

2009 HOUSE FINANCE AND TAXATION

HB 1392

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1392

House Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 01/28/09

Recorder Job Number: 7969

Committee Clerk Signature

*Lou Engelson*

Minutes:

**Vice Chairman Drovdol called the hearing to order on HB 1392.**

**Rep. Belter:** I'm State Representative Wes Belter, District 22. This is called the IC DISC bill. That is interest charge domestic international sales corporation. The federal government set up a program in order to encourage the exporting of product out of this country. As you know, the export business out of North Dakota has been growing rapidly and so we have been very successful and proud of the progress that the exporting companies have made. They have run into some double taxation problems the way our current tax policy is written. What 1392 does is try to rectify the double taxation that has taken place here by these exporters.

**Mike Seifert, N.D. Trade Office,** offered testimony in support of HB 1392. See Testimony 1, attached.

**Rep. Kelsh:** Can you tell me if this affects the producer or does this apply to the exporter?

**Mike Seifert:** It really applies specifically to the exporter. The technical aspects is when the North Dakota language was established, the pervasiveness of the pass-through entities and LLCs and so forth weren't there so the people using the IC DISC structure had a double taxation problem. The answer is the exporter.

**Rep. Schmidt:** Does this mean machinery?

**Mike Seifert:** Anything that is a value added ag or manufacturing companies.

**Rep. Kelsh:** What about the manufacturer that's a sole proprietorship?

**Mike Seifert:** Certainly a sole proprietorship would be able to set up an IC DISC and it would allow them to compete globally.

**Jim Fyhrie, Worldwide Trade Partners** offered testimony in support of HB 1392. See Testimony 2, attached.

**Rep. Winrich:** I am an exporter. Do I set up an IC DISC under federal law?

**Jim Perry:** Correct.

**Rep. Winrich:** It's kind of a wholly owned subsidiary.

**Jim Fyhrie:** Yes. So what happens is two and satisfy the federal requirements. These companies have to set up an interest charge DISC. It has to be a C corp. And that's where the problem comes. The exporter then makes an IC DISC collection for federal tax purposes.

It's form 4876A. What they do is via these administrative pricing rules, we pay commissions over to the DISC. The exporter gets a deduction for that commission and then the IC DISC immediately turns around and pays it back to the exporter. But what it does is re-characterizes that income from ordinary to dividend so they're taking advantage of the preferential dividend rate. For federal tax purposes, an IC DISC is not a taxable entity. But for North Dakota purposes, they are starting with federal taxable income. What this does is makes the dividend deductible. Therefore we net out the income from the expense. (Mr. Fyhrie gave brief history of the purpose of this bill.)

**Rep. Winrich:** This business about the IC DISC has elected to use administrative pricing rules. What does that mean.

**Jim Fyhrie:** Under section 994? The internal revenue code defines how much that commission can be that's paid over to the DISC.

**Rep. Belter:** Really the bottom line is that companies in our state, because they are having to pay extra tax because of the way our laws are written we are at a position with a company who is getting the benefit of the IC DISC.

**Jim Perry:** Yes, because if they have to pay the tax in North Dakota, and you compare it to the benefit you are getting at the federal level, it wipes out a huge piece of it.

**Tom Brosnahan, CFO Sinner Bros. & Bresnahan,** offered testimony of HB 1392. See Testimony 3, attached.

**Rep. Pinkerton:** Is your company like a pass-through company?

**Tom Brosnahan:** We are an S corp.

**SuAnn Olson** offered testimony in support of HB 1392. Testimony 4, attached.

**Mike Seifert** passed out testimony in support of HB 1392 from **Howard Dahl, Amity Technology, LLC.**, who could not be present. See Testimony 5, attached.

**Vice Chairman Drovdol:** Is there any further testimony in support of HB 1392? Opposition to 1392? Neutral testimony to 1392?

**Vice Chairman Drovdol closed the hearing on HB 1392.**

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1392

House Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: February 2, 2009

Recorder Job Number: 8383

Committee Clerk Signature



Minutes:

**Chairman Belter:** Let's look at HB1392. That is that ID DISC bill dealing with international trade. We won't act on this. There are some questions, but basically what these amendments do is make it retroactive to 2008 rather than all the way back to 2005.

