series, including *The Grand Tour*, *The Man in the High Castle*, and *Transparent*, as well as popular Hollywood movies and TV shows. Prime Video is now automatically available at no additional cost to Amazon Prime members in Belgium, Canada, France, India, Italy, and Spain.
- Prime Video is now available on Amazon.in, offering Prime members in India the largest selection of new release Bollywood and regional Indian blockbusters, Hollywood movies, day-after-broadcast U.S. TV shows, kids' programming, and award-winning Amazon Original Series. Amazon also announced the start of production of new Indian Amazon Original Series featuring top Indian talent and filmmakers, which will be available exclusively to Prime members in India.
- The debut episode of *The Grand Tour* was the biggest show premiere ever on Prime Video, with millions of Prime members streaming the first episode in the U.S., U.K., Germany, Austria, and Japan over the opening weekend.
- Amazon Studios released *Manchester by the Sea*, *The Salesman*, *Paterson*, and *Gimme Danger* in theaters nationwide.
- Amazon Studios was nominated for seven Academy Awards, including Best Picture (*Manchester by the Sea*), Best Director (Kenneth Lonergan), and Best Foreign Language Film (*The Salesman*).
- Amazon Studios was nominated for 11 Golden Globes and received two awards: Best Performance by an Actor in a Motion Picture - Drama for Casey Affleck in *Manchester by the Sea*, and Best Performance by an Actor in a Television Series - Drama for Billy Bob Thornton in *Goliath*.
- Amazon Music Unlimited expanded to Austria, Germany, and the U.K. with over 40 million songs, hand-curated playlists, and personalized stations. Prime members in those countries can access Amazon Music Unlimited at a breakthrough price (€7.99/£7.99 per month), while the exclusive "for Echo" subscription plan is available to all customers for only €3.99/£3.99 per month. All customers listening to Amazon Music Unlimited on Echo, Echo Dot, or Amazon Tap can access their favorite music with new natural language voice controls powered by Alexa.
- Alexa-enabled devices were the top-selling products across all categories on Amazon.com this holiday season. Customers purchased and gifted a record-setting number of devices from the Amazon Echo family with sales up over 9x compared to last holiday season.
- Customers purchased millions of Fire tablets this holiday season. Additionally, Amazon brought Alexa to Fire HD 10, Fire HD 8, and other Fire tablets via a free software update, making it easy for customers to enjoy endless entertainment at the touch of a button.
- Amazon sold millions of Fire TV devices this holiday season. The new Fire TV Stick with Alexa Voice Remote has received over 25,000 5-star customer reviews in just three months, and Amazon released a free, over-the-air software update delivering a new user interface that makes finding what to watch next even easier and more enjoyable.
- Third-party developers released more than 4,000 new Alexa Skills since October, including ADT, AT&T, CBS, Pizza Hut, and The Wall Street Journal. Tens of thousands of developers are building skills for Alexa.
- Tens of thousands of developers are using the Alexa Voice Service to integrate Alexa into their products, including Dish DVRs, Ford and Volkswagen vehicles, GE C Lamp, Huawei Mate 9, LG Smart Instaview fridge, and Whirlpool appliances.

2/8/2017

SB 2298

Attachment #3

pg1



1014 EAST CENTRAL AVENUE + PO BOX 1956
BISMARCK, ND 58502 + 701-223-3370
WWW.NDRETAIL.ORG
FAX: 701-223-5004

Testimony SB 2298

February 8, 2017 – Senate Finance & Tax Committee

Good morning Chairman Cook and members of the Committee:

For the record, my name is Mike Rud. I'm the president of the North Dakota Retail Association.

NDRA represents both mom and pop as well as big box retailers across the state. These operations provide thousands of good jobs to ND citizens. I am here urging you to recommend a **"DO PASS" on SB 2298.**

NDRA has a long history with regard to Main Street Fairness. Senator Cook and NDRA have been waging this tax collection battle against out state sellers for over a decade.

For roughly 20 years now, retailers have been fighting to stay competitive with essentially one arm tied behind their back. Since the birth of online commerce, local retailers that serve as the backbone of our downtowns and Main Streets here in North Dakota have been unfairly punished with a tax code that gives their online competitors a government-sponsored advantage. Every day the brick and mortar stores in our community are required to collect state sales tax, while many out-of-state competitors get a free pass. The result is obvious, an automatic price advantage that puts local job creators at a distinct competitive disadvantage. More is at stake than the fate of an individual storefront. When retailers in our local downtowns close, foot traffic drops for others; payroll, sales and property tax receipts drop; and jobs diminish. Our communities take a hit including public services funded by the local tax base. It's our local retailers that are charitably giving back to their communities. The result is a downward spiral that results in fewer services and a weaker local economy.

2/8/2017

SB 2298

#3

pg 2

SB 2298 enhances current law by making it clear North Dakota expects all sellers to comply with the State's sales tax law. It does not create a new tax on anyone. We understand this legislation may take considerable time to implement as we know many online retailers may not be compliant. It doesn't raise taxes; it simply ensures that all who do business in North Dakota play by the same rules.

Online sellers might oppose ND's efforts to restore basic free market competition for retailers. In an effort to preserve their special tax treatment they've might try to convince you that it's extremely burdensome for out of state, online sellers to collect sales tax. The same computing power allowing consumers and merchants to buy and sell goods from a smart phone has the know how to calculate the correct sales tax. Software to collect and remit these taxes has existed for more than a decade and is being used by thousands of online retailers who voluntarily collect sales taxes via the streamlined system.

Modern commerce has given unprecedented power to consumers to search for the best products, compare prices and do business with companies who have earned their trust and loyalty. This is a good thing for the future of retail and our customers, as it will require retailers of all sizes to compete for customers.

North Dakota's retailers aren't afraid of competition, they just believe that their competitors shouldn't benefit from a government tax policy subsidizing a select few with special tax treatment. SB 2298 will allow state retailers to finally compete on a level playing field.

Again, We urge a DO PASS recommendation on SB 2298.

2/8/2017

SB 2298

Attachment #3 A p81



January 30, 2017

The Honorable Dwight Cook
Chair, Senate Committee on Finance and Taxation
1408 17th Street SE
Mandan, ND 58554-4895

Re: SB 2298, Sales and Use Tax Collection Obligations

Dear Chairman Cook:

On behalf of Best Buy, I am writing to express support for SB 2298, which will create a level playing field for main street businesses versus online only retailers. Best Buy operates 5 stores and employs more than 300 in North Dakota, in addition to serving all North Dakota customers through www.BestBuy.com.

Best Buy supports state and federal efforts to create sales tax collection parity at point of sale for all sellers competing in the marketplace, regardless of selling channel, as well as efforts to require in-state businesses to collect tax on behalf of third parties who sell items on the in-state business' websites (e.g., online marketplaces).

The current competitive disadvantage in the marketplace harms retailers of all sizes including our main street businesses that are part of the fabric of our communities. Moreover, the lost sales tax revenue forces the state and municipalities to make difficult budgetary decisions impacting the residents of North Dakota on issues such as infrastructure, schools, and first responders.

Continued state activity is critical to passage of federal legislation and/or reconsideration of the *Quill* decision by the U.S. Supreme Court. As more states pass legislation, Congress will be under increasing pressure to act. So far, 40 states, plus the District of Columbia and Puerto Rico, have enacted some version of e-fairness legislation since 2008. With SB 2298, North Dakota will be sending a strong signal to Congress that the current competitive disadvantages main street businesses face and the resulting strain on state and local resources are unacceptable and unsustainable.

Thank you for your public service and consideration of our views. If you have any questions, feel free to contact me or Dan López, Senior Manager, Government Affairs, at 612-291-4174 or dan.lopez@bestbuy.com.

Respectfully,

A handwritten signature in black ink that reads "Laura Bishop". The signature is stylized with a large, flowing "L" and "B".

Laura Bishop
Vice President, Public Affairs and Sustainability

2/8/2017

SB 2298

Attachment #3B

pg1

SEARS HOLDINGS

February 7, 2017

The Honorable Senator Dwight Cook, Chair
Senate Committee on Finance and Taxation
State Capitol, Lewis and Clark Room
Bismarck, ND 58505

Re: SB 2298 - Sales and use tax collection obligations of certain out of state sellers - Support

Dear Chair and Members of the Committee:

On behalf of Sears Holdings, I write to register my support of Senate Bill 2298 and commend you for your diligence in pursuing a solution to one of the most vexing ongoing problems faced by retailers across the country.

Senate Bill 2298, if enacted, will assist in restoring balance and fairness to the system by enabling North Dakota to enforce collection of taxes that are already owed by every customer making a purchase, whether the purchase is online or in a retail store. Your legislation will help to correct a system that has given a significant and unfair competitive advantage to a handful of online-only retailers, while hurting those that create jobs and invest in your local communities. It will also, importantly, provide North Dakota the ability to capture the lost revenues it is owed; allowing for investments in critical public services, from education to emergency response.

