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Interest Group Influence on the Adoption of Accelerated Sakes Tax Collections as Provided in House Bill 1727 of the 1983 North Dakota Legislative Sessions

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INTEREST GROUP INFLUENCE ON THE ADOPTION OF ACCELERATED SALES TAX COLLECTIONS AS PROVIDED IN HOUSE BILL 1727 OF THE 1983 NORTH DAKOTA LEGISLATIVE SESSION

by

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CHAPTER I

INTRODUCTION

Statement of the Problem

This study proposed to identify and evaluate the influence of interest group lobby activity on the outcome of a provision for monthly sales and use tax reporting, as set forth in House Bill 1727 of the 1983 North Dakota Legislative Session.

The first subproblem. The first subproblem was to identify those individuals who presented the views of a specific organization and/or interest group to members of the 1983 North Dakota Legislature.

The second subproblem. The second subproblem was to trace amendments to the monthly sales and use tax reporting provisions of HB 1727 from the introduction of the bill until its final passage by the Legislature.

The third subproblem. The third subproblem was to relate amendments pertaining to the monthly sales and use tax reporting requirements of HB 1727 to lobbyist activity on behalf of interest groups.

Importance of the Study

Financing state government demands state legislators to strike a balance between two often opposing requirements: to provide the legal framework to allow collection of sufficient revenue to meet the fiscal responsibilities of the state; and to do so in a manner which does not create an excessive burden upon any individual or group of citizens.

While factual information is requisite to intelligent legislation, opinions of constituencies serve to provide an important input into the legislative process. The practice of public hearings on proposed legislation is one avenue through which opinions are introduced. Other forms of contact used for the purpose of expressing views include letters, telephone calls, and personal visits to legislators.

House Bill 1727 of the 1983 North Dakota Legislative Session contained a provision for accelerated sales tax collections. Its enactment would improve the State's cash flow; it could also place a burden on retailers whose compliance would be required. Because the legislation would affect enterprises with a commonality of interests, it was selected as the vehicle for this study. It would appear that an analysis of the influence of interest groups on tax legislation in a time of fiscal austerity would be of some value to those involved in the legislative process and to the State of North Dakota.

Delimitations of the Problem

The study dealt only with those sections of House Bill 1727 which pertained to sales and use taxes; it did not attempt to evaluate the influence of interest group activity on monthly reporting of gross production tax on oil or gas, privilege tax on coal facilities, or the coal severance tax.

The study did not attempt to evaluate the validity of the arguments or the accuracy of the materials presented by interest group representatives. Neither did it attempt to evaluate the philosophy or attitudes of the legislative body, individual legislators, or administrators.

The study did not attempt to draw any inferences between the influence of interest groups on the provisions for monthly sales and use tax reporting and the overall effectiveness of lobbyists in influencing legislation passed by the 48th Session of the North Dakota Legislature.

The study reported, analyzed, and evaluated only the influence of interest groups and their effectiveness in the adoption of accelerated sales tax collections by the 1983 North Dakota Legislature.

Definition of Terms

Biennium. A biennium is a period of two years. In North Dakota State Government, this period begins July 1 of odd numbered years and ends June 30 of the following odd numbered year.

Cash Flow. Cash flow is a pattern of receipts and expenditures which results in the availability or nonavailability of cash.

Fiscal Impact. Fiscal impact is the comparison of revenue and expenditure flows over time.

Fiscal Note. A fiscal note sets out the fiscal impact of proposed legislation. It serves to put a "price tag" on legislation.

Fiscal Year. A fiscal year is a period of twelve months between settlement of financial accounts. North Dakota's State fiscal year begins July 1 and ends June 30.

Windfall. A windfall is an increase of tax dollars without increased rates. In this study, windfall refers to the additional sales tax revenue which resulted from the acceleration of sales tax collections.

CHAPTER II

SURVEY OF LITERATURE

A single-stage tax on retail sales is the common consumption tax of American states.[1] The philosophy of consumption taxes is not one of universal agreement. A fundamental argument in public finance has been whether one should be taxed on what he consumes or what he produces. If one believes that income is a measurement of one's contribution to society, and consumption is a measurement of what one receives, it would seem ludicrous to tax one's contribution.

In Thomas Hobbes' view, the concept of contributions and withdrawals was a central consideration of tax policy. He held that it is better to add to, than withdraw from society's pool of goods, and that the benefit from government services is more closely related to withdrawals than additions. If this is true, then consumption expenditures are a reasonable basis for taxation.[2]

While the Hobbesian view distinguishes between income and consumption, and decrees the latter to be the proper basis for taxation, John Stuart Mill and Irving Fisher define income as equal to consumption. They start from the proposition that one should be

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[1]Harold M. Groves and Robert L. Bish, Financing Government, 7th ed. (New York: Holt, Rinehart and Winston, Inc., 1973), p. 220.

[2]C. Harry Kahn, "The Place of Consumption and Net-Worth Taxation in the Federal Tax Structure," in Broad-Based Taxes: New Options and Sources, ed. Richard A. Musgrave (Baltimore: The Johns Hopkins University Press, 1973), p. 137.

taxed by the size of one's income; however, Mills argues that if savings are equal to the present value of a future income stream, then "unless . . . savings are exempted from income tax, the contributors are taxed twice on what they save, and only once on what they spend."[3] Fisher considered income as the value of services from capital of all kinds, including human capital. Under this concept, savings are additions to capital stock and as such, constitute future, not current, income.[4]

Sales taxes, like income taxes, are imposed on flows generated in the production of current output. However, while income taxes are imposed on the sellers' side of factor transactions (income from households), sales taxes are imposed on the sellers' side of product transactions.[5] Income taxes are based on the sources side of a household account; sales taxes are based on the uses side, with all uses except saving included in a general tax. From the standpoint of equity, sales taxes are inferior both horizontally and vertically, in that they do not allow for personal circumstances as income tax does with its exemptions, deductions, and progressive rates.[6]

The most crucial policy issue in sales tax design is choice of base.[7] A general sales tax attempts to provide comprehensive cover-

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[3]Ibid., p. 139.

[4]Ibid.

[5]Richard Musgrave and Peggy B. Musgrave, <u>Public Finance in Theory and Practice</u>, 3rd ed. (New York: McGraw-Hill Book Co., 1980), p. 442.

[6]Ibid., p. 443.

[7]Ibid., p. 445.

age of consumption, but exclusion of certain items from the base prevents true comprehensiveness and reduces the base by one-third to one-half. Perhaps the major single item of slippage is rent, both imputed and rental payments, which accounts for over one-half of this loss. Calculating the value of imputed rent would be such a difficult task that its inclusion in the base would be impossible to administer.[8]

Another common exclusion is home-consumed food, which is an attempt to reduce the regressivity of the tax. There are some serious objections to food exemption, especially unnecessary revenue loss. "The credit-against-income-tax approach to lessening regressivity is far superior but lacks the political appeal of food exemption, which arouses emotional fervor in much the same fashion as gun control and abortion."[9]

Exclusions are also used to promote or discourage consumption. Prescription drugs are excluded to encourage use of a merit good, just as selective sales taxes are enacted to discourage demerit goods, e.g. alcohol and tobacco. One inherent problem in allowing exclusions is erosion of the tax base and the necessity for higher rates to achieve the same revenue.[10]

Sales taxation has existed for centuries. In Roman times, it was employed by Augustus, who placed a one percent tax on all articles, fixtures, or moveable goods sold through the marketplace or

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[8]Ibid., p. 448.

[9]John F. Due, "Changes in State Sales Taxation 1970 to 1981," Revenue Administration, 1981, p. 30.

[10]Musgrave and Musgrave, p. 448.

at auction.[11] Modern European sales taxes grew out of the need for revenue to pay the costs of World War I. Most of the countries at war adopted some form of sales tax during the years 1918-1923.[12]

In the United States, there were continued attempts to enact a federal sales tax. From 1918 to 1921, with the demand for repeal of excess-profits tax, reduction of surtax rates on individual income, and elimination of war excises, a federal sales tax was considered as a possible alternative source of revenue, but no legislation was enacted.[13] Later, a sales tax to help defray the cost of World War II was promoted, but was opposed by labor unions, consumer organizations, New Dealers, the Treasury Department, and the President.[14]

The development of retail sales taxation at the state level was a grass-roots phenomenon. Some authors consider West Virginia to be the first state to enact a sales tax. However, the tax, adopted in 1921, was essentially a business occupation tax, one to be borne by the business instead of the purchaser. In 1930, Mississippi imposed a similar tax. These taxes had multiple-stage features and could be tolerated only when rates were very low.

The modern state retail sales tax actually came into being when Mississippi converted the business occupation levy to a sales tax by eliminating its multiple-stage applications and raising the rate to two percent. The tax proved to be very productive. Beginning with

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[11]Groves and Bish, p. 509.

[12]Ibid., p. 510.

[13]E. R. Nichols, <u>A Federal Sales Tax</u> (New York: H. W. Wilson Company, 1942), p. 125.

[14]Ibid., p. 9.

the Depression, the tax spread quickly. Revenue from income tax had been reduced at the same time federal programs required greater state expenditures. Few states had reserve sources of revenue to tap; sales taxation was very attractive.[15] In 1933, thirteen states enacted sales tax measures. Following World War II there was another wave of sales tax legislation.[16]

Today, the retail sales tax is the most significant source of revenue at the state level, comprising 31.9 percent of the average state's total revenue. The dependence upon sales tax in financing state government is pointed up by the fact that no sales tax which has remained in force for at least two years has ever been eliminated. Only five states do not impose a state sales tax, although one of these, Alaska, has a sales tax at the local level.[17]

Certain standards are generally deemed necessary in evaluating sales taxation in a contemporary society. First, in keeping with its design as a uniform tax on consumption expenditures, it should: apply to all consumption expenditures at a uniform rate; facilitate shifting to the final consumer; and apply to the actual amounts paid by the ultimate consumer.[18] Second, it should minimize regressivity in keeping with accepted standards of equity. The third standard is that it should not create business disturbances and cause economic

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[15]John F. Due and John L. Mikesell, Sales Taxation (Baltimore: The Johns Hopkins University Press, 1983), p. 2.

[16]Groves and Bish, p. 510.

[17]Due and Mikesell, p. 4.

[18]Ibid., p. 23.

inefficiency. Fourth, the sales tax structure should be one which facilitates administration and promotes compliance.

Historically, state sales taxes have been classified into a neat dichotomy: privilege levies on the vendor, and consumer taxes on the sale. However, this simplistic approach may be misleading.[19] A more satisfactory classification may include a third type, which is really a hybrid, with both vendor and consumer features. While each category has characteristics relating to shifting of the tax, compensating vendors, and other requirements, the three operate with a surprising uniformity.[20]

Thirteen states impose a sales tax on the "privilege" of operating a retail business or selling at retail. North Dakota is one of these vendor-tax states. None of these states requires shifting of the tax, although some state laws indicate legislative intent that the tax be shifted to the consumer by using such phrases as "insofar as possible," or "may" be shifted. In North Dakota and Connecticut, it is unlawful for the vendor to absorb the tax.

The sales tax in seventeen states is actually a consumer tax, imposed on the retail sales, with the tax liability measured by the selling price.[21] This differs from vendor privilege taxes which are based on gross receipts or proceeds. In consumer levy states, the vendor is required to collect the tax from the consumer and, in turn, remit it to the states. The tax is kept separate from the price,

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[19]Ibid., p. 24.

[20]Ibid., p. 25.

[21]Ibid., p. 24.

retailers are prohibited from advertising that they are absorbing the taxes, and brackets for collecting are prescribed.

Fifteen states impose sales taxes which contain both vendor and consumer levy features. Courts determine the legal status of these taxes and most are considered vendor taxes; however, the laws provide for mandatory shifting. The tax is legally imposed on the vendor, but collection of the tax from the consumer is required.

There are some significant advantages in placing the legal liability with the vendor. One of the most important is that it clearly sets out the responsibility for payment. Also, the intent of use of the product is less significant with a vendor levy, and there is less danger that exemptions based on class of buyer will be included in the law. Another benefit is that it may be easier to collect the tax in the event of a vendor's bankruptcy; generally the priority of tax claims is lower in a consumer levy state. Finally, there is less possibility that vendors will be required to account for and to remit the exact amount of tax collected.[22]

A general sales tax places the retailer in the role of tax collector, and there are a variety of viewpoints regarding compensation for those who must act in this capacity. The practice of compensating retailers gets support from three arguments. First, since the tax results in handling costs for the retailer, those costs should be borne by the state and not made a part of the retailer's overhead. The second point is that compensation helps enlist the retailer's cooperation. Finally, it is argued that compensation lessens delinquency since vendors must file the tax return on time if they are

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[22]Ibid., p. 25.

to receive the compensation.

