

2013 HOUSE FINANCE AND TAXATION

HB 1106

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1106
January 15, 2013
Job 17231

Conference Committee

Committee Clerk Signature

Mary Bruckner

Explanation or reason for introduction of bill/resolution:

A Bill relating to notice of township, city, and county equalization meetings, collection and certification of electric generation, transmission, and distribution taxes, appeals to the state board of equalization, and the liability of a general partner of a limited liability limited partnership for unpaid taxes; relating to the emergency medical services levy, the permanent and totally disabled property tax exemption certifications, public utility reports, collection and certification of transmission line property tax, liability of a general partner of a limited liability limited partnership for unpaid taxes, income tax credit for blending biodiesel or green diesel fuel in this state, qualifying investments in angel funds, the definition of passthrough entity for income tax purposes, and the sales tax exemption for equipment and machinery used in a new coal mine; relating to notice of township and city equalization meetings.

Minutes:

Attached testimony #1, 2

Chairman Belter: Opened hearing on HB 1106.

Emily Thompson, Legal Counsel for the North Dakota Office of State Tax Commissioner: See attached testimony #1 in support.

Representative Drovdal: On the transmission line collection and distribution center you mentioned section 5-7 that it was inadvertently taken out last session and you're putting the penalties and deposits back in. Are they being put back in at the same penalty rate and deposit rate as what was in previous code?

Emily Thompson: Yes we are simply adding that inadvertently removed language back in. We have been administering this section in accordance with that language since it was inadvertently repealed so this is just clean up on our part to add those sections into the code.

Chairman Belter: Further testimony?

Donnita Wald, General Counsel for State Tax Department: Also refer to attached testimony #1 regarding limited liability partnerships, pass-through entity language, and miscellaneous income and sales tax technical changes.

Chairman Belter: I know at the end of the year there were a lot of agriculture interests that were turned into limited liability partnerships for estate planning. Is there anything in this bill that is going to surprise any of the people that involved in a limited liability partnership or their attorneys?

Donnita Wald: Surprise, probably if they are not tracking the bills. I know the state bar association is tracking this bill so I know they are aware of it. I would hope they would advise their clients when they create these limited liability partnerships that there would be personal liability. We would also advise those through our income tax newsletter and our sales tax newsletter. If they're doing their job there should be no surprise.

Chairman Belter: My concern is all the ones that were signed on December 31 of this past year. Are those individuals having second thoughts on the impact this has on the formation of those limited liability partnerships.

Donnita Wald: With respect to the tax part of this it will apply only to unpaid taxes in the future. When you create a LLP, LC, etc. there are other reasons they are created for state tax planning purposes. There are advantages to the creation of those entities that override what this bill is doing.

Representative Klein: I see you have three effective dates. Is that because the tax years involved?

Donnita Wald: The reason we have three is because for property taxes some of those we have to push out into the future because what we're doing now has already passed and counties can't comply with it. For the limited liability partnership issues we're setting an effective date out into the future. For the sales tax some of those sections were making those effective July 1, 2013. It all depends on the tax type.

Representative Kelsh: On page 14 section 20 where you're adding the additional credit for angel fund investment, am I correct in assuming that the fiscal note would be negligible?

Donnita Wald: The fiscal note that I have says that there is no fiscal impact or it would be negligible, less than \$5,000.

Chairman Belter: Any further testimony on HB 1106?

Kevin Glatt, Burleigh County Auditor/Treasurer: See attached testimony #2 in opposition.

Representative Marie Strinden: It is my understanding that section 2 had just been moved from later on in the code so has this been a burden to you within the last few years and you just want it removed?

Kevin Glatt: I provided you an example on what Burleigh County has done the last several years. I'm not so certain that we are required to publish the dates, times, and locations of all the equalization meetings.

Representative Marie Strinden: Miss Thompson had said that section 2 was moved from later in the code so is it the second part of it that would be the burden for you guys, clarifying that you would have to give it twice a year in the county paper?

Kevin Glatt: At present I don't believe the counties are required to publish and list each and every township. Each township, where they meet, when they meet, or how they meet. To me that would be a burden. We have 41 townships in Burleigh County with 29 assessors serving those so there's a lot of shifting going on as to when the township boards of equalization meetings are held. They are not all held on the second Tuesday of April.

Chairman Belter: Any other questions? Any other testimony to 1106? If not I will close the hearing on HB 1106.

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1106
January 23, 2013
Job #17612

Conference Committee

Committee Clerk Signature

Mary Bricker

Explanation or reason for introduction of bill/resolution:

A Bill relating to notice of township, city, and county equalization meetings, collection and certification of electric generation, transmission, and distribution taxes, appeals to the state board of equalization, and the liability of a general partner of a limited liability limited partnership for unpaid taxes; relating to the emergency medical services levy, the permanent and totally disabled property tax exemption certifications, public utility reports, collection and certification of transmission line property tax, liability of a general partner of a limited liability limited partnership for unpaid taxes, income tax credit for blending biodiesel or green diesel fuel in this state, qualifying investments in angel funds, the definition of passthrough entity for income tax purposes, and the sales tax exemption for equipment and machinery used in a new coal mine; relating to notice of township and city equalization meetings.

Minutes:

Attached amendments #1

Vice Chairman Headland: We have amendments. See attached amendments #1.

Dan Rouse, Legal Counsel to the State Tax Commissioners Office and State Board of Equalization: Explained amendments.

Vice Chairman Headland: You have these amendments before you.

Representative Klein: I move the amendments.

Representative Schmidt: Seconded.

Vice Chairman Headland: Any questions on the amendments? Hearing none all those in favor of the proposed amendments say aye (13) nay (0) absent (1): **MOTION CARRIED.** We have amended HB 1106 before us. What are your wishes?

Representative Owens: Chairman Belter had a question regarding limited liability limited partnership. I don't know if he ever got that question answered or not.

Chairman Belter: I cannot answer to what his question was either. Donnita, could you address the question from Representative Owens?

Donnita Wald, Legal Counsel for Tax Commissioner: After the committee hearing I discussed LLPs with Chairman Belter and explained how it works. It was about who was liable and other similar questions.

Representative Owens: I remember now that it had to do with the shift and liability. I don't know if the tax department gave the A answer or the B answer.

Donnita Wald, Legal Counsel for the Tax Commissioner: We always give the A answer. His question was answered and his concern was alleviated.

Vice Chairman Headland: Chairman Belter confided in me that it was a bill he entrusted us to take care of for him in his absence. We have the amended bill before us. What are the committee's wishes?

Representative Drovdal: Made a motion for DO PASS AS AMENDED.

Representative Owens: SECONDED.

Vice Chairman Headland: Discussion on the amended bill? Hearing none will the clerk call the roll for a DO PASS AS AMENDED ON HB 1106?

**ROLL CALL TAKEN: 13 YES 0 NO 1 ABSENT
MOTION CARRIED FOR DO PASS AS AMENDED.
Representative Klein will carry the bill.**

FISCAL NOTE
Requested by Legislative Council
12/24/2012

Amendment to: HB 1106

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1106 makes technical changes as requested by the Office of Tax Commissioner. There are no fiscal impacts associated with these changes.

