

2009 HOUSE FINANCE AND TAXATION

HB 1256

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1256

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: **January 20, 2009**

Recorder Job Number: 7281 and 7337

Committee Clerk Signature



Minutes:

Chairman Belter opened the hearing of HB 1256.

Representative Craig Headland, District 29, introduced the bill. This is a relatively simple bill that will change the way we tax dividends in ND to the same way we tax capital gains.

That is the same way that the federal government does. In ND when you receive a capital gain of \$1000, we reduce it by 30% and then you pay the tax on the level that remains. That is what we are requesting be done with dividends. Currently dividends are taxed in ND as regular income. He distributed a handout. **(Attachment 1)** and discussed its contents.

Bill Shaloub testified in favor of the bill. I'm not sure that all of us understand the current economic malaise we are experiencing. Part of the solution is to get money back to people. HB 1256 will increase that return for investments by lowering taxes for ND investors. It mirrors federal treatment for this income so we would not be breaking new ground.

Bob Gravlin, representing the Utility Shareholders of ND testified in favor of the bill. I think it is important to remember that taxation of dividends is truly the poster child for double taxation. When a shareholder earns enough money in their ordinary life and business and they invest it in a company, they become a partner in that company. When the company makes a profit, that company pays a tax upon the income they make. The dividends are paid

from profits after the taxes are paid to the dividend holders who are expected to pay taxes.

Over the past several years various corporations have gotten into trouble. Keep in mind that dividends are paid from the cash balance companies have. We support increasing dividends and decreasing taxes on them. There is also a common misconception that people who pay taxes are in a higher income bracket. The Edison Electric Institute and the American Gas Association performed a study and I will give you a copy of the executive summary.

(Attachment 2) You see that the study deals with IRS information. There are broad classes of Americans that invest to make their daily way. We encourage the Committee to pass this bill and save some of the money for those investors.

Representative Froseth: What happens if we tie the dividend tax to the federal capital gains rate which in effect until 2010?

Gravlin: My testimony deals with not taxing it at all.

Representative Pinkerton: Would you believe in just not taxing ND corporation's dividend.

Gravlin: I would prefer no double taxation.

Joe Becker, State Tax Department, provided information to the Committee.

Representative Headland: Could you explain how we tax capital gains and how we are going to tax dividends in this bill.

Becker: I'll start with the federal tax return and carry it through to the state. On the federal return a long term capital gain is included in the adjusted gross income and federal taxable income; however, at that point they will segregate the long term gain and when doing the calculation it is not taxed more than a particular rate depending on the bracket you are in. Currently that can run from 0 – 15% for most capital gains and then there are higher rates for special things like collectibles. Once we get to the state return we start with federal taxable

income therefore that capital gain is in that number. On the ND – 1, there is a 30% deduction for ND sources only. Only 70% of the gain is subjected to the state rate.

There being no further testimony, Chairman Belter closed the hearing of HB 1256.

Later on the same date the Committee again took up HB 1256.

Representative Headland: If President Obama decides to change the way he taxes capital gains and dividends and we pass this bill, would that impact the way we tax capital gains and if this bill passes—dividends.

Becker: This is a 30% exclusion on a state return for those items so it is not going to change the way the state is going to handle it. The catch on the qualified dividend part of it though is if congress decides to not give preferential treatment to those on the federal return then this will be in effect.

Representative Headland: Then this would be the same for capital gains.

Becker: That exclusion is there regardless of what the federal government does.

Representative Headland: I'm not sure why Walstad drafted it in this form. I don't think that was the original intent. Is there a way that would amend this bill that would put some permanence in to what we do here and not have it reflective of what the federal government does?

Becker: Yes, on line 8 and 9 where it says "for federal income tax purposes." If the federal government would remove that special rate on dividend income. . . . Qualified dividends have preferential treatment now, but congress may change that. If all they do is change the preferential rate which I have heard the President talking about then qualifying dividends will still get that preferential treatment at the federal level. The language here would have to allow 30% excluding dividends. To make it permanent at the state level you would remove the language after "qualifying dividend income." Don't tie it to the federal government's rate.

It would read as follows: "Reduce by 30% of the excess of the taxpayer's net long term capital gains and qualified dividend income." We will then have to define qualified dividend income and you may want to adopt the federal guidelines since we don't define that under state law at this time.

Representative Froseth: If you have \$10,000 in capital gains, how is that going to be taxed at the federal and state levels?

Becker: It will go to taxable income on the federal return. If you end up in the 28% bracket, they will tax it at 15%. They have to go through calculations to figure out what rates apply. You are getting a reduced tax because you have capital gains in the mix. Qualified dividends are treated the same.

Representative Pinkerton: Say your MDU stock is paying 3.2% and is in your IRA or 401K and you withdraw it, that income treated as ordinary income.

Becker: That is a loaded questions because we talk about the law, there are exceptions.

Discussion closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1256

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: **January 28, 2009**

Recorder Job Number: 8067

Committee Clerk Signature



Minutes:

Chairman Belter opened discussion of HB 1256.

Representative Headland: I have two amendments. The first is if we were to pass this bill, this amendment would make it permanent whereas the bill would make a change when the federal government makes a change in dividend taxation. **I move the amendment.**

(90526.0101)

Representative Grande: Second

A roll call vote was taken—the amendment 90526.0101 was accepted.

Representative Headland: The tax department pointed some things out. I would like to ask Donnita to explain it.

