

# MICROFILM DIVIDER

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ROLL NUMBER

DESCRIPTION

2455

2001 SENATE FINANCE AND TAXATION

SB 2455

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2455

Senate Finance and Taxation Committee

☐ Conference Committee

Hearing Date 2/19/01

Tape Number	Side A	Side B	Meter #
1	x		0-end
2/12/01 - 1		x	10.1-end
2	x		0-5.9
Committee Clerk Signature <i>Lynelle M. Knight</i>			

Minutes:

Senator Urlacher: Opened the hearing on SB 2455, a bill to adopt a simplified sales and use tax administration act.

Senator Dave Nething: Co-sponsored the bill, testified in support. This bill is dealing with applying sales and use tax to electronic commerce. There is a task force in place that has had several meetings with tax administrators in the country. The attempt is to come up with a simplified sales and use tax administration act, which enough states will pass so they can become part of an ongoing dialogue to continue to refine the differences so we can come up with a basis to go to Congress with a program. It's a national problem and its purpose is for all the states to come up with something.

Senator Urlacher: Would the attempt be for a uniform system or a payback based on existing rates?

Senator Dave Nething: Initially they tried to come up with something uniform, and' t this point, they pretty much decided it's almost an impossible task. The idea is to come up with a method of utilizing the tax base and then be part of a uniform system.

Senator Christmann: Do you think there's any legitimacy to the argument that not having the tax on Internet transactions is the perfect solution for a very rural state like we have because the merchants can reach multitudes?

Senator Dave Nething: The problem is the local merchant is at a disadvantage. It's about fairness between Internet and local merchants.

Senator Dwight Cook: Co-sponsored the bill, testified in support. I actually had legislation drafted that would have done some of the things that might happen as a result of states getting together and studying this issue. Senator Nething convinced me that this may be a better vehicle to address that issue so I did not introduce that. I am a tax collector, collecting sales tax is a burden, you have to know all the different rules and regulations that each state has. I see this as a very good step in streamlining sales tax so there is some simplification in it. The NC'SL has two recommendations for the states to pursue. This is moving forward in the smallest step. This issue will be revisited in the next legislative session, there's no mandates, it will not override or overrule any of our existing sales tax laws. By next session, you might see some recommendations coming out of this task force that will suggest some changes and this legislative body will be able to address those changes and decide at the time whether or not to continue for the next two years.

Senator Nichols: Does it seem that all of the states that collect sales tax seem interested in putting something together that will work?

Senator Dwight Cook: I'm not sure. I believe there's four that already have. Senator Nothing may know the answer to that.

John Walstad: Legislative Council, testified neutrally. I did not draft the bill, the draft came from NC'SL, the task force that Senator Nothing has served on. What this bill does is sets up a continuing study. North Dakota does not have say seat at the table without this. States that enact legislation like this, will have a seat at the table in deciding how states will collect sales tax. There is some explanation in the materials that Senator Cook distributed as to what these things are trying to accomplish. Goes through section by section of the bill. What is in this bill does not change anything that is in our state law, with regard to what is or is not subject to tax or what rates are imposed.

Senator Stenehjem: Shouldn't there be a fiscal note?

John Walstad: I anticipate that the four legislators that serve on this group will be taken care of, as far as expenses, through the Legislative Council Budget. With regard to cost to the Tax Commissioner, I didn't see an extraordinary expenditure there. They have been participating in discussions of this type already, if there are some additional budget needs for the Tax Dept., we can send a fiscal note to them to have that addressed. I don't anticipate any change in any sales tax collections the state has made before. This will not give the state any more authority over those kinds of transactions occurring between states. This is really a discussion thing.

Senator Christmann: Can you explain how sections 3, 4, & 5 fit together?

John Walstad: The purpose of this agreement is just to get the discussions in motion. NC'SL has an unfinished companion piece of legislation that goes with this. Senator Cook & Senator Nothing chose not to introduce that. It is an incomplete puzzle at this time because of those

problems you're talking about. I have a little bit of concern about section 3, regarding the Tax Commissioner entering an agreement

Senator Stenchjem: In section 5, regarding to simplified state rates, does that mean that the group can say to simplify this everybody's charging one rate, etc.?

John Walstad: A very astute observation. That is a big part of this. The companion bill has not resolved that problem. They have come to agreements a number of times. The latest thing is local sales tax can have no more than two rates, once of which can be zero. The significance of that is that a local government rate can be zero on an item that the state taxes, or a local government rate can be something on something that the state exempts. The latest thing I've seen says we're only going to allow that to happen once for each state.

Senator Wardner: In section 3, where it says the Tax Commissioner "shall" enter, could that mean the Tax Commissioner "shall be the one" that will do this. That the Tax Commissioner is the person that will sign it if there is something.

John Walstad: It could be that that's what they intended. If I was writing it and I wanted it to say that, I would not use the language they have here.

Senator Stenchjem: Somebody else is going to be dictating what our sales tax rates going to be, based on whatever they come up with.

John Walstad: I have no idea what's going to result from this study. Most other states have a lot more streamlining to do than ND does.

Senator Stenchjem: In section 5 where it says the Tax Commissioner may not enter the streamlined sales and tax agreement. Is this the agreement, if we pass this bill we're going to have an agreement on the collection of sales tax? Or just simply allowing us to sit at the table for the study?

John Walstad: The way NC'SL as presented this bill is it just puts ND at the table for the discussion, it does not change anything. It looks like section 3 says the Commissioner has to go into this agreement if it's presented, as long as it meets the requirement of section 5. I would anticipate that's not going to happen within the next 2 years.

Senator Nichols: Is it possible that the Internet transactions can be different from other things? In other words, we wouldn't have to change what we have on the books in order to put something together for Internet sales?

John Walstad: That would be a possibility.

Senator Stenehjem: Presents scenario of what might happen.

Senator Urlacher: The main purpose is to be at the table?

John Walstad: Yes.

Senator Christmann: We had a bill like this in Natural Resources, and we were able to change a lot of "shalls" to "mays" and it got approved by the organization. Even though it wasn't the language they submitted, it still did the job and we're part of the compact and we'll have the communication. Do you think that's a possibility on NC'SL that we can make some changes here to the Tax Commissioner may do some things or date changes? Or are they being really firm on the language here

John Walstad: I had the same question. How much will they let ND play with this before they say we don't get a seat at the table. Much of what is in this act is optional. I think the only thing that is really essential here is section 2. I think there is some play room in the other sections.

Senator Stenehjem: States his concerns. Not that I don't trust our Commissioner, but I'm not willing to give him the authority that I think belongs to the legislature in entering into an

agreement. As far as I can see, we're getting rid of local control and sending it off to some other board someplace. This concerns me.

Senator Christmann: Would we be OK with NC'SL by passing only whatever definitions are necessary out of section one, section 2 as it reads, section 3 with the July of 2003 effective date, and section 4?

John Walstad: I can't speak for NC'SL. I don't know what they will they will absolutely require as a minimum ticket to get into the room for these discussions.

Senator Urlacher: Asks John to talk to Senator Nething.

Gary Anderson: State Tax Dept., testified in support. Explained costs of participating in discussions. The bill, as it stands now, does not change the application of tax laws, does not provide the authority to the Tax Commissioner to change the tax law that currently exists for the application of sales and use taxes. I think this bill will have more of an impact on technology. It creates a Certified Service Provider, who will create all of the software. I look at this as laying the groundwork.

Rick Clayburgh: State Tax Commissioner. It's the executive branch who binds the states into agreements. The language needs to be a little more specific. Nothing is going to occur over the next two years, it is going to require future legislative action to do any of this. This is really the foundation to allow us to have the discussions to ensure that ND's interest is addressed at the table. That is my interpretation. As Tax Commissioner, I don't intend on binding the state at all before the next legislative session were to occur. That is my word to the legislature. We would not be signing any agreement before 2003.

Senator Christmann: If they happen to work really fast, and want to limit the number of different tax rates, how are you going to say no if we pass this this way and it says you must enter into the



agreement?

Rick Clayburgh: I'm not going to put the state in any precarious position or put any of the subdivisions in any situation based on my decision alone. I don't believe I, as Tax Commissioner, binding the state to such a monumental agreement without the next legislative assembly.

Senator Christmann: My worry is not that you would want to, but that we're almost forcing you to.

Rick Clayburgh: It is my understanding that there is no deadline before 2003 for us to participate in any program.

Senator Urlacher: Do you see any reason for a fiscal note?

