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SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2140

2005 SENATE FINANCE AND TAXATION

SB 2140

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2140

Senate Finance and Taxation Committee

☐ Conference Committee

Hearing Date January 5, 2005

| Tape Number | Side A | Side B | Meter # |
|---|--------|--------|------------|
| # 1 | X | | 33.0 - 54. |
| | | | |
| | | | |
| Committee Clerk Signature <i>Sharon Benfraw</i> | | | |

Minutes: All members present.

SEN. URLACHER: called the meeting to order and opened the hearing on SB 2140.

MARY LOFTSGARD, Supervisor of the Corporate Income Tax Section of the Office of State Tax Commissioner appeared in support with written testimony, stating that Section 1 amends a section of the Financial Institution Tax and is introduced based on recommendation from the state's banking industry. Section 1 fixes the inequity in the financial institutions tax by referring to a section of the corporate tax law that requires combined reporting for 100% North Dakota companies. This proposed change requires financial institutions that are members of a unitary group and conducting 100% of their business in ND to file FIT returns on a combined report and will allow them to deduct intercompany dividends paid within the unitary group in computing taxable income. This amendment will create parity between apportioning financial institutions and financial institutions doing 100% of their business in ND, and will create consistency in treatment between the FIT and corporate income tax.

Section 2, amended will ensure that amended returns filed under the 3-year or the 6-year, 25% rule will have the same number of years to be audited whether the returns report additional tax due or request a refund. The will provide consistency in application for taxpayers and the Tax Dept.

Sections 3 and 4 amendment remove the definition of "financial organization" and deletes the reference to financial organizations in the section on applicability of the statute.

SEN. EVERY: It's been since 1997, 8 years, why now?

MARY LOFTSGARD: It probably should have happened before now, it's confusing and we're auditing with confusion and we would like to clean it up no.

SEN. TOLLEFSON: How do you define public utility in section 4 and also a portion of that section of the law would be removed if this bill is passed.

MARY LOFTSGARD: on page 2 of the bill itself, the public utilities are defined in # 5, line 24.

SEN. TOLLEFSON: any business entity serving as a public utility would be covered under this law?

MARY LOFTSGARD: yes, they would remain covered, they are not being taken out of this bill.

SEN. BERCIER: Do you have an idea as to how much money may have been, what the amount is that we didn't collect? In dividends

ANSWER: prior to 2003, what the dividend reduction was, I don't know, but could get that information for you.

RICK CLAYBURG: State Tax Commissioner appeared in support, stating we don't in general put in housekeeping bills, but this session, all of our bills are just that. On this particular bill, sections 2, 3 and 4 are merely housekeeping, however, section 1 is very important with the Supreme Courts decision in elimination of the domestic dividends solution. That lead to the creation of an equity in our tax policy.

No further testimony in support, opposition or neutral.

RICK CLAYBURG: as far as he is concerned, all the parties or organizations were aware of what we were doing and I don't anticipate anybody else appearing on the bill.

SEN. WARDNER: I do remember last session when we dealt with the corporate income tax where it came up the dividend exclusion was unconstitutional by the Tax Dept. At that time with the Supreme Court, so some of this looks familiar.

Sen. Every made a motion for DO PASS, seconded by Sen. Wardner. .

There being no further discussion, the roll call was taken. 6-0-0, unanimous vote in favor of Do Pass. The carrier of the bill will be Sen. Wardner.

Meeting adjourned

FISCAL NOTE
Requested by Legislative Council
12/23/2004

Bill/Resolution No.: SB 2140

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 | | | (\$8,600) | | | |
| Expenditures | | | | | | |
| Appropriations | | | | | | |

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 |
| | | | (\$21,400) | | | | | |

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

Enactment of SB 2140 will require domestic financial institutions conducting business solely within North Dakota to file a combined report.

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.*

If enacted, SB 2140 is expected to reduce revenues by an estimated \$30,000 during the 2005-07 biennium. Financial institutions tax revenue is split 2/7's general fund and 5/7's counties.

