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ROLL NUMBER

DESCRIPTION

11/43

2005 HOUSE FINANCE AND TAXATION

HB 1143

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1143**

House Finance and Taxation Committee

Conference Committee

Hearing Date **January 12, 2005**

Tape Number	Side A	Side B	Meter #
1	x		0.7

Committee Clerk Signature

Janice Stein

Minutes:

REP. WES BELTER, CHAIRMAN Called the committee hearing to order.

JOSEPH BECKER, AUDITOR III/RESEARCH SPECIALIST, NORTH DAKOTA

OFFICE OF STATE TAX COMMISSIONER, Testified in support of the bill. See attached written testimony.

REP. DROVDAL Related to an experience he knew about, his question was if there was a check and balance or review board when there are questionable cases.

JOSEPH BECKER Stated they anticipated that someone could get a physician to sign off on these things. The department doesn't know what to do with it either. They are open to suggestions.

REP. BELTER Under this program, can you be eligible for the tax credit, but not eligible for social security benefits?

JOSEPH BECKER Yes

REP. KELSH Can you define what developmentally disabled means?

JOSEPH BECKER Stated he could not.

REP. WEILER Can you have more than one qualifying family member?

JOSEPH BECKER To qualify, the member has to be sixty five years or older, or a disabled family member. You, the taxpayer, have certain expenses which are intended to keep the individual out of long term care facilities, there is a call that has to be made there, we have been fairly liberal with that. However, expenses are defined. It has to be for home health agency services, companionship services, personal care attendants, homemaker, adult care, respite care, health care equipment and supplies. The category which gives us fits is, other expenses for goods and services, which have to be provided by a third party, not covered by insurance.

REP. WRANGHAM The tax department apparently recognizes there could be some problems with abuse, I feel reluctant to pass into law something we don't know how to handle, can you give me a little more comfort?

JOSEPH BECKER It is already in the law, this change is only to make it more palatable.

REP. WRANGHAM Before the social security administration, who have strenuous tests that need to be, to determine if someone is eligible, we have removed all of those tests for just a letter from a physician, that is the weakening, and the potential for abuse.

JOSEPH BECKER It seems to tie in with Rep. Drovdal's comments earlier, I don't know what the solution is. The department is in a problem position to make a judgment call on health care decisions, that is our problem.

REP. DROVDAL What if we amended this bill to leave the current language in, as determined to be disabled by the social security administration or in the case of that determination, or in the case that a determination cannot be obtained, then it can be obtained by a certified physician.

JOSEPH BECKER Related to a situation which they have encountered. Individuals had contacted SSI, they already knew they couldn't get benefits, the SSI didn't know what to do with them, because they generally don't issue letters for this purpose, through persistence on the part of one of them, they were able to get a letter from them. We felt that we were really pushing the taxpayer to the wall on some of these requirements, it seemed a little bit much. That would help.

REP. CONRAD Stated she is a social worker, and that the SSI is using doctors in exactly this way. They just sign off on things to be eligible. This would not be any different, then what it is. If they are on SSI, they are automatically in.

REP. SCHMIDT Asked whether they can't get a definition of developmentally disabled, what does it mean?

JOSEPH BECKER There is a definition in state law, it means a severe chronic disability, and it gives a list of items, it is defined. In talking to the individuals from the human services department and trying to get a handle on this, our hope that we could send something like this to a staff member there, and they could make a call. The disability requirements take up a lot of paper, and they said it just isn't something they could handle. There are definitions for these things, but who is going look over all of those provisions and make a judgment call.

DAVID PESKE, NORTH DAKOTA MEDICAL ASSOCIATION Testified in a neutral position. Stated he liked Rep. Drovdal's suggestion. He stated if a physician is placed in a position of certifying some kind of disability, in other statutes there may be mention of or based

on a form, or guidance provided by some department, so that a physician just doesn't have a patient come in and say, my mother is disabled, could you certify us to get a tax credit. They won't know what is going on unless there is some guidance issued by the tax department. I don't know if you can write that into the amendment.