- 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

Telephone: 328-3402

Date Prepared: 01/06/2013

FISCAL NOTE
Requested by Legislative Council
12/24/2012

Bill/Resolution No.: HB 1106

- 1 A. **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.*

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
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- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1106 makes technical changes as requested by the Office of Tax Commissioner. There are no fiscal impacts associated with these changes.

- 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.*

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- 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

Telephone: 328-3402

Date Prepared: 01/06/2013

January 23, 2013

1/23/13
TM

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1106

Page 2, line 22, remove "however, the"

Page 2, line 23, remove "second notice must be published more than ten days prior to the date of the meeting"

Page 2, line 24, replace "the date and time of the meetings and" with "a statement"

Page 2, line 25, replace "office of the clerk or auditor" with "regular meeting place of the governing board or other place designated by that board"

Page 4, line 7, replace "this chapter" with "section 57-06-17.3"

Page 5, line 2, replace "this chapter" with "section 57-06-17.3"

Renumber accordingly

Date: 1-23-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1106

House Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By R. Klein Seconded By R. Schmidt

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley Belter			Rep. Scot Kelsh		
Vice Chairman Craig Headland			Rep. Steve Zaiser		
Rep. Matthew Klein			Rep. Jessica Haak		
Rep. David Drovdal			Rep. Marie Strinden		
Rep. Glen Froseth					
Rep. Mark Owens					
Rep. Patrick Hatlestad					
Rep. Wayne Trottier					
Rep. Jason Dockter					
Rep. Jim Schmidt					

Total (Yes) 13 No 0

Absent 1

Floor Assignment _____

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

*Verbal
Vote*

MOTION CARRIED

Date: 1-23-13
Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1106

House Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By R. Drovdal Seconded By R. Owens

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley Belter	<input checked="" type="checkbox"/>		Rep. Scot Kelsh	<input checked="" type="checkbox"/>	
Vice Chairman Craig Headland	<input checked="" type="checkbox"/>		Rep. Steve Zaiser	<input checked="" type="checkbox"/>	
Rep. Matthew Klein	<input checked="" type="checkbox"/>		Rep. Jessica Haak	<input checked="" type="checkbox"/>	
Rep. David Drovdal	<input checked="" type="checkbox"/>		Rep. Marie Strinden	<input checked="" type="checkbox"/>	
Rep. Glen Froseth	<input checked="" type="checkbox"/>				
Rep. Mark Owens	<input checked="" type="checkbox"/>				
Rep. Patrick Hatlestad	<input checked="" type="checkbox"/>				
Rep. Wayne Trottier	<input checked="" type="checkbox"/>				
Rep. Jason Dockter	<input checked="" type="checkbox"/>				
Rep. Jim Schmidt	<input checked="" type="checkbox"/>				

Total (Yes) 13 No 0

Absent 1

Floor Assignment ~~R. Owens~~ R. Klein

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

REPORT OF STANDING COMMITTEE

HB 1106: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1106 was placed on the Sixth order on the calendar.

Page 2, line 22, remove "however, the"

Page 2, line 23, remove "second notice must be published more than ten days prior to the date of the meeting"

Page 2, line 24, replace "the date and time of the meetings and" with "a statement"

Page 2, line 25, replace "office of the clerk or auditor" with "regular meeting place of the governing board or other place designated by that board"

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Page 5, line 2, replace "this chapter" with "section 57-06-17.3"

Renumber accordingly

2013 SENATE FINANCE AND TAXATION

HB 1106

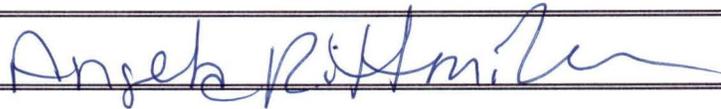
2013 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

HB 1106
3/11/2013
Job Number 19719

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact two new sections to chapter 57-02, three new sections to chapter 57-06, a new subsection to section 57-13-04, a new section to chapter 57-33.2, sections 57-36-09.6, 57-38-60.3, 57-39.2-15.3, 57-40.2-15.3, 57-43.1-17.5, 57-43.2-16.4, and 57-43.3-21.1 of the North Dakota Century Code, relating to notice of township, city, and county equalization meetings, collection and certification of electric generation, transmission, and distribution taxes, appeals to the state board of equalization, and the liability of a general partner of a limited liability limited partnership for unpaid taxes; to amend and reenact section 23-27-04.7, subsection 5 of section 57-02-08.1, subsection 17 of section 57-06-06, sections 57-06-17.3, 57-33.2-16, and 57-38-01, subsection 5 of section 57-38-01.21, sections 57-38-01.22 and 57-38-01.23, subsection 2 of section 57-38-01.24, subsection 5 of section 57-38-01.25, subsections 2, 3, and 7 of section 57-38-01.26, subsection 9 of section 57-38-01.27, subsection 2 of section 57-38-01.31, subsection 9 of section 57-38-01.32, subsection 7 of section 57-38-01.33, subsections 6 and 12 of section 57-38-30.5, section 57-38.5-01, subsection 4 of section 57-38.5-03, section 57-38.6-01, subsection 4 of section 57-38.6-03, subsection 2 of section 57-39.2-04.8, and sections 57-40.2-15.2, 57-43.3-20, and 57-43.3-21 of the North Dakota Century Code, relating to the emergency medical services levy, the permanent and totally disabled property tax exemption certifications, public utility reports, collection and certification of transmission line property tax, liability of a general partner of a limited liability limited partnership for unpaid taxes, income tax credit for blending biodiesel or green diesel fuel in this state, qualifying investments in angel funds, the definition of pass-through entity for income tax purposes, and the sales tax exemption for equipment and machinery used in a new coal mine; to repeal section 57-23-02 of the North Dakota Century Code, relating to notice of township and city equalization meetings; to provide a penalty; to provide a continuing appropriation; and to provide an effective date.

Minutes:

Testimony Attached

Chairman Cook opened the hearing on HB 1106.

Emily Thompson, Tax Department, gave a general explanation of the bill (attachment 1).

Senator Dotzenrod - On page 6 section 9 line 3 where you have overstruck the language and that's on the payment revenues received must be deposited in the county general fund.

Was that just a thought that if the county gets the money that's really not our business where to put it? Is that why that was overstruck, it's not needed?

Emily Thompson - That reference right there before repeal of chapter 57-33.01 that language was specifically cited after the overstruck language to tie in those allocation and deposit provisions and penalty provisions when that was overstruck to remove that obsolete language citation. This overstricken language was inserted instead and it just didn't quite bring in all of those penalty and distribution provisions. It wasn't sufficient to replace the repeal of that section.

Senator Dotzenrod - Is that a repealer we did 2 years ago?

Emily Thompson - That was in 2009 I believe.

Senator Dotzenrod - It's a repeal we did 2 sessions ago and it hasn't really created trouble but it was found to be unnecessary.

