

2011 SENATE FINANCE AND TAXATION

SB 2208

2011 SENATE STANDING COMMITTEE MINUTES

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

SB 2208
2/2/2011
Job Number 13830

Conference Committee

A. R. Miller

Explanation or reason for introduction of bill/resolution:

Relating to the income tax exemption applying to qualifying reservation residents, activities, and sources

Minutes:

Written Testimony Attached

Chairman Cook opened the hearing on SB 2208.

Senator Schaible – (see attached introduction A)

Senator Marcellais - (see attached testimony B in favor of SB 2208)

Senator Burckhard – It says, who resides anywhere within the exterior boundaries of a reservation. How far out is that? Or what does that mean exactly?

Senator Marcellais – We had a tribal member from New Mexico that worked up at the Turtle Mountains for 30 years in the indian health service, and was paying state tax at that time and she approached me, and said, can you introduce a bill to have native americans exempt from state taxes that work on a reservation? So I introduced one but there was also a House bill at the same time so they killed my bill and accepted the House bill. It could be anywhere in the United States as long as they are a member of a recognized tribe.

Emily Thompson, North Dakota Office of State Tax Commissioner – (see attached proposed amendment C)

Chairman Cook asked for testimony opposed to SB 2208. No one came forward.

Chairman Cook asked for neutral testimony for SB 2208. No one came forward.

Chairman Cook closed the hearing on SB 2208.

Vice Chairman Miller – I will move a Do Pass on SB 2208.

Seconded by **Senator Burckhard**.

Carried by **Senator Triplett**.

FISCAL NOTE

Requested by Legislative Council
01/14/2011

Bill/Resolution No.: SB 2208

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).*

SB 2208 clarifies the individual income tax exemption for enrolled members residing on reservations.

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.*

SB 2208 makes some technical clarifications to the existing income tax exemption for enrolled members who reside within reservations that adjoin another state. The fiscal impact is less than \$5000.

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: | 02/01/2011 |

Date: 2-2-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2208

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 Miller Seconded By Senator Burckhard

| 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 Triplett

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

REPORT OF STANDING COMMITTEE

SB 2208: Finance and Taxation Committee (Sen. Cook, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2208 was placed on the Eleventh order on the calendar.

2011 HOUSE FINANCE AND TAXATION

SB 2208

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2208
March 14, 2011
#15372

Conference Committee

Committee Clerk Signature

Mary Buckle

Explanation or reason for introduction of bill/resolution:

A bill relating to the income tax exemption applying to qualifying reservation residents, activities, and sources; and to provide an effective date.

Minutes:

See attached testimony #1 and #2.

Representative Jim Schmidt: Introduced bill. This bill has been proposed by Tax Commissioner, Cory Fong and is considered to clarify existing legislation. Currently, legislation provides an income tax exemption for an individual who is an enrolled member of any federally recognized Indian tribe if the individual lives and earns income within the boundaries of the portion of a reservation that is situated in North Dakota. SB 2208 changes the current language of the statute from "within the boundaries of any reservation in this state" to "anywhere within the exterior boundaries of a reservation situated in this state or situated both in this state and in an adjoining state." Miss Emily Thompson, Paralegal with the Office of State Tax Commissioner will further describe the circumstances involved in SB 2208.

Senator Marcellais: Co-sponsor. Support. Please refer to attached testimony #1.

Representative Shirley Meyer: Currently, are enrolled members exempt from federal income taxes?

Senator Marcellais: No, they are not exempt from federal income tax. I call this the Delia bill. I had an individual who worked up at Turtle Mountain for 30 years and was paying state income tax; she was in a federally recognized tribe from the southwest. She tried to push her luck to try and make it retroactive but I told her we went far enough with this. Thank you very much.

Emily Thompson, Paralegal with North Dakota Office of State Tax Commissioner: Support. Please refer to attached testimony #2.

Chairman Wesley R. Belter: The only place this would have any impact is where we have the North Dakota and South Dakota situation?

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2208
March 14, 2011
#15403

Conference Committee

Committee Clerk Signature

May Brucher

Explanation or reason for introduction of bill/resolution:

A bill relating to the income tax exemption applying to qualifying reservation residents, activities, and sources; and to provide an effective date.

Minutes:

No attachments.

Representative Shirley Meyer: I make a motion for a DO PASS.

Representative Bette Grande: Seconded.

**A roll call vote was taken: YES 14 NO 0 ABSENT 0
MOTION CARRIED FOR DO PASS.**

Representative Wayne Trottier will carry SB 2208.