Rick Clayburgh: I don't know if a fiscal note is appropriate. Outside of travel, nothing else would change in the next two years.

Connie Sprynczynatyk: ND League of Cities, testified in support. Our interest is to see ND get a place at the table and if this is the way to do it, we're in support.

Curly Haugland: Local businessman, testified in opposition. Written testimony attached. This is a small part of a big lobbying effort. It may be unconstitutional. There are only 29 states participating in this.

Senator Nichols: With regard to the argument that businesses here have a more difficult time competing when they do collect and pay the sales tax, what is your answer to these arguments?

Curly Haugland: On the one hand we say it's bad that our in state people should not have to pay the sales tax, but at the same time we have bills that exempt nonresidents who come here to shop from paying the sales tax. I'm confused by that logic. Leveling the playing field is all well an

good, but the Supreme of the United States in Quill vs. North Dakota, says whether it's a good idea or not, it's unconstitutional.

Kimberly Long: Local businesswoman, testified in opposition. The Senators all seem to agree that what we're looking at today is part of a larger plan that is to be introduced at the next legislative session, that we want a seat at the table. Yet, we're downplaying the potential loss of local control over the taxes, the potential negative impact on businesses in ND. References Quill vs. North Dakota. I strongly urge a do not pass.

Senator Urlacher: Closed the hearing. Action delayed.

Discussion held 2/20/01. Meter number 10.1-end, Tape 1, Side B & 0-5.9, Tape 2, Side A.  
3 amendments were introduced. The committee went through them one by one.

Senator Urlacher: Proposed amendment 10807.0201.

John Walstad: Explained the amendment.

AMENDMENT ACTION: 10807.0201

Motion made by Senator Wardner, Seconded by Senator Kroeplin, to move the amendment. Voice Vote taken. All in favor, amendment adopted.

Senator Christmann: Proposed amendment 10807.0202 to eliminate section 5 of the bill. I feel this would take those agreement requirements out and leave them in a better bargaining position.

Rick Clayburgh: We've talked to representatives of the streamline committee of the NCSL. The information Senator Christmann received from the NCSL is contrary to what we received. The information that was handed out yesterday from NCSL states that the inclusion of Section 5 is necessary for states to participate in the next phase of the discussion. The information we received is that without section 5, we'd be excluded from participating in any further discussion. That's contrary now to what Senator Christmann just heard from the individual from NCSL. I'm

concerned that if that section if removed we may be excluded. I don't see the concern in adopting Section 5. That is what all states are adopting.

Senator Stenchjem: There's a streamline committee involved in the processing of this NCSL business?

Rick Clayburgh: Originally NCSL started the process of looking at the streamline system. They enlisted the support of the NGA, The Federation of Tax Administrators, & The Multistate Tax Commission. Explains how it all came together.

Gary Anderson: NCSL will continue to provide the oversight.

Senator Stenchjem: Where do our 4 legislators fit into this program?

Rick Clayburgh: That's where our amendment comes in. The way it is set up now, the tax department would no longer be represented in the program, and it would be 4 legislators that would be involved. Our amendment states that up to four members may represent ND in these discussions consisting of the tax commissioner and up to three members to be appointed by the chairman of the Legislative Council. Proposed his amendment.

Senator Wardner: In Section 5, part 5, as I read that, you get the feeling that one of the things they want to do is to bring local sales taxes and change them or make them all the same. That does bother me a little bit. Is that what that says?

Gary Anderson: The intent is to streamline the administrative process that's incurred by the retailers out there. The idea is that's one of the focuses of the agreement, it's still a discussion point. This maintains it as a discussion point.

Senator Wardner: So it doesn't have to be the same tax, just administered the same

Gary Anderson: That's exactly right. The rates that the cities apply now would not be the concern.

Senator Christmann: I want to acknowledge that the Commissioner is right if you read this memorandum says that it's necessary. I acknowledge that. But if we leave this section in there, we're sending people to the table and the only agreement that they would be allowed to make, would be one that calls for a joint private public study that has to be done by July 1, 2002. That's before we meet again. So right to start with, we're asking them to do something that's contradictory to what's possible. Secondly, the man who's name is on this memo is the one I talked to that said we don't need to this section. If for some reason they changed their mind again, I suppose the House could add it.

AMENDMENT ACTION: 10807.0202

Motion made by Senator Christmann, Seconded by Senator Stenehjem, to move the amendment. Roll Call Vote taken. Vote was 2 yeas, 4 nays, 0 absent and not voting.

Amendment failed.

Rick Clayburgh: Explained his amendment. The idea of restricting it to 2 House members and 2 Senate members is contrary to what NCSL's looking at in that there should be some representation from the executive and legislative branch. It also doesn't have to be elected officials. It could be myself or a designee. The way the bill is currently written is to restrictive.

Senator Stenehjem: The amendment does not say that any of them have to be legislators. Some language should be changed.

It was decided on to change the wording to "Consisting of the Tax Commissioner or designee" and "Up to three members, at least two of whom must be members of the legislature, to be appointed by the Chairman of the Legislative Council"

Page 11  
Senate Finance and Taxation Committee  
Bill/Resolution Number 2455  
Hearing Date 2/19/01

AMENDMENT ACTION: 10807.tax1

Motion made by Senator Wardner, Seconded by Senator Nichols, to move amendment with changes. Voice Vote taken. All in favor, amendment adopted.

COMMITTEE ACTION: 2/20/01

Motion made by Senator Wardner for a DO PASS AS AMENDED, Seconded by Senator Nichols. Vote was 4 yeas, 2 nays, 0 absent and not voting. Bill carrier was Senator Wardner.

Prepared by the Office of  
State Tax Commissioner  
February 20, 2001

**PROPOSED AMENDMENTS TO SENATE BILL NO. 2455**

10807. tax 1

**SECTION 2. Participation in multistate discussions.** For reviewing or amending the agreement embodying the simplification requirements as contained in section 5 of this Act, the state shall enter into multistate discussions. For purposes of such discussions, the state must be represented by ~~two~~ up to four members, ~~of the senate and two consisting of the tax commissioner and up to three members of the house of representatives,~~ to be appointed by the chairman of the legislative council.

10807.0201  
Title.

*adopted*

Prepared by the Legislative Council staff for  
Senate Finance and Taxation  
February 20, 2001

PROPOSED AMENDMENTS TO SENATE BILL NO. 2455

Page 1, line 23, replace "to" with "may", replace "The" with "Upon prior approval of the agreement by the legislative assembly, the", and replace "shall" with "may"

Renumber accordingly

Date: 2/20/01  
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2455

Senate Finance and Taxation Committee

☐ Subcommittee on \_\_\_\_\_  
or  
☐ Conference Committee

Legislative Council Amendment Number 10807.0201

Action Taken Move Amendment (voice vote)

Motion Made By Wardner Seconded By Kroeplin

Senators	Yes	No	Senators	Yes	No
Senator Urlacher-Chairman					
Senator Wardner-Vice Chairman					
Senator Christmann					
Senator Stenehjem					
Senator Kroeplin					
Senator Nichols					

Total (Yes) 6 No 0

Absent 0

Floor Assignment \_\_\_\_\_

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



10807.0202  
Title.

Prepared by the Legislative Council staff for  
Senator Christmann  
February 20, 2001

*Failed*  
PROPOSED AMENDMENTS TO SENATE BILL NO. 2455

Page 1, line 19, remove "embodying the simplification requirements as contained in section 5 of this Act"

Page 2, remove lines 17 through 31

Page 3, remove lines 1 through 29

Renumber accordingly

Date: 2/20/01  
Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2455

enate Finance and Taxation Committee

☐ Subcommittee on \_\_\_\_\_  
or  
☐ Conference Committee

Legislative Council Amendment Number 10807.0202

Action Taken Move Amendment

Motion Made By Christmann Seconded By Stenehjem

Senators	Yes	No	Senators	Yes	No
Senator Urlacher-Chairman		✓			
Senator Wardner-Vice Chairman		✓			
Senator Christmann	✓				
Senator Stenehjem	✓				
Senator Kroeplin		✓			
Senator Nichols		✓			

Total (Yes) 2 No 4

Absent 0

Floor Assignment \_\_\_\_\_

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

10807.tax1  
Title.