REP. DROVDAL I think you answered my question, we need to make sure the physician would be using the same definition of disabled, as the social security administration uses.

With no further testimony, the committee hearing was closed.

COMMITTEE ACTION TAPE #1, 1-12-05, Side A, Meter 42.7

Committee members discussed amendments.

JOSEPH BECKER Commented on some of the questions. If a taxpayer doesn't qualify for a benefit, in other words, their income is too high, the Social Security Administration will not make a determination of disability, they have no need to do so.

REP. DROVDAL Stated he wanted to work with the Legislative Council to see if they could come up with language which would include definitions of certain disabilities.

REP. BELTER Stated they should use comments stated by David Peske. He stated he would hold the bill until the amendments would be drafted.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1143**

House Finance and Taxation Committee

Conference Committee

Hearing Date **Januaary 17, 2005**

Tape Number	Side A	Side B	Meter #
1	x		40.2

Committee Clerk Signature

Minutes:

COMMITTEE ACTION

REP. DROVDAL Presented amendments to the committee members regarding this bill relating to disability definitions. The amendments will allow a certified physician to sign for a taxpayer who qualifies for a tax credit.

REP. GRANDE Made a motion to adopt the amendments as presented by Rep. Drovdal.

REP. BRANDENBURG Second the motion. Motion carried.

REP. WRANGHAM Made a motion for a **Do Pass As Amended**.

REP. GRANDE Second the motion. **Motion carried.**

14 YES 0 no 0 Absent

REP. SCHMIDT Was given the floor assignment.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1143**

House Finance and Taxation Committee

Conference Committee

Hearing Date **February 1, 2005**

Tape Number	Side A	Side B	Meter #
1		X	38

Committee Clerk Signature

Minutes:

COMMITTEE ACTION

JOSEPH BECKER, STATE TAX DEPARTMENT, Introduced Al Ettl with the Human Services and works in disability and termination services there. Mr. Becker stated they wanted someone who is an expert in this area, help out with this bill.

REP. BELTER Asked Donnita Wald to explain the language.

DONNITA WALD, STATE TAX DEPARTMENT She stated they did not have any problem with the amendments for the most part, except, the language on lines 17 through 20 in the engrossed bill. Committee members did not have the engrossed bill. Donnita continued to state their concerns.

AL Ettl, HUMAN SERVICE PROGRAM ADMINISTRATOR Mr. Ettl appeared before the committee at the request of the State Tax Department. He had prepared comments, see attached copy.

REP. CONRAD Asked Mr. Ettl, what he suggests we do.

AL Ettl Stated he didn't know. I think you need to delink from our criteria, because the physician out in the field, doesn't know our program, there is a major portion of our program which is not, "medical only". One statistic that I know, the blue book that I showed you, in terms of the number of allowances that are made, just with that criteria alone, is about thirty five percent only of the allowance decisions that are made. Someone not familiar with our criteria, don't have access to that. Delinkage, is probably the answer, but what the answer is to what you should use, I frankly don't know.

REP. CONRAD Is there any check list kind of thing before they get to your unit, that somebody has gone through?

AL Ettl I have not seen that. The different agencies have different eligibility screenings.

RICK CLAYBURGH, STATE TAX COMMISSIONER Stated it was the department's belief that the bill addresses an issue which would be better without the amendments, it would be more workable without the amendments.

REP. BELTER You are recommending going back to the original bill?

RICK CLAYBURGH It would be more workable.

REP. CONRAD The physician's don't want to be without some kind of list. Will you be able to provide them with some kind of criteria to use?

RICK CLAYBURGH I wasn't aware that the physicians had a concern, I thought the medical association was neutral on the issue. I did not have anyone contact me specifically with any concern over this legislation. The reason it is here is, because we ran into a situation with a taxpayer, that had to jump through so many hoops, to get something done.

REP. BELTER How long has this family member care tax been on the books?

RICK CLAYBURGH I believe it has been four years, maybe three bienniums.

