

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1159

2005 HOUSE FINANCE AND TAXATION

HB 1159

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1159**

House Finance and Taxation Committee

☐ Conference Committee

Hearing Date **January 12, 2005**

Tape Number

1

Side A

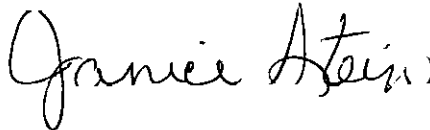
Side B

x

Meter #

0

Committee Clerk Signature



Minutes:

REP. WES BELTER, CHAIRMAN Called the committee hearing to order.

BLANE BRAUNBERGER, SUPERVISOR OF FIELD AUDIT SECTION FOR INCOME, SALES, & SPECIAL TAXES, STATE TAX DEPARTMENT testified in support of the bill. See attached written testimony.

REP. BELTER Asked whether there were different types of wineries, what constitutes a domestic winery?

BLANE BRAUNBERGER A business that is located in North Dakota that does use North Dakota home grown products. They have to be licensed as a domestic winery.

REP. BELTER Are there various levels of domestic wineries, based on their sales?

BLANE BRAUNBERGER There is not a different level of domestic winery. They either are one are not.

REP. BELTER Do the domestic wineries have an association? Are they familiar with what you are doing here?

BLANE BRAUNBERGER I don't have an answer on that. This is just to include the domestic wineries with the rest of the distributors.

REP. GRANDE Is this going to be a new tax to domestic wineries?

REP. SCHMIDT If I am a retailer, I can order \$250 of beer from the wholesaler, after this bill is in, it has to be \$500?

BLANE BRAUNBERGER The evaluation you are referring to is under the unfair competition section. That statute pertains to items that can be given by the wholesaler to an alcohol retailer. The \$250 and \$500 pertains to sale items such as neon lights, mirrors, things of that sort.

REP. SCHMIDT The first line increases the allowable cost of outdoor signs, the next line does not specify, it says sale items, sale items to me would be beer.

BLANE BRAUNBERGER Directed Rep. Schmidt to go to Line 24 of the bill, it states, the items which the bill pertains to.

REP. IVERSON Stated he had a business in his district which produces wine, but he didn't think they get their juice from a North Dakota company, they make the wine here, are they still a domestic company if they get their products from another area?

BLANE BRAUNBERGER In the case of this business, if they are not buying a majority of their ingredients from within the state, they do not qualify for a domestic winery license. In the case of the business you referred to, they could operate as a manufacturer, but then they would have different limitations.

DAN ROUSE, LEGAL COUNCIL FOR THE OFFICE OF THE STATE TAX

COMMISSIONER, Appeared before the committee to introduce amendments to the bill. The amendment pertains to page 2, lines 7, 8, and 9 of the bill, We are asking that these lines be removed. As we inherited this area of taxation and regulation from the State Treasurer's office, we are in the process of going through it, and learning.

JOEL GILBERTSON, REP. THE NORTH DAKOTA BEER WHOLESALERS ASSN.

Testified in support of the bill. The North Dakota Beer Wholesalers Association, is an association of seventeen all family owned and operated, distributorships in North Dakota. The association goes on record in support of fair and consistent industry regulations. He stated they worked with the tax department discussing some problems and issues and agreed on this bill.

REP. BELTER Asked why there is a cap on the cost of signs wholesalers can provide for retailers?

JOEL GILBERTSON It goes back to the kinds of non beer things that can be given away, from the liquor industry. How much can you do to encourage more sale of your product. Over the years, I think they just determined it was easier from a regulatory standpoint to set a limit on it. With no further testimony, the committee hearing was closed.

COMMITTEE ACTION 1-12-05 Tape #1, Side B, Meter #13.8

REP. IVERSON Made a motion to adopt the amendments as presented by the tax department.

REP. OWENS Second the motion. Motion carried.

REP. WRANGHAM Made a motion for a **Do Pass As Amended**.

REP. IVERSON Second the motion. **MOTION CARRIED** 12 Yes 0 No 2 Absent

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1159**

House Finance and Taxation Committee

☐ Conference Committee

Hearing Date **January 24, 2005**

Tape Number	Side A	Side B	Meter #
2		X	2.8

Committee Clerk Signature

Minutes:

COMMITTEE ACTION

REP. HEADLAND Made a motion to reconsider the action by which HB 1159 was passed out of committee.

REP. GRANDE Second the motion. Motion carried.

