

2011 HOUSE AGRICULTURE

HB 1424

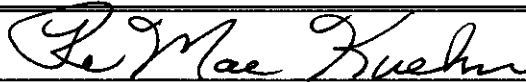
2011 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee
Peace Garden Room, State Capitol

HB 1424
February 3, 2011
Job #13935

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

(Fiscal note)

Relating to the sales and use tax exemption for chemicals used for agricultural purposes; and to provide an effective date.

Minutes:

Rep. Pollert, Co-Sponsor: I am an owner/operator of a grain elevator, feed plant, fertilizer, seed, and chemical business. This is a clarification. Section 8 & 9 deals with agrichemical tank cleaners and foam markers. I have not been charging sales tax for this item. The reason I haven't, is because I think of it as chemical. It is part of the chemical sale. The tax dept. has done audits in our type of businesses. The tax dept. says they owe sales tax. This bill clarifies that.

Representative Headland: Is it your belief that you are not the only ag dealer that isn't properly taxing?

Rep. Pollert: Probably 90-95% of us are not charging a sales tax. I would be found as not adhering to that law.

Representative Wall: Do you think the fiscal note is correct?

Rep. Pollert: I didn't do the fiscal note.

Representative Trottier: Are liquid soaps like Tide and Dove used as adjuvants?

Rep. Pollert: I've never done that. Whenever I buy a chemical tank cleaner, it is from the same company that I get generic chemicals from.

Representative Trottier: Is that a thing of the past to use liquid soaps?

Rep. Pollert: I don't want to go off label.

Terry Weckerly, Ag Retail Owner and President of ND Grain Growers Assn.:
(See attached #1)

I did get a tax audit last year. I found out I was supposed to be charging sales tax on these items. If I go into my chemical adjuvants book, it is there under adjuvants. For the fiscal note they went back three years. In three years of sales, we went through \$6 ½ million of sales per year. My tax, with compensation for not paying it on time, was \$2,000 in three years. I don't think it is a huge burden for the state to pass this bill. I just got back from a trip with 400 ag. retailers and none had been charging sales tax. I've never thought of using soap, never heard of it being used as a foaming product or tank cleaner.

Gary Knutson, ND Agricultural Assn.: We support this clarification as well.

Allan Tellmann, Chairman of ND Ag Coalition: (See attached #2)

Chairman Johnson: The companies like Amway that sell adjuvants by the drums, are they paying tax?

Allan Tellmann: That's a good question. There are other brands also.

Nathan Green, Pembina Co. farmer: I support HB 1424. These chemical tank cleaners and foam markers are agricultural chemicals and should be exempt as part of the law.

Representative Mueller: Have you been charged taxes on adjuvants?

Nathan Green: No

Chairman Johnson: Closed the hearing

Representative Belter: Moved to amend and add emergency clause for this season

Vice Chairman Kingsbury: Seconded it.

Voice Vote taken. Passed

Representative Wall: Moved **Do Pass as Amended** with the emergency clause attached

Representative Mueller: Seconded it.

A Roll Call vote was taken. Yes: 12, No: 0, Absent: 2,
Representatives Schatz and Boe)

DO PASS as amended carried

Representative Wall will carry the bill.

FISCAL NOTE
Requested by Legislative Council
04/20/2011

Amendment to: Engrossed
 HB 1424

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	(\$25,300)	(\$2,200)	(\$1,708,440)	(\$148,560)		
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).*

Engrossed HB 1424 with Conference Committee Amendments creates a sales and use tax exemption for agricultural tank cleaners and foam markers, expands the retail compensation allowance, and declares an emergency.

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 as an emergency measure, Eng. HB 1424 with Conference Committee Amendments is expected to reduce state general fund and state aid distribution fund revenues by an estimated \$27,500 in the current 2009-11 biennium, and \$55,000 in the 2011-13 biennium, relative to the sales tax exemption for tank cleaners and foam markers.

Additionally, the bill expands the compensation for sales tax permit-holders which is expected to reduce state general fund and state aid distribution fund revenues by approximately \$1.802 million during the final 18 months of 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:	04/20/2011

FISCAL NOTE
Requested by Legislative Council
02/07/2011

Amendment to: HB 1424

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
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Expenditures						
Appropriations						

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Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	02/07/2011

FISCAL NOTE

Requested by Legislative Council
01/19/2011

Bill/Resolution No.: HB 1424

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			(\$50,600)	(\$4,400)		
Expenditures						
Appropriations						

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

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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 1424 creates a sales and use tax exemption for agricultural tank cleaners and foam markers.

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 1424 is expected to reduce state general fund and state aid distribution fund revenues by an estimated \$55,000 during the 2011-13 biennium.

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

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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.*

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Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	02/01/2011

Date: 2/3/11

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB1424

House **Agriculture** Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended

☐ Rerefer to Appropriations

Motion Made By Representative Belter Seconded By Vice Chairman Kingsbury

Representatives	Yes	No	Representatives	Yes	No
Dennis Johnson, Chair			Tracy Boe		
Joyce Kingsbury, Vice Chair			Tom Conklin		
Wesley Belter			Richard Holman		
Craig Headland			Phillip Mueller		
David Rust					
Mike Schatz					
Jim Schmidt					
Wayne Trottier					
John Wall					
Dwight Wrangham					

Total Yes _____ No _____

Absent _____

Bill Carrier _____

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

Amendment for emergency clause

February 3, 2011

VR
2/3/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1424

Page 1, line 3, remove "and"

Page 1, line 3, after "date" insert "; and to declare an emergency"

Page 1, after line 24, insert:

"SECTION 4. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Date: 2/3/11

Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB1424

House **Agriculture** Committee

Legislative Council Amendment Number 11.8238.01001

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

☐ Rerefer to Appropriations

Motion Made By Representative Wall Seconded By Vice Chairman Mueller

Representatives	Yes	No	Representatives	Yes	No
Dennis Johnson, Chair	X		Tracy Boe	AB	
Joyce Kingsbury, Vice Chair	X		Tom Conklin	X	
Wesley Belter	X		Richard Holman	X	
Craig Headland	X		Phillip Mueller	X	
David Rust	X				
Mike Schatz	AB				
Jim Schmidt	X				
Wayne Trottier	X				
John Wall	X				
Dwight Wrangham	X				

Total **Yes** 12 **No** 0

Absent 2

Bill Carrier Representative Wall

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

Amendment for emergency clause

REPORT OF STANDING COMMITTEE

HB 1424: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1424 was placed on the Sixth order on the calendar.

Page 1, line 3, remove "and"

Page 1, line 3, after "date" insert "; and to declare an emergency"

Page 1, after line 24, insert:

"SECTION 4. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2011 SENATE FINANCE AND TAXATION

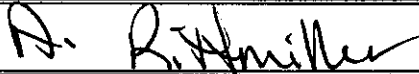
HB 1424

2011 SENATE STANDING COMMITTEE MINUTES

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

HB 1424
3/14/2011
Job Number 15342

☐ Conference Committee



Explanation or reason for introduction of bill/resolution:

Relating to the sales and use tax exemption for chemicals used for agricultural purposes

Minutes:

Written Testimony Attached

Chairman Cook opened the hearing on HB 1424.

Representative Pollert – HB 1424 I feel is more of a clarification than it is of a tax, not charging tax on ag chemical tank cleaners and foam markers. We sell a fair amount of chemical and included in that is these foam markers and tank cleaners. My whole life as an elevator guy I've never charged sales tax for tank cleaners. As I understand the Tax Department has come in and done audits and have said you should be charging sales tax on them. That is why this bill is in front of you, is for a clarification.

Dan Wogsland, North Dakota Grain Growers – We are in support of HB 1424. The intern has got some testimony from my president Terry Weckerly (attachment A).

Senator Oehlke – It says chemicals used to preserve agricultural crops being stored as seeds, roots, bulbs, small plants to commercial users or that type of thing. Does it work the same for a flower shop as it does for John the farmer?

Dan Wogsland, North Dakota Grain Growers – What you have in this law is current state law. What we are trying to do is clarify right here, these 2 products, the ag chem tank cleaner and foam marker use pretty much exclusively in the agricultural business so that's the reason for this.

Senator Oehlke – I just wanted to know if the average flower shop gets a break on this tax as well.

Senator Hogue – I had the impression that a lot of farmers who have the GPS aren't using the foam marker material anymore. I was wondering if you could tell us in a big scale what has been the consumption of these foam marker products in the last 5 years.

Dan Wogsland, North Dakota Grain Growers – My sense would be that it is going down because of the GPS. None the less many of these sprayers, in case something would

happen to the GPS or something goes out, they still have this on hand but my sense would be that you are seeing a market decrease in the use of at least the foam marker solution.

Sandy Clark, North Dakota Farm Bureau – We also stand in support of this bill. We concur that this is a clarification of the law and has been interpreted differently by the Tax Department and differently with retailers and so we think this is a good way to have that clarified.

Chairman Cook – The only thing I don't understand with all this testimony is how it's a clarification. It's black and white in the law.

Sandy Clark, North Dakota Farm Bureau – It doesn't say that it is or it isn't. It is chemical.

Chairman Cook – You are saying there is nowhere in the law where it says it is taxed?

Sandy Clark, North Dakota Farm Bureau – No it doesn't.

Allan Tellmann, North Dakota Ag Coalition – (See attached testimony B in favor of HB 1424)

Vice Chairman Miller – The adjuvant part, that's the part where I'd say that's kind of the all encompassing part. Would you agree that should have been interpreted as part of that?

Allan Tellmann, North Dakota Ag Coalition – Yes I would. In fact we operate a small grains farm and use chemicals. This weekend I went to my file and got out the North Dakota Weed Control Guide and looked up adjuvant. Under adjuvant there is many different products tank spray cleaners so there are a wide variety of chemical additives in the adjuvant category and after going through my booklet here I can see merit to this bill.

Chairman Cook – What else is an adjuvant used for?

Allan Tellmann, North Dakota Ag Coalition – Mainly for improving a spray's effectiveness. It could be an adjuvant that help keep down drift, the affect of the water droplet as it comes out of the spray. They can be designed to better cover the plant; the plant actually absorbs the chemical better. There are oil based adjuvants that are designed to cling on to the plant longer stimulating the effectiveness. It makes operation more effective.

Chairman Cook asked for testimony opposed to HB 1424. No one came forward.

Chairman Cook asked for neutral testimony for HB 1424. No one came forward.

Chairman Cook asked Blane Braunberger to come forward to answer questions.

Chairman Cook – Fiscal note, \$27,500 for the current biennium, how does that figure?

Blane Braunberger, Tax Department – That would have been probably related to estimates from our audit area.

Chairman Cook – Do you have audits out there that you are going to forgive?

Blane Braunberger, Tax Department – No, that would have been audits that we've already conducted that we use for a basis for determining some kind of rational numbers.

Chairman Cook – Did this have a different effective date when it was introduced?

Blane Braunberger, Tax Department – My understanding is that there was no emergency clause on it and that was added on the House side.

Chairman Cook – Section 3 of the bill says this act is effective for taxable events beginning after June 30, 2011. Section 4 is the emergency clause. Does the emergency clause if it's signed prior to June 30, 2011 trump the effective date in section 3?

Blane Braunberger, Tax Department – That is my understanding.

Chairman Cook – So that \$27,000 is because of the emergency clause?

Blane Braunberger, Tax Department – I would have to study this fiscal note more closely I do not know if that was prior to this engrossed bill.

Chairman Cook – To what degree have you done audits across the state that focused on this problem? Or would you prefer not to answer that question?

Blane Braunberger, Tax Department – I would prefer not to.

Chairman Cook – Are we creating a situation here where a product is taxable based on how it is used?

Blane Braunberger, Tax Department – Based on conversations we had with the industry we felt that with this type of classification as far as exempting it that we would hope to narrowly exempt the intended purpose of the exemption and not make it too broad so it would bring in other types of non agricultural type cleaners.

Chairman Cook – So we are exempting adjuvants, agricultural tank cleaners, and foam markers no matter how it is used or purchased? It's totally exempt or does it have to be used in an agricultural application?

Blane Braunberger, Tax Department – It would have to be used for agricultural purpose.

Chairman Cook – If I buy it I pay tax on it?

Blane Braunberger, Tax Department – That is correct.

Chairman Cook closed the hearing on HB 1424.

2011 SENATE STANDING COMMITTEE MINUTES

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

HB 1424
3/28/2011
Job Number 16041

☐ Conference Committee

A. Rittmire

Explanation or reason for introduction of bill/resolution:

Relating to the sales and use tax exemption for chemicals used for agricultural purposes

Minutes:

Committee Work

Chairman Cook opened discussion on HB 1424.

Chairman Cook – Earlier this session we passed a bill dealing with compensating retailers for collecting and remitting sales tax. That was killed on the House floor. I think as I listen to the discussions over there that they had in the House, it wasn't so much of 'I don't want to give retailers increased compensation' as much as it was fear of the boogie man of streamline sales tax. What I have done is I have drafted amendments that change the amount of compensation we had in the sales tax compensation bill that we passed so that it is absolutely got no connections to getting federal authority to mandate the collection of sales tax by all remote sellers. The only change that you have is that you remember today we compensate at 1.5%, it's capped at \$85, the bill we passed removed the cap and it created 2 new tiers, one at 65% and another at 33%. I have removed the 65% tier. So the cap would be removed and you'd get compensated 1.5% up to \$6,250 of sales tax remitted per month and then after that you would get compensated 33%. That is all it does.

Senator Dotzenrod – Is there a fiscal note?

Chairman Cook – Yes there is. I will get it before we vote; we will come back to this.

Break followed.

Chairman Cook reopened discussion on HB 1424.

Senator Triplett – Can you remind me what bill was killed in the House that this comes from?

Chairman Cook – SB 2238. It's annual so the fiscal note I assume would be \$1.95 million.

Senator Dotzenrod – On the fiscal note I was surprised to see that there is a gain for the cities and counties. How do they get a gain out of these amendments?

Chairman Cook – Today cities and counties that levy a sales tax determine themselves what their rate of compensation is. The amendments that we have here will require the cities and counties to compensate at the same level that the state compensates, so all of them will compensate the same. That means that some cities who compensate at 0 will be required to start compensating, others who compensate at a higher rate than this level will come down to this level and that is where there is some gain. The state wide average today for compensating retailers at the local level, the average is higher than what this new rate would be.

Vice Chairman Miller – I'll move the amendments to HB 1424.

Seconded by **Senator Triplett**.

Senator Dotzenrod – That portion where the retailers have to get in compliance then, is that on page 2 there, that underlined language? They have to be in compliance with chapter 57-39.2 or 40?

Chairman Cook – Yes, and the rates you will see are on the top of page 5 and toward the bottom of page 6 for the use tax. There is no mechanism, in the past we had set aside $\frac{3}{4}$ of a percent of all sales tax and that had to go out in compensation and those rates would change annually. Now the rates are fixed in law.

Chairman Cook – All in favor of the amendments say yea, opposed? (7-0-0)

Vice Chairman Miller – I'll move a Do Pass as Amended and rerefer to Appropriations.

Seconded by **Senator Dotzenrod**.

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

Carried by **Chairman Cook**.

FISCAL NOTE
Requested by Legislative Council
03/30/2011

Amendment to: Engrossed
HB 1424

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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
				\$217,400				

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If enacted as an emergency measure, Eng. HB 1424 with Senate Amendments is expected to reduce state general fund and state aid distribution fund revenues by an estimated \$27,500 in the current 2009-11 biennium, and \$55,000 in the 2011-13 biennium, relative to the sales tax exemption for tank cleaners and foam markers.

Additionally, the bill expands compensation for retailers which is expected to reduce state general fund and state aid distribution fund revenues by approximately \$1.95 million during the final 18 months of the 2011-13 biennium. This provision is also expected to increase city sales tax revenues by an estimated \$217,400 by reducing the overall level of local compensation to retailers.

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Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	03/30/2011

FISCAL NOTE

Requested by Legislative Council
02/07/2011

Amendment to: HB 1424

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Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	02/07/2011

FISCAL NOTE
Requested by Legislative Council
01/19/2011

Bill/Resolution No.: HB 1424

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Appropriations						

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HB 1424 creates a sales and use tax exemption for agricultural tank cleaners and foam markers.

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 1424 is expected to reduce state general fund and state aid distribution fund revenues by an estimated \$55,000 during the 2011-13 biennium.