**Donnita Wald, Tax Department:** The bill effective date was retroactive to the tax year 2005.

**Chairman Belter:** I don't know how much of a problem going retroactive is with the committee to go back to 2005 or if you are comfortable with that.

**Representative Kelsh:** It means an amended return.

**Chairman Belter:** Yes, you would have to do an amended return.

**Representative Pinkerton:** This is really a technicality that prevents North Dakota corporations from receiving tax benefits companies from other states receive so I think it is fair to go back to 2005. Perhaps it would be more easily explained on this bill if we put it back to 2008 and let a conference committee deal with the retroactive changes.

**Chairman Belter:** That is a possibility. We won't act on this but I do want to give you these amendments because there were some concerns expressed by the trade office and these amendments address their concerns.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1392

House Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 02/04/09

Recorder Job Number: 8626

Committee Clerk Signature

*Lou Engelson*

Minutes:

**Vice Chairman Drovdol** opened the hearing on HB 1392. We'll go to 1392 which is a bill regarding distributions of an interest charge domestic international sales corporation. Rep. Belter do you have amendments.

**Rep. Belter:** I have amendments 02TX.

**Vice Chairman Drovdol:** Remove "retroactively and replace with "to include all" with "for".

**Rep. Grande:** Yes.

**Rep. Belter:** The original bill is retroactive back to 2005. What these amendments do is allow the tax deduction for 2008. The reason I did the amendments, I think that it's very important that we pass this bill and historically the legislature has not looked very kindly on retroactive tax corrections and I thought I want to get it passed and hope to get it passed. The other thing, if the legislature passes this bill, then it also does give direction to the tax department as to the intent of the legislature. Subsequently these companies can go back. They can file a grievance, and I believe that they can negotiate with the tax commissioner as to interest and penalty as well as even some tax forgiveness. As long as the tax department knows that the legislature says, this is what we want to do, it may give these companies an opportunity to negotiate the taxes for years prior to 2008.

**Vice Chairman Drovdol:** So the amendment makes it retroactive and says this act is good for taxable years beginning after December 31, 2008. This act is effective for taxable years beginning after December 31, 2008.

**Rep. Belter:** They should be able to claim this for 2008 was my intent. Amend it to 2007.

**Vice Chairman Drovdol:** Do you want to withdraw your amendment.

**Rep. Belter:** I guess I'm going to have to.

**Rep. Grande:** Just further amend.

**Vice Chairman Drovdol:** I apologize. Do you wish to change that to 2007? December 31, 2007?

**Rep. Grande:** Yes.

**Rep. Belter:** If we just change the beginning of the taxable year ending December, 2007.

**Vice Chairman Drovdol:** So the amendment will read page 1, line 22, remove "retroactively" and replace with "to include all" with "for" and line 23 replace "2005" with "2007". Is there a motion on that amendment. Moved by Rep. Wrangham. Seconded by Rep. Grande. Further discussion on the amendment. Hearing none, all in favor of amendment 02TX say aye. Opposed. Amendment carries. We now have HB 1392 before us as amended.

**Rep. Pinkerton:** Can we accept a do pass?

**Vice Chairman Drovdol:** I'll accept any motion.

**Rep. Pinkerton:** Do pass.

**Vice Chairman Drovdol:** We have a motion by Rep. Pinkerton for a do pass. Does that have to be rereferred. Is there a second.

**Rep. Grande:** Second.

**Vice Chairman Drovdol:** Seconded by Rep. Grande. Discussion.

**Rep. Kelsh:** I would ask that I be excused from voting on this because I have a direct conflict of interest. My wife has a small manufacturing business that does exports.

**Vice Chairman Drovdol:** Do we have to vote on that?

**Rep. Belter:** No, I don't believe we have to on his request.

**Vice Chairman Drovdol:** I thought it was one of those things where the chair says, without objection, or something. In order to clarify it we are going to have a voice vote to allow Rep. Kelsh to vote on this bill. All in favor in allowing him vote on this bill signify by saying aye. Opposed. (Voice vote in favor of letting Rep. Kelsh vote) Any discussion on HB 1392 as amended. Seeing no other discussion I have a motion to do pass as amended. Will the clerk please read the roll.

