

**FISCAL NOTE**  
**Requested by Legislative Council**  
**04/14/2015**

Amendment to: SB 2292

- 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.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			\$(15,000,000)			
Expenditures						
Appropriations						

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

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 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 2292 second engrossment with Conference Committee Amendments authorizes corporations to elect alternative methods for apportioning business income beginning with tax year 2016 and beyond.

- 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 2292 second engrossment with Conference Committee Amendments allows businesses that apportion income to voluntarily elect to use a double-weighted sales factor for tax years 2016 and 2017. The election is binding for five consecutive tax years. The sales factor election grows to 6 times the weight of other factors for tax year 2018. For tax years after 2018, the election becomes a sales-only factor.

If enacted, SB 2292 second engrossment with Conference Committee Amendments is expected to result in a decrease in state general fund revenues of an estimated \$15 million for tax year 2016 (impacting primarily FY 2017 revenues) and increasing in the 2017-19 biennium to nearly -\$50 million. When fully phased in, the single sales factor election could reduce revenues by as much as \$120 million or more per biennium. It is difficult to estimate the impact of this bill on future biennial revenues because a forecast that far in the future does not exist and the current corporate industry mix could change in the years to come.

Section 3 deals with the Multistate Tax Compact. Chapter 57-59 relating to the Compact is being repealed and reenacted in its entirety, except for provisions that relate to requiring or allowing for an equally weighted three-factor apportionment formula. There is no additional impact on revenues due to this section.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is 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:** 04/18/2015

**FISCAL NOTE**  
**Requested by Legislative Council**  
**03/25/2015**

Amendment to: SB 2292

- 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.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 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 2292 second engrossment with House Amendments authorizes corporations to elect alternative methods for apportioning business income beginning with tax year 2018 and beyond.

- 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 2292 second engrossment with House Amendments allows businesses that apportion income to voluntarily elect to use a double-weighted sales factor for tax years 2018 and 2019. The election is binding for five consecutive tax years. The sales factor election grows to 6 times the weight of other factors for tax years 2020 and 2021. For tax years after 2022, the election becomes a sales-only factor.

If enacted, SB 2292 second engrossment with House Amendments is expected to result in a decrease in state general fund revenues beginning with the 2017-19 biennium. It is difficult to estimate the impact of this bill on future biennial revenues because a forecast that far in the future does not exist and the current corporate industry mix could change in the years to come.

Section 3 deals with the Multistate Tax Compact. Chapter 57-59 relating to the Compact is being repealed and reenacted in its entirety, except for provisions that relate to requiring or allowing for an equally weighted three-factor apportionment formula. There is no additional impact on revenues due to this section.

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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 or a part of the appropriation is 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:** 03/26/2015

**FISCAL NOTE**  
**Requested by Legislative Council**  
**02/19/2015**

Amendment to: SB 2292

- 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.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			\$(30,000,000)		\$(65,000,000)	
Expenditures						
Appropriations						

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

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 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 2292 second engrossment authorizes corporations to elect to use a double-weighted sales factor for apportioning business income. In the following biennium, the bill provides the option for the sales factor to be weighted six times the other factors.

- 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 2292 second engrossment allows businesses that apportion income to voluntarily elect to use a double-weighted sales factor for tax years 2015 and 2016. The election is binding for five consecutive tax years. An analysis of the corporate income tax base indicates this election will result in a reduction in corporate income tax liabilities totaling between \$25 million and \$35 million in the first two tax years. The sales factor election grows to 6 times the weight of other factors for tax years 2017 and 2018. For tax years after 2018, the election becomes a sales-only factor.

If enacted, SB 2292 second engrossment is expected to result in a decrease in state general fund revenues totaling an estimated \$30 million in the 2015-17 biennium, followed by a decrease of an estimated \$65 million in the 2017-19 biennium.

Section 3 deals with the Multistate Tax Compact. Chapter 57-59 relating to the Compact is being repealed and reenacted in its entirety, except for provisions that relate to requiring or allowing for an equally weighted three-factor apportionment formula. There is no additional impact on revenues due to this section. The second engrossment corrects a numbering issue in this section.

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**Name:** Kathryn L. Strombeck

**Agency:** Office of Tax Commissioner

**Telephone:** 328-3402

**Date Prepared:** 02/23/2015

**FISCAL NOTE**  
**Requested by Legislative Council**  
**02/10/2015**

Amendment to: SB 2292

- 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.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			\$(30,000,000)		\$(65,000,000)	
Expenditures						
Appropriations						

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

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 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 2292 authorizes corporations to elect to use a double-weighted sales factor for apportioning business income. In the following biennium, the bill provides the option for the sales factor to be weighted six times the other factors.

- 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.*

Engrossed SB 2292 allows businesses that apportion income to voluntarily elect to use a double-weighted sales factor for tax years 2015 and 2016. The election is binding for five consecutive tax years. An analysis of the corporate income tax base indicates this election will result in a reduction in corporate income tax liabilities totaling between \$25 million and \$35 million in the first two tax years. The sales factor election grows to 6 times the weight of other factors for tax years 2017 and 2018. For tax years after 2018, the election becomes a sales-only factor.

If enacted, engrossed SB 2292 is expected to result in a decrease in state general fund revenues totaling an estimated \$30 million in the 2015-17 biennium, followed by a decrease of an estimated \$65 million in the 2017-19 biennium.

Section 3 deals with the Multistate Tax Compact. Chapter 57-59 relating to the Compact is being repealed and reenacted in its entirety, except for provisions that relate to requiring or allowing for an equally weighted three-factor apportionment formula. There is no additional impact on revenues due to this section.

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**Name:** Kathryn L. Strombeck

**Agency:** Office of Tax Commissioner

**Telephone:** 328-3402

**Date Prepared:** 02/14/2015

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/19/2015**

Bill/Resolution No.: SB 2292

- 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.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			\$(118,000,000)			
Expenditures						
Appropriations						

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

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 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 2292 authorizes businesses to elect to use a sales-only factor for apportioning business income.

- 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 2292 allows businesses that apportion income to voluntarily elect to use a single sales factor. The election is binding for five consecutive tax years. An analysis of the corporate income tax base indicates this election will result in a reduction in corporate income tax liabilities totaling between 20% to 25% of the tax base. If enacted, SB 2292 is expected to result in a decrease in state general fund revenues totaling an estimated \$118 million in the 2015-17 biennium.

Qualifying passthrough entities may also make the sales-only election. The additional revenue loss associated with passthrough entities that choose the election cannot be determined and are not contained in 1A above.

Section 2 deals with the Multistate Tax Compact. Chapter 57-59 relating to the Compact is being repealed and reenacted in its entirety, except for provisions that relate to requiring or allowing for an equally weighted three-factor apportionment formula. There is no additional impact on revenues due to this section.

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.*

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- 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 or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

**Name:** Kathryn L. Strombeck

**Agency:** Office of Tax Commissioner

**Telephone:** 328-3402

**Date Prepared:** 01/31/2015

**2015 SENATE FINANCE AND TAXATION**

**SB 2292**

# 2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee  
Lewis and Clark Room, State Capitol

SB2292  
2/2/2015  
Job # 22953

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Ammonson for Alice Grove*

## Explanation or reason for introduction of bill/resolution:

Relating to the multistate tax compact; relating to the multistate tax compact; and to provide an effective date.

## Minutes:

Attachments 1,2,3,4

**Senator Cook** presented SB 2292. It deals with the way we apportion income tax for corporate tax purposes. When we look at the economic picture and what we are trying to do to attract major employers, we need to have this conversation. There is a healthy fiscal note we need to talk about and maybe how to reduce it. It is important for this policy committee that establishes the tax policy of North Dakota to understand exactly what the implications are of our apportionment factors, what our neighboring states are doing to states we are competing with, and how that affects us in attracting primary sector businesses to stay in North Dakota.

To make this change, there is a requirement that we repeal our current multi state tax compact and then rewrite it. That's what the last 11 pages of the bill are. The key to the bill is on page 1, to offer a single sales tax factor election for these multi state corporations.

(03:25) **Joel Gilbertson**, Bismarck office of the Vogel Law Firm, appeared on behalf of Amazon. Amazon has an increased presence in North Dakota with over 700 employees in Grand Forks. He introduced Steve Krantz, a lawyer and partner with the Washington DC office of McDermott Will & Emery. He is a nationally known tax law expert.

(04:50) **Stephen Krantz** provided testimony in support of SB 2292. (Attachment #1)

(15:50) **Sen. Cook** asked what the map looked like 10 years ago.

**Mr. Krantz** replied that it has been a steady march from red to yellow. Two of those states, Tennessee and Virginia, are proposals that are out there this year. They haven't yet been enacted but are pending legislative proposals to move from green to yellow.

**Sen. Cook** asked when apportionment factors were first put in place.

**Mr. Kranz** said in the late forties. North Dakota is one of the states that has something called Uniform Division of Income for Tax Purposes Act. It was originally developed as a model act and almost all the states that have corporate income tax regimes adopted it. It was the three factor approach. It's now seen as antiquated in a number of respects. This is one of them and probably the most important from an economic development perspective. States have seen that and moved away from it.

**Sen. Cook** asked how many other states offer an election.

**Mr. Kranz** didn't know the answer to the number of states that make it elective. For the purposes of our state, if it's not elective, then it imposes a penalty on out of state companies who are doing business here and have presence here. The election is likely important to prevent a bunch of companies from showing up and trying to kill this effort to help North Dakota employers. It has been seen in other states.

**Sen. Triplett** asked if he could say how much of the fiscal effect is from leaving the election in as opposed to making the change.

**Mr. Kranz** believed the answer was going to be that none of the fiscal impact comes from election. If you strip out the election, that brings more revenue to the state. It would reduce the estimate. Having an elective is benefitting the companies who are here without hurting the companies who are not here. It is also important that by benefitting the companies that are here, there's no one in North Dakota who would be hurt under this. If they think that they are, as a North Dakota employer, better off under a three factor they can continue using that.

**Sen. Triplett** asked him to quantify his statement in the early part of his testimony when he said this bill and concept is more important than the tax rate.

(20:22) **Mr. Kranz** said that was going to be an absolutely facts and circumstances specific inquiry. Rate differences make a difference at the margin but apportionment drives it.

**Sen. Bekkedahl** asked (1) if this deals all with corporate income tax and (2) what percentage of this fiscal note is in our current collections of corporate income tax on an annual basis.

**Mr. Kranz** answered "yes" to question 1.

**Sen. Cook** answered about 20% to question 2.

**Tom Iles**, Director, State Public Affairs for John Deere, testified in support of SB 2292. Attachment #2

**Don Morton**, Microsoft, testified in support of SB 2292. He presented pictures of the Microsoft Fargo Campus (Attachment #3). He said they are basically a technical campus but also have a lot of the other things they do on their campus such as payroll for 60,000 Microsoft employees in the United States. He explained the physical structure of their company - approx. 600 people per building, basically an open campus, one office for every

ten cubes. It's a very cost efficient model for them. They made a \$70 million expansion in 2009 and one of the things they built was a cafeteria that can accommodate 2900 people. Primary sector companies bring a lot of business into our state. As an example he pointed out that just Microsoft employees that reside in other states and come to Fargo will spend about \$150,000 per year just on rental cars.

They do a lot of training, a lot of marketing, and they have a lot of events that bring people in. That is the nature of a primary sector business.

Fargo also has an executive briefing center where they do about 120 briefings a year. Usually these are people in the sales process or existing customers who want to expand. They come from all over the world.

As leaders of the Fargo campus it is to their best interest to grow the campus. The more headcount and the more functions they can do on the Fargo campus the better career paths they have for people. SB 2292 is one more tool that would be very helpful. They are competing against all the other locations that have the single sales factor.

**Sen. Cook** asked if he knew what the percentage of sales of Microsoft in North Dakota is.

**Mr. Morton** replied that it is a very small percentage.

**Sen. Cook** asked if they are still planning on building two more campuses in Fargo.

**Mr. Morton** replied they are getting full again and they also lease space for overflow. They are growing and need to either start leasing more space in Fargo or building their own.

**Sen. Cook** wondered if the other incentives would have been needed if North Dakota had a single weighted sales factor. Now, if we had a single sales factor formula could we eliminate some of the other incentives?

**Mr. Morton** thought there would be no question that would be the case.

**Sen. Dotzenrod** asked if Microsoft has compared the current obligation to pay North Dakota tax with the obligation in a single sales factor state given the same operation.

**Mr. Morton** said they get approached a lot by the states of South Dakota and Minnesota. Their tax people and leadership will always consider those. He wasn't aware if the tax team has done the detailed analysis on the single sales factor in Minnesota.

**John Godfread**, Vice President, Greater North Dakota Chamber of Commerce, provided testimony in support of SB 2292. (Attachment #4)

**Dana Bohn**, Economic Development Association of North Dakota, said the North Dakota's three factored apportionment formula places North Dakota at a distinct disadvantage, therefore they ask for support of this bill. It will make us much more competitive and help us attract additional primary sector business and diversify our economy.

There was no opposing or neutral testimony.

**Sen. Cook** closed the hearing on SB 2292.

# 2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee  
Lewis and Clark Room, State Capitol

SB2292  
2/2/2015  
Job #22995

- Subcommittee  
 Conference Committee

Committee Clerk Signature *Alice Grone*

## Minutes:

**Chairman Cook** opened the committee work on SB2292.

I brought you this bill so that we would have this discussion. It's one that we definitely have to have. I'm a little concerned with the fiscal note, as it is. I personally think it is important enough to do with this fiscal note but I don't think it would ever find its way to the governor. I think it is important for us to find some way to eventually get North Dakota so we can compete with our neighboring states on these primary sector multistate corporations. Dee, what do you think would happen to this fiscal note in this biennium if we moved to a double weighted sales factor?

**Dee Wald** -- I think it would go down. Are you talking the 3 factor formula, double weighted? Would it go down substantially? I think a lot of the data came from Matt. It would reduce it substantially and that is what the MTC has endorsed, a double weighted sales factor with property and payroll.

**Chairman Cook** -- For a uniform state apportionment factor?

**Dee Wald** -- That's correct. We are not done with the project.

**Chairman Cook** -- And when you get done with the project, the states are not going to care what MTC says, that much.

**Dee Wald** -- It's just time to update the law.

**Chairman Cook** -- Any questions on the apportionment factors while Dee is here?

**Senator Laffen** -- Any idea how much the total corporate tax is? If we were cutting \$118 million, are we cutting in half?

**Dee Wald** -- About 20%.

**Chairman Cook** -- \$500 million for this last biennium.

**Senator Laffen** -- And if we did a double weighted?

**Chairman Cook** -- We'd double weight sales. We'd use property, payroll and a double weighted sales.

**Senator Triplett** -- Can you tell us why the multistate group thinks that is better than what was requested here?

**Dee Wald** -- When you look at what the overall apportionment formula is supposed to reflect, it's the property you have in this state, and the payroll, Those in-state people and property that we use are fire, police, and other infrastructure. And that was the thought that we'd double weight the sales factor: get that. But that was the thought of the commission because states do provide those other services.

**Chairman Cook** -- If I were an idealist I would support the 3 factor equally weighted. Unfortunately we don't live in that world. It's become such a competitive world and these incubators figure out ways to do things and we need to react. Part of me wishes there was a way we could eliminate this competition and all go to the same factor. That would be the ideal world. Only way we would get there is with a federal mandate. That would trample on state's sovereign rights, and we don't want that.

**Dee Wald** -- That's correct and that's what Article 4's revisions is to reflect what is going on in the world and that we are more of a service-oriented world. We are a worldwide business. With the original 3 factor formula it really was geared towards a manufacturing-type of environment.

**Chairman Cook** -- Going back to the 50's when this was created, wasn't there federal legislation on the table at the same time trying to create a federal mandate?

**Dee Wald** -- Yes, all this started with a case called, Northwestern Portland Cement Company -vs- Minnesota, where the taxpayers lost and they went to congress to get the case over-ruled by federal law. So the Willis Commission came together and they first came up with public law 86-272 to protect those in-state salesmen. The Nexus law exempts company from income taxes if you have a job or sales person and all they do is solicit orders. They don't approve orders. And they are shipped into the state by common carrier. That's what the exemption does. As a result of that, the states got together and working with the Uniform Law Commission came up with the 3 factor formula to deal with multistate companies who are doing business in other states and that's where that came from. North Dakota adopted the Uniform Division of Income for Tax Purposes Act in 1966.

**Chairman Cook** -- What I'm trying to get at is history. I like to know where things come from before we know where we are going. There was a time when there was no corporate income tax. There was a time when corporate income tax started to become a problem. We started seeing multistate corporations and that was the Willis Commission that followed shortly. Multistate Tax Commission? You came aboard about the same time that was formed, right?

**Dee Wald** -- That's correct and we worked at that point in time with COST very closely.

**Chairman Cook** -- And COST was born at the same time. To keep you honest?

**Dee Wald** -- No, it was a friendly environment. And, it still is today.

**Senator Triplett** -- The states that are closest to us: Minnesota, Iowa, Nebraska, Colorado, Utah, all have the single factor it seems and the heavily weighted ones tend to be in the south and the east. What would have been helpful here is if someone could have put a date to these in terms of when it was happening so we'd have a sense if the trend is toward the heavily weighted or if the trend is toward the single and that is not clear. What we did learn in testimony this morning that Iowa changed their formula sometime in the 1980's and that Minnesota's was very recent but I don't have any other sense of which direction the trend is going. Can you answer that question?

**Dee Wald** -- It's just been in the last, mid to late 90's, that the single sales factor has been adopted by a number of these states. It started out as an economic development tool. The only thing on the Alaska, they have a 3 factor for oil and gas companies and a single sales factor for different things. There's rules inside some of those states. Just like ours, if we pass this bill, we'll have that election which we think is a good thing.

**Chairman Cook** -- Is Minnesota really a single sales now? I went on the FTA website and I thought that I saw 90% sales, 5% property, 5% payroll?

**Dee Wald** -- You're right. They are not a pure single sales factor state. The other thing that Minnesota did is phased in their single sales factor.

**Chairman Cook** -- I looked at the FTA. If we had the 50 states plus DC of Columbus, what is their apportionment factor.

**Senator Bekkedahl** -- In relationship to the fiscal note, I was trying to figure out, aren't there bills this session and even the governor's recommendation for a reduction in the corporate income tax?

**Chairman Cook** -- Yes, there are, but not this much.

**Senator Bekkedahl** -- This looks like we would pay greater dividends to our state than just the cut. Is there a way that we can maybe not do one and do more of this, that would be more favorable.

**Chairman Cook** -- Hindsight is 20/20. I wish we had done this instead of a cut a few years ago.

**Senator Triplett** -- We could increase the rate.

**Chairman Cook** -- We could. I wouldn't want to increase the rate on those elected not to choose this. But I think we could increase the corporate tax rate on those companies that

make this selection. Could we have 2 different tax rates, depending upon the apportionment election you make?

Dee Wald -- I'm going to have to take you back a few years when we got rid of the federal tax deduction. We had that waters-edge election filing and so at that time waters-edge filers were going to still get advantage of that federal tax deduction as were financials and so we imposed a surtax on those companies who file under the waters-edge method. I think it is 3% surtax.

Chairman Cook -- So the answer is yes.

Dee Wald -- Yes, and the reason is, it's an election.

Senator Laffen -- You mentioned some states had phased this in, how would you do that?

Dee Wald -- What they would do is, like Minnesota is now to the 95/5/5, they would phase down the 100% sales to maybe 85% or phase down all the other factors.

Senator Triplett -- Is Minnesota going toward a 100% single factor? Is that why they are listed that way?

Dee Wald -- I'll have to check. I thought they were done phasing down.

Senator Dotzenrod -- A couple of questions about how this bill works. On page 12 there's a repeal. It repeals 57-59. I assume that the repealer is the old multistate compact that had the formula that we've been using. I'm going to assume that this multistate compact would take the place of a compact that we are currently part of and that this, by itself, doesn't really set up any of the rates. It sets up the process by which we cooperate with other states in enforcing our tax law. Is that correct?

