

2011 HOUSE FINANCE AND TAXATION

HB 1124

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1124
January 12, 2011
12791

Conference Committee

Committee Clerk Signature

Mary Bruckner

Explanation or reason for introduction of bill/resolution:

A Bill relating to the individual income tax credit for installation of geothermal energy devices; relating to the tuition scholarship tax credit for financial institution tax purposes, the tax credit for planned gifts and qualified endowments, the marriage penalty tax credit, the employer tax credit for mobilized employees, the long-term care partnership plan insurance coverage tax credit, the qualified dividend and long-term capital gain income tax exclusion, return filing requirements for individuals, withholding on lottery winnings, and the use of the domestic disclosure spreadsheet for the water's edge method election for reporting income; and to provide an effective date.

Minutes:

See attached testimony #1 and #2

Mary Loftsgard, Associate Director of the Tax Administration Division, for the Office of State Tax Commissioner: Sponsor. Support. Testimony attached (#1 and #2). Section 1, 2, 10, and 11 reviewed with committee.

Representative Shirley Meyer: Is the water's edge system of filing just if you live in Fargo in the spring or would you explain that to me?

Mary Loftsgard: North Dakota is what we call a combined reporting state. What that means is if your part of an affiliated group of corporations, basically a parent subsidiary and you have a highly integrated unitary relationship amongst those corporations they tend to be the same line of business, their business is interdependent upon each other, anyone of that group of corporations that has business in North Dakota and has a tax liability here or reporting requirement has to begin their reporting with the entire income of the whole combined group. Then we take a look at, say we have this unitary group and the reason we do that is because of the interdependents, you can't really separate out that companies true income. When you have that income and you make the add backs and the subtracts that are allowed for under the law, you apportion that income. You determine out of this unitary income world-wide how much belongs to North Dakota. We do that by something called apportionment. Basically we take that company's North Dakota property divide it by the property of all those entities everywhere and do the same thing for payroll and sales, we add those three ratios together, divide it by three and that's the North Dakota apportionment factor. So that's your normal world-wide group. So if you have a company

in North Dakota that doesn't elect water's edge and they have subsidiaries overseas we would pull that overseas income in as well plus the overseas property payroll and sales. The water's edge method is a change to that and it is an elective method, it's not something that North Dakota can tell a taxpayer they must file. What the taxpayer elects to do under water's edge is to exclude entities that are outside the United States. There are a lot more parameters to that because you would also adjust the apportionment factor you would not include the any of the property and sales of any of those foreign affiliates that are not included in the group.

Nathan Bergman, Supervisor in Office of the State Tax Commissioner: Please refer to attached testimony #1. Reviewed sections 3-9 and 12 with the committee.

Representative Mark S. Owens: In reading section 3 it says that is you put a geo then it's 3% of the actual cost over five years even if you lease the property. So if you lease the property, the person taking the credit is the one who installed the geo or the leaser or the owner, correct?

Nathan Bergman: That is correct. The one who is actually doing the installation of the geothermal device is the one who could claim the credit.

Representative Mark S. Owens: In the event of the leaser installing the geothermal and then turning around and not being there the full five years, do they continue to take the credit even though they are not leasing the facility or is it transferrable, is the credit transferable for the remaining years? Say they sell the remaining credit back to the building owner do they still get the credit?

Nathan Bergman: There is not a salability or a transferability of this credit in the law for geothermal energy devices.

Representative Mark S. Owens: Then does the individual still get to take it even after they are done leasing the building if the five years have not been completed.

Nathan Bergman: Yes, if they earned the credit they would be able to continue to take the credit.

Representative Dave Weiler: My question is on the wording in that same paragraph, page 2 line 20 where it says the person that can use this credit is in a building or on property owned or leased by the taxpayer. So if I own a building and I have a geothermal device installed then me as the owner get to use the tax credit?

Nathan Bergman: That is correct. If you install the geothermal device you own the building you would be the one to claim the credit.

Representative Dave Weiler: If I lease out the building the way I read it here is the person who leases it gets to use the credit as well.

Nathan Bergman: That is not how I see the language to be read. I can look for clarification but the first sentence identifies that the individual taxpayer may claim the credit

based on the cost of the device that's installed. So I think that would lead it to be the person who does the installation not the specific transfer of that.

Representative Dave Weiler: But if I'm leasing a building how am I going to be able to take advantage of that credit because it's the owner that installed it not the one that's leasing it.

Nathan Bergman: That is correct. If you are leasing the space that would not be a credit you would be able to claim because you were not the installer of the device.

Representative Dave Weiler: Why would the word "leased" be in here?

Nathan Bergman: I'm going to defer that question to Joseph Becker as he has some history with this credit.

Joe Becker, Tax Department: The basis for the credit is the cost of acquisition and installation. Once you do that you've earned that credit over the five years even if you should sell that property to someone else at a later date. It's based on the cost you put in to installing it.

Representative Dave Weiler: That I understand but you would have to be the owner of the building in order to do that.

Joe Becker: At the time that you install it you either have to own the building or you have to lease the property in which it is installed. Thereafter, if you decide to sell it then it's irrelevant. At the time of installation you better own the building or lease the property.

Representative Steven L. Zaiser: I'm going to refer you to that same section on the geothermal credit. In addition to, what I believe, Representative Weiler, I think another ambiguity is when it talks about the installer of the equipment getting the credit. To me the installer is the actual technician, not the person who's paying for the installation. Might it be a better way to say that, by saying the person who is paid for the installation rather the installer?

Nathan Bergman: I'm looking for the word "installer" and I'm not seeing it here. I know we have the word "installed" but I don't know if that's referencing the installer, I think that's the act of having the device installed.

Representative Steven L. Zaiser: It's still not clear. Clarity is important in tax code. Be sure that it makes it abundantly clear that we're talking about the person purchasing the installation.

Nathan Bergman: In my reading of it it's clear but that doesn't mean that it's clear for everyone's reading and I think there may always be some things that could be added.

Representative Steven L. Zaiser: I disagree.

Representative Dave Weiler: Representative Zaiser, I tend to agree with you, however, I think that just in the conversation they use the word "installer" but the word "installer" is not in the bill. I think the bill is probably okay the way it is with the exception of the word "lessy."

Mary Loftsgard: This language is the same language that is in the credit for wind energy devices, biomass device, and all geothermal devices. Joe indicated the site which is in section 01-57-3801.8. This is language that's been in the statute for many years so if you have concern about this language you are aware that it's in other sections of the code. Really all that was done last session was to allow to take the same language and to allow an individual income taxpayer to take a credit for the cost of that taxpayer's installing of a geothermal device.

Chairman Wesley R. Belter: No further testimony in support. No testimony in opposition or neutral testimony. Committee members, what are your wishes for HB1124?

Representative Bette Grande: Motion made for a DO PASS.

Representative Mark S. Owens: Seconded.

A roll call votes was taken. 13 YES 1 NO 0 ABSENT

MOTION CARRIED—DO PASS.

Representative Winrich will carry HB1124.

FISCAL NOTE

Requested by Legislative Council
03/24/2011

Amendment to: HB 1124

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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 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.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 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).*

Except for sections 3, 9, 11 and 12, the bill is a set of technical changes to the income and financial institution tax laws. Sections 3 and 9, which expand the energy device income tax credit for individuals, and sections 11 and 12, which expand the refund offset program, are substantive changes.

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.*

Those sections of HB 1124 with Senate Amendments that make technical changes (sections 1-2, 4-8, 10, 13, and 14) have no fiscal impact.

Section 3 of the bill, as originally introduced, would have made a technical change to clarify the law governing the geothermal energy device income tax credit for individual income tax purposes. However, the Senate amendments to the bill changed section 3 (and added section 9) to expand the credit to allow an individual to also claim the credit for the installation of a wind energy device. This change also allows an individual who owns an interest in a passthrough entity, such as a partnership, to claim a share of a wind energy device credit earned by the passthrough entity for installing a wind energy device.

The credit is 3 percent of the cost of acquisition and installation of a wind energy device on property owned or leased in North Dakota, which is allowed in each of 5 tax years for a total credit of 15 percent.

Based on limited information indicating there may be sales of residential-size wind turbines, particularly in rural settings, during the next biennium, this change in the law will likely result in a decrease in state general fund revenues for the 2011-13 biennium. Typically these devices for home and farm use will cost \$50,000 or more, resulting in a tax credit under these provisions of \$7500 for each home/farm installation. Estimating the likely overall decrease is not possible because the extent of those sales are unknown.

In addition, information on potential commercial installations by passthrough entities and the extent any tax credits might be passed through to individual owners also is unknown.

Sections 11 and 12 of the bill were added by the Senate amendments. These sections amend the income tax law governing the individual income tax refund offset program, under which an individual's refund may be taken and

applied to debts owed by the individual to specified state agencies. Section 11 of the bill adds the Internal Revenue Service to the list of claimant agencies specified in the law. Section 12 of the bill provides that all state agency claims have priority over any claims submitted by the Internal Revenue Service. Although the figures will vary, recent figures provided by the Internal Revenue Service show approximately 3,200 federal tax claims. The changes made by sections 11 and 12 of the bill have no fiscal impact.

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

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

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

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, 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:	03/25/2011

FISCAL NOTE

Requested by Legislative Council
12/23/2010

Bill/Resolution No.: HB 1124

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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 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.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 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 1124 is a compilation of technical changes requested by the Office of State Tax Commissioner to clarify, correct, and clean up certain provisions, and to remove a number of obsolete provisions contained in the income and financial institution tax statutes.

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.*

None of the changes contained in the bill are substantive in nature and therefore have no fiscal impact.

