

FISCAL NOTE
Requested by Legislative Council
12/22/2014

Bill/Resolution No.: SB 2115

- 1 A. **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.*

| | 2013-2015 Biennium | | 2015-2017 Biennium | | 2017-2019 Biennium | |
|----------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
| | General Fund | Other Funds | General Fund | Other Funds | General Fund | Other Funds |
| Revenues | | | | | | |
| Expenditures | | | | | | |
| Appropriations | | | | | | |

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

| | 2013-2015 Biennium | 2015-2017 Biennium | 2017-2019 Biennium |
|------------------|--------------------|--------------------|--------------------|
| Counties | | | |
| Cities | | | |
| School Districts | | | |
| Townships | | | |

- 2 A. **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 2115 makes minor changes to assessment and retailer compensation provisions.

- 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.*

Section 1 allows the Tax Commissioner to make changes to assessments in certain cases for legal settlement purposes. These provisions, if enacted, may result in a small, indeterminable, increase in revenues. Sections 2 and 3 will likely not impact revenues.

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 or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 328-3402

Date Prepared: 12/31/2014

2015 SENATE FINANCE AND TAXATION

SB 2115

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB2115
1/7/2015

Job Number 21749, @ meter

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Alice Grove

Explanation or reason for introduction of bill/resolution:

Relating to the assessment of taxes and compensation allowance to retailers for administrative expenses.

Minutes:

Attachment #1

Chairman Cook opened the hearing on SB 2115.

Myles Vosford, Director Tax Administration Division presents testimony #1.

Senator Oehlke -- What's the time limit when they file things on time? Does it get done in 30 days or 90 days or a year, or how does that work?

Myles Vosberg -- I don't think there is a specific number of days that we would have to process an amended return or issue a refund, but on our taxpayer bill of rights there are restrictions on the tax commissioner as well as the taxpayer. Basically the taxpayer has 30 days to let us know that they are going to protest the assessment, and then they get the additional 90 days to provide a statement of grounds that gives the basis of their protest.

Senator Dotzenrod -- On page 2, line 8, there it says that the tax as assessed exceeds the actual amount due. I'm wondering about a situation where the tax has been paid and you find out that the tax as assessed exceeded what was really due. Does this not work if the tax has been paid?

Myles Vosberg -- That is correct. Once they paid the tax then it is no longer adjustable.

Senator Dotzenrod -- Is there any method for the taxpayer in future filings to claim a credit that they overpaid and get some kind of reduction in subsequent years or are we actually saying that if you paid an amount that was larger than you should have paid that's your problem?

Myles Vosberg -- For a notice of determination, where it's been formally assessed, once the tax is paid, there is no way to take a credit in future period or get an adjustment. Meter 27:40.

Chairman Cook -- Myles, we're talking only sales tax?

Myles Vosberg -- No, we're actually talking all tax types here where the commissioner has the ability to make an assessment but the estimations that we do most frequently occur in withholding and sales tax because they are required to file these returns whether they have any activity or not and if they don't file the return then we make our best estimate that we can.

Chairman Cook -- Senator Dotzenrod's question: if it was an income tax that we are talking about, if he overpaid his tax all he has to do is file an amended return, correct?

Myles Vosberg -- Correct.

Chairman Cook -- Did I understand you to say that you cannot file an amended sales tax return?

Myles Vosberg -- No.

Chairman Cook -- So, you can still file an amended sales tax return if you overpaid your sales tax?

Myles Vosberg -- Yes, this only applies to situations where we have made that formal assessment.

Chairman Cook -- Right.

Myles Vosberg -- And they've not responded to that.

Chairman Cook -- I would also assume that there's not many of these, and if there are many of them they are usually in the last year of a company's business, maybe?

Myles Vosberg -- There actually are a lot of these.

Chairman Cook -- There are?

Myles Vosberg -- We did some checking on calendar year 2014 and we had about 4000 fixed assessments where the taxpayer did not respond to us and so we fixed the assessments.

