

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2391

2005 SENATE FINANCE AND TAXATION

SB 2391

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **SB 2391**

Senate Finance and Taxation Committee

Conference Committee

Hearing Date February 8, 2005

Tape Number	Side A	Side B	Meter #
#1		X	21.0 - 47.
#3	X		32.6 - 40.5
Committee Clerk Signature <i>Sharon Senfrow</i>			

Minutes:

SEN. SYVERSON: appeared as prime sponsor with written testimony and handed out proposed amendments.

CRAIG JOHNSON, CPA appeared in support with written testimony.

SEN. WARDNER: this is a state tax liability

ANSWER: Yes

SEN. WARDNER: so your gonna give 20% of whatever the gift is per year, is that correct?

ANSWER: Whatever the federal deduction is on the gift, in other words, these are split interest gifts.

SEN. COOK: we had amendments here to this bill, you spoke to the bill as amended?

ANSWER: there are 2 amendments that I think are quite substantive, the first one is on page 1, line 3, we have eliminated estates and trusts, this is only for individuals, the next amendment is on page 2, line 3 and I would rather not speak to that, there are some other folks that this has to

do with foreign corporations with ___ in ND and the last one has to do with an effective date.

We had put August 1 rather than retroactive. We want people to understand the bill and draft their trust accordingly if the bill passes so they have time to react to it. The rest of them are minor.

GORDON BENEK: Vice President for College Advancement for Bismarck State College appeared in support with written testimony. I'm in support for to provide an income tax credit for giving gifts to ND nonprofit organizations. The incentive of an income tax credit could make the difference to some potential donors

SHELLY PETERSON: ND Long Term Care Association appeared in support and to introduce John Frantsvog.

JOHN FRANTSVOG: appeared in support with written testimony.

KEVIN DVORAK: President of the ND Community Foundation appeared in support stating deferred and gift giving and this incentive would be a great asset to us as we build charitable resources for the future of the citizens of ND.

MIKE ARENGARD: University of Mary appeared in support stating anything we can do to help and keep our kids (youth) here would be beneficial.

Closed the hearing.

JOE BECKER: Tax Dept. presented amendments and explained them stating he visited with Sen. Syverson and pointed out that in the bill the way we understand it now is when a taxpayer gets to the state return, if they made a charitable contribution and claimed a deduction for it on their federal tax return, the state by default it going to be affected by that because we start with federal taxable income and I visited with them about that in the bill on page 3, lines 8 through 11

is the area of concern. I said that that language would appear to be put in there to prevent a double benefit that is you can't have a deduction and a credit too. They agreed with that. My understanding on this bill works is on the state return your going to have to add back into your income the amount of the contribution on which the credit is taken, then you can take the credit. So its replacing the deduction for the credit which would require some mechanical work on the state return, but mostly its going to require a statutory add back for that income adjustment and essentially the amendment will do is make sure that that income gets added in as its supposed to or the amount of that contribution gets added back in. Page 1 are just some technical changes, page 3 we wan to replace lines 8 through 11 with new language that states that if a credit is claimed then the amount of the contribution upon which the credit is computed must be added to federal taxable income when your computing ND taxable income. But only to the extent that that contribution actually reduced that number, so that should help clarify to a reader what's going to happen. The other amendment, page 3, line 18 were inserting a new section into the statute for form ND-1 to make sure there that we have that add back language in the code. We may need to add another amendment that I missed.

SEN. COOK: I have a note that the effective date should be changed, is that from you?

ANSWER: no, from Sen. Syverson's amendments.

SEN. WARDNER: then we should take all the amendments to Legislative Council and have them combined.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2391

Senate Finance and Taxation Committee

Conference Committee

Hearing Date **February 9, 2005**

Tape Number	Side A	Side B	Meter #
#1	X		38.7 - 54.5
Committee Clerk Signature			

Minutes:

SEN. WARDNER: handed out amendments and gave explanation. Starting with page 3, that was Tax Dept's stuff which had to put in there to for the process. That's the jest of the first part; it takes out estates and trusts changes words from gift to gifts, terminology. I'm comfortable with it.

SEN. COOK: page 2, line 18, Commissioner in tax. I don't know what the original intent was as I read it after that amendment, I wonder why they even had tax commissioner in there.