Dee Wald -- That is correct. We are just amending the contract between the states. The reason that we had to repeal and re-enact was, first there was Article 4 of the compact did have the 3 factor formula in there and secondly, if we went to a single sales factor in the old Article 3, you still had an election to go back and use the 3 factor formula. When we re-enacted the compact, we took that language out, just to make it clear. Now we've got a compact that complies with what we are doing here and made it clear in the state tax law that you have that single sales factor election.

Chairman Cook -- We'll come back to this one. I'd like to get it out of here.

# 2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee  
Lewis and Clark Room, State Capitol

SB2292

2/9/2015

Job #23511, meter 00:00 to 17:30

Subcommittee

Conference Committee

Committee Clerk Signature

*Alice Grove*

## Explanation or reason for introduction of bill/resolution:

Committee work on SB2292

## Minutes:

Attachment #1

**Chairman Cook** opened the committee work.

The bill would take us to a single sales factor. The fiscal note on it was \$118 million, I think it is probably the most important bill that we could pass here, as far as doing something in this state to attract, bring, and keep primary sector businesses here in North Dakota. I am a little uncomfortable with \$118 million fiscal note. The apportionment factor is 22.92. We could phase it in, over a period of years, bring that fiscal note down. So my first question is: what do you think that we need to bring it down to be comfortable with it? Would you be comfortable at \$25 million?

**Senator Laffen** -- \$50 million.

**Chairman Cook** -- You were going to say \$50?

**Senator Unruh** -- I'm closer to Senator Laffen's \$50 than I am to \$25, myself.

**Senator Bekkedahl** -- The fiscal note on Senator Laffen's bill, SB2349, was \$125 million. This is \$118 million. Do you see the need to try and do both and not displace one with another?

**Chairman Cook** -- I didn't want anybody to ask that question.

**Senator Bekkedahl** -- You are the chairman.

**Chairman Cook** -- But I knew somebody would. Senator Bekkedahl, it's a long way to the finish line. That's a very fair question. I think as far as what we do here today, we want to keep both a tax reduction and some sort of a apportionment factor alive. That's where I would be today. I think as this bill moves toward the finish line, depending upon what happens to revenue, that is a very legitimate question that is going to have to be asked.

**Senator Triplett** -- You know that I have objected to misleading fiscal notes in the past and I would have the same objection to a phased in type of thing. We do something in the next biennium to make it look like there's not much impact but we all know that it is coming down the road. If we are going to do this and phase it in, I don't necessarily have a problem with that but I do have a problem then when we get to doing the tallying in the end we forget that we've phased this in and then we get overly large corporate income tax reductions to everyone because this will get phased in and it will add up. We need to have an honest discussion about who this is helping and what it is doing and then, if it's the right thing, just do it. The issue is that it would only help those corporations that have a multistate presence and does not have any impact on smaller companies who only operate in North Dakota. It's silly that we just keep lowering, and lowering, and lowering the corporate tax rate. If we're so low that we have corporations coming in just asking us to give them cash, I think our corporate taxes are low enough.

**Chairman Cook** -- I think the bill you referred to yesterday, we all found equal distaste in and that's why it took a 7-0 do not pass. If we see a fiscal note, if we phase it in, I would expect they'll show the fiscal impact for the next biennium also. And I've had that conversation when I had some amendments drafted to phase it in. We know that something else is coming. To me the issue is important enough where if we lost other corporate income tax relief to get this through, I'd swallow that pill.

**Senator Laffen** -- There is some corporate income tax relief in the other bill that's got my name on it, but I would agree, I think this is more important. There are differences, as Senator Triplett pointed out. There are winners and losers in that trade but I think it is important to figure this one out.

**Chairman Cook** -- There's no losers with the apportionment factor. There could be losers because we didn't lower the tax rate on somebody that doesn't get any relief, corporate income tax. One bit of information, I asked Matt Peyerl to try to identify the top ten corporations that would benefit from a change of the apportionment factor. How many employees do they have in North Dakota and what is their payroll? The top ten beneficiaries, corporations, of going to a single sales factor weighting system, have 4,310 employees in North Dakota. Total payroll from those 10 companies is \$341.5 million. They are substantial employers. Senator Triplett, you'd like to vote on it, either up or down, I like that idea, I'd like to go right to a single sales factor. If the price of oil would go up, I think we could do it. I'm not that optimistic where the price of oil is.

**Senator Dotzenrod** -- During the discussion and the hearing we were talking about double weight, that's another alternative, isn't it? Right now, we have 1/3, 1/3, 1/3. You'd have 1/4, 1/4, & 50%. Is that how it would work?

**Chairman Cook** -- That's exactly how it would work. 50% for sales, and 25% for payroll.

**Senator Dotzenrod** -- Would that be a way to make it so that we would begin to have a fairly significant benefit for those companies that you just mentioned, and at the same time leaving off to the future some other date when we would look at it and take another step in that direction or do it straight out?

**Chairman Cook** -- The amendments I just handed out do just that: double weighted sales factor, 50%, 25% property, 25% payroll. If started immediately, \$26 million fiscal note. You started in the second year of the biennium, \$13 million fiscal note. I would suggest that at this point of the game, we would pass it out starting immediately with a \$26 million fiscal note. These amendments that I just handed out, you'll see on the front, page 1, line 13, after December 31, 2015, the way these amendments are written, you would start it in the second year of the biennium. The way these amendments are written, the fiscal note for this biennium would be \$13 million. I would like to move that to 2014 and get us a \$26 million fiscal note. A couple people said \$50 million.

**Senator Dotzenrod** -- My leaning would be toward the \$25 million to do it and get that date moved up so that it is both years of the biennium. I think it provides us a pretty significant benefit to our North Dakota companies that have the kind of operations where, if they build in North Dakota, under the current system we have, they pay a penalty for that. That is where I'm at. I would be okay with these amendments and do it both years of the biennium.

**Chairman Cook** -- Dee, can you step up to the podium? The double weighted was for 2 years?

**Dee Wald** -- That's correct.

**Chairman Cook** -- And then, after 2 years, we went to a what?

**Dee Wald** -- It's a triple weighted factor. And then you go to the single sales factor.

**Chairman Cook** -- So it would take 4 years to get there.

**Dee Wald** -- It would take 4 years to get there. Three steps.

**Chairman Cook** -- And if we started it immediately: 2017 biennium? We would be at a triple weighted factor. 2019 biennium, we'd go to a single factor. If we started it immediately the dates would be 2014, 2016, and then 2018.

**Dee Wald** -- The way these are written, for the first year, 2016, there would be a double weighted, then 2 years of triple weighted, and then single sales factor. That would be 5 years. If you start now it would be 6. The way it is written, it's for the first 2 taxable years beginning after. So it would be taxable year 15,16 for the double weighted; 17,18 for the triple weighted; and then you'd go to the single sales factor.

**Chairman Cook** -- Unless we moved the dates up, all one year? Then it would be 14,15 double, 16,17 triple. So this would not protect any pass-through entities?

**Dee Wald** -- That is correct.

**Chairman Cook** -- The only type of corporations it would affect, is?

**Dee Wald** -- The C corps.

**Senator Triplett** -- Would you just repeat those statistics that you gave a few minutes ago, the top ten corporations, number of employees and amount of payroll?

**Chairman Cook** -- I'll make copies and hand it out. Count of employees is 4,310. Total payroll is \$341.5. 2013 tax year.

**Senator Laffen** -- I agree. I think this is important work and I would move amendment 15.8198.01001 and amend December 31 from 2015 to 2014. **(Attachment #1)**

**Chairman Cook** -- And then own a little lower bit, 2017 to 2016. And then on the back page 2019 to 2018.

**Seconded by Senator Unruh.**

**Roll call vote 6-1-0.**

We have SB2292, as amended.

**Senator Unruh** -- I would move SB2292, as amended, and rerefer to appropriations.

**Seconded by Senator Laffen.**

**Roll Call vote on SB2292, do pass as amended, and rerefer .**

**Roll Call vote 6-1-0**

**Carrier Senator Cook.**

**Chairman Cook** closed the committee work.

February 9, 2015

PROPOSED AMENDMENTS TO SENATE BILL NO. 2292

Page 1, line 2, after "reenact" insert "subsection 5 of section 57-38-04 and"

Page 1, after line 6, insert:

**"SECTION 1. AMENDMENT.** Subsection 5 of section 57-38-04 of the North Dakota Century Code is amended and reenacted as follows:

5. Whenever business activity is carried on partly within and partly without this state by a nonresident of this state as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, the entire income therefrom must be allocated to this state and to other states, according to the provisions of chapter 57-38.1 but only according to the apportionment method provided under subsection 1 of section 57-38.1-09, providing for allocation and apportionment of income of corporations doing business within and without this state."

Page 1, line 10, overstrike "All" and insert immediately thereafter "Except as permitted under subsections 2 through 4, all"

Page 1, line 13, overstrike "A taxpayer" and insert immediately thereafter "For the first two taxable years beginning after December 31, 2015, a taxpayer that is not a passthrough entity may elect to apportion business income to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus two times the sales factor, and the denominator of which is four."

- a. The election must be made on the return as originally and timely filed in the form and manner prescribed by the tax commissioner.
  - b. The election is applicable for all companies in a unitary group and for all companies filing a consolidated North Dakota return.
  - c. The election is binding for five consecutive taxable years after making the election, at which time the election lapses. The election under this subsection also includes the election to use the sales factor under subsections 3 and 4 for the taxable years those subsections apply.
  - d. Unless a taxpayer makes another election under subsection 4 in the taxable year immediately following the final year of the binding effect of the election under this subsection, the taxpayer must file under subsection 1 for a period of three taxable years before it may make a new election under subsection 4.
3. For the first two taxable years beginning after December 31, 2017, a taxpayer that is not a passthrough entity may elect to apportion business income to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus six times the sales factor, and the denominator of which is eight.
    - a. The election must be made on the return as originally and timely filed in the form and manner prescribed by the tax commissioner.

- b. The election is applicable for all companies in a unitary group and for all companies filing a consolidated North Dakota return.
  - c. The election is binding for five consecutive taxable years after making the election, at which time the election lapses. The election under this subsection also includes the election to use the sales factor under subsection 4 for the taxable years that subsection applies.
  - d. Unless a taxpayer makes another election under subsection 4 in the taxable year immediately following the final year of the binding effect of the election under this subsection, the taxpayer must file under subsection 1 for a period of three taxable years before it may make a new election under subsection 4.
4. For taxable years beginning after December 31, 2019, a taxpayer that is not a passthrough entity"

Page 2, line 2, replace "can" with "may"

Renumber accordingly

PROPOSED AMENDMENTS TO SENATE BILL NO. 2292

Page 1, line 2, after "reenact" insert "subsection 5 of section 57-38-04 and"

Page 1, after line 6, insert:

**"SECTION 1. AMENDMENT.** Subsection 5 of section 57-38-04 of the North Dakota Century Code is amended and reenacted as follows:

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Page 1, line 10, overstrike "All" and insert immediately thereafter "Except as permitted under subsections 2 through 4, all"

Page 1, line 13, replace "A taxpayer" with "For the first two taxable years beginning after December 31, 2014, a taxpayer that is not a passthrough entity may elect to apportion business income to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus two times the sales factor, and the denominator of which is four."

- a. The election must be made on the return as originally and timely filed in the form and manner prescribed by the tax commissioner.
  - b. The election is applicable for all companies in a unitary group and for all companies filing a consolidated North Dakota return.
  - c. The election is binding for five consecutive taxable years after making the election, at which time the election lapses. The election under this subsection also includes the election to use the sales factor under subsections 3 and 4 for the taxable years those subsections apply.
  - d. Unless a taxpayer makes another election under subsection 4 in the taxable year immediately following the final year of the binding effect of the election under this subsection, the taxpayer must file under subsection 1 for a period of three taxable years before it may make a new election under subsection 4.
3. For the first two taxable years beginning after December 31, 2016, a taxpayer that is not a passthrough entity may elect to apportion business income to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus six times the sales factor, and the denominator of which is eight.
    - a. The election must be made on the return as originally and timely filed in the form and manner prescribed by the tax commissioner.

2012

- b. The election is applicable for all companies in a unitary group and for all companies filing a consolidated North Dakota return.
  - c. The election is binding for five consecutive taxable years after making the election, at which time the election lapses. The election under this subsection also includes the election to use the sales factor under subsection 4 for the taxable years that subsection applies.
  - d. Unless a taxpayer makes another election under subsection 4 in the taxable year immediately following the final year of the binding effect of the election under this subsection, the taxpayer must file under subsection 1 for a period of three taxable years before it may make a new election under subsection 4.
4. For taxable years beginning after December 31, 2018, a taxpayer that is not a passthrough entity"

Page 2, line 2, replace "can" with "may"

Renumber accordingly

Date: 2-9-15

Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO 2292

Senate Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: 15.8198.01002

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar

Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Sen. Laffen Seconded By Sen. Unruh

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook	✓		Senator Jim Dotzenrod	✓	
Vice Chairman Lonnie Laffen	✓		Senator Connie Triplett		✓
Senator Brad Bekkedahl	✓				
Senator Dave Oehlke	✓				
Senator Jessica Unruh	✓				

Total (Yes) 6 No 1

Absent 0

Floor Assignment \_\_\_\_\_

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

Date: 2-9-15

Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO 2292

Senate Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar

Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Sen. Unruh Seconded By Sen. Laffen

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook	✓		Senator Jim Dotzenrod	✓	
Vice Chairman Lonnie Laffen	✓		Senator Connie Triplett		✓
Senator Brad Bekkedahl	✓				
Senator Dave Oehlke	✓				
Senator Jessica Unruh	✓				

Total (Yes) 6 No 1

Absent 0

Floor Assignment Sen. Cook

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

**REPORT OF STANDING COMMITTEE**

**SB 2292: 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** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2292 was placed on the Sixth order on the calendar.

Page 1, line 2, after "reenact" insert "subsection 5 of section 57-38-04 and"

Page 1, after line 6, insert:

**"SECTION 1. AMENDMENT.** Subsection 5 of section 57-38-04 of the North Dakota Century Code is amended and reenacted as follows:

5. Whenever business activity is carried on partly within and partly without this state by a nonresident of this state as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, the entire income therefrom must be allocated to this state and to other states, according to the provisions of chapter 57-38.1 but only according to the apportionment method provided under subsection 1 of section 57-38.1-09, providing for allocation and apportionment of income of corporations doing business within and without this state."

Page 1, line 10, overstrike "All" and insert immediately thereafter "Except as permitted under subsections 2 through 4, all"

Page 1, line 13, replace "A taxpayer" with "For the first two taxable years beginning after December 31, 2014, a taxpayer that is not a passthrough entity may elect to apportion business income to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus two times the sales factor, and the denominator of which is four.

- a. The election must be made on the return as originally and timely filed in the form and manner prescribed by the tax commissioner.
  - b. The election is applicable for all companies in a unitary group and for all companies filing a consolidated North Dakota return.
  - c. The election is binding for five consecutive taxable years after making the election, at which time the election lapses. The election under this subsection also includes the election to use the sales factor under subsections 3 and 4 for the taxable years those subsections apply.
  - d. Unless a taxpayer makes another election under subsection 4 in the taxable year immediately following the final year of the binding effect of the election under this subsection, the taxpayer must file under subsection 1 for a period of three taxable years before it may make a new election under subsection 4.
3. For the first two taxable years beginning after December 31, 2016, a taxpayer that is not a passthrough entity may elect to apportion business income to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus six times the sales factor, and the denominator of which is eight.
    - a. The election must be made on the return as originally and timely filed in the form and manner prescribed by the tax commissioner.
    - b. The election is applicable for all companies in a unitary group and for all companies filing a consolidated North Dakota return.

- c. The election is binding for five consecutive taxable years after making the election, at which time the election lapses. The election under this subsection also includes the election to use the sales factor under subsection 4 for the taxable years that subsection applies.
  - d. Unless a taxpayer makes another election under subsection 4 in the taxable year immediately following the final year of the binding effect of the election under this subsection, the taxpayer must file under subsection 1 for a period of three taxable years before it may make a new election under subsection 4.
4. For taxable years beginning after December 31, 2018, a taxpayer that is not a passthrough entity"

Page 2, line 2, replace "can" with "may"

Renumber accordingly

**2015 SENATE APPROPRIATIONS**

**SB 2292**

# 2015 SENATE STANDING COMMITTEE MINUTES

**Appropriations Committee**  
Harvest Room, State Capitol

SB 2292  
2/16/2015  
Job # 23895

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Emmery Brothman for Prose Loring*

## Explanation or reason for introduction of bill/resolution:

Relating to the multistate tax compact; relating to apportionment of business income.

## Minutes:

Attachments: #1 - 3

Legislative Council - Nick Creamer  
OMB - Chris Kadrmas

**Chairman Holmberg** called the committee to order on SB 2292.

## **Dwight Cook, State Senator, District 34, Bill Sponsor:**

Corporation Income Tax (see attachment #1)

2015 Apportionment: Sales Factor Weight (see attachment #2)

Explained bill using attachments.

The bill is a corporate tax reform bill and passed the Finance Tax committee 7-0. Most corporations used to do their business in state. This bill changes our state tax as single weighted factor - only look at sales. Changed to double weighted and removes disincentive from employing people in ND.

**Senator Bowman:** (7:20) The ultimate goal of this bill would be with the tax incentive to give the employees more of an incentive to hire more people. Is that where you're going with this?

**Senator Cook:** It takes away the disincentive of them hiring people today. If you look at the \$118M that the fiscal note came with, that's the amount of the disincentive. \$118M is because of our 3 factor formula, they have to pay ND that they would not have to pay a single sales factor state.

**Senator Sorvaag:** In the double weighted, which one are you throwing out?

**Senator Cook:** We're not throwing out any. In the double weighted formula, sales would be weighted at 50%, property at 25%.

**Senator Sorvaag:** Is that what most of the other double are heavily weighted or is it all over the place?

**Senator Cook:** If you look at this map and you can pull up corporate income tax apportionment factors, you'll see charts out there and I don't know how current they all are but on the federal tax administrators, it looks like about half of these yellow are single and the other half are double.

**Senator Sorvaag:** With those double, some are doing the percentage like you're recommending not just dropping one of three?

**Senator Cook:** It's both. The yellow is an even split between double weighted and single weighted. MN is single weighted.

**Senator Wanzek:** You could also say that besides just being a disincentive for adding payroll, it's also a disincentive for investing in new infrastructure.

**Senator Cook:** Exactly. Usually when you hire a lot more people, you're going to build another building to house them in.

**Senator Mathern:** Did you change this bill to change the fiscal note? What is the present fiscal note in the present version?

**Senator Cook:** I haven't seen the new fiscal note since these amendments passed on the 6<sup>th</sup> order, I was led to believe before we passed them that it would be \$26M. I assume you have a new fiscal note on the bill here today, I might be wrong.

**Senator Krebsbach:** It's \$30M.

**Senator Cook:** One other point I need to make on this, Microsoft is one of our major employers in the state. Besides the home office, there are five other Microsoft campuses. Everyone of these campuses is located in a single sales factor state. We compete with those states and Microsoft is a major contributor to our economy. If we expect them to continue to grow their foot print in ND, we need to be able to compete.

**Jon Godfread, Vice President of Government Relations, Greater North Dakota Chamber:** (12:14) Testified in favor of SB 2292 (see attachment #3)

**Senator Bowman:** (13:56) As far as down the road with a bill like this with our energy development, this would be an attractive tool for business to come in and take advantage of the energy that we have. Wouldn't you agree?

**Jon Godfread:** We have a great business climate in ND. What we're seeing right now is that there are other states that employ the single sales factor and that's one of the main selling points when they come to a North Dakota corporation is to ask them to consider expanding in our state. That's difficult to compete with so we encourage you to take a strong look on this.