On the other hand, there are two major difficulties in granting retailers compensation. First, the revenue loss can be significant if the compensation is large enough to really be worthwhile. If the allowance exceeds administrative costs, this violates the principle that taxpayers should not be compensated for compliance with taxes. Second, a flat percentage is very inequitable because vendor costs vary depending on unit size of sales and percentage of exempt sales. The result is that vendors are not compensated for costs in handling the tax, because compensation is not tied to the costs of the firm. Consequently, a bonus may result.[23]

When Virginia adopted its retail sales and use tax, the General Assembly provided that merchants could retain 3.0% of state tax due to compensate them for their role as tax collectors. After five years' experience with the tax, the Virginia Retail Merchants Association commissioned and paid for a study by the Tayloe Murphy Institute which indicated that average dealer cost was 6.8% of the tax actually collected.[24] In another study conducted in 1976, these costs were alleged to average 6.0% and ranged from 4.5% for food stores to 25.7% for farm stores.[25] The excessiveness of the collection costs for farm stores resulted from the tax exemption on sales to farmers for

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[23]Ibid., pp. 327-328.

[24]Eleanor G. May, Cost of Collecting Virginia Sales and Use Taxes 1976 (University of Virginia: Tayloe Murphy Institute, The Colgate Darden Graduate School of Business Administration, 1976), p. iii.

[25]Ibid., pp. 7-8.

items used in agricultural production. The report contends that verifying the validity of exemptions is time consuming and costly; i.e., the retailer must check each purchase to determine whether the purchase is, in fact, for agriculture and not for personal use.[26] When the reader considers how costs were computed, it may place the high percentages in a proper perspective. Costs associated with collection were: direct selling costs; direct non-selling costs; costs of money; and overhead costs.

Direct selling costs were computed by calculating the time to record a transaction multiplied by the annual number of transactions. Added to this is depreciation on special selling equipment necessary to compute or record sales tax.[27] Costs will decline with electronic transaction recording equipment, which computes sales tax and accumulates totals.[28]

Direct non-selling costs included: the cost to train salespeople and bookkeepers, as well as the expense of training materials; bookkeeping costs, comprised of in-house time, public accounting time, and depreciation of bookkeeping equipment used in processing the tax; auditing costs for in-house and public accounting time used in work with tax auditors, as well as penalty and interest assessed and audit adjustments; and costs of equipment and equipment space used in maintaining historical records.

In considering the cost of money, two aspects of cash flow

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[26]Ibid., p. 9.

[27]Ibid., p. 19.

[28]Ibid., p. 9.

affected the cost of collecting sales tax. First, since sales taxes are reported on all sales, tax must be remitted on credit sales before payment is received on charged transactions. A second factor, which serves to counterbalance the first, is that if stores aren't required to remit tax until the 20th day of the month following collection, a store holds those moneys an average of 35 days. Therefore, stores with a high percentage of cash sales have a negative cost of money.[29]

Table 1 sets out the vendor compensation systems which are presently used by those states that have a provision for compensating the collection of tax.[30]

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[29]Ibid., p. 20.

[30]Due and Mikesell, p. 328.

TABLE 1

VENDOR COMPENSATION SYSTEMS, 1980

Uniform %	
1	Indiana,[a] Ohio, Pennsylvania, Texas, Wisconsin
1.2	Maryland
1.5	Louisiana
2	Arkansas, Illinois, Missouri, Tennessee
3	Florida, Georgia, Iowa, Nebraska, North Carolina, Oklahoma, Virginia
3.33	Colorado
3.586	Nevada[b]
Diminishing with Amount of Tax	
Mississippi:	2% $50 maximum discount per month
Alabama:	5% on tax to $100, thence 2%
Kentucky:	2% to $1,000 tax, thence 1.25%
South Carolina:	3% to $100 tax, 2% to $1,000 tax, 1% above $1,000

[a]Except utilities.

[b]2% of the basic 2% tax, ½% for each of the 1% state and ½% local taxes.

There have been no dramatic changes in sales tax structures or operation within the past decade. There has been little change in the rate structure and additional states have not added the tax since Vermont adopted a sales tax in 1969. This is partly due to the adequacy of state revenues in the seventies; another factor was the emergence of the anti-tax wave in the latter part of the decade.

However, there has been a trend away from the broad-based, low rate taxes covering all sales of tangible personal property. Instead, the tendency has been toward greater restriction through increased exemptions of certain goods. One major exemption is that of food. Since 1971, eleven states have exempted food, and two others have lowered the rate preparatory to phasing in the exemption. In total, twenty-six states exempt food. Reasons for the increases in food exemption paralleled those which precluded other dramatic changes in sales tax in the seventies: revenue was generally adequate; and the drive for tax reduction was particularly strong during those years.

In other areas, the trend has been toward exemption, as well. Most states exempt prescription drugs and medicines, and an increasing number have exempted household fuel. Also, major categories of goods used in production, farm machinery and equipment, and those items used in pollution control and solar energy have seen an increase in exemptions.

The one significant change has been in reporting periods. There has been an increasing shift to multiple periods, with only five states still using a single reporting period. The majority use combinations of monthly and quarterly or monthly, quarterly, and annual reporting. In conjunction with this change in reporting frequency, there has been an increase in the requirement for monthly deposits with quarterly reconciliations.[31] (A chart illustrating changes in reporting frequency is included as Appendix A.)

As states faced economic crises, they looked to ways in which they might increase tax dollars without raising taxes. One solution which was adopted by a number of states was accelerated tax collections to generate a windfall by providing a one-time improvement in cash flow.[32] Although the practice has become increasingly common, very little literature is available on accelerated sales tax collections. Procedures may vary widely among the states, but the lack of research and publications on this topic severely limits the data available for inclusion in this study.

In 1976, an impending cash flow crisis threatened Illinois with bankruptcy for the second time in seven years.[33] An accelerated sales tax collection program was adopted in 1969 to help keep the state solvent. The system was cumbersome, requiring two sales tax returns and two tax payments each month - an estimated return and payment for the current month, and a final return and payment for the previous month. This resulted in a burdensome and inefficient double-processing requirement.

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[31] Due, p. 30.

[32] William H. Forst, "Accelerated Collection of Sales and Withholding Taxes," Revenue Administration, 1977, p. 54.

[33] Robert M. Whitler, "Accelerated Tax Collection in Illinois," Revenue Administration, 1977, p. 56.

In an effort to simplify the processing of the sales tax returns, the system was replaced in 1975 by one which required a deposit equal to the retailer's average monthly tax liability, with the highest and lowest months excluded. This eliminated the estimated return, a welcome change for both the taxpayer and tax administrator. However, because the deposits were based on the previous year's liability, inflation was not considered and the deposits were artificially low.

The 1976 speedup of sales tax collections affected only the largest taxpayers, and required a payment of twenty-five percent of average monthly liability on the seventh, fifteenth, twenty-second and last day of the month in which the liability is incurred. At the beginning of each quarter the retailer is sent twelve pre-printed cards, one for each pay period. Each week the retailer pays that amount. Within thirty days after the end of the business month, the retailer files his sales tax return and pays additional taxes owed or is credited for overpayment. Most recent quarters are used to compute the monthly average. This benefits retailers whose businesses are affected by seasonal trends. It also benefits the state because it reflects business trends and deals more realistically with inflation.[34]

Virginia is another state which adopted a program of accelerated sales tax collections to provide a windfall to meet the requirement for additional revenue. Rather than utilizing a system necessitating monthly reconciliation of accelerated tax payments and actual liability, Virginia instituted a program much like bonding.

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[34] Ibid., p. 57.

Average monthly sales tax liability is determined by discarding high and low months for the preceding year and averaging the remaining ten months. If that average is greater than $600, the retailer is assessed for two-thirds of the amount. This is the accelerated payment. If this amount is within 20 percent of the advance payment for the previous year, there is no change in the amount of advance payment for the current year. However, if the difference exceeds 20 percent, the retailer is either billed or issued a refund. By accelerating two-thirds of the average monthly payment once a year, the state knows what the windfall is, has that amount in the bank, and does not have to keep track of monthly accelerated payments.[35]

A different approach to advance sales tax collections is that taken by Louisiana. Their program provides for the collection at the wholesale level. Manufacturers, wholesalers, jobbers, or suppliers collect 3 percent of the sales price from the retail dealer.[36] The retailer, in turn, collects tax upon the sale at retail and deducts the amount paid from the total tax collected. If the amount paid exceeds collections, they receive a refund. Manufacturers, wholesalers, and suppliers are given exemption numbers so they can make purchases without payment of advance sales tax.

Louisiana believes the benefits outweigh the one major problem inherent in this system, that being in determining who is entitled to an exemption number. Benefits are believed to be minimization of

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[35]Forst, p. 55.

[36]R. Charles Bradley, Jr., "Louisiana's Advance Sales Tax Collection System," Revenue Administration, 1976, p. 160.

reporting inaccuracies; improvement of internal processing; reduction in delinquencies and business losses; and a 13.5 percent net increase in collections. They contend this system also eliminates the need for comprehensive audit coverage on the majority of retailers and places collection with the wholesaler, who is usually better equipped to account for the tax and is more knowledgeable than a small retailer.[37]

One caution was given by Robert M. Whitler, Director, Illinois Department of Revenue, at the 1977 National Tax Association Conference. He stated that, while they may provide a one-time improvement in cash flow, " . . . programs like accelerated tax collections are no substitute for tax increases, if that is what really is needed."[38]

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[37]Ibid., p. 161.

[38]Whitler, p. 55.

CHAPTER III

METHODOLOGY

The method selected for this study was survey research. The objective in adopting this methodology was to provide a vehicle which would lend itself to comparability between the three groups of respondents: legislators, lobbyists, and administrators. Questionnaires were developed which contained common questions or sufficient similarity of question content to allow comparison of responses. The survey instruments are included in this study as Appendix B.

Because HB 1727 was voted on by both chambers, all members of the 1983 North Dakota Legislature were included in the universe selected for data collection. Also selected were those lobbyists who were identified through the transcribed minutes of the House and Senate Committees on Finance and Taxation,[39] and those administrators who testified or were present at the committee hearings on the bill.

This study was undertaken as a research project for the Bureau of Governmental Affairs, as well as in partial fulfillment of the requirements for the degree of Master of Public Administration. Cover letters were sent through the Bureau to all legislators and

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[39]The author learned later that the transcribed proceedings of the committee hearings were incomplete and names and testimony of some lobbyists had been omitted. Their names and testimony are included in this study, but they were not listed on questionnaires, nor were they contacted and asked to respond.

those lobbyists who were listed as having appeared at committee hearings. The letters explained the purpose of the study, the co-operation of the Bureau of Governmental Affairs, and requested the respondent's assistance by completing and returning the questionnaire.

To obtain responses from administrators, they were contacted by telephone or in person, and interviews were scheduled at a time convenient for them. The face-to-face interviews were conducted using the questionnaire designed for that group. Precisely the same questions, in the same order, were asked each interviewee, and any additional questions were only those necessary to clarify the previous response.

Questionnaires included both open-ended questions and those with fixed responses. The order of questions was selected to encourage the respondent's participation, with the first questions being those which might be perceived as the least threatening. Fixed response questions were designed to provide comparability between respondent groups and to allow easier tabulation of responses.

Responses to all questions were coded. This was necessitated by the requirement for some method to manage the nominal data collected from responses to open-ended questions. By adopting a simple coding system which categorized responses, the data was suitable for computer entry and processing, and tabulation of responses and relationships was facilitated.

CHAPTER IV

SETTING

When the North Dakota Legislature adjourned in 1981, a $120 million surplus was predicted at the end of the 1981-83 biennium. However, a severe reduction in expected revenues from oil taxes dashed hopes for this comfortable balance. With the world oil glut and the plummeting price of oil, the prospective surplus quickly shrank to about $20 million.[40]

In November, 1981, Governor Allen Olson directed state agencies to cut spending by 5 percent, which was estimated would save $20 million.[41] The State was facing a serious cash flow problem; even with cutbacks, the possibility loomed that in January, 1983, the state might be forced to hold back some payments until income tax collections were received. Of grave concern to the State's school districts were the foundation aid payments, which also were in jeopardy.[42] It was hardly surprising that the March 21, 1982 edition of the Fargo Forum proclaimed, "Budget-making in North Dakota is going to be as much in the news in the next few months as it is now in

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[40]"N.D. Budget and Election," Fargo (N.D.) Forum, 21 March 1982.

[41]Bismarck (N.D.) Tribune, 24 February 1982.

[42]"N.D. Faces Loss of Fund Surplus," Minot (N.D.) Daily News, 25 March 1982.