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Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	02/01/2011

March 23, 2011

Handwritten:
3-23-11
1 of 7

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1424

Page 1, line 1, after "reenact" insert "subsection 2 of section 11-09.1-05, section 40-05.1-06,"

Page 1, line 1, replace the second "and" with ", sections 57-39.2-12.1, 57-39.5-04, and 57-39.6-04,"

Page 1, line 2, after "57-40.2-04" insert ", and section 57-40.2-07.1"

Page 1, line 2, after "to" insert "compensation allowable to retailers for expenses associated with the collection, reporting, and remittance of state and local option sales, use, and gross receipts taxes and"

Page 1, after line 5, insert:

"SECTION 1. AMENDMENT. Subsection 2 of section 11-09.1-05 of the North Dakota Century Code is amended and reenacted as follows:

2. Control its finances and fiscal affairs; appropriate money for its purposes, and make payments of its debts and expenses; subject to the limitations of this section levy and collect property taxes, sales and use taxes, farm machinery gross receipts taxes, alcoholic beverage gross receipts taxes, motor vehicle fuels and special fuels taxes, motor vehicle registration fees, and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings, and improvements; contract debts, borrow money, issue bonds, warrants, and other evidences of indebtedness; establish charges for any county or other services to the extent authorized by state law; and establish debt and mill levy limitations. Notwithstanding any authority granted under this chapter, all property must be assessed in a uniform manner as prescribed by the state board of equalization and the state supervisor of assessments and all taxable property must be taxed by the county at the same rate unless otherwise provided by law. A charter or ordinance or act of a governing body of a home rule county may not supersede any state law that determines what property or acts are subject to, or exempt from, ad valorem taxes. A charter or ordinance or act of the governing body of a home rule county may not supersede section 11-11-55.1 relating to the sixty percent petition requirement for improvements and of section 40-22-18 relating to the barring proceeding for improvement projects. After December 31, 2005, sales and use taxes, farm machinery gross receipts taxes, and alcoholic beverage gross receipts taxes levied under this chapter:
 - a. Must conform in all respects with regard to the taxable or exempt status of items under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed at multiple rates with the exception of sales of electricity, piped natural or artificial gas, or other heating fuels delivered by the seller or the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

- 2x
- b. May not be newly imposed or changed except to be effective on the first day of a calendar quarterly period after a minimum of ninety days' notice to the tax commissioner or, for purchases from printed catalogs, on the first day of a calendar quarter after a minimum of one hundred twenty days' notice to the seller.
 - c. May not be limited to apply to less than the full value of the transaction or item as determined for state sales and use tax, except for farm machinery gross receipts tax purposes.
 - d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1 and must be administered by the tax commissioner in accordance with the relevant provisions of chapter 57-39.2, including reporting and paying requirements, correction of errors, payment of refunds, and application of penalty and interest.

After December 31, 2005, any portion of a charter or any portion of an ordinance or act of a governing body of a home rule county passed pursuant to a charter which does not conform to the requirements of this subsection or the retailer compensation provisions of chapter 57-39.2 or 57-40.2 is invalid to the extent that it does not conform. The invalidity of a portion of a charter or ordinance or act of a governing body of a home rule county because it does not conform to this subsection does not affect the validity of any other portion of the charter or ordinance or act of a governing body of a home rule county or the eligibility for a refund under section 57-01-02.1. Any taxes imposed under this chapter on farm machinery, farm irrigation equipment, and farm machinery repair parts used exclusively for agricultural purposes, or on alcoholic beverages, which were in effect on December 31, 2005, become gross receipts taxes after December 31, 2005.

SECTION 2. AMENDMENT. Section 40-05.1-06 of the North Dakota Century Code is amended and reenacted as follows:

40-05.1-06. Powers.

From and after the filing with the secretary of state of a charter framed and approved in reasonable conformity with the provisions of this chapter, such city, and the citizens thereof, shall, if included in the charter and implemented through ordinances, have the following powers set out in this chapter:

- 1. To acquire, hold, operate, and dispose of property within or without the corporate limits, and, subject to chapter 32-15, exercise the right of eminent domain for such purposes.
- 2. To control its finances and fiscal affairs; to appropriate money for its purposes, and make payment of its debts and expenses; to levy and collect taxes, excises, fees, charges, and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings, and improvements; to contract debts, borrow money, issue bonds; warrants, and other evidences of indebtedness; to establish charges for any city or other services; and to establish debt and mill levy limitations. Notwithstanding any authority granted under this chapter, all property must be assessed in a uniform manner as prescribed by the state

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board of equalization and the state supervisor of assessments and all taxable property must be taxed by the city at the same rate unless otherwise provided by law. The authority to levy taxes under this subsection does not include authority to impose income taxes.

3. To fix the fees, number, terms, conditions, duration, and manner of issuing and revoking licenses in the exercise of its governmental police powers.
4. To provide for city officers, agencies, and employees, their selection, terms, powers, duties, qualifications, and compensation. To provide for change, selection, or creation of its form and structure of government, including its governing body, executive officer, and city officers.
5. To provide for city courts, their jurisdiction and powers over ordinance violations, duties, administration, and the selection, qualifications, and compensation of their officers; however, the right of appeal from judgment of such courts shall not be in any way affected.
6. To provide for all matters pertaining to city elections, except as to qualifications of electors.
7. To provide for the adoption, amendment, and repeal of ordinances, resolutions, and regulations to carry out its governmental and proprietary powers and to provide for public health, safety, morals, and welfare, and penalties for a violation thereof.
8. To lay out or vacate streets, alleys, and public grounds, and to provide for the use, operation, and regulation thereof.
9. To define offenses against private persons and property and the public health, safety, morals, and welfare, and provide penalties for violations thereof.
10. To engage in any utility, business, or enterprise permitted by the constitution or not prohibited by statute or to grant and regulate franchises therefor to a private person, firm, corporation, or limited liability company.
11. To provide for zoning, planning, and subdivision of public or private property within the city limits. To provide for such zoning, planning, and subdivision of public or private property outside the city limits as may be permitted by state law.
12. To levy and collect franchise and license taxes for revenue purposes.
13. To exercise in the conduct of its affairs all powers usually exercised by a corporation.
14. To fix the boundary limits of said city and the annexation and deannexation of territory adjacent to said city except that such power shall be subject to, and shall conform with the state law made and provided.
15. To contract with and receive grants from any other governmental entity or agency, with respect to any local, state, or federal program, project, or works.

16. To impose registration fees on motor vehicles, farm machinery gross receipts taxes, alcoholic beverage gross receipts taxes, or sales and use taxes in addition to any other taxes imposed by law. After December 31, 2005, sales and use taxes and gross receipts taxes levied under this chapter:
- a. Must conform in all respects with regard to the taxable or exempt status of items under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed at multiple rates with the exception of sales of electricity, piped natural or artificial gas, or other heating fuels delivered by the seller or the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.
 - b. May not be newly imposed or changed except to be effective on the first day of a calendar quarterly period after a minimum of ninety days' notice to the tax commissioner or, for purchases from printed catalogs, on the first day of a calendar quarter after a minimum of one hundred twenty days' notice to the seller.
 - c. May not be limited to apply to less than the full value of the transaction or item as determined for state sales and use tax purposes, except for farm machinery gross receipts tax.
 - d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1 and must be administered by the tax commissioner in accordance with the relevant provisions of chapter 57-39.2, including reporting and paying requirements, correction of errors, payment of refunds, and application of penalty and interest.

It is the intention of this chapter to grant and confirm to the people of all cities coming within its provisions the full right of self-government in both local and city matters within the powers enumerated herein. The statutes of the state of North Dakota, so far as applicable, shall continue to apply to home rule cities, except insofar as superseded by the charters of such cities or by ordinance passed pursuant to such charters.

After December 31, 2005, any portion of a charter or any portion of an ordinance passed pursuant to a charter which does not conform to the requirements of subsection 16 or the retailer compensation provisions of chapter 57-39.2 or 57-40.2 is invalid to the extent that it does not conform. The invalidity of a portion of a charter or ordinance because it does not conform to subsection 16 does not affect the validity of any other portion of the charter or ordinance or the eligibility for a refund under section 57-01-02.1. Any taxes imposed under this chapter on farm machinery, farm irrigation equipment, and farm machinery repair parts used exclusively for agricultural purposes, or on alcoholic beverages, which were in effect on December 31, 2005, become gross receipts taxes after December 31, 2005."

Page 1, after line 14, insert:

"SECTION 4. AMENDMENT. Section 57-39.2-12.1 of the North Dakota Century Code is amended and reenacted as follows:

1.
 - a. A retailer required registered to report and pay monthly remit sales, use, or gross receipts tax imposed under section 57-39.2-12 chapter 57-39.2, 57-39.5, 57-39.6, or 57-40.2 may deduct and retain one and one-half percent of the tax due. The aggregate of deductions allowed by this section and section 57-40.2-07.1 may not exceed eighty-five dollars per month. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 2 or 3 for the same period from the tax remitted to the tax commissioner compensation or a monetary allowance as provided in this subsection.
 - b. The following two rates of compensation apply to the combined state and local options sales, use, and gross receipts taxes remitted for each month of activity included in a sales, use, or gross receipts tax return:
 - (1) One and one-half percent of the first six thousand two hundred fifty dollars of tax.
 - (2) Thirty-three one-hundredths of one percent of tax amounts greater than six thousand two hundred fifty dollars but less than seven hundred fifty thousand dollars of tax.
2. A certified service provider that contracts with retailers to calculate, collect, and remit tax due on behalf of retailers may deduct and retain from the tax remitted to the tax commissioner compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board effective June 1, 2006. The compensation provided in this subsection applies only to tax remitted by certified service providers on behalf of retailers that are remote sellers registered to collect sales and use tax in this state under chapter 57-39.4. Certified service providers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 3 for the same period.
3. A retailer that is a remote seller registered to collect sales and use tax under chapter 57-39.4 and that uses a certified automated system to calculate, report, and remit tax due under chapters 57-39.2, 57-39.4, and 57-40.2 may deduct and retain compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board during its December 2006 meeting. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 2 for the same period.
4. For purposes of this section, "remote seller" means a retailer that does not have an adequate physical presence to establish nexus in this state for sales and use tax purposes.
5. Compensation may not be deducted and retained under this section unless the tax due is paid within the time limitations under section 57-39.2-12 or 57-40.2-07 or chapter 57-39.4.
6. The deduction allowed retailers or certified service providers by this section is to reimburse retailers directly or indirectly for expenses incurred

in keeping records, preparing and filing returns, remitting the tax, and supplying information to the tax commissioner upon request.

SECTION 5. AMENDMENT. Section 57-39.5-04 of the North Dakota Century Code is amended and reenacted as follows:

57-39.5-04. Administration.

The provisions of chapter 57-39.2 pertaining to administration of the retail sales tax, including provisions for refund, credits, retailer compensation, or adoption of rules, not in ~~compliance~~conflict with this chapter or federal law, govern the administration of the gross receipts tax imposed in this chapter.

SECTION 6. AMENDMENT. Section 57-39.6-04 of the North Dakota Century Code is amended and reenacted as follows:

57-39.6-04. Administration.

The provisions of chapter 57-39.2, pertaining to administration of the retail sales tax, including provisions for refund, credits, retailer compensation, or adoption of rules, not in conflict with this chapter or federal law, govern the administration of the gross receipts tax imposed in this chapter."

Page 1, after line 23, insert:

"SECTION 8. AMENDMENT. Section 57-40.2-07.1 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-07.1. Deduction to reimburse retailer for administrative expenses.

1.
 - a. A retailer required registered to report and pay monthly remit sales, use, or gross receipts tax imposed under section 57-40.2-07 chapter 57-39.2, 57-39.5, 57-39.6, or 57-40.2 may deduct and retain one and one-half percent of the tax due. The aggregate of deductions allowed by this section and section 57-39.2-12.1 may not exceed eighty-five dollars per month. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 2 or 3 for the same period from the tax remitted to the tax commissioner compensation or a monetary allowance as provided in this subsection.
 - b. The following two rates of compensation apply to the combined state and local options sales, use, and gross receipts taxes remitted for each month of activity included in a sales, use, or gross receipts tax return:
 - (1) One and one-half percent of the first six thousand two hundred fifty dollars of tax.
 - (2) Thirty-three one-hundredths of one percent of tax amounts greater than six thousand two hundred fifty dollars but less than seven hundred fifty thousand dollars of tax.
2. A certified service provider that contracts with retailers to calculate, collect, and remit tax due on behalf of retailers may deduct and retain from the tax remitted to the tax commissioner compensation or a monetary allowance

up to the amount approved by the streamlined sales and use tax governing board effective June 1, 2006. The compensation provided in this subsection applies only to tax remitted by certified service providers on behalf of retailers that are remote sellers registered to collect sales and use tax in this state under chapter 57-39.4. Certified service providers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 3 for the same period.

3. A retailer that is a remote seller registered to collect sales and use tax under chapter 57-39.4 and that uses a certified automated system to calculate, report, and remit tax due under chapters 57-39.2, 57-39.4, and 57-40.2 may deduct and retain compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board during its December 2006 meeting. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 2 for the same period.
4. For purposes of this section, "remote seller" means a retailer that does not have an adequate physical presence to establish nexus in this state for sales and use tax purposes.
5. Compensation may not be deducted and retained under this section unless the tax due is paid within the time limitations under section 57-39.2-12 or 57-40.2-07 or chapter 57-39.4.
6. The deduction allowed retailers or certified service providers by this section is to reimburse retailers directly or indirectly for expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying information to the tax commissioner upon request."

Page 2, line 1, replace "This" with "Sections 3 and 7 of this"

Page 2, line 1, replace "is" with "are"

Page 2, line 2, after "2011" insert ", and sections 1, 2, 4, 5, 6, and 8 of this Act are effective for taxable events occurring after December 31, 2011"

Renumber accordingly

Date: 3-28-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1424

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 Triplett

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

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

Verbal vote

Date: 3-28-11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1424

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 _____ Seconded By _____

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 1424, as engrossed: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1424 was placed on the Sixth order on the calendar.

Page 1, line 1, after "reenact" insert "subsection 2 of section 11-09.1-05, section 40-05.1-06,"

Page 1, line 1, replace the second "and" with ", sections 57-39.2-12.1, 57-39.5-04, and 57-39.6-04,"

Page 1, line 2, after "57-40.2-04" insert ", and section 57-40.2-07.1"

Page 1, line 2, after "to" insert "compensation allowable to retailers for expenses associated with the collection, reporting, and remittance of state and local option sales, use, and gross receipts taxes and"

Page 1, after line 5, insert:

"SECTION 1. AMENDMENT. Subsection 2 of section 11-09.1-05 of the North Dakota Century Code is amended and reenacted as follows:

2. Control its finances and fiscal affairs; appropriate money for its purposes, and make payments of its debts and expenses; subject to the limitations of this section levy and collect property taxes, sales and use taxes, farm machinery gross receipts taxes, alcoholic beverage gross receipts taxes, motor vehicle fuels and special fuels taxes, motor vehicle registration fees, and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings, and improvements; contract debts, borrow money, issue bonds, warrants, and other evidences of indebtedness; establish charges for any county or other services to the extent authorized by state law; and establish debt and mill levy limitations. Notwithstanding any authority granted under this chapter, all property must be assessed in a uniform manner as prescribed by the state board of equalization and the state supervisor of assessments and all taxable property must be taxed by the county at the same rate unless otherwise provided by law. A charter or ordinance or act of a governing body of a home rule county may not supersede any state law that determines what property or acts are subject to, or exempt from, ad valorem taxes. A charter or ordinance or act of the governing body of a home rule county may not supersede section 11-11-55.1 relating to the sixty percent petition requirement for improvements and of section 40-22-18 relating to the barring proceeding for improvement projects. After December 31, 2005, sales and use taxes, farm machinery gross receipts taxes, and alcoholic beverage gross receipts taxes levied under this chapter:
 - a. Must conform in all respects with regard to the taxable or exempt status of items under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed at multiple rates with the exception of sales of electricity, piped natural or artificial gas, or other heating fuels delivered by the seller or the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.
 - b. May not be newly imposed or changed except to be effective on the first day of a calendar quarterly period after a minimum of ninety days' notice to the tax commissioner or, for purchases from printed catalogs, on the first day of a calendar quarter after a minimum of one hundred twenty days' notice to the seller.