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 | Agency: | Office of Tax Commissioner |
| Phone Number: | 328-3402 | Date Prepared: | 01/04/2005 |

Date: 1-5-05
Roll Call Vote #: _____

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2140

| | | |
|--------|-----------------------------|-----------|
| Senate | Finance and Taxation | Committee |
|--------|-----------------------------|-----------|

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Evans Seconded By Wardner

[illegible]

Total (Yes) 10 No 0

Absent 0

Floor Assignment Wardner

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

REPORT OF STANDING COMMITTEE (410)
January 5, 2005 12:34 p.m.

Module No: SR-02-0094
Carrier: Wardner
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2140: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2140 was placed on the Eleventh order on the calendar.

2005 HOUSE FINANCE AND TAXATION

SB 2140

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **SB 2140**

House Finance and Taxation Committee

☐ Conference Committee

Hearing Date **February 23, 2005**

| Tape Number | Side A | Side B | Meter # |
|---|----------|--------|------------|
| 1 | X | | 4.7 |
| | | | |
| | | | |
| Committee Clerk Signature <i>Janice Stein</i> | | | |

Minutes:

REP. WES BELTER, CHAIRMAN Called the committee 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.

REP. SCHMIDT This kind of looks like ten companies are affected by this, do they do all of their business in North Dakota?

MARY LOFTSGARD That is correct. Most of the financial institutions who file, do business in North Dakota and in other states. There is a small group who do all of their business in North Dakota, this bill would treat them the same as all of the financial institutions.

With no further testimony, the committee hearing was closed.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **SB 2140**

House Finance and Taxation Committee

☐ Conference Committee

Hearing Date **February 28, 2005**

| Tape Number | Side A | Side B | Meter # |
|---------------------------|--------|----------|----------|
| 1 | | X | 5 |
| | | | |
| | | | |
| Committee Clerk Signature | | | |

Minutes:

COMMITTEE ACTION

REP. DROVDAL Made a motion for a **do pass**.

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

10 YES 1 NO 3 ABSENT

REP. OWENS Was given the floor assignment.

Date: 2-28-05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2140

House FINANCE & TAXATION

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

Do Pass

Motion Made By

Rep. Drovdal

Seconded By

Rep. Conrad

| Representatives | Yes | No | Representatives | Yes | No |
|-------------------------|-----|----|-----------------|-----|----|
| 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 | ✓ | | | | |

Total

(Yes)

10

No

1

Absent

3

Floor Assignment

Rep. Owens

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

REPORT OF STANDING COMMITTEE (410)
February 28, 2005 3:28 p.m.

Module No: HR-36-3787
Carrier: Owens
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2140: Finance and Taxation Committee (Rep. Belter, Chairman) recommends DO PASS (10 YEAS, 1 NAY, 3 ABSENT AND NOT VOTING). SB 2140 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

SB 2140

TESTIMONY BEFORE THE SENATE
FINANCE AND TAXATION COMMITTEE

SB 2140

MARY LOFTSGARD

FEBRUARY 5, 2005

*same
given to
the House*

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 2140.

SECTION 1. FINANCIAL INSTITUTIONS TAX AMENDMENT

Section 1 of the bill amends a section of the Financial Institution Tax (FIT) and is introduced based on recommendation from the state's banking industry.

Some history may be helpful in explaining the amendment. For taxable years beginning before January 1, 1997, the taxation of banks, trusts and building and loan institutions was regulated by N.D.C.C. Chapters 57-35, 57-35.1 and 57-35.2. Under these statutes, the entities were required to file bank and privilege tax returns on a separate entity basis. They were precluded from filing a combined report even if they were unitary with a parent or subsidiary company.

The 1997 Legislature repealed the bank tax statutes noted above and replaced them with the FIT, N.D.C.C. Chapter 57-35.3. The FIT allows financial institutions that are unitary to file a tax return based on a combined report, if at least one member

of the unitary group does business within and without North Dakota (i.e., is an apportioning financial institution). It does not, however, allow unitary financial institutions that do 100% of their business in North Dakota to file a combined report.

