

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2082

2007 SENATE FINANCE AND TAXATION

SB 2082

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2082**

Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: January 15, 2007

Recorder Job Number: # 1067

Committee Clerk Signature

Sharon Kenyon

Minutes:

Sen. Urlacher called the committee to order and opened the hearing on SB 2082.

Joseph Becker from the Tax Dept. appeared in support with written testimony. (See attached)

Sen. Cook: gave a scenario of someone living in MN but working in ND for the same amount of time (6 months in each state) and wanted to know if they would still owe ND income tax or would tax they paid to MN basically bring ND's down to zero?

ANSWER: they would deal with each state separately.

Sen. Cook: gave another scenario of someone living all year in ND but go into MN and make 10% of your income over there, and MN's tax is twice as high as ours, will ND lose 10% of the tax or will they lose 20% of the tax?

ANSWER: if the income in question would be wages, it's a non-issue because we have reciprocity agreement that would cover that. They would simple report that income to MN and we would give it up. If it was income from property located in MN, which is not eligible for reciprocity, now were talking about a situation where the ND resident will pay tax on the rental income from that real estate in MN to us because they are a resident here. MN will also tag that income because the property is located within their jurisdiction. So you will pay taxes to us at our rate and to MN at their rates. To your question now, our credit operates to limit the

credit to our rates. We would not give up more than what we would have gotten on that income in the first place. In other words, since most other states have higher tax rates, we have to limit that otherwise we would be taken to the cleaners on this. You will over all pay a higher tax but only because you paid a bigger bill to MN.

Sen. Cook: various state tax laws, does MN tax North Dakotans making an income over there in situations where we don't tax that income if it was a MN making that income in ND?

ANSWER: I think with our neighbor in MN we would handle the situation identically. If we are taxing a resident in a certain way, they are doing the same, we have a non-resident coming over into our state and working here or has rental income or a business here, the two states would treat similarly. I think that's fairly common practice among the states with general income taxes.

SEN. URLACHER: how do contractors handle this? A ND contractor who would take part of his business or do business in another state?

ANSWER: it depends on whether we are talking about an individual or corporation, partnership, etc.; we have a set of rules that works differently. There they will apportion their total income among the states depending on what the other states rules are for apportionment. In ND we are doing the same for a contractor located in SD that does business here for awhile. If it's a partnership or corporation, that particular entity, we will apportion based on their payroll, property, etc.

SEN. URLACHER: so each state collects on the portion of the income that they derive in that state?

ANSWER: with respect to those types of entities.

SEN. COOK: what is ND Nexus law regarding business activity in our state?

ANSWER: you actually set up a warehouse here or you bring employees into the state that actually repaired the equipment or you have a salesman here that does more than solicit sales by actually having the authority to sign the final papers and ok the sale. Those would be some obvious things that would trigger a connection that we could tax.

SEN. COOK: do you know what MN's Nexus laws are regarding back taxes?

ANSWER: no, I can't speak to that right now.

MR. BECKER: explained what Nexus is: its one of those wonderful lingual terms that simply means that there's sufficient connection to the individual of the business that would give the state jurisdiction to tax them.

SEN. COOK: Physical presence!

SEN. COOK: does ND treat somebody from MN that's a sole proprietor coming in here doing business different than they would treat a corporation?

ANSWER: the fact that they are performing those duties in the state is all we need to know and we'll tax those wages. I believe that MN would do the same thing.

SEN. OEHLKE: if someone comes into this state as a sole proprietor and they are simply soliciting sales and then going back home and sending orders over and they are not doing any of their service or fixing any equipment or anything like that, then there's not Nexus there?

ANSWER: Federal statute now precludes us from taxing corporations that are simply soliciting sales. I am not aware at this point that anyone has ever invoked for an individual so it's probably a poor example on my part. In think that in a sole proprietorship scenario as I said it, whether or not that federal statute would come into play, I'm not sure I've never that come up ever. I would say that in a sole proprietor situation, that individual sets foot in the state, they just placed themselves within our jurisdiction because they are the ones providing doing whatever they do to make that business run.