Minnesota and at the Federal level in Washington."[43]

Governor Olson started the budget process by issuing instructions to all state agencies and departments to show a 10 percent reduction below current levels in their original executive budget requests for the 1983-85 biennium. Already asked to cut spending by 5 percent from the levels appropriated for the 1981-83 biennium, agencies were faced with the prospect of further cutbacks.[44]

On December 13, 1983 Governor Olson offered his budget plan for the 1983-85 biennium. The total cost would be $2.04 billion, and to help finance it, the Governor asked state lawmakers to increase general fund taxes by $257 million. He proposed that the state sales tax be increased from 3 to 4 percent, which would raise $100 million for the biennial period. The additional $157 million would be provided through selections made from a variety of tax options: an increase of one percent in the tax rate on the individual income tax short form; elimination of the $100 energy credit; an increase in corporate income tax rates; an increase in the coal conversion tax; and increases in cigarette, liquor, and beer taxes.[45]

Prior to the start of the 1983 Session, Tax Commissioner Kent Conrad proposed changes which would increase revenue in the 1983-85 biennium without a tax increase. The additional revenue would result from the acceleration of collections of a variety of tax types, includ-

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[43]"N.D. Budget and Election," Fargo (N.D.) Forum, 21 March 1982.

[44]Ibid.

[45]"$260 Million in New Taxes Asked," Bismarck (N.D.) Tribune, 13 December, 1982.

ing sales tax. Under a system of quarterly reporting, two months worth of taxes due during one fiscal year are not collected by the state until the next fiscal year. By changing tax collections from a quarterly to monthly basis, those taxes owed during a biennium would be paid during that biennium. Monthly sales tax collections for the largest twenty percent of businesses were estimated by Mr. Conrad to bring $28.5 million additional revenue into the State's general fund during the 1983-85 biennium.[46]

In his address to the members of the 48th Legislative Assembly on January 4, 1983, Governor Allen Olson stated that fiscal responsibility would require that the budget for the 1983-85 biennium be less than the previous budget. Nevertheless, even with reductions, expenditures and projected revenues could not be matched. The general fund revenues were expected to remain at the same level, given the present tax structure. Therefore, in order to fund aid programs, as well as other state programs, the Governor recommended an increase in sales and motor vehicle excise taxes of one percent, in addition to other revenue increases and adjustments to be determined by the legislature.

Governor Olson referred to the acceleration of collection of sales and severance taxes as one such adjustment. Monthly collections would result in two or three months collections which would otherwise be deferred to the 1985-87 biennium. This adjustment would make available, on a one-time basis, approximately $50 million.

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[46]"Conrad Prepares Tax Changes for Review by N.D. Legislature," Fargo (N.D.) Forum, 26 December 1982.

He voiced his support of such an action if the one-time dollars were applied toward an appropriate general fund balance or to nonrecurring expenditures.[47]

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[47]North Dakota, House of Representatives, Governor Olson, "Message to the Legislature," 48th Legislative Assembly., _Journal of the House_, 4 January 1983, p. 67.

CHAPTER V

RELATED LEGISLATION

On January 4, 1983, the same day that the Governor addressed the members of the 48th Legislative Assembly, Representative Earl Strinden introduced HB 1235.[48] The following day, Representative Peter Lipsiea introduced HB 1244,[49] and twelve days later HB 1532 was introduced by Representative Richard Backes.[50] The Strinden and Backes bills called for monthly sales tax reporting; all three bills proposed retailer compensation for collecting sales tax. The bills were referred to the House Committee for Finance and Taxation, where they were heard on the morning of January 24, 1983.[51]

Members of the committee were: Ronald Anderson; Clare Aubol; William Goetz; Steve Hughes; Roger Koski; Bruce Larson; Bruce Laughlin; Clarence Martin; Marshall Moore; Eugene Nicholas; Alice Olson; Glen Pomeroy; Allen Richard; Emil Riehl, Vice Chairman; John Schneider; George Sinner, Chairman; and Mike Timm.

Of the three bills, the first to be considered by the Com-

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[48]North Dakota, House of Representatives, 48th Legislative Assembly., Journal of the House, 4 January 1983, p. 114.

[49]Ibid., 5 January 1983, p. 120.

[50]Ibid., 17 January 1983, p. 285.

[51]Testimony and proceedings which follow occurred January 24, 1983, before the House Committee on Finance and Taxation and are taken from Tape 15 of the committee's recorded minutes.

mittee was HB 1244. Representative Sinner stated that testimony would be allowed on House Bills 1235 and 1532 concurrently with that on HB 1244, even though they had not officially come before the committee.

HB 1244 allowed retailers to retain 5 percent of sales taxes collected, with a $100 maximum per quarter. This would be a credit against the sales tax liability of the retailer, with reporting to continue on a quarterly basis.

Lobbyists who gave testimony included Mr. Vernon Pepple, who appeared for the North Dakota Food Retailers Association. He stated that his organization would favor the 5 percent compensation to retailers, with the reporting interval remaining on a quarterly schedule. Mr. Pepple testified that the quarterly reports allowed retailers the use of the money for the 90 day period. When Chairman Sinner asked if the Food Retailers Association would favor this bill on a monthly basis, Vernon Pepple said they would oppose it unless the cap of $100 was removed, so a maximum compensation would not be set out in the law.

The second individual to appear before the committee was Elmer Klipstein, who represented North Dakota Wholesalers and Manufacturers. Testifying in opposition to the concept of monthly reporting, Mr. Klipstein said the workload created for businesses, with the monthly filing of sales tax, would be too great.

Art Wheeler, President of the North Dakota Retail Association, testified at length on compensation for retailers as it related to all three bills. Citing a study by Peat, Marwick, and Mitchell, which sets out compliance costs in seven states, Mr. Wheeler stated that he calculated North Dakota retailers' costs of collection to be 4.113% of sales tax collected. The premise upon which the retailer costs were computed included all sizes of retail establishments, with monthly collections and a due date of the 25th of the month. Mr. Wheeler also opposed monthly filing.

The two major changes which Mr. Wheeler suggested as amendments to the Strinden and Backes bills were: (1) that there be no maximum specified for the 2 percent vendor allowance, and (2) that the due date be the 25th day of the following month, rather than the 15th day.

Representative Strinden appeared before the committee to introduce and explain HB 1235.[52] He spoke of the revenue shortfall and his request in the summer of 1982 that the Legislative Council prepare a brief giving all options open to the legislature in order to alleviate the cash flow problem. He stated that when a serious cash flow problem develops, one of the first places one would look for a means to alleviate the problem is in the timing of collections.

One of the options developed by the Legislative Council was the timely transfer of tax collections, and specifically refers to the various taxes that could be brought from quarterly to monthly payment. It was on that basis that he instructed the Council to draft a bill calling for monthly reporting of those taxes, with the retailer receiving a nominal reimbursement for providing a service to the state in collecting the sales tax.

Representative Strinden also referred to another bill, HB

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[52]Testimony and proceedings which follow occurred January 24, 1983, before the House Committee on Finance and Taxation and are taken from Tape 16 of the committee's recorded minutes.

1499, which put forth the concept of a deposit system with the tax paid at the local bank. In that bill, which he also sponsored, the businessman would deposit, once a month, the taxes owed to the State of North Dakota. Within three days, the money could be transferred from the local bank to the Bank of North Dakota, accounts could be drawn upon by wire transfer, or the money could go through the Federal Reserve. The retailer would deposit 90 percent of the sales tax collected the 15th of the month, with a quarterly reconciliation. The 90 percent deposit would allow for return sales and tax exempt sales.

Following Representative Strinden's testimony, Representative Backes introduced HB 1532 to the committee. The main provisions of this bill as it related to sales tax were: (1) those retailers who paid sales tax in excess of $4,000 for the preceding calendar year would report monthly rather than quarterly, and (2) they would receive compensation of 2 percent of tax paid up to a maximum of $300 for each business issued a sales tax permit and required to file on a monthly basis. Only monthly filers would qualify for the 2 percent, and those who paid less than $4,000 would be required to return to a quarterly basis. The Backes bill called for an appropriation of $312,722 to administer monthly filing, and carried an emergency clause.

Representative Backes stated that his bill and Representative Strinden's bill agreed upon the speedup of collections. He said monthly reporting of those taxes set out in HB 1532 and HB 1235 would produce a windfall of $60 million in the 1983-85 biennium. The alternative to accelerated collections was to increase taxes by $60 million. "We need the money, and I don't know any other way to get it," Representative Backes said.

Citing Governor Olson's suggestion that there be a $50 million balance in the state general fund at the end of the next biennium, Representative Backes stated that revenue forecasts are flat for the next two years, and those are predicted on a very poor economic base. If monthly collections were to be adopted and revenue projections borne out, there would be a $50 million ending balance at the close of the 1983-85 biennium, and taxes would be in place to produce the same surplus in the following biennium.

The Tax Department was asked to enumerate and explain the differences between HB 1235 and HB 1532. Tax Commissioner Kent Conrad responded to the request and set out the major difference in the two bills as they related to accelerated sales tax collections.

HB 1235 provided for the monthly filing of all sales tax accounts, which Commissioner Conrad opposed. He stated that the administrative costs for small accounts were too great to warrant their inclusion in the monthly filing requirement. The net revenue effect after reimbursement of retailers was estimated to be $22,150,000 for the 1983-85 biennium.

HB 1532 would require monthly reporting of sales tax for only those retailers who had sales tax collections of $4,000 or more in the prior calendar year. The net revenue effect of HB 1532 for the 1983-85 biennium was projected to be $20,590,000. This bill contained an emergency clause and carried an appropriation of $312,722 to administer monthly filing.

A different method of retailer reimbursement was proposed in each of the two bills. While both called for 2 percent reimbursement, HB 1235 allowed a credit taken against tax paid. HB 1532 provided for a direct payment at the end of the year. Tax Commissioner Conrad favored the direct payment. He reported that other states which allow a credit have experienced problems. First, there are administrative problems when a credit is taken on late returns. Second, there are a significant number of errors when two different percentages are in effect, e.g. a 4 percent tax on one type of goods and a 3 percent tax on another type.

Following clarification of the similarities and differences in HB 1235 and HB 1532 by the Tax Commissioner, interest group representatives again spoke out against the bills. Keith Howard, representing North Dakota Automobile and Implement Dealers, testified against monthly collections. He stated this would increase cash flow problems and would place a burden on small retailers because their operations are not computerized. He urged a 2 percent compensation to retailers and asked consideration of the problem of open accounts.

Walter Stack, Tax Department Director of Sales and Special Taxes, said the problem with cash accounts is a valid one.[53] Retailers must report on an accrual basis during the quarter in which the sales occur. He conceded that monthly reporting would create some problems that were not present with quarterly filing.

Next to testify against the accelerated sales tax bills was Mr.

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[53]Testimony and proceedings which follow occurred January 24, 1983, before the House Committee on Finance and Taxation and are taken from Tape 17 of the committee's recorded minutes.

James DuBois, Northwestern Bell Telephone Company representative. He pointed out two major problems for retailers, and especially for Northwestern Bell. First, he requested that the reporting date of the 15th be amended to no earlier than the 25th of the following month and to permit filing an estimated tax with no penalty. Second, he urged a 2 percent retailer compensation allowance, with no cap on the amount of reimbursement.

Mr. Stack spoke briefly on retailer compensation, and said that those states that compensate retailers also have a monthly filing requirement, while those that do not compensate retailers have quarterly sales tax reporting. When Representative Olson asked if North Dakota had always required quarterly reporting, Mr. Stack stated that reporting had been on that basis since sales tax was adopted except for a few small retailers who pay on an annual or semiannual basis.

The hearing on HB 1235 and HB 1532 was closed. Representatives Strinden and Backes withdrew their respective bills on February 14, 1983.[54] Although these bills were dead, the issue was not. The stage had been set for accelerated sales tax collections, and the lobbyists who had registered their opposition and expressed their views on these two bills would repeat their positions time and again in the remaining weeks of the 48th Legislative Session as they appeared in opposition to HB 1727.

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[54]North Dakota, House of Representatives, 48th Legislative Assembly., Journal of the House, 14 February 1983, p. 1048.

