

MICROFILM DIVIDER

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ROLL NUMBER

DESCRIPTION

1144

2007 HOUSE JUDICIARY

HB 1144

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1144

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 1/15/07

Recorder Job Number: 1040, 1043

Committee Clerk Signature

A. Penrose

Minutes:

Chairman DeKrey: We will open the hearing on HB 1144.

Rep. Todd Porter: I am the sponsor of this bill. This bill came out of a situation that arose with a constituent that contacted me and asked about erroneous W2's. The situation that arose was that their employer gave them an erroneous W2 and when their non-profit was audited in July, it was discovered. New W2's were then issued. When the individuals then went back to the IRS and State Tax Dept. they had penalties and interest to pay. The State of ND, in this instance, was very good to work with and they waived the interest and penalties because of the error. The federal government, on the other hand, was not. The employee was then required to pay all of the interest and penalties that took place with the employer's erroneous W2. The individual that this happened to, just felt that it shouldn't be their responsibility for their employer's wrong accounting; that they should be held accountable for the information they provide to their employees when filing their taxes. The way the bill is written, it basically gives the employer time to double check their information right up until April 15, when taxes are due. If, after that date, the employer becomes responsible for any of the erroneous information that may be on the W2. That's really where the bill came from and what it's all about.

Rep. Onstad: This is only on penalty and interest that might occur. Is that correct.

Rep. Todd Porter: On lines 9 and 10, is where it basically states what the penalty is. It is for the amount of any penalty and interest that are incurred.

Rep. Onstad: A situation occurred in my own district, after about five months, the person they worked for wasn't collecting social security. Of course, they wanted to go and collect all that. How would that apply to this situation.

Rep. Todd Porter: That is not addressed.

Rep. Kretschmar: Was there a reason that the taxpayer had to pay additional income tax, and why you didn't include that in the bill.

Rep. Todd Porter: The tax, if they reported short, the person would owe additional taxes.

That would still be their responsibility, even up until April 15th. I don't think anybody was looking to get the taxes paid. What the problem was, is that the interest and penalties that occurred because of the erroneous W2 given to the employee, needed to be addressed. The employer is just responsible for their error and the penalties and interest that had accrued. The employee is still responsible for their taxes, right or wrong.

Rep. Kretschmar: But it would have been caused by the employer's error.

Rep. Todd Porter: Not really, because it is just the difference between erroneous amount and the corrected amount. The penalties and the interest are caused by the employer's error. The actual taxes owed are still the same, just corrected now.

Rep. Klemin: In this particular case, I am assuming that the employer was not willing to reimburse the employee for the interest and penalties.

Rep. Todd Porter: You are exactly right.

Rep. Klemin: How does this change anything. Doesn't the person have the right to collect damages for negligence by another person anyway. I'm not sure how we're actually adding

anything to the state of the law here. That employer made a mistake because of which the employee relied upon this income tax return and then the penalty and interest as a result of the mistake by the employer, seems to me that under ordinary legal principles, that the employee would have a cause of action against the employer. Why do we need the statute.

Rep. Todd Porter: I would venture a guess that you are exactly right. There is existing civil precedent that an employee could simply sue their employer. I would guess that would really come into play if you really didn't like your job in the first place, and that you were already looking to work somewhere else. What this does is take that potential conflict out of play and just put the responsibility on the employer so that the employee doesn't have to go to resort to taking that action and potentially risk losing their job.

Rep. Koppelman: Under this bill, if it became law, it seems to me that there is no mechanism to enforce this, other than the fact that it is on the books and therefore, if an employee had a problem, and the employer said "tough", then you would have to sue the employer to trigger the provisions of the statute, which they can already do that.

Rep. Todd Porter: A lot of times just by having the words written in the Century Code, take that conflict out and the employer's willingness to look at it and say "you're right, I am responsible, I will pay that". By not having that in there, the employer, as it was in this case, said I'm not responsible for that, you're equally responsible to be adding up your pay stubs to make sure that I'm reporting the proper information, whether you want to just verbatim believe our accountant or not, that's up to you. Apparently our accountant was wrong and now here's the corrected W2 and we've fulfilled our part in this, and the rest is up to you.

Rep. Koppelman: If it is an accountant doing this work, do they have any kind of insurance, errors and omissions insurance, where they could, short of a lawsuit, oops I made a mistake and this is my error. Is that supported at all in this bill.

Rep. Todd Porter: No it is not.

Rep. Koppelman: Was a huge error, or a miniscule error.

Rep. Todd Porter: It was in the hundreds of dollars. It wasn't so much the error, it was the penalty and interest was in the hundreds of dollars. It doesn't take very long in an IRS action to accumulate hundreds of dollars.

Rep. Klemin: The erroneous information, and of course, we've been talking about dollars on here, I suppose we're looking in this case at the gross amount of wages paid to the employee. But does this also apply to any other information on the form that would be erroneous, because there is other information on there besides dollars.

Rep. Todd Porter: It would apply to everything on the W2.

Rep. Kretschmar: Do you know whether the person who wanted this bill introduced, try to talk to the IRS and try and get the penalty waived because of the circumstances.

Rep. Todd Porter: I worked with them to the level of the State Tax Dept. and those penalties and interest were waived. I did not hear back from them in regard to what happened on the federal side.

Rep. Kretschmar: Generally, if you have a reasonable excuse, some of the penalty is waived, but they don't waive the interest.

Chairman DeKrey: Thank you for appearing. Further testimony in support.

John Risch, United Transportation Union/Railroad Workers: I think this is an excellent idea. When an employee gets their pay stubs, they look at the number of hours, calculate to see if the actual pay is okay, but I doubt that hardly anyone calculates the taxes, to see if the taxes are deducted properly. I think what the bill really does is clarify who is responsible for handling this problem. I think if this is passed, it makes that clear to the employer and employee if there is a dispute and I think the employee could probably go to the Labor Dept.

and try and get some help in collecting the interest and penalties that may be involved. I would be happy to try and answer any questions.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

(Opened later in the same session)

Chairman DeKrey: We will take a look at HB 1144. What are the committee's wishes.

Rep. Delmore: I move a Do Pass.

Rep. Wolf: Second.

Chairman DeKrey: Further discussion.

Rep. Klemin: I just want to point out again that you can already do this. If a party screws up, you can sue the employer already. I have a problem with putting statutes in that won't change, or do anything, that you can already do.

Chairman DeKrey: The clerk will call the roll on DP as HB 1144.

11 YES 2 NO 1 ABSENT

DO PASS

CARRIER: Rep. Wolf

Date: 1-15-07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1144

House JUDICIARY Committee

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Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Delmore Seconded By Rep. Wolf

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin		✓	Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Meyer	✓	
Rep. Charging		✓	Rep. Onstad	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Heller					
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 11 No 2

Absent 1

Floor Assignment Rep. Wolf

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

REPORT OF STANDING COMMITTEE

HB 1144: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS
(11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1144 was placed on the
Eleventh order on the calendar.