Donnita Wald, legal counsel, ND Tax Department: This makes sure that excluded qualifying dividends are reported to the Tax Department. In this amendment we take care of this.

Representative Headland: I move this amendment. (92526.0102)

Representative Grande: Second

Representative Schmidt: I know what qualified dividends are. What are unqualified dividends? I get dividends from my local co-op. Do they fall under this?

Wald: Qualified dividends are like long-term capital gains at the federal level and get special treatment.

A roll call vote was taken: The amendment 92526.0102 was accepted.

Representative Grande: I move a Do Pass as Amended and rerefer to appropriations.

Representative Brandenburg: Second

A roll call vote was taken: Yes: 8, No: 5, Absent: 0 HB 1256, as amended, passed and will be referred to Appropriations.

Representative Grande will carry the bill.

FISCAL NOTE
Requested by Legislative Council
01/12/2009

Bill/Resolution No.: HB 1256

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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			(\$4,600,000)			
Expenditures						
Appropriations						

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1256 creates an income tax deduction of 30% for certain qualified dividends. The deduction becomes available on the state's primary individual income tax return, Form ND-1.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

If enacted, HB 1256 is expected to reduce state general fund revenues by \$4.6 million in the 2009-11 biennium.

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, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	01/19/2009

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1256

Page 1, line 9, after "purposes" insert "under Internal Revenue Code provisions in effect
December 31, 2008"

Renumber accordingly

Date: 28 Jan 09

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1256

House FINANCE AND TAXATION Committee

Check here for Conference Committee

Legislative Council Amendment Number Amend to make permanent

Action Taken Do Pass Do Not Pass Amended

Motion Made By Headland Seconded By Grande

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter			Representative Froelich		
Vice Chairman David Drovdal			Representative Kelsh		
Representative Brandenburg			Representative Pinkerton		
Representative Froseth			Representative Schmidt		
Representative Grande			Representative Winrich		
Representative Headland					
Representative Weiler					
Representative Wrangham					

Total (Yes) _____ No _____

Absent Accepted

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
LC#
90526.0101

90526.0102
Title.

Prepared by the Legislative Council staff for
Representative Headland
January 26, 2009

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1256

Page 1, line 12, after "gain" insert "or qualified dividend"

Renumber accordingly

January 28, 2009

VR
1/29/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1256

Page 1, line 9, after "purposes" insert "under Internal Revenue Code provisions in effect on
December 31, 2008"

Page 1, line 12, after "gain" insert "or qualified dividend"

Renumber accordingly

Date: 28 Jan 09

Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1256

House FINANCE AND TAXATION Committee

Check here for Conference Committee

Legislative Council Amendment Number 92526.0102

Action Taken Do Pass Do Not Pass Amended

Motion Made By Headland Seconded By Grande

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter			Representative Froelich		
Vice Chairman David Drovdal			Representative Kelsh		
Representative Brandenburg			Representative Pinkerton		
Representative Froseth			Representative Schmidt		
Representative Grande			Representative Winrich		
Representative Headland					
Representative Weiler					
Representative Wrangham					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Date: January 28, 2009

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1256

House FINANCE AND TAXATION Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By _____ Seconded By _____

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	/		Representative Froelich		/
Vice Chairman David Drovdal	/		Representative Kelsh		/
Representative Brandenburg	/		Representative Pinkerton		/
Representative Froseth	/		Representative Schmidt		/
Representative Grande	/		Representative Winrich		/
Representative Headland	/				
Representative Weiler	/				
Representative Wrangham	/				

Total (Yes) 8 No 5

Absent 0

Floor Assignment Representative Grande

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

REPORT OF STANDING COMMITTEE

HB 1256: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (8 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1256 was placed on the Sixth order on the calendar.

Page 1, line 9, after "purposes" insert "under Internal Revenue Code provisions in effect on December 31, 2008"

Page 1, line 12, after "gain" insert "or qualified dividend"

Renumber accordingly

2009 SENATE FINANCE AND TAXATION

HB 1256

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1256

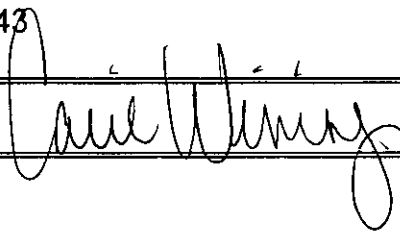
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 03/04/2009

Recorder Job Number: 10143

Committee Clerk Signature



Minutes:

Chairman Cook: Opened hearing on HB 1256.

Representative Craig Headland, District 29: Appeared as sponsor and in support of the bill.

(Explained the bill) Dividends are essentially taxed twice and this is to correct that. It would

encourage investment and instill confidence in the market.

3.30 **Bob Graveline, Utility Shareholders of North Dakota:** Testified in support of the bill.

We need to keep in mind that shareholders are partners in the business venture. If the

business succeeds then the shareholders are entitled to a profit, but on the other hand if the

business doesn't do well then they are penalized for that failure. The corporation can only

declare a dividend after the federal and state taxes are paid on the profit. If in fact they do,

those dividends return to the shareholders, and then they have to pay income tax on that

dividend. That clearly is double taxation. Even without state taxes, before the dividend tax

was lowered, as much as 60 cents of a dividend dollar was being taken by state and federal

income tax dollars. We have a new administration and with that new administration there have

been recommendations made by his administration on the dividend tax. It is to keep the peg at

15% on personal dividends for folks that have income under \$250,000. Above that it would go

to 20%. See Attachment #1 for study passed out to committee. (Starts at 5.40 on the tape.)

