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10/23/03
Date

2003 SENATE FINANCE AND TAXATION

SB 2411

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2411

Senate Finance and Taxation Committee

Conference Committee

Hearing Date February 5, 2003

Tape Number	Side A	Side B	Meter #
1	X		1-4170
Committee Clerk Signature <i>Deanna Hill</i>			

Minutes:

Senator Urlacher opened the hearing on SB2411. All committee members are present. This bill relates to an exemption from income taxes of income of enrolled tribal members from reservation sources.

Senator Bercier (mtr #22) - Is the primary sponsor of the bill. Testified in support of the bill and explained the intent of the bill.

Senator Wardner (mtr #656) - Clarified the concern that Senator Bercier is addressing with this bill.

Senator Bercier (mtr #715) - Agreed with clarification and referenced the sovereign nation status of the reservation.

Senator Wardner (mtr #750) - Is there a tribal income tax?

Senator Bercier (mtr #766) - There is no tribal income tax. Considering a tax on some goods such as alcohol and gas.

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Senate Finance and Taxation Committee
Bill/Resolution Number SB2411
Hearing Date February 5, 2003

Senator Wardner (mtr #995) - Questioned the identity of the "whistle blowers"

Senator Bercier (mtr #1005) - Usually disgruntled tribal members.

Elaine McLaughlin, Tax Commissioner, Standing Rock Sioux Tribe (mtr #1135) - Testified in support of SB2411. Feel this bill would be an incentive for non-tribal members to stay within the tribal boundaries and provide services.

Tom Disselhorst, Attorney (mtr #1625) - Testified in support of SB2411. Proposed an amendment and clarified the intent.

Senator Syverson (mtr #2146) - Questioned the number of people this would effect.

Mr. Disselhorst (mtr #2187) - Deferred that question to the Tax Commissioners Officer

Senator Tollefson (mtr #2311) - Clarified, if you live on the reservation but work off the reservation what is the tax status.

Mr. Disselhorst - Answered question on the tax status. Does not believe that the fiscal note would be large for this bill.

Matt Seewalker, Standing Rock Sioux Tribe (mtr #2494) - Employed by the Tribal Employment Office, testified in support of SB2411.

Rick Clayburgh, State Tax Commissioner (mtr #2727) - Testified neutral on the bill, but have background on the bill. Reviewed current state policy under federal and state law. Clarified ND position. Went over different scenarios on how state tax is applied and how the bill would change that.

Senator Wardner (mtr #3569) - Question on how other state handle this issue.

Mr. Clayburgh (mtr #3667) - We will verify the handling by other states, but every state treats this issue the same.

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Senate Finance and Taxation Committee
Bill/Resolution Number SB2411
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Senator Wardner (mtr #3728) - Question on the tax status if they live on reservation and work off reservation.

Mr. Clayburgh (mtr #3740) - Will check on that. Going back to "whistle blower" issue. Most of our compliance issue we find do not come from whistle blowers, are a result of the federal cross check program.

Senator Urlacher (mtr #3888) - How many individuals would this impact?

Mr. Clayburgh (mtr #3900) - Don't have knowledge of the depth of this issue. Very difficult to deal with in compliance.

Senator Wardner (mtr #3975) - Would this legislation lighten your load?

Mr. Clayburgh (mtr #3994) - Would solve a lot of concerns within agency. But it is a policy decision for the legislature.

Senator Urlacher (mtr #4170) - Closed the hearing on SB2411.

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2411

Senate Finance and Taxation Committee

Conference Committee

Hearing Date February 10, 2003

Tape Number	Side A	Side B	Meter #
1		X	4049-5100

Committee Clerk Signature *Mary Kay Lindsey*

Minutes:

Senator Urlacher opened the discussion on SB2411. All committee members are present. This bill relates to exemption from income taxes of income of enrolled tribal members from reservation sources.

Senator Seymour (mtr #4303) - Would like a clarification on who it effects.

Senator Tollefson (mtr #4324) - Clarified the effect for the record.

Senator Wardner (mtr #4385) - Reviewed bill and the impact. Also talked on how this tax subject is handled in South Dakota and other states.

Senator Urlacher (mtr #4540) - Reviewed the proposed amendment.

Senator Nichols (mtr #4698) - Has not had a chance to talk to the sponsor. Sponsor seemed concerned with the language of the bill. Volunteered to clarify questions with the sponsor.

Senator Urlacher - Will pass over this bill for consideration at this time.