The significance of the ability to file combined reports relates to the treatment of dividends received from related corporations. Subsidiary corporations, including financial institutions, commonly pay dividends to their parent corporation. If the companies file a unitary, combined report, the dividend income is eliminated as an intercompany adjustment when computing taxable income. This is true under both corporate income tax and FIT.

Prior to 2003, both corporations and financial institutions that did not file a return based on a combined report, but filed on a single entity basis, could reduce taxable income for a dividend received from related or unrelated parties, if the dividend payor conducted business in North Dakota (i.e., a domestic dividend exclusion). The dividend deduction allowed a 100% North Dakota financial institution to reduce its taxable income for the dividends it received from a subsidiary 100% North Dakota financial institution.

However, in 2003 the North Dakota Supreme Court ruled that the domestic dividend exclusion was unconstitutional, and it was thus repealed by the 2003 Legislature. As a result, a 100% North Dakota financial institution could no longer reduce its taxable income for the dividends it received from a subsidiary that also conducted 100% of its business in North Dakota. North Dakota financial institutions that file

a combined report, however, could continue to eliminate such intercompany dividends from taxable income.

Section 1 of this bill fixes this inequity in the financial institutions tax by referring to a section of the corporate tax law that requires combined reporting for 100% North Dakota companies. This proposed change requires financial institutions that are members of a unitary group and conducting 100% of their business in North Dakota to file FIT returns on a combined report and will allow them to deduct intercompany dividends paid within the unitary group in computing taxable income.

This amendment will create parity between apportioning financial institutions and financial institutions doing 100% of their business in North Dakota, and will create consistency in treatment between the FIT and corporate income tax.

SECTION 2. AUDIT PERIOD AMENDMENT

In Section 2 of SB 2140, the Tax Commissioner proposes an amendment to North Dakota Century Code § 57-38-38(9). In the 2003 Legislative Session, Senate Bill 2100 amended this section to allow the Tax Commissioner the same two year period to audit amended returns whether they were filed:

- Under the normal 3-year statute (N.D.C.C. § 57-38-38(1)), or
- Under the 6-year statute if North Dakota taxable income or the North Dakota tax liability has been understated by more than 25% (N.D.C.C. § 57-38-38(3)).

However, due to an oversight by the Tax Department, the amendment in the last session did not apply to some amended returns claiming a refund. Currently, the Tax Department has an additional two years to audit a refund claim if the claim is made under the 3-year statute of limitations for refund claims, but not if the refund claim is made due to a 25% overstatement of tax, which has a 6-year refund claim statute. The amendment in Senate Bill 2140 will allow the Tax Commissioner an additional 2 years to audit refund claims filed under the 6-year, 25% overstatement provisions.

Passage of this amendment will ensure that amended returns filed under the 3-year or the 6-year, 25% rule will have the same number of years to be audited whether the returns report additional tax due or request a refund. This will provide consistency in application for taxpayers and the Tax Department.

SECTIONS 3 AND 4. UDITPA HOUSEKEEPING AMENDMENT

Sections 3 and 4 of Senate Bill 2140 amend N.D.C.C. Chapter 57-38.1, Uniform Division of Income Tax Act (UDITPA). The amendment removes the definition of "financial organization" and deletes the reference to financial organizations in the section on applicability of the statute.

Prior to 1997, corporate taxpayers defined as financial organizations were excluded from the allocation and apportionment mandates of this chapter. Essentially those entities were required to use a two-factor formula for apportionment (property and business) rather than the standard UDITPA three-factor formula (property, payroll, and sales).

With the enactment of the FIT in 1997, the entities previously considered "financial organizations" are now subject to the provisions of that chapter. Consequently, the "financial organization" language in UDITPA is now obsolete, and the Tax Commissioner recommends the amendments proposed in Sections 3 and 4 of this Bill. This will avoid confusion for taxpayers and tax practitioners.