- c. May not be limited to apply to less than the full value of the transaction or item as determined for state sales and use tax, except for farm machinery gross receipts tax purposes.
- d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1 and must be administered by the tax commissioner in accordance with the relevant provisions of chapter 57-39.2, including reporting and paying requirements, correction of errors, payment of refunds, and application of penalty and interest.

After December 31, 2005, any portion of a charter or any portion of an ordinance or act of a governing body of a home rule county passed pursuant to a charter which does not conform to the requirements of this subsection or the retailer compensation provisions of chapter 57-39.2 or 57-40.2 is invalid to the extent that it does not conform. The invalidity of a portion of a charter or ordinance or act of a governing body of a home rule county because it does not conform to this subsection does not affect the validity of any other portion of the charter or ordinance or act of a governing body of a home rule county or the eligibility for a refund under section 57-01-02.1. Any taxes imposed under this chapter on farm machinery, farm irrigation equipment, and farm machinery repair parts used exclusively for agricultural purposes, or on alcoholic beverages, which were in effect on December 31, 2005, become gross receipts taxes after December 31, 2005.

SECTION 2. AMENDMENT. Section 40-05.1-06 of the North Dakota Century Code is amended and reenacted as follows:

40-05.1-06. Powers.

From and after the filing with the secretary of state of a charter framed and approved in reasonable conformity with the provisions of this chapter, such city, and the citizens thereof, shall, if included in the charter and implemented through ordinances, have the following powers set out in this chapter:

- 1. To acquire, hold, operate, and dispose of property within or without the corporate limits, and, subject to chapter 32-15, exercise the right of eminent domain for such purposes.
- 2. To control its finances and fiscal affairs; to appropriate money for its purposes, and make payment of its debts and expenses; to levy and collect taxes, excises, fees, charges, and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings, and improvements; to contract debts, borrow money, issue bonds, warrants, and other evidences of indebtedness; to establish charges for any city or other services; and to establish debt and mill levy limitations. Notwithstanding any authority granted under this chapter, all property must be assessed in a uniform manner as prescribed by the state board of equalization and the state supervisor of assessments and all taxable property must be taxed by the city at the same rate unless otherwise provided by law. The authority to levy taxes under this subsection does not include authority to impose income taxes.
- 3. To fix the fees, number, terms, conditions, duration, and manner of issuing and revoking licenses in the exercise of its governmental police powers.
- 4. To provide for city officers, agencies, and employees, their selection, terms, powers, duties, qualifications, and compensation. To provide for

change, selection, or creation of its form and structure of government, including its governing body, executive officer, and city officers.

5. To provide for city courts, their jurisdiction and powers over ordinance violations, duties, administration, and the selection, qualifications, and compensation of their officers; however, the right of appeal from judgment of such courts shall not be in any way affected.
6. To provide for all matters pertaining to city elections, except as to qualifications of electors.
7. To provide for the adoption, amendment, and repeal of ordinances, resolutions, and regulations to carry out its governmental and proprietary powers and to provide for public health, safety, morals, and welfare, and penalties for a violation thereof.
8. To lay out or vacate streets, alleys, and public grounds, and to provide for the use, operation, and regulation thereof.
9. To define offenses against private persons and property and the public health, safety, morals, and welfare, and provide penalties for violations thereof.
10. To engage in any utility, business, or enterprise permitted by the constitution or not prohibited by statute or to grant and regulate franchises therefor to a private person, firm, corporation, or limited liability company.
11. To provide for zoning, planning, and subdivision of public or private property within the city limits. To provide for such zoning, planning, and subdivision of public or private property outside the city limits as may be permitted by state law.
12. To levy and collect franchise and license taxes for revenue purposes.
13. To exercise in the conduct of its affairs all powers usually exercised by a corporation.
14. To fix the boundary limits of said city and the annexation and deannexation of territory adjacent to said city except that such power shall be subject to, and shall conform with the state law made and provided.
15. To contract with and receive grants from any other governmental entity or agency, with respect to any local, state, or federal program, project, or works.
16. To impose registration fees on motor vehicles, farm machinery gross receipts taxes, alcoholic beverage gross receipts taxes, or sales and use taxes in addition to any other taxes imposed by law. After December 31, 2005, sales and use taxes and gross receipts taxes levied under this chapter:
 - a. Must conform in all respects with regard to the taxable or exempt status of items under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed at multiple rates with the exception of sales of electricity, piped natural or artificial gas, or other heating fuels delivered by the seller or the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

- b. May not be newly imposed or changed except to be effective on the first day of a calendar quarterly period after a minimum of ninety days' notice to the tax commissioner or, for purchases from printed catalogs, on the first day of a calendar quarter after a minimum of one hundred twenty days' notice to the seller.
- c. May not be limited to apply to less than the full value of the transaction or item as determined for state sales and use tax purposes, except for farm machinery gross receipts tax.
- d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1 and must be administered by the tax commissioner in accordance with the relevant provisions of chapter 57-39.2, including reporting and paying requirements, correction of errors, payment of refunds, and application of penalty and interest.

It is the intention of this chapter to grant and confirm to the people of all cities coming within its provisions the full right of self-government in both local and city matters within the powers enumerated herein. The statutes of the state of North Dakota, so far as applicable, shall continue to apply to home rule cities, except insofar as superseded by the charters of such cities or by ordinance passed pursuant to such charters.

After December 31, 2005, any portion of a charter or any portion of an ordinance passed pursuant to a charter which does not conform to the requirements of subsection 16 or the retailer compensation provisions of chapter 57-39.2 or 57-40.2 is invalid to the extent that it does not conform. The invalidity of a portion of a charter or ordinance because it does not conform to subsection 16 does not affect the validity of any other portion of the charter or ordinance or the eligibility for a refund under section 57-01-02.1. Any taxes imposed under this chapter on farm machinery, farm irrigation equipment, and farm machinery repair parts used exclusively for agricultural purposes, or on alcoholic beverages, which were in effect on December 31, 2005, become gross receipts taxes after December 31, 2005."

Page 1, after line 14, insert:

"SECTION 4. AMENDMENT. Section 57-39.2-12.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-12.1. Deduction to reimburse retailer for administrative expenses.

1. a. A retailer required registered to report and pay monthly remit sales, use, or gross receipts tax imposed under section 57-39.2-12 chapter 57-39.2, 57-39.5, 57-39.6, or 57-40.2 may deduct and retain one and one-half percent of the tax due. The aggregate of deductions allowed by this section and section 57-40.2-07.1 may not exceed eighty-five dollars per month. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 2 or 3 for the same period from the tax remitted to the tax commissioner compensation or a monetary allowance as provided in this subsection.
- b. The following two rates of compensation apply to the combined state and local options sales, use, and gross receipts taxes remitted for each month of activity included in a sales, use, or gross receipts tax return:
 - (1) One and one-half percent of the first six thousand two hundred fifty dollars of tax.

(2) Thirty-three one-hundredths of one percent of tax amounts greater than six thousand two hundred fifty dollars but less than seven hundred fifty thousand dollars of tax.

2. A certified service provider that contracts with retailers to calculate, collect, and remit tax due on behalf of retailers may deduct and retain from the tax remitted to the tax commissioner compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board effective June 1, 2006. The compensation provided in this subsection applies only to tax remitted by certified service providers on behalf of retailers that are remote sellers registered to collect sales and use tax in this state under chapter 57-39.4. Certified service providers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 3 for the same period.
3. A retailer that is a remote seller registered to collect sales and use tax under chapter 57-39.4 and that uses a certified automated system to calculate, report, and remit tax due under chapters 57-39.2, 57-39.4, and 57-40.2 may deduct and retain compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board during its December 2006 meeting. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 2 for the same period.
4. For purposes of this section, "remote seller" means a retailer that does not have an adequate physical presence to establish nexus in this state for sales and use tax purposes.
5. Compensation may not be deducted and retained under this section unless the tax due is paid within the time limitations under section 57-39.2-12 or 57-40.2-07 or chapter 57-39.4.
6. The deduction allowed retailers or certified service providers by this section is to reimburse retailers directly or indirectly for expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying information to the tax commissioner upon request.

SECTION 5. AMENDMENT. Section 57-39.5-04 of the North Dakota Century Code is amended and reenacted as follows:

57-39.5-04. Administration.

The provisions of chapter 57-39.2 pertaining to administration of the retail sales tax, including provisions for refund, credits, retailer compensation, or adoption of rules, not in ~~compliance~~conflict with this chapter or federal law, govern the administration of the gross receipts tax imposed in this chapter.

SECTION 6. AMENDMENT. Section 57-39.6-04 of the North Dakota Century Code is amended and reenacted as follows:

57-39.6-04. Administration.

The provisions of chapter 57-39.2, pertaining to administration of the retail sales tax, including provisions for refund, credits, retailer compensation, or adoption of rules, not in conflict with this chapter or federal law, govern the administration of the gross receipts tax imposed in this chapter."

Page 1, after line 23, insert:

"SECTION 8. AMENDMENT. Section 57-40.2-07.1 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-07.1. Deduction to reimburse retailer for administrative expenses.

1. a. A retailer required registered to report and pay monthly remit sales, use, or gross receipts tax imposed under section 57-40.2-07 chapter 57-39.2, 57-39.5, 57-39.6, or 57-40.2 may deduct and retain one and one-half percent of the tax due. The aggregate of deductions allowed by this section and section 57-39.2-12.1 may not exceed eighty-five dollars per month. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 2 or 3 for the same period from the tax remitted to the tax commissioner compensation or a monetary allowance as provided in this subsection.
- b. The following two rates of compensation apply to the combined state and local options sales, use, and gross receipts taxes remitted for each month of activity included in a sales, use, or gross receipts tax return:
 - (1) One and one-half percent of the first six thousand two hundred fifty dollars of tax.
 - (2) Thirty-three one-hundredths of one percent of tax amounts greater than six thousand two hundred fifty dollars but less than seven hundred fifty thousand dollars of tax.
2. A certified service provider that contracts with retailers to calculate, collect, and remit tax due on behalf of retailers may deduct and retain from the tax remitted to the tax commissioner compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board effective June 1, 2006. The compensation provided in this subsection applies only to tax remitted by certified service providers on behalf of retailers that are remote sellers registered to collect sales and use tax in this state under chapter 57-39.4. Certified service providers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 3 for the same period.
3. A retailer that is a remote seller registered to collect sales and use tax under chapter 57-39.4 and that uses a certified automated system to calculate, report, and remit tax due under chapters 57-39.2, 57-39.4, and 57-40.2 may deduct and retain compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board during its December 2006 meeting. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 2 for the same period.
4. For purposes of this section, "remote seller" means a retailer that does not have an adequate physical presence to establish nexus in this state for sales and use tax purposes.
5. Compensation may not be deducted and retained under this section unless the tax due is paid within the time limitations under section 57-39.2-12 or 57-40.2-07 or chapter 57-39.4.
6. The deduction allowed retailers or certified service providers by this section is to reimburse retailers directly or indirectly for expenses

incurred in keeping records, preparing and filing returns, remitting the tax,
and supplying information to the tax commissioner upon request."

Page 2, line 1, replace "This" with "Sections 3 and 7 of this"

Page 2, line 1, replace "is" with "are"

Page 2, line 2, after "2011" insert ", and sections 1, 2, 4, 5, 6, and 8 of this Act are effective
for taxable events occurring after December 31, 2011"

Renumber accordingly

2011 SENATE APPROPRIATIONS

HB 1424

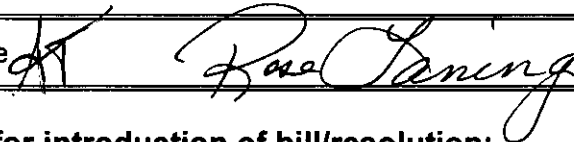
2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee
Harvest Room, State Capitol

HB 1424
March 31, 2011
Job # 16235

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A bill relating to compensation allowable to retailers for expenses associated with the collection, reporting and remittance of state and local option sales, use and gross receipts and the sales and use tax exemption for chemicals used for agricultural purposes.

Minutes:

"Attached testimony 1 -2."

Chairman Holmberg called the committee hearing to order on HB 1424.

Senator Cook, District 34, sponsor of HB 1424. It deals with what is exempt from sales tax, as in chemicals, cleaners and the foam markers. There is a lot of confusion out there and I think most of the people that believed it was sales tax exempt and there has been an audit and some confusion, so the intent of the bill, and the financing and tax committee supported that. It is to remove the ambiguity in "what that black line between what is taxable and what is tax exempt". It makes it clear that the foam markers are tax exempt as are the chemicals. They are usually purchased together. The second thing that you will see is that we put in an amendment dealing with the compensation for retailers. You will remember earlier this session, with a bill that dealt with compensating retailers. We took off the \$85 cap and graduated rates at 65% and 33%. That was defeated over in the House and I believe the reason it was defeated is we lined our compensation up to a standard that was established by the streamlined sales tax governing board. If you would reach it and if the bank street fairness board was to pass, as it was introduced, we would get collection authority. There was a lot of objection in the House to getting that. What I have done with these amendments, is reduce the amount of compensation, we took out the 65% bracket, so you will get compensated at 1½% on the first \$6250 in sales tax that you remit and then after that, up to that \$750,000 cap at .33%. It is a lesser amount than we passed before and it will not give us collection authority if the federal bill is to pass. This will not get us that. Less than what we passed over and I think the House will be acceptable to this level. It removes their main objection.

Senator Grindberg states, the emergency clause is just for spring planting?

Senator Cook states, yes.

Chairman Holmberg states, will this go to conference committee?

Senator Cook states, I don't know.

Senator Krebsbach states, there is a difference between the two fiscal notes. The last one, the \$1.844M that is because the first one just included the chemical and this includes the compensation.

Senator Cook states, that is correct and you will see that the compensation is a lot less than the one you approved before crossover.

Chairman Holmberg asks, what was that bill number?

Senator Cook states, it was # 2238

Mike Rood, ND Retail Association. Testified in support of HB 1424. No written testimony. We want to support the sales tax collection remission process. We want to see that put into place. We think it is a good thing. We believe this more for the "mom and pop" organizations, not so much as our big organizations. It is for our folks out there who might only save \$1200-\$1500/yr. That is a half time employee for one month for some of these people. Every little bit helps and as the cost of doing business continues to rise and profit margins are stagnant at this point in time in a lot of the retail sectors. This is crucial and we would like to see passed as amended to this bill.

Chairman Holmberg states, we had a DO PASS on it.

Dan Wogsland, Executive Director, ND Grain Growers Association. Testified in support of HB 1424. No written testimony. In Section 3, what this bill originally proposed was to clear up an ambiguity in state law regarding a foam marker and tank cleaner and how it is taxed in the state. This clears it up.

Jeb Oehlke, ND Chamber of Commerce

Testified in support of HB 1424. No written testimony.

Encourages out of state retailers and gives them incentive to collect sales taxes for our state.

Sandy Clark, ND Farm Bureau. Testified in support of HB 1424. No written testimony. In support of the chemical adjuvants. We don't have an opinion on the other section.

Myles Vosberg, ND Tax Office. Presented an amendment – see attached #1

We have a technical problem with the effective date of the bill and so we have an amendment to address that. The effective date and the emergency clause of this bill, page 10, Section 9, has an effective dates for Sections 3 and 7 of the bill which are the farm chemical aspects of it and make it effective for transactions after June 30th. The remaining sections will be effective after December 31, 2011. Section 10, is an emergency. The way we read this, emergency really doesn't do too much because there are effective dates for both. So what the amendment does is to remove the reference to Section 3 & 7, in the effective date section. It will basically read, Sections 1,2,4,5,6 and 8 of the act are effective for taxable events occurring

after December 31, 2011. Then it will be silent on Section 3 & 7, so that the emergency clause will make the ag chemical portion effective when it is signed by the governor.

Chairman Holmberg states, "immediately in other words". This is redundant at what it does actually is say, Section 3 and 7 are effective for tax poll events after June but the emergency clause says, once the governor signs it, it is effective.

Myles Vosberg states, "That is correct".

Senator Christmann asks, on line 10, is it suppose to be June 30, 2011 or 2010?

Myles Vosberg states, 2011. This would be the first period that the compensation would be effective January, 2012.

