

2013 SENATE FINANCE AND TAXATION

SB 2093

2013 SENATE STANDING COMMITTEE MINUTES

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

SB 2093
1/14/2013
Job Number 17128

Conference Committee

Committee Clerk Signature

Angeh Kittmiller

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 57-01-15 of the North Dakota Century Code, relating to the use of tax information by the tax commissioner to enforce the tax laws in title 57.

Minutes:

Testimony Attached

Chairman Cook opened the hearing for SB 2093.

Donnita Wald, Tax Department - See attached testimony 1.

Senatory Oehlke - It sounds like this is pursuant to gas lines for instance, is this kind of critical that we should do this pretty quick? Should this have an emergency clause on it?

Donnita Wald - I don't believe that is necessary. Otherwise it will be August 1st, it will already be too late for the assessment and valuation of properties because of centrally assessed pipelines and stuff because by the time it even gets, say for instance through the Senate, through the House, they have already started the process of obtaining information from the pipeline companies. In my opinion, an emergency clause isn't needed, but will be very helpful for the next tax year.

Chairman Cook - If someone, because you didn't have the information, was able to avoid paying their fair share of property tax on centrally assessed property, can you go back and collect that once you get the information you needed?

Donnita Wald - Yes we can, there is an omitted property statute where we can and have gone back and assessed that property. From our perspective it's better to get it right up front because the counties are building their budgets on that and I think right now where these pipelines are going up is where some of those dollars are needed the most.

Chairman Cook - When you get it after the fact though, that money is bonus money.

Donnita Wald - It is, but there is also some pretty stiff penalties for that happening and we would rather get taxpayers in compliance right away than to go after them 3 years later, because of course that doesn't build good relations either.

Senator Dotzenrod - The last sentence in the bill, line 15 and 16 says 'this section does not apply to statements of full consideration filed with the state board of equalization'. I want to make sure I understand what's I that statement. Really what you are talking about is the value of the property. It

isn't the taxes that are due on it, you primarily want the other surrounding information, the sort of filing information like addresses or zip codes, or phone numbers, or information that would help you identify. But when you say does not apply to statements of full consideration, your trying to avoid there, is having the value. The valuation that's been set by the state board of equalization, you want to protect that. Do I understand that?

Donnita Wald - Statement of full consideration are documents that are filed when there is a transfer of a home for instance, between 2 parties. What that statement will contain is the sale price of that home and a lot of home owners would like to keep that information confidential. They are filed with the county and are confidential at the county level. When they are filed with the state board they are confidential at our level. What those documents are used for is calculating, part of the calculation of the sales ratio study. So, when the state board goes in and equalizes property throughout the state that is part of that calculating that tolerance that they use. So really statements of consideration are documents that identify transactions between 2 private parties.

Senator Dotzenrod - Prior to the adoption of this bill that sort of thing your describing, the sale price, that I assume was protected, even though we are saying it does not apply to that in this bill, we already have protection for that. I'm not sure why you are saying it again in this bill if we already do it because it looks like on line 9 and 10 we are only talking here about centrally, we are only bringing into this the only new thing that is coming in to the law by adopting this bill would be the centrally assessed property. So I'm not exactly sure why you are adding the sentence on protecting the full consideration, because I assume that is already protected.

Donnita Wald - You are correct. It is currently protected. If you look on line 8 and 9, after the overstruck language we say, let's start on line 7. It says 'information filed by or on behalf of a person with the tax commissioner under this title' and that includes anything that is filed under title 57 with is the centrally assessed property, the property taxes state board of equalization and all the other taxes. That broad statement on line 7 through 8 we wanted to make sure that nobody thought that that included statements of full consideration. It's just a little bit extra, don't come in and ask for that because you're not going to get it under this section. We just want to make it clear.

Chairman Cook - Any other questions? Any testimony opposed? Any other testimony? We will close the hearing.

Senator Miller - I'll move a Do Pass.

Vice Chairman Campbell - I'll second that.

Chairman Cook - Discussion? I'll ask the clerk to take the roll.

Roll Call Votes - 6 yeas, 0 nays, 1 absent and not voting.

Carried by **Senator Miller**.

Date: 1-14-13
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2093

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO Pass

Motion Made By Senator Miller Seconded By Senator Campbell

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	X				
Senator Dave Oehlke	X				
Senator Randy Burckhard					

Total (Yes) 6 No 0

Absent 1

Floor Assignment Senator Miller

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

REPORT OF STANDING COMMITTEE

SB 2093: Finance and Taxation Committee (Sen. Cook, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2093 was placed on the Eleventh order on the calendar.

2013 HOUSE FINANCE AND TAXATION

SB 2093

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2093
March 6, 2013
Job #19497

Conference Committee

Committee Clerk Signature

Mary Bruckey

Explanation or reason for introduction of bill/resolution:

A Bill relating to the use of tax information by the tax commissioner to enforce the tax laws in title 57.

Minutes:

Attached testimony #1.

Chairman Belter: Opened hearing on SB 2093.

Donnita Wald, General Counsel for the Tax Commissioner's Office: See attached testimony #1.

