

FISCAL NOTE
Requested by Legislative Council
02/06/2019

Amendment to: HB 1159

- 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.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 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.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 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 HB 1159 changes the requirement for contractors to remit use tax in certain situations.

- 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.*

Section 1 of engrossed HB 1159 removes the use tax due on tangible personal property for contractors that do not enter into a contract to purchase the property.

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.*

It is not known how many contractors will be affected by the provisions of engrossed HB 1159, nor the value of the property that may become exempt from use tax. Therefore the negative fiscal impact cannot be determined.

- 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 Strombeck

Agency: Office of Tax Commissioner

Telephone: 701.328.3402

Date Prepared: 02/07/2019

FISCAL NOTE
Requested by Legislative Council
02/06/2019

Amendment to: HB 1159

- 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.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 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.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 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 HB 1159 changes the requirement for contractors to remit use tax in certain situations.

- 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.*

Section 1 of engrossed HB 1159 removes the use tax due on tangible personal property for contractors that do not enter into a contract to purchase the property.

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.*

It is not known how many contractors will be affected by the provisions of engrossed HB 1159, nor the value of the property that may become exempt from use tax. Therefore the negative fiscal impact cannot be determined.

- 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 Strombeck

Agency: Office of Tax Commissioner

Telephone: 701.328.3402

Date Prepared: 02/07/2019

FISCAL NOTE
Requested by Legislative Council
01/07/2019

Bill/Resolution No.: HB 1159

- 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.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 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.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1159 changes the requirement for contractors to remit use tax in certain situations.

- 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.*

Section 1 of HB 1159 removes the use tax due on tangible personal property for contractors that do not enter into a contract to purchase the property.

Section 2 of HB 1159 makes the provisions retroactive to June 30, 2018.

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.*

It is not known how many contractors will be affected by the provisions of HB 1159, nor the value of the property that may become exempt from use tax. Therefore the negative fiscal impact cannot be determined.

- 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 Strombeck

Agency: Office of Tax Commissioner

Telephone: 701.328.3402

Date Prepared: 01/13/2019

2019 HOUSE FINANCE AND TAXATION

HB 1159

2019 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1159
1/14/2019
30718

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill relating to payment of use tax by contractors; and to provide an effective date.

Minutes:

Attachment 1

Chairman Headland: Opened hearing on HB 1159.

Representative B. Koppelman: Introduced bill. Distributed written testimony, see attachment #1. Ended testimony at 3:37.

Chairman Headland: Is there any testimony in support of HB 1159? Is there any opposition? I have a question for the tax department. Myles, what would happen in the case where a RFP was put out with construction, building, etc. and a contractor was chosen, can you give us an example of how the process works now? In most cases does the builder's bid puts together the purchases that would include the sales tax? Could you go through this and help us understand what we're missing here?

Myles Vosberg, Office of State Tax Commissioner: The way the law is written now, Representative B. Koppelman is correct in saying the contractor is responsible for tax on anything they use in the performance of a job. In most cases the contractor is purchasing the materials they are installing but there are cases where they are not. The reason this provision was put in law the way it is was so that tax exempt entities could not separately contract for materials versus the contractor just contracting for labor and avoid tax on materials that go into the building. This is how it all started back in the eighties. We run into instances where a contractor is unaware of the tax and they get hooked. We've had interim discussions of tax on contractors and the tax paid by or the projects constructed by nontaxable entities. A county or a township buys culverts for their roads tax free then has a contractor install it so under the current law the contractor would be responsible for the tax on that culvert. As long as they're aware of it and can get the cost of those materials they can build that into their bid to the tax exempt entity. It is more problematic when they aren't aware of it.

Representative Steiner: The tax department has a program so do they reach out to the contractors and let them know of this? Is there any kind of outreach on the program? If it isn't included in the bid, then there isn't a need for this bill.

Myles Vosberg: We have contractor guidelines and information. We participate in a few seminars in various places to try and promote the law. We do whatever we can. If we have a contractor who applies for a sales and use tax permit they would get our guidelines and instructions about them always being liable for the tax. We do what we can to inform those contractors.

Chairman Headland: We've struggled with this bill in the past. I don't know what we'll do with this bill but we'll discuss later in committee.

2019 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1159
2/4/2019
32132

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill relating to payment of use tax by contractors; and to provide an effective date.

Minutes:

No attachments

Chairman Headland: Open for discussion.

