2011 SENATE FINANCE AND TAXATION

SB 2238

2011 SENATE STANDING COMMITTEE MINUTES

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

SB 2238
January 24, 2011
13290

☐ Conference Committee

Committee Clerk Signature	Katie Oliver

Explanation or reason for introduction of bill/resolution:

Relating to compensation allowable to retailers for expenses associated with the collecting, reporting and remittance of state and local option sales, use, and gross receipts taxes; an to provide an effective date

Minutes: Testimony attached

Vice Chairman Miller called the committee to order. Senator Cook, the prime sponsor, introduced the bill. Myles Vosberg of the Office of State Tax Commissioner also spoke in favor of the bill.

Senator Cook: This bill deals with how we handle our remote sellers for collecting and remitting sales tax. The bill has a 3-legged approach: First to simplify, when we would not simplify find uniformity that would remove this burden. Second thing was the use of technology, we have developed a technology over the year, and we have certified service providers and certified automated systems. Third burden that we are removing is compensation; to what degree a burden still existed that remote sellers need to be compensated. I weighed heavily in the fact that it is a state right to determine what we compensate sellers and that we should only have remote sellers. Here in North Dakota we are not going to compensate remote sellers more than we compensate in-state sellers. The compensation that we have today is 1 1/2% with a cap at $85 a month for those sellers that collect and remit monthly. This bill removes the cap; it keeps the rate at 11/2% for the first $6,250 that a seller would collect and remit. The rate for the sales tax from $6,250-$62,500 the North Dakota sellers would be compensated at a rate of .65% and all sales tax after $62,500 will be capped at .33%.

Myles Vosberg: See testimony #1.

Senator Cook: If this bill was not to pass, we would still be incompliance with the streamline sales tax agreement, yes.

Myles Vosberg: Yes.

Senator Cook: Even if federal legislation passed we would still be in compliance we just would not get collection authority.

Myles Vosberg: That is also correct Mr. Chairman.

Senator Cook: The main thing here is that if we ever want to get collection authority and the Main Street Fairness Act were to pass then we would need to increase our compensation.

Myles Vosberg: Yes.

Senator Cook: If we wanted to get collection authority we would only have to increase the compensation in tier 1 to 1.3%, so when we are at 1.5% that is something that we have elected to do.

Myles Vosberg: Correct.

Senator Cook: The $6,250, $62,500 and the $750,000 those caps are in the streamline sales tax agreement which the Main Street Fairness Act would recognize so we don't have flexibility on them?

Myles Vosberg: There are higher caps based on the total sales revenues that are generated by a state.

Senator Cook: And the 3 1/4% that is in this bill is also in the streamline tax agreement as being the total amount that is necessary for compensation.

Myles Vosberg: That is the minimum requirement for states that have local option taxes.

Jerry Hjelmastad: North Dakota League of Cities has been a long time supporter of the streamline sales tax efforts. We see it as an issue of fairness to local merchants who collect local sales tax and feel that by making it possible to get the sales tax from remote sellers it levels the playing field.

Mike Rud: North Dakota Retail Association also stands in support of this bill. We support the streamline sales tax and would ask that you vote do pass.

There was no further testimony in support, opposition or a neutral position and the public hearing on SB 2238 was closed.

2011 SENATE STANDING COMMITTEE MINUTES

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

SB 2238
1/25/2011
Job Number 13410

☐ Conference Committee

A. Rittmiller

Explanation or reason for introduction of bill/resolution:

Relating to compensation allowable to retailers for expenses associated with the collecting, reporting and remittance of state and local option sales, use, and gross receipts taxes

Minutes:

Committee Work

Chairman Cook opened discussion on SB 2238.

Chairman Cook – Committee, any wishes?

Senator Oehlke – I motion a Do Pass and rerefer to Appropriations.

Seconded by **Senator Triplett**.

Carried by **Chairman Cook**.

Senator Oehlke – We didn't have any opposition testimony that I recorded. I can't imagine where the heart ache is going to come from. Even in those communities where they may be collecting a little more tax right now, they are collecting it on a minor amount of money and when this finally is working it's going to be a lot more money for them. It had support of the League of Cities and also petroleum dealers, for what that's worth.

Chairman Cook – We have a motion for a Do Pass and rerefer to Appropriations and a second on SB 2238. We will ask the clerk to take the roll. (7-0-0)

Chairman Cook closed discussion on SB 2238.

FISCAL NOTE
Requested by Legislative Council
02/21/2011

Amendment to: SB 2238

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			($1,003,000)	($87,000)		
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).*

Eng. SB 2238 expands the compensation allowed to permit-holders collecting and remitting sales and use taxes in a manner consistent with compensation methodology accepted by the streamlined sales tax governing board.

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.*

Eng. SB 2238 expands the sales and use tax compensation to make it effective for all permit-holders that collect and remit sales and use taxes. The bill creates three tiers of compensation based on the montly state and local sales and use taxes collected by each consolidated business entity. The calculation of compensation will be based on the combined state and local taxes, with the compensation pro-rated between the state and the localities. There may be annual adjustments of the compensation rates among the three tiers.

If enacted, Eng. SB 2238 is expected to increase compensation costs by $2.17 million per year, or $1.09 million for the last 6 months of the 2011-13 biennium when it would be in effect. This would reduce state general fund and state aid distribution fund revenues as shown above.

The provisions of this bill require the compensation to be shared between the state and the local jurisdictions that impose a sales tax. Current information indicates the local component is about equal to current law, although there will be shifts among individual cities, with some paying more compensation, and others paying less.

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:**	02/21/2011

FISCAL NOTE

Requested by Legislative Council
02/10/2011

REVISION

Bill/Resolution No.: SB 2238

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			($2,999,000)	($261,000)		
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).*

SB 2238 expands the compensation allowed to permit-holders collecting and remitting sales and use taxes in a manner consistent with compensation methodology accepted by the streamlined sales tax governing board.

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.*

SB 2238 expands the sales and use tax compensation to make it effective for all permit-holders that collect and remit sales and use taxes. The bill creates three tiers of compensation based on the montly state and local sales and use taxes collected by each consolidated business entity. The calculation of compensation will be based on the combined state and local taxes, with the compensation pro-rated between the state and the localities. There may be annual adjustments of the compensation rates among the three tiers.

If enacted, SB 2238 is expected to increase compensation costs by $2.17 million per year, or $3.26 million for the last 18 months of the 2011-13 biennium when it would be in effect. This would reduce state general fund and state aid distribution fund revenues as shown above.

This fiscal note is being revised to reflect CY 2010 actuals which were stronger than anticipated. The provisions of this bill require the compensation to be shared between the state and the local jurisdictions that impose a sales tax. Current information indicates the local component is about equal to current law, although there will be shifts among individual cities, with some paying more compensation, and others paying less.