Chairman Cook -- Small businesses?

Myles Vosberg -- Small businesses. Probably more small businesses than large businesses. It's a lot of situations.

Senator Dotzenrod -- I would think that if a taxpayer has drug his feet and then gets called and has to do this and subsequently finds out he's paid more than was actually due, you'd think there would be some way to fix that. Should taxpayers make sure they get their work done on time. How do we mentally justify this so that we're saying that it's okay that they paid more than they should have?

Myles Vosberg -- From a tax administrator we say you should have done it right in the first place. They do have numerous opportunities and even when the assessment is fixed now, we're still trying to give them an opportunity to pay the correct amount of tax and only the tax due. Dee just reminded me that we're talking about legal settlements.

Senator Bekkedahl -- Just to follow up one last point on Senator Dotzenrod's question, I see a bill and I know that it's not right but I want to make sure that it's paid by the due date so I just pay it. What happens to those people? What I'm hearing is that they have no recourse.

Myles Vosberg -- I would say that people that are so concerned about paying a bill, even though they don't know it's right, are probably not the people we are talking about. This law will give us the authority to adjust up as well as down. And we feel that it should be a two-way street.

Motion by Senator Triplett for a Do Pass.

Seconded by Senator Laffen.

Roll Call Vote 7-0-0.

Carried by Senator Triplett.

Date: 1-7-15

Roll Call Vote#: 1

**2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO 2115**

Senate Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Triplett Seconded By Laffen

| Senators | Yes | No | Senators | Yes | No |
|-----------------------------|-----|----|-------------------------|-----|----|
| Chairman Dwight Cook | ✓ | | Senator Jim Dotzenrod | ✓ | |
| Vice Chairman Lonnie Laffen | ✓ | | Senator Connie Triplett | ✓ | |
| Senator Brad Bekkedahl | ✓ | | | | |
| Senator Dave Oehlke | ✓ | | | | |
| Senator Jessica Unruh | ✓ | | | | |
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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 2115: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2115 was placed on the Eleventh order on the calendar.

2015 HOUSE FINANCE AND TAXATION

SB 2115

2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2115
2/23/2015
24235

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Mary Brucher

Explanation or reason for introduction of bill/resolution:

A bill relating to the assessment of taxes and compensation allowance to retailers for administrative expenses.

Minutes:

Attachment #1

Chairman Headland: Opened hearing.

Myles Vosberg, Office of State Tax Commissioner: Introduced bill. Distributed testimony in support. See attachment #1. (Ended testimony at 7:10)

Representative Schneider: What triggered the inquiry of the auditor's office into these sections?

Myles Vosberg: It was a routine audit done by the state auditor's office.

Vice Chairman Owens: Are there a number of them that file late?

Myles Vosberg: There are quite a number of sales and withholding tax returns that are filed late or that are not filed at all. We need to estimate the tax due and that's really the crux of this issue. When we estimate tax we're using the best information we have available and so we're going to be off. If we overestimate the auditor's office is saying we can't adjust down based on better information later.

Vice Chairman Owens: If you underestimate does the current law allow for you to go back and get it?

Myles Vosberg: It does not. Right now we can't go in either direction.

Representative Froseth: In sections two and three it states "for good cause shown." What is considered good cause?

Myles Vosberg: We don't have a definition of good cause. It could be an illness, a snowstorm, someone that's filed timely for 20 years then all of a sudden is late, etc.

Chairman Headland: Is there further testimony in support of SB 2115? Is there any opposition to SB 2115? Seeing none we will close the hearing on SB 2115.

Representative Dockter: MADE A MOTION FOR A DO PASS

Representative Strinden: SECONDED

**ROLL CALL VOTE: 13 YES 0 NO 1 ABSENT
MOTION CARRIES**

Representative Strinden will carry this bill.