Vice Chairman Grueneich: I do some contracting. This bill was almost like a consumer or business owner protection. It doesn't have a fiscal note. Now with the internet and availability of different things there are a lot of products that get shipped in so if you're a labor only contractor you could really get hung out to dry on something like this not knowing it. I like this bill. I'd like to see it move forward.

Representative B. Koppelman: This is the bill I was referring to that addressed some of Representative Weisz's concerns in dealing with townships and such. It does it in such a way that it applies to any contractor who is hired to do work. It keeps them from being burned by something they really didn't have anything to do with. It says if you're not the buyer or the seller then you can't be charged tax.

Representative Steiner: Why is this retroactive on the fiscal note?

Chairman Headland: It's retroactive to the beginning of the biennium.

Representative B. Koppelman: I don't remember them asking for retroactivity but I think it was how it best fit with the practices of the Tax Department and their auditing of those who have contracts and stuff. I don't know if it matters if it has the retroactivity clause. The only advantage would be to the extent it applies to the townships because they may operate on the same fiscal year as the state so it might help them mid-year. It won't cost any differently if we take it to the end of the year but it would work a little better with the government's fiscal cycle.

Chairman Headland: Let's visit with the Tax Department before we decide anything.

2019 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1159
2/5/2019
32173

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill relating to payment of use tax by contractors; and to provide an effective date.

Minutes:

No attachments

Representative B. Koppelman: There was a question as to why the effective date is after June 30, 2018? Does it have something to do with connecting with another bill in dealing with townships and when their fiscal year is or was there some other reason?

Dee Wald, General Counsel for the Office of State Tax Commissioner: We put that effective date in because for sales tax the effective date is July 1 and we wanted to make sure that it didn't apply to contracts that were entered into before the effective date of the act. We would have issues with one saying it was applicable and one saying it was not. We've had that issue in corporate income tax cases a long time ago so we wanted to be clear and make sure what contracts this applies to.

Representative B. Koppelman: Would you suggest that if somebody were to hear that we passed this bill and is under a current contract but hasn't fully executed it they would be covered by this? It was retroactively take effect for this fiscal year because it's June 30, 2018.

Dee Wald: That's a typo. It was supposed to be 2019.

Representative B. Koppelman: MADE A MOTION TO AMEND IT TO 2019 to fix that error.

Representative Steiner: SECONDED

Chairman Headland: Discussion.

VOICE VOTE: MOTION CARRIED

Chairman Headland: We have amended HB 1159 before us.

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

Representative Fisher: SECONDED

Chairman Headland: Discussion.

Representative Eidson: Can you explain how this would work again?

Representative B. Koppelman: The general concept is if you're not the seller or the buyer you shouldn't be paying sales tax. The current law allows the state to charge that tax to a contractor who just touches something and installs it as opposed to reserving it for the buyer and seller so this bill would fix that.

Vice Chairman Grueneich: How many instances of this are we seeing of this happening where a labor only contractor supplying equipment only gets hooked for the sales tax?

Dee Wald: Often. There are a lot of smaller business owners that are contractors who don't know they have this responsibility.

Vice Chairman Grueneich: What is their recourse if any once the state charges them?

Dee Wald: It only applies to entities that are exempt. The only recourse that contractor would have is to go back to the person he contracted with to install equipment to try and get some sort of restitution. That would be a personal contractual matter.

Representative B. Koppelman: I don't believe this bill is limited to those that are tax exempt entities. That was a different bill. This bill applies to anybody.

Dee Wald: Anybody.

Representative B. Koppelman: If the person who hired you to do the installation, who is the buyer in this example, didn't pay the tax then you could go after them but I don't know how successful those are so we need to protect them here.

Representative Mitskog: If we're eliminating the contractor, how are we going to go after the original seller for recouping the sales tax if they fail to do it?

Dee Wald: We usually find use tax due on audits. If we found a particular contractor or subcontractor brought in materials that tax hadn't been paid on we would get the invoice and find that retailer. Under Wayfair they would have the responsibility to collect the tax as a remote seller.

Representative Mitskog: You would do an audit of the contractor and through an investigation process you would go after that original seller?

Dee Wald: That's one way. We would have to make sure the public knows the purchaser of the material is to collect the tax.

Representative B. Koppelman: In attempting to get the retailer there is also a buyer with an in-state location so anything above that \$5,000 transaction the buyer is responsible to pay as well.

Representative Mitskog: To go after that customer, how does the Tax Department get them to show up on their radar?