Senate Appropriations Committee  
SB 2292  
February 16, 2015  
Page 3

**Dana Bohn, Economic Development Corporation (14:58)** Testified in favor of SB 2292

**Senator Bowman** closed the hearing on SB 2292.

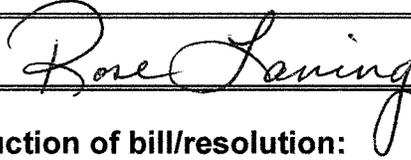
# 2015 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee  
Harvest Room, State Capitol

SB 2292  
2/16/2015  
Job # 23897

- Subcommittee  
 Conference Committee

Committee Clerk Signature



**Explanation or reason for introduction of bill/resolution:**

Relating to the multistate tax compact; relating to apportionment of business income.

**Minutes:**

**Senator Krebsbach moved Do Pass on SB 2292.**  
**Senator O'Connell seconded.**

**Senator O'Connell:** After hearing the testimony, why haven't we got the emergency clause on this bill?

**Senator Krebsbach:** It would be applicable to December 14 - the date that's stated in the bill. Is it necessary?

**Senator Wanzek:** With the effective date being December 31, 2014, I think they want to coincide this law with the tax year. If we pass it and it becomes law, it would be effective January 1, 2015. Thus I don't think there is a need for an emergency clause because it will be law by the end of the year and be effective this year. This year would already utilize this formula for determining income tax.

A Roll Call vote was taken. Yea: 13 Nay: 0 Absent: 0

**Senator Cook** will carry the bill.

Date: 2-16-13  
 Roll Call Vote #: \_\_\_\_\_

**2015 SENATE STANDING COMMITTEE**  
**ROLL CALL VOTES**  
 BILL/RESOLUTION NO. ~~202319~~ 2292

Senate Appropriations Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

- Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Krebsbach    Seconded By O'Connell

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Heckaman	✓	
Senator Bowman	✓		Senator Mathern	✓	
Senator Krebsbach	✓		Senator O'Connell	✓	
Senator Carlisle	✓		Senator Robinson	✓	
Senator Sorvaag	✓				
Senator G. Lee	✓				
Senator Kilzer	✓				
Senator Erbele	✓				
Senator Wanzek	✓				

Total (Yes) 13    No 0

Absent 0

Floor Assignment COOK

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

**REPORT OF STANDING COMMITTEE**

**SB 2292, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman)**  
recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
Engrossed SB 2292 was placed on the Eleventh order on the calendar.

**2015 HOUSE FINANCE AND TAXATION**

**SB 2292**

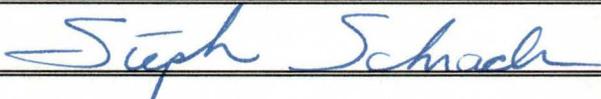
# 2015 HOUSE STANDING COMMITTEE MINUTES

## Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2292  
3/11/2015  
Job # 24641

- Subcommittee  
 Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

A bill relating to the multistate tax compact; relating to apportionment of business income; relating to the multistate tax compact.

### Minutes:

Attachment #1, 2, 3, 4, 5, 6

**Chairman Headland:** Opened hearing.

**Senator Cook, District 34:** Introduced bill. Distributed testimony. See attachment #1.

**Joel Gilbertson, Amazon: Vogel Law Firm, Bismarck Office.** Introduced Steve Kranz, McDermott Will and Emery.

**Stephen Kranz, Partner at the law firm McDermott Will and Emery, Washington, D.C.:** Distributed testimony. See attachment #2.

**Representative Haak:** Why did you keep sales the same, what if sales goes up or down?

**Stephen Kranz:** By keeping sales the same in this hypothetical, I wanted to demonstrate clearly and isolate the impact of changing property and payroll. Sales would impact the ultimate calculation.

**Representative Froseth:** These rates are pro-rated to each individual company, not as a state average as a whole?

**Stephen Kranz:** That is correct, this is true of every state that taxes corporate income. This is a percentage that is calculated every single year by every tax payer.

**Representative Klein:** We are talking about utilizing our prime companies like Bobcat, Microsoft, John Deere, under this scenario?

**Stephen Kranz:** That is correct and all of them are in the room or have sent letters in support of this piece of legislation. If any of those companies expands in North Dakota they

are driving up their tax rate. If instead they put the investment in Minnesota, they're driving down their North Dakota tax rate. This is what really drives a corporation's liability.

**Representative Klein:** This is kind of a similar system of some of our major companies moving their headquarters out of the country to avoid taxes.

**Stephen Kranz:** Yes and no. There are a lot of different issues that come up with the inversion that are happening internationally. There are reasons why companies don't invest in North Dakota that come from this formula. There are reasons why companies are going through inversions.

**Chairman Headland:** Did the single factor apportionment come first from the multistate compact?

**Stephen Kranz:** The formula is part of the compact language, and the compact language itself was developed by the uniform law commission in the 1960s. It was in place for about 10 years when state policy makers started to realize the impact it had on their headquarter companies and large employers, so they started to move away from it.

**Chairman Headland:** Are all the states part of the multi-state compact?

**Stephen Kranz:** There are 19 members now that are full compact. Full members are states that have the entire compact in their statute. North Dakota is one of those states.

**Representative Haak:** If their sales would go down would that decrease their tax liability and if their sales went up? It's basically, we don't want their sales to be here, we want them to sell their stuff out of state? If we do sell their stuff in state, are we penalizing those companies?

**Stephen Kranz:** Yes, but the alternative is turning into a green state with no corporate tax. What this is saying is that North Dakota will not punish companies for investing in property or hiring people in the state. We are only going to tax you based on your sales.

**Representative Steiner:** When you say punish is the fiscal note your definition of the punishment, 30,000,000 dollars?

**Stephen Kranz:** Yes, but I think that there is a cost to eliminating these from the formula. What is not recognized by the fiscal note is what has been the cost to the state and the economy and what will be the continuing cost to the state if you punish investment and people and property? I can't estimate it for you, but it needs to be recognized that there is an economic cost to the state.

**Representative Haak:** What are the corporate tax rates for the other states that are yellow? Is it as low as ours?

**Stephen Kranz:** I don't know, the tax foundation would have that number.

**Chairman Headland:** What we do know is that if you're a green state you really have an advantage over the rest of us.

**Representative Klein:** Basically, we are betting that by helping these North Dakota companies we'd make double of what we're losing? If things go the right direction.

**Stephen Kranz:** If instead of this \$20 million or whatever the investment is from the fiscal note, you would expect increased property tax, sales tax, and payroll taxes, there would be a lot of additional money to the state and the economy as well.

**Representative Schneider:** Are there businesses currently operating in North Dakota now that don't think this would be a good idea?

**Stephen Kranz:** There are no losers under the legislation as drafted before you. It is an elective provision, for companies that want to use the three-factor formula they would still be able to do so.

**Representative Schneider:** Are there more adverse impacts on a rural state such as North Dakota that sends a lot of its products out in sales as opposed to some of the other yellow states that have a higher level of sales within the state itself?

**Stephen Kranz:** North Dakota is a rural state but it has an incredible manufacturing presence. Right now the growth of that presence is hindered by the three-factor formula.

**Representative Schneider:** This seems like its geared more to manufacturing so if we increase our manufacturing in the state do we have workforce issues?

**Stephen Kranz:** I'm a tax lawyer so this is outside my area of focus. This will benefit retailers as well. It is all sectors that would benefit from this.

**Representative Froseth:** If the state eliminated corporate tax what would be the net effect?

**Stephen Kranz:** I don't know what the revenue is from corporate income tax is here. If the state chose to eliminate it entirely, that's now economics.

**Representative Froseth:** I mean what would be the effect on the tax?

**Stephen Kranz:** It gets rid of the formula, you don't need one.

**Don Morton, Microsoft Corporation Sr. Director, Site Leader for Microsoft campus in Fargo:** Distributed testimony. See attachment #3.

**Representative Haak:** What percentage of your sales are in North Dakota?

**Don Morton:** One tenth of one percent.

**Representative Schneider:** Have you calculated under this system how much the taxes would have gone down?

**Don Morton:** I haven't but I can get that for you.

**Representative Hatlestad:** If you lease a building would that change the formula?

**Stephen Kranz:** Whether you own or lease a building the property is included in your property taxes.

**Keith Lund, President of Economic Development Association of North Dakota:** Distributed testimony. See attachment #4.

**Representative Haak:** Does this bill disallow local incentives?

**Keith Lund:** All the other incentive packages or business support programs are still available.

**Jon Godfread, Greater North Dakota Chamber:** Distributed testimony. See attachment #5 and #6.

**Representative Steiner:** Giving light of the March 18<sup>th</sup> forecast, let's say the committee likes this and supports it, but we don't have the money to do it all at once. Is there a way to step this in over a longer time frame?

**Jon Godfread:** I think the bill was amended in the Senate to do just that?

**Opposition:** None.

**Representative Haak:** Do you know how many local incentives have been used to bring businesses to North Dakota over the past five years?

**Donita Wald, General Counsel of North Dakota Tax Commissioner's Office:** We can get that information for you.

**Representative Haak:** Do we know how many manufacturers it would take to make up the lost revenue?

**Donita Wald:** We wouldn't be able to know that.

**Chairman Headland:** We do know that if Microsoft adds another 1000 employees in the next few years like they are talking about, the revenues in other areas will flow.

**Chairman Headland:** Closed hearing.

# 2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee  
Fort Totten Room, State Capitol

SB 2292  
3/24/2015  
25323

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Mary Brucher*

## Explanation or reason for introduction of bill/resolution:

A bill relating to the multistate tax compact; relating to apportionment of business income; relating to the multistate tax compact.

## Minutes:

Attachment #1

**Chairman Headland:** Distributed proposed amendment 15.8198.03001; attachment #1.

**Emily Thompson, Legislative Council:** Explained amendments. The amendments are almost identical to the intent of the bill before you. It's a hog house because we are no longer creating a brand new chapter; we are simply amending the existing chapter. The other change in the amendment is pushing the dates out to when we'll be rolling over to single sales. In the current version of the bill it allows for corporations to elect to use a double rated sales factor for tax years 2015 and 2016. This bill pushes those dates out to 2018-2019. That election is the same as the current language of the bill so it would be binding for five consecutive years. In the next section the sales factor election expands to six times the rate of the other factors. Currently it's 2017-18 tax years; this amendment pushes that out to tax years 2020-21. In the current version of the bill for any tax year after 2018 the election can be a single sales factor. This amendment pushes that out to 2021.

**Chairman Headland:** By doing that the fiscal impact is zeroed out in the current biennium. So what would the next biennium be?

**Emily Thompson:** For the 2015-17 biennium it would have a zero impact and for the 2017-19 the estimated impact is \$15 million.

**Representative Steiner:** Moving forward is it a total of \$65 million after \$21 million?

**Emily Thompson:** I believe it would be an additional \$15 million added to half of the \$65 million for the next biennium but I would like to clarify that with the tax department.

**Representative Haak:** This wouldn't have any fiscal impact until the next biennium so we could revisit this and make changes depending on the forecast?

**Emily Thompson:** This would obviously be able to be amended by any future session and wouldn't be an impact until then.

**Representative Schneider:** Can you tell me why it wasn't set up like this to begin with and why we're amending now and proposing a new bill formerly?

**Emily Thompson:** It was a very lengthy section so as far as pulling in all of that to amend there was a thought that it might be easier to just create the new section rather doing all the overstrikes. There are also some with more of a comfort level seeing what is coming out and what is going in rather than having all new language then having to pull those two chapters side by side and have to compare with all that.

**Representative Schneider:** Will we get a new fiscal note?

**Chairman Headland:** We will get a new fiscal note when the amendment is added.

**Vice Chairman Owens:** On page 1 paragraph 2c the election is binding for five consecutive taxable years but it's really only going to run the first two that way. Then the next two years beginning December 31, 2019 it's for five years but before those five years is over we change it again in 2028. They aren't really limited to those five years or do they have to maintain that for five years even though the new one goes into effect?

**Emily Thompson:** It is a five year election so the method you elect at that start point will run for five years. You just don't have different options opening up until certain periods for what you can elect.

**Vice Chairman Owens:** Under our current apportionment if we do this first one and a company elects to do that they are stuck in that for five years and they don't have any of the other options as they become available until the end of that five years.

**Emily Thompson:** That is correct; it's a five year binding election.

**Representative Haak:** Made a motion to adopt the amendment 15.8198.03001.

**Representative Dockter:** Seconded.

**Voice vote:** Motion carried.

**Representative Klein:** Made a motion for a do pass as amended.

**Representative Steiner:** Seconded.

**Roll call vote:** 11 yes 3 no 0 absent

**Motion carried.**

**Vice Chairman Owens will carry this bill.**

SK  
3/24/15  
1/n

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2292

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 5 of section 57-38-04 and sections 57-38.1-09, 57-59-01, 57-59-05, 57-59-06, and 57-59-08 of the North Dakota Century Code, relating to apportionment of business income and the multistate tax compact; to repeal section 57-59-02 of the North Dakota Century Code, relating to the optional computation provision of the multistate tax compact; and to provide an effective date.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Subsection 5 of section 57-38-04 of the North Dakota Century Code is amended and reenacted as follows:

5. Whenever business activity is carried on partly within and partly without this state by a nonresident of this state as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, the entire income therefrom must be allocated to this state and to other states, according to the provisions of chapter 57-38.1 but only according to the apportionment method provided under subsection 1 of section 57-38.1-09, providing for allocation and apportionment of income of corporations doing business within and without this state.

**SECTION 2. AMENDMENT.** Section 57-38.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.1-09. Business income.**

1. All Except as permitted under subsections 2 through 4, all business income must be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.
2. For the first two taxable years beginning after December 31, 2017, a taxpayer that is not a passthrough entity may elect to apportion business income to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus two times the sales factor, and the denominator of which is four.
  - a. The election must be made on the return as originally and timely filed in the form and manner prescribed by the tax commissioner.
  - b. The election is applicable for all companies in a unitary group and for all companies filing a consolidated North Dakota return.
  - c. The election is binding for five consecutive taxable years after making the election, at which time the election lapses. The election under this subsection also includes the election to use the sales factor under subsections 3 and 4 for the taxable years those subsections apply.

- d. Unless a taxpayer makes another election under subsection 4 in the taxable year immediately following the final year of the binding effect of the election under this subsection, the taxpayer must file under subsection 1 for a period of three taxable years before it may make a new election under subsection 4.
3. For the first two taxable years beginning after December 31, 2019, a taxpayer that is not a passthrough entity may elect to apportion business income to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus six times the sales factor, and the denominator of which is eight.
- a. The election must be made on the return as originally and timely filed in the form and manner prescribed by the tax commissioner.
- b. The election is applicable for all companies in a unitary group and for all companies filing a consolidated North Dakota return.
- c. The election is binding for five consecutive taxable years after making the election, at which time the election lapses. The election under this subsection also includes the election to use the sales factor under subsection 4 for the taxable years that subsection applies.
- d. Unless a taxpayer makes another election under subsection 4 in the taxable year immediately following the final year of the binding effect of the election under this subsection, the taxpayer must file under subsection 1 for a period of three taxable years before it may make a new election under subsection 4.
4. For taxable years beginning after December 31, 2021, a taxpayer that is not a passthrough entity may elect to apportion business income to this state by multiplying the income by the sales factor. A taxpayer electing to file using a single sales factor must comply with the following:
- a. The election must be made on the return as originally and timely filed in the form and manner prescribed by the tax commissioner.
- b. The election is applicable for all companies in a unitary group and for all companies filing a consolidated North Dakota return.
- c. The election is binding for five consecutive taxable years after making the election, at which time the election lapses.
- d. Unless a taxpayer makes another election under this subsection in the taxable year immediately following the final year of a prior single sales factor election, the taxpayer must file under subsection 1 for a period of three taxable years before it may make a new single sales factor election.

**SECTION 3. AMENDMENT.** Section 57-59-01 of the North Dakota Century Code is amended and reenacted as follows:

**57-59-01. Multistate tax compact.**

The multistate tax compact is hereby entered into law and entered into with all jurisdictions legally joining therein, in the form substantially as follows:

**MULTISTATE TAX COMPACT**

**ARTICLE I - PURPOSES**

The purposes of this compact are to:

- 1. Facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes.
- 2. Promote uniformity or compatibility in significant components of tax systems.
- 3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.
- 4. Avoid duplicative taxation.

**ARTICLE II - DEFINITIONS**

As used in this compact:

- 1. "Capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety.
- 2. "Gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax.
- 3. "Income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions.
- 4. "Sales tax" means a tax imposed with respect to the transfer for a consideration of ownership, possession, or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller, or which is customarily separately stated from the sales price, but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles.
- 5. "State" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, or any territory or possession of the United States.
- 6. "Subdivision" means any governmental unit or special district of a state.
- 7. "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of ~~articles~~ article III, IV, and V of this compact shall apply only to the taxes specifically designated therein ~~and the provisions of article IX of this compact shall apply only in respect to determinations pursuant to article IV.~~

- 8. "Taxpayer" means any corporation, partnership, firm, association, governmental unit, or agency or person acting as a business entity in more than one state.
- 9. "Use tax" means a nonrecurring tax, other than a sales tax, which (a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession, or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property, and (b) is complementary to a sales tax.

**ARTICLE III - ELEMENTS OF INCOME TAX LAWS**

**~~Taxpayer Option, State and Local Taxes~~**

- ~~1. Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party state or pursuant to the laws of subdivisions in two or more party states may elect to apportion and allocate the taxpayer's income in the manner provided by the laws of such state or by the laws of such states and subdivisions without reference to this compact, or may elect to apportion and allocate in accordance with article IV. This election for any tax year may be made in all party states or subdivisions thereof or in any one or more of the party states or subdivisions thereof without reference to the election made in the others. For the purposes of this subsection, taxes imposed by subdivisions shall be considered separately from state taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein article IV is employed for all subdivisions of a state may the sum of all apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation that would be assignable to that state if the apportionment or allocation were being made with respect to a state income tax.~~

**~~Taxpayer Option, Short Form~~**

- ~~2. Each party state or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return, whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property, and whose dollar volume of gross sales made during the tax year within the state or subdivision, as the case may be, is not in excess of one hundred thousand dollars may elect to report and pay any tax due on the basis of a percentage of such volume, and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The multistate tax commission, not more than once in five years, may adjust the one hundred thousand dollar figure in order to reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon adoption by the commission, shall replace the one hundred thousand dollar figure specifically provided herein. Each party state and subdivision thereof may make the same election available to taxpayers additional to those specified in this subsection.~~

**Coverage**

- 3. Nothing in this article relates to the reporting or payment of any tax other than an income tax.

**ARTICLE IV – DIVISION OF INCOME**

- 1. ~~As used in this article, unless the context otherwise requires:~~
  - (a) ~~"Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.~~
  - (b) ~~"Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.~~
  - (c) ~~"Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.~~
  - (d) ~~"Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, or any type of insurance company.~~
  - (e) ~~"Nonbusiness income" means all income other than business income.~~
  - (f) ~~"Public utility" means any business entity (1) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipeline, or the production, transmission, sale, delivery, or furnishing of electricity, water, or steam; and (2) whose rates of charges for goods or services have been established or approved by a federal, state, or local government or governmental agency.~~
  - (g) ~~"Sales" means all gross receipts of the taxpayer not allocated under subsections of this article.~~
  - (h) ~~"State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.~~
  - (i) ~~"This state" means the state in which the relevant tax return is filed or, in the case of application of this article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.~~
- 2. Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion that taxpayer's net income as provided in this article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of the taxpayer's income from activities subject to this article, the taxpayer may elect to allocate and apportion the taxpayer's entire net income as provided in this article.

