2013 SENATE FINANCE AND TAXATION

SB 2364

2013 SENATE STANDING COMMITTEE MINUTES

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

SB 2364
2/4/2013
Job Number 18206

☐ Conference Committee

Committee Clerk Signature	Angela Kitchin

Explanation or reason for introduction of bill/resolution:

A BILL for an Act create and enact subsections 7 and 8 to section 57-38-34, subsection 11 to section 57-38-38, and subsection 16 to section 57-38-40 of the North Dakota Century Code, relating to the time for filing of returns for certain corporations, interest on tax when the time for filing a return is extended, refunds of tax for certain corporations, and audits of certain corporations; amend and reenact subsection 5 of section 11-37-08, subsection 8 of section 40-63-01, subsection 5 of section 40-63-04, section 40-63-06, subsections 3 and 4 of section 40-63-07, subsection 3 of section 57-38-01.3, and subsections 5 and 7 of section 57-38-01.32 of the North Dakota Century Code, relating to subjecting financial institutions to the corporate income tax, adjustments for net operating losses, bonds and other obligations of a commerce authority, creation of renaissance zones, the housing incentive fund tax credit, and computation of farm income; to repeal chapter 57-35.3 and subdivisions c and f of subsection 2 of section 57-38-30.3 of the North Dakota Century Code, relating to elimination of the financial institutions tax and income associated with losses passed through to a financial institution; to provide an effective date; and to declare an emergency.

Minutes:

Attachments

Chairman Cook opened the hearing on SB 2364.

Senator Laffen introduced SB 2364.

Matt Peyerl, Tax Department gave an overview of SB 2364, attachment 1, and handed out proposed amendments 2 and 3.

Senator Dotzenrod - The $7.3 million that you referred to in the fiscal note, I'm not sure if I understand where that comes from.

Matt Peyerl - That's the state's portion that we would collect if we just kept them on the financial institution tax.

Chairman Cook - It cost the tax department a fair amount of money to administer the current financial institutions tax. Is it going to be less of a burden as far as regulating or administering the tax if we move to a corporation tax?

Matt Peyerl - It certainly would help. As far as the resources it would take to administer, it affects probably 8-9 different people and maybe 10% of each person's time so it doesn't add up to a lot of time in total. It's just one of those things that is a part of so many people that it takes up a disproportionate amount of time versus what it probably would if we taxed them as regular taxpayers. The financial institutions tax is very similar to income tax.

Senator Dotzenrod - We are going to eliminate this financial institution tax distribution fund, that fund goes away. Does that go away because of section 14 when we repeal chapter 57-35.3 that takes care of it?

Matt Peyerl - That's correct.

Senator Miller - The money that counties receives, is there any restrictions on how that money can be spent or is that just general fund money?

Matt Peyerl - I believe it is used for their own general budget and accounting purposes.

Chairman Cook - The distribution I'm sure is relative to the institutions tax generated within that county.

Matt Peyerl - The distribution each county gets is set in stone in statute based on what that county received as a total of all bank taxes in 1991 through 1996. Some counties would argue that is an out of date distribution formula.

Senator Oehlke - Did the counties, will their share be different now because of where the bank happens to be owned and whether it's a branch bank in a community or a major bank in a community?

Matt Peyerl - Pre 1997 banks paid tax branch by branch, so each branch was specifically located in a county so it was easy that that counties banks paid tax that benefitted their own counties. In 1997 the system changed so that all the banks state wide all that money goes into a pot and that pot is distributed based on the percentages from 1991-96.

Senator Oehlke - So how is this going to work?

Matt Peyerl - This will say all of the banks dollars just go into the general fund and as part of the fiscal note you can see that the counties no longer would be getting any money and so that was one of the issues that Senator Laffen raised in that, it's not in this bill, but what do we do about replacing that money that the counties would have otherwise been getting.

Rick Clayburgh, North Dakota Bankers Association - We are in support of the concept of what SB 2364 is doing. Our legislative committee met 2 weeks ago and looked at this concept that came out of the discussion of the joint tax committees at the beginning of the session and have had a number of legislators approaching us asking is it time, would the banks support this concept and I didn't have that ability to give you that answer until our legislative committee met. We do support the concept because we understand the complexity of the return not only for the tax department's standpoint but for our tax professionals that do the returns. The financial institutions tax is complex. If we could find a way to hold the counties harmless which this bill doesn't particularly do, but we've had discussion with legislative leaders in keeping this clean and you all have that discussion as the policy makers. (24:06)

Senator Dotzenrod - This change would probably be more favorable toward North Dakota domestic banks, regional banks than for the larger national C Corp banks. Is that correct?

Rick Clayburgh - You are going to see a level of fairness. Right now, and there are two types of banks, the C Corp and an S Corp bank. Currently both of them are taxed at the bank level and then a credit is given down to the individual shareholder of an S Corp bank so they aren't being double taxed. Currently both banks are being taxed at the bank level. (30:21)

Jim Geotz, Security First Bank - I'm also a member of Independent Community Banks of North Dakota's legislative committee. I'm testifying on behalf of them as well. I'm here to support the concept of SB 2364 and to reduce state income taxes in general. Banks need a level of capital to function. That capital comes largely from retained earnings, in fact, over time that is the only real source of capital for a bank. Roughly for a bank to make loans for every $10 in capital it has, it can make about $100 in loans so every $10 in tax we can save enables us to make more loans in our community. (33:50)

Mark Johnson, North Dakota Association of Counties - I need to stand in opposition to this purely because of the extreme loss of revenue to the counties based on the way the current tax is structured. In Grand Forks alone it would be $850,000, in Morton County about $200,000. I want to remind the committee that the discussion that's gone on so far, there really hasn't been discussion addressing the fact that this is a pure loss going forward and just because the state is made whole, the money won't go, through the corporate income tax, that money doesn't get transferred to the counties. (41:59)

Chairman Cook - I don't think this has anything to do with the state having more money, it has to do with just having a common sense fair and efficient tax policy in place and right now as the bill looks it generates more revenue for the state. I also agree with you that somewhere before this thing would ever go to the governor there's got to be some sort of fix for money going to local governments to make up the $9.8 million you are going to lose a year with this bill, but, isn't it safe for me to assume that once we have that fix on the table that if there are some counties out there that get less and some counties get more, that you probably still will be opposed to the fix, or will we be able to end up with a formula fix that doesn't have to hold every county harmless.

Mark Johnson - I can't guarantee this, but I can assure you that the 53 counties that participate in the state association of counties have always found a way to collaborate together and not fight amongst each other.

Chairman Cook closed the hearing on SB 2364.

2013 SENATE STANDING COMMITTEE MINUTES

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

SB 2364
2/12/2013
Job Number 18786

☐ Conference Committee

Committee Clerk Signature	

Explanation or reason for introduction of bill/resolution:

A BILL for an Act create and enact subsections 7 and 8 to section 57-38-34, subsection 11 to section 57-38-38, and subsection 16 to section 57-38-40 of the North Dakota Century Code, relating to the time for filing of returns for certain corporations, interest on tax when the time for filing a return is extended, refunds of tax for certain corporations, and audits of certain corporations; amend and reenact subsection 5 of section 11-37-08, subsection 8 of section 40-63-01, subsection 5 of section 40-63-04, section 40-63-06, subsections 3 and 4 of section 40-63-07, subsection 3 of section 57-38-01.3, and subsections 5 and 7 of section 57-38-01.32 of the North Dakota Century Code, relating to subjecting financial institutions to the corporate income tax, adjustments for net operating losses, bonds and other obligations of a commerce authority, creation of renaissance zones, the housing incentive fund tax credit, and computation of farm income; to repeal chapter 57-35.3 and subdivisions c and f of subsection 2 of section 57-38-30.3 of the North Dakota Century Code, relating to elimination of the financial institutions tax and income associated with losses passed through to a financial institution; to provide an effective date; and to declare an emergency.

Minutes: Committee Work

Chairman Cook opened discussion on SB 2364.

Chairman Cook - I handed out amendments 8260.01001(attachment 4). This is a credit for North Dakota rural leadership that was available to financial institutions. Apparently some financial institutions have generously contributed to this and we need to have that ability to continue that so if we eliminate the financial institutions tax we eliminate this ability so I just wanted it to move over to the corporate side also. That is all this amendment does.

Senator Miller - I'll move a do pass on the amendment.

Seconded by **Senator Burckhard**.

Senator Oehlke - Rural leadership is not a nonprofit organization then?

Chairman Cook - Yes it is a nonprofit.

Senator Oehlke - I would think a distribution to it then is deductible right. So why would you need a tax credit?

Chairman Cook - Because a credit is different than an exemption.

Senator Oehlke - So you get a choice if you wanted it.

Chairman Cook - If it is a nonprofit, and I'm 99% sure that it is...

Mark Johnson, North Dakota Association of Counties - Its run through extension service and it's out of NDSU. We actually have a department with a director.

Verbal Vote on Amendment 7-0-0

Matt Peyerl, Tax Department handed out proposed amendments on behalf of the State Tax Commissioner (attachment 5).

Chairman Cook - Section 1 is declared to be an emergency measure, why is that again?

Donnita Wald, Tax Department - The reason that has to be an emergency measure is so that those bonds remain tax exempt.

Chairman Cook - What happens if we don't get it?

Donnita Wald - If we don't pass the emergency measure then they wouldn't be exempt until such time as the bill becomes effective. I'm not really sure how that would work. It wouldn't become effective until the next tax year I think. Until that next tax return is filed.

Chairman Cook - We are talking about bonds that somebody has already purchased, assuming they were going to be tax exempt?

Donnita Wald - Right, on this tax return for this year they wouldn't be exempt. That they would file in calendar year 2013.

Senator Triplett - I would think that bonds already issued with the terms already set would be subject to being changed by this. I have no objection to putting the emergency clause on just for the 'belt and suspenders' effect to make sure that were getting it right. But I think that is at least arguable that it would only apply to bonds issued in this gap time, but it's still better not to have a gap.

Donnita Wald - It's for the gap and for the other but I question, because of the contract clause and those issues when John Walstad explained it to me, it was for both. When we drafted this we did not put the emergency clause on, it was Legislative Council that did that to make sure those remained exempt.

Chairman Cook - You put up a red flag or something in case we don't get the emergency clause, we've got to find another solution and verify the consequence.

Vice Chairman Campbell - Just to clarify to make sure, wording states that the institution is not switching status from S to C Corp, it's just electing the different tax status of that, correct?

Matt Peyerl - That is correct.

Senator Dotzenrod - We've been taxing banks with our own special sort of tax structure that we've kind of grown up with, it goes back to the counties when banks were sort of tied to the fortunes of the counties and vice versa. We are going to switch over to this corporate form now and we have in the banking community those that are, the S Corps and we have the C Corp banks. They have chosen to incorporate under different rules for their own reasons and they feel they've got the maximized benefits by being in one or the other. Is there anything in this change we are making, is there anything in switching to a corporate tax for all that would influence whether someone is a C Corp or an S Corp or would want to switch because of this change?

