

2021 HOUSE FINANCE AND TAXATION

HB 1309

2021 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Room JW327E, State Capitol

HB 1309
1/18/2021

A bill relating to payment of use tax by contractors.

Chairman Headland opened the hearing at 9:29am. Roll call was taken:

Representatives	Present
Representative Craig Headland	Y
Representative Vicky Steiner	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Jason Dockter	N
Representative Sebastian Ertelt	Y
Representative Jay Fisher	Y
Representative Patrick Hatlestad	Y
Representative Zachary Ista	Y
Representative Tom Kading	Y
Representative Ben Koppelman	Y
Representative Marvin E. Nelson	Y
Representative Nathan Toman	Y
Representative Wayne A. Trottier	Y

Discussion Topics:

- Contractor use tax exemption

Representative B. Koppelman introduced the bill at 9:29am (#1171).

Bill Wocken, North Dakota League of Cities, testified in opposition (#1076).

Shannon Fleischer, Associate Director of the Tax Administration for the Office of the State Tax Commissioner, answered questions from committee.

Chairman Headland closed the hearing at 9:52am.

Committee discussion with **Shannon Fleischer** from the North Dakota Tax Department (9:55am).

House Finance and Taxation Committee

HB1309

January 18, 2021

Page 2

Dee Wald, General Counsel for the Office of the State Tax Commissioner further discussed the bill and answered questions from the committee.

Meeting adjourned at 10:12am.

Mary Brucker, Committee Clerk

HB 1309

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 1309 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 1309 a Do-Pass recommendation.

Testimony in Opposition to House Bill 1309
March 18, 2021
House Finance and Taxation Committee
Bill Wocken on behalf of the North Dakota League of Cities

Good Morning Mr. Chairman and members of the House Finance and Taxation Committee. For the record, my name is Bill Wocken and I am testifying in opposition to House Bill 1309 on behalf of the North Dakota League of Cities.

House Bill 1309 seeks to exempt a contractor from payment of the use tax if they are not involved in a contract to purchase the items they are installing. The bill also eliminates an exemption for medical equipment installations.

At present, North Dakota law requires construction materials to pay sales tax either at the time of purchase or the use tax is applied at the time of installation. This is necessary since not all construction materials used in buildings are sold in North Dakota. State law does not require a sales tax permit until sales reach \$100,000 in any year. The practical effect of the relief sought by House Bill 1309 then, would appear to be avoidance of payment of sales tax for materials purchased outside North Dakota or materials purchased within the state for which sales tax was not collected. The present safety net for collection of these taxes would no longer exist. North Dakota material suppliers who collect sales tax would appear to be at a potential disadvantage to out-of-state rivals.

The North Dakota League of Cities is concerned for the effect this change would have on sales and use tax collections utilized by the state and local governments to provide services. There is no fiscal note on the bill, perhaps the fiscal impacts of the bill could not be calculated. We are concerned now, as we were when this concept was considered last session, about unintended consequences on revenue collections.

We are not sure answers are available for all the questions this bill raises so we must respectfully request a DO NOT PASS recommendation for House Bill 1309.

2021 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Room JW327E, State Capitol

HB 1309
1/20/2021

A bill relating to payment of use tax by contractors.

Chairman Headland opened for discussion at 2:28pm.

Representatives	Present
Representative Craig Headland	P
Representative Vicky Steiner	P
Representative Dick Anderson	P
Representative Glenn Bosch	P
Representative Jason Dockter	P
Representative Sebastian Ertelt	P
Representative Jay Fisher	P
Representative Patrick Hatlestad	P
Representative Zachary Ista	P
Representative Tom Kading	AB
Representative Ben Koppelman	P
Representative Marvin E. Nelson	P
Representative Nathan Toman	P
Representative Wayne A. Trottier	P

Discussion Topics:

- Committee action

Representative B. Koppelman made a motion to adopt a verbal amendment changing the effective date to 2021.

Vice Chairman Steiner seconded the motion.

Voice vote-motion carried.

