

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



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| ROLL NUMBER |
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DESCRIPTION

2060

2001 SENATE FINANCE AND TAXATION

SB 2060

2001 SENATE STANDING COMMITTEE MINUTES

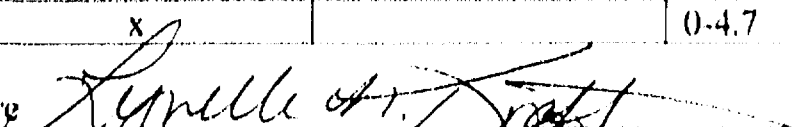
BILL/RESOLUTION NO. 2060

Senate Finance and Taxation Committee

Conference Committee

Hearing Date 1/15/01

| Tape Number | Side A | Side B | Meter # |
|-------------|--------|--------|---------|
| 1 | | x | 0.1 |
| 1/16/01 - 1 | | x | 34-end |
| 1/16/01 - 2 | x | | 0-4.7 |

Committee Clerk Signature 

Minutes:

Senator Urlacher: Called the hearing on SB 2060, relating to penalties for income tax and sales or use tax purposes.

Gary Anderson: Director of Sales & Special Taxes for State Tax Department, testified in support of the bill. Written testimony attached.

Senator Stenehjem: If I had 15 employees and I don't turn in any of the income tax withholdings, does that put me in the 15 or more categories right right away or is that one instance?

Gary Anderson: It does not put you in that category right away. In the current system, it's based on your actual number of returns that are delinquent. That's one return that they file, regardless of the number of employees.

Senator Stenehjem: If I'm a retailer selling in many different cities, and I'm not paying the monies back, then I'm in violation for the state, plus every city?

Gary Anderson: Each city stands alone. We don't total this group and say we have 15 different taxing authorities so you've got 15 delinquencies at one time.

Senator Stenehjem: Continues to ask questions of Gary Anderson to clarify delinquencies. Through meter number 14.1.

Senator Nichols: How would this affect a farmer/rancher?

Gary Anderson: For a few exceptions, the same would apply if they were annual filers.

Dan Rouse: Legal Counsel for the Tax Department, made a comment to clear up the questions that Senator Stenehjem had. The bill would be applied retroactively.

Bill put aside for further discussion to add an emergency clause.

Senator Urlacher: Closed the hearing. Action delayed.

Discussion held 1/16/01 meter number 34-end on Tape 1, Side B, 0-4.7, Tape 2, Side A. Dan Rouse appeared to answer questions and clarify some things-penalties, percents, and the retroactive application. Introduced amendment.

AMENDMENT ACTION:

Motion made by Senator Stenehjem, Seconded by Senator Wardner, to move amendment numbered 1080.0100. ~~Voice Vote~~ taken. All in favor, amendment adopted.

COMMITTEE ACTION: 1/16/01

Motion made by Senator Stenehjem for DO PASS AS AMENDED, Seconded by Senator Christmann. Vote was 6 yeas, 0 nay, and 0 absent or not voting. Bill carrier was Senator Stenehjem.

FISCAL NOTE
 Requested by Legislative Council
 12/18/2000

Bill/Resolution No.: SB 2060

Amendment to:

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

| | 1999-2001 Biennium | | 2001-2003 Biennium | | 2003-2005 Biennium | |
|----------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
| | General Fund | Other Funds | General Fund | Other Funds | General Fund | Other Funds |
| Revenues | | | | | | |
| Expenditures | | | | | | |
| Appropriations | | | | | | |

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

| 1999-2001 Biennium | | | 2001-2003 Biennium | | | 2003-2005 Biennium | | |
|--------------------|--------|------------------|--------------------|--------|------------------|--------------------|--------|------------------|
| Counties | Cities | School Districts | Counties | Cities | School Districts | Counties | Cities | School Districts |
| | | | | | | | | |

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

SB 2060 changes the penalty provisions for delinquent sales and withholding returns to one that is more administratively workable and fair. There are positive and negative fiscal effects associated with this bill, but the exact fiscal impact cannot be determined.

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

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

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

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

| | | | |
|----------------------|----------------------|-----------------------|----------------|
| Name: | Kathryn L. Strombeck | Agency: | Tax Department |
| Phone Number: | 328-3402 | Date Prepared: | 01/12/2001 |

18080.0100
Title.

Prepared by the Office of State Tax
Commissioner
January 16, 2001

PROPOSED AMENDMENTS TO SENATE BILL NO. 2060

Page 5, remove lines 7 through 8

Renumber accordingly

Date: 1/16/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2000

Senate Finance and Taxation Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number 18080.0100

Action Taken Move Amendment (Voice Vote)

Motion Made By Stenehjem Seconded By Wardner

| Senators | Yes | No | Senators | Yes | No |
|-------------------------------|-----|----|----------|-----|----|
| Senator Urlacher-Chairman | | | | | |
| Senator Wardner-Vice Chairman | | | | | |
| Senator Christmann | | | | | |
| Senator Stenehjem | | | | | |
| Senator Kroeplin | | | | | |
| Senator Nichols | | | | | |
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Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