Senator Nichols - Reviewed the fiscal note.

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Senate Finance and Taxation Committee
Bill/Resolution Number SB2411
Hearing Date February 10, 2003

Senator Wardner (mtr #5020) - Keep in mind that the reservations are sovereign nations. Does
have an effect on collecting taxes.

Senator Urlacher - Closed the discussion on SB2411

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Deanna Williams
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10/23/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2411

Senate Finance and Taxation Committee

Conference Committee

Hearing Date February 11, 2003

Tape Number	Side A	Side B	Meter #
1	X		610-1257

Committee Clerk Signature *Deanna Tolleson*

Minutes:

Senator Urlacher opened discussion on SB2411. All committee members are present. This bill relates to exemption from income taxes of income of enrolled tribal members from reservation sources.

Senator Nichols (mtr #679) - Motioned to add amendment .0201 to the bill. 2nd by Senator Wardner.

Senator Nichols (mtr #730) - Explained what the amendment would do to the bill.

Voice vote to add amendment. 6 yea, 0 nay, 0 absent. Amendment added.

Senator Wardner (mtr#812) - Move a Do Not Pass. 2nd by Senator Tolleson.

Senator Wardner (mtr #855) - Respects sovereignty of the tribes. But should be exempt will on their reservation. Feels tax should apply when they leave their reservation. Question the ability of the Tax Department to collect.

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Senate Finance and Taxation Committee
Bill/Resolution Number SB2411
Hearing Date February 11, 2003

Senator Nichols (mtr #985) - May have been some problems with this bill. Not sure of the full support of the sponsor.

Roll call for a Do Not Pass as Amended. 4 yea, 2 nay, 0 absent. Carrier is Senator Tollefson.

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10/23/03
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FISCAL NOTE
 Requested by Legislative Council
 01/28/2003

Bill/Resolution No.: SB 2411

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.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 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.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 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 2411 provides an income tax exemption for enrolled tribal members for income earned from sources on the state's reservations without regard to where the taxpayer resides. Additionally, SB 2411 contains a retroactive provision for refunding certain taxes paid by enrolled tribal members. We have no information on which to estimate the fiscal impact.

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 Dept.
Phone Number:	328-3402	Date Prepared:	02/04/2003

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10/23/03
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30003.0201
Title.0300

Prepared by the Legislative Council staff for
Senate Finance and Taxation
February 11, 2003

JB
2-11-03

PROPOSED AMENDMENTS TO SENATE BILL NO. 2411

Page 1, line 19, replace "The" with "Notwithstanding any other law, the"
Renumber accordingly

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REPORT OF STANDING COMMITTEE (410)
February 12, 2003 12:14 p.m.

Module No: SR-27-2388
Carrier: Tollefson
Insert LC: 30003.0201 Title: .0300

REPORT OF STANDING COMMITTEE

SB 2411: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO NOT PASS (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2411 was placed on the Sixth order on the calendar.

Page 1, line 19, replace "The" with "Notwithstanding any other law, the"

Renumber accordingly

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2003 TESTIMONY

SB 2411

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Proposed Amendment to SB 2411:

On Line 19, strike the word "The", and insert the following: "Notwithstanding any other law, the"

The sentence should then read:

"Tribal member income tax, penalty, and interest waiver. Notwithstanding any other law, the tax commissioner shall waive all income taxes and associated penalty and interest under this chapter attributable to taxes on income of a taxpayer if all of the following apply:"

This amendment should make it clear that if any other state law would otherwise prevent the waiver of income taxes that have been essentially illegally collected, this law is nevertheless valid.

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TESTIMONY OF CAROL TWO EAGLE RE SB 2411. February 5, 2003.

Hau mitakuyapi. Hello, my relatives. Senator Erlacher and members of the Committee, for the record, my name is Carol Two Eagle. I support SB 2411 for the following reasons:

Native Reservations are the lands of sovereign nations, not counties within the states. Our primary legal relationship is with the United States government, not the state. This is a fact, not a perspective. It is so because of the 389 Treaties made between our various Indigenous Nations of this Turtle Island and the United States of America government.

Our residents have citizenship in both our nations and the U.S., because citizenship was given to us in 1924, by virtue of the Snyder Act, and we were told it was as a reward for our service in WWI. The irony of this does not escape us - Being made citizens of our own land by the government that spent over one hundred years to that time trying to eradicate us - and which often appears to continue to try to eliminate us, our languages, and our cultures - whether intentionally or not - except when it comes to making money off of us. By way of reference, I give as the latest example the cutting of 53% of the funding for United Tribes Technical College from the Department of Interior Budget by President Bush. UTTC provides schooling - with a strong Native flavor - for young people from Head Start through college age; the President carries on about "no child left behind in education", and then removes the entire federal contribution to the support of UTTC without so much as a hiccup in its thinking.

