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Yuberead d. Lee

Date

10-16-03

2003 SENATE FINANCE AND TAXATION

SB 2100

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10-16-03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2100

Senate Finance and Taxation Committee

☐ Conference Committee

Hearing Date January 14, 2003

| Tape Number | Side A | Side B | Meter # |
|---|--------|--------|---------|
| 1 | X | | 3,475 |
| | | | |
| | | | |
| Committee Clerk Signature <i>Mary Loftsgard</i> | | | |

Minutes:

Senator Urlacher - Opened hearing on SB2100. All committee members in attendance.

Mary Loftsgard, Supervisor of the Corporate Income Tax Section of the Office of State Tax

Commissioner. Testified in support of SB2100. This Subsection concerns amended corporation income tax returns and specifies the amount of time available to the Tax Commissioner to audit these returns and assess any additional tax that may be due. Written testimony is attached.

Recommends a Do Pass.

Senator Urlacher - Any additional testimony on SB2100? Hearing closed.

Senator Nichols motioned Do Pass. Second by Senator Wardner. Roll call vote taken. 6 yea, 0 nay, 0 absent.

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10-16-03
Date

Date: 1.14.2003
Roll Call Vote #:

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2100

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen. Nichols Seconded By Sen. Leland

| Senators | Yes | No | Senators | Yes | No |
|---------------------------------|-------------------------------------|----|-----------------|-------------------------------------|----|
| Senator Urlacher - Chairman | <input checked="" type="checkbox"/> | | Senator Nichols | <input checked="" type="checkbox"/> | |
| Senator Wardner - Vice Chairman | <input checked="" type="checkbox"/> | | Senator Seymour | <input checked="" type="checkbox"/> | |
| Senator Syverson | <input checked="" type="checkbox"/> | | | | |
| Senator Tollefson | <input checked="" type="checkbox"/> | | | | |
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Total (Yes) 6 No 0

Absent _____

Floor Assignment Sen. Nichols

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

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Operator's Signature

Date

REPORT OF STANDING COMMITTEE (410)
January 14, 2003 3:22 p.m.

Module No: SR-06-0552
Carrier: Nichols
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2100: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends DO
PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2100 was placed on the
Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-06-0552

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Y. Urlacher
Operator's Signature

10-16-03
Date

2003 HOUSE FINANCE AND TAXATION

SB 2100

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10-16-03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2100

House Finance and Taxation Committee

☐ Conference Committee

Hearing Date March 3, 2003

| Tape Number | Side A | Side B | Meter # |
|---|--------|--------|---------|
| 1 | X | | 0.4 |
| | | | |
| | | | |
| Committee Clerk Signature <i>Janice Stein</i> | | | |

Minutes:

REP. WESLEY BELTER, CHAIRMAN Called the hearing to order.

**MARY LOFTSGARD, SUPERVISOR OF THE CORPORATE INCOME TAX SECTION
OF THE OFFICE OF STATE TAX COMMISSIONER** Testified in support of the bill. See

attached written testimony.

With no further testimony, the hearing was closed.

COMMITTEE ACTION

REP. CLARK Made a motion for a **DO PASS**.

REP. HEADLAND Second the motion. **MOTION CARRIED.**

14 YES 0 NO 0 ABSENT

REP. CLARK Was given the floor assignment.

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Operator's Signature

10-16-03
Date

Date: **3-3-03**
Roll Call Vote #: **1**

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. **SB2100**

House FINANCE & TAXATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do pass

Motion Made By Rep. Clark Seconded By Rep. Headland

| Representatives | Yes | No | Representatives | Yes | No |
|---------------------|-----|----|-----------------|-----|----|
| BELTER, CHAIRMAN | ✓ | | | | |
| DROVDAL, VICE-CHAIR | ✓ | | | | |
| CLARK | ✓ | | | | |
| FROELICH | ✓ | | | | |
| GROSZ | ✓ | | | | |
| HEADLAND | ✓ | | | | |
| IVERSON | ✓ | | | | |
| KELSH | ✓ | | | | |
| KLEIN | ✓ | | | | |
| NICHOLAS | ✓ | | | | |
| SCHMIDT | ✓ | | | | |
| WEILER | ✓ | | | | |
| WIKENHEISER | ✓ | | | | |
| WINRICH | ✓ | | | | |

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Clark

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

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10-16-03
Date

REPORT OF STANDING COMMITTEE (410)
March 3, 2003 12:55 p.m.

Module No: HR-37-3731
Carrier: Clark
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
SB 2100: Finance and Taxation Committee (Rep. Belter, Chairman) recommends DO
PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2100 was placed on
the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-37-3731

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2003 TESTIMONY

SB 2100

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10-16-03
Date

TESTIMONY BEFORE THE SENATE
FINANCE AND TAXATION COMMITTEE

SB 2100

MARY LOFTSGARD

JANUARY 14, 2003

Chairman Urlacher, members of the committee, my name is Mary Loftsgard. I am the supervisor of the Corporate Income Tax Section of the Office of State Tax Commissioner, and I am here to testify in support of SB 2100.