CHAPTER VI

INTRODUCTION OF HB 1727

Following the decision to withdraw their individual bills, HB 1235 and HB 1532, Representatives Strinden and Backes joined together to co-sponsor legislation to provide for accelerated tax collections. On February 9, 1983, Representatives Richard Backes and Earl Strinden introduced House Bill No. 1727, which was "a bill for an Act to amend and reenact section 57-39.2-11, subsection 1 of section 57-39.2-12, section 57-40.2-07, subsection 1 of section 57-51-05, sections 57-51-06, 57-51-17, 57-60-02, 57-60-05, 57-61-01, 57-61-02, and 57-61-05 of the North Dakota Century Code, relating to monthly payment of sales and use taxes, gross production tax, privilege tax on coal facilities, and the coal severance tax; to repeal subsection 6 of section 57-51-01 and section 57-60-04 of the North Dakota Century Code; to provide an appropriation; and to declare an emergency."[55]

The original bill, as introduced, provided that if total sales and use taxes paid, or required to be paid, for the preceding calendar year by a retailer of a business which has been issued a permit equaled or exceeded $4,000, the tax would be payable monthly. The tax levied would be paid on or before the 20th day of the next suc-

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[55]North Dakota, House of Representatives, <u>A Bill for an Act to Amend And Reenact Sections of the North Dakota Century Code, Relating to Monthly Payment of Sales and Use Taxes</u>, H.B. 1727, 48th Legislative Assembly, 1983, p. 1.

ceeding month, with a requirement that the retailer pay an estimated tax of at least 90 percent of the tax due on a monthly basis. At the end of each quarterly period, a retailer required to pay tax on a monthly basis would file a return showing gross receipts, tax due, and tax paid for each month of that quarter. When the return was filed, the retailer would pay any balance of tax due for the quarterly period. If the monthly payment wasn't made, or if less than 90 percent of tax was paid, the retailer would be subject to a penalty of 5 percent of the amount below 90 percent left unpaid for each month or fraction of month in which it remained unpaid, to the date the quarterly report would be due. If the total of taxes decreased below $4,000 for any succeeding year, the retailer would be allowed to return to quarterly filing and payment.

One major difference existed between the earlier bills calling for accelerated collections and HB 1727, and that pertained to retailer compensation. While HB 1235 allowed a 2 percent credit against tax paid and HB 1532 provided for a 2 percent refund at the end of each year, HB 1727 contained no provision for compensating retailers for administrative costs which might result from monthly sales tax reporting.[56]

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[56]Ibid., pp. 2-3.

CHAPTER VII

HOUSE HEARINGS AND AMENDMENTS

HB 1727 was referred to the House Finance and Taxation Committee, which met on Tuesday, February 15, 1983. When the bill was taken up for discussion by the committee, it was evident that the committee members were familiar with the concept and problems of accelerated collections. The earlier bills of Representatives Backes and Strinden had served to provide a sounding board for the retail community and the State's money needs. The committee members dealt with this bill with somewhat greater dispatch, although there was a wide disparity among the members' positions and the bill. The lengthy testimony on the earlier bills was noticeably absent from the hearing on February 15.[57]

Representative Moore moved to amend the bill by deleting the word "four" and inserting the word "twenty," thereby requiring monthly filing by only those retailers whose total sales taxes paid for the previous calendar year equaled or exceeded $20,000. Representative Olson seconded the motion to amend.

Art Wheeler testified that with $4,000 annual tax collections as a criterion for monthly reporting, 88 percent of the fiscal year collections would be collected by 5,000 tax collectors, while under Repre-

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[57]All testimony and proceedings at the February 15, 1983 meeting of the House Committee on Finance and Taxation were taken from Tape 43 of the committee's recorded minutes.

sentative Moore's amendment, 63.5 percent of the fiscal year collections would be collected by only 1,100 tax collectors.

A roll call vote was requested, and the motion failed 8-9-0. Next, Representative Hughes moved that the committee vote a Do Not Pass on the bill, and Representative Goetz seconded the motion. In discussion, the motion of Do Not Pass was withdrawn.

Representative Timm moved that the bill be amended to delete the word "ninety" and insert the word "eighty." This would change from 90 percent to 80 percent the amount of estimated tax required to be paid monthly by the retailer. The amendment would provide some relief to those with a high volume of charge sales. The motion was seconded by Representative Goetz. On a requested roll call vote, the motion failed 8-9-0, with the vote following strict party lines.

Representative Anderson moved that the committee remove the appropriation section of HB 1727 and the motion was seconded by Representative Goetz. David Haring, Administrative Officer for the Tax Department, pointed out the need for upgrading the computer systems to deal with monthly filing and said the appropriation would be necessary to fund those changes. Jerald Buss, Director of the Income and Oil Taxes Division of the Tax Department, explained that the appropriation was not for computer equipment, but to modify the existing programs to be able to handle estimated payments and to process the additional volume of returns. On a voice vote the motion to remove the appropriation failed.

Representative Schneider moved that the committee amend the bill by deleting the word "four" and inserting the word "ten," thereby changing the requirement for monthly reporting from $4,000 sales tax collections for the previous year to $10,000 sales tax collections for the previous year. The motion was seconded by Representative Timm. On a voice vote, the motion was carried.

A motion by Representative Hughes that the committee vote a Do Not Pass as Amended on the bill failed to carry on a roll call vote 8-9-0. Representative Koski then moved a Do Pass as Amended on HB 1727. Representative Pomeroy seconded the motion. On a roll call vote there were 10 ayes, 7 nays, and 0 absent and not voting. Representative Sinner would explain the bill in the House.

On February 16, 1983, HB 1727 was reported back amended and placed on the Sixth order of business on the calendar for the succeeding legislative day.[58] On February 17, in the morning session of the House of Representatives, Representative Sinner moved that HB 1727 be rereferred to the Committee on Finance and Taxation, and the motion prevailed.[59]

When the House reconvened at 1:15 p.m. on that same day, the Committee on Finance and Taxation recommended by a vote of 10 ayes, 7 nays, 0 absent and not voting that HB 1727 be amended, and when so amended, recommended a Do Pass. Among the amendments was the change from $4,000 tax collections for the prior year to $10,000 tax collections for the prior year as the basis for monthly sales tax filing. Other changes were procedural, rather than substantive. HB 1727 was placed on the Sixth order of business on the calendar for the succeeding legislative day. Representative Sinner

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[58]North Dakota, House of Representatives, 48th Legislative Assembly., Journal of the House, 16 February 1983, p. 1257.

[59]Ibid., 17 February 1983, p. 1278.

moved that the amendments as recommended by the committee be adopted, and the motion carried.[60]

On February 18, 1983, Representative Lyle Hanson moved the question on the final passage of HB 1727 as amended. The roll was called, and there were 75 yeas, 29 nays, with Representatives Peterson and Whalen absent and not voting. The bill passed and the emergency clause carried.[61]

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[60] Ibid., pp. 1292-4.

[61] Ibid., 18 February 1983, pp. 1364-5.

CHAPTER VIII

SENATE HEARINGS AND AMENDMENTS

HB 1727 was received by the Senate February 18, 1983,[62] and was introduced and referred to the Senate Finance and Taxation Committee on February 23, 1983. The bill, which provided an appropriation and carried an emergency clause,[63] was heard by the Senate Appropriations Committee March 8, 1983.[64] Committee members included Senators Stella Fritzell; Perry Grotberg; William Heigaard; Evan Lips, Chairman; L. L. Naaden; Gary Nelson; Bryce Streibel; Floyd Stromme; Harvey Tallackson; Jens Tennefos; Russell Thane, Vice Chairman; Malcolm Tweten; Jerome Walsh; and Frank Wenstrom.

Among those testifying at the hearing was Mr. Walter Stack, Director of Sales and Special Taxes, North Dakota Tax Department. Appearing in favor of the bill, Mr. Stack explained that HB 1727 would speed up the collection of some taxes, including sales tax, by converting them from quarterly to monthly reporting. The sales tax permit holder required to report monthly would file an estimate of the previous month's sales tax on the 20th of each month. At the close

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[62]North Dakota, Senate, 48th Legislative Assembly., Journal of the Senate, 18 February 1983, p. 1002.

[63]Ibid., 23 February 1983, p. 1103.

[64]Testimony and proceedings which follow occurred March 8, 1983, before the Senate Appropriations Committee and are taken from Tape 83 of the committee's recorded minutes.

of the quarter, the retailer would file the quarterly return which would include the sales tax reported for the entire quarter. After the estimated tax payments were credited, the retailer would pay the balance. Mr. Stack referred the committee to section 13, which was the appropriation contained in HB 1727, and reported that the amount had been amended from $338,347 to $327,947.

Mr. Art Wheeler, North Dakota Retail Association, testified against the bill. He opposed the appropriation because he stated that it provided operating dollars for a system to be effected that was presently nonexistent.

Senator Tennefos asked Mr. Wheeler if he had any idea what HB 1727 would cost the business community. Mr. Wheeler stated that based upon the results of the most recent study conducted in seven states, any tax collector for the State must recognize that it costs him or her 4.1 percent per sales tax dollar collected. This includes the use of the funds that the retailer currently has for 85 days prior to remitting the money to the State.

Senator Goodman also testified on HB 1727. He indicated that the question concerning the Appropriations Committee was the $327,947, not the tax question. He stated that he was totally in favor of the bill.

Senator Tennefos said that it would cost a retailer something to report on a monthly basis, and he asked Senator Goodman if that would be appropriated or passed on to the consumer. Senator Goodman requested clarification of the bill and was told that HB 1727 did not contain a vendor allowance, although the previous bill did. Senator Goodman expressed the opinion that that was not right.

On March 14, 1983, the Senate Finance and Taxation Committee met with all members present: Senators Mark Adams, Vice Chairman; Francis Barth; James Dotzenrod; Chuck Goodman, Chairman; Shirley Lee; Thomas Matchie; Donald Moore; and Stanley Wright. Among the bills heard by the committee on this day was HB 1727.[65]

Testimony included that given by David Butler, Butler Machinery Company of Fargo, North Dakota. Appearing in opposition to the speedup of sales tax collections, Mr. Butler testified that this provision would result in an additional $15,000 to $25,000 in expenses for this year. Eighty-five percent of the company's sales are on credit, with no interest charged for 60 days, which would result in Butler Machinery paying the sales tax on the credit sales prior to receiving cash from its customers. Mr. Butler stated that changing the estimated tax from 90 percent to 75 percent would help substantially and that his company was willing to pay more taxes, but within the taxing system.

In discussion which ensued, Senator Goodman said he would have some amendments prepared that might be in agreement with the proposal made by Mr. Butler. The hearing was concluded.

On March 16, 1983, the Senate Finance and Taxation Committee again convened.[66] Testimony was provided by Representative Strinden, who stated that one means of getting enough money for the State was early collection. Referring to House Bills 1235 and 1532,

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[65]Testimony and proceedings which follow occurred March 14, 1983, before the Senate Committee on Finance and Taxation and are taken from Tape 50 of that committee's recorded minutes.

[66]Testimony and proceedings which follow occurred March 16, 1983, before the Senate Committee on Finance and Taxation and are taken from Tape 55 of that committee's recorded minutes.

Representative Strinden said that he and Representative Backes withdrew both bills and co-sponsored a bill. This money would improve cash flow. Because it would not be new money, it could not be used to increase spending; it would simply be brought in earlier. Representative Strinden said the State appreciates major outlets and wants them to thrive. Nevertheless, the major share of sales tax is paid by a few major business outlets, which draw out their (sales tax) money and put it in their headquarters' bank and use it. It is actually North Dakota's money, and there is no rational argument for business using the State's money for any length of time.

Senator Wright questioned how businesses would pay sales tax every month on charge sales. Representative Strinden replied that they would distinguish between small companies and the much more professional businesses that make money on their credit program, and gave as examples Target, Dayton's, K Mart, Penney's, and Sears.

Representative Backes also provided testimony in favor of the bill.[67] He reiterated the State's need for the money and stated that this was simply a way of speeding up collections to ease a difficult situation in North Dakota. He said a $50 million reserve was being built into the budget, with $40 million of that being new taxes. Although this was a one-time windfall, the State needed the money. In response to a question from Senator Wright as to whether this was a two-year bill, Representative Backes answered, "No, it is permanent." Senator Wright indicated that if it were a two-year bill,

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[67]Testimony and proceedings which follow occurred March 16, 1983, before the Senate Committee on Finance and Taxation and are taken from Tape 55 of the committee's recorded minutes.

people could borrow for two years and then repay the loan. Senator Goodman agreed that the bill was permanent.

Senator Goodman spoke on cash flow problems. He said that state government should use cash flow wisely, just as retailers and farmers should. He stated that he had learned to speed up cash flow in his own business. A speedup in collections would hurt retailers a bit, so they should be compensated properly. He added that if we properly compensate retailers, we have justification for bringing in the money earlier. For that reason, he had drawn up amendments to HB 1727.

One change was at the request of the North Dakota Retail Association. To allow the retailer more time, the proposed amendment moved the reporting date from the 20th to the 25th of the succeeding month. The bill which called for a depository system (HB 1499) had been killed in the House because the Tax Department felt they couldn't handle that date, Senator Goodman said. He felt that the Tax Department could handle it, and told the committee he was putting the depository system back in the bill.