Matt Peyerl - I would just guess, but my general background is that anybody that can be an S Corp or a pass through entity probably already is just because the tax benefits of being structured that way are such that you would probably want to do that. I don't see anything in the bill that changes that. What it does is it removes one of the states, an adverse impact of our system that has applied to pass through entity banks so it's removing that and so now they are going to be getting the full benefit, both state and federal pass through treatment.

Senator Triplett - We have new section 17 with an effective date for taxable years beginning after December 31, 2012 so we have the whole act going in to effect as of January 1, 2013. Then we add the emergency clause on top of that? Explain that please.

Matt Peyerl - I had a similar thought on the emergency clause and in my reading of the bill is that it isn't essential in that there are no tax returns that are going to be filed for 2013 therefore none of these bonds will be subject to the financial institution tax for 2013. That is how I read it.

Senator Triplett - I'll move the tax department amendment.

Seconded by **Vice Chairman Campbell**.

Verbal Vote on Amendment 7-0-0

Chairman Cook closed discussion on SB 2364.

2013 SENATE STANDING COMMITTEE MINUTES

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

SB 2364
2/12/2013
Job Number 18798

☐ Conference Committee

Committee Clerk Signature	

Explanation or reason for introduction of bill/resolution:

A BILL for an Act create and enact subsections 7 and 8 to section 57-38-34, subsection 11 to section 57-38-38, and subsection 16 to section 57-38-40 of the North Dakota Century Code, relating to the time for filing of returns for certain corporations, interest on tax when the time for filing a return is extended, refunds of tax for certain corporations, and audits of certain corporations; amend and reenact subsection 5 of section 11-37-08, subsection 8 of section 40-63-01, subsection 5 of section 40-63-04, section 40-63-06, subsections 3 and 4 of section 40-63-07, subsection 3 of section 57-38-01.3, and subsections 5 and 7 of section 57-38-01.32 of the North Dakota Century Code, relating to subjecting financial institutions to the corporate income tax, adjustments for net operating losses, bonds and other obligations of a commerce authority, creation of renaissance zones, the housing incentive fund tax credit, and computation of farm income; to repeal chapter 57-35.3 and subdivisions c and f of subsection 2 of section 57-38-30.3 of the North Dakota Century Code, relating to elimination of the financial institutions tax and income associated with losses passed through to a financial institution; to provide an effective date; and to declare an emergency.

Minutes: Committee Work

Chairman Cook opened discussion on SB 2364.

Vice Chairman Campbell when through his proposed amendment .01002 (attachment 6).

Senator Miller - This is what I was waiting for. I asked for numbers on what the counties receive and how much this would mean toward a county allocation versus what they currently get.

Vice Chairman Campbell - Why wouldn't it be the same?

Chairman Cook - It's going to make the 53 counties whole as the 53 counties, it's going to create some minor winners and losers within the 53 counties.

Vice Chairman Campbell - Why wouldn't it be replacing the exact dollars there?

Senator Miller - It was based upon that financial institutions formula that was set back in 1997.

Discussion followed on the fiscal note and the breakdown of dollars.

Vice Chairman Campbell - I will move amendments .01002.

Seconded by **Senator Oehlke**.

Senator Dotzenrod - Right now the counties get four-tenths of a cent, we are changing it to .435 of a cent. That will be in the statute and a permanent increase in the distribution to the counties. The $9 million is for the second half of the biennium but by doing this we cover them for both years? This is permanent so it's after this first biennium goes by it's going to be about a $20 million increase for them per biennium.

Chairman Cook - Yes

Senator Dotzenrod - I was surprised on the fiscal note, that $9.8 million, isn't that a biennium number?

Chairman Cook - I don't know where she (Kathy Strombeck) came up with that, but she just told me now that county distribution of the financial institutions bounces around between $9.5 - $12 million so she's using $11.5 million. She figures you need $23 million a biennium and this will get $11.5 million.

Verbal Vote on Amendment 7-0-0

Senator Miller - I'll move a **Do Pass as Amended and re-refer to Appropriations**.

Seconded by **Senator Oehlke**.

Roll Call Vote 7-0-0

Carried by **Vice Chairman Campbell**.

FISCAL NOTE
Requested by Legislative Council
01/29/2013

Bill/Resolution No.: SB 2364

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			$18,500,000			
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		$(9,800,000)	
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).*

SB 2364 repeals the North Dakota financial institution tax, and those entities that were subject to the financial institution tax will be subject to the North Dakota income tax.

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 2364 repeals the North Dakota financial institution tax, and those entities that were subject to the financial institution tax will be subject to the North Dakota income tax. This will affect both the state general fund and the financial institution tax distribution fund. Of the total financial institution tax revenue collected, 3/13ths is deposited into the state general fund and 10/13ths is deposited into the financial institution tax distribution fund. The revenues deposited into the financial institution tax distribution fund are distributed to the counties.

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.*

If enacted, SB 2364 is expected to increase state general fund revenues by an estimated net amount of $18.5 million for the 2013-15 biennium, consisting of an estimated increase of $25.8 million in income tax and an estimated decrease in the state general fund portion of the financial institution tax of $7.3 million. The 10/13ths portion of the financial institution tax revenues for the 2012 tax year due on January 15, 2014, is unaffected by this bill, and will be the last deposit into the financial institution tax distribution fund. The bill does not provide for a replacement of this revenue distribution to the counties, and results in an estimated shortfall of $9.8 million for the counties' share of the 2013 tax year, that would have become due on January 15, 2015.

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: 02/01/2013

13.8260.01003
Title.02000

Adopted by the Finance and Taxation Committee

February 12, 2013

2-13-13
1 of 4

PROPOSED AMENDMENTS TO SENATE BILL NO. 2364

Page 1, line 1, after "Act" insert "to"

Page 1, line 1, after "enact" insert "two new sections to chapter 57-38,"

Page 1, line 3, after "to" insert "a corporate income tax credit, utilization of net operating losses and credit carryforwards,"

Page 1, line 5, after the semicolon insert "to"

Page 1, line 7, remove the first "and"

Page 1, line 7, after "57-38-01.32" insert ", subdivisions c and f of subsection 2 of section 57-38-30.3, and section 57-39.2-26.1"

Page 1, line 10, after the second comma insert "state aid distribution fund allocations to political subdivisions,"

Page 1, line 10, remove "and"

Page 1, line 11, after "income" insert ", and income associated with losses passed through to a financial institution"

Page 1, line 11, remove "and subdivisions c and f of subsection 2 of section"

Page 1, line 12, remove "57-38-30.3"

Page 1, line 13, remove "and income associated with losses passed through to a financial institution"

Page 3, after line 29, insert:

"**SECTION 10.** A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Financial institutions - Net operating losses - Credit carryovers.

1. A subchapter S corporation that was a financial institution under chapter 57-35.3 may elect to be treated as a taxable corporation under chapter 57-38. If an election is made under this section, the election:

   a. Must be made in the form and manner prescribed by the tax commissioner on the return filed for the tax year beginning on January 1, 2013, or the return filed for the short period required under section 15 of this Act; and

   b. Is binding until the earlier of:

      (1) The end of the tax year for which the taxpayer reports a tax liability after tax credits; or

      (2) The beginning of the tax year for which the taxpayer elects to be recognized as a subchapter S corporation under section 57-38-01.4.

2. If an election is made under this section, the following apply:

   a. A subchapter S corporation may not file a consolidated return.

   b. Any unused credit carryovers earned by a financial institution under chapter 57-35.3 for tax years beginning before January 1, 2013, may be carried forward in the same number of years the financial institution would have been entitled under chapter 57-35.3.

   c. Any unused net operating losses incurred by a financial institution under chapter 57-35.3 for tax years beginning before January 1, 2013, may be carried forward for the same number of years the financial institution would have been entitled under chapter 57-35.3.

SECTION 11. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Corporate credit for contributions to rural leadership North Dakota.

There is allowed a credit against the tax imposed by section 57-38-30 in an amount equal to fifty percent of the aggregate amount of contributions made by the taxpayer during the taxable year for tuition scholarships for participation in rural leadership North Dakota conducted through the North Dakota state university extension service. Contributions by a taxpayer may be earmarked for use by a designated recipient.

SECTION 12. AMENDMENT. Subdivision c of subsection 2 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

c. Reduced by the amount equal to the earnings that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under ~~chapter 57-35.3~~section 7 of this Act.

SECTION 13. AMENDMENT. Subdivision f of subsection 2 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

f. Increased by an amount equal to the losses that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under ~~chapter 57-35.3~~section 7 of this Act."

Page 4, line 5, after the underscored period insert "This subsection applies to the first tax year beginning after December 31, 2012."

Page 4, after line 20, insert:

"**SECTION 18. AMENDMENT.** Section 57-39.2-26.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-26.1. Allocation of revenues among political subdivisions.

Notwithstanding any other provision of law, a portion of sales, gross receipts, use, and motor vehicle excise tax collections, equal to ~~forty~~forty-three and one-half percent of an amount determined by multiplying the quotient of one percent divided by the general sales tax rate, that was in effect when the taxes were collected, times the net sales, gross receipts, use, and motor vehicle excise tax collections under chapters 57-39.2, 57-39.5, 57-39.6, 57-40.2, and 57-40.3 must be deposited by the state treasurer in the state aid distribution fund. The state tax commissioner shall certify to the state treasurer the portion of sales, gross receipts, use, and motor vehicle excise tax net revenues that must be deposited in the state aid distribution fund as determined under this section. Revenues deposited in the state aid distribution fund are provided as a standing and continuing appropriation and must be allocated as follows:

1. Fifty-three and seven-tenths percent of the revenues must be allocated to counties in the first month after each quarterly period as provided in this subsection.

   a. Sixty-four percent of the amount must be allocated among the seventeen counties with the greatest population, in the following manner:

      (1) Thirty-two percent of the amount must be allocated equally among the counties; and

      (2) The remaining amount must be allocated based upon the proportion each such county's population bears to the total population of all such counties.

   b. Thirty-six percent of the amount must be allocated among all counties, excluding the seventeen counties with the greatest population, in the following manner:

      (1) Forty percent of the amount must be allocated equally among the counties; and

      (2) The remaining amount must be allocated based upon the proportion each such county's population bears to the total population of all such counties.

   A county shall deposit all revenues received under this subsection in the county general fund. Each county shall reserve a portion of its allocation under this subsection for further distribution to, or expenditure on behalf of, townships, rural fire protection districts, rural ambulance districts, soil conservation districts, county recreation service districts, county hospital districts, the Garrison Diversion Conservancy District, the southwest water authority, and other taxing districts within the county, excluding school districts, cities, and taxing districts within cities. The share of the county allocation under this subsection to be distributed to a township must be equal to the percentage of the county share of state aid distribution fund allocations that township received during calendar year 1996. The governing boards of the county and township may agree to a different distribution.

2. Forty-six and three-tenths percent of the revenues must be allocated to cities in the first month after each quarterly period based upon the proportion each city's population bears to the total population of all cities.

