

2011 HOUSE FINANCE AND TAXATION

HB 1391

# 2011 HOUSE STANDING COMMITTEE MINUTES

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

HB 1391  
January 25, 2011  
#13345

☐ Conference Committee

Committee Clerk Signature

*Mary Bruen*

### Explanation or reason for introduction of bill/resolution:

A bill relating to prohibited replacement taxes; relating to the administration of the streamlined sales and use tax agreement; relating to fees in lieu of sales taxes; and to provide an effective date.

### Minutes:

See attached testimony #1

**Representative Drovdal:** Sponsor. Support. We bring forward from the streamline sales tax contacted our organization which we have been a part of since its inception at the turn of the century. The streamline sales tax group is working to address a lawsuit that stated North Dakota laws were too complicated and too complex and too burdensome for businesses so that we cannot require them to collect our sales tax which is due if they do not have (inaudible) in the state of North Dakota. To me this creates an unfair burden with our businesses that have to compete with the internet businesses and the catalog businesses which are the fastest growing businesses in the United States. Even during the recession they have double digit growth every year. So that is what the streamline sales tax is about and that is why it is before you. It's basically a housekeeping bill with one exception. The streamline sales tax exemption is not there to set policy for North Dakota. Currently North Dakota defines communication in one category and taxes at one rate with one little exception and that is the old one way page system somehow got off by itself all this time and is taxed at a different rate. This definition would bring that in to the fold of all other communications and it would be taxed at that rate. It does make a little difference. There are not a lot of people that use the one way communications anymore, most of them use cell phones or two way communications but that is the only policy change that I am aware of in this bill. I encourage you to look at the bill. I encourage you to pass the bill. The streamline sales tax has got 1,100 businesses that aren't located in North Dakota and are willing to collect our sales tax voluntarily and submit it to us. They get paid compensation at some level but it doesn't cover their costs but it does give them some level of compensation.

**Chairman Wesley R. Belter:** There is underling in this bill on fuel used by power motor vehicle, aircraft, locomotives, and water craft?

**Representative Drovdal:** That is correct but I would rather refer that question to Myles. I don't believe it makes any changes in the way we do our procedure now.

**Andy Peterson, President ND Chamber of Commerce:** Support. We have supported this since its inception and we continue to support this. We would urge you to pass this at it is.

**Myles Vosberg, Director of the Tax Administration Division of the Office of State Tax Commissioner:** Support. Please refer to attached testimony #1.

**Representative Dave Weiler:** So if we choose to not tax one way pagers and then we're not in compliance, is that correct?

**Myles Vosberg:** North Dakota will be in compliance if we tax all paging service or we exempt all paging service.

**Representative Scot Kelsh:** What is meant by model 1, 2, 3, or 4 sellers?

**Myles Vosberg:** The model 1 seller is a seller who uses a certified service provider who is a company that has created software that can be integrated into a retailer system so that it determines the correct taxability or exemption for a product and they provide services. A model 2 seller is a retailer that uses a software program to do those same calculations but doesn't hire a certified service provider to take care of all their sales tax responsibilities. A model 3 is a proprietary system so if we had a large retailer like a Penny's or a Sears that develop their own software system that the states approve and certify that is correctly calculating the tax. A model 4 is whoever is left.

**Jerry Hjelmstad, ND League of Cities:** Support. The North Dakota League of Cities has supported streamline sales tax provisions to allow for taxation of remote sales. In fairness to local businesses as it levels the playing field for them, they are collecting the state sales tax so by getting the out of state retailers to also have to collect the same sales tax this would issue a fairness to local retailers.

**Vice Chairman Craig Headland:** No opposition. No further testimony. Closed hearing on HB 1391.

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee  
Fort Totten Room, State Capitol

HB 1391  
January 25, 2011  
#13401

☐ Conference Committee

Committee Clerk Signature

*Mary Brucker*

## Explanation or reason for introduction of bill/resolution:

A bill relating to prohibited replacement taxes; relating to the administration of the streamlined sales and use tax agreement; relating to fees in lieu of sales taxes; and to provide an effective date.