On behalf of our over 570 employees in North Dakota, I thank you for your commitment to this issue.

Sincerely,



Misty Redman
Divisional Vice President, Government Affairs
Sears Holdings Corporation

2/8/2017

SB 2298

Attachment #3C pg 1

	Non-Electronic Business to Customer	Non-electronic Business to Business	Electronic Business to Business and Business to Customer	Total
Alabama	101,657,313	75,677,086	170,400,000	347,734,399
Alaska	880,149	655,832	1,500,000	3,035,981
Arizona	220,741,594	118,086,660	369,800,000	708,628,254
Arkansas	67,947,572	54,464,358	113,900,000	236,311,930
California	1,136,801,607	1,118,366,340	1,904,500,000	4,159,667,947
Colorado	103,065,552	76,798,022	172,700,000	352,563,574
Connecticut	38,022,475	50,544,930	63,800,000	152,367,405
District of Columbia	21,211,612	15,805,570	35,500,000	72,517,182
Florida	479,769,709	200,120,301	803,800,000	1,483,690,010
Georgia	244,857,701	182,452,688	410,300,000	837,610,389
Hawaii	35,822,100	26,692,395	60,000,000	122,514,495
Idaho	27,636,706	29,083,776	46,400,000	103,120,482
Illinois	302,507,519	249,542,069	506,800,000	1,058,849,588
Indiana	116,619,861	86,897,847	195,300,000	398,817,708
Iowa	52,897,008	39,415,552	88,700,000	181,012,560
Kansas	85,286,525	51,037,503	142,900,000	279,224,028
Kentucky	65,659,182	48,925,127	109,900,000	224,484,309
Louisiana	236,320,247	176,091,110	395,900,000	808,311,357
Maine	19,099,252	14,231,572	32,100,000	65,430,824
Maryland	109,930,722	81,913,518	184,100,000	375,944,240
Massachusetts	78,333,340	58,369,120	131,300,000	268,002,460
Michigan	84,494,390	62,959,949	141,500,000	288,954,339

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SB 2298

#3c

pg 2

	Non-Electronic Business to Customer	Non-electronic Business to Business	Electronic Business to Business and Business to Customer	Total
Minnesota	140,471,923	79,447,327	235,300,000	455,219,250
Mississippi	80,533,715	87,852,645	134,900,000	303,286,360
Missouri	125,773,420	93,718,508	210,700,000	430,191,928
Nebraska	36,614,235	20,137,833	61,300,000	118,052,068
Nevada	100,865,178	75,158,440	168,900,000	344,923,618
New Jersey	120,844,580	90,045,845	202,500,000	413,390,425
New Mexico	71,908,246	53,581,540	120,500,000	245,989,786
New York	516,559,974	384,908,277	865,500,000	1,766,968,251
North Carolina	127,621,735	95,095,757	213,800,000	436,517,492
North Dakota	9,153,558	6,820,661	15,300,000	31,274,219
Ohio	183,775,298	136,937,891	307,900,000	628,613,189
Oklahoma	84,054,315	71,494,343	140,800,000	296,348,658
Pennsylvania	206,483,165	153,858,377	345,900,000	706,241,542
Rhode Island	17,338,952	24,097,506	29,000,000	70,436,458
South Carolina	74,372,666	55,417,872	124,500,000	254,290,538
South Dakota	17,779,027	13,247,822	29,800,000	60,826,849
Tennessee	245,209,761	92,471,128	410,800,000	748,480,889
Texas	519,552,484	387,138,109	870,400,000	1,777,090,593
Utah	52,808,993	39,349,968	88,500,000	180,658,961
Vermont	14,962,548	4,696,781	25,100,000	44,759,329
Virginia	123,573,045	92,078,926	207,000,000	422,651,971
Washington	168,284,660	90,784,044	281,900,000	540,968,704
West Virginia	30,189,141	22,495,065	50,600,000	103,284,206

2/8/2017

SB 2298

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pg 3

	Non-Electronic Business to Customer	Non-electronic Business to Business	Electronic Business to Business and Business to Customer	Total
Wisconsin	84,846,450	62,059,664	142,100,000	289,006,114
Wyoming	17,074,908	16,069,797	28,600,000	61,744,705
Total	6,800,214,113	5,067,095,451	11,392,700,000	23,260,009,564

ESTIMATED UNCOLLECTED USE TAX FROM ALL REMOTE SALES IN 2012

2/8/2017

SB 2298

Attachment # 4

pg 1

Eckroth Music

Division of Music and Education

North Dakota

Company Headquarters

1-800-437-1762

701-223-5320

Fax: 701-223-7554

1655 N Grandview Lane

Bismarck, ND 58503

1-800-437-1762

701-223-6707

Fax: 701-255-1625

1620 32nd Ave South

Fargo, ND 58104

1-800-525-9232

701-476-3408

Fax: 701-476-3409

Minnesota

159 7th Avenue South

Waite Park, MN 56387

1-800-450-7664

320-259-8165

Fax: 320-259-8166

Centre Pointe Drive

Roseville, MN 55113

1-800-543-8255

651-704-9654

Fax: 651-773-1091

Montana

922 Grand Ave

Billings, MT 59102

1-800-552-1888

406-252-2604

Fax: 406-252-1641

621 W Mendenhall St

Bozeman, MT 59715

1-800-580-8007

406-587-8007

Fax: 406-587-5344

www.eckroth.com

Testimony SB 2298

February 8, 2017 – Senate Finance & Tax Committee

Good morning Chairman Cook and members of the Committee:

For the record, my name is Jeff Eckroth, President of Eckroth Music Co. Eckroth Music is a full line music retailer operating 6 locations in Minnesota, Montana and North Dakota. I am here urging you to recommend a **"DO PASS" on SB 2298.**

As former chairman of the North Dakota Retail Association the Main Street Fairness issue has been a topic of conversation among membership for some time. Just like online retailers, Eckroth Music generates revenue from customers in many states, and has been collecting and remitting sales tax in at least five states for decades.

Indeed, even in the complicated municipalities of Hennepin County and the City of Minneapolis, the efficient and sophisticated software that is commonly accessible today, makes it very simple to do. I think we spend more staff time on 'accounting and reporting' requirements relating to the Affordable Care Act than we do on sales tax reporting.

As a resident and taxpayer of North Dakota there is another undeniable issue with online merchants not collecting sales tax and remitting to the State and cities in ND. The inability to effectively collect legally owed sales tax from remote sellers is eroding the ND tax base. This is causing revenue losses and inevitable damage to the State through the loss of critical funding for state and local services.

This is the revenue due the state that would help cover the expenses of running our schools, state and communities. This 'unpaid bill' now falls on the citizens of our state.

2/8/2017

SB 2298

#4

pg 2

Nobody likes paying taxes, but we shouldn't be asking law-abiding citizens to pay MORE to make up for a select few who benefit from special sales tax treatment. Collecting all sales taxes legally owed to ND provides the opportunity to potentially lower tax rates for all state residents.

Inaction implies we are essentially subsidizing out of state, and in some cases foreign retailers who don't have to play by the same rules as our local Main Street Businesses. In a true free market, the government shouldn't be picking retail winners and losers with the tax code.

North Dakota MUST lead the way to ensure a fair, competitive playing field for all local businesses.

I urge a DO PASS recommendation on SB 2298.

2/8/2017

SB 2298

Attachment #5

pg 1

Kirkwood Hardware

"Bismarck's Real Hardware Store(s)"

805 SOUTH 7TH STREET
BISMARCK, NORTH DAKOTA 58504
(701) 258-6161

4321 OTTAWA STREET
BISMARCK, NORTH DAKOTA 58503
(701) 751-0529

Testimony SB2298 Senate Finance and Tax Committee

Hi, I'm Jeff Hinz, a hardware store owner from Bismarck, and I am here to support SB 2298.

I am the current chairman of the North Dakota Retail Association and have operated Kirkwood Hardware for 30 years as a manager, and 28 years as its owner. I employ 90 people locally and have seen massive changes in retail in my career. I am not one to shy away from competition, as long as that competition is fair.

Many things I sell are small and a few cents of sales tax are not an issue, but in an economy with an increasingly frugal customer, a 6.5% difference in the price of an item becomes a major negotiating point. Many customers ask me to "waive" the sales tax or they will buy online. Since we are not able to "waive" the tax, that difference would come out of our profit. On an item like a Toro mower with a 15% margin, 6 ½% reduction in price coupled with a 3½% credit card fee does not leave much to operate on.

Internet sales were originally allowed to be tax free to encourage the growth of a fledgling format that would have to compete in a solidly brick and mortar world. That world has changed. Today internet shopping is the norm and the giants in retail are the online operations and they no longer require or deserve tax protection.

While retailers like me support local economies with not only sales tax, but property tax and payroll taxes, many internet retailers deliver the same products to our customers with none of the local tax support that we offer. Their excuse is that they have no physical presence in our state, but every FedEx, UPS, and US Post Office facility is virtually a brick and mortar branch of their operations, not much different than if I would choose just to deliver goods to my customer's homes rather than have them enter my store.

