

2009 HOUSE FINANCE AND TAXATION

HB 1429

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1429**

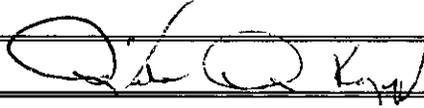
House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: January 26, 2009

Recorder Job Number: 7712

Committee Clerk Signature



Minutes:

**Chairman Belter:** We will open the hearing on HB 1429.

**Representative Gary Sukut: (Testimony 1). (7:57)**

**Representative Headland:** Why not just lower sales tax?

**Representative Sukut:** If you lower the sales tax, you reduce the state's revenue substantially over the course of the next couple of years. If you look at what is happening right now just in the oil industry alone, you are looking at the price of oil being at the lower end. You are also looking at a number of oil field companies that are talking about looking at six to eighteen months before we see any kind of recovery.

**Representative Headland:** I have a fiscal note here that says general fund revenues are reduced by \$100 million.

**Representative Sukut:** These are not reducing revenue funds; these are dollars that are taking the surplus dollars we have right now and giving back \$100 of our surplus funds. We are not taking this money out of what is ongoing; we are talking about using the surplus funds that exist at this point in time in lieu of what the Governor is talking about with his income tax reduction, giving \$100 million back of income tax reduction. I don't see this as anything reducing ongoing revenues at all.

**Representative Headland:** I don't understand what you are saying because the fiscal note says, "If enacted 1429 reduces state general revenues by an estimated \$100 million in 2009-2011." Most of the impact is all upfront so it does affect.

**Representative Sukut:** That is not the intention. The intention is to use existing cash dollars right now and to put those dollars back. The intention is to take existing dollars and put those dollars back. The intention is to take sales tax dollars that have already been paid and put them back into the economy. It should not have any effect on ongoing revenues.

**Chairman Belter:** Just a point of clarification. It will show up though as a \$100 million cost in the general fund, just as Representative Berg's bill this morning will when he gave a one-time rebate of income tax paid in 2007. On the books it will show up as a one-time \$100 million loss to the general fund.

**Representative Weiler:** This bill is a one-time shot taking \$100 million of our current surplus and giving it back. Next biennium it doesn't exist. What the Governor's bill does is it changes the tax brackets so that every biennium from here on out, the state will be receiving X amount of dollars less. The difference is that is ongoing and this isn't. This is one-time cash back.

**Representative Winrich:** I was just going to say basically what Representative Weiler said. In both the Governor's plan and Representative Berg's bill that we heard earlier, income tax rates are reduced so the reduction in revenue would be ongoing. This is a one-time reduction in revenue because of the tax credit.

**Representative Brandenburg:** You are using 2009 taxable year so the rationale for \$40,000 single and \$80,000 joint is? I just question it.

**Representative Sukut:** When I first had them run this table for me, I had the top at \$70-100,000. What happened was I just thought there was too much going on the upper end so I

knocked those top levels down so there would be better distribution on the lower end of the graph also.

**Representative Froseth:** We need some clarification on that. Line 9 says this is a tax credit against tax liability for the year 2009 but lines 19-30 indicate it is ongoing. This act becomes effective beginning after December 31, 2008 so it doesn't say it sunsets. We would like some clarification.

**Chairman Belter:** We can ask the Tax Department.

**Representative Sukut:** If that is the way it actually reads, it would have to be amended so that it reads properly and is truly a one-time shot.

**Representative Pinkerton:** This could be more of a question for the Tax Department, but the other income tax reduction bill, that rebate coming back would have been subject to federal tax if you had filed an itemized return. Is this going to be subject, since we are no longer to deduct sales tax except in a business entity, would this be federally taxable or not?

**Representative Sukut:** I would defer that question to somebody that is more adept in that tax area than I am.

**Representative Hatlestad:** I want to compliment you on the task before you of finding a fair and equitable way of returning money to the taxpayer. I am sure there has been more than one pack of Roloids consumed and several bottles of aspirin. Therefore, I stand before you in support of HB 1429 which will relieve a great deal of stress and anguish and is a very fair and equitable manner in which you can return \$100 million to the taxpayers. Thank you, Mr. Chairman.