7.40 **Bill Shalhoob, North Dakota Chamber of Commerce:** See Attachment #2 for testimony in support of the bill.

8.35 **Dennis Boyd, MDU Resources Group:** Testified in support of the bill. I do not have much to add that hasn't already been said, but I would like to make a couple of points. I don't think that dividends should be taxed at all. As has already been noted, they are taxed twice as those dollars work their way through a corporate income statement. They are taxed at a corporate rate, in my case is 37% and then they are taxed again after the board of directors declares a dividend and they are received by the investor and taxed again as ordinary income in the state. This Bill does allow a deduction of a portion of a dividend received and thereby at least theoretically will reward North Dakota investments. There aren't very good reasons right now to invest in the stock market right now and maybe this would encourage that. We should do what we can to invest in the market and protect retirement plans. This would be a strong statement of confidence.

12.15 **Chairman Cook:** Any further testimony? (no) Closed the hearing.

Vice Chairman Miller: Moved a Do Pass.

Senator Oehlke: Seconded.

Chairman Cook: Discussion?

Senator Anderson: I don't know if I am ready to support it or not support it at this point.

Someone tell me about the double tax. Why has it been that way for many years and why is it so important to get rid of it now? Maybe this isn't a good analogy, but if I get paid a paycheck and the taxes are taken out and then I go buy a tie then I have pay taxes on it, is that double taxation?

Chairman Cook: I think you are using the wrong analogy. This is paying income tax twice.

Senator Triplett: Gives another example.

Chairman Cook: In your example there are two different services being done so the tax would apply every time.

Senator Dotzenrod: The reference to December 31st, 2008, is that because of something the federal government did?

Chairman Cook: No.

Senator Oehlke: It has varied over the years how they have treated dividend income even on the federal basis and also capital gains. I think the argument here is when I go to invest in a company, I using dollars that I already paid tax on too. Now if that investment does, they are paying a corporate tax on that money that they made, so that is really a second tax, and then the third time around you have to pay income tax on that dividend again. I think reducing it is a great idea.

Chairman Cook: Senator Dotzenrod, I think that date you mentioned is relative to the effective date.

Senator Hogue: I cannot support this bill. Let's decide on the big bills that affect everyone, and then decide on the bills that benefit the small groups.

Chairman Cook: You want to wait and deal with the total tax policy that we are going to deal with and then deal with this one?

Senator Hogue: I would rather deal with the tax bills that affect all taxpayers and then go to these bills that affect a smaller group like this one. It makes more sense to me.

Chairman Cook: I don't have a problem with that.

Senator Dotzenrod: I did not think that the way these dividends were added – I am confused on that.

Senator Hogue: The vast majority of us who buy stocks, we do it through our 401K program. So we do it with pretax dollars; that is one of the advantages of that. Then when the

corporation, when you get that stock in your 401K portfolio, you are not taxed on the gain, the depreciation of the stock, you are not taxed when they declare the dividends as long as it goes into your 401K. You are not taxed until you take it out of your 401K at retirement. The double tax is a myth unless you are taking money out of your payroll and going out and buying stock.

Chairman Cook: You are still taxed when pulled out.

Senator Hogue: Yes.

Senator Oehlke: Still differing it until you are in a lower tax bracket.

Motions withdrawn.

Chairman Cook: Closed hearing.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1256

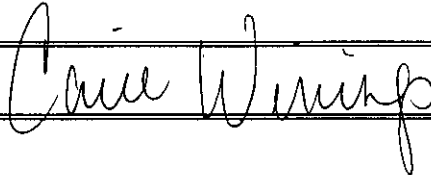
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 03/16/2009

Recorder Job Number: 10986

Committee Clerk Signature



Minutes:

Chairman Cook: Reopened discussion on HB 1256. Mentions a handout that left at home and asks Senator Hogue to give the figures on how many taxpayers it would affect.

Senator Hogue: The handout indicated that there would be 70,000 people in North Dakota that would benefit from the bill.

Senator Triplett: Does the handout show to what extent the people would benefit? Do we have any idea the level of benefit?

Donnita Wald, Tax Department: That was statistical information that we got in (inaudible).

Senator Dotzenrod: I think this bill creates a new subsection on the short form, so I can assume this is an option that is currently available on the long form, is that right?

Chairman Cook: Refers to Tax Binder, Tab 1, Page 12, and says that it was not listed.

Senator Oehlke: Reads from fiscal note and states that it clarifies that.

Senator Triplett: I think that we don't want to add deductions to the long form. The tax department's goal is to get rid of that soon.

Chairman Cook: Asks Donnita Wald if it is available.

Donnita Wald: No it is not.

Chairman Cook: Your wishes?

Senator Triplett: My position is to focus the attention of the legislature on property tax reform.

I have not heard from my constituents on wanting income tax relief. I am not in favor of this bill.

Chairman Cook: Comment. It is a two way street.

Senator Triplett: It is a two way street, but as we work our way to the middle. I think we only had two lobbyists that came in and testified in favor of this bill. I don't think there is the same level of desire for this as there is property tax relief.

Senator Hogue: What was Representative's Svedjan's number on the gap in what is proposed and what are available funds?

Senator Triplett: \$254 million.

Senator Dotzenrod: If there is a taxpayer out there that owns these and they are in a tax shelter, an individual IRA or a 401K, then this really has no meaning?

Chairman Cook: I think that depends on how they handle the dividend.