JOE BECKER: Tax Dept. appeared to explain the language. The language on page 2 of the bill lines 17 and 18. What the amendments are doing there is saying that the commissioner doesn't have to make any determination, what we're going to simply do is since the charitable contribution valuation will already be made for federal tax purposes, then that determination will be made by the IRS based on their own table, so commissioner doesn't have to do anything more is what the amendment is gonna do. Just taking us out of the loop.

Might I suggest one more technical change, at the bottom of page 1 the second amendment from the bottom where it reads page 3, replace lines 8 through 11 with that new language there, the 3rd line down where it reads computing ND taxable income under subsection 2, technically we should strike the language there under subsection 2 of section 57-30-30.3, we shouldn't have that in there.

So it should read income in computing ND taxable income, but only to the extent. The reason I say that is that is a reference to our form ND-1 only, this adjustment needs to be made both on the ND-1 and ND-2 so that's a little awkward there. We just make it generic, we'll be fine.

SEN. COOK: made a **MOTION TO ADOPT THE AMENDMENTS**, seconded by Sen.

Bercier

VOICE VOTE: 6-0-0 **MOTION CARRIES**

SEN. WARDNER: made a **MOTION FOR DO PASS AS AMENDED**, seconded by Sen.

Bercier

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

FISCAL NOTE

Requested by Legislative Council
02/14/2005

Amendment to: SB 2391

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						

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.*

Engrossed SB 2391 creates a tax credit for individuals, estates and trusts for planned gifts to qualified nonprofit organizations. There is no information available on the extent to which planned gifting currently occurs, or the amount of tax credit that may be generated by the provisions of engrossed SB 2391.

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, 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:	02/15/2005

FISCAL NOTE
Requested by Legislative Council
01/25/2005

Bill/Resolution No.: SB 2391

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						

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.*

SB 2391 creates a tax credit for individuals, estates and trusts for planned gifts to qualified nonprofit organizations. There is no information available on the extent to which planned gifting currently occurs, or the amount of tax credit that may be generated by the provisions of SB 2391. However, Section 1, item 2A (pg 3 lines 8-10) appears to limit the tax credit to those who do not deduct the gift as a charitable contribution on the federal return. This may mitigate or possibly eliminate the negative fiscal impact of this bill.

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, 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:	02/07/2005

PROPOSED AMENDMENTS TO SENATE BILL NO. 2391

Page 1, line 3, remove ", estates, and trusts"

Page 2, line 2, remove "a"

Page 2, line 3, replace "Tax-exempt" with "A tax-exempt", replace "501(c)(3)" with "501(c), contributions that qualify for a federal charitable income tax deduction", and replace "or" with "and"

Page 2, line 4, replace "Bank, trust company, or other trustee that is holding the fund on behalf" with "An organization that has an established business presence or situs in North Dakota."

Page 2, remove line 5

Page 2, line 9, after "the" insert "North Dakota" and replace "endowment" with "nonprofit organization"

Page 2, line 17, replace "adopted by rule by the tax" with "used by the internal revenue service in determining federal charitable income tax deductions"

Page 2, line 18, remove "commissioner in effect"

Page 2, line 22, after "the" insert "North Dakota" and replace "endowment" with "nonprofit organization"

Page 2, remove lines 29 through 31

Page 3, line 1, replace "A" with "An individual"

Page 3, line 3, remove "a" and replace "gift" with "gifts"

Page 3, line 4, after "any" insert "North Dakota"

Page 3, line 17, replace "A" with "An individual"

Page 3, line 20, after "2004" insert ", and applies to qualifying planned gifts made after July 31, 2005"

Renumber accordingly

PROPOSED AMENDMENTS TO SENATE BILL NO. 2391

Page 1, line 1, replace the second "and" with ","

Page 1, line 2, after "57-38-30.3" insert ", and a new subdivision to subsection 2 of section 57-38-30.3"

Page 3, replace lines 8 through 11 with

- "a. If this credit is claimed, the amount of the contribution upon which the credit is computed must be added to federal taxable income in computing North Dakota taxable income under subsection 2 of section 57-38-30.3, but only to the extent that the contribution reduced federal taxable income."

Page 3, after line 18, insert:

"SECTION 3. A new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Increased by the amount of the contribution upon which the credit under section 1 of this Act is computed, but only to the extent that the contribution reduced federal taxable income."