Date: 11/16/01
Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2060

Senate Finance and Taxation Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Stenehjem Seconded By Christmann

| Senators | Yes | No | Senators | Yes | No |
|-------------------------------|-----|----|----------|-----|----|
| Senator Urlacher-Chairman | ✓ | | | | |
| Senator Wardner-Vice Chairman | ✓ | | | | |
| Senator Christmann | ✓ | | | | |
| Senator Stenehjem | ✓ | | | | |
| Senator Kroeplin | ✓ | | | | |
| Senator Nichols | ✓ | | | | |
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Total (Yes) 6 No 0

Absent 0

Floor Assignment Stenehjem

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

REPORT OF STANDING COMMITTEE (410)
January 16, 2001 4:00 p.m.

Module No: SR-06-1083
Carrier: Stenehjem
Insert LC: 18080.0101 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2060: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2060 was placed on the Sixth order on the calendar.

Page 1, line 3, after the first semicolon insert "and" and replace "; and to" with a period

Page 1, remove line 4

Page 5, remove lines 7 and 8

Renumber accordingly

2001 HOUSE FINANCE AND TAXATION

SB 2060

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2060

House Finance and Taxation Committee

Conference Committee

Hearing Date March 7, 2001

| Tape Number | Side A | Side B | Meter # |
|--|--------|--------|---------|
| 1 | | X | 99 |
| | | | |
| | | | |
| Committee Clerk Signature <i>Jamie Stein</i> | | | |

Minutes:

REP. AL CARLSON, CHAIRMAN Opened the hearing and read the fiscal note.

GARY L. ANDERSON, DIRECTOR OF SALES & SPECIAL TAXES, STATE TAX

COMMISSIONER'S OFFICE, Testified in support of the bill. See attached written testimony.

REP. CARLSON What did you collect last year?

GARY ANDERSON Stated he didn't have that figure.

REP. CARLSON I see the Senate took out the date where you had it effective December 31, 2000.

GARY ANDERSON When the bill was drafted, I am not sure, how the numbers were put in there, I think in our legal work on the bill, it was put in there. When the Senate looked at that, they were wondering if that was an important feature, and it certainly wasn't, so we agreed that it should come out and take place August 1, without the extended effective date.

REP. CARLSON The penalties will be the same for both, in the end, is there really going to be very much difference, you are using different methodology, but will the actual fine be that much different?

GARY ANDERSON It is our belief, that it will not. What happened in our case, we have run into situations frequently, where somebody will have failed to file a return and if they are filing in several cities, they have all of these penalties for each city, obviously, you can understand that if somebody has a two hundred dollar tax liability, they end up with a thousand dollar penalty interest billing because of all of the combinations of state and city taxes, we certainly take that into allowance and do some adjustments, that these taxpayers have shown us that they were making an effort and just slipped up. There has been some adjustments to equalize that, certainly not waiving all of it, but at least adjusting it. This will basically, bring it into line with what we are doing anyway. I don't see a major change here.

With no further testimony, the hearing was closed.

COMMITTEE ACTION 3-7-01, TAPE 1, SIDE B, METER #3628

REP. CLARK Made a motion for a **DO PASS**.

REP. SCHMIDT Second the motion. **MOTION CARRIED.**

11 YES 0 NO 4 ABSENT

REP. CLARK Was given the floor assignment.

Date: 3-7-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 582060

House FINANCE & TAXATION Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Clark Seconded By Rep. Schmidt

| Representatives | Yes | No | Representatives | Yes | No |
|-------------------------|-----|----|-------------------|-----|----|
| CARLSON, AL, CHAIRMAN | ✓ | | NICHOLAS, EUGENE | A | |
| DROVDAL, DAVID, V-CHAIR | ✓ | | RENNER, DENNIS | A | |
| BRANDENBURG, MICHAEL | ✓ | | RENNERFELDT, EARL | ✓ | |
| CLARK, BYRON | ✓ | | SCHMIDT, ARLO | ✓ | |
| GROSZ, MICHAEL | ✓ | | WIKENHEISER, RAY | ✓ | |
| HERBEL, GIL | A | | WINRICH, LONNY | ✓ | |
| KELSH, SCOT | ✓ | | | | |
| KROEBER, JOE | ✓ | | | | |
| LLOYD, EDWARD | A | | | | |
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Total (Yes) 11 No 0

Absent 4

Floor Assignment Rep. Clark

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

REPORT OF STANDING COMMITTEE (410)
March 7, 2001 1:22 p.m.

Module No: HR-39-5016
Carrier: Clark
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2060, as engrossed: Finance and Taxation Committee (Rep. Carlson, Chairman)
recommends **DO PASS** (11 YEAS, 0 NAYS, 4 ABSENT AND NOT VOTING).
Engrossed SB 2060 was placed on the Fourteenth order on the calendar.