RICK CLAYBURGH STATE TAX COMMISSIONER Reviewed the bill and amendments which were presented. The bill was a housekeeping bill. The amendments would eliminate the brand registration by June 30, but the suppliers who supply alcohol to our wholesalers in the state of North Dakota would be required to register. On a monthly basis, they need to register and provide information electronically, or by paper, just explaining what products they distributed into the state for the month.

REP. GRANDE Made a motion to adopt the amendments as presented.

REP. OWENS Second the motion. Motion carried.

Page 2

House Finance and Taxation Committee

Bill/Resolution Number **HB 1159**

Hearing Date **January 24, 2005**

REP. GRANDE Made a motion for a **Do Pass As Amended**.

REP. BRANDENBURG Second the motion. **Motion carried.**

11 yes 0 no 3 Absent

REP. IVERSON Was given the floor assignment.

FISCAL NOTE
Requested by Legislative Council
01/27/2005

Amendment to: Engrossed
 HB 1159

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.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2003-2005 Biennium			2005-2007 Biennium			2007-2009 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 1159 Second Engrossment makes technical changes to the wholesale liquor tax, including providing the same penalty and interest provisions as for other tax types. The fiscal impact is less than \$5000.

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
Phone Number: 328-3402

Agency: Office of Tax Commissioner
Date Prepared: 01/27/2005

FISCAL NOTE
Requested by Legislative Council
01/14/2005

Amendment to: HB 1159

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.*

2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues					
Expenditures					
Appropriations					

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

2003-2005 Biennium			2005-2007 Biennium			2007-2009 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 1159 First Engrossment makes technical changes to the wholesale liquor tax, including providing the same penalty and interest provisions as for other tax types. The fiscal impact is less than \$5000.

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
Phone Number: 328-3402

Agency: Office of Tax Commissioner
Date Prepared: 01/17/2005

FISCAL NOTE
Requested by Legislative Council
01/03/2005

Bill/Resolution No.: HB 1159

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.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2003-2005 Biennium			2005-2007 Biennium			2007-2009 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 1159 makes technical changes to the wholesale liquor tax, including providing the same penalty and interest provisions as for other tax types. The fiscal impact is less than \$5000.

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
Phone Number: 328-3402

Agency: Office of Tax Commissioner
Date Prepared: 01/11/2005

Date: **1-12-05**
Roll Call Vote #: **1**

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. **HB 1159**

House **FINANCE & TAXATION**☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Motion Made By

Seconded By

Representatives
BELTER, WES, CHAIRMAN
DROVDAL, DAVID, V-CHAIR
BRANDENBURG, MICHAEL
CONRAD, KARI
FROELICH, ROD
GRANDE, BETTE
HEADLAND, CRAIG
IVERSON, RONALD
KELSH, SCOT
NICHOLAS, EUGENE
OWENS, MARK
SCHMIDT, ARLO
WEILER, DAVE
WRANGHAM, DWIGHT

Yes No

Representatives

Yes No

Total (Yes)

No

Absent

Floor Assignment

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

REPORT OF STANDING COMMITTEE (410)
January 13, 2005 8:37 a.m.

Module No: HR-08-0384
Carrier: Iverson
Insert LC: 58195.0101 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1159, as amended, Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1159, as amended, was placed on the Sixth order on the calendar.

Page 2, remove lines 7 and 8

Page 2, line 9, remove "alcohol beverage industry."

Renumber accordingly

Date:

BILL/RESOLUTION NO. HB 1159

Committee



58195 0201

Do Pass as amended

Rep Grande

Seconded By

Ref Brantenburg

Representatives

Yes

No

Representatives

Yes No

**BELTER, WES, CHAIRMAN
DROVDAL, DAVID, V-CHAIR
BRANDENBURG, MICHAEL
CONRAD, KARI
FROELICH, ROD
GRANDE, BETTE
HEADLAND, CRAIG
IVERSON, RONALD
KELSH, SCOT
NICHOLAS, EUGENE
OWENS, MARK
SCHMIDT, ARLO
WEILER, DAVE
WRANGHAM, DWIGHT**

ALL A L L

11

No

2

3

Rep. Iverson

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

REPORT OF STANDING COMMITTEE

HB 1159, as engrossed: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). Engrossed HB 1159 was placed on the Sixth order on the calendar.