Senator Dotzenrod: As I understand it, if you have holdings of any kind that are generating profits, interest or earnings, if they are in a 401K or IRA, those earnings are not taxed.

Chairman Cook: Don't you have the option to take those earnings or dividend or else leave them in the 401K?

Senator Dotzenrod: I didn't think they did.

Chairman Cook: You have to take them Donnita?

Donnita Wald: I am not an expert on that, but I believe that Senator Dotzenrod is correct.

Chairman Cook: So you will not pay taxes until it comes out?

Senator Dotzenrod: And if it is a Roth IRA, not even then.

Senator Hogue: A Roth you are paying tax to a company.

Senator Dotzenrod: When you put the money in you pay those taxes, but as far as the dividends that come off of that investment, once they are in that Roth, they keep generating dividends.

Chairman Cook: If it was a Roth IRA I would assume you would pay taxes on the dividends.

Senator Dotzenrod: I don't think so.

Senator Hogue: That is the way the Roth is designed.

Senator Dotzenrod: Later on when you take them out there is no tax there either.

Chairman Cook: That is your only way of getting dividends tax free then.

Senator Triplett: We received figures from Bob Graveline that are national statistics on page 6 it points out that 42% of tax returns with qualified dividends from utility investments. That is just utility investments. Between the IRA investments and the fact that a fair number of people have things like utility investment are maybe in lower income brackets, I think the number of people that would benefit to a significant degree is going to be minimal.

Senator Anderson: I am wondering; I don't feel that we should be scrambling to get rid of all our taxes. I am afraid that is going to put us into the shape that a lot of other states are in now. Maybe I am wrong.

Chairman Cook: We have 3 choices: spend it, save it, or give it back. Which one do you want to do first?

Senator Anderson: Let me withhold judgment on that.

Senator Triplett: Moved for a Do Not Pass.

Senator Anderson: Seconded.

Chairman Cook: Discussion?

Vice Chairman Miller: I support the bill. I think this is one of those things that should never have existed and this is our chance to correct that. There are ways that people can get around

the tax, but I think it is better to have one straightforward tax and not cause them to have to find a way to do that.

Senator Oehlke: Two of the pieces that we got as testimony were that capital gains had been adjusted downward for income tax purposes, but dividends were not. That is what this bill would do. I look at those as similar type ideas of investment. The other thing was that they had some pretty compelling testimony by the CEO of MDU and he mentioned that for the second time in his testimony on instilling confidence in our economy, and in talking about their dividends that they pay out and how people are affected tax wise. I would be in a position to vote against the Do Not Pass.

Senator Hogue: I have always tried to stay away from what I consider special interest tax cuts that benefit only a few people and that is where I was initially on this bill, but I did get the information that said that 70,000 people in North Dakota would benefit from it and I am going to rely on it and say that this is not a special interest tax cut. I will support the bill, 70,000 is a good number of people to me.

Chairman Cook: I think that is where I was at too. I have seen a lot more special interest legislation pass regarding tax policy that has benefited a much smaller group of people than this.

Chairman Cook: Any further discussion?

A Roll Call vote was taken: Yea 3, Nay 4, Absent 0.

Motion Failed.

Vice Chairman Miller: Moved a Do Pass and Re-Referred to Appropriations.

Senator Hogue: Seconded.

Chairman Cook: Discussion?

Senator Oehlke: I think reducing this tax is a good idea and it might instill a little confidence.

Senator Triplett: I think that in the current tax year we are probably not giving up very much because there are not very many dividends paid out.

Chairman Cook: Any further discussion?

A Roll Call Vote was taken: Yea 4, Nay 3, Absent 0.

Senator Oehlke will carry the bill.

Date: 03/04/09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. : 1256

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Senator Miller Seconded By Senator Oehlke

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman			Sen. Arden Anderson		
Sen. Joe Miller - Vice Chairman			Sen. Jim Dotzenrod		
Sen. David Hogue			Sen. Constance Triplett		
Sen. Dave Oehlke					
<i>Withdrawn</i>					

Total: Yes _____ No _____

Absent _____

Floor Assignment _____

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

Date: 03/16/09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.: 1256

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Senator Triplett Seconded By Senator Anderson

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman		✓	Sen. Arden Anderson	✓	
Sen. Joe Miller - Vice Chairman		✓	Sen. Jim Dotzenrod	✓	
Sen. David Hogue		✓	Sen. Constance Triplett	✓	
Sen. Dave Oehlke		✓			

Total: Yes 3 No 4

Absent _____

Floor Assignment _____

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

Date: 03/16/09

Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. : 1256

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number Re-Ref to Approp.

Action Taken Do Pass Do Not Pass Amended

Motion Made By Senator Miller Seconded By Senator Hogue

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman	✓		Sen. Arden Anderson		✓
Sen. Joe Miller - Vice Chairman	✓		Sen. Jim Dotzenrod		✓
Sen. David Hogue	✓		Sen. Constance Triplett		✓
Sen. Dave Oehlke	✓				

Total: Yes 4 No 3

Absent 0

Floor Assignment Senator Oehlke

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

REPORT OF STANDING COMMITTEE

HB 1256, as engrossed: Finance and Taxation Committee (Sen. Cook, Chairman) recommends DO PASS and BE REREFERRED to the Appropriations Committee (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1256 was rereferred to the Appropriations Committee.