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:**	02/10/2011

FISCAL NOTE

Requested by Legislative Council
01/18/2011

Bill/Resolution No.: SB 2238

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			($1,500,000)	($130,000)		
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
				($700,000)				

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).*

SB 2238 expands the compensation allowed to permit-holders collecting and remitting sales and use taxes in a manner consistent with compensation methodology accepted by the streamlined sales tax governing board.

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.*

SB 2238 expands the sales and use tax compensation to make it effective for all permit-holders that collect and remit sales and use taxes. The bill creates three tiers of compensation based on the total annual state and local sales and use taxes collected by each consolidated business entity. The calculation of compensation will be based on the combined state and local taxes, with the compensation pro-rated between the state and the localities. There will be annual adjustments of the compensation rates among the three tiers.

If enacted, SB 2238 is expected to increase compensation costs by $1.55 million per year, or $2.33 million for the last 18 months of the 2011-13 biennium when it would be in effect. This amount will be split among the state and the cities and counties that impose local option taxes. It is estimated that the state share would be approximately 70% to 80% of the total, and the local share 20% to 30% of the total. The state's share of the impact would reduce state general fund and state aid distribution fund revenues as shown above.

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

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

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

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency* *and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	**Date Prepared:**	01/23/2011

11.8209.01002
Title.02000

Prepared by the Legislative Council staff for
Senator Cook
February 15, 2011

2-16-11

PROPOSED AMENDMENTS TO SENATE BILL NO. 2238

Page 11, line 9, replace "2011" with "2012"

Renumber accordingly

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

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2238

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 Oehlke Seconded By Senator Triplett

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

SB 2238: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2238 was rereferred to the **Appropriations Committee**.

2011 SENATE APPROPRIATIONS

SB 2238

2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee
Harvest Room, State Capitol

SB 2238
02-03-2011
Job # 13910

☐ Conference Committee

Committee Clerk Signature	Alice Delzer

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 taxes

Minutes: See attached testimony.

Chairman Holmberg called the committee to order on Thursday, February 3, 2011 at 9:30 am in reference to SB 2238. All committee members were present. except Senator Robinson and Senator Kilzer. Becky J. Keller, Legislative Council and Tad H. Torgerson, OMB were also present.

Senator Cook, District 34, Mandan introduced SB 2238 and stated he is prime sponsor of this Bill. He explained on line 7 of Page 7 of this Bill to the committee which talks about the percentage of compensation for each twelve-month period ending June thirtieth. He also asked them to turn to page 6 concerning the three rates (line 17) Turn to page 6, three rates. There would be no caps. This is what's in the Streamlined Sales Tax Governing Agreement. I should tell you that we do not have to pass this Bill in order to stay in compliance with Streamlined. We do not have this compensation rate in order to continue to be a member state for the Streamlined Sales Tax Governing Board. However, we do have to pass this Bill if we are ever going to get agreement or (inaudible) of North Dakota turned and the right to require out of state sellers to collect our sales tax. The other thing I should tell you about it is the 1.5 rate, it's a policy decision here in ND that the actual rate we would have to have for that first bracket is 1.3. That would give us collection authority. We've raised it to 1.5 that way nobody in the lower brackets would get a decrease in what they get compensated at today. Again I think that's a very good sound rate, The Finance and Tax Committee brings this Bill to you with a 7-0 vote and we certainly urge you to pass it. (Meter 5.33)

Senator Wardner Remind me what is the percent they currently get? He was told they get 1 ½ % but it is capped at $85.00 per month so the cap goes.

Senator Christmann had questions if we need to pass this Bill or not as far as state compliance. We don't need to do it to stay in compliance but we need to do it if we are going to force collections. So, if there's an 'IF" involved there, why don't we do this pending everything else coming together and allowing us to force the collections instead of just starting to do this and lesson our revenues by a million and a half dollars and then never being able to force the collections.

SenatorCook: I would argue the answer to that question is it is the right thing to do, in ir - regardless of whether or not we get collections. We are doing this for our instate sellers also, there is a burden. I argued very hard to get the rate where it is at and I also argued that states should do it because it is right regardless if we have collection authority or not. That's why I made the point we don't have to pass this to get collection authority but I would argue that we should.

Senator Wardner : It is true, we would not be able to have two different rates, one for out of state and one for in state. So it has to be the same, doesn't it?

Senator Cook: Actually we could have two different rates but not if we are going to get collection authority. But it is a policy decision that this state could make. I don't think it would be a wise decision to compensate sellers differently based on their nexus status.

Senator Christmann: What are the other factors, this is a factor in whether we get compliance enforceability, what other things need to happen to ultimately, what all has to happen, is this pending some judges decision that we've met certain criteria.

Senator Cook: There is two ways we could get it, one the state could go back through the courts and try to overturn QUILL. The way we are pursuing is congressional legislation. Last session it was HB 5660. I expect Senator Enzi from Wy to introduce the Main Street Fairness Act probably sometime within the next month to overturn QUILL, that was part of why I was in DC last Friday I won't predict what happens. The National Governor's Association is on board and very supportive. You have a lot of states in financial troubles, and this would be a great tool for congress to help states out at no expense to congress. The timing could be right.

Andy Peterson, President of the ND Chamber of Commerce (NDCC) testified in favor of SB 2238 Testimony attached # 1. He stated they also represent the National Manufacturers Association in ND. He stated the NDCC appreciates the state's support of the Streamlined Sales Tax Agreement to more fairly compensate retailers for their work in collecting and remitting taxes under this law. We urge your support in this Bill. (Meter 12.54)

Jerry Hjelmstad representing ND League of Cities (NDLC) testified in favor of SB 2238. The NDLC has been a supporter of Streamlined Sales Tax provisions. We see it as moving toward allowing taxation of remote sales and as a measure of fairness to our local businesses who are collecting these local sales taxes now. This will level the playing field with remote sellers.

Chairman Holmberg: The fiscal note indicates that there will be reduction in sales tax collections in cities of some 700,000 during the next biennium. Does that bother you or is the big picture more important? He was told the long term benefit to be able to tax remote sellers and level the playing field for local businesses and that would be more than made up for with the sales tax collected from remote sellers.

Myles Vosberg, Director of the Tax Administration Division of the Office of State Tax Commissioner I am here today to explain the sales tax compensation proposal in SB 2238. Testimony attached # 2. We have been long time supporters of the Streamlined Agreement so we support the compensation as well. He continued to explain the compensation proposal in this Bill. We support a DO PASS on SB 2238

Senator Christmann asked for further explanation regarding the 3 tiers and why something isn't set just a little higher so we don't have the fiscal note that we do have in this bill. This information was explained by Myles Vosberg. Senator Christmann asked about the calculations.

Myles Vosberg: The basis for this calculation was agreed upon by all the Streamlined states. We don't have to pass this to continue to be a member, but if there's federal legislation passed, they will have compensation requirements in it and then the member states would have to pass this in order to have the collection authority that would be granted by that federal legislation. The compensation that was agreed to by the Streamlined states establishes the minimum rate of compensation and it's based on the second tier being half of the first and the third tier being half of the second tier. That is the very minimum that we can pay.

