

# MICROFILM DIVIDER

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ROLL NUMBER

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2001 SENATE FINANCE AND TAXATION

SB 2455

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2455

Senate Finance and Taxation Committee

Conference Committee

Hearing Date 2/19/01

Tape Number	Side A	Side B	Meter #
1	x		0-end
2/12/01 - 1		x	10.1-end
2	x		0-5.9
Committee Clerk Signature <i>Lynelle M. Hoyle</i>			

Minutes:

Senator Urlacher: Opened the hearing on SB 2455, a bill to adopt a simplified sales and use tax administration act.

Senator Dave Nething: Co-sponsored the bill, testified in support. This bill is dealing with applying sales and use tax to electronic commerce. There is a task force in place that has had several meetings with tax administrators in the country. The attempt is to come up with a simplified sales and use tax administration act, which enough states will pass so they can become part of an ongoing dialogue to continue to refine the differences so we can come up with a basis to go to Congress with a program. It's a national problem and its purpose is for all the states to come up with something.

Senator Urlacher: Would the attempt be for a uniform system or a payback based on existing rates?

Senator Dave Nething: Initially they tried to come up with something uniform, and at this point, they pretty much decided it's almost an impossible task. The idea is to come up with a method of utilizing the tax base and then be part of a uniform system.

Senator Christmann: Do you think there's any legitimacy to the argument that not having the tax on Internet transactions is the perfect solution for a very rural state like we have because the merchants can reach multitudes?

Senator Dave Nething: The problem is the local merchant is at a disadvantage. It's about fairness between Internet and local merchants.

Senator Dwight Cook: Co-sponsored the bill, testified in support. I actually had legislation drafted that would have done some of the things that might happen as a result of states getting together and studying this issue. Senator Nething convinced me that this may be a better vehicle to address that issue so I did not introduce that. I am a tax collector, collecting sales tax is a burden, you have to know all the different rules and regulations that each state has. I see this as a very good step in streamlining sales tax so there is some simplification in it. The NCSL has two recommendations for the states to pursue. This is moving forward in the smallest step. This issue will be revisited in the next legislative session, there's no mandates, it will not override or overrule any of our existing sales tax laws. By next session, you might see some recommendations coming out of this task force that will suggest some changes and this legislative body will be able to address those changes and decide at the time whether or not to continue for the next two years.

Senator Nichols: Does it seem that all of the states that collect sales tax seem interested in putting something together that will work?

Senator Dwight Cook: I'm not sure. I believe there's four that already have. Senator Nothing may know the answer to that.

John Walstad: Legislative Council, testified neutrally. I did not draft the bill, the draft came from NCSL, the task force that Senator Nothing has served on. What this bill does is sets up a continuing study. North Dakota does not have say seat at the table without this. States that enact legislation like this, will have a seat at the table in deciding how states will collect sales tax. There is some explanation in the materials that Senator Cook distributed as to what these things are trying to accomplish. Goes through section by section of the bill. What is in this bill does not change anything that is in our state law, with regard to what is or is not subject to tax or what rates are imposed.

Senator Stenchjem: Shouldn't there be a fiscal note?

John Walstad: I anticipate that the four legislators that serve on this group will be taken care of, as far as expenses, through the Legislative Council Budget. With regard to cost to the Tax Commissioner, I didn't see an extraordinary expenditure there. They have been participating in discussions of this type already, if there are some additional budget needs for the Tax Dept., we can send a fiscal note to them to have that addressed. I don't anticipate any change in any sales tax collections the state has made before. This will not give the state any more authority over those kinds of transactions occurring between states. This is really a discussion thing.

Senator Christmann: Can you explain how sections 3, 4, & 5 fit together?

John Walstad: The purpose of this agreement is just to get the discussions in motion. NCSL has an unfinished companion piece of legislation that goes with this. Senator Cook & Senator Nothing chose not to introduce that. It is an incomplete puzzle at this time because of those

problems you're talking about. I have a little bit of concern about section 3, regarding the Tax Commissioner entering an agreement

Senator Stenchjem: In section 5, regarding to simplified state rates, does that mean that the group can say to simplify this everybody's charging one rate, etc.?

John Walstad: A very astute observation. That is a big part of this. The companion bill has not resolved that problem. They have come to agreements a number of times. The latest thing is local sales tax can have no more than two rates, once of which can be zero. The significance of that is that a local government rate can be zero on an item that the state taxes, or a local government rate can be something on something that the state exempts. The latest thing I've seen says we're only going to allow that to happen once for each state.