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

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

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

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, 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:	01/08/2011

Date: 1-12-11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1124

House Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Grande Seconded By Owens

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	✓		Scot Kelsh	✓	
Vice Chair. Craig Headland	✓		Shirley Meyer	✓	
Glen Froseth	✓		Lonny B. Winrich	✓	
Bette Grande	✓		Steven L. Zaiser	✓	
Patrick Hatlestad	✓				
Mark S. Owens	✓				
Roscoe Streyle	✓				
Wayne Trottier	✓				
Dave Weiler		✓			
Dwight Wrangham	✓				

Total (Yes) 13 No 1

Absent ∅

Floor Assignment Rep. Winrich

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

REPORT OF STANDING COMMITTEE

HB 1124: Finance and Taxation Committee (Rep. Belter, Chairman) recommends DO PASS (13 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). HB 1124 was placed on the Eleventh order on the calendar.

2011 SENATE FINANCE AND TAXATION

HB 1124

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee
Lewis and Clark Room, State Capitol

HB 1124

3/9/2011

Job Number 15197

Conference Committee

A. R. Miller

Explanation or reason for introduction of bill/resolution:

Relating to the tuition scholarship tax credit for financial institution tax purposes, the tax credit for planned gifts and qualified endowments, the marriage penalty tax credit, the employer tax credit for mobilized employees, the long term care partnership plan insurance coverage tax credit.

Minutes:

Written Testimony Attached

Chairman Cook opened the hearing on HB 1124.

Mary Loftsgard, Tax Department – Read sections 1 and 2 of attachment A.

Chairman Cook – All corporations that have a presence in North Dakota and a presence in another state are filing their income tax in a combined reporting correct?

Mary Loftsgard, Tax Department – Not necessarily.

Chairman Cook – Can you give me an example of one that is not?

Mary Loftsgard, Tax Department – I can tell you that some entities that are part of large affiliated groups chose to file here on a separate entity basis. They are still going to apportion their income between North Dakota and whatever states they are in, but it's always something that we take a look at. If they are part of a large affiliated group, our question then becomes, should they be filing on a combined report basis and that becomes an audit question then.

Chairman Cook – Have you noticed any trends over the years as far as the amount of corporate income tax paid to the state of North Dakota that comes from corporations solely in the state of North Dakota vs. corporate income tax that comes from multi-state corporations? Is it safe for me to assume that the amount of corporate tax that's coming from multi-state corporations is growing proportionately?

Mary Loftsgard, Tax Department – I would say yes. It does constitute the majority of the tax we receive from corporations.

Nathan Bergman, Tax Department – Read sections 3 through 12 of attachment A.

Chairman Cook asked for testimony opposed to HB 1124. No one came forward.

Chairman Cook asked for neutral testimony for HB 1124. No one came forward.

Chairman Cook – Committee I have an email that was sent to Angie to be handed out from John Hanson. I think the intent of the email is that he is concerned about a tax credit or deduction that use to be on the long form that was lost as was many others when the long form was eliminated and asked that it be put on this bill. (Attachment B)

Senator Triplett – One of the Representatives who worked on this bill on the House side did bring me some pre-drafted amendments and asked if I would move them related to this point.

Chairman Cook closed the hearing on HB 1124.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee
Lewis and Clark Room, State Capitol

HB 1124
3/15/2011
Job Number 15465

Conference Committee

A. Rittmiller

Explanation or reason for introduction of bill/resolution:

Relating to the tuition scholarship tax credit for financial institution tax purposes, the tax credit for planned gifts and qualified endowments, the marriage penalty tax credit, the employer tax credit for mobilized employees, the long term care partnership plan insurance coverage tax credit.

Minutes:

Committee Work

Chairman Cook opened discussion on HB 1124.

Senator Triplett – This is the one that I had a request from a colleague to put in an amendment. This would add wind along with geothermal on to the short form.

Chairman Cook – Myles can we get a fiscal note reflecting the amendment?

Myles Vosberg, Tax Department – Yes.

Chairman Cook – With that we will close discussion in HB 1124.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee
Lewis and Clark Room, State Capitol

HB 1124
3/21/2011
Job Number 15758

Conference Committee

A. Ritter

Explanation or reason for introduction of bill/resolution:

Relating to the tuition scholarship tax credit for financial institution tax purposes, the tax credit for planned gifts and qualified endowments, the marriage penalty tax credit, the employer tax credit for mobilized employees, the long term care partnership plan insurance coverage tax credit.

Minutes:

Committee Work

Chairman Cook opened discussion on HB 1124.

Joe Becker, Tax Department – The proposed amendments to the bill is going to expand the income tax credit for energy devices for individuals. Right now individuals can only claim the geothermal device. The amendments would open that up and add the wind energy device to that. The request was for fiscal impact; we are unable to determine that. There are just too many variables. We do have indications from industry folks that there are sales of small residential wind turbines taking place so there is the likelihood of a state general fund revenue decrease we just don't know how much. (Attachment C)

Donnita Wald, Tax Department – We ask that you attached this amendment to our housekeeping bill. We have currently with the IRS a tax payer offset program where this state of North Dakota will offset federal income tax refunds to pay state debt; this is the opposite of that. This is where the IRS will come in and offset their debt with state income tax refunds. It doesn't change the priority of the other agencies that are already currently offsetting refunds.

Chairman Cook closed discussion on HB 1124.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee
Lewis and Clark Room, State Capitol

HB 1124
3/22/2011
Job Number 15820

Conference Committee

A. R. Miller

Explanation or reason for introduction of bill/resolution:

Relating to the tuition scholarship tax credit for financial institution tax purposes, the tax credit for planned gifts and qualified endowments, the marriage penalty tax credit, the employer tax credit for mobilized employees, the long term care partnership plan insurance coverage tax credit.

Minutes:

Committee Work

Chairman Cook opened discussion on HB 1124.

Chairman Cook – We have proposed amendments from the Tax Commissioner's Office, another technical amendment to a technical bill. Can we put these amendments on the bill?

Donnita Wald, Tax Department – The amendment provides a reciprocal kind of refund offset program between North Dakota and the IRS. Right now we are able to offset federal income tax refunds to pay North Dakota state tax debts. This will allow the IRS to come in and grab state income tax refunds to offset federal income tax debt. We are passing money back and forth.

Chairman Cook – Why would we want to do that?

Donnita Wald, Tax Department – Because of the tax offset program that we currently have with the IRS. They are offsetting their refunds so that we can get some unpaid taxes taken care of and so it is just for that purpose.

Senator Triplett – I will move the amendments requested by the Office of State Tax Commissioner dated March 21, 2011.

Seconded by **Vice Chairman Miller**.

Chairman Cook – All in favor of the motion to amend the Tax Department amendments signify by saying yea, opposed? (7-0-0)

Senator Triplett – I would also move amendment 01.001 that adds the 'and wind or wind' language.

Seconded by **Vice Chairman Miller**.

Senator Oehlke – Is there a reason the effective date goes back to 2008?

Donnita Wald, Tax Department – What happened was last session we removed the long form and I think Senator Triplett introduced a bill that passed putting the geothermal credit only on the short form so that remained on the short form but when we got rid of the long form we got rid of the wind part for individuals too which it had before. Individuals were no longer able to take the wind.

Chairman Cook – On personal income tax on the short form?

Donnita Wald, Tax Department – Right.

Chairman Cook – You believe it was the intent that they should have been able to?

Donnita Wald, Tax Department – I think it was an oversight.

Chairman Cook – We have a motion to amend. All in favor say yea, opposed? (7-0-0)

Senator Triplett – I will move a Do Pass as twice amended.

Seconded by **Vice Chairman Miller**.

Carried by **Senator Triplett**.

Date: 3-22-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1124

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By: Senator Triplett Seconded By Senator Miller

Senators	Yes	No	Senators	Yes	No
Dwight Cook – Chairman			Jim Dotzenrod		
Joe Miller – Vice Chairman			Connie Triplett		
Randy Burckhard					
David Hogue					
Dave Oehlke					

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

Verbal note regarding the tax offset program

Date: 3-22-11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1124

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Triplett Seconded By Senator Miller

Senators	Yes	No	Senators	Yes	No
Dwight Cook - Chairman			Jim Dotzenrod		
Joe Miller - Vice Chairman			Connie Triplett		
Randy Burckhard					
David Hogue					
Dave Oehlke					

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

Verbal vote to add wind language

March 22, 2011

JB
3-23-11
lot 2

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1124

Page 1, line 1, after "57-38-01.8" insert "and a new subdivision to subsection 7 of section 57-38-30.3"

Page 1, line 2, after "geothermal" insert "and wind"

Page 1, line 5, replace "sections" with "section"

Page 1, line 6, replace the first "and" with ", subsection 1 of section 57-38.3-02, subsection 3 of section 57-38.3-04, section"

Page 1, line 11, after the second comma insert "setoff of income tax refunds by the internal revenue service,"

Page 2, line 19, after "geothermal" insert "or wind"

Page 2, line 22, after "geothermal" insert "or wind"

Page 10, after line 6, insert:

"SECTION 9. A new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Wind energy device installation credit under section 57-38-01.8."

Page 10, after line 19, insert:

"SECTION 11. AMENDMENT. Subsection 1 of section 57-38.3-02 of the North Dakota Century Code is amended and reenacted as follows:

1. "Claimant agency" means the department of human services, job service North Dakota, workforce safety and insurance, the insurance commissioner, the North Dakota guaranteed student loan program, the industrial commission acting as the state housing finance agency under chapter 54-17, a housing authority created under section 23-11-02, or the state court administrator on behalf of the state courts for purposes of court-ordered fines, fees, or costs due the state or the internal revenue service. On or before September first of each year, the state housing finance agency shall conduct an election by mail among housing authorities of the state and certify to the tax commissioner which housing authority received the greatest number of votes and is capable of compliance with the duties of a claimant agency under section 57-38.3-05. During the ensuing calendar year, the housing authority certified as selected under this subsection shall act as the claimant agency for all housing authorities for the purposes of submitting debtor information to the tax commissioner for fund transfers and for providing notice to the debtor as required by section 57-38.3-05.