## Minutes:

*No attachments.*

**Chairman Wesley R. Belter:** This issue here is whether we want to extend the compliance.

**Representative Shirley Meyer:** Instead of including one-way and two-way telecommunication services, wouldn't it be more logical to just blanket it and include everything?

**Dan Rouse, Legal Counsel to the Tax Commissioner's Office:** We deliberately put those words in for two reasons; one it was streamlined the agreement reflects but more importantly it left no doubt in our minds what was included by that phrase.

**Representative Shirley Meyer:** And that includes everything?

**Dan Rouse:** Yes ma'am.

**Representative Glen Froseth:** Made a motion for a DO PASS.

**Representative Shirley Meyer:** Seconded.

A roll call vote was taken: YES 11 NO 1 ABSENT 2  
MOTION CARRIED-DO PASS.

Representative Patrick Hatlestad will carry HB 1391.

## FISCAL NOTE

Requested by Legislative Council  
01/24/2011

### REVISION

Bill/Resolution No.: HB 1391

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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			\$18,800	\$1,600		
Expenditures						
Appropriations						

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

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1391 provides the necessary statutory updates to comply with the changes adopted by the streamlined sales and use tax governing board relative to the streamlined sales tax agreement.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

If enacted, HB 1391 is expected to increase sales and use tax revenues by \$20,400 during the 2011-13 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, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	01/24/2011

Date: 1-25-11  
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1391

House Finance and Taxation Committee

☐ Check here for Conference Committee

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

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Froseth Seconded By Rep. Meyer

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	✓		Scot Kelsh	✓	
Vice Chair. Craig Headland	✓		Shirley Meyer	✓	
Glen Froseth	✓		Lonny B. Winrich	✓	
Bette Grande	✓		Steven L. Zaiser	✓	
Patrick Hatlestad	✓				
Mark S. Owens	AB				
Roscoe Streyle	✓				
Wayne Trottier	✓				
Dave Weiler		✓			
Dwight Wrangham	AB				

Total (Yes) 11 No 1

Absent 2

Floor Assignment Rep. Hatlestad

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

**REPORT OF STANDING COMMITTEE**

**HB 1391: Finance and Taxation Committee (Rep. Belter, Chairman)** recommends **DO PASS** (11 YEAS, 1 NAYS, 2 ABSENT AND NOT VOTING). HB 1391 was placed on the Eleventh order on the calendar.

2011 SENATE FINANCE AND TAXATION

HB 1391



# 2011 SENATE STANDING COMMITTEE MINUTES

## Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

HB 1391  
3/15/2011  
Job Number 15463

☐ Conference Committee

*A. R. Miller*

### Explanation or reason for introduction of bill/resolution:

Relating to prohibited replacement taxes; relating to the administration of the streamline sales and use tax agreement; relating to fees in lieu of sales taxes

### Minutes:

Written Testimony Attached

**Chairman Cook** opened the hearing on HB 1391.

**Representative Drovdal** – The bill before you is to correct language, that has to do with the streamline sales tax agreement that we are members of. In 2001 as you are familiar with we went with a number of other states and I believe it's about 24 now that are full members, to work on simplifying our language in the century code but also the filing requirements required by retailers both in state and out of state in order to help collect the sales tax. One of the changes in this bill is in the communication section, it says that one way paging is also included with all other telecommunications. We currently do not tax one way paging. That is not a big item but just so everyone is aware.

**Myles Vosberg, Tax Department** – (See attached testimony A in favor of HB 1391)

**Senator Oehlke** – Are you able to develop that fiscal note because the telephone companies do that now?

**Myles Vosberg, Tax Department** – There are paging services in companies that provide that service, I think doctors are common to have pagers and so on. We developed the fiscal note by looking at the retailers that sell those products, we talked to a few of them and there aren't very many that sell the paging services, and how many services were one way and two way and so on.

**Senator Oehlke** – There has been a technology improvement to pagers too. On our search and rescue team I'm the only one that has an antique pager that I can't respond to. Everyone else has the kind of pager that they can talk back to the paging service on. Would that still be taxable because it's considered a page?

**Myles Vosberg, Tax Department** – It doesn't necessarily have to be voice but any time the person that has the pager has the ability to respond to the sender that would be considered two way.