Senator Wardner: I am going to make a comment. I have business people in my community that were hot on this issue that felt that they were not being reimbursed. I would have put in a bill to increase their reimbursement. They are capped at $85.00. The cap's taken off; that's where the fiscal note increases. I'd put a bill in to take the cap off and Senator Cook stopped me and said I have this bill and I ran it by him and they are happy with it. What's the issue? They are getting paid with credit cards and the credit cards are digging into the margins and especially if you are in a gas station, if you think there is a lot of money to be made on a gallon of gas after you pay with the credit card, there is not. And this is just compensating them for handling that money. I'm going to be 100% behind this bill. He was asked if Dickinson gas stations give discounts when paying with cash or check and he was told no, they do not.

Senator Christmann asked if there would be any logic in setting the rates at a level that keeps us revenue neutral and requested Becky Keller work with Myles concerning this matter.

Chairman Holmberg closed the hearing on SB2238.

Testimony #3 Mike Rud, President of NDRA and NDPMA urging a DO PASS was handed in after the hearing was over. Testimony attached # 4 - Memorandum from Myles Vosberg submitted after hearing.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee
Harvest Room, State Capitol

SB 2238
02-16-2011
Job # 14639

☐ Conference Committee

Committee Clerk Signature	Alice Delzer

Explanation or reason for introduction of bill/resolution:

Compensation paid to retailers for collecting, reporting, and remitting state and local sales taxes.

Minutes:

You may make reference to "attached testimony."

Chairman Holmberg opened hearing on SB 2238. All committee members were present except V. Chair Grindberg. Tammy R. Dolan, OMB and Brady Larson, Legislative Council were also present.

Senator Wardner explained the Amendment and discussion was held concerning the fiscal note and stated we haven't gotten it yet, but would anticipate it would be about half as the one that is here now. Further discussion was held concerning the fiscal note and the timing when the bill would be in effect.

Chairman Holmberg stated we had testimony from Senator Cook on this bill.

Senator Wardner moved a DO PASS ON THE AMENDMENT # 11.8209.01002. Seconded by Senator Fischer.

Chairman Holmberg: Call the Roll on the Amendment which delays the implementation of 2238 for a year. A Roll Call vote was taken. Yea: 12; Nay: 0; Absent 1.

There was further discussion regarding this Bill.

Senator Wardner moved a DO PASS AS AMENDED. Seconded by Senator Wanzek.

A Roll Call vote was taken. Yea: 12; Nay: 0; Absent: 1. The motion passed.

Senator Wardner will check with Senator Cook as to who will carry the Bill. After the hearing the clerk was informed that **Senator Cook will carry the Bill.**

The hearing was closed on SB 2238. (There was further discussion to the end of the recording regarding Bills that will be passed out the next day)

11.8209.01002
Title.

Prepared by the Legislative Council staff for
Senator Cook
February 15, 2011

PROPOSED AMENDMENTS TO SENATE BILL NO. 2238

Page 11, line 9, replace "2011" with "2012"

Renumber accordingly

Date: 2-16-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2238

Senate Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11.8209.01002

Action Taken: ☒ Do Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Wardner Seconded By Fischer

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

Total (Yes) 12 No 0

Absent 1

Floor Assignment

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

Date: 2-16-11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2238

Senate Appropriation 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 Wardner Seconded By Wanzek

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

Total (Yes) 12 No 0

Absent 1

Floor Assignment Sen. Cook

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

REPORT OF STANDING COMMITTEE

SB 2238: Appropriations Committee (Sen. Holmberg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2238 was placed on the Sixth order on the calendar.

Page 11, line 9, replace "2011" with "2012"

Renumber accordingly

2011 HOUSE FINANCE AND TAXATION

SB 2238

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2238
March 15, 2011
#15439

☐ Conference Committee

Committee Clerk Signature Mary Brucker

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 taxes; and to provide an effective date.

Minutes:

Please see attached testimony #1, #2

Senator Cook: Introduced bill. This bill deals with how we compensate our retailers who collect and remit North Dakota sales tax. It will increase the compensation given to retailers who collect and remit the sales tax. it will assure that all retailers who collect our sales tax will be compensated the same regardless of their size or their nexus. Currently, only retailers who remit monthly sales tax remittance receive compensation. If your annual sales are above $333,000 a year you are required to remit monthly and if its below that you are required to remit quarterly. Currently, the quarterly people get zero compensation today. This bill will compensate all retailers the same regardless of their size. It will remove the $85 cap. Current law in North Dakota we cap retailers 1 1/2 % but it's capped at $85 so after you have remitted $5,660 in sales tax a month you have reached your cap and everything above that you get zero compensation. SB 2238 will remove the cap. It includes businesses that collect and remit our farm machinery and alcohol gross receipts tax and assures that they are in the compensation package and will get compensated the same as all other retailers. It will require local governments that have a local sales tax option to also compensate at the same level that the state compensates. Currently local governments that have a local sales tax have an option as to whether or not they compensate or do not. We have some that compensate and some that don't. It would require the ¾ of 1% of our total sales tax dollars that are remitted to the state of North Dakota be set in a pot for compensation. If you go to page 7 of the bill on line 7, presently we are at ½ % of the compensation that we issue to our sellers of the total sales tax collected so this will raise that to 3/4 of 1%. The actual rate will vary annually but it will assure that ¾ is done. If you look at page 6 line 20 you will see three rates, rate 1 applies to the first $6,250, rate 2 applies to the amount of sales tax that is remitted between $6,250 and $62,500, and rate 3 would apply to the sales tax remitted by a retailer monthly that is greater than $62,500. The rates that we would put in place that would give us ¾ of 1% for this next year would be 1 ½% for rate 1, .65% for rate 2, and .33% for rate 3. Today a retailer gets compensated 1 ½% and is capped at $85 per month so they reach that cap at $5,660 basically. It recognizes the economies of scale that the burden that is placed on retailers to collect sales tax will decrease from the greatest to the smallest sellers so we are compensating smaller sellers at a higher rate than we are compensating the larger sellers. I think burden is the key word. I think we put together sales tax policy and have retailers all over who have to live with that sales tax policy and have to collect the sales tax. I always say I started my business in 1989 and then applied for a sales tax permit immediately. I don't know how many of you filled out a sales tax remittance form but there is a burden to it and a headache to it. I received no training, no compensation, and after about four years two real nice people from the tax department came and visited me and were called auditors. They looked at my sales tax remittance and found some money that I sent to Minnesota that they thought was North Dakota's and ultimately I ended up with about $100 that I didn't do it right so I had to pay a penalty and interest on that. I'm a small seller. You sent two bills over to us dealing with sales tax collection and both of them touch on the burden that is placed on people who have to collect and remit sales tax. The biggest burden is knowing whether something is taxable or not. The other burden is remitting the sales tax to all the various locations.