   A city shall deposit all revenues received under this subsection in the city general fund. Each city shall reserve a portion of its allocation under this subsection for further distribution to, or expenditure on behalf of, park districts and other taxing districts within the city, excluding school districts. The share of the city allocation under this subsection to be distributed to a park district must be equal to the percentage of the city share of state aid distribution fund allocations that park district received during calendar year

1996, up to a maximum of thirty percent. The governing boards of the city and park district may agree to a different distribution."

Page 4, line 21, remove "and subdivisions c and f of subsection 2 of"

Page 4, line 22, remove "section 57-38-30.3"

Page 4, line 22, replace "are" with "is"

Renumber accordingly

Date: 2-12-13
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2364

Senate Finance & Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 13.8260.01001

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Miller Seconded By Senator Burckhard

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

Total (Yes) 7 No 0

Absent 0

Floor Assignment

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

Verbal Vote

Date: 2-12-13
Roll Call Vote #: 2

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2364

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 Triplett Seconded By Senator Campbell

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

Total (Yes) 7 No 0

Absent 0

Floor Assignment ______

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

Verbal Vote

Tax Department Amendment (Attachment 5)

Date: 2-12-13
Roll Call Vote #: 3

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2364

Senate Finance & Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 13.8260.01002

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Campbell Seconded By Senator Oehlke

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

Total (Yes) 7 No 0

Absent 0

Floor Assignment

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

verbal vote

Date: 2-12-13
Roll Call Vote #: 4

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2364

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 Miller Seconded By Senator Burckhard

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	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Campbell

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

REPORT OF STANDING COMMITTEE

SB 2364: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2364 was placed on the Sixth order on the calendar.

Page 1, line 1, after "Act" insert "to"

Page 1, line 1, after "enact" insert "two new sections to chapter 57-38,"

Page 1, line 3, after "to" insert "a corporate income tax credit, utilization of net operating losses and credit carryforwards,"

Page 1, line 5, after the semicolon insert "to"

Page 1, line 7, remove the first "and"

Page 1, line 7, after "57-38-01.32" insert ", subdivisions c and f of subsection 2 of section 57-38-30.3, and section 57-39.2-26.1"

Page 1, line 10, after the second comma insert "state aid distribution fund allocations to political subdivisions,"

Page 1, line 10, remove "and"

Page 1, line 11, after "income" insert ", and income associated with losses passed through to a financial institution"

Page 1, line 11, remove "and subdivisions c and f of subsection 2 of section"

Page 1, line 12, remove "57-38-30.3"

Page 1, line 13, remove "and income associated with losses passed through to a financial institution"

Page 3, after line 29, insert:

"**SECTION 10.** A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Financial institutions - Net operating losses - Credit carryovers.

1. A subchapter S corporation that was a financial institution under chapter 57-35.3 may elect to be treated as a taxable corporation under chapter 57-38. If an election is made under this section, the election:

   a. Must be made in the form and manner prescribed by the tax commissioner on the return filed for the tax year beginning on January 1, 2013, or the return filed for the short period required under section 15 of this Act; and

   b. Is binding until the earlier of:

      (1) The end of the tax year for which the taxpayer reports a tax liability after tax credits; or

      (2) The beginning of the tax year for which the taxpayer elects to be recognized as a subchapter S corporation under section 57-38-01.4.

2. If an election is made under this section, the following apply:

   a. A subchapter S corporation may not file a consolidated return.

   b. Any unused credit carryovers earned by a financial institution under chapter 57-35.3 for tax years beginning before January 1, 2013, may be carried forward in the same number of years the financial institution would have been entitled under chapter 57-35.3.

   c. Any unused net operating losses incurred by a financial institution under chapter 57-35.3 for tax years beginning before January 1, 2013, may be carried forward for the same number of years the financial institution would have been entitled under chapter 57-35.3.

SECTION 11. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Corporate credit for contributions to rural leadership North Dakota.

There is allowed a credit against the tax imposed by section 57-38-30 in an amount equal to fifty percent of the aggregate amount of contributions made by the taxpayer during the taxable year for tuition scholarships for participation in rural leadership North Dakota conducted through the North Dakota state university extension service. Contributions by a taxpayer may be earmarked for use by a designated recipient.

SECTION 12. AMENDMENT. Subdivision c of subsection 2 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

c. Reduced by the amount equal to the earnings that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under ~~chapter 57-35.3~~section 7 of this Act.

SECTION 13. AMENDMENT. Subdivision f of subsection 2 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

f. Increased by an amount equal to the losses that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under ~~chapter 57-35.3~~section 7 of this Act."

Page 4, line 5, after the underscored period insert "This subsection applies to the first tax year beginning after December 31, 2012."

Page 4, after line 20, insert:

"**SECTION 18. AMENDMENT.** Section 57-39.2-26.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-26.1. Allocation of revenues among political subdivisions.

Notwithstanding any other provision of law, a portion of sales, gross receipts, use, and motor vehicle excise tax collections, equal to ~~forty~~forty-three and one-half percent of an amount determined by multiplying the quotient of one percent divided by the general sales tax rate, that was in effect when the taxes were collected, times the net sales, gross receipts, use, and motor vehicle excise tax collections under chapters 57-39.2, 57-39.5, 57-39.6, 57-40.2, and 57-40.3 must be deposited by the state treasurer in the state aid distribution fund. The state tax commissioner shall certify to the state treasurer the portion of sales, gross receipts, use, and motor vehicle excise tax net revenues that must be deposited in the state aid distribution fund as determined under this section. Revenues deposited in the state aid distribution fund are provided as a standing and continuing appropriation and must be allocated as follows:

1. Fifty-three and seven-tenths percent of the revenues must be allocated to counties in the first month after each quarterly period as provided in this subsection.

   a. Sixty-four percent of the amount must be allocated among the seventeen counties with the greatest population, in the following manner:

      (1) Thirty-two percent of the amount must be allocated equally among the counties; and

      (2) The remaining amount must be allocated based upon the proportion each such county's population bears to the total population of all such counties.

   b. Thirty-six percent of the amount must be allocated among all counties, excluding the seventeen counties with the greatest population, in the following manner:

      (1) Forty percent of the amount must be allocated equally among the counties; and

      (2) The remaining amount must be allocated based upon the proportion each such county's population bears to the total population of all such counties.

   A county shall deposit all revenues received under this subsection in the county general fund. Each county shall reserve a portion of its allocation under this subsection for further distribution to, or expenditure on behalf of, townships, rural fire protection districts, rural ambulance districts, soil conservation districts, county recreation service districts, county hospital districts, the Garrison Diversion Conservancy District, the southwest water authority, and other taxing districts within the county, excluding school districts, cities, and taxing districts within cities. The share of the county allocation under this subsection to be distributed to a township must be equal to the percentage of the county share of state aid distribution fund allocations that township received during calendar year 1996. The governing boards of the county and township may agree to a different distribution.

2. Forty-six and three-tenths percent of the revenues must be allocated to cities in the first month after each quarterly period based upon the proportion each city's population bears to the total population of all cities.

   A city shall deposit all revenues received under this subsection in the city general fund. Each city shall reserve a portion of its allocation under this subsection for further distribution to, or expenditure on behalf of, park districts and other taxing districts within the city, excluding school districts. The share of the city allocation under this subsection to be distributed to a park district must be equal to the percentage of the city share of state aid distribution fund allocations that park district received during calendar year 1996, up to a maximum of thirty percent. The governing boards of the city and park district may agree to a different distribution."

Page 4, line 21, remove "and subdivisions c and f of subsection 2 of"

Page 4, line 22, remove "section 57-38-30.3"

Page 4, line 22, replace "are" with "is"

Renumber accordingly

2013 SENATE APPROPRIATIONS

SB 2364

2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee
Harvest Room, State Capitol

SB 2364
02-20-2013
Job # 19268

☐ Conference Committee

Committee Clerk Signature	Alice Delzer

Explanation or reason for introduction of bill/resolution:

Relating to time for filing returns for certain corporations, interest, refunds and audits. (Do Pass as Amended)

Minutes: See attached testimony

Chairman Holmberg called the committee to order on Wednesday, February 20, 2013. All committee members were present. Adam Mathiak, Legislative Council and Joe Morrissette from OMB present.

Senator Cook, District 34 - This bill SB 2364 comes from the Senate Finance and Tax committee with a 7-0 do pass. It eliminates the financial institutions tax; it moves banks over to the corporate tax. (00:55)

Chairman Holmberg - I recall last session when we were looking at tax relief the financial institution folks were in, and this came out of your committee unanimous do pass.

Senator Cook - If you add amendments Senator Campbell is the carrier of the bill.

Matt Peyerl, Associate Director of Tax Administration Office - Handed out an excel spreadsheet. Testimony attached # 2. (3:25)

Chairman Holmberg - My understanding is the whole thing is to hold harmless the counties, but these amendments will make a change in that, still come out ahead, but not that much.

Matt Peyerl - Correct, with the amendments it will bring that down to be more even and of course that also includes all of the amounts in that bottom section. What the end result will be on the right amount to increase that percentage from state aid to hit the target that was desired.

Vice Chairman Grindberg - To clarify then, if we did nothing what would the counties and cities receive next biennium from financial institutions tax?

Matt Peyerl - The financial institution distribution fund goes to the counties and all of the political subdivisions that are part of that get part of that money which is a little bit different than the state aid distribution fund which I believe is paid specifically to counties and cities.

Vice Chairman Grindberg - The amendment would reduce $8.8 million down, cut in half?

Matt Peyerl - The amendment would strike row 49, so the positive $8.8 million would drop to a small negative.

Vice Chairman Grindberg - So then in the 2015-17 biennium what would happen?

Matt Peyerl - In the 2015-17 biennium there will be two years' worth of state aid distribution payments that I think would be estimated if $11 and $12 million, per year, so that is essentially 2 years' worth of replacement funding for the 2 years' worth of financial institutions distribution funding.

Vice Chairman Grindberg - The opportunity for this to grow, help me understand that, and then, I'd be right in assuming that if the banks statewide had terrific years and were very profitable and paid more tax, then the counties are going to benefit.

Matt Peyerl - It will be tied to growth and sale tax. As it is now the counties funding is tied to the bank income tax which can fluctuate and the past few years have been $6-9 million, as high as $13-14 million, so there is fluctuations based on the amount of income taxes that banks pay. (9:59)

Senator O'Connell - Has there been any looking if one of these other tax bills pass the reduction in tax what kind of results are there going to be then?

Matt Peyerl - I believe the fiscal note process or the scoring that was applied was just based on static statistics and not dynamic based on what might happen.

Rick Clayburgh, North Dakota Bankers Association - We support the bill. It does treat banks as other businesses in the state. But primarily our legislative committee was interested in supporting this legislation if we could ensure that we could hold the counties harmless. The way the bill came to you amended it does do that. It does have to be clarified; the current amendment has a technical flaw in terms of the date. The state aid distribution fund is set on a biennial fiscal year, the way it's set up in there it's on a calendar year, that would have to be adjusted and we also support the part of the amendment removing the emergency clause that was inadvertently put in during bill drafting, it's not needed.