Representative B. Koppelman: There are two ways; auditing the sales tax records and audit the person who owns the property or possibly audit the contractor. It would more often be found through a sales tax audit with the other two entities and only found on a contractor if they are randomly selected.

Representative Mitskog: There are companies that ship in cabinetry and may ship to a residential home then hires someone to install it so that could be a \$25,000-30,000 transaction. How would the Tax Department get notified of that?

Dee Wald: The law states now that anyone who ships tangible personal property for delivery in North Dakota is required to collect and remit the sales tax.

Representative Dockter: With the amount of resources the Tax Department has they do a good job in this. That's the only way is doing an audit on those that really stick out. They do as many audits as they can with their resources because we get requests all the time in our office. Two sessions ago they were asking for more FTEs and they have one more FTE for an auditor. I think they found about \$1.2 million of extra revenue that was lost by the state by just adding an auditor. I have no problem hiring someone to help find the people that aren't paying their taxes.

Chairman Headland: I agree with the policy behind this bill but I'm concerned with the fiscal note and the potential lost revenue. If these kinds of transactions are found doing an audit are we looking at a company who has one transaction they'll forget to collect the tax on or is that their practice? In these audits when you find a transaction where the sales tax wasn't collected and remitted is it common that it would be an accident or would it be more common that they do this regularly?

Dee Wald: If the smaller businesses haven't collected or remitted it's usually because they didn't know what the law required of them. For the most part companies know.

Chairman Headland: Should I be nervous and worried about this fiscal note?

Dee Wald: I can't tell you how to feel.

Representative B. Koppelman: I think the biggest thing we need to ask ourselves is if we had a current law and you were responsible to pay your neighbor's income tax would we support that bill if it was here or would we vote to repeal that? It just makes no sense. There is no standing to say that contractor should pay that money. They just did the labor to do an install which we currently exempt in North Dakota. This is an equity bill and a fairness bill. I think we should do this on a policy basis.

Representative Toman: Sales tax is a transaction tax and if the contractor isn't part of that transaction or doesn't know the details of that transaction then I don't think they should be responsible for paying that transaction tax. I'm going to support the do pass.

ROLL CALL VOTE: 14 YES 0 NO 0 ABSENT

MOTION CARRIED

Representative Eidson will carry this bill.

19.0633.01001
Title.02000

DA 2/5/19
Adopted by the Finance and Taxation
Committee

February 5, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1159

Page 2, line 30, replace "2018" with "2019"

Renumber accordingly

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1159**

House Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: change to 2019

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. Steiner

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland			Representative Eidson		
Vice Chairman Grueneich			Representative Mitskog		
Representative Blum					
Representative Dockter					
Representative Ertelt					
Representative Fisher					
Representative Hatlestad					
Representative Kading					
Representative Koppelman					
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
change to 2019

Date: 2-5-19
Roll Call Vote #: 2

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1159

House Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: 19.0633.01001

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 Rep. Ertelt Seconded By Rep. Fisher

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland	✓		Representative Eidson	✓	
Vice Chairman Grueneich	✓		Representative Mitskog	✓	
Representative Blum	✓				
Representative Dockter	✓				
Representative Ertelt	✓				
Representative Fisher	✓				
Representative Hatlestad	✓				
Representative Kading	✓				
Representative Koppelman	✓				
Representative Steiner	✓				
Representative Toman	✓				
Representative Trottier	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Eidson

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

REPORT OF STANDING COMMITTEE

HB 1159: Finance and Taxation Committee (Rep. Headland, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1159 was placed on the Sixth order on the calendar.

Page 2, line 30, replace "2018" with "2019"

Renumber accordingly

2019 SENATE FINANCE AND TAXATION

HB 1159

2019 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Lewis and Clark Room, State Capitol

HB 1159
3/11/2019
Job #33508

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Alicia Larsgaard

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 57-40.2-03.3 of the North Dakota Century Code, relating to payment of use tax by contractors; and to provide an effective date.

Minutes:

Attachments: 1

Chairman Cook: Called the hearing to order on HB 1159.

Representative Ben Koppelman, District 16, West Fargo: Introduced the bill. See attachment #1. The main idea here is that if you are paid to install something or receive something, that you are not paid nor do you have the otherwise funds to cover the tax on it. In many cases, there is nothing that requires the person you are working with to show you their receipt. In this example, the person who was buying the kitchen equipment, doesn't want to tell you what kind of a good, national deal they got on that equipment because they do not want it floating around. If you bought it yourself, you can look at what sales tax was charged and if it was paid. If not, you better pay it. Contractors do that. To ask them to pay something that they are not even aware was there, is unreasonable. I will stand for questions.