Jeb Oehlke, ND Chamber of Commerce: Support.

Representative Shirley Meyer: Are nonprofits when they are selling things, are they eligible to get compensated back from this?

Jeb Oehlke: Yes they are.

Mike Rud, ND Petroleum Marketers Association, ND Retail Association: Support. Please refer to attached testimony #1.

Jerry Hjelmstad, ND League of Cities: Support. We have supported efforts to streamline sales tax to allow taxation of remote sales. In fairness to our local retailers who have to collect this tax this would help level the playing field with the remote sellers also paying the state and local sales tax. Right now the compensation that goes to retailers goes to those that are providing local jobs. The compensation that would go to remote sellers would go to those that otherwise would not be able to collect this tax. This would make it more possible for the state and local governments to get tax from remote sellers.

Vice Chairman Craig Headland: Do the cities pay the state for collecting their sales tax for them?

Jerry Hjelmstad: Yes. All the cities have a local sales tax have a contract with the state tax department and they pay a portion of that tax to the tax department.

Representative Lonny B. Winrich: Senator Cook indicated that this bill would also require local governments to compensate retailers according to the same schedule as the state. Is that going to affect any of your members in the cities?

Jerry Hjelmstad: There are 125 cities right now that have a local sales tax so they would all be impacted by that. Some of them already compensate at a different rate but they would all be required to have a uniform rate in order to work towards the streamline sales tax goal to provide taxation to remote sellers.

Representative Lonny B. Winrich: Is there an objection to that?

Jerry Hjelmstad: No. They are supporting the efforts to move toward collection from remote sellers.

Myles Vosberg, Tax Commissioner's Office: Please refer to attached testimony #2.

Chairman Wesley R. Belter: The tax department is making those calculations?

Myles Vosberg: We would make the calculations based on the formula that is placed in the law and then we would announce those rates that would be effective July 1. So based on the previous calendar year the new rates would go into effect each year July 1. They may not change all that often. We've done calculations for the last couple of years and they've fallen into this category that Senator Cook indicated we would be at 1 ½% for the first tier, .65% for the second tier, and 33% for the third tier.

Chairman Wesley R. Belter: Do the retailers submit the tax and then you compute their compensation and give them a refund or how does that work?

Myles Vosberg: They would calculate the compensation each time they file a return. One of the ideas behind this formula even though there are three tiers was to make it so that the retailer when filing their return wouldn't have to know any information from any other period. They would know what the compensation rates are and they would calculate the compensation and deduct it from the tax that they remit to the tax department. I should add that the vast majority of the permit holders are going to be in the bottom tier. They are only going to have one rate to calculate. Based on the 2010 figures we would have had 1,300 taxpayers that would reach tier 2 and 125 taxpayers that would reach tier 3 and the remaining 30,000 permit holders would all be in that first tier. You have to be pretty large in order for you to get into that second tier.

Representative Dave Weiler: If this bill doesn't pass is there any danger of us being booted out of the streamlined sales tax governing board?

Myles Vosberg: That is correct. The streamlined states have agreed to this compensation method. If there is federal legislation that requires all retailers to collect and remit tax then compensation will be paid to the retailers. The federal legislation will leave it up to the streamlined states to determine what that level of compensation would be.

Representative Dave Weiler: Your last words scare me a bit when you say "at this point."

Myles Vosberg: There really is no requirement at all but if the federal legislation passes granting collection authority to the streamlined states to require all retailers to collect in order for us to get that collection authority we would need to adopt this compensation plan. We could still be in compliance and not have collection authority.

Representative Dave Weiler: What is the reasoning for starting this the last six months of the biennium, is it to make the fiscal note look small?

Myles Vosberg: That's correct. When Senator Cook originally introduced this he had planned that it would start January of 2012 rather than 2013. That was mainly to provide the tax commissioner with time to make the changes we need to do in order to put this in place. It was in appropriations that the date was changed.

Representative Dave Weiler: But it didn't have anything to do with downsizing the fiscal note, did it?

Myles Vosberg: I wasn't a part of those discussions.

Representative Glen Froseth: Doesn't 1% of sales tax bring in about $15 million a year? Then on the fiscal note it says that this will cost $2.17 per year.

Myles Vosberg: We're talking about ¾ of the 1% of the tax collections. Not 1% of the 5% of the state tax collections. We're talking about when you add all the collections together and just take ¾ of 1% of that.

Representative Lonny B. Winrich: You indicated that the estimated rates for 2013 would be 1.5%, .65%, and .33% but just above that it says the tier 1 rate may not be less than 1 ½% and tier 2 rate is half of the first tier and the third tier rate is half of the second tier. Those numbers don't quite match.

Myles Vosberg: The 1.5% was something that Senator Cook wanted and it was actually 1.3% if you just used the straight calculations. Senator Cook didn't want us to go below the rate that we currently are so that some of those getting compensation now would get less than what they are receiving. The formula is decreased by 50% on each tier but we are making an exception if we don't reach 1 ½%. An important change that will occur with this compensation is currently we ask the retailers to file returns by location so if you have 10 locations in the state they are filing 10 returns. In order for this to work we need to consolidate those returns so retailers will be filing one return for all sales that they have in the state regardless of how many locations they have.

Representative Dwight Wrangham: It appears that cities have been compensating higher than they will be under the new plan. What about the cities who collect their own taxes such as lodging taxes and stuff like that?

Myles Vosberg: This only applies to the sales and gross receipts tax and not the lodging tax. The tax commissioner's office is administering most of the lodging taxes now. Some of the cities are compensating now that are in the state and some are not at all.

Vice Chairman Craig Headland: What is the total cost of the compensation to the state today?

Myles Vosberg: I believe it is about $4 ½ million.

Chairman Wesley R. Belter: No further testimony. Closed hearing on SB 2238.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2238
March 15, 2011
#15476

☐ Conference Committee

Committee Clerk Signature Mary Brucker

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 taxes; and to provide an effective date.

Minutes:

No attachments.

Chairman Wesley R. Belter: This is quite a jump in compensation from my perspective. I'm open to looking at some alternatives as to the amount of compensation.

Representative Shirley Meyer: Why was the fiscal note done like this? Is it to just give the perception of lowering how much it's going to cost? I've never seen where it's the last six months of the biennium.

Representative Dave Weiler: Myles Vosberg stated that part of it is because they wouldn't be able to be ready to handle this right away. I think it's a combination of the tax department not being quite ready and the sponsor of the bill saying if we put this out right now it's going to have a $4.34 million fiscal note which it will be in the year 2013-2015 biennium.

Representative Dwight Wrangham: How much are we currently or have in the past paid in compensation to those retailers who live outside the state? As I recall that was a different rate and if we pass this bill all retailers regardless of remote sales or brick and mortar will be the same.

Chairman Wesley R. Belter: I'm just looking for some direction from the committee. My thought is that we need to adjust this down some. We can put in our own amounts.