Today, Bismarck State College had me talking about Native Cultures and Issues as part of its "Celebration of Diversity". This 'celebration' is part of the Lewis and Clark commemoration. How serendipitous that this bill should come before this Committee today, isn't it?

In any case, we are Indians first and U.S. citizens second, both legally and loyally. If this were not so, we would not fight so hard to retain our cultures rather than assimilate into the majority culture of this Turtle Island. UTTC would not need to exist. The Native American College Fund would not be needed. You get the picture.

The doctrine of sovereignty states that the governments of the 50 states do not have jurisdiction over any of us when we are on any of the Reservations - not just the one a person is enrolled on. In a few limited cases, reciprocity has been worked out for instances when a native person has committed some crime off a Reservation & then gone to a Reservation to avoid the off-Rez police, but overall, North Dakota does not have jurisdiction over any Indian on any Reservation. And I note, there are no cases of reciprocity I can find for when a non-Indian commits a crime on a Reservation and then leaves the Reservation to avoid the Reservation police.

Even so - When off-Reservation police want to serve a warrant on a Reservation, they must work through the appropriate police on that Reservation. They cannot just go on the Reservation and serve the warrant. Thus, the tax department of the state of North Dakota does not have jurisdiction over any Indians when they live and work on Reservations. It's as simple as that.

While it is understandable that the tax department of the state of North Dakota wants all the jurisdiction it can get, it simply doesn't have it. Moreover, the state legislature does not have the authority in law to force or make that jurisdiction happen.

In the case of an Indian who lives and works on the Reservation but who has an off-Reservation mailing address, it is where a person actually lives that matters; not where their mail goes. There are many good reasons to live in one place and have a mailing address

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somewhere else; including convenience. The physical address may change, but the mailing address won't, thus a person's mail won't be lost in changing addresses with physical locations. I have this myself.

Also, it sometimes happens on Reservations that a Post Office doesn't have enough mail boxes for all the residents of the Reservation or a District within it. This is common. There is no house delivery of mail on Reservations, so P.O. boxes are the only mailing addresses possible. If the Post Office for a person's district doesn't have enough mailboxes for everyone, Indian People are forced to get mailboxes somewhere else, including off the Reservation. Thus, having an off-Rez P.O. box does not mean the state has jurisdiction over a person or family, because they don't live off the Reservation. It doesn't matter where they get their mail. It matters where they live.

I have had a tax hassle like this in another state. The person I had to deal with that actually sent me a letter stating that I, "being an Indian", was "the property of the state", and because I had not told the state I was moving, I was "still the state's property" and therefore owed taxes to that state.

At the time I got that letter, I had not set foot in that state in nearly 5 years! When we took it to court and the letter from the tax department was read into the record, the judge burst into laughter. And threw out the case and the delinquent tax warrants. And ordered the tax department to correct my credit files and any other 'relevant' files.

I lived on a Reservation there, but had an off-Res P.O. box because there weren't enough boxes for everyone to rent one at the on-Rez P.O.'s. It was 20 miles closer to get an off-Rez P.O. box than an on-Rez P.O. box; obviously I was going to get the closer box. Gas and time aren't free..

The same is true here, for all I doubt the tax department here has physically claimed that anyone, Indian or not, "is the state's property." But in harrasing Indians who are enrolled on one Reservation but who live and work on another Reservation to pay taxes to the state, the state - at least its tax department - is claiming it by inference. This is completely false, as you know.

Please support SB 2411, and vote "Do Pass" on it when you send it to the senate for a vote. Indians living and working on any Reservation are not 'the property of the state of North Dakota' - or any state - and they do not owe it taxes when they live and work on any Reservation. Given that most of us Indians live at the bottom of the economic totem pole everywhere, we suffer enough already without the added insult of being told we are 'the property of the state of North Dakota' and owe it taxes when we are on our sovereign nations' lands.

To not support SB 2411 is to try to declare Native nations' sovereignty a myth, and a multitude of court cases, including before the World Court, prove it is definitely not a myth.

Thank you for hearing me in a good way now. If anyone has any questions, I will be happy to answer them. Many blessings.

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