2009 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2405

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2405

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: February 2, 2009

Recorder Job Number: 8336

Committee Clerk Signature	Era Liebelt

Minutes:

Senator Anderson: The bill you are going to debate is in regard to manufacturing deductions on a cooperatives' income tax return.

Allen Landon: Written Testimony Attached.

The difficulty we have is trying to get this very difficult tax rule figured out. At the fifty thousand foot level Mindac is a cooperative with about five hundred share holders. Cooperatives' are business entities that are created for two reasons. As a cooperative were created so farmers can get together as a group, so they can have some size. So they can compete against the national and the international firms. The other reason is that cooperatives are taxed much the same as a partnership or limited company. When we have any business with are patrons it flows through us in the tax benefits flow to the patrons.

Chairman Klein: Have you shared this with the tax department?

Allen: Yes, I have and they are neutral. The concern is the legality of it.

Chairman Klein: We heard neutral but sometimes we take it as being against. So what we've done is trying to bring the North Dakota law more in line with what the Federal Government has said we could do, a couple years ago but we haven't gotten it right yet.

Allen: What happened was the federal law did not come until March 2007 which made it difficult to absorb it.

Chairman Klein: The revenue lost associated with this change can't be determined so that would mean we don't know if there is any revenue lost to the State or not?

Allen: I can't speak for any other cooperatives if there was any revenue loss, it would be a technicality because there shouldn't be a loss. If there was a loss it should never happen again in North Dakota.

Senator Potter: What were your financial implications on your cooperative in 2007 and what will it be in 2008? This doesn't have an emergency clause and wouldn't take effect until August So your 2008 taxes would be filed then

Allen: To address that the 2007 is actually our fiscal year ended in 8/31/2008 and if we do that we would have approximately five million dollars of additional income that we would have to claim. We do have prior tax loss carried forwards to offset that so there would be no immediate impact in the next calendar year. The 2008 year which would be our year in the 8/3//2009. We would have approximately the same five million dollars that we'd have to claim as income but I believe we have about half of that still left in prior year tax loss carry forwards. So that would be about a two and half million dollars to us. The following year, this started at three percent, went to six percent and then it will go to nine percent. At a nine percent level it will cost Mindac about 750,000 dollars a year, which is about 1,500 dollars per farmer that's a member. The money goes out of our treasury and that's money we can't put into the farmers pocket. Because we can't show that as an asset, it can never be recovered under the current structure of North Dakota. They don't have the same tax structure that the federal level has where you can go back to prior years, which is called a thirteen thirty three deduction.

Senator Potter: The 2007 year which ended in August of 2008, you will lose your carry forwards. Is that a significant burden to your company going forward? Are you going to need that to offset revenue in the future?

Allen: Yes, we would have to pay that but we are not the only cooperative involved. There may be other cooperative that may have started early on the 199. The 2007 was the first year of passing it through to our members.

Stephen Schroeder, Senior Tax Management, I Bailey: I am here as a technical expert. North Dakota Farmers coops are treated as Corporations and their tax determinations are generally determined as the same as any other corporations. They have to then follow the state rules on all adjustments that are made in determining their North Dakota taxable income. In 2004 the congress repealed the extra territorial income exclusions substituted for that a provision that a provision that was indented to provide tax benefits for domestic industry. This includes farmers and people who process farm products and congress recognized in special situations that many farmers who farm as family entities, partnerships and so forth and don't employ outside people and therefore won't qualify for this deduction because they don't pay W2 wages or their wages are very limited. So in order to allow farmers to have the benefit of this deductions we allow cooperatives to pass the deduction back through to their farmer members. The rules that implemented this have been at flux until the final regulations were drafted, in the spring of 2007. We can only guess why they did this but when they drafted these bills, they required the farm cooperative when passing the domestic production deduction on to the farmer they don't reduce the DPD on the cooperatives' tax return. Instead they reduce the deduction for farmers' payments. A straight and literal reading would have the tax department taking it away from the coop and the farmers. We're asking for a clarification.

Senator Wanzek: If the patronage dividends that I get from coop A has within that amount a pass through the actual federal deduction. It's counted in the income determining my patronage dividend but I am not allowed to use that deduction to offset my patronage income?

Stephen: You would get on the 1099 showing the amount of the dividend that same form will show the amount of the deduction that is passed through to you.

Chairman Klein: We are going to move to informational testimony from the department.

Matt Peyerl, North Dakota Tax Department: I have been working with the sponsor a little bit on the language so we could administer according to their indent for the resolution to be. So it can be administrable and solve the problem.

Chairman Klein: So you do see a problem?