Date: 3-14-11
 Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 2208

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 Rep. Meyer Seconded By Rep. Grande

| 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) 14 No 0

Absent 0

Floor Assignment Rep. Trottier

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

REPORT OF STANDING COMMITTEE

SB 2208: Finance and Taxation Committee (Rep. Belter, Chairman) recommends DO PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2208 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

SB 2208

Senate Bill 2208**February 2, 2011**

Chairman Cook, members of the Senate Finance and Taxation Committee, for the record my name is Donald Schaible, Senator from District 31, which covers parts Morton, Sioux, Grant and Hettinger Counties. I am here to introduce SB 2208 at the request of the ND Tax Commissioner's office. Last session a law that provides an income tax exemption for an individual who is an enrolled member of any federally recognized tribe and if the individual lives and earns income within the boundaries of the portion of a reservation that is situated in North Dakota. It was later discovered that there is a small amount of members that live on the reservation but live just outside the boundaries of the state and conduct business in North Dakota. The current law does allow these members to that exemption. SB 2208 would allow for the exemption. Emily Thompson from the Tax Commissioner Office is here to explain the details of this bill and offer more expertise than I can. I would ask for your support for this bill and I will try to answer any questions that you may have for me.



NORTH DAKOTA SENATE

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Senator Richard Marcellais
District 9
RR 1, Box 267A
Belcourt, ND 58316-9787
rmarcellais@nd.gov

COMMITTEES:
Education
Government and Veterans Affairs

**Testimony
Senate Bill No. 2208
Finance & Taxation Committee
Senator D. Cook, Chairman
February 2, 2011**

Chairman Cook, members of the Finance & Taxation Committee, for the record my name is Richard Marcellais, Senator from District 9, of Belcourt I am here today to provide you with testimony on behalf of the enrolled tribal members of the state of North Dakota.

During the 60th Legislative Assembly (2007) we introduced House Bill 1393 which allowed income tax exemptions and sales, use and motor vehicle excise tax exemptions for enrolled tribe members of any federally recognized Indian tribal member who resides within the boundaries of any reservation in the state of North Dakota.

Senate Bill 2208 allows for reservation residents are tax exempt who resides anywhere within the exterior boundaries of a reservation situated in North Dakota or situated both in this state and in an adjoining state.

Thank you very much for the opportunity to appear in support of Senate Bill 2208. If there are any questions I will try and answer them.

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

SENATE BILL 2208

FEBRUARY 2, 2011

Chairman Cook, members of the Senate Finance and Taxation Committee, my name is Emily Thompson. I am a Paralegal with the North Dakota Office of State Tax Commissioner. I am here today on behalf of Tax Commissioner Cory Fong to testify in support of Senate Bill 2208.

CURRENT LAW

Subdivision o of subsection 2 of section 57-38-30.3 provides an income tax exemption for an individual who is an enrolled member of any federally recognized Indian tribe if the individual lives and earns income within the boundaries of the portion of a reservation that is situated in North Dakota.

PROPOSED CHANGE

Senate Bill 2208 changes the current language of the statute from “within the boundaries of any reservation in *this state*” to “anywhere within the exterior boundaries of a reservation situated *in this state or situated both in this state and in an adjoining state.*”

REASON FOR PROPOSED CHANGE

The reason for the proposed change is to address those reservations having boundaries which encompass territory in North Dakota and an adjoining state. Under North Dakota law, if a nonresident individual earns income from sources within North Dakota, that income must be reported to North Dakota and any income tax paid. The current statute only references reservations “in this state”. Thus, an individual living on a reservation extending into an adjoining state would be considered a nonresident and subject to North Dakota income tax despite the fact that the individual meets the other requirements for the exemption. Application of the current law can be illustrated by the following example:

- An enrolled member of the Standing Rock Sioux Tribe works within the northern boundaries of the Standing Rock Reservation but lives five miles south on the portion of the reservation situated in South Dakota.

Under current law, the income tax exemption would not apply. Though the individual is a member of a federally recognized Indian tribe, and earns income within the boundaries of a reservation situated in North Dakota, the income would be subject to North Dakota income tax because the individual does not reside on the North Dakota portion of the reservation.

Under Senate Bill 2208, the individual would be eligible for the income tax exemption because of the added language addressing reservations "situated both in this state and in an adjoining state". This change in the law would bring in those portions of North Dakota reservations having boundaries which partially extend into an adjoining state. Under the previous example, the income would not be subject to North Dakota income tax because the individual would meet all three requirements listed in Senate Bill 2208. The individual is a member of a federally recognized Indian tribe who lives and earns income on a reservation situated in both this state and in an adjoining state.

CONCLUSION

The Tax Commissioner respectfully requests that you give favorable consideration to Senate Bill 2208. I thank you for your time and consideration and would be happy to respond to any questions.