The roll call was read by the clerk.

**13 yes, 0 no, 0 absent. Rep. Winrich was assigned to carry the bill.**



**FISCAL NOTE**  
**Requested by Legislative Council**  
01/13/2009

Bill/Resolution No.: HB 1392

**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 1392 relates to income tax deductions for a specified type of distributions.

**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.*

HB 1392 is specific to an interest charge domestic international sales company (IC-DISC), which is basically a trading conduit, when the IC-DISC is owned by individuals or passthrough entities. The bill creates a deduction for the IC-DISC for dividends paid or deemed paid to the owners. The bill effectively creates the same tax consequence as if the IC-DISC were owned by a corporation.

The fiscal impact of this change cannot be determined.

**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.*

<b>Name:</b>	Kathryn L. Strombeck	<b>Agency:</b>	Office of Tax Commissioner
<b>Phone Number:</b>	328-3402	<b>Date Prepared:</b>	01/27/2009

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1392

Page 1, line 22, remove "retroactively" and replace "to include all" with "for"

Page 1, line 23, replace "2005" with "2008"

Renumber accordingly

February 4, 2009

V/R  
2/4/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1392

Page 1, line 23, replace "2005" with "2007"

Renumber accordingly

Date: February 4, 2009

Roll Call Vote #: 1

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1392**

House FINANCE AND TAXATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 02. TX

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Wrangham Seconded By Grande

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

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

Amendment carried

Date: February 4, 2009

Roll Call Vote #: 1

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1392**

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 Pinkerton Seconded By Grande

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

Total (Yes) 13 No 0

Absent 0

Floor Assignment Winrich

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

**REPORT OF STANDING COMMITTEE**

**HB 1392: Finance and Taxation Committee (Rep. Belter, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1392 was placed on the Sixth order on the calendar.**

Page 1, line 23, replace "2005" with "2007"

Renumber accordingly

2009 SENATE FINANCE AND TAXATION

HB 1392

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1392

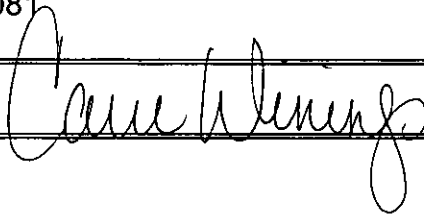
Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 03/03/2009

Recorder Job Number: 10081

Committee Clerk Signature



Minutes:

**Chairman Cook:** Opened hearing on HB 1392.

**Representative Wesley Belter, District 22:** Testified as sponsor and in support of the bill.

(Explained the bill to the committee) It is an extremely competitive business and we do not

want these companies that are dealing in international trade to be caught in double taxation.

We did amend the bill in committee on the House side. You may want to go back to the retroactive part that we amended out.

4.32 **Senator Triplett:** What is the significance of the year 2005, is that when the federal law became effective?

**Rep. Belter:** No, I am not sure if that is the law or if that is when these particular companies first discovered that it would have been a 2000 tax year that they were getting hit with this double taxation.

**Chairman Cook:** I see when I read the fiscal note that the bill effectively creates the same tax consequences as if the IC-DISC were owned by a corporation. An IC\_DISC company is a trading conduit, there wouldn't be a whole lot of these wouldn't there?

**Rep. Belter:** I do not believe so. The tax department can answer that.



6.12 **Mike Siefert, North Dakota Trade Office:** See Attachment #1 for testimony in support of the bill.

8.29 **Jim Fyhrie, Worldwide Trade Partners:** See Attachment #2 for testimony in support of the bill.

11.27 **Senator Anderson:** Earlier we talked about double taxation and if the state passes this, then it is just like a corporation?

**Jim Fyhrie:** If the state passes it, it makes the dividend that the IC-DISC pays out deductible so that the IC-DISC has no taxable income at the state level so that income truly is with the share holder. The only reason we set up this structure with the c-corp in the middle is to comply with the federal requirements and by doing that we put money into this entity and pay it back out, and depending on how you interpret it, it is getting trapped over there even though this entity does nothing.

