

May 2013

North Dakota's 63rd State Legislative Assembly is complete. The longest session in State History reached well into the 80th day and wasn't without its share of fireworks in the closing hours. The policy and fiscal bills affecting the retail industry are finished. Governor Dalrymple termed the latest session historic. In terms of spending, that certainly appears to be the case.

The 63rd Legislative Assembly spent the following: \$6.862 billion in general fund appropriations. This marks a 62% increase in spending, including \$1.532 billion in one-time spending, like infrastructure (roads, water projects, etc.).

Total tax relief exceeded 1.1 BILLION Dollars!

- \$657 million in property tax relief.
- 12 % reduction in direct property tax relief totaling \$200 Million
- \$200 Million in Individual Income Tax reductions
- \$50 Million in Corporate Income Tax reductions - double the 2011 session total of \$25 Million

The \$657 million education funding, \$200 million direct property tax relief and \$250 million income tax cuts totals \$1.1 billion. The budget has an \$87 million ending fund balance and about \$600 million in the Strategic Investment and Improvement Fund.

All in all it was another productive, yet challenging session for the retail members of the Great State of North Dakota. I would be happy to answer any questions you have about specific bills, call me at your convenience. 701-223-3370.

Thank you for your continued support.

Mike Rud

SB 2245: Support

Right to blend bill. This is by far NDPMA's highest priority during this session. This bill was heard in the House IBL Committee on March 19, Tuesday of this week. Myself and a handful of dedicated NDPMA members testified in support of the bill. Opponents of the bill such as Tesoro, Cenex and Flints Hills were able to turn the focus of the bill from a right to blend outside the terminal gates issue into a referendum on the Renewable Fuels Standard. The true purpose of the bill was clouded by the refiner/suppliers contention that the RFS was driving them to producing and marketing a subgrade gasoline. While we understand as an association the concerns refiners and suppliers have with meeting the renewable fuels standards, our association members strongly believe the need to maintain the right to blend their own product for competitive purposes was never truly addressed. After that it was sent on a fast track to defeat. It went down to defeat on the House floor by a 78-15 count.

Again, thank you to all the marketers who contacted their respective legislators asking for a yes vote on SB 2245. As you saw in the Senate, Your voices make a difference. Continue to Be Heard! NDPMA appreciates it very much!

HB 1097: Support

Relating to **electronic filing of sales and use tax returns and electronic payment of sales and use taxes**; and to provide an effective date. Basically, this bill states a business in ND with over \$330,000 in annual sales tax collection must file its tax return forms electronically. Currently about two-thirds of the businesses falling into this category do so. There is a provision in the bill whereby the tax commissioner can waive this requirement if a business can show due cause. **Passed** House 1/17/13 yeas 87 nays 7. **Passed the Senate 45-1.**

HB 1253: Support

Relating to securing the necessary **signage required to be in compliance with smoking restrictions** in public places and places of employment. **Passed** the House, yeas 68 nays 26. **Passed the Senate by a 47-0 vote.** I will attempt to work with the ND Breathe Coalition to develop a sign that works for all concerned parties.

HB 1292: Support

Relating to smoking in public places and places of employment and the responsibility of proprietors. This is the bill that would **call for the ND Tobacco Prevention and Control Advisory Committee to pay for the cost of all the decals needed by businesses to comply with the new rules and regulations** set forth in the initiated measure dealing with smoke free areas that passed in November 2012. This bill should get a floor vote in the House this week. **Passed** House 2/19/13 yeas 72 nays 22. **Passed the Senate 47-0**. NDPMA and several other associations wanted to send the message to the anti-tobacco folks and the government shooting at constantly moving smoking laws was becoming very costly. Truckstops, restaurants and bars that had spent thousands of dollars are smoke-free zones or smoking huts that were deemed useless after passage of Measure 2 in November 2012. We were aiming at getting money from the tobacco free coalition funds to reimburse marketers for their costs to meet earlier compliance. We tried, but came up short. Again, we did get legislated the monies from the tobacco free group to pay for signage. We also got the signage language narrowed to just the main entrance of every door at a business needs to have No Smoking signage, not every door. Basically, we were able to get the camel's nose under the tent. That was our goal.

HB 1458:

Relating to the **penalty for delivery of alcohol to an underage individual**; and to provide a penalty. This bill as proposed states anyone selling liquor to a minor can be charged with a felony. **Passed** House 2/20/13 yeas 61 nays 33. The bill in its original state was very problematic to our marketers selling alcohol. We agreed to less penal amendments in the House and went to work in the Senate to essentially kill the bill. **It died in the Senate by a 41-5 counts**.