The Tax Commissioner proposes an amendment to North Dakota Century Code § 57-38-38(9). This subsection concerns amended corporation income tax returns and specifies the amount of time available to the Tax Commissioner to audit these returns and assess any additional tax that may be due.

The subsection currently refers to amended returns filed before the statutory period to audit and assess expires. These statutory periods are specified in N.D.C.C. §§ 57-38-38(1) and 57-38-38(2). Essentially, the statute currently allows the Tax Commissioner two years from the date an amended return is filed under these subsections to audit that return.

An example may be of some help. If a taxpayer filed an original tax year 2000 return on the due date of April 15, 2001, the Tax Commissioner would have three years from that date to audit that return, or until April 15, 2004. If the taxpayer timely files an amended tax year 2000 return on April 15, 2004, the current language of the statute allows the Tax Commissioner until April 15, 2006, to audit the amended return.

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Date

The proposed amendment would allow the Tax Commissioner the same two-year period to audit amended returns when they are filed under N.D.C.C. § 57-38-38(3). This subsection allows the Tax Commissioner a six-year period to audit and assess if North Dakota taxable income or the North Dakota tax liability has been understated by more than 25%.

However, as the statute now stands, the Tax Commissioner would be precluded from auditing amended returns filed in this situation if they were filed after the deadlines in N.D.C.C. §§ 57-38-38(1) and 57-38-38(2). As in the prior example, assume a taxpayer filed an original tax year 2000 return on the due date of April 15, 2001. If the taxpayer files an amended tax year 2000 return on April 15, 2007, to show taxable income or tax liability in excess of 25% of that originally reported, the Tax Commissioner, under the current language of the statute would be precluded from auditing the amended return.

The proposed amendment will allow the Tax Commissioner an additional two years to audit amended returns under both the normal statutory period for filing and the six-year statutory period.

The proposed amendment also adds language to allow the Tax Commissioner to assess any additional tax ". . . attributable to the changes or corrections on the amended return." This will allow the Tax Commissioner to assess tax due when the change on an amended return affects a year for which the statutes to assess are closed.

The most likely scenario where this could happen would be where a taxpayer files an amended return for a year where a North Dakota net operating loss (NOL) was reported and carried back to a prior year. Assume a taxpayer's 2000 tax year return reports a North Dakota NOL. The taxpayer files the 2000 tax year return on April 15, 2001. On the same date, the taxpayer files an amended return to carry the NOL back to tax year 1998. The amended return is audited and the taxpayer receives the refund claimed for tax year 1998.

Then, on April 15, 2004, the taxpayer timely files an amended return for tax year 2000, which reports a smaller North Dakota NOL than was reported on the original return. The time period to audit tax year 1998 expired on April 15, 2003 (i.e., two years after the amended return was filed). Thus, the taxpayer will have received a larger refund than it is entitled to, based on the amended return for tax year 2000. The proposed amendment would allow the Tax Commissioner to audit the tax year 1998 return in such an instance.

The Tax Commissioner recommends a "do-pass" for Senate Bill 2100. If there are any questions, I will be glad to respond.

TESTIMONY BEFORE THE HOUSE
FINANCE AND TAXATION COMMITTEE

SB 2100

MARY LOFTSGARD

MARCH 3, 2003

Chairman Belter, members of the committee, my name is Mary Loftsgard. I am the supervisor of the Corporate Income Tax Section of the Office of State Tax Commissioner, and I am here to testify in support of SB 2100.

The Tax Commissioner proposes an amendment to North Dakota Century Code § 57-38-38(9). This subsection concerns amended corporation income tax returns and specifies the amount of time available to the Tax Commissioner to audit these returns and assess any additional tax that may be due.

The subsection currently refers to amended returns filed before the statutory period to audit and assess expires. These statutory periods are specified in N.D.C.C. §§ 57-38-38(1) and 57-38-38(2). Essentially, the statute currently allows the Tax Commissioner two years from the date an amended return is filed under these subsections to audit that return.

An example may be of some help. If a taxpayer filed an original tax year 2000 return on the due date of April 15, 2001, the Tax Commissioner would have three years from that date to audit that return, or until April 15, 2004. If the taxpayer timely files an amended tax year 2000 return on

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However, as the statute now stands, the Tax Commissioner would be precluded from auditing amended returns filed in this situation if they were filed after the deadlines in N.D.C.C. §§ 57-38-38(1) and 57-38-38(2). As in the prior example, assume a taxpayer filed an original tax year 2000 return on the due date of April 15, 2001. If the taxpayer files an amended tax year 2000 return on April 15, 2007, to show taxable income or tax liability in excess of 25% of that originally reported, the Tax Commissioner, under the current language of the statute would be precluded from auditing the amended return.

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The Tax Commissioner recommends a "do-pass" for Senate Bill 2100. If there are any questions, I will be glad to respond.

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