**Senator Oehlke:** What if there was no IC-DISC? Would you be able to export?

**Jim Fyhrie:** You can still continue with business as normal, it is just an export incentive is in place at the federal level and this just helps companies. The company pays a commission to the IC-DISC and it gets a deduction for that commission at the shareholders rate. The commission is determined on their export sales and then the dividend is taxed as a qualified dividend. They are getting a deduction at 35% but picking income up at 15%, so they are saving a percentage on their export sales.

**Senator Oehlke:** Is it because you have investors in the IC-DISC that help promote things?

**Jim Fyhrie:** The IC-DISC itself does nothing.

**Senator Oehlke:** Why would you want to do it through an IC-DISC then?

**Jim Fyhrie:** Then you get that cheaper dividend rate on your income. (Refers to a specific example)

17.00 **Tom Bresnahan, Chief Financial Officer, Sinner Bros. & Bresnahan Companies, Casselton, North Dakota:** See Attachment #3 for testimony in support of the bill.

19.12 **Senator Anderson:** We don't have anything on the fiscal note. How much in taxes will be saved through this program?

**Tom Bresnahan:** It could save us close to 20% of our export sales.

20.20 **SuAnn Olson, CPA, Eide Bailly LLP:** See Attachment #4 for testimony in support of the bill.

24.10 **Vice Chairman Miller:** When you look at someone's books at the end of the year, I am wondering why there is not a fiscal note on this. There should be a way to identify.

**SuAnn Olson:** The tax department could answer that.

**Senator Dotzenrod:** You state that there is a provision on the federal return that allows for the deduction of this dividend, and that it is not automatically allowed on the North Dakota corporate tax. If the business entity that existed at the state level was a partnership or a limited or an LLC, is it available at that level, is it just in corporate section that this has to be changed.

**SuAnn Olson:** The entity that has created the IC-DISC is a regular C corporation of sorts.

**Mike Siefert:** Handed out Attachment #5 testimony of Howard Dahl.

**Chairman Cook:** Asks the tax department if the fiscal note was difficult to come up with, and is this information you are not able to give out?

**Mary Loftsgard, Tax Department:** In response to your question about the fiscal note the answers are yes and yes. We cannot run a query and find all of the IC-DISCs in North Dakota. The number of IC-DISCs we have been able to identify informally is 5 or less.

**Chairman Cook:** Explain to me how this works. You build an item and you sell them overseas, exports them, gets them a price for that item, and so a commission is taken, a percentage of

the total price, put it into the IC-DISC, and then take it out and pay dividends to the stockholders of the company, is that correct?

**Mary Loftsgard:** In essence the parent company that owns the disc, the disc is going to be like a marketing arm of that company and when the disc sells those items, the parent is going to pay the disc a commission. It is going to have commission income while the parent company is going to have commission expense that it is going to deduct on its federal return. The IC-DISC is going to have commission income and an IC-DISC is not taxable on the federal level, but then that IC-DISC is out of its income going to pay dividends to the parent, which are going to be taxable to the parent but at that preferred rate.

**Chairman Cook:** At a preferred rate; how is it double taxed?

**Mary Loftsgard:** We need go back to when we talked about all the taxes in North Dakota and we talked about combined reporting. What we are seeing here is the difference between how and IC-DISC is treated for tax purposes when it is owned by a corporation verses when it is owned by a pass through entity like a partnership or a sub-chapter S Corporation. An IC-DISC is a vehicle to do business, but they don't operate independently. They don't have employees or a building. When we are talking about combination and the parent company is already a C Corporation, we are going to combine these companies and so we are going to take the C Corporations income and add the IC-DISCs income but then we are going to subtract out those dividends that the IC-DISCs pays to the C Corporation so that we don't have that double taxation. In the scenario where you have a C Corp and an IC-DISC, that has all been avoided under unitary combination. What happens when you have a pass through entity like a subchapter S Corporation, or a partnership that owns the IC-DISC, we don't have a combinable group because of the fact that you don't have the ownership kind of interest that you have with a C Corp. So what happens when you have a subchapter S Corporation or a

partnership that owns the IC-DISC, is that there is not that intercompany dividend elimination so the disc is taxable in North Dakota on that same company and there is no way to eliminate those dividends and in essence that is what this bill provides for is that if the ownership is by a pass through entity for the specific kind of IC-DISC that is talked about in the bill, one that has no economic substance. What it does is to allow them to reduce their income by those dividends that are paid.