**Chairman Cook** – Section 17 prohibits member states from creating replacement taxes on a product defined. We have 2 replacement taxes in the state of North Dakota don't we?

**Myles Vosberg, Tax Department** – We have 2 replacement taxes but they don't fit the definition of replacement taxes in the agreement because they were not defined products.

**Chairman Cook** – Those 2 replacement taxes are farm machinery and alcohol.

**Myles Vosberg, Tax Department** – Correct.

**Chairman Cook** – And we were forced to take them out of our sales tax code and put them in the gross receipts tax because we have a different rate than the 5% state rate, correct?

**Myles Vosberg, Tax Department** – That is correct.

**Senator Dotzenrod** – As I understand it states are free to select out certain items that could vary from one state to another that they want to exempt and they would still be in compliance with the agreement but it's only when they don't want to exempt it they want to tax it so they pick some in between position which might be 2 points off or 3 points off from the normal rate that is if you discount the sales tax, that's not really something that is allowed in the agreement.

**Myles Vosberg, Tax Department** – That is correct. They are totally able to decide what they want to tax and what they want to exempt. The only restriction there is if a product is defined, like we have defined telecommunication services, you cannot carve a section of that out and exempt part of telecommunications services unless it's defined. For our purposes the agreement has defined telecommunication services and they have defined various components of telecommunication services. So a state can choose to tax or exempt any of those.

**Jerry Hjelmstad, North Dakota League of Cities** – The League of Cities has supported streamline sales tax provisions to allow taxation of sales and to help level the playing field for our local retailers who support their community in many ways.

**Jeb Oehlke, North Dakota Chamber of Commerce** – The Chamber has also been a long time supporter of the streamline sales tax agreement and supports the continued compliance of that. One of the provisions we really like in this is the provision that eases the burden a little bit on out of state retailers with respect to having to report continuously when they have no tax obligation.

**Chairman Cook** asked for testimony opposed to HB 1391. No one came forward.

**Chairman Cook** asked for neutral testimony for HB 1391. No one came forward.

**Chairman Cook** closed the hearing on HB 1391.

**Senator Dotzenrod** – This affects the way states administer and report and deal with businesses that collect sales tax. Does this affect in any way what the cities put on when a city decides to have city sales tax, does that have any effect on this?

**Chairman Cook** – Yes, one of the three major requirements for city government, the sales tax base that they levy there or impose their sales tax on has to be the same as the state tax pays.

**Vice Chairman Miller** – I'll move a Do Pass.

Seconded by **Senator Hogue**.

**Chairman Cook** – Ask the clerk to take the roll. (7-0-0)

Carried by **Chairman Cook**.

Date: 3-15-11  
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1391

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

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

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment  
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Miller Seconded By Senator Hogue

Senators	Yes	No	Senators	Yes	No
Dwight Cook – Chairman	X		Jim Dotzenrod	X	
Joe Miller – Vice Chairman	X		Connie Triplett	X	
Randy Burckhard	X				
David Hogue	X				
Dave Oehlke	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Cook

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

**REPORT OF STANDING COMMITTEE**

**HB 1391: Finance and Taxation Committee (Sen. Cook, Chairman)** recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1391 was placed on the Fourteenth order on the calendar.

**2011 TESTIMONY**

**HB 1391**

Testimony #1 p. 1

**TESTIMONY OF THE OFFICE OF STATE TAX COMMISSIONER  
BEFORE THE  
HOUSE FINANCE AND TAXATION COMMITTEE**

**HOUSE BILL 1391**

**January 25, 2011**

Chairman Belter, members of the House Finance and Taxation Committee, I am Myles Vosberg, Director of the Tax Administration Division of the Office of State Tax Commissioner, and I am here today on behalf of the Commissioner to testify in support of House Bill 1391.

**BACKGROUND**

North Dakota has participated in the Streamlined Sales Tax project since 2001 and has been a full member of the Streamlined Sales Tax (SST) Agreement since 2005. We have requested law changes in every session since 2003 to remain in compliance with the agreement. As you know, the SST project has been a joint effort of state and local governments, the business community, tax practitioners, and many trade associations to simplify the sales tax laws in exchange for voluntary collection of sales and use taxes by retailers that have no legal obligation to collect.