*Accepted w/ Changes*

Prepared by the Office of State Tax  
Commissioner

February 20, 2001

PROPOSED AMENDMENTS TO SENATE BILL NO. 2455

Page 1, line 21, replace the first "two" with "up to four", replace "of the senate and two" with ",  
consisting of the tax commissioner and up to three", and replace "of the house of" with  
"to be"

Page 1, line 22, remove "representatives,"

Renumber accordingly

Date: 2/20/01  
Roll Call Vote #: 3

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2455

enate Finance and Taxation Committee

☐ Subcommittee on \_\_\_\_\_  
or  
☐ Conference Committee

Legislative Council Amendment Number 10807. tax w/ changes (Voice Vote)

Action Taken Move Amendment w/ changes: "Tax Commissioner or designee" to "At least two of whom are legislators"

Motion Made By Wardner Seconded By Nichols

Senators	Yes	No	Senators	Yes	No
Senator Urlacher-Chairman					
Senator Wardner-Vice Chairman					
Senator Christmann					
Senator Stenehjem					
Senator Kroeplin					
Senator Nichols					

Total (Yes) 4 No 0

Absent 0

Floor Assignment \_\_\_\_\_

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

Date: 2/20/01  
Roll Call Vote #: 4

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2455

Senate Finance and Taxation Committee

☐ Subcommittee on \_\_\_\_\_  
or  
☐ Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS AS AMENDED

Motion Made By Wardner Seconded By Nichols

Senators	Yes	No	Senators	Yes	No
Senator Urlacher-Chairman	✓				
Senator Wardner-Vice Chairman	✓				
Senator Christmann		✓			
Senator Stenehjem		✓			
Senator Kroeplin	✓				
Senator Nichols	✓				

Total (Yes) 4 No 2

Absent 0

Floor Assignment Wardner

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

**REPORT OF STANDING COMMITTEE**

**SB 2455: Finance and Taxation Committee (Sen. Urlacher, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2455 was placed on the Sixth order on the calendar.

Page 1, line 21, replace the first "two" with "up to four", replace "of the senate and two" with ", consisting of the tax commissioner or designee and up to three", and replace "of the house of" with ", at least two of whom must be members of the legislative assembly, to be"

Page 1, line 22, remove "representatives,"

Page 1, line 23, replace "to" with "may", replace "The" with "Upon prior approval of the agreement by the legislative assembly, the", and replace "shall" with "may"

Renumber accordingly

2001 HOUSE FINANCE AND TAXATION

SB 2455

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2455

House Finance and Taxation Committee

☐ Conference Committee

Hearing Date March 19, 2001

Tape Number	Side A	Side B	Meter #
1	X		166
Committee Clerk Signature <i>Janice Stein</i>			

Minutes:

**REP. AL CARLSON, CHAIRMAN** Opened the hearing.

**SEN. DAVE NETHING, DIST. 48.** Introduced the bill. See written testimony.

**REP. CARLSON** Asked Sen. Nothing to explain the reason for the amendments which were put on in the Senate.

**SEN. NETHING** I wasn't on the committee that did that, but I think they were trying to make sure there was a lot of flexibility without getting tied down to too much detail and still be able to participate.

**REP. CARLSON** Was there any discussion in the Senate about having anyone from the Tax Department on this committee?

**SEN. NETHING** I think so. As I recall, at the time, the idea was that we felt the Tax Department is an executive branch agency, this would be the policy making part of state



government, and it should be our responsibility to be involved, however, we would certainly be working with them. I know whoever the four people are, you will work closely with them.

**REP. CARLSON** There is no fiscal note with this, but obviously, there will be some travel, do we need to address that in any way?

**SEN. NETHING** Probably people from the council can answer that better. I think it will come out of their budget.

**REP. CARLSON** You brought up Quill, is it the assumption that catalogue sales would be the same as remote sales of any kind, whether over the internet or by catalogue, there is this unified deck, it would cover those as well?

**SEN. NETHING** This is what is preventing us now from taxing internet sales, unless they want to collect it voluntarily. The idea is that we want to come up with a proposal that will let the Congress show, we can handle this in a fair way, and then they in turn, will give us what Quill said they could give us, that is authority to go ahead and have our tax in place.

**REP. WINRICH** One of the things that makes the sales tax system so complex and probably the principle thing, is the different exemptions that exist in various states, and for a nationwide marketer to track all of those, would be difficult, has the NCSL task force anticipated a way to deal with that, do we expect sort of a common set of exemptions?

**SEN. NETHING** For those companies who have a presence, they deal with the complexity all of the time, it doesn't bother them a bit. The software is there to permit that, however, if you are a company that is not collecting the tax and prefer not to do it, and keep the advantage you have over the local retailer, you say it is way too complex. Yes, in our January meeting when we put together the somewhat model bill, part of it was going to get more specific to definitions and we

just felt, at the present time, we are not there yet. There has been considerable work done to come up with what is liveable. Some states tax food, some don't tax food. That is a very major policy.

**REP. CARLSON** You have been active in ALEC over the years. ALEC has taken a strong position against the taxing of the internet, give me your thoughts.

**SEN. NETHING** ALEC's position stems from letting this new industry evolve as freely without any taxes at all. NCSL's position comes from a position of, a wait a minute, this hurts them. As I mentioned, we are looking at twenty million dollars. That impact is big. There are a lot of states that have seven and eight percent tax, like Tennessee, for example, I think maybe they have nine. We are looking at it from a different perspective.

**REP. CARLSON** I understand the purpose of this bill is not to argue whether you believe that we should be taxing the internet or not, it deals with setting up a commission to look at it. I guess I look at it, and if I buy something from Cabela's today, it is basically, the same price or a dollar or two less, then if I buy it from my local Scheel's store, but I pay shipping and I don't pay tax, and when I get all done, it is the same price. The issue is, we better move very carefully on how we do this.

**SEN. NETHING** That is one of the reasons, from the proposed model bill, as a task force, we kind of thought the same thing.

**RICK CLAYBURGH, STATE TAX COMMISSIONER.** Appeared to talk about the concept and to address any questions. Stated he was in support of the general concept. NCSL is looking at some different issues. We have moved along for about a year now on putting together a streamlined sales tax project to try to simplify the whole process, to make it easier for sellers to

collect taxes on behalf of the state. It was not our intent at that point, to overturn Quill or make changes, but to provide a vehicle that if businesses wanted to participate and wanted to collect, they could do that, and for states like North Dakota who wanted to participate. This is a tax on the commerce that occurs over the internet, and a tax on the consumer, not the business. It is a pass through tax. The issue of shipping and handling, is an interesting issue. The cost of selling a product has changed quite a bit, because of the change in the makeup of the dot.com's. Originally, these dot.com's were coming in and selling items at a lower price point, because they could sell at a lower price on a greater margin. What happened, they were coming in waiving, shipping and handling charges and selling at a really competitive advantage over local merchants. We have heard most from businesses in North Dakota that want to know how we are going to make those out-of-state corporations collect a state sales tax. Most generally, the difference between shipping and handling, is profit center.

**REP. CARLSON** Read from the bill regarding entering into a streamlined sales and use tax agreement, what authority are we granting here?

**RICK CLAYBURGH** The concept of this bill, or any other type of provision, however we handle it at the table, is allowing the tax commissioner's office to work to continue to be a resource to put together model legislation. We will not have any authority to change any existing law without the next legislative assembly. The next legislature in North Dakota is the one that will be ratifying or codifying an agreement which will be put together for the next two years.

**REP. CARLSON** What happens if we are not part of this process?

**RICK CLAYBURGH** If we aren't part of the negotiations, we may not be detrimentally affected at all, but we potentially could. If we aren't sitting at the table, there are nuances that

could have an effect on North Dakota businesses. Gave examples of what is occurring in other states, regarding sales taxes.

**REP. CARLSON** Are you, as a tax commissioner, involved in a multi-state tax commission of some type?

**RICK CLAYBURGH** Yes, that is correct, this streamlined process, was a blend between the National Governor's Association and the NCSL, with the assistance of a number of other organizations, the League of Cities, Association of Counties, a number of other organizations came in and the staff of the tax department, over the past year, have put together this streamlined process. NCSL came in in December, I think from a policy perspective, saw the difficulties that were occurring and understanding the importance, thought that a lot of it could get bogged down in the legislative arena, so they kind of took over. Right now, we have two different directions going, the streamlined direction and the NCSL.

**REP. CARLSON** My point was, there are two separate groups?

**RICK CLAYBURGH** There are two different groups, but not the multi-state tax commission, it is a streamlined group and the NCSL group. A ratification of either one of these groups, will keep us at the table. Something has to occur this session, otherwise our participating position is eliminated and we become only an observing state, which is meaningless.