Of course, there is the issue of raising taxes. No one likes a tax increase. But the internet tax exemption is actually a tax subsidy. Their tax liability is carried by those of us that live and work here, and pay for the streets, bridges, and sidewalks that carry their goods to customer's homes. As internet sales increase, more and more of those tax burdens will be shouldered by those of us retailers that remain, making us even less competitive.

Finally, there is the issue of fairness. The current system gives my online competitors an automatic 6 1/2% government awarded advantage in pricing. This is simply not right.

2/8/2017

SB 2298

Attachment #5

pg 2

Kirkwood Hardware

"Bismarck's Real Hardware Store(s)"

805 SOUTH 7TH STREET
BISMARCK, NORTH DAKOTA 58504
(701) 258-6161

4321 OTTAWA STREET
BISMARCK, NORTH DAKOTA 58503
(701) 751-0529

I would love to tell you about the intrinsic value of a local main street merchant, the worth of his family and employees in the community, the reassurance to the consumer of a retailer to help them and to fix the items they have purchased, but the consumer and his pocketbook will choose, and I am not asking for you to give me an advantage in that decision, but please, help me to keep that choice fair. Please recommend a DO PASS on SB 2298.

Jeffrey Hinz
Owner
Kirkwood Ace Hardware



February 8, 2017

The Honorable Senator Dwight Cook

Finance and Taxation Committee

Re: Support for Senate Bill 2298

Chairman Cook and members of the committee:

My name is Brent Bogar and I am representing the Greater North Dakota Chamber. The GNDC works on behalf of all our members to support building a strong, vibrant business climate in North Dakota. GNDC stands today in support of SB 2298.

GNDC believes that a fair and equal business environment of regulation and taxes is the cornerstone to an economy that creates opportunity, wealth, and growth. When creating a business environment in today's global economy we must make sure that we are doing all that we can to keep the regulations and tax structure fair and equal.

North Dakota has utilized various tax incentive to encourage investment and economic growth in the state over the years and has seen the results of a diversified economy and new opportunities for people and businesses to grow. GNDC has come before this committee and the legislature in the past to support such efforts to encourage business development, investment, and growth. We have worked with our business members and partners and with legislators to create policies that support the growth of North Dakota's economy and to do it in a way that does not burden one business or industry at the cost of another.

The fact that online sales from various sources have been able to take advantage of not collecting and remitting sales tax has given them a tax incentive that was never intended by the state. It puts them at an advantage over the local businesses and some online sites, those with a physical nexus in the state, that must comply with collecting the sales tax. In some places in North Dakota that can equate to an 8% discount. While North Dakota law states that the consumer is to file and pay the sales tax, we all know that does not happen on a regular basis. Thus, the discount is truly being provided and giving the online retailer an advantage.

This is not about a tax increase, it is about tax fairness to all that do business in North Dakota. GNDC believes that SB 2298 is step towards ensuring a fair and equal business environment in North Dakota.

Chairman, members of the committee GNDC urges a Do Pass on SB 2298 and I would stand for any questions you may have.

Champions  Business

PO Box 2639 P: 701-222-0929
Bismarck, ND 58502 F: 701-222-1611

www.ndchamber.com

2/8/2017

SB 2298

Attachment #7 pgl

February 8, 2017
Senate Finance and Taxation
Sen. Cook, Chair
SB 2298

For the record, I am Blake Crosby, Executive Director of the North Dakota League of Cities, representing the 357 incorporated cities across the state. Approximately 77% of the population of North Dakota lives in those cities.

I am here to testify in support of SB 2298. North Dakota is complicit in the situation states find themselves in when trying to collect state sales and use tax on internet purchases from retailers outside the state. The 1992 case was Quill Corp. vs North Dakota and the United States Supreme Court decision was that in order for a state to collect sales and use tax the business must have a nexus in that state. Obviously since 1992 internet sales have exploded and states, looking for additional revenue, turned to Congress who introduced the latest iteration of the Marketplace Fairness Act (MFA) in 2015. Congress has made very little progress since 2011 when the first MFA was introduced to attempt to address the ability of states to collect sales and use tax from on-line and out-of-state retailers. However, the U. S. Supreme Court has indicated it is time to revisit that situation and is looking for the appropriate case to come before it.

Several states have initiated a collection requirement and it is time North Dakota did likewise. To count on congressional action is a long shot at the best.

I respectfully ask for a DO-PASS on SB 2298.

THANK YOU FOR YOUR TIME AND CONSIDERATION. I will try to answer any questions.

4/8/2017

SB 2298

Attachment #1

pg 1

DRAFT PROPOSED AMENDMENTS TO SENATE BILL NO. 2298

(Prepared by Legislative Intern Brady Pelton at the request of the Senator Cook)

Page 2, line 9, remove "**CONTINGENT**"

Page 2, line 9, remove "becomes effective on the date the"

Page 2, remove lines 10 through 12

Page 2, line 13, replace "2019, whichever occurs first" with is effective for taxable events occurring after June 30, 2017"

Renumber accordingly

#1 p. 1
SB 2298
3-8-17

MULTISTATEINSIDER

50-STATE GOVERNMENT RELATIONS COMMENTARY & INSIGHT

Economic Nexus is the Most Prevalent Type of Sales Tax Compliance Legislation This Year

MultiState Associates, Inc.

01/27/2017

Joe Crosby, Principal; Ryan Maness, Senior Policy Analyst & Tax Counsel; Liz Malm, Senior Policy Analyst & Economist

Last week, we identified the biggest tax issues which state legislatures will address in 2017. One of these issues is collection of sales and use taxes by remote (internet) sellers. Our prediction in this regard has thus far been borne out: as of January 27th, a total of 35 bills have been introduced in 17 states to promote broader collection of sales taxes which are already legally due and payable. A proposal in Wyoming has already passed the House and is expected to see action in the Senate next week.

The purpose of all of these bills is the same: to promote collection of sales taxes by as many sellers as possible (including remote sellers) in the absence of Congressional action. State legislators have pursued a variety of strategies to enhance compliance, which we've grouped into three broad categories (note that some bills have language that falls in more than one category):

1. Economic Nexus Bills. These bills set aside "physical presence" as the standard for state authority to require sellers to collect sales taxes. Instead of focusing on physical presence, these bills set a bright line sales thresholds (in dollars or number of transactions or both), with sellers exceeding these thresholds required to collect legally due and payable sales taxes. These measures were inspired initially by U.S. Supreme Court Justice Anthony Kennedy, who, in his concurring opinion in *DMA v. Brohl*, invited the legal system to present the Court with a case that would allow it to revisit its holding in *Quill*. However, some policymakers are also of the opinion that modern e-commerce can be distinguished from the facts in *Quill* and physical presence isn't the correct standard—after all, they argue, the internet wasn't even legally available for commercial activity when *Quill* was decided. Regardless, these proposals are generating new revenue in the two states which have already implemented economic nexus—Alabama and South Dakota—which is garnering notice from other states. So far, there are 17 active economic nexus bills, making this the most prevalent legislative strategy pursued.

2. Expanded Nexus Bills. These bills aim to extend the physical presence standard to the existing constitutional limit. Many non-practitioners mistakenly believe that "physical presence" means that a retailer must have a store or a distribution center or own some other real estate in a state to be subject to sales tax collection. They may have heard of *Quill*, but they probably haven't read it. And it's unlikely

#1 p. 2

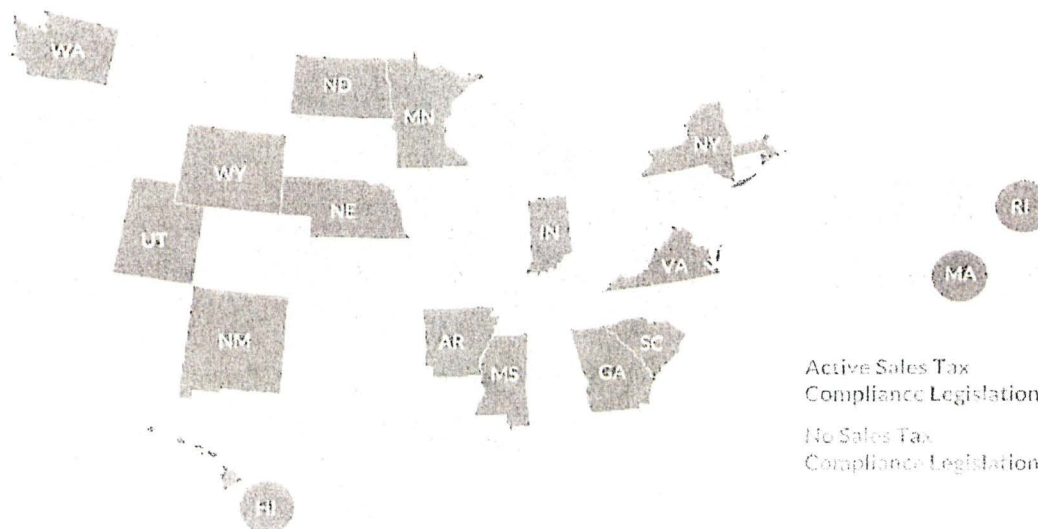
they're aware of related cases such as *Scripto v. Carson* or *Tyler Pipe v. Washington*. The bottom line is that "physical presence" isn't clear; yes, it includes ownership of real estate, but it also has been interpreted to extend to activities of affiliates, agents, and others who are acting on behalf of or in conjunction with the remote/internet seller. Examples of these "expanded nexus" bills include affiliate nexus, click-through nexus, and drop ship nexus. This category also includes extending the imposition of a sales tax collection obligation to new economic actors, such as online marketplaces (assuming they have physical presence in the state; if they do not, then the bill falls under economic nexus). So far, there are 15 active expanded nexus bills in state legislatures.