- 3. ~~For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if (a) in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (b) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.~~
- 4. ~~Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in subsections 5 through 8 of this article.~~
- 5. (a) ~~Net rents and royalties from real property located in this state are allocable to this state.~~
- (b) ~~Net rents and royalties from tangible personal property are allocable to this state: (1) if and to the extent that the property is utilized in this state, or (2) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.~~
- (c) ~~The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.~~
- 6. (a) ~~Capital gains and losses from sales of real property located in this state are allocable to this state.~~
- (b) ~~Capital gains and losses from sales of tangible personal property are allocable to this state if (1) the property had a situs in this state at the time of the sale, or (2) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.~~
- (c) ~~Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.~~
- 7. ~~Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.~~
- 8. (a) ~~Patent and copyright royalties are allocable to this state: (1) if and to the extent that the patent or copyright is utilized by the payer in this state, or (2) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.~~

- (b) ~~A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.~~
- (c) ~~A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.~~
- 9. ~~All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.~~
- 10. ~~The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.~~
- 11. ~~Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.~~
- 12. ~~The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.~~
- 13. ~~The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.~~
- 14. ~~Compensation is paid in this state if:~~
  - (a) ~~The individual's service is performed entirely within the state;~~
  - (b) ~~The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or~~
  - (c) ~~Some of the service is performed in the state and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.~~

- 15. ~~The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.~~
- 16. ~~Sales of tangible personal property are in this state if:
 
  - (a) ~~The property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or~~
  - (b) ~~The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (1) the purchaser is the United States government, or (2) the taxpayer is not taxable in the state of the purchaser.~~~~
- 17. ~~Sales, other than sales of tangible personal property, are in this state if:
 
  - (a) ~~The income producing activity is performed in this state; or~~
  - (b) ~~The income producing activity is performed both in and outside this state and a greater proportion of the income producing activity is performed in this state than in any other state, based on costs of performance.~~~~
- 18. ~~If the allocation and apportionment provisions of this article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:
 
  - (a) ~~Separate accounting;~~
  - (b) ~~The exclusion of any one or more of the factors;~~
  - (c) ~~The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or~~
  - (d) ~~The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.~~~~

**ARTICLE V- ELEMENTS OF SALES AND USE TAX LAWS**

**Tax Credit**

- 1. Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by the purchaser with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

**Exemption Certificates, Vendors May Rely**

- 2. Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

**ARTICLE VIV - THE COMMISSION**

**Organization and Management**

1. (a) The multistate tax commission is hereby established. It shall be composed of one "member" from each party state who shall be the head of the state agency charged with the administration of the types of taxes to which this compact applies. If there is more than one such agency the state shall provide by law for the selection of the commission member from the heads of the relevant agencies. State law may provide that a member of the commission be represented by an alternate but only if there is on file with the commission written notification of the designation and identity of the alternate. The attorney general of each party state or the attorney general's designee, or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission, but shall not vote. Such attorneys general, designees, or other counsel shall receive all notices of meetings required under subdivision e of subsection 1 of this article.
- (b) Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.
- (c) Each member shall be entitled to one vote. The commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.
- (d) The commission shall adopt an official seal to be used as it may provide.
- (e) The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular, and special meetings. Notices of special meetings shall include the reasons therefor and an agenda of the items to be considered.
- (f) The commission shall elect annually, from among its members, a chairman, a vice chairman, and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and it shall fix the executive director's duties and compensation. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.
- (g) Irrespective of the civil service, personnel, or other merit system laws of any party state, the executive director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix their duties and compensation. The commission bylaws shall provide for personnel policies and programs.

- (h) The commission may borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental entity.
- (i) The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.
- (j) The commission may establish one or more offices for the transacting of its business.
- (k) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party states.
- (l) The commission annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission, and shall include the nature, amount, and conditions, if any, of the donation, gift, grant, or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

**Committees**

- 2. (a) To assist in the conduct of its business when the full commission is not meeting, the commission shall have an executive committee of seven members, including the chairman, vice chairman, treasurer, and four other members elected annually by the commission. The executive committee subject to the provisions of this compact and consistent with the policies of the commission, shall function as provided in the bylaws of the commission.
- (b) The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the commission, including problems of special interest to any party state and problems dealing with particular types of taxes.
- (c) The commission may establish such additional committees as its bylaws may provide.

**Powers**

- 3. In addition to powers conferred elsewhere in this compact, the commission shall have power to:
  - (a) Study state and local tax systems and particular types of state and local taxes.
  - (b) Develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a view toward

encouraging the simplification and improvement of state and local tax law and administration.

- (c) Compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws.
- (d) Do all things necessary and incidental to the administration of its functions pursuant to this compact.

**Finance**

- 4. (a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.
- (b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-tenth in equal shares; and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, and sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this subsection.
- (c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under subdivision i of subsection 1 of this article; provided, that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under subdivision i of subsection 1, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.
- (d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the commission.
- (e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.
- (f) Nothing contained in this article shall be construed to prevent commission compliance with laws relating to audit or inspection of

accounts by or on behalf of any government contributing to the support of the commission.

**ARTICLE VIII - UNIFORM REGULATIONS AND FORMS**

1. Whenever any two or more party states, or subdivisions of party states, have uniform or similar provisions of law relating to an income tax, the commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax, or prescribing uniform tax forms. ~~The commission may also act with respect to the provisions of article IV of this compact.~~
2. Prior to the adoption of any regulation, the commission shall:
  - (a) As provided in its bylaws, hold at least one public hearing on due notice to all affected party states and subdivisions thereof and to all taxpayers and other persons who have made timely request of the commission for advance notice of its regulation-making proceedings.
  - (b) Afford all affected party states and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the commission.
3. The commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

**ARTICLE VIII - INTERSTATE AUDITS**

1. This article shall be in force only in those party states that specifically provide therefor by statute.
2. Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records, or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local government or governments for which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.
3. The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property, or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, the person may be required to attend for such purpose at any time and place fixed by the commission within the state of which the person is a resident; provided, that such state has adopted this article.

4. The commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this article and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order being sought is situated. The provisions of this subsection apply only to courts in a state that has adopted this article.
5. The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.
6. Information obtained by any audit pursuant to this article shall be confidential and available only for tax purposes to party states, their subdivisions, or the United States. Availability of information shall be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit, and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this article shall be construed to require any taxpayer to keep records for any period not otherwise required by law.
7. Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party states or any of their subdivisions are not superseded or invalidated by this article.
8. In no event shall the commission make any charge against a taxpayer for an audit.
9. As used in this article, "tax", in addition to the meaning ascribed to it in article II, means any tax or license fee imposed in whole or in part for revenue purposes.

**ARTICLE IX—ARBITRATION**

- ~~1. Whenever the commission finds a need for settling disputes concerning apportionments and allocations by arbitration, it may adopt a regulation placing this article in effect, notwithstanding the provisions of article VII.~~
- ~~2. The commission shall select and maintain an arbitration panel composed of officers and employees of state and local governments and private persons who shall be knowledgeable and experienced in matters of tax law and administration.~~
- ~~3. Whenever a taxpayer who has elected to employ article IV, or whenever the laws of the party state or subdivision thereof are substantially identical~~

with the relevant provisions of article IV, the taxpayer, by written notice to the commission and to each party state or subdivision thereof that would be affected, may secure arbitration of an apportionment or allocation, if the taxpayer is dissatisfied with the final administrative determination of the tax agency of the state or subdivision with respect thereto on the ground that it would subject the taxpayer to double or multiple taxation by two or more party states or subdivisions thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein, and agrees to be bound thereby.

4. The arbitration board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the commission's arbitration panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the arbitration panel. The two persons selected for the board in the manner provided by the foregoing provisions of this subsection shall jointly select the third member of the board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No member of a board selected by lot shall be qualified to serve if that member is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residence within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this subsection.
5. The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's incorporation, residence, or domicile, in any state where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.
6. The board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses. The board shall act by majority vote.
7. The board shall have power to administer oaths, take testimony, subpoena, and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena, and upon application by the board, any judge of a court of competent jurisdiction of the state in which the board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoena, and the court may punish failure to obey the order as a contempt. The provisions of this subsection apply only in states that have adopted this article.
8. Unless the parties otherwise agree the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the board in such manner as it may determine. The commission shall fix a schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No officer or employee of a state or local government who serves as a member of a board shall be entitled to compensation therefor unless that person is required on account of that person's service

~~to forego the regular compensation attaching to that person's public employment, but any such board member shall be entitled to expenses.~~

- ~~9. The board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the board shall be final for purposes of making the apportionment or allocation, but for no other purpose.~~
- ~~10. The board shall file with the commission and with each tax agency represented in the proceeding: the determination of the board; the board's written statement of its reasons therefor; the record of the board's proceedings; and any other documents required by the arbitration rules of the commission to be filed.~~
- ~~11. The commission shall publish the determinations of boards together with the statements of the reasons therefor.~~
- ~~12. The commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party states.~~
- ~~13. Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceeding.~~

**ARTICLE XVII - ENTRY INTO FORCE AND WITHDRAWAL**

- 1. This compact shall enter into force when enacted into law by any seven states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof. The commission shall arrange for notification of all party states whenever there is a new enactment of the compact.
- 2. Any party state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.
- 3. ~~No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.~~

**ARTICLE XVIII - EFFECT ON OTHER LAWS AND JURISDICTION**

Nothing in this compact shall be construed to:

- 1. Affect the power of any state or subdivision thereof to fix rates of taxation, except that a party state shall be obligated to implement subsection 2 of article III of this compact.
- 2. Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax; provided, that the definition of "tax" in subsection 9 of article ~~VIII~~VI may apply for the purposes of that

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article and the commission's powers of study and recommendation pursuant to subsection 3 of article ~~VI~~IV may apply.

- 3. Withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation, ~~limited liability company,~~ or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body.
- 4. Supersede or limit the jurisdiction of any court of the United States.

**ARTICLE XIII - CONSTRUCTION AND SEVERABILITY**

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

**SECTION 4. AMENDMENT.** Section 57-59-05 of the North Dakota Century Code is amended and reenacted as follows:

**57-59-05. Legal counsel.**

The chief counsel of the state tax department or the chief counsel's designee shall attend the meetings of the multistate tax commission as the legal counsel representing the state of North Dakota as provided for by subdivision a of subsection 1 of article ~~VI~~IV of section 57-59-01.

**SECTION 5. AMENDMENT.** Section 57-59-06 of the North Dakota Century Code is amended and reenacted as follows:

**57-59-06. Selection of representatives to meet with commission member.**

The state tax commissioner shall appoint two persons who are representatives of subdivisions affected or likely to be affected by the multistate tax compact from among persons nominated by the association of counties and league of cities. The state tax commissioner, and any alternate designated by the state tax commissioner, shall consult with these appointees, in accordance with subdivision b of subsection 1 of article ~~VI~~IV of section 57-59-01. The state tax commissioner shall also consult regularly with the chairman and ranking minority party member of the finance and taxation committees of the senate and house of representatives as provided for in subdivision b of subsection 2 of article ~~VI~~IV of section 57-59-01.

**SECTION 6. AMENDMENT.** Section 57-59-08 of the North Dakota Century Code is amended and reenacted as follows:

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**57-59-08. Interaudits.**

Article ~~VIII~~VI of the multistate tax compact relating to interaudits shall be in force in and with respect to the state of North Dakota.

**SECTION 7. REPEAL.** Section 57-59-02 of the North Dakota Century Code is repealed.

**SECTION 8. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2014."

Renumber accordingly

Date: 3-24-15  
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2292

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: 15.8198.03001

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Rep. Haak    Seconded By Rep. Dockter

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN HEADLAND			REP HAAK		
VICE CHAIRMAN OWENS			REP STRINDEN		
REP DOCKTER			REP MITSKOG		
REP TOMAN			REP SCHNEIDER		
REP FROSETH					
REP STEINER					
REP HATLESTAD					
REP KLEIN					
REP KADING					
REP TROTTIER					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

*Voice vote = Motion carries.*

Date: 3-24-15  
 Roll Call Vote #: 2

**2015 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2292**

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: 15.8198.03001

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Rep. Klein    Seconded By Rep. Steiner

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN HEADLAND	✓		REP HAAK		✓
VICE CHAIRMAN OWENS	✓		REP STRINDEN		✓
REP DOCKTER	✓		REP MITSKOG	✓	
REP TOMAN	✓		REP SCHNEIDER		✓
REP FROSETH	✓				
REP STEINER	✓				
REP HATLESTAD	✓				
REP KLEIN	✓				
REP KADING	✓				
REP TROTTIER	✓				

Total (Yes) 11 No 3

Absent 0

Floor Assignment Rep. Owens

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

**REPORT OF STANDING COMMITTEE**

SB 2292, as reengrossed: Finance and Taxation Committee (Rep. Headland, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed SB 2292 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 5 of section 57-38-04 and sections 57-38.1-09, 57-59-01, 57-59-05, 57-59-06, and 57-59-08 of the North Dakota Century Code, relating to apportionment of business income and the multistate tax compact; to repeal section 57-59-02 of the North Dakota Century Code, relating to the optional computation provision of the multistate tax compact; and to provide an effective date.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Subsection 5 of section 57-38-04 of the North Dakota Century Code is amended and reenacted as follows:

5. Whenever business activity is carried on partly within and partly without this state by a nonresident of this state as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, the entire income therefrom must be allocated to this state and to other states, according to the provisions of chapter 57-38.1 but only according to the apportionment method provided under subsection 1 of section 57-38.1-09, providing for allocation and apportionment of income of corporations doing business within and without this state.

**SECTION 2. AMENDMENT.** Section 57-38.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.1-09. Business income.**

1. AllExcept as permitted under subsections 2 through 4, all business income must be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.
2. For the first two taxable years beginning after December 31, 2017, a taxpayer that is not a passthrough entity may elect to apportion business income to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus two times the sales factor, and the denominator of which is four.
  - a. The election must be made on the return as originally and timely filed in the form and manner prescribed by the tax commissioner.
  - b. The election is applicable for all companies in a unitary group and for all companies filing a consolidated North Dakota return.
  - c. The election is binding for five consecutive taxable years after making the election, at which time the election lapses. The election under this subsection also includes the election to use the sales factor under subsections 3 and 4 for the taxable years those subsections apply.
  - d. Unless a taxpayer makes another election under subsection 4 in the taxable year immediately following the final year of the binding effect of the election under this subsection, the taxpayer must file under subsection 1 for a period of three taxable years before it may make a new election under subsection 4.

3. For the first two taxable years beginning after December 31, 2019, a taxpayer that is not a passthrough entity may elect to apportion business income to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus six times the sales factor, and the denominator of which is eight.
  - a. The election must be made on the return as originally and timely filed in the form and manner prescribed by the tax commissioner.
  - b. The election is applicable for all companies in a unitary group and for all companies filing a consolidated North Dakota return.
  - c. The election is binding for five consecutive taxable years after making the election, at which time the election lapses. The election under this subsection also includes the election to use the sales factor under subsection 4 for the taxable years that subsection applies.
  - d. Unless a taxpayer makes another election under subsection 4 in the taxable year immediately following the final year of the binding effect of the election under this subsection, the taxpayer must file under subsection 1 for a period of three taxable years before it may make a new election under subsection 4.
  
4. For taxable years beginning after December 31, 2021, a taxpayer that is not a passthrough entity may elect to apportion business income to this state by multiplying the income by the sales factor. A taxpayer electing to file using a single sales factor must comply with the following:
  - a. The election must be made on the return as originally and timely filed in the form and manner prescribed by the tax commissioner.
  - b. The election is applicable for all companies in a unitary group and for all companies filing a consolidated North Dakota return.
  - c. The election is binding for five consecutive taxable years after making the election, at which time the election lapses.
  - d. Unless a taxpayer makes another election under this subsection in the taxable year immediately following the final year of a prior single sales factor election, the taxpayer must file under subsection 1 for a period of three taxable years before it may make a new single sales factor election.

**SECTION 3. AMENDMENT.** Section 57-59-01 of the North Dakota Century Code is amended and reenacted as follows:

**57-59-01. Multistate tax compact.**

The multistate tax compact is hereby entered into law and entered into with all jurisdictions legally joining therein, in the form substantially as follows:

**MULTISTATE TAX COMPACT**

**ARTICLE I - PURPOSES**

The purposes of this compact are to:

1. Facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes.

2. Promote uniformity or compatibility in significant components of tax systems.
3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.
4. Avoid duplicative taxation.

## ARTICLE II - DEFINITIONS

As used in this compact:

1. "Capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety.
2. "Gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax.
3. "Income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions.
4. "Sales tax" means a tax imposed with respect to the transfer for a consideration of ownership, possession, or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller, or which is customarily separately stated from the sales price, but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles.
5. "State" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, or any territory or possession of the United States.
6. "Subdivision" means any governmental unit or special district of a state.
7. "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of ~~articles~~ article III, IV, and V of this compact shall apply only to the taxes specifically designated therein and the provisions of ~~article IX of this compact shall apply only in respect to determinations pursuant to article IV.~~
8. "Taxpayer" means any corporation, partnership, firm, association, governmental unit, or agency or person acting as a business entity in more than one state.
9. "Use tax" means a nonrecurring tax, other than a sales tax, which (a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession, or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property, and (b) is complementary to a sales tax.

## ARTICLE III - ELEMENTS OF INCOME TAX LAWS

### **~~Taxpayer Option, State and Local Taxes~~**

1. ~~Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party state or pursuant to the laws of subdivisions in two or more party states may elect to apportion and allocate the taxpayer's income in the manner provided by the laws of such state or by the laws of such states and subdivisions without reference to this compact, or may elect to apportion and allocate in accordance with article IV. This election for any tax year may be made in all party states or subdivisions thereof or in any one or more of the party states or subdivisions thereof without reference to the election made in the others. For the purposes of this subsection, taxes imposed by subdivisions shall be considered separately from state taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein article IV is employed for all subdivisions of a state may the sum of all apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation that would be assignable to that state if the apportionment or allocation were being made with respect to a state income tax.~~

### **~~Taxpayer Option, Short Form~~**

2. ~~Each party state or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return, whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property, and whose dollar volume of gross sales made during the tax year within the state or subdivision, as the case may be, is not in excess of one hundred thousand dollars may elect to report and pay any tax due on the basis of a percentage of such volume, and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The multistate tax commission, not more than once in five years, may adjust the one hundred thousand dollar figure in order to reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon adoption by the commission, shall replace the one hundred thousand dollar figure specifically provided herein. Each party state and subdivision thereof may make the same election available to taxpayers additional to those specified in this subsection.~~

### **Coverage**

3. ~~Nothing in this article relates to the reporting or payment of any tax other than an income tax.~~

### **ARTICLE IV – DIVISION OF INCOME**

1. ~~As used in this article, unless the context otherwise requires:~~
  - (a) ~~"Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.~~
  - (b) ~~"Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.~~
  - (c) ~~"Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.~~

- (d) ~~"Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, or any type of insurance company.~~
  - (e) ~~"Nonbusiness income" means all income other than business income.~~
  - (f) ~~"Public utility" means any business entity (1) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipeline, or the production, transmission, sale, delivery, or furnishing of electricity, water, or steam; and (2) whose rates of charges for goods or services have been established or approved by a federal, state, or local government or governmental agency.~~
  - (g) ~~"Sales" means all gross receipts of the taxpayer not allocated under subsections of this article.~~
  - (h) ~~"State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.~~
  - (i) ~~"This state" means the state in which the relevant tax return is filed or, in the case of application of this article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.~~
2. ~~Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion that taxpayer's net income as provided in this article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of the taxpayer's income from activities subject to this article, the taxpayer may elect to allocate and apportion the taxpayer's entire net income as provided in this article.~~
3. ~~For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if (a) in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (b) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.~~
4. ~~Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in subsections 5 through 8 of this article.~~
5. (a) ~~Net rents and royalties from real property located in this state are allocable to this state.~~
- (b) ~~Net rents and royalties from tangible personal property are allocable to this state: (1) if and to the extent that the property is utilized in this state, or (2) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.~~

- (c) ~~The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.~~
- 6. (a) ~~Capital gains and losses from sales of real property located in this state are allocable to this state.~~
- (b) ~~Capital gains and losses from sales of tangible personal property are allocable to this state if (1) the property had a situs in this state at the time of the sale, or (2) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.~~
- (c) ~~Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.~~
- 7. ~~Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.~~
- 8. (a) ~~Patent and copyright royalties are allocable to this state: (1) if and to the extent that the patent or copyright is utilized by the payer in this state, or (2) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.~~
- (b) ~~A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.~~
- (c) ~~A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.~~
- 9. ~~All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.~~
- 10. ~~The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.~~

11. ~~Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.~~
12. ~~The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.~~
13. ~~The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.~~
14. ~~Compensation is paid in this state if:~~
  - ~~(a) The individual's service is performed entirely within the state;~~
  - ~~(b) The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or~~
  - ~~(c) Some of the service is performed in the state and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.~~
15. ~~The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.~~
16. ~~Sales of tangible personal property are in this state if:~~
  - ~~(a) The property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or~~
  - ~~(b) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (1) the purchaser is the United States government, or (2) the taxpayer is not taxable in the state of the purchaser.~~
17. ~~Sales, other than sales of tangible personal property, are in this state if:~~
  - ~~(a) The income-producing activity is performed in this state; or~~
  - ~~(b) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.~~
18. ~~If the allocation and apportionment provisions of this article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:~~
  - ~~(a) Separate accounting;~~

- (b) ~~The exclusion of any one or more of the factors;~~
- (c) ~~The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or~~
- (d) ~~The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.~~

## **ARTICLE V-- ELEMENTS OF SALES AND USE TAX LAWS**

### **Tax Credit**

1. Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by the purchaser with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

### **Exemption Certificates, Vendors May Rely**

2. Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

## **ARTICLE ~~VII~~IV - THE COMMISSION**

### **Organization and Management**

1. (a) The multistate tax commission is hereby established. It shall be composed of one "member" from each party state who shall be the head of the state agency charged with the administration of the types of taxes to which this compact applies. If there is more than one such agency the state shall provide by law for the selection of the commission member from the heads of the relevant agencies. State law may provide that a member of the commission be represented by an alternate but only if there is on file with the commission written notification of the designation and identity of the alternate. The attorney general of each party state or the attorney general's designee, or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission, but shall not vote. Such attorneys general, designees, or other counsel shall receive all notices of meetings required under subdivision e of subsection 1 of this article.
- (b) Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.
- (c) Each member shall be entitled to one vote. The commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.
- (d) The commission shall adopt an official seal to be used as it may provide.