Senator Christmann states, I have amendment with this bill. I can bring it up later. Amendment 11.8238.02003 – see attached # 2.

Chairman Holmberg states, we will pass it out now.

Senator Christmann states, a constituent brought a concern to me before the session. We looked at how to solve it without having to have such a big impact on our tax revenues and individuals. I never figured out a solution till long after the bill filing deadline and only just recently figured it out. I looked for a sales tax bill upon which to attach it and this is the one that is out there. Let me say, first priority, I would not want this to in anyway jeopardize the rest of the bill. The point of the bill is if you are a ready mix or some other type of handler of those types of products, gravel or scoria, where you acquire a bunch of this stuff and stock pile it. Then when customers need it, you sell them a load and deliver it their yard. You charge them sales tax on that product and the trucking. However, if you are a trucking company and you can get that person to go out and buy that gravel from the gravel company out of the pit, and send the trucker out there, there is no sales tax on the trucking. So it is just seems it tips the playing field. You wonder why not to just put in a bill to exempt the trucking, the problem being with our streamlined sales tax business. It would of required exemption of lots of things. So what this lengthy looking amendment does is, it changes the tax on sand and gravel and scoria from sales tax to gross receipts tax. Same level of taxation but if it gross receipt tax then we don't have to charge it on the trucking.

Myles Vosberg states, one way of doing it is to carve gravel and sand out of the sales tax and so we create a sales tax exemption for that. Create a separate gross receipts tax, which is not part of the streamlined sales tax agreement. We can do what we want with gross receipt tax. By creating a gross receipts tax for sand and gravel, we can define that to "not include the freight for those products to be subject to tax". It is a bit of a "slight of hand" in order to be able to do that but it is something allowable under the streamlined agreement. We cannot do that under the streamlined agreement if the product is being carved out is one of the defined products by streamline and sand and gravel is not defined by the streamlined agreement.

Senator Warner asks, is there an analogous group of construction materials that would have the same sales tax exemption or would you have a gross revenue? I hate carving out a separate category.

Myles Vosberg states, there maybe is. It depends on sponsor and how far he wants to go. For asphalt, probably not. A product that has to be installed, the installer has to pay tax on their cost of the materials that are installed. This probably wouldn't apply to that.

Senator Robinson asks, we're looking at revenue reduction? Do you know how much it may be?

Myles Vosberg stated, a reduction of the amount that would now be subject to freight tax, would alone be about \$7M.

Senator Wanzek asks, all freight or just on gravel?

Myles Vosberg states, just the freight on gravel.

Senator Wanzek states, I am imagining most of those buying gravel etc. are local counties are townships and counties, so they are the ones paying that tax then?

Myles Vosberg states, the political subdivisions are exempt from tax.

Chairman Holmberg closed the hearing on HB 1424.

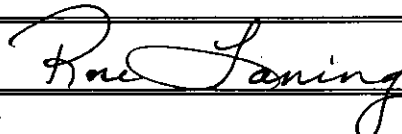
2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

HB 1424
April 5, 2011
Job # 16379

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A bill relating to compensation allowable to retailers for expenses associated with the collection, reporting and remittance of state and local option sales, use and gross receipts and the sales and use tax exemption for chemicals used for agricultural purposes.

Minutes:

You may make reference to "attached testimony."

Chairman Holmberg called the committee hearing to order on HB 1424 and said it was about sales and use tax exemption for chemicals. Sandy Clark and Mike Rud testified on this bill. We had the Christmann amendments.

Senator Grindberg: And the tax department.

Senator Krebsbach: There were two amendments proposed for this bill. One was by Senator Christmann and the other was by the Tax Department.

Senator Grindberg: If I recall, the fiscal impact of the Christmann amendments was quite large - \$7M for some reason, sticks out in my mind.

Chairman Holmberg: Is there anyone here from the tax department that would like to talk about their amendments first of all?

Cory Fong, ND Tax Commissioner: The purpose of this bill originally was to exempt certain farm chemicals and to clarify the current law with regard to certain additives known as adjuvants that go into farm chemicals to foam them – those kinds of things. That was the original purpose of this bill. Senator Cook then added to the bill the concept of a comp for all retailers that have a permit. This was through the sales tax initiative, a goal of Senator Cook to enhance compensation and so I think that was the addition to the bill. Obviously, it might be more encompassing than the original concept of the bill in terms of its overall content, but that was the amendment that was added on by Senator Cook. As far as the amendments that are being suggested by Senator Christmann, I cannot speak to those.

Chairman Holmberg: But the amendments that the tax department is asking for, that was the clean-up language, it seemed to me. Becky is agreeing.

Cory Fong: Yes, concerning the effective dates. That is correct.

Vote #1 -

Senator Erbele moved to accept the Tax Department's amendment.
Senator Wardner seconded.

Senator O'Connell: What's the cost on this amendment?

Chairman Holmberg: On this amendment, there should be no cost. It's just the effective date.

Cory Fong: The purpose of the amendments put in place the emergency clause for the exemption for the foaming agents for the farm season so it's going to put that in place earlier so that portion of the bill will go into effect. There is no effect in terms of the revenue – the fiscal note on the bill.

A Roll Call vote was taken. Yea: 12 Nay: 0 Absent: 1

Chairman Holmberg: The other aspect of this bill is the amendments that **Senator Christmann** brought. If you recall, there was estimated like \$7M – it was on behalf of someone he knew. It was a trucking thing. We're trying to see if he's around.

Senator Robinson: Some testimony following that is that it was pretty far-reaching and probably went way beyond \$7M. The definition of "aggregate" if you recall, got to be pretty convoluted.

Chairman Holmberg: We'll take a motion for Do Pass as we amended it, but the bill won't be ready to go until tomorrow and if **Senator Christmann** has a lot of heartburn about not having that amendment attached, he can always make a motion for us to reconsider it.

Vote #2 -

Senator Wanzek moved Do Pass as Amended on HB 1424.
Senator Grindberg seconded.

(**Senator Christmann** walked into the room.)

Chairman Holmberg: We were doing HB 1424. We attached the tax department amendment. If you recall, you had some amendments from a local concern. There was discussion that the fiscal impact was much greater. It was like \$7M. We decided to go ahead and reconsider if you wanted to attach your amendment, otherwise we were going ahead with it.

Senators Wanzek and Grindberg withdrew their motion and second.

Chairman Holmberg: So right now we have the bill with the technical amendment that came from the tax department which had no impact on the bill.

Senator Christmann: I don't want to spend \$7M on this either, however this idea to fix this problem came in late and that's too bad, but it took til now for anybody to think of a way to do it. This fiscal note can't be right. If these sand and gravel guys who are losing \$7M a year across the state, everyone of us would have complaints. That just can't be, there's something not being calculated right. So I'm going to run it up the flag pole and hopefully we'll keep it alive and get a little more information between now and the end. The worst case is that we can get a few votes that we can all be thinking about it and showing a little support for finding a solution to this problem over the course of the next two years.

Vote #3 -

Senator Christmann moved amendment # 11.8238.02003.

Senator Krebsbach seconded.

**A Roll Call vote was taken. Yea: 4 Nay: 9 Absent: 0
Amendment failed.**

Vote #4 -

Senator Wanzek moved Do Pass as Amended on HB 1424.

Senator Erbele seconded.

**A Roll Call vote was taken. Yea: 9 Nay: 4 Absent: 0
The bill goes back to Finance and Tax and Senator Cook will carry the bill.**

*Prepared for the Senate Appropriations Committee
by the North Dakota Office of State Tax Commissioner
March 31, 2011*

**PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1424 (First
Engrossment with Senate Amendments; Version 11.8238.0300)**

Page 10, line 8, remove "3 and 7 of this Act are effective for taxable"

Page 10, line 9, remove "events beginning after June 30, 2011, and sections"

Renumber accordingly

Date: 4-5-11Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1424Senate APPROPRIATIONS Committee☐ Check here for Conference CommitteeLegislative Council Amendment Number Tax Dept AmendmentAction Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment☐ Rerefer to Appropriations ☐ ReconsiderMotion Made By Erbele Seconded By Wardner

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Warner	✓	
Senator Bowman	✓		Senator O'Connell	✓	
Senator Grindberg	✓		Senator Robinson	✓	
Senator Christmann <i>A</i>					
Senator Wardner	✓				
Senator Kilzer	✓				
Senator Fischer	✓				
Senator Krebsbach	✓				
Senator Erbele	✓				
Senator Wanzek	✓				

Total (Yes) 12 No 0Absent 1Floor Assignment Cook

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

Date: 4.5-11Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1424Senate APPROPRIATIONS Committee☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment☐ Rerefer to Appropriations ☐ ReconsiderMotion Made By Wanzek Seconded By Grindberg

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg			Senator Warner		<input checked="" type="checkbox"/>
Senator Bowman		<input checked="" type="checkbox"/>	Senator O'Connell		
Senator Grindberg	<input checked="" type="checkbox"/>		Senator Robinson	<input checked="" type="checkbox"/>	
Senator Christmann					
Senator Wardner	<input checked="" type="checkbox"/>				
Senator Kilzer					
Senator Fischer					
Senator Krebsbach	<input checked="" type="checkbox"/>				
Senator Erbele					
Senator Wanzek					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1424

In addition to the amendments adopted by the Senate as printed on pages 917 through 923 of the Senate Journal, Engrossed House Bill No. 1424 is further amended as follows:

Page 1, line 1, after "Act" insert "to create and enact a new subsection to section 57-39.2-04 and chapter 57-39.8 of the North Dakota Century Code, relating to sales and use tax exemption and gross receipts tax imposition for sand, gravel, scoria, and similar materials used or usable for road construction and maintenance;"

Page 1, line 1 replace the second "and" with ", subsections 3, 5, and 8 of section 57-40.2-01, section 57-40.2-02.1,"

Page 1, line 2, after "to" insert "sales and use tax exemption and gross receipts tax imposition for sand, gravel, scoria, and similar materials used or usable for road construction and maintenance, and"

Page 1, after line 14, insert:

"SECTION 2. A new subsection to section 57-39.2-04 of the North Dakota Century Code is created and enacted as follows:

Gross receipts from sales of sand, gravel, scoria, and similar materials used or usable for road construction and maintenance.

SECTION 3. Chapter 57-39.8 of the North Dakota Century Code is created and enacted as follows:

57-39.8-01. Definitions.

Words used in this chapter have the same meaning as in chapter 57-39.2. For purposes of this chapter:

1. "Gross receipts", in addition to the meaning provided in chapter 57-39.2, includes the full retail purchase price, including any taxes imposed on such road construction and maintenance materials or their use or on the retail or other sale of the road construction and maintenance materials and value upon severance of road construction and maintenance materials, excluding transportation costs and taxes imposed under this chapter.
2. "Road construction and maintenance materials" means sand, gravel, scoria, and similar materials used or usable for road construction and maintenance.

57-39.8-02. Gross receipts tax on road construction and maintenance materials - Exemption.

There is imposed a tax of five percent on the gross receipts of retailers from all sales at retail of road construction and maintenance materials. Gross receipts from sales at retail of road construction and maintenance materials are exempted from the

tax imposed by this chapter when the sale is made to a purchaser who is entitled to a sales and use tax exemption on otherwise taxable sales.

57-39.8-03. Administration.

The provisions of chapter 57-39.2, pertaining to administration of the retail sales tax, including provisions for refund, credits, or adoption of rules, not in conflict with this chapter or federal law, govern the administration of the gross receipts tax imposed in this chapter.

57-39.8-04. Use tax and credit for taxes paid.

1. A person who receives road construction and maintenance materials for storage, use, or consumption in this state is subject to tax on storage, use, or consumption of those road construction and maintenance materials at the rate imposed under section 57-39.8-02.
2. A person subject to taxes under subsection 1 who has paid taxes to another state or political subdivision of a state as required by law on the purchase of the road construction and maintenance materials is entitled to a credit against the tax due under subsection 1 equal to the lesser of the tax actually paid to the other state or political subdivision or the amount of tax imposed under subsection 1.

SECTION 4. AMENDMENT. Subsections 3, 5, and 8 of section 57-40.2-01 of the North Dakota Century Code are amended and reenacted as follows:

3. "Purchase" means any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration. ~~"Purchase" also means the severing of sand or gravel from the soil of this state.~~
5. "Purchased at retail" includes:
 - a. The completion of the fabricating, compounding, or manufacturing of tangible personal property by a person for storage, use, or consumption by that person.
 - b. The furnishing of wares, merchandise, and gas, when furnished or delivered to consumers or users within this state, and the sale of vulcanizing, recapping, and retreading services for tires.
 - c. The leasing or renting of tangible personal property, the sale, storage, use, or consumption of which has not been previously subjected to a retail sales or use tax in this state.
 - d. The purchase of magazines or other periodicals. Provided, the words "magazines and other periodicals" as used in this subdivision do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.
 - e. ~~The severance of sand or gravel from the soil.~~
 - f. The purchase, including the leasing or renting, of tangible personal property from any bank for storage, use, or consumption.

g-f. The purchase of an item of tangible personal property by a purchaser who rents or leases it to a person under a finance leasing agreement over the term of which the property will be substantially consumed, if the purchaser elects to treat it as being purchased at retail by paying or causing the transferor to pay the use tax to the commissioner on or before the last day on which payments may be made without penalty as provided in section 57-40.2-07.

8. "Use" means the exercise by any person of any right or power over tangible personal property incident to the ownership or possession of that property, including the storage, use, or consumption of that property in this state, except that it does not include processing, or the sale of that property in the regular course of business. ~~"Use" also means the severing of sand or gravel from the soil of this state for use within or outside this state.~~

SECTION 5. AMENDMENT. Section 57-40.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-02.1. Use tax imposed.

1. Except as otherwise expressly provided in subsection 2 for purchases of mobile homes used for residential or business purposes, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property purchased at retail for storage, use, or consumption in this state, at the rate of five percent of the purchase price of the property. Except as limited by section 57-40.2-11, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property not originally purchased for storage, use, or consumption in this state at the rate of five percent of the fair market value of the property at the time it was brought into this state.
2. An excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes, except as provided in subsection 19 of section 57-40.2-04 purchased at retail for storage, use, or consumption in this state at the rate of three percent of the purchase price thereof. Except as limited by section 57-40.2-11, and except as provided in subsection 35 of section 57-39.2-04, an excise tax is imposed on the storage, use, or consumption in this state of a mobile home used for residential or business purposes at the rate of three percent of the fair market value of a mobile home used for residential or business purposes at the time it was brought into this state.
3. Repealed by S.L. 2007, ch. 529, § 7.
4. In the case of a contract awarded for the construction of highways, roads, streets, bridges, and buildings prior to December 1, 1986, the contractor receiving the award shall be liable only for the sales or use tax at the rate of tax in effect on the date of contract.
5. ~~An excise tax is imposed on the fair market value of sand or gravel severed when sand or gravel is not sold at retail as tangible personal property by the person severing the sand or gravel. If the sand or gravel is not sold at retail by the person severing the sand or gravel, it must be presumed until the contrary is shown by the commissioner or by the~~

~~person severing the sand or gravel that the fair market value is eight cents per ton of two thousand pounds [907.18 kilograms]. If records are not kept as to the tonnage of sand or gravel severed from the soil, it must be presumed for the purpose of this chapter that one cubic yard [764.55 liters] of sand or gravel is equal to one and one half tons [1360.78 kilograms] of sand or gravel."~~

Renumber accordingly

Date: 4-5-11Roll Call Vote # 3

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1424Senate APPROPRIATIONS

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

2003*Christmann
amended*Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By

Christmann

Seconded By

Krebsbach

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Warner		✓
Senator Bowman		✓	Senator O'Connell	✓	
Senator Grindberg		✓	Senator Robinson		✓
Senator Christmann	✓				
Senator Wardner		✓			
Senator Kilzer		✓			
Senator Fischer		✓			
Senator Krebsbach	✓				
Senator Erbele		✓			
Senator Wanzek		✓			

Total (Yes)

4

No

9

Absent

Floor Assignment

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

Failed

Date: 4-5-11Roll Call Vote # 4

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1424Senate APPROPRIATIONS Committee☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment☐ Rerefer to Appropriations ☐ ReconsiderMotion Made By Wanzek Seconded By Erbele

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Warner		✓
Senator Bowman	✓	✓	Senator O'Connell		✓
Senator Grindberg	✓		Senator Robinson		✓
Senator Christmann	✓				
Senator Wardner	✓				
Senator Kilzer	✓				
Senator Fischer	✓				
Senator Krebsbach	✓				
Senator Erbele	✓				
Senator Wanzek	✓				

Total (Yes) 9 No 4

Absent _____

Floor Assignment F + T Cook

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

REPORT OF STANDING COMMITTEE

HB 1424, as engrossed and amended: Appropriations Committee (Sen. Holmberg, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (9 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1424, as amended, was placed on the Sixth order on the calendar.