2001 TESTIMONY

SB 2060

SENATE BILL NO. 2060

Testimony prepared by
Gary L. Anderson
North Dakota Office of State Tax Commission
January 15, 2001

Chairman Urlacher and members of the Senate Finance and Taxation Committee, my name is Gary L. Anderson, Director of Sales & Special Taxes. Senate Bill No. 2060 represents a request by the Office of State Tax Commissioner for a change in the manner in which penalty is applied when a sales and use tax or income tax withholding return is not timely filed or paid.

Most states apply an automatic penalty system for failure to file timely tax returns. These penalty systems generally involve a flat penalty rate but with a dollar minimum. The dollar minimum will most often apply to those filers owing little or no tax but yet create a substantial administrative expense by not filing timely tax returns.

Current North Dakota law provides for the application of penalty based upon the delinquency history of the filer. The more delinquent returns or payments a filer has will result in a larger penalty rate. The current penalty application follows:

| | <u>Delinquent returns/payments</u> | <u>Penalty (first month late)</u> |
|------------------|------------------------------------|------------------------------------|
| Monthly Filer: | 1 to 6 | 5% or \$5, whichever is greater |
| | 7 to 14 | 10% or \$25, whichever is greater |
| | 15 or more | 25% or \$100, whichever is greater |
| Quarterly filer: | 1 to 3 | 5% or \$5, whichever is greater |
| | 4 to 8 | 10% or \$25, whichever is greater |
| | 9 or more | 25% or \$100, whichever is greater |

Although the intent of the current penalty application is to apply a higher penalty rate to those filers having continual delinquencies, the penalty application can often result in an assessment of the higher penalty rate to a filer having a good filing history. For example, a filer may experience a large number of delinquencies during the first few years of business, then file timely returns for several years. Because the filer's delinquency history reflects a number of previous delinquent returns, the filing of one

delinquent return several years later can result in the application of the higher penalty rates.

With the increase in the number of local sales and use taxes, which currently totals 84 cities and one county, the filer can also find themselves subject to the same penalty rates for each individual city and county.

North Dakota is the only state currently applying a penalty rate based on a Taxpayer's delinquency history.

North Dakota, like most states, wants to encourage the timely filing of returns and payment of taxes. It is for this reason that most states provide for the application of penalty when a filer is delinquent in its responsibilities.

Section 1 of SB 2060 repeals the current penalty provision as it applies to the income tax withholding. By repealing this provision, the penalty that applies to corporate income tax returns, as provided in subsection 2(b) of section 57-38-45, will also be applicable to income tax withholding returns that are not filed timely. This subsection provides for an application of a 5% penalty or \$5.00 per month; whichever is greater, up to a maximum of 25 percent if the filer fails to file a tax return.

Section 2 and 3 of SB 2060 repeals the current penalty provisions in the sales and use tax laws. The additional language in each section also provides for an application of a 5% penalty or \$5.00 per month, whichever is greater, up to a maximum of 25 percent if the filer fails to file a tax return.

SB 2060 provides for the application of an increased penalty rate based on the filer's failure to file a timely return, instead of basing the penalty rate on a filer's filing history. SB 2060 proposes a penalty application for delinquent sales and income tax withholding returns that is administratively workable and fair.

Although the fiscal effect cannot be determined, SB 2060 will generally reflect a reduced penalty if the delinquent returns are filed the first month or two of being delinquent. SB 2060 will generally provide for progressive penalties for successive delinquencies and for added months of delinquency, which places an increased pressure on the more hard-core delinquents. The Office of State Tax Commissioner would ask for a Do Pass on Senate Bill No. 2060.

Senate Bill No. 2060
Addendum to January 15, 2001 Testimony
Presented by Gary L. Anderson
North Dakota Office of State Tax Commissioner

Application of penalty as provided by SB2060:

| | <u>First Month Delinquent</u> | <u>Second Month Delinquent</u> | <u>Third Month Delinquent</u> | <u>Fourth Month Delinquent</u> | <u>Fifth Month Delinquent</u> | <u>Total Penalty</u> |
|---------|---|---|---|---|---|---|
| Penalty | 5% or \$5.00 whichever is greater | 5% or \$5.00 whichever is greater | 5% or \$5.00 whichever is greater | 5% or \$5.00 whichever is greater | 5% or \$5.00 whichever is greater | 25% or \$25.00 whichever is greater |

ABC Company has a requirement to file a tax return (could be a sales & use tax return or an income tax withholding tax return) no later than December 31. The tax liability for ABC Company is \$1,000.

| If delinquent: | January | February | March | April | May | Total Penalty |
|-------------------|-----------|-----------|-----------|-----------|-----------|---------------|
| Penalty to apply: | \$50 (5%) | \$50 (5%) | \$50 (5%) | \$50 (5%) | \$50 (5%) | \$250 (25%) |

If ABC Company files the return in January, the total penalty will be \$50.

.....in February, the total penalty will be \$100 (January plus February)

.....in March, the total penalty will be \$150 (January plus February plus March)

.....in April, the total penalty will be \$200 (January plus February plus March plus April)

.....in May, the total penalty will be \$250 (January plus February plus March plus April plus May)

If Return is filed after May, no additional penalty will apply but the filer will be subject to an interest rate of 1% per month until filed and paid.