Representative Klein: The statement of full consideration, what is it?

Donnita Wald: It is a document that can be filed when property is sold. It identifies the selling price of the property. They are filed with the county auditor and they remain confidential at the county level but when the property tax division on behalf of the state board does their sales ratio study we obtain those documents so we can determine what the tolerance is for property and the correct valuation.

Representative Klein: You're referring to real estate?

Donnita Wald: Yes I am.

Representative Kelsh: At what point does a pipeline start paying property tax? Is it when there is actual flow? At what point do they stop paying property tax? Do abandoned pipelines still pay property tax?

Donnita Wald: That is not my area of expertise but I think they begin paying property tax while they are being constructed. I don't know when they quit paying property tax but I can find out if you desire.

Chairman Belter: Any further testimony in support of 2093? Any opposition to 2093? Any neutral testimony? We will close the hearing on SB 2093.

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2093
March 6, 2013
Job #19516

Conference Committee

Committee Clerk Signature

Mary Brucker

Minutes:

No attachments.

Chairman Belter: What are the committee's wishes?

Representative Owens: Made a motion for a Do Pass.

Representative Schmidt: Seconded.

ROLL CALL VOTE: 12 YES 0 NO 2 ABSENT

Representative Dockter will carry this bill.

Date: 3-6-13
 Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2093**

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 Rep. Owens Seconded By Rep. 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	AB	
Rep. Glen Froseth	✓				
Rep. Mark Owens	✓				
Rep. Patrick Hatlestad	✓				
Rep. Wayne Trottier	✓				
Rep. Jason Dockter	✓				
Rep. Jim Schmidt	✓				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Dockter

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

REPORT OF STANDING COMMITTEE

SB 2093: Finance and Taxation Committee (Rep. Belter, Chairman) recommends DO PASS (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2093 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

SB 2093

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**TESTIMONY OF THE
OFFICE OF STATE TAX COMMISSIONER
before the
SENATE FINANCE AND TAXATION COMMITTEE
SENATE BILL NO. 2093
January 14, 2013**

Good Morning, Chairman Cook and members of the Senate Finance and Taxation Committee. My name is Donnita Wald, General Counsel for the North Dakota Office of State Tax Commissioner and I stand on the Tax Commissioner's behalf, in support of Senate Bill No. 2093.

CURRENT LAW

Since 1977, N.D.C.C. section 57-01-15, has allowed the exchange of all confidential tax information received and administered by the Tax Commissioner to be exchanged between the different tax sections administered by the Tax Department. What is significant is that this section allows the exchange of information only to those taxes that are directly administered by the Tax Commissioner. (See *lines 13 through 14*). Examples of taxes that are directly administered by the Tax Department are sales and use taxes, income taxes, oil and gas taxes, and motor fuels taxes. Examples of taxes that are not administered by the Tax Department and therefore, information from the previously identified taxes cannot be used for administration purposes are property taxes, that are administered and collected by the local political subdivisions, and centrally assessed property, administered by the State Board of Equalization, an entity separate and distinct from the Office of State Tax Commissioner notwithstanding the fact that the Tax Commissioner is the Secretary of the State Board.

Here is an example of how the law currently works. For example, this statute currently allows information received from administration of the sales tax laws to be exchanged with the income tax section to be used in the administration of the income tax. If the income tax staff is trying to prove how much income for income tax purposes a business owner had, the sales tax section can provide that owner's gross receipts as reported on the sales tax return. However, if our property tax staff is trying to obtain information about an oil or gas pipeline so that it may locate a pipeline or so that income information can be obtained to provide correct valuations to the State Board of Equalization, the sales tax section cannot provide the property tax division any information even though that information may be available in an application for the sales

and use tax exemption for materials used in gathering or refining of gas or information may be found in the company's income tax return. The reason - the property taxation of oil or gas pipelines is a function of the State Board of Equalization.

The pipeline example is a situation that we currently encountered. Under state law, there is no central reporting of the location of gas gathering lines. Our sales tax staff had information about a pipeline, but was unable to share that information with those administering the taxation of centrally assessed property. This is the reason we introduced Senate Bill No. 2093.

PROPOSED CHANGE TO THE LAW

Senate Bill 2093 proposes, in lines 9-10, that information obtained by the Tax Commissioner, in whatever capacity, can be exchanged to "determine or enforce the tax liability, if any, of that person under any other tax law of this state." (See, lines 13-14). So, in the above examples, if SB 2093 is passed, the sales tax section would be able to provide information to the SBOE that it would need to discover any pipelines that are being built if that company is asking for the sales tax exemption. Likewise, the sales tax section can receive information from the property tax section

Please note, that in lines 15 through 16, the confidentiality of any statement of full consideration that is filed with the state supervisor of assessments remains confidential.

CONCLUSION

As long as 1977, it has been a sensible way, from the viewpoint of the Legislature, the Tax Department, and taxpayers to effectively and efficiently administer the tax laws. With the proliferation of business activity in the West, this is one way the Tax Department can bring more efficiency and effectiveness to the administration of all taxes, but mainly, will assist in the administration of centrally assessed properties, the revenue of which goes to the counties. Taxpayers and our staff have stated how nonsensical it was for the right-hand to be unable to see what the left-hand was holding. So, in effect, this bill is about just expanding the effectiveness of the Tax Department and eases the burden of compliance for the State's taxpayers.