3. Non-Nexus Collection Bills. Other sales tax compliance bills that don't address the nexus question often require out of state sellers to inform their buyers about the responsibility to pay sales tax on their purchases, typically with an annual mailer. We have seen this policy appear in several states so far this year (6 bills), both as part of standalone legislation and incorporated into larger legislative packages. In light of the fact that the Supreme Court let stand the 10th Circuit Court's holding that these statutes are constitutionally permissible, it's likely we'll see more of them again this year.



Check out the map below to see which states are currently considering sales tax compliance legislation in 2017.

2017 Update: Sales Tax Compliance Legislation

MULTISTATE



The table below provides details on each of these bills, including status, category, and a brief summary. We know that new introductions in Maryland, Massachusetts (both as part of a stand alone filing and the governor's budget proposal), and Ohio are imminent. We will continue to provide updates in future blog posts as additional bills are introduced and as the bills below move through the legislative process.

 te	Bill	Category	Status	Summary
Arkansas	SB 140	Economic Nexus	Introduced	Changes state sales tax nexus rules to establish that out of state sellers have presence in the state if their gross revenues within the state are in excess of \$100,000 or if they complete 200 discrete transactions within the state. Expands sales tax nexus to require out of state sellers to remit sales tax on in state purchases if the seller has more than \$250,000 worth of annual sales into the state or more than 200 discrete sales. Further requires sellers who do not qualify under the above formulation to inform in state purchasers annually about their responsibility to pay sales tax on their purchases.
Georgia	HB 61	Economic Nexus & Reporting Requirement	Introduced	Limits state sales tax nexus rules by establishing what does NOT qualify as an instate affiliate. Specifically, casual sales, utilizing non-affiliate third party call centers, and the activities of a person without physical presence in the State if the person and the person's affiliates have less than \$100,000 of gross receipts do not establish presence.
Hawaii	HB 345	Economic Nexus	Introduced	Limits state sales tax nexus rules by establishing what does NOT qualify as an instate affiliate. Specifically, casual sales, utilizing non-affiliate third party call centers, and the activities of a person without physical presence in the State if the person and the person's affiliates have less than \$100,000 of gross receipts do not establish presence.
 Hawaii	SB 620	Economic Nexus	Introduced	Limits state sales tax nexus rules by establishing what does NOT qualify as an instate affiliate. Specifically, casual sales, utilizing non-affiliate third party call centers, and the activities of a person without physical presence in the State if the person and the person's affiliates have less than \$100,000 of gross receipts do not establish presence.
Hawaii	SB 622	Economic Nexus	Introduced	Limits state sales tax nexus rules by establishing what does NOT qualify as an instate affiliate. Specifically, casual sales, utilizing non-affiliate third party call centers, and the activities of a person without physical presence in the State if the person and the person's affiliates have less than \$100,000 of gross receipts do not establish presence.
Hawaii	HB 398	Reporting Requirement	Introduced	Requires retailers or vendors that are not located in the state and not required to pay or collect general excise or use tax for sales to send certain information to purchasers in the state and further requires retailers or vendors to submit an annual report to the department of taxation.
Hawaii	SB 161	Reporting Requirement	Introduced	Requires retailers or vendors that are not located in the state and not required to pay or collect general excise or use tax for sales to send certain information to

				<p>purchasers in the state and further requires retailers or vendors to submit an annual report to the department of taxation.</p> <p>Provides that if a purchaser is physically present at a retail merchant's location when a product is purchased and the purchaser requests delivery of the product to a location outside Indiana, the sale is considered to be made at the business location of the sale and subject to the state sales tax, unless the purchaser presents proof during the consummation of the sale that the purchaser resides outside Indiana.</p> <p>Provides that an out of state seller must collect the state sales tax if: (1) the seller's gross revenue from sales into Indiana in a calendar year exceeds \$100,000; or (2) the seller makes sales into Indiana in more than 200 separate transactions.</p> <p>Instructs the tax commissioner to prepare the government for the collection of sales taxes on remote and foreign sales to the fullest extent that federal law allows.</p> <p>Changing state sales tax nexus standards to require tax collection by remote/out of state sellers if the seller employs an in state agent, affiliate, or marketplace provider who facilitates sales.</p> <p>Redefines "doing business in the state", for sales tax purposes, to stipulate that out of state sellers have presence in the state if the seller's total sales into the state exceed \$250,000.</p> <p>Amends definition of "retailer" and "doing business in the state" to establish that an out of state seller has sales tax nexus if they employ or contract with an in state agent who facilitates the sale of tangible personal property.</p> <p>Expands sales tax nexus standard to establish that an out of state seller has presence within the state if the seller employs an agent inside the state who facilitates the seller's commercial activity.</p> <p>Establishes an affiliate nexus standard for the state sales tax, whereby a seller will be assumed to have nexus with Mississippi if they contract with an in-state resident for customer referrals.</p>
Indiana	HB 1158	Expanded Nexus	Introduced	
Indiana	SB 545	Economic Nexus	Introduced	
Massachusetts	SD 259	Expanded Nexus	Draft	
Minnesota	SF 45	Expanded Nexus	Introduced	
Mississippi	HB 480	Economic Nexus	Introduced	
Mississippi	HB 688	Expanded Nexus	Introduced	
Mississippi	SB 2414	Expanded Nexus	Introduced	
Mississippi	SB 2008	Expanded Nexus	Introduced	

Mississippi	HB 1304	Economic Nexus	Introduced	Expands sales tax nexus standard to include out of state sellers who make more than \$250,000 worth of sales into the state.
Nebraska	LB 44	Economic Nexus & Reporting Requirement	Introduced	Adopt the Remote Seller Sales Tax Collection Act, which would require remote or internet sellers to remit sales tax if they have more than 200 discrete sales into the state or if their in-state sales exceed \$100,000. Further requires remote sellers to send notifications to all instate buyers detailing all of the purchases that they made with the seller and informing of them of their responsibility to pay tax on these transactions.
Nebraska	LB 564	Economic Nexus & Reporting Requirement	Introduced	Adopt the Remote Seller Sales Tax Collection Act, which would require remote or internet sellers to remit sales tax if they have more than 200 discrete sales into the state or if their in-state sales exceed \$25,000. Further requires remote sellers to send notifications to all instate buyers detailing all of the purchases that they made with the seller and informing of them of their responsibility to pay tax on these transactions.
New Mexico	SB 123	Expanded Nexus	Introduced	Establishing that an out of state seller has presence in the state if they retain an instate affiliate or agent, so long as their sales into the state total more than \$100,000
New Mexico	HB 202	Economic Nexus & Expanded Nexus	Introduced	Establishes that an out of state seller is not deemed to have physical presence for sales tax purposes if they and any affiliates have less than one hundred thousand dollars (\$100,000) of gross receipts in the state. Further provides that an out of state seller's gross receipts also include any sales realized from a multi-vendor marketplace platform.
New York	A 3009 (Budget)	Expanded Nexus	Introduced	Expanding state sales tax nexus rules to require "marketplace providers" to collect sales taxes associated with out of state sales
New York	S 2009 (Budget)	Expanded Nexus	Introduced	Expanding state sales tax nexus rules to require "marketplace providers" to collect sales taxes associated with out of state sales
North Dakota	SB 2298	Economic Nexus	Introduced	Requires remote sellers to collect the sales tax if their annual sales into the state are valued at more than \$100,000 or if they have more than 200 discrete sales into the state.