Page 1, line 1, after "Act" insert "to create and enact a new section to chapter 5-03 of the North Dakota Century Code, relating to alcoholic beverage supplier licensing requirements;", after "sections" insert "5-01-01,", and after "5-01-11" insert a comma

Page 1, line 2, after the first "to" insert "definitions," and after "retailers" insert a comma

Page 1, line 3, after "entities" insert "; to repeal section 5-03-01.2 of the North Dakota Century Code, relating to brand registration of alcoholic beverages"

Page 1, after line 5, insert:

"SECTION 1. AMENDMENT. Section 5-01-01 of the North Dakota Century Code is amended and reenacted as follows:

5-01-01. Definitions. In this title:

1. "Alcohol" means neutral spirits distilled at or above one hundred ninety degrees proof, whether or not such product is subsequently reduced, for nonindustrial use.
2. "Alcoholic beverages" means any liquid suitable for drinking by human beings, which contains one-half of one percent or more of alcohol by volume.
3. "Beer" means any malt beverage containing one-half of one percent or more of alcohol by volume.
4. "Distilled spirits" means any alcoholic beverage that is not beer, wine, sparkling wine, or alcohol.
5. "Licensed premises" means the premises on which beer, liquor, or alcoholic beverages are normally sold or dispensed and must be delineated by diagram or blueprint which must be included with the license application or the license renewal application.
6. "Liquor" means any alcoholic beverage except beer.
7. "Local governing body" means the governing entity of a city, county, or federally recognized Indian tribe in this state.
8. "Local license" means a city, county, or tribal retail alcoholic beverage license issued by the appropriate local governing body.
9. "Microbrew pub" means a brewer that brews ten thousand or fewer barrels of beer per year and sells beer produced or manufactured on the premises for consumption on or off the premises, or serves beer produced or manufactured on the premises for purposes of sampling the beer.
10. "Organization" means a domestic or foreign corporation, general partnership, limited partnership, or limited liability company.

11. "Sparkling wine" means wine made effervescent with carbon dioxide.
12. "Supplier" means an alcoholic beverage manufacturer, importer, marketer, or wholesaler selling alcoholic beverages to a wholesaler licensed in this state for purposes of resale.
13. "Tribal licensee" means a person issued a local license by the governing body of a federally recognized Indian tribe in this state for the retail sale of alcoholic beverages within the exterior tribal reservation boundaries.
- ~~13.~~ 14. "Wine" means the alcoholic beverage obtained by fermentation of agricultural products containing natural or added sugar or such beverage fortified with brandy and containing not more than twenty-four percent alcohol by volume."

Page 3, after line 16, insert:

"SECTION 4. A new section to chapter 5-03 of the North Dakota Century Code is created and enacted as follows:

Supplier license required - Filing requirements - Penalty.

1. Before a supplier may engage in the sale or shipment of alcoholic beverages to a licensed North Dakota wholesaler, that supplier must first procure a supplier license from the state tax commissioner.
2. For any month in which a licensed supplier has made sales to a North Dakota wholesaler, that supplier shall file a report with the tax commissioner no later than the thirtieth day of each calendar month covering alcoholic beverages sold or shipped to a North Dakota wholesaler during the preceding calendar month. When the thirtieth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. The report must provide such detail and be in a format as prescribed by the tax commissioner. The tax commissioner may require that the report be submitted in an electronic format approved by the tax commissioner.
3. If a supplier fails to file the required report as required by this section, there is imposed a penalty of twenty-five dollars per month for each calendar month or fraction of a month during which the delinquency continues beginning with the month during which the report was due.
4. A supplier in violation of this section or who furnishes information required by this section that is false or misleading is guilty of a class A misdemeanor.

SECTION 5. REPEAL. Section 5-03-01.2 of the North Dakota Century Code is repealed."

Renumber accordingly

2005 SENATE FINANCE AND TAXATION

HB 1159

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1159**

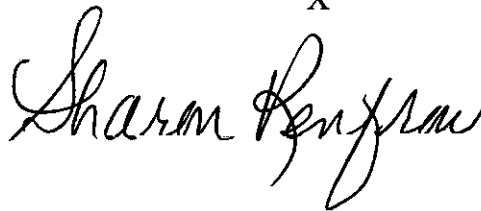
Senate Finance and Taxation Committee

☐ Conference Committee

Hearing Date **March 9, 2005**

Tape Number	Side A	Side B	Meter #
# 1	X	X	42.9 - 61.3 0.0 -5.4

Committee Clerk Signature



Minutes:

CHAIRMAN URLACHER CALLED THE COMMITTEE TO ORDER AND OPENED THE HEARING ON HB 1159.

JOAN GALSTER: Tax Dept. Appeared in support with written testimony stating this is sort of a house cleaning bill and went through the changes.