Emily Thompson - That was SB 2297.

Donnita Wald, Tax Department broke down each section within the bill (also attachment 1).

Senator Dotzenrod - How do you get around that you can't restrict a tax benefit to only those people who live here?

Donnita Wald - With this particular issue we went back and we looked at the legislative history and it was clear to us that the intent of the legislature was to limit it to blending in the state. There are a number of other things that were going on at the same time when this particular section was put in century code.

Terry Traynor, North Dakota Association of Counties - See attached testimony 2.

Senator Miller - Why isn't there an effort made to redraw the taxing district lines to reflect the service?

Terry Traynor - Those taxing districts were created by a petition of the voters. The voters would have to come in and say okay let's move the boundary and you can just move the boundary and you can just about bet 6 months later there's going to be a different determination on which is the quickest ambulance and then the boundary will change again. (36:01)

Chairman Cook closed the hearing on HB 1106.

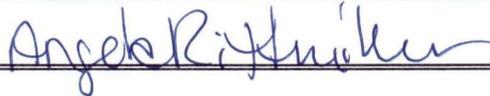
2013 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee
Lewis and Clark Room, State Capitol

HB 1106
4/5/2013
Job Number 20923

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact two new sections to chapter 57-02, three new sections to chapter 57-06, a new subsection to section 57-13-04, a new section to chapter 57-33.2, sections 57-36-09.6, 57-38-60.3, 57-39.2-15.3, 57-40.2-15.3, 57-43.1-17.5, 57-43.2-16.4, and 57-43.3-21.1 of the North Dakota Century Code, relating to notice of township, city, and county equalization meetings, collection and certification of electric generation, transmission, and distribution taxes, appeals to the state board of equalization, and the liability of a general partner of a limited liability limited partnership for unpaid taxes; to amend and reenact section 23-27-04.7, subsection 5 of section 57-02-08.1, subsection 17 of section 57-06-06, sections 57-06-17.3, 57-33.2-16, and 57-38-01, subsection 5 of section 57-38-01.21, sections 57-38-01.22 and 57-38-01.23, subsection 2 of section 57-38-01.24, subsection 5 of section 57-38-01.25, subsections 2, 3, and 7 of section 57-38-01.26, subsection 9 of section 57-38-01.27, subsection 2 of section 57-38-01.31, subsection 9 of section 57-38-01.32, subsection 7 of section 57-38-01.33, subsections 6 and 12 of section 57-38-30.5, section 57-38.5-01, subsection 4 of section 57-38.5-03, section 57-38.6-01, subsection 4 of section 57-38.6-03, subsection 2 of section 57-39.2-04.8, and sections 57-40.2-15.2, 57-43.3-20, and 57-43.3-21 of the North Dakota Century Code, relating to the emergency medical services levy, the permanent and totally disabled property tax exemption certifications, public utility reports, collection and certification of transmission line property tax, liability of a general partner of a limited liability limited partnership for unpaid taxes, income tax credit for blending biodiesel or green diesel fuel in this state, qualifying investments in angel funds, the definition of pass-through entity for income tax purposes, and the sales tax exemption for equipment and machinery used in a new coal mine; to repeal section 57-23-02 of the North Dakota Century Code, relating to notice of township and city equalization meetings; to provide a penalty; to provide a continuing appropriation; and to provide an effective date.

Minutes:

Chairman Cook opened discussion on HB 1106.

Donnita Wald, Tax Department gave a brief summary of the HB 1106 (attachment 1A) and proposed amendments (attachment 1B).

Senator Triplett - I will move the amendments dated March 15, 2013.

Seconded by **Senator Burckhard**.

Verbal Vote on Amendment 6-0-1

Senator Burckhard - I'll move the Association of Counties amendment.

Seconded by **Senator Triplett**.

Verbal Vote on Amendment 6-0-1

Senator Burckhard - I'll move a **Do Pass as Amended**.

Seconded by **Senator Dotzenrod**.

Roll Call Vote 6-0-1

Carried by **Senator Dotzenrod**.

FISCAL NOTE
Requested by Legislative Council
12/24/2012

Amendment to: HB 1106

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Revenues						
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Appropriations						

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- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1106 makes technical changes as requested by the Office of Tax Commissioner. There are no fiscal impacts associated with these changes.

- 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.*

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Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 328-3402

Date Prepared: 01/06/2013

FISCAL NOTE
Requested by Legislative Council
12/24/2012

Bill/Resolution No.: HB 1106

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Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 328-3402

Date Prepared: 01/06/2013

April 5, 2013

1 of 2
4/5/13
TW

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1106

Page 1, line 9, after the second comma insert "57-35.3-07,"

Page 1, line 19, after the comma insert "financial institutions tax credit for contributions to the housing incentive fund,"

Page 2, overstrike line 9

Page 2, line 10, overstrike "district receives a portion of the revenue from this tax. The taxing district"

Page 2, line 10, after "allocate" insert "all of"

Page 2, line 11, overstrike "to each ambulance service based upon the taxable value of the"

Page 2, line 12, overstrike "property within each township of the taxing district"

Page 2, line 13, after "~~township~~" insert "collected in a particular township"

Page 2, line 13, remove the overstrike over "~~to the ambulance service that serves the largest area within that township~~"

Page 2, line 13, remove "that is"

Page 2, line 13, remove "located within the service area of that ambulance district"

Page 7, after line 15, insert:

"SECTION 13. AMENDMENT. Section 57-35.3-07 of the North Dakota Century Code is amended and reenacted as follows:

57-35.3-07. (Effective for the first two taxable years beginning after December 31, 2010) Payment of tax.

Three-thirteenths of the tax before credits allowed under section 57-35.3-05, less the credits allowed under subsections 1, 3, 4, and 5 of section 57-35.3-05, must be paid to the tax commissioner on or before April fifteenth of the year in which the return is due, regardless of any extension of the time for filing the return granted under section 57-35.3-06. Ten-thirteenths of the tax before credits allowed under section 57-35.3-05, less the credit allowed under subsection 2 of section 57-35.3-05, must be paid to the tax commissioner on or before January fifteenth of the year after the return is due. Payment must be made in the manner prescribed by the tax commissioner.

(Effective after the first two taxable years beginning after December 31, 2010) Payment of tax. Three-thirteenths of the tax before credits allowed under section 57-35.3-05, less the credits allowed under subsections 1, 3, and 4 of section 57-35.3-05 and section 4 of House Bill No. 1029 if approved by the sixty-third legislative assembly, must be paid to the tax commissioner on or before April fifteenth of the year in which the return is due, regardless of any extension of the time for filing the return granted under section 57-35.3-06. Ten-thirteenths of the tax before credits allowed under section 57-35.3-05, less the credit allowed under subsection 2 of section 57-35.3-05, must be paid to the tax commissioner on or before January fifteenth of the

year after the return is due. Payment must be made in the manner prescribed by the tax commissioner."