Senator Krebsbach moved the amendment. Seconded by Senator Carlisle. All in favor of amendment # 13.8260.02001. Motion carried.

Senator Krebsbach moved a do pass as amended on 2364. Seconded by Senator Carlisle. A Roll Call vote was taken. Yea: 13; Nay: 0; Absent: 0. Senator Campbell will carry the bill.

The hearing was closed on SB 2364

FISCAL NOTE
Requested by Legislative Council
02/14/2013

Amendment to: SB 2364

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			$(3,120,000)	$21,620,000		
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).*

Engrossed SB 2364 repeals the financial institution tax and subjects the affected entities to the income tax. It also provides a special rule for certain affected entities to carry over unused losses and credits and provides a replacement of the lost revenue to the counties.

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.*

Sections 1 through 17 and 19 of the bill provide for the repeal of the North Dakota financial institution tax and subject the affected entities to the North Dakota income tax. They also provide a special rule under which an affected entity consisting of an S corporation may elect to be taxed like a regular corporation for the limited purpose of utilizing any unused financial institution losses and tax credits. These changes will affect both the state general fund and the financial institution tax distribution fund. Of the total financial institution tax revenue collected, 3/13ths is deposited into the state general fund, and the remaining 10/13ths is deposited into the financial institution tax distribution fund for distribution to the counties. Section 18 of the bill increases the portion of the statutorily-determined amount of sales and use, gross receipts, and motor vehicle excise tax collections deposited into the state aid distribution fund from 40 to 43.5 percent for the purpose of replacing the lost revenues to the counties from the repeal of the financial institution tax.

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.*

If enacted, Engrossed SB 2364 is expected to increase state general fund revenues by an estimated net amount of $18.5 million for the 2013-15 biennium, consisting of an estimated increase of $25.8 million in income tax revenue and an estimated decrease of $7.3 million due to the repeal of the general fund portion of the financial institution tax. This net positive impact to the general fund is offset by an estimated $21.62 million reduction in general fund revenues due to the additional amount required to be transferred to the state aid distribution fund (SADF) by Section 18 of the bill. Based on the statutory formula, the increase in the amount required to be transferred to the SADF equates to an increase from 8 to 8.7 percent of the sales, use, gross receipts, and motor vehicle excise tax collections. The additional amount transferred to the SADF is intended to replace the local government revenue lost with the repeal of the financial institution tax. The effective date in Section 20 of the bill, which refers to "taxable year," is appropriate for the income and financial institution tax portions of the bill; however, it does not coordinate with the SADF provisions in Section 18 of the bill. The amount shown under "Other Funds" in 1A assumes the effective date clause will be revised making the SADF changes effective for taxable events occurring on or after July 1, 2013. Alternatively, because the local government revenue loss affects only the second year of the 2013-15 biennium, consideration may also be given to making the SADF changes in the bill effective for taxable events occurring on or after July 1, 2014. (Note: The 10/13ths portion of the financial institution tax revenue for the 2012 tax year due on January 15, 2014, is unaffected by this bill, and will be the last deposit into the financial institution distribution fund for distribution to the counties and their political subdivisions in March of 2014.)

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: 02/19/2013

FISCAL NOTE
Requested by Legislative Council
01/29/2013

Bill/Resolution No.: SB 2364

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			$18,500,000			
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		$(9,800,000)	
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).*

SB 2364 repeals the North Dakota financial institution tax, and those entities that were subject to the financial institution tax will be subject to the North Dakota income tax.

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 2364 repeals the North Dakota financial institution tax, and those entities that were subject to the financial institution tax will be subject to the North Dakota income tax. This will affect both the state general fund and the financial institution tax distribution fund. Of the total financial institution tax revenue collected, 3/13ths is deposited into the state general fund and 10/13ths is deposited into the financial institution tax distribution fund. The revenues deposited into the financial institution tax distribution fund are distributed to the counties.

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.*

If enacted, SB 2364 is expected to increase state general fund revenues by an estimated net amount of $18.5 million for the 2013-15 biennium, consisting of an estimated increase of $25.8 million in income tax and an estimated decrease in the state general fund portion of the financial institution tax of $7.3 million. The 10/13ths portion of the financial institution tax revenues for the 2012 tax year due on January 15, 2014, is unaffected by this bill, and will be the last deposit into the financial institution tax distribution fund. The bill does not provide for a replacement of this revenue distribution to the counties, and results in an estimated shortfall of $9.8 million for the counties' share of the 2013 tax year, that would have become due on January 15, 2015.

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: 02/01/2013

13.8260.02001
Title.03000

Prepared by the Legislative Council staff for Senator Laffen
February 18, 2013

4B
2-20-13

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2364

Page 1, line 15, after the semicolon insert "and"

Page 1, line 16, remove "; and to declare an emergency"

Page 7, line 27, after "2012" insert ", except section 18 of this Act, which is effective for taxable events occurring after June 30, 2014"

Page 7, remove lines 28 and 29

Renumber accordingly

Date: 2-20-13

Roll Call Vote # 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2364

Senate Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken DPA

Motion Made By KK Seconded By Carlisle

Senators	Yes	No	Senator	Yes	No
Chariman Ray Holmberg	✓		Senator Tim Mathern	✓	
Co-Vice Chairman Bill Bowman	✓		Senator David O'Connell	✓	
Co-Vice Chair Tony Grindberg	✓		Senator Larry Robinson	✓	
Senator Ralph Kilzer	✓		Senator John Warner	✓	
Senator Karen Krebsbach	✓				
Senator Robert Erbele	✓				
Senator Terry Wanzek	✓				
Senator Ron Carlisle	✓				
Senator Gary Lee	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment S Campbell

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

REPORT OF STANDING COMMITTEE

SB 2364, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2364 was placed on the Sixth order on the calendar.

Page 1, line 15, after the semicolon insert "and"

Page 1, line 16, remove "; and to declare an emergency"

Page 7, line 27, after "2012" insert ", except section 18 of this Act, which is effective for taxable events occurring after June 30, 2014"

Page 7, remove lines 28 and 29

Renumber accordingly

2013 HOUSE FINANCE AND TAXATION

SB 2364

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2364
March 6, 2013
Job #19498

☐ Conference Committee

Committee Clerk Signature Lynell Thueson

Explanation or reason for introduction of bill/resolution:

A Bill relating to a corporate income tax credit, utilization of net operating losses and credit carry forwards, the time for filing of returns for certain corporations, interest on tax when the time for filing a return is extended, refunds of tax for certain corporations, and audits of certain corporations; relating to subjecting financial institutions to the corporate income tax, adjustments for net operating losses, bonds and other obligations of a commerce authority, creation of renaissance zones, state aid distribution fund allocations to political subdivision, the housing incentive fund tax credit, computation of farm income, and income associated with losses passed through to a financial institution; relating to elimination of the financial institutions tax.

Minutes:

Attached testimony #1, 2 and 2a, amendment #3

Chairman Belter: Opened hearing on SB 2364.

00:56 Senator Laffen: Introduced SB 2364.

Chairman Belter: Testimony in support of 2364?

03:40 Rick Clayburgh, CEO and President of the North Dakota Bankers Association: In support of the concept of SB 2364 if two things occur. By increasing the state aid distribution fund and making sure our banks are treated fairly.

09:28 Jim Goetz, Chairman and CEO of Security First Bank of North Dakota: See attached testimony #1.

Vice Chairman Headland: I'm assuming most of the independent banks file as S-corps?

Jim Goetz: I think sixty-five or seventy percent are S-corps.

Vice Chairman Headland: Most of them are the independent banks versus the corporate banks or does it matter?

Jim Goetz: The large corporate banks are all C-Corps.

Representative Trottier: Are deposits considered equity?

Jim Goetz: No.

John Brown, Executive Vice President of the Independent Community Banks in North Dakota. A concern is to make sure the counties are taken care of.

Chairman Belter: Any Neutral testimony?

Terry Traynor, North Dakota Association of Counties: We support this change.

16:56 Matt Peyerl, Associate Director, and Tax Administrator for the Office of State Tax Commissioner: See attached testimony **#2 and 2a**.

Matt Peyerl: Reviewed the bill and fiscal note from testimony. **(Ended 28:14)**

Vice Chairman Headland: I want to talk about section 10. At the end of those losses they will make a decision whether they want to continue to allow them to carry any future losses forward?

Matt Peyerl: In their first year (2013) if they have a loss, they will file a corporate income tax return which will reflect their ability to carry forward the loss. They will continue to carry this forward as long as they have a loss to continue to utilize. The first year they have income (after they deduct all losses), this will be their final year as being allowed to elect and be taxed as a C-corporation. They would revert to an S-corporation treatment automatically.

Vice Chairman Headland: These are losses that are already incurred and it doesn't include any future losses?

Matt Peyerl: Yes, they get to carry it forward as a deduction and a future year against future income.

31:07 Representative Kelsh: What are some of the financial implications if corporate tax rates are reduced? How are the counties going to be made whole? How will that affect the fiscal note on the loss of revenue to the state and the amount of money that will have to be put into the state aid distribution formula?

31:35 Matt Peyerl: The amounts that will be going to the counties through the increased percentage on the state aid distribution fund wouldn't be impacted by any reduction in tax rates. The state aid distribution fund is tied to sales tax collections and is a percent of the sales tax collections.

33:06 Representative Trottier: When this money is distributed to the counties and then goes to the cities, they distribute it to the cities then?

33:17 Matt Peyerl: The distribution the state makes goes to the counties. All the political subdivisions have a share in that.

Representative Trottier: How is it determined how much each city gets? Is it based on sales tax?

33:47 Matt Peyerl: The distribution goes to the county. It's set in statute based on the amount of tax the branches in that county paid in 1991-1996.

35:06 Representative Froseth: Has the state financial institutions tax comparable to the amount of income taxes collected so they will pay the same amount of tax on either method?

35:39 Matt Peyerl: In years prior to 2003 they would have been very similar.

37:29 Representative Froseth: How would the two bills passed earlier reduced compare in this next biennium? Would the banks get a bigger reduction in the income tax rather than the half percent reduction in their financial tax?

38:04 Matt Peyerl: The reduction from 6.5% to 6% is a little less than a 10% reduction.

Distributed amendment. See attached amendment **#3**

Hearing closed.

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2364
March 13, 2013
Job #19864

☐ Conference Committee

Committee Clerk Signature Mary Brucker

Minutes:

Attached amendment .03001

Vice Chairman Headland: We were given an amendment because there was a typo. I will **make a motion to adopt the proposed amendment from the tax commissioner's office.** On page 5 line 7 it replaces the section 7 with section 10.

Representative Klein: Seconded.

VOICE VOTE: MOTION CARRIES.

Vice Chairman Headland: Made a motion for a Do Pass as Amended.

Representative Klein: Seconded.