**Chairman Cook:** OK.

**Senator Oehlke:** Does the IC-Disc have to be registered?

**Mary Loftsgard:** I believe with the Secretary of State in order to do business in North Dakota.

**Senator Oehlke:** How often do they have to declare dividends?

**Mary Loftsgard:** I don't know. Others in the room say yes.

**Chairman Cook:** Does it have a company name?

**Mary Loftsgard:** Yes they do, the company they are under, they have to file a federal income tax return.

**Senator Triplett:** What is the issue regarding the 2005 back dating compared to 2007?

**Mary Loftsgard:** It is rare for us to see retroactive treatment; it is not administratively a problem. It is up to the committee on the retroactive issue.

**Senator Triplett:** 2007 is already retroactive.

**Mary Loftsgard:** It is no more work than an amended return.

**Senator Hogue:** Can the problem be solved by having the IC-DISC converted to a C Corp?

**Mary Loftsgard:** If the IC-DISC is going to convert, it would only be in that form prospectively anyway, I don't know if it would solve the issue.

37.50 **Chairman Cook:** Any further testimony? (no) Closed the hearing.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1392

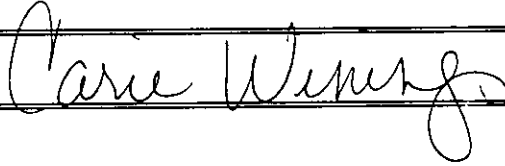
Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 03/04/2009

Recorder Job Number: 10185

Committee Clerk Signature



Minutes:

**Chairman Cook:** Reopened discussion on HB 1392.

**Discussion:** A discussion occurred between all committee members and whether the committee understood the bill well enough to act on it. They conferred with the tax department over whether or not to amend the bill to be retroactive (back to the original bill form); per Representative Belter's request. The discussion continued into how the bill would affect companies if it ends up being retroactive and whether or not they would go back and file amended tax returns. They essentially have been filing as if the tax code were already as the bill was presented.

**Donnita Wald:** Preferred to keep it out of conference committee and requested that it not be retroactive past 2008.

**Chairman Cook:** Decided that they wanted the bill to be held until all members were present and suspended the hearing.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1392

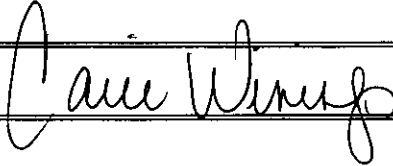
Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 03/10/2009

Recorder Job Number: 10584

Committee Clerk Signature



Minutes:

**Chairman Cook:** Reopens discussion on HB 1392. We were concerned on the correct thing to do with the effective date. The current situation by the few companies that are affected by this is confidential within the tax department however Representative Belter has visited with them and they have basically all indicated that they have proceeded in filing their taxes as if this was the law. I think what we should do is just remove the retroactive portion of this effective date and pass the bill and make some statement that is clear in our intentions that if there should ever be an audit of these companies that they be treated as if this was the law.

**Senator Triplett:** We should still have an effective date then?

**Chairman Cook:** Yes.


**Senator Triplett:** Moved for an amendment to change the effective date to December 31<sup>st</sup>, 2008.

**Senator Dotzenrod:** Seconded.

**Chairman Cook:** Discussion? (no)

**A voice vote was taken: Yea 6, Nay 0, Absent 1 (Senator Miller).**

**Motion Passed.**

 **Chairman Cook:** Again, it is our intention that any audits of the few companies affected by this would be treated as if this was the law.