The Tax Commissioner recommends a "do-pass" for Senate Bill 2140. If there are any questions, I will be glad to respond.



North Dakota Office of State Tax Commissioner

2004 Corporation Income Tax

Rick Clayburgh, Tax Commissioner

Form 40
Form 40-UT
Form 40-ES

Need help?

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- **Find answers to tax questions through our Frequently Asked Questions.**
- **E-mail your tax questions:**
corptax@state.nd.us

Dear Taxpayer,

As you prepare your North Dakota corporation income tax return, please consider the following:

Corporations engaged in business in North Dakota or having sources of income from North Dakota must file a North Dakota Corporation Income Tax Return, Form 40.

A corporation which files a Federal Form 1120S as a small business corporation must file a North Dakota Small Business Corporation Income Tax Return, Form 60.

Financial institutions (*See North Dakota Century Code ch. 57-35.3*) located or doing business within North Dakota must file a North Dakota Financial Institution Tax Return, Form 35.

If you have questions, need tax forms, or would like other North Dakota tax information, give us a call or visit our Web site at www.ndtaxdepartment.com. I also encourage you to let us know what you think we are doing well and what we can do to improve service to you. Please e-mail, phone, or write us using the contact information found on the following page.

Sincerely,

Rick Clayburgh,
Tax Commissioner

ndTax

Please remove label and attach it to your return

Obtain
copy
from Tax Dept

SB 2140



North Dakota Office of State Tax Commissioner

2004 Individual Income Tax

Rick Clayburgh, Tax Commissioner

Form ND-1

e-file

Direct Deposit

Dear Taxpayer,

Electronic filing has become a popular income tax filing option. Last year about 40 percent of North Dakota's taxpayers used e-file to file their state income tax. And, many taxpayers were eligible to e-file free of charge through the IRS Free File consortium. If you didn't e-file your state income tax last year, I hope you will consider it this year.

E-file reduces errors and prevents processing delays. And, if you are expecting a refund, when you use Direct Deposit you get your refund more quickly. When you use these electronic options, you also help reduce the cost of government. It costs the Office of State Tax Commissioner less money to process an electronic return than a paper return. Please turn to page 15 in the booklet to learn more about electronic options.

I hope you will take a minute to visit our Web site at www.ndtaxdepartment.com. You can download forms and find out about other electronic options such as Direct Deposit and paying your taxes by credit card.

I also encourage you to let us know what you think we are doing well and what we can do to improve service to you. Please phone, write, or e-mail your comments to us using the contact information on the back cover of this booklet.

Thank you,

Rick Clayburgh,
Tax Commissioner



www.ndtaxdepartment.com



BY MAIL
ONLINE
E-FILE

Obtain
copy from
Tax Dept



North Dakota Office of State Tax Commissioner

2004 Individual Income Tax

Rick Clayburgh, Tax Commissioner

Form ND-2

**Are you using
the right
form?**

**If not, you may be
paying too much tax!**

**See page 3
for more
information.**

**Do you owe
Use tax?**

**Did you purchase
goods in another
state? If you did,
you may have to pay
a use tax.**

**See inside front
cover for more
information.**

Dear Taxpayer,

Your choice of forms will affect the amount of tax you have to pay. The majority of taxpayers have a lower tax on Form ND-1. For help in choosing the right form, turn to page 3 and read **Which form to use**.

If you would like to file electronically, you will need to use the Form ND-1. When you use these electronic options, you also help reduce the cost of government. It costs the Office of State Tax Commissioner less money to process an electronic return than a paper return. I hope you will consider e-file this year.

Please take a minute to visit our Web site, www.ndtaxdepartment.com. You can download tax forms and other informational publications, and read about other electronic options, such as Direct Deposit and paying your taxes by credit card.

I also encourage you to let us know what you think we are doing well and what we can do to improve service to you. Please phone, write, or e-mail your comments to us using the contact information on the back cover of this booklet.

Thank you,

Rick Clayburgh
Tax Commissioner

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North Dakota's taxes, visit
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