Renumber accordingly

PROPOSED AMENDMENTS TO SENATE BILL NO. 2391

Page 1, line 1, after "57-38" insert ", a new subdivision to subsection 1 of section 57-38-01.2," and after the second "new" insert "subdivision to subsection 2 and a new"

Page 1, line 3, remove ", estates, and trusts"

Page 2, line 2, remove "a"

Page 2, line 3, replace "Tax-exempt" with "A tax-exempt", replace "501(c)(3)" with "501(c), contributions that qualify for a federal charitable income tax deduction", and replace "or" with "and"

Page 2, line 4, replace "Bank, trust company, or other trustee that is holding the fund on behalf" with "An organization that has an established business presence or situs in North Dakota."

Page 2, remove line 5

Page 2, line 9, after "the" insert "North Dakota" and replace "endowment" with "nonprofit organization"

Page 2, line 17, replace "adopted by rule by the tax" with "used by the internal revenue service in determining federal charitable income tax deductions"

Page 2, line 18, remove "commissioner in effect"

Page 2, line 22, after "the" insert "North Dakota" and replace "endowment" with "nonprofit organization"

Page 2, remove lines 29 through 31

Page 3, line 1, replace "A" with "An individual"

Page 3, line 3, remove "a" and replace the second "gift" with "gifts"

Page 3, line 4, after "any" insert "North Dakota"

Page 3, replace lines 8 through 11 with:

- "a. If this credit is claimed, the amount of the contribution upon which the credit is computed must be added to federal taxable income in computing North Dakota taxable income under subsection 2 of section 57-38-30.3, but only to the extent that the contribution reduced federal taxable income."

Page 3, after line 14, insert:

"SECTION 2. A new subdivision to subsection 1 of section 57-38-01.2 is created and enacted as follows:

Increased by the amount of the contribution upon which the credit under section 1 of this Act is computed, but only to the extent that the contribution reduced federal taxable income.

SECTION 3. A new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Increased by the amount of the contribution upon which the credit under section 1 of this Act is computed, but only to the extent that the contribution reduced federal taxable income."

Page 3, line 17, replace "A" with "An individual"

Page 3, line 20, after "2004" insert ", and applies to qualifying planned gifts made after July 31, 2005"

Renumber accordingly

Date: 2-9-05
 Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2391

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number 50818.0202 w/Changes

Action Taken Adopt Amendments

Motion Made By Cook Seconded By Bercier

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

*voice
vote*

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

Date: 2-9-05
 Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2391

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass AS Amended

Motion Made By Wardner Seconded By Bercier

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 Wardner

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

REPORT OF STANDING COMMITTEE

SB 2391: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2391 was placed on the Sixth order on the calendar.

Page 1, line 1, replace the second "and" with ", a new subdivision to subsection 1 of section 57-38-01.2," and after the second "new" insert "subdivision to subsection 2 of section 57-38-30.3, and a new"

Page 1, line 3, remove ", estates, and trusts"

Page 2, line 2, remove "a"

Page 2, line 3, replace "Tax-exempt" with "A tax-exempt", replace "501(c)(3)" with "501(c), to which contributions qualify for a federal charitable income tax deduction", and replace "or" with "and"

Page 2, line 4, replace "Bank, trust company, or other trustee that is holding the fund on behalf" with "An organization that has an established business presence or situs in North Dakota."

Page 2, remove line 5

Page 2, line 9, after "the" insert "North Dakota" and replace "endowment" with "nonprofit organization"

Page 2, line 17, replace "adopted by rule by the tax" with "used by the internal revenue service in determining federal charitable income tax deductions"

Page 2, line 18, remove "commissioner in effect"

Page 2, line 22, after "the" insert "North Dakota" and replace "endowment" with "nonprofit organization"

Page 2, remove lines 29 through 31

Page 3, line 1, replace "A" with "An individual"

Page 3, line 3, remove "a" and replace the second "gift" with "gifts"

Page 3, line 4, after "any" insert "North Dakota"

Page 3, replace lines 8 through 11 with:

"a. If this credit is claimed, the amount of the contribution upon which the credit is computed must be added to federal taxable income in computing North Dakota taxable income, but only to the extent that the contribution reduced federal taxable income."

Page 3, after line 14, insert:

"SECTION 2. A new subdivision to subsection 1 of section 57-38-01.2 is created and enacted as follows:

Increased by the amount of the contribution upon which the credit under section 1 of this Act is computed, but only to the extent that the contribution reduced federal taxable income.

SECTION 3. A new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Increased by the amount of the contribution upon which the credit under section 1 of this Act is computed, but only to the extent that the contribution reduced federal taxable income."