**Chairman Belter:** Any other testimony in support of HB 1429? Any opposition to 1429? Any neutral testimony?

**Dustin Gawrylow, ND Taxpayers' Association:** We are not against this idea per se. Our feeling on it is that a simpler method would be a sales tax holiday at back to school time, July 1 to October 1, something of that effect to reach the same percentage or \$100 million mark as intended. It would eliminate any administrative costs and people would actualize that benefit as they are buying consumables during that period. It quite possibly could lead to an economic uptick for border cities like Fargo, Grand Forks, and Williston, Dickinson, where out-of-staters come in and buy, knowing that we have a sales tax holiday so our local economy could benefit from that sort of approach.

**Donnita Wald, Legal Counsel with the Tax Commissioner's Office:** The first question which Representative Froseth had in regard to the effective date and how long this credit lasts, there is some inconsistency between the date on line 9 and the effective dates on line 19 and 20. In my opinion, though, the statute would control and so it would be only a credit for one year. However, I would recommend because that question has come up among the staff and here so I recommend you amend line 19 to say for the taxable year 2009. The second item that we would have hesitation on was what Representative Sukut did clarify for us, but we think we should have it in the statute. If you look at lines 14 and 15, it says that credit under this section is fully refundable without regard to the taxpayer's tax liability. In the second example that Representative Sukut gave you where there was \$150 tax due, we had a \$270 credit under here, and Representative Sukut said that we would be refunding \$120 so that language is kind of "squishy" and could be requiring that we refund \$270 to him, notwithstanding a \$150 tax liability. We would like to use the language we had in other tax statutes that say any unused credit may be refunded. We look at the other credit language we have so that would be something we propose would be amended too. I can draft those. The last thing I wanted to address was Representative Pinkerton's question regarding federal tax

treatment of this. Even though it is "a sales tax rebate", it truly is an income tax credit and so what the feds would do to it with respect to tax liability and add back, I don't know. We couldn't even gather an opinion on that. How this would be treated for federal tax purposes, I can't tell you.

**Chairman Belter:** The question I have is the way this bill reads is the only people who would be eligible for this.....what is considered taxable income?

**Donnita Wald:** What we are interpreting as that is if you have a net operating loss; is that what you are getting at?

**Chairman Belter:** Well I am just saying is taxable income, I interpret that as income that is liable for taxation.

**Donnita Wald:** Right, after you go you start at federal taxable, you add back that number there.

**Chairman Belter:** So I am thinking in that effect you leave out people who don't have a tax liability or taxable income.

**Donnita Wald:** That is correct so if you do have a net operating loss, these individuals would not be eligible for this credit.

**Chairman Belter:** So how could we include them?

**Donnita Wald:** I think the best thing to do is just look at making it an overall credit that can be applied against tax liability. We have never really had a credit that is dependent upon using federal taxable income. All of our credits require that you have some tax liability so once you get past your taxable income, run through the brackets, figure out your tax, if you have tax there, that should determine if you are eligible for the credit. What those levels or thresholds should be within that, I don't know. That is how we usually do it; this is kind of different that way because it does piggyback off having positive federal taxable income.

**Chairman Belter:** Does anybody else have a question? Any other neutral testimony? If not, we will close the hearing on HB 1429.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1429**

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: January 26, 2009

Recorder Job Number: 7788 (Also contains HB1411)

Committee Clerk Signature

Minutes: (02:22)

**Chairman Belter:** Donnita Wald has the amendments on this. We won't act on this, but why don't you go over the amendments?

**Donnita Wald, Legal Counsel:** Amendments No. 90538.02TX. On page 1, line 14 replace with "The amount of the credit under this section in excess of the taxpayer's tax liability shall be refunded to the taxpayer"; the sponsor of the bill indicated that the refund that the taxpayers were supposed to get was supposed to be the net so if you owed \$100, and you were supposed to get a \$150 refund, this would give you a check for \$50. The way it was written, it implied that we had to give you \$150. That's what the first amendment does. The second amendment, page 1, line 19 replaces "years" with "year" which answers Representative Froseth's question about how long this program lasts.

**Chairman Belter:** Any questions?

**Representative Headland:** Does it need to have a year in it?

**Donnita Wald:** Probably not; it is self described as for this tax year, but as a matter of course, we like to put all effective dates on all the tax bills. We have ended up in litigation over the lack of one. It doesn't hurt. Does it help? It might.

**Chairman Belter:** Any other questions? That completes our work for the day. Tomorrow is oil day; we have seven bills tomorrow so we need to roll. I want to remind committee members to make sure their questions pertain to the bill so that we can roll.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1429

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 02/04/09

Recorder Job Number: 8629

Committee Clerk Signature *Lou Engelson*

Minutes:

**Chairman Belter** opened the hearing on HB 1429. A motion by Rep. Froseth to move the amendments .02TX on HB 1429. Is there a second?