Page 26, line 8, replace "and 17" with ", 13, 18, 21, and 27"

Page 26, line 9, remove "8, 9,"

Page 26, line 9, replace "23, 29, 30" with "14"

Page 26, line 9, remove "and"

Page 26, line 9, after "33" insert ", 34, 35, 36, 37, 38, 39, and 40"

Page 26, line 10, after the sixth comma insert "and"

Page 26, line 10, remove ", and 37"

Renumber accordingly

Date: 4-5-13
Roll Call Vote #: 2

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1106

Senate Finance & Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Burckhard Seconded By Senator Triplett

Senators	Yes	No	Senator	Yes	No
Chairman Dwight Cook			Senator Jim Dotzenrod		
Vice Chairman Tom Campbell			Senator Connie Triplett		
Senator Joe Miller					
Senator Dave Oehlke					
Senator Randy Burckhard					

Total (Yes) 6 No 0

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
Verbal vote - Association of Counties
Amendment

Date: 4-5-13
 Roll Call Vote #: 3

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
 BILL/RESOLUTION NO. 1106

Senate Finance & Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Burckhard Seconded By Senator Dotzenrod

Senators	Yes	No	Senator	Yes	No
Chariman Dwight Cook	X		Senator Jim Dotzenrod	X	
Vice Chairman Tom Campbell	X		Senator Connie Triplett	X	
Senator Joe Miller					
Senator Dave Oehlke	X				
Senator Randy Burckhard	X				

Total (Yes) 6 No 0

Absent 1

Floor Assignment Senator Dotzenrod

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

REPORT OF STANDING COMMITTEE

HB 1106, as engrossed: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1106 was placed on the Sixth order on the calendar.

Page 1, line 9, after the second comma insert "57-35.3-07,"

Page 1, line 19, after the comma insert "financial institutions tax credit for contributions to the housing incentive fund,"

Page 2, overstrike line 9

Page 2, line 10, overstrike "district receives a portion of the revenue from this tax. The taxing district"

Page 2, line 10, after "allocate" insert "all of"

Page 2, line 11, overstrike "to each ambulance service based upon the taxable value of the"

Page 2, line 12, overstrike "property within each township of the taxing district"

Page 2, line 13, after "~~township~~" insert "collected in a particular township"

Page 2, line 13, remove the overstrike over "~~to the ambulance service that serves the largest area within that township~~"

Page 2, line 13, remove "that is"

Page 2, line 13, remove "located within the service area of that ambulance district"

Page 7, after line 15, insert:

"SECTION 13. AMENDMENT. Section 57-35.3-07 of the North Dakota Century Code is amended and reenacted as follows:

57-35.3-07. (Effective for the first two taxable years beginning after December 31, 2010) Payment of tax.

Three-thirteenths of the tax before credits allowed under section 57-35.3-05, less the credits allowed under subsections 1, 3, 4, and 5 of section 57-35.3-05, must be paid to the tax commissioner on or before April fifteenth of the year in which the return is due, regardless of any extension of the time for filing the return granted under section 57-35.3-06. Ten-thirteenths of the tax before credits allowed under section 57-35.3-05, less the credit allowed under subsection 2 of section 57-35.3-05, must be paid to the tax commissioner on or before January fifteenth of the year after the return is due. Payment must be made in the manner prescribed by the tax commissioner.

(Effective after the first two taxable years beginning after December 31, 2010) Payment of tax. Three-thirteenths of the tax before credits allowed under section 57-35.3-05, less the credits allowed under subsections 1, 3, and 4 of section 57-35.3-05 and section 4 of House Bill No. 1029 if approved by the sixty-third legislative assembly, must be paid to the tax commissioner on or before April fifteenth of the year in which the return is due, regardless of any extension of the time for filing the return granted under section 57-35.3-06. Ten-thirteenths of the tax before credits allowed under section 57-35.3-05, less the credit allowed under subsection 2 of section 57-35.3-05, must be paid to the tax commissioner on or before January fifteenth of the year after the return is due. Payment must be made in the manner prescribed by the tax commissioner."

Page 26, line 8, replace "and 17" with ", 13, 18, 21, and 27"

Page 26, line 9, remove "8, 9,"

Page 26, line 9, replace "23, 29, 30" with "14"

Page 26, line 9, remove "and"

Page 26, line 9, after "33" insert ", 34, 35, 36, 37, 38, 39, and 40"

Page 26, line 10, after the sixth comma insert "and"

Page 26, line 10, remove ", and 37"

Renumber accordingly

2013 TESTIMONY

HB 1106

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**TESTIMONY OF THE OFFICE OF STATE TAX COMMISSIONER
BEFORE THE
HOUSE FINANCE AND TAXATION COMMITTEE**

**HOUSE BILL 1106
JANUARY 15, 2013**

Chairman Belter, members of the House Finance and Taxation Committee, my name is Emily Thompson, Legal Counsel for the North Dakota Office of State Tax Commissioner. Donnita Wald, General Counsel and I are here today on behalf of Tax Commissioner Cory Fong to testify in support of House Bill 1106.

REASONS FOR PROPOSED CHANGES

This bill was introduced by the Tax Commissioner to:

- make technical corrections, provide clarification and refine definitions in the income tax statutes,
- conform language, correct oversights and make technical corrections in the property tax statutes,
- clarify terms used within a sales tax statute, and
- eliminate obsolete language.

I will explain Sections 1 through 10 of the bill which deal with property tax. Donnita Wald, General Counsel, will explain the remaining sections of the bill which deal with individual income tax and sales tax.

EXPLANATION OF THE BILL

Clarification Regarding the Allocation of Special Tax Levy Revenue

Section 23-27-04.7 of the North Dakota Century Code, **found in Section 1 of the bill (page 2)**, is amended to clarify the manner in which taxing districts shall allocate revenue generated from special emergency medical services or ambulance service levies. A drafting oversight resulted in conflicting language. The amended language clarifies that each taxing district shall allocate the special tax levy revenue to each ambulance service based upon the taxable value of the property within each township of the taxing district that is located within the service area of that ambulance district.



Transmission Line Collection and Distribution Provisions

The removal of a cross reference to a repealed section of the North Dakota Century Code inadvertently removed the deposit, allocation and penalty provisions for transmission lines. During the 2009 Legislative Session, Senate Bill 2297 repealed chapter 57-33.1 of the North Dakota Century Code relating to the taxation of cooperative electrical generating plants. Prior to the repeal of chapter 57-33.1 the transmission line tax imposed under section 57-06-17.3 was subject to the same manner of imposition and allocation as the tax imposed under chapter 57-33.1.

Thus, the removal of the internal reference to the repealed chapter also inadvertently removed the deposit, allocation and penalty provisions for transmission lines. By amending the language in section 57-06-17.3, found in **Section 9 of the bill (page 5)**, and creating three new sections to the Century Code, found in **Sections 5 through 7 of the bill (page 4-5)**, which explicitly outline the deposit, allocation, and penalty provisions relating to transmission lines, the inadvertently removed language is restored.