REP. BELTER Can you guess how many problem cases you have had?

RICK CLAYBURGH Only one that I am aware of.

REP. IVERSON Made a motion to reconsider the action by which the bill was passed out of the committee.

REP. BRANDENBURG Second the motion. Motion carried by voice vote.

REP. OWENS Made a motion for a **DO NOT PASS**.

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

13 YES 0 NO 1 ABSENT

REP. SCHMIDT Was given the floor assignment.

FISCAL NOTE
 Requested by Legislative Council
 01/03/2005

Bill/Resolution No.: HB 1143

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.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 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.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 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.*

HB 1143 makes technical changes to the family member care tax credit. There is no fiscal impact to HB 1143.

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
Phone Number: 328-3402

Agency: Office of Tax Commissioner
Date Prepared: 01/11/2005

Date: 1-17-05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1143

House FINANCE & TAXATION

Reconsidered Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Do Pass As Amended
Motion Made By *Rep. Wrangham* Seconded By *Rep. Grande*

Representatives	Yes	No	Representatives	Yes	No
BELTER, WES, CHAIRMAN	✓				
DROVDAL, DAVID, V-CHAIR	✓				
BRANDENBURG, MICHAEL	✓				
CONRAD, KARI	✓				
FROELICH, ROD	✓				
GRANDE, BETTE	✓				
HEADLAND, CRAIG	✓				
IVERSON, RONALD	✓				
KELSH, SCOT	✓				
NICHOLAS, EUGENE	✓				
OWENS, MARK	✓				
SCHMIDT, ARLO	✓				
WEILER, DAVE	✓				
WRANGHAM, DWIGHT	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment *Rep. Schmidt*

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

REPORT OF STANDING COMMITTEE

HB 1143, as amended, Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1143, as amended, was placed on the Sixth order on the calendar.

Page 1, line 14, remove the overstrike over "dctcrmincd" and remove "certified"

Page 1, line 15, remove the overstrike over "the social security administration" and insert immediately thereafter "or certified by", after "physician" insert "to meet the qualifications of what constitutes disabled as applied by the social security administration. The tax commissioner shall make available to claimants of the credit under this section a form for certifications by licensed physicians under this section, including a list of qualifications of what constitutes disabled as applied by the social security administration"

Renumber accordingly

Date: 2-1-05
Roll Call Vote #: 2

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB1143

House FINANCE & TAXATION

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Do Not Pass

Motion Made By

Rep Owens

Seconded By

Rep. Brandenburg

Representatives	Yes	No	Representatives	Yes	No
BELTER, WES, CHAIRMAN	✓				
DROVDAL, DAVID, V-CHAIR	✓				
BRANDENBURG, MICHAEL	✓				
CONRAD, KARI	✓				
FROELICH, ROD	✓				
GRANDE, BETTE	✓				
HEADLAND, CRAIG	✓				
IVERSON, RONALD	✓				
KELSH, SCOT	✓				
NICHOLAS, EUGENE	✓				
OWENS, MARK	✓				
SCHMIDT, ARLO	✓				
WEILER, DAVE	✓				
WRANGHAM, DWIGHT	✓				

Total (Yes)

13

No

0

Absent

1

Floor Assignment

Rep. Schmidt

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

REPORT OF STANDING COMMITTEE (410)
February 1, 2005 5:08 p.m.

Module No: HR-21-1622
Carrier: Schmidt
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1143: Finance and Taxation Committee (Rep. Belter, Chairman) recommends DO NOT PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1143 was placed on the Eleventh order on the calendar.

2005 TESTIMONY

HB 1143

Testimony—
House Finance and Taxation Committee

1-12-04

House Bill 1143

January 12, 2005

Prepared by Joseph Becker, Auditor III/Research Specialist
North Dakota Office of State Tax Commissioner
Phone: 328-3451
E-mail: jjbecker@state.nd.us

Chairman Belter, and Members of the Committee:

Introduction

For the record, my name is Joseph Becker, and I'm here on behalf of the North Dakota Office of State Tax Commissioner (Tax Department).