**Senator Dotzenrod: Motioned for a Do Pass As Amended.**

**Senator Oehlke: Seconded.**

**Chairman Cook:** Discussion? (no)

**A Roll Call vote was taken: Yea 6, Nay 0, Absent 1 (Senator Miller).**

**Senator Hogue will carry the bill.**





Date: 03/10/09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. : 1392

Senate Finance and Taxation

Committee

☐ Check here for Conference Committee

Amendment  
change eff. date to Dec. 31<sup>st</sup>  
2008

Legislative Council Amendment Number

Action Taken

☐ Do Pass

☐ Do Not Pass

☐ Amended

Motion Made By Senator Triplett

Seconded By Senator Dotzenrod

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

6

No

0

Absent

1 (Miller)

Floor Assignment

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



Date: 03/10/09

Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.: 1392

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended <sup>As</sup>

Motion Made By Senator Dotzenrod Seconded By Senator Dehlke

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 6 No 0

Absent 1 (Miller)

Floor Assignment Senator Hogue

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

**REPORT OF STANDING COMMITTEE**

**HB 1392, as engrossed: Finance and Taxation Committee (Sen. Cook, Chairman)**  
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends  
**DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1392  
was placed on the Sixth order on the calendar.

Page 1, line 22, remove "retroactively" and replace "to include all" with "for"

Page 1, line 23, replace "2007" with "2008"

Renumber accordingly

2009 TESTIMONY

HB 1392

January 28, 2009

Rep. Wes Belter, Chairman  
House Finance and Tax Committee

RE: House Bill 1392; Fort Totten Room – 09:30 a.m. 28 Jan. 2009

Good morning and thank you Chairman Belter and members of the House Finance and Tax Committee. My name is Mike Seifert and I am here representing the ND Trade Office in support of House Bill 1392.

As most of you already know, the ND Trade Office is a non-profit organization chartered with assisting ND Exporters in developing and sustaining their export growth. ND led the nation in export growth in 2007, at a rate double that of any other state in the Union. We are proud to be part of that success and here today to ask for your assistance, via HB 1392, in correcting a tax law interpretation that will enable ND exporters using federally endorsed IC DISC structure to compete as intended globally.

House Bill 1392 is a bill that, in my words is essentially benign from an impact on ND taxpayers, although paramount for a very few exporters. It is very important to leverage federally endorsed and promulgated tax law as one competes in a global marketplace. To date ND has had a small technical error in the tax code that contradicts the intended outcome of federally written IC-DISC statutes, which are intended to enable exporters to compete abroad. Congress created IC-DISC to facilitate export sales for U.S. companies targeting products being manufactured, produced, grown or extracted in the US and sold outside of the U.S. As many of you know a large portion of our North Dakota exporters fall into these categories.

Mr. Jim Fyhrie, of World Wide Trade Partners, can very precisely and competently explain the technical aspects of this tax treatment. I would simply close in support of the need to correct the language, in an attempt to sustain our current export growth as well as attract future exporters to grow here in the State of North Dakota.

Respectfully Submitted and Thank you.

Mike Seifert  
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Bismarck ND 58504  
701.400.9712  
[mike@ndto.com](mailto:mike@ndto.com)

Testimony 1

Same given  
to Senate.

Testimony 2

Same to  
given to  
Senate.

Good morning members of the House Finance and Tax Committee. I'm Jim Fyhrie. I live in Fargo and am representing Worldwide Trade Partners, a boutique International Tax consulting firm. Prior to forming Worldwide Trade Partners I was a manager with PricewaterhouseCoopers focusing on export tax incentives.

House Bill 1392 is intended to clarify North Dakota's tax treatment of an Interest Charge Domestic International Sales Corporation or IC-DISC. The IC-DISC is a federal tax incentive for small exporters that is supported by both of North Dakota's United States Senators.

The IC-DISC entity is a separate entity as required to comply with US trade agreements. The IC-DISC is the only remaining federal export contingent incentive available.

An IC-DISC receives commission income from an exporter for the exporter's export sales. The commission is typically determined using Internal Revenue Code Section 994 administrative pricing rules which intentionally lack any economic substance. The IC-DISC does not perform any activities to earn a Section 994 determined commission.

A small number of North Dakota exporters currently use IC-DISCs for their export sales. The majority of these exporters are flow-through entities (S-Corporations). In most cases the S-Corporation owns 100% of the IC-DISC.