Chairman Cook: Any further testimony in favor? Any opposed? Neutral?

Myles Vosberg: I am happy to answer any questions.

Chairman Cook: The scenario that was just given, can that actually happen?

Myles Vosberg: Yes.

Chairman Cook: Why is the company from Texas not paying a sales tax?

Myles Vosberg: The law makes the contractor liable for the tax. If we contacted the owner of that restaurant in that example, he could point to the law and say it is the responsibility of the contractor. I do not know that we would normally have that kind of an issue. The restaurant owner may just pay the tax themselves but it is a possibility.

Chairman Cook: Why can't we make it clear in the law that the responsibility lies on the restaurant owner?

Myles Vosberg: The reason this language is in the law right now, is to avoid contracts where an exempt entity would exempt the tax. If you had a hospital, nursing home, or government entity, have a separate contract to purchase materials and then a separate one for the labor, they could avoid the tax that way. The current use tax language, makes that contractor liable. The language is for the exempt entities and for them to not be able to avoid tax on a project.

Chairman Cook: Without some kind of change, a contractor who is going to install this property, has to be aware.

Myles Vosberg: That is correct.

Chairman Cook: Any further testimony on the bill? Hearing none, we will close the hearing on HB 1159.

2019 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Lewis and Clark Room, State Capitol

HB 1159
3/18/2019
Job #33864

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Alicia Larsgaard

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 57-40.2-03.3 of the North Dakota Century Code, relating to payment of use tax by contractors; and to provide an effective date.

Minutes:

Attachments: 2

Chairman Cook: Called the committee to order on HB 1159.

Chairman Cook: Distributed attachment #1 and #2. A contractor makes a purchase from out of state. I think the presenter used the figure of \$5,000. The product is shipped in. All he does is install it. If the seller of the product refuses the pay sales tax, then the sales tax liability falls back onto the contractor. Apparently we have different classes of contractors: A, B, C, and D. I think B, C, and D all take you up to \$500,000. This would at least exempt all of those contractors underneath \$500,000.

Myles Vosberg, Office of State Tax Commissioner: HB 1159 allowed a contractor to be exempt from tax if the contractor did not purchase the materials. This amendment restricts that exemption to contractors that would hold a license B, C, or D which means they can do a job up to \$500,000. It would cover the smaller jobs.

Any contractor that was licensed to do a job of more than \$500,000 would not qualify for this exemption. There are two parts to the exemption. If you look at the Christmas tree version on page 1, line 17 – 19, we added the language so now it is a two-part test. Contractor number 1 does not purchase the materials and number 2 is required to hold the B, C, or D license.

If you look at the top of page 2, we had to put that language back in that had to do with when a hospital purchases exempt medical equipment because now the larger jobs would apply in this situation.

Chairman Cook: Would this encourage a contractor to advise the owner of the project he is doing work on to buy certain material from a company the contractor knows is under the \$100,000 threshold and therefore does not have to collect and remit ND sales tax?

Myles Vosberg: It could. That contractor could encourage the project owner if they were exempt from tax to purchase those materials for a smaller job.

Chairman Cook: How big is this problem? Does this happen a lot?

Myles Vosberg: I would not say it happens frequently. Where we see it most, would be the smaller jobs. In the testimony you have had on contractor bills, you hear about someone delivering gravel that is owned by a township or a county or a hospital that hires a contractor to do a small repair job. Those would probably fall within this exemption category. We do not see it for large projects where the contractor is not paying materials.

Chairman Cook: Would you be able to monitor this for the next few years to see if there are a lot of exemptions underneath this section?

Myles Vosberg: I do not know that we would be able to monitor it because the contractor is not going to be required to pay the use tax. We really would not know what those situations are from the returns we receive.

Chairman Cook: We have this other bill that Robin Wiesz introduces every session. Would this amendment on 1159 effect that issue also to any degree?

Myles Vosberg: I think his testimony was about some of the smaller jobs where the contractor is smaller and does labor only. It is still going to only apply if the entity that is doing the project is exempt. If the contractor does not purchase the materials, but the entity he is doing the job for, we would be able to bill that entity for the tax. In a way, it will solve those smaller situations. It will not open it wide so a large project by an exempt entity would be exempt from tax.