Notice Required for Township, City and County Equalization Meetings

The publication requirements a county auditor is required to follow to notice township and city equalization meetings is currently placed in a section of the Century Code where it can be easily overlooked. In order to place this notice provision in a more practical location within the Century Code, section 57-23-02 was repealed in **Section 40 of the bill (page 26)** and the language from that section was relocated to the newly created section 57-02-31.1 found in **Section 2 of the bill (page 2)**. An additional section to chapter 57-02, found in **Section 3 of the bill (page 2)**, was also created to provide clarity to county auditors regarding the manner and time publication must be made to properly notice county equalization meetings.

Lastly, the language in section 57-13-04 was amended in **Section 10 of the bill (page 6)** to clarify that a taxpayer will not be foreclosed from bringing their appeal to the State Board of Equalization if their failure to attend the city or county equalization meeting was due to an error in notice or irregularity in the assessment proceedings.

Clarification Regarding Additional Information Provided with Public Utility Reports

The amendment provided in **Section 8 of the bill (page 5)** serves to simplify the current language allowing the tax commissioner to request, or utility companies to provide, additional materials along with required public utility reports.

Clarification Regarding Agencies Having the Authority to Certify Disability

The amendment provided in **Section 4 of the bill (page 3)** clarifies that a certificate of disability issued by any federal or state agency that has the ability to certify an individual's disability will suffice to substantiate an individual's disability for purposes of the property tax exemption.

Limited Liability Limited Partnerships

In general, under the laws governing the creation of corporations and limited liability companies (LLCs), the officers, governors, managers, or members of the entity are protected from liability for the debts and actions of the entity, unless a person is successfully initiates a "piercing the corporate veil" legal action, which could make the officers and members personally liable for any damages resulting from that lawsuit.

However, the Tax Department has not had to initiate costly and time-consuming lawsuits to "pierce the corporate veil" for unpaid state taxes. In 1977, the Legislature passed corporate officer liability provisions for all of the taxes required to be collected and remitted to the Tax Department. These provisions impose personal liability for unfiled returns and unpaid taxes only on a corporate officer if that officer is responsible for the filing and payment of the taxes owed by the corporation.

In 1993, when North Dakota adopted its LLC laws, Senate Bill 2223 was introduced by Senator Wayne Stenehjem and other co-sponsors, making technical corrections throughout the Century Code to add "LLCs" to the same locations in the Code that referenced "corporations." In addition, this bill added identical personal liability for governors and managers of LLCs with unfiled returns or unpaid taxes. These provisions are identical to the laws already in place for corporate officers.

#1

Now, we are asking you to consider adopting identical personal liability statutes for the general partner of a Limited Liability Limited Partnership, or LLLP. In general, under current partnership law, partners of a “regular” partnership and the general partner of a Limited Liability Partnership (LLP), have personal responsibility and liability for the debts of the partnership. If either one of these two entities have not filed or paid state taxes, the general partners are personally liable for the payment of those taxes.

However, if the entity is a LLLP, the general partner may not be personally liable for debts incurred by the LLLP, including state tax debts. Therefore, to “even the playing field” the Tax Department is asking that the Legislature provide the same personal responsibility and liability for filing and paying state taxes on general partners of LLLPs.

A sample of the language the Tax Department is proposing is first found in **Section 11, on Page 6, lines 17-29**. This particular section of the law relates to the Electrical Generation, Distribution & Transmission Tax. The other bill sections proposing the addition of this identical language are in:

- Section 13 – Tobacco Taxes (p.7)
- Section 26 – Employer Withholding Tax (p. 18)
- Section 32 – Sales Tax (p. 21)
- Sections 34 – Use Tax (p. 22)
- Section 35 – Motor Vehicle Fuel Tax (p. 23)
- Section 36 – Special Fuels Tax (p. 24)
- Section 39 – Aviation Fuels Tax (p. 25)

It is important to note that since 1999, corporations and LLCs may make an election to protect its officers, governors, and managers from personal liability for unpaid taxes by posting a bond equal to the company’s annual tax liability. The bond posting election is also being made available to LLLPs. During the drafting of this bill, it was discovered that there were 3 instances in which the bond election was inadvertently omitted from the 1999 law. The omissions are remedied in **Sections 12, 33, 37, and 38 (pp. 12, 22, 24, and 25)**.

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Simplification of the Pass-Through Entity Language

Since proliferation of the use of passthrough entities for federal and state tax purposes, the Legislature has adopted provisions allowing passthrough entities to be eligible, similar to any other individual or corporate taxpayer, for the state's income tax incentives, such as the agricultural processing facility tax credit and the angel fund tax credit. Each time this authority has been granted, a lengthy provision has been added to each credit. An example of this language is found on **page 11, lines 20-31**.

The Tax Department is proposing to simplify the passthrough entity language. **Section 14 of the bill (pp. 8-11)** contains the definitions for the income tax laws. On **page 10, lines 11-16**, we propose adding a definition for "passthrough entity." This definition includes all of the entities that in the past have been listed in each separate tax credit. This bill then proceeds to remove the list of all passthrough entities in each individual tax credit, and replace the list with the term "passthrough entity." The benefit of making this change is that, in the future, if other entities are given passthrough treatment, only one change needs to be made – and that change is to the new definition of "passthrough" on page 10 of the bill.

The bill sections reflecting the change to each of the income tax credits that allow passthrough entities to claim the credits **begin on page 11**, and are **Sections 15 through 25, and Sections 27 through 30**.

Other Miscellaneous Income and Sales Tax Technical Changes

The Tax Department's housekeeping bill contains 4 additional technical changes. The first is in **Section 16 (page 12, line 5)**. We propose adding "in this state" to the statute to clarify that the blending of biodiesel fuel or green diesel fuel must occur in North Dakota in order for the fuel supplier to qualify for this income tax credit. This change will also codify the Formal Opinion of the Tax Commissioner which was recently issued to a fuel supplier.

The second miscellaneous income tax technical change is in **Section 17, on page 12, line 23**. This amendment to the credit for biodiesel or green diesel sales equipment costs removes an obsolete date.



The amendment on **Page 14, lines 8-11, Section 20 of the bill**, is the third income tax technical change. This amendment adds language to the angel fund tax credit to clarify that a contribution made from a retirement plan is an investment eligible for the tax credit if a separate retirement account is maintained and the plan participant controls the investment activities of the retirement account. Similar language is contained in the other investment tax credits, such as the seed capital and the agricultural business investment tax credit.

The final technical amendment we ask you to consider is in **Section 31, page 21, lines 17-22**, and relates to sales and use taxes. During the last Legislative Assembly, a new sales tax exemption for machinery or equipment used to produce coal from a new mine was enacted. N.D.C.C. § 57-39.2-04.8. The statute also allows an exemption for the purchase of replacement machinery or equipment if the “capitalized investment” in the new mine exceeds \$20 million. Since last session, the Tax Department and industry have questioned how to determine whether the \$20 million threshold has been met. This is due to the fact that there are a number of financial accounting rules that determine whether an asset should be capitalized. To provide clarification, industry and the Tax Department agree that using United States generally accepted accounting methods is the proper standard to use.