Representative Dave Weiler: We could kill the bill and still be in compliance.

Chairman Wesley R. Belter: We could change the formula too.

Representative Dave Weiler: Some day they may require us to compensate them at a certain rate which is one of my concerns.

Representative Patrick Hatlestad: Didn't he say this morning that the streamline sales tax people had agreed to these numbers? I thought he said they agreed to this formula.

Representative Dave Weiler: Were you referring to the language in the fiscal note?

Chairman Wesley R. Belter: We won't deal with this one today but I am going to look at other options as far as changing the compensation.

Representative Glen Froseth: I don't hear anybody complaining about collecting sales tax. It's kind of a mute point. Maybe if we just remove the cap. This gets to be a complicated formula that I don't really like. If we remove the cap and made it somewhat of a reimbursement for the work they do I don't think anybody intends to make money off the collection of sales tax. They want a little stipend for the work they do but I don't think it has to be a great amount.

Chairman Wesley R. Belter: No further discussion.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2238
March 21, 2011
#15751

☐ Conference Committee

Committee Clerk Signature	Mary Brucker

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 taxes; and to provide an effective date.

Minutes:

No attachments.

Representative Bette Grande: I move a DO NOT PASS

Representative Roscoe Streyle: Seconded.

Representative Patrick Hatlestad: I think if we are going to ask businesses to collect our taxes they should be fairly compensated for their work.

A roll call vote was taken: YES 8 NO 5 ABSENT 1
MOTION CARRIED FOR DO NOT PASS.

Representative Steven L. Zaiser will carry SB 2238.

Date: 3-21-11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2238

House Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

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

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Grande Seconded By Rep. Streyle

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

Total (Yes) 8 No 5

Absent 1

Floor Assignment Rep. Zaiser

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

REPORT OF STANDING COMMITTEE

SB 2238, as engrossed: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **DO NOT PASS** (8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2238 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

SB 2238

A

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

HOUSE BILL 2238

January 24, 2011

Chairman Cook, members of the Senate Finance and Taxation Committee, I am Myles Vosberg, Director of the Tax Administration Division of the Office of State Tax Commissioner and I am here today to explain the sales tax compensation proposal in Senate Bill 2238.

BACKGROUND

Under current law, retailers that report $333,000 of taxable sales and purchases in the previous calendar year are required to file monthly sales tax returns. These same retailers are also authorized to deduct and retain compensation of 1½ percent of the state sales tax, up to $85, on each monthly sales tax return. Retailers reporting less than $333,000 of taxable sales and purchases annually do not receive state compensation. Thirty-six of the cities imposing a local sales tax also authorize compensation on the local tax collected. Cities that authorize compensation provide it to all retailers and the rate of compensation ranges from three to five percent with varying maximum amounts per month. House Bill 2238 will authorize uniform state and local compensation to all retailers remitting tax on sales and use tax returns filed with the Tax Commissioner's Office.

EXPLANATION OF THE BILL

Sections 1 and 2 of the bill amend county and city home rule provisions to indicate that existing sales tax ordinances or home rule charter provisions that currently do not conform with the compensation provided in Senate Bill 2238 will no longer be valid.

Section 3, which I will explain in more detail later, authorizes retailer compensation and defines how the compensation is calculated.

Sections 4 and 5 amend the farm machinery and alcohol gross receipts tax laws to authorize compensation for these gross receipts taxes and to include them as part of the overall compensation calculation.

Section 6 is the authorization and description for compensation in the use tax law. The language in this section is the same as Section 3 for the sales tax law.

Section 7 of the bill provides for an effective date. The new rate of compensation will apply to returns filed for periods beginning after December 31, 2011.

COMPENSATION CALCULATION

The proposed compensation system is designed so every retailer is authorized to calculate and retain compensation on all sales tax returns. Each return stands on its own. The return preparer will not need to know information from any previous return to make the calculation. The compensation rate may change annually on July 1 and the Tax Commissioner's Office will determine the rates as follows:

- Total compensation to all retailers will be equal to approximately ¾ of 1 percent of the total tax collections; however, the rate of compensation available to retailers will vary based on the amount of tax remitted.
  - The rate of compensation is based on the previous calendar year's total collections of sales tax, use tax, farm machinery gross receipts tax, alcohol gross receipts tax, and county and city sales, use and gross receipts taxes.
- Three rates of compensation will apply (values are per month):
  - First rate applies to the first $6,250 of tax remitted.
  - Second rate applies to tax remitted greater than $6,250 but less than $62,500.
  - Third rate applies to tax remitted greater than $62,500 but less than $750,000.
  - No compensation applies to tax remitted greater than $750,000 a month.
- Rate of compensation
  - The rate of compensation declines as the amount of tax remitted increases.
  - Second tier rate is ½ of first tier and third tier rate is ½ of second tier.
  - Tier one rate may not be less than 1½ percent.
  - Tiers two and three are not adjusted if tier one must be increased from the calculated value up to the minimum1½ percent rate.
- Compensation rates beginning in 2012 will be 1.5 percent on tier one, 0.65 percent on tier two, and .33 on tier three. Without the minimum tier one rate requirement of 1.5 percent, the tier one rate in 2012 would be 1.3 percent based on the rate calculations.
- The sum of all compensation from the three tiers will be equal to approximately ¾ of 1 percent of the total tax collections for the year.

- Compensation rates are recalculated annually based on the previous calendar year's total tax collections and the percent of actual tax collections from each tier. Revised rates become effective on July 1.

OTHER CONSIDERATIONS

- Returns must be filed on time and paid in full to be eligible for compensation.
- Return reporting requirements will be changed so all retail locations for the same business will be reported on one consolidated return. Currently, retailers report each location on a separate return.
- Local sales, use and gross receipts taxes will be included in the compensation calculation. The total combined compensation calculated on state and local sales taxes will be prorated between the state and local tax remitted.
- The first returns subject to the new compensation plan will be for reporting periods beginning January 2012. The January 2012 start date will provide the Tax Commissioner's Office adequate time to notify retailers, update sales and use tax return forms, and update our return processing system for consolidated reporting and the new compensation rates. It will also provide retailers and software companies that offer software products time to make similar changes.

CONCLUSION

If adopted, the Senate Bill 2238 will provide compensation to all retailers regardless of the volume of taxable sales and purchases reported and the plan will make the rate of compensation uniform for North Dakota and all its cities and counties that impose local taxes. Thank you for your consideration.