Senator Dotzenrod: The blue language on page 2 that we are putting back in here: the reason we are doing that is because that equipment is not subject to sales tax. Is that why we are saying the tax imposed by this section is not to be worried about because he is installing equipment that is tax free of the facility that is installing it is not going to have to pay sales tax?

Myles Vosberg: That is right. Right now, the law allows a hospital or a nursing home to purchase medical equipment and have it installed by the contractor and that contractor does not have to pay tax. Because this bill was intended to remove all situations like that, it was not needed anymore so we took it out. Now we are putting it back in again because we will still need it for the larger jobs.

Senator Kannianen: I question leaving class A out of there. Both my Dad and I have our contracting businesses and we hold class A licenses. We have never done a job close to \$500,000 but when it is only an extra \$30 a year to renew a class A versus a lower class, it is easier to do it so you do not have to worry about it. There are a lot of small contractors that do small dollar amounts that hold class A. We might as well put all classes in there if we are going to put an amendment on.

Myles Vosberg: If we put all classes in there, it would open it wide up again so that anyone would be able to enter into a separate contract with an exempt entity for labor and let the entity purchase the materials tax free. The idea of limiting it to B, C, and D would be to do it to smaller jobs. The language reads that it does not apply to a contractor that is required to hold a class B, C, or D license. I guess we had not thought about you getting a license for jobs greater than you need. I think if the contractor could show that he never did a job larger than \$500,000, he would not be required to hold that class A license and this could still apply to that situation.

Chairman Cook: We will give that some thought.

2019 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Lewis and Clark Room, State Capitol

HB 1159
3/19/2019
Job #33926

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Alicia Larsgaard

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 57-40.2-03.3 of the North Dakota Century Code, relating to payment of use tax by contractors; and to provide an effective date.

Minutes:

Attachments: 0

Chairman Cook: Called the committee to order on HB 1159.

Chairman Cook: Senator Kannianen, you raised one question. Are you okay with the answer you got?

Senator Kannianen: I do not know how else to work around that because I can understand that obviously if class A's were included, it would open up everything like they are worried about. I am fine with the way the amendment is.

Senator Dotzenrod: Moved to adopt amendment 19.0633.02001.

Senator Kannianen: Seconded.

Chairman Cook: Any Discussion?

Senator Dotzenrod: These amendments change the bill so the smaller jobs that the contractor does not have to worry about having to be hooked for those taxes. On larger jobs over \$500,000, there is still going to be a state requirement that the contractor or the developer is going to have to pay the sales tax.

A Voice Vote Was Taken

Motion Carried.

Senator Dotzenrod: Based on what the tax department told us and what we have learned about this so far, are we going to have a situation of any significance where we are not going to be able to find someone that will pay those taxes on those smaller jobs? I do not think this happens a lot.

Chairman Cook: It would only happen if the seller was an out of state seller and did not qualify to be required to collect ND sales tax based on the economic threshold.

Senator Unruh: I am not convinced that the risk of unintended consequences outweighs the purpose of the bill so I plan to vote do not pass.

Chairman Cook: I am kind of in the same camp.

Senator Unruh: Moved a Do Not Pass on HB 1159 as Amended.

Senator Dotzenrod: Seconded.

Chairman Cook: Any Discussion?

Chairman Cook: I am not convinced myself as to how large of a problem we have out there. I am not convinced that this is the way to solve it if there is a problem. I think what we should be doing is making sure there is a better effort going after the seller to make sure he is collecting and remitting our sales tax. That work has been going on for years for making great progress. We have to continue on that journey. My fear with this is that we are enabling an out of state seller of a certain project to be identified by a contractor and advising the owner of the property to buy the appliances and have them shipped in tax exempt.

A Roll Call Vote Was Taken: 4 yeas, 2 nays, 0 absent

Motion Carried.

Senator Cook will carry the bill.

March 19, 2019

SK
3/19,
19D

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1159

Page 1, line 16, after "that" insert "is required to hold a valid class B, C, or D license issued under chapter 43-07 and"

Page 1, line 21, remove the overstrike over "~~The tax imposed by this section does not apply to medical equipment purchased as~~"

Page 1, remove the overstrike over line 22

Page 2, remove the overstrike over lines 1 and 2

Page 2, line 3, remove the overstrike over "4."