**REP. CARLSON** This bill did not call for your participation though, it called for four legislators.

**RICK CLAYBURGH** This bill allows for the state of North Dakota, that is an issue we are still trying to understand and resolve. NCSL's model enabling act which this came from, their discussion points envision that state representatives include both member of the executive branch

and the legislative branch. To my understanding, all of the states who are enacting the NCSL version, are having representatives from both the executive and the legislative branch.

**REP. WINRICH** You commented that you weren't trying to overturn the Quill decision, if I understand Quill, the undue burden on interstate commerce, is attributed to the complexity of the system not to the imposition of a consumption tax, if we are successful in simplifying the system, then Quill would be moot, would it not?

**RICK CLAYBURGH** The Quill decision basically says, that if a company does not have significant contact or nexus with the state, then the state can't require them to collect taxes. It requires a certain amount of contact, just sending a catalogue is not sufficient. Most legal scholars believe that if Quill were litigated today, the U S Supreme Court would probably overturn itself, in that, technology has made it so easy. There have been some interesting developments which have occurred over the last several months, that a lot of the people who were originally opposed, from a business standpoint, are now coming out and saying, they agree there needs to be some simplification and that businesses should be on a level playing field, and there should be a duty to collect tax.

**CONNIE SPRYNCZENATYK, LEAGUE OF CITIES,** Testified to say that the National League of Cities, as the tax commissioner mentioned, has been active with all of the other six groups, and a part of the discussion. When I was in Washington, a couple of week-ends ago, we spent an hour with a representative of Taxpayer International, who showed how their system is working right now, to allow collections of taxes. They are already involved. There are businesses who are doing this right now. It is a very complicated system. The most interesting thing about it, is that it indicated to me that any North Dakota business that wanted to use a

product like that to deal with multi-state taxation, could do it right now, since it is done on-line.

It is a really slick looking system. We have an interest in keeping things level. We have main street merchants in our communities providing what we need for commerce in this state, we have given them a playing field which is not exactly level. If you buy from Cabella's versus from Scheel's store, that is a disadvantage to Scheel's. All we are saying is, our communities are relying on sales tax.

**CURLY HAUGLAND, BISMARCK BUSINESSMAN.** Testified in opposition of the bill.

This proposed simplification of the sales and use tax, is an unconstitutional matter. As it stands right now, Quill is the law of the land regarding taxation of remote sellers and internet sales.

What you are seeing here, is nothing but an attempt to get the state to fund action or powerful lobby of the so-called, big seven in Congress, to get Congress to intervene. Frankly, I think if Congress doesn't intervene, this same group of seven will resort to a legal challenge because the tax commissioner indicated that maybe, the Court would see it differently now. I think this is an abuse of the legislative process. Gave testimony back to the early 90's stating the tax commissioner then, tried the same thing. That bill resulted in the Quill case. We became that anti-business state that sued Quill, and lost in the Supreme Court, and I think, appropriately so. He felt this is a pro tax, anti-business bill. Read from the Wyoming Governor's testimony regarding this matter.

**REP. KROEBER** This is a small percent now who buy for less, if this increases, and it will increase if it gets up to thirty or thirty five percent, how do you perceive the state would make up this amount of money?

Page 8

House Finance and Taxation Committee

Bill/Resolution Number SB 2455

Hearing Date March 19, 2001

**CURLY HAUGLAND** Actually, I don't disagree with the state's right to collect this tax. I disagree with its method. If we are willing to give up all of our privacy, as will happen if you buy out side the state of North Dakota, you have to tell people what you are buying, what your zip code is, your social security number, there will be all kinds of reporting requirements. If it is O.K to give up that privacy when you go outside the state, why not give it up inside the state of North Dakota. The technology is there to do it. If we want to give up a little privacy about what we are buying, we frankly, won't need the tax department, we could get these trusted third parties to replace the tax department. All we really need to do, is have the tax collected and remitted to a central group or send it to the state treasurer, or whoever keeps the money in the state.

**REP. CARLSON to RICK CLAYBURGH** What is the end result of this study. Is it that all states have a simplified, streamlined tax system that is the same for sales tax, or is this the intent to deal with the remote market?

**RICK CLAYBURGH** We are here because of the issue of remote sales, catalogue and electronic sales. We are here because a moratorium has been placed by the Congressional level. From an administrative standpoint, the discussion very quickly, changed from, how do we address this issue from a competitive standpoint and a lost revenue standpoint, to how can we put together a system that benefits everyone. That is where we are now.

With no further testimony, the hearing was closed.

**COMMITTEE ACTION 3-19-01, TAPE #2, SIDE B, METER #5890**

**REP. CARLSON** Reviewed the bill with committee members.

A lengthy discussion was held regarding the bill.

**REP. HERBEL** Stated a lot of agencies are already doing it.

**REP. WINRICH** Stated he represented his caucus in Washington, D.C., and this was one of the topics. We heard about the task force, etc. I think there are some policies that have to be worked out before we can have some agreements. There is so much complexity in the taxation.

**REP. KELSH** Made a motion to amend the bill by changing the amendment to include the tax commissioner, two representatives and one senator to a task force.

**REP. CLARK** Second the motion. **MOTION CARRIED BY VOICE VOTE.**

**REP. DROVDAL** Made a motion for a **DO PASS AS AMENDED.**

**REP. BRANDENBURG** Second the motion. **MOTION CARRIED**

**9 YES      5 NO      1 ABSENT**

**REP. DROVDAL** Was given the floor assignment.



Date: 3-19-01  
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2455

House FINANCE & TAXATION Committee

☐ Subcommittee on \_\_\_\_\_  
or  
☐ Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass as Amended

Motion Made By Rep. Drovdal Seconded By Rep. Brandenburg

Representatives	Yes	No	Representatives	Yes	No
CARLSON, AL, CHAIRMAN		✓	NICHOLAS, EUGENE	✓	
DROVDAL, DAVID, V-CHAIR	✓		RENNER, DENNIS	✓	
BRANDENBURG, MICHAEL	✓		RENNERFELDT, EARL		✓
CLARK, BYRON	✓		SCHMIDT, ARLO	✓	
GROSZ, MICHAEL		✓	WIKENHEISER, RAY		✓
HERBEL, GIL	✓		WINRICH, LONNY	✓	
KELSH, SCOT	✓				
KROEBER, JOE	✓				
LLOYD, EDWARD		✓			

Total (Yes) 9 No 5

Absent 1

Floor Assignment Rep. Drovdal

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

REPORT OF STANDING COMMITTEE (410)  
March 20, 2001 8:42 a.m.

Module No: HR-48-6097  
Carrier: Drovdal  
Insert LC: 10807.0401 Title: .0500

**REPORT OF STANDING COMMITTEE**

**SB 2455, as reengrossed: Finance and Taxation Committee (Rep. Carlson, Chairman)**  
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends  
**DO PASS** (9 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). Reengrossed SB 2455  
was placed on the Sixth order on the calendar.

Page 1, line 20, replace "up" with "the tax commissioner or designee and two members of the  
house of representatives and one member of the senate"

Page 1, line 21, remove "to four members of the legislative assembly"

Renumber accordingly

2001 SENATE FINANCE AND TAXATION

CONFERENCE COMMITTEE

SB 2455

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2455

Senate Finance and Taxation Committee

☒ Conference Committee

Hearing Date 4/4/01

Tape Number	Side A	Side B	Meter #
1	x		28.7-end
		x	0-2.7
4/6/01 - 1	x		19.9-32
Committee Clerk Signature <i>Sydney M. Hayes</i>			

Minutes:

All members present: Senators Warder, Christmann, Kroeplin and Representatives Carlson, Rennerfeldt, S. Kelsh.

Senator Wardner: Chairman, opened the meeting. The way the bill came to us in the Senate, it said the state must be represented by two members from the Senate and two members from the House. The Senate amended it to 4 members from the Legislative Assembly, not with any particular combination in mind, but leaving up to the discretion of the Chairman of the Legislative Council. We would like to know why the House did what they did.

Representative Carlson: There were several concerns. In the bill, there were a significant numbers of duties assigned to the Tax Commissioner on the things that would be done by this commission. We thought he should be sitting at the table understanding what kinds of things were being done there. That's why we included him as one of the four. And then we felt the

logical thing to do then was to have two House members and one Senator because that would proportionally put it the way that we are represented in this assembly. That is the reason we did that.

Senator Wardner: It was my understanding that the Tax Commissioner is involved anyway. Any comments on that?