House Bill 1143 is an individual income tax bill. It proposes changes to the family member care tax credit allowed on Form ND-1 (main method) and Form ND-2 (optional method).

Background

The family member care tax credit is allowed to individuals who pay eligible expenses to keep a family member at home and out of a long-term care facility. The family member must be disabled or at least 65 years old. Certain income thresholds must also be met by both the taxpayer and the family member.

The tax credit ranges from 20 to 30 percent of the eligible expenses depending on the amount of the taxpayer's adjusted gross income, up to a maximum credit of \$2,000 (or \$4,000 for two or more family members). The otherwise allowable credit is phased out if the taxpayer's adjusted gross income exceeds certain thresholds.

Reason for bill

The reason for this bill is to make a number of changes to make the tax credit provisions more workable and consistent.

The biggest change relates to the disability standard contained in the law, which is not practical for either the taxpayer or the Tax Department. The statute requires that the Social Security Administration make a determination of disability. However, the Social Security Administration will not (nor does it have any reason to) make a determination of disability if the taxpayer is not eligible for social security benefits because the taxpayer's income is too high. It is the Tax Department's understanding that the language was only intended to establish some means of checking for a disability, and not to limit the tax credit to those taxpayers who qualify for social security benefits.

To simply change the law to say that the disability must meet the Social Security Administration's standards does not remedy the problem because the Tax Department does not possess the knowledge or expertise to make that judgment. Instead, the Tax Department proposes in this bill to replace the current disability language with new language that requires the taxpayer to obtain a statement from a licensed physician certifying that a family member is disabled.

In conjunction with this, two other changes are proposed: One of them would require the taxpayer to also obtain a statement from a licensed physician certifying that the expenses satisfy the existing condition in the law that they were incurred to avoid the placement of the family member in a long-term care facility.

The second change expands the language to include facilities other than long-term care facilities in which a disabled individual might be placed for care. Based on discussions with experts from the Department of Human Services, it is the Tax Department's understanding that the terminology "long-term care facility" is a term of art in the industry. Certain disabled persons are not necessarily placed in a long-term care facility, but may be placed in a hospital, group home, or other facility that serves their particular needs.

Explanation of bill

Now I'd like to walk you through the bill to point out and explain the changes.

On page 1, lines 14 and 15, the language requiring a determination by the Social Security Administration is removed. In its place, new language is added to provide that a disability can be shown by providing a statement from a licensed physician certifying that the family member is disabled.

On page 1, lines 19 and 20, similar language is added requiring certification by a licensed physician that the expenses claimed are necessary to avoid the placement of a family member in a long-term care facility (or other facility that serves disabled individuals—see the next paragraph).

On page 1, lines 21 and 22, additional language is added to include any facility or institution that provides services to developmentally disabled persons. The credit was intended to assist families caring for disabled family members. However, disabled individuals are not necessarily placed in a “long-term care facility.”

On page 2, line 5, unnecessary wording is removed to clean up the provision.

On page 2, lines 18 and 19, new language is added to define a licensed physician as one who is licensed to practice medicine in North Dakota.

Finally, on page 2, lines 23, 26, and 27, the term “elderly” is removed to bring consistency to the provisions. Eligible care expenses do not apply only to the elderly.

Fiscal impact

The changes made by this bill will not result in any fiscal impact. For your information, information from our data base shows the following usage of the tax credit for the past four years:

Tax year	No. of returns	Credit amount
2000	11	\$ 9,184.73
2001	18	15,708.36
2002	21	15,395.03
2003	19	16,732.09

Conclusion

The Tax Commissioner requests the Committee’s favorable consideration of House Bill 1145. If there are any questions from the Committee, Mr. Chairman, I’d be happy to address them.