Page 3, line 17, replace "A" with "An individual"

Page 3, line 20, after "2004" insert ", and applies to qualifying planned gifts made after July 31, 2005"

Renumber accordingly

2005 HOUSE FINANCE AND TAXATION

SB 2391

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2391

House Finance and Taxation Committee

Conference Committee

Hearing Date February 28, 2005

Tape Number	Side A	Side B	Meter #
1	X		37
Committee Clerk Signature <i>Janice Stein</i>			

Minutes:

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

SEN. JOHN SYVERSON, DIST. 45 Introduced the bill. See attached written testimony.

CRAIG M. JOHNSON, CPA, Testified in support of the bill. See attached written testimony.

JACK MC DONALD, ON BEHALF OF YMCA'S OF NORTH DAKOTA Testified in support of the bill. See attached written testimony.

GERALD SKOGLEY, RETIRED Testified in support of the bill. See written testimony.

REP. CONRAD When we looked at the long form of the North Dakota tax form, we found that only fourteen people had given to the nonprofit colleges, would this be used more than that was?

GERALD SKOGLEY Many of these are given, as in our case, who are billed, so the process, after one of us dies, it isn't really reflected.

CRAIG JOHNSON Answered the question, stating the long form is used by a very small percentage of taxpayers in North Dakota. There may be a whole lot of other people making those

types of gifts, but they are better off with the short form. That one hundred dollars isn't enough to get them to file the long form.

MIKE ARNEGARD, UNIVERSITY OF MARY Testified in support of the bill. Also answered the question stating that prior to 1986, no one took a tax credit when giving a gift. He stated you now have to use the long form to get that credit. He stated the credit will not make you charitable, but some people may do it to get the credit.

KEVIN DVORAK, NORTH DAKOTA COMMUNITY FOUNDATION Testified in support of the bill. He stated they work all across North Dakota raising money and giving it away. He related to a situation in 2003 about a person you was getting one percent on his CD's and at the age of 93, he received an 11.3% income off of a charitable gift annuity. That is the increase in income that can happen with folks when they do charitable gifts of this type. We think it will be a big incentive for folks to make that decision. It is also helpful for their financial advisors.

DAVE MEEDEM ? Did not sign in, not sure of spelling. Stated he was the Plan Giving Director of the University of North Dakota foundation. Testified in support of the bill. We are a publicly owned institution, although we become more and more dependent on private funding every year. The University Foundation plays a role in that. Any incentive we can add, as part of each marketing, with regard to plan giving, is certainly positive.

With no further testimony, the committee hearing was closed.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **SB 2391**

House Finance and Taxation Committee

Conference Committee

Hearing Date **March 7, 2005**

Tape Number	Side A	Side B	Meter #
1		X	46.6
Committee Clerk Signature			

Minutes:

COMMITTEE ACTION

REP. IVERSON Reviewed the bill for committee members, this will encourage people to set up a trust to give to charity.

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

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

11 YES 3 NO 0 ABSENT

REP. IVERSON Was given the floor assignment.

Date: 3-7-05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2391

House FINANCE & TAXATION Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Conrad Seconded By Rep. Drovdal

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) 11 No 3

Absent 0

Floor Assignment Rep. Iverson

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

REPORT OF STANDING COMMITTEE (410)
March 7, 2005 2:51 p.m.

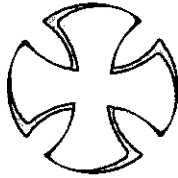
Module No: HR-41-4305
Carrier: Iverson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2391, as engrossed: Finance and Taxation Committee (Rep. Belter, Chairman)
recommends **DO PASS** (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed SB 2391 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

SB 2391



**ST. BENEDICT'S
HEALTH CENTER**
Benedictine Health System

memo

Date: 2/08/2005

To: Senate Finance and Taxation Committee
✶ Senator Herb Urlacher, Chairman
✶ Senator Rich Wardner, Vice-Chairman
✶ Senator Dennis Bercier
✶ Senator Dwight Cook
✶ Senator Michael Every
✶ Senator Ben Tollefson

From: Jon Frantsvog, Administrator/CEO

RE: SB2391

Mr. Chairman, members of the Senate Finance and Taxation Committee. Good morning. My name is Jon Frantsvog. I'm here to speak in favor of SB2391.

I am the Administrator/CEO of Dickinson's St. Benedict's Health Center – a 164 bed skilled nursing facility and 26 apartment assisted living complex. We are a 501(c)3 not-for-profit corporation that is a part of Benedictine Health System of Duluth, MN. Benedictine Health System operates not-for-profit health facilities in 8 midwest states, including 7 not-for-profit health facilities in North Dakota. We are incorporated in Minnesota, the home of our corporate office, and licensed to do business in North Dakota – a typical situation for many not-for-profit multi-state health care providers.