In lieu of the amendments adopted by the Senate as printed on pages 917-923 of the Senate Journal, Engrossed House Bill No. 1424 is amended as follows:

Page 1, line 1, after "reenact" insert "subsection 2 of section 11-09.1-05, section 40-05.1-06,"

Page 1, line 1, replace the second "and" with ", sections 57-39.2-12.1, 57-39.5-04, and 57-39.6-04,"

Page 1, line 2, after "57-40.2-04" insert ", and section 57-40.2-07.1"

Page 1, line 2, after "to" insert "compensation allowable to retailers for expenses associated with the collection, reporting, and remittance of state and local option sales, use, and gross receipts taxes and"

Page 1, line 3, after the first semicolon insert "and"

Page 1, line 3, remove "; and to"

Page 1, line 4, remove "declare an emergency"

Page 1, after line 5, insert:

"SECTION 1. AMENDMENT. Subsection 2 of section 11-09.1-05 of the North Dakota Century Code is amended and reenacted as follows:

2. Control its finances and fiscal affairs; appropriate money for its purposes, and make payments of its debts and expenses; subject to the limitations of this section levy and collect property taxes, sales and use taxes, farm machinery gross receipts taxes, alcoholic beverage gross receipts taxes, motor vehicle fuels and special fuels taxes, motor vehicle registration fees, and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings, and improvements; contract debts, borrow money, issue bonds, warrants, and other evidences of indebtedness; establish charges for any county or other services to the extent authorized by state law; and establish debt and mill levy limitations. Notwithstanding any authority granted under this chapter, all property must be assessed in a uniform manner as prescribed by the state board of equalization and the state supervisor of assessments and all taxable property must be taxed by the county at the same rate unless otherwise provided by law. A charter or ordinance or act of a governing body of a home rule county may not supersede any state law that determines what property or acts are subject to, or exempt from, ad valorem taxes. A charter or ordinance or act of the governing body of a home rule county may not supersede section 11-11-55.1 relating to the sixty percent petition requirement for improvements and of section 40-22-18 relating to the barring proceeding for improvement projects. After December 31, 2005, sales and use taxes, farm machinery gross receipts taxes, and alcoholic beverage gross receipts taxes levied under this chapter:
 - a. Must conform in all respects with regard to the taxable or exempt status of items under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed at multiple rates with the exception

of sales of electricity, piped natural or artificial gas, or other heating fuels delivered by the seller or the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

- b. May not be newly imposed or changed except to be effective on the first day of a calendar quarterly period after a minimum of ninety days' notice to the tax commissioner or, for purchases from printed catalogs, on the first day of a calendar quarter after a minimum of one hundred twenty days' notice to the seller.
- c. May not be limited to apply to less than the full value of the transaction or item as determined for state sales and use tax, except for farm machinery gross receipts tax purposes.
- d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1 and must be administered by the tax commissioner in accordance with the relevant provisions of chapter 57-39.2, including reporting and paying requirements, correction of errors, payment of refunds, and application of penalty and interest.

After December 31, 2005, any portion of a charter or any portion of an ordinance or act of a governing body of a home rule county passed pursuant to a charter which does not conform to the requirements of this subsection or the retailer compensation provisions of chapter 57-39.2 or 57-40.2 is invalid to the extent that it does not conform. The invalidity of a portion of a charter or ordinance or act of a governing body of a home rule county because it does not conform to this subsection does not affect the validity of any other portion of the charter or ordinance or act of a governing body of a home rule county or the eligibility for a refund under section 57-01-02.1. Any taxes imposed under this chapter on farm machinery, farm irrigation equipment, and farm machinery repair parts used exclusively for agricultural purposes, or on alcoholic beverages, which were in effect on December 31, 2005, become gross receipts taxes after December 31, 2005.

SECTION 2. AMENDMENT. Section 40-05.1-06 of the North Dakota Century Code is amended and reenacted as follows:

40-05.1-06. Powers.

From and after the filing with the secretary of state of a charter framed and approved in reasonable conformity with the provisions of this chapter, such city, and the citizens thereof, shall, if included in the charter and implemented through ordinances, have the following powers set out in this chapter:

- 1. To acquire, hold, operate, and dispose of property within or without the corporate limits, and, subject to chapter 32-15, exercise the right of eminent domain for such purposes.
- 2. To control its finances and fiscal affairs; to appropriate money for its purposes, and make payment of its debts and expenses; to levy and collect taxes, excises, fees, charges, and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings, and improvements; to contract debts, borrow money, issue bonds, warrants, and other evidences of indebtedness; to establish charges for any city or other services; and to establish debt and mill levy limitations. Notwithstanding any authority granted under this chapter, all property must be assessed in a uniform manner as prescribed by the state board of equalization and the state supervisor of

assessments and all taxable property must be taxed by the city at the same rate unless otherwise provided by law. The authority to levy taxes under this subsection does not include authority to impose income taxes.

3. To fix the fees, number, terms, conditions, duration, and manner of issuing and revoking licenses in the exercise of its governmental police powers.
4. To provide for city officers, agencies, and employees, their selection, terms, powers, duties, qualifications, and compensation. To provide for change, selection, or creation of its form and structure of government, including its governing body, executive officer, and city officers.
5. To provide for city courts, their jurisdiction and powers over ordinance violations, duties, administration, and the selection, qualifications, and compensation of their officers; however, the right of appeal from judgment of such courts shall not be in any way affected.
6. To provide for all matters pertaining to city elections, except as to qualifications of electors.
7. To provide for the adoption, amendment, and repeal of ordinances, resolutions, and regulations to carry out its governmental and proprietary powers and to provide for public health, safety, morals, and welfare, and penalties for a violation thereof.
8. To lay out or vacate streets, alleys, and public grounds, and to provide for the use, operation, and regulation thereof.
9. To define offenses against private persons and property and the public health, safety, morals, and welfare, and provide penalties for violations thereof.
10. To engage in any utility, business, or enterprise permitted by the constitution or not prohibited by statute or to grant and regulate franchises therefor to a private person, firm, corporation, or limited liability company.
11. To provide for zoning, planning, and subdivision of public or private property within the city limits. To provide for such zoning, planning, and subdivision of public or private property outside the city limits as may be permitted by state law.
12. To levy and collect franchise and license taxes for revenue purposes.
13. To exercise in the conduct of its affairs all powers usually exercised by a corporation.
14. To fix the boundary limits of said city and the annexation and deannexation of territory adjacent to said city except that such power shall be subject to, and shall conform with the state law made and provided.
15. To contract with and receive grants from any other governmental entity or agency, with respect to any local, state, or federal program, project, or works.
16. To impose registration fees on motor vehicles, farm machinery gross receipts taxes, alcoholic beverage gross receipts taxes, or sales and use taxes in addition to any other taxes imposed by law. After December 31,

2005, sales and use taxes and gross receipts taxes levied under this chapter:

- a. Must conform in all respects with regard to the taxable or exempt status of items under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed at multiple rates with the exception of sales of electricity, piped natural or artificial gas, or other heating fuels delivered by the seller or the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.
- b. May not be newly imposed or changed except to be effective on the first day of a calendar quarterly period after a minimum of ninety days' notice to the tax commissioner or, for purchases from printed catalogs, on the first day of a calendar quarter after a minimum of one hundred twenty days' notice to the seller.
- c. May not be limited to apply to less than the full value of the transaction or item as determined for state sales and use tax purposes, except for farm machinery gross receipts tax.
- d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1 and must be administered by the tax commissioner in accordance with the relevant provisions of chapter 57-39.2, including reporting and paying requirements, correction of errors, payment of refunds, and application of penalty and interest.

It is the intention of this chapter to grant and confirm to the people of all cities coming within its provisions the full right of self-government in both local and city matters within the powers enumerated herein. The statutes of the state of North Dakota, so far as applicable, shall continue to apply to home rule cities, except insofar as superseded by the charters of such cities or by ordinance passed pursuant to such charters.

After December 31, 2005, any portion of a charter or any portion of an ordinance passed pursuant to a charter which does not conform to the requirements of subsection 16 or the retailer compensation provisions of chapter 57-39.2 or 57-40.2 is invalid to the extent that it does not conform. The invalidity of a portion of a charter or ordinance because it does not conform to subsection 16 does not affect the validity of any other portion of the charter or ordinance or the eligibility for a refund under section 57-01-02.1. Any taxes imposed under this chapter on farm machinery, farm irrigation equipment, and farm machinery repair parts used exclusively for agricultural purposes, or on alcoholic beverages, which were in effect on December 31, 2005, become gross receipts taxes after December 31, 2005."

Page 1, after line 14, insert:

"SECTION 4. AMENDMENT. Section 57-39.2-12.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-12.1. Deduction to reimburse retailer for administrative expenses.

1. a. A retailer required registered to report and pay monthly remit sales, use, or gross receipts tax imposed under section 57-39.2-12 chapter 57-39.2, 57-39.5, 57-39.6, or 57-40.2 may deduct and retain one and one-half percent of the tax due. The aggregate of deductions allowed by this section and section 57-40.2-07.1 may not exceed eighty five dollars per month. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 2 or 3 for the same period from the tax remitted to the tax

commissioner compensation or a monetary allowance as provided in this subsection.

- b. The following two rates of compensation apply to the combined state and local option sales, use, and gross receipts taxes remitted for each month of activity included in a sales, use, or gross receipts tax return:
 - (1) One and one-half percent of the first six thousand two hundred fifty dollars of tax.
 - (2) Thirty-three one-hundredths of one percent of tax amounts greater than six thousand two hundred fifty dollars but less than seven hundred fifty thousand dollars of tax.
2. A certified service provider that contracts with retailers to calculate, collect, and remit tax due on behalf of retailers may deduct and retain from the tax remitted to the tax commissioner compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board effective June 1, 2006. The compensation provided in this subsection applies only to tax remitted by certified service providers on behalf of retailers that are remote sellers registered to collect sales and use tax in this state under chapter 57-39.4. Certified service providers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 3 for the same period.
3. A retailer that is a remote seller registered to collect sales and use tax under chapter 57-39.4 and that uses a certified automated system to calculate, report, and remit tax due under chapters 57-39.2, 57-39.4, and 57-40.2 may deduct and retain compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board during its December 2006 meeting. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 2 for the same period.
4. For purposes of this section, "remote seller" means a retailer that does not have an adequate physical presence to establish nexus in this state for sales and use tax purposes.
5. Compensation may not be deducted and retained under this section unless the tax due is paid within the time limitations under section 57-39.2-12 or 57-40.2-07 or chapter 57-39.4.
6. The deduction allowed retailers or certified service providers by this section is to reimburse retailers directly or indirectly for expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying information to the tax commissioner upon request.

SECTION 5. AMENDMENT. Section 57-39.5-04 of the North Dakota Century Code is amended and reenacted as follows:

57-39.5-04. Administration.

The provisions of chapter 57-39.2 pertaining to administration of the retail sales tax, including provisions for refund, credits, retailer compensation, or adoption of rules, not in ~~compliance~~conflict with this chapter or federal law, govern the administration of the gross receipts tax imposed in this chapter.

SECTION 6. AMENDMENT. Section 57-39.6-04 of the North Dakota Century Code is amended and reenacted as follows:

57-39.6-04. Administration.

The provisions of chapter 57-39.2, pertaining to administration of the retail sales tax, including provisions for refund, credits, retailer compensation, or adoption of rules, not in conflict with this chapter or federal law, govern the administration of the gross receipts tax imposed in this chapter."

Page 1, after line 23, insert:

"SECTION 8. AMENDMENT. Section 57-40.2-07.1 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-07.1. Deduction to reimburse retailer for administrative expenses.

1.
 - a. A retailer required registered to report and pay monthly remit sales, use, or gross receipts tax imposed under section 57-40.2-07 chapter 57-39.2, 57-39.5, 57-39.6, or 57-40.2 may deduct and retain one and one-half percent of the tax due. The aggregate of deductions allowed by this section and section 57-39.2-12.1 may not exceed eighty-five dollars per month. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 2 or 3 for the same period from the tax remitted to the tax commissioner compensation or a monetary allowance as provided in this subsection.
 - b. The following two rates of compensation apply to the combined state and local option sales, use, and gross receipts taxes remitted for each month of activity included in a sales, use, or gross receipts tax return:
 - (1) One and one-half percent of the first six thousand two hundred fifty dollars of tax.
 - (2) Thirty-three one-hundredths of one percent of tax amounts greater than six thousand two hundred fifty dollars but less than seven hundred fifty thousand dollars of tax.
2. A certified service provider that contracts with retailers to calculate, collect, and remit tax due on behalf of retailers may deduct and retain from the tax remitted to the tax commissioner compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board effective June 1, 2006. The compensation provided in this subsection applies only to tax remitted by certified service providers on behalf of retailers that are remote sellers registered to collect sales and use tax in this state under chapter 57-39.4. Certified service providers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 3 for the same period.
3. A retailer that is a remote seller registered to collect sales and use tax under chapter 57-39.4 and that uses a certified automated system to calculate, report, and remit tax due under chapters 57-39.2, 57-39.4, and 57-40.2 may deduct and retain compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board during its December 2006 meeting. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 2 for the same period.
4. For purposes of this section, "remote seller" means a retailer that does not have an adequate physical presence to establish nexus in this state for sales and use tax purposes.

5. Compensation may not be deducted and retained under this section unless the tax due is paid within the time limitations under section 57-39.2-12 or 57-40.2-07 or chapter 57-39.4.
6. The deduction allowed retailers or certified service providers by this section is to reimburse retailers directly or indirectly for expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying information to the tax commissioner upon request."

Page 2, line 2, replace "June 30" with "December 31"

Page 2, remove line 3

Renumber accordingly

2011 HOUSE AGRICULTURE

CONFERENCE COMMITTEE

HB 1424

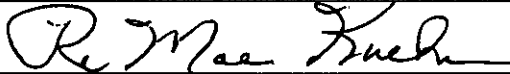
2011 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee
Peace Garden Room, State Capitol

HB 1424
April 13, 2011
Job #16563

☒ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

(Fiscal note)

Relating to the sales and use tax exemption for chemicals used for agricultural purposes; and to provide an effective date.

Minutes:

Representative Headland, Conference Committee Chair: HB 1424, as it left the house, related to a sales and use tax exemption for chemicals. The Senate amended in some additional items.

Senator Cook: It is the compensation for retailers that we amended on to the bill. It is a good place for it when you have a bill that is before you because of the burden that tax collectors have to face in determining what is taxable and what is not taxable. You killed that compensation bill in the House. My understanding is that the biggest concern that the House had is that one of the possible consequences of passing, is it would align us up with a necessary level of compensation that would give the State of North Dakota collection authority should Congress pass the Main Street Fairness Act. I understand there are some of you over there who have not yet grasped the wisdom of getting that collection authority so then you vote against something that I think is very important. That is to increase the level of compensation that our retailers receive for collecting and remitting sales tax.

So I reduced the amount of compensation so that it removes any connection with the requirements to get collection authority so it would not give us collection authority. With the hope that would enable you to embrace a raise for retailers without the fear of someday being in a position where we would have collection authority for out-of-state sellers.

Today any retailer that has sales over \$333,000/year is required to remit the sales tax monthly. Those retailers are compensated at 1½% with a cap of \$85/month. Retailers smaller than \$333,000 can remit sales tax quarterly and they get zero compensation. The bill that the House disposed of was going to compensate everybody. It took off the cap. It compensated them at 1½% for the first \$6,250 of taxable sales. Then from \$6,250 to \$62,500 it compensated them at .65. After that it compensated them at .33. Then it required local governments to compensate at the same level that the state did. The bill you have before us removed that middle bracket of .65

I hope you would agree to find some increase in the small amount of compensation that we give our retailers for collecting and remitting sales tax. If it is still too much, I will negotiate.