Effective Date

Section 41 of the bill (page 26) specifies that Sections 1 and 17 are effective for tax years beginning after December 31, 2012. Sections 8, 9, 10, 23, 29, 30, 31, 32, and 33 are effective for tax periods beginning after June 30, 2013. Section 2, 3, 4, 5, 6, 7, and 37 are effective for tax years beginning after December 31, 2013.

CONCLUSION

The Tax Commissioner respectfully requests that you give favorable consideration to House Bill 1106. I thank you for your time and consideration and would be happy to respond to any questions.

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**TESTIMONY TO THE
HOUSE FINANCE and TAXATION COMMITTEE**
Prepared by Kevin J. Glatt, Burleigh County Auditor\Treasurer
1/15/12

HOUSE BILL 1106

Mr. Chairman and members of the committee, this testimony is in opposition to HB1106.

- Burleigh County has 41 organized townships with 29 township assessors. Equalization meetings are held at various times and places to accommodate the lack of township assessors. Very few townships have offices and many townships conduct their business in private residences.
- It would be very difficult and expensive for a COUNTY to assume the responsibility for publishing a notice for every city and township containing the date, time and location for every board of equalization meeting.
- If there is an issue with the manner in which townships handle the assessment process, perhaps the best solution would be to eliminate township and small city assessors and their boards of equalization.
- I have attached a copy of the 2012 equalization publication for Burleigh County.

Mr. Chairman, members of the House & Taxation Committee, I respectfully request a do not pass for HB1106.

Thank You.

Kevin J. Glatt
Burleigh County Auditor\Treasurer

#2

**NOTICE OF
BOARDS OF EQUALIZATION MEETINGS**

All Township Boards of Equalization will meet according to law on the second Monday of April, being the 8th. All City Boards of Equalization will meet the second Tuesday of April, being the 9th; and the County Board of Equalization will meet June 3rd according to Section 57-23-02 North Dakota Century Code.

The City Boards and the County Board meetings may be adjourned from time to time until the work is completed. These meetings will be held at the regular meeting places.

Kevin J. Glatt
Burleigh County Auditor\Treasurer

run March 8 and 15, 2012

1

**TESTIMONY OF THE OFFICE OF STATE TAX COMMISSIONER
BEFORE THE
SENATE FINANCE AND TAXATION COMMITTEE**

**ENGROSSED HOUSE BILL 1106
MARCH 11, 2013**

Chairman Cook, members of the Senate Finance and Taxation Committee, my name is Emily Thompson, Legal Counsel for the North Dakota Office of State Tax Commissioner. Donnita Wald, General Counsel and I are here today on behalf of Tax Commissioner Cory Fong to testify in support of House Bill 1106.

REASONS FOR PROPOSED CHANGES

This bill was introduced by the Tax Commissioner to:

- make technical corrections, provide clarification and refine definitions in the income tax statutes,
- conform language, correct oversights and make technical corrections in the property tax statutes,
- clarify terms used within a sales tax statute, and
- eliminate obsolete language.

I will explain Sections 1 through 10 of the bill which deal with property tax. Donnita Wald, General Counsel, will explain the remaining sections of the bill, which deal with individual income tax and sales tax.

EXPLANATION OF THE BILL

Clarification Regarding the Allocation of Special Tax Levy Revenue

Section 23-27-04.7 of the North Dakota Century Code, **found in Section 1 of the bill (page 2)**, is amended to clarify the manner in which taxing districts shall allocate revenue generated from special emergency medical services or ambulance service levies. A drafting oversight resulted in conflicting language. The amended language clarifies that each taxing district shall allocate the special tax levy revenue to each ambulance service based upon the taxable value of the property within each township of the taxing district that is located within the service area of that ambulance district.

Transmission Line Collection and Distribution Provisions

The removal of a cross reference to a repealed section of the North Dakota Century Code inadvertently removed the deposit, allocation and penalty provisions for transmission lines. During the 2009 Legislative Session, Senate Bill 2297 repealed chapter 57-33.1 of the North Dakota Century Code relating to the taxation of cooperative electrical generating plants. Prior to the repeal of chapter 57-33.1 the transmission line tax imposed under section 57-06-17.3 was subject to the same manner of imposition and allocation as the tax imposed under chapter 57-33.1.

Thus, the removal of the internal reference to the repealed chapter also inadvertently removed the deposit, allocation and penalty provisions for transmission lines. By amending the language in section 57-06-17.3, found in **Section 9 of the bill (page 5)**, and creating three new sections to the Century Code, found in **Sections 5 through 7 of the bill (page 4-5)**, which explicitly outline the deposit, allocation, and penalty provisions relating to transmission lines, the inadvertently removed language is restored.

Notice Required for Township, City and County Equalization Meetings

The publication requirements a county auditor is required to follow to notice township and city equalization meetings is currently placed in a section of the Century Code where it can be easily overlooked. In order to place this notice provision in a more practical location within the Century Code, section 57-23-02 was repealed in **Section 40 of the bill (page 26)** and the language within that section was relocated to **Section 2 of the bill (page 2)** which creates a new section to chapter 57-02 of the Century Code. **Section 3 of the bill (page 2)** also creates an additional section to chapter 57-02 to provide clarity to county auditors regarding the manner and time publication must be made to properly notice county equalization meetings.

Lastly, the language in section 57-13-04 was amended in **Section 10 of the bill (page 6)** to clarify that a taxpayer will not be foreclosed from bringing an appeal to the State Board of Equalization if the taxpayer's failure to attend the city or county equalization meeting was due to an error in notice or irregularity in the assessment proceedings.

Clarification Regarding Additional Information Provided with Public Utility Reports

The amendment provided in **Section 8 of the bill (page 5)** serves to simplify the current language allowing the Tax Commissioner to request, or utility companies to provide, additional materials along with required public utility reports.

Clarification Regarding Agencies Having the Authority to Certify Disability

The amendment provided in **Section 4 of the bill (page 3)** clarifies that a certificate of disability issued by any federal or state agency that has the ability to certify an individual's disability will suffice to substantiate an individual's disability for purposes of the property tax exemption.

Limited Liability Limited Partnerships

In general, under the laws governing the creation of corporations and limited liability companies (LLCs), the officers, governors, managers, or members of the entity are protected from liability for the ordinary debts of the entity, unless a person successfully "pierces the corporate veil" of the entity. In that circumstance, an officer or member can be held personally liable for those debts.

However, the Tax Department has not had to initiate costly and time-consuming lawsuits to "pierce the corporate veil" for unpaid state taxes. In 1977, the Legislature passed corporate officer liability provisions for all of the taxes required to be collected and remitted to the Tax Department. These provisions impose personal liability for unfiled returns and unpaid taxes on a corporate officer, but only if that officer is responsible for the filing and payment of the taxes owed by the corporation.

In 1993, when North Dakota adopted its LLC laws, Senate Bill 2223 was introduced by then Senator Wayne Stenehjem and other co-sponsors, to add "LLCs" to locations in the Code that referenced "corporations," and added the same personal liability provisions for governors and managers of LLCs with unfiled returns or unpaid taxes.