As you know, most of North Dakota's health facilities are not-for-profit organizations. Many, like my facility, count heavily upon the support of the community, to help assure the best possible facilities and care. The community support comes from gifts of time, talent and treasure. SB2391 will create additional incentives for North Dakotans to care for their fellow North Dakotans, by providing tax credit to North Dakota taxpayers who engage in charitable estate planning for the benefit of North Dakota charities, including health facilities such as St. Benedict's Health Center.

Over the past few years, I have been part of a southwestern North Dakota effort that has resulted in the formation of COCO – the Coalition of Charitable Organizations. COCO is an affiliation of all types of Charitable Organizations across all of southwestern North Dakota. Our primary goal is to promote philanthropy across the region. We promote this to those who might give, as well as the many professionals who assist with estate planning. It is my belief that SB2391 aligns well with the goals of COCO, and will be a powerful incentive to those who give, and professionals who plan giving (attorneys, accountants, etc) to even more strongly consider directing their gifts to North Dakota charities.

In closing, I would like to thank you for your time. I would also ask that the language of the bill be amended to assure that multi-state corporations, such as ours, that receive and spend charitable gifts in North Dakota, are considered eligible charities for those gifts given by eligible taxpayers for the benefit of our North Dakota organizations.

**NORTH DAKOTA SENATE BILL NO. 2391
SENATE FINANCE AND TAXATION COMMITTEE
Tuesday, February 8, 2005**

**Gordon Binek
Vice President for College Advancement and Federal Relations
Bismarck State College**

Chairman Urlacher and members of the Senate Finance and Taxation Committee:

My name is Gordon Binek. I am the Vice President for College Advancement and Federal Relations at Bismarck State College.

On behalf of Bismarck State College and the BSC Foundation, I fully support the passage of Senate Bill 2391 to provide an income tax credit for planned gifts to North Dakota nonprofit organizations. North Dakotans are generous to the charities that serve the state in various ways. However, the incentive of an income tax credit could make the difference to some potential donors. During the twenty years I have worked for nonprofit organizations in North Dakota, I have been involved in the arrangement of numerous planned gifts. Without a doubt, tax incentives do play a role in many cases.

From the organization perspective, planned gifts generally are major gifts that can and do make a real difference in the financial stability of North Dakota charities. Frequently the remainder is endowed by the charity after the obligation to beneficiaries is satisfied. This provides a permanent source of funding for the nonprofits, allowing them to better serve their constituents, the residents of the state of North Dakota.

In the case of the BSC Foundation, we normally endow the remainder funds of a planned gift or bequest to support our primary programs. These include providing scholarships to students at Bismarck State College and funding grants to support special projects and purchase equipment for the college. Endowed funds provide resources for generations of students at BSC. For many decades in the future, students at BSC will benefit from planned gift arrangements that occur at this time.

Senators, I encourage you to pass SB2391. It will support nonprofit organizations in North Dakota and encourage our citizens to visit with their favorite charities about ways in which they can make planned gifts that will support the organization.

TO: Senate Finance and Taxation Committee
Herb Urlacher, Chairman
Rich Wardner, Vice Chairman
Dennis Bercier
Dwight Cook
Michael A. Every
Ben Tollefson

Same given to House

FROM: Craig M. Johnson, CPA; CFRE

RE: Speaking in favor of Senate Bill 2391
as introduced by Senators Syverson,
Brown, Espgaard, Grindberg and Nelson;
and by Representative Iverson

DATE OF HEARING: 10:00 A.M., February 8, 2005

I speak today in favor of Senate Bill 2391. Senate Bill 2391 creates a new income tax credit for a very specific group of taxpayers... individuals engaging in charitable estate planning to favor North Dakota charities through the use of irrevocable lifetime planned giving methods.

I am a native Montanan and have seen the positive effects of this type of incentive in that state. Montana's tax credit applies to both outright and planned gifts to Montana charitable endowments; our proposal applies only to planned gifts made by individuals which ultimately benefit North Dakota charities.