SECTION 12. AMENDMENT. Subsection 3 of section 57-38.3-04 of the North Dakota Century Code is amended and reenacted as follows:

2 of 2

3. A claim made by any child support unit of the department of human services has priority in setting off any refund. Other claims by state claimant agencies rank by date of certification under section 57-38.3-05 in the office of the commissioner with the claim earlier certified having priority. Claims made by the internal revenue service may be offset up to the amount of refund owing after other state priority offsets."

Page 13, line 6, replace "This Act is" with "Sections 1 through 9 and sections 12 and 13 of this Act are"

Renumber accordingly

Date: 3-22-11
Roll Call Vote # 3

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1124

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Triplett Seconded By Senator Miller

Senators	Yes	No	Senators	Yes	No
Dwight Cook - Chairman	X		Jim Dotzenrod	X	
Joe Miller - Vice Chairman	X		Connie Triplett	X	
Randy Burckhard	X				
David Hogue	X				
Dave Oehlke	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Miller

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

REPORT OF STANDING COMMITTEE

HB 1124: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1124 was placed on the Sixth order on the calendar.

Page 1, line 1, after "57-38-01.8" insert "and a new subdivision to subsection 7 of section 57-38-30.3"

Page 1, line 2, after "geothermal" insert "and wind"

Page 1, line 5, replace "sections" with "section"

Page 1, line 6, replace the first "and" with ", subsection 1 of section 57-38.3-02, subsection 3 of section 57-38.3-04, section"

Page 1, line 11, after the second comma insert "setoff of income tax refunds by the internal revenue service,"

Page 2, line 19, after "geothermal" insert "or wind"

Page 2, line 22, after "geothermal" insert "or wind"

Page 10, after line 6, insert:

"SECTION 9. A new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Wind energy device installation credit under section 57-38-01.8."

Page 10, after line 19, insert:

"SECTION 11. AMENDMENT. Subsection 1 of section 57-38.3-02 of the North Dakota Century Code is amended and reenacted as follows:

1. "Claimant agency" means the department of human services, job service North Dakota, workforce safety and insurance, the insurance commissioner, the North Dakota guaranteed student loan program, the industrial commission acting as the state housing finance agency under chapter 54-17, a housing authority created under section 23-11-02, or the state court administrator on behalf of the state courts for purposes of court-ordered fines, fees, or costs due the state or the internal revenue service. On or before September first of each year, the state housing finance agency shall conduct an election by mail among housing authorities of the state and certify to the tax commissioner which housing authority received the greatest number of votes and is capable of compliance with the duties of a claimant agency under section 57-38.3-05. During the ensuing calendar year, the housing authority certified as selected under this subsection shall act as the claimant agency for all housing authorities for the purposes of submitting debtor information to the tax commissioner for fund transfers and for providing notice to the debtor as required by section 57-38.3-05.

SECTION 12. AMENDMENT. Subsection 3 of section 57-38.3-04 of the North Dakota Century Code is amended and reenacted as follows:

3. A claim made by any child support unit of the department of human services has priority in setting off any refund. Other claims by state claimant agencies rank by date of certification under section 57-38.3-05 in the office of the commissioner with the claim earlier certified having

priority. Claims made by the internal revenue service may be offset up to the amount of refund owing after other state priority offsets.

Page 13, line 6, replace "This Act is" with "Sections 1 through 9 and sections 12 and 13 of this Act are"

Renumber accordingly

2011 HOUSE FINANCE AND TAXATION

CONFERENCE COMMITTEE

HB 1124

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1124
April 6, 2011
16382

Conference Committee

Committee Clerk Signature

Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill relating to the individual income tax credit for installation of geothermal energy devices; relating to the tuition scholarship tax credit for financial institution tax purposes, the tax credit for planned gifts and qualified endowments, the marriage penalty tax credit, the employer tax credit for mobilized employees, the long-term capital gain income tax exclusion, return filing requirements for individuals, withholding on lottery winnings, and the use of the domestic disclosure spreadsheet for the water's edge method election for reporting income; and to provide and effective date.

Minutes:

See attached proposed amendments.

Chairman Weiler: This bill started on the House floor as a tax credit for geothermal device and also it was used as a cleanup bill for the Tax Commissioner. As we look at it as it came over from the Senate there were two changes that were made. Could someone explain the two amendments that were made on this?

Senator Oehlke: I believe the two changes you are talking about is adding wind to the credit as well as geothermal and then in a couple places the Internal Revenue Service was added as a claimant on tax credits relative to credits from either geothermal or wind energy.

Senator Triplett: Maybe we could have Donnita Wald can come up and explain the IRS correction. My understanding was that it is wholly and completely separate from the wind energy piece.

Donnita Wald, General Counsel for Office of State Tax Commissioner: The Internal Revenue Service amendment we put on allows us to offset North Dakota income tax refunds to pay Internal Revenue Service debt. The IRS will send us a list and then if there is a match in our system we will give them the refund. It does not change the priority of other state debts so those refunds will first be used to pay state debts then child support and then the other agencies that are listed on page 10 and 11 to include Workforce Safety, Job Service, Human Services, Industrial Commission, Insurance Commissioner, and the Courts who can offset to pay for debts.

Chairman Weiler: Could you explain to the committee who is first in line if someone was awarded a tax credit? Is the tax credit we're talking about only for geothermal and wind or is it any type of tax credit that a taxpayer of North Dakota is to receive?

Donnita Wald, General Counsel for Office of State Tax Commissioner: There are two things that the Senate did; one is they added the wind devices to the geothermal wind solar energy tax credit and they did the refund offset. When you file your income tax return you are entitled to a refund of your North Dakota income taxes. If you owe child support, Job Service, Workforce Safety, etc, you won't get your refund but we will grab it and send that money off to Job Service. It has nothing to do with the wind energy tax credit.

Chairman Weiler: The two have nothing to do with one another. If you have a refund from the State of North Dakota who gets the first crack at that money if you owe...if you're entitled to a refund of \$3,000 or whatever it is and you owe the IRS \$1,000 and you owe Child Support Disbursement Unit \$500 obviously both are going to get it but who gets the first crack at that if the numbers don't work out? Is the IRS on top?

Donnita Wald, General Counsel for Office of State Tax Commissioner: The IRS is on the bottom after every other state claimant agency.

Chairman Weiler: Currently under North Dakota law if someone is supposed to get a tax refund and they owe money to some state agency does the state keep it? That's not part of this bill is it?

Donnita Wald, General Counsel for Office of State Tax Commissioner: Current law allows the state to keep that refund if they are on that list.

Chairman Weiler: So all that's been added is the IRS?

Donnita Wald, General Counsel for Office of State Tax Commissioner: That is correct. The reason we are asking for this amendment is that we are currently trying to work with a project with the IRS to offset these refunds. In order to get this project going we thought we needed statutory authority to do so and that's why we're asking that be put in. If the committee does concur in that particular amendment we would respectfully ask that you put an emergency clause in that section. The reason is because there have been more discussions and we want to get this project up and running and start working on it technology wise and otherwise as soon as we can. We have an amendment drafted and I would like you to consider that.

Chairman Weiler: It's better to be prepared than not to be prepared. On the effective date in sections 12 and 13 is that a mistake, shouldn't that be sections 11 and 12 because sections 11 and 12 are what were added in?

Donnita Wald, General Counsel for Office of State Tax Commissioner: That is a mistake. It should be sections 1-9 are effective for taxable years beginning after 12-31-2010 and section 13 and 14 are effected so section 12 and 13 need to be changed. I think our amendment does that. In addition to the emergency clause we've made that fix.

Representative Roscoe Streye: Essentially the state is acting as a collection agency for the federal government?

Donnita Wald, General Counsel for Office of State Tax Commissioner: That is correct. I want to also let you know that the IRS is doing the same for us, we call that a Treasury Offset Program whereas we are able to offset federal income tax refunds to pay state tax debt.

Senator Triplett: Just to clarify the effective date, the reason it was wrong is that in the amendments we failed to make the correction. The effective date was correct when it was first drafted but then after we amended it we just missed that. Thank you for catching that.

Donnita Wald, General Counsel for Office of State Tax Commissioner: You are correct.

Chairman Weiler: I guess we have all the changes that were made. Senators, can you explain briefly what the wind energy devices are?

Senator Triplett: Those are intended for on farm or on site wind energy. They were previously available as tax credits when we had the long form and then when we got rid of the long form we moved some things around last time. I think it was just an oversight. I and some other people made sure the geothermal part got slid over to the short form and then we just kind of lost track of the wind energy. It used to be available as a credit and then no longer is throughout the transition from the long form to the short form.

Chairman Weiler: I have a question on the wind energy devices. When the wind energy devices were available as a tax credit on the long form do you have any data on whether or not that was something that was used or not?

Mary Loftsgard, Associate Director for the Office of Tax Commissioner: I do but I don't have it with me. It should be in the information that the committee was given earlier as to the usage of tax credits. If you need it we will run it down right away.

Chairman Weiler: I will weigh in and then anybody else can weigh in on their feelings on this. I've never been a real big fan of tax credits because when we give someone a tax credit we are shifting the tax burden to everyone else that is not getting a tax credit. When we grant a group of people a tax credit it makes it more difficult for us to do the right thing and that is to give everybody a tax break in the form of a personal income tax reduction which I believe is the fair way to do it. I'm not in favor of adding wind. I don't believe that I was in favor of the geothermal and not because I didn't think they're a good thing to do. I think that anybody that puts in a geothermal system or anybody that puts up a wind tower on their farm they are doing that because they are seeing the benefits of doing that. The long term cost to them they are benefiting from that and I think they should but for the rest of the taxpayers of North Dakota have to pick up the pieces of that. We could go through the tax code and I'm sure there are many different tax credits that are given so with respect to that I am not in support of adding the wind. I probably have more of a problem with the state of North Dakota to be doing the job of the IRS.