**Rep. Brandenburg:** Second.

**Chairman Belter:** Second by Rep. Brandenburg. Discussion on the amendments?

**Rep. Wrangham:** Was this intended it to be for only one taxable year? They replace "years" with "year".

**Chairman Belter:** That is correct.

**Rep. Weiler:** That is correct. It was supposed to be a one-time shot. Comments on the amendments? We'll have a voice vote to accept the amendments on 1429. All in favor signify by saying aye. Opposed. The amendments carry. We have HB 1429 as amended before us. What is the committee's desire?

**Rep. Grande:** I move a **do not pass**.

**Rep. Headland:** Second

**Chairman Belter:** Rep. Grande has moved a do not pass. Seconded by Rep. Headland.

Discussion. Seeing no discussion, I'll have the clerk read the roll call.

**8 yes, 5 no, 0 absent. Rep. Froseth was assigned to carry the bill.**

**FISCAL NOTE**  
**Requested by Legislative Council**  
02/06/2009

Amendment to: HB 1429

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			(\$100,000,000)			
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).*

Engrossed HB 1429 creates a sales tax rebate in the form of an individual income tax credit, to be claimed on 2009 individual income tax returns.

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.*

Engrossed HB 1429 authorizes a sales tax rebate that is computed as 1.35% of the first \$40,000 of taxable income (\$80,000 for married joint filers) to be claimed on 2009 individual income tax returns, Forms ND-1 and ND-2.

If enacted, Engrossed HB 1429 is expected to reduce state general fund revenues by an estimated \$100,000,000 in the 2009-11 biennium. Most of the impact will occur in FY 2010.

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.*

<b>Name:</b>	Kathryn L. Strombeck	<b>Agency:</b>	Office of Tax Commissioner
<b>Phone Number:</b>	328-3402	<b>Date Prepared:</b>	02/07/2009

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/16/2009

Bill/Resolution No.: HB 1429

**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
<b>Revenues</b>			(\$100,000,000)			
<b>Expenditures</b>						
<b>Appropriations</b>						

**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 1429 creates a sales tax rebate in the form of an individual income tax credit, to be claimed on 2009 individual income tax returns.

**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.*

HB 1429 authorizes a sales tax rebate that is computed as 1.35% of the first \$40,000 of taxable income (\$80,000 for married joint filers) to be claimed on 2009 individual income tax returns, Forms ND-1 and ND-2.

If enacted, HB 1429 is expected to reduce state general fund revenues by an estimated \$100,000,000 in the 2009-11 biennium. Most of the impact will occur in FY 2010.

**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.*

<b>Name:</b>	Kathryn L. Strombeck	<b>Agency:</b>	Office of Tax Commissioner
<b>Phone Number:</b>	328-3402	<b>Date Prepared:</b>	01/23/2009

January 26, 2009

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1429

Page 1, replace line 14 with "The amount of the credit under this section in excess of the taxpayer's tax liability shall be refunded to the taxpayer."

Page 1, remove line 15

Page 1, line 19, replace "years" with "year"

Renumber accordingly

February 4, 2009

VR  
2/4/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1429

Page 1, line 3, remove "and" and after "date" insert "; and to provide an expiration date"

Page 1, replace line 14 with "The amount of the credit under this section in excess of the taxpayer's tax liability must be refunded to the taxpayer."

Page 1, remove line 15

Page 1, line 19, after "**DATE**" insert "- **EXPIRATION DATE**", after "for" insert "the", and replace "years" with "year"

Page 1, line 20, after "2008" insert ", and after that date is ineffective"

Renumber accordingly

Date: 2/4/09

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1429

House FINANCE AND TAXATION Committee

Check here for Conference Committee

Legislative Council Amendment Number Amend .0274

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Froseth Seconded By Brandenburg

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter			Representative Froelich		
Vice Chairman David Drovda			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:

*Amendment carries*

Date: 9/4/09

Roll Call Vote #: \_\_\_\_\_

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1429**

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 Grande Seconded By Headland

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 Froseth

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

**REPORT OF STANDING COMMITTEE**

**HB 1429: Finance and Taxation Committee (Rep. Belter, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (8 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1429 was placed on the Sixth order on the calendar.