Senator Wardner: In section 3, where it says the Tax Commissioner "shall" enter, could that mean the Tax Commissioner "shall be the one" that will do this. That the Tax Commissioner is the person that will sign it if there is something.

John Walstad: It could be that that's what they intended. If I was writing it and I wanted it to say that, I would not use the language they have here.

Senator Stenchjem: Somebody else is going to be dictating what our sales tax rates going to be, based on whatever they come up with.

John Walstad: I have no idea what's going to result from this study. Most other states have a lot more streamlining to do than ND does.

Senator Stenchjem: In section 5 where it says the Tax Commissioner may not enter the streamlined sales and tax agreement. Is this the agreement, if we pass this bill we're going to have an agreement on the collection of sales tax? Or just simply allowing us to sit at the table for the study?

John Walstad: The way NC'SL as presented this bill is it just puts ND at the table for the discussion, it does not change anything. It looks like section 3 says the Commissioner has to go into this agreement if it's presented, as long as it meets the requirement of section 5. I would anticipate that's not going to happen within the next 2 years.

Senator Nichols: Is it possible that the Internet transactions can be different from other things? In other words, we wouldn't have to change what we have on the books in order to put something together for Internet sales?

John Walstad: That would be a possibility.

Senator Stenehjem: Presents scenario of what might happen.

Senator Urlacher: The main purpose is to be at the table?

John Walstad: Yes.

Senator Christmann: We had a bill like this in Natural Resources, and we were able to change a lot of "shalls" to "mays" and it got approved by the organization. Even though it wasn't the language they submitted, it still did the job and we're part of the compact and we'll have the communication. Do you think that's a possibility on NC'SL that we can make some changes here to the Tax Commissioner may do some things or date changes? Or are they being really firm on the language here

John Walstad: I had the same question. How much will they let ND play with this before they say we don't get a seat at the table. Much of what is in this act is optional. I think the only thing that is really essential here is section 2. I think there is some play room in the other sections.

Senator Stenehjem: States his concerns. Not that I don't trust our Commissioner, but I'm not willing to give him the authority that I think belongs to the legislature in entering into an

agreement. As far as I can see, we're getting rid of local control and sending it off to some other board someplace. This concerns me.

Senator Christmann: Would we be OK with NCSL by passing only whatever definitions are necessary out of section one, section 2 as it reads, section 3 with the July of 2003 effective date, and section 4?

John Walstad: I can't speak for NCSL. I don't know what they will they will absolutely require as a minimum ticket to get into the room for these discussions.

Senator Urlacher: Asks John to talk to Senator Nething.

Gary Anderson: State Tax Dept., testified in support. Explained costs of participating in discussions. The bill, as it stands now, does not change the application of tax laws, does not provide the authority to the Tax Commissioner to change the tax law that currently exists for the application of sales and use taxes. I think this bill will have more of an impact on technology. It creates a Certified Service Provider, who will create all of the software. I look at this as laying the groundwork.

Rick Clayburgh: State Tax Commissioner. It's the executive branch who binds the states into agreements. The language needs to be a little more specific. Nothing is going to occur over the next two years, it is going to require future legislative action to do any of this. This is really the foundation to allow us to have the discussions to ensure that ND's interest is addressed at the table. That is my interpretation. As Tax Commissioner, I don't intend on binding the state at all before the next legislative session were to occur. That is my word to the legislature. We would not be signing any agreement before 2003.

Senator Christmann: If they happen to work really fast, and want to limit the number of different tax rates, how are you going to say no if we pass this this way and it says you must enter into the



agreement?

Rick Clayburgh: I'm not going to put the state in any precarious position or put any of the subdivisions in any situation based on my decision alone. I don't believe I, as Tax Commissioner, binding the state to such a monumental agreement without the next legislative assembly.

Senator Christmann: My worry is not that you would want to, but that we're almost forcing you to.

Rick Clayburgh: It is my understanding that there is no deadline before 2003 for us to participate in any program.

Senator Urlacher: Do you see any reason for a fiscal note?

Rick Clayburgh: I don't know if a fiscal note is appropriate. Outside of travel, nothing else would change in the next two years.

Connie Sprynczynatyk: ND League of Cities, testified in support. Our interest is to see ND get a place at the table and if this is the way to do it, we're in support.

Curly Haugland: Local businessman, testified in opposition. Written testimony attached. This is a small part of a big lobbying effort. It may be unconstitutional. There are only 29 states participating in this.

Senator Nichols: With regard to the argument that businesses here have a more difficult time competing when they do collect and pay the sales tax, what is your answer to these arguments?