Representative Roscoe Streye: I would echo most of that. I am not a proponent of wind. If it's economically feasible for a farmer to put up a wind tower he shouldn't have to be subsidized to do that. It's pretty much proven that these things will never pay back. The only reason to make them feasible even with this credit is to subsidize them but that's just not my view of capitalism, free market, I guess, so I would oppose that also.

Senator Triplett: I think our legislature gives a variety of tax credits to different people and organizations and in each case I would hope that we would analyze it for the benefit that it provides to the state as a whole. I think that the clear reason to provide an incentive to individuals and public institutions and businesses to use renewable forms of fuel is to take some of the pressure off the production of fossil fuels which I think we are at a place where the expense of producing new electric generation is really a serious consideration. We have an unsteady or nonexistent federal policy regarding energy which leaves our major industries, the coal industry in particular, in some state of confusion about whether they should be investing in further plant expansions and such. I think that giving people a little bit of an incentive for these things like geothermal that is already in the law and wind energy which has serious upfront costs to encourage them to get into it makes sense from a policy standpoint. I think that your people obviously make their own choices based on their idea of the long term payback and you could say in a perfect world if it's going to pay back in five to seven years then people would willingly do it. We see the situation even in our public buildings where our public institutions have not done as much as I think they could have or should have with using geothermal energy and that sort of thing. There are all kinds of reasons that people make decisions and for us in state government we tend to make decisions on two year budget cycles instead of having a longer term vision which might encourage geothermal. I think a lot of individual people are like that too when they are putting up a new house they see the initial upfront costs and maybe they are intimidated by the cost but over the long run it would make economic sense. So giving a little bit of assistance upfront is a way of encouraging that kind of investment. If you don't want to encourage that kind of investment then of course you are entitled to your vote but for those of us who want to see our world move more toward clean energy I think it is a good thing to do. In terms of the other piece regarding the IRS the fact that we have put the IRS at the bottom of the list, I don't think there is very much risk or very much of our citizens' money going to the IRS for payment of back taxes but if we expect the IRS to be a collection agency for us on federal taxes I think this would be incumbent on us entering into agreement. I suspect it's one or the other, either we can't expect it of them or they won't do it for us. I think it's a good thing to have a reciprocal agreement and since they are at the bottom of the list our state agencies are protected.

Chairman Weiler: That raises a question, the reciprocal credit where the IRS is collecting for the state, is that something we've asked of them or is it just something they do? They are asking us to collect for them but did we ever ask them to collect for us or how did that come about?

Donnita Wald, General Counsel for Office of State Tax Commissioner: That came about two sessions ago. The IRS was given authority to enter into agreements with the states to give us IRS refunds. At that time we did get statutory authority from the legislature to do so and participate in that program. We felt we shouldn't be doing that unless you authorized us to do that.

Representative Steven L. Zaiser: I am going to echo Senator Triplett's words. I feel that there is a state benefit although very small and for that reason I support the tax credit. I realize and I think every tax credit should be analyzed on its own merit but I think the fact that it will take pressure off our fossil fuel industry I am in support of renewable forms of energy development. I support adding wind to the geothermal. I agree as well we have a reciprocal agreement with the feds as it's not a one way street it's a two way street.

Chairman Weiler: I am certainly not opposed to wind energy or geothermal devices but I just don't believe the taxpayers of North Dakota should subsidize that type of energy.

Senator Oehlke: Perhaps we can agree on the IRS and the Tax Department side of things. When the bill came over to us it came over with geothermal on it and all we did was add wind. You personally may not like the tax credits but you're committee sent it over that way and your House sent it over that way so I'm a little confused about your position in a way. Are you representing you or are you representing your House and your committee? I know it's hard to differentiate that sometimes because you take it seriously and so do I.

Representative Roscoe Streyle: I don't dislike these I just feel subsidizing is not right in any way. Our objection is with the wind. I don't think we passed it like you said out of geothermal. It will potentially benefit the state but we don't have an energy shortage or crunch of any kind in this state; we export a large portion of the power we have. We're generating enough power right now; we are not like California or the east coast where they have energy shortages so I would disagree with that argument.

Chairman Weiler: We will adjourn for the day and we'll have to set up another time.

Senator Triplett: Before we adjourn for the day would it be possible to ask for the amendments that Ms. Wald proposes so we can review them before the next meeting?

Chairman Weiler: Yes, that would be very appropriate.

Donnita Wald, General Counsel for Office of State Tax Commissioner: Distributed the proposed amendments. Please refer to the attached amendments.

Chairman Weiler: Closed conference committee hearing on HB 1124.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1124
April 11, 2011
#16468

Conference Committee

Committee Clerk Signature

Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill relating to the individual income tax credit for installation of geothermal energy devices; relating to the tuition scholarship tax credit for financial institution tax purposes, the tax credit for planned gifts and qualified endowments, the marriage penalty tax credit, the employer tax credit for mobilized employees, the long-term capital gain income tax exclusion, return filing requirements for individuals, withholding on lottery winnings, and the use of the domestic disclosure spreadsheet for the water's edge method election for reporting income; and to provide and effective date.

Minutes:

No attachments.

Chairman Weiler: We've had four or five days to look over this. I visited with the tax department last week and if it would be okay with the rest of the committee I would like to have Dee Wald come forward and explain the situation with the IRS as we discussed it last Thursday. Would you be willing to do that?

Donnita Wald, General Counsel for Office of State Tax Commissioner: Could you pose the question you asked me last week?

Chairman Weiler: We talked about the situation where a North Dakota taxpayer is getting a refund and under that situation if they owe the IRS money then the purpose of this particular amendment dealing with the IRS is that we are going to collect the money for the IRS.

Donnita Wald, General Counsel for Office of State Tax Commissioner: That's correct. If the amount owing the IRS is substantial and would result in them getting a full refund we will give them the full refund. If it's partial then we will give the IRS part of the money owed and send a check to the taxpayer for the rest of the money owed. It's just dealing with the refund. Currently, we are involved in the Treasury Offset Program with the IRS where the legislature gave us statutory authority in 2005 so if somebody owes the state money, North Dakota sales tax and if the IRS owes you a federal refund we can take that federal refund and use it to pay the state tax debt. We are asking is to balance out the playing field; they are doing something for us right now and we would like to do something for them. The IRS is last in line; we have state taxes, child support, and then a first come first serve between the other state agencies on the list. Within the agreement we will enter into with the IRS

and that we have entered into with the other states there is a process; letters go out to the taxpayer informing them that if they have an issue with this then they should call the IRS. Likewise when we offset a state refund, for example, to pay child support we send letters to the taxpayer and if they have an issue with the offset they are to contact the child support office. There are processes and procedures in place already and we plan on following those. It's been working well for a long time and we anticipate that it will work well with the IRS. We would really like to get moving on this project.

Senator Triplett: I want to correct a misstatement that I made which probably added to the confusion last time. I get that the credit and the refunds are separate issues but I thought the tax offset that we had been getting from the IRS was being made dependant on us reciprocating but apparently they are two separate programs.

Chairman Weiler: HB 1124 came in as a tax credit for geothermal devices. Actually it's not really a tax credit for geothermal devices because the tax credit was already given in the 2009 session and this was a bill to simply move that tax credit into a different location in the tax code to make it easier for people to see exactly how they would qualify or whatever. The rest of the bill is a cleanup bill for the tax commissioner. The tax credit for the wind was added by the Senate as was the IRS language. After visiting with our chairman and discussing this at length it is the House's position that because this was a bill for cleanup language the tax credit for the wind should have been a separate bill. It should have had its own hearing and therefore, the House really does not want to add another tax credit on to the books for something that didn't even have a hearing.

Senator Triplett: I think that it was a germane place to add the wind credit because it's a renewable form of energy that's closely associated with geothermal and people's mind in the sense that it's an alternate energy source. I think as you can see from the numbers that have been provided by Ms. Loftsgard from the tax department from the last hearing it's not possible to separate them out but there really haven't been many of them claimed so we're talking about a minuscule amount of dollars. Because the credit was there in the past but was only on the long form and didn't get switched over it seems to me that this is equally arguable as clean up language because we are still in the process of getting rid of the information about the North Dakota long form as we've transitioned into the short form. I think adding wind back in is just as much cleanup language as getting the geothermal one added in the right place. I would resist the notion to remove it. I think it's a tiny little credit but it makes a statement that if people want to make use of it then it would be available for them.

Representative Steven L. Zaiser: I recognize that we didn't have a separate hearing on the wind energy portion but I do concur with Senator Triplett's view that it is equally a cleanup. On the other hand in terms of having separate hearings I think that those of us at least on this side of the table are cognizant of the fact that we've had some significant amendments. I know I pushed for an amendment on a bill that didn't have a hearing but probably should have had a hearing. So I would hope that the end would not be a hindrance to adding that component to this bill as essentially part of the cleanup language. I will be the person from the House that takes a minority position.

Senator Triplett: We didn't have any hearing about not having wind energy as a credit two or four years ago when we made the transition from the long form to the short form. We were talking then about getting rid of the long form and so the wind energy was available as a credit. We didn't have a hearing about removing it so it was an inadvertent removal by that transition and procedural thing and nobody came and asked us to remove it. I really think this is very arguable that this is more in the nature of technical cleanup and making sure that what was previously available continues to be available. I think its okay to leave in as it's a pretty minor number.

Senator Oehlke: We may have to visit with our tax committee to see our wishes on the wind side of it. On the rest of the issues it sounds like we're pretty agreeable as far as the tax department's amendments and the geothermal credit.

