



DEPARTMENT OF COMMERCE TESTIMONY ON ECONOMIC DEVELOPMENT TAX INCENTIVE

JULY 29, 2015, 10:50 A.M.

POLITICAL SUBDIVISION TAXATION COMMITTEE

REPRESENTATIVE JASON DOCKTER, CHAIRMAN

ALAN ANDERSON – COMMISSIONER, ND DEPARTMENT OF COMMERCE

Good morning, Mr. Chairman and members of the committee, my name is Alan Anderson and I serve as the Commissioner for the North Dakota Department of Commerce.

The Department of Commerce, as well as the economic development community in North Dakota, has been supportive of the effort to evaluate tax incentives in the state and was involved in the drafting of SB 2057 (2015) and supported it during the legislative session. This is because it is in the state's and local communities' best interest to have an effective incentive package that works and doesn't waste resources. And, quite frankly, we understand that in order to maintain public support for incentives and economic development efforts, the incentives need to demonstrate a positive return on investment.

Overview of Economic Development Tax Incentives

Tax incentives are one of the primary tools North Dakota uses to promote economic diversification and growth. This primarily includes sales tax exemptions, income tax credits, and income tax exemptions on the state level with local municipalities having the ability to reduce or exempt property. The focus of your evaluation will be on state provided tax incentives.

Sales Tax Exemptions

As measured by cost to the state, sales tax exemptions are the largest portion of tax incentives. They are used to promote private sector investment in targeted industries such as manufacturing, information technology businesses, agriculture processing, or the energy industry. Economic development sales tax exemptions include:

- Agricultural Commodity Processing Plant Construction Materials (NDCC § 57-39.2-04.4)
- Coal Gasification Byproducts (NDCC § 57-39.2-04.11)
- Coal Mine Machinery or Equipment (NDCC § 57-39.2-04.8)
- Computer and Telecommunications Equipment (NDCC § 57-39.2-04.3)
- Coal-Powered Electrical Generating Facilities (NDCC § 57-39.2-04.2)
- Wind-Powered Electrical Generating Facilities (NDCC § 57-39.2-04.2)
- Gas Processing Facilities (NDCC § 57-39.2-04.5)
- Liquefied Gas Processing (NDCC § 57-39.2-04.10)
- Manufacturing, Agricultural, or Recycling Equipment (NDCC § 57-39.2-04.3)
- Oil Refineries (NDCC § 57-39.2-04.6)

- Telecommunications Infrastructure (NDCC § 57-39.2-04.9)
- Biodiesel Equipment (NDCC § 57-39.2-04(51))
- Carbon Dioxide for Enhanced Oil Recovery (NDCC § 57-39.2-04(49)) & Related Materials (NDCC § 57-39.2-04.14)
- Hydrogen Generation Facility (NDCC § 57-39.2-04(50))
- Enterprise Information Technology Equipment and Computer Software used in a Qualified Data Center (NDCC § 57-39.2-04.13)
- Fertilizer or Chemical Processing Facility (NDCC § 57-39.2-04.15)

Commerce's limited role in sales tax exemptions includes certifying primary sectors businesses that would like to receive a sales tax exemption for computer and telecommunications equipment.

There are two sales tax exemptions that are set to expire at the end of the biennium: wind powered electrical generating facilities and telecommunications infrastructure. The committee may wish to review these incentives in order to assist the legislature in determining whether or not to extend these incentives during the 2017 legislative session.

Income Tax Credits

Income tax credits are another method the legislature has put in place to encourage certain activities to promote economic development. One encouraged activity is the investment into private sector projects. Investment tax credits include:

- Seed Capital Investment Tax Credit (NDCC Chapter 57-38.5)
- Agricultural Commodity Processing Facility Investment Tax Credit (NDCC Chapter 57-38.6)
- Angel Fund Investment Tax Credit (NDCC § 57-38-01.26)

Commerce has a role in certifying businesses or angel funds as being eligible for these tax credits.

Other tax credits include:

- Automation Tax Credit (NDCC § 57-38-01.33)
- Biodiesel Production or Soybean and Canola Crushing Facility (NDCC § 57-38-30.6)
- Certified Nonprofit Development Corporation Investment Credit (NDCC § 10-33-124)
- Internship Employment Credit (NDCC § 57-38-01.24)
- Microbusiness Income Tax Credit (NDCC § 57-38-01.27)
- Research Expense Credit (NDCC § 57-38-30.5)
- Wage and Salary Credit (NDCC § 57-38-30.1)
- Workforce Recruitment Credit (NDCC § 57-38-01.25)

Commerce has a role in certifying eligible equipment under the Automation Tax Credit and has a role in certifying smaller businesses that have the ability to transfer earned Research Expense Credits.

The automation tax credit was extended by two years through the passage of SB 2340 (2015) which included a section of legislative intent that this tax credit “be one of the economic development tax incentives selected for analysis during the 2015-16 interim.”

New or Expanding Business Income Tax Exemption

The State Board of Equalization may grant an income tax exemption for up to five years for new or expanding businesses that are certified by Commerce as being primary sector or tourism business (NDCC Chapter 40-57.1).