Senator Richard Marcellais
District 9
RR 1, Box 267A
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NORTH DAKOTA SENATE

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



COMMITTEES:
Education
Government and Veterans Affairs

**Testimony
Senate Bill No. 2208
Finance & Taxation Committee
Representative Belter, Chairman
March 14, 2011**

Chairman Belter, members of the Finance & Taxation Committee, for the record my name is Richard Marcellais, Senator from District 9, of Belcourt I am here today to provide you with testimony on behalf of the enrolled tribal members of the state of North Dakota.

During the 60th Legislative Assembly (2007) we introduced House Bill 1393 which allowed income tax exemptions and sales, use and motor vehicle excise tax exemptions for enrolled tribe members of any federally recognized Indian tribal member who resides within the boundaries of any reservation in the state of North Dakota.

Senate Bill 2208 allows for reservation residents are tax exempt who resides anywhere within the exterior boundaries of a reservation situated in North Dakota or situated both in this state and in an adjoining state.

Thank you very much for the opportunity to appear in support of Senate Bill 2208. If there are any questions I will try and answer them.

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Sixtieth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1393

Introduced by

Representatives Froelich, Charging

Senator Marcellais

1 A BILL for an Act to create and enact a new subdivision to subsection 1 of section 57-38-01.2, a
2 new subdivision to subsection 2 of section 57-38-30.3, a new subsection to section 57-39.2-04,
3 and a new subsection to section 57-40.3-04 of the North Dakota Century Code, relating to
4 income tax exemptions and sales, use, and motor vehicle excise tax exemptions for enrolled
5 tribal members; and to provide an effective date.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1.** A new subdivision to subsection 1 of section 57-38-01.2 of the North
8 Dakota Century Code is created and enacted as follows:

9 Reduced by the amount of income of a taxpayer, who resides within the
10 boundaries of any reservation in this state and who is an enrolled member of
11 a federally recognized Indian tribe, from activities or sources within the
12 boundaries of any reservation in this state.

13 **SECTION 2.** A new subdivision to subsection 2 of section 57-38-30.3 of the North
14 Dakota Century Code is created and enacted as follows:

15 Reduced by the amount of income of a taxpayer, who resides within the
16 boundaries of any reservation in this state and who is an enrolled member of
17 a federally recognized Indian tribe, from activities or sources within the
18 boundaries of any reservation in this state.

19 **SECTION 3.** A new subsection to section 57-39.2-04 of the North Dakota Century Code
20 is created and enacted as follows:

21 Gross receipts from sales within the boundaries of any reservation in this state to
22 an individual who resides within the boundaries of any reservation in this state and
23 who is an enrolled member of a federally recognized Indian tribe.

Sixtieth
Legislative Assembly

1 **SECTION 4.** A new subsection to section 57-40.3-04 of the North Dakota Century Code
2 is created and enacted as follows:

3 A motor vehicle acquired within the boundaries of any reservation in this state by
4 an individual who resides within the boundaries of any reservation in this state and
5 who is an enrolled member of a federally recognized Indian tribe.

6 **SECTION 5. EFFECTIVE DATE.** Sections 1 and 2 of this Act are effective for taxable
7 years beginning after December 31, 2006. Sections 3 and 4 of this Act are effective for taxable
8 events occurring after June 30, 2007.

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

SENATE BILL 2208

MARCH 14, 2011

Chairman Belter, members of the House Finance and Taxation Committee, my name is Emily Thompson. I am a Paralegal with the North Dakota Office of State Tax Commissioner. I am here today on behalf of Tax Commissioner Cory Fong to testify in support of Senate Bill 2208.

CURRENT LAW

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PROPOSED CHANGE

Senate Bill 2208 changes the current language of the statute from “within the boundaries of any reservation in *this state*” to “anywhere within the exterior boundaries of a reservation situated *in this state or situated both in this state and in an adjoining state.*”

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The reason for the proposed change is to address those reservations having boundaries which encompass territory in North Dakota and an adjoining state. Under North Dakota law, if a nonresident individual earns income from sources within North Dakota, that income must be reported to North Dakota and any income tax paid. The current statute only references reservations “in this state”. Thus, an individual living on a reservation extending into an adjoining state would be considered a nonresident and subject to North Dakota income tax despite the fact that the individual meets the other requirements for the exemption. Application of the current law can be illustrated by the following example:

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Under Senate Bill 2208, the individual would be eligible for the income tax exemption because of the added language addressing reservations "situated both in this state and in an adjoining state". This change in the law would bring in those portions of North Dakota reservations having boundaries which partially extend into an adjoining state. Under the previous example, the income would not be subject to North Dakota income tax because the individual would meet all three requirements listed in Senate Bill 2208. The individual is a member of a federally recognized Indian tribe who lives and earns income on a reservation situated in both this state and in an adjoining state.

CONCLUSION

The Tax Commissioner respectfully requests that you give favorable consideration to Senate Bill 2208. I thank you for your time and consideration and would be happy to respond to any questions.