For these reasons, the Office of State Tax Commissioner respectfully requests that the Senate Finance and Taxation Committee give Senate Bill 2093 favorable consideration. Thank you for your time. I'll be happy to answer any questions you may have.

#1

**TESTIMONY OF THE
OFFICE OF STATE TAX COMMISSIONER
before the
HOUSE FINANCE AND TAXATION COMMITTEE
SENATE BILL NO. 2093
March 6, 2013**

Good Morning, Chairman Belter and members of the House Finance and Taxation Committee. My name is Donnita Wald, General Counsel for the North Dakota Office of State Tax Commissioner and I stand on the Tax Commissioner's behalf, in support of Senate Bill No. 2093.

CURRENT LAW

Since 1977, N.D.C.C. § 57-01-15, has allowed the exchange of all confidential tax information received by the Tax Commissioner between the different tax sections, but for only those tax types directly administered by the Tax Department. This "directly administered" limitation provided for in the current law is on Line 14 of the bill. Examples of taxes that are directly administered by the Tax Department are sales and use taxes, income taxes, oil and gas taxes, and motor fuels taxes.

However, there are taxes that would appear to be "administered by the tax commissioner" but are not. One example of a tax that is not administered by the Tax Department is the property tax. The Tax Department's Property Tax Division provides policies and guidelines, but the taxes are administered and collected by the local political subdivisions. Another example is centrally assessed property that is administered and assessed by the State Board of Equalization, a state entity that is separate and distinct from the Office of State Tax Commissioner. The fact that the Tax Commissioner is the Secretary of the State Board does not change the fact that it is a separate entity.

The following is an example of how the law currently works. The statute we propose amending currently allows information received for sales tax purposes to be exchanged with the income tax section to be used for income tax compliance purposes. If instance, this exchange of information could occur if the income tax staff is trying to prove how much income a business owner has, then the sales tax information would be relevant in that it can provide the owner's gross receipts as reported on the sales tax returns, which would prove some of the owner's income.

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The situation we are addressing in SB 2093 is one that the Tax Department recently encountered. There is an exemption under the sales tax law for materials used in the gathering or refining of oil and gas, and in order to obtain this exemption, the taxpayer must provide a list of the materials that may be eligible for the exemption. The State Board of Equalization is responsible for centrally assessing oil and gas pipeline property.

Recently, our property tax staff was trying to obtain information regarding the location of a gas pipeline so that it could obtain income information to provide correct valuations to the State Board of Equalization. However, the sales tax section could not provide the property tax division any information even though that information was available in an application for the sales and use tax exemption for materials used in gathering or refining of gas. In addition, any information that may have been available in the company's income tax return could not be provided. The reason - the property taxation of oil or gas pipelines is a tax administered by the State Board of Equalization and is not a tax "directly administered" by the Tax Commissioner.

This is the reason the Tax Commissioner introduced Senate Bill No. 2093.

PROPOSED CHANGE TO THE LAW

Senate Bill 2093 proposes that information obtained by the Tax Commissioner, in whatever capacity, can be exchanged, within the Tax Department only, to "determine or enforce the tax liability, if any, of that person under any other tax law 'in this title", which is Title 57 of the North Dakota Century Code. The information that can be exchanged includes information obtained for valuing centrally assessed property (Lines 8-9 and Lines 13-14). Therefore, in the above examples, if SB 2093 were passed, the sales tax or income tax section would be able to provide information to the SBOE staff that it would need to discover any pipelines, which can then be valued and assessed accordingly, and certified for collection to the counties. Likewise, the sales tax section can receive information from the property tax section for the purposes of administering the gas gathering pipeline sales tax exemption.

The changes proposed in Senate Bill No. 2093 is also being requested because there currently is not central reporting of the location of gas gathering lines.

Please note, that in Lines 15 through 16, the confidentiality of any statement of full consideration that is filed with the state supervisor of assessments remains confidential.

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CONCLUSION

For 35 years, the current version of N.D.C.C. § 57-01-15 has been, for both the Tax Department and taxpayers, an effective and efficient way to administer the tax laws. With the proliferation of oil and gas activity in the West and the construction of numerous pipeline properties that are locally and centrally assessed, this is one way the Tax Department can bring more efficiency and effectiveness to the administration of all taxes, but mainly, will assist in the administration of centrally assessed properties, the revenue of which goes to the counties. Tax Department staff and I have heard many times from taxpayers how nonsensical it is for the right-hand to be unable to see what the left-hand is holding.

In effect, this bill is only about expanding the effectiveness of the Tax Department and eases the burden of compliance for the State's taxpayers.

For these reasons, the Office of State Tax Commissioner respectfully requests that the House Finance and Taxation Committee give Senate Bill 2093 favorable consideration. Thank you for your time. I will be happy to answer any questions you may have.