In 1999, the Legislature further amended the corporate officer and LLC laws to provide for an “opt-out” provision. This allows the entity to post a bond to immunize the entity’s officers or governors from personal liability for the entity’s unpaid taxes.

Now, we are asking you to consider adopting identical personal liability statutes for the general partner of a Limited Liability Limited Partnership, or LLLP (“Triple LP”). In general, under current partnership law, partners of a “regular” partnership and the general partner of a Limited Liability Partnership (LLP), have personal responsibility and liability for the debts of the partnership. If either one of these two entities have not filed or paid state taxes, the general partners are personally liable for the payment of those taxes.

However, if the entity is a Triple LP, the general partner is not personally liable for the ordinary debts incurred by the LLLP, including state tax debts. Therefore, to “even the playing field” the Tax Department is asking that the Legislature provide the same personal responsibility and liability for filing and paying state taxes on general partners of LLLPs.

I want to clarify that the statutes currently in law and the Triple LP proposals in HB 1106:

1. Apply only to businesses who collect tax from their customers, but do not remit those taxes to the state as required by state tax law. The most common example of this type of tax is sales tax.
2. Apply only to business entities that are employers who are required to withhold state income taxes from their employees, but then do not remit those withheld wages to the state.
3. Do not apply to majority of those businesses in North Dakota. Only a small minority of the businesses in our state are noncompliant.

A sample of the language the Tax Department is proposing is first found in **Section 11, on Page 6, lines 17-29**. This particular section of the law relates to the Electrical Generation, Distribution & Transmission Tax. The other bill sections proposing the addition of this identical language are in:

- Section 13 – Tobacco Taxes (p.7)
- Section 26 – Employer Withholding Tax (p. 18)
- Section 32 – Sales Tax (p. 21)
- Sections 34 – Use Tax (p. 22)
- Section 35 – Motor Vehicle Fuel Tax (p. 23)
- Section 36 – Special Fuels Tax (p. 24)
- Section 39 – Aviation Fuels Tax (p. 25)

Finally, during the drafting of this bill, it was discovered that there were 3 instances in which the bond election was omitted from the 1999 law. The omissions are remedied in **Sections 12, 33, 37, and 38 (pp. 6, 22, 24, and 25).**

Simplification of the Pass-Through Entity Language

Since proliferation of the use of passthrough entities for federal and state tax purposes, the Legislature has adopted provisions allowing passthrough entities to be eligible, similar to any other individual or corporate taxpayer, for the state’s income tax incentives, such as the agricultural processing facility tax credit and the angel fund tax credit. Each time this authority has been granted, a lengthy provision has been added to each credit. An example of this language is found on **page 11, lines 20-31.**

The Tax Department is proposing to simplify the passthrough entity language by adding a definition of passthrough entity in the definitions section of the income tax chapter. This definition is in **Section 14, on page 10, lines 11-16,** and includes all of the entities that in the past have been listed in each separate tax credit. The bill then proceeds to remove this list of passthrough entities in each individual tax credit, and replace the list with the term “passthrough entity.” The benefit of making this change is that, in the future, if other entities are given passthrough treatment, only one change needs to be made – and that change is to the new definition of “passthrough” on page 10 of the bill.

The bill sections reflecting the change to each of the income tax credits that allow passthrough entities to claim the credits are **Sections 15 through 25** (beginning on page 11) **and Sections 27 through 30.** For the Seed Capital Investment Tax Credit and the Agricultural Commodity Investment Tax Credit, we made the same changes and referenced the definition on page 10. **Sections 27 through 30.**

Other Miscellaneous Income and Sales Tax Changes

The Tax Department's housekeeping bill contains 4 additional changes. The first is in **Section 16 (page 12, line 5)**. We propose adding "in this state" to the statute to clarify that the blending of biodiesel fuel or green diesel fuel must occur in North Dakota in order for the fuel supplier to qualify for this income tax credit. This change will also codify the Formal Opinion of the Tax Commissioner which was recently issued to a fuel supplier.

The second miscellaneous income tax technical change is in **Section 17 (page 12, line 23)**. This amendment to the credit for biodiesel or green diesel sales equipment costs removes an obsolete date.

The amendment in **Section 20 (page 14, lines 8-11)**, is another change to the income tax law that we are proposing in HB 1106. This amendment adds language to the angel fund tax credit to clarify that a contribution made from a retirement plan is an investment eligible for the tax credit if a separate retirement account is maintained and the plan participant controls the investment activities of the retirement account. Similar language is contained in the other investment tax credits, such as the seed capital and the agricultural business investment tax credit.

The final amendment we ask you to consider is in **Section 31, page 21, lines 17-22**, and relates to sales and use taxes. During the 2011 Legislative Assembly, a new sales tax exemption for machinery or equipment used to produce coal from a new mine was enacted. N.D.C.C. § 57-39.2-04.8. The statute allows an exemption for the purchase of replacement machinery or equipment if the "capitalized investment" in the new mine exceeds \$20 million. Since last session, the Tax Department and industry have questioned how to determine whether the \$20 million threshold has been met. This is because there are a number of financial accounting rules that determine whether an asset should be capitalized. To provide clarification, industry and the Tax Department agree that using United States generally accepted accounting methods is the proper standard to use.

Effective Date

Section 41 of the bill (page 26) specifies that Sections 1 and 17 are effective for tax years beginning after December 31, 2012. Sections 8, 9, 10, 23, 29, 30, 31, 32, and 33 are effective for tax periods beginning after June 30, 2013. Section 2, 3, 4, 5, 6, 7, and 37 are effective for tax years beginning after December 31, 2013.

CONCLUSION

The Tax Commissioner respectfully requests that you give favorable consideration to House Bill 1106. We thank you for your time and consideration and would be happy to respond to any questions.

Testimony to the
Senate Finance and Taxation Committee

Prepared March 11, 2013 by
Terry Traynor, Assistant Director
North Dakota Association of Counties

Regarding: Engrossed House Bill No. 1106

Mr. Chairman and Committee Members, the North Dakota Association of Counties requests the Committee's consideration of the amendments on the reverse of this testimony. It may be necessary to review the history and purpose of this section of law in order to understand this request.

The Legislature, a number of Sessions ago, revised the standards for dispatching ambulances, requiring that the "nearest" (which the AG says means "quickest") ambulance be dispatched to a particular incident.

The ambulance services quickly realized that state law was requiring them to serve areas that were not included in the taxing district created for their support. Some of these taxing districts follow county lines, but most are independent political subdivisions with their own unique boundaries.

The legislature responded by requiring every taxing district that levies a special tax for ambulance service, to share that revenue with every ambulance that was now required to respond into that taxing district. That, while reasonable, is difficult to administer. As these actual service boundaries can cut through townships, sections, even individual parcels, (and also change quite frequently) counties urged that the mandate be written to allow the distribution to be calculated only to the township level.