Senate Bill 2238

Retailer Compensation Examples

Sample Calculation of Tier Rates:

Sales Tax Collections:		$ Million		
State Sales Tax Collections (millions)		622.6		
City and County Sales Tax collections		108.3		
Total Collections		730.9		
		0.0075		
Total Estimated Compensation ¾%		$ 5.5		
Tax Reported in Tier 1	36.00%	263.1	0.0130	3.4
Tax Reported in Tier 2	35.30%	258.0	0.0065	1.7
Tax Reported in Tier 3	24.00%	175.4	0.0033	0.6
Tax Reported above $750K	4.70%	34.4	none	-
	100.00%	730.9		$ 5.7
				(difference is rounding)

Sample Calculation of Compensation on Return:

		Comp Rate	Taxpayer Compensation
State Tax Due on Return	$ 7,450		
City Tax Due - city 1	1,400		
City Tax Due - city 2	180		
Total Tax Due on Return	9,030		
Tier 1 compensation	6,250	0.015	$ 93.75
Tier 2 compensation	2,780	0.0065	18.07
	$ 9,030		$ 111.82

Prepared by Office of State Tax Commissioner
January 24, 2011
Myles Vosberg

Local Tax Compensation Rates

As of January 1, 2011

Local Tax	Tax Rate	Compensation Rate	Monthly Maximum
Ashley	1%	3%	$33.33
Beulah	1%	3%	50.00
Bismarck	1%	3%	83.33
Bottineau	2%	3%	50.00
Buffalo	1%	3%	83.33
Cando	2%	3%	50.00
Devils Lake	2%	3%	83.33
Edgeley	2%	3%	50.00
Ellendale	1%	3%	50.00
Grafton	2%	3%	83.33
Grand Forks	1¾%	5%	166.67
Hankinson	2%	3%	No maximum
Harvey	1%	3%	83.33
Hazelton	1%	3%	50.00
Hazen	1%	3%	83.33
Hoople	1%	3%	83.33
Langdon	2%	3%	83.33
Linton	2%	3%	50.00
Mandan	1%	3%	83.33
Minot	2%	5%	83.33
Minto	1%	3%	83.33
Munich	1%	3%	50.00
Napoleon	2%	3%	50.00
Oakes	2%	3%	83.33
Powers Lake	1%	3%	83.33
Rugby	2%	3%	50.00
St. John	1%	3%	83.33
Stanley	1%	3%	83.33
Strasburg	2%	3%	50.00
Towner	1%	3%	50.00
Wahpeton	2%	3%	No maximum
Washburn	2%	3%	83.33
Watford City	1%	3%	83.33
Williston	2%	3%	83.33
Wilton	1%	3%	83.33
Wishek	1%	3%	83.33

See next page for local taxes that do not provide retailer compensation.

Prepared by Office of State Tax Commissioner
January 24, 2011
Myles Vosberg

Local Tax Compensation Rates

As of January 1, 2011

Cities with no compensation:

Cities with 1% tax: Anamoose, Aneta, Beach, Berthold, Bowman, Carrington, Carson, Casselton, Crosby, Dunseith, Edinburg, Elgin, Enderlin, Fairmount, Finley, Forman, Fort Ransom, Gackel, Glenburn, Glen Ullin, Grenora, Gwinner, Halliday, Hannaford, Harwood, Hope, Lakota, Larimore, Lidgerwood, McClusky, Mohall, New Leipzig, New Salem, Oxbow, Page, Reeder, Rolette, Scranton, Streeter, Tioga, Tower City, West Fargo, Westhope, Wimbledon, and Woodworth.

Cities with 1½% tax: Cooperstown, Dickinson, Drayton, Hettinger, Killdeer, Maddock, Mapleton, Michigan, Milnor, Minnewaukan, Mott, Northwood, Underwood,

Cities with 2% tax: Belfield, Cavalier, Drake, Fargo, Garrison, Granville, Hatton, Hillsboro, Jamestown, Kenmare, Kulm, LaMoure, Leonard, Lisbon, Mayville, McVille, Neche, New England, New Rockford, Park River, Portland, Regent, Richardton, Rolla, Steele, Turtle Lake, Velva, and Walhalla.

Cities with 2½% tax: Medora, Pembina, and Valley City.

Counties with no compensation:

Steele (1% tax rate), Walsh (¼% tax rate), and Williams (½% rate).

Prepared by Office of State Tax Commissioner
January 24, 2011
Myles Vosberg

Testimony of Andy Peterson
North Dakota Chamber of Commerce
SB 2238
February 3, 2011

Chairman Holmberg and members of the Appropriations Committee, my name is Andy Peterson, president of the North Dakota Chamber of Commerce. I am here today representing the North Dakota Chamber of Commerce, the principal business advocacy group in North Dakota. Our organization is an economic and geographical cross section of North Dakota's private sector and also includes state associations, local chambers of commerce, development organizations, convention and visitors bureaus and public sector organizations.

The North Dakota Chamber of Commerce would like to voice its support for SB 2238 and the changes made to the Streamlined Sales Tax Agreement to more fairly compensate retailer for their work in collecting and remitting taxes under this law.

The North Dakota Chamber of Commerce has supported the Streamlined Sales Tax Agreement since the state first adopted the Agreement in 2005. This is a joint effort of many entities, including state and local governments, the business community, tax practitioners and trade associations, to simplify sales tax laws and promote the voluntary collection of sales and use taxes by retailers. This has greatly simplified the collection of taxes from out-of-state companies and has brought increased tax revenue to North Dakota.

The North Dakota Chamber believes the proposed bill more fairly compensates retailers for the work they have to go through to collect taxes for North Dakota and raises this compensation to a level that more accurately reflects the cost of performing the duties required of collecting and remitting these sales taxes.

The North Dakota Chamber of Commerce appreciates the state's support of the Streamlined Sales Tax Agreement and we urge your support of SB 2238 and the increase in compensation for the retailers collecting and remitting sales taxes to our state.

Thank you for your consideration and I would be happy to answer any questions at this time.

/

TESTIMONY OF THE OFFICE OF STATE TAX COMMISSIONER
BEFORE THE
SENATE APPROPRIATIONS COMMITTEE

SENATE BILL 2238

February 3, 2011

Chairman Holmberg, members of the Senate Appropriations Committee, I am Myles Vosberg, Director of the Tax Administration Division of the Office of State Tax Commissioner and I am here today to explain the sales tax compensation proposal in Senate Bill 2238.

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EXPLANATION OF THE BILL

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Section 3, which I will explain in more detail later, authorizes retailer compensation and defines how the compensation is calculated.

