

2009 HOUSE FINANCE AND TAXATION

HB 1086

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1086

House Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: January 12, 2009

Recorder Job Number: 6837

Committee Clerk Signature

Minutes:

Chairman Belter: I call the hearing on HB 1086 to order.

Matt Peyerl, Corporate Income Tax Supervisor, State Tax Commissioner's Office: I am here from the Tax Commissioner's office in support of HB 1086. This has become our house cleaning bill. There are five or six relatively different items in here. As you see on the testimony that was handed out, **Mary Loftsgard, Associate Director of Tax Administration**, prepared some written testimony. **(See Testimony #1.)** Since she was unable to be here this morning, I will hit some highlights of the intent behind each of these sections. I won't read her testimony word for word, but I will follow along. I can take questions with each of the five different sections or wait until the end. HB 1086 is a change to 5735 which is our financial institution tax law. All of the financial tax laws are housed within 5735. In 2003 there was a change on the corporate income tax law which is referred to in subdivision g that was repealed on the corporate income tax side. At that time, there was an oversight and this was not stricken from the financial institution tax statute. Subdivision g no longer exists. This amendment would strike that reference and there would be no impact. I will move on to Section 2. More housekeeping due to the fact that some years ago the IRS code changed their definition. This would just piggyback on their change. There is no practical change

involving the R&D credit. I think there are about 18 different places it appears. Also in Section 2 on page 3, subdivision f, there is a change to strike the word "section" and replace it with "subsection" to have the \$2 million cap as intended to only be to those taxpayers in the subsection and not to all taxpayers. That section was new in the last legislative session. Mr. Chairman, continuing on on page 5, subsection 7 to add a time limit in which to file a claim to carry back the R&D tax credit. This is the only tax credit we have for corporations you can carry back. This would establish a three year time limit, which is our common practice for carrying back operating losses, capital losses and those type of things. This would make it consistent. Whenever you carry back, it has to be done in a three year period. Continuing on with section 3, a change to section 57-38-32--There is a replacement of a reference to 57-38-14, which includes the language that 57-38-30 essentially used to. Continuing on with Section 4, for any tax credits that may be carried back--currently it is only the R&D tax credit that is carried back, subsection c dictates how refund will be paid on such a refund claim. That would establish that if the claim is refunded within 45 days from which the claim is filed, no interest is paid. If not refunded in 45 days, a certain amount of refund interest is paid--the same operating provisions that would apply to net operating loss carry backs and capital loss carry backs. This would apply to any tax carry back refund claims as well. You can see that this would automatically apply to any tax claim carry backs in the future--the interest payment provision. Mr. Chairman, moving on to Section 5, this is a bit more of a complex issue. It is not a change; it is an addition of one sentence to add clarification that would more clearly show the intent of 57-38.1 and 17.1 and that refers to the gain or loss on the sale of a partnership and how that income or loss is taxed to the state. This was a section enacted in 1991. Attached to Mary's testimony is some original testimony from the Director of Income Tax at that time, Harold Aldinger. The final page of that testimony makes clear that the intent was for this

section to apply only to the extent that the gain or loss on the sales of that partnership interest is not business income, which means it is separate income that is not in the ordinary course of the taxpayer's business. This additional sentence would put that intent clearly in the statute. We have had a number of taxpayers who will not see in the statute that it only applies to the extent that it is already non-business income and they will ask where we find our intent. We provide them with copies of the 1991 legislative history and then they will clearly see that it should apply and they are happy. This should be helpful for them to have in this section.

Chairman Belter: Any questions? Any questions from committee members? Any further testimony on 1086? If not, I am just going to hold 1086. We will recess until 11:00.

Upon reconvening, at 11:00:

Vice Chairman Drovdal moved "Do Pass".

Representative Schmidt seconded.

A voice vote was taken. Yeas: 12, Nays: 0, Absent: 1(Brandenburg).

Representative Schmidt will carry the bill.