Representative Carlson: We asked him what other organizations he was involved in, what things he goes to, and if he's addressing this issue. He said yes and no. He said we're involved in The National Federation of Tax Commissioners and a Multistate Tax Commission as well. Both of them are not mentioned in this particular legislation. This is separate of that because this is set up by the NCSL and the National Assoc. of Governors, if I'm understanding it correctly. This organization is funded from and separate of the things that he belongs to. He may be discussing this at his other meetings, but he's not discussing it with the backing and the group and the direction that this has. I voted against this, but we thought it was important for him to be involved in this if in fact we were going to require this. Should he be involved or not, should it just be legislators? That's the question. Just for clarification, he did not bring the amendment to our committee. That was done by our committee, not at his request.

Senator Christmann: Hasn't he been involved up to this point? Through his office, he seems to be able to sending someone to the meetings and staying involved. Am I right?

Senator Wardner: That was my impression and that's why we didn't put him in.

Senator Christmann: I think we should be sending legislators. With the way it is now, with one Senate designee, you can pretty well guarantee that the minority party in the Senate is getting left out. I strongly prefer the way the bill was passed by the Senate.

Representative Carlson: To continue on that thought. In our tax committee, we firmly believe that we need someone from the Tax Dept. there to fully understand all of our laws in place, so that when we make a policy decision, we understand the ramifications it has on the rest of our taxes. Without some presence of that, I guarantee that all four people would not have the fullest understanding of all of our tax laws. Yes, we are the policy making branch of government, but we always rely on these experts to help us get this information.

Representative Rennerfeldt: That's the best reason for him, I think he's got to be there. Maybe we need 5 members on that commission.

Representative Carlson: Maybe it needs to be 4 plus a representative from the Tax Dept., just for informational purposes.

Senator Christmann: I do believe that there was an appropriation for this in the Tax Commissioner's budget.

Senator Wardner: Points out that what the amendment that the Senate committee passed is not how the Senate engrossed version was printed.

Senator Kroeplin: Thinks there was an amendment on the floor.

Senator Christmann: I think we had passed this with an amendment brought by the Tax Commissioner. I think that Senator Kroeplin is right, that there was a floor amendment, and that's where we got the two Senate members and two House members.

Representative Carlson: Whether we agree who should be on the committee or not, I think it's troubling for us to give up some of our state's rights when we join a compact on a uniform sales tax. Stated the he still thinks we are making a mistake.

Senator Wardner: In response to that, I think you have some real good points but I think we need to be there. Just because we're there doesn't necessarily mean we're going to end up involved. I think we need to know what's going on.

CONFERENCE COMMITTEE ACTION:

Motion made by Senator Christmann that the House recede from their amendments,  
Seconded by Senator Kroeplin. Roll call vote take. Vote was 3 yeas, 3 nays. Motion failed.

Motion made by Representative Carlson to amend so that there would be two members of the House, two members of the Senate, and a representative of the Tax Dept. in an advisory capacity, Seconded by Representative Rennerfeldt. Later numbered 10807.0402)

Senator Wardner: Motion was laid on the table until the amendment was drafted. Closed the meeting.

Committee met again 4/6/01. Meter number 19.9-. All members present.

Senator Wardner: There is a motion on the table to adopt these amendments (numbered 10807.0402). I did visit with Senator Nething as far as the funding for this. The Tax Commissioner's Office takes care of the designee that goes, and Legislative Council takes care of the funding for the legislators. He also thought that we should make the person from the Tax Dept. an alternate. He feels they will be more active in the process that way.

Representative Carlson: To me that means that they will never get to go.

Senator Wardner: That's a good point, unless we said that the alternate went along all the time. I am just throwing that out.

Representative Kelsh: I think the way the amendment is written now says that the Tax Commissioner's designee will always be there.

Senator Wardner: I agree with that.

Page 5

Senate Finance and Taxation Committee

Bill/Resolution Number 2455

Hearing Date ~~4/4/01~~ 4.6.01

Senator Christmann: I think the advisory position is fine rather than a voting alternate. I think this is a pretty good amendment.

Discussion on amendments.

CONFERENCE COMMITTEE ACTION: ~~4/6/01~~

Roll call vote was taken on the motion to adopt amendments. Vote was 6 yeas, 0 nays, 0 absent and not voting.

Motion made by Representative Kelsh, Seconded by Representative Rennerfeldt, for the HOUSE TO RECEDE AND FURTHER AMEND. Roll call vote taken. Vote was 6 yeas, 0 nays, 0 absent and not voting.





PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2455

That the House recede from its amendments as printed on page 971 of the Senate Journal and page 1013 of the House Journal and that Reengrossed Senate Bill No. 2455 be amended as follows:

Page 1, line 20, replace "up" with "two members of the house of representatives and two members of the senate"

Page 1, line 21, remove "to four members of the legislative assembly"

Page 1, line 22, after the period insert "The tax commissioner shall designate a member of the tax commissioner's staff to accompany and advise the members appointed under this section with regard to reviewing or amending the agreement."

Renumber accordingly

Roll Call Vote #: 20

**BILL/RESOLUTION NO.** *2455*

## Senate



or

☒

Legislative Council Amendment Number

### Action Taken

**Motion Made By**

## Seconded

By

[illegible]**Total**

(Yes)

No

**Absent**

### Floor Assignment

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

Roll Call Vote #: 3

**BILL/RESOLUTION NO.** 3455

## Senate



Legislative Council Amendment Number

### Action Taken

**Motion Made By**

Seconded  
By

[illegible]**Total**

(Yes)

No

**Absent**

## Floor Assignment

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

**REPORT OF CONFERENCE COMMITTEE**

**SB 2455, as reengrossed:** Your conference committee (Sens. Wardner, Christmann, Kroepfln and Reps. Carlson, Rennerfeldt, S. Kelsh) recommends that the **HOUSE RECEDE** from the House amendments on SJ page 971, adopt amendments as follows, and place SB 2455 on the Seventh order:

That the House recede from its amendments as printed on page 971 of the Senate Journal and page 1013 of the House Journal and that Reengrossed Senate Bill No. 2455 be amended as follows:

Page 1, line 20, replace "up" with "two members of the house of representatives and two members of the senate"

Page 1, line 21, remove "to four members of the legislative assembly"

Page 1, line 22, after the period insert "The tax commissioner shall designate a member of the tax commissioner's staff to accompany and advise the members appointed under this section with regard to reviewing or amending the agreement."

Renumber accordingly

Reengrossed SB 2455 was placed on the Seventh order of business on the calendar.

2001 TESTIMONY

SB 2455

SENATE BILL 2455  
Senate Finance and Tax Committee  
February 19, 2001

Mr. Chairman and Members of the Committee;

My name is Curly Haugland. I am a local businessman here today in opposition to Senate Bill 2455.

By any other name, this bill is simply a tax increase on the citizens of North Dakota.

This bill reminds me of another pro-tax, anti-business piece of legislation authored in the early '90's by then Tax Commissioner Heidi Heitkamp which was aimed at the same target as this bill.

Her bill was similar to this bill in that it was not an end in itself. It was a bill that imposed an unconstitutional requirement on out of state mail order companies selling goods in North Dakota to collect and remit sales taxes.

As I said, it was similar to this bill.

Her bill was initiated as part of her efforts on behalf of the Multistate Tax Commission to create a test case in an attempt to get the courts to require what they could not get Congress to do.

This bill is an attempt by The National Governor's Association, The National Conference of State Legislatures and other national pro-tax, big government groups to do the same thing.

I believe they will first take a run at the new Congress to see what they can get; however; I would not be the least bit surprised if they try a new court test if that doesn't work.

Either effort will be seriously wounded if you don't allow them this bill. While I know there is talk that this kind of thing is somehow related to the "New Economy", I believe it is nothing more than "New Excuses" for higher taxes and bigger government.

I urge you to give this bill a DO NOT PASS recommendation.

Thank You.