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2

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Senate Bill 2238

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Tax Reported in Tier 3	24.00%	175.4	0.0033	0.6
Tax Reported above $750K	4.70%	34.4	none	-
	100.00%	730.9		$ 5.7
				(difference is rounding)

Sample Calculation of Compensation on Return:

State Tax Due on Return	$ 7,450		
City Tax Due - city 1	1,400		
City Tax Due - city 2	180		
Total Tax Due on Return	9,030		
		Comp Rate	Taxpayer Compensation
Tier 1 compensation	6,250	0.015	$ 93.75
Tier 2 compensation	2,780	0.0065	18.07
	$ 9,030		$ 111.82

Prepared by Office of State Tax Commissioner
Myles Vosberg

Local Tax Compensation Rates

As of January 1, 2011

Local Tax	Tax Rate	Compensation Rate	Monthly Maximum
Ashley	1%	3%	$33.33
Beulah	1%	3%	50.00
Bismarck	1%	3%	83.33
Bottineau	2%	3%	50.00
Buffalo	1%	3%	83.33
Cando	2%	3%	50.00
Devils Lake	2%	3%	83.33
Edgeley	2%	3%	50.00
Ellendale	1%	3%	50.00
Grafton	2%	3%	83.33
Grand Forks	1¾%	5%	166.67
Hankinson	2%	3%	No maximum
Harvey	1%	3%	83.33
Hazelton	1%	3%	50.00
Hazen	1%	3%	83.33
Hoople	1%	3%	83.33
Langdon	2%	3%	83.33
Linton	2%	3%	50.00
Mandan	1%	3%	83.33
Minot	2%	5%	83.33
Minto	1%	3%	83:33
Munich	1%	3%	50.00
Napoleon	2%	3%	50.00
Oakes	2%	3%	83.33
Powers Lake	1%	3%	83.33
Rugby	2%	3%	50.00
St. John	1%	3%	83.33
Stanley	1%	3%	83.33
Strasburg	2%	3%	50.00
Towner	1%	3%	50.00
Wahpeton	2%	3%	No maximum
Washburn	2%	3%	83.33
Watford City	1%	3%	83.33
Williston	2%	3%	83.33
Wilton	1%	3%	83.33
Wishek	1%	3%	83.33

See next page for local taxes that do not provide retailer compensation.

Prepared by Office of State Tax Commissioner
Myles Vosberg

Local Tax Compensation Rates
As of January 1, 2011

Cities with no compensation:
Cities with 1% tax: Anamoose, Aneta, Beach, Berthold, Bowman, Carrington, Carson, Casselton, Crosby, Dunseith, Edinburg, Elgin, Enderlin, Fairmount, Finley, Forman, Fort Ransom, Gackel, Glenburn, Glen Ullin, Grenora, Gwinner, Halliday, Hannaford, Harwood, Hope, Lakota, Larimore, Lidgerwood, McClusky, Mohall, New Leipzig, New Salem, Oxbow, Page, Reeder, Rolette, Scranton, Streeter, Tioga, Tower City, West Fargo, Westhope, Wimbledon, and Woodworth.

Cities with 1½% tax: Cooperstown, Dickinson, Drayton, Hettinger, Killdeer, Maddock, Mapleton, Michigan, Milnor, Minnewaukan, Mott, Northwood, Underwood,

Cities with 2% tax: Belfield, Cavalier, Drake, Fargo, Garrison, Granville, Hatton, Hillsboro, Jamestown, Kenmare, Kulm, LaMoure, Leonard, Lisbon, Mayville, McVille, Neche, New England, New Rockford, Park River, Portland, Regent, Richardton, Rolla, Steele, Turtle Lake, Velva, and Walhalla.

Cities with 2½% tax: Medora, Pembina, and Valley City.

Counties with no compensation:
Steele (1% tax rate), Walsh (¼% tax rate), and Williams (½% rate).

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Myles Vosberg

North Dakota Retail Association
ND Petroleum Marketers Association
ND Retail Association
NDPMA

Testimony SB 2238
February 3, 2011- Senate Appropriations

Chairman Holmberg and members of the Senate Appropriations Committee:

For the record, my name is Mike Rud. I'm the president of the North Dakota Retail Association and the North Dakota Petroleum Marketers Association. On behalf of nearly 900 members, I'm here today urging a **"DO PASS" recommendation on SB 2238.**

SB 2238 will serve to simplify and remove the undue burden on retailers regarding sales tax collection and remission.

While the economy remains strong in the state, the cost of doing business continues to rise. In fact, in some instances operating expenses are running neck and neck with sales making it difficult for some businesses to remain in the black. Our associations have numerous members in the western part of the state who can attest to health care premiums increasing by double digits and wage increases running anywhere from $3-5/per hour more than a year or two ago. While this bill is certainly not a cure-all for such

1025 North 3rd Street • PO Box 1956 • Bismarck, ND 58502 • 701-223-3370 • Fax 701-223-5004
Web Address: ndretail.org • ndpetroleum.org

concerns, it will generate a little extra revenue to offset some of the costs associated with doing business.

In addition, SB 2238 continues to keep the state in line with the Streamlined Sales Tax Initiative, a plan supported by our associations. In fact, it might bring in some additional revenue from those remote sellers who feel the compensation is now enough to put the effort into collection and remission of the ND sales tax.

Again, NDRA and NDPMA urge a **"DO PASS" on SB 2238.**

Thank you for your time and consideration.

STATE OF NORTH DAKOTA
OFFICE OF STATE TAX COMMISSIONER
Cory Fong, Commissioner

Memorandum

To: Senator Ray Holmberg, Chair
Senate Appropriations Committee

From: Myles Vosberg
Director, Tax Administration Division

Date: February 11, 2011

Subject: Senate Bill 2238

On February 3, the Senate Appropriations Committee heard testimony on SB 2238, which increases the rate of compensation paid to retailers for collecting, reporting, and remitting state and local sales taxes. This memorandum is in response to a question from Senator Christman about modifying the proposed compensation rates to make SB 2238 revenue neutral.

The compensation proposed by SB 2238 and the rates required to make the bill revenue neutral are listed below.

Tax Remitted Each Month	SB 2238	Revenue Neutral
Up to $6,250	1.50%	0.75%
More than $6,250 and less than $62,500	0.65%	0.38%
More than $62,500 and less than $750,000	0.33%	0.19%

The above rates were calculated from data received from the calendar year 2010 sales and use tax returns. Complete data for 2010 was not available at the time our original fiscal note was prepared. The new data from 2010 suggests that our original fiscal note was understated and we are preparing an amended fiscal note. The fiscal impact of SB 2238 for the 2011-13 biennium will be increased from $2.33 million to $3.26 million.

If there are additional questions, please contact me by phone at 328-3471 or email at msvosberg@nd.gov

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Testimony #1

North Dakota Retail Association

ND Petroleum Marketers Association
ND Retail Association

NDPMA

Testimony SB 2238
March 15, 2011- House Finance and Tax

Chairman Belter and members of the Committee:

For the record, my name is Mike Rud. I'm the President of the North Dakota Petroleum Marketers and North Dakota Retail Association. I'm here today urging a **"DO PASS" on SB 2238.**

We fully support lifting the cap on the compensation amount paid to retailers for the collection and remission of sales tax in North Dakota. It helps to even the playing field for brick and mortar retail outlets which have to spend time and money collecting, preparing and submitting these sales tax reports, while many remote sellers continue to do neither.

While the North Dakota economy may be the envy of the nation, the cost of doing business for our state's retailers continues to escalate. The additional Monies generated for retail outlets by lifting of the caps and the increased compensation may help to ease some of financial stress facing many businesses.