FISCAL NOTE
Requested by Legislative Council
12/24/2008

Bill/Resolution No.: HB 1086

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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 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.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1086 is a technical corrections bill. There is no fiscal impact.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	01/10/2009

Date: January 12, 2009

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1086

House FINANCE AND TAXATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By _____ Seconded By _____

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	X		Representative Froelich	X	
Vice Chairman David Drovdal	X		Representative Kelsh	X	
Representative Brandenburg			Representative Pinkerton	X	
Representative Froseth	X		Representative Schmidt	X	
Representative Grande	X		Representative Winrich	X	
Representative Headland	X				
Representative Weiler	X				
Representative Wrangham	X				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Schmidt

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

REPORT OF STANDING COMMITTEE

HB 1086: Finance and Taxation Committee (Rep. Belter, Chairman) recommends DO PASS (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1086 was placed on the Eleventh order on the calendar.

2009 SENATE FINANCE AND TAXATION

HB 1086

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1086

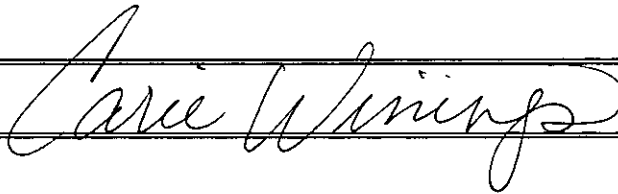
Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 03/04/2009

Recorder Job Number:

Committee Clerk Signature



Minutes:

Chairman Cook: Opened hearing on HB 1086.

Mary Loftsgard, Associate Director, Tax Administration Division, Office of the State Tax

Commissioner: See Attachment #1 for testimony in explanation of and in support of the bill.

14.08 Senator Dotzenrod: In section 5 you use the terms allocable and apportionable, you want to make sure it is clear that the word allocable is used instead of apportionable? I want to make sure of the difference between the two terms.

Mary Loftsgard: Yes, we want to make it clear that if they have treated certain certain (inaudible) that section of the code is part of chapter 57-38.1 which deals with allocation or apportionment income and those issues are (inaudible).

Senator Dotzenrod: You just want to make sure that if they treated it one way up until that point that when they sell they have to also treat it the same way.

Mary Loftsgard: That is exactly right.

15.38 Chairman Cook: You mentioned in section 2 that beyond the credit the only credit that we had where we allowed it to be carried back, and then section 4 of the bill is also dealing with tax credit carry backs, is that still dealing with the R and D portion of the bill?

Mary Loftsgard: That is correct; so that when we had tax credit carry backs in the future there should be some other tax credit that would be enacted that would be carried back. Rather than say specifically the R and D credit, because that is the only one we have right now. Then they would all be treated the same way if we say tax credit carry backs.

16.45 **Chairman Cook:** Further testimony? (no)

Chairman Cook: Closed hearing.

Senator Triplett: Moved a Do Pass.

Vice Chairman Miller: Seconded.

A Roll Call vote was taken: Yea 7, Nay 0, Absent 0.

Senator Triplett will carry the bill.

Date: 03/04/09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. : 10826

Senate Finance and Taxation

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Senator Triplett Seconded By Senator Miller

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman	✓		Sen. Arden Anderson	✓	
Sen. Joe Miller - Vice Chairman	✓		Sen. Jim Dotzenrod	✓	
Sen. David Hogue	✓		Sen. Constance Triplett	✓	
Sen. Dave Oehlke	✓				

Total: Yes 7 No 0

Absent 0

Floor Assignment Senator Triplett

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

REPORT OF STANDING COMMITTEE (410)
March 4, 2009 12:00 p.m.

Module No: SR-38-4019
Carrier: Triplett
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1086: Finance and Taxation Committee (Sen. Cook, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1086 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

HB 1086

Testimony #1

TESTIMONY OF THE OFFICE OF STATE TAX COMMISSIONER
BEFORE THE
HOUSE FINANCE AND TAXATION COMMITTEE

HOUSE BILL 1086

January 12, 2009

*Same testimony
given to Senate
Finance +
Taxation.*

Chairman Belter, members of the House Finance and Taxation Committee, I am Mary Loftsgard, Associate Director of the Tax Administration Division, for the Office of State Tax Commissioner. I am here today on behalf of the Commissioner to testify in support of House Bill 1086.