SEN. COOK: I assume all these suppliers we are talking about are from out of state?

ANSWER; yes, the majority of them are

SEN. BERCIER: how many winery's do we have in the state?

ANSWER; 6

SEN. COOK: suppliers, you say right now its an honor system, I am assuming we have some suppliers out side of the state who are not possibly registered, how are we going to find them all and do we know who all of them are?

ANSWER; I don't think we do, we get our information from who registers the brand labels.

The problem with that is that some of these companies have several branches and the branch that registers their labels would not be the one who would be responsible for doing the report, just because the brands are registered doesn't mean that they actually did ship anything.

JOEL GILBERTSON: ND Beer Wholesalers Association appeared in support.

SEN. COOK: unfair competition cause, the purpose of it, give us some information on it. Why doe we even have such a section here of unfair competition and limitations on the relationship between these different tiers, its got to be unique to the liquor industry isn't it?

ANSWER; yes, the genesis of the way this is set out and socially for lack of a better term, heavily regulated goes back to prohibition and when prohibition went out, we had a series of federal and state laws that came in that heavily regulated what can be done for various levels, where it can be done and frankly there are some pressures on that the way its set up now, but its a system that both from the side of the sellers and the side of the regulators its a system that we think is working well and we want to make sure it stays that way.

PAT WARD: ND Wholesale Liquor Dealers appeared in support with written testimony stating the real reason for 3 tiered system as we call it is the collection of taxes in alcohol.

Closed the hearing.

SEN. TOLLEFSON: really the winery's are really fitting into 2 categories sometimes, both retail and wholesale. That apparently is covered by the still but the levels you were talking about is a little gray. We'd have a domestic winery right in our district that's both well manufactures and wholesales and retail. I don't know if its a big issue, do you think its covered in that area?

Page 3
Senate Finance and Taxation Committee
Bill/Resolution Number HB 1159
Hearing Date March 9, 2005

JOAN GALSTER: The domestic winery has been given some latitude. They actually cannot wholesale, they manufacturer, they can retail at their own location but cannot wholesale.

SEN. WARDNER: made a MOTION FOR DO PASS, seconded by Sen. Cook.

ROLL CALL VOTE: 6-0-0 Sen. Wardner will carry the bill.

Date: 3-9-04
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1159

Senate

Finance and Taxation

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Do Pass

Motion Made By

Wardner

Seconded By

Cook

Senators	Yes	No	Senators	Yes	No
Sen. Urlacher	✓		Sen. Bercier	✓	
Sen. Wardner	✓		Sen. Every	✓	
Sen. Cook	✓				
Sen. Tollefson	✓				

Total (Yes)

4

No

0

Absent

0

Floor Assignment

Wardner

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

REPORT OF STANDING COMMITTEE (410)
March 9, 2005 11:47 a.m.

Module No: SR-43-4496
Carrier: Wardner
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1159, as reengrossed: Finance and Taxation Committee (Sen. Urlacher, Chairman)
recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Reengrossed HB 1159 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

HB 1159

TESTIMONY BEFORE THE HOUSE
FINANCE AND TAXATION COMMITTEE

HB 1159

Blane Braunberger

January 12, 2005

Chairman Belter, members of the committee, my name is Blane Braunberger. I am the supervisor of the Field Audit Section for the Income, Sales & Special Taxes Division of the Office of State Tax Commissioner, and I am here to testify in support of HB 1159.

Effective July 1, 2001, the wholesale alcoholic beverage administration was transferred to the State Tax Commissioner. Since that date, our office has provided the administration of alcoholic beverage laws, issued licenses, processed tax returns and payments, and completed compliance and audit reviews. In completing these activities, we have maintained continued communications with the North Dakota alcohol industry to address issues and concerns involving wholesalers.

House Bill 1159 addresses several areas as a result of our administration of the alcoholic beverage laws.

SECTION 1

Section 1 provides for amendments to 5-01-11, the *Unfair Competition* statute addressing allowable items of value that may be provided by wholesalers to retailers.

Page 1, line 16 allows a wholesaler to furnish beer containers and tap beer dispensing equipment to retailers. In the administration of this provision, it is common in the industry and often required as part of the wholesaler's agreement with the brewers to also provide tap cleaning services. Lines 17 and 18 address the furnishing of such containers, equipment and tap cleaning services, and increases the limit in valuation of these items from fifty dollars (\$50) per tap per year to one hundred fifty dollars (\$150) per tap per year.