Date: 2-23-15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2115

House Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Dockter Seconded By Rep. Strinden

| Representatives | Yes | No | Representatives | Yes | No |
|---------------------|-----|----|-----------------|-----|----|
| CHAIRMAN HEADLAND | ✓ | | REP HAAK | ✓ | |
| VICE CHAIRMAN OWENS | ✓ | | REP STRINDEN | ✓ | |
| REP DOCKTER | ✓ | | REP MITSKOG | ✓ | |
| REP TOMAN | ✓ | | REP SCHNEIDER | ✓ | |
| REP FROSETH | ✓ | | | | |
| REP STEINER | ✓ | | | | |
| REP HATLESTAD | ✓ | | | | |
| REP KLEIN | ✓ | | | | |
| REP KADING | ✓ | | | | |
| REP TROTTIER | AB | | | | |
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Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Strinden

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

REPORT OF STANDING COMMITTEE

SB 2115: Finance and Taxation Committee (Rep. Headland, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2115 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

SB 2115



#1 1-7-15
SB 2115

Testimony—

Senate Finance and Taxation Committee

Senate Bill 2115

January 7, 2015

Prepared by Myles Vosberg, Director, Tax Administration Division
North Dakota Office of State Tax Commissioner
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Introduction

Good Morning Chairman Cook and members of the Senate Finance and Taxation Committee. I am Myles Vosberg, Director of the Tax Administration Division of the Office of State Tax Commissioner. I am here today on behalf of the Commissioner to testify in support of Senate Bill 2115, which addresses two specific areas of the Tax Commissioner's authority related to administration of taxes. The intent of this bill is to address recommendations made by the State Auditor's Office.

Background

The first issue addressed in this bill is the Commissioner's ability to negotiate settlement of debt arising from a fixed assessment of tax. North Dakota tax laws provide the Tax Commissioner with authority to audit taxpayer records and assess unreported taxes by a Notice of Determination. In cases where records are incomplete or where the taxpayer did not file returns required by statute, the Commissioner has authority to estimate taxes due based on the best information available. Taxpayers have the right to protest assessments by providing notice to the Tax Commissioner within thirty days of the Notice of Determination. The taxpayer has an additional ninety days to provide a Statement of Grounds and other documentation to support the protest. When the Commissioner agrees with part or

1-7-15
SR 2115
#1.2

all of the protest, the assessment is reduced accordingly. If the taxpayer does not respond to the Notice of Determination within thirty days, the assessment amount becomes fixed and not reviewable. At this point, the taxpayer is liable for the tax assessed and the Tax Commissioner no longer has the ability to assess additional tax if more complete and accurate information becomes available at a later time.

Because tax is assessed using the best information available, estimated assessments may be overstated or understated. For legal settlement purposes, the Tax Commissioner's practice has been to settle fixed assessments for less than the full amount of tax assessed in cases where the tax was overestimated and the taxpayer provides documentation supporting the adjustment. The Tax Commissioner believes the North Dakota Supreme Court has established that state agencies have implied power to negotiate and settle unpaid tax debt through a legal settlement process when in the best interests of the state. This authority is used to avoid litigation, encourage taxpayer compliance, and to collect only those tax dollars which are, in fact, due to the state.

After extensive discussion with the State Auditor's Office, the Auditor's Office made a formal recommendation that the Commissioner should: 1) treat all fixed assessments as final and not reviewable, or 2) introduce legislation that allows the Department to accept, for legal settlement purposes, an amount that is different from the fixed tax assessment amount. Section 1 of Senate Bill 2115 will provide the Tax Commissioner with explicit authority to make legal settlements for less than the fixed amount of tax assessed when an adjustment is warranted.

The second issue addressed in Senate Bill 2115 relates to sales tax compensation provided to retailers that collect and remit North Dakota and local sales taxes. Under current sales and use tax laws, retailers are allowed to deduct and retain 1½ percent of the state sales, use, and gross receipts taxes due up to \$110 per return filed. In addition, many city and county sales tax ordinances also provide for compensation at various rates. The state and local compensations are intended to defray retailers' cost of collecting, reporting and remitting these taxes. In order to qualify for compensation, the sales and use tax laws require retailers to file and pay all tax due no later than the due date of the return.

