

**2021 HOUSE FINANCE AND TAXATION**

**HB 1310**

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Finance and Taxation Committee Room JW327E, State Capitol

HB 1310  
1/18/2021

A bill relating to an exception to the payment of sales and use taxes.
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**Chairman Headland** opened the hearing at 10:12am. Roll call for attendance:

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:

- Consumer sales and use tax exemption

**Representative B. Koppelman** introduced the bill (#1170).

**Bill Wocken, North Dakota League of Cities**, testified in opposition (#1077).

**Shannon Fleischer, North Dakota Tax Department** answered questions from committee members.

**Representative B. Koppelman** made a motion for an amendment in line 13 replace with ten.

**Vice Chairman Steiner** seconded the motion.

**Voice vote-motion failed 6-7-1**

**Chairman Headland** closed the hearing at 10:32.

*Mary Brucker, Committee Clerk*

HB 1310

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 1310 is a bill that would take the burden of sales and use tax off of the backs of most consumers, and leave the responsibility to collect and remit sales and use tax solely with the **Retailer/ Seller**. Only on large purchases would the consumer be responsible to remit use tax if sales tax was not collected by the Retailer.

After the South Dakota v. Wayfair decision came down from the U.S. Supreme Court essentially reversing most of the restrictions of the previous precedent of Quill Corp. v. North Dakota, North Dakota started to collect sales tax from out of state retailers due to trigger legislation passed during the 2017 legislative session. That bill included a threshold to when out of state retailers needed to get a ND sales tax permit and start remitting sales tax on purchases that came to rest in the state. Starting this last fall, the state started seeing an increase in revenue due to compliance with the 2017 law, and as a result, I believe that it is the time to remove the burden from the consumer.

Retailers are the best suited to collect and remit the tax, since they have sales tax permits that require reporting and remittance on a regular basis already in other states and now ND as well. In addition, nearly all retailers that would meet the threshold of our law, own or lease software and hardware that do all of the calculating for them. This is a far cry from the time and ability the average citizen of our state or the average small business with only one or two employees working in the office has to comply with the current law.

Although I am told that individual taxpayer use tax audits are not typically conducted by the Tax Department, the law technically requires all individuals to "audit" all receipts for all purchases to ensure that not only sales tax was charged, but that it was charged at the proper rate base on where it was purchased or delivered. If it was not charged, then individual must remit a use tax payment of the same amount as what the sales tax should have been. This is unfair and definitely impractical to expect this of our citizens, especially since they don't possess the software that retailers do to keep track of and calculate such tax.

Businesses, both large and small alike, that are not retailers or sales tax permit holders do get routinely audited for sales and use tax. Just like individuals, they too are expected to "audit" each receipt to see if the proper tax was paid, and if not remit that amount to the state. This can be thousands of receipts for some companies that may only have a couple of employees, and like individuals, they don't possess the technology to track tax due and jurisdiction for all of these purchases other than manual inspection and recording. This is why we have a threshold in the bill of \$50,000. Non-retail businesses can more easily track large purchases manually since there is likely much fewer of them. This threshold also ensures that for large purchases, there is not an incentive created for business owners to travel out of state to purchase these items and avoid our sales tax all together.

I believe this reform is long overdue, and in the aftermath of the South Dakota v. Wayfair decision, it comes at a much smaller cost. It is time that we reduce the burden on our citizens and small businesses by creating police that would focus the efforts of the Tax Department on out of state retailer compliance rather than consumer/ small business use tax submission.

Thank you for your time and I request a Do-Pass recommendation on this bill.

Testimony in Opposition to House Bill 1310  
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 1310 on behalf of the North Dakota League of Cities.

House Bill 1310 seeks to exempt a purchase from payment of sales tax if the retailer did not collect sales tax and the purchase was \$50,000 or less. It also exempts payment of the use tax if sales tax was not collected on the subject goods and the goods being installed are valued at less than \$50,000.