Curly Haugland: On the one hand we say it's bad that our in state people should not have to pay the sales tax, but at the same time we have bills that exempt nonresidents who come here to shop from paying the sales tax. I'm confused by that logic. Leveling the playing field is all well an

good, but the Supreme of the United States in *Quill vs. North Dakota*, says whether it's a good idea or not, it's unconstitutional.

Kimberly Long: Local businesswoman, testified in opposition. The Senators all seem to agree that what we're looking at today is part of a larger plan that is to be introduced at the next legislative session, that we want a seat at the table. Yet, we're downplaying the potential loss of local control over the taxes, the potential negative impact on businesses in ND. References *Quill vs. North Dakota*. I strongly urge a do not pass.

Senator Urlacher: Closed the hearing. Action delayed.

Discussion held 2/20/01. Meter number 10.1-end, Tape 1, Side B & 0-5.9, Tape 2, Side A.  
3 amendments were introduced. The committee went through them one by one.

Senator Urlacher: Proposed amendment 10807.0201.

John Walstad: Explained the amendment.

AMENDMENT ACTION: 10807.0201

Motion made by Senator Wardner, Seconded by Senator Kroepelin, to move the amendment. Voice Vote taken. All in favor, amendment adopted.

Senator Christmann: Proposed amendment 10807.0202 to eliminate section 5 of the bill. I feel this would take those agreement requirements out and leave them in a better bargaining position.

Riek Clayburgh: We've talked to representatives of the streamline committee of the NCSL. The information Senator Christmann received from the NCSL is contrary to what we received. The information that was handed out yesterday from NCSL states that the inclusion of Section 5 is necessary for states to participate in the next phase of the discussion. The information we received is that without section 5, we'd be excluded from participating in any further discussion. That's contrary now to what Senator Christmann just heard from the individual from NCSL. I'm

concerned that if that section is removed we may be excluded. I don't see the concern in adopting Section 5. That is what all states are adopting.

Senator Stenchjem: There's a streamline committee involved in the processing of this NCSL business?

Rick Clayburgh: Originally NCSL started the process of looking at the streamline system. They enlisted the support of the NGA, The Federation of Tax Administrators, & The Multistate Tax Commission. Explains how it all came together.

Gary Anderson: NCSL will continue to provide the oversight.

Senator Stenchjem: Where do our 4 legislators fit into this program?

Rick Clayburgh: That's where our amendment comes in. The way it is set up now, the tax department would no longer be represented in the program, and it would be 4 legislators that would be involved. Our amendment states that up to four members may represent ND in these discussions consisting of the tax commissioner and up to three members to be appointed by the chairman of the Legislative Council. Proposed his amendment.

Senator Wardner: In Section 5, part 5, as I read that, you get the feeling that one of the things they want to do is to bring local sales taxes and change them or make them all the same. That does bother me a little bit. Is that what that says?

Gary Anderson: The intent is to streamline the administrative process that's incurred by the retailers out there. The idea is that's one of the focuses of the agreement, it's still a discussion point. This maintains it as a discussion point.

Senator Wardner: So it doesn't have to be the same tax, just administered the same

Gary Anderson: That's exactly right. The rates that the cities apply now would not be the concern.

Senator Christmann: I want to acknowledge that the Commissioner is right if you read this memorandum says that it's necessary. I acknowledge that. But if we leave this section in there, we're sending people to the table and the only agreement that they would be allowed to make, would be one that calls for a joint private public study that has to be done by July 1, 2002. That's before we meet again. So right to start with, we're asking them to do something that's contradictory to what's possible. Secondly, the man who's name is on this memo is the one I talked to that said we don't need to this section. If for some reason they changed their mind again, I suppose the House could add it.

AMENDMENT ACTION: 10807.0202

Motion made by Senator Christmann, Seconded by Senator Stenehjem, to move the amendment. Roll Call Vote taken. Vote was 2 yeas, 4 nays, 0 absent and not voting.

Amendment failed.

Rick Clayburgh: Explained his amendment. The idea of restricting it to 2 House members and 2 Senate members is contrary to what NCSL's looking at in that there should be some representation from the executive and legislative branch. It also doesn't have to be elected officials. It could be myself or a designee. The way the bill is currently written is to restrictive.

Senator Stenehjem: The amendment does not say that any of them have to be legislators. Some language should be changed.

It was decided on to change the wording to "Consisting of the Tax Commissioner or designee" and "Up to three members, at least two of whom must be members of the legislature, to be appointed by the Chairman of the Legislative Council"