Further amendments which he wanted included changing the amount paid from 90 percent of estimated sales tax to 60 percent of the "taxes that they have collected." He also proposed a deduction to reimburse the retailer for administration expenses. A retailer would retain 2 percent, up to a maximum of $200 per month. Senator Goodman said he had asked for fiscal notes on (retailer reimbursement) maximums of $25 per month, $50 per month, $100 per month, and $200 per month, and these fiscal notes should be available by the time the bill would reach the conference committee.

Arnold Burian, Deputy Tax Commissioner, testified, not to favor or oppose the bill or Senator Goodman's amendments, but rather to point out that a reporting date of the 25th of the month would probably result in the fiscal effect of sales tax acceleration being cut in half. He stated that the windfall occurs up front; the 25th day would not allow sufficient time to process deposits and transfer the funds into the Bank of North Dakota on the last working day of the month and to be credited for that month. Therefore, the windfall would probably only be one extra month, rather than two. On the other hand, a reporting date of the 20th day would give sufficient time for deposits to be in the bank before the end of the month.

Those who appeared in opposition to HB 1727 included representatives from a variety of retail establishments and associations. The first to testify was Art Wheeler representing the North Dakota Retail Association. Speaking against a speedup, Mr. Wheeler cited Iowa's weekly reporting of sales tax. He explained that every seven days a retailer sends sales tax on an estimated basis, with a final report on the last day of the month. Mr. Wheeler said the reason is that the money is already committed, and they must have it to pay the bills. He stated that this is the wrong pathway for North Dakota. He conceded that the State needed the money and said the retailers were willing to work with the legislators in coming up with the dollars, but through a sales tax increase rather than accelerated collections.

When Senator Goodman asked if that still wouldn't be giving the money to the legislature to spend, Art Wheeler answered that it would, but the impact would be different. Where the impact in HB 1727 would be on the business community's cash flow, a sales tax increase would affect every resident of North Dakota.

Mr. Wheeler again discussed compliance costs associated with sales tax collections and the need for retailer reimbursement. Referring to an analysis of sales tax compliance costs prepared by the North Dakota Retail Association, Mr. Wheeler stated that the average North Dakota cost per tax dollar collected is 4.113 percent. The analysis was based upon a study which was completed in November 1982, and which included Arizona, California, Illinois, Maryland, Missouri, New York, and Pennsylvania. Elements which comprised the total cost were: (1) collection cost, consisting of costs at the point of sale; (2) reporting cost, which is incurred in the recording and reporting of sales tax information; (3) payment cost, relating to the remittance of sales tax to the state and handling these moneys between payments; (4) auditing cost, which is encountered in reviewing sales tax information; and (5) miscellaneous cost, which is unassignable to any other cost element.

Retailers were separated by size of annual gross sales, and three categories were used: (1) those with less than $1 million annual gross sales; (2) those whose annual gross sales were between $1 million and $10 million; and (3) those whose annual gross sales were greater than $10 million.

In addition to size, retailers were classified by type. Seven distinct classes were used to group them: (1) building materials and hardware stores; (2) general merchandise and department store; (3) food stores; (4) apparel and accessory stores; (5) furniture stores;

(6) miscellaneous retail stores; and (7) drug and proprietary stores.

Cost for the retailers with annual gross sales of more than $10 million were significantly less than for those with annual gross sales under $1 million. Compliance costs by type of retailer were lowest for food stores (3.181 percent) and highest for drug and proprietary stores (8.743 percent), with the average for all retailers being 4.113 percent.

Others appearing against HB 1727 were Lloyd Schnaidt, representing White Drug, Dickinson, North Dakota; Robert McCallum, owner-manager of Ace Hardware, Bismarck, North Dakota; Morey Metzger, President, North Dakota Retail Association, who appeared as a private businessman; Keith Howard, North Dakota Automobile and Implement Dealers; Russ Smith, Manager, J. C. Penney Company, Bismarck; Tom Rausch, Rausch Furniture Company, Bismarck; and Dale Anderson, representing the Greater North Dakota Association.

Lloyd Schnaidt expressed his disturbance by the talk of "big" and "small" businesses as they related to HB 1727. Mr. Schnaidt voiced his concern over charge sales and cash flow problems. Objecting to accelerated collection of sales tax, he stated that 31 percent of his company's sales were charge sales, and of those sales 20 percent to 25 percent remain on account for 60 to 90 days, with some accounts never being paid. He expressed the viewpoint that small business has the same obligations and problems that large businesses have. One of the most serious problems is cash flow.

Mr. McCallum made several points in opposition to HB 1727: (1) The speedup would place a burden, both in time and money, on employers. There would be eight more tax forms and remittances per year, as well as eight more payments to the accountant. (2) Remittance of sales tax would be required before many businesses actually collected the tax themselves. Between 38 percent and 40 percent of his company's sales are charge sales. (3) Money must be borrowed to remit the tax and this creates an additional burden of interest expense. Mr. McCallum, in a prepared letter distributed to the committee, stated, "Please do not pass any more legislation that regulates, or taxes, the retailers of this state out of business."

Keith Howard, representing North Dakota Automobile and Implement Dealers, in voicing his opposition to HB 1727, said that the bill would affect cash flow. Because of the depressed farm economy, tractor and combine sales dropped 30 percent. There are 100 fewer implement dealers in the state today than there were ten years ago. Mr. Howard stated that the farm equipment retailer has had to exercise every good management tool available to just stay in business. The small businessman must hold the line on costs, hold down inventories, and reduce the number of people on staff. This reality should also be a reality for the State of North Dakota. He voiced the opinion that, in meeting the budget, legislators would have to increase taxes. He cautioned that they also should try to balance the tax load, rather than to overburden business and industry, which includes farming, because that is one of the biggest businesses in North Dakota. Mr. Howard stated, "If we are going to create an atmosphere in which business and industry can not only survive, but grow, we are going to have to take a look at the balance as far as taxation is concerned, so that we can create more jobs in the State of North Dakota."

Mr. Russ Smith, J. C. Penney Manager, testified that while he represented a business classified as "big," this did not necessarily mean "rich." Citing the Woolco store as an example of problems for large business, he emphasized the cash flow situation which results from credit sales. He said that their (J. C. Penney) accounts receivable average 45 percent of sales, and that sixty days after a credit sale, less than 30 percent of the sale has been collected.

Tom Rausch of Rausch Furniture also spoke on HB 1727. He expressed his concern on all taxes, but opposed accelerated collections on sales and corporate income taxes. He said his company has revolving charge accounts that allow 24 months for customers to pay their accounts, and he said customers average 12 months. Mr. Rausch explained that 25 percent of sales are c.o.d.s, which generally run from 60 to 90 days to delivery. However, the sale is subject to tax from the date the sale is made. He said his company would prefer a 1 percent increase in sales tax with this reevaluated in two years.

Dale Anderson testified very briefly, having already voiced his opposition to other bills heard by the committee earlier in the day. Mr. Anderson said this was a very painful short-term approach to a long-term solution and called it a "band-aid" approach.

On March 17, 1983, the Senate Finance and Taxation Committee again convened.[68] Amendments which had been prepared were reviewed and discussed. Senator Goodman asked John Walstad, Legislative Council Attorney, to explain them, and requested Dick Gross,

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[68]Testimony and proceedings which follow occurred March 17, 1983, before the Senate Committee on Finance and Taxation and are taken from Tape 58 of the committee's recorded minutes.

Senator Wright.

On Thursday, March 17, 1983, HB 1727 was reported back amended and the amendment was placed on the calendar for the next succeeding legislative day. Amendments to the bill included: (1) creation of a new section to chapter 57-40.2 of the North Dakota Century Code to provide a deduction to reimburse retailers for administrative expenses associated with collection and payment of sales and use taxes; (2) change of reporting date from 20th to 22nd; and (3) change of percentage of estimated tax from 90 percent to 70 percent. The retailer reimbursement was set at 2 percent of tax due, with a maximum of $200 per month for each business location. This amount was to be deducted and retained by the retailer.[69]

The amendments were adopted on March 18, 1983. Senator Nething moved that HB 1727 be referred to the Committee on Appropriations, and that motion prevailed.[70] On March 21, the Senate Appropriations Committee considered the bill again during the course of their committee work.[71]

Art Wheeler, North Dakota Retail Association, testified against the appropriation, stating that the committee would remove part of the problem by deleting the appropriation.

Mr. Wheeler again pointed out the problems of the retail community regarding charge sales. He stated that J. C. Penney and

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[69]North Dakota, Senate, 48th Legislative Assembly., Journal of the Senate, 17 March 1983, pp. 1627-8.

[70]Ibid., 18 March 1983, p. 1665.

[71]Testimony and proceedings which follow occurred March 21, 1983, before the Senate Appropriations Committee and are taken from Tapes 99 and 100 of the committee's recorded minutes.

Sears have 60 percent cash sales and 40 percent charge sales. If all sales were on that basis, it would result in a $10,108.80 one-time cost for each permit holder to convert to the cash flow of monthly payments, Mr. Wheeler said. He estimated an $800,000 one-time cost for 1983 tax collectors (retailers) to go from a quarterly to monthly basis.

Senator Tallackson asked if this included the compliance cost and Mr. Wheeler stated that it did not. He said compliance costs would add $3,500 to the one-time cost under HB 1727 in its present form.

After some discussion between Senator Lips and Mr. Wheeler regarding procedures in revolving credit and payment of charge sales, Senator Streibel moved to delete the appropriation section of the bill. Senator Grotberg seconded the motion. Senator Streibel then moved to reconsider his motion. That motion was accepted.

Mr. Kent Conrad, State Tax Commissioner, stated that the appropriation contained in section 13 was tied to the bill. If the bill passed, the Tax Department would need the money to administer quarterly filing; if the bill failed to pass, the appropriation would not be necessary.

A discussion ensued regarding the possibility of continuing on a quarterly basis, but with the quarter moved up by one month. The Tax Department responded that the windfall would be only about half of what they would receive under HB 1727.

March 24, 1983, HB 1727 was rereferred to the Senate Finance and Taxation Committee. In a committee hearing on March 28, Senator Goodman stated that the bill had previously been rereferred to the

Senate Appropriations Committee, and that committee had held another hearing but had done nothing with the bill and had rereferred it to the Senate Finance and Taxation Committee.[72]

Senator Goodman presented amendments to the bill. He stated that the amendments would leave the deduction for retailers, but it would delay the effective date for the speedup until April 1, 1985. The fiscal note would be the same, and the bill would contain a kill clause, dying on June 30, 1985. It would retain money for the biennium, but would not improve cash flow as quickly. It also would force the next legislature to make a decision. They could choose to let it die, put it into effect permanently, or cancel it and not even have the one quarter of accelerated collections. The amendments would also remove both the appropriation and the emergency clause. Senator Goodman said if the bill was killed it might mean an additional one-half percent sales tax. He stated that Bob Melland (Director of the Office of Management and Budget) was bothered by the delay until 1985 from the standpoint of cash flow, but that the Governor had said he might support one-half percent (additional) sales tax, so Mr. Melland was in a difficult position.

Senator Dotzenrod said he was originally against it, but he favored a speedup over a one-half percent sales tax increase. He pointed out that when Representative Strinden presented the bill he said it was a case where states have to make better use of the revenue they have. Senator Dotzenrod added that most states have monthly filing, with perhaps only six that do not. He said South Dakota

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[72]Testimony and proceedings which follow occurred March 28, 1983, before the Senate Committee on Finance and Taxation and are taken from Tape 62 of the committee's recorded minutes.

would go to a bi-monthly system in July.

Senator Goodman expressed his belief that it is something every state should do, but they should pay retailers for the conversion. He stated that, as Art Wheeler had said, we probably aren't paying them enough, and that the cost of the change-over should be returned to the retailer. He then asked if retailers would break even with that amount, to which Mr. Wheeler replied, "No, they would need 4 percent without a cap."

Senator Goodman said he thought the $10,000 amount should be raised to take the smaller retailers off the bill, and he believed that might be the direction the committee should take. He asked that they come up with an amendment for him for the conference committee.

Senator Adams moved that the amendment be adopted. Senator Moore seconded the motion and the vote was 4-3, with Senators Wright, Dotzenrod, and Matchie casting the nay votes. A motion was then made by Senator Moore and seconded by Senator Adams that the Committee recommend a Do Pass As Amended, and again the vote was 4-3 with Senators Wright, Lee, and Matchie casting the nay votes. The March 28 hearing on HB 1727 was closed. Senator Goodman would explain the bill in the Senate.

On Wednesday, March 30, 1983, amendments to engrossed HB 1727 were presented to the Senate by the Committee on Finance and Taxation. The effective date of the bill for sales tax collections was the final quarter of the biennium, for taxes accruing from April 1, 1985, through June 30, 1985. The provision for monthly reporting would die with the end of the biennium, and the decision to continue accelerated sales tax collections would rest with the 1985 legislature.