HB 1464: Support

Relating to the deduction to allow retailer reimbursement for administrative expenses of collecting sales and use taxes; and to provide an effective date. This bill would **increase retailer reimbursement from \$93 to \$200 for sales tax collection and remission**. It was amended to \$110. **Passed** the House, yeas 89 nays 1. **Passed the Senate 45-0**. This is another bill we keep whittling away at each session. It will mean about \$860,000 stay in ND retailer pockets during the 2013-2015 biennium.

SB 2106: Support

Relating to the operation of **roll-your-own cigarette-making machines**. This bill essentially treats the owner/operator of an RYO machine as cigarette manufacturer, subjecting them to the same tax requirements/regulations as a major cigarette maker. House passed the bill on the full floor 69-25. Minor amendment. Went back to the **Senate passed on a 45-1 vote**.

SB 2126: Support

Relating to the **prohibition of automated sales suppression devices**; and to provide a penalty. **Passed** the Senate, yeas 45 nays 0. House passed the bill on the floor 93-0. **North Dakota became the 9th state to pass such a law pertaining to these till "skimming" devices**. Many more states have a similar bill before their legislative branches. This device can literally erase sales from a till and allow someone to not only to skim money off your till, but to defraud the state of sales tax dollars. This would obviously be an issue should you be audited. It's also a tremendous potential weapon for a retail theft crime scheme. Be on the lookout for these devices. Most of the time, they come in the form of flash drives. In some cases, the device is embedded in the POS.

SB 2154: Support

Relating to **registration fees for above and underground tanks**. These small language adjustments in **SB 2154** came at the request of the ND Insurance Department. The prime sponsor of the bill is Senator Jerry Klein from Fessenden. Hearing went well. Jeff Bitz did a good job explaining the tank fund regulations and how the fund works. A bit concerned about all the discussion centered around ag producers accessing the fund. **Passed** Senate yeas 45 Nays 1. House passed bill 93-0.

SB 2261: Support

This bill asks **the retailers to collect and remit a 2% fee on all prepaid calling cards**. Retailers would receive collection allowance of 3% on all fees collected. Delayed implementation on this bill until January 2014 so all parties effected could be educated. The bill also includes minimum sale language. **Passed** the Senate yeas 47 nays 0. **Passed the House 78-15**.

SB 2294: Support

Relating to **increased fees for use of dyed special fuel in a licensed motor vehicle** and display of consumer advisory information on pumps dispensing dyed special fuel. Committee Hearing 2/5/13 **Passed** the Senate, yeas 44 nays 1. **Passed the House 64-28** with a slight amendment regarding enforcing authorities. **Passed the Senate on a second reading 47-0**. NDPMA will be working with the tax department to develop a dyed diesel pump decal that

works for all concerned parties. This bill also essentially doubles the state fines for any person driving a vehicle on North Dakota roadways that has dyed diesel in the tank.

SB 2316: Support

Relating to a **special fuels tax refund for North Dakota taxes paid on special fuels** used to operate the power take-off unit or auxiliary engines of a motor vehicle; and to provide an effective date. **Passed** the Senate yeas 45 nays 0. **Failed in the House by a 73-19 vote.**

HCR 3016: Support Amended

NDPMA offered an amendment to the bill. A concurrent resolution directing the Legislative Management to study the use of natural gas as fuel in motor vehicles, including the feasibility of turning natural gas into diesel fuel for public consumption. House adopted that amendment. Passed the House 93-0. Senate did not concur with the amendment. Bill went to conference committee where language was changed to include studying of natural gas as a form of transportation fuel as a whole, not just as a diesel fuel. House acceded to those amendments. **Second reading passed again by a 93-0 vote.**

HB 1009: North Dakota Agriculture Commission's Budget bill

This bill has caused a fair amount of controversy in NDPMA's office. An amendment was attached to the Ag Commission's bill to provide for a legislative management **study of the milk marketing board**. For whatever reason, the Grocer's Association accused NDPMA and several of our associate members of pushing for this study. While we have been actively pursuing justification as to why the milk stabilization board can just routinely deny wholesale distributors of the right to sell fluid milk in the state, NDPMA has never had an interest in studying the viability of the milk board. NDPMA has held numerous meetings over the last month and should soon have an answer to this issue. I will keep you posted in the weeks ahead on the status of these efforts.