Rhode Island	HB 5175 (Budget)	Expanded Nexus	Introduced	Requires "marketplace providers" to collect and remit sales taxes associated with purchases made from out of state sellers.
South Carolina	SB 214	Expanded Nexus	Introduced	Presumes sales tax nexus if an out of state seller contracts with an in-state agent to refer potential customers to the seller.
Utah	SB 110	Economic Nexus	Introduced	Requires remote sellers to collect the sales tax if they had sales equaling more than \$100,000 or more within the state or if they store/use/consume tangible personal property stored or electronically transferred in the state.
Utah	SB 101	Economic Nexus	Introduced	Requires remote sellers to collect the sales tax if they had sales equaling more than \$100,000 or more within the state or if they store/use/consume tangible personal property stored or electronically transferred in the state.
Utah	SB 83	Reporting Requirement	Introduced	Requires out of state sellers to notify buyers of their responsibility to remit sales tax on their purchases.
Virginia	HB 1500 (Budget)	Expanded Nexus	Introduced	Establishing that having inventory in Virginia is sufficient to establish nexus for sales tax purposes
Virginia	SB 900	Expanded Nexus	Introduced	Establishing that having inventory in Virginia is sufficient to establish nexus for sales tax purposes
Virginia	HB 2058	Expanded Nexus	Introduced	Provides that storage of inventory in the Commonwealth is sufficient nexus to require out-of-state businesses to collect sales and use tax on sales to customers in the Commonwealth.
Virginia	SB 962	Expanded Nexus	Introduced	Provides that storage of inventory in the Commonwealth is sufficient nexus to require out-of-state businesses to collect sales and use tax on sales to customers in the Commonwealth.
Washington	HB 1549	Economic Nexus	Introduced	Establishes that a company has economic nexus with the state if they have more than \$267,000 worth of receipts within the state.
Washington	SB 5112	Economic Nexus	Introduced	Establishes that a company has economic nexus with the state if they have more than \$267,000 worth of receipts within the state.
Wyoming	HB 19	Economic Nexus	Passed First Chamber	Changes state sales tax nexus rules to provide that remote sellers must collect the state tax if their in-state sales exceed \$100,000 or if they make 200 or more separate sale. The bill also provides a provision to protect sellers from liability of these policies are later deemed to be unlawful.

#2
SB 2298
3-8-17

National Bellas Hess v. Illinois

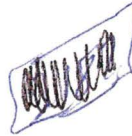
From Wikipedia, the free encyclopedia

National Bellas Hess v. Department of Revenue, 386 U.S. 753, 87 S.Ct. 1389 (1967), the Supreme Court ruled that a mail order reseller was not required to collect sales tax unless it had some physical contact with the state.

Background

National Bellas Hess was a mail order seller of various consumer products. Its principal place of business was in Missouri. It owned no tangible property in Illinois and had no sales outlets, representatives, telephone listing, or solicitors in that state. It did not advertise there by radio, television, billboards, or newspapers. It mailed catalogues to customers throughout the United States, including Illinois. Orders for merchandise were mailed to appellant's Missouri plant, and goods were sent to customers by mail or common carrier. The State of Illinois attempted to force National Bellas Hess to collect a use tax from its customers.

Ruling



The Commerce Clause prohibits a State from imposing the duty of use tax collection and payment upon a seller whose only connection with customers in the State is by common carrier or by mail. The court stated that "the Court has never held that a State may impose the duty of use tax collection and payment upon a seller whose only connection with customers in the State is by common carrier or the United States mail." The opinion cited *Miller Brothers Co. v. Maryland*, 347 U.S. 340.

In 1992, the Supreme Court in *Quill Corp. v. North Dakota* issued an order overruling part of the case. The court held that "Thus, to the extent that this Court's decisions have indicated that the Clause requires a physical presence in a State, they are overruled." That case slightly distinguished itself from *Bellas Hess* by ruling that physical presence was not necessary for a state to impose a duty to collect under the Due Process Clause of the US Constitution, but physical presence was still necessary for a state's use tax on a foreign vendor under the Dormant Commerce Clause of the US Constitution.

The Court stated "In this case, the Supreme Court of North Dakota declined to follow *Bellas Hess* because "the tremendous social, economic, commercial, and legal innovations" of the past quarter-century have rendered its holding "obsolete [te]." [cite omitted] we must either reverse the State Supreme Court or overrule *Bellas Hess*. While we agree with much of the state court's reasoning, we take the former course. *Quill Corp. v. N. Dakota* By & through Heitkamp, 504 U.S. 298, 301-02 (1992).

External links

National Bellas Hess v. Department of Revenue



Supreme Court of the United States

Argued February 23, 1967

Decided May 8, 1967

Full case name *National Bellas Hess v. Department of Revenue*

Citations 386 U.S. 753 (<https://supreme.justia.com/us/386/753/case.html>) (*more*)
87 S.Ct. 1389

Court membership

Chief Justice

Earl Warren

Associate Justices

Hugo Black · William O. Douglas

Tom C. Clark · John M. Harlan II

William J. Brennan, Jr. · Potter Stewart

Byron White · Abe Fortas

Case opinions

Majority Stewart, joined by Warren, Clark, Harlan, Brennan, White

Dissent Fortas, joined by Black, Douglas

Overruled by

Quill Corp. v. North Dakota



#3 p. 1
SB 2298
3-8-17

1014 EAST CENTRAL AVENUE + PO BOX 1956
BISMARCK, ND 58502 + 701-223-3370
WWW.NDRETAIL.ORG
FAX: 701-223-5004

Testimony SB 2298

March 8, 2017 –House Finance & Tax Committee

Good morning Chairman Headland and members of the Committee:

For the record, my name is Mike Rud. I'm the president of the North Dakota Retail Association.

NDRA represents both mom and pop as well as big box retailers across the state. These operations provide thousands of good jobs to ND citizens. I am here urging you to recommend a **"DO PASS" on SB 2298.**

NDRA has a long history with regard to Main Street Fairness. Senator Cook and NDRA have been waging this tax collection battle against out state sellers for over a decade.

For roughly 20 years now, retailers have been fighting to stay competitive with essentially one arm tied behind their back. Since the birth of online commerce, local retailers that serve as the backbone of our downtowns and Main Streets here in North Dakota have been unfairly punished with a tax code that gives their online competitors a government-sponsored advantage. Every day the brick and mortar stores in our community are required to collect state sales tax, while many out-of-state competitors get a free pass. The result is obvious, an automatic price advantage that puts local job creators at a distinct competitive disadvantage. The truth is: a sale is a sale is a sale. Whether it takes place online or at a local business, a sale is made, a transaction has occurred and the sales tax is owed. The same rules should apply online that apply on Main Street. It is a question of fairness and evenhandedness.

More is at stake than the fate of an individual storefront. When retailers in our local downtowns close, foot traffic drops for others; payroll, sales and property tax receipts drop; and jobs diminish. These employers can't compete with online giants that don't collect sales

taxes and don't have the same local presence in our communities.

Local businesses support our civic organizations, sports teams and are permanent community members. However, unless the system is corrected, local retailers will become endangered species as they are being punished for following the law and collecting sales taxes, while their competitors are not. The result is a downward spiral that results in fewer services and a weaker local economy.

It's important to note, just because the online merchant doesn't collect the tax, it doesn't mean the tax is not due. On-line retailers are leaving individuals who purchase items on their Web sites exposed as these purchasers are responsible for the tax themselves. In fact, individuals can be audited and penalized for any unmet tax obligation that hasn't been paid.

Furthermore, if some retailers continue collecting the sales tax at the point of purchase, while others exploit a loophole and do not, states that are currently experiencing massive budget deficits are going to increase other taxes and fees, like property taxes, sales taxes and/or income taxes, which is already happening across the country.

SB 2298 enhances current law by making it clear North Dakota expects all sellers to comply with the State's sales tax law. It removes the burden of remitting the taxes from the consumer and places it on the internet retailer. It doesn't raise taxes; it simply ensures that all who do business in North Dakota play by the same rules.

Online sellers might oppose ND's efforts to restore basic free market competition for retailers. In an effort to preserve their special tax treatment they might try to convince you that it's extremely burdensome for out of state, online sellers to collect sales tax. The same computing power allowing consumers and merchants to buy and sell goods from a smart phone has the know how to calculate the correct sales tax. Software to collect and remit these taxes has

existed for more than a decade and is being used by thousands of online retailers who voluntarily collect sales taxes via the streamlined system.

Modern commerce has given unprecedented power to consumers to search for the best products, compare prices and do business with companies who have earned their trust and loyalty. This is a good thing for the future of retail and our customers, as it will require retailers of all sizes to compete for customers.

North Dakota's retailers aren't afraid of competition, they just believe that their competitors shouldn't benefit from a government tax policy subsidizing a select few with special tax treatment. SB 2298 will allow state retailers to finally compete on a level playing field.

Again, NDRA urges a DO PASS recommendation on SB 2298.