2009 SENATE APPROPRIATIONS

HB 1256

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1256

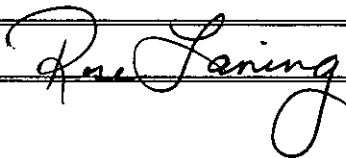
Senate Appropriations Committee

Check here for Conference Committee

Hearing Date: March 20, 2009

Recorder Job Number: 11333 & tax info (11334 starting at 2:03)

Committee Clerk Signature



Minutes:

Chairman Holmberg called the committee hearing to order on HB 1256 which relates to income tax treatment of qualified dividend income.

Rep. Wes Belter, District 22

What bill 1256 does is under current law we reduce the long term capital gain by thirty percent before it is taxed on the NB1 form and what this bill would do it with also tax qualified dividends at the same rate as the long term capital gains. The federal government passed the jobs and growth tax relief reconciliation act in 2003, which reduced the tax on long term capital gains until December 31, 2010. As part of that bill they reduced the tax on qualified dividends such as they would be taxed at long term capital gains. What we did in North Dakota here is we gave relief on the long term capital gains by reducing the amount of the gain by thirty percent but we did not do it on the qualified capital gains. So what we were attempting to do on this bill is to reconcile what we did on the feds deal and reconcile the state tax in the same way. The question maybe asked what qualified dividends are. According to federal tax guide qualified dividends are those paid to share holders and corporation and qualified foreign corporations. However dividends on stocks held less than sixty one days are not qualified dividends.

The internal revenue code provides that qualified dividends get taxed at the same rate as capital gains and that is what we are trying to do here.

Senator Mathern: If the rationale is to make same as federal tax policy. Have you checked to see that this is same as what's being done on federal level?

Belter: I don't know what changes are being made in Washington. That goes through 2010.

Senator Krauter: I am not quite following the definition of qualified dividends. Where in ND do we have qualified dividends?

Belter: Any dividends you receive on stock.

Senator Krauter You read "with exception to stock dividends"

Belter: We have people from the tax department here. Read from bill; however stocks held for less than 61 days are not qualified dividends.

Bill Shalhoob, Economic Development Association:

Testified in favor of HB 1256. Written attached testimony # 1.

People want a return on their money.

Senator Robinson: We have a number of tax proposals before us. I get concerned how this fits in the list in terms of priority. Which ones do we support? We can't do them all.

Bill: I think that everyone has conceded that property taxes are the most important. I think we're talking about two different things here. We're talking about what is important to North Dakota people and those four things as a relief package. If you take the people who pay property tax, then income tax, with the Cooperate filers and the retiree we have a nice package.

Senator Robinson: We have a number of other bills coming. The income tax, the people (70%) were not in favor of that. Very few people stand up and say we need more taxes.

Just a comment...

Senator Mathern: This will affect 23 % of all filers will have taxes lowered. I'd be interested to know what group of ND will get this benefit.

Bill Shalhoob: I don't, this is a figure we got from the tax department.

Robert Graveline, Utility Shareholders of ND:

We urge a do pass on 1256 because taxation on dividends is a double taxation. Shareholders earn money and pay tax as individual income and what they have left they purchase shares of stocks and they become a partner in a business investment and a business venture. If it is successful they profit and if it fails they suffer. The dividends are only paid after the company has paid its taxes. The shares of stocks are bought with post tax money and any profit the company makes is taxed and then the Board of Directors, if they choose to declare a dividend, has paid the tax. Prior to Bush's tax cuts in 2003 the Cooperate tax rates were as high as 35 percent the personal income tax were as high as 39.1 percent. Prior to Bush's tax cut lowering them down to 15% taxes on dividends could be as high sixty cents on every dollar earned. Obama's plan is to increase that dividend tax to 20% what we're asking here is equal treatment. The demographics of North Dakota's tax cut there is three hundred and twenty thousand individual filers and some 75,000 have qualified dividends.

Handed out executive summary "The Dividend Tax Rate Reduction – A Demographic Profile of Utility Shareholders" – see attached #2. Robert reads through the pamphlet.

Senator Krauter: Is this specific to ND or is it national?

Robert: That's the national.

Senator Mathern: I've heard on news that companies moving into bankruptcy that is paying out dividends?

Robert: Obviously what we are seeing in the news today are very strange circumstances.

Senator Christmann: I have a question for the tax department, when people lease land for oil. There is a lease and then a signing bonus. They are taxed differently. One is a rent tax and one is dividend. Is something in those oil leases considered a dividend when you fall into this?

Joe Becker, State Tax Department:

They are taxed as ordinary income, not dividend.

Senator Krauter: Just trying to understand the fiscal note here how did you arrive at the number of 30% to get the \$4.6 M. Please walk us through the math.

Joe: We are working from the 2006 data. The numbers we worked with are as follows.

Looking at federal returns that were filed with ND addresses, the number of qualified dividends that were reported was a 154 million dollars. Then take 30% which we would exclude. That's 46 million dollars. The average income tax would be at 4.34 percent against that which gave us two million dollars in reduction per year. So the biennium, we doubled that to four million and multiplied that by one hundred and fifteen percent.

Senator Krauter: Let's say that there is a widowed woman who has an IRA that she's using and she has some dividends and also Social Security. How much income from dividends is she going to have to have before she pays in tax? What is the tax bracket?

Joe: Assuming we have a single individual are lowest bracket is at 2.1 percent for 2009 will go up to 3950 dollars. The next bracket is at 3.92 percent.

Senator Krauter: I've trying to figure out how this will affect retired individuals.

Joe: We use an average rate of 4.34 perhaps it should be something lower we don't know each and every taxpayer. We can't get the information off those returns to work from the other direction.