North Dakota's approach to blend the provisions of the Streamlined Sales Tax Agreement into our law has been to adopt the entire agreement by reference in Section 1 of North Dakota Century Code Chapter 57-39.4 except for Articles III and V of the Agreement. The detailed language of each section of Articles III and V has been adopted in the remaining sections of Chapter 57-39.4. Most of the changes in this bill are amendments and additions to Articles III and V of the agreement. Although some of these changes will not directly impact our administration of the sales tax laws, they are included in N.D.C.C. Chapter 57-39.4 so our law continues to contain these sections of the agreement in their entirety.

Article III and V of the agreement specify the simplification and uniformity provisions that member states of the SST agreement have agreed to in an attempt to modernize and simplify the sales tax laws. Some of the agreement provisions are required while others are options a state may choose to adopt.

**EXPLANATION OF THE BILL**

**Sections 1, 2, 6 and 8** of the bill provide exceptions to two SST general principles which are 1) the state and local tax base must be the same, and 2) each taxing jurisdiction (state, city or county) may impose sales tax at only one rate. The amendments in these four sections add fuel products to the exception list and modify the list of exceptions so the same exceptions may apply to both the equal tax base principle and the one rate per jurisdiction principle

**Section 3** is the one amendment in this bill that will have an impact on the taxability of a product or service. North Dakota currently imposes sales tax on telecommunication services, which includes paging service. Our current rule states a telecommunication service must be a two-way service to be taxable. However, we have adopted the SST definition of paging service, which includes both one-way and two-way service. To be in compliance with the SST agreement, North Dakota must tax all paging service or exempt all paging service. As written, House Bill 1391 imposes tax on all paging services. We recognize this is a policy decision to be made by the legislature and a change in either direction will satisfy compliance with the agreement. This change is the only section of the bill that has a fiscal impact. Extending sales tax to all paging service will generate revenue of about \$20,400 in the following biennium. If all paging services were exempted from tax, the revenue loss would be approximately \$5,000.

**Section 4** adopts amendments to the SST agreement that are not included in Articles III and V. As I stated earlier, North Dakota has adopted the entire SST agreement by reference in Section 1 of North Dakota Century Code Chapter 57-39.4 except for Articles III and V. This section clarifies that amendments to the agreement since November 2002 except for the amendments in Articles III and V are also adopted by reference.

**Section 5** authorizes member states to contract with third parties to audit taxpayers on their behalf. North Dakota does not contract for audit services.

**Section 7** Addresses the SST central registration system. Prior to this change, a retailer registering through the central registration system was required to register in every SST member state and file at least one return each year. This amendment allows retailers to register in only member states where the retailer anticipates making sales.



**Sections 9 and 11** address the sourcing of “direct mail” transactions. North Dakota previously adopted the definition of direct mail in our sales and use tax laws. This amendment in the SST agreement defines two types of direct mail. “Advertising and promotion direct mail” is printed material that is intended to attract public attention to a product, person, business or organization and is sourced to the final delivery point of the product (to the recipients’ mailbox). “Other direct mail” includes all other direct mail and it is sourced where the product is printed. In most cases “other direct mail” consists of items like invoices, statements of account and payroll advices. North Dakota views the generation of these products to be a nontaxable service. Therefore the service provider pays tax on the materials consumed to provide this service and no tax is charged to the customer. These sourcing rules are consistent with our current policies.

**Sections 10 and 12** update general sourcing rules for states that use origin sourcing. This section of the agreement does not apply to North Dakota because we source transactions at the delivery point.

**Section 13** requires member states to allow a retailer 120 days to obtain an exemption certificate at the time of audit if the seller did not obtain a valid certificate at the time of sale. It also requires member states to post the standard SST exemption certificate on their websites.

**Sections 14 and 15** adopt the following uniform sales tax return and payment standards:

- If the due date of a return or payment falls on a weekend or holiday, states must extend the due date to the next business day. This is our current practice.
- States must accept the simplified electronic return (SER) from all retailers, not just those registered through the central registration system.
- Retailers that register through the central registration system are no longer required to file a return in a state if the retailer indicated during registration that they do not anticipate making sales in the state. Of course, returns are required if the business actually makes a sale into the state.
- States must adopt electronic transmission standards for electronic returns and payments.