- (e) The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular, and special meetings. Notices of special meetings shall include the reasons therefor and an agenda of the items to be considered.
- (f) The commission shall elect annually, from among its members, a chairman, a vice chairman, and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and it shall fix the executive director's duties and compensation. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.
- (g) Irrespective of the civil service, personnel, or other merit system laws of any party state, the executive director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix their duties and compensation. The commission bylaws shall provide for personnel policies and programs.
- (h) The commission may borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental entity.
- (i) The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.
- (j) The commission may establish one or more offices for the transacting of its business.
- (k) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party states.
- (l) The commission annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission, and shall include the nature, amount, and conditions, if any, of the donation, gift, grant, or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

#### Committees

- 2. (a) To assist in the conduct of its business when the full commission is not meeting, the commission shall have an executive committee of seven members, including the chairman, vice chairman, treasurer, and four other members elected annually by the commission. The executive committee subject to the provisions of this compact and consistent with the policies of the commission, shall function as provided in the bylaws of the commission.

- (b) The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the commission, including problems of special interest to any party state and problems dealing with particular types of taxes.
- (c) The commission may establish such additional committees as its bylaws may provide.

#### **Powers**

- 3. In addition to powers conferred elsewhere in this compact, the commission shall have power to:
  - (a) Study state and local tax systems and particular types of state and local taxes.
  - (b) Develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a view toward encouraging the simplification and improvement of state and local tax law and administration.
  - (c) Compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws.
  - (d) Do all things necessary and incidental to the administration of its functions pursuant to this compact.

#### **Finance**

- 4. (a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.
- (b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-tenth in equal shares; and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, and sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this subsection.
- (c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under subdivision i of subsection 1 of this article; provided, that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under subdivision i of subsection 1, the

commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

- (d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the commission.
- (e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.
- (f) Nothing contained in this article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

#### **ARTICLE ~~VII~~ - UNIFORM REGULATIONS AND FORMS**

- 1. Whenever any two or more party states, or subdivisions of party states, have uniform or similar provisions of law relating to an income tax, the commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax, or prescribing uniform tax forms. ~~The commission may also act with respect to the provisions of article IV of this compact.~~
- 2. Prior to the adoption of any regulation, the commission shall:
  - (a) As provided in its bylaws, hold at least one public hearing on due notice to all affected party states and subdivisions thereof and to all taxpayers and other persons who have made timely request of the commission for advance notice of its regulation-making proceedings.
  - (b) Afford all affected party states and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the commission.
- 3. The commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

#### **ARTICLE ~~VIII~~ - INTERSTATE AUDITS**

- 1. This article shall be in force only in those party states that specifically provide therefor by statute.
- 2. Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records, or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local government or governments for which it performs the service, for any audits performed

by it in order to reimburse itself for the actual costs incurred in making the audit.

3. The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property, or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, the person may be required to attend for such purpose at any time and place fixed by the commission within the state of which the person is a resident; provided, that such state has adopted this article.
4. The commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this article and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order being sought is situated. The provisions of this subsection apply only to courts in a state that has adopted this article.
5. The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.
6. Information obtained by any audit pursuant to this article shall be confidential and available only for tax purposes to party states, their subdivisions, or the United States. Availability of information shall be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit, and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this article shall be construed to require any taxpayer to keep records for any period not otherwise required by law.
7. Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party states or any of their subdivisions are not superseded or invalidated by this article.
8. In no event shall the commission make any charge against a taxpayer for an audit.
9. As used in this article, "tax", in addition to the meaning ascribed to it in article II, means any tax or license fee imposed in whole or in part for revenue purposes.

#### **ARTICLE IX--ARBITRATION**

- 4- ~~Whenever the commission finds a need for settling disputes concerning apportionments and allocations by arbitration, it may adopt a regulation placing this article in effect, notwithstanding the provisions of article VII.~~

- 2- ~~The commission shall select and maintain an arbitration panel composed of officers and employees of state and local governments and private persons who shall be knowledgeable and experienced in matters of tax law and administration.~~
- 3- ~~Whenever a taxpayer who has elected to employ article IV, or whenever the laws of the party state or subdivision thereof are substantially identical with the relevant provisions of article IV, the taxpayer, by written notice to the commission and to each party state or subdivision thereof that would be affected, may secure arbitration of an apportionment or allocation, if the taxpayer is dissatisfied with the final administrative determination of the tax agency of the state or subdivision with respect thereto on the ground that it would subject the taxpayer to double or multiple taxation by two or more party states or subdivisions thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein, and agrees to be bound thereby.~~
- 4- ~~The arbitration board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the commission's arbitration panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the arbitration panel. The two persons selected for the board in the manner provided by the foregoing provisions of this subsection shall jointly select the third member of the board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No member of a board selected by lot shall be qualified to serve if that member is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residence within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this subsection.~~
- 5- ~~The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's incorporation, residence, or domicile, in any state where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.~~
- 6- ~~The board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses. The board shall act by majority vote.~~
- 7- ~~The board shall have power to administer oaths, take testimony, subpoena, and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena, and upon application by the board, any judge of a court of competent jurisdiction of the state in which the board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoena, and the court may punish failure to obey the order as a contempt. The provisions of this subsection apply only in states that have adopted this article.~~
- 8- ~~Unless the parties otherwise agree the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the board in such manner as it may determine. The commission shall fix a schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No officer or employee of a state or local government who serves as a member of a board shall be entitled to~~

~~compensation therefor unless that person is required on account of that person's service to forego the regular compensation attaching to that person's public employment, but any such board member shall be entitled to expenses.~~

- ~~9. The board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the board shall be final for purposes of making the apportionment or allocation, but for no other purpose.~~
- ~~10. The board shall file with the commission and with each tax agency represented in the proceeding: the determination of the board; the board's written statement of its reasons therefor; the record of the board's proceedings; and any other documents required by the arbitration rules of the commission to be filed.~~
- ~~11. The commission shall publish the determinations of boards together with the statements of the reasons therefor.~~
- ~~12. The commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party states.~~
- ~~13. Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceeding.~~

#### **ARTICLE ~~XVII~~ - ENTRY INTO FORCE AND WITHDRAWAL**

1. This compact shall enter into force when enacted into law by any seven states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof. The commission shall arrange for notification of all party states whenever there is a new enactment of the compact.
2. Any party state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.
- ~~3. No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.~~

#### **ARTICLE ~~XVIII~~ - EFFECT ON OTHER LAWS AND JURISDICTION**

Nothing in this compact shall be construed to:

1. Affect the power of any state or subdivision thereof to fix rates of taxation, ~~except that a party state shall be obligated to implement subsection 2 of article III of this compact.~~
2. Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax; provided, that the definition of "tax" in subsection 9 of article ~~VI~~ may apply for the purposes of that article and the commission's powers of study and recommendation pursuant to subsection 3 of article ~~IV~~ may apply.

3. Withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation, ~~limited liability company~~, or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body.
4. Supersede or limit the jurisdiction of any court of the United States.

#### **ARTICLE ~~XIII~~ - CONSTRUCTION AND SEVERABILITY**

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

**SECTION 4. AMENDMENT.** Section 57-59-05 of the North Dakota Century Code is amended and reenacted as follows:

##### **57-59-05. Legal counsel.**

The chief counsel of the state tax department or the chief counsel's designee shall attend the meetings of the multistate tax commission as the legal counsel representing the state of North Dakota as provided for by subdivision a of subsection 1 of article ~~VI~~ of section 57-59-01.

**SECTION 5. AMENDMENT.** Section 57-59-06 of the North Dakota Century Code is amended and reenacted as follows:

##### **57-59-06. Selection of representatives to meet with commission member.**

The state tax commissioner shall appoint two persons who are representatives of subdivisions affected or likely to be affected by the multistate tax compact from among persons nominated by the association of counties and league of cities. The state tax commissioner, and any alternate designated by the state tax commissioner, shall consult with these appointees, in accordance with subdivision b of subsection 1 of article ~~VI~~ of section 57-59-01. The state tax commissioner shall also consult regularly with the chairman and ranking minority party member of the finance and taxation committees of the senate and house of representatives as provided for in subdivision b of subsection 2 of article ~~VI~~ of section 57-59-01.

**SECTION 6. AMENDMENT.** Section 57-59-08 of the North Dakota Century Code is amended and reenacted as follows:

##### **57-59-08. Interaudits.**

Article ~~VI~~ of the multistate tax compact relating to interaudits shall be in force in and with respect to the state of North Dakota.

**SECTION 7. REPEAL.** Section 57-59-02 of the North Dakota Century Code is repealed.

**SECTION 8. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2014."

Renumber accordingly

**2015 CONFERENCE COMMITTEE**

**SB 2292**

# 2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee  
Lewis and Clark Room, State Capitol

SB2292  
4/8/2015  
Job #25925

Subcommittee  
 Conference Committee

Committee Clerk Signature

*Alice Grove*

## Explanation or reason for introduction of bill/resolution:

Conference Committee

## Minutes:

Attachment #1

Chairman Cook opened the conference committee on SB2292. Senators Cook, Laffen & Triplett; Rep. Headland, Owens & Haak all present.

**Sen. Cook** -- Folks, I think we know what we've got here before us. **(Attachment #1)** I handed out the graphs that show the difference between the two bills. It's obvious that we are all in agreement that it is something that we have to get done. We should move towards the single rated sales factor. I think the question is how fast can we get it done. The handout shows the way we approved it, the way the House approved it at the bottom. Our fiscal note was \$30 million. I believe your fiscal note for this biennium was zero. This shows 4 other options that all try to speed it up and that would be my ultimate goal at the end: we get to a single weighted sales factor in 2019, you accomplish it in 2022. I wish we could find a way that we could do it even faster than 2019, myself. I think to what degree we can make that decision is probably a week to 10 days away from us. As we get closer to the end we might be able to see that.

**Sen. Triplett** -- I wanted to share the brilliant idea that I had in our committee, that you all didn't accept, which was we could make it happen with no fiscal effect now if we just raised income taxes.

**Sen. Cook** -- That's right, you did make that suggestion. My guess is that what we do will be relative to what we do with income tax.

**Rep. Haak** -- Do you have fiscal notes for all of these options or can you give us a ballpark figure of what they would be for this biennium and our next biennium?

**Sen. Cook** -- The option that I like the best is option D and I would guess that the fiscal note for that would be \$15 million for this biennium. We are going to the double weighted sales factor in just the second year of the biennium and it is \$15 million a year. Right now, to go all the way to a single sales factor is \$118 million, if we were to do that. Get there in 1

biennium. I would suggest that we all think about other options. I'll give credit to commerce, Justin Dever, for coming up with options A, B & C and doing this graph. We suggested 1 more option D, that doesn't mean that there isn't another one. Any comments from the House?

**Rep. Headland** -- Just from my perspective, I would agree with you that our ultimate goal is to get into the same place and the quicker we can. I think we would all agree is the direction we would all like to end up. I certainly applaud Justin, as well, for coming up with this. I think you are exactly right, we are just going to have to give this a little time to see how things wash out and towards the end we will be able to make that decision rather easily.

**Sen. Cook** -- I think so too. Senator Laffen is going to be gone on business tomorrow and Friday. We will not reschedule this again until Monday.

Adjourned.

# 2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee  
Lewis and Clark Room, State Capitol

SB2292  
4/13/2015  
Job #26060

Subcommittee  
 Conference Committee

Committee Clerk Signature

*Alice Grove*

## Explanation or reason for introduction of bill/resolution:

Conference Committee

## Minutes:

Attachments #1, #2

Chairman Cook opened the conference committee on SB2292. Senators Cook, Laffen and Triplett; Representatives Headland, Owens and Haak all present.

**Sen. Cook** -- At the last meeting I handed out this little chart that showed some options. The option, I think, that we were focused on was the last one, option D, and I have since, the fiscal note, if we went to option D for this biennium, would \$15M. **(Attachment #1)** I think option D is the best way to get this put into code this biennium with some certainty that it would offer then and give us 2019 in full compliance with the single sales factor which I think is the right direction for us to go, considering what all of our competing states do.

**Rep. Headland** -- I think, from my perspective, I would be in complete agreement, in looking at the different scenarios myself. I took a look at option D and thought that that was a fair compromise and a workable compromise. I'm in agreement. Rep. Owens has a question.

**Rep. Owens** -- Option D is the logical direction, I believe. In section 2 of your amendments. **(Attachment #2)** Section 2c, and it carry through to 3c where it talks about the election is binding for five consecutive years after making the election, at which time the election lapses. The election under this subsection also includes the election to use the sales factor under subsections 3 and 4 for the taxable years those subsections apply. What always bothered me about the first part of that was we were making the changes every 2 years or 1 year and yet we were locking them in to 5 years, but as I read the second half of that paragraph, that allows them to walk the scale as they become available, am I correct?

**Sen. Cook** -- I believe that you are correct.

**Rep. Owens** -- Well, then I have no problem with it.

**Rep. Headland** -- With that being said, would the proper motion be just to move the amendment that already states that the House recesses?

**Sen. Cook** -- That would be fine.

**Rep. Headland** -- I would move the proposed amendment.

**Sen. Cook** -- Rep. Headland moves amendment 15.8198.03002. Discussion?

**Rep. Owens** -- Seconded.

**Sen. Triplett** -- I can see where this train is going and my comments are futile but I will say them out loud, I don't think we can afford this unless we increase the rates accordingly. I don't have a serious problem with the concept but we are proposing to reduce our state's revenues by a rather significant amount and we sat here in the previous half hour in the same room with a different conference committee talking about how we can't afford \$50,000 for a tiny little program with many, many other things we are being told we can't afford this or that for half a million here, couple hundred thousand there, a million there, and yet we blithely give away \$15M in favor of a new policy. If the policy is good, fine, let's go with the policy but then let's make it revenue neutral by increasing income taxes across the board to have a revenue neutral bill.

**Sen. Cook** -- Sen. Triplett, a lot of that argument is justified but I would have to point out that in this particular case, if we don't keep ourselves competitive what we stand to possibly lose could be a lot more than \$15M. I know that is an unknown number, but I think we all recognize the importance of keeping a state competitive with the other states. We don't want to see a major expansion go to Minnesota. We don't need to see a company that could possibly employ a couple hundred people stay away from North Dakota because of such a tax policy.

**Sen. Triplett** -- Do I need to point out to this group that North Dakota's income taxes are highly competitive with every other state in the union, including those that have no taxes because our income taxes are just barely above nothing.

**Sen. Cook** -- You certainly do not have to point that out but we also remember when we had this hearing and it passed the Senate 46-1 that the real issue amongst corporations is the amount of their worldwide profits that are apportioned to North Dakota for that tax purpose. If we are apportioned 3 or 4 times more than other states are, our tax rate becomes rather meaningless.

**Roll call vote on motion to amend 15.8198.03002. Senators 2 yes, 1 no; Representatives 2 yes, 1 no. Motion carried 4 to 2.**

**Carriers: Sen. Cook and Rep. Headland.**

Conference committee adjourned sine die.

April 10, 2015

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PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2292

That the House recede from its amendments as printed on pages 1019-1033 of the Senate Journal and pages 1137-1151 of the House Journal and that Reengrossed Senate Bill No. 2292 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 5 of section 57-38-04 and sections 57-38.1-09, 57-59-01, 57-59-05, 57-59-06, and 57-59-08 of the North Dakota Century Code, relating to apportionment of business income and the multistate tax compact; to repeal section 57-59-02 of the North Dakota Century Code, relating to the optional computation provision of the multistate tax compact; and to provide an effective date.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Subsection 5 of section 57-38-04 of the North Dakota Century Code is amended and reenacted as follows:

5. Whenever business activity is carried on partly within and partly without this state by a nonresident of this state as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, the entire income therefrom must be allocated to this state and to other states, according to the provisions of chapter 57-38.1 but only according to the apportionment method provided under subsection 1 of section 57-38.1-09, providing for allocation and apportionment of income of corporations doing business within and without this state.

**SECTION 2. AMENDMENT.** Section 57-38.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.1-09. Business income.**

1. All Except as permitted under subsections 2 through 4, all business income must be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.
2. For the first two taxable years beginning after December 31, 2015, a taxpayer that is not a passthrough entity may elect to apportion business income to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus two times the sales factor, and the denominator of which is four.
  - a. The election must be made on the return as originally and timely filed in the form and manner prescribed by the tax commissioner.
  - b. The election is applicable for all companies in a unitary group and for all companies filing a consolidated North Dakota return.

- c. The election is binding for five consecutive taxable years after making the election, at which time the election lapses. The election under this subsection also includes the election to use the sales factor under subsections 3 and 4 for the taxable years those subsections apply.
  - d. Unless a taxpayer makes another election under subsection 4 in the taxable year immediately following the final year of the binding effect of the election under this subsection, the taxpayer must file under subsection 1 for a period of three taxable years before it may make a new election under subsection 4.
3. For the first taxable year beginning after December 31, 2017, a taxpayer that is not a passthrough entity may elect to apportion business income to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus six times the sales factor, and the denominator of which is eight.
- a. The election must be made on the return as originally and timely filed in the form and manner prescribed by the tax commissioner.
  - b. The election is applicable for all companies in a unitary group and for all companies filing a consolidated North Dakota return.
  - c. The election is binding for five consecutive taxable years after making the election, at which time the election lapses. The election under this subsection also includes the election to use the sales factor under subsection 4 for the taxable years that subsection applies.
  - d. Unless a taxpayer makes another election under subsection 4 in the taxable year immediately following the final year of the binding effect of the election under this subsection, the taxpayer must file under subsection 1 for a period of three taxable years before it may make a new election under subsection 4.
4. For taxable years beginning after December 31, 2018, a taxpayer that is not a passthrough entity may elect to apportion business income to this state by multiplying the income by the sales factor. A taxpayer electing to file using a single sales factor must comply with the following:
- a. The election must be made on the return as originally and timely filed in the form and manner prescribed by the tax commissioner.
  - b. The election is applicable for all companies in a unitary group and for all companies filing a consolidated North Dakota return.
  - c. The election is binding for five consecutive taxable years after making the election, at which time the election lapses.
  - d. Unless a taxpayer makes another election under this subsection in the taxable year immediately following the final year of a prior single sales factor election, the taxpayer must file under subsection 1 for a period of three taxable years before it may make a new single sales factor election.