Renaissance Zone

Businesses or individuals located in a Renaissance Zone may be eligible for a five year property tax exemption, five year income tax exemption, and an income tax credit for historic preservation (NDCC Chapter 40-63). Commerce has a role in approving community-proposed Renaissance Zone plans and projects.

New Jobs Training

New or expanding primary sector businesses may work with Job Service North Dakota to help cover the cost of training new employees. Funding that is provided up front is recovered through income tax withheld from the new employees.

Services Available to the Committee Concerning the Evaluation of Tax Incentives

Department of Commerce

As indicated in NDCC § 54-35-26(5), the Department of Commerce, Tax Commissioner, and ND Economic Development Foundation are to provide data and analysis as requested by the Political Subdivision Taxation Committee.

The legislature approved House Bill 1060, which is a companion bill to SB 2057. HB 1060 allows the Tax Commissioner and Job Service North Dakota to share confidential information with Commerce to the purpose of evaluating economic development incentives. All information shared with Commerce will maintain its confidential nature and Commerce will only be able to share aggregate information. HB 1060 will allow the Tax Department to share information on who has benefited from certain tax incentives. Commerce will then be able to match that information with jobs and payroll data provided by Job Service North Dakota. This will help determine some of the results of the incentives.

Commerce is currently reviewing options for evaluating the total economic impact from projects that have benefited from economic development incentives. This will allow Commerce to estimate a Return on Investment for the tax incentives.

Commerce is also willing to assist the committee in providing additional information to aid in the evaluation of tax incentives including the competitive landscape with other states, as well as information regarding the complementary or duplicative effect of other incentives or governmental programs.

One point of potential concern. While Commerce stands ready to assist in any way we are able, we were not provided additional resources for our role in assisting with the evaluation of tax incentives. This is a new process and with its complexity we do have concerns about the amount of data and analysis that this committee may request from us.

Other Partners

Others that stand ready to assist the committee include the ND Economic Development Foundation and the Economic Development Association of North Dakota (EDND).

The North Dakota Economic Development Foundation was established by the legislature at the same time as the creation of the Department of Commerce in 2001. Its purpose is to provide private-sector guidance and oversight of the state's economic development efforts, including responsibility for the state's economic development strategic plan. The committee may want to ask the Foundation for assistance as it considers the goals of tax incentives.

EDND represent local economic developers across the state and was a primary partner in the development of SB 2057. I would encourage this committee to reach out to EDND for assistance in evaluating tax incentives by providing the local economic developer perspective.

Preference for First Round Study Selection

It is our recommendation to focus the first round on those incentives set to expire, as well as investment income tax credits that are designed to help diversify North Dakota's economy and potentially other income tax credits.

As mentioned previously, tax incentives that are set to expire include:

- Sales tax exemption for wind powered electrical generating facilities
- Sales tax exemption for telecommunications infrastructure
- Automation tax credit

Investment income tax credits include:

- Seed Capital Investment Tax Credit
- Angel Fund Investment Tax Credit
- Agricultural Processing Facility Tax Credit

Depending on the number of tax incentives you wish to evaluate during the first interim, you could also consider the following tax credits:

- Microbusiness Income Tax Credit

- Research Expense Credit
- Wage and Salary Credit

Mr. Chairman and members of the Political Subdivision Taxation Committee, thank you for allowing me to visit with you today. That concludes my testimony and I am happy to entertain any questions.