Matt: It would have been something that wouldn't have been anticipated when the law was drafted. Because of how the IRS made the adjustment and how it needs to track back. I think that's the underlying reason why there is a disconnect on the state return verses the federal return.

Chairman Klein: This would fix it with addition of the two changes Allen had proposed with 199 B. He also talked about moving this 08 back to 07. Is that a problem?

Matt: The amendment to change the reference to the internal revenue code site that would be something I would agree with. As far as the retroactivity I would have to differ that to our legal counsel or legislative legal staff.

Senator Potter: The fiscal note says the revenue loss associated with change cannot be determined. How big would the change be?

Matt: Mr. Larson can probably give you some numbers.

Chairman Klein: Committee Allen will visit with the intern to make changes and I will visit with counsel. We will close the hearing.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2405

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: February 3, 2009

Recorder Job Number: 8499

Committee Clerk Signature	Eva Lubelt

Minutes:

Chairman Klein: Committee Senate Bill 2405. We need to fix lines eleven and twelve.

Moved by Senator Wanzek to accept as amended. Seconded by Senator Andrist.

Roll Call Vote: Yes: 7 No: 0 Absent: 0

Moved by Senator Wanzek to pass as amended. Seconded by Senator Nodland.

Roll Call Vote: Yes: 7 No: 0 Absent: 0

Floor Assignment: Senator Wanzek

FISCAL NOTE

Requested by Legislative Council
01/27/2009

Bill/Resolution No.: SB 2405

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).*

SB 2405 changes the tax treatment of certain income of cooperatives.

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.*

SB 2405 alters the add-back of a federal deduction for certain qualifying cooperatives that passed the deduction through to the patrons. The revenue loss associated with 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.*

Name:	Kathryn L. Strombeck	**Agency:**	Office of Tax Commissioner
Phone Number:	328-3402	**Date Prepared:**	01/31/2009

90978.0101
Title.

Prepared by the Legislative Council staff for
Senator Anderson
February 2, 2009

PROPOSED AMENDMENTS TO SENATE BILL NO. 2405

Page 1, line 11, replace "199(c)(3)" with "199(d)(3)"

Page 1, line 12, replace "199(c)(3)" with "199(d)(3)"

Page 1, line 15, replace "2008" with "2006"

Renumber accordingly

++

Date: 2/3/09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2405

Senate **Industry, Business and Labor** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 90978.0101

Action Taken ☒ **Pass** ☐ **Do Not Pass** ☒ **Amended**

Motion Made By Senator Wanzek Seconded By Senator Andrist

Senator	Yes	No	Senator	Yes	No
Senator Jerry Klein - Chairman	✓		Senator Arthur H. Behm	✓	
Senator Terry Wanzek – V.Chair	✓		Senator Robert M. Horne	✓	
Senator John M. Andrist	✓		Senator Tracy Potter	✓	
Senator George Nodland	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment

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

Date: 2/3/09
Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2405

Senate Committee

Industry, Business and Labor

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken ☑ **Pass** ☐ **Do Not Pass** ☑ **Amended**

Motion Made By Senator Wanzek Seconded By Senator Nodland

Senator	Yes	No	Senator	Yes	No
Senator Jerry Klein - Chairman	✓		Senator Arthur H. Behm	✓	
Senator Terry Wanzek – V.Chair	✓		Senator Robert M. Horne	✓	
Senator John M. Andrist	✓		Senator Tracy Potter	✓	
Senator George Nodland	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Wanzek

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

REPORT OF STANDING COMMITTEE

SB 2405: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2405 was placed on the Sixth order on the calendar.

Page 1, line 11, replace "199(c)(3)" with "199(d)(3)"

Page 1, line 12, replace "199(c)(3)" with "199(d)(3)"

Renumber accordingly

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2405

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2405

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: March 11, 2009

Recorder Job Number: 2405

Committee Clerk Signature Ellen LeTang

Chairman Keiser: Opened the hearing on SB 2405 relating to income tax treatment of the domestic reduction activities deduction for marketing cooperatives.

Senator Arden Anderson~District 25 in the Southeastern part of North Dakota. The bill is about the manufacturing deductions of a cooperative's income tax return. I passed out some amendment to the proposed bill (see attachment).

Representative John Wall~District 25. I'm here to help introduce and support SB 2405 and respectively ask for a Do Pass recommendation.