Representative Headland: In discussion in the House, we do believe compensating our retailers is important. We are not here to accept your amended version. We hope to come to some compromise in committee.

Senator Cook: One of the concerns in the bill is "political subdivisions that have local sales tax." It requires them to compensate at the same rate that the state does. Today we have some that don't compensate at all. We have some that compensate more than what the state does. That was one of the requirements of streamline. It is not contentious if we take that out or leave it in. We need to discuss the level of compensation that we allow someone to get. I can bring forth a proposal for you to consider. I would suggest we remove the \$85 cap. That we compensate at 1½% for the first \$6,250. Then we go to .33% for an amount above that. Then find a point relative to what the fiscal note would be as far as where we would stop that compensation. Everybody would get compensation. Those who do not get it today would start getting it. Those who are reaching the \$85 cap would be able to get a raise. All we have to do is discuss how big of a raise. I can bring some options and fiscal notes to meet again.

Representative Headland: If I understand you correctly, you are going to remove all the language relative to political subdivisions. Your intent is to make sure every retailer is compensated but to continue with some type of cap. That is what the house is interested in.

Senator Cook: I will have several versions prepared.

Representative Boe: The cities will not be part of the compensation? They are on a free ride the same as they have in the past? Is that right?

Senator Cook: Now the way you have it, the cities would be required to compensate at the level as the state. I will take that out. What they compensate is at their discretion.

Representative Headland: Adjourned the meeting.

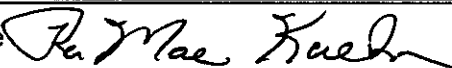
2011 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee
Peace Garden Room, State Capitol

HB 1424
April 15, 2011
Job #16634

☒ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

(Fiscal note)

Relating to the sales and use tax exemption for chemicals used for agricultural purposes; and to provide an effective date.

Minutes:

Representative Headland, Conference Committee Chair: We have an amendment.

Senator Cook: At our previous meeting, I suggested we change this compensation so that everyone got compensated. Also, to give those who were getting compensated a slight increase in the compensation and we had no language in there regarding requiring cities to compensate at the same level as the state.

Look at the handout of the chart in the middle part of the page with the 1 ½ compensation rate. Leaving the cap the same and compensating everybody, the fiscal note would be \$1.49 million to compensate everybody. To raise the \$85 to \$93.75 it would be \$1.802 million. To go to a \$100 cap it would be \$1.943.

The amendments are at the \$93.75 cap. So everybody would get compensated. The cap would go from \$85 to \$93.75. There is no reference to a second rate. At 33% everybody would be compensated at 1 ½%.

The only mistake with the amendments before you, to do what I said, is the amendments include Section 1 and 2 which still deals with the local governments having to compensate the same. So I suggest we cross out Section 1, on the bottom of page 1, all of page 2, 3, 4, and the top of page 5.

The amendment says that the Senate recede from its amendments an further amend. We are removing the emergency clause on it.

Moved the amendment .02005 without Section 1 and Section 2.

Senator Oehlke: Seconded motion.

Senator Triplett: I would think that if we pull out the sections there will be adjustments in the title also. Maybe before we vote we should have a new copy drafted.

Representative Headland: I agree. We will ask council to draft a new amendment.

Senator Cook withdraws motion and **Senator Oehlke** withdraws the second.

Representative Headland: Adjourned.

2011 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee
Peace Garden Room, State Capitol

HB 1424
April 18, 2011
Job #16712

☒ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

(Fiscal note)

Relating to the sales and use tax exemption for chemicals used for agricultural purposes; and to provide an effective date.

Minutes:

Representative Headland, Conference Committee Chair: Asks for new amendment draft.

Senator Cook: Handed out amendment LC#11.8238.02006.

On page 2, Section 6, subsection 1—there the cap of \$85 is changed to \$93.75 per return. In Section 2 on the front page in subsection 1, we are referencing “return” so everybody that submits sales tax is going to get compensation. This will compensate everybody at 1 ½%. The cap will go from \$85 to \$93.75. If you are a quarterly filer, you will get \$93.75 per quarterly return. It will not be capped on a monthly basis. It is a raise in compensation. Everybody will get it. Those who are getting compensated today and reaching the cap will get a small increase. It has nothing to do with streamline sales tax. It is just a simple raise to the retailers of North Dakota who collect and remit our sales tax.

Moved that the Senate recede from their amendments and further amend and leave the adjuvants and the original bill and add this to it.

Representative Wrangham: Seconded the motion.

Dan Rouse, Legal Counsel to the State Tax Commissioner: It was our understanding that the language related to the Ag Chemicals in Sections 1 & 5 was to be an emergency.

Senator Cook: There is an effective day in it.

Representative Headland: It is the House’s desire to have an Emergency Clause.

Senator Cook: Then you want to take out the effective date.

Dan Rouse: The last version we saw had Sections 1 and 5 as being effective July 1. The change on page 3 of these amendments is half of the battle. The other half was on page 1, line 4. If that line of the amendments was struck, then these are fine.

Representative Headland: The need for the Emergency Clause is for our chemical retailers. I don't think we can take the Emergency Clause out. We just have to change the effective date.

Senator Cook: These amendments are removing the Emergency Clause. So you want to cross that out. I think we still need to take the effective date out of the bill.

Representative Headland: The only section we want the Emergency Clause to apply is to the chemical adjuvant.

Myles Vosberg, Tax Commissioner's Office: By striking the language that says to remove "declare an emergency", you are in effect putting the emergency back in. Sections 1 and 5 which are the chemical sections would be an emergency. They have no effective dates so the Emergency Clause would apply to those two sections. Because we have after December 31, 2011 effective date in Sections 2, 3, 4, and 6 that is when they will become effective. The end result is an emergency for the farm chemical portion and an effective date after December 31, 2011 for the compensation portion.

Representative Headland: So all we have to do is remove the "removing of the emergency clause."

Myles Vosberg: Also go back to page 1 of the amendment, the third page 1, line 2 item and the second line of that you will see "and local option." We want to strike that so it only applies to the state sales, use, and gross receipts taxes.

Senator Cook: Looking at the last, page 2 line 1, it says replace "This" with "Sections 1 and 4 of this." I look at the bill and that is the effective date. So instead of saying this act is effective for taxable events beginning after July 30, 2011, it is going to say "Sections 1 and 5 of this bill are effective for taxable events beginning after June 30, 2011." So whether we have the Emergency Clause or not on there, this adjuvant exemption is going to go into effect July 30, 2011. So what you need to do is remove Section 3 which is an effective date. We don't have to have an effective date for Sections 1 and 5.

Representative Headland: We don't need an effective date if it is declared an emergency.

Senator Cook: So page 2, line 1 "replace", it should say page 2, "removes lines 1 and 2."

Representative Wrangham: What happens if the emergency clause doesn't pass on the floor if we don't have an effective date?

Myles Vosberg: Then it would go into effect July 1 because it is a tax exemption which normally goes into effect on July 1.

Senator Cook: I still make my motion contingent on these two changes. I think we have to have an understanding that we should see the final amendments before us.

Representative Headland: John is drafting a new draft. We should be able to vote it out and complete our work.

Senator Cook: contingent on our final review.

A Roll Call vote was taken. **Yes:** 6 **No:** 0 **Absent:** 0

Motion carries.

Representative Headland will carry the bill in the House.

Senator Cook will carry the bill in the Senate.

2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: **Agriculture Committee**

Bill/Resolution No. HB 1424 as (re) engrossed

Date: 4/13/11

Roll Call Vote #: _____

Action Taken

- ☐ HOUSE accede to Senate amendments
☐ HOUSE accede to Senate amendments and further amend
☐ SENATE recede from Senate amendments
☐ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HB/SJ page(s) 1466 -- 1472

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed)

HB 1424
of business on the calendar

was placed on the Seventh order

Motion Made by: _____ Seconded by: _____

Representatives				Yes	No		Senators				Yes	No
Representative Headland	✓						Senator Cook	✓				
Representative Wrangham	✓						Senator Oehlke	✓				
Representative Boe	✓						Senator Triplett	✓				

Vote Count Yes: _____ No: _____ Absent: _____

House Carrier _____ Senate Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: **Agriculture Committee**

Bill/Resolution No. HB 1424 as (re) engrossed

Date: 4/15/11

Roll Call Vote #: _____

Action Taken

- ☐ HOUSE accede to Senate amendments
☐ HOUSE accede to Senate amendments and further amend
☐ SENATE recede from Senate amendments
☐ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) 1466 -- 1472

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed)

HB 1424

was placed on the Seventh order

of business on the calendar

Motion Made by: _____ Seconded by: _____

Representatives				Yes	No		Senators				Yes	No
Representative Headland							Senator Cook					
Representative Wrangham							Senator Oehlke					
Representative Boe							Senator Triplett					

Vote Count Yes: _____ No: _____ Absent: _____

House Carrier _____ Senate Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

April 18, 2011

VR
4/19/11
183

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1424

That the Senate recede from its amendments as printed on pages 1466-1472 of the House Journal and pages 1250-1256 of the Senate Journal and that Engrossed House Bill No. 1424 be amended as follows:

Page 1, line 1, after "57-39.2-04" insert ", sections 57-39.2-12.1, 57-39.5-04, and 57-39.6-04,"

Page 1, line 2, after "57-40.2-04" insert ", and section 57-40.2-07.1"

Page 1, line 2, after "to" insert "compensation allowable to retailers for expenses associated with the collection, reporting, and remittance of state sales, use, and gross receipts taxes and"

Page 1, after line 14, insert:

"SECTION 2. AMENDMENT. Section 57-39.2-12.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-12.1. Deduction to reimburse retailer for administrative expenses.

1. A retailer ~~required~~registered to report and ~~pay monthly~~remit sales, use, or gross receipts tax imposed under section 57-39.2-12~~chapter 57-39.2, 57-39.5, 57-39.6, or 57-40.2~~ may deduct and retain one and one-half percent of the tax due. The aggregate of deductions allowed by this section and section 57-40.2-07.1 may not exceed ~~eighty-five~~ninety-three dollars ~~and seventy-five cents per month~~return. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 2 or 3 for the same period.
2. A certified service provider that contracts with retailers to calculate, collect, and remit tax due on behalf of retailers may deduct and retain from the tax remitted to the tax commissioner compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board effective June 1, 2006. The compensation provided in this subsection applies only to tax remitted by certified service providers on behalf of retailers that are remote sellers registered to collect sales and use tax in this state under chapter 57-39.4. Certified service providers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 3 for the same period.
3. A retailer that is a remote seller registered to collect sales and use tax under chapter 57-39.4 and that uses a certified automated system to calculate, report, and remit tax due under chapters 57-39.2, 57-39.4, and 57-40.2 may deduct and retain compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board during its December 2006 meeting. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 2 for the same period.

4. For purposes of this section, "remote seller" means a retailer that does not have an adequate physical presence to establish nexus in this state for sales and use tax purposes.
5. Compensation may not be deducted and retained under this section unless the tax due is paid within the time limitations under section 57-39.2-12 or 57-40.2-07 or chapter 57-39.4.
6. The deduction allowed retailers or certified service providers by this section is to reimburse retailers directly or indirectly for expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying information to the tax commissioner upon request.

SECTION 3. AMENDMENT. Section 57-39.5-04 of the North Dakota Century Code is amended and reenacted as follows:

57-39.5-04. Administration.

The provisions of chapter 57-39.2 pertaining to administration of the retail sales tax, including provisions for refund, credits, retailer compensation, or adoption of rules, not in ~~compliance~~ conflict with this chapter or federal law, govern the administration of the gross receipts tax imposed in this chapter.

SECTION 4. AMENDMENT. Section 57-39.6-04 of the North Dakota Century Code is amended and reenacted as follows:

57-39.6-04. Administration.

The provisions of chapter 57-39.2, pertaining to administration of the retail sales tax, including provisions for refund, credits, retailer compensation, or adoption of rules, not in conflict with this chapter or federal law, govern the administration of the gross receipts tax imposed in this chapter."

Page 1, after line 23, insert:

"SECTION 6. AMENDMENT. Section 57-40.2-07.1 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-07.1. Deduction to reimburse retailer for administrative expenses.

1. A retailer ~~required~~ registered to report and ~~pay monthly~~ remit sales, use, or gross receipts tax imposed under section 57-40.2-07 chapter 57-39.2, 57-39.5, 57-39.6, or 57-40.2 may deduct and retain one and one-half percent of the tax due. The aggregate of deductions allowed by this section and section 57-39.2-12.1 may not exceed ~~eighty-five~~ ninety-three dollars and seventy-five cents per month ~~return~~. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 2 or 3 for the same period.
2. A certified service provider that contracts with retailers to calculate, collect, and remit tax due on behalf of retailers may deduct and retain from the tax remitted to the tax commissioner compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board effective June 1, 2006. The compensation provided in this subsection applies only to tax remitted by certified service providers on

behalf of retailers that are remote sellers registered to collect sales and use tax in this state under chapter 57-39.4. Certified service providers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 3 for the same period.

3. A retailer that is a remote seller registered to collect sales and use tax under chapter 57-39.4 and that uses a certified automated system to calculate, report, and remit tax due under chapters 57-39.2, 57-39.4, and 57-40.2 may deduct and retain compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board during its December 2006 meeting. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 2 for the same period.
4. For purposes of this section, "remote seller" means a retailer that does not have an adequate physical presence to establish nexus in this state for sales and use tax purposes.
5. Compensation may not be deducted and retained under this section unless the tax due is paid within the time limitations under section 57-39.2-12 or 57-40.2-07 or chapter 57-39.4.
6. The deduction allowed retailers or certified service providers by this section is to reimburse retailers directly or indirectly for expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying information to the tax commissioner upon request."

Page 2, line 1, remove "This Act is effective for taxable events beginning after"

Page 2, replace line 2 with "Sections 2, 3, 4, and 6 of this Act are effective for taxable events occurring after December 31, 2011."

Renumber accordingly

2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: **Agriculture Committee**

Bill/Resolution No. HB 1424 as (re) engrossed

Date: 4/18/11

Roll Call Vote #: 1

- Action Taken**
- ☐ HOUSE accede to Senate amendments
 - ☐ HOUSE accede to Senate amendments and further amend
 - ☐ SENATE recede from Senate amendments
 - ☒ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ SJ page(s) 1466 -- 1472

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) HB 1424 was placed on the Seventh order of business on the calendar

Motion Made by: Senator Cook Seconded by: Representative Wrangham

Representatives	<u>4/18/11</u>		Yes	No		Senators	<u>4/18/11</u>		Yes	No
Representative Headland	x		x			Senator Cook	x		x	
Representative Wrangham	x		x			Senator Oehlke	x		x	
Representative Boe	x		x			Senator Triplett	x		x	

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Representative Headland Senate Carrier Senator Cook

LC Number 11.8238 . 02007 of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

—Retailers submitting sales tax will receive increased compensation per return.

REPORT OF CONFERENCE COMMITTEE

HB 1424, as engrossed: Your conference committee (Sens. Cook, Oehlke, Triplett and Reps. Headland, Wrangham, Boe) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1466-1472, adopt amendments as follows, and place HB 1424 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1466-1472 of the House Journal and pages 1250-1256 of the Senate Journal and that Engrossed House Bill No. 1424 be amended as follows:

Page 1, line 1, after "57-39.2-04" insert ", sections 57-39.2-12.1, 57-39.5-04, and 57-39.6-04,"

Page 1, line 2, after "57-40.2-04" insert ", and section 57-40.2-07.1"

Page 1, line 2, after "to" insert "compensation allowable to retailers for expenses associated with the collection, reporting, and remittance of state sales, use, and gross receipts taxes and"

Page 1, after line 14, insert:

"SECTION 2. AMENDMENT. Section 57-39.2-12.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-12.1. Deduction to reimburse retailer for administrative expenses.