Representative Drovdal: I thought this was a tax decrease but it shows a general fund increase of $7 million and other funds at $12 million. Can you explain that please?

Vice Chairman Headland: I think that $7 million assumes that there is no tax relief given which we provided in HB 1250. That would have to pass in order to get the fiscal note removed.

Representative Drovdal: This is a tax break for financial institutions. Currently some of their money goes to the county so are we covering the loss to the county?

Vice Chairman Headland: I think somebody is here to address this.

Rick Clayburgh, President of Bankers Association: There is a positive tax impact to some financial institutions and it's the sub s banks that have been an artificially high tax because there aren't allowed the corporate income tax deduction that the c corps banks can take because theirs are filed at the institution level and passed down to their individual return. By eliminating this they are going to be going to the individual rate like all other subchapter s banks or s corps banks in the state so they will be paying the tax they should be paying; a fairer tax. This is correcting an inequity. The second issue is that the financial institution tax, currently 6 ½%, 5% of it goes to the counties and ½% goes to the state. In order to hold the counties harmless this bill has an amendment to increase the state aid distribution which comes from sales tax from .4 to .435%. The counties now will have a stable income source compared to the financial institution tax which can fluctuate with economic activity.

Representative Drovdal: The fiscal note shows a positive impact but you're talking about a reduction to the state.

Rick Clayburgh: The state will receive a positive $18 million based on this fiscal note because all of the money that banks will now pay under the corporate and individual tax system goes to the state. In the past some of that went to the state and some of it went to the counties and now all of it is going to the state so it boosts the general fund while the special fund side is dropped and the net impact is not $7 million but in the range of $4 or 4 ½ million.

Representative Drovdal: The negative impact is in another bill.

Rick Clayburgh: This biennium it is a positive $18 million for the general fund no matter what. The hold harmless for the counties doesn't start until July 1 of 2015, the second year of the biennium. The banks next year will be paying both the financial institution tax and the corporate tax so there is one year where the counties will receive their normal payment.

Representative Froseth: Are all the independent community banks, state banks, and national banks treated the same in this taxing structure?

Rick Clayburgh: Yes. The c corps banks will now be treated just like all other corporations in the state. The subchapter s businesses will be treated the same way as other subchapter s businesses. With passthrough entities or limited liability partnerships and corporations the income that is earned at the business levy is passed down to the shareholders then the shareholders report that on their tax returns. Corporations all pay it at the corporate level; sometimes their dividends are taxed to the individual but they pay it up here. The banks are going to be treated like all other businesses in North Dakota. Currently our c corps banks enjoy a corporate income tax deduction that makes their effective tax rate a little bit lower than the corporate rate. With the passing of this bill our c corps banks will see a slight increase.

ROLL CALL VOTE FOR DO PASS: 12 YES 0 NO 2 ABSENT

Representative Trottier will carry this bill.

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2364
April 1, 2013
Job #20712

☐ Conference Committee

Committee Clerk Signature	Mary Brucker

Minutes:

Chairman Belter: Could I have a motion to reconsider our action on SB 2364?

Representative Drovdal: Made a motion to reconsider.

Representative Klein: Seconded.

VOICE VOTE: MOTION CARRIED.

Vice Chairman Headland: Made a motion to further amend on page 6 line 10 remove the new language of 43 ½ and remove the overstrike over the 40.

Representative Dockter: Seconded.

VOICE VOTE: MOTION CARRIED.

Vice Chairman Headland: Made a motion for a Do Pass as Amended.

Representative Owens: Seconded.

Representative Drovdal: Is this going to change the fiscal note?

Chairman Belter: Yes, it will change it.

Vice Chairman Headland: You should be able to go to the legislative forecast and that should be the difference in what this bill does.

ROLL CALL VOTE: 13 YES 0 NO 1 ABSENT

Representative Trottier will carry this bill.

FISCAL NOTE
Requested by Legislative Council
04/02/2013

Amendment to: SB 2364

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			$18,500,000			
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).*

SB 2364 Second Engrossment with House Amendments repeals the financial institution tax and subjects the affected entities to the income tax. It also provides a special rule for certain affected entities to carry over unused losses and credits.

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.*

Sections 1 through 18 of the bill provide for the repeal of the North Dakota financial institution tax and subject the affected entities to the North Dakota income tax. They also provide a special rule under which an affected entity consisting of an S corporation may elect to be taxed like a regular corporation for the limited purpose of utilizing any unused financial institution losses and tax credits. These changes will affect both the state general fund and the financial institution tax distribution fund. Of the total financial institution tax revenue collected, 3/13ths is deposited into the state general fund, and the remaining 10/13ths is deposited into the financial institution tax distribution fund for distribution to the counties.

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.*

If enacted, SB 2364 Second Engrossment with House Amendments is expected to increase state general fund revenues by an estimated net amount of $18.5 million for the 2013-15 biennium, consisting of an estimated increase of $25.8 million in income tax revenue and an estimated decrease of $7.3 million due to the repeal of the general fund portion of the financial institution tax. Note: The 10/13ths portion of the financial institution tax revenue for the 2012 tax year due on January 15, 2014, is unaffected by this bill, and will be the last deposit into the financial institution distribution fund for distribution to the counties and their political subdivisions in March of 2014.

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: 04/03/2013

FISCAL NOTE
Requested by Legislative Council
02/20/2013

Amendment to: SB 2364

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			$6,910,000	$11,590,000		
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).*

SB 2364 Second Engrossment repeals the financial institution tax and subjects the affected entities to the income tax. It also provides a special rule for certain affected entities to carry over unused losses and credits and provides a replacement of the lost revenue to the counties.

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.*

Sections 1 through 17 and 19 of the bill provide for the repeal of the North Dakota financial institution tax and subject the affected entities to the North Dakota income tax. They also provide a special rule under which an affected entity consisting of an S corporation may elect to be taxed like a regular corporation for the limited purpose of utilizing any unused financial institution losses and tax credits. These changes will affect both the state general fund and the financial institution tax distribution fund. Of the total financial institution tax revenue collected, 3/13ths is deposited into the state general fund, and the remaining 10/13ths is deposited into the financial institution tax distribution fund for distribution to the counties. Section 18 of the bill increases the portion of the statutorily-determined amount of sales and use, gross receipts, and motor vehicle excise tax collections deposited into the state aid distribution fund from 40 to 43.5 percent for the purpose of replacing the lost revenues to the counties from the repeal of the financial institution tax.

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.*

If enacted, SB 2364 Second Engrossment is expected to increase state general fund revenues by an estimated net amount of $18.5 million for the 2013-15 biennium, consisting of an estimated increase of $25.8 million in income tax revenue and an estimated decrease of $7.3 million due to the repeal of the general fund portion of the financial institution tax. This net positive impact to the general fund is partially offset by an estimated $11.59 million reduction in general fund revenues due to the additional amount required to be transferred to the state aid distribution fund (SADF) by Section 18 of the bill. Based on the statutory formula, the increase in the amount required to be transferred to the SADF equates to an increase from 8 to 8.7 percent of the sales, use, gross receipts, and motor vehicle excise tax collections. The additional amount transferred to the SADF replaces the local government revenue lost with the repeal of the financial institution tax. Note: The 10/13ths portion of the financial institution tax revenue for the 2012 tax year due on January 15, 2014, is unaffected by this bill, and will be the last deposit into the financial institution distribution fund for distribution to the counties and their political subdivisions in March of 2014. Beginning in October of 2014, counties and cities will receive the expanded SADF distributions each quarter which will replace their annual financial institutions tax distributions they had previously received each March.

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: 02/21/2013

FISCAL NOTE
Requested by Legislative Council
02/20/2013

Amendment to: SB 2364

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			$6,910,000	$11,590,000		
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).*

SB 2364 Second Engrossment repeals the financial institution tax and subjects the affected entities to the income tax. It also provides a special rule for certain affected entities to carry over unused losses and credits and provides a replacement of the lost revenue to the counties.

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.*

Sections 1 through 17 and 19 of the bill provide for the repeal of the North Dakota financial institution tax and subject the affected entities to the North Dakota income tax. They also provide a special rule under which an affected entity consisting of an S corporation may elect to be taxed like a regular corporation for the limited purpose of utilizing any unused financial institution losses and tax credits. These changes will affect both the state general fund and the financial institution tax distribution fund. Of the total financial institution tax revenue collected, 3/13ths is deposited into the state general fund, and the remaining 10/13ths is deposited into the financial institution tax distribution fund for distribution to the counties. Section 18 of the bill increases the portion of the statutorily-determined amount of sales and use, gross receipts, and motor vehicle excise tax collections deposited into the state aid distribution fund from 40 to 43.5 percent for the purpose of replacing the lost revenues to the counties from the repeal of the financial institution tax.

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.*

If enacted, SB 2364 Second Engrossment is expected to increase state general fund revenues by an estimated net amount of $18.5 million for the 2013-15 biennium, consisting of an estimated increase of $25.8 million in income tax revenue and an estimated decrease of $7.3 million due to the repeal of the general fund portion of the financial institution tax. This net positive impact to the general fund is partially offset by an estimated $11.59 million reduction in general fund revenues due to the additional amount required to be transferred to the state aid distribution fund (SADF) by Section 18 of the bill. Based on the statutory formula, the increase in the amount required to be transferred to the SADF equates to an increase from 8 to 8.7 percent of the sales, use, gross receipts, and motor vehicle excise tax collections. The additional amount transferred to the SADF replaces the local government revenue lost with the repeal of the financial institution tax. Note: The 10/13ths portion of the financial institution tax revenue for the 2012 tax year due on January 15, 2014, is unaffected by this bill, and will be the last deposit into the financial institution distribution fund for distribution to the counties and their political subdivisions in March of 2014. Beginning in October of 2014, counties and cities will receive the expanded SADF distributions each quarter which will replace their annual financial institutions tax distributions they had previously received each March.

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: 02/21/2013

FISCAL NOTE
Requested by Legislative Council
02/14/2013

Amendment to: SB 2364

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			$(3,120,000)	$21,620,000		
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).*

Engrossed SB 2364 repeals the financial institution tax and subjects the affected entities to the income tax. It also provides a special rule for certain affected entities to carry over unused losses and credits and provides a replacement of the lost revenue to the counties.

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.*

Sections 1 through 17 and 19 of the bill provide for the repeal of the North Dakota financial institution tax and subject the affected entities to the North Dakota income tax. They also provide a special rule under which an affected entity consisting of an S corporation may elect to be taxed like a regular corporation for the limited purpose of utilizing any unused financial institution losses and tax credits. These changes will affect both the state general fund and the financial institution tax distribution fund. Of the total financial institution tax revenue collected, 3/13ths is deposited into the state general fund, and the remaining 10/13ths is deposited into the financial institution tax distribution fund for distribution to the counties. Section 18 of the bill increases the portion of the statutorily-determined amount of sales and use, gross receipts, and motor vehicle excise tax collections deposited into the state aid distribution fund from 40 to 43.5 percent for the purpose of replacing the lost revenues to the counties from the repeal of the financial institution tax.