HB 1727 was placed on the calendar for the succeeding legislative day.[73]

Later that day, however, Senator Nething moved that the rules be suspended, and that HB 1727 be placed on the Fourteenth order of business, as amended, for second reading and final passage. The motion prevailed.

Senator Wright moved that the question be divided on the final passage of HB 1727, with Sections 1 through 5 and Sections 6 through 14 voted upon separately. In the vote on Sections 1 through 5, there were 39 yeas, 13 nays, with 1 absent and not voting. Sections 6 through 14 passed by a vote of 48 yeas, 4 nays, and 1 absent and not voting. On the question of final passage of the bill as amended, there were 38 yeas, 15 nays, and 0 absent and not voting.

Senator Nething moved that the vote by which HB 1727 passed be reconsidered and that the motion to reconsider be laid on the table. Senator Nething further moved that the opinion of the Attorney General on the division of the question be printed in the Journal.

Lieutenant Governor Sands had requested an opinion on dividing the question, and Attorney General Wefald replied that when a question is divided pursuant to Senate Rule 316, the divisions may be acted on by a majority vote; however, no change is made in the requirements for final approval of the question.[74]

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[73] North Dakota, Senate, 48th Legislative Assembly., Journal of the Senate, 30 March 1983, p. 1969.

[74] Ibid., pp. 2010-2012.

HB 1727 was returned to the House on March 30,[75] and on March 31, 1983, Representative Sinner moved that the House not concur in the Senate amendments to HB 1727 and that a conference committee be appointed. The speaker appointed Representatives Schneider, B. Larson, and Moore.[76]

On April 5, 1983, Senator Goodman moved that the President appoint a committee of three to act with a like committee from the House as a conference committee on HB 1727. Senators Goodman, Adams, and Dotzenrod were appointed.[77]

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[75]North Dakota, House of Representatives, 48th Legislative Assembly., Journal of the House, 30 March 1983, p. 2347.

[76]Ibid., 31 March 1983, p. 2384.

[77]North Dakota, Senate, 48th Legislative Assembly., Journal of the Senate, 5 April 1983, p. 2097.

CHAPTER IX

CONFERENCE COMMITTEE HEARING

On April 6, 1983, a conference committee met to consider three House Bills, one of which was HB 1727. Representative Schneider chaired the committee.[78]

Senator Goodman asked if there was a new fiscal note with a break-down of two different impacts; one based on the sales tax speedup and the other based on the energy tax speedup. He also questioned the impact based on a 4 percent sales tax, rather than 3 percent, which was the premise upon which the original impact was based. Senator Goodman stated the committee needed a fiscal note to know what windfall would come from the sales tax speedup.

Representative Schneider asked for the difference between the original starting date and the Senate starting date. Senator Goodman replied that the fiscal note did not change with changing the effective date.

Art Wheeler, North Dakota Retail Association, responded that with a 4 percent sales tax, with the bill as presently drafted, using the $10,000 sales tax collected level, the fiscal note for two months

[78]Testimony and proceedings which follow occurred April 6, 1983, before the Conference Committee, House Finance and Taxation, and are taken from Tape 2 of the committee's recorded minutes.

would be $17.4 million.[79] When Senator Goodman asked if he had gotten this from the Tax Department, Mr. Wheeler replied, "No, this I did myself." He also said he had figures using a 4.5 percent and 5 percent sales tax. Senator Goodman asked, "Why did you throw in the four and a half and the five?" "Doing some early homework, Senator," was Art Wheeler's reply.

Mr. Wheeler told the committee members that he would be happy to explain a handout he had distributed and to answer any questions. He said that at $10,000 annual sales tax collected, every business with $250,000 or more of taxable sales would be affected, which would result in at least 2,200 to 2,600 monthly filers. Mr. Wheeler stated that with two months of revenue resulting in $17.4 million, the compliance cost would be $716,000, a full 2 percent vendor's allowance without a cap would be $349,000. He explained he had no way of determining who would fit into a cap and who would not.

Senator Dotzenrod referred to the 4.1 percent compliance cost and asked if that was what it cost to go from quarterly to monthly filing, or if that was what it costs a retailer to comply. Mr. Wheeler replied that it was all costs, including the speedup, business administrative costs, and loss of use of funds.

The discussion then moved to the 90 percent or 70 percent required remittance of estimated sales tax. The question was whether this percentage affected the amount of the windfall and Art Wheeler

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[79]Mr. Wheeler would have no authority or responsibility to provide fiscal notes to the committee. That information is to be furnished by the agency vested with the authority to collect or expend that revenue.

responded that it did not, because at the end of the two months there would have to be a reconciliation.

Dick Gross, Tax Department Legal Counsel, said that with a requirement of 70 percent of estimated tax, and having the use of the money for the other 20 percent for two more months or the entire biennium, there would be a significant difference in retailer costs. Representative Schneider replied, "I think you've made your point, Mr. Gross. Obviously, if they remit 20 percent less than what they are originally required, the 4.1 which you (Mr. Wheeler) originally stated, would be something less, regardless of the credit split or anything else."

Art Wheeler replied he did not think the 4.1 percent would be less, because there would be greater bookkeeping on the 90 percent level or the 70 percent level. He added that trying to bring something down to a monthly cost factor versus an annual cost factor is very difficult.

Again Representative Schneider asked, "Art, isn't the 4.1 percent compliance cost . . . isn't the largest part of that the loss of the use of the money?" Mr. Wheeler replied that they had calculated the cost of the loss of the use of money at only 1.8 percent of the 4.1 percent. The remaining 2.3 percent was other administrative costs not related to the use of the money.

Senator Goodman then presented committee members with a copy of amendments for their review. He explained that his proposal was to remove the cap and change to $25,000 the sales tax collected for the prior year. This would result in 1,000 to 1,300 remitters, rather than 2,200 and would change the fiscal note to $14 million, rather than $17 million. The remainder of his proposals related to the Senate amendments. He asked Art Wheeler what $25,000 would be in taxable sales and he responded $625,000.

Art Wheeler then said that the two month sales tax collection at the $25,000 sales tax collection level should be approximately $13 million. He added that would be assuming, by interpolation, a 59 percent level of fiscal effect. When Representative Schneider asked if the Tax Department was in compliance with those figures, Dick Gross said, "I haven't seen these before. . ."

Mr. Wheeler replied, "May I clarify, Mr. Chairman? I didn't get a chance to see the Commissioner (Tax Commissioner) yesterday. He was tied up, but I did get a chance to visit with Walt Stack. Walt tells me that the $10,000 level, where I've shown 17 million . . . he was in a meeting on Monday, and Arnold Burian had referred to it as being around 17 million, or thereabouts."

Senator Goodman then said he would hand out copies of his amendments and explained that they were difficult to read. He continued, "You know, my mind is working on too many bills. . . but I think I asked for two things, and that was to change the last year's tax collected, . . . make it so that only the bigger retailers have to go after this, change that to $25,000, and the other thing I asked for was to remove the cap. And that's in there. And Art, with those figures, is already saying without a cap. So, the fiscal note would still apply proper. In my mind, that's all I asked for, was to change the $10,000 to $25,000 and to remove the cap. We can double-check that with John Walstad, and Art is handing us a fiscal note of 13.3 instead of 17.4, and the purpose for that, as this bill now reads, it won't go into effect until the final quarter of this biennium. It still raises the same total dollars in this biennium as if we put it in effect immediately, except it doesn't give them the cash flow. And in my mind that's the problem for the Office of Management and Budget. That's their worry. And I realize that they're worried about it. My other point is that by doing that, we keep this so it's maybe 30 millions bucks total with the energy tax . . . we keep this 30 in the package, and we therefore don't have to go to another half-cent sales tax. That's my biggest argument for keeping this in a total package. . . . Some people would sooner see us go to a five percent sales tax. In my mind, this is much better use of the money, and it would only apply to about the top one thousand retailers, out of how many, Art? Twenty-two thousand?" Art Wheeler replied that figure was correct.

Senator Goodman continued, "It would only apply to a thousand retailers, period. And it wouldn't even apply to them until April of 1985, and if the next legislature so chose, they've got three options: they can let this bill go into effect, which would mean it would go into effect for only one quarter and then it would be killed; or the next legislature can say, 'Let's make it permanent'; or the next legislature can say, 'Hey, we've got enough money, the economy is rolling, let's forget the whole thing,' and it'll never go into effect. If you hit it with an emergency clause, it wouldn't even go into effect for one quarter. It seems to me that we leave the options and the decisions two years down the line, and the only thing we hurt a little bit is the immediate cash flow. Instead of getting it in the beginning of the biennium, we get it in the end of the biennium, and I think that can be worked around very easily. Not easily, but it can be worked around."

Representative Schneider said that, as he understood, Senator Goodman's purpose would be that this would be a one-time thing at the end of the biennium and the next session would have to either retain it or end it.

Senator Goodman said it was a compromise, and yet it didn't hurt the amount of revenue in this biennium's budget. Representative Schneider again stated that he was unclear on the impact on retailers relative to when the acceleration took place. He asked if the compliance cost would be the same regardless of when it was initiated.

Senator Goodman stated that it would cost retailers to convert from quarterly to monthly reporting and that should be compensated, and that was what the 2 percent vendor's allowance is. He added that if Art Wheeler was right we should go to 4 percent instead of 2 percent vendor's allowance, but that he (Senator Goodman) struggled with it psychologically in regard to the public. He said he'd prefer to go to a 3 percent allowance which would be much more fair to the retailer.

Representative Schneider expressed his understanding of Senator Goodman's feeling on retailer compensation and said that balancing that with the cash flow was the major purpose, to which Senator Goodman replied, "No, it isn't. It's one of the purposes." Representative Schneider then countered, "If the impact on the retailer is the same, regardless of when it's put in, why not put it in right away, so that the state has the cash flow from the beginning of the biennium?"

Senator Goodman responded that it was very obvious that the impact would not be on the retailer until the final quarter of the biennium, rather than right away. He added that the next legislature could make a better decision, if the economy turned around.

After a further exchange, Representative Schneider said, "My question, Senator Goodman, is this: Is the impact the same at the beginning of the biennium, or is it more, or less, than at the end of the biennium? Does it change, depending on when it's initiated?"

Art Wheeler responded that two months' collections at the beginning of the biennium would be the same as the two months' at the end of the biennium relative to compliance costs. However, if the collections were for the whole biennium, the compliance costs would be more, because of the cash flow of remitting the sales tax.

Then, Representative Schneider asked if retailer cost would be the same each reporting period. Art Wheeler replied that the first four months of monthly reporting are more costly to the retailers than any successive months, because of the comparison of cash versus credit.

Representative Schneider asked if the remaining part of the percentage would remain constant throughout the biennium. Mr. Wheeler replied that for a business with $600,000 in sales and a ratio of 60 percent cash and 40 percent credit, monthly collections would result in a cash flow loss of $1,684 that is unrecoverable. He added that once a business is in the fifth month of accelerated collections, it begins to break even.

Senator Goodman said he was going to have a new amendment prepared with a statement of what it does, and that it would have a fiscal note attached.

At that point, the committee moved on to the energy tax portion of the bill, after which the meeting was adjourned. No further record of conference committee meetings exists; therefore, any meetings and deliberations on HB 1727 appear to have been informal.

The next record of the bill was on April 16, 1983, in the Senate where the Tax Department appropriation was amended as follows: an additional increase of $113,400 for one compliance officer, two clerk IIIs, and one data entry operator related to the administration of HB 1727; $10,800 for expenses related to the administration of HB 1727; an increase of $189,267 in the data processing line item for expenses related to the administration of HB 1727; and an equipment line item increase of $14,480 for expenses related to the administration of HB 1727.[80]

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[80] North Dakota, Senate, 48th Legislative Assembly., Journal of the Senate, 16 April 1983, p. 2535.

CHAPTER X

FINAL VOTE ON HB 1727

On April 20, HB 1727 was reported back to the House by the conference committee. The committee recommended that the Senate recede from its amendments. The recommended amendments contained the following changes: (1) The requirement for monthly filing by retailers who had paid $10,000 sales tax the previous year was amended to $333,000 in sales subject to tax. (2) The requirement for payment of 90 percent of tax due was changed to a payment of 95 percent. (3) Retailers subject to monthly reporting and payment of estimated tax were allowed to deduct 1½ percent of the tax due, not to exceed $250 per quarterly period for each business issued a sales or use tax permit. The filing date remained the 22nd day of the following month, as it had previously been amended. Senator Adams and Representative Moore refused to sign the recommendation of the committee.

Representative Schneider moved that the report be adopted. The roll call vote requested by Representative Kingsbury resulted in 54 yeas, 50 nays, with 2 absent and not voting. The question was called on the final passage of the bill as amended, the roll was called and there were 54 yeas, 50 nays, 2 absent and not voting.

