

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1041

2005 HOUSE FINANCE AND TAXATION

HB 1041

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1041**

House Finance and Taxation Committee

☐ Conference Committee

Hearing Date **January 11, 2005**

Tape Number

1

Side A

x

Side B

Meter #

6.7

Committee Clerk Signature

Janice Stein

Minutes:

REP. WES BELTER, CHAIRMAN Called the committee hearing to order.

JOHN WALSTAD, ATTORNEY FOR THE LEGISLATIVE COUNCIL Explained the bill stating the origination of the bill came from the interium committee. See attached copy of interium committee recommendations.

REP. BELTER Asked whether the practice of combining the incomes, has that been going on all of the time?

JOHN WALSTAD I believe it has been going on since 1981, when North Dakota went to the short-form method.

REP. BELTER But this is only going back to 2001 to give those refunds.

JOHN WALSTAD That is correct, those are what is called open tax years, where taxpayers are still eligible to amend their returns under existing law. The committee decided not to open up all of the way back.

REP. BELTER Would people have any recourse, if they wanted to go back?

JOHN WALSTAD Stated if you had a good lawyer....

Someone from the sidelines, stated you could not go back.

REP. KELSH The tax commissioner isn't asking for this particular authority because he can always administrate it from here on out, this isn't granting authority to the tax commissioner?

JOHN WALSTAD The tax commissioner feels comfortable that administratively, 2003, and on, are addressable with the tax commissioner's current authority. The problem with 2001 and 2002, those tax years are already closed out, there may be a constitutional gift issue, and some other things, so the commissioner thought this is a legislative decision whether we want to open up prior tax years.

REP. WEILER If we don't pass this bill and someone is in this situation finds out that they have the right for this money, can they come back to the state of North Dakota for their two hundred dollars?

JOHN WALSTAD You can always challenge a decision made by the tax commissioner, I think the issue becomes, how much do you want to spend to get your two hundred bucks back.

REP. WEILER If we don't pass this, what are the chances that someone will come back after this money?

JOHN WALSTAD They would have a hard time convincing the tax commissioner to issue the refund. The commissioner has already taken the position that he probably can't do that with the authority he has now. They would then be faced with some serious lawsuit costs, challenging the constitutionality of North Dakota law ignoring the provisions of federal law. You are looking at a substantial amount of money to obtain a relatively small refund.

REP. FROELICH Asked whether interest is accrued.

JOHN WALSTAD Stated yes, on refunds, law does provide for interest payments from the time the tax was paid until the refund is claimed.

REP. WRANGHAM Related to the fiscal note of \$75,000. Does that indicate that everyone who could ask for a refund did ask? How many people will apply for this refund?

JOHN WALSTAD Referred to Joseph Becker of the State Tax Commissioner's Office.

JOSEPH BECKER, STATE TAX DEPARTMENT Stated the estimate on the fiscal note, was the best they could come up with. They are looking at three to four hundred taxpayers per year. He also added that the tax department asked the interium committee to put this bill in, because they were notified by the United Stated Department of Defense asking if we would consider opening up the open years, to these individuals. He stated they are keeping the Department of Defense informed about what has been happening. We are assuming that most of our population also, are those that are stationed at our two bases. We have an individual who goes to the bases every year to talk to them.

REP. WEILER Why don't we just send these people the money, if we know who they are?

JOSEPH BECKER The commissioner through council, has determined that that is not possible. He stated they have taken a close look at the federal legislation, and it is unclear as to retroactive application, and that is why the commissioner is moving in this direction.

With no further testimony, the committee hearing was closed.

COMMITTEE ACTION

In discussion regarding action on this bill, Rep. Belter stated he would check if the bill needed to be rereferred to the appropriations committee.

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House Finance and Taxation Committee

Bill/Resolution Number **HB 1041**

Hearing Date **January 11, 2005**

COMMITTEE ACTION 1-12-05, Tape #1, Side B, Meter 34.5

Committee members discussed the idea whether this bill should be referred to appropriations.

The bill is being held until a later date.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1041**

House Finance and Taxation Committee

☐ Conference Committee

Hearing Date **January 18, 2005**

Tape Number	Side A	Side B	Meter #
1		x	16.6

Committee Clerk Signature

Minutes:

COMMITTEE ACTION

REP. HEADLAND Made a motion for a **Do Pass**

REP. GRANDE Second the motion. **Motion Carried.**

12 YES 0 NO 2 ABSENT

REP. BRANDENBURG Was given the floor assignment.

FISCAL NOTE
Requested by Legislative Council
12/17/2004

Bill/Resolution No.: HB 1041

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.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

(\$75,000)

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

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

HB 1041 allows the retroactive application of the refund provisions of the Servicemembers Civil Relief Act, to tax years 2001 and 2002.

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.*

Enactment of HB 1041 will result in approx. \$75,000 in individual income tax refunds for tax years 2001 and 2002.