HB 1130: Relating to computerized issuance of game and fish licenses.

This bill sets up an electronic licensing system for the retail sale of hunting and fishing licenses. The law states that by March 2015, county auditors will have the online system in place and approved for use by the NDGF Department. The electronic licenses will be available for sale at the retail outlets by March 2016.

HB 1163: Relating to workers' compensation definitions of compensable injury.

This was perhaps the most crucial workforce safety bill simply because of the potential price tag to members. It basically states that pain is a symptom and may be considered in determining whether there is a substantial acceleration or substantial worsening of a preexisting injury, disease, or other condition, but pain alone is not a substantial acceleration or a substantial worsening.

Bottom line: **passage of this bill saved members from about a 12.5% increase in workforce premiums.**

The bill flew under the radar in the House passing 61-28. An amended version passed the Senate by a 27-19 vote. It went to conference committee where the House acceded to the amendments. HB 1163 passed the House by a 65-28 vote.

HB 1243:

Relating to issuance of **checks without sufficient funds** or without an account.

This bill raises the fees charged by a collection agency for an NSF check from \$35 to \$40. It passed the House by a 79-12 vote. It passed the Senate 45-0.

HCR 3025: A concurrent resolution of commendation to the North Dakota State University **Bison football team** and Coach Craig Bohl for achieving a rare level of dominance in NCAA Division I football.

SB 2261: Support

This bill asks **the retailers to collect and remit a 2% fee on all prepaid calling cards**. Retailers would receive collection allowance of 3% on all fees collected. Retailers will be allowed to keep all of the first quarter fees collected as an offset for setting up the collection and remission of these fees on its POS. Delayed implementation on this bill until January 2014 so all parties effected could be educated. The bill also includes minimum sale language. **Passed** the Senate yeas 47 nays 0. **Passed the House 78-15.**

It is the hope of NDRA that a bill will be brought forward next session to address the Next generation emergency services programs and SB 2261 will be short lived.

Are pre-loaded top up cards which allow customers to download video games, software, and/or other digital goods subject to the fee?

As stated in S.B. 2261, "**Prepaid wireless service**" means "any telecommunications service that provides the right to use a mobile wireless service as well as other non-telecommunications services, including the download of digital products delivered electronically, content and ancillary services, which are paid for in advance and sold in predetermined units or dollars which decline with use in a known amount."

In this definition, a prepaid wireless service essentially refers to any method by which a customer pays, in advance, for a wireless telecommunications connection. Examples of prepaid wireless service include:

- 1) Prepaid wireless phone cards providing air-time;
- 2) Recharge or refill authorization codes for air-time; and
- 3) Prepaid cell phones that come preloaded with air-time.

In some cases, a prepaid wireless service may be accompanied by a non-telecommunications service or other ancillary service. For example:

A customer purchases a cell phone that comes pre-loaded with 100 minutes of air-time for \$75.00. The phone may come with other non-telecommunication services such as internet capabilities to download ring tones, music, videos, and reading materials. The phone may also be equipped with ancillary services such as voice mail, caller ID, and conference calling.

The seller of the phone in this example would charge the prepaid wireless 911 fee either on:

1. The entire amount of the purchase if the phone is sold for a single, non-itemized price, or
2. The amount of the purchase that makes up the prepaid wireless service (i.e. the 100 minutes of air-time) if the dollar amount for the minutes and the prepaid wireless fee are disclosed to the consumer or if the seller can identify the portion of the price that relates to the minutes in the books and records kept in the ordinary course of their business.

* (For example: The package or the seller's records can show that the cost of the phone is \$50.00 and the cost of the prepaid minutes is \$25.00)

A specific question was asked regarding the applicability of the fee to pre-loaded top-up cards. In the descriptions the Department reviewed for pre-loaded top-up cards, the cards were described as being redeemable for talk time or add-ons, including games and ring tones.

Unlike in the previous example, it does not appear that the amount the consumer is paying for air-time can be separated from the amount the consumer may be paying for other items, such as games or ring tones, as it cannot be known by the seller what the consumer will ultimately apply the value of the card to. Thus, the entire purchase amount of a pre-loaded top-up card would be subject to the prepaid wireless 911 fee.

I hope this example assists in providing clarity to the language in question. Should you have any additional questions relating to the application of S.B. 2261 please do not hesitate to contact the Office of State Tax Commissioner.

Office of State Tax Commissioner
Emily Thompson, Legal Counsel
Phone: (701) 328-2776
E-mail: emthompson@nd.gov