The North Dakota Law addressing IC-DISC speaks to activity of an IC-DISC, but never defines activity. House Bill 1392 clarifies that when an IC-DISC uses administrative pricing (that is does not have activity or economic substance) the dividend paid from the DISC is a deduction of the DISC and income to the shareholder.

Enactment of House Bill 1392 will ensure that all North Dakota exporters will be able to utilize an IC-DISC without impacting their North Dakota tax.

Thank you.



Testimony 3

**SINNER BROS. & BRESNAHAN**  
*PARTNERS IN FARMING*

Same  
given to  
Senate.

January 28, 2009

Rep. Wes Belter, Chairman  
House Finance and Tax Committee

RE: House Bill 1392; Fort Totten Room – 9:30 a.m. January 28, 2009

Good morning and thank you Chairman Belter and members of the House Finance and Tax Committee. My name is Tom Bresnahan, Chief Financial Officer and partner with Sinner Bros. & Bresnahan Companies from Casselton, ND. I am here in support of House Bill 1392.

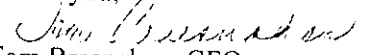
We are exporters of identity preserved (IP) commodities, focusing on soybeans and wheat. We process and package to foreign customer specifications and ship to numerous countries, primarily in the Pacific Rim. In 2004, we started Identity Ag Processing, LLC, a North Dakota primary sector agricultural processing facility. In 2006 we received the North Dakota Exporter of the Year award given our five-year annual growth rate of nearly 40%. In 2008 we more than doubled our export sales and expanded our Identity Ag Processing facility. In 2009 we received the ND Entrepreneur of the Year award at Marketplace of Entrepreneurs. We have over 150 contracts with area growers to assist us in producing IP commodities for export.

The IC-DISC program was made available by Congress via the Federal tax code to assist companies like ours to grow and continue to re-invest in our export business. All of our job creation since 2000 has been because of the export business. Besides providing job creation and helping grow North Dakota's export activity, we bring significant economic benefits, such as premium-priced crops, to the farmers of the great state of North Dakota.

In the global marketplace, we face ever increasing foreign competition as well as competition from other states that utilize the IC-DISC program as it was intended to be treated in the tax code.

The IC-DISC program is vital for the continued growth of North Dakota exporters. We urge you to help us keep North Dakota as the nation's leader in export growth. Please support House Bill 1392 and clarify the North Dakota tax code to be consistent with the intentions of this federally endorsed statute and enable us to continue to invest in our business.

Thank you,

  
Tom Bresnahan, CFO  
Sinner Bros. & Bresnahan Companies  
Casselton, ND 58012  
701-347-4900  
[tebresnahan@sb-b.com](mailto:tebresnahan@sb-b.com)

January 28, 2009

Rep. Wes Belter, Chairman  
House Finance and Tax Committee

RE: House Bill 1392; Fort Totten Room – 9:30 a.m. January 28, 2009

Mr Chairman and members of the committee, my name is SuAnn Olson. I am a CPA and a partner with Eide Bailly LLP in Bismarck and am here in support of House Bill 1392.

As a tax preparer, I work for and with clients of all sizes and industries. Accountants see start-up businesses that often have simply a vision and a shoestring and we see mature businesses with established products and services. All of us share a common goal of wanting our North Dakota economy to thrive because a thriving economy provides opportunity and jobs for our citizens. We want our North Dakota businesses to thrive and compete for customers who may not only be down the street but also around the globe. For many of us, thinking about doing business around the globe is still pretty new.

An old cornerstone of tax law is the concept that income should not be taxed twice. It's a fairness issue and is the reason certain methodologies have been adopted. For example, the apportioning of income earned among several states has long been a way to ensure that taxpayers don't pay tax on the same income to more than one state. HB 1392 is addressing a similar concept. Currently, many businesses operate as some type of pass-through entity, such as a type of partnership or an S corporation, meaning the income is passed through and taxed to the partners or shareholders. Many of you on the committee are probably involved in businesses or farms that operate this way. Some of these entities have formed an Interest Charge-Domestic International Sales Corporation or IC-DISC in conjunction with their business that includes sales to customers in foreign countries. The federal return for the IC-DISC allows a deduction for a dividend paid to the shareholder. This same deduction is not automatically allowed in computing the North Dakota corporate tax causing a state tax liability at the IC-DISC level when there isn't a liability at the federal level. When the owner of the IC-DISC is a pass-through entity, all the income is passed through to the individuals and taxed by the state, effectively causing the IC-DISC income to be taxed twice by North Dakota. From a tax standpoint, this is clearly not "fair" and unnecessarily serves to penalize businesses who are taking a risk and being innovative in seeking customers for their products.