Page 1, line 20 increases the allowable cost of an outdoor sign a wholesaler may provide to a retailer from one hundred dollars (\$100) to four hundred dollars (\$400).

Page 2, line 2 increases the allowable cost of "point-of-sale" items a wholesaler may provide to a retailer from two hundred fifty dollars (\$250) to five hundred dollars (\$500).

Lines 4 through 6 strikes out language that currently provides authority for the state tax commissioner to adjust the mentioned limitation for point-of-sale items to keep current with market conditions.

Lines 7 through 9 inserts new language to address the authority of the state tax commissioner relative to the value limitations noted previously. I would note that at the conclusion of my testimony, a proposed amendment will be presented by our office addressing this area.

SECTION 2

The Tax Commissioner is responsible for completing examinations to insure compliance with alcoholic beverage laws and proper tax reporting, therefore we are proposing several amendments to the examination statute 5-03-06.

Page 2, line 18 includes "domestic winery" as an alcoholic beverage distributor whose books and records may be reviewed to ensure compliance with the alcohol statutes and rules.

Line 20 includes domestic winery as an alcoholic beverage distributor that may be subject to a penalty and interest for failure to pay taxes in a timely manner. Lines 22 through 25 replaces the current penalty provision of five percent per month for failure to pay taxes, and instead replaces this with a five percent penalty application for the first month delinquent, and one percent interest for each month thereafter until the taxes are paid. This penalty and interest application is similar to that presently provided in the other tax laws, such as sales tax.

Line 25 again provides for the inclusion of domestic winery as it relates to a penalty for failure to furnish tax reports as required.

Lines 28 through 31 on page 2 and lines 1 through 9 on page 3 provides for a notice of determination process that again is similar to our other tax types. As noted on lines 30 and 31 on page 2, a notice of determination of additional taxes owing must be provided no later than three years

after the last day on which the return was due or three years after the return was filed.

The remaining changes listed on page 3, lines 9, 11, and 16 again include a domestic winery in the language that addresses possible enforcement actions that may arise in the event an attempt to evade taxes occurs.

The Tax Commissioner recommends a "do-pass" for HB 1157. If there are any questions, I will be glad to respond.

March 9, 2005

Senate Finance and Taxation Committee

Testimony of Patrick Ward in Support of HB 1159

Chairman Urlacher and members of the Senate Finance and Taxation Committee. My name is Patrick Ward. I am a partner in the law firm of Zuger Kirmis & Smith. I am here to testify on behalf of the North Dakota Wholesale Liquor Dealers Association. We are here in support of HB 1159.

Alcohol is a highly taxed and regulated product. North Dakota for many years, like other states, has maintained a three tiered system for distribution and taxation of liquor. The three tiers consist of the manufacturer, the wholesaler, and the retailer. The wholesale tier is the level at which the state insures collection of alcohol taxes. Our North Dakota wholesalers carry and distribute alcohol products to retailers.

The System Enables Efficient Tax Collection

Beverage alcohol is the most highly taxed consumer product in America. Billions of dollars of revenue flow into state tax coffers from sales of beer, wine and distilled spirits. The single most efficient way devised by states to insure 100 percent collection of this massive amount of revenue is to require that all beverage alcohol enter its borders through a licensed wholesaler, who is responsible for paying all alcohol excise taxes. By requiring the thousands of out-of-state suppliers of beer, wine and liquor to sell only to an in-state, licensed wholesaler, the state assures that excise and sales taxes are collected on all beverage alcohol crossing its borders. Collection of sales taxes also is assured since the retailer can only buy from a licensed wholesaler, who must record all sales to retailers.

We urge a Do Pass on HB 1159.

TESTIMONY BEFORE THE SENATE
FINANCE AND TAXATION COMMITTEE
SECOND ENGROSSED HB 1159

Joan Y. Galster

March 9, 2005

Chairman Urlacher, members of the committee, my name is Joan Galster. I am the supervisor of the Alcohol Tax Section in the Income, Sales and Special Taxes Division of the Office of State Tax Commissioner, and I am here to testify in support of re-engrossed HB 1159.

Effective July 1, 2001, the administration of the wholesale alcoholic beverage laws was transferred to the State Tax Commissioner. Since that date, our office has issued licenses, processed tax returns and tax payments, and completed compliance and audit reviews. In connection with these activities, we have maintained continued communications with the North Dakota alcohol industry to address issues and concerns involving wholesalers.