Senate Bill 2391 is patterned loosely after Montana's tax credit which has been in effect since 1997, and is scheduled to sunset at the end of 2007. However, Senate Bill 2391 has a much lower revenue impact than Montana's, to wit:

	<u>North Dakota</u>	<u>Montana</u>
Credit for individuals' "planned gifts"	20% of Fed deduction Maximum \$5,000 with 2 year carryover	40% of Fed deduction Maximum \$10,000 (50%: 1997-2001)
Credit for corporation, partnership, trust & estate gifts to endowments	N/A	20% of Fed deduction Maximum \$10,000 (50%: 1997-2001)

Senate Bill 2391 applies to nine (9) specific varieties of planned gifts as listed. Most of these gifting alternatives are "life income agreements" whereby an individual or couple receives income for life(s) or a term of years, with the gifted principal transferring to charity(s) at their death(s). The most common forms of planned gifts are Charitable Remainder Trusts and Charitable Gift Annuities.

Two examples of the proposed credit computation follow:

- A. EXAMPLE:** Mr. Smith establishes a \$100,000 Charitable Remainder Unitrust. The allowable charitable income tax deduction is \$40,000. Seventy-five percent of the residual charitable benefits go to the ND non-profits. Therefore, \$30,000 of the deduction can be incorporated into the ND credit computation.

The credit computation is as follows:

Allocation of North Dakota deduction and credit portions:

Total deduction on Federal	\$ 40,000
Portion of \$30,000 ND share available for credit	<u>(25,000)</u>
Deduction allowable in ND	<u>\$ 15,000</u>

ND tax credit computation:

ND tentative taxable income	\$ 90,000
Add back amount of Federal deduction available for credit	<u>25,000</u>
ND taxable income	<u>\$115,000</u>
Tax on \$115K	\$ 4,200
Current year credit (lesser of \$4,200 or \$5,000)	<u>(4,200)</u>
Net tax	<u>\$ 0</u>
Credit carryover available	<u>\$ 800</u>

- B. EXAMPLE:** Mrs. Jones is a single individual who claims the standard deduction. She establishes a \$10,000 Charitable Gift Annuity to ultimately benefit her church in North Dakota. This gift will be

administered by the national church foundation in Chicago.

The available Federal income tax deduction on the gift annuity is \$4,000. The charitable tax deduction only has a \$1,500 benefit to her; without the charitable deduction her itemized deductions would have been \$2,500 below the available standard deduction.

Nevertheless, the entire \$4,000 amount qualifies for a 20% ND credit of \$800. Her tax before the credit was \$1,200, which reduces to a net \$400 tax after the use of the \$800 credit.

To determine her ND taxable income, Mrs. Jones must only add back the \$1,500 portion of the charitable deduction which gave her a tax benefit on her Federal return.

I strongly support this Bill because of the difference it will make to North Dakota charities including churches, colleges, secondary schools, youth services, hospitals, long-term care facilities, Hospices, arts, research organizations, community foundations, etc. This incentive will most certainly lead to an overall increase in **other forms of planned giving which does not qualify for the credit**, such as revocable bequests and beneficiary designations, etc. The resultant increase in philanthropic activity will help keep dollars in the state's economy, while serving those in need.

What might this credit cost the state of North Dakota?

The only reasonable estimate we have is to use as a baseline the state of Montana's analysis from 1997 and 1998, the first two years of its credit for philanthropy. During those two years (in the aggregate) the total tax credit slightly exceeded \$8.65 million or a "fiscal note" of \$4.33 million per year. However, 51% of this amount was from outright gifts by entities (corporations mostly) which are not part of the North Dakota proposal.

Accordingly, let us focus on "apples vs. apples". During 1997 and 1998 I calculate that 49% of the gifts qualifying for the credit were planned gifts from individuals. The total credits claimed by individuals were \$4,260,166. The following chart translates this data to the possible effect in North Dakota:

1997 - 1998 total credits for individual planned gifts	<u>\$4.26 million</u>
-----------------------------------------------------------	-----------------------

Average credits claimed per
year for planned gifts \$2.13 million

Convert 50% Montana credit
To 20% ND credit \$852,000

In my opinion, the revenue impact in North Dakota would be in the range of \$500,000-\$750,000 per year. In Montana, the revenue impact from this credit was over \$4.3 million per year. In spite of this high cost, Montana's state legislature has extended the credit every year since 1997, with a sunset date of December, 2007.