1. A retailer ~~required~~registered to report and ~~pay monthly~~remit sales, use, or gross receipts tax imposed under ~~section 57-39.2-12~~ chapter 57-39.2, 57-39.5, 57-39.6, or 57-40.2 may deduct and retain one and one-half percent of the tax due. The aggregate of deductions allowed by this section and section 57-40.2-07.1 may not exceed ~~eighty-five~~eighty-five ninety-three dollars ~~and seventy-five cents per month~~return. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 2 or 3 for the same period.
2. A certified service provider that contracts with retailers to calculate, collect, and remit tax due on behalf of retailers may deduct and retain from the tax remitted to the tax commissioner compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board effective June 1, 2006. The compensation provided in this subsection applies only to tax remitted by certified service providers on behalf of retailers that are remote sellers registered to collect sales and use tax in this state under chapter 57-39.4. Certified service providers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 3 for the same period.
3. A retailer that is a remote seller registered to collect sales and use tax under chapter 57-39.4 and that uses a certified automated system to calculate, report, and remit tax due under chapters 57-39.2, 57-39.4, and 57-40.2 may deduct and retain compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board during its December 2006 meeting. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 2 for the same period.
4. For purposes of this section, "remote seller" means a retailer that does not have an adequate physical presence to establish nexus in this state for sales and use tax purposes.

5. Compensation may not be deducted and retained under this section unless the tax due is paid within the time limitations under section 57-39.2-12 or 57-40.2-07 or chapter 57-39.4.
6. The deduction allowed retailers or certified service providers by this section is to reimburse retailers directly or indirectly for expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying information to the tax commissioner upon request.

SECTION 3. AMENDMENT. Section 57-39.5-04 of the North Dakota Century Code is amended and reenacted as follows:

57-39.5-04. Administration.

The provisions of chapter 57-39.2 pertaining to administration of the retail sales tax, including provisions for refund, credits, retailer compensation, or adoption of rules, not in ~~compliance~~conflict with this chapter or federal law, govern the administration of the gross receipts tax imposed in this chapter.

SECTION 4. AMENDMENT. Section 57-39.6-04 of the North Dakota Century Code is amended and reenacted as follows:

57-39.6-04. Administration.

The provisions of chapter 57-39.2, pertaining to administration of the retail sales tax, including provisions for refund, credits, retailer compensation, or adoption of rules, not in conflict with this chapter or federal law, govern the administration of the gross receipts tax imposed in this chapter."

Page 1, after line 23, insert:

"SECTION 6. AMENDMENT. Section 57-40.2-07.1 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-07.1. Deduction to reimburse retailer for administrative expenses.

1. A retailer ~~required~~registered to report and ~~pay monthly~~remit sales, use, or gross receipts tax imposed under section 57-40.2-07chapter 57-39.2, 57-39.5, 57-39.6, or 57-40.2 may deduct and retain one and one-half percent of the tax due. The aggregate of deductions allowed by this section and section 57-39.2-12.1 may not exceed ~~eighty-five~~ninety-three dollars ~~and seventy-five cents per month~~return. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 2 or 3 for the same period.
2. A certified service provider that contracts with retailers to calculate, collect, and remit tax due on behalf of retailers may deduct and retain from the tax remitted to the tax commissioner compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board effective June 1, 2006. The compensation provided in this subsection applies only to tax remitted by certified service providers on behalf of retailers that are remote sellers registered to collect sales and use tax in this state under chapter 57-39.4. Certified service providers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 3 for the same period.
3. A retailer that is a remote seller registered to collect sales and use tax under chapter 57-39.4 and that uses a certified automated system to calculate, report, and remit tax due under chapters 57-39.2, 57-39.4, and

57-40.2 may deduct and retain compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board during its December 2006 meeting. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 2 for the same period.

4. For purposes of this section, "remote seller" means a retailer that does not have an adequate physical presence to establish nexus in this state for sales and use tax purposes.
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Page 2, line 1, remove "This Act is effective for taxable events beginning after"

Page 2, replace line 2 with "Sections 2, 3, 4, and 6 of this Act are effective for taxable events occurring after December 31, 2011."

Renumber accordingly

Engrossed HB 1424 was placed on the Seventh order of business on the calendar.

2011 TESTIMONY

HB 1424



Your voice for wheat and barley. www.ndgga.com

**North Dakota Grain Growers Association
Testimony on HB 1424
House Agriculture Committee
February 3, 2011**

Mr. Chairman, members of the House Agriculture Committee, for the record my name is Terry Weckerly; I am a fourth generation farmer and farm retail owner from Hurdsfield, North Dakota. I am also the President of the North Dakota Grain Growers Association. I appear before you today in support of HB 1424.

HB 1424 is here today to clear up an inconsistency in state law in regards to the taxation of pesticide tank cleaner and foam marker solution as agricultural products. Both products are used extensively and almost exclusively in agriculture; as such ag retailers such as myself have considered these products non-taxable under the agricultural provisions in state tax law. Much to my amazement, and to the amazement of other ag retailers as well as producers, after a tax audit I found out that this was not the case.

Mr. Chairman, members of the House Agriculture Committee, it is my belief that pesticide tank cleaner and foam marker solution are agricultural products and should be covered by the non-taxable provisions of state law. Some would call these products "adjuvants" which are currently non-taxable under the North Dakota Century Code. Tank cleaner and foam marker are used every day in the course of pesticide applications. However, these two products fall "between the cracks" under the present interpretation of the law. Because of this, there is confusion by ag retailers and producers regarding the taxable status of these products.

To clear up this confusion I have worked with Tax Commissioner Cory Fong and the North Dakota Tax Department staff to craft the bill before you. HB 1424 seeks to clear up confusion and puts into law what for the most part is practice in our state.

Therefore, Mr. Chairman, members of the House Agriculture Committee, on behalf of the North Dakota Grain Growers Association I would ask for a Do Pass recommendation on HB 1424 and I would be open to any questions.

NDGGA provides a voice for wheat and barley producers on domestic policy issues – such as crop insurance, disaster assistance and the Farm Bill – while serving as a source for agronomic and crop marketing education for its members.



P.O. Box 2599
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(701) 355-4458
FAX (701) 223-4645

MEMBERS

AmeriFlax
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Independent Beef Association
of North Dakota
Milk Producers Association
of North Dakota, Inc.
Minn-Dak Farmers Co-op
North Dakota Ag Aviation Association
North Dakota Ag Consultants
North Dakota Agricultural Association
North Dakota Agri-Women
North Dakota Association
of Agricultural Educators
North Dakota Association
of Soil Conservation Districts
North Dakota Barley Council
North Dakota Beef Commission
North Dakota Corn Growers
Association
North Dakota Corn Utilization Council
North Dakota Crop Improvement
Association
North Dakota Department of
Agriculture
North Dakota Dry Bean Council
North Dakota Dry Edible Bean
Seed Growers
North Dakota Elk Growers
North Dakota Ethanol Council
North Dakota Farm Bureau
North Dakota Farm Credit Council
North Dakota Farmers Union
North Dakota Grain Dealers
Association
North Dakota Grain Growers
Association
North Dakota Lamb and Wool
Producers Association
North Dakota Oilseed Council
North Dakota Pork Council
North Dakota Soybean Council
North Dakota Soybean Growers
Association
North Dakota State Seed
Commission
North Dakota Stockmen's Association
North Dakota Wheat Commission
North Dakota State University
and University Extension
Northern Canola Growers Association
Northern Food Grade Soybean
Association
Northern Plains Potato Growers
Association
Northern Pulse Growers Association
Red River Valley Sugarbeet Growers

#2

Testimony of Allan Tellmann

North Dakota Ag Coalition Chairman

HB 1424

February 3, 2011

Mr. Chairman and members of the Committee, my name is Allan Tellmann, and I am the chairman of the North Dakota Ag Coalition. On behalf of the Ag Coalition, I encourage your support of HB 1424, which clarifies the tax status of chemicals used for agricultural purposes.

The Ag Coalition has provided a unified voice for North Dakota agricultural interests for more than 25 years. Today, we represent more than 40 statewide organizations and associations that represent specific commodities or have a direct interest in agriculture. The Ag Coalition takes a position on a limited number of issues brought to us by our members that have significant impact on North Dakota's agriculture industry.

This bill clarifies an inconsistency in the current law regarding the taxation of pesticide tank cleaner and foam marker solution, which are commonly sold by ag retailers and used by ag producers. These chemicals are often considered adjuvants, which are currently not taxable under the state law. The Ag Coalition supports HB 1424 as it will reduce confusion regarding these products for North Dakota's ag retailers and producers.

We encourage your favorable consideration of HB 1424.

Vosberg, Myles S.

From: Vosberg, Myles S.
Sent: Thursday, March 24, 2011 3:40 PM
To: Cook, Dwight C.
Strombeck, Kathy L.
Subject: Fiscal Impact of Compensation Amendment to HB1424

Senator Cook,

The fiscal impact of the compensation amendment you are proposing for HB1424 will be an annual revenue loss of \$1.3 million for the state and a revenue gain of approximately \$145,000 for the cities and counties that impose a local tax.

If successful, the new comp rate will go into effect January 1, 2012, and the fiscal impact for the full eighteen months the new comp rate will be in effect next biennium will be a loss of \$1.95 million for the state and a revenue increase of \$217,500 for the locals.

Even though some of the cities and counties do not currently provide for retailer compensation, the existing state-wide average rate of compensation for the locals is currently greater than the proposed compensation plan in HB1424. So, even though there is a net revenue gain for the locals in total, some cities and counties will have a revenue loss while others will have a gain.

If you have any questions, please let me know.

Myles



Your voice for wheat and barley. www.ndgga.com

**North Dakota Grain Growers Association
Testimony on HB 1424
Senate Finance and Tax Committee
March 14, 2011**

Mr. Chairman, members of the Senate Finance and Tax Committee, for the record my name is Terry Weckerly; I am a fourth generation farmer and farm retail owner from Hurdsfield, North Dakota. I am also the President of the North Dakota Grain Growers Association. I appear before you today in support of HB 1424.

HB 1424 is here today to clear up an inconsistency in state law in regards to the taxation of pesticide tank cleaner and foam marker solution as agricultural products. Both products are used extensively and almost exclusively in agriculture; as such ag retailers such as myself have considered these products non-taxable under the agricultural provisions in state tax law. Much to my amazement, and to the amazement of other ag retailers as well as producers, after a tax audit I found out that this was not the case.

Mr. Chairman, members of the Committee, it is my belief that pesticide tank cleaner and foam marker solution are agricultural products and should be covered by the non-taxable provisions of state law. Some would call these products "adjuvants" which are currently non-taxable under the North Dakota Century Code. Tank cleaner and foam marker are used every day in the course of pesticide applications. However, these two products fall "between the cracks" under the present interpretation of the law. Because of this, there is confusion by ag retailers and producers regarding the taxable status of these products.

To clear up this confusion I have worked with Tax Commissioner Cory Fong and the North Dakota Tax Department staff to craft the bill before you. HB 1424 seeks to clear up confusion and puts into law what for the most part is practice in our state.

Therefore, Mr. Chairman, members of the Senate Finance and Tax Committee, on behalf of the North Dakota Grain Growers Association I would ask for a Do Pass recommendation on HB 1424 and I would be open to any questions.

NDGGA provides a voice for wheat and barley producers on domestic policy issues – such as crop insurance, disaster assistance and the Farm Bill – while serving as a source for agronomic and crop marketing education for its members.



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North Dakota Dry Edible Bean
Seed Growers
North Dakota Elk Growers
North Dakota Ethanol Council
North Dakota Farm Bureau
North Dakota Farm Credit Council
North Dakota Farmers Union
North Dakota Grain Dealers
Association
North Dakota Grain Growers
Association
North Dakota Lamb and Wool
Producers Association
North Dakota Oilseed Council
North Dakota Pork Council
North Dakota Soybean Council
North Dakota Soybean Growers
Association
North Dakota State Seed
Commission
North Dakota Stockmen's Association
North Dakota Wheat Commission
North Dakota State University
and University Extension
Northern Canola Growers Association
Northern Food Grade Soybean
Association
Northern Plains Potato Growers
Association
Northern Pulse Growers Association
Red River Valley Sugarbeet Growers

**Testimony of Allan Tellmann
North Dakota Ag Coalition Chairman
HB 1424
March 14, 2011**

Mr. Chairman and members of the Committee, my name is Allan Tellmann, and I am the chairman of the North Dakota Ag Coalition. On behalf of the Ag Coalition, I would encourage your support of HB 1424, which clarifies a tax exemption for chemicals used for agricultural purposes.

The Ag Coalition has provided a unified voice for North Dakota agricultural interests for more than 25 years. Today, we represent more than 40 statewide organizations and associations that represent specific commodities or have a direct interest in agriculture. The Ag Coalition takes a position on a limited number of issues brought to us by our members that have significant impact on North Dakota's agriculture industry.

HB 1424 clarifies an inconsistency in state law regarding the taxation of pesticide tank cleaner and foam marker solution as agricultural products. These chemicals are often considered adjuvants, which are currently non-taxable under the North Dakota Century Code. The Ag Coalition supports the exemption as these chemicals are a necessary tool in today's agriculture industry.

We appreciate your past support and would encourage your continued support of HB 1424 and North Dakota's agriculture industry.

Estimated Compensation

Based on Calendar 2010 Sales Tax Returns
(In millions)

	1½ Compensation Rate				
	Cap Based on Month				
	\$85 cap	\$100 cap	\$125 cap	\$150 cap	\$170 cap
Estimated compensation	4.158	4.452	4.858	5.189	5.413
2010 state compensation	3.023	3.023	3.023	3.023	3.023
Annual cost	1.135	1.429	1.835	2.166	2.39
Biennium cost w/1/1/12 effective date	\$ 1.703	\$ 2.144	\$ 2.753	\$ 3.249	\$ 3.585

	1½ Compensation Rate				
	Cap Based on Return				
	\$85 cap	\$100 cap	\$125 cap	\$150 cap	\$170 cap
Estimated compensation	4.018	4.318	4.732	5.067	5.294
2010 state compensation	3.023	3.023	3.023	3.023	3.023
Annual cost	0.995	1.201	1.709	2.044	2.271
Biennium cost w/1/1/12 effective date	\$ 1.493	\$ 1.802	\$ 2.564	\$ 3.066	\$ 3.407

	1½% on First \$6,250 Tax plus .33% on Balance				
	Cap Based on Return				
	\$100 cap	\$125 cap	\$150 cap	\$170 cap	
Estimated compensation	4.306	4.564	4.702	4.778	
2010 state compensation	3.023	3.023	3.023	3.023	
Annual cost	1.283	1.541	1.679	1.755	
Biennium cost w/1/1/12 effective date	\$ 1.925	\$ 2.312	\$ 2.519	\$ 2.633	

Cap based on month means the cap amount applies to each month in reporting period (for example, a quarterly return receives cap amount * 3)

Cap based on return means the same cap amount applies to a return whether the return includes a monthly, quarterly, semi-annual or annual period

Prepared by Myles Vosberg
Office of State Tax Commissioner
April 15, 2011

April 15, 2011

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1424

That the Senate recede from its amendments as printed on pages 1466-1472 of the House Journal and pages 917-923 of the Senate Journal and that Engrossed House Bill No. 1424 be amended as follows:

Page 1, line 1, after "reenact" insert "subsection 2 of section 11-09.1-05, section 40-05.1-06,"

Page 1, line 1, replace the second "and" with ", sections 57-39.2-12.1, 57-39.5-04, and 57-39.6-04,"

Page 1, line 2, after "57-40.2-04" insert ", and section 57-40.2-07.1"

Page 1, line 2, after "to" insert "compensation allowable to retailers for expenses associated with the collection, reporting, and remittance of state and local option sales, use, and gross receipts taxes and"

Page 1, line 3, after the first semicolon insert "and"

Page 1, line 3, remove "; and to"

Page 1, line 4, remove "declare an emergency"

Page 1, after line 5, insert:

"SECTION 1. AMENDMENT. Subsection 2 of section 11-09.1-05 of the North Dakota Century Code is amended and reenacted as follows:

2. Control its finances and fiscal affairs; appropriate money for its purposes, and make payments of its debts and expenses; subject to the limitations of this section levy and collect property taxes, sales and use taxes, farm machinery gross receipts taxes, alcoholic beverage gross receipts taxes, motor vehicle fuels and special fuels taxes, motor vehicle registration fees, and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings, and improvements; contract debts, borrow money, issue bonds, warrants, and other evidences of indebtedness; establish charges for any county or other services to the extent authorized by state law; and establish debt and mill levy limitations. Notwithstanding any authority granted under this chapter, all property must be assessed in a uniform manner as prescribed by the state board of equalization and the state supervisor of assessments and all taxable property must be taxed by the county at the same rate unless otherwise provided by law. A charter or ordinance or act of a governing body of a home rule county may not supersede any state law that determines what property or acts are subject to, or exempt from, ad valorem taxes. A charter or ordinance or act of the governing body of a home rule county may not supersede section 11-11-55.1 relating to the sixty percent petition requirement for improvements and of section 40-22-18 relating to the barring proceeding for improvement projects. After December 31, 2005, sales and use taxes, farm machinery gross receipts taxes, and alcoholic beverage gross receipts taxes levied under this chapter:

- a. Must conform in all respects with regard to the taxable or exempt status of items under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed at multiple rates with the exception of sales of electricity, piped natural or artificial gas, or other heating fuels delivered by the seller or the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.
- b. May not be newly imposed or changed except to be effective on the first day of a calendar quarterly period after a minimum of ninety days' notice to the tax commissioner or, for purchases from printed catalogs, on the first day of a calendar quarter after a minimum of one hundred twenty days' notice to the seller.
- c. May not be limited to apply to less than the full value of the transaction or item as determined for state sales and use tax, except for farm machinery gross receipts tax purposes.
- d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1 and must be administered by the tax commissioner in accordance with the relevant provisions of chapter 57-39.2, including reporting and paying requirements, correction of errors, payment of refunds, and application of penalty and interest.