The Tax Commissioner has specific authority to waive penalty and interest assessed on a return filed after the due date if the Commissioner is satisfied that the delay was excusable. The Commissioner may also grant an extension of time to file a return if the retailer can demonstrate

1-7-15
SB 2115
#1.3

the necessity for the extension. If a return is filed on or before an extended due date, no penalty is applied and the compensation is granted. However, there is no specific statute to reinstate compensation that was disallowed because a sales and use tax return was filed after the due date. It has been the Tax Commissioner's practice to reinstate compensation in cases where the Department also agreed to waive penalty and interest because the taxpayer showed good cause for the delay. It seems logical that if waiver of penalty and interest is justified, compensation is also justified.

After reviewing compensation adjustments for late returns, the State Auditor's Office made an informal recommendation in its management letter recommending the Tax Commissioner not allow compensation on late returns regardless of the reason for delay. Sections 2 and 3 of the bill will grant the Tax Commissioner authority to allow the retailer to deduct and retain compensation if the taxpayer can show good cause for its filing delay.

Explanation of bill

Section 1 of the bill creates a new subsection in North Dakota Century Code 57-01-11. This section of code currently provides all taxpayers the right to appeal a tax assessment issued by the Commissioner and to request a hearing under the North Dakota Administrative Practice Act found in Century Code Chapter 28-32. The new subsection states that for all taxes administered by the Tax Commissioner's Office, the Commissioner may accept for legal settlement purposes an amount of tax less than originally assessed if the tax has not already been paid and the taxpayer has provided information to document that the actual tax due is less than the amount assessed. The new subsection also authorizes the Tax Commissioner to assess additional tax due if the Commissioner receives information that tax was under-assessed in a period that is fixed and not reviewable. We believe that this language will address any concerns the State Auditor's Office may have regarding our current tax settlement process.

Sections 2 and 3 of the bill insert language in the sales tax law (section 2) and the use tax law (section 3) that authorize the Tax Commissioner to allow compensation on sales and use tax returns filed or paid after the due date in cases where the taxpayer shows good cause for the delay.

Fiscal impact

The changes made in this bill will have no fiscal impact from current practice.

1-7-15
SB 2115
#1.4

Conclusion

The changes in Senate Bill 2115 will resolve recommendations made by the State Auditor's Office and allow the Tax Commissioner to maintain existing administrative processes that we feel are fair, reasonable, and in the best interest of both taxpayers and the state. The Tax Commissioner asks for a favorable consideration of this bill. Thank you. I will be happy to address any questions you may have.

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SB 2115
2-23-15
#1 p. 1

North Dakota Office of State Tax Commissioner's Testimony before the House Finance and Taxation Committee Senate Bill 2115

February 23, 2015

Prepared by Myles Vosberg, Director, Tax Administration Division
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Introduction

Good Morning Chairman Headland and members of the House Finance and Taxation Committee. I am Myles Vosberg, Director of the Tax Administration Division of the Office of State Tax Commissioner. I am here today on behalf of the Commissioner to testify in support of Senate Bill 2115, which addresses two specific areas of the Tax Commissioner's authority related to administration of taxes. The intent of this bill is to address recommendations made by the State Auditor's Office.

Background

The first issue addressed in this bill is the Commissioner's ability to negotiate settlement of debt arising from a fixed assessment of tax. In cases where records are incomplete or where the taxpayer, after receiving notice still has not filed returns as required by statute, the Commissioner estimates the tax due based on the best information available. If the taxpayer does not respond with corrected information, the estimated amount becomes fixed and the taxpayer is liable for the tax assessed. In addition, the Tax Commissioner no longer has the ability to assess additional tax if more complete and accurate information becomes available at a later time.