The vote was as follows:

Yeas: Aubol; Backes; Boyle; Brokaw; DeMers; Dotzenrod;

DuBord; Erdman; Gerl; Gullickson; Halmrast; Hanson, L.; Hill; Hjelle; Hoffner, Serenus; Hoffner, S. F.; Horgan; Jacobson; Keller; Koski; Lardy; Larson, B.; Laughlin; Lautenschlager; Linderman; Lloyd; Martin, G.; Meier, A.; Meiers, R.; Mertens; Meyer, R.; Meyer, W.; Mushik; Nowatzki; O'Connell; Opedahl; O'Shea; Pomeroy, E.; Pomeroy, G.; Rayl; Richard; Riehl; Sanstead; Schneider; Schoenwald; Shockman; Sinner; Stofferahn; Vig; Watne; Williams, A.; Williams, C.; Williams, W.; Speaker Kelly

Nays: Anderson, C.; Anderson, R.; Black; Conmy; Gates; Goetz; Gorder; Gunsch; Hamerlik; Hanson, O.; Haugland; Hausauer; Hughes; Kent; Kingsbury; Kloubec; Knudson; Koehn; Kretschmar; Kuchera; Lang; Larson, R.; Lipsiea; Martin, C.; Martinson; Melby; Moore; Murphy; Nalewaja; Nicholas; Olafson; Olsen, D.; Olson, A.; Peltier; Peterson; Retzer; Rice; Riley; Rued; Schindler; Shide; Strinden; Swiontek; Thompson; Timm; Unhjem; Vander Vorst; Wentz; Whalen; Wold

Absent and Not Voting: Eagles and Solberg[81]

In the Senate, Senator Goodman moved that the conference committee report on HB 1727 be adopted, and the motion prevailed. Senator Nething moved that the rules be suspended, and that HB 1727 be placed on the calendar, as amended, for second reading and final passage, which motion prevailed.

The roll call vote was:

Yeas: Barth; Berube; Christensen; Dotzenrod; Fritzell; Goodman; Grotberg; Heigaard; Miller Heinrich; Hilken; Holmberg; Krauter; Kusler; Lashkowitz; Lodoen; Maixner; Matchie; Meyer, D.; Meyer, J.; Naaden; Nething; Olson; Peterson; Redlin; Reiten; Satrom; Stromme; Tallackson; Waldera; Walsh; Wenstrom; Wogsland

Nays: Adams; Bakewell; David; Dykshoorn; Erickson; Kilander; Lee; Leibhan; Lips; Moore; Mutch; Nelson; Parker; Stenehjem; Streibel; Tennefos; Thane; Todd; Tweten; Vosper; Wright

Absent and Not Voting: None

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[81]North Dakota, House of Representatives, 48th Legislative Assembly., Journal of the House, 20 April 1983, p.p. 2960-2963.

HB 1727 was passed and the title was agreed to.[82] The bill was signed by Governor Allen Olson on April 28, 1983.[83] Monthly reporting had become a reality for some of North Dakota's retailers.

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[82]North Dakota, Senate, 48th Legislative Assembly., Journal of the Senate, 20 April 1983, p.p. 2651-2655.

[83]This date is on the final bill which is retained in the Office of the Secretary of State.

CHAPTER XI

FINDINGS

Legislators

Of the 159 legislators who were contacted, 100, or 62.8%, responded. Not all legislators completed all parts of the questionnaire. Those questions to which all legislators responded have been described by percentages; where the responses are incomplete, I have given the number of responses. Because they were not asked to identify themselves, there is no tabulation of how many of the respondents were senators or representatives, Democrats or Republicans. (A copy of the questionnaire may be found in Appendix B.)

Nineteen of the 100 respondents indicated they were on a committee that heard HB 1727. Of the 19 individuals, 17 (89%) had been contacted in some way by one of the interest group representatives, while two respondents indicated there had been no contact. Fifteen said they had been contacted personally by both Art Wheeler and Dale Anderson, while 17 individuals reported contacts by Anderson and 16 reported contacts by Wheeler. Lloyd Schnaidt and Tom Rausch each contacted four committee members through personal visits. The least used method for contacting legislators was by telephone, with only one receiving a call, and that being from Lloyd Schnaidt. Contacts with committee members totalled 49, or an average of 2.5 times for each committee member.

The remaining 81 respondents who were not on committees hearing HB 1727 submitted the following data. Of the total not on committee, 28 (34.5 percent) were not contacted by any of the seven lobbyists listed on the questionnaire. Art Wheeler made 32 personal visits; Dale Anderson contacted 24 personally. Neither of these men made telephone calls, however 10 legislators said they received letters from Wheeler, and 11 indicated that Anderson had written them. Total contacts with those not on committees hearing the bill were 112, or an average of 1.3 contacts with each noncommittee legislator.

The 19 legislators who indicated they were on a committee that heard the bill were quite evenly divided on the final vote; 10 voted for the bill and 9 against. The legislators who were not on a committee hearing the bill responded that 53 had voted for the bill and 28 against.

In answer to question three, regarding contacts from their home districts, 57 legislators said they had been contacted, and the number of contacts totalled 412, an average of 7.2 contacts for each legislator contacted. Thirty-three believed Art Wheeler had encouraged the contacts, while 16 believed it has been Dale Anderson. The remaining contacts were thought to have been encouraged by Butler, Schnaidt, McCallum, Rausch, and Keith Howard.

Question five asked the legislators who they believed were the principle people for and against accelerated tax collections. Forty listed the Tax Department or Commissioner Conrad as favoring the bill, while 21 said the Democrats. Six indicated Representative Backes and five included Representative Strinden as proponents of monthly reporting.

In naming those they perceived to be against the bill, 28 said retailers, 26 listed the Retail Association, 16 said the Greater North Dakota Association, and 11 named Art Wheeler.

Asked to name who did the best job in favor of the bill, 32 responded Tax Department or Kent Conrad. Seven listed legislative leadership, and four said the Democrats. The legislators' responses to the question on the best job against the bill indicated that 22 thought the Retail Association was best, 17 said Art Wheeler, and 10 said the Greater North Dakota Association.

Question 8 asked the reason that was most important in causing them to vote the way they did and 44 said cash flow and/or money needs of the State. Twenty-three said it was the spending of future income, while 12 said it avoided a tax increase. Twelve also indicated that it creates a hardship for retailers. In response to the question of how they felt about the measure, 30 said they were strongly in favor, 28 mildly favored the bill, 17 were mildly opposed and 25 strongly opposed.

Asked how they voted on the bill, 63 said in favor, while 37 voted against HB 1727. Eighty-three said it was not a hard decision, 16 said it was a hard decision, and one legislator said it was a very hard decision.

Lobbyists

Questionnaires were sent to seven lobbyists who were identified from the written transcripts of committee hearings. Four of these responded: Russ Smith, Bob McCallum, Lloyd Schnaidt, and Art Wheeler.

They listed the present disadvantages of monthly sales tax collections as follows: additional paperwork and administrative costs resulting from more frequent reports; payment of tax on credit sales in advance of collection from the consumer; depriving businesses of the cash flow they have become accustomed to using in their business operations.

Their opinions regarding the one greatest disadvantage were evenly divided, with Mr. McCallum and Mr. Schnaidt indicating the additional reports required by monthly filing, and Mr. Smith and Mr. Wheeler stating that the greatest disadvantage was remittance of sales tax on credit sales, before the retailer has collected the money.

There was total agreement upon the advantage of accelerated sales tax collections. All four respondents stated that the State benefited by getting its money faster, and the increased cash flow on a one-time basis.

All lobbyists responded that they had received fair consideration of their points by the legislators, and all of them indicated that they had organized or encouraged others to contact the legislators in their districts. They also responded that they had contacted legislators in Bismarck in addition to appearing before the committee. Mr. Schnaidt said he had contacted six to eight legislators, Mr. Smith said six, and Mr. McCallum, four. Mr. Wheeler was uncertain of the number. Mr. Schnaidt made contacts by telephone and personal letter, while the other three respondents used personal visits primarily.

Respondents were asked to select all that applied from a list of legislative groups. Two replied that they had contacted members of finance and tax committees, two indicated they had contacted primarily legislators from their own district, two responded that all legislators were contacted, and one said he had contacted primarily legislators sharing his views.

The respondents were divided in how they perceived their effectiveness. Mr. Wheeler rated himself effective, Mr. McCallum and Mr. Smith both indicated they were not very effective and Mr. Schnaidt indicated he didn't know how effective he had been.

In response to question 8, which asks what made it difficult for them to be effective, two of the lobbyists said the State's money needs and the belief of legislators that they should use accelerated collections to obtain it, rather than cutting back on spending as retailers must do. One stated that the State's cash flow was so precarious that reasonableness was forsaken to balance the budget.

When asked who, other than he, had presented the best case against the bill, the respondents answered in a variety of ways. The North Dakota Retail Association and the Implement Dealers were named, as well as Tom Rausch, Art Wheeler, and Keith Howard.

The tenth question asked them to relate the specific ways their testimony had affected the final legislation. Only Mr. Wheeler believed he had any real effect, with that being the enactment of vendor's allowance which he said should have been a full 2 percent without a cap.

Three listed the State's financial needs as the main reason legislators voted for the bill. The other respondent stated that the legislators do not fill out the reports each month or understand the negative cash problems of businesses.

The reasons given for legislators voting against the bill were: the realization that retailers can't afford any more profit-loss factors, that they are not rich; a few understood that the speedup is a one-time gain, and a permanent liability; legislators simply did not feel this was the "right" thing to do.

Administrators

Face-to-face interviews were conducted with five administrators who had provided testimony on HB 1727 or who had attended the hearings and followed the bill closely. Those individuals are: Kent Conrad, Tax Commissioner; Arnold Burian, Deputy Tax Commissioner; Walter Stack, Director of Sales and Special Taxes, North Dakota Tax Department; Richard Gross, Tax Department Legal Counsel; and Larry Isaak, Fiscal Analyst, Office of Management and Budget.[84]

Present advantages of HB 1727 were perceived by all interviewees to include cash flow, although Commissioner Conrad pointed out that he believed the most important advantage was allowing avoidance of a further tax increase.

Disadvantages listed depended somewhat on the perspective of the administrator, with the Tax Department personnel generally naming increased administrative workload and costs. Both Commissioner

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[84]Interviews were held with the administrators on the following dates: Kent Conrad, June 24, 1983; Arnold Burian, June 2, 1983; Walter Stack, June 9, 1983; Richard Gross, June 30, 1983; and Larry Isaak, August 19, 1983.

Conrad and Mr. Isaak said the one-time pickup of income, once utilized, would not be available again. Mr. Isaak stated, "From our (OMB) standpoint, it is going to have an impact on the 1985-87 budget. In the 1983-85 biennium, the state will receive 26 months' collections, and go back to 24 in the 1985-87 biennium. In terms of replacing those two months of revenue, it depends on to what extent we will have to find additional revenue sources." Another disadvantage which was listed was the loss of the interest on sales tax collections which retailers had previously been able to use under quarterly reporting.

Almost all administrators believed that they received fair consideration of their views by the legislature. One administrator, Walt Stack, indicated that the final form of the legislation was really determined the night before the session ended and he really didn't have much input into the final version of HB 1727.

Two administrators considered the lobbyists against HB 1727 to be very effective, while two rated them as effective. The other, Dick Gross, felt their effectiveness varied. He said initially they were not as effective, then in the middle of the session they became very effective. When the legislators fully grasped the severity of the State's problems, their effectiveness diminished. However, they still had the bill amended to require only 95 percent payment and to provide retailer compensation.

It was the consensus of the administrators that the thing which made it most difficult for the lobbyists to be effective on the issue of sales tax acceleration was the State's fiscal plight and the need for additional revenue and improved cash flow.

The five administrators were divided on the question of the lobbyist who had presented the best case against HB 1727. Three considered it to be Art Wheeler, North Dakota Retail Association. The remaining two thought Keith Howard representing North Dakota Automobile and Implement Dealers, had presented the best case against HB 1727. One of the two who named Keith Howard was Dick Gross. He stated that Mr. Howard had made the point which was most often repeated by legislators throughout the session. Mr. Howard pointed out the difficulty for implement dealers, who have many open accounts on machinery, when sales tax must be paid at the time of sale. On a quarterly basis they had time to collect those moneys, but with monthly filing they would have to pay taxes on sales made on open accounts.

In response to the question, "Did any retailers contact you directly about this bill?" two administrators said they were contacted. Mr. Isaak said he had been contacted by the North Dakota Retail Association. Mr. Conrad said approximately six retailers had contacted him personally, and he believed they had done this on their own, rather than at someone's suggestion.