Allen Larson~Co-worker for Minn-Dak Farmer's Cooperative. Minn-Dak Farmer's Cooperative is a farmer owned cooperative, about 500 shareholders located in Wahpeton, North Dakota and it been in existence for about 34 years. Hands out a paper that Steve (who couldn't make it because of bad roads) put together, **see attachment.** In addition to Minn-Dak Farmer's Cooperative, we have contacted North Dakota Ag Coalition and they are in support of this as well as American Sugar Cooperative, Associated Potato Growers in Grand Forks, North American Bison Cooperative and Land of Lakes who have given me permission to use their name in support of this bill. Cooperatives are special business entities that are created for two basic purposes. First of all, the primary reason was to give the cooperative the ability to form

organization the farmers could market their product jointly without fear of anti-trust laws and still be able to compete with the large nation and international firms. The other primary part in a cooperative is any business conducted with the members; the patron business is to be taxed at a single level. On March of 2007, the United State Treasury Department came out with instructions regarding how the internal revenue section 199, manufacturing deduction was to be shown on a Cooperative's Federal Tax return. The 199 deduction is a program that allows a company to deduct its profits up to ½ of its W2 wages as an incentive to manufacture and create jobs. Well, they didn't tell us how to put this on our tax forms until of March of 2007, which we could not fix the state tax problem at that point in time. We have worked with the state tax department and we have come to an agreement on how to clarify that confusion on SB 2405. What we are doing is for a cooperative that is elected to pass the deduction through the patrons under 199D3 of the internal revenue service code, to deduct that for our state income taxes. What's happened on the Federal 1120 form, which is what we file, the specific line item on that tax form, is where our North Dakota state taxes begin. To get this 199 to work for cooperatives at the Federal level, they had to jockeyed up above that line to an artificial income, then deduct later on. That result is grounded in having a zero income, we have this 199 passing through, which according to the century code, we aren't authorized to deduct from our income taxes without a correction. In summary, this is a technical correction and we are also requesting that we amend that the effective date be April 30, 2009. That a very important amendment for us as cooperatives.

Chairman Keiser: Could you make up some dollar numbers and show us what is happening now and what this will correct?

Larson: If a cooperative were to work for zero net income for the year because it passed all its income on to its members. If that cooperative made a million dollars in payments to its

farmers that year for the farmers who contributed. The 199 deduction allows a cooperative to take the money paid to its growers and treat that as income for the 199 pass through. Take 6% of a million dollars, which is $60,000, you pass that on to the shareholders as a deduction that they get to use on their Federal taxes. You take that million dollars times 6% and you get $60,000, you must have at least $120,000 of W2 wages in order to take $60,000, your cap was 50% of this. So on the Federal level; you are going to say that we made zero money, but now on the Federal level, because we passed this through, they are going to have us reduce our million dollars expense deduction what we paid our growers and reduce that down from a million dollars to $940,000. The line that the State of North Dakota would look at is seeing the $60,000 setting there. On the Federal return, you get to deduct $60,000 right after that line and we end up with a zero taxable dollar at the Federal level. What happened is the state of North Dakota goes and takes a look at that line and all of a sudden it has that $60,000 in there. It's not supposed to be in there when we are doing our state taxes. The century code doesn't allow us to take that $60,000 off but you can in the Federal.

Chairman Keiser: This is a technical correction you're arguing, it will take us back to where we were prior to March.

Representive Clark Williams~District 25. I'm here to speak in support of SB 2405.

Deana Wiese~Administrator for the North Dakota Ag Coalition. See testimony attachment.

Chairman Keiser: Anyone here to testify in opposition of SB 2405, neutral?

Matt Peyeal~North Dakota Corporate Tax Department. I have no testimony but I will answer any questions you might have.

Chairman Keiser: This does take us back to pre action of the Federal Government.

Peyeal: I don't know if I would use that terminology because this didn't exist. This has been in place since 2005 and at that time when we adopted what the legislature passed in that statue, the treasury hadn't decided how they wanted to show it for cooperatives. The intent of the bill is to say, had we known how the treasury was going to treat it in 2007, there would have been something addressed in 2005 for this.

Chairman Keiser: Is there fiscal note on this bill.

Peyeal: There is not because we can't determinate it.

Chairman Keiser: That is still a fiscal note and at least you would have it documented.

Peyeal: I believe there is a fiscal note.

Vice Chairman Kasper: Does this legislation give cooperatives any advantage over for-profit businesses?

Peyeal: I don't know if I could answer that far as advantages. This bill is specific to cooperatives because the treasury regulation that is trying to correct. It's trying to keep cooperatives not being harmed by the treasury regulation.

Representative Ruby: Along those lines, is it similar or different than dividends that are distributes by corporation.