Renumber accordingly

Date: 3-19-19
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1159

Senate	Finance and Taxation	Committee
--------	----------------------	-----------

☐ Subcommittee

Amendment LC# or Description: 19.0633.02001

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 Dotzenrod Seconded By Kannianer

[illegible]

Total (Yes) _____ No _____

Absent

Floor Assignment

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

Date: 3-19-19
Roll Call Vote #: 2

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1159

Senate Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: _____

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

Motion Made By Unruh Seconded By Dotzenrod

Senators	Yes	No	Senators	Yes	No
Chairman Cook	✓	✓	Senator Dotzenrod		✓
Vice Chairman Kannianen	✓	✓			
Senator Meyer	✓				
Senator Patten	✓				
Senator Unruh	✓				

Total (Yes) 4 No 2

Absent 0

Floor Assignment COOK

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

REPORT OF STANDING COMMITTEE

HB 1159, as engrossed: Finance and Taxation Committee (Sen. Cook, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO NOT PASS (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1159 was placed on the Sixth order on the calendar.

Page 1, line 16, after "that" insert "is required to hold a valid class B, C, or D license issued under chapter 43-07 and"

Page 1, line 21, remove the overstrike over "~~The tax imposed by this section does not apply to medical equipment purchased as~~"

Page 1, remove the overstrike over line 22

Page 2, remove the overstrike over lines 1 and 2

Page 2, line 3, remove the overstrike over "4."

Renumber accordingly

2019 TESTIMONY

HB 1159

#1
HB 1159
1-14-19

HB 1159

Mr. Chairman and members of the Finance and Taxation Committee, my name is Rep. Ben Koppelman of District 16, and I thank you for the opportunity to introduce this bill in front of your committee.

HB 1159 is a bill that would exempt contractors for being required to pay **Use Tax** on items that they did not sell or buy. Since they were not a party to the sale, it would make sense to me that they should not be responsible for collecting or paying sales or use tax just because they happened to touch an item.

For example, lets say that a national restaurant franchise owner that was based out of Texas, was planning to build a location in North Dakota. Upon the building being built, he purchases \$250,000 of kitchen equipment from a company out of California and has it shipped to the location in North Dakota. He then hires a North Dakota small business for \$6,000 to receive and unload the truck containing the kitchen equipment and to set up and install the equipment in the kitchen of the new restaurant. Upon the completion of the install, the franchise owner takes possession of the restaurant and all of its contents. A year and a half later, the Tax Department audits the restaurant and sees that the California based equipment supplier never charged or remitted sales tax on the purchase, and neither the equipment supplier nor franchise owner will respond to requests by the Tax Department to pay the tax that is due. During the audit, the Tax Department also had seen that the ND small business was paid to receive and install the equipment. The Tax Department then informs the small business that since neither sales nor use tax was collected from retailer or the franchisee, that they will have to remit \$12,500. The small business appeals claiming that they were not party to any sale of kitchen equipment, and that they have no documentation that would indicate the terms of the sale, but they are informed that they owe the tax anyway. Thus, a small business that charged \$6,000 to install kitchen equipment, now has to pay over double that amount to the government just because they touched it and installed it.

This example, although maybe more extreme than some other examples, demonstrates the inequity of our law. Why should someone not party to a sale be responsible for the sales/ use tax on that sale. Surely we wouldn't expect an accountant who prepares an income tax return for a client to pay that client's income tax out of his pocket just because the client refused to pay the state, would we?

I thank you for your time, and request that you give HB 1159 a **Do-Pass** recommendation.

Mr. Chairman and members of the Finance and Taxation Committee, my name is Rep. Ben Koppelman of District 16, and I thank you for the opportunity to introduce this bill in front of your committee.

HB 1159 is a bill that would exempt contractors for being required to pay **Use Tax** on items that they did not sell or buy. Since they were not a party to the sale, it would make sense to me that they should not be responsible for collecting or paying sales or use tax just because they happened to touch an item.