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.*

If enacted, Engrossed SB 2364 is expected to increase state general fund revenues by an estimated net amount of $18.5 million for the 2013-15 biennium, consisting of an estimated increase of $25.8 million in income tax revenue and an estimated decrease of $7.3 million due to the repeal of the general fund portion of the financial institution tax. This net positive impact to the general fund is offset by an estimated $21.62 million reduction in general fund revenues due to the additional amount required to be transferred to the state aid distribution fund (SADF) by Section 18 of the bill. Based on the statutory formula, the increase in the amount required to be transferred to the SADF equates to an increase from 8 to 8.7 percent of the sales, use, gross receipts, and motor vehicle excise tax collections. The additional amount transferred to the SADF is intended to replace the local government revenue lost with the repeal of the financial institution tax. The effective date in Section 20 of the bill, which refers to "taxable year," is appropriate for the income and financial institution tax portions of the bill; however, it does not coordinate with the SADF provisions in Section 18 of the bill. The amount shown under "Other Funds" in 1A assumes the effective date clause will be revised making the SADF changes effective for taxable events occurring on or after July 1, 2013. Alternatively, because the local government revenue loss affects only the second year of the 2013-15 biennium, consideration may also be given to making the SADF changes in the bill effective for taxable events occurring on or after July 1, 2014. (Note: The 10/13ths portion of the financial institution tax revenue for the 2012 tax year due on January 15, 2014, is unaffected by this bill, and will be the last deposit into the financial institution distribution fund for distribution to the counties and their political subdivisions in March of 2014.)

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: 02/19/2013

FISCAL NOTE
Requested by Legislative Council
01/29/2013

Bill/Resolution No.: SB 2364

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			$18,500,000			
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		$(9,800,000)	
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).*

SB 2364 repeals the North Dakota financial institution tax, and those entities that were subject to the financial institution tax will be subject to the North Dakota income tax.

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 2364 repeals the North Dakota financial institution tax, and those entities that were subject to the financial institution tax will be subject to the North Dakota income tax. This will affect both the state general fund and the financial institution tax distribution fund. Of the total financial institution tax revenue collected, 3/13ths is deposited into the state general fund and 10/13ths is deposited into the financial institution tax distribution fund. The revenues deposited into the financial institution tax distribution fund are distributed to the counties.

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.*

If enacted, SB 2364 is expected to increase state general fund revenues by an estimated net amount of $18.5 million for the 2013-15 biennium, consisting of an estimated increase of $25.8 million in income tax and an estimated decrease in the state general fund portion of the financial institution tax of $7.3 million. The 10/13ths portion of the financial institution tax revenues for the 2012 tax year due on January 15, 2014, is unaffected by this bill, and will be the last deposit into the financial institution tax distribution fund. The bill does not provide for a replacement of this revenue distribution to the counties, and results in an estimated shortfall of $9.8 million for the counties' share of the 2013 tax year, that would have become due on January 15, 2015.

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: 02/01/2013

VK
3/13/13

13.8260.03001
Title.04000

Adopted by the Finance and Taxation Committee

March 13, 2013

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2364

Page 5, line 7, replace "7" with "10"

Page 5, line 12, replace "7" with "10"

Renumber accordingly

VK
4/1/13

13.8260.03002
Title.05000

Adopted by the Finance and Taxation Committee

April 1, 2013

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2364

Page 1, line 9, after the first comma insert "and"

Page 1, line 9, remove ", and section"

Page 1, line 10, remove "57-39.2-26.1"

Page 1, line 12, remove "state aid distribution fund allocations to"

Page 1, line 13, remove "political subdivisions,"

Page 6, remove lines 6 through 30

Page 7, remove lines 1 through 24

Page 7, line 27, remove ", except section 18 of this Act, which is effective for taxable events occurring"

Page 7, line 28, remove "after June 30, 2014"

Renumber accordingly

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

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2364

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
Tax Commissioner's

Motion Made By Rep. Headland Seconded By Rep. Klein

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					

VOICE VOTE > MOTION CARRIES

Total (Yes) ______ No ______

Absent ______

Floor Assignment ______

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

p. 5 line 7 replaces Section 7 with Section 10.

Date: 3-13-13
Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2364

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. Headland Seconded By Rep. Klein

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	AB	
Rep. David Drovdal	√		Rep. Marie Strinden	√	
Rep. Glen Froseth	√				
Rep. Mark Owens	AB				
Rep. Patrick Hatlestad	√				
Rep. Wayne Trottier	√				
Rep. Jason Dockter	√				
Rep. Jim Schmidt	√				

Total (Yes) 12 No 0

Absent ~~0~~ 2

Floor Assignment Rep. Trottier

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

Date: 4-1-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2364

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. Drovdal Seconded By Rep. Klein

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					

VOICE VOTE = MOTION CARRIED

Total (Yes) ________ No ________

Absent ________

Floor Assignment ________

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

Date: 4-1-13
Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2364

House Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number ______

Action Taken: ☐ Do Pass ☐ Do Not Pass ☒ Amended p. 6 line 10 ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Headland Seconded By Rep. Dockter

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					

VOICE VOTE - MOTION CARRIED

Total (Yes) ______ No ______

Absent ______

Floor Assignment ______

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

Page 6, On line ~~8~~ 10 remove 43 1/2 + the overstrike over 40.

Date: 4-1-13
Roll Call Vote #: 3

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2364

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. Headland Seconded By Rep. Owens

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) 13 No 0

Absent 1

Floor Assignment Rep. Trottier

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

REPORT OF STANDING COMMITTEE

SB 2364, as reengrossed: 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). Reengrossed SB 2364 was placed on the Sixth order on the calendar.

Page 1, line 9, after the first comma insert "and"

Page 1, line 9, remove ", and section"

Page 1, line 10, remove "57-39.2-26.1"

Page 1, line 12, remove "state aid distribution fund allocations to"

Page 1, line 13, remove "political subdivisions,"

Page 6, remove lines 6 through 30

Page 7, remove lines 1 through 24

Page 7, line 27, remove ", except section 18 of this Act, which is effective for taxable events occurring"

Page 7, line 28, remove "after June 30, 2014"

Renumber accordingly

2013 TESTIMONY

SB 2364

1

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

SENATE BILL 2364

February 4, 2013

Chairman Cook, members of the Senate Finance and Taxation Committee, my name is Matt Peyerl, Associate Director, Tax Administration, for the Office of State Tax Commissioner. I am here today to explain Senate Bill 2364.

PROPOSED CHANGES

This bill would repeal the Financial Institution Tax (FIT), found in section 14 of the bill, and subject entities that are currently financial institutions to regular income tax. Under the proposed change, financial institutions would be subject to either corporate income tax or personal income tax for income passed through from a passthrough entity.

EXPLANATION OF THE BILL

Section 1

This section repeals the reference to N.D.C.C. § 57-35.3-03 related to certain bonds being exempt from FIT.

Section 2

This section deletes the term "financial institution" as a term that describes a taxpayer that would have been taxable under N.D.C.C. chapter 57-35.3.

Sections 3 through 6

These four sections are all related to existing Renaissance Zone tax incentives that are applicable for FIT. With a repeal of the FIT, the references are no longer applicable and are being stricken.

Section 7

This provision relates to the current Net Operating Loss (NOL) deduction that is available to C-corporations. If a financial institution is a C-corporation and has a North Dakota NOL to carryover after 2012, this provision allows for that NOL to be a deduction on the subsequent corporation income tax returns for 2013 and forward. An item similar to this provision is the subject of one of the two amendments that will also be discussed.

Sections 8 and 9

These two sections relate to the current tax credit for contributions to the Housing Incentive Fund as an allowable credit against FIT. With a repeal of the FIT, the references are no longer applicable and are being stricken.

Section 10

Under current FIT law, the due date of the 10/13 portion of the total tax is due January 15 of the year after the return was due. For example, the return for the 2010 calendar tax year was due April 15, 2011. Of the total tax to be owed, 10/13 is due on January 15, 2012. In the year of transition to be taxed as a regular corporate taxpayer, there would be a final FIT payment due January 15, 2014 (relating to the 2012 tax year) along with a payment due April 15, 2014 (relating to the 2013 tax year), the first year paying the regular income tax. This provision will allow for a six-month deferral of the first corporate income tax payment without any charge for penalty or interest. The Tax Department has also provided an amendment to this section of the bill that will indicate this provision applies only to tax year 2013 as a one-time transition issue.

Section 11

This section also relates to a one-time transition year issue. The current FIT law requires a tax return to be filed on a calendar year basis. Regular income tax allows for fiscal tax year filing based on the taxpayer's year for federal income tax purposes. This provision will require the first return to be filed for a short period beginning January 1, 2013, through the end of the taxpayer's fiscal year. This will only apply in 2013.

/

Section 12

This section relates to the taxpayer's requirement to amend FIT returns and the Tax Department's ability to audit returns that were filed as FIT returns for years the FIT applied.

Section 13

The section provides the authority under which a taxpayer that filed FIT returns would be able to amend a return and claim the associated refund pursuant to the existing income tax provisions for making claims of refunds.

Section 14

This section repeals N.D.C.C. chapter 57-35.3 which includes all of the provisions related to imposition of the FIT.

Section 15

The provisions of the bill would take effect January 1, 2013, so the last year of the FIT would be calendar year 2012.

EXPLANATION OF THE FISCAL NOTE

The narrative of the fiscal note lays out the total increase of $18.5 million to general fund revenues. To get to that number, without any changes to statute, the fiscal note assumes all banks would have total FIT liability of $16.4 million per year, so $32.8 million for the biennium. As called for in this bill, if all financial institutions would instead be taxed as corporations and regular passthrough entities, that state's general fund would receive 100% of that tax and it would be $25.8 million. Thus, financial institutions would be paying $7.0 million less in total tax.

The net impact to the state general fund $25.8 million, less $7.3 million, which is what the state's 3/13 share of the FIT tax would have been. Therefore, the net impact to the general fund is $18.5 million.

The overall reduction of revenues to the counties was estimated to be the 10/13 share of the 2013 tax year collections that would otherwise have been distributed to the counties in January 2015. The January 2014 distribution (related to tax year 2012 FIT collections) would

/

not be affected. Therefore, there was only one year's worth of impact on the distribution fund falling within the 2013-2015 biennium.

As with any significant change in tax structure, there may be taxpayers that have a higher or lower tax under the new structure. With respect to the overall reduction of tax liability of $7.0 million for financial institutions, about one third of all financial institutions are S-corporations. Instead of paying tax at a FIT rate of 6.5%, income tax would instead be paid by the owners at the personal income tax rates, with the top rate being 3.99%. This accounts for the bulk of the $7.0 million reduction in total tax that would be paid by financial institutions. Based on our analysis, the overall tax liability of C-corporations that are financial institutions would be fairly similar to the current level of tax, which is because the "effective" FIT tax rate for a C-corporation (after considering the deduction for federal income taxes) is very similar to the existing corporate income tax rate, which has a top rate of 5.15%.