NATIONAL CONFERENCE of STATE LEGISLATURES

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Jim Costa  
State Senator  
California  
President, NCSL

MEMORANDUM

Diane Bolander  
Director, Legislative Service Bureau  
Iowa  
Staff Chair, NCSL

William T. Pound  
Executive Director

**TO:** All Members of the Task Force on State and Local  
Taxation of Telecommunications & Electronic Commerce

**FROM:** Neal Osten and Graham Williams

**DATE:** February 6, 2001

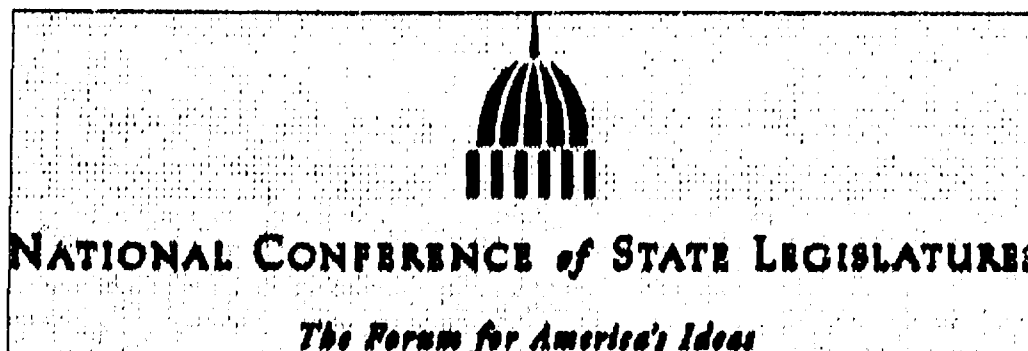
**SUBJECT:** NCSL Model Legislation

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We would like to point out an error in the copy of the Simplified Sales and Use Tax Administration Act that was Federal Expressed to you last week. In Section 4 (Page 2, Line 17-18,) the Act should read "For the purposes of reviewing and/or amending the Agreement embodying the simplification requirements as contained in Section 7 of this Act . . ."

The copy you received incorrectly referenced Section 5 instead of Section 7. We wanted to make sure that your bill drafters were aware of this mistake.





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**From:**                      **Name:**                      Graham Williams  
                                 **Fax Number:**  
                                 **Voice Phone:** (202) 624-8663

**To:**                      **Name:**                      David Nothing  
                                 **Company:**                      North Dakota  
                                 **Fax Number:**                      #643220917012527429  
                                 **Voice Phone:**

Date and time of transmission: Tuesday, February 06, 2001 5:39:22 PM  
Number of pages including this cover sheet: 11

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Dear Task Force Members,  
Please find attached supporting document

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## **SIMPLIFIED SALES AND USE TAX ADMINISTRATION ACT**

**AS AMENDED AND ADOPTED BY NCSL, JANUARY 27, 2001**

### **LEGISLATION NOTES**

#### **Section 1. [Title]**

The title is optional and should conform to appropriate state legislative rules and procedures. Earlier versions of this act were entitled a "Uniform Sales and Use Tax Administration Act" and this raised concerns from some legislative bill drafters as to whether the model legislation was a product of the National Conference of Commissioners of Uniform State Laws (NCCUSL). It is not and to avoid any confusion, "uniform" has been changed to "simplified".

#### **Section 2. [Definitions]**

Clarifies certain terms used throughout the model legislation.

#### **Section 3. [Legislative Finding]**

This section is optional and should conform to appropriate state legislative rules and procedures.

#### **Section 4. [Authority to Participate in Multistate Discussions]**

This section is necessary to a state's participation in the next phase of multistate discussions. If a state was a participating member of the Streamlined Sales Tax Project either through an act of the legislature or an order of an elected official of the executive branch, it is still necessary to have this section in any act considered by the legislature. Only those states enacting the Simplified Sales and Use Tax Administration Act with or without the provisions contained in the Streamlined Sales and Use Tax Agreement will be allowed to vote on any changes to the Agreement until July 1, 2003.

This section allows up to four people to represent a state at the multistate discussions. It is left to each state to decide whether the state desires to be represented by four people and how they shall be appointed. In making this proposal, it was anticipated that the appointments be divided between the executive and legislative branches. There was also a discussion as to whether all the appointments should be public officials and it also was decided to leave that decision to each legislature.

The voting procedures to amend the Agreement, including the intent of the Task Force that each state shall have only one vote, are included in Article VII - Interim Governance of the Streamlined Sales and Use Tax Agreement.

## **SIMPLIFIED SALES AND USE TAX ADMINISTRATION ACT**

**AS AMENDED AND ADOPTED BY NCSL, JANUARY 27, 2001**

### **LEGISLATION NOTES**

**Page 2.**

#### **Section 5. [Authority to Enter Agreement]**

This section is optional if the state decides at this time only to pass the Act without including any of the provisions of the Streamlined Sales and Use Tax Agreement as adopted on January 27, 2001. States intending to comply with the provisions of the Agreement should include this section. The state may also include this section with an effective date that coincides with the state's readiness to enter into the Agreement.

#### **Section 6. [Relationship to State Law]**

Again, deciding upon the state's intention with regard to the provisions of the Agreement, this section may be held until the state is ready to enter into the Agreement. However, this is an important section as it makes clear that the Agreement will never have the authority to preempt, amend or modify any provision of a state's law.

#### **Section 7. [Agreement Requirement]**

As with Section 4, the inclusion of this section is necessary for states to participate in the next phase of discussions in reviewing and amending the Streamlined Sales and Use Tax Agreement. The Section outlines the major simplifications the state is signaling its intent to adopt either with this Act or by July 1, 2003. The NCSL Task Force on State and Local Taxation of Telecommunications and Electronic Commerce removed certain items from the list in this section, including uniform definitions, caps and thresholds on sales and use tax rates and uniform rules for bad debt deductions. It was the intent of the members of the Task Force that the states enacting the Simplified Sales and Use Tax Administration Act will have the option of reviewing these items and making further recommendations as to their inclusion in the Agreement.

#### **Section 8. [Relationships between States]**

Maintains that any relationships between states in furtherance of streamlining their sales and use tax collections systems is voluntary for each state and that each state abiding by its own laws and statutes has made the decision to work with other states in the successful implementation of this goal.

#### **Section 9. [Effects of the Act and Agreement on the State]**

Ensures that when the state complies with the provisions of the Agreement, the Agreement can not be used to challenge existing state laws and statutes. This section makes clear that it is not the intent of the legislature for the Agreement or any of its provisions to supercede their authority to enact laws of the state.

## **SIMPLIFIED SALES AND USE TAX ADMINISTRATION ACT**

**AS AMENDED AND ADOPTED BY NCSL, JANUARY 27, 2001**

### **LEGISLATION NOTES**

**Page 3.**

#### **Section 10. [Liability]**

This section is optional if the state decides not to comply with the provisions of the Agreement at this time. However, should the state decide to comply with the Agreement, the state must include this section so as to ensure that the proper party (ies) are held liable for the collection and remittance of the sales tax collected to the state.

#### **Section 11. [Complying Amendments to State Statutes]**

If the state decides to begin complying with the provisions of the Streamlined Sales and Use Tax Agreement, then it would begin to make the appropriate changes to its own statutes beginning in this section. However, the state only needs to amend those statutes that are out of compliance with the Agreement or add to its existing statutes those provisions of the Agreement not presently covered by state law. For example, state administration (Agreement Article III, Section 302), central registration for sellers (Agreement Article III, Section 306 and Article V), uniform tax returns, creation of state databases for boundaries changes and alignment of tax rates with the proper jurisdiction (Agreement Article III, Section 308) and so on.

#### **Section 12. [Effective Date]**

This section is optional and should conform to appropriate state legislative rules and procedures. Some states that are planning to put into their act the provisions of the Agreement are also considering putting a delayed effective date so as to ensure that the changes to their state statutes only become effective when the Agreement is effective (Agreement Article VIII, Section 804).

**MEMORANDUM IN SUPPORT**  
**SIMPLIFIED SALES AND USE TAX ADMINISTRATION ACT**

S. \_\_\_\_\_

H. \_\_\_\_\_

**Summary of Provisions:** The legislation authorizes the state to participate in the next phase of discussions with other states for the purposes of developing a multi-state, voluntary, streamlined system for the collection and administration of state and local sales and use taxes (Section 4). The legislation and the accompanying "Streamlined Sales and Use Tax Agreement as Amended and Adopted on January 27, 2001," provides the state, if it wishes to do, the structure to begin simplify the state's sales and use tax collection system.

The states enacting either solely this Act without including any provisions of the Streamlined Sales and Use Tax Agreement as amended and adopted on January 27, 2001 or enacting this Act with all or some of the Agreement provisions will have the authority to amend the Agreement. If the state passes only the Act (not including the provisions to bring the state into compliance with the Agreement), the state has until July 1, 2003 to adopt the necessary provisions to comply with the Agreement. After July 1, 2003 a state that has not brought their sales and use tax collection in compliance with the Agreement shall lose its voting privileges on amendments to the Agreement until it complies with the Agreement. A state, which either through legislative enactment or order of an elected official of the executive branch, participated in the Streamlined Sales Tax Project is not considered a governing state for the second phase of multi-state discussions unless the state enacts this legislation.