**SECTION 3. AMENDMENT.** Section 57-59-01 of the North Dakota Century Code is amended and reenacted as follows:

**57-59-01. Multistate tax compact.**

The multistate tax compact is hereby entered into law and entered into with all jurisdictions legally joining therein, in the form substantially as follows:

**MULTISTATE TAX COMPACT**

**ARTICLE I - PURPOSES**

The purposes of this compact are to:

- 1. Facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes.
- 2. Promote uniformity or compatibility in significant components of tax systems.
- 3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.
- 4. Avoid duplicative taxation.

**ARTICLE II - DEFINITIONS**

As used in this compact:

- 1. "Capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety.
- 2. "Gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax.
- 3. "Income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions.
- 4. "Sales tax" means a tax imposed with respect to the transfer for a consideration of ownership, possession, or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller, or which is customarily separately stated from the sales price, but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles.
- 5. "State" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, or any territory or possession of the United States.
- 6. "Subdivision" means any governmental unit or special district of a state.

- 7. "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of ~~articles~~ article III, IV, and V of this compact shall apply only to the taxes specifically designated therein ~~and the provisions of article IX of this compact shall apply only in respect to determinations pursuant to article IV.~~
- 8. "Taxpayer" means any corporation, partnership, firm, association, governmental unit, or agency or person acting as a business entity in more than one state.
- 9. "Use tax" means a nonrecurring tax, other than a sales tax, which (a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession, or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property, and (b) is complementary to a sales tax.

**ARTICLE III -ELEMENTS OF INCOME TAX LAWS**

**Taxpayer Option, State and Local Taxes**

- 1. ~~Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party state or pursuant to the laws of subdivisions in two or more party states may elect to apportion and allocate the taxpayer's income in the manner provided by the laws of such state or by the laws of such states and subdivisions without reference to this compact, or may elect to apportion and allocate in accordance with article IV. This election for any tax year may be made in all party states or subdivisions thereof or in any one or more of the party states or subdivisions thereof without reference to the election made in the others. For the purposes of this subsection, taxes imposed by subdivisions shall be considered separately from state taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein article IV is employed for all subdivisions of a state may the sum of all apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation that would be assignable to that state if the apportionment or allocation were being made with respect to a state income tax.~~

**Taxpayer Option, Short Form**

- 2. ~~Each party state or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return, whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property, and whose dollar volume of gross sales made during the tax year within the state or subdivision, as the case may be, is not in excess of one hundred thousand dollars may elect to report and pay any tax due on the basis of a percentage of such volume, and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The multistate tax commission, not more than once in five years, may adjust the one hundred thousand dollar figure in order to reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon adoption by the commission, shall replace the one hundred thousand~~

dollar figure specifically provided herein. Each party state and subdivision thereof may make the same election available to taxpayers additional to those specified in this subsection.

### Coverage

3. ~~Nothing in this article relates to the reporting or payment of any tax other than an income tax.~~

### ARTICLE IV – DIVISION OF INCOME

1. ~~As used in this article, unless the context otherwise requires:~~
- (a) ~~"Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.~~
  - (b) ~~"Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.~~
  - (c) ~~"Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.~~
  - (d) ~~"Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, or any type of insurance company.~~
  - (e) ~~"Nonbusiness income" means all income other than business income.~~
  - (f) ~~"Public utility" means any business entity (1) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipeline, or the production, transmission, sale, delivery, or furnishing of electricity, water, or steam; and (2) whose rates of charges for goods or services have been established or approved by a federal, state, or local government or governmental agency.~~
  - (g) ~~"Sales" means all gross receipts of the taxpayer not allocated under subsections of this article.~~
  - (h) ~~"State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.~~
  - (i) ~~"This state" means the state in which the relevant tax return is filed or, in the case of application of this article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.~~
2. ~~Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion that taxpayer's net income as~~

provided in this article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of the taxpayer's income from activities subject to this article, the taxpayer may elect to allocate and apportion the taxpayer's entire net income as provided in this article.

3. ~~For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if (a) in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (b) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.~~
4. ~~Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in subsections 5 through 8 of this article.~~
5. (a) ~~Net rents and royalties from real property located in this state are allocable to this state.~~
  - (b) ~~Net rents and royalties from tangible personal property are allocable to this state: (1) if and to the extent that the property is utilized in this state, or (2) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.~~
  - (c) ~~The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.~~
6. (a) ~~Capital gains and losses from sales of real property located in this state are allocable to this state.~~
  - (b) ~~Capital gains and losses from sales of tangible personal property are allocable to this state if (1) the property had a situs in this state at the time of the sale, or (2) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.~~
  - (c) ~~Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.~~
7. ~~Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.~~
8. (a) ~~Patent and copyright royalties are allocable to this state: (1) if and to the extent that the patent or copyright is utilized by the payer in this~~

state, or (2) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

- (b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.
  - (c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.
9. All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.
  10. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.
  11. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.
  12. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.
  13. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.
  14. Compensation is paid in this state if:
    - (a) The individual's service is performed entirely within the state;
    - (b) The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or
    - (c) Some of the service is performed in the state and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (2) the base of operations or the place from which the service is directed or controlled

~~is not in any state in which some part of the service is performed, but the individual's residence is in this state.~~

15. ~~The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.~~
16. ~~Sales of tangible personal property are in this state if:~~
- ~~(a) The property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or~~
  - ~~(b) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (1) the purchaser is the United States government, or (2) the taxpayer is not taxable in the state of the purchaser.~~
17. ~~Sales, other than sales of tangible personal property, are in this state if:~~
- ~~(a) The income-producing activity is performed in this state; or~~
  - ~~(b) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.~~
18. ~~If the allocation and apportionment provisions of this article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:~~
- ~~(a) Separate accounting;~~
  - ~~(b) The exclusion of any one or more of the factors;~~
  - ~~(c) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or~~
  - ~~(d) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.~~

## **ARTICLE V- ELEMENTS OF SALES AND USE TAX LAWS**

### **Tax Credit**

1. Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by the purchaser with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

### **Exemption Certificates, Vendors May Rely**

2. Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption

authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

## **ARTICLE VIIV - THE COMMISSION**

### **Organization and Management**

1. (a) The multistate tax commission is hereby established. It shall be composed of one "member" from each party state who shall be the head of the state agency charged with the administration of the types of taxes to which this compact applies. If there is more than one such agency the state shall provide by law for the selection of the commission member from the heads of the relevant agencies. State law may provide that a member of the commission be represented by an alternate but only if there is on file with the commission written notification of the designation and identity of the alternate. The attorney general of each party state or the attorney general's designee, or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission, but shall not vote. Such attorneys general, designees, or other counsel shall receive all notices of meetings required under subdivision e of subsection 1 of this article.
- (b) Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.
- (c) Each member shall be entitled to one vote. The commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.
- (d) The commission shall adopt an official seal to be used as it may provide.
- (e) The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular, and special meetings. Notices of special meetings shall include the reasons therefor and an agenda of the items to be considered.
- (f) The commission shall elect annually, from among its members, a chairman, a vice chairman, and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and it shall fix the executive director's duties and compensation. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.
- (g) Irrespective of the civil service, personnel, or other merit system laws of any party state, the executive director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix their duties and

compensation. The commission bylaws shall provide for personnel policies and programs.

- (h) The commission may borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental entity.
- (i) The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.
- (j) The commission may establish one or more offices for the transacting of its business.
- (k) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party states.
- (l) The commission annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission, and shall include the nature, amount, and conditions, if any, of the donation, gift, grant, or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

#### **Committees**

- 2. (a) To assist in the conduct of its business when the full commission is not meeting, the commission shall have an executive committee of seven members, including the chairman, vice chairman, treasurer, and four other members elected annually by the commission. The executive committee subject to the provisions of this compact and consistent with the policies of the commission, shall function as provided in the bylaws of the commission.
- (b) The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the commission, including problems of special interest to any party state and problems dealing with particular types of taxes.
- (c) The commission may establish such additional committees as its bylaws may provide.

#### **Powers**

- 3. In addition to powers conferred elsewhere in this compact, the commission shall have power to:
  - (a) Study state and local tax systems and particular types of state and local taxes.

- (b) Develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a view toward encouraging the simplification and improvement of state and local tax law and administration.
- (c) Compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws.
- (d) Do all things necessary and incidental to the administration of its functions pursuant to this compact.

#### **Finance**

- 4. (a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.
- (b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-tenth in equal shares; and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, and sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this subsection.
- (c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under subdivision i of subsection 1 of this article; provided, that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under subdivision i of subsection 1, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.
- (d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the commission.
- (e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

- (f) Nothing contained in this article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

#### **ARTICLE ~~VIII~~ V - UNIFORM REGULATIONS AND FORMS**

1. Whenever any two or more party states, or subdivisions of party states, have uniform or similar provisions of law relating to an income tax, the commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax, or prescribing uniform tax forms. ~~The commission may also act with respect to the provisions of article IV of this compact.~~
2. Prior to the adoption of any regulation, the commission shall:
  - (a) As provided in its bylaws, hold at least one public hearing on due notice to all affected party states and subdivisions thereof and to all taxpayers and other persons who have made timely request of the commission for advance notice of its regulation-making proceedings.
  - (b) Afford all affected party states and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the commission.
3. The commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

#### **ARTICLE ~~VIII~~ VI - INTERSTATE AUDITS**

1. This article shall be in force only in those party states that specifically provide therefor by statute.
2. Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records, or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local government or governments for which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.
3. The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property, or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, the person may be required to attend for such purpose at any time and place fixed by the commission within the state of

which the person is a resident; provided, that such state has adopted this article.

4. The commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this article and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order being sought is situated. The provisions of this subsection apply only to courts in a state that has adopted this article.
5. The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.
6. Information obtained by any audit pursuant to this article shall be confidential and available only for tax purposes to party states, their subdivisions, or the United States. Availability of information shall be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit, and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this article shall be construed to require any taxpayer to keep records for any period not otherwise required by law.
7. Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party states or any of their subdivisions are not superseded or invalidated by this article.
8. In no event shall the commission make any charge against a taxpayer for an audit.
9. As used in this article, "tax", in addition to the meaning ascribed to it in article II, means any tax or license fee imposed in whole or in part for revenue purposes.

#### **ARTICLE IX—ARBITRATION**

- ~~1. Whenever the commission finds a need for settling disputes concerning apportionments and allocations by arbitration, it may adopt a regulation placing this article in effect, notwithstanding the provisions of article VII.~~
- ~~2. The commission shall select and maintain an arbitration panel composed of officers and employees of state and local governments and private persons who shall be knowledgeable and experienced in matters of tax law and administration.~~

3. ~~Whenever a taxpayer who has elected to employ article IV, or whenever the laws of the party state or subdivision thereof are substantially identical with the relevant provisions of article IV, the taxpayer, by written notice to the commission and to each party state or subdivision thereof that would be affected, may secure arbitration of an apportionment or allocation, if the taxpayer is dissatisfied with the final administrative determination of the tax agency of the state or subdivision with respect thereto on the ground that it would subject the taxpayer to double or multiple taxation by two or more party states or subdivisions thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein, and agrees to be bound thereby.~~
4. ~~The arbitration board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the commission's arbitration panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the arbitration panel. The two persons selected for the board in the manner provided by the foregoing provisions of this subsection shall jointly select the third member of the board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No member of a board selected by lot shall be qualified to serve if that member is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residence within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this subsection.~~
5. ~~The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's incorporation, residence, or domicile, in any state where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.~~
6. ~~The board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses. The board shall act by majority vote.~~
7. ~~The board shall have power to administer oaths, take testimony, subpoena, and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena, and upon application by the board, any judge of a court of competent jurisdiction of the state in which the board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoena, and the court may punish failure to obey the order as a contempt. The provisions of this subsection apply only in states that have adopted this article.~~
8. ~~Unless the parties otherwise agree the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the board in such manner as it may determine. The commission shall fix a schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No officer or employee of a state or local government~~

who serves as a member of a board shall be entitled to compensation therefor unless that person is required on account of that person's service to forego the regular compensation attaching to that person's public employment, but any such board member shall be entitled to expenses.

9. ~~The board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the board shall be final for purposes of making the apportionment or allocation, but for no other purpose.~~
10. ~~The board shall file with the commission and with each tax agency represented in the proceeding: the determination of the board; the board's written statement of its reasons therefor; the record of the board's proceedings; and any other documents required by the arbitration rules of the commission to be filed.~~
11. ~~The commission shall publish the determinations of boards together with the statements of the reasons therefor.~~
12. ~~The commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party states.~~
13. ~~Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceeding.~~

#### **ARTICLE XVII - ENTRY INTO FORCE AND WITHDRAWAL**

1. This compact shall enter into force when enacted into law by any seven states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof. The commission shall arrange for notification of all party states whenever there is a new enactment of the compact.
2. Any party state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.
3. ~~No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.~~

#### **ARTICLE XVIII - EFFECT ON OTHER LAWS AND JURISDICTION**

Nothing in this compact shall be construed to:

1. ~~Affect the power of any state or subdivision thereof to fix rates of taxation, except that a party state shall be obligated to implement subsection 2 of article III of this compact.~~
2. Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax; provided, that the definition

of "tax" in subsection 9 of article ~~VIII~~VI may apply for the purposes of that article and the commission's powers of study and recommendation pursuant to subsection 3 of article ~~VII~~IV may apply.

- 3. Withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation, ~~limited liability company~~, or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body.
- 4. Supersede or limit the jurisdiction of any court of the United States.

**ARTICLE ~~XIII~~XIX - CONSTRUCTION AND SEVERABILITY**

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

**SECTION 4. AMENDMENT.** Section 57-59-05 of the North Dakota Century Code is amended and reenacted as follows:

**57-59-05. Legal counsel.**

The chief counsel of the state tax department or the chief counsel's designee shall attend the meetings of the multistate tax commission as the legal counsel representing the state of North Dakota as provided for by subdivision a of subsection 1 of article ~~VII~~IV of section 57-59-01.

**SECTION 5. AMENDMENT.** Section 57-59-06 of the North Dakota Century Code is amended and reenacted as follows:

**57-59-06. Selection of representatives to meet with commission member.**

The state tax commissioner shall appoint two persons who are representatives of subdivisions affected or likely to be affected by the multistate tax compact from among persons nominated by the association of counties and league of cities. The state tax commissioner, and any alternate designated by the state tax commissioner, shall consult with these appointees, in accordance with subdivision b of subsection 1 of article ~~VII~~IV of section 57-59-01. The state tax commissioner shall also consult regularly with the chairman and ranking minority party member of the finance and taxation committees of the senate and house of representatives as provided for in subdivision b of subsection 2 of article ~~VII~~IV of section 57-59-01.

**SECTION 6. AMENDMENT.** Section 57-59-08 of the North Dakota Century Code is amended and reenacted as follows:

**57-59-08. Interaudits.**

Article ~~VIII~~VI of the multistate tax compact relating to interaudits shall be in force in and with respect to the state of North Dakota.

**SECTION 7. REPEAL.** Section 57-59-02 of the North Dakota Century Code is repealed.

**SECTION 8. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2014."

Renumber accordingly

**2015 SENATE CONFERENCE COMMITTEE  
 ROLL CALL VOTES**

BILL/RESOLUTION NO. SB2292 as Reengrossed

**Senate Finance & Tax Committee**

- Action Taken**
- SENATE accede to House Amendments
  - SENATE accede to House Amendments and further amend
  - HOUSE recede from House amendments
  - HOUSE recede from House amendments and amend as follows
  - Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Rep. Headland Seconded by: Rep. Owens

Senators	4/8	4/13		Yes	No	Representatives	4/8	4/13		Yes	No
Sen. Cook	x	x		x		Rep. Headland	x	x		x	
Sen. Laffen	x	x		x		Rep. Owens	x	x		x	
Sen. Triplett	x	x			x	Rep. Haak	x	x			x
Total Senate Vote				2	1	Total Rep. Vote				2	1

Vote Count      Yes: 4                      No: 2                      Absent: 0

Senate Carrier Sen. Cook                      House Carrier Rep. Headland

LC Number 15.8198.03002 . 05000 of amendment

LC Number \_\_\_\_\_ . \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

**REPORT OF CONFERENCE COMMITTEE**

**SB 2292, as reengrossed:** Your conference committee (Sens. Cook, Laffen, Triplett and Reps. Headland, Owens, Haak) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ pages 1019-1033, adopt amendments as follows, and place SB 2292 on the Seventh order:

That the House recede from its amendments as printed on pages 1019-1033 of the Senate Journal and pages 1137-1151 of the House Journal and that Reengrossed Senate Bill No. 2292 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 5 of section 57-38-04 and sections 57-38.1-09, 57-59-01, 57-59-05, 57-59-06, and 57-59-08 of the North Dakota Century Code, relating to apportionment of business income and the multistate tax compact; to repeal section 57-59-02 of the North Dakota Century Code, relating to the optional computation provision of the multistate tax compact; and to provide an effective date.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Subsection 5 of section 57-38-04 of the North Dakota Century Code is amended and reenacted as follows:

5. Whenever business activity is carried on partly within and partly without this state by a nonresident of this state as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, the entire income therefrom must be allocated to this state and to other states, according to the provisions of chapter 57-38.1 but only according to the apportionment method provided under subsection 1 of section 57-38.1-09, providing for allocation and apportionment of income of corporations doing business within and without this state.

**SECTION 2. AMENDMENT.** Section 57-38.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.1-09. Business income.**

1. All Except as permitted under subsections 2 through 4, all business income must be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.
2. For the first two taxable years beginning after December 31, 2015, a taxpayer that is not a passthrough entity may elect to apportion business income to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus two times the sales factor, and the denominator of which is four.
  - a. The election must be made on the return as originally and timely filed in the form and manner prescribed by the tax commissioner.
  - b. The election is applicable for all companies in a unitary group and for all companies filing a consolidated North Dakota return.
  - c. The election is binding for five consecutive taxable years after making the election, at which time the election lapses. The election under this subsection also includes the election to use the sales factor under subsections 3 and 4 for the taxable years those subsections apply.
  - d. Unless a taxpayer makes another election under subsection 4 in the taxable year immediately following the final year of the binding effect

- of the election under this subsection, the taxpayer must file under subsection 1 for a period of three taxable years before it may make a new election under subsection 4.
3. For the first taxable year beginning after December 31, 2017, a taxpayer that is not a passthrough entity may elect to apportion business income to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus six times the sales factor, and the denominator of which is eight.
    - a. The election must be made on the return as originally and timely filed in the form and manner prescribed by the tax commissioner.
    - b. The election is applicable for all companies in a unitary group and for all companies filing a consolidated North Dakota return.
    - c. The election is binding for five consecutive taxable years after making the election, at which time the election lapses. The election under this subsection also includes the election to use the sales factor under subsection 4 for the taxable years that subsection applies.
    - d. Unless a taxpayer makes another election under subsection 4 in the taxable year immediately following the final year of the binding effect of the election under this subsection, the taxpayer must file under subsection 1 for a period of three taxable years before it may make a new election under subsection 4.
  4. For taxable years beginning after December 31, 2018, a taxpayer that is not a passthrough entity may elect to apportion business income to this state by multiplying the income by the sales factor. A taxpayer electing to file using a single sales factor must comply with the following:
    - a. The election must be made on the return as originally and timely filed in the form and manner prescribed by the tax commissioner.
    - b. The election is applicable for all companies in a unitary group and for all companies filing a consolidated North Dakota return.
    - c. The election is binding for five consecutive taxable years after making the election, at which time the election lapses.
    - d. Unless a taxpayer makes another election under this subsection in the taxable year immediately following the final year of a prior single sales factor election, the taxpayer must file under subsection 1 for a period of three taxable years before it may make a new single sales factor election.