HB 1159 addresses several areas to which we suggest changes, resulting out of our administration of the alcoholic beverage laws.

SECTION 1:

Section 1 proposes the addition of a definition to 5-01-01.

Page 2, lines 12 through 14 proposes adding a definition of "supplier." This definition is related to the new section proposed in SECTION 4.

SECTION 2:

Section 2 provides for amendments to 5-01-11, the *Unfair Competition* statute addressing allowable items of value that may be provided by wholesalers to retailers.

Page 3, line 1 allows a wholesaler to furnish beer containers and tap beer-dispensing equipment to retailers. In the administration of this provision, it is common in the industry and often required as part of the wholesaler's agreement with the brewers to also provide tap cleaning services. **Lines 2 and 3** address the furnishing of such containers, equipment and tap cleaning services, and include a proposed increase to the value limit of these items from fifty dollars (\$50) per tap per year to one hundred fifty dollars (\$150) per tap per year.

Page 3, line 5 proposes an increase to the allowable cost of an outdoor sign a wholesaler may provide to a retailer from one hundred dollars (\$100) to four hundred dollars (\$400).

Page 3, line 11 proposes an increase to the allowable cost of "point-of-sale" items a wholesaler may provide to a retailer from two hundred fifty dollars (\$250) to five hundred dollars (\$500). **Lines 13 through 15** propose to strike out language that currently provides authority for the state tax commissioner to adjust the limitation for point-of-sale items to keep current with market conditions.

SECTION 3:

The Tax Commissioner is responsible for completing examinations to insure compliance with alcoholic beverage laws and proper tax reporting. In Section 3, we are proposing several amendments to the examination statute 5-03-06.

Page 3, line 25 proposes to include a "domestic winery" as an alcoholic beverage licensee whose books and records may be reviewed to ensure compliance with the alcohol statutes and rules.

Page 3, line 27 proposes to include a "domestic winery" as an alcoholic beverage licensee that may be subject to penalty and interest for failure to pay taxes in a timely manner.

Page 3 lines 29 through 31 and page 4 line 1 proposes to replace the current penalty provision of five percent per month for failure to pay taxes, and to be replaced with a five percent penalty application for the first month of delinquency, and one percent interest for each month thereafter until the taxes are paid. This penalty and interest application is similar to that presently provided in the other tax laws, such as sales tax.

Page 4 line 1 proposes the inclusion of a "domestic winery" as it relates to penalty and interest for failure to furnish tax reports as required.

Page 4 lines 4 through 16 propose provisions for a notice of determination process that is similar to our other tax types. As noted on lines 6, 7, and 8, a notice of determination of additional taxes owing must be provided no later than three years after the last day on which the return was due or three years after the return was filed.

The remaining changes listed on **page 4, lines 16, 17, 18, and 23** again propose including a domestic winery in the language that addresses possible enforcement actions that may arise in the event an attempt to evade taxes occurs.

SECTION 4:

Section 4 is for a new licensing requirement for alcoholic beverage suppliers ["supplier" is defined in the proposal found in Section 1 of this bill] selling their products to North Dakota wholesalers.

Page 4 lines 28 through 31 and page 5 lines 1 through 15, propose to require suppliers selling alcoholic beverages to North Dakota wholesalers to obtain licenses from the Tax Commissioner and impose a report filing requirement. Currently suppliers are required to make sure the brand labels of the products they sell to North Dakota wholesalers are registered with the Tax Commissioner (which registration requirement is the subject of the proposed repeal in Section 5 of this bill). The only reporting requirement currently in existence is found in North Dakota Administrative Code Section 81-12-01-03 for liquor suppliers and Section 81-12-01-04 for beer suppliers. The current method of administration is, at best, an honor system. The proposed changes are in line with the licensing requirement in other states and will provide the Tax Commissioner with a workable method of identifying the suppliers and of obtaining the information necessary to cross-check the information reported on the wholesaler's reports.

SECTION 5:

Section 5 requests the repeal of the brand label approval process.

Page 5 lines 16 and 17 proposes the elimination of the current requirement that before any brand of alcoholic beverage may be offered for sale in this state, the primary source of supply for the brand must register the brand annually with the tax commissioner.

Brand labels must already be approved by the federal Alcohol and Tobacco Tax and Trade Bureau. That agency thoroughly screens all types of alcoholic beverages and the brand labels affixed to them before they can be made available anywhere in the United States. We base our approval upon theirs.

The Tax Commissioner recommends a "do-pass" for HB 1157. If there are any questions, I will be glad to respond.