#4 p.1
SB 2298
3-8-17

Testimony SB 2298

March 8, 2017 – House Finance & Tax Committee

North Dakota
Company Headquarters
1-800-437-1762
701-223-5320
Fax: 701-223-7554

1655 N Grandview Lane
Bismarck, ND 58503
1-800-437-1762
701-223-6707
Fax: 701-255-1625

1620 32nd Ave South
Fargo, ND 58104
1-800-525-9232
701-476-3408
Fax: 701-476-3409

Minnesota
159 7th Avenue South
Waite Park, MN 56387
1-800-450-7664
320-259-8165
Fax: 320-259-8166

065 Centre Pointe Drive
Roseville, MN 55113
1-800-543-8255
651-704-9654
Fax: 651-773-1091

Montana
922 Grand Ave
Billings, MT 59102
1-800-552-1888
406-252-2604
Fax: 406-252-1641

621 W Mendenhall St
Bozeman, MT 59715
1-800-580-8007
406-587-8007
Fax: 406-587-5344

www.eckroth.com

Good morning Chairman Headland and members of the Committee:

For the record, my name is Jeff Eckroth, President of Eckroth Music Co. Eckroth Music is a full line music retailer operating 6 locations in Minnesota, Montana and North Dakota. I am here urging you to recommend a **"DO PASS" on SB 2298.**

As former chairman of the North Dakota Retail Association the Main Street Fairness issue has been a topic of conversation among membership for some time. Just like online retailers, Eckroth Music generates revenue from customers in many states, and has been collecting and remitting sales tax in at least five states for decades.

Indeed, even in the complicated municipalities of Hennepin County and the City of Minneapolis, the efficient and sophisticated software that is commonly accessible today, makes it very simple to do. I think we spend more staff time on 'accounting and reporting' requirements relating to the Affordable Care Act than we do on sales tax reporting.

As a resident and taxpayer of North Dakota there is another undeniable issue with online merchants not collecting sales tax and remitting to the State and cities in ND. The inability to effectively collect legally owed sales tax from remote sellers is eroding the ND tax base. This is causing revenue losses and inevitable damage to the State through the loss of critical funding for state and local services.

This is the revenue due the state that would help cover the expenses of running our schools, state and communities. This 'unpaid bill' now falls on the citizens of our state.



#4 p. 2
SB 2298
3-8-17

North Dakota

Company Headquarters

1-800-437-1762

701-223-5320

Fax: 701-223-7554

1655 N Grandview Lane

Bismarck, ND 58503

1-800-437-1762

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Fax: 406-252-1641

621 W Mendenhall St

Bozeman, MT 59715

1-800-580-8007

406-587-8007

Fax: 406-587-5344

www.eckroth.com

Nobody likes paying taxes, but we shouldn't be asking law-abiding citizens to pay MORE to make up for a select few who benefit from special sales tax treatment. Collecting all sales taxes legally owed to ND provides the opportunity to potentially lower tax rates for all state residents.

Inaction implies we are essentially subsidizing out of state, and in some cases foreign retailers who don't have to play by the same rules as our local Main Street Businesses. In a true free market, the government shouldn't be picking retail winners and losers with the tax code.

North Dakota MUST lead the way to ensure a fair, competitive playing field for all local businesses.

I urge a DO PASS recommendation on SB 2298.



#5 p.1
SB 2298
3-8-17

January 30, 2017

The Honorable Dwight Cook
Chair, Senate Committee on Finance and Taxation
1408 17th Street SE
Mandan, ND 58554-4895

Re: SB 2298, Sales and Use Tax Collection Obligations

Dear Chairman Cook:

On behalf of Best Buy, I am writing to express support for SB 2298, which will create a level playing field for main street businesses versus online only retailers. Best Buy operates 5 stores and employs more than 300 in North Dakota, in addition to serving all North Dakota customers through www.BestBuy.com.

Best Buy supports state and federal efforts to create sales tax collection parity at point of sale for all sellers competing in the marketplace, regardless of selling channel, as well as efforts to require in-state businesses to collect tax on behalf of third parties who sell items on the in-state business' websites (e.g., online marketplaces).

The current competitive disadvantage in the marketplace harms retailers of all sizes including our main street businesses that are part of the fabric of our communities. Moreover, the lost sales tax revenue forces the state and municipalities to make difficult budgetary decisions impacting the residents of North Dakota on issues such as infrastructure, schools, and first responders.

Continued state activity is critical to passage of federal legislation and/or reconsideration of the *Quill* decision by the U.S. Supreme Court. As more states pass legislation, Congress will be under increasing pressure to act. So far, 40 states, plus the District of Columbia and Puerto Rico, have enacted some version of e-fairness legislation since 2008. With SB 2298, North Dakota will be sending a strong signal to Congress that the current competitive disadvantages main street businesses face and the resulting strain on state and local resources are unacceptable and unsustainable.

Thank you for your public service and consideration of our views. If you have any questions, feel free to contact me or Dan López, Senior Manager, Government Affairs, at 612-291-4174 or dan.lopez@bestbuy.com.

Respectfully,

A handwritten signature in black ink that reads "Laura Bishop". The signature is fluid and cursive, with the first name "Laura" being more prominent than the last name "Bishop".

Laura Bishop
Vice President, Public Affairs and Sustainability

From:

Laura Bishop, Director of Government Relations, Best Buy Co. Inc.
Anika Hagenson, Senior Group Manager, Government Affairs, Target Corporation
Maggie Sans, Sr. Vice President, Chief Corporate Affairs Officer, Wal-Mart Stores, Inc.
Kent Knutson, Vice President, Government Relations, Home Depot, Inc.
Misty Redman, Director Government Affairs, Sears Holdings Corporation

As you know, there has been considerable discussion lately about a priority for the retail industry for many years: Internet sales-tax parity with non-nexus retailers. As multi-channel retailers, we have a common interest in leveling the playing field in terms of sales-tax collection and reforming the current system under which we consistently lose significant market share to sellers that abuse the nexus loophole and, as a result, are able to offer customers a significant price advantage of upwards of 10 percent in some states.

Over the years, our industry has supported a federal solution to address the Constitutional issues surrounding interstate commerce and the Internet. As you also know, there has been frustration within our industry at the lack of progress on the federal solution. While we would prefer a consistent federal solution to a patchwork approach, we believe that a complementary strategy of pursuing state-by-state solutions is warranted at this point.

We have concluded that an additional opportunity is to focus on sales-tax parity efforts at the state level. We believe that a focus on state based activity will eventually assist the overall effort by encouraging online retailers to seek Federal preemption and thereby providing additional momentum for federal activity on the Main Street Fairness Act. There are a variety of options open to our industry for this strategy, and as a group we want to apprise our State Retail Association partners that those of us that are members of your respective associations will be working with you to review every option thoroughly and vigorously and will seek to pursue the most appropriate strategic approach in your state.

Although not perfect, the "New York" style affiliate-nexus legislation is the best option for capturing these uncollected taxes and leveling the playing field, especially in light of the recent ruling from the New York Court of Appeals that upheld the lower court's finding that the parties do not have a case that NY's affiliate-nexus statute is unconstitutional on its face and remanded the case back to the lower court for a retrial. Another state option is efforts by state tax agencies to pursue sales-tax collection by virtue of nexus based on warehouses, distribution centers and other facilities that may be owned directly or indirectly by online-only retailers, and prospective litigation by states pursuing the right to impose sales-tax collection on these companies, as they currently do with respect to brick-and-mortar retailers.

The bottom line is this: While some in our industry believe that pursuit of a federal legislative solution is the only way to achieve sales-tax parity, we do not. We strongly believe that while a federal solution is preferable, we must pursue other measures, including affiliate nexus style legislation to level the playing field between online-only and brick-and-mortar retailers with respect to collection of state sales taxes. We offer our support to ensure that your efforts as representatives of our industry in your state are successful.

	Non-Electronic Business to Customer	Non-electronic Business to Business	Electronic Business to Business and Business to Customer	Total
Alabama	101,657,313	75,677,086	170,400,000	347,734,399
Alaska	880,149	655,832	1,500,000	3,035,981
Arizona	220,741,594	118,086,660	369,800,000	708,628,254
Arkansas	67,947,572	54,464,358	113,900,000	236,311,930
California	1,136,801,607	1,118,366,340	1,904,500,000	4,159,667,947
Colorado	103,065,552	76,798,022	172,700,000	352,563,574
Connecticut	38,022,475	50,544,930	63,800,000	152,367,405
District of Columbia	21,211,612	15,805,570	35,500,000	72,517,182
Florida	479,769,709	200,120,301	803,800,000	1,483,690,010
Georgia	244,857,701	182,452,688	410,300,000	837,610,389
Hawaii	35,822,100	26,692,395	60,000,000	122,514,495
Idaho	27,636,706	29,083,776	46,400,000	103,120,482
Illinois	302,507,519	249,542,069	506,800,000	1,058,849,588
Indiana	116,619,861	86,897,847	195,300,000	398,817,708
Iowa	52,897,008	39,415,552	88,700,000	181,012,560
Kansas	85,286,525	51,037,503	142,900,000	279,224,028
Kentucky	65,659,182	48,925,127	109,900,000	224,484,309
Louisiana	236,320,247	176,091,110	395,900,000	808,311,357
Maine	19,099,252	14,231,572	32,100,000	65,430,824
Maryland	109,930,722	81,913,518	184,100,000	375,944,240
Massachusetts	78,333,340	58,369,120	131,300,000	268,002,460
Michigan	84,494,390	62,959,949	141,500,000	288,954,339