Page 1, line 3, remove "and" and after "date" insert "; and to provide an expiration date"

Page 1, replace line 14 with "The amount of the credit under this section in excess of the taxpayer's tax liability must be refunded to the taxpayer."

Page 1, remove line 15

Page 1, line 19, after "**DATE**" insert "- **EXPIRATION DATE**", after "for" insert "the", and replace "years" with "year"

Page 1, line 20, after "2008" insert ", and after that date is ineffective"

Renumber accordingly

2009 TESTIMONY

HB 1429

**TESTIMONY HB1427  
REPRESENTATIVE GARY SUKUT  
DISTRICT 1**

**GOOD MORNING MISTER CHAIRMAN AND COMMITTEE MEMBERS. FOR THE RECORD MY NAME IS GARY SUKUT, REPRESENTATIVE FROM DISTRICT 1, and WILLISTON.**

**I STAND BEFORE YOU THIS MORNING TO INTRODUCE HB1427.**

**THIS BILL SUGGESTS AN ALTERNATE APPROACH TO GOVERNOR HOEVEN'S \$100M INCOME TAX REDUCTION PLAN.**

**MY CONSTITUENTS ARE SAYING:**

- (1) DON'T SPEND ALL THE MONEY**
- (2) GIVE US SOME OF OUR TAX DOLLARS BACK**
- (3) DO SOMETHING ABOUT REAL ESTATE TAXES**

**WE WILL HAVE MUCH DEBATE ON ALL THREE OF THESE ISSUES THIS SESSION.**

**THIS BILL ADDRESSES \* GIVING SOME MONEY BACK \***

**PROBLEM WITH GOVERNOR'S INCOME TAX PLAN AND A FEW OTHERS I SEEN – THEY REDUCE ON-GOING REVENUES –**

**AG INDUSTRY AND OIL INDUSTRY ARE PREDICTABLY UNPREDICTABLE. THEY CAN CREATE MASSIVE SWINGS IN THE ECONOMY AT THE DROP OF A HAT. WE ARE EXPERIENCING ONE OF THE MASSIVE SWINGS RIGHT NOW AND WE NEED TO APPROACH THESE SWINGS WITH CAUTION! REDUCING OUR INCOME REVENUE STREAM AT THIS TIME BY REDUCING TAXES CAN BE VERY DETRIMENTAL TO OUR FUTURE.**

**HB1427 DOES TWO THINGS:**

- (1) IT IS A SALES TAX CREDIT WHICH EVERYONE PAYS AND EVERYONE BENEFITS.**

**(2) IT PUTS \$100M BACK INTO THE ECONOMY AT ONE TIME(2009)**

**THE FORMULA IS SIMPLE, YOU TAKE 1.35% OF THE TAXABLE INCOME FROM THE ND INCOME TAX RETURN AND THAT AMOUNT IS USED AS A CREDIT AGAINST THE STATE INCOME TAX DUE. THE TAX DEPARTMENT THEN ISSUES A TAX REFUND CHECK AS THEY ARE ACUSTOMED TO DOING RIGHT NOW.**

**EXAMPLES:**

<b>Taxable Income</b>	<b>Sales tax Credit</b>	<b>ND Income Tax Due</b>	<b>Refund</b>
\$10,000	1.35%x\$10T = \$135	-\$100	\$235
\$20,000	1.35%x\$20T = \$270	\$150	\$120
\$30,000	1.35%x\$30T = \$405	\$0	\$405
\$40,000	1.35%x\$40T = \$540	\$40	\$500
\$80,000	1.35%x\$80T = \$1,080	\$480	\$600

**TABLE CAPPED AT: \$40,000 FOR A SINGLE FILING  
\$80,000 FOR A JOINT FILING**

**THIS BILL PUTS \$100M INTO THE HANDS OF THE NORTH DAKOTA CITIZENS WHO PAID THE TAX AND HAS NO NEGATIVE EFFECT ON OUR FUTURE STATE REVENUES.**

**MR. SPEAKER AND COMMITTEE MEMBERS, THIS BILL IS A REALISTIC APPROACH TO PUTTING TAX PAYERS HARD EARNED DOLLARS BACK INTO THEIR HANDS AN I ASK YOU TO GIVE HB1427 SERIOUS CONSIDERATION.**

**MR. SPEAKER I STAND FOR QUESTIONS.**

**THANK YOU FOR YOUR TIME!**