Because tax is assessed using the best information available, estimated assessments may be overstated or understated. When the account is transferred to the Legal Division for collection, our

#1p.2

practice has been to settle fixed assessments for less than the full amount of the tax assessed in cases where the tax was overestimated and if the taxpayer provides documentation supporting the adjustment. The Tax Commissioner believes the Tax Department has implied power to negotiate and settle unpaid tax debt through a legal settlement process when it is in the best interests of the state. These legal settlements are entered into to avoid litigation, encourage taxpayer compliance, and to collect only those tax dollars which are, in fact, due to the state.

After extensive discussion with the State Auditor's Office, the Auditor's Office made a formal recommendation that the Commissioner: 1) could not enter into legal settlements when the tax is fixed and not reviewable; or 2) should introduce legislation that allows the Department to accept, for legal settlement purposes, an amount that is different from the fixed tax assessment amount. Section 1 of Senate Bill 2115 will provide the Tax Commissioner with explicit authority to make legal settlements for less than the fixed amount of tax assessed if the taxpayer provided appropriate documentation and when an adjustment is warranted.

The second issue addressed in Senate Bill 2115 relates to sales tax compensation provided to retailers that collect and remit North Dakota and local sales taxes. Under current sales and use tax laws, retailers are allowed to deduct and retain 1½ percent of the state sales, use, and gross receipts taxes due up to \$110 per return filed. In addition, many city and county sales tax ordinances also provide for compensation at various rates. The state and local compensation is intended to defray retailers' cost of collecting, reporting and remitting these taxes. In order to qualify for compensation, the sales and use tax laws require retailers to file and pay all tax due no later than the due date of the return.

The Tax Commissioner has specific authority to waive penalty and interest assessed on a return filed after the due date if the Commissioner is satisfied that the delay was excusable. The Commissioner may also grant an extension of time to file a return if the retailer can demonstrate the necessity for the extension. If a return is filed on or before an extended due date, no penalty is applied and the compensation is granted. However, there is no specific statute to reinstate compensation that was disallowed because a sales and use tax return was filed after the due date. It has been the Tax Commissioner's practice to reinstate compensation in cases where the Department also agreed to waive penalty and interest because the taxpayer showed good cause for the delay. It seems logical that if waiver of penalty and interest is justified, compensation is also justified.

After reviewing compensation adjustments for late returns, the State Auditor's Office made an informal recommendation in its management letter recommending the Tax Commissioner not allow compensation on late returns regardless of the reason for delay. Sections 2 and 3 of the bill will grant the Tax Commissioner authority to allow the retailer to deduct and retain compensation if the taxpayer can show good cause for its filing delay.

Explanation of bill

Section 1 of the bill creates a new subsection in North Dakota Century Code 57-01-11. This section of code currently provides all taxpayers the right to appeal a tax assessment issued by the Commissioner and to request a hearing under the North Dakota Administrative Practice Act found in Century Code Chapter 28-32. The new subsection states that for all taxes administered by the Tax Commissioner's Office, the Commissioner may accept for legal settlement purposes an amount of tax less than originally assessed if the tax has not already been paid and the taxpayer has provided information to document that the actual tax due is less than the amount assessed. The new subsection also authorizes the Tax Commissioner to assess additional tax due if the Commissioner receives information that tax was under-assessed in a period that is fixed and not reviewable. We believe that this language will address any concerns the State Auditor's Office may have regarding our current tax settlement process.

Sections 2 and 3 of the bill insert language in the sales tax law (section 2) and the use tax law (section 3) that authorize the Tax Commissioner to allow compensation on sales and use tax returns filed or paid after the due date in cases where the taxpayer shows good cause for the delay.

Fiscal impact

The changes made in this bill will have no fiscal impact from current practice.

Conclusion

The changes in Senate Bill 2115 will resolve recommendations made by the State Auditor's Office and allow the Tax Commissioner to maintain existing administrative processes that we feel are fair, reasonable, and in the best interest of both taxpayers and the state. The Tax Commissioner asks for a favorable consideration of this bill. Thank you. I will be happy to address any questions you may have.