Representative Ertelt made a motion for a Do Pass As Amended.

Representative B. Koppelman seconded the motion.

Roll call vote:

Representatives	Vote
Representative Craig Headland	Y
Representative Vicky Steiner	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Jason Dockter	Y

Representative Sebastian Ertelt	Y
Representative Jay Fisher	Y
Representative Patrick Hatlestad	Y
Representative Zachary Ista	Y
Representative Tom Kading	AB
Representative Ben Koppelman	Y
Representative Marvin E. Nelson	Y
Representative Nathan Toman	Y
Representative Wayne A. Trottier	Y

Motion carried 13-0-1

Representative Hatlestad is the bill carrier.

Chairman Headland closed the discussion at 2:36pm.

Mary Brucker, Committee Clerk

21.0750.01001
Title.02000

Adopted by the Finance and Taxation
Committee

January 20, 2021

*DA 1/20/21
/cf/*

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1309

Page 3, line 2, replace "2020" with "2021"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1309: Finance and Taxation Committee (Rep. Headland, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1309 was placed on the Sixth order on the calendar.

Page 3, line 2, replace "2020" with "2021"

Renumber accordingly

2021 SENATE FINANCE AND TAXATION

HB 1309

2021 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1309
3/9/2021

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.

Chair Bell calls the meeting to order. Chair Bell, Vice Chair Kannianen, Senators Meyer, J. Roers, Patten, Piepkorn, Weber are present. [10:04]

Discussion Topics:

- Taxation on contractors
- Taxation without ownership
- Use tax on contractors

Representative Ben Koppelman [10:05] presents the bill and submits testimony #8295 in favor.

William Wocken [10:15], Lobbyist for the ND League of Cities, testifies in opposition and submits testimony #8128.

Shannon Fleischer [10:21], with the ND Tax Department, answers clarifying questions from the committee.

Chair Bell adjourns the public hearing. [10:24]

Joel Crane, Committee Clerk

HB 1309

Madame Chairman and Members of the Committee, my name is Rep. Ben Koppelman and I represent District 16. Thank you for the opportunity to introduce this bill to you committee.

HB1309 is a bill that would relieve contractors of the responsibility to pay *Use Tax* on items that they did not sell or buy. Since the contractor was not a party to the sale (not the buyer nor the seller), 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. Here are two examples where this hidden tax on contractors might come into play:

- 1) A township, county, or city government buys a culvert or a fire hydrant and is not required to pay sales tax because of their tax-free status. They hire the local dirt and sitework contractor to install the culvert or hydrant. The contractor pays sales tax on all the gravel and other supplies that the contractor purchased to complete the install. The contractor gets paid for the labor and material provided by the political subdivision. After all of this, the state audits the contractor and then assesses the contractor *Use Tax* on the cost of the culvert or hydrant that was purchased by the political subdivision, even though the political subdivision is exempt from sales tax. In this example, the contractor has no way to recoup that money as he was already paid for his services.
- 2) A national restaurant franchise owner, based out of Texas, builds a location in North Dakota. He then purchases \$250,000 of kitchen equipment from a California based equipment supplier, and has it shipped to the North Dakota location. He then hires a North Dakota contractor to unload and install the kitchen equipment for \$6,000. Upon the completion of the install, the franchise owner then opens the restaurant. The contractor is then paid the agreed upon \$6,000. A year later, the tax department audits the restaurant and sees that the California based equipment supplier did not charge or remit sales tax on the transaction. Upon the audit completion, the Tax Department attempts to collect *Use Tax* due from the franchise owner or the equipment vendor, but neither will respond. The

Tax Department then notifies the installation contractor that since the parties to the sale (the buyer and seller) have not paid the **Use Tax** in the amount of \$12,500, that he would have to pay the tax. The installation contractor, which is a small business, then appeals the notice claiming that they were not party to the purchase of the kitchen equipment and have no way to know if tax was paid or not. The Tax Department follows up by informing them that due to the law, they owe the \$12,500 in tax anyway. Thus, a small business that charged \$6,000 to install kitchen equipment now must pay more than double that amount to the government just because they unloaded and installed the equipment.

