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1422

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La Costa Rickford  
Operator's Signature

10/16/03  
Date

2003 HOUSE FINANCE AND TAXATION

HB 1422

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Richard Costa  
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10/16/03  
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1422

House Finance and Taxation Committee

☐ Conference Committee

Hearing Date January 28, 2003

Tape Number	Side A	Side B	Meter #
1	X		42.8
			to side B
Committee Clerk Signature <i>Janice Stein</i>			

Minutes:

**REP. WESLEY BELTER, CHAIRMAN** Called the hearing to order.

**REP. ROD FROELICH, DIST. 31,** Introduced the bill.

He stated that Sioux county is completely encompassed by the Standing Rock Indian Reservation. He gave a history of past years, regarding the tribe working with Sioux County and the state. He stated they put up a 1.3 million dollar bridge, and of that, the tribe picked up about one half a million dollars. There has been a lot of cooperation between the tribe and the county. The tribe requested that this bill be brought forward.

**ELAINE MC LAUGHLIN, TAX COMMISSIONER FOR THE STANDING ROCK**

**TRIBE,** Testified in support of the bill. This bill would allow sales tax exemptions for the tribal government. At the present time, any purchases that are made by departments within the tribal government system, are usually purchased for Standing Rock, and thereby, tax exempt.

However, there are instances in which purchases are made in Bismarck, and the sales tax are then

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House Finance and Taxation Committee

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paid upon that purchase even though it is by a tribal department government agency. These off-reservation purchases, are usually during an emergency status. Gave an example of a water line break where water pipes needed to be repaired, and sales tax was charged for the pipes. This amendment will enhance the positive relationship you will have with the tribes. The amendment will also insure fairness, by treating the tribes the same as federal, state and local governments.

**REP. WEILER** Asked for an example that the tribe would buy which you are asking for a tax exemption.

**ELAINE MC LAUGHLIN** She said nine times out of ten, it is an emergency status purchase, she again referred to the water line break last year, and had to purchase pipeline, in Fargo. They had to pay an essential amount of sales tax on that. There are times when they must purchase a machinery part for one of the vehicles. They usually do their purchases so that they are delivered to the reservation. She stated this tax exemption had been done before but was taken away in 1997.

**REP. WINRICH** Stated, he finds it a little curious that the tribe should be treated like a political subdivision, he wondered if there are other areas where the tribe is treated as a political subdivision or if this was a unique situation.

**ELAINE MC LAUGHLIN** She stated that the law states political subdivisions, she was just quoting from that through the treaty code.

**MARCUS WELLS, SR., TAX COMMISSIONER OF THE THREE AFFILIATED**

**TRIBES** Testified in support of the bill. He stated they do have contracts with specific governments where they buy a lot of supplies from communities, Minot, in particular. He stated they get a certificate lately, with all of the building which has gone on on their reservation, the

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certificate exempts them from the sales tax. When we get federal monies, we have a limited budget.

**MARCUS WELLS, JR. TREASURER OF THE THREE AFFILIATED TRIBES**

Testified in support of the bill. See written testimony.

**CAROL TWO EAGLE** Submitted written testimony in support of the bill.

**TOM DISSELHORST, ATTORNEY WITH THE THREE AFFILIATED TRIBES,**

Testified in support of the bill. What we are talking about in terms of exemptions, is what is already the law. Why it is not expressed in state statutes, I can't say. The idea behind this exemption is that, items consumed on reservations, by a tribe, are tax exempt, that is the status of the law now. This is an attempt to codify what is already in state law. This bill will reduce the chance, that at some point, the tribe will have to litigate the issue.