Senator Christmann: Social Security is not taxed?

Joe: Yes and no. Your income has to be certain level before they tax it. For an individual once your income reaches up to \$25,000- \$32,000 then they will start to tax it.

Senator Mathern: When does this elderly person with this kind of income begin to pay tax off this income, is it the first dollar?

Joe: It depends where there filling requirements are at take a standard deduction plus their exemption amount their income has to exceed that before we even require a tax return.

Taxable income is above that amount.

Senator Mathern: You created an average for this can't we create an average for that?

Joe Becker: I can bring data.

V. Chair Grindberg: I think you researched some information last session for me that outlined a number of states that didn't tax any retirement income. I would like to have an update on that as well.

Joe: You're looking for states that do not tax pension income?

V. Chair Grindberg: That's correct, any retirement income for those.

Joe Becker: The question regarding at what point we start to tax income that is readily available. Regardless of what the federal government does or does not do is irrelevant to this bill. All this bill is going to do is pick up the definition of qualified dividends.

Chairman Holmberg: Closed the hearing on HB 1256.

Joe Becker: You had asked at what point an individual would start paying you income tax.

I am giving you a document that provides the 2008 filing requirements. These are the absolute minimum amounts an individual we begin to pay. See attached #3.

Senator Mathern: This does not include social security income. If someone has eight thousand dollars of income and ten thousand dollars from social security is it still considered eight thousand dollars?

Joe: With respect to the taxation of social security the way that works is you would have to take a look at all of their gross income except for social security and take you take one half of the social security benefits and add to that number. If it goes above a certain amount then they start to tax social security. They have to get up to around twenty two thousand dollars.

Chairman Holmberg: We will hold on the bill until after we have heard the rest of the bills.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1256

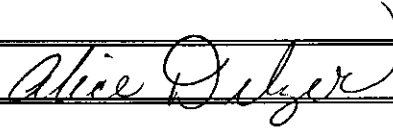
Senate Appropriations Committee

Check here for Conference Committee

Hearing Date: 04-03-09

Recorder Job Number: 11719

Committee Clerk Signature



Minutes:

Chairman Holmberg called the committee to order in regards to income tax treatment.

SENATOR CHRISTMANN MOVED A DO PASS. SECONDED BY VICE-CHAIRMAN BOWMAN.

Chairman Holmberg shared the amount of appropriation this bill has.

Senator Robinson I would only say that in all these tax bills I could be very, very cautious.

When we hear the stories about layoffs and we have our own set of economic challenges in the state. And I have been around long enough to know that taking these off is easy, putting them back on is very difficult in our community people willing to step to the plate to do it so I am going to vote against this measure. I think if you dig into this at all you will find that the people that benefit from this aren't necessarily struggling, hurting, financially or economically. They are doing well. You've got these investments so for those and many other reasons I am going to oppose the do pass recommendation. (1.20)

Senator Wardner Just a comment, we do want people to start investing. We want to encourage them because that will help our economy.

Senator Krauter I am not going to support this. In addition to what Senator Robinson said people out across the state and it is not just my legislative district, to them the issue is property taxes. When I ask when I am in Dickinson, Bismarck, or at home when I talk about these

issues this one and corporate income tax are brought up. They want property tax relief, they want property tax reform, they want something with property tax and I agree with that idea that we reduce these things now and those of you that have been around here going to meetings, when those revenues slow down or change, it is hard to bring these things back. The other thing is the testimony really made me think hard on this. I went up to the tax department and started asking about who really gets the dividend credits or is eligible for this. It's primarily individuals who are up in age, retired, and have retirement from businesses, individual situations where they were given stock as part of their employment and these are the ones that benefit from this. So income tax in North Dakota is an issue where you don't pay the taxes on the social security you receive but on dividends like this. For this to really kick in, this income, your retirement plus your dividends, that's the wealthiest of the wealthiest so I think in North Dakota that is not the direction we need to go. So I am going to oppose 1256.

ROLL CALL VOTE WAS TAKEN ON A DO PASS ON 1256 RESULTING IN 8 YEAS, 6 NAYS, 0 ABSENT. SENATOR OELHKE OF FINANCE AND TAX WILL CARRY THE BILL.

Chairman Holmberg closed the hearing on HB 1256. (5.26) (HB 1231 and 1551 were also heard on this job)

Date: 4/3/09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1256

Senate Senate Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Christmann Seconded By Wardner ^{Bowman}

Representatives	Yes	No	Representatives	Yes	No
Senator Krebsbach	✓		Senator Seymour	✓	✓
Senator Fischer	✓		Senator Lindaas		✓
Senator Wardner	✓		Senator Robinson		✓
Senator Kilzer	✓		Senator Warner		✓
V. Chair Bowman	✓		Senator Krauter		✓
Senator Christmann	✓		Senator Mather		✓
V. Chair Grindberg	✓				
Chairman Holmberg	✓				

Total Yes 8 No 6

Absent _____

Floor Assignment F & Tax

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

REPORT OF STANDING COMMITTEE (410)
April 3, 2009 9:50 a.m.