To offset the projected revenue impact in North Dakota, I make the following assertions:

1. Most of the planned gifts will return taxable income to the donor for many years. The income return from the planned gifts will usually be significantly higher than was received from the assets (cash, farm land, stocks, etc.) which funded the planned gifts. Let us conservatively assume that this difference will be 3%. The following analysis estimates the potential effect of the increased income:

Total credit per year \$ 600,000

Estimated portion of the credit
from planned gifts
that produce income-say 90% \$ 540,000

Federal tax deduction equivalent
of \$540,000 in credits (@20%) \$2,700,000

Total assets funding life income gifts
if the average Federal tax deduction
is 40% of face value
(\$2,700,000 divided by 40%) \$6,750,000

Estimated additional income from gifts
(\$6,750,000 x 3% /year x 15 years
average duration of planned gift) \$3,037,500

Additional ND tax (@ 3% bracket)
from an average year of qualifying
planned gifts \$ 91,125

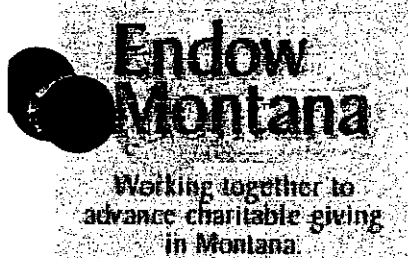
I realize that this analysis is very uncertain, but it does illustrate the likelihood that there will be additional income generated from planned gifts which will bring back revenue to the state.

2. The planned gifts will keep significant dollars in the state which will circulate for years to come within the state's overall economy. This will tend to create jobs and enhance the missions of North Dakota's non-profit organizations.
3. Many of the assets which fund planned gifts (particularly stocks, mutual funds and real estate) are subject to capital gains taxation and the Federal estate tax. These assets will now stay in the state rather than going out in the form of Federal taxation.
4. Many of these same assets would otherwise be inherited by heirs from other states rather than being retained within North Dakota's state economy.

In conclusion, I would like to reiterate that Senate Bill 2391 probably will have only 20-30% of the annual revenue impact of Montana's legislation. Even though the revenue impact is much larger in Montana, their lawmakers have retained this incentive for a period extending from 1997 - 2007.

I join with those who endorse this Bill, as I believe it will make a real difference in the state of philanthropy in North Dakota, as North Dakota residents are encouraged to increase their planned giving to favor North Dakota charities and the people they serve.

Thank you very much for your consideration of this legislation.



IMPACT OF THE TAX CREDIT

The Montana Department of Revenue recently reviewed 90% of the 1997 and 1998 individual tax returns claiming the Montana Endowment Tax Credit. The Governor's Task Force on Endowed Philanthropy analyzed the data and found it very encouraging with regards to the original legislative intent of the law - encouraging philanthropy in Montana.

Among the highlights of the Task Force analysis:

Individuals & Families

Corporations & Businesses

Policy Makers

Professional Advisors

Nonprofit Organizations

Foundations

Governor's Task Force Members

Governor's Task Force Minutes

Links

- In 1997 and 1998, there was widespread utilization of the Montana Endowment Tax Credit by Montana taxpayers.
- Immediate or future "endowments" now benefit charities in nearly, if not all Montana counties. In 1997 and 1998, the endowments of 231 non-profit organizations in 45 communities benefited from the Tax Credit. These included 30 communities identified by the Department of Revenue and an additional 15 identified by the Montana Community Foundation.
- 256 planned gifts were made using one of the five "life income" gift vehicles. Assuming these gifts pay for a 15 year term (a very conservative average life expectancy) and assuming a 5-8% pay out for the "life income" gifts, over \$12,000,000 in new taxable revenues are being generated by certain "life income" gift categories which qualify for the credit. This reduces the net "cost" of the credit to the state of Montana.
- The Montana Endowment Tax Credit keeps dollars in Montana. These dollars cycle over and over again not only impacting Montana's economy but also working to lessen the burden of Montana government. Further, when one considers the capital gains tax and estate tax exposure of many estates, those dollars usually leave Montana to be spent on a federal level with only a small portion returning to Montana on a revenue sharing basis. The Montana Endowment Tax Credit law keeps "otherwise" spent federal tax dollars in the state . . . working for Montanans.