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 goods 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 1310 would appear to be avoidance of payment of sales tax or the use tax on for materials worth \$50,000 or less for which sales tax was not collected. The present safety net for collection of these taxes would no longer exist. There is no limit on the number of \$50,000 sales allowed for any party or project.

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 1310.

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Finance and Taxation Committee Room JW327E, State Capitol

HB 1310  
1/20/2021

A bill relating to an exception to the payment of sales and use taxes.
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**Chairman Headland** opened discussion at 2:36pm.

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 an amendment on lines 9 and 13 replace fifty with five.

**Vice Chairman Steiner** seconded the motion.

**Voice vote-motion** carried.

**Representative Dockter** made a motion for a Do Pass As Amended.

**Vice Chairman Steiner** seconded the motion.

### Roll call vote:

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

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

**Motion carried 8-5-1**

**Representative Dockter is the bill carrier.**

**Chairman Headland** closed the hearing at 2:45pm.

*Mary Brucker, Committee Clerk*

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Title.02000

Adopted by the Finance and Taxation  
Committee

January 20, 2021

DE 1/20/21  
1 of 1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1310

Page 1, line 9, replace "fifty" with "five"

Page 1, line 13, replace "fifty" with "five"

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**HB 1310: Finance and Taxation Committee (Rep. Headland, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). HB 1310 was placed on the Sixth order on the calendar.

Page 1, line 9, replace "fifty" with "five"

Page 1, line 13, replace "fifty" with "five"

Renumber accordingly



**2021 SENATE FINANCE AND TAXATION**

**HB 1310**

# 2021 SENATE STANDING COMMITTEE MINUTES

## Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1310  
3/10/2021

A BILL for an Act to create and enact a new subsection to section 57-39.2-12 and a new subsection to section 57-40.2-06 of the North Dakota Century Code, relating to an exception to the payment of sales and use taxes; 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. [9:00]

### Discussion Topics:

- Quill vs. North Dakota
- Out of state sales tax collections
- Retailer tax collections
- Use tax

**Representative B. Koppelman** [9:01] introduces the bill in favor #8539.

**William Wocken** [9:09] Lobbyist, ND League of Cities in opposition #8129.

**Shannon Fletcher** [9:12] Associate Director, Office of the State Tax Commissioner provided oral information.

**Chair Bell** adjourns the meeting. [9:13]

*Joel Crane, Committee Clerk*

HB 1310

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.

HB 1310 is a bill that would take the burden of ***Sales and Use Tax*** off the backs of consumers, including small businesses, on purchases of less than five thousand dollars. It would leave the responsibility to collect and remit sales and use tax primarily with the ***Retailer/ Seller*** where it belongs.

Since the ***South Dakota v. Wayfair*** decision came down from the U.S. Supreme Court, essentially reversing most of the restrictions of the previous precedent ***Quill Corp. v. North Dakota***, North Dakota has seen a significant increase of sales tax collected from out-of-state retailers. This is due to a trigger law for collecting sales tax from out of state retailers that was passed during the 2017 session which went into effect in 2018 after the court decision. This law requires most out-of-state retailers to collect and remit sales tax.

Retailers are best suited to collect and remit ***Sales Tax***, since they have sales tax permits that require reporting and remittance on a regular basis. They also own or lease software and hardware that can easily calculate the many different local tax rates that apply to various cities and counties within the state. This is a far cry from the time and ability the average citizen or small business (who may only have one or two employees working in the office) has to comply with current law.

Although I am told that sales and use tax audits are not typically conducted for individual taxpayers by the Tax Department, the **law technically requires all individuals to “audit” all receipts, for all purchases**, to not only ensure that sales tax was paid to the retailer, but that it was paid at the appropriate rate based on where it was purchased or delivered. If ***Sales Tax*** was not charged, then the individual must remit ***Use Tax*** in the amount of the sales tax that should have been paid. Especially for everyday purchases, this is impractical and unfair to expect this of our citizens, especially since most don’t possess the software that retailers have to keep track of and calculate such tax.