**GARY ANDERSON, DIRECTOR OF SALES & SPECIAL TAXES, STATE TAX**

**DEPARTMENT** Testified in a neutral position. He stated they did prepare the fiscal note. As indicated, it is in law, in regard to purchases and information. Currently, the law provides the sale of materials to the reservation to a tribal member, however, the purchases made off the reservation, the tax will apply. The reason the fiscal note is small, is because most of the material deliveries are made to the reservation. There are emergency situations where large items might have to be picked up off the reservation on occasion. Other things that would be covered under this, might be hotel and motel, in Bismarck, when the Indian conference was held here, the tribes would be exempt from the lodging and restaurant taxes. However, in order to enjoy the exemption, it would be no different then the federal government, state government or a political

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subdivision, that is a payment or purchase would have to be made by a government check or a tribal warrant or check. The retailer must be paid directly from the tribe for that purchase.

**REP. BELTER** Prior to 1997, what this bill tried to do, was general practices, is that correct?

**GARY ANDERSON** Prior to 1997, it was an administrative decision made in our office, that tribes did qualify as a government entity, however, there was a question raised in 1997, as to whether that was a correct position. It was determined by our legal council, that it was in error, and as a result, the tribes were notified that the exemptions they previously held, were no longer effective. I believe the exemptions weren't long standing, they were placed for a number of years, and once it was determined that the law didn't really provide for that, the department did notify the tribes in 1997, that the exemption no longer applied.

**CHERYL KULOS, EXECUTIVE DIRECTOR OF INDIAN AFFAIRS** Testified in support. She stated this amendment would enhance relationships between the tribes and insures fairness and provides that tribal governments are treated in the same manner that local and other governments are.

With no further testimony, the hearing was closed.

**COMMITTEE ACTION** 2-3-03, Tape #1, Side B, Meter #0.1

**REP. IVERSON** Made a motion for a **DO NOT PASS**

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

10 YES      3 NO      1 ABSENT

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

**FISCAL NOTE**  
Requested by Legislative Council  
01/21/2003

Bill/Resolution No.: HB 1422

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			(\$27,600)	(\$2,400)		
Expenditures						
Appropriations						

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2. Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

HB 1422 provides an exemption for sales to Indian tribes. If enacted, it is estimated to result in a drop in sales tax revenues totaling \$30,000 for the 2003-05 biennium.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Kathryn L. Strombeck	Agency:	Tax Dept.
Phone Number:	328-3402	Date Prepared:	01/27/2003

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*Krista Rickford*  
Operator's Signature

*10/16/03*  
Date

Date: 2-3-03  
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1422

House FINANCE & TAXATION Committee

☐ Check here for Conference Committee

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

Action Taken

Do Not Pass

Motion Made By

Rep. Iverson

Seconded By

Rep. Clark

Representatives	Yes	No	Representatives	Yes	No
BELTER, CHAIRMAN		✓			
DROVDAL, VICE-CHAIR	✓				
CLARK	✓				
FROELICH		✓			
GROSZ	✓				
HEADLAND	✓				
IVERSON	✓				
KELSH	A				
KLEIN	✓				
NICHOLAS	✓				
SCHMIDT	✓				
WEILER	✓				
WIKENHEISER	✓				
WINRICH		✓			

Total (Yes)

10

No

3

Absent

1

Floor Assignment

Rep. Iverson

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



**REPORT OF STANDING COMMITTEE (410)**  
February 3, 2003 4:04 p.m.

Module No: HR-20-1569  
Carrier: Iverson  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**  
HB 1422: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **DO NOT PASS** (10 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). HB 1422 was placed on the Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-20-1569

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Yolanda Rickford  
Operator's Signature

10/16/03  
Date

2003 TESTIMONY

HB 1422

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Salvatore Riccardi  
Operator's Signature

10/6/03  
Date



TRIBAL BUSINESS COUNCIL  
(701) 627-4781  
Fax (701) 627-3805

## MANDAN, HIDATSA, & ARIKARA NATION

Three Affiliated Tribes • Fort Berthold Indian Reservation  
404 Frontage Road • New Town, North Dakota 58763-9402

Finance and Taxation Committee  
North Dakota House  
58th Legislative Assembly

Testimony of Three Affiliated Tribes  
Mandan, Hidatsa and Arikara Nation  
Marcus Wells, Jr.  
Treasurer  
HB 1422  
January 28, 2003

Good morning, Mr. Chairman, members of the Committee. My name is Marcus Wells, Jr. and this testimony is in support of HB 1422, regarding putting into law an already recognized sales tax exemption for Indian Tribes in North Dakota.