REASONS FOR PROPOSED CHANGES

This bill was introduced by the Tax Commissioner to:

- correct obsolete language in the financial institution tax statute,
- conform language and correct oversights in the income tax statute, and
- clarify language in the income tax statute relating to the allocation of certain income for tax purposes.

The amendments are made to remedy oversights which occurred when statutes were previously amended and to provide greater clarity to taxpayers as to how certain income must be reported.

EXPLANATION OF THE BILL

Section 1- Adjustment to Determine Taxable Income of Financial

Institutions. This section of the bill amends the statute relating to how taxable income is determined for financial institutions.

The bill amends a section of the statute addressing the amount of charitable contributions required to be subtracted from federal taxable income to compute North Dakota taxable income.

The overstruck language on lines 17 and 18 of the bill has been part of the financial institution tax statute since it was enacted in the 1997 Legislative Session. At that time, the language referenced a subdivision of the income tax statute that provided a deduction for dividends or income received from entities that had paid North Dakota income tax, bank tax or bank privilege tax. In the 2003 Legislative Session that particular subdivision of the income tax statute was repealed after it was ruled unconstitutional by the North Dakota Supreme Court.

It was an oversight that the overstruck language on lines 17 and 18 of the bill was not removed from the financial institutions tax statute at the same time. Section 1 of the bill now makes the correction that should have been made in 2003.

Section 2 – Income Tax Credit for Research and Experimental Expenditures.

Section 2 of the bill amends what is commonly referred to as the “R & D Tax Credit”, found in N.D.C.C. § 57-38-30.5. First, the amendment updates language to conform with portions of the Internal Revenue Code (IRC). Previously, the IRC had referenced “base period research expenses” in computing the federal credit. The language has been changed to “base amount”. To be consistent, the amendment before you makes the same change throughout pages 2 through 4.

Second, on page 3 of the amendment, lines 9 and 10 correct a drafting error. As written, the statute would limit the amount of the credit any taxpayer could claim to two million dollars per year. The limitation was to be placed on only those taxpayers who had earned or claimed a R & D tax credit in tax years beginning before January 1, 2007, i.e. those taxpayers identified in subsection 1 of section 1. The amendment achieves the intended limitation by replacing the word “section” with “subsection”.

The third amendment in regard to this credit is found on page 5 of the bill, lines 18 through 20. This section of the statute allows an unused R & D tax credit to be carried back and/or carried forward to offset tax liability in other tax years. The amendment specifies the time period within which a claim to carry back the credit must be filed. The claim must be made within three years of the due date, or extended due date, of the return for the taxable year when the credit was earned. This time period is consistent with that required for claims based on the carryback of net operating or capital losses.

Section 3 – Corporations’ duty to file returns. Section 3 of the bill relates to the section of the income tax statute containing corporations’ reporting requirements.

On page 8 of the bill, line 10, one section of the statute has been replaced with another. In the 2003 Session, two obsolete sections covering assignment of income, sections 57-38-12 and 57-38-13, were repealed. Corresponding technical revisions were made to other sections of the statute, one of which was section 57-38-30. After the revisions, section 57-38-30 no longer addressed assignment of income. It was an

oversight that a correction was not also made to section 57-38-32. Section 3 of the bill now makes the correction that should have been made in 2003.

Section 4 – Refund interest related to tax credit carrybacks. This section specifies how interest is computed on income tax refunds resulting from the carryback of a tax credit.

The current statute does not address how interest on such refunds is to be computed. The statute does specify how interest accrues in the instance of the only other carrybacks allowed, i.e., net operating loss or capital loss carrybacks. The amendment will create conformity for computing interest in all instances when a refund occurs as the result of a carryback.

Section 5 – Gain or loss on the sale of a partnership. This section addresses instances when the gain or loss from the sale of a partnership interest is directly assigned (allocated) to North Dakota, rather than being apportioned, for income tax purposes.

This section of N.D.C.C. chapter 57-83.1 was enacted in the 1991 Session. Attached you will find testimony given by Tax Department staff at that time. That testimony indicates the legislation was to clarify the tax treatment of the sale of a partnership interest, when the income/loss of the partnership has previously been reported as nonbusiness (allocable) income. In such an instance, the gain or loss on the sale would also be treated as allocable income.