EXPLANATION OF THE AMENDMENTS

Amendment #1 is being offered by the Tax Department. It is a change to Section 10 of the bill to indicate the six-month deferral of the payment due date for corporate income tax would only be a one-time provision that applies only to 2013.

Amendment #2 was drafted at the request of Committee Chairman Cook. This amendment is similar in nature to how Section 7 addresses North Dakota NOLs for C-corporations. About one-third of financial institutions are S-corporations. Under FIT law, these entities are essentially being taxed by North Dakota as a C-corporation, whereby an entity that incurs a NOL can carry the NOL forward to the next year to deduct against FIT taxable income. By changing the treatment of these S-corporations to be actual passthrough entities, there was no provision in the bill to allow for the carryover of any unused NOL the S-corporation may still have as of the end of 2012. This provision will allow the remaining balance of NOL to be passed through to the individual shareholders and taken as a deduction on the owners' personal income tax returns.

2

Prepared by the Office of
State Tax Commissioner for the
Senate Finance & Taxation Committee
February 4, 2013

PROPOSED AMENDMENTS TO SENATE BILL NO. 2364

Page 4, line 5, after the period insert "This subsection applies to the first tax year beginning after December 31, 2012."

Renumber accordingly

3

Prepared by the Office of
State Tax Commissioner for the
Senate Finance & Taxation Committee
February 4, 2013

PROPOSED AMENDMENTS TO SENATE BILL NO. 2364

Page 1, line 1, after "enact" insert "a new subdivision to subsection 2 of section 57-38-30.3,"

Page 1, line 3, after "to" insert "the passthrough of net operating losses for individual shareholders of subchapter S financial institutions,"

Page 3, after line 29, insert:

"**SECTION 10.** A new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

For an individual who is a shareholder of a subchapter S corporation that was a financial institution under chapter 57-35.3, reduced by an amount equal to the unused net operating loss attributable to North Dakota sources generated by the financial institution prior to December 31, 2012. To the extent the reduction in this subdivision exceeds North Dakota taxable income, the difference may reduce taxable income each subsequent year, not to exceed the same number of years the financial institution would have been entitled under chapter 57-35.3."

Renumber accordingly

13.8260.01001
Title.

Prepared by the Legislative Council staff for
Senator Cook
February 7, 2013

PROPOSED AMENDMENTS TO SENATE BILL NO. 2364

Page 1, line 1, after "Act" insert "to"

Page 1, line 1, after "enact" insert "a new section to chapter 57-38,"

Page 1, line 3, after "to" insert "a corporate income tax credit for contributions to rural leadership North Dakota,"

Page 1, line 5, after the semicolon insert "to"

Page 3, after line 29, insert:

"**SECTION 10.** A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Corporate credit for contributions to rural leadership North Dakota.

There is allowed a credit against the tax imposed by section 57-38-30 in an amount equal to fifty percent of the aggregate amount of contributions made by the taxpayer during the taxable year for tuition scholarships for participation in rural leadership North Dakota conducted through the North Dakota state university extension service. Contributions by a taxpayer may be earmarked for use by a designated recipient."

Renumber accordingly

5

Prepared by the Office of
State Tax Commissioner for the
Senate Finance & Taxation Committee
February 8, 2013

PROPOSED AMENDMENTS TO HOUSE BILL NO. 2364

Page 1, line 1, after "enact" insert "a new section to chapter 57-38,"

Page 1, line 3, after "to" insert "the ability of subchapter S corporations to utilize unused net operating losses and credit carryforwards incurred when taxed as a financial institution,"

Page 1, line 7, remove "and"

Page 1, line 7, after "57-38-01.32" insert ", and subdivisions c and f of subsection 2 of section 57-38.30.3"

Page 1, line 10, remove "and"

Page 1, line 11, after "income" insert ", and income associated with losses passed through to a financial institution"

Page 1, line 11, remove "and subdivisions c and f of subsection 2 of section"

Page 1, line 12, remove "57-38-30.3"

Page 1, line 13, remove "and income associated with losses passed through to a financial institution"

Page 3, after line 4, insert:

"**SECTION 7.** A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Financial institutions – net operating losses – credit carryovers.

1. A subchapter S corporation that was a financial institution under chapter 57-35.3 may elect to be treated as a taxable corporation under chapter 57-38. If an election is made under this section, the election:
   a. Must be made in the form and manner prescribed by the tax commissioner on the return filed for the tax year beginning on January 1, 2013, or the return filed for the short period required under section 13 of this Act; and
   b. Is binding until the earlier of:
      (1) The end of the tax year for which the taxpayer reports a tax liability after tax credits; or
      (2) The beginning of the tax year for which the taxpayer elects to be recognized as a subchapter S corporation under section 57-38-01.4.

5

2. If an election is made under this section the following apply:
   a. A subchapter S corporation may not file a consolidated return.
   b. Any unused credit carryovers earned by a financial institution under chapter 57-35.3 for tax years beginning before January 1, 2013, may be carried forward for the same number of years the financial institution would have been entitled under chapter 57-35.3.
   c. Any unused net operating losses incurred by a financial institution under chapter 57-35.3 for tax years beginning before January 1, 2013, may be carried forward for the same number of years the financial institution would have been entitled under chapter 57-35.3."

Page 3, after line 29, insert:

"**SECTION 11. AMENDMENT.** Subdivisions c and f of subsection 2 of section 57-38.30.3 of the North Dakota Century Code are amended and reenacted as follows:

c. Reduced by the amount equal to the earnings that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under ~~chapter 57-35.3~~ section 7 of this Act.

f. Increased by an amount equal to the losses that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under ~~chapter 57-35.3~~ section 7 of this Act."

Page 4, line 5, after the period insert "This subsection applies to the first tax year beginning after December 31, 2012."

Page 4, line 21, remove "and subdivisions c and f of subsection 2 of"

Page 4, line 22, remove "section 57-38-30.3"

Page 4, line replace "are" with "is"

Renumber accordingly

6.

13.8260.01002
Title.

Prepared by the Legislative Council staff for Senator Campbell
February 12, 2013

PROPOSED AMENDMENTS TO SENATE BILL NO. 2364

Page 1, line 1, after "Act" insert "to"

Page 1, line 5, after the semicolon insert "to"

Page 1, line 7, remove the first "and"

Page 1, line 7, after "57-38-01.32" insert ", and section 57-39.2-26.1"

Page 1, line 10, after the second comma insert "state aid distribution fund allocations to political subdivisions,"

Page 4, after line 20, insert:

"**SECTION 14. AMENDMENT.** Section 57-39.2-26.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-26.1. Allocation of revenues among political subdivisions.

Notwithstanding any other provision of law, a portion of sales, gross receipts, use, and motor vehicle excise tax collections, equal to ~~forty~~<u>forty-three and one-half</u> percent of an amount determined by multiplying the quotient of one percent divided by the general sales tax rate, that was in effect when the taxes were collected, times the net sales, gross receipts, use, and motor vehicle excise tax collections under chapters 57-39.2, 57-39.5, 57-39.6, 57-40.2, and 57-40.3 must be deposited by the state treasurer in the state aid distribution fund. The state tax commissioner shall certify to the state treasurer the portion of sales, gross receipts, use, and motor vehicle excise tax net revenues that must be deposited in the state aid distribution fund as determined under this section. Revenues deposited in the state aid distribution fund are provided as a standing and continuing appropriation and must be allocated as follows:

1. Fifty-three and seven-tenths percent of the revenues must be allocated to counties in the first month after each quarterly period as provided in this subsection.

    a. Sixty-four percent of the amount must be allocated among the seventeen counties with the greatest population, in the following manner:

        (1) Thirty-two percent of the amount must be allocated equally among the counties; and

        (2) The remaining amount must be allocated based upon the proportion each such county's population bears to the total population of all such counties.

    b. Thirty-six percent of the amount must be allocated among all counties, excluding the seventeen counties with the greatest population, in the following manner:

        (1) Forty percent of the amount must be allocated equally among the counties; and

(2) The remaining amount must be allocated based upon the proportion each such county's population bears to the total population of all such counties.

A county shall deposit all revenues received under this subsection in the county general fund. Each county shall reserve a portion of its allocation under this subsection for further distribution to, or expenditure on behalf of, townships, rural fire protection districts, rural ambulance districts, soil conservation districts, county recreation service districts, county hospital districts, the Garrison Diversion Conservancy District, the southwest water authority, and other taxing districts within the county, excluding school districts, cities, and taxing districts within cities. The share of the county allocation under this subsection to be distributed to a township must be equal to the percentage of the county share of state aid distribution fund allocations that township received during calendar year 1996. The governing boards of the county and township may agree to a different distribution.

2. Forty-six and three-tenths percent of the revenues must be allocated to cities in the first month after each quarterly period based upon the proportion each city's population bears to the total population of all cities.

A city shall deposit all revenues received under this subsection in the city general fund. Each city shall reserve a portion of its allocation under this subsection for further distribution to, or expenditure on behalf of, park districts and other taxing districts within the city, excluding school districts. The share of the city allocation under this subsection to be distributed to a park district must be equal to the percentage of the city share of state aid distribution fund allocations that park district received during calendar year 1996, up to a maximum of thirty percent. The governing boards of the city and park district may agree to a different distribution."

Renumber accordingly

#1

HOUSE FINANCE AND TAXATION COMMITTEE – SB 2364

Chairman Belter, Members of the Committee, good morning. My name is Jim Goetz, and I am the Chairman and CEO of Security First Bank of North Dakota, with offices in Center, New Salem, Mandan and Bismarck. I am also a past President of the Independent Community Banks of North Dakota, and a current member of that Organization's Legislative Committee. I have also served on various committees of the Independent Community Banks of America for well over 20 years.

I am here to ask that you strongly support SB 2364. This bill repeals the financial institutions tax that North Dakota's community banks pay, and instead taxes our community banks like other corporations. The financial institutions tax is an archaic tax system that has become unfair and no longer makes any sense.

The financial institutions income tax, which is currently 6.5%, is divided between the State and the counties with the State receiving 1.5%, and the counties receiving 5.0%. At one time each bank paid the county's share of the financial institutions tax directly to the county the bank was located in. Then in the late 1990s, the law was changed to require banks to pay the county's share of the tax directly to the state, and the state in turn then distributes that tax to the counties using a formula that allocates amount of tax that each county is paid based on the percentage of the total tax collected statewide that each county collected between 1993 and 1997.

#1
P. 2

This system is now obsolete and unfair for both the counties and banks for a couple of reasons. First, the advent of branch banking in North Dakota has remarkably changed our banking landscape. For example in 1997, our bank only had offices in Morton County, so under the old distribution system, all of the county's share of our financial institutions tax was paid to Morton County. Today our bank and four other banks that did not have a presence in Burleigh County in 1997, have offices in Bismarck, and the current financial institutions tax distribution formula does not recognize that change. As a result the financial institutions tax is no longer fairly distributed among the counties.