	Non-Electronic Business to Customer	Non-electronic Business to Business	Electronic Business to Business and Business to Customer	Total
Minnesota	140,471,923	79,447,327	235,300,000	455,219,250
Mississippi	80,533,715	87,852,645	134,900,000	303,286,360
Missouri	125,773,420	93,718,508	210,700,000	430,191,928
Nebraska	36,614,235	20,137,833	61,300,000	118,052,068
Nevada	100,865,178	75,158,440	168,900,000	344,923,618
New Jersey	120,844,580	90,045,845	202,500,000	413,390,425
New Mexico	71,908,246	53,581,540	120,500,000	245,989,786
New York	516,559,974	384,908,277	865,500,000	1,766,968,251
North Carolina	127,621,735	95,095,757	213,800,000	436,517,492
North Dakota	9,153,558	6,820,661	15,300,000	31,274,219
Ohio	183,775,298	136,937,891	307,900,000	628,613,189
Oklahoma	84,054,315	71,494,343	140,800,000	296,348,658
Pennsylvania	206,483,165	153,858,377	345,900,000	706,241,542
Rhode Island	17,338,952	24,097,506	29,000,000	70,436,458
South Carolina	74,372,666	55,417,872	124,500,000	254,290,538
South Dakota	17,779,027	13,247,822	29,800,000	60,826,849
Tennessee	245,209,761	92,471,128	410,800,000	748,480,889
Texas	519,552,484	387,138,109	870,400,000	1,777,090,593
Utah	52,808,993	39,349,968	88,500,000	180,658,961
Vermont	14,962,548	4,696,781	25,100,000	44,759,329
Virginia	123,573,045	92,078,926	207,000,000	422,651,971
Washington	168,284,660	90,784,044	281,900,000	540,968,704
West Virginia	30,189,141	22,495,065	50,600,000	103,284,206

	Non-Electronic Business to Customer	Non-electronic Business to Business	Electronic Business to Business and Business to Customer	Total
Wisconsin	84,846,450	62,059,664	142,100,000	289,006,114
Wyoming	17,074,908	16,069,797	28,600,000	61,744,705
Total	6,800,214,113	5,067,095,451	11,392,700,000	23,260,009,564

ESTIMATED UNCOLLECTED USE TAX FROM ALL REMOTE SALES IN 2012

March 8, 2017

The Honorable Representative Craig Headland

Finance and Taxation Committee

Re: Support for Senate Bill 2298

Chairman Headland and members of the committee:

My name is Brent Bogar and I am representing the Greater North Dakota Chamber. The GNDC works on behalf of all our members to support building a strong, vibrant business climate in North Dakota. GNDC stands today in support of SB 2298.

GNDC believes that a fair and equal business environment of regulation and taxes is the cornerstone to an economy that creates opportunity, wealth, and growth. When creating a business environment in today's global economy we must make sure that we are doing all that we can to keep the regulations and tax structure fair and equal.

North Dakota has utilized various tax incentive to encourage investment and economic growth in the state over the years and has seen the results of a diversified economy and new opportunities for people and businesses to grow. GNDC has come before this committee and the legislature in the past to support such efforts to encourage business development, investment, and growth. We have worked with our business members and partners and with legislators to create policies that support the growth of North Dakota's economy and to do it in a way that does not burden one business or industry at the cost of another.

The fact that online sales from various sources have been able to take advantage of not collecting and remitting sales tax has given them a tax incentive that was never intended by the state. It puts them at an advantage over the local businesses and some online sites, those with a physical nexus in the state, that must comply with collecting the sales tax. In some places in North Dakota that can equate to an 8% discount. While North Dakota law states that the consumer is to file and pay the sales tax, we all know that does not happen on a regular basis. Thus, the discount is truly being provided and giving the online retailer an advantage.

This is not about a tax increase, it is about tax fairness to all that do business in North Dakota. GNDC believes that SB 2298 is step towards ensuring a fair and equal business environment in North Dakota.

Chairman, members of the committee GNDC urges a Do Pass on SB 2298 and I would stand for any questions you may have.

Champions  Business

PO Box 2639 P: 701-222-0929
Bismarck, ND 58502 F: 701-222-1611

www.ndchamber.com

#7
SB 2298
3-8-17

March 8, 2017
House Finance and Taxation
Rep. Headland, Chair
SB 2298

For the record, I am Blake Crosby, Executive Director of the North Dakota League of Cities, representing the 357 incorporated cities across the state. Approximately 77% of the population of North Dakota lives in those cities.

I am here to testify in support of SB 2298. North Dakota is complicit in the situation states find themselves in when trying to collect state sales and use tax on internet purchases from retailers outside the state. The 1992 case was Quill Corp. vs North Dakota and the United States Supreme Court decision was that in order for a state to collect sales and use tax the business must have a nexus in that state. Obviously since 1992 internet sales have exploded and states, looking for additional revenue, turned to Congress who introduced the latest iteration of the Marketplace Fairness Act (MFA) in 2015. Congress has made very little progress since 2011 when the first MFA was introduced to attempt to address the ability of states to collect sales and use tax from on-line and out-of-state retailers. However, the U. S. Supreme Court has indicated it is time to revisit that situation and is looking for the appropriate case to come before it.

Several states have initiated a collection requirement and it is time North Dakota did likewise. To count on congressional action is a long shot at the best.

I respectfully ask for a DO-PASS on SB 2298.

THANK YOU FOR YOUR TIME AND CONSIDERATION. I will try to answer any questions.



#8
SB 2298
3-8-17

TESTIMONY TO SENATE BILL 2298

MARCH 8, 2017

HOUSE FINANCE AND TAXATION COMMITTEE

**KEITH J. HUNKE, CITY ADMINISTRATOR,
CITY OF BISMARCK**

Good morning Mr. Chairman and members of the Finance and Taxation Committee. For the record, my name is Keith Hunke, City Administrator, providing written testimony in response to Senate Bill 2298.

The City of Bismarck has experienced a decline in the collection of local sales tax along with a reduction in its portion of the ND State Aid Distribution Formula revenue which is attributed to the declining collection of state sales tax. Both of these declining experiences can be credited to the increasing use of remote sales by our local and state residents.

In my reading of Senate Bill 2298, it lays the foundation for initiating the modernization of the North Dakota sales tax code and levels the playing field for state and local businesses as it relates to the collection of the North Dakota sales and use tax from sellers of property and product that do not have a physical presence in North Dakota.

Today, an ever increasing amount of consumer purchases are for services that are not taxed and more and more of the tangible goods purchased are bought over the internet. These changes in consumer behavior have meant that our North Dakota sales tax base is struggling to keep up with funding the public investments it has supported in the past. Technology is now available to easily calculate sales tax for any U.S. address. These services easily integrate into online shopping carts and instantly calculate sales tax for any U.S. address.

In summary, North Dakota loses between \$40-\$50 million per year in lost tax revenue from remote sales. I believe Senate Bill 2298 is a solution to the remote sales tax collection issue and urge the House Finance and Taxation Committee to consider a "Do Pass" of Senate Bill 2298.



Legislative Testimony SB 2298

House Finance and Taxation Committee 03/08/2017

City of Fargo

Honorable Chair Headland and members of the House Finance and Taxation Committee, the City of Fargo supports SB 2298 because it will have a profoundly positive impact upon our sales tax collections and state aid payments.

Currently, the City collects a 2% sales tax on taxable sales and all of this money is dedicated to the ongoing construction of infrastructure for our growing community. Our largest projects currently underway include the FM Diversion, expansion of our water treatment plant and an upcoming expansion of our wastewater treatment facility. These core infrastructure elements are essential and service our community. These projects are large in amount and as a result, we will be financing these projects and will use sales tax to repay the project loans. It is very important that our sales tax collections continue to grow as they have in the past. A decline in sales tax collections in the future could have a negative impact on our ability to pay debt obligations as currently planned and could trigger unanticipated increases in special assessments or utility fees.

The State aid we receive from statewide sales tax collections is a key component of our annual operating budget in our General Fund. We keep our property tax levies as low as possible by using this unrestricted revenue in our operations. It helps us fund our highest budget priorities on a sustainable basis.

We agree with bill sponsors that leveling the playing field for our local business community is very important and the protection and preservation and future growth of our sales taxes is essential.

We urge a DO PASS vote on SB 2298. It is a proactive measure that will have a positive impact on our community and follows a common sense approach. Thank you for allowing us to provide this testimony.



Michael R. Brown
Mayor

#10
SB2298
3-8-17

City of Grand Forks

255 North Fourth Street • P.O. Box 5200 • Grand Forks, ND 58206-5200

(701) 746-2607
Fax: (701) 787-3773

TESTIMONY ON SENATE BILL 2298

North Dakota House Finance and Taxation Committee

**Maureen Storstad, Finance Director
City of Grand Forks, ND**

March 8, 2017

Chair Headland and Members of the House Finance and Tax Committee, thank you for this opportunity to provide comment on SB2298 related to supporting our local businesses by closing loopholes in internet sales and use tax law. On behalf of the City of Grand Forks, I urge you to support this legislation with a DO PASS recommendation.