**Section 16** allows a cap or threshold on clothing for states that had a cap or threshold in place before January 1, 2006. This amendment does not apply to North Dakota.

**Section 17** prohibits member states from creating replacement taxes on any product defined in the agreement.

**Section 18** provides an effective date of July 1, 2011.

**Section 19** repeals Chapter 57-39.3 of the Century Code, "In Lieu of Sales Tax Fees." This chapter was developed before the SST project started and would have allowed out-of-state retailers to elect to collect local sales tax at an average state-wide rate if federal legislation required all out-of-state retailers to collect tax on goods shipped into North Dakota. SST makes this chapter obsolete.

#### **CONCLUSION**

All of the changes in House Bill 1391 relate to amendments of the Streamline Sales Tax Agreement that have been agreed to by the member states. Most of the administrative provisions are already in practice in the Tax Commissioner's administration of the sales and use tax laws. Any administrative changes required are minor. Section 3 of the bill, however, does make a change to existing tax policy regarding the taxability of paging service and we leave that decision to tax or exempt up to the legislative body. The Tax Commissioner's Office respectfully requests favorable consideration on House Bill 1391. Thank you.

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**TESTIMONY OF THE OFFICE OF STATE TAX COMMISSIONER  
BEFORE THE  
SENATE FINANCE AND TAXATION COMMITTEE**

**HOUSE BILL 1391**

**March 15, 2011**

Chairman Cook, members of the Senate Finance and Taxation Committee, I am Myles Vosberg, Director of the Tax Administration Division of the Office of State Tax Commissioner, and I am here today on behalf of the Commissioner to testify in support of House Bill 1391.

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Article III and V of the agreement specify the simplification and uniformity provisions that member states of the SST agreement have agreed to in an attempt to modernize and simplify the sales tax laws. Some of the agreement provisions are required while others are options a state may choose to adopt.

## **EXPLANATION OF THE BILL**

**Sections 1, 2, 6 and 8** of the bill provide exceptions to two SST general principles which are 1) the state and local tax base must be the same, and 2) each taxing jurisdiction (state, city or county) may impose sales tax at only one rate. The amendments in these four sections add fuel products to the exception list and modify the list of exceptions so the same exceptions may apply to both the equal tax base principle and the one rate per jurisdiction principle

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**Section 7** addresses the SST central registration system. Prior to this change, a retailer registering through the central registration system was required to register in every SST member state and file at least one return each year. This amendment allows retailers to register in only member states where the retailer anticipates making sales.

**Sections 9 and 11** address the sourcing of “direct mail” transactions. North Dakota previously adopted the definition of direct mail in our sales and use tax laws. This amendment in the SST agreement defines two types of direct mail. “Advertising and promotion direct mail” is printed material that is intended to attract public attention to a product, person, business or organization and is sourced to the final delivery point of the product (to the recipients’ mailbox). “Other direct mail” includes all other direct mail and it is sourced where the product is printed. In most cases “other direct mail” consists of items like invoices, statements of account and payroll advices. North Dakota views the generation of these products to be a nontaxable service. Therefore the service provider pays tax on the materials consumed to provide this service and no tax is charged to the customer. These sourcing rules are consistent with our current policies.

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**Section 13** requires member states to allow a retailer 120 days to obtain an exemption certificate at the time of audit if the seller did not obtain a valid certificate at the time of sale. It also requires member states to post the standard SST exemption certificate on their websites.

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#### **CONCLUSION**

All of the changes in House Bill 1391 relate to amendments of the Streamline Sales Tax Agreement that have been agreed to by the member states. Most of the administrative provisions are already in practice in the Tax Commissioner's administration of the sales and use tax laws. Any administrative changes required are minor. Section 3 of the bill, however, does make a change to existing tax policy regarding the taxability of paging service and we leave that decision to tax or exempt up to the legislative body. The Tax Commissioner's Office respectfully requests favorable consideration on House Bill 1391. Thank you.