The administrators were quite candid in their responses to the question of those specific ways their testimony affected the final legislation. Commissioner Conrad said the idea itself had come from the Tax Department and many of the technical details to make it as simple as possible came from the work done by the department. Arnold Burian and Dick Gross both named defeating the bank transfer concept as one way Tax Department testimony had affected the final outcome of the bill. Arnold Burian also indicated that he believed

Tax Department testimony had played a role in adopting the date of the 22nd, rather than the 25th, which retailers wanted. Mr. Isaak stated that the impact of OMB was one of trying to bring the retailer groups, the committee, and the proponents of the legislation to a compromise. He pointed out that in the final days of HB 1727, Robert Melland (OMB Director) was very instrumental in getting the groups together and trying to work out a compromise. Another input, Larry Isaak said, was the information OMB generated on the cash flow impacts and which provided the legislature a good understanding on the cash flow impact for the general fund.

Regarding the question of what ways the testimony of lobbyists changed the bill, there was unanimous agreement among the five that the retailer compensation was affected by lobby efforts. The other two major changes to the bill which some credited to lobbyists were the deposit of 95 percent of estimated tax due, rather than a final return with 100 percent due, and the reporting date on the 22nd. Mr. Issak also felt the dollar limits on the requirement to file monthly were influenced by the lobbyists.

When asked what they perceived to be the main reason legislators voted for the bill, all cited the State's need for revenue and three added that it also avoided a tax increase. On the other hand, they listed the following reasons for legislators voting against HB 1727: (1) the fact that this did not provide a long-term, stable source of revenue; (2) concerns about placing additional workload on retailers; (3) a group of legislators favored reduced spending over accelerated collections; (4) use of one-time revenue which, if the State's economic status remains as it is now, will require tax increases in the next biennium to raise the same amount of revenue; (5) concern that this will lead to further accelerated collections as it has in some other states; (6) pressure from certain lobby groups, and political party pressures.

CHAPTER XII

CONCLUSIONS

This study set out to identify and evaluate the influence of interest group lobby activity on the provision for accelerated sales tax collections contained in HB 1727. Questions were constructed to gather nominal data which could be described in a narrative, with percentages given where appropriate.

Because many of the questions asked the respondent's opinion, belief, or feelings about a particular subject, it was not designed to be an objective statement of fact. Bias and subjectivity are inherent in the responses, and this was expected. Therefore, from the data collected, it would be imprudent to issue a definitive list of specific achievements or defeats of the lobby group, or individual lobbyists.

Nevertheless, from the responses I received from legislators, administrators, and lobbyists, and from reviewing taped committee hearings, I do conclude that the lobbyists did influence the final outcome of HB 1727. I further believe that the one overriding constraint on their effectiveness was the State's need for money to fund its programs and the necessity of improving its cash flow.

The major achievement of the lobbyists appears to be the vendors' allowance. They also were instrumental in having it included as a deduction rather than a refund, which the Tax Department had urged. Other areas where their influence appears to have been felt are in the 95 percent estimated payment, rather than a final return with 100 percent payment; and in the date being changed to the 22nd of the month instead of the 20th as in the original bill.

If one considers the amendments to HB 1727, the most effective lobbyist appears to have been Art Wheeler. His continuing presence at committee hearings and his repeated testimony and presentations on a study of compliance costs appears to have been a significant factor in the inclusion of a vendors' allowance in the final bill. Although he had urged a 2 percent allowance without a maximum, and the bill calls for 1½ percent with a $250 maximum, Mr. Wheeler figuratively got the "camel's nose inside the tent."

The taped committee hearings which were the source of the body of this paper revealed that the other lobbyists and business representatives who testified presented their viewpoints sincerely and succinctly. Although they were not in attendance, or did not speak at all the hearings as did Mr. Wheeler, they made their opposition known in an intelligent, reasonable manner. Had the State not been in such dire fiscal straits, the concern of some legislators over the use of a one-time windfall and the testimony of these individuals might well have resulted in the defeat of HB 1727.

CHAPTER XIII

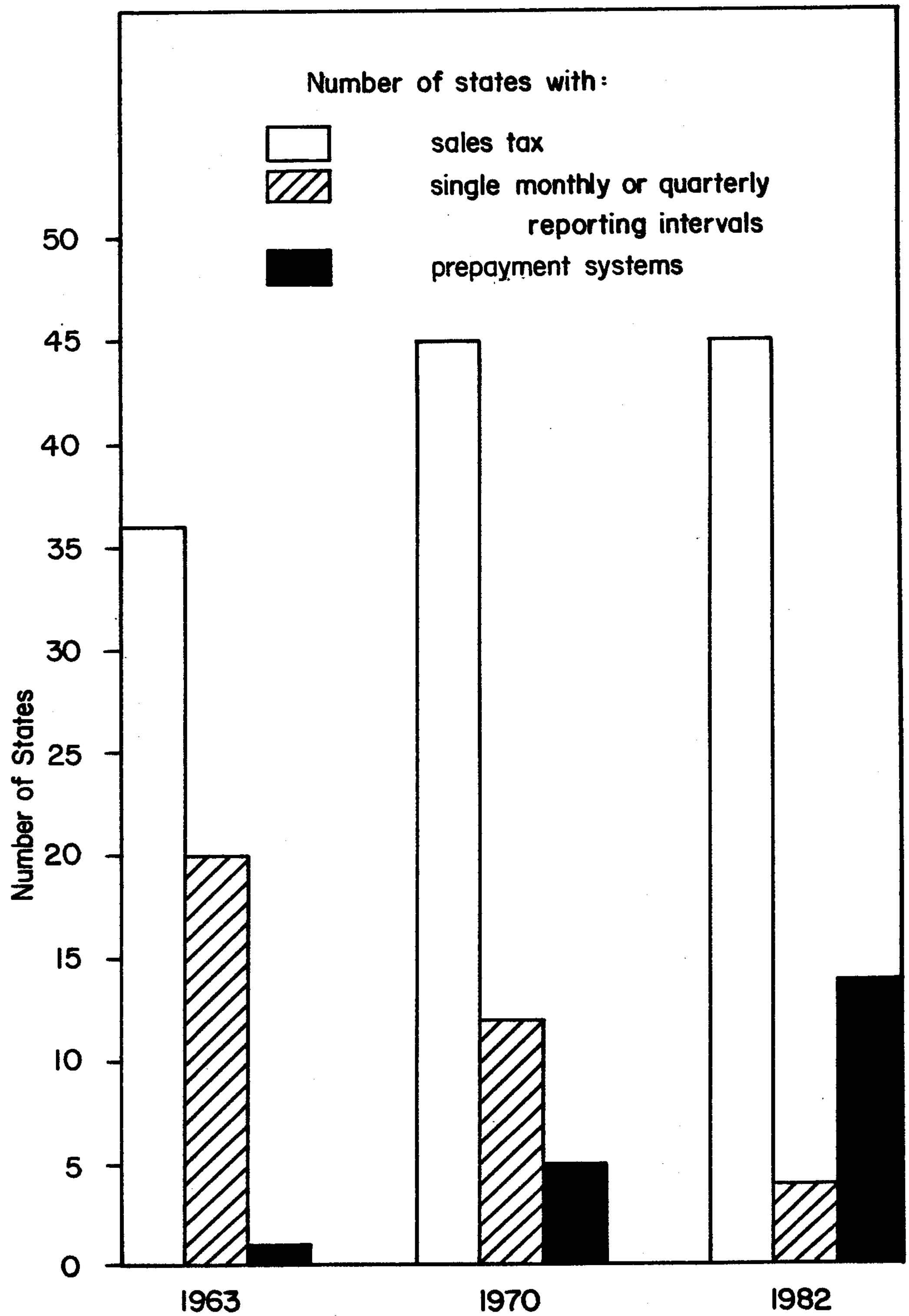
RECOMMENDATIONS

As a measurement of interest group influence, the results of this research are inconclusive. My recommendation is that further study be done. As lobbyist involvement in North Dakota's legislative process appears to be increasing, this may be a fertile research topic for students of political science.

Of particular interest to the author would be a study of sales tax legislation in the 1985 North Dakota legislative session relative to expanded benefits for retailers, i.e. retailer compensation, or changes in reporting criteria.

APPENDIX A

TRENDS IN REPORTING INTERVALS


Number of states with:
sales tax
single monthly or quarterly reporting intervals
prepayment systems
Number of States
50
45
40
35
30
25
20
15
10
5
0
1963
1970
1982

APPENDIX B

SURVEY QUESTIONNAIRES

Legislator Questionnaire

Monthly Sales Tax Reporting

1. Were you on a committee that heard testimony on H.B. 1727 which provided for monthly sales tax reporting?

    _____ Yes _____ No

2. Committee minutes indicate that the following gave testimony on this bill in the hearing. Did any of them contact you directly? If so, how?

	Contacted?		If yes, how?		
	Yes	No	Personal Visit	Phone	Letter
Butler Machinery Fargo (David Butler)	____	____	_____	_____	_____
N.D. Retail Assn. (Art Wheeler)	____	____	_____	_____	_____
Service Drug Dickinson (Lloyd Schnaidt)	____	____	_____	_____	_____
Ace Hardware Bismarck (Bob McCallum)	____	____	_____	_____	_____
J.C. Penney (Russ Smith)	____	____	_____	_____	_____
Rausch Furniture Bismarck (Tom Rausch)	____	____	_____	_____	_____
Greater N.D. Assn. (Dale Anderson)	____	____	_____	_____	_____

3. Did anyone contact you from your home district about this bill?

    _____ Yes _____ No IF YES, about how many individuals contacted you?

4. In your opinion, which (if any) of those who testified encouraged people in your district to contact you about this bill?

    ______________________________ ______________________________

5. As you saw, it, who were the principal people for and against monthly reporting of sales tax?

For	Against
____________________	____________________
____________________	____________________
____________________	____________________

6. As far as you are concerned, who did the best job in favor of the bill?

____________________ ____________________

7. As far as you are concerned, who did the best job against the bill?

____________________ ____________________

8. What reason was most important to you that caused you to vote the way you did?

____

9. How did you feel about this measure?

____ Strongly Favored ____ Mildly Favored ____ Mildly Opposed ____ Strongly Opposed

10. How did you end up voting on the monthly reporting bill?

____ In Favor ____ Against ____ Didn't Vote

11. How hard a decision was this?

____ Very Hard ____ Hard ____ Not Hard ____ Didn't Vote

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Lobbyist Questionnaire

1. What do you believe are the present disadvantages of HB 1727 calling for monthly sales tax collections?

____

____

____

2. What is the one greatest disadvantage? __________________

____

3. What are the advantages of accelerated sales tax collections?

____

____

4. In presenting your views, do you feel you received a fair consideration of your points by the legislators?

____

5. Did you organize or encourage others to contact the legislators in their districts to help you?

____

6. Did you contact legislators in Bismarck in addition to appearing before the committee?

   ____ Yes ____ No

   a. If "yes", about how many in total? ________

   b. If "yes", how did you contact most of them?

      ____ Personal Visit ____ Telephone ____ Personal Letter ____ Personal Mailing

   c. If "yes", who did you contact? (Check as many as apply)

      _____ Members of finance and tax committees
      _____ Primarily legislators from your own district
      _____ Primarily legislators sharing your views
      _____ All legislators

7. How would you rate your effectiveness?

____ Very Effective	____ Effective	____ Not Very Effective	____ Don't Know

8. What, if anything, made it difficult for you to be effective on this issue? ____________________

____

9. Other than yourself, who presented the best case against the bill?

____

10. In what specific ways do you think your testimony affected the final legislation, if at all? ____________________

____

11. In your opinion, what was the main reason legislators voted <u>for</u> the bill? ____________________

____

12. In your opinion, what was the main reason legislators voted <u>against</u> the bill? ____________________

____

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Administrator Questionnaire

1. What do you believe are the present advantages of HB 1727 calling for monthly sales tax collections?

2. What are the disadvantages?

3. In presenting your views, do you believe you received fair consideration of your points by the legislators?

4. How would you rate the effectiveness of lobbyists against HB 1727?

____ Very Effective	____ Effective	____ Not Effective	____ Don't Know

5. What, if anything, made it difficult for them to be effective on this issue?

6. Which lobbyist presented the best case against HB 1727?

7. Did any retailers contact you directly about this bill? If so, about how many?

8. If yes, do you feel they did this on their own or were they encouraged to do so by a lobby organization?

9. In what specific ways do you think your testimony affected the final legislation?

10. In what specific ways did the testimony of lobbyists change the bill?

11. In your opinion, what was the main reason legislators voted <u>for</u> the bill?

12. In your opinion, what was the main reason legislators voted <u>against</u> the bill?

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