Peyeal: It would be different in that when the IRS allows a cooperative to deduct their dividends paid. They are a deduction on that Federal return. What happened when this 199 deduction, when a cooperative wants to pass it through, the IRS says, you are going to show the deduction but we are going to take away a different deduction. It's an odd way of adjusting the federal return when a cooperative chooses to pass through. If they would just take away that deduction on that line item, we wouldn't be here today but they decided to keep the deduction there but take an amount equal to that on a different line.

Representative Ruby: You are taxed on the full amount and as it gets passed down to each shareholder, they pay again. It's like a double taxation. Is this correcting that type of situation for cooperative?

Peyeal: It does address the correction on the state level, for that same item of deduction; the state won't tax that at the cooperative level and have the patron also be taxed on it. This bill will correct that so only the patron is taxed on that item.

Chairman Keiser: Anyone here to testify in favor, opposition or neutral? Closes the hearing on SB 2405, what are the wishes of the committee?

Vice Chairman Kasper: Motions to adopt the amendment 90978.0201.

Representative Amerman: Second.

Chairman Keiser: Further discussion?

Voice roll call was taken with all ayes, 0 nays.

Chairman Keiser: What are the wishes of the committee?

Representative Thorpe: Moves a Do Pass as Amended.

Representative N Johnson: Second.

Roll call was taken on SB 2405 for a Do Pass as Amended with 13 ayes, 0 nays, 0 absent and Representative Schneider is the carrier.

90978.0201
Title.0300

Prepared by the Legislative Council staff for
Senator Anderson
February 6, 2009

VR
3/11/09

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2405

Page 1, line 14, replace "beginning" with "ending"

Page 1, line 15, replace "December 31, 2008" with "April 30, 2009"

Renumber accordingly

Date: Mar 11- 2009

Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2405

House House, Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken ☐ Do Pass ☐ Do Not Pass ☒ As Amended

Motion Made By Kasper Seconded By Amerman

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman	✓	
Vice Chairman Kasper	✓		Representative Boe	✓	
Representative Clark	✓		Representative Gruchalla	✓	
Representative N Johnson	✓		Representative Schneider	✓	
Representative Nottestad	✓		Representative Thorpe	✓	
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	✓				

Total (Yes) 1 No

Absent

Floor Assignment

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

Date: Mar 11- 2009

Roll Call Vote # 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2405

House House, Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ As Amended

Motion Made By Thorpe Seconded By N Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman	✓	
Vice Chairman Kasper	✓		Representative Boe	✓	
Representative Clark	✓		Representative Gruchalla	✓	
Representative N Johnson	✓		Representative Schneider	✓	
Representative Nottestad	✓		Representative Thorpe	✓	
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Schneider

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

REPORT OF STANDING COMMITTEE

SB 2405, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2405 was placed on the Sixth order on the calendar.

Page 1, line 14, replace "beginning" with "ending"

Page 1, line 15, replace "December 31, 2008" with "April 30, 2009"

Renumber accordingly

2009 TESTIMONY

SB 2405

Allen Landon

THE DOMESTIC PRODUCTION ACTIVITIES DEDUCTION: UNINTENDED STATE TAX CONSEQUENCES FOR COOPERATIVES?

came given to the House

When Congress repealed the exclusion for extraterritorial income and created the federal domestic production activities deduction ("DPAD") in 2004, its stated purpose was to "enact tax laws that enhance the ability of domestic businesses, and domestic manufacturing firms in particular, to compete in the global marketplace."[1] Congress believed that "a reduced tax burden on domestic manufacturers [would] improve the cash flow of domestic manufacturers and make investments in domestic manufacturing facilities more attractive."[2]

The Federal DPAD and Cooperatives

Under IRC §199, taxpayers are allowed to deduct 6% of their qualified production activities income ("QPAI"). QPAI is defined as domestic production gross receipts (DPGR) less cost of goods sold and other allocable expenses. DPGR includes gross receipts derived from the sale of tangible personal property manufactured, produced, grown, or extracted by the taxpayer in the United States. The sale of agricultural products falls within the definition of DPGR. The federal DPAD cannot exceed the taxpayer's taxable income and it cannot exceed 50% of W-2 wages paid by the taxpayer. Under IRC §199(d)(3)(D), a value added agricultural marketing cooperative is treated as producing or growing the agricultural products produced or grown by its patrons. Cooperative payments to growers for their crops are not counted in calculating the cooperative's patronage Section 199 deduction.[3] An agricultural or horticultural cooperative can choose to pass all, some, or none of its patronage DPAD through to its patrons by issuing the patrons written notices within eight and one half months of the cooperative's year end.[4] The 50% W-2 wage limitation is only applied at the cooperative level and is not applied a second time by the farmer.