SEN. OEHLKE: would you know then if that same thing applies for workers comp for that individual?

ANSWER; no, I couldn't answer that.

SEN. TOLLEFSON: a corporation is handled differently?

ANSWER: in the corporate world, we have to be cognizant of federal law which says "if a corporation is doing nothing more than soliciting sales in the state, even if they send in people to do that, as long as those orders are going back out of state to some other office to be okayed, they don't have any property here, a significance other than property that a salesman would normally have like a car and what not, federal law said the state has to leave their hands off" We have no connection, no nexus because federal law precludes it.

SEN. URLACHER: getting back to my contractor question, I see ND people with heavy equipment what have you going out of state and their headquarters are in the state. The income derives with moving this equipment in another state; they are subject to ND tax, right?

ANSWER; if it is a corporation or partnership, part of their income will most likely be apportioned away, we will probably get some of it. We will get our share of the corporations total income picture, but the other states will also get something, depending on what their state laws provide for. Now individuals it works differently, you have sole proprietorship who was a contractor who went into another state, but because it's an individual our statute says that that individual must report all income to ND, we will tax it all. The issue now is, will the other state tax part of that income, if they do than this credit will come in and ND is going to give up its share on that.

No further testimony closed the hearing.

SEN. OEHLKE: made a motion for **DO PASS**, seconded by Sen. Tollefson. 7-0-0
Sen. Cook will carry the bill.

FISCAL NOTE
Requested by Legislative Council
12/27/2006

Bill/Resolution No.: SB 2082

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.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 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.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 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).*

SB 2082 clarifies the code with respect to departmental procedures for individual income tax credits for taxes paid to another state. SB 2082 has 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:	01/13/2007

REPORT OF STANDING COMMITTEE (410)
January 15, 2007 12:23 p.m.

Module No: SR-09-0561
Carrier: Cook
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2082: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2082 was placed on the Eleventh order on the calendar.

2007 HOUSE FINANCE AND TAXATION

SB 2082

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2082 A

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: February 21, 2007

Recorder Job Number: 3527

Committee Clerk Signature

Mickie Schmidt

Minutes:

Chairman Belter opened the hearing on SB 2082 and asked for testimony in support of SB 2082.

Donnita Wald, Legal Counsel for Tax Dept.: (See Attachment #1)

Chairman Belter: Are there any questions? Is there further testimony on SB 2082? Any opposition? Any neutral? If not we'll close the hearing on SB 2082. Committee members, what are your wishes on SB 2082?

Representative Brandenburg: I move a Do Pass.

Representative Owens: Second it.

Chairman Belter: Is there any discussion? If not, will the clerk read the roll: 11-y; 0-n; 3-absent; Rep. Grande will carry the Bill.

REPORT OF STANDING COMMITTEE (410)
February 21, 2007 12:45 p.m.

Module No: HR-36-3603
Carrier: Grande
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2082: Finance and Taxation Committee (Rep. Belter, Chairman) recommends DO PASS (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). SB 2082 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

SB 2082

Testimony—
Senate Finance and Taxation Committee

Senate Bill 2082

January 15, 2007

Prepared by Joseph Becker, Auditor III/Research Specialist
North Dakota Office of State Tax Commissioner
Phone: 328-3451
E-mail: jjbecker@state.nd.us

Good morning, Chairman Urlacher and Members of the Committee:

For the record, my name is Joseph Becker, and I'm here on behalf of the North Dakota Office of State Tax Commissioner (Tax Department).

Senate Bill 2082 is an individual income tax bill. It pertains to that section of the income tax law providing for what is known as the credit for income tax paid to another state.