**SECTION 3. AMENDMENT.** Section 57-59-01 of the North Dakota Century Code is amended and reenacted as follows:

**57-59-01. Multistate tax compact.**

The multistate tax compact is hereby entered into law and entered into with all jurisdictions legally joining therein, in the form substantially as follows:

**MULTISTATE TAX COMPACT**

**ARTICLE I - PURPOSES**

The purposes of this compact are to:

1. Facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes.
2. Promote uniformity or compatibility in significant components of tax systems.
3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.
4. Avoid duplicative taxation.

## ARTICLE II - DEFINITIONS

As used in this compact:

1. "Capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety.
2. "Gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax.
3. "Income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions.
4. "Sales tax" means a tax imposed with respect to the transfer for a consideration of ownership, possession, or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller, or which is customarily separately stated from the sales price; but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles.
5. "State" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, or any territory or possession of the United States.
6. "Subdivision" means any governmental unit or special district of a state.
7. "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of ~~articles~~ article III, IV, and V of this compact shall apply only to the taxes specifically designated therein ~~and the provisions of article IX of this compact shall apply only in respect to determinations pursuant to article IV.~~
8. "Taxpayer" means any corporation, partnership, firm, association, governmental unit, or agency or person acting as a business entity in more than one state.
9. "Use tax" means a nonrecurring tax, other than a sales tax, which (a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession, or custody of that property or the leasing of that property

from another including any consumption, keeping, retention, or other use of tangible personal property, and (b) is complementary to a sales tax.

### **ARTICLE III –ELEMENTS OF INCOME TAX LAWS**

#### **Taxpayer Option, State and Local Taxes**

1. ~~Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party state or pursuant to the laws of subdivisions in two or more party states may elect to apportion and allocate the taxpayer's income in the manner provided by the laws of such state or by the laws of such states and subdivisions without reference to this compact, or may elect to apportion and allocate in accordance with article IV. This election for any tax year may be made in all party states or subdivisions thereof or in any one or more of the party states or subdivisions thereof without reference to the election made in the others. For the purposes of this subsection, taxes imposed by subdivisions shall be considered separately from state taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein article IV is employed for all subdivisions of a state may the sum of all apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation that would be assignable to that state if the apportionment or allocation were being made with respect to a state income tax.~~

#### **Taxpayer Option, Short Form**

2. ~~Each party state or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return, whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property, and whose dollar volume of gross sales made during the tax year within the state or subdivision, as the case may be, is not in excess of one hundred thousand dollars may elect to report and pay any tax due on the basis of a percentage of such volume, and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The multistate tax commission, not more than once in five years, may adjust the one hundred thousand dollar figure in order to reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon adoption by the commission, shall replace the one hundred thousand dollar figure specifically provided herein. Each party state and subdivision thereof may make the same election available to taxpayers additional to those specified in this subsection.~~

#### **Coverage**

3. ~~Nothing in this article relates to the reporting or payment of any tax other than an income tax.~~

### **ARTICLE IV –DIVISION OF INCOME**

1. ~~As used in this article, unless the context otherwise requires:~~
  - (a) ~~"Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.~~
  - (b) ~~"Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.~~

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- (e) ~~"Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.~~
  - (d) ~~"Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, or any type of insurance company.~~
  - (e) ~~"Nonbusiness income" means all income other than business income.~~
  - (f) ~~"Public utility" means any business entity (1) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipeline, or the production, transmission, sale, delivery, or furnishing of electricity, water, or steam; and (2) whose rates of charges for goods or services have been established or approved by a federal, state, or local government or governmental agency.~~
  - (g) ~~"Sales" means all gross receipts of the taxpayer not allocated under subsections of this article.~~
  - (h) ~~"State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.~~
  - (i) ~~"This state" means the state in which the relevant tax return is filed or, in the case of application of this article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.~~
2. ~~Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion that taxpayer's net income as provided in this article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of the taxpayer's income from activities subject to this article, the taxpayer may elect to allocate and apportion the taxpayer's entire net income as provided in this article.~~
3. ~~For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if (a) in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (b) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.~~
4. ~~Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in subsections 5 through 8 of this article.~~
5. (a) ~~Net rents and royalties from real property located in this state are allocable to this state.~~
- (b) ~~Net rents and royalties from tangible personal property are allocable to this state: (1) if and to the extent that the property is utilized in this state, or (2) in their entirety if the taxpayer's commercial domicile is~~

- in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.
- (c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.
6. (a) Capital gains and losses from sales of real property located in this state are allocable to this state.
- (b) Capital gains and losses from sales of tangible personal property are allocable to this state if (1) the property had a situs in this state at the time of the sale, or (2) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.
- (c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.
7. Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.
8. (a) Patent and copyright royalties are allocable to this state: (1) if and to the extent that the patent or copyright is utilized by the payer in this state, or (2) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.
- (b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.
- (c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.
9. All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.
10. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator

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~~of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.~~

- ~~11. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.~~
- ~~12. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.~~
- ~~13. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.~~
- ~~14. Compensation is paid in this state if:
  - ~~(a) The individual's service is performed entirely within the state;~~
  - ~~(b) The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or~~
  - ~~(c) Some of the service is performed in the state and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.~~~~
- ~~15. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.~~
- ~~16. Sales of tangible personal property are in this state if:
  - ~~(a) The property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or~~
  - ~~(b) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (1) the purchaser is the United States government, or (2) the taxpayer is not taxable in the state of the purchaser.~~~~
- ~~17. Sales, other than sales of tangible personal property, are in this state if:
  - ~~(a) The income producing activity is performed in this state; or~~
  - ~~(b) The income producing activity is performed both in and outside this state and a greater proportion of the income producing activity is performed in this state than in any other state, based on costs of performance.~~~~
- ~~18. If the allocation and apportionment provisions of this article do not fairly represent the extent of the taxpayer's business activity in this state, the~~

~~taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:~~

- ~~(a) Separate accounting;~~
- ~~(b) The exclusion of any one or more of the factors;~~
- ~~(c) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or~~
- ~~(d) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.~~

#### **ARTICLE V-- ELEMENTS OF SALES AND USE TAX LAWS**

##### **Tax Credit**

1. Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by the purchaser with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

##### **Exemption Certificates, Vendors May Rely**

2. Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

#### **ARTICLE VI - THE COMMISSION**

##### **Organization and Management**

1. (a) The multistate tax commission is hereby established. It shall be composed of one "member" from each party state who shall be the head of the state agency charged with the administration of the types of taxes to which this compact applies. If there is more than one such agency the state shall provide by law for the selection of the commission member from the heads of the relevant agencies. State law may provide that a member of the commission be represented by an alternate but only if there is on file with the commission written notification of the designation and identity of the alternate. The attorney general of each party state or the attorney general's designee, or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission, but shall not vote. Such attorneys general, designees, or other counsel shall receive all notices of meetings required under subdivision e of subsection 1 of this article.
- (b) Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.
- (c) Each member shall be entitled to one vote. The commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.

- (d) The commission shall adopt an official seal to be used as it may provide.
- (e) The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular, and special meetings. Notices of special meetings shall include the reasons therefor and an agenda of the items to be considered.
- (f) The commission shall elect annually, from among its members, a chairman, a vice chairman, and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and it shall fix the executive director's duties and compensation. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.
- (g) Irrespective of the civil service, personnel, or other merit system laws of any party state, the executive director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix their duties and compensation. The commission bylaws shall provide for personnel policies and programs.
- (h) The commission may borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental entity.
- (i) The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.
- (j) The commission may establish one or more offices for the transacting of its business.
- (k) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party states.
- (l) The commission annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission, and shall include the nature, amount, and conditions, if any, of the donation, gift, grant, or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

#### Committees

- 2. (a) To assist in the conduct of its business when the full commission is not meeting, the commission shall have an executive committee of seven members, including the chairman, vice chairman, treasurer, and four other members elected annually by the commission. The executive committee subject to the provisions of this compact and

consistent with the policies of the commission, shall function as provided in the bylaws of the commission.

- (b) The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the commission, including problems of special interest to any party state and problems dealing with particular types of taxes.
- (c) The commission may establish such additional committees as its bylaws may provide.

#### **Powers**

- 3. In addition to powers conferred elsewhere in this compact, the commission shall have power to:
  - (a) Study state and local tax systems and particular types of state and local taxes.
  - (b) Develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a view toward encouraging the simplification and improvement of state and local tax law and administration.
  - (c) Compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws.
  - (d) Do all things necessary and incidental to the administration of its functions pursuant to this compact.

#### **Finance**

- 4. (a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.
- (b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-tenth in equal shares; and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, and sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this subsection.
- (c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under subdivision i of subsection 1 of this article; provided, that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in

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part in such manner. Except where the commission makes use of funds available to it under subdivision i of subsection 1, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

- (d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the commission.
- (e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.
- (f) Nothing contained in this article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

#### **ARTICLE VIII - UNIFORM REGULATIONS AND FORMS**

1. Whenever any two or more party states, or subdivisions of party states, have uniform or similar provisions of law relating to an income tax, the commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax, or prescribing uniform tax forms. ~~The commission may also act with respect to the provisions of article IV of this compact.~~
2. Prior to the adoption of any regulation, the commission shall:
  - (a) As provided in its bylaws, hold at least one public hearing on due notice to all affected party states and subdivisions thereof and to all taxpayers and other persons who have made timely request of the commission for advance notice of its regulation-making proceedings.
  - (b) Afford all affected party states and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the commission.
3. The commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

#### **ARTICLE VIII - INTERSTATE AUDITS**

1. This article shall be in force only in those party states that specifically provide therefor by statute.
2. Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records, or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local government or

governments for which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.

3. The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property, or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, the person may be required to attend for such purpose at any time and place fixed by the commission within the state of which the person is a resident; provided, that such state has adopted this article.
4. The commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this article and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order being sought is situated. The provisions of this subsection apply only to courts in a state that has adopted this article.
5. The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.
6. Information obtained by any audit pursuant to this article shall be confidential and available only for tax purposes to party states, their subdivisions, or the United States. Availability of information shall be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit, and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this article shall be construed to require any taxpayer to keep records for any period not otherwise required by law.
7. Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party states or any of their subdivisions are not superseded or invalidated by this article.
8. In no event shall the commission make any charge against a taxpayer for an audit.
9. As used in this article, "tax", in addition to the meaning ascribed to it in article II, means any tax or license fee imposed in whole or in part for revenue purposes.

#### ARTICLE IX—ARBITRATION

4. ~~Whenever the commission finds a need for settling disputes concerning apportionments and allocations by arbitration, it may adopt a regulation placing this article in effect, notwithstanding the provisions of article VII.~~

2. ~~The commission shall select and maintain an arbitration panel composed of officers and employees of state and local governments and private persons who shall be knowledgeable and experienced in matters of tax law and administration.~~
3. ~~Whenever a taxpayer who has elected to employ article IV, or whenever the laws of the party state or subdivision thereof are substantially identical with the relevant provisions of article IV, the taxpayer, by written notice to the commission and to each party state or subdivision thereof that would be affected, may secure arbitration of an apportionment or allocation, if the taxpayer is dissatisfied with the final administrative determination of the tax agency of the state or subdivision with respect thereto on the ground that it would subject the taxpayer to double or multiple taxation by two or more party states or subdivisions thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein, and agrees to be bound thereby.~~
4. ~~The arbitration board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the commission's arbitration panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the arbitration panel. The two persons selected for the board in the manner provided by the foregoing provisions of this subsection shall jointly select the third member of the board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No member of a board selected by lot shall be qualified to serve if that member is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residence within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this subsection.~~
5. ~~The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's incorporation, residence, or domicile, in any state where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.~~
6. ~~The board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses. The board shall act by majority vote.~~
7. ~~The board shall have power to administer oaths, take testimony, subpoena, and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena, and upon application by the board, any judge of a court of competent jurisdiction of the state in which the board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoena, and the court may punish failure to obey the order as a contempt. The provisions of this subsection apply only in states that have adopted this article.~~
8. ~~Unless the parties otherwise agree the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the board in such manner as it may determine. The commission shall fix a schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No officer or employee of a state or local government who serves as a member of a board shall be entitled to~~

~~compensation therefor unless that person is required on account of that person's service to forego the regular compensation attaching to that person's public employment, but any such board member shall be entitled to expenses.~~

- ~~9. The board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the board shall be final for purposes of making the apportionment or allocation, but for no other purpose.~~
- ~~10. The board shall file with the commission and with each tax agency represented in the proceeding: the determination of the board; the board's written statement of its reasons therefor; the record of the board's proceedings; and any other documents required by the arbitration rules of the commission to be filed.~~
- ~~11. The commission shall publish the determinations of boards together with the statements of the reasons therefor.~~
- ~~12. The commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party states.~~
- ~~13. Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceeding.~~

#### **ARTICLE XVII - ENTRY INTO FORCE AND WITHDRAWAL**

1. This compact shall enter into force when enacted into law by any seven states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof. The commission shall arrange for notification of all party states whenever there is a new enactment of the compact.
2. Any party state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.
3. ~~No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.~~

#### **ARTICLE XVIII - EFFECT ON OTHER LAWS AND JURISDICTION**

Nothing in this compact shall be construed to:

1. Affect the power of any state or subdivision thereof to fix rates of taxation, ~~except that a party state shall be obligated to implement subsection 2 of article III of this compact.~~
2. Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax; provided, that the definition of "tax" in subsection 9 of article ~~XXIV~~ may apply for the purposes of that article and the commission's powers of study and recommendation pursuant to subsection 3 of article ~~XXIV~~ may apply.

3. Withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation, ~~limited liability company~~, or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body.
4. Supersede or limit the jurisdiction of any court of the United States.

#### **ARTICLE ~~XIII~~ - CONSTRUCTION AND SEVERABILITY**

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

**SECTION 4. AMENDMENT.** Section 57-59-05 of the North Dakota Century Code is amended and reenacted as follows:

##### **57-59-05. Legal counsel.**

The chief counsel of the state tax department or the chief counsel's designee shall attend the meetings of the multistate tax commission as the legal counsel representing the state of North Dakota as provided for by subdivision a of subsection 1 of article ~~VI~~ of section 57-59-01.

**SECTION 5. AMENDMENT.** Section 57-59-06 of the North Dakota Century Code is amended and reenacted as follows:

##### **57-59-06. Selection of representatives to meet with commission member.**

The state tax commissioner shall appoint two persons who are representatives of subdivisions affected or likely to be affected by the multistate tax compact from among persons nominated by the association of counties and league of cities. The state tax commissioner, and any alternate designated by the state tax commissioner, shall consult with these appointees, in accordance with subdivision b of subsection 1 of article ~~VI~~ of section 57-59-01. The state tax commissioner shall also consult regularly with the chairman and ranking minority party member of the finance and taxation committees of the senate and house of representatives as provided for in subdivision b of subsection 2 of article ~~VI~~ of section 57-59-01.

**SECTION 6. AMENDMENT.** Section 57-59-08 of the North Dakota Century Code is amended and reenacted as follows:

##### **57-59-08. Interaudits.**

Article ~~VI~~ of the multistate tax compact relating to interaudits shall be in force in and with respect to the state of North Dakota.

**SECTION 7. REPEAL.** Section 57-59-02 of the North Dakota Century Code is repealed.

**SECTION 8. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2014."

Renumber accordingly

Reengrossed SB 2292 was placed on the Seventh order of business on the calendar.

**2015 TESTIMONY**

**SB 2292**

# McDermott Will & Emery

Boston Brussels Chicago Dusseldorf Frankfurt Houston London Los Angeles Miami  
Milan Munich New York Orange County Paris Rome Seoul Silicon Valley Washington D.C.  
Strategic alliance with MWE China Law Offices (Shanghai)

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February 2, 2015

Senator Dwight Cook  
Chairman, Finance and Taxation Committee  
North Dakota Senate  
1408 17th Street SE  
Mandan, ND 58554-4895

Senator Lonnie J. Laffen  
Vice Chairman, Finance and Taxation Committee  
North Dakota Senate  
3549 15th Avenue South  
Grand Forks, ND 58201-3706

Re: **Testimony Before Senate Committee on Finance and Taxation  
In Support of SB 2292 -- Single Sales Factor Apportionment**

Dear Senator Cook and Senator Laffen:

Chairman Cook, Vice Chairman Laffen, and members of the Senate Finance and Taxation Committee, thank you for the opportunity to provide testimony in support of SB 2292, a bill to adopt elective single sales factor apportionment.

My name is Stephen Kranz; I am a Partner at the law firm of McDermott Will & Emery in Washington, D.C., where I specialize in state and local tax. I appear before you today as an expert in the field of state taxation and the use of formulary apportionment in taxing corporations. I am also a proud native of North Dakota.

As North Dakota considers adopting single sales factor apportionment, the local and national economy watches with interest. The single sales factor bill would eliminate the current disincentive for companies to locate facilities or hire additional workers in North Dakota. Eliminating this disincentive will create new investment and retain current investment in North Dakota's expanding economy. It will also enhance North Dakota's business rankings vis-a-vis other States.

As a bit of background on formulary apportionment, States with corporate income taxes use what is called an apportionment formula to determine what ratio of a corporation's income is taxable by the State. Fifty years ago, the standard formula consisted of the average of three ratios: a property ratio; a payroll ratio, and a sales ratio. The numerator of each ratio was the corporation's in-state

value of the factor (e.g., property or payroll) and the denominator was the total value of the corporation's factor.

Over time States have moved away from three-factor apportionment to formulas that rely more on the sales factor – that is their tax regimes are based more on the sales a corporation makes in the state than on property or employees located in the State. Twenty States have single sales factor apportionment and many others have more heavily weighted sales factors. Indeed, as can be seen in the attached chart, only a handful of States still have equally weighted three-factor apportionment.

Why are States moving towards the sales factor? The answer is simple, property and payroll factors punish corporations for the property that they own in a State and for people they hire in a State. Consider the following example,

1. A corporation has \$100 million of income. It has 25% of its payroll, property, and sales in North Dakota. The North Dakota corporate income tax rate is 4.53%. The company's corporate income tax liability is as follows:

$$\mathbf{\$100\ million * (1/4\ property + 1/4\ payroll + 1/4\ sales)/3 * 4.53 = \$1.13\ million}$$

2. Now assume that the company wants to invest in a large facility in North Dakota and that its property in North Dakota would increase from \$20 million to \$100 million and its payroll in North Dakota would increase from \$2 million to \$10 million. Its North Dakota tax liability doubles as follows:

$$\mathbf{\$100\ million * (5/8\ property + 5/8\ payroll + 1/4\ sales)/3 * 4.53 = \$2.26\ million}$$

3. If the company instead makes that investment in another State, its North Dakota tax liability is reduced dramatically as follows:

$$\mathbf{\$100\ million * (1/8\ property + 1/8\ payroll + 1/4\ sales)/3 * 4.53 = \$.75\ million}$$

Plainly, the three factor apportionment formula discourages investments in North Dakota property and North Dakota employees. This fact is true for companies large and small alike. Any company that sells across the State's border is hurt by the current apportionment formula. SB 2292 would eliminate this bias against investing in North Dakota and companies would be taxed on sales to, not investment in, North Dakota.

Single sales factor apportionment strengthens the economy for local and multistate businesses alike. Local businesses with limited ability to expand out-of-state would no longer face a higher tax bill for expansion in North Dakota. Similarly, multistate businesses will be less likely to look outside North Dakota for investment.

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SB 2292

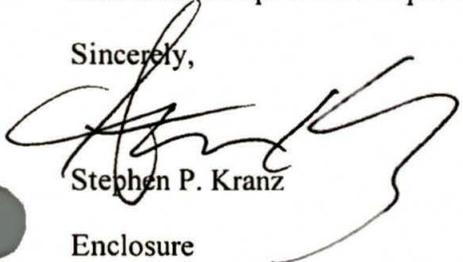
Senator Dwight Cook  
Senator Lonnie J. Laffen  
February 2, 2015  
Page 3

Importantly, SB 2292 would make North Dakota more favorable when compared to its neighbors. South Dakota has no corporate income tax. Minnesota just completed a move to single sales factor apportionment, making investment into the State more attractive. Montana continues to use three factor apportionment, so SB 2292 would give North Dakota a competitive edge. Other States in the region have single sales factor structures including Colorado, Nebraska, Wisconsin, and Iowa and Idaho has a three factor formula with the sales fraction being more heavily weighted.