In addition, passage of this bill might generate more interest and desire among the remote sellers across the country who are doing business in our state, but doing nothing for our tax rolls. It's hoped the caps being lifted and the compensation level being enhanced would encourage remote sellers to collect and remit the sales tax.

Again, We urge a "DO PASS" on SB 2238.

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Testimony #2 p. 1

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

SENATE BILL 2238

March 15, 2011

Chairman Belter, members of the House Finance and Taxation Committee, I am Myles Vosberg, Director of the Tax Administration Division of the Office of State Tax Commissioner and I am here today to explain the sales tax compensation proposal in Senate Bill 2238.

BACKGROUND

Under current law, retailers that report $333,000 of taxable sales and purchases in the previous calendar year are required to file monthly sales tax returns. These same retailers are also authorized to deduct and retain compensation of 1½ percent of the state sales tax, up to $85, on each monthly sales tax return. Retailers reporting less than $333,000 of taxable sales and purchases annually do not receive state compensation. Thirty-six of the cities imposing a local sales tax also authorize compensation on the local tax collected. Cities that authorize compensation provide it to all retailers and the rate of compensation ranges from three to five percent with varying maximum amounts per month. Senate Bill 2238 will authorize uniform state and local compensation to all retailers remitting tax on sales and use tax returns filed with the Tax Commissioner's Office.

EXPLANATION OF THE BILL

Sections 1 and 2 of the bill amend county and city home rule provisions to indicate that existing sales tax ordinances or home rule charter provisions that currently do not conform with the compensation provided in Senate Bill 2238 will no longer be valid.

Section 3, which I will explain in more detail later, authorizes retailer compensation and defines how the compensation is calculated.

Sections 4 and 5 amend the farm machinery and alcohol gross receipts tax laws to authorize compensation for these gross receipts taxes and to include them as part of the overall compensation calculation.

Section 6 is the authorization and description for compensation in the use tax law. The language in this section is the same as Section 3 for the sales tax law.

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Section 7 of the bill provides for an effective date. The new rate of compensation will apply to returns filed for periods beginning after December 31, 2012.

COMPENSATION CALCULATION

The proposed compensation system is designed so every retailer is authorized to calculate and retain compensation on all sales tax returns. Each return stands on its own. The return preparer will not need to know information from any previous return to make the calculation. The compensation rate may change annually on July 1 and the Tax Commissioner's Office will calculate the rates as follows:

- Total compensation to all retailers will be equal to approximately ¾ of 1 percent of the total tax collections; however, the rate of compensation available to retailers will vary based on the amount of tax remitted.
    - The rate of compensation is based on the previous calendar year's total collections of sales tax, use tax, farm machinery gross receipts tax, alcohol gross receipts tax, and county and city sales, use and gross receipts taxes.
- Three rates of compensation will apply (values are per month):
    - First rate applies to the first $6,250 of tax remitted.
    - Second rate applies to tax remitted greater than $6,250 and up to $62,500.
    - Third rate applies to tax remitted greater than $62,500 and up to $750,000.
    - No compensation applies to tax remitted greater than $750,000 a month.
- Rate of compensation
    - The rate of compensation declines as the amount of tax remitted increases.
    - Second tier rate is ½ of first tier and third tier rate is ½ of second tier.
    - Tier one rate may not be less than 1½ percent.
    - Tiers two and three are not adjusted if tier one must be increased from the calculated value up to the minimum1½ percent rate.
- Compensation rates beginning in 2013 are estimated to be 1.5 percent on tier one, 0.65 percent on tier two, and .33 on tier three. Without the minimum tier one rate requirement of 1.5 percent, the tier one rate in 2013 would be 1.3 percent based on the rate calculations.
- The sum of all compensation from the three tiers will be equal to approximately ¾ of 1 percent of the total tax collections for the year.

#2 p.3

- Compensation rates are recalculated annually based on the previous calendar year's total tax collections and the percent of actual tax collections from each tier. Revised rates become effective on July 1.

OTHER CONSIDERATIONS

- Returns must be filed on time and paid in full to be eligible for compensation.
- Return reporting requirements will be changed so all retail locations for the same business will be reported on one consolidated return. Currently, retailers report each location on a separate return.
- Local sales, use and gross receipts taxes will be included in the compensation calculation. The total combined compensation calculated on state and local sales taxes will be prorated between the state and local tax remitted.
- The first returns subject to the new compensation plan will be for reporting periods beginning January 2013. The January 2013 start date will provide the Tax Commissioner's Office adequate time to notify retailers, update sales and use tax return forms, and update our return processing system for consolidated reporting and the new compensation rates. It will also provide retailers and software companies that offer software products time to make similar changes.

CONCLUSION

If adopted, Senate Bill 2238 will provide compensation to all retailers regardless of the volume of taxable sales and purchases reported and the plan will make the rate of compensation uniform for North Dakota and all its cities and counties that impose local taxes. We ask for a Do Pass recommendation on SB 2238. Thank you for your consideration.

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Senate Bill 2238

Retailer Compensation Examples

Sample Calculation of Tier Rates:

Sales Tax Collections:		$ Million		
State Sales Tax Collections (millions)		622.6		
City and County Sales Tax collections		108.3		
Total Collections		730.9		
		0.0075		
Total Estimated Compensation ¾%		$ 5.5		
Tax Reported in Tier 1	36.00%	263.1	0.0130	3.4
Tax Reported in Tier 2	35.30%	258.0	0.0065	1.7
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Prepared by Office of State Tax Commissioner
January 24, 2011
Myles Vosberg

#2 p. 5

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As of January 1, 2011

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See next page for local taxes that do not provide retailer compensation.

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January 24, 2011
Myles Vosberg

#2 p. 6

Local Tax Compensation Rates

As of January 1, 2011

Cities with no compensation:

Cities with 1% tax: Anamoose, Aneta, Beach, Berthold, Bowman, Carrington, Carson, Casselton, Crosby, Dunseith, Edinburg, Elgin, Enderlin, Fairmount, Finley, Forman, Fort Ransom, Gackel, Glenburn, Glen Ullin, Grenora, Gwinner, Halliday, Hannaford, Harwood, Hope, Lakota, Larimore, Lidgerwood, McClusky, Mohall, New Leipzig, New Salem, Oxbow, Page, Reeder, Rolette, Scranton, Streeter, Tioga, Tower City, West Fargo, Westhope, Wimbledon, and Woodworth.

Cities with 1½% tax: Cooperstown, Dickinson, Drayton, Hettinger, Killdeer, Maddock, Mapleton, Michigan, Milnor, Minnewaukan, Mott, Northwood, Underwood,

Cities with 2% tax: Belfield, Cavalier, Drake, Fargo, Garrison, Granville, Hatton, Hillsboro, Jamestown, Kenmare, Kulm, LaMoure, Leonard, Lisbon, Mayville, McVille, Neche, New England, New Rockford, Park River, Portland, Regent, Richardton, Rolla, Steele, Turtle Lake, Velva, and Walhalla.

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