For example, lets say that a national restaurant franchise owner that was based out of Texas, was planning to build a location in North Dakota. Upon the building being built, he purchases \$250,000 of kitchen equipment from a company out of California and has it shipped to the location in North Dakota. He then hires a North Dakota small business for \$6,000 to receive and unload the truck containing the kitchen equipment and to set up and install the equipment in the kitchen of the new restaurant. Upon the completion of the install, the franchise owner takes possession of the restaurant and all of its contents. A year and a half later, the Tax Department audits the restaurant and sees that the California based equipment supplier never charged or remitted sales tax on the purchase, and neither the equipment supplier nor franchise owner will respond to requests by the Tax Department to pay the tax that is due. During the audit, the Tax Department also had seen that the ND small business was paid to receive and install the equipment. The Tax Department then informs the small business that since neither sales nor use tax was collected from retailer or the franchisee, that they will have to remit \$12,500 in use tax. The small business appeals claiming that they were not party to any sale of kitchen equipment, and that they have no documentation that would indicate the terms of the sale, but they are informed that they owe the tax anyway. Thus, a small business that charged \$6,000 to install kitchen equipment, now has to pay over double that amount to the government just because they touched it and installed it.

This example, although maybe more extreme than some other examples, demonstrates the inequity of our law. Why should someone not party to a sale be responsible for the sales/ use tax on that sale. Surely we wouldn't expect an accountant who prepares an income tax return for a client to pay that client's income tax out of his pocket just because the client refused to pay the state, would we?

I thank you for your time, and request that you give HB 1159 a **Do-Pass** recommendation.

3/18 HB 1159
1pg.1

Prepared for Senate
Finance & Taxation Committee
March 13, 2019
19.0633.02000

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL 1159

Page 1, line 16, after "that" insert "is required to hold a valid class B, C, or D license issued under chapter 43-07 and"

Page 1, remove the overstrike over lines 21 and 22

Page 2, remove the overstrike over lines 1 and 2

Page 2, line 3, remove the overstrike over "4."

Renumber accordingly

3/18 HB 1159 #2 pg.1

19.0633.02000

FIRST ENGROSSMENT

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1159

Introduced by

Representatives B. Koppelman, Delzer, Dockter, Ertelt, Hatlestad, Headland, Kasper,
Kempenich, Schmidt

Senators Clemens, Kannianen, Unruh

- 1 A BILL for an Act to amend and reenact section 57-40.2-03.3 of the North Dakota Century
2 Code, relating to payment of use tax by contractors; and to provide an effective date.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 57-40.2-03.3 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **57-40.2-03.3. Use tax on contractors.**

- 7 1. When a contractor or subcontractor uses tangible personal property in the
8 performance of that person's contract, or to fulfill contract or subcontract
9 obligations, whether the title to ~~such~~the property be in the contractor,
10 subcontractor, contractee, subcontractee, or any other person, or whether the
11 titleholder of ~~such~~the property would be subject to pay the sales or use tax,
12 ~~such~~the contractor or subcontractor shall pay a use tax at the rate prescribed by
13 section 57-40.2-02.1 measured by the purchase price or fair market value of
14 ~~such~~the property, whichever is greater, unless ~~such~~the property has been
15 previously subjected to a sales tax or use tax by this state, and the tax due
16 ~~thereon~~ has been paid. This section does not apply to a contractor or
17 subcontractor that is required to hold a valid class B, C, or D license issued
18 under chapter 43-07 and does not enter a contract for the purchase of the
19 tangible personal property.
20 2. The provisions of this chapter pertaining to the administration of the tax imposed
21 by section 57-40.2-02.1, not in conflict with the provisions of this section, govern
22 the administration of the tax levied by this section.

3. The tax imposed by this section does not apply to medical equipment purchased as tangible personal property by a hospital or by a long-term care facility as defined in section 50-10.1-01 and subsequently installed by a contractor into such hospital or facility.

4. The tax imposed by this section does not apply to:

- a. Production equipment or tangible personal property as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.2;
- b. Machinery, equipment, or other tangible personal property used to construct an agricultural commodity processing facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.3 or 57-39.2-04.4;
- c. Tangible personal property used to construct or expand a system used to compress, process, gather, or refine gas recovered from an oil or gas well in this state or used to expand or build a gas-processing facility in this state as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.5;
- d. Tangible personal property used to construct or expand a qualifying oil refinery as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.6;
- e. Tangible personal property used to construct or expand a qualifying facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.10;
- f. Tangible personal property used to construct or expand a qualifying facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.11;
- g. Materials used in compressing, gathering, collecting, storing, transporting, or injecting carbon dioxide for use in enhanced recovery of oil or natural gas as provided in section 57-39.2-04.14; or
- h. Tangible personal property used to construct a qualifying fertilizer or chemical processing facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.15.

SECTION 2. EFFECTIVE DATE. This Act is effective for contracts entered after June

30, 2019.