TESTIMONY
ENGROSSED HB 1143
FINANCE AND TAXATION COMMITTEE
REPRESENTATIVE BELTER, CHAIRMAN
FEBRUARY 1, 2005

Chairman Belter and members of the House Finance and Taxation Committee, my name is Al Ettl, Human Service Program Administrator for the Disability Determination Services (DDS). The DDS is a federally funded, state administered agency under the Department of Human Services. We are charged with making disability decisions for Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) for the Social Security Administration. I am here representing the Department of Human Services, appearing at the request of the Office of the State Tax Commissioner. The Department of Human Services is not opposed to family member care tax credits under House Bill 1143, but rather wishes to provide the committee with some information on a neutral basis relative to: (1) the decision making criteria necessary in determining disability under the SSDI and SSI programs, and (2) the potential impact of the proposed changes to the bill found on Page No. 1, lines 15 through 20, on the Office of the State Tax Commissioner.

I would like to provide you a thumbnail sketch of the decision making process in determining disability under the SSDI and SSI programs. The most recent statistics available for the State of North Dakota shows that there are over 9,000 disabled workers receiving SSDI benefits and over 5,000 disabled and blind individuals (under age 65) receiving SSI payments. The first step in filing a claim for disability benefits under either SSDI or SSI is a financial eligibility screening that is performed by the federal employees of the Social Security Administration. The SSDI and SSI programs have different financial eligibility criteria, while the disability

criteria are the same for both programs. This financial eligibility screening includes an analysis of such things as the applicant's current income, resources, and whether there has been Social Security withholdings processed through the applicant's employment. Once the Social Security Administration completes their financial eligibility screening and it has been determined that an individual may receive a disability decision, the claim is forwarded to the DDS. Once a disability claim is received by the DDS, medical records and other pertinent claim related information is requested to assist a Disability Claims Analyst, (trained in program rules and regulations) and a Medical Consultant (trained in the administrative medical aspects of the program) in making a joint decision of whether the applicant is disabled.

The North Dakota DDS contracts with eleven licensed physicians and psychologists as part-time Medical Consultants. Each has received extensive training, mentoring, and oversight that enable them to properly analyze medical records and other pertinent claim related information in an administrative setting. This training provides the contracted Medical Consultants with the specialized knowledge necessary to work in concert with the Disability Claims Analyst to make proper disability decisions consistent with the extensive and complex Social Security guidelines.

Relative to the proposed changes on Page No. 1, lines 15 through 20, of engrossed House Bill 1143, the Department of Human Services would like to point out the following issues to the committee that may potentially become problematic for the Office of the State Tax Commissioner in administering the family member care tax credit:

- Any licensed physician not trained in or otherwise unfamiliar with the disability criteria of the SSDI and SSI programs may be reluctant or unwilling to certify an individual as disabled under that criteria even though a form for doing so is provided by the Office of the

State Tax Commissioner. Anecdotally, it is common for the DDS to receive medical reports from physicians wherein they have advised their patients to apply for disability but in the same sentence give deference to the DDS in making the disability decision.

- Because the medical criteria for disability are frequently updated to reflect advances in medical science and the treatment of medical conditions, it would be difficult for the Office of the State Tax Commissioner to provide any licensed physician with a current "list of qualifications of what constitutes disabled" as noted in lines 19 and 20 of engrossed House Bill 1143.
- Other factors frequently considered in determining disability are the age, education, and work history of the applicant including types of jobs held and skill level required in those jobs. So, even though an applicant's medical condition may not directly meet the medical disability criteria noted in the publication "Disability Evaluation Under Social Security" (SSA Pub. No. 64-039), when combined with these other "vocational" factors, the applicant can be considered disabled under separate rules which allow for consideration of both medical and vocational factors. A licensed physician, without the benefit of assistance from a trained Disability Claims Analyst who provides the expertise in the vocational area of adjudication, would be unable to properly apply these separate rules that consider both medical and vocational factors.
- An individual that the DDS determines to be disabled under either the SSDI or SSI programs does not automatically need placement in a long-term care facility or other institution and many would not qualify for such placement following a screening process.

Mr. Chairman, this concludes my testimony. I would be happy to answer any questions that the committee may have.