North Dakota Tax Incentives for Businesses

Tax Incentive	NDCC	Enacted	Type of Tax Incentive	NDCC § 54-35-26(3)	Beneficiary Savings		Interim to Study
					Annual	Biennial	
Agricultural Commodity Processing Facility Investment Tax Credit	57-38.6	2001	Income tax credit	c.	\$ 396,782	\$ 649,596	2015-16
Angel Fund Investment Tax Credit	57-38-01.26	2007	Income tax credit	i.	\$ 4,813,873	\$ 12,197,374	2015-16
Automation Tax Credit	57-38-01.33	2011	Income tax credit	l.	\$ 198,763	\$ 977,007	2015-16
Biodiesel or green diesel production or soybean and canola crushing facility equipment costs	57-38-30.6	2003	Income tax credit	k.	NR	NR	
Biodiesel Sales Equipment Cost Tax Credit	57-38-01.23	2005	Income tax credit	d.	NR	NR	
Blending of Biodiesel Tax Credit	57-38-01.22	2005	Income tax credit	d.	NR	NR	
Certified Nonprofit Development Corporation Investment Credit	10-33-124 and 57-38-01.17	1989	Income tax credit		\$ -	\$ -	
Geothermal, Solar, Wind or Biomass Energy Device Tax Credit (for devices installed before 1/1/2015)	57-38-01.8	1977	Income tax credit				
Internship Employment Credit	57-38-01.24	2007	Income tax credit	g.	\$ 5,267	\$ 14,353	
Microbusiness Income Tax Credit	57-38-01.27	2007	Income tax credit	h.	NR	NR	2015-16
Research Expense Credit	57-38-30.5	1987	Income tax credit	b.		\$ 3,449,515	2015-16
Seed Capital Investment Credit	57-38.5	1993	Income tax credit	e.	\$ 801,287	\$ 2,378,397	2015-16
Wage and Salary Credit	57-38-30.1	1969	Income tax credit	f.	\$ -	\$ -	2015-16
Workforce Recruitment Credit	57-38-01.25 and 57-38-30.3(2)	2007	Income tax credit	j.	NR	NR	
New or Expanding Business Exemption	40-57.1	1969	Income tax exemption	m.	\$ 26,282	\$ 378,098	
Renaissance Zone	40-63	1999	Income tax exemptions, credits and property tax exemptions	a.	\$ 1,041,411	\$ 2,770,666	
New Jobs Training	52-02.1	1993	Income tax withheld from new employees	r.	\$ 1,975,272	\$ 3,683,270	
Coal Severance and Conversion Tax Exemptions	57-60 and 57-61		Payment in lieu of property tax	o.			
Wind Turbine Electric Generators Taxable Valuation (constructed prior to 1/1/2015)	57-06-14.1	2007	Property tax reduction				
Motor Fuel Tax Refund - Agricultural Use	57-43.1-03.1	1989	Refund of Motor Fuel Tax	q.			
Motor Fuel Tax Refund - Emergency Medical Services	57-43.1-03.3	2007	Refund of Motor Fuel Tax	q.			
Motor Fuel Tax Refund - Industrial Use	57-43.1-03	1983	Refund of Motor Fuel Tax	q.			
Agricultural Processing Plant Construction Materials Sales Tax Exemption	57-39.2-04.4	1994	Sales and use tax exemption		\$ 1,492,424	\$ 4,146,473	
Biodiesel Equipment Sales Tax Exemption	57-39.2-04(51)	2005	Sales and use tax exemption				
Carbon Dioxide for Enhanced Oil and Gas Recovery	57-39.2-04(49) and 57-40.2-04(24)	2005	Sales and use tax exemption				
Coal Gasification Byproducts	57-39.2-04.11	2013	Sales and use tax exemption				
Coal Mine Machinery or Equipment	57-39.2-04.8	2011	Sales and use tax exemption		NR	NR	
Computer and Telecommunications Equipment Sales Tax Exemption (set to expire in 2017)	57-39.2-04.9 (formerly 57-39.2-04.7)	2011	Sales and use tax exemption		NR	> \$1,772,462	2015-16
Electrical Generating Facilities - Coal Powered Sales Tax Exemption	57-39.2-04.2 and 57-40.2-04.2	1991	Sales and use tax exemption			*	
Electrical Generating Facilities - Other Sales Tax Exemption	57-39.2-04.2 and 57-40.2-04.2	2007	Sales and use tax exemption			*	
Electrical Generating Facilities - Wind Powered Sales Tax Exemption (set to expire in 2017)	57-39.2-04.2 and 57-40.2-04.2	2001	Sales and use tax exemption			*	2015-16
Fertilizer or Chemical Production Facility Sales and Use Tax Exemption	57-39.2-04.15	2015	Sales and use tax exemption	s.			
Gas Processing Facilities Sales Tax Exemption	57-39.2-04.2 and 57-39.2-04.5	2007	Sales and use tax exemption		\$ 7,495,310	\$ 18,506,560	
Hydrogen Generation Facility Sales Tax Exemption	57-39.2-04(50)	2005	Sales and use tax exemption				
Liquefied Natural Gas Processing Sales Tax Exemption	57-39.2-04.10	2013	Sales and use tax exemption				
Manufacturing Equipment Sales Tax Exemption	57-39.2-04.3	1991	Sales and use tax exemption	n.	\$ 1,786,068	\$ 4,873,431	
Materials used in compressing, gathering, collecting, storing, transporting, or injecting carbon dioxide for use in enhanced recovery of oil or natural gas.	57-39.2-04.14	2015	Sales and use tax exemption	s.			
Oil Refineries Sales Tax Exemption	57-39.2-04.2 and 57-39.2-04.6	2007	Sales and use tax exemption		\$ -	\$ -	
Qualified Data Center Sales Tax Exemption	57-39.2-04.14	2015	Sales and use tax exemption			*	
Oil and Gas Gross Production and Oil Extraction Tax Exemptions - HB 1476 (2015) Eliminated larger incentives and established a Legislative study.	57-51 and 57-51.1; HB 1476 (2015)		Various tax incentives	p.			

NR indicates the information is Not Reportable due to an insufficient number of applications.

* Each of these categories had an insufficient number of applicants to separately disclose them. As a whole, the beneficiaries of these exemptions benefited by \$14,934,347 (2013-15).

NDCC § 54-35-26(4) requires the interim committee to designate for analysis during that interim and a plan to provide for analysis of remaining tax incentives with a six-year period. Commerce's recommendation for analysis during the 2015-16 interim is listed.