Chairman Weiler: There are only two changes being made on the bill and that's the wind energy being added and the IRS language. There is also the change of the effective dates which would be included in the IRS language. I'm not sure that we need to dig our heels in on this issue. If you would like to visit with the tax committee we could certainly set up another meeting to get their wishes. It is the House's wish that you would recede from your amendments on both the IRS and the wind. If you come back and wish not to recede from those then it is the House's position that we would accede to your amendments and we will bring it to the House floor for a vote.

Senator Oehlke: If we receded from our amendments then everything would come off. It would just go back to the geothermal. Is that what you're saying?

Chairman Weiler: Yes. If you recede from your amendments which is the wind energy and the IRS language then it would go back to its original bill form where its adding the geothermal language to another section and then all the other cleanup language that the tax department has in there.

Senator Oehlke: If we recede then we take off that cleanup language.

Chairman Weiler: No. Your only amendments are adding the wind energy tax credit and adding the IRS language. If you recede from your amendments then you take those two off. If you chose to not recede from your amendments then we will accede to the Senate amendments and we will bring the bill to the House floor in the exact form that you passed it out in the Senate. I don't know that's its necessarily trying to kill it. I'm just really concerned about the ability to pass that with both the wind and the IRS language in there. There are a few members of the tax committee that are not on this particular committee who are not pleased about the wind energy being in there. If you would like time with the rest of your committee members we will set up another meeting and hopefully we could then take care of it with just one more meeting.

Senator Triplett: Let's do that.

Chairman Weiler: Closed conference committee on HB 1124.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1124
April 13, 2011
Job # 16550

Conference Committee

Committee Clerk Signature *Jeanette Cook*

Explanation or reason for introduction of bill/resolution:

A Bill relating to the individual income tax credit for installation of geothermal energy devices; relating to the tuition scholarship tax credit for financial institution tax purposes, the tax credit for planned gifts and qualified endowments, the marriage penalty tax credit, the employer tax credit for mobilized employees, the long-term care partnership plan insurance coverage tax credit, the qualified dividend and long-term capital gain income tax exclusion, return filing requirements for individuals, withholding on lottery winnings, and the use of the domestic disclosure spreadsheet for the water's edge method election for reporting income; and to provide an effective date.

Minutes:

No attachments.

Chairman Weiler opened the Conference Committee on HB 1124.

Chairman Weiler: I met with the tax department. I found out some more information on this IRS Off-set program, which is one of the two bits of amendments on this. This bill already was defeated in the House. It was a Tax Department bill that was heard in the first half of the session. It went to Judiciary, and apparently the Tax Commissioner came in and asked that the bill be defeated. After that the Chairman of Judiciary told me that when you have eighty some bills, and the Tax Commissioner asks that the bill be defeated, you don't ask questions. The hearing was minimal. Through some more discussion between the Tax Commissioner and the IRS, they have come back and asked for this to be put in over on the Senate side. The problem that I have with this IRS is... Let me give you an example of an individual that owes \$3000 to the IRS. They have a North Dakota state tax refund coming to them of \$2,500. If we pass this law, the IRS is going to get that money; they will not get their refund. Chances are, if that person owes the IRS \$3000, they probably have other debts as well. Maybe they are counting on that refund to pay off some other debts. I think if a person has a state refund coming, they should be allowed to get the refund and disperse the money however they choose. By passing this bill we are collecting money for the IRS. I don't like this bill. I would like comments from other committee members on this and the amendments.

Senator Triplett: Your description on the other bill was interesting to me, but what I missed in your explanation is **why**? What was going on in the Tax Commissioner's office relative to this IRS that caused them to ask for it, withdraw it, and later reinstate it?

Chairman Weiler: They explained it yesterday.

Donnita Wald, General Counsel for Office of State Tax Commissioner: At that time we were still in negotiations with them about how the whole process would all work. How the money would be transferred from the Bank of North Dakota ACH. It was just some of those things that we had to get okayed. We finally got the okay on some of those issues. There were technical issues. There were language issues with the MOU, so those were the types of things when the bill was introduced that I don't think we had pounded out. So, it was pulled. We were jumping the gun at that point, because we had not agreed with IRS.

Senator Oehlke: Relative to the IRS thing, in the absence of the ability to do this, there is something about garnishments. How does that work?

Donnita Wald, General Counsel for Office of State Tax Commissioner: If we don't agree or have the authority to electronically off-set, which is what the program is going to do, the IRS is going to serve paper levies on the state, or paper garnishments, which is the term that we are more familiar with. The end result, using the example that Representative Weiler used, would be the same.

Representative Steven L. Zaiser: In regard to the IRS reciprocal arrangement, I thought when you talked before; you spoke of the order of sequence in where people would get the money. I thought that you indicated at that time that the IRS would be last.

Donnita Wald, General Counsel for Office of State Tax Commissioner: Under the off-set program in the bill, they would be last. How that would work where we get a paper garnishment and a levy: we are of the opinion that they would again be last because our refund Off-set Program, which is really a garnishment program, was enacted to avoid having child support send us paper every time they wanted to garnish. Whether the IRS agrees with that, we don't know. They like to think they are "up here" in a lot of different ways.

Representative Steven L. Zaiser: Based on what you're saying, you still haven't worked out the arrangement?

Donnita Wald, General Counsel for Office of State Tax Commissioner: The things we were trying to work out were really other issues. It was about transferring money because of the way the refund Off-set Program goes and about the Bank of North Dakota and the ACH transfers. If we go to court on that, it is an issue, but in our mind it is resolved. This statute would, I believe, support our position and back us up to give us that authority.

Representative Steven L. Zaiser: I know that is a point of concern where the IRS fell into the order. To me, that is not really resolved, until we have that resolved. I would like to see that.

Donnita Wald, General Counsel for Office of State Tax Commissioner: That's only when there are paper levies, and this is **not** passed. That is where the problem is created. It won't be a problem if we **pass** this. This makes sure that they are last.

Chairman Weiler: This would only apply to those that are getting a state refund, correct?

Donnita Wald, General Counsel for Office of State Tax Commissioner: That is correct. It is only for those receiving a refund and for those who owe the IRS debt. We have been told that right now there are probably about 1,000 people in that position. It is not a lot to us electronically, but if we start getting paper, it will be a problem. Out of the 1,000 probably about 1/3 would get a refund.

Chairman Weiler: If we don't put this into law, how soon do you send my refund check back to me from when you get it in? It may be a month. How is the IRS going to jump in, and are they going to stop the refund payment from coming to me? How does it work?

Donnita Wald, General Counsel for Office of State Tax Commissioner: Are you talking about the paper levies, or if you pass the bill?

Chairman Weiler: If we do not pass this law, and you get the paper levies, and they say that you cannot give me my refund?

Donnita Wald, General Counsel for Office of State Tax Commissioner: That's correct. We cannot give you a refund up to the amount owed by the debt. If you owed the IRS \$5,000, and you would be getting a \$2,000 North Dakota refund, and we have been served with the levy by the IRS; we would have to give the IRS your refund money. They will serve those every two weeks.

Chairman Weiler: What happens if you say that the individual has a refund coming, and we are going to pay them? What happens to you?

Donnita Wald, General Counsel for Office of State Tax Commissioner: Once we have been served with the garnishment, I think we would be in big trouble from the IRS.

Chairman Weiler: What will the IRS do to the state of North Dakota?

Donnita Wald, General Counsel for Office of State Tax Commissioner: I don't know what they would do. I don't know to what extent they would try to impose penalties on North Dakota. We have been talking about some potential arguments that we had. I know that if the IRS served you a levy to pay someone else's debt, you would be subject to huge penalties and fines. In North Dakota, for example, our law too is very strict if you don't send **us** the money because we issue those all the time. For tax purposes, for example, if you work for MDU, and we issue a levy because you owe us money; if MDU doesn't pay us, we can get a judgment against MDU for the amount that **YOU** owe. There are many judicial ramifications for failing to comply with garnishment orders. We would not like to find ourselves in that position. We have many exchange agreements with the IRS. We get a lot of information from them. We are friends with them, and we want to get along.

Senator Oehlke: I think Dee probably answered the question. It sounds to me that the IRS will probably get their money one way or the other. If we don't pass this legislation, will you have to hire more people to handle garnishments? Is it that much extra work?

Donnita Wald, General Counsel for Office of State Tax Commissioner: Right now, a bill has been passed, that I wasn't aware of, that says that any garnishment levies or other legal proceedings must be served on the Office of Management and Budget or the Director's designee. There is a question then if OMB would be getting these and passing them on to us. We haven't resolved that at this point in time. It is a question. If we receive the paper levies, we talked about having to figure out where they are in line, going through our process, and then at the end of that, we would have to do a manual check of the names. It will be more work.

Senator Triplett: I know that this is a cooperative effort, and you are trying to do this in the most efficient way possible, and you have been presenting it from the perspective of the tax department. But, if we look at it from the perspective from the taxpayer of North Dakota, it seems to me that this bill really is a protection for North Dakota taxpayers in the sense that it does resolve the question that Rep. Zaiser asked you. It says, more clearly than anything else, that you guys have reached an agreement that while you will collect for them, they will agree to be last. Whereas, if you do it the old fashioned way with the paper garnishment; they are going to possibly claim to be first. It will cause extra turmoil and grief between you, but in the end you will both get whatever is there to get if debt is owed to both of you. This allows the process to be more efficient, to have fewer questions, to get it resolved quickly, and to get the state paid off first. If the taxpayer is not going to suffer any different consequences, it seems there is some benefit to the taxpayer as well, is that right?

Donnita Wald, General Counsel for Office of State Tax Commissioner: I do have that opinion that we are getting the IRS off your back and vice versa. I know there is a difference opinion, and there is more than one perspective.

Representative Steven L. Zaiser: How important would you say this legislation is to resolving this issue of the order for the benefit of the North Dakota taxpayer on a scale of 1-10?

