

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1065

2001 HOUSE FINANCE AND TAXATION

HB 1065

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1065**

House Finance and Taxation Committee

Conference Committee

Hearing Date January 15, 2001

Tape Number	Side A	Side B	Meter #
1	X		2.840
Committee Clerk Signature <i>Jamie Stein</i>			

Minutes:

REP. AL CARLSON, CHAIRMAN Opened the hearing with one committee member absent.

JOSEPH BECKER, STATE TAX COMMISSIONER'S OFFICE Testified in support of the bill. See attached written testimony.

REP. CARLSON Asked whether this bill was common, and if other states used this.

JOSEPH BECKER Stated there were a number of states which operated like this.

REP. KROEBER Asked whether this only affected the long form.

JOSEPH BECKER Stated the bill will affect all individuals.

REP. SCHMIDT Stated evidently there isn't much loss in the effect of this bill.

JOSEPH BECKER Stated it could be a positive negative effect.

REP. CARLSON Asked how they followed this.

JOSEPH BECKER Stated, if there is a partnership operating in this state, they have a nexus with the state.

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PAUL WOJNOUTKA, PARTNER WITH EIDE BAILLY, BISMARCK Testified in opposition of this bill. See attached written testimony.

With no further testimony, the hearing was closed.

COMMITTEE ACTION 2-13-01, TAPE #1, SIDE B, METER 1428

REP. GROSZ Gave a report on the research of the background on this bill.

He stated most of the bill was clean up language. The actual contention part of the bill was on page 3, lines 20 - 22, which is the guaranteed payment portion. The problem with this was defining salaries for partners. He stated the bill codifies what the current practice has been, and it keeps the non resident partners honest in reporting their taxable income.

JOSEPH BECKER, STATE TAX DEPARTMENT Gave a report of how this would be administered. He stated it is already being administered in the fashion it is described in the bill, but for the issue of interpretation, they asked that the language be in there to clarify it.

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

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

14 YES 0 NO 1 ABSENT

REP. GROSZ Was given the floor assignment.

COMMITTEE ACTION 2-19-01, TAPE #1, SIDE A, METER # 65

The bill was rereferred back to committee for amendments.

RICK CLAYBURGH, STATE TAX COMMISSIONER Presented amendments to the bill, which was an agency bill drafted to clarify areas dealing with partnership taxation and how guaranty payments for partners is addressed. Gave a brief explanation of why the bill was drafted because of a lawsuit. He stated they are very concerned if this bill does not pass because of the ramifications on tax law. He explained what the amendments did in the bill.

REP. KROEBER Asked whether the amendments had any bearing on the fiscal note.

RICK CLAYBURGH Stated there would be a slight fiscal impact. Right now, the original bill was formed on our current interpretation of the statutes in the law and our administrative practices, I think the fiscal impact is probably less than ten thousand dollars, it is not a significant amount. There will still be certain items which will be subject to North Dakota tax. It will be the amount associated with the salary of the out of state partner which will now be excluded from North Dakota taxes. That is a fairly minimal amount.

REP. GROSZ Can you define how, reasonable salary, is determined?

RICK CLAYBURGH The term, reasonable, is a factual driven analysis. It occurs many times in the statutes. What we would be looking at is insuring that an unreasonable amount of partnership activity would not be put into a salary line, such as moving some of the capital payments, or interest on loans, could be disguised as a salary and escape taxation.

REP. HERBEL Related to one of the concerns regarding creating significant negative business environments from all states, are you saying this addresses that?

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RICK CLAYBURGH I disagreed with that original statement. I don't believe our rules did that. I think this bill would actually create an incentive for partners to leave North Dakota.

JOSEPH BECKER, STATE TAX COMMISSIONER'S OFFICE Appeared to clear up questions the committee had.

PAUL WOJNOUTKA, REPRESENTING EIDE-BAILLEY, Appeared to state he was in agreement with the amendments.

KEN TUPA, LOBBYIST FOR THE NORTH DAKOTA SOCIETY OF CPA'S, The amendments are also agreeable to them.