Second, it is unfair to tax our community banks at the current rate of 6.5%, while the same time proposing to reduce the maximum state income rate on every other taxpaying person and entity in North Dakota down to 2.90%. In fairness community banks should treated the same as every other corporation that does business in the State, and community banks should be subject to the same tax rates as other corporations.

Community banks are all about fully supporting the counties they serve. Therefore we are very pleased to see that this bill replaces the current financial institutions tax revenue that counties receive with a more fair and more stable source of revenue.

Finally, as you are probably aware, all community banks must retain certain levels or percentages of their assets in capital. In simplified terms, for very $100.00 in loans that a bank makes, the bank must have about $10.00 in equity capital. As our economy grows, our banks grow, their loans grow, and their need for additional capital increases. In 2012, our bank increased our lending in the communities we serve by about 22%, and it takes a lot of capital to support that growth in lending. Over time the only real source of that capital is retained earnings.

Reducing taxes on community banks to the same tax rates at which all other corporations in North Dakota are taxed will to enable community banks to retain more earnings, and that in turn will enable them to increase lending in North Dakota, which will foster continued economic growth for the betterment of all us.

SB 2364 would create tax system that is fair for counties, a tax system that is fair for community banks, and a tax system that is best for sustained economic growth in North Dakota.

Therefore, I would again ask that you strongly support SB 2364.

Mr. Chairman, Members of the Committee, thank you.

#3

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

SENATE BILL 2364

March 6, 2013

Chairman Belter, members of the House Finance and Taxation Committee, my name is Matt Peyerl, Associate Director, Tax Administration, for the Office of State Tax Commissioner. I will be explaining Senate Bill 2364.

PROPOSED CHANGES

This bill would repeal the Financial Institution Tax (FIT) and subject entities that are currently financial institutions to regular income tax. Under the proposed change, a financial institution would be subject to either corporate income tax, or if a passthrough entity, its owners subject to personal income tax. Many of the provisions of this bill relate to issues dealing with transitioning between FIT and regular income tax. The actual repeal of FIT is in Section 19.

EXPLANATION OF THE BILL

Section 1

This section repeals the reference to N.D.C.C. § 57-35.3-03 related to certain bonds being exempt from FIT.

Sections 2 through 6

These five sections are all related to existing Renaissance Zone tax incentives that are applicable for FIT. With a repeal of the FIT, the references are no longer applicable and are being stricken.

Section 7

This provision relates to the existing Net Operating Loss (NOL) deduction that is available to C-corporations. If a current financial institution that is a C-corporation and has a

P. 2

NOL to carryover on its final FIT return for 2012, this provision allows for that NOL to be a deduction on the subsequent corporation income tax returns for 2013 and forward.

Sections 8 and 9

These two sections relate to the current tax credit for contributions to the Housing Incentive Fund as an allowable credit against FIT. With a repeal of the FIT, the references are no longer applicable and are being stricken.

Section 10

Current tax law does not allow passthrough treatment for a financial institution that is an S-corporation. Instead, S-corporations are taxed similar to C-corporations. This provision addresses a situation in which an S-corporation financial institution has incurred a NOL and has unused NOL carryover available to be deducted for future years. This section allows the S-corporation to <u>elect</u> to continue to be taxed as a C-corporation until the NOL is used up. The election to be taxed as a C-corporation can also be used if the S-corporation has unused tax credits to carryover.

Section 11

This section relates to a tax credit for contributions to a North Dakota rural leadership scholarship fund that was available under previous FIT law. The bill adds this credit to corporate income tax law.

Sections 12 and 13

Under existing FIT law, because passthrough treatment for financial institutions was not allowed, these two sections apply to existing adjustments on a personal income tax return to avoid taxing income twice or allowing losses to be deducted twice when the income flows through to the personal income tax return. The statute being referenced for these two adjustments is based on the continued existence of this treatment if an S-corporation makes the election outlined in Section 10. There is an amendment to correct a section reference to refer to Section 10 instead of Section 7.

#2 p. 3

Section 14

Under current FIT law, the due date of the 10/13 portion of the total tax is due January 15 of the year after the return was due. In the first year to be taxed as a regular corporate taxpayer, there would be a final FIT payment due January 15, 2014 (relating to the 2012 tax year) along with the first corporate income tax payment due April 15, 2014 for the 2013 year. This provision will allow for a six-month deferral of the first corporate income tax payment without any charge for penalty or interest. This is a one-time provision only to address the transition year.

Section 15

This section also relates to a one-time transition year issue to avoid any income from being double taxed. Current FIT law requires a tax return to be filed on a calendar year basis. Regular income tax allows for fiscal tax year filing based on the taxpayer's year for federal income tax purposes. This provision will require the first return to be filed for a short period beginning January 1, 2013, through the end of the taxpayer's fiscal year. This will only apply in 2013.

Section 16

This section relates to the taxpayer's continued requirement to amend prior FIT returns as necessary and the Tax Department's existing ability to audit FIT returns that were filed.

Section 17

The section provides the authority under which a taxpayer that filed FIT returns would be able to amend a FIT return and claim the associated refund pursuant to the existing income tax provisions for making claims of refunds.

Section 18

This section provides the revenue replacement feature for the portion of the FIT that is distributed to the counties. The State Aid Distribution Fund (SADF) distribution to counties and cities is being increased from 40% to 43.5% of 1%. This increased percentage is estimated to result in an $11.59 million higher distribution for the first year. I will discuss this and the fiscal note in more detail as well.

Section 19

This section repeals N.D.C.C. chapter 57-35.3 which includes all of the provisions related to imposition of the FIT.

Section 20

The provisions related to the FIT repeal would take effect January 1, 2013, so the last year of the FIT would be calendar year 2012. The final FIT distribution to the will be for the 2012 tax year and will be in March 2014.

The provision related to the county funding replacement using the increased SADF would take effect July 1, 2014.

EXPLANATION OF THE FISCAL NOTE

The narrative of the fiscal note lays out the total increase of $6.91 million to general fund revenues.

Illustration – Part 1 – Impact on Financial Institution Income Taxes Paid

Without any changes to statute, the fiscal note assumes all financial institutions would have total FIT liability of $32.8 million for the two years of the biennium. As called for in this bill, if all financial institutions would instead be taxed as corporations and regular passthrough entities, the estimated total tax would be $25.8 million. Thus, financial institutions would be paying $7.0 million less in total tax.

As with any significant change in tax structure, there may be taxpayers that have a higher or lower tax under the new structure. About one third of all financial institutions are S-corporations. With respect to the overall reduction of tax liability of $7.0 million for financial institutions, the bulk of the $7.0 reduction relates to S-corporations because instead of paying tax at a FIT rate of 6.5%, income tax would instead be paid by the owners at the personal income tax rates, with the top rate currently being 3.99%.

Based on our analysis, the overall tax liability of C-corporations that are financial institutions would be fairly similar to the current level of tax, which is because the "effective" FIT tax rate for a C-corporation (after considering the deduction for federal income taxes) is very similar to the existing corporate income tax rate, which has a top rate of 5.15%.

#2 p.5

Illustration – Part 2 – Impact on State General Fund

The net impact to the state general fund of $18.5 million is the net of the $25.8 million of two years of income taxes, less $7.3 million, which is what the state's 3/13 share of the existing FIT tax would have been. That amount netted against the increased SADF expenditure of $11.59 million results in an overall general fund increase of $6.91 million.

The primary reason there can be an overall tax reduction of $7.0 million with an overall increase to the general fund relates to synchronizing the distributions to the counties. There are two years of tax revenues being received while there is only one year of increased SADF distribution occurring in this biennium. Therefore, this is a one-time positive impact.

Illustration – Part 3 – Impact on Revenues to Counties / Cities

With the repeal of FIT, the loss of revenues to the counties for this biennium is estimated to be $12.8 million, which is the 10/13 share of the 2013 tax year collections that would otherwise have been distributed to the counties in March 2015. The March 2014 distribution estimated to be $9.5 million (related to tax year 2012 FIT collections) would not be affected. After the revenue replacement of increased SADF of $11.59 million, the net result is an estimated reduction to counties / cities of $1.21 million for this biennium.

Illustration – Part 4 – Supplemental Information (Prior year FIDF Distributions)

Supplemental information of prior years' Financial Institution Distribution Fund distributions to counties is shown for comparison purposes.

#8

SB 2364 Fiscal Note Illustration

(as passed by Senate)

Part1 — Impact on Financial Institution Income Taxes Paid

	Current Law (6.5% rate)	SB 2364 (reg. rates)	Difference
Estimated income tax liability 2013 & 2014	$32,800,000	$25,800,000	($7,000,000)

Part 2 — Impact on State General Fund

	Current Law	SB 2364	Difference
Income taxes paid in biennium	$31,600,000	$25,800,000	
x Percentage assigned to General Fund	23%	100%	
Net General Fund Revenues (two years)	$7,300,000	$25,800,000	$18,500,000
Increase in General Fund Expenditures via increase to State Aid Distribution Fund Four quarters -FYE June 2015	$0	($11,590,000)	($11,590,000)
Net Impact on General Fund	**$7,300,000**	**$14,210,000**	**$6,910,000**

Part 3 — Impact on Revenues to Counties / Cities

	Current Law	SB 2364		Difference
Tax year 2012 estimated distribution to counties in March 2014 (FIDF to counties)	$9,500,000	$9,500,000	**	$0
Tax year 2013 estimated distribution to counties in March 2015 (FIDF to counties)	$12,800,000	$0		($12,800,000)
Increase in General Fund Expenditures via increase to SADF (to counties and cities) (from above) Four quarters -FYE June 2015	$0	$11,590,000		$11,590,000
	$22,300,000	**$21,090,000**		**($1,210,000)**

** Final distribution under existing law with Financial Institution Distribution Fund (FIDF) for tax year 2012.

Part 4 — Supplemental Information

(from Redbook, page 39)

Prior years' FIDF to counties	
Distribution March 2013 (2011 tax year)	$12,539,063
Distribution March 2012 (2010 tax year)	$9,777,194
Distribution March 2011 (2009 tax year)	$7,940,281
Distribution March 2010 (2008 tax year)	$6,535,072
Distribution March 2009 (2007 tax year)	$12,931,382
Distribution March 2008 (2006 tax year)	$12,558,064
Distribution March 2007 (2005 tax year)	$10,005,681

Prepared by:
Matt Peyerl
Associate Director, Tax Administration
ND Office of State Tax Commissioner
328-2706
5-Mar-13

#3

Prepared by the Office of
State Tax Commissioner for the
House Finance and Taxation Committee
March 6, 2013
13.8260.03000

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2364

Page 5, line 7, replace "7" with "10"

Page 5, line 12, replace "7" with "10"

Renumber accordingly

13.8260.03001
Title.04000

Adopted by the Finance and Taxation Committee
March 13, 2013

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2364

Page 5, line 7, replace "7" with "10"

Page 5, line 12, replace "7" with "10"

Renumber accordingly