The Act also includes the outline of a streamlined sales and use tax collection and administration system (Section 7): simplified state rate; uniform standards for sourcing of transactions, exempt sales, and returns and remittances; central registration for sellers; monetary allowances for certified service providers and sellers implementing new technological models; consumer privacy; and, state administration of local sales and use taxes, including restricting variance between state and local sales tax bases, restricting the frequency of changes in local sales and use tax rates, and providing timely notice of boundary changes for local taxing jurisdictions. The Agreement also must ensure that seller registration will not be used as a factor in determining the seller's nexus with the state for any other tax and establish advisory councils of private sector representatives and representatives of non-members states.

Section 5 of the Act provides authorization to the state taxing authority to enter into an Agreement upon the state's compliance with the Agreement as well as participate with other states in establishing the standards for certification of service providers and an automated rate determination system. The Section also allows the state tax authority to act jointly with other state taxing authorities in procurement for goods and services. If the legislature decides not to go forward at this time with including in the Act the provisions necessary to bring the state in compliance with the Agreement, then this section as well as related sections with regard to the state's participation with the Agreement are optional.

Sections 6, 8 and 9 ensure that the Agreement does not in anyway preempt, amend or modify any existing state laws or regulations.

**Statement of Support:** In the 1930s, when the sales tax was first imposed, consumers bought goods from the local merchant and it was not that difficult for the merchant to collect a few cents on the dollar. In the 1970s and 1980s, the share of personal consumption expenditures began to shift from taxable goods to services. So the sales tax was applied on a smaller and smaller share of tangible products. This was compounded on the goods side by mail order outlets selling goods without collecting sales taxes from their customers - a practice sanctioned by the U.S. Supreme Court in the *National Bellas Hess* case in 1967 and reaffirmed in the *Quill* decision in 1992.

Today, states face a new threat to sales tax revenue, electronic commerce, with the potential to dramatically expand the volume of goods sold to customers without collection of a sales or use tax. The combined weight of the shift to services and the tax erosion due to electronic commerce threatens the future viability of the sales tax. The state sales and use tax system has not kept pace with changes in the U.S. or global economies and is particularly out of step with electronic commerce.

A recent study by the Center for Business and Economic Research at the University of Tennessee estimates that by 2003 the states collectively will loose at least \$10.8 billion a year in sales tax revenues due to e-commerce transactions. The study was completed in February 2000.

State legislators across the country recognize that the current system of state and local sales tax administration is complex and burdensome. Differences in sales tax law among the states, coupled with the extensive use of the tax by local governments in many states, imposes a significant compliance burden on multi-state sellers, a burden for which they are not compensated in many instances.

Substantial changes are necessary if the sales tax is to continue as an integral part of the state and local revenue system. Sales tax laws and administration must be substantially overhauled and simplified and become more uniform across the states.

This legislation would authorize the state to participate in the next phase of discussions with other states on finalizing a more simple, uniform, and fair system of state sales and use tax collection and administration. The legislation provides a mechanism for the state to begin the simplification process. The legislation also would allow only those states enacting either just the Act or the Act with the provisions necessary for the state to comply with the Agreement to amend the Agreement until July 1, 2003.

**Fiscal Impact:** *(To be determined by state, depending on the level of simplification the state may wish to undertake in this legislation.)*

**Local Fiscal Note:** *(To be determined by state, depending on the level of simplification the state may wish to undertake in this legislation.)*

## **FREQUENTLY ASKED QUESTIONS**

**Why are there two documents, an act, "The Simplified Sales and Use Tax Administration Act," and an agreement, "The Streamlined Sales and Use Tax Agreement," and how are they related?**

The Simplified Sales and Use Tax Administration Act provides the state with the legislative structure to begin the process towards simplification of its sales and use tax collections system. The first ten sections fall into two categories, expressing the legislature's intent to simplify the state's sales tax system and to provide authorization to the state's taxing authority to formally enter into an interstate agreement when the state has substantially complied with the provisions of the Agreement. The Streamlined Sales and Use Tax Agreement contains the first set of simplifications a state may wish to undertake to streamline their sales and use tax collection systems. The provisions of the Agreement have not been formally included in the model act as some states may already have some of the simplifications in place and will not need to re-enact them. Also, states have different sales and use tax statutes and it would be near impossible to write language in a model bill to accommodate so many states. If a state wishes to begin the process of simplification, it should review the provisions of the Agreement with its own statutes and determine what changes are necessary and begin making those changes in Section 11 of the model act.

**Are the Simplified Sales and Use Tax Administration Act and Streamlined Sales and Use Tax Agreement as amended and adopted on January 27, 2001 by the National Conference of State Legislatures the same as the Uniform Sales and Use Tax Administration Act and the Streamlined Sales and Use Tax Agreement as adopted by the Streamlined Sales Tax Project on January 24, 2001?**

No. While they are similar in form and substance, there are a few major differences. The NCSL version provides each state with two options. The first option: enact just the first ten sections of the Simplified Sales and Use Tax Administration Act. The second option: enact the first ten sections of the Act with the additional sections to begin bringing the state into compliance with the Agreement. Until July 1, 2003, the NCSL version would treat states taking option one or two equally for purposes of amending the Agreement. The SSTP version would only be applicable to those states enacting legislation that brings the state into substantial compliance with the Agreement that they adopted on December 22, 2000 and amended on January 24, 2001.

The NCSL Task Force also removed from the Streamlined Sales and Use Tax Agreement as adopted by the SSTP on January 24 the following provisions with the directive that they be held for further review: uniform definitions; uniform procedures for bad debt deductions; uniform rounding rule; caps and thresholds on rates; and, sales tax holidays. The review and any decision with regard to including these issues in the Agreement will be made by those states enacting solely the Act or the Act with the Agreement as adopted by NCSL on January 27, 2001. The NCSL Task Force also amended the Agreement to



allow the state to have one additional lower rate (that may be zero) than the regular state rate for such items as food, clothing, electricity and gas.

**Why did the NCSL Task Force believe it was necessary to change the governance of the initial phase of the simplification effort?**

The members of the NCSL Task Force felt it was vital to the success of the simplification process to have as many states as possible from various levels of complexity at the table to make the final and more difficult policy decisions with regard to the Agreement. Any state passing either the Act or the Act with some or all of the provisions of the Agreement will be given the same vote on changes or additions to the Agreement. The Task Force also decided that it would be beneficial to bring more people to the table by increasing the number of representatives from each state to four. This would allow the state to have not just their revenue department represented but also the appropriate policy makers from the legislature or possibly a representative from the private sector.

Those states only passing the first ten sections of the Act will be allowed a vote on any changes to the Agreement until July 1, 2003. After that date, the state will need to either enact the provisions of the Agreement or lose its ability to change the Agreement. Any state that fails to enact the necessary legislation to bring its state in compliance with the provisions of the Agreement by July 1, 2003 can do after that date and become a party to the Streamlined Sales and Use Tax Agreement.

**Why did the NCSL Task Force support amending the SSTP's proposed Agreement with regard to state rates and uniform base?**

The members of the Task Force were concerned that requiring the state and local sales tax base to be identical and to restrict the state and localities to only one rate, would remove the flexibility many local governments now enjoy to tax certain items the state has chosen not to tax. For example, a number of states have decided not to place a sales tax on food, while letting their local jurisdictions do so. Under the proposed SSTP Agreement, a state falling into this category would either have to put food in the uniform state and local base and then tax food at the full state rate (this would be fought by many as a tax increase) or take food out of the local sales tax base, which would cause a negative financial impact on local revenues. In this latter case, the state would probably be expected to cover any financial shortfall by the local jurisdictions as a result of this simplification. The Task Force believed that the issue of uniform base and no flexibility on state rates would result in a number of states deciding not to take the next steps to simplify their sales and use tax systems.

The Task Force amended the Agreement to maintain the requirement of a uniform base between the state and its local jurisdictions, however, the NCSL version of the Agreement would allow the state to have one additional lower rate, which could be "zero" on food, clothing, electricity and gas and any other item the Agreement may be amended to include at a later date. If a city now taxes food and the state does not, in the NCSL version of the "streamlined system," food would be in the uniform state and local base,

but the state would place a "zero" state sales tax rate on the purchase of the food item and only a local sales tax would be collected.