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, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name: Kathryn L. Strombeck
Phone Number: 328-3402

Agency: Office of Tax Commissioner
Date Prepared: 01/03/2005

Roll Call Vote #:

BILL/RESOLUTION NO. *HB 1041*

House **FINANCE & TAXATION**

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Ass

Motion Made By

Seconded By

Seconded By

Rep. Grande

Representatives
BELTER, WES, CHAIRMAN
DROVDAL, DAVID, V-CHAIR
BRANDENBURG, MICHAEL
CONRAD, KARI
FROELICH, ROD
GRANDE, BETTE
HEADLAND, CRAIG
IVERSON, RONALD
KELSH, SCOT
NICHOLAS, EUGENE
OWENS, MARK
SCHMIDT, ARLO
WEILER, DAVE
WRANGHAM, DWIGHT

Yes

No

Representatives

Yes

No

Total (Yes)

No

Q

Absent

Floor Assignment

Rep. Brandenburg²

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

REPORT OF STANDING COMMITTEE (410)
January 18, 2005 4:13 p.m.

Module No: HR-11-0668
Carrier: Brandenburg
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1041: Finance and Taxation Committee (Rep. Belter, Chairman) recommends DO PASS (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1041 was placed on the Eleventh order on the calendar.

2005 SENATE FINANCE AND TAXATION

HB 1041

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1041**

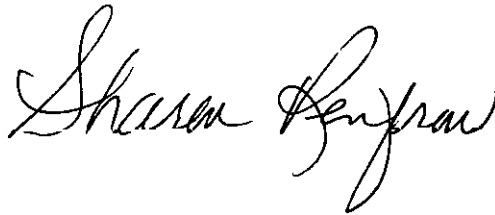
Senate Finance and Taxation Committee

☐ Conference Committee

Hearing Date **March 1, 2005**

Tape Number	Side A	Side B	Meter #
# 1	X		49.4 - 60.3

Committee Clerk Signature



Minutes:

CHAIRMAN URLACHER CALLED THE COMMITTEE TO ORDER AND OPENED THE HEARING ON HB 1041.

JOHN WALSTAD, attorney for Legislative Council gave a handout "Military Pay as Taxable Income" stating the Federal government enacted legislation in 2003 prohibiting states from using active duty military pay of a nonresident service member to calculate income taxes on income that is taxable in the state. For the taxable year 2003 and beyond, the Tax Commissioner has made an administrative adjustment to take care of that problem, to factor out that income that the Fed's say the State cannot tax or use in a computation. The Tax Commissioner told the interim committee that he does not believe that he has the authority to administratively make change for the open tax years before 2003 and that is what is addressed by this bill. It only addresses the 2001 and 2002 tax years, it allows nonresident service members and spouses to file an amended return to exclude that income that should not have been included in those tax years and the bill

draft would allow the claim for a credit or refund to be filed up to April 15, 2006. So what it does, it opens a window to allow affected individuals to file an amended return for those 2 tax years to obtain a refund from the State. I think the fiscal note says there is a potential revenue loss of \$75,000 to the state general fund, I'm not sure how that is determined. My suspicion is that a lot of service members who were in that situation in 01-02 in ND are longer in ND, I'm guessing that the Tax Dept. Is not going to track those people down. The military has a pretty good network for letting people know about state income tax issues so I would guess that that would be the method we would anticipate would allow these people to find out about this opportunity.

SEN. URLACHER: so your saying the impact may not be that great?

ANSWER: I'm saying that some of the people eligible may not become aware that this window is open for them, I don't know how the fiscal note was calculated. If the fiscal note is based on everybody who has the opportunity finding out about it and filing a claim, then the number would be less, but I'm guessing that the Tax Dept. Probably factored in that some people won't find out to have this opportunity or will decide that its not worth the trouble of amending those returns and filing. I don't know.

SEN. EVERY: wouldn't their name show up on a like a there's published and unclaimed tax refund lists every year, wouldn't it show up on there or do they have to file to get it?

ANSWER: they wouldn't be on that list, because until they amend their return, they don't have a refund coming.

SEN. BERCIER: the narrative goes back to 2001 and 2002,

ANSWER: that's correct, its just those 2 tax years that are addressed by this bill. Tax years since then, 03 on are addressed by an administrative decision made by the Tax Commissioner so that income can be excluded from ND's return and won't be used to determine tax liability. The most likely scenario is that that income gets used, that income is not taxed, but whatever income the spouse has then ends up taxed at a higher rate because it looks like there's more income for the couple filing a joint return

DONNITA WALD: legal counsel with the Tax Dept. Actually we were able to identify those refunds and we do know that in 2001 there was 393 returns that we think will be affected. In 2002 there are 351 returns and based on that we kinda just did some quick calculations and came up the \$75,000 dollar amount, so I think that we are probably pretty darn close, assuming everybody files a claim for refund. As far as notifications, when the amendments to the Civil Service Members Relief Act, if passed, their liaison in Washington DC did contact us so they are waiting to hear from us to see what the Legislature does and as soon as this bill is passed we will be in contact with them so they can get the word out.