After December 31, 2005, any portion of a charter or any portion of an ordinance or act of a governing body of a home rule county passed pursuant to a charter which does not conform to the requirements of this subsection or the retailer compensation provisions of chapter 57-39.2 or 57-40.2 is invalid to the extent that it does not conform. The invalidity of a portion of a charter or ordinance or act of a governing body of a home rule county because it does not conform to this subsection does not affect the validity of any other portion of the charter or ordinance or act of a governing body of a home rule county or the eligibility for a refund under section 57-01-02.1. Any taxes imposed under this chapter on farm machinery, farm irrigation equipment, and farm machinery repair parts used exclusively for agricultural purposes, or on alcoholic beverages, which were in effect on December 31, 2005, become gross receipts taxes after December 31, 2005.

SECTION 2. AMENDMENT. Section 40-05.1-06 of the North Dakota Century Code is amended and reenacted as follows:

40-05.1-06. Powers.

From and after the filing with the secretary of state of a charter framed and approved in reasonable conformity with the provisions of this chapter, such city, and the citizens thereof, shall, if included in the charter and implemented through ordinances, have the following powers set out in this chapter:

- 1. To acquire, hold, operate, and dispose of property within or without the corporate limits, and, subject to chapter 32-15, exercise the right of eminent domain for such purposes.

2. To control its finances and fiscal affairs; to appropriate money for its purposes, and make payment of its debts and expenses; to levy and collect taxes, excises, fees, charges, and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings, and improvements; to contract debts, borrow money, issue bonds, warrants, and other evidences of indebtedness; to establish charges for any city or other services; and to establish debt and mill levy limitations. Notwithstanding any authority granted under this chapter, all property must be assessed in a uniform manner as prescribed by the state board of equalization and the state supervisor of assessments and all taxable property must be taxed by the city at the same rate unless otherwise provided by law. The authority to levy taxes under this subsection does not include authority to impose income taxes.
3. To fix the fees, number, terms, conditions, duration, and manner of issuing and revoking licenses in the exercise of its governmental police powers.
4. To provide for city officers, agencies, and employees, their selection, terms, powers, duties, qualifications, and compensation. To provide for change, selection, or creation of its form and structure of government, including its governing body, executive officer, and city officers.
5. To provide for city courts, their jurisdiction and powers over ordinance violations, duties, administration, and the selection, qualifications, and compensation of their officers; however, the right of appeal from judgment of such courts shall not be in any way affected.
6. To provide for all matters pertaining to city elections, except as to qualifications of electors.
7. To provide for the adoption, amendment, and repeal of ordinances, resolutions, and regulations to carry out its governmental and proprietary powers and to provide for public health, safety, morals, and welfare, and penalties for a violation thereof.
8. To lay out or vacate streets, alleys, and public grounds, and to provide for the use, operation, and regulation thereof.
9. To define offenses against private persons and property and the public health, safety, morals, and welfare, and provide penalties for violations thereof.
10. To engage in any utility, business, or enterprise permitted by the constitution or not prohibited by statute or to grant and regulate franchises therefor to a private person, firm, corporation, or limited liability company.
11. To provide for zoning, planning, and subdivision of public or private property within the city limits. To provide for such zoning, planning, and subdivision of public or private property outside the city limits as may be permitted by state law.
12. To levy and collect franchise and license taxes for revenue purposes.
13. To exercise in the conduct of its affairs all powers usually exercised by a corporation.

14. To fix the boundary limits of said city and the annexation and deannexation of territory adjacent to said city except that such power shall be subject to, and shall conform with the state law made and provided.
15. To contract with and receive grants from any other governmental entity or agency, with respect to any local, state, or federal program, project, or works.
16. To impose registration fees on motor vehicles, farm machinery gross receipts taxes, alcoholic beverage gross receipts taxes, or sales and use taxes in addition to any other taxes imposed by law. After December 31, 2005, sales and use taxes and gross receipts taxes levied under this chapter:
 - a. Must conform in all respects with regard to the taxable or exempt status of items under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed at multiple rates with the exception of sales of electricity, piped natural or artificial gas, or other heating fuels delivered by the seller or the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.
 - b. May not be newly imposed or changed except to be effective on the first day of a calendar quarterly period after a minimum of ninety days' notice to the tax commissioner or, for purchases from printed catalogs, on the first day of a calendar quarter after a minimum of one hundred twenty days' notice to the seller.
 - c. May not be limited to apply to less than the full value of the transaction or item as determined for state sales and use tax purposes, except for farm machinery gross receipts tax.
 - d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1 and must be administered by the tax commissioner in accordance with the relevant provisions of chapter 57-39.2, including reporting and paying requirements, correction of errors, payment of refunds, and application of penalty and interest.

It is the intention of this chapter to grant and confirm to the people of all cities coming within its provisions the full right of self-government in both local and city matters within the powers enumerated herein. The statutes of the state of North Dakota, so far as applicable, shall continue to apply to home rule cities, except insofar as superseded by the charters of such cities or by ordinance passed pursuant to such charters.

After December 31, 2005, any portion of a charter or any portion of an ordinance passed pursuant to a charter which does not conform to the requirements of subsection 16 or the retailer compensation provisions of chapter 57-39.2 or 57-40.2 is invalid to the extent that it does not conform. The invalidity of a portion of a charter or ordinance because it does not conform to subsection 16 does not affect the validity of any other portion of the charter or ordinance or the eligibility for a refund under section 57-01-02.1. Any taxes imposed under this chapter on farm machinery, farm irrigation equipment, and farm machinery repair parts used exclusively for agricultural purposes,

or on alcoholic beverages, which were in effect on December 31, 2005, become gross receipts taxes after December 31, 2005."

Page 1, after line 14, insert:

"SECTION 4. AMENDMENT. Section 57-39.2-12.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-12.1. Deduction to reimburse retailer for administrative expenses.

1. A retailer ~~required~~registered to report and ~~pay monthly~~remit sales, use, or gross receipts tax imposed under section 57-39.2-12~~chapter 57-39.2, 57-39.5, 57-39.6, or 57-40.2~~ may deduct and retain one and one-half percent of the tax due. The aggregate of deductions allowed by this section and section 57-40.2-07.1 may not exceed ~~eighty-five~~ninety-three dollars ~~and seventy-five cents per month~~return. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 2 or 3 for the same period.
2. A certified service provider that contracts with retailers to calculate, collect, and remit tax due on behalf of retailers may deduct and retain from the tax remitted to the tax commissioner compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board effective June 1, 2006. The compensation provided in this subsection applies only to tax remitted by certified service providers on behalf of retailers that are remote sellers registered to collect sales and use tax in this state under chapter 57-39.4. Certified service providers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 3 for the same period.
3. A retailer that is a remote seller registered to collect sales and use tax under chapter 57-39.4 and that uses a certified automated system to calculate, report, and remit tax due under chapters 57-39.2, 57-39.4, and 57-40.2 may deduct and retain compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board during its December 2006 meeting. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 2 for the same period.
4. For purposes of this section, "remote seller" means a retailer that does not have an adequate physical presence to establish nexus in this state for sales and use tax purposes.
5. Compensation may not be deducted and retained under this section unless the tax due is paid within the time limitations under section 57-39.2-12 or 57-40.2-07 or chapter 57-39.4.
6. The deduction allowed retailers or certified service providers by this section is to reimburse retailers directly or indirectly for expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying information to the tax commissioner upon request.

SECTION 5. AMENDMENT. Section 57-39.5-04 of the North Dakota Century Code is amended and reenacted as follows:

57-39.5-04. Administration.

The provisions of chapter 57-39.2 pertaining to administration of the retail sales tax, including provisions for refund, credits, retailer compensation, or adoption of rules, not in ~~compliance~~conflict with this chapter or federal law, govern the administration of the gross receipts tax imposed in this chapter.

SECTION 6. AMENDMENT. Section 57-39.6-04 of the North Dakota Century Code is amended and reenacted as follows:

57-39.6-04. Administration.

The provisions of chapter 57-39.2, pertaining to administration of the retail sales tax, including provisions for refund, credits, retailer compensation, or adoption of rules, not in conflict with this chapter or federal law, govern the administration of the gross receipts tax imposed in this chapter."

Page 1, after line 23, insert:

"SECTION 8. AMENDMENT. Section 57-40.2-07.1 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-07.1. Deduction to reimburse retailer for administrative expenses.

1. A retailer ~~required~~registered to report and ~~pay monthly~~remit sales, use, or gross receipts tax imposed under section 57-40.2-07~~chapter 57-39.2, 57-39.5, 57-39.6, or 57-40.2~~ may deduct and retain one and one-half percent of the tax due. The aggregate of deductions allowed by this section and section 57-39.2-12.1 may not exceed ~~eighty-five~~ninety-three dollars ~~and seventy-five cents per month~~return. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 2 or 3 for the same period.
2. A certified service provider that contracts with retailers to calculate, collect, and remit tax due on behalf of retailers may deduct and retain from the tax remitted to the tax commissioner compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board effective June 1, 2006. The compensation provided in this subsection applies only to tax remitted by certified service providers on behalf of retailers that are remote sellers registered to collect sales and use tax in this state under chapter 57-39.4. Certified service providers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 3 for the same period.
3. A retailer that is a remote seller registered to collect sales and use tax under chapter 57-39.4 and that uses a certified automated system to calculate, report, and remit tax due under chapters 57-39.2, 57-39.4, and 57-40.2 may deduct and retain compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board during its December 2006 meeting. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 2 for the same period.

4. For purposes of this section, "remote seller" means a retailer that does not have an adequate physical presence to establish nexus in this state for sales and use tax purposes.
5. Compensation may not be deducted and retained under this section unless the tax due is paid within the time limitations under section 57-39.2-12 or 57-40.2-07 or chapter 57-39.4.
6. The deduction allowed retailers or certified service providers by this section is to reimburse retailers directly or indirectly for expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying information to the tax commissioner upon request."

Page 2, line 2, replace "June 30" with "December 31"

Page 2, remove line 3

Renumber accordingly

April 15, 2011

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1424

Page 1, line 1, after "57-39.2-04" insert ", sections 57-39.2-12.1, 57-39.5-04, and 57-39.6-04,"

Page 1, line 2, after "57-40.2-04" insert ", and section 57-40.2-07.1"

Page 1, line 2, after "to" insert "compensation allowable to retailers for expenses associated with the collection, reporting, and remittance of state and local option sales, use, and gross receipts taxes and"

Page 1, line 3, after the first semicolon insert "and"

Page 1, line 3, remove "; and to"

Page 1, line 4, remove "declare an emergency"

Page 1, after line 14, insert:

"SECTION 2. AMENDMENT. Section 57-39.2-12.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-12.1. Deduction to reimburse retailer for administrative expenses.

1. A retailer ~~required~~registered to report and ~~pay monthly~~remit sales, use, or gross receipts tax imposed under section 57-39.2-12~~chapter 57-39.2, 57-39.5, 57-39.6, or 57-40.2~~ may deduct and retain one and one-half percent of the tax due. The aggregate of deductions allowed by this section and section 57-40.2-07.1 may not exceed ~~eighty-five~~ninety-three dollars ~~and seventy-five cents per month~~return. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 2 or 3 for the same period.
2. A certified service provider that contracts with retailers to calculate, collect, and remit tax due on behalf of retailers may deduct and retain from the tax remitted to the tax commissioner compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board effective June 1, 2006. The compensation provided in this subsection applies only to tax remitted by certified service providers on behalf of retailers that are remote sellers registered to collect sales and use tax in this state under chapter 57-39.4. Certified service providers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 3 for the same period.
3. A retailer that is a remote seller registered to collect sales and use tax under chapter 57-39.4 and that uses a certified automated system to calculate, report, and remit tax due under chapters 57-39.2, 57-39.4, and 57-40.2 may deduct and retain compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board during its December 2006 meeting. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 2 for the same period.

4. For purposes of this section, "remote seller" means a retailer that does not have an adequate physical presence to establish nexus in this state for sales and use tax purposes.
5. Compensation may not be deducted and retained under this section unless the tax due is paid within the time limitations under section 57-39.2-12 or 57-40.2-07 or chapter 57-39.4.
6. The deduction allowed retailers or certified service providers by this section is to reimburse retailers directly or indirectly for expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying information to the tax commissioner upon request.

SECTION 3. AMENDMENT. Section 57-39.5-04 of the North Dakota Century Code is amended and reenacted as follows:

57-39.5-04. Administration.

The provisions of chapter 57-39.2 pertaining to administration of the retail sales tax, including provisions for refund, credits, retailer compensation, or adoption of rules, not in ~~compliance~~conflict with this chapter or federal law, govern the administration of the gross receipts tax imposed in this chapter.

SECTION 4. AMENDMENT. Section 57-39.6-04 of the North Dakota Century Code is amended and reenacted as follows:

57-39.6-04. Administration.

The provisions of chapter 57-39.2, pertaining to administration of the retail sales tax, including provisions for refund, credits, retailer compensation, or adoption of rules, not in conflict with this chapter or federal law, govern the administration of the gross receipts tax imposed in this chapter."

Page 1, after line 23, insert:

"SECTION 6. AMENDMENT. Section 57-40.2-07.1 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-07.1. Deduction to reimburse retailer for administrative expenses.

1. A retailer ~~required~~registered to report and ~~pay monthly~~remit sales, use, or gross receipts tax imposed under section 57-40.2-07 chapter 57-39.2, 57-39.5, 57-39.6, or 57-40.2 may deduct and retain one and one-half percent of the tax due. The aggregate of deductions allowed by this section and section 57-39.2-12.1 may not exceed ~~eighty-five~~ninety-three dollars ~~and seventy-five cents per month~~return. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 2 or 3 for the same period.
2. A certified service provider that contracts with retailers to calculate, collect, and remit tax due on behalf of retailers may deduct and retain from the tax remitted to the tax commissioner compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board effective June 1, 2006. The compensation provided in this subsection applies only to tax remitted by certified service providers on

behalf of retailers that are remote sellers registered to collect sales and use tax in this state under chapter 57-39.4. Certified service providers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 3 for the same period.

3. A retailer that is a remote seller registered to collect sales and use tax under chapter 57-39.4 and that uses a certified automated system to calculate, report, and remit tax due under chapters 57-39.2, 57-39.4, and 57-40.2 may deduct and retain compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board during its December 2006 meeting. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 2 for the same period.
4. For purposes of this section, "remote seller" means a retailer that does not have an adequate physical presence to establish nexus in this state for sales and use tax purposes.
5. Compensation may not be deducted and retained under this section unless the tax due is paid within the time limitations under section 57-39.2-12 or 57-40.2-07 or chapter 57-39.4.
6. The deduction allowed retailers or certified service providers by this section is to reimburse retailers directly or indirectly for expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying information to the tax commissioner upon request."

Page 2, line 1, replace "This" with "Sections 1 and 5 of this "

Page 2, line 1, replace "is" with "are"

Page 2, line 2, after the period insert "Sections 2, 3, 4, and 6 of this Act are effective for taxable events occurring after December 31, 2011."

Renumber accordingly