The resulting language was clearly confusing, and the Tax Department rightly sought to clarify it. However, the clarification would require distributing tax revenue down to the parcel level (or further), essentially recreating new extremely erratic and changeable "distribution districts", that are invariably different than the "tax collecting districts" which are most often established by a specific set of voters. This is something for which property tax software does not easily work.

The amendments we propose would restore the section to the original intent, limiting the distribution to already existing "districts" – the townships. The amendments, we believe, would also add clarity.

Thank you for your consideration of this request.

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PROPOSED AMENDMENTS FOR ENGROSSED HOUSE BILL No. 1106

Page 2, overstrike line 9

Page 2, line 10, overstrike “district receives a portion of the revenue from this tax. The taxing district” and after “allocate” insert “all of”

Page 2, line 11, after “revenue” insert “collected in a particular township” and overstrike “to each ambulance services based upon the taxable value of the”

Page 2, line 12, overstrike “property within each township of the taxing district”

Page 2, line 13, remove the overstrike over “~~to the ambulance service district that serves the largest area within that township~~” and remove “that is”

Page 2, line 14, remove “located with the service area of that ambulance district”

Renumber accordingly

With the proposed amendment, the section would read as follows:

23-27-04.7. County reporting - Use of property tax levies.

The board of county commissioners of every county in this state shall conduct an annual review of the emergency medical services coverage within that county and shall submit an annual report to the state health officer in a format approved by the state department of health. A taxing district that levies a special emergency medical services or ambulance service levy shall ensure that every ambulance service that has portions of its service area in that taxing district receives a portion of the revenue from this tax. The taxing district shall allocate all of the special tax levy revenue collected in a particular township to each ambulance service based upon the taxable value of the property within each township of the taxing district, allocating the taxable value of each township to the ambulance service that serves the largest area within that township.

**TESTIMONY OF THE OFFICE OF STATE TAX COMMISSIONER
BEFORE THE
SENATE FINANCE AND TAXATION COMMITTEE**

**ENGROSSED HOUSE BILL 1106
APRIL 5, 2013**

BRIEF SUMMARY OF HOUSE BILL 1106

- 1) Clarification regarding the manner in which taxing districts shall allocate revenue generated from special emergency medical services or ambulance service levies. Conflicting language was remedied.
 - **Section 1**
- 2) Transmission line deposit, allocation, and penalty provisions added to remedy the effect of the removal of an internal reference to a repeal chapter of the code.
 - **Sections 5, 6, 7, and 9**
- 3) Publication requirements necessary to properly notice township, city, and county equalization meetings outlined. Ability for a taxpayer to appeal to the State Board of Equalization if the taxpayer legitimately failed to attend the preceding equalization meeting due to no fault of their own clarified.
 - **Sections 2, 3, 10, 40**
- 4) Language simplified noting that a utility company may provide, or the Tax Commissioner may request, any additional materials to accompany required public utility reports.
 - **Section 8**
- 5) Clarification regarding agencies that have authority to certify an individual’s disability for purposes of qualifying for a property tax exemption.
 - **Section 4**
- 6) Mirrors the same personal liability that exists for a corporate officer for unfiled returns or unpaid taxes owed by a corporation to a general partner for unfiled returns or unpaid taxes owed by a Limited Liability Limited Partnership (LLLP).
 - **Sections 11, 13, 26, 32, 34, 35, 36, and 39**
- 7) Three instances in which the bond election was omitted from the 1999 law were corrected.
 - **Sections 12, 33, 37, and 38**

- 8) Definition of “passthrough entity” added to the income tax chapter to eliminate the need to list out each individual entity that is a passthrough entity when passthrough entities are referenced within the code.
 - **Sections 14-25 and 27-30**
- 9) Clarification that biodiesel fuel or green diesel fuel must be blended in this state for the credit to apply. An obsolete date was also removed.
 - **Section 16 and 17**
- 10) Clarification that contributions made from a retirement plan are eligible investments for angel fund purposes.
 - **Section 20**
- 11) Clarification that generally accepted accounting method should be used when determining whether an asset should be capitalized for purposes of determining the value of replacement machinery or equipment for a new mine.
 - **Section 31**
- 12) Proposed Amendments to Engrossed House Bill 1106:
 - The **proposed amendments** to Engrossed House Bill 1106 have been drafted as contingent language in the event that HB 1029 becomes effective. The purpose of this language is to indicate which portion of the financial institutions tax the credit for investments in the housing incentive fund would apply against (i.e. the 3/13th portion or the 10/13th portion.) Currently, all tax credits against financial institution tax apply to the 3/13th portion of the tax (with the exception of credits relating to Renaissance Zones) The addition language provided in this amendment simply restores the language previously found in the code for years 2011-12 should the housing incentive fund credit provisions found in HB1029 become effective.
- 13) Effective dates
 - **Section 41** (*reflects section numbers after the proposed amendments are applied*)

Effective for tax years beginning after December 31, 2012	Effective for tax periods beginning after June 30, 2013	Effective for tax years beginning after December 31, 2013	Effective date not specified
Sections 1, 13, 18, 21, and 27	Sections 10, 14, 31, 32, 33, 34, 35, 36, 37, 38, 39 and 40	Sections 2, 3, 4, 5, 6, and 7	Sections 8, 9, 11, 12, 15, 16, 17, 19, 20, 22, 23, 24, 25, 26, 28, 29, 30, and 41

Prepared by the Office of
State Tax Commissioner for the
Senate Finance & Taxation Committee
March 15, 2013

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1106

Page 1, line 9, after the second comma insert “57-35.3-07,”

Page 1, line 19, after the comma insert “financial institutions tax credit for contributions to the housing incentive fund,”

Page 7, after line 15, insert:

“SECTION 13. AMENDMENT. If sections 4 and 5 of Engrossed House Bill No. 1029 become effective, section 57-35.3-07 of the North Dakota Century Code is amended and reenacted as follows:

(Effective after the first two taxable years beginning after December 31, 2010)

Payment of tax.

Three-thirteenths of the tax before credits allowed under section 57-35.3-05, less the credits allowed under subsections 1, 3, and 4 of section 57-35.3-05, and section 4 of Engrossed House Bill No. 1029, must be paid to the tax commissioner on or before April fifteenth of the year in which the return is due, regardless of any extension of the time for filing the return granted under section 57-35.3-06. Ten-thirteenths of the tax before credits allowed under section 57-35.3-05, less the credit allowed under subsection 2 of section 57-35.3-05, must be paid to the tax commissioner on or before January fifteenth of the year after the return is due. Payment must be made in the manner prescribed by the tax commissioner.”

Page 26, line 8, replace “and 17” with “, 13, 18, 21, and 27”

Page 26, line 9, remove “8, 9,”

Page 26, line 9, replace “23, 29, 30” with “14”

Page 26, line 9, remove “and”

Page 26, line 9, after “33” insert “, 34, 35, 36, 37, 38, 39, and 40”

Page 26, line 10, after the sixth comma insert “and”

Page 26, line 10, remove “, and 37”

Re-number accordingly