REP. WINRICH Made a motion to adopt the amendments as presented.

REP. BRANDENBURG Second the motion. **MOTION CARRIED BY VOICE VOTE**

REP. RENNER Made a motion for a **DO PASS AS AMENDED**

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

14 YES 0 NO 1 ABSENT

REP. GROSZ Was given the floor assignment.

FISCAL NOTE
 Requested by Legislative Council
 02/20/2001

Bill/Resolution No.:

Amendment to: HB 1065

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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			(\$75,000)			
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 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.*

HB 1065 First Engrossment addresses the apportionment and allocation of partnership income for income tax purposes.

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

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

If enacted as amended, HB 1065 is expected to reduce state general fund revenues by an estimated \$75,000 during the 01-03 biennium. Failure to enact the bill will indicate to the Tax Department that it should change how it has been allocating certain nonresident partnership income, and revenues could fall by \$1,000,000 or more per year.

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:	Tax Department
Phone Number:	328-3402	Date Prepared:	02/21/2001

FISCAL NOTE

Requested by Legislative Council
12/19/2000

Bill/Resolution No.: HB 1065

Amendment to:

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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 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.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

HB 1065 codifies administrative practice and is expected to have a fiscal impact of less than \$5000 during the 01-03 biennium.

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:	Kalhryn L. Strombeck	Agency:	Tax
Phone Number:	328-3402	Date Prepared:	12/22/2000

Date: 2-13-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1065

House FINANCE & TAXATION Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Brandenburg Seconded By Rep. Nicholas

Representatives	Yes	No	Representatives	Yes	No
CARLSON, AL, CHAIRMAN	✓		NICHOLAS, EUGENE	✓	
DROVDAL, DAVID, V-CHAIR	A		RENNER, DENNIS	✓	
BRANDENBURG, MICHAEL	✓		RENNERFELDT, EARL	✓	
CLARK, BYRON	✓		SCHMIDT, ARLO	✓	
GROSZ, MICHAEL	✓		WIKENHEISER, RAY	✓	
HERBEL, GIL	✓		WINRICH, LONNY	✓	
KELSH, SCOT	✓				
KROEBER, JOE	✓				
LLOYD, EDWARD	✓				

Total (Yes) 14 No 0

Absent 1

Floor Assignment Rep. Grosz

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

Date: 2-19-01
Roll Call Vote #: 2

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1065

House FINANCE & TAXATION Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number 18079.0101

Action Taken Do pass as amended

Motion Made By Rep. Renner Seconded By Rep. Grosz

Representatives	Yes	No	Representatives	Yes	No
CARLSON, AL, CHAIRMAN	✓		NICHOLAS, EUGENE	A	
DROVDAL, DAVID, V-CHAIR	✓		RENNER, DENNIS	✓	
BRANDENBURG, MICHAEL	✓		RENNERFELDT, EARL	✓	
CLARK, BYRON	✓		SCHMIDT, ARLO	✓	
GROSZ, MICHAEL	✓		WIKENHEISER, RAY	✓	
HERBEL, GIL	✓		WINRICH, LONNY	✓	
KELSH, SCOT	✓				
KROEBER, JOE	✓				
LLOYD, EDWARD	✓				

Total (Yes) 14 No 0

Absent 1

Floor Assignment Rep. Grosz

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

REPORT OF STANDING COMMITTEE

HB 1065: Finance and Taxation Committee (Rep. Carlson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1065 was placed on the Sixth order on the calendar.

Page 3, line 20, replace "Guaranteed" with "Except as otherwise provided in this subdivision, guaranteed"

Page 3, line 22, after the underscored period insert "In the case of a professional service partnership, the portion of a guaranteed payment paid to a nonresident partner attributable to a reasonable salary may not be treated as a distributive share. The portion of the guaranteed payment not treated as a distributive share that is for services performed in this state must be assigned as provided under subsection 1 of section 57-38-04. For purposes of this subdivision, "professional service partnership" means a partnership that engages in the practice of law, accounting, medicine, and any other profession in which neither capital nor the services of employees are a material income producing factor."

Renumber accordingly