While it has long been recognized, at least since statehood for North Dakota in the enabling Act, and under numerous U.S. Supreme Court decisions, that the Indians citizens within North Dakota would not be taxed while on their reservations, the issue of sales taxes and their applicability to Tribes has, in recent years, come up regularly. One procedure we have followed is for the Tribe to apply to the State Tax Commissioner's office for a sales tax exemption determination regarding a particular project that is being developed on the reservation. Given the nature of this statute, I do not believe that procedure would change. What this amendment to the law does is to put into positive state law what we know to be the law now.

This bill also recognizes that in general, not just for specific projects, when we, as the Tribe purchase personal property, even off the reservation, that purchase will not be subject to the state sales tax. This clears up a long-standing issue for us, regarding whether Tribal purchases of personal property off the reservation for use primarily on the reservation are subject to the sales tax, and this amendment should take care of that uncertainty.

This issue has never been fully clarified under state law, although there have been several Attorney General opinions about the issue of excise taxes on vehicles. The most recent Attorney General opinion regarding the excise tax on vehicles issue, issued September 20, 1991, overruled a previous opinion, and cited, among other U.S. Supreme Court cases, *Mescalero Apache Tribe v. Jones*, 411 U.S. 151 (1973); *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164 (1973); *Moe v. Confederated Salish & Kootenai Tribes*, 425 U.S. 474 (1976); *Washington v. Confederated Tribes of Colville*, 447 U.S. 165 (1980) and *White Eagle v. Dorgan*, 209 N.W.2d 621 (N.D. 1973). These cases all stand for the proposition that Tribes are not subject to tax while on the reservation. Thus, this bill serves another purpose, and that is to avoid needless litigation regarding the applicability of state sales taxes to Tribal governments.

This does not mean that individual Tribal members who purchase goods off the reservation will not continue to be subject to the State sales tax. We leave that issue for another day.

*Richard*  
Operator's Signature

10/16/03  
Date

This bill in general should be nearly revenue neutral; the fiscal note estimates an impact of \$30,000, which actually might be high. As the Treasurer for the Three Affiliated Tribes, I certainly am aware of the need to maintain revenues, and I understand that budgets for the State government are stretched to the limit.

But I also want to note why the exemption for Indian tribes is placed in this particular section, along with the United States, the state and political subdivisions. Tribes are governments, which provide a great many vital services to their members. On the Fort Berthold Reservation alone, we support and supplement the budgets of the local county funded ambulance services, our Tribal colleges educate many non-Indians, we supplement health care provided through the Indian Health Service, provide additional assistance to welfare recipients, provide additional housing for our members, provide education grants and scholarships, provide small loans for economic development and other purposes, supplement police protection, assist with our roads program and many, many other things. These are all government services that are not provided by the state to our members. The small fiscal impact of this bill, to the extent there is any impact at all, allows us to do that much more for our members and lessen the burden on state government.

Mr. Chairman, members of the Committee, for the reasons I have given, I urge a DO PASS recommendation on this bill.

Submitted after the hearing

CAROL TWO EAGLE  
P.O. BOX 293  
MANDAN, ND 58554  
Pager: 221-0285 Email: [AWiseSpirit@nativeweb.net](mailto:AWiseSpirit@nativeweb.net)

HB 1422

Hau mitakuyapi, Chairman Belter and members of the Committee, for the record, my name is Carol Two Eagle and I wish to testify in support of this bill.

All 389 Treaties between the US Government and Native Nations, plus the US Constitution, state that American Indian Tribes are sovereign nations. This bill recognizes that, which is appropriate, since the State of North Dakota is a part of the United States.

Please pass this bill out of Committee with a unanimous "Do Pass" and support it fully in the House, and later in the Senate.

Thank you for hearing me in a good way now. Many blessings.

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*Yolanda Rickford*

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