Here are some of the key numbers in the DOR study of the impact of the Montana Endowment Tax Credit in its first two years:

- A total of 1,336 gifts were made in 1997 and 1998. The total Market Value of the contributions donated was \$17,314,588.
- 317 planned gifts, which constituted 23.73% of the gifts, and accounted for 67.82% of the gift amount or \$9,086,940.
- Business entities and estates donated 751 outright gifts, which comprised 56.21% of the total gifts and constituted 30.52% of the gift amount or \$4,089,205. These gifts will be immediately working to generate earnings for Montana's non-profit organizations.
- In 1997, 15 C-corporations gave away approximately \$127,000 claiming \$63,500 in tax credits. In 1998, 58 C-corporations gave another approximately \$626,000 for \$314,000 in credits claimed.
- Non-classified gifts: 20.06% of gifts (268); 1.67% of the gift amount (\$223,293)
- The total Tax Credits claimed by individuals was \$4,260,166.

Statement of Senator Syverson before the Finance and Taxation Committee

8 Feb 2005

SB 2391

Mr Chairman and committee

Our colleges ,universities and other benevolent and worthy organizations have a continuous struggle to fund their endowments and their charitable good works . As we know , there is a significant amount of money spent on trying to raise funds for those myriad programs . This bill would be a way of encouraging those individuals who probably would give to a foreign organization , to give to a ND fund . There are also those who have not thought in terms of giving to a ND organization and this , I believe , would encourage that thought in the minds of new givers . What a great thought - keep it in this state .

When I was approached about this prospective legislation , I was impressed with what this kind of encouragement could accomplish , as has been proven to be the case in other states. The visible costs that may be reflected in the fiscal note , in all probability , do not consider the tangible and intangible benefits of retaining capital in this state . And , as well, it does not reflect the benefits that can be derived from having certain organizations accumulate more substance with which to accomplish good works with our children and adults . The possibility looms large that , that there could be a reduction in the demand on our state resources , or at least a reduction in the rate of increase , if beneficent organizations could relieve some of those demands . This could also include the demands on our higher education budgets ,through foundations providing for certain capital improvements that are difficult to justify through the normal legislative budgeting process .

Mr Chairman and committee , I see this as an investment on the part of this State that would have long term benefits to all of our citizens through benevolent giving . I would encourage your committee's futuristic and positive approach to this proposed legislation .

There are those with much more knowledge and experience on this issue that will , I am sure , answer your questions more succinctly than I could .

I thank you for your time .

February 28, 2005

HOUSE FINANCE & TAXATION COMMITTEE
SB 2391

REPRESENTATIVE BELTER AND COMMITTEE MEMBERS:

My name is Jack McDonald. I am appearing today on behalf of the YMCAs of North Dakota. We strongly support SB 2391 and urge your favorable consideration.

We believe this bill will encourage North Dakotans to contribute to local nonprofit organizations such as their local YMCA as well as other groups. This type of legislation has been successful in other states in encouraging more local rather than national donations.

We respectfully urge a DO PASS.

If you have any questions, I'd be glad to try to answer them. THANK YOU FOR YOUR TIME AND CONSIDERATION.

NORTH DAKOTA SENATE BILL NO. 2391
HOUSE FINANCE AND TAXATION COMMITTEE
Monday, February 28, 2005

Gerald M. Skogley, Retired

My name is Gerald Skogley. I am a resident of Bismarck (one of those rare individuals who came back after living in Minnesota for nearly 20 years). I was employed at the University of North Dakota for 27 years and the Bush Foundation in St. Paul for 14.

Currently I serve on four non-profit foundation boards in North Dakota - Bismarck State College Foundation, North Dakota Museum of Art Foundation, Prairie Learning Center Foundation, and Bismarck Public Schools Foundation. I support the passage of Senate Bill 2391 which will provide an incentive for many people to gain an income tax credit for providing support of non-profit organizations in North Dakota.

Often, the decision to support an organization is made possible by the tax benefit to the donor. Also deferred gifts tend to be larger than gifts given for current support. Gordy Binek, Vice-President for College Advancement and Federal Relations, at Bismarck State College, said, and I quote: "North Dakotans are generous to the charities that serve the state in various ways. However, the incentive of an income tax credit could make the difference to some potential donors. During the twenty years I have worked for nonprofit organizations in North Dakota, I have been involved in the arrangement of numerous planned gifts. Without a doubt, tax incentives do play a role in many cases."

A personal note - my wife and I, a number of years ago made a decision to establish a charitable remainder unitrust. The trust is in place and will provide a stream of income to us during our lifetimes, income to our two children during their lives, and the remainder (which should be much more than current value) will go to three charities in North Dakota. Certainly the tax benefits involved had much to do with our decision.

Representatives, I encourage you to pass SB2391. It will support nonprofit organizations in North Dakota and encourage our citizens to visit with their favorite charities about ways in which they can make planned gifts that will support the organization.