Donnita Wald, General Counsel for Office of State Tax Commissioner: We think it's important to get statutory authority and to get some direction from you as to where this is. We are protecting the North Dakota taxpayers by putting the IRS last. We are protecting the state by making sure that other state debts are being paid first. This is not just protecting us from administrative issues. I'm sorry; I can't give you a number.

Representative Roscoe Streyle: I find it hard to believe that the tax department has never had a garnishment placed on an individual from the IRS.

Donnita Wald, General Counsel for Office of State Tax Commissioner: I have raised that question with the IRS. They have just started this program and been able to electronically pass forth and send us information. I do believe they needed to get Congressional okay to have this kind of program, too. They did with the taxpayer Off-set Program. Congress gave them specific authority to get money from us. That is why we came in.

Representative Roscoe Streyle: In the place I work we get these quite often on accounts, and a levy is against it. We simply write the check and send it. That is at state level and federal.

Donnita Wald, General Counsel for Office of State Tax Commissioner: That is a very wise thing to do.

Chairman Weiler: At this point I would like for us to come to an agreement.

Senator Oehlke: Distributed amendments and reviewed April 11, 2011 amendments. This amendment would do if we receded from our previous amendments and offer to re-amend, this would take wind out of the existing bill, and leave geothermal in and be able to put it on the short form. It would address the issue for the tax department.

Senator Oehlke made a motion for the Senate to recede from its amendments and re-amend as such.

Chairman Weiler: How does this amendment differ on the IRS stuff?

Senator Oehlke: It doesn't. It simply takes off everything that we sent to you in the first place, taking off the wind issue. Then adding back on this effort for ...

Senator Burckhard seconded the motion.

Representative Steven L. Zaiser: I know a businessman who is putting up these small windmills for farm and small rural subdivisions, but the tax credit has been a deterrent. I understand some folks on this committee's view that if it doesn't work in the private sector, it ought not happen. But, I think that it is to the state's advantage if we can anyway enhance or expand renewable energy, I think that there is a benefit. I do have some concerns about giving up the wind energy opportunity on a small scale. These things cost \$40 to \$50 thousand dollars. The impact on the state in terms of the credit would be pretty minor. I have concerns about this amendment, and I probably will oppose it. To me the fact that the wind got dropped off is a technical glitch in the first place.

A roll call vote was taken: Yes 5 No 1 Absent 0 (Roll call vote #1)

The motion failed.

Donnita Wald, General Counsel for Office of State Tax Commissioner: If the bill is going to go to the floor with this on it, we would prefer to take this IRS off-set program totally out of the bill. It leaves the wind in there. We just want to put it back to the administrative thing. We don't want the bill to die because of the treasury off-set.

Donnita Wald distributed amendments.

Chairman Weiler: This amendment takes the IRS stuff out, and it reinserts the wind device tax credit.

Senator Oehlke moved the amendment presented by Donnita Wald.

Senator Burchhard seconded the motion.

A roll call vote was taken on the proposed amendment. Yes 4 No 2 Absent (Roll call vote # 2)

The motion failed, since there were not two yes votes from each body.

Representative Streyle moved that the Senate recede from their amendment.
Senator Triplett seconded the motion.

Chairman Weiler: You are asking that the bill go back to its original form?

Representative Streyle: Yes.

A roll call vote was taken. Yes 5 No 1 Absent 0 (Roll call vote #3)

The motion passed.

The hearing on Conference Committee on HB 1124 was closed.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1124

In addition to the amendments adopted by the Senate as printed on pages 834 and 835 of the Senate Journal, House Bill No. 1124 is further amended as follows:

Page 1, line 15, remove "and" and after "date" insert "; and to declare an emergency"

Page 14, line 1, replace "12" with "13" and replace "13" with "14"

Page 14, line 2, after the period insert "Section 10 of this Act is effective for winnings received after June 30, 2011."

SECTION 16. EMERGENCY. This Act is declared to be an emergency."

Renumber accordingly

Aehlke

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1124

That the Senate recede from its amendments as printed on pages 1167 and 1168 of the House Journal and pages 834 and 835 of the Senate Journal and that House Bill No. 1124 be amended as follows:

Page 1, line 5, replace "sections" with "section"

Page 1, line 6, replace the first "and" with ", subsection 1 of section 57-38.3-02, subsection 3 of section 57-38.3-04, section"

Page 1, line 11, after the second comma insert "setoff of income tax refunds by the internal revenue service,"

Page 1, line 12, remove "and"

Page 1, line 13, after "date" insert "; and to declare an emergency"

Page 10, after line 19, insert:

"SECTION 10. AMENDMENT. Subsection 1 of section 57-38.3-02 of the North Dakota Century Code is amended and reenacted as follows:

1. "Claimant agency" means the department of human services, job service North Dakota, workforce safety and insurance, the insurance commissioner, the North Dakota guaranteed student loan program, the industrial commission acting as the state housing finance agency under chapter 54-17, a housing authority created under section 23-11-02, or the state court administrator on behalf of the state courts for purposes of court-ordered fines, fees, or costs due the state or the internal revenue service. On or before September first of each year, the state housing finance agency shall conduct an election by mail among housing authorities of the state and certify to the tax commissioner which housing authority received the greatest number of votes and is capable of compliance with the duties of a claimant agency under section 57-38.3-05. During the ensuing calendar year, the housing authority certified as selected under this subsection shall act as the claimant agency for all housing authorities for the purposes of submitting debtor information to the tax commissioner for fund transfers and for providing notice to the debtor as required by section 57-38.3-05.

SECTION 11. AMENDMENT. Subsection 3 of section 57-38.3-04 of the North Dakota Century Code is amended and reenacted as follows:

3. A claim made by any child support unit of the department of human services has priority in setting off any refund. Other claims by state claimant agencies rank by date of certification under section 57-38.3-05 in the office of the commissioner with the claim earlier certified having priority. Claims made by the internal revenue service may be offset up to the amount of refund owing after other state priority offsets.

Page 13, line 6, replace "This" with "Sections 1 through 8 and sections 12 and 13 of this" and replace "is" with "are"

Page 13, line 7, after the period insert "Section 9 of this act is effective for winnings received after June 30, 2011."

SECTION 15. EMERGENCY. This Act is declared to be an emergency."

Renumber accordingly

2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: House Finance + Tax

Bill/Resolution No. HB1124 as (re) engrossed

Date: 4-6-11, 4-11-11, 4-13-11

Roll Call Vote #: 1

- Action Taken**
- HOUSE accede to Senate amendments
 - HOUSE accede to Senate amendments and further amend
 - SENATE recede from Senate amendments
 - SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) _____

- Unable to agree; recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by: Senator Oehlke Seconded by: Senator Burchard

Chairman

Representatives	4-6	4-11	4-13	Yes	No		Senators	4-6	4-11	4-13	Yes	No
Rep. Dave Weiler	✓	✓	✓		✓		Senator Dave Oehlke	✓	✓	✓	✓	
Rep. Roscoe Streyke	✓	✓	✓		✓		Senator Randy Burchard	✓	✓	✓	✓	
Rep. Steven Zaiser	✓	✓	✓		✓		Senator Connie Triplett	✓	✓	✓	✓	

Chair

Vote Count Yes: 3 No: 3 Absent: 0

House Carrier _____ Senate Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

MOTION FAILS

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1124

That the Senate recede from its amendments as printed on pages 1167 and 1168 of the House Journal and pages 834 and 835 of the Senate Journal and that House Bill No. 1124 be amended as follows:

Page 1, line 1, after "57-38-01.8" insert "and a new subdivision to subsection 7 of section 57-38-30.3"

Page 1, line 2, after "geothermal" insert "and wind"

Page 2, line 19, after "geothermal" insert "or wind"

Page 2, line 22, after "geothermal" insert "or wind"

Page 10, after line 6 insert:

"SECTION 9. A new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Wind energy device installation credit under section 57-38-01.8."

Page 13, line 6, replace "This" with "Sections 1 through 9 and sections 11 and 12 of this" and replace "is" with "are"

Page 13, line 7, after the period insert "Section 10 of this act is effective for winnings received after June 30, 2011."

Re-number accordingly

2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: House Finance + Tax

Bill/Resolution No. HB 1124 as (re) engrossed

Date: 4-13-11

Roll Call Vote #: 2

Action Taken

- HOUSE accede to Senate amendments
- HOUSE accede to Senate amendments and further amend
- SENATE recede from Senate amendments
- SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) _____

- Unable to agree; recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by: Senator Oehlle Seconded by: Senator Buehlhard

Representatives				Senators			
		Yes	No			Yes	No
<u>Chairman Weiler</u>			✓	<u>Senator Oehlle</u>		✓	
<u>Rep. Streyle</u>			✓	<u>Senator Buehlhard</u>		✓	
<u>Rep. Zaiser</u>		✓		<u>Senator Triplett</u>		✓	

Vote Count Yes: 4 No: 2 Absent: 0

House Carrier _____ Senate Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

MOTION FAILS

2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: House Finance + Tax

Bill/Resolution No. HB 1124 as (re) engrossed

Date: 4-13-11

Roll Call Vote #: 3

- Action Taken**
- HOUSE accede to Senate amendments
 - HOUSE accede to Senate amendments and further amend
 - SENATE recede from Senate amendments
 - SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/~~SP~~ page(s) 1179

Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by: Rep. Streyle Seconded by: Senator Triplett

Representatives				Senators			
		Yes	No			Yes	No
<u>Chairman Weiler</u>		✓		<u>Senator Oehlle</u>		✓	
<u>Rep. Streyle</u>		✓		<u>Senator Burchard</u>		✓	
<u>Rep. Zaiser</u>			✓	<u>Senator Triplett</u>		✓	

Vote Count Yes: 5 No: 1 Absent: 0

~~House~~ Carrier _____ Senate Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

MOTION PASSES

REPORT OF CONFERENCE COMMITTEE

HB 1124: Your conference committee (Sens. Oehlke, Burckhard, Triplett and Reps. Weiler, Streyle, Zaiser) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ page 1179 and place HB 1124 on the Seventh order.

