



SENATE FINANCE AND TAXATION COMMITTEE  
SENATOR BELL, CHAIRMAN

Chair Bell, members of the Senate Finance and Taxation Committee, my name is Matt Peyerl, Associate Director, Tax Administration, for the Office of State Tax Commissioner. I am here on behalf of the Tax Commissioner in support of House Bill 1082. This bill amends N.D.C.C. § 57-38-42 relating to the filing of information returns and certain passthrough entity income tax returns and amends N.D.C.C. § 57-38-60 relating to the filing and paying of employer's wage withholding returns.

**FOUR CHANGES PROPOSED**

1. Require employers and payors to electronically file their annual return and W-2's and 1099's.
2. Require passthrough entities with 10 or more owners to electronically file income tax returns.
3. Increase the threshold for allowing an "annual" filing for wage withholding returns (instead of quarterly).
4. Require electronic payment for quarterly wage withholding returns.

Three of the four changes that would establish or expand electronic filing or paying requirements also include provisions allowing the Tax Commissioner to waive the requirement for good cause. All four changes would result in less paper being processed. The effective date included in Section 3 of the bill is for tax periods beginning after December 31, 2021. However, because of the nature of each change, the practical application of the effective date is described separately for each of the four changes.

**PROPOSED CHANGES AND EXPLANATION OF THE BILL**

**Proposal 1 - Section 1 - (Page 1, Line 8, and Page 4, Lines 5-9).** Current law includes the requirement a business to file electronically for 10 or more information returns (Form 1099's) or 10 or more W-2's. The current threshold of 10 was first applicable for the information returns filed in January 2020.

This new language on line 8 would remove the threshold of 10 for 1099's and require all to be electronically filed. The overstrikes and edits on page 4, lines 5-9, relate to removing the reference to the threshold of 10 for W-2's and the associated annual transmittal return.

The change would reduce processing time, reduce errors, enhance compliance, and allow for more efficient verification of individual income tax returns which claim withholding. We believe our office's improved online entry portal (TAP – Taxpayer Access Point) is a particularly attractive option for small businesses that do not use larger software packages that can automatically upload the information. In addition, the delayed effective date provides for significant opportunity for our office to communicate such an upcoming change. This change would affect approximately 11,900 employers (of which, 3,900 report zero employees), as shown below:

Total employer accounts	37,876
Less: Already file electronically	<u>(25,935)</u>
Equals affected employers	11,941

The effective date applicable for taxable years beginning after December 31, 2021, means the change would be applicable for the 1099's and W-2's covering year 2022, which are due January 31, 2023.

**Proposal 2 - Section 1 - (Page 1, Lines 8-11).** This change would establish a requirement that any passthrough entity with 10 or more owners or partners file its income tax return (which includes the associated K-1's) and pay the tax electronically. A passthrough entity is an S-corporation, partnership, fiduciary (trust), or similar entity. This change would reduce processing time and provide for more efficient and expanded verification of income tax claimed to be withheld. It is estimated this change would impact approximately 400 returns per year, as shown below. Those 403 income tax returns included over 1.9 million K-1's that would possibly reflect income tax withheld.

Total passthrough entity returns	55,235
Less: Already file electronically	(40,730)
Less: Have 9 or less owners	<u>(14,102)</u>
Equals affected passthrough entities	403

The effective date applicable for taxable years beginning after December 31, 2021, means the change would be applicable for the passthrough entity income tax returns of tax year 2022, which would be due April 15, 2023 (and later for taxpayers using a fiscal year instead of calendar year end).



**Proposal 3 - Section 2 - (Page 1, Lines 20-21).** This change would raise the threshold that is used to determine an employer may file annual wage withholding returns instead of quarterly. Currently, an employer whose prior year income tax withheld from wages is \$500 or more must file and remit withholding on a quarterly basis. If the prior year withholding was less than \$500, an employer may file on an annual basis. This change would raise this threshold to \$1,000, resulting in an estimated 3,600 more employers able to file on an annual basis instead of quarterly.

The effective date applicable for taxable years beginning after December 31, 2021, means the change would be applicable for quarterly returns covering periods of year 2022, for which the first quarter would otherwise be due April 30, 2022.

**Proposal 4 - Section 2 - (Page 2, Lines 7-12).** This change would establish the requirement that any employer which does not qualify for annual filing (new threshold of \$1,000 described in Proposal 3) would be required to electronically file and pay the quarterly return. The estimated count of those impacted is shown below:

Total employer accounts	37,876
Less: Already file / pay electronically (25,935)	
Less: Withholding less than \$1,000	<u>(9,998)</u>
Equals affected employers	1,943

The effective date applicable for taxable years beginning after December 31, 2021, means the change would be applicable for quarterly returns covering periods of year 2022, for which the first quarter would otherwise be due April 30, 2022.

**Section 3 – Effective date.** The four proposed changes would be effective for taxable years beginning after December 31, 2021. The practical application of this effective date for each of the four changes was previously described for each proposed change.

## CONCLUSION

The Tax Commissioner respectfully requests your favorable consideration of HB 1082. Thank you for your time and consideration.