The Federal No-Double-Counting Rule

If a cooperative passes its patronage DPAD through to its patrons, IRC §199(d)(3)(B) requires the cooperative to reduce its deduction for grower payments by the amount of the federal DPAD that is passed through to its patrons. If the federal DPAD is attributable to a patronage dividends, this reduction is accounted for by reducing the patronage dividend deduction on federal Form 1120-C. If the federal DPAD is attributable to per-unit retains or amounts paid to buy crops, the cooperative accounts for this reduction by reducing the cooperative's deduction for cost of goods sold.

A cooperative and its patrons must use Treas. Reg. §1.199-6 to compute the amount of the federal DPAD. To avoid double counting, Treas. Reg. §1.199-6(l) says that farm patrons of a cooperative cannot include their sales to cooperatives when they calculate their own Section 199 deduction.[5] The express purpose of Treas. Reg. §1.199-6(l) is to make sure the entire federal DPAD calculation is done by the cooperative and not its patrons.[6]

This no-double- counting rule ensures that the amount of patronage-sourced DPAD is only deducted once at the federal level, either by the cooperative or by its patrons. The problem lies in the federal reporting requirements when a cooperative passes its federal DPAD through to its patrons. In an odd rule, the cooperative is still required to deduct the DPAD on its Form 1120-C, even though the cooperative itself has passed the DPAD through to its patrons. Instead of reducing the Section 199 deduction on Form 1120-C, the cooperative reduces a different deduction—either its patronage dividend deduction or its cost of sales.

North Dakota Treatment

North Dakota requires corporations (including agricultural cooperatives) to add back the federal DPAD, "but only to the extent of the deduction taken to determine federal taxable

income."[7] North Dakota law does not require farmers who file as sole proprietors to add back the federal DPAD.[8] However, a strict and literal interpretation of the law may reasonably be that "if there is a deduction on Form 1120-C, there should be an addition in determining North Dakota taxable income." If cooperatives are required to pay taxes on the Section 199 deduction, the taxes will come out of the funds available for payments to farmer-patrons and diminish the economic benefit of value added cooperatives.

Because the federal DPAD is clearly a subtraction on federal Form 1120-C, a clarification of the current law would benefit the farmer-owners of cooperatives and simplify the work of the tax department.

It should be mentioned that cooperative organizations pay North Dakota state income taxes on their non-patronage income. This amendment would not change the way that those taxes are calculated.

---

[1] *See* H.R. REP. NO. 108-548, pt. 1 at 115, which accompanies the American Jobs Creation Act of 2004, Pub. L. No. 108-357, 118 Stat. 1418 (2004).
[2] Id.
[3] *See* IRC §199(d)(3)(C) and Treas. Reg. §1.199-6(c).
[4] *See* IRC §199(d)(3)(A) and Treas. Reg. §1.199-6(h).
[5] *See* Chief Counsel Advice 200806011.
[6] Id.
[7] See N. D. Cent. Code §57-38-30.1
[8] See N.D. Cent. Code §57-38-30-3(2) (simplified method) and §57-38-01.2 (optional method). Neither statute lists the federal DPAD an addition for the determination of North Dakota taxable income.

North Dakota AG COALITION

P.O. Box 2599
Bismarck, ND 58502
(701) 355-4458
FAX (701) 223-4645

Testimony of Deana Wiese
North Dakota Ag Coalition
In Support of SB 2405
March 11, 2009

Chairman Keiser and members of the House Industry, Business and Labor Committee:

For the record, I am Deana Wiese, administrator of the North Dakota Ag Coalition. On behalf of the Ag Coalition, I would encourage your support of SB 2405.

The Ag Coalition has provided a unified voice for North Dakota agricultural interests for more than 25 years. Today, we represent 38 statewide organizations and associations that represent specific commodities or have a direct interest in agriculture. The Ag Coalition takes a position on a limited number of issues brought to us by our members that have significant impact on North Dakota's agriculture industry.

The Ag Coalition is in support of SB 2405 as it would allow ag marketing cooperatives, such as Minn-Dak, to pass the 199 federal income tax deduction to its patrons without a North Dakota state tax penalty. It clarifies that when an ag cooperative passes its deduction through to patrons, the coop is not required to increase its North Dakota taxable income by the amount of the deduction passed through to the farmers. This situation has been created by how the federal government designed its 1120 form. Coops have been unable to previously access the federal tax incentive due to a technical mistake on the federal form. Coops have been and will continue to be an important part of North Dakota's ag industry.

We encourage your favorable consideration of SB 2405.

Wiese testimony in support of SB 2405.