HB 1124 was placed on the Seventh order of business on the calendar.

2011 TESTIMONY

HB 1124

#1
P. 1

TESTIMONY OF THE OFFICE OF STATE TAX COMMISSIONER
BEFORE THE
HOUSE FINANCE AND TAXATION COMMITTEE

HOUSE BILL 1124

January 12, 2010

Chairman Belter, members of the House Finance and Taxation Committee, I am Mary Loftsgard, Associate Director of the Tax Administration Division, for the Office of State Tax Commissioner. I am here today on behalf of the Commissioner to testify in support of House Bill 1124.

REASONS FOR PROPOSED CHANGES

This bill was introduced by the Tax Commissioner to:

- make technical corrections in the financial institution tax statute,
- conform language, correct oversights and make technical corrections in the income tax statute, and
- eliminate a reporting requirement and obsolete language in the water's edge election method income tax statute.

The amendments are made to remedy oversights which occurred when statutes were previously adopted or amended, and to provide greater clarity to taxpayers as to how to comply with reporting requirements.

I will explain Sections 1, 2, 10 and 11 of the bill which deal with financial institutions and the water's edge method of filing for corporations. Nathan Bergman, Supervisor, Individual Income Tax and Withholding, will explain the remaining sections of the bill which deal with individual income tax.

EXPLANATION OF THE BILL

Section 1 - Adjustment to tax credit allowed to financial institutions. This section of the bill amends the portion of the statute that allows a credit for a contribution by a financial institution for tuition scholarships for participation in rural leadership North Dakota, a program conducted through the state university extension service.

As with other tax credits allowed to financial institutions, this credit is offset only against the 2/7th general fund portion of the tax and not against the 5/7th distribution fund portion (which is collected by the Tax Department and disbursed to the counties). Due to an oversight in drafting, the language that is overstruck on page 1 of the bill and in lines 1-2 on page 2 did not correctly accomplish this and, therefore we request its removal. The overstruck language was

#1 p. 2

1124

modeled on that in another section, N. D. C.C. § 57-35.3-05(1), allowing for credits for contributions to certain nonprofit institutions of learning. However, these credits have different parameters than the rural leadership credit and, thus, require a different computation.

Section 2 – Correction to offset tax credit allowed to financial institutions. This section is amended to clarify that the credit for contributions to the rural leadership scholarship program addressed in Section 1 are to be offset only against the general fund portion of the tax. The changes in the last sentence of the section are made simply for the purpose of brevity and clarity:

Section 3 - Clarification to the credit for installing a geothermal energy device. Prior to the 2009 tax year, an individual could claim a credit for installing such a device on form ND-2 (referred to as the “long form”). The credit could not be claimed on form ND-1 (the “short form”).

During the 2009 Legislative Session, House Bill 1277 was passed allowing an individual to claim a credit on the ND-1 for installing a geothermal energy device. Additionally, in the 2009 Legislative Session, House Bill 1324 repealed the “long form” method and the individual credits that were specific to that. The portion of the statute that dealt with the individual credit was removed, but language was not added to reflect House Bill 1277. The additional subsection proposed in Section 3 will not change the application of the credit, but will add clarity to the law.

Section 4 - Amendment to the tax credit for planned gifts and qualified endowments. The changes proposed seek to correct oversights in prior draftings. The language added on page 3, line 15 makes it clear that the paragraph applies to both qualified nonprofit organizations and endowments. The language changes on page 4, lines 15 and 16 are necessary to ensure the addback would occur in all years that applied. The changes will not change the application of the credit, but will add clarity to the law.

Section 5 – Amendment to the marriage penalty tax credit. The term “earned income” as it pertains to this section can easily be confused with the term “earned income” as it pertains to Federal income tax law. Replacing the term “earned income” with “qualifying income” provides greater clarity.

This section also removes Subsection 3 of the current statute relating to preparing a comprehensive table for the marriage penalty tax credit. The creation of a comprehensive table isn't feasible as our computations indicated there would be no practical end to the number of pages needed. Also, given that the table would use income ranges and midpoints, the resulting credit would not match the actual credit that would result from using the calculation formula outlined in Subsection 2. For these reasons, we ask that Subsection 3 be removed.

Section 6 – Amendment to the employer tax credit for mobilized employees. A reference to N.D.C.C. § 57-38-29 is being removed to reflect the repeal of the “long form” method in the 2009 Legislative Session.

Section 7 – Amendment to the long-term care partnership plan insurance coverage tax credit. Similar to the previous section, this section reflects the repeal of the reference to the “long form” method.

Section 8 – Amendment to the qualified dividend and long-term capital gain income tax exclusion. The amendment separates the qualified dividend and long-term capital gain exclusions to provide clarity. It will not change the application of the exclusions. Additionally, reference to the “long form” method is removed. The sentence that is being added will serve to provide additional clarity as to which filing status should be used.

Section 9 – Amendment to withholding on lottery winnings. During the 2009 Legislative Session, Senate Bill 2199 reduced the highest individual income tax rate from 5.54 percent to 4.86 percent. The withholding rate on lottery winnings identified in this section was not changed to reflect the rate reduction. Section 9 changes the withholding rate on lottery winnings to be consistent with the highest individual income tax rate.

Section 10 – Amendment to a requirement for corporations electing the water’s edge method of filing. For those corporations that elect to file tax returns using this method, this section of the bill removes the requirement to also file a “domestic disclosure spreadsheet” (DDS). As you can see in the overstruck language, a substantial amount of information is currently required to be provided in a DDS. By rule in N. D. Admin. Code § 81-03-05.2-05, taxpayers are required to file a DDS if the combined group of corporations:

- Has property, payroll and sales in foreign countries exceeding \$10 million dollars, and
- Has assets exceeding \$250 million dollars.

A domestic disclosure spreadsheet must be filed in the first year these conditions are met and every third year thereafter if the conditions continue to be met. In North Dakota, the majority of corporations electing the water’s edge filing method meet these conditions.

When the water’s edge method of filing was initially adopted most, if not all states, required a similar DDS to be filed. As taxpayers and state revenue departments became more knowledgeable about the method and filing compliance increased, many states discontinued the requirement for the DDS. North Dakota is one of the last to retain it. Tax managers and practitioners have requested the elimination of the DDS, indicating that it is very time consuming

and expensive to prepare for only one state. We will continue to be able to obtain the same information, if needed, through audit and thus, request the statutory reporting requirement be eliminated.

Section 11 – Amendment to remove obsolete language in the water’s edge statute.

Since this statute was first adopted in 1987, taxpayers electing the water’s edge method of filing were prohibited from claiming a state deduction for federal income taxes paid. In the 2003 Legislative Session, the federal tax deduction was repealed for all corporate taxpayers, effective for tax years beginning after December 31, 2003. Since the deduction is no longer available to any corporate taxpayer, the language is obsolete and can be eliminated.

In conjunction with Section 10, this section also eliminates the requirement to file the DDS.

Section 12 – Effective date. This section specifies that all sections are effective for taxable years beginning after December 31, 2010.

CONCLUSION

The Tax Commissioner respectfully requests that you give favorable consideration to House Bill 1124.

2 p. 6

1124

North Dakota Domestic Disclosure Spreadsheet

Instructions

Who Must File: A corporation electing to use the water's edge method must file a domestic disclosure spreadsheet if the affiliated corporations as a group have property, payroll or sales in foreign countries exceeding ten million dollars and assets everywhere exceeding two hundred fifty million dollars.

Time For Filing: The domestic disclosure spreadsheet must be filed by a corporation with its North Dakota income tax return in the initial year of the water's edge election and every third year thereafter while the election remains in effect.

Extension Of Time For Filing: If the information required to be reported on the domestic disclosure spreadsheet is not available when the return is filed, a corporation may file the domestic disclosure spreadsheet within six months after the due date of the return, including extensions. If the aforementioned time deadlines cannot be met, a corporation must submit a written request for an additional extension of time to the Office of State Tax Commissioner within six months after the due date of

the return, including extensions. The Office of State Tax Commissioner will notify the corporation if the request for additional time is granted; however, this additional extension of time may not exceed one hundred twenty days from six months after the due date of the return, including extensions.

Where To File Or Obtain Additional Forms And Instructions: The completed domestic disclosure spreadsheet, written requests for additional forms and instructions, and written requests for extensions of time should be addressed to the Office of State Tax Commissioner, 600 E. Boulevard Ave., Bismarck, ND 58505-0599.

Additional forms and instructions may also be obtained by calling 701-328-2046.

Failure To File: The water's edge election is not complete until the completed domestic disclosure spreadsheet is filed with the Office of State Tax Commissioner.

Additional Information Regarding The Water's Edge Method And The Domestic Disclosure Spreadsheet Is Contained In North Dakota Century Code ch. 57-38.4 and North Dakota Administrative Code ch. 81-03-05.2.

**TESTIMONY OF THE OFFICE OF STATE TAX COMMISSIONER
BEFORE THE
SENATE FINANCE AND TAXATION COMMITTEE**

HOUSE BILL 1124

March 9, 2011

Chairman Cook, members of the Senate Finance and Taxation Committee, I am Mary Loftsgard, Associate Director of the Tax Administration Division, for the Office of State Tax Commissioner. I am here today on behalf of the Commissioner to testify in support of House Bill 1124.

REASONS FOR PROPOSED CHANGES

This bill was introduced by the Tax Commissioner to:

- make technical corrections in the financial institution tax statute,
- conform language, correct oversights and make technical corrections in the income tax statute, and
- eliminate a reporting requirement and obsolete language in the water's edge election method income tax statute.