Module No: SR-57-6093
Carrier: Oehlke
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1256, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman)
recommends **DO PASS** (8 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1256 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

HB 1256

①

HB 1256
January 20, 2009
Representative Headland

House Bill to reduce tax on "Qualified Dividend Income"

- The Federal Government passed the "Jobs and Growth Tax Relief Reconciliation Act of 2003" which reduced the tax on Long Term Capital Gains effective 1/1/2003 – 12/31/2010.
- As part of that Bill, they also reduced the tax on "Qualified Dividends" such that they would be taxed at the same rate as Long Term Capital Gains.
- As a result of the JGTRRA of 2003, the State of North Dakota also offered relief for Long Term Capital Gains by reducing the amount of gain subject to tax by 30%.
- However, North Dakota did nothing to change the tax on Qualified Dividends

HB 1256
January 20, 2009
Attachment # 2

The Dividend Tax Rate Reduction

A Demographic Profile of Utility Shareholders

*Same
given to Finance & Top
Senate
and to Senate
Approps*

Prepared for the
Edison Electric Institute
and the
American Gas Association

UTILITY SHAREHOLDERS
OF NORTH DAKOTA
PO BOX 1856
BISMARCK, ND 58502-1856

 **ERNST & YOUNG**
Quality In Everything We Do

The Dividend Tax Rate Reduction: A Demographic Profile of Utility Shareholders

Executive Summary

Ernst & Young's Quantitative Economics and Statistics Practice was engaged by the Edison Electric Institute, in cooperation with the American Gas Association, to analyze the age and income characteristics of utility company shareholders who qualify for the lower tax rates on qualified corporate dividends.

Utility stocks, particularly electric and gas utility stocks, have above-average dividend yields and below-average volatility compared to the overall stock market. These two key characteristics make utility equity investments attractive for investors seeking current income and/or reduced market volatility, which include many investors near or in retirement.

Investor surveys about the views on the risk tolerance, investment horizons, and financial goals for mutual fund investments find that investors age 65 and older are more likely to invest to earn current income, have shorter investment horizons, and less risk tolerance than younger investors. Older investors are more likely to own stocks directly and also more likely to own investments outside of tax-qualified defined contribution plans compared to younger investors.

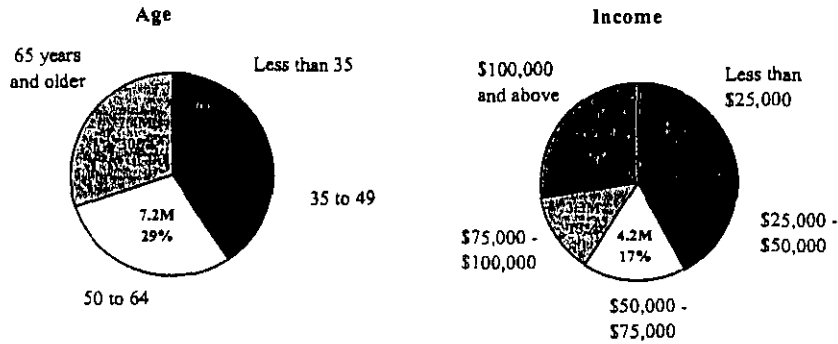
Based on information from the Internal Revenue Service's (IRS's) Statistics of Income on tax returns with qualified dividends and information from a variety of sources on investors' portfolio holdings, we have made estimates of the age and income distribution of tax returns with qualified dividends from utility stocks at the national and state levels.

The findings of the study include the following:

- In 2004, 24.5 million tax returns had dividends qualifying for the lower tax rates from equity investments.¹
- The percentages of tax returns with qualified dividends have the following profile:
 - 59 percent are from taxpayers age 50 and older,
 - 30 percent are from taxpayers age 65 and older,
 - 59 percent are from returns with incomes less than \$75,000, and
 - 24 percent are from returns with incomes less than \$25,000.
- According to the Investment Company Institute, more than half of the older investors cite current income as a principal objective of their investment, compared to 11 to 14 percent for younger investors.

¹ IRS/SOI Individual Income Tax Returns Publication 1304 reports 25.9 million returns with qualified dividends totaling \$119 billion in 2005.

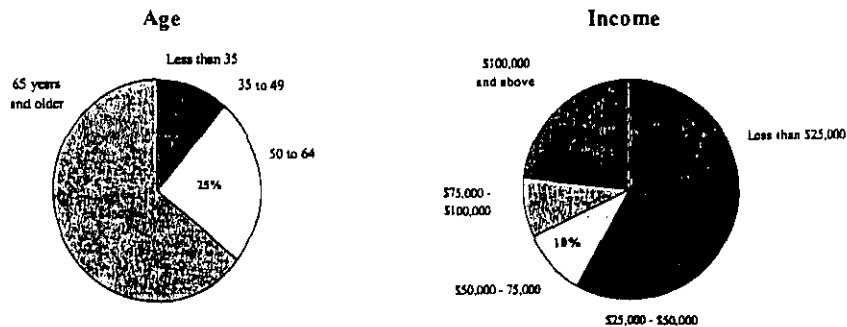
Tax Returns with Qualified Dividends by Age & Income, 2004
(Millions of Returns)



The findings of the study for utility shareholders include the following:

- In 2004, 16.7 million tax returns had dividends qualifying for the lower tax rates from equity investments in utility companies.
- Taxpayers with investments directly and indirectly (through taxable mutual funds) in utility company stocks account for 68 percent of tax returns with qualified dividends.
- More than half of the returns with qualified dividends from direct and indirect utility stock holdings are from taxpayers age 50 and older and from taxpayers with incomes less than \$75,000.
- The percentages of tax returns with qualified dividends from direct utility investments are:
 - 89 percent are from taxpayers age 50 and older,
 - 64 percent are from taxpayers age 65 and older,
 - 68 percent are from returns with incomes less than \$75,000, and
 - 42 percent are from returns with incomes less than \$25,000.