A North Dakota resident is subject to income tax on all of his or her income regardless of whether it has its source within or without North Dakota. If sourced in another state, and that other state taxes the income, a resident would have to pay tax to two states on the same income. However, the credit for income tax paid to another state protects the resident by reducing the North Dakota tax by the amount of North Dakota tax attributable to the income taxed by the other state.¹

Reason for bill

In 2001, major changes were made to the individual income tax law and tax forms. One change involved the implementation of a part-year resident category and the necessary modification of the tax forms to accommodate it, including the calculation of the credit for income tax paid to another state. The sole purpose of this bill is to clarify the law on the calculation of the credit in the case of a part-year resident by more clearly setting out the calculation in the language of the statute. The other changes that you see in the bill merely clean

¹ This credit is a feature in all states' tax codes that impose a general income tax.

up the language, which is commonly done when a statute is opened up for amendment. In short, this bill is a technical bill that codifies existing administrative practice since 2001.

Explanation of bill

In **Section 1** of the bill, the current language covering the credit for income tax paid to another state (for purposes of Form ND-2 filers²) is being replaced by the new language which sets out the calculation for the part-year resident.

In **Section 2** of the bill (starting on page 5), the current language covering the credit for income tax paid to another state (for purposes of Form ND-1 filers³) is being replaced by the new language which sets out the calculation for the part-year resident.

The bill also includes a number of other technical changes in both Sections 1 and 2 of the bill to clean up the language, including the relocation of existing language from subsection 2 to subsection 1 of section 57-38-04 (in Section 1 of the bill).

In **Section 3** of the bill (on page 6), the changes made by this bill are effective for 2007 and subsequent tax years.

Fiscal impact

The changes made by this bill have no fiscal impact.

Conclusion

The Tax Commissioner asks for your favorable consideration of Senate Bill 2082. If there are any questions from the Committee, Mr. Chairman, I'd be happy to address them.

² North Dakota income tax law provides two different systems for calculating the individual income tax. They are implemented on Form ND-1 (Main Method) and Form ND-2 (Optional Method). The law governing the calculation of the tax on Form ND-2 is governed by law provisions found in various locations within the Code. The law governing the credit calculation is set out in section 57-38-04.

³ North Dakota income tax law provides two different systems for calculating the individual income tax. They are implemented on Form ND-1 (Main Method) and Form ND-2 (Optional Method). The law governing the calculation of the tax and the credit on Form ND-1 is set out in section 57-38-30.3.

#1

SB 2082-A

2-21-07

Testimony—

House Finance and Taxation Committee

Senate Bill 2082

February 21, 2007

Prepared by Donnita Wald, Special Assistant Attorney General
North Dakota Office of State Tax Commissioner

Phone: 328-2777

E-mail: dwald@nd.gov

Good morning, Chairman Belter and Members of the Committee:

For the record, my name is Donnita Wald, and I'm here on behalf of the North Dakota Office of State Tax Commissioner (Tax Department).

Senate Bill 2082 is an individual income tax bill. It pertains to that section of the income tax law providing for what is known as the credit for income tax paid to another state.

A North Dakota resident is subject to income tax on all of his or her income regardless of whether it has its source within or without North Dakota. If sourced in another state, and that other state taxes the income, a resident would have to pay tax to two states on the same income. However, the credit for income tax paid to another state protects the resident by reducing the North Dakota tax by the amount of North Dakota tax attributable to the income taxed by the other state.¹

Reason for bill

In 2001, major changes were made to the individual income tax law and tax forms. One change involved the implementation of a part-year resident category and the necessary modification of the tax forms to accommodate it, including the calculation of the credit for income tax paid to another state. The sole purpose of this bill is to clarify the law on the calculation of the credit in the case of a part-year resident by more clearly setting out the calculation in the language of the statute. The other changes that you see in the bill merely clean

¹ This credit is a feature in all states' tax codes that impose a general income tax.

up the language, which is commonly done when a statute is opened up for amendment. In short, this bill is a technical bill that codifies existing administrative practice since 2001.

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³ North Dakota income tax law provides two different systems for calculating the individual income tax. They are implemented on Form ND-1 (Main Method) and Form ND-2 (Optional Method). The law governing the calculation of the tax and the credit on Form ND-1 is set out in section 57-38-30.3.