The amendments are made to remedy oversights which occurred when statutes were previously adopted or amended, and to provide greater clarity to taxpayers as to how to comply with reporting requirements.

I will explain Sections 1, 2, 10, and 11 of the bill which deal with financial institutions and the water's edge method of filing for corporations. Nathan Bergman, Supervisor, Individual Income Tax and Withholding, will explain the remaining sections of the bill which deal with individual income tax.

EXPLANATION OF THE BILL

Section 1 - Adjustment to tax credit allowed to financial institutions. This section of the bill amends the portion of the statute that allows a credit for a contribution by a financial institution for tuition scholarships for participation in rural leadership North Dakota, a program conducted through the state university extension service.

As with other tax credits allowed to financial institutions, this credit is offset only against the 2/7ths general fund portion of the tax and not against the 5/7ths distribution fund portion (which is collected by the Tax Department and disbursed to the counties). Due to an oversight in drafting, the language that is overstruck on page 1 of the bill and in lines 1-2 on page 2 did not correctly accomplish this and, therefore we request its removal. The overstruck language was modeled on that in another section, N. D. C.C. § 57-35.3-05(1), allowing for credits for contributions to certain nonprofit institutions of learning. However, these credits have different parameters than the rural leadership credit and, thus, require a different computation.

Section 2 – Correction to offset tax credit allowed to financial institutions. This section is amended to clarify that the credit for contributions to the rural leadership scholarship program addressed in Section 1 are to be offset only against the general fund portion of the tax. The changes in the last sentence of the section are made simply for the purpose of brevity and clarity.

Section 3 - Clarification to the credit for installing a geothermal energy device. Prior to the 2009 tax year, an individual could claim a credit for installing such a device on form ND-2 (referred to as the “long form”). The credit could not be claimed on form ND-1 (the “short form”).

During the 2009 Legislative Session, House Bill 1277 was passed allowing an individual to claim a credit on the ND-1 for installing a geothermal energy device. Additionally, in the 2009 Legislative Session, House Bill 1324 repealed the “long form” method and the individual credits that were specific to that. The portion of the statute that dealt with the individual credit was removed, but language was not added to reflect House Bill 1277. The additional subsection proposed in Section 3 will not change the application of the credit in any way, but will add clarity to the law for individual taxpayers. The language proposed mirrors language currently in North Dakota Century Code relating to credits for business entities that install geothermal energy devices.

Section 4 - Amendment to the tax credit for planned gifts and qualified endowments. The changes proposed seek to correct oversights in prior draftings. The language added on page 3, line 15 makes it clear that the paragraph applies to both qualified nonprofit organizations and endowments. The language changes on page 4, lines 15 and 16 are necessary to ensure the addback would occur in all years that applied. The changes will not change the application of the credit, but will add clarity to the law.

Section 5 – Amendment to the marriage penalty tax credit. The term “earned income” as it pertains to this section can easily be confused with the term “earned income” as it pertains to Federal income tax law. Replacing the term “earned income” with “qualifying income” provides greater clarity.

This section also removes Subsection 3 of the current statute relating to preparing a comprehensive table for the marriage penalty tax credit. The creation of a comprehensive table isn't feasible as our computations indicated there would be no practical end to the number of pages needed. Also, given that the table would use income ranges and midpoints, the resulting credit would not match the actual credit that would result from using the calculation formula outlined in Subsection 2. For these reasons, we ask that Subsection 3 be removed.

Section 6 – Amendment to the employer tax credit for mobilized employees. A reference to N.D.C.C. § 57-38-29 is being removed to reflect the repeal of the “long form” method in the 2009 Legislative Session.

Section 7 – Amendment to the long-term care partnership plan insurance coverage tax credit. Similar to the previous section, this section reflects the repeal of the reference to the “long form” method.

Section 8 – Amendment to the qualified dividend and long-term capital gain income tax exclusion. The amendment separates the qualified dividend and long-term capital gain exclusions to provide clarity. It will not change the application of the exclusions. Additionally, reference to the “long form” method is removed. The sentence that is being added will serve to provide additional clarity as to which filing status should be used.

Section 9 – Amendment to withholding on lottery winnings. During the 2009 Legislative Session, Senate Bill 2199 reduced the highest individual income tax rate from 5.54 percent to 4.86 percent. The withholding rate on lottery winnings identified in this section was not changed to reflect the rate reduction. Section 9 changes the withholding rate on lottery winnings to be consistent with the highest individual income tax rate.

Section 10 – Amendment to a requirement for corporations electing the water's edge method of filing. For those corporations that elect to file tax returns using this method, this section of the bill removes the requirement to also file a “domestic disclosure spreadsheet” (DDS). As you can see in the overstruck language, a substantial amount of information is currently required to be provided in a DDS.

By rule in N.D. Admin. Code § 81-03-05.2-05, taxpayers are required to file a DDS if the combined group of corporations:

- Has property, payroll and sales in foreign countries exceeding \$10 million dollars, and
- Has assets exceeding \$250 million dollars.

A domestic disclosure spreadsheet must be filed in the first year these conditions are met and every third year thereafter if the conditions continue to be met. In North Dakota, the majority of corporations electing the water's edge filing method meet these conditions.

When the water's edge method of filing was initially adopted, most, if not all states, required a similar DDS to be filed. As taxpayers and state revenue departments became more knowledgeable about the method and filing compliance increased, many states discontinued the requirement for the DDS. North Dakota is one of the last to retain it. Tax managers and practitioners have requested the elimination of the DDS, indicating that it is very time consuming and expensive to prepare for only one state. We will continue to be able to obtain the same information, if needed, through audit and thus, request the statutory reporting requirement be eliminated.

Section 11 – Amendment to remove obsolete language in the water's edge statute. Since this statute was first adopted in 1987, taxpayers electing the water's edge method of filing were prohibited from claiming a state deduction for federal income taxes paid. In the 2003 Legislative Session, the federal tax deduction was repealed for all corporate taxpayers, effective for tax years beginning after December 31, 2003. Since the deduction is no longer available to any corporate taxpayer, the language is obsolete and can be eliminated.

In conjunction with Section 10, this section also eliminates the requirement to file the DDS.

Section 12 – Effective date. This section specifies that all sections are effective for taxable years beginning after December 31, 2010.

CONCLUSION

The Tax Commissioner respectfully requests that you give favorable consideration to House Bill 1124.

NDLA, S FIN

From: john hanson [solarwindconsultants@yahoo.com]
Date: Wednesday, March 09, 2011 8:40 AM
Subject: NDLA, S FIN
 Robinson, Larry J.; Mueller, Phil; Mock, Corey R.
 ammending AB-1124 sect.3 to include farmers and individuals

Dear Senator Cook;

Recinding Incentives for Renewables at the end of the last session did great financial harm to many farmers who had purchases solar and wind projects in 2009 and later years. It has also hurt our business revenue and number of employees.

Please re-instate the incentives, presently for corporations only, to include small busines people, farmers and individuals, I presume by ammending AB 1124.

Over 20 projects expecting these incentives lost expected income tax credits when their taxes were completed last year. This has hurt the reputation of our business and I feel they should be able to claim incentives for projects installed since Jan 1, 2009.

I have a petition with 65 signatures of people wanting the encouragement and incentives to move forward with solar and wind projects in our great energy producing state. This would also be more in alignment with National Alternative Energy Policies.

Sincerely; John Hanson Enterprise Sales, Solar & Wind Valley City



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

Memorandum

To: Senator Dwight Cook
Chairman, Senate Finance and Taxation Committee

From: Joseph Becker
Research and Education Section

Date: March 21, 2011

Subject: House Bill 1124
Expansion of Energy Device Income Tax Credit for Individuals

Under current law, an income tax credit is allowed to a corporation for installing a biomass, geothermal, solar, or wind energy device in North Dakota before January 1, 2015. In the case of an individual, the credit is allowed only for the installation of a geothermal energy device. The proposed amendments (#11.8091.01001) to House Bill 1124 would allow individuals to also claim the income tax credit for a wind energy device.

This change in the law would allow the credit to an individual who installs the wind energy device on property owned or leased by the individual—for example, an individual who installs a residential wind turbine. The change also would allow an individual to use his or her share of a wind energy device credit received from a passthrough entity, such as a partnership, that installs a wind energy device on property owned or leased by the passthrough entity. (Under current law, only corporate owners are allowed to use their respective shares of the credit.)

The credit is equal to 3 percent of the costs of acquisition and installation, which is allowed in each of 5 tax years, for a total credit of 15 percent of the allowable costs. With respect to each of the 5 tax years, if the 3 percent credit exceeds the individual's tax liability, the excess may be carried forward to the immediately succeeding 20 tax years, if installed before January 1, 2012, or 10 tax years, if installed on or after January 1, 2012.

This change in the law will likely result in a decrease in state general fund revenues for the 2011-13 biennium. Available information indicate there may be sales of residential-size wind turbines, particularly in rural settings, during the biennium. An estimate of the decrease is not possible because the extent of any sales cannot be determined, and the costs of acquisition and installation vary widely by equipment manufacturer, the size or energy-producing capacity, location and zoning, and method of installation. Information on commercial installations by passthrough entities and the extent any earned credits might be passed through to individual owners also is not known.

Memo to Senator Dwight Cook
Page 2
March 21, 2011

For illustrative purposes, a typical household would require a 10 kilowatt wind device to power it. The cost to purchase and install the device can cost \$35,000-\$50,000. If an individual installs a \$50,000 wind device in calendar year 2011, the total credit available would be \$7,500 (3% credit taken in each of five years after installation). If the individual is unable to use all of the credit in a tax year, the individual would have up to 20 years to use the credit. If the taxpayer's average North Dakota tax liability is \$600, which is the statewide average, the carryforward would eliminate the taxpayer's North Dakota liability for over 12.5 years.