Tax Returns with Qualified Dividends from Direct Utility Stocks, 2004



The numbers of tax returns with qualified dividends from utility investments are estimated by income and age for each of the 50 states.

U.S. electric and gas utilities paid \$16.3 billion in dividends in 2005, and increased those dividends to \$17.7 billion in 2006. Lower tax rates on dividends have helped to increase the above-average share appreciation of utility stocks during the past three years, which reduces the cost of capital for the major transmission and distribution system upgrades, environmental and energy-efficiency improvements, and new capacity needs the industry is facing.

#2



Testimony of Bill Shalhoob
North Dakota Chamber of Commerce
HB 1256
March 4, 2009

Mr. Chairman and members of the committee, my name is Bill Shalhoob and am here today representing the ND Chamber of Commerce, the principle business advocacy group in North Dakota. Our organization is an economic and geographical cross section of North Dakota's private sector and also includes state associations, local chambers of commerce development organizations, convention and visitors bureaus and public sector organizations. For purposes of this hearing we are also representing six local chambers with total membership over 3,900 members . As a group we stand in support of HB 1256 and urge a do pass from the committee on this bill.

I'm not sure any of us completely understand all of the roots of the current economic malaise we are experiencing. Like you, I have heard the jokes about the condition of my 201K. That being said at least part of the solution is restoring confidence in our investment markets and get money flowing back into them. People invest to get a return and HB 1256 will increase that return for investments by lowering taxes for North Dakota investors. It mirrors federal treatment of this income so we will not be breaking new ground. Lowering taxes and getting that money back into people's hands is a good thing.

Thank you for the opportunity to appear before you today in support of HB 1256. I would be happy to answer any questions.

THE VOICE OF NORTH DAKOTA BUSINESS



STATE OF NORTH DAKOTA
OFFICE OF STATE TAX COMMISSIONER
Cory Fong, Commissioner

3

Memorandum

To: Senator Holmberg, Chairman
Senate Appropriations Committee

From: Joseph Becker
Office of State Tax Commissioner

Date: March 20, 2009

Subject: House Bill 1256 (Qualified dividend exclusion)

Senator Holmberg,

Senator Mathern asked for information about the income level at which an individual begins to pay income tax.

Attached is a document showing the filing requirements for 2008. Assuming the individual does not itemized deductions (which means the standard deduction is used), once income goes over the amounts shown, the taxpayer begins to pay income tax.

For example, for a single person having income of \$9,000, he or she would pay income tax on \$50 (\$9,000 - \$8,950).

If a taxpayer has additional deductions, such as for an IRA contribution or is able to itemize deductions, the amount at which the taxpayer will begin paying income tax increases by the amount of the deduction.

2008

FILING REQUIREMENTS

SINGLE	\$ 8,950
65 OR OLDER.....	\$10,300
MARRIED JOINT RETURN	\$17,900
ONE SPOUSE 65 OR OLDER	\$18,950
BOTH SPOUSES 65 OR OLDER.....	\$20,000
NOT LIVING WITH SPOUSE AT END OF YEAR (OR ON DATE SPOUSE DIED).....	\$ 3,500
MARRIED FILING SEPARATE RETURN (REGARDLESS OF AGE).....	\$ 3,500
HEAD OF HOUSEHOLD	\$11,500
65 OR OLDER.....	\$12,850
SURVIVING SPOUSE.....	\$14,400
65 OR OLDER.....	\$15,450

STANDARD DEDUCTION

SINGLE	\$ 5,450
MARRIED JOINT RETURN OR SURVIVING SPOUSE	\$10,900
HEAD OF HOUSEHOLD	\$ 8,000
MARRIED SEPARATE RETURN	\$ 5,450

NOTE: THE STANDARD DEDUCTION CAN BE INCREASED BY THE SMALLER OF (1) THE AMOUNT OF PROPERTY TAXES THAT WOULD BE DEDUCTIBLE IF TAXPAYER ITEMIZED OR (2) \$500 (\$1,000 IF JOINT RETURN)

INCREASE THE STANDARD DEDUCTION FOR BEING 65 YEARS OF AGE OR OLDER AND/OR BLIND.

SINGLE	\$ 1,350
MARRIED JOINT RETURN OR SURVIVING SPOUSE	\$ 1,050
HEAD OF HOUSEHOLD	\$ 1,350
MARRIED SEPARATE RETURN	\$ 1,050

PERSONAL EXEMPTION

FOR ALL TAXPAYERS	\$ 3,500
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Testimony of Bill Shalhoob
North Dakota Chamber of Commerce
HB 1256
March 20, 2009

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I'm not sure any of us completely understand all of the roots of the current economic malaise we are experiencing. Like you, I have heard the jokes about the condition of my 201K. That being said at least part of the solution is restoring confidence in our investment markets and get money flowing back into them. People invest to get a return and HB 1256 will increase that return for investments by lowering taxes for North Dakota investors. According to State Tax Department figures for 2006 it will lower taxes for 74,968 or 23.4% of all filers. I have to think a great many of these recipients are residents who rely on dividend income as part of their retirement plan. It mirrors federal treatment of this income so we will not be breaking new ground. Lowering taxes and getting that money back into people's hands is a good thing.

Thank you for the opportunity to appear before you today in support of HB 1256. I would be happy to answer any questions.

THE VOICE OF NORTH DAKOTA BUSINESS