NO OPPOSITION.

Closed the hearing.

SEN. EVERY: made a **MOTION FOR DO PASS AND REFER TO APPROPRIATIONS**, seconded by Sen. Wardner.

ROLL CALL VOTE: 6-0-0 Sen. Tollefson will carry the bill.

SEN. EVERY: we're not going to contact anybody and let them know.

DONNITA WALD: the military is very very proactive in what their liabilities and responsibilities are so I'm sure the word will get out.

Date: 3-1-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1041

Senate

Finance and Taxation

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Do Pass & Refer to Approp's

Motion Made By

Every

Seconded By

Wardner

Senators	Yes	No	Senators	Yes	No
Sen. Urlacher	✓		Sen. Bercier	✓	
Sen. Wardner	✓		Sen. Every	✓	
Sen. Cook	✓				
Sen. Tollefson	✓				

Total (Yes)

6

No

0

Absent

0

Floor Assignment

Tollefson

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

REPORT OF STANDING COMMITTEE (410)
March 2, 2005 2:12 p.m.

Module No: SR-38-3998
Carrier: Tollefson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1041: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends DO PASS and BE REREFERRED to the Appropriations Committee (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1041 was rereferred to the Appropriations Committee.

2005 SENATE APPROPRIATIONS

HB 1041

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1041

Senate Appropriations Committee

☐ Conference Committee

Hearing Date March 9, 2005

Tape Number	Side A	Side B	Meter #
2	a		2,328

Committee Clerk Signature



Minutes:

Chairman Holmberg called the hearing to order on HB 1041.

John Walstad, Legislative Council, testified on HB 1041 providing neutral information. ND has not put state tax on nonresident service members stationed in North Dakota. Congress in 2003 passed service member relief act of 2003 which made it clear you cannot use the military income of a nonresident to calculate the tax on taxable income for that individual or the spouse. The military has been included as nonresident to calculate income tax on spouses. For 2003 and later, the tax administration made the adjustment so we are not doing what had been done. Brass in Washington is urging states to go back and pick up earlier tax years and the tax commissioner felt he did not have the authority to do that, therefore this went to a decision of the interim committee. If this bill passes any service man falling into that category, could amend their return. The fiscal note reflects the best guess of what might happen for those two years.

Hearing closed

Page 2

Senate Appropriations Committee

Bill/Resolution Number 1041

Hearing Date March 9, 2005

Senator Christmann moved a DO PASS, Senator Bowman seconded, no discussion. A roll call vote was taken with 13 yes, 0 no 2 absent. Senator Tollefson will carry the bill.

Date 3/9/05
Roll Call Vote #:

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB

Senate SENATE APPROPRIATIONS

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Do Pass

Motion Made By

Christmann

Seconded By

Bowman

Senators	Yes	No	Senators	Yes	No
CHAIRMAN HOLMBERG	✓		SENATOR KRAUTER	✓	
VICE CHAIRMAN BOWMAN	✓		SENATOR LINDAAS	✓	
VICE CHAIRMAN GRINDBERG			SENATOR MATHERN	✓	
SENATOR ANDRIST	✓		SENATOR ROBINSON	✓	
SENATOR CHRISTMANN	✓		SEN. TALLACKSON	✓	
SENATOR FISCHER					
	✓				
SENATOR KILZER	✓				
SENATOR KRINGSTAD	✓				
SENATOR SCHOBINGER	✓				
SENATOR THANE	✓				

Total (Yes)

13

No

0

Absent

2

Floor Assignment

Tollefson

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

REPORT OF STANDING COMMITTEE (410)
March 11, 2005 7:42 a.m.

Module No: SR-43-4710
Carrier: Tollefson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1041: Appropriations Committee (Sen. Holmberg, Chairman) recommends DO PASS
(15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1041 was placed on the
Fourteenth order on the calendar.

2005 TESTIMONY

HB 1041

HB1041
John Walstad
1-11-03

Military Pay as Taxable Income

The Servicemembers Civil Relief Act of 2003 prohibits a state from using active duty military pay of a nonresident servicemember to calculate income taxes on income that is taxable by the state. The most likely circumstance that would be impacted by this in North Dakota relates to income earned in the state by a nonresident civilian spouse of a nonresident servicemember stationed in North Dakota. To comply with the 2003 federal legislation, an adjustment must be made on Form ND-1 to exclude consideration of the servicemember's military income in determining the couple's tax obligation. The Tax Commissioner has made this adjustment by administrative action for taxable year 2003 and later. However, the Tax Commissioner believes that legislation is needed to recognize retroactive application for taxable years before 2003.

The committee recommends House Bill No. 1041 to allow a claim of an individual income tax refund for taxable years 2001 and 2002 for a nonresident whose military income was used to determine the initial tax on North Dakota taxable income. The bill allows the refund claim to be filed until April 15, 2006. The estimated fiscal effect of the bill is a one-time loss of approximately \$88,000 in general fund revenue.