This bill has thoughtfully and thoroughly addressed a long-standing loophole in the collection of sales and use tax that has put the small business owners of North Dakota at a competitive disadvantage.

These brick-and-mortar business owners are paying property taxes and/or lease payments and thereby bearing their fair share of the local and state costs of services and infrastructure that allows their businesses a chance to succeed. In addition, they are collecting and remitting sales and use taxes on the purchase made in their businesses.

These sales and use taxes, both at a local and state level, are also being invested in the services and infrastructure that provide a healthy business environment and promote economic opportunity. In supporting SB2298, we are asking all who do business in our state, whether they have a physical presence or not, to fairly pay their share.

We fully support the growing number of businesses operating solely through e-commerce. We understand this is an important and expanding marketplace and provide expanded options to our citizens. Clearly, this is not an issue of additional tax but one of fairness, particularly to the hard working North Dakota business people who are fueling our economy and the future of our communities. Our intent is simply to ensure our local entrepreneurs and business owners have the best chance at success as possible and the playing field is level.

Thank you for your time and energy spent on this issue and for your consideration of a DO PASS on SB2298.

Kirkwood Hardware

"Bismarck's Real Hardware Store(s)"

805 SOUTH 7TH STREET
BISMARCK, NORTH DAKOTA 58504
(701) 258-6161

4321 OTTAWA STREET
BISMARCK, NORTH DAKOTA 58503
(701) 751-0529

#11
SB2298
3-8-17

SB2298

I am Jeff Hinz. I own two hardware stores in Bismarck. I employ 90 North Dakotans and am the current chairman of the North Dakota Retail Association. I also collect a half million dollars of sales tax for the people of North Dakota.

Do you know what its like to spend a half hour or more working on a sale, educating your customer, showing them an item and how it works, explain features and benefits, and when it comes time to close they ask you to match the online no sales tax price?

At the dawn of e-commerce, government determined that to tax the fledgling internet platform would inhibit it's growth. Now, the giants of retail are the on-line enterprises who no longer need your protection. Their 6 ½% price advantage is devastating Main Street businesses that support all of our state and city functions.

Today the only merchants required to add sales tax to the goods that our customers purchase are those that have brick and mortar presence in the state. We are penalized for living here. Those that do not contribute to the support of our state are rewarded with a government sponsored pricing advantage.

No entity can truly operate without brick and mortar. Every Post Office, Fed Ex and UPS facility is a real life building that is used to facilitate their flow of goods. They use the streets and sidewalks that our sales tax builds and for every box they deliver tax free, more tax burden shifts to those of us merchants that remain. We have seen this in Bismarck where the city is discussing doubling our city sales tax to cover infrastructure cost.

I am aware that some of you may view SB2298 as a tax increase. I view it as ending a tax subsidy to an industry that no longer needs it. Online sales are reducing Main Street sales and shifting the tax burden. The subsidized business is destroying the taxed business. There have been massive retail closings announced in the last month. While some may be blamed on business plan or management, the general sense is that they cannot compete with online retailers and their favored tax status. The current tax exemption is similar to TIF districts where a few chosen businesses are exempted while the rest of us pay more to cover the basic cost of government, making it even harder for us to compete.

For me, this is a matter of fairness. If I chose not to add sales tax to a purchase I would face penalties, but my on line competitors do so with government blessing. Why is one business granted a 6 ½% advantage over another? You can change that. I am not asking for you to give businesses like mine an advantage, but you can make competition fair. Consumers are already supposed to account for what they buy tax free and remit to the state. Taxing these items at the source would make trade fair for all of us. Please give your support to SB2298.



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3-8-17

March 7, 2017

Members of the House Finance and Tax Committee,

On behalf of the 10,000 Americans for Prosperity activists in North Dakota and the 3.2 million activists across the nation, I write today in strong opposition to Senate Bill 2298. Our grassroots organization is committed to promoting free enterprise, protecting the rule of law, and ensuring the tax dollars of every North Dakotan are spent wisely.

North Dakota is not alone in its pursuit of increasing tax revenues from online sales. Colorado has recently enacted new measures to achieve this goal. While that law has yet to be fully implemented, the revenue increases were estimated by the government's own accountants to total a paltry \$200,000 per year. When considering the budgetary costs of practically enforcing the law on the countless small businesses that make online sales to the state's residents, it is doubtful any net revenue will be generated. It is easy to see that even a small department of tax lawyers and investigators focused on enforcing this law would cost taxpayers more just in salaries than the state would receive in revenues, should SB 2298 come into effect.

In addition to wasting taxpayer dollars, SB 2298 would limit the choices of North Dakotans by leading out-of-state small businesses to stop offering their products and services due to the cost of navigating the nearly 140 tax jurisdictions in our state. If every state were to adopt its own tax compliance dragnet, almost anyone attempting to start a business online could become subject to costly government audits from the nearly 10,000 tax jurisdictions around the country. This would hurt the economy and kill countless jobs which is why Gallup public opinion polls show nearly 60 percent of consumers oppose this approach to online sales tax.

The Supreme Court established in the *Quill Corp. v. North Dakota* (1992) that state laws have finite jurisdictions under the Constitution. The *Quill* doctrine holds that, absent Congressional action, states do not have the power to force remote sellers to collect and remit sales taxes. However, even if *Quill* were overturned, state tax policy that served retaliatory or protectionist ends would still clearly violate the Constitution's commerce clause. In addition, the language contained in SB 2298 is currently being litigated by at least two other states, South Dakota and Alabama. It would be a waste of taxpayer dollars to replicate a legal challenge that other states have already brought forward in the courts, or to implement a program today that may well be ruled unconstitutional tomorrow.

SB 2298, and other proposals like it, do not level the playing field. This legislation would create an extra and unique burden on out of state retailers that local sellers do not face – namely intensive record-keeping obligations for compliance with multiple sales tax jurisdictions. If SB 2298 is enacted, every out of state retailer will be forced to keep the personal information of all

Americans for Prosperity (AFP) exists to recruit, educate, and mobilize citizens in support of the policies and goals of a free society at the local, state, and federal level, helping every American live their dream – especially the least fortunate. AFP has more than 3.2 million activists across the nation, 10,000 in North Dakota, a local infrastructure that includes 37 state chapters, and has received financial support from more than 100,000 Americans in all 50 states. For more information, visit www.AmericansForProsperity.org.

of their clients for fear of facing an audit. Sellers in the state of North Dakota do not have to record the address of every customer.

Further, local businesses are not subject to audits from tax jurisdictions other than the one in which they operate – this difference serves as protection from out of state competition. The U.S. Congress clearly has the Constitutional authority to resolve the problem of 20th century sales tax collection being disrupted by the rise of the internet; but, it is understandable for states like ours to doubt action from the federal level will come.

However, this proposal fails to address the underlying cause of this erosion of the sales tax base in a means consistent with promoting economic growth and facilitating further technological innovation. Rather than using the tax code to hammer the economy into a shape that comports with the government's vision for tax collection, the legislature should develop a modern tax collection system that respects the vibrancy and potential of digital commerce, while fairly and equally levying reasonable taxes necessary to perform the vital functions of government.

As stated in North Dakota Century Code (NDCC), Title 57, section 40.2-06, use taxes on tangible personal property purchased from retailers not subject to sales tax remittance requirements "must be paid to the commissioner directly by any person storing, using, or consuming such property within this state." Further, Title 57, section 39.2-08.2 of NDCC state that any sales or use tax obligation "is a debt from the consumer or user...until paid, and is recoverable at law." The NDCC is unequivocal that sales and use taxes from online purchases are already due by consumers and users within the state.

SB 2298 imposes an undue burden on out-of-state sellers to address the failure of North Dakota consumers to remit the taxes they legally owe. It is unfair to require citizens of other states who will not benefit from the services funded by sales and use taxes to be subject to collection and remittance requirements. The Constitutional limitation on taxation outside state borders works to the advantage of businesses and consumers in the state of North Dakota. Absent this limitation, North Dakotans could be subject to the whims of legislatures in states with values far different from our own and each state would be forced to pursue a "beggar thy neighbor" policy to maintain revenues.

SB 2298 is the wrong response to growth in internet-facilitated commerce. If enacted, this legislation would create a bad precedent for overly complex tax policy in North Dakota and waste taxpayer money should the Supreme Court overrule its present ban on taxation of interstate sales. We strongly urge you to oppose SB 2298.

Sincerely,

Jason Flohrs
State Director
Americans for Prosperity – North Dakota

Americans for Prosperity (AFP) exists to recruit, educate, and mobilize citizens in support of the policies and goals of a free society at the local, state, and federal level, helping every American live their dream – especially the least fortunate. AFP has more than 3.2 million activists across the nation, 10,000 in North Dakota, a local infrastructure that includes 37 state chapters, and has received financial support from more than 100,000 Americans in all 50 states. For more information, visit www.AmericansForProsperity.org.