The Tax Department has consistently applied the statute in this fashion, but taxpayers frequently are unaware of the proper application of the statute based on the current statutory language. When provided with copies of the 1991 testimony, taxpayers have accepted the Tax Department's application of the statute. The amendment in Section 5 will further clarify the requirement of the statute, decreasing confusion on the part of taxpayers and promoting improved compliance.

Section 6 – Effective date. This section specifies that Section 2 of the bill is effective for tax credits earned after December 31, 2008 and Section 4 is effective for amended returns filed after June 30, 2009.

CONCLUSION

The Tax Commissioner respectfully requests that you give favorable consideration to House Bill 1086.

HB 1150

Testimony Before the House Finance
and Taxation Committee

January 16, 1991

Harold Aldinger, Director
Income & Oil Taxes Division

Chairman Timm; Committee Members: My name is Harold Aldinger. I am Director of the Income & Oil Taxes Division of the Tax Department.

House Bill No. 1150 relates to the treatment of the gain or loss on the sale of a partnership interest when the partnership income or loss was previously determined to be nonbusiness income when taxing the income of a corporation. The language included in this bill has been recommended by the Uniformity Committee of the Multistate Tax Commission of which North Dakota is a member.

North Dakota Century Code Chapters 57-38 and 57-38.1 are the statutes which provide for the taxation of corporations doing business in North Dakota. The Tax Department is requesting that Chapters 57-38 and 57-38.1 be amended to avoid the situation that happened in California in the Holiday Inn case.

Briefly, the Holiday Inn case involved the sale of an interest in a partnership. The taxpayer (Holiday Inn) and the state agreed that the income and losses from the operation of the partnership were nonbusiness income and wholly assignable to California. They also agreed that the gain on the sale of the partnership interest was nonbusiness income. However, California's position was that the gain should be allocated to California, not the taxpayer's commercial domicile, which was in Tennessee. Had the gain resulted from

the sale of partnership property, rather than the partnership interest, there is no dispute that the gain would have been taxable by California. The Court ruled that the gain should be allocated to the commercial domicile state.

The Tax Department does not have any pending cases in which the above situation exists. We are attempting to clarify the law to avoid future misunderstandings. Generally, income earned by a corporation through a partnership interest is considered business income and apportioned to the various states in which the corporation does business. However, to avoid a situation similar to the Holiday Inn case, we respectfully request your support of House Bill No. 1150.

If there are any questions, I would be happy to address them.

CHAPTER 673

HOUSE BILL NO. 1150
(Committee on Finance and Taxation)
(At the request of the Tax Commissioner)

PARTNERSHIP SALE GAIN ALLOCATION

AN ACT to create and enact a new subsection to section 57-38-12 and a new section to chapter 57-38.1 of the North Dakota Century Code, relating to the gain or loss on the sale of partnership interest when the partnership income or loss was previously determined to be nonbusiness income when taxing the income of a corporation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-38-12 of the North Dakota Century Code is created and enacted as follows:

Gain or loss on the sale of a partnership interest is allocable to this state in the ratio of the original cost of partnership tangible property in the state to the original cost of partnership tangible property everywhere, determined at the time of the sale. In the event that more than fifty percent of the value of the assets of the partnership consist of intangibles, gain or loss from the sale of the partnership interest is allocated to this state in accordance with the ratio of total North Dakota income to total income of the partnership for its first full tax period immediately preceding the tax period of the partnership during which the partnership interest was sold.

SECTION 2. A new section to chapter 57-38.1 of the North Dakota Century Code is created and enacted as follows:

Gain or loss on the sale of a partnership. Gain or loss on the sale of a partnership interest is allocable to this state in the ratio of the original cost of partnership tangible property in the state to the original cost of partnership tangible property everywhere, determined at the time of the sale. In the event that more than fifty percent of the value of the assets of the partnership consist of intangibles, gain or loss from the sale of the partnership interest is allocated to this state in accordance with the ratio of total North Dakota income to total income of the partnership for its first full tax period immediately preceding the tax period of the partnership during which the partnership interest was sold.

SECTION 3. EFFECTIVE DATE. This Act is effective for all taxable years beginning after December 31, 1990.

Approved March 19, 1991
Filed March 19, 1991