I ask that you vote in support of HB 1392.

Thank you,  
SuAnn Olson  
PO Box 1914  
Bismarck, ND 58502  
701-255-8442  
solson@eidebailly.com

Testimony 4  
Same given to Senate.

January 28, 2009

Rep. Wes Belter, Chairman  
House Finance and Tax Committee

RE: House Bill 1392; Fort Totten Room – 09:30 a.m. 28 Jan. 2009  
Rep. Wes Belter, Chairman

I am pleased to have opportunity to pass on to the members of the House Finance and Tax Committee my thoughts on exporting and how it relates to the IC-DISC. House Bill 1392 is very critical for many of us who are trying to compete in a global marketplace that has fierce competition. We are trying to sell equipment against competitors from many different countries, most of which have very large incentives for exporters. In our case, our German competitors on sugar beet harvesting equipment not only have export incentives, but low rate financing over many years from Hermes that makes competing with them difficult. On our tillage and planting side of our business, in addition to many European competitors, we also compete against American companies like Deere, Case and AGCO, all of whom sell much of their equipment to a foreign entity and don't pay taxes on the profit in the United States until they choose to bring their profits home.

There are few vehicles for small company exporters to compete without setting up an offshore company and selling at a GAAP approved transfer pricing to this offshore company. The IC-DISC was designed in the Federal tax code to assist smaller companies to have incentives to take the risk of going to new export markets. Of our three companies in North Dakota (Amity Technology, LLC, WilRich and Wishek) 150 of our 300 jobs are due to our export sales of the past 7 years.

Today we face stiffer competition than ever as sales are very difficult to close. We do not want to lose the market share we have achieved in a number of markets and clearly the cost of doing business in this economic climate has increased. If this correction in the IC-DISC legislation is not made, it will be a major hindrance to our ability to compete. We would then be forced to go through the costly effort of setting up an offshore entity which would have as an end result the lowering of the taxes that we pay to the state of North Dakota. We would then probably do what many large corporations have done, which is to wait for a tax holiday when the Federal government says that you can bring these profits back to the United States at a tax rate of 5%. The end result would be less tax revenue for the state of North Dakota for companies such as ours.

I have not gotten legal clarification on this, but I believe we also could set up a corporation in another state in the United States that has laws that are in line with the intent of the IC-DISC and not face the double taxation that we are now faced with in North Dakota. The reality at present is that we paid taxes as shareholders of Amity Technology, LLC, but are also asked to pay taxes on our IC-DISC, the result being higher taxes in North Dakota than if we had no IC-DISC.

Thank you for your careful consideration of this bill.

Howard Dahl, CEO  
Amity Technology, LLC



#5  
**Testimony – HB 1392 – 2:30 p.m. 4 March 2009 – Lewis and Clark Room ND State Capitol**

Chairman Cook and members of the Senate Finance and Taxation Committee,

I am pleased to have opportunity to pass on to the members of the Senate Finance and Taxation Committee my thoughts on exporting and how it relates to the IC-DISC. House Bill 1392 is very critical for many of us who are trying to compete in a global marketplace that has fierce competition. We are trying to sell equipment against competitors from many different countries, most of which have very large incentives for exporters. In our case, our German competitors on sugar beet harvesting equipment not only have export incentives, but low rate financing over many years from Hermes that makes competing with them difficult. On our tillage and planting side of our business, in addition to many European competitors, we also compete against American companies like Deere, Case and AGCO, all of whom sell much of their equipment to a foreign entity and don't pay taxes on the profit in the United States until they choose to bring their profits home.

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Thank you for your careful consideration of this bill.

Howard Dahl, CEO  
Amity Technology, LLC