These examples demonstrate the inequities of the law. It is fundamentally unfair to ask someone to pay a tax on an item that they neither bought nor sold just because the government hasn't successfully collected it from the parties involved. Surely, you would not expect an accountant who prepared an income tax return for a client to pay that clients income tax out-of-pocket just because they prepared the return, would you? The use tax provision that this bill is amending dates back to the early 1980's at a time when the political climate was much different than today. Obviously, this tax policy is inequitable and needs to be changed. I thank you for your time today and would ask that you give this bill a strong **Do-Pass** recommendation.

Testimony in Opposition to House Bill 1309
March 9, 2021
Senate Finance and Taxation Committee
Bill Wocken on behalf of the North Dakota League of Cities

Good Morning Madame Chair and members of the Senate Finance and Taxation Committee. For the record, my name is Bill Wocken and I am testifying in opposition to House Bill 1309 on behalf of the North Dakota League of Cities.

House Bill 1309 seeks to exempt a contractor or subcontractor from payment of the use tax if they are not involved in a contract to purchase the items they are installing. The bill also eliminates an exemption for medical equipment installations.

At present, North Dakota law requires a contractor or a subcontractor to pay either sales tax at the time of purchase of tangible personal property or use tax at the time of installation of tangible personal property. This is necessary to ensure that the sales tax or the use tax is paid on all tangible personal property because not all such property installed in North Dakota is sold in North Dakota to non-exempt entities. State law does not require a sales tax permit until sales reach \$100,000 in any year. House Bill 1309 removes the requirement that a contractor or subcontractor pays the sales tax or the use tax when that contractor or subcontractor is performing the work to install tangible personal property but was not a party to a contract to purchase this property.

The practical effect of the exemption sought by House Bill 1309 then, would appear to be avoidance of payment of sales tax for materials purchased outside North Dakota or materials purchased within the state for which sales tax was not collected. The present safety net for collection of these taxes would no longer exist. North Dakota material suppliers who collect sales tax would appear to be at a potential disadvantage to out-of-state rivals.

The North Dakota League of Cities is concerned for the effect this change would have on sales and use tax collections utilized by the state and local governments to provide services. There is no fiscal note on the bill, perhaps the fiscal impacts of the bill could not be calculated, but we believe they could be substantial. We are concerned now, as we were when this concept was considered last session, about unintended consequences on revenue collections.

We are not sure answers are available for all the questions this bill raises so we must respectfully request a DO NOT PASS recommendation for House Bill 1309.

2021 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1309
3/30/2021

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.

Chair Bell calls the meeting to order. Chair Bell, Vice Chair Kannianen, Senators Meyer, J. Roers, Patten, Piepkorn, Weber are present. [9:22]

Discussion Topics:

- Contracts between private contractors and the state
- Construction
- Safety nets

Emily Thompson [9:23], Code Reviser for Legislative Council, answers questions from the committee.

Chair Bell adjourns the meeting. [9:39]

Joel Crane, Committee Clerk

2021 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1309
3/31/2021

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.

Chair Bell calls the meeting to order. Chair Bell, Vice Chair Kannianen, Senators Meyer, J. Roers, Patten, Piepkorn, Weber are present. [11:08]

Discussion Topics:

- User tax payment principles
- Sales tax
- Contractor tax liability

Senator J. Roers [11:18] moves DO PASS

Senator Kannianen seconds

Senators	Vote
Senator Jessica Bell	N
Senator Jordan Kannianen	Y
Senator Scott Meyer	Y
Senator Dale Patten	Y
Senator Merrill Piepkorn	N
Senator Jim Roers	Y
Senator Mark Weber	Y

Motion passed 5-2-0

Senator J. Roers carries

Chair Bell adjourns the meeting. [11:34]

Joel Crane, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1309, as engrossed: Finance and Taxation Committee (Sen. Bell, Chairman)
recommends **DO PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1309 was placed on the Fourteenth order on the calendar.