**Why did the NCSL Task Force recommend removing the Sections on Uniform Definitions, Bad Debt Deductions and Caps and Thresholds on Rates for further review by the states?**

The Task Force after much discussion and debate determined that the three areas listed above were the most controversial and needed additional review and discussion by the states. The members of the Task Force were concerned that these items would generate enough political opposition in each state capitol to quite possibly defeat the whole simplification process. The members decided that we could move forward on a number of valid simplifications such as state administration, central registration for sellers, uniform procedures for remittances and so on.

The members of the Task Force realize that these issues particularly uniform definitions need to be discussed further and must be part of the Agreement. However, the Streamlined Sales Tax Project had even made clear that the section on uniform definitions was not complete and they planned on working on additional definitions through this year. The Task Force decided it was best to hold this section and move forward with the other simplifications in the Agreement. These issues will be decided by those states, that this year, enact either the Act or the Act with provisions of the Agreement.

**If a state enacts the SSTP version of the Act and the Agreement and other states enact the NCSL amended version would it result in confusion for sellers?**

No. Most of the simplifications that NCSL adopted in its action on January 27, 2001 are in the SSTP's version of the Agreement. The state that enacts the SSTP Act with the provisions of the Agreement as adopted by the SSTP on January 24, 2001, would merely have moved further along than the other states in a just a few areas such as uniform definitions. The states that can enact the SSTP version will likely be those states with much less complex systems and most likely would already have one uniform base for state and local jurisdictions and probably only one statewide rate.

It is anticipated that the states choosing the NCSL governance procedure as provided in the Act and Agreement the Task Force and NCSL Executive Committee approved on January 27, 2001 would invite any state that may enact the SSTP version to join them in the further review of the remaining issues as well as in finalizing the Agreement.

**Where does industry stand on the changes made by NCSL?**

NCSL's changes to the Act and the Agreement have received wholesale support from a number of impacted industry organizations as well as quelled the opposition of a number of other groups which would have joined together to defeat our simplification efforts. Prior to our action a number of retailers made clear that they would not be able to support

the SSTP's recommendations this year. The NCSL's version of the Act and the Agreement has received retailer support.

**What members of the NCSL Task Force participated in the meeting in Savannah on January 26-27, 2001?**

**Rep. Matt Kisber, Tennessee and Sen. Steve Rauschenberger, Illinois, Co-Chairs of the Task Force**

Sen. John Andreason, Idaho; Rep. Tom Armstrong, Pennsylvania; Sen. Larry Borst, Indiana; Rep. Joan Bray, Missouri; Sen. Joanne Emmons, Michigan; Rep. David Ennis, Delaware; Sen. Richard Finan, Ohio; Sen. Dick Hainje, South Dakota; Rep. John Hines, Wyoming; Sen. Lyle Hillyard, Utah; Sen. Bob Jauch, Wisconsin; Del. Nancy Kopp, Maryland; Sen. Derryl McLaren, Iowa; Sen. David Nething, North Dakota; Rep. Roger Roy, Delaware; Rep. Philip Travis, Massachusetts; Alan Johansen, Senate Finance Committee, Florida; Gary Olson, Senate Fiscal Agency, Michigan.

SB 2455 Testimony By  
Senator Dave Nething  
House Finance and Tax Committee  
March 19, 2001

SB 2455, the Simplified Sales and Use Tax Administration Act represents the next step in the process of bringing North Dakota's sales tax codes into a better position to efficiently and fairly treat sellers in the emerging digital economy. Specifically, this bill outlines a set of broad guidelines for an interstate agreement, for states choosing to participate, which would develop and implement a streamlined sales tax system that dramatically reduces the collection burden on remote and main street retailers alike. Furthermore, SB 2455 authorizes 4 delegates to represent North Dakota in the next round of multi-state negotiations to finalize the specific requirements of the interstate agreement. Nothing in this bill changes North Dakota sales tax laws, nor binds the legislature to make any changes in the future. Rather, it allows North Dakota to be at the table and have full voting rights on changes to the interstate agreement.

The simplification process now being considered in over 20 legislatures has drawn its momentum from several forces. First, as I'm sure all of you remember, in 1992 the United States Supreme Court found, in *Quill v. North Dakota*, states cannot compel out of state sellers to collect and remit sales taxes on goods shipped into the states unless the remote seller has a physical presence in the state such as

a store or warehouse. The Court ruled cited the complexity of the sales tax systems from states to states as an undue burden on remote sellers and thus on interstate commerce. The growth of the Internet and e-commerce over the past five years has exacerbated the problem as more and more sales are migrating to remote sales over the Internet, causing a loss in revenue for the state. In a study conducted at the University of Tennessee in February 2000, Professor Bill Fox estimated North Dakota would lose over 20 million dollars in uncollected sales taxes on electronic commerce by FY2003. The current rules also create a competitive disadvantage for brick and mortar retailers.

The second force pushing the need for simplification in the states has been the threat of congressional preemption. In 1998 Congress passed the Internet Tax Freedom Act which established a three-year moratorium on Internet access taxes or other discriminatory taxes on Internet transaction. Although the moratorium does not apply to sales and use taxes on e-commerce, the Act did establish a federal commission to evaluate if and how sales and use taxes should be assessed on remote sales. The Advisory Commission on Electronic Commerce was unable to come to consensus on any proposals, however, several unofficial recommendations would have severely preempted states' authority to set their own tax policy garnered interest in the Congress, including a prohibition on state sales

taxes on any digital items or their real world counterparts such as books, c.d.'s, movies etc.

In 1998 The National Conference of State Legislatures established its own Task Force, of which I am a member, to look at ways states might proactively stop the erosion of the sales tax base and ward off federal preemption. The Task Force quickly adopted six principles to guide our deliberations:

**First**, state and local tax systems should treat transactions involving goods and services, including telecommunications and electronic commerce, in a competitively neutral manner;

**Second**, a simplified sales and use tax system which treats all transactions in a competitively neutral manner will strengthen and preserve the sales and use tax as vital state and local revenue sources and preserve state fiscal sovereignty;

**Third**, the Internet and Internet vendors should not receive preferential tax treatment at the expense of local "main street" merchants, nor should such vendors be burdened with special, discriminatory or multiple taxes;

**Fourth**, states recognize the need to undertake significant simplification of state and local sales

and use taxes to reduce the administrative burden of collection;

Fifth, under such a simplified system remote sellers, without regard to physical presence in the purchaser's state, should be required to collect sales and use taxes from the purchaser and remit such taxes to the purchaser's state;

Sixth, NCSL encourages current and future cooperative efforts by states to simplify the operation and administration of sales and use taxes; and

Seventh, NCSL will continue to oppose any federal action to preempt the sovereign and Constitutional right of the states to determine their own tax policies in all areas, including telecommunications and electronic commerce.

Using these principles, the Task Force, along with the National Governors' Association, embraced an idea to try to create a simplified system which is more uniform throughout the states and would take the burden reference in Quill off remote sellers and make collection easier for all sellers. In January 2000, the Task Force drafted model legislation directing revenue departments to enter multi-state discussions to try to design such a system. Just over a year later, the Streamlined Sales Tax Project has 32 participating states, including North Dakota. The

provisions of the interstate agreement will largely be based on the work of the Streamlined Sales Tax Group. SB 2455 would maintain North Dakota as an active voice in deciding the exact requirements for the interstate agreement.

This legislation is critically important to continue the process of creating a level playing field for all retailers, regardless of the method by which they deliver their goods. Furthermore, the goal of a more simple sales and use tax system will benefit all retailers by reducing the cost and burden of collecting and remitting sales taxes. Continuing this process will also get North Dakota one step closer to entering into an interstate system which will be beneficial and easy to administer thus encouraging remote sellers to voluntarily collect taxes on goods sold into the state, thus stopping the erosion of sales tax revenues. Finally, it is important to all the states to show our friends in Congress the states understand the complexity of the sales and use tax systems, and are serious about reform so Congress will not feel the need to preempt our authority to set our own tax policy.

SB 2455 is an important piece of legislation for North Dakota. As I said earlier, this legislation does not bind the legislature to undertake any changes to our sales tax code. The bill simply allows North Dakota to continue to participate and vote on the terms of the interstate agreement. North Dakota has some unique features to our sales tax system and only through voicing our concerns can we influence how much we would need to change should we choose to enter the new



system. Once the agreement has been finalized, then it will be up to us in the legislature to decide if the benefits of simplifying our system outweigh the downsides. The economy is constantly evolving. This legislation will put us in a position, if we choose, to enable more efficient business practices on the web, while at the same time securing the fundamental fairness of our sales tax.