Unlike individuals, **businesses, both large and small alike, that are not retailers or sales tax permit holders DO get routinely audited for Sales and Use Tax.** Just like individuals, they too are expected to “audit” each receipt to see if the proper ***Sales Tax*** was paid properly based on the tax jurisdiction, and if not, they must remit the tax due to the state as ***Use Tax***. This can include thousands of receipts that the small business must “audit” for proper sales tax payment even though they may only have a couple of employees. Like individuals, they also likely do not possess the technology to determine proper sales tax due based on the jurisdiction for every purchase other than manual inspection and recording.

This bill attempts to balance the need to collect Sales/ Use Tax with the need to reduce the burden placed on taxpayers. By limiting the requirement of self-auditing and submittal of use tax to purchases over \$5,000, we significantly reduced the amount time and expense needed to properly comply with the law while limiting the potential loss of tax revenue to \$250 or less per transaction. This threshold also ensures that there is not an incentive to travel out of state in order to avoid the responsibility to pay ***Sales or Use Tax*** on large purchases

The current ***Sales and Use Tax*** provisions date back to the early 1980’s to a time when the political tax climate was much different, and I believe that reform is long overdue. In the aftermath of *South Dakota v. Wayfair* decision, this reform comes at a much smaller potential cost. I believe now is the time to reduce the burden on our citizens and small businesses by creating policy that would focus the efforts of the Tax Department on proper retailer collection of sales tax rather than auditing use tax submission on everyday purchases of our citizens. Thank you for your time and I request a ***Do-Pass*** recommendation.

Testimony in Opposition to House Bill 1310  
March 10, 2021  
House 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 1310 on behalf of the North Dakota League of Cities.

House Bill 1310 sets up a new exemption to payment of sales tax if the retailer did not collect sales tax and the purchase was \$5,000 or less. It also exempts payment of the use tax if sales tax was not collected on the subject goods and the goods being installed are valued at less than \$5,000. Section 2 of the bill differentiates between goods intended to be used inside the state and those not so intended, but both are exempted.

At present, North Dakota law requires that someone pays sales tax at the time of purchase or the use tax at the time of installation. This is necessary since not all goods used in buildings are 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. The practical effect of the relief sought by House Bill 1310 would appear to be avoidance of payment of sales tax or the use tax on for materials worth \$5,000 or less for which sales tax was not collected. The present safety net for collection of these taxes would no longer exist. There is no limit on the number of \$5,000 sales allowed for any party or project. We believe the bill may incent owners and contractors to purchase their building materials from sources outside North Dakota where sales tax is not collected.

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 the fiscal effects of the bill may 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 1310.

# 2021 SENATE STANDING COMMITTEE MINUTES

## Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1310  
3/29/2021

A BILL for an Act to create and enact a new subsection to section 57-39.2-12 and a new subsection to section 57-40.2-06 of the North Dakota Century Code, relating to an exception to the payment of sales and use taxes; 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. [10:05]

### **Discussion Topics:**

- Streamlined sales tax
- Tax exemptions

No Committee Action

**Chair Bell** adjourns the meeting. [10:05]

*Joel Crane, Committee Clerk*

# 2021 SENATE STANDING COMMITTEE MINUTES

## Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1310  
3/30/2021

A BILL for an Act to create and enact a new subsection to section 57-39.2-12 and a new subsection to section 57-40.2-06 of the North Dakota Century Code, relating to an exception to the payment of sales and use taxes; 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. [9:11]

### Discussion Topics:

- Collection and remittance of taxes
- Tax-planning strategies
- Retail bill-backs

**Shannon Fleischer [9:11]** is called to the podium to answer questions from the committee.

**Senator J. Roers [9:21]** motions DO NOT PASS.

**Senator Piepkorn [9:21]** seconds.

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

Motion passes 7-0-0. [9:22]

**Senator J. Roers** will carry.

**Chair Bell** adjourns the meeting. [9:22]

*Joel Crane, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**HB 1310, as engrossed: Finance and Taxation Committee (Sen. Bell, Chairman)**  
recommends **DO NOT PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
Engrossed HB 1310 was placed on the Fourteenth order on the calendar.