Lastly, the election is an important element of the structure. This is a feature that differentiates SB 2292 from many other single sales factor States. The election provides businesses flexibility based on their current economic condition. It's also simple – companies that want to continue doing what they are already doing are free to do so. No business in the state would be hurt by passage of SB 2292.

Thank you for your consideration in this matter. I urge you to adopt SB 2292 and put my home state on the map of States open to investment.

Sincerely,



Stephen P. Kranz

Enclosure

- cc: Senator Brad Bekkedahl
- Senator Jim Dotzenrod
- Senator Dave Oehlke
- Senator Connie Triplett
- Senator Jessica Unruh





**JOHN DEERE**

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**Thomas E. Iles**  
Director, State Public Affairs  
**Public Affairs Worldwide**

Beijing	Brussels
Cary	Des Moines
Moline	Moscow
Olathe	Pune
Sao Paulo	Washington

## **SB 2292: North Dakota - Single Sales Factor Formula**

**Position:** John Deere supports the enactment of SB 2292 during the 2015 North Dakota Legislative Session. The legislation would allow for a taxpayer to elect to apportion business income to the state utilizing the Single Sales Factor Formula (SSFF).

**Background:** SB 2292 – SSFF is currently in the Senate Finance & Taxation Committee and provides for an elective Single Sales Factor Formula while keeping the current statutory regime in place. If enacted, SB 2292 would eliminate increases in corporate income taxes for businesses adding property or payroll in the state.

### **Position Rationale:**

- **North Dakota Economic Growth:** SB 2292 would encourage business to maintain investment in property and employees within North Dakota while also encouraging expansion and location to the state.
- **Other States:** 22 states currently utilize a Single Sales Factor Formula, with many of these close to North Dakota (i.e. Minnesota, Iowa, Illinois, Wisconsin and Nebraska). Enactment of SB 2292 would also improve North Dakota's national ranking on tax and business environment studies.
- **Business Flexibility:** Management's location and expansion decisions can be based upon the economy and their respective markets for products and services, with the knowledge that their tax burden would be consistent.
- **Multistate Tax Compact:** The contained provisions within SB 2292 provide protection for the state of North Dakota while also simplifying the tax system.

**Summary:** The enactment of SB 2292 would significantly enhance economic growth in the state, reduce the tax burden of growing businesses and provide for a more competitive environment, while simplifying the North Dakota tax system.

**Attachment: John Deere Presence in North Dakota**

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# John Deere Presence in North Dakota

Deere & Company (NYSE: DE) is a world leader in providing advanced products and services and is committed to the success of customers whose work is linked to the land - those who cultivate, harvest, transform, enrich and build upon the land to meet the world's dramatically increasing need for food, fuel, shelter and infrastructure. Since 1837, John Deere has delivered innovative products of superior quality, built on a tradition of integrity. For more information, visit John Deere at its worldwide website at [www.JohnDeere.com](http://www.JohnDeere.com).

## John Deere Quick Facts

<b>Net Sales &amp; Revenues</b>	<b>&gt;\$36 billion*</b>
<b>Employees</b>	<b>&gt;59,000*</b>
• U.S. & Canada	>29,000
<b>Facilities</b>	
• States	18
• Countries	36
<b>Research &amp; Development</b>	<b>-\$1.5 billion* (\$4.1 million/day)</b>
<small>* Figures taken from Deere &amp; Company Annual Report 2014</small>	

## Who We Are in North Dakota

- **Employees**
  - >950 work as part of John Deere's major business operations
  - >850 live in the state
  - >80 retirees
- **Suppliers & Dealers**
  - >130 contracts (approximately \$77 million)
  - 47 dealerships

## Facility Locations

**Fargo** - John Deere Electronic Solutions— Electronics Design & Mfg.

**Valley City** - John Deere Seeding Group—Air Seeding Equipment



## John Deere is a Power for Good



Deere & Company's corporate citizenship efforts continued making a meaningful impact in 2014 through support of citizenship activities, whose main focus includes solutions for world hunger, improved educational opportunities, and community development. John Deere employees also enriched their communities through extensive volunteer efforts which increased incomes and the standard of living for smallholder farmers in India and Sub-Saharan Africa. Deere also provided funding for programs focusing on science, technology, engineering and math (STEM) in communities in Brazil, India and the U.S. John Deere and the John Deere Foundation also made significant investments in our home communities worldwide to ensure their economic vibrancy for years to come. In all, our investments in 2014 improved the lives of more than 9.4 million people around the world.

## Protecting the Environment

John Deere is committed to reducing our environmental footprint worldwide. The company has established the following enterprise eco-efficiency goals to be achieved by 2018. These goals are designed to encourage improved performance and innovation, as well as raise internal and public awareness of our environmental stewardship:



Reduce Greenhouse gas emissions and energy consumption per ton of production 15% from 2012 through 2018.



Reduce water consumption per ton of production 15% from 2012 through 2018.



Increase amount of enterprise waste recycled to 75% of total waste by 2018.



Use life cycle engineering to create products and services that meet customer needs and

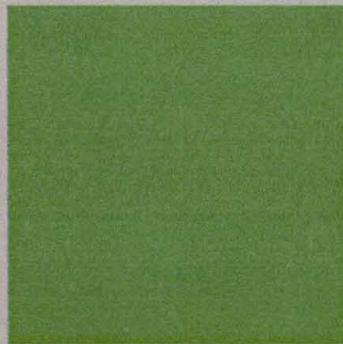
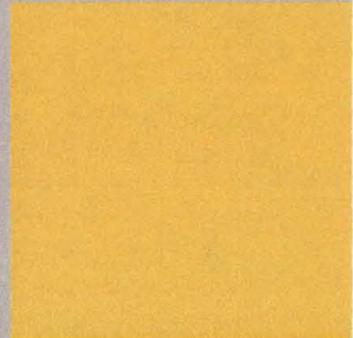
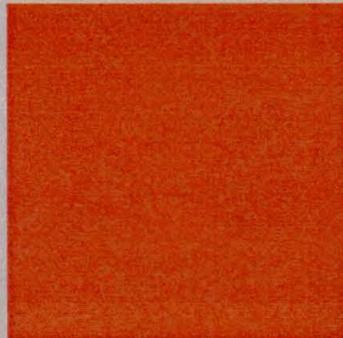
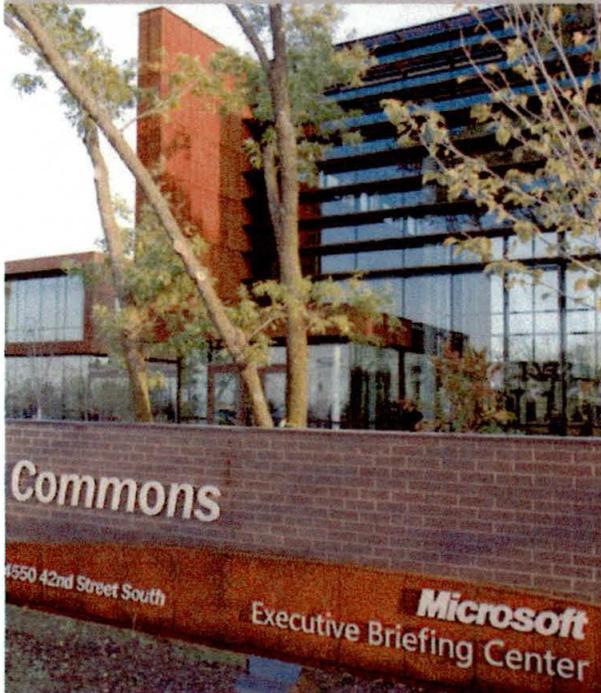
## Promoting Alternative Energy



John Deere supports utilization of biofuels as a method of increasing energy stability and independence, reducing greenhouse gas emissions, and generating agricultural and other rural economic opportunities throughout the world.

#3  
SB 2292  
2-2-15

# Microsoft Fargo Campus



3.2  
SB2292  
2-2-15

# Microsoft Campus in Fargo

## Business Groups

Research & Development

Commercial Technical Support

HR & Legal

Microsoft Business  
Group Finance

Employee Data  
Management

Content Publishing

Channel Support

Real Estate &  
Facilities

Global Finance  
Operations

Tele-Sales

Marketing

Academic  
Programs

Internal IT

Dynamics  
Operations

Field Sales

Executive Briefing  
Center

Site Management

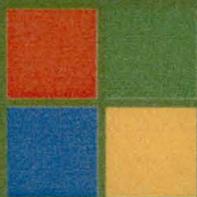
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SR2292  
2-2-15



3.4  
SB2292  
2-2-15



3.5  
SR2292  
2-2-15



# Microsoft

#4



Testimony of Jon Godfread  
Greater North Dakota Chamber of Commerce  
SB 2292  
February 2, 2015

Mr. Chairman and members of the committee, my name is Jon Godfread, I am the Vice President of Government Relations for the Greater North Dakota Chamber, the champions for business in North Dakota. GNDC is working on behalf of our more than 1,100 members, to build the strongest business environment in North Dakota. GNDC also represents the National Association of Manufacturers and works closely with the U.S. Chamber of Commerce. As a group we stand in in Support of SB 2292.

SB 2292 seeks to end the current disincentive for companies to locate facilities or hire additional workers in North Dakota. By allowing the election of a single sales factor apportionment formula, there will be an incentive to invest, expand, or retain current investments in North Dakota. This will also improve our business climate rankings as we are compared to other states. North Dakota currently has a very good business climate, but as companies look to relocate, invest, or even perhaps shift assets, SB 2292 will bring North Dakota in line with many other states and thus allow our good business climate to compete.

SB 2292 will impact any company that sells across the State's boarder; it would eliminate the disincentive against investing in North Dakota. Single sales factor apportionment strengthens the economy for local and multistate businesses alike. Local businesses with limited ability to expand outside of North Dakota would no longer face a higher tax bill for expansion in North Dakota.

Other states in our region have moved to a single sales factor formula, Minnesota just completed a move to the single sales factor apportionment. Other states including Colorado, Nebraska, Wisconsin, and Iowa all have single sales factor formula, and Idaho has a heavily weighted sales factor. Montana, currently still has a three factor formula, thus making the change now would make investment in North Dakota more attractive than investment in Montana.

You have heard from many of our states larger employers today, but I wanted to take a moment to talk about small businesses in North Dakota and how SB 2292 could help them as well. Importantly, a single sales factor would be positive for smaller regional manufacturers, particularly those located near boarders who are more likely to locate new manufacturing facilities, warehouses, offices, and employees in surrounding states. For our smaller members who are not able to move or locate expansion outside of North Dakota, a single sales factor would eliminate the disproportionately higher tax bill they face if they choose to expand in North Dakota.

Lastly, it's important to note that this would be a voluntary election, a business decision, and thus, no business would be hurt by SB 2292, as it would be a choice made by the business under SB 2292.

Thank you, the GNDC urges a DO PASS on SB 2292.



PO Box 2639 P: 701-222-0929  
Bismarck, ND 58502 F: 701-222-1611



Clark Equipment Company  
250 East Beaton Drive  
Fargo, North Dakota 58078  
678 714 6310



A.2  
SB2292  
2-2-15

January 31, 2015

Senator Dwight Cook  
Chairman, Finance and Taxation Committee  
North Dakota Senate  
1408 17th Street SE  
Mandan, ND 58554-4895  
[dcook@nd.gov](mailto:dcook@nd.gov)

Re: Support for SB 2292 – Elective Single Sales Factor Legislation

Dear Senator Cook:

I am the North America Tax Director for Clark Equipment Company, doing business as Bobcat Company, and write to you in support of Senate Bill 2292, which will adopt a single sales factor apportionment formula. We manufacture Bobcat<sup>®</sup> compact equipment in North Dakota and have customers globally, including a significant number throughout the United States. All of our North America manufacturing facilities for Bobcat equipment are located in North Dakota, including locations in Gwinner, Wahpeton and Bismarck. We also have non-manufacturing facilities in West Fargo and Bismarck. All of these facilities combined carry an assessed value exceeding \$67 million and employ more than 2,000 people.

Over the past several years, we have made significant investments in our facilities and workforce in the state of North Dakota. Our Gwinner facilities, where we began our business more than 50 years ago, have seen upgrades and enhancements in excess of \$20 million. And in Bismarck alone, we expended \$6.5 million to renovate our manufacturing facility, and recently opened a \$43 million Acceleration Center, ushering in a generation of advanced product innovation and accelerated learning to benefit customers, dealers and employees worldwide. The Acceleration Center is home to many of our engineers and other employees who are responsible for the initial design, prototype engineering, prototype manufacturing, computer simulation and testing of ideas and concepts for equipment that reaches a global marketplace.

We are proud to call North Dakota our home; each machine that we ship out of our facilities boasts hand crafted pride of the hard working people of North Dakota. We are a chief exporter for our state – selling our products across the globe. In fact, we produced our 1 millionth loader last summer and continue to change the way the world works, all from our home in North Dakota.

4.3  
SB 2292  
2-2-15

As noted previously, I write in support of Senate Bill 2292 which will adopt a single sales factor apportionment. Under North Dakota's current three factor apportionment tax structure, if our sales to customers in North Dakota remain the same, and we hire additional people or continue to expand our facilities as we have steadily been doing, our tax liability increases. Conversely, if we hire more people outside of North Dakota or if we had built our Acceleration Center outside of North Dakota, our tax liability in North Dakota would decrease even though our North Dakota sales do not change. As our company considers future plans to hire and expand, North Dakota is at a disadvantage because of this unbalanced apportionment structure.

Adopting a single sales factor apportionment will increase the relative tax liability of out-of-state corporations or those with little investment in the state (i.e., those that do not own property or payroll in North Dakota). A single sales factor apportionment will encourage "in-state corporations" to invest more in property and payroll in North Dakota and will provide an incentive to "out-of-state corporations" to invest "in state" in property and payroll in North Dakota.

We are proud to call North Dakota home. However, in our work across the United States, we find that most states now have a sales factor apportionment and very few states apply the three factor apportionment formula. Adopting a sales factor apportionment in North Dakota will provide a more level playing field for North Dakota multistate corporations, and will ease the inequity faced by North Dakota manufacturers, like us, who export much of our product. Senate Bill 2292 would tax us based on the revenue we make selling to customers in the state and eliminate the current penalty for hiring people in North Dakota. It would also encourage additional investment in North Dakota properties. In short, Senate Bill 2292 makes North Dakota more attractive for our business. We hope you will give strong consideration and support for Senate Bill 2292.

Sincerely,



Kathleen M. Merkel  
North America Director of Tax

- cc: Senator Lonnie J. Laffen (by e-mail [llaffen@nd.gov](mailto:llaffen@nd.gov))
- Senator Brad Bekkedahl (by e-mail [bbekkedahl@nd.gov](mailto:bbekkedahl@nd.gov))
- Senator Jim Dotzenrod (by e-mail [jdotzenrod@nd.gov](mailto:jdotzenrod@nd.gov))
- Senator Dave Oehlke (by e-mail [doehlke@nd.gov](mailto:doehlke@nd.gov))
- Senator Connie Triplett (by e-mail [ctriplett@nd.gov](mailto:ctriplett@nd.gov))
- Senator Jessica Unruh (by e-mail [nruh@nd.gov](mailto:nruh@nd.gov))



4.4  
SB 2292  
2-2-15

SENT VIA EMAIL: dcook@nd.gov

January 29, 2015

Senator Dwight Cook  
Chairman, Finance and Taxation Committee  
North Dakota Senate  
1408 17th Street SE  
Mandan, ND 58554-4895

Re: Support for SB 2292 – Elective Single Sales Factor Legislation



Dear Senator Cook:



On behalf of CNH Industrial America LLC (CNHI) we write to you in support of SB 2292, which would adopt elective single sales factor apportionment in the State of North Dakota.



CNH Industrial is a global manufacturer of CaseIH and New Holland brands of agricultural equipment, Case and New Holland brands of construction equipment and the FPT brand of engines and powertrains. Our brands have dealers and customers in all fifty states and over 160 countries around the globe. We currently have operations in several states including the CNHI Plant in Fargo. The CNHI Fargo Plant occupies over 750,000 square feet on an 86 acre site and employs approximately 1,000 people. Over the last ten-years CNHI has invested over \$70 million in our Fargo operations.



The CNHI Fargo Plant is the center-of-excellence for the design and manufacture of large four-wheel drive agricultural tractors, large rubber-track agricultural crawler tractors and high production wheel loaders marketed under the respective brands identified above. The CNHI Fargo Plant also produces operator cabs for sprayers, fertilizer applicators and construction equipment produced at CNHI production sites in Europe and Brazil. Over 40% of the plant's total annual production is exported to CNHI operations, dealers and customers around the world.

Under North Dakota's current three factor apportionment tax structure, if our sales to customers in North Dakota do not change, our tax liability goes up if we hire more people in North Dakota or expand our property footprint in North Dakota. Conversely, if we hire additional people outside North Dakota or expand facilities outside North Dakota, our tax liability in North Dakota decreases even though our North Dakota sales have not changed.

As our company considers future plans to hire and expand, North Dakota is at a disadvantage (versus sites CNHI operates in Minnesota, Wisconsin, Illinois and Iowa) because of the discriminatory structure that exists. Adopting elective single sales factor



apportionment would fix this discrimination and would tax based on the revenue we make selling to customers in the State. SB 2292 would eliminate the penalty for hiring people in North Dakota and would encourage additional investment in North Dakota.

CNH Industrial America LLC believes SB 2292 makes North Dakota more attractive for our business, as well as our suppliers, and we encourage the committee to act favorably on this legislation.

Please feel free to call upon us if you require any additional input.

Sincerely,

George Whitaker  
State Government Affairs  
CNH Industrial America LLC  
621 State St.  
Racine, WI 53404

Office: 262-636-4959  
Email: [george.whitaker@cnhind.com](mailto:george.whitaker@cnhind.com)

Rick Aide  
North America Tax Director  
CNH Industrial America LLC  
621 State St.  
Racine, WI 53404

Office: 262-636-6004  
[rick.aide@cnhind.com](mailto:rick.aide@cnhind.com)

- cc: Sent via email -
- Vice Chairman Lonnie Laffen ([llaffen@nd.gov](mailto:llaffen@nd.gov))
- Senator Brad Bekkedahl ([bbekkedahl@nd.gov](mailto:bbekkedahl@nd.gov))
- Senator Jim Dotzenrod ([jdotzenrod@nd.gov](mailto:jdotzenrod@nd.gov))
- Senator Dave Oehlke ([doehlke@nd.gov](mailto:doehlke@nd.gov))
- Senator Connie Triplett ([ctriplett@nd.gov](mailto:ctriplett@nd.gov))
- Senator Jessica Unruh ([jkunruh@nd.gov](mailto:jkunruh@nd.gov))
- Senator Carolyn Nelson ([cnelson@nd.gov](mailto:cnelson@nd.gov))

February 9, 2015

#1  
SB 2292  
2.9.15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2292

Page 1, line 2, after "reenact" insert "subsection 5 of section 57-38-04 and"

Page 1, after line 6, insert:

**"SECTION 1. AMENDMENT.** Subsection 5 of section 57-38-04 of the North Dakota Century Code is amended and reenacted as follows:

5. Whenever business activity is carried on partly within and partly without this state by a nonresident of this state as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, the entire income therefrom must be allocated to this state and to other states, according to the provisions of chapter 57-38.1 but only according to the apportionment method provided under subsection 1 of section 57-38.1-09, providing for allocation and apportionment of income of corporations doing business within and without this state."

Page 1, line 10, overstrike "All" and insert immediately thereafter "Except as permitted under subsections 2 through 4, all"

Page 1, line 13, overstrike "A taxpayer" and insert immediately thereafter "For the first two taxable years beginning after December 31, 2015, a taxpayer that is not a passthrough entity may elect to apportion business income to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus two times the sales factor, and the denominator of which is four."

- a. The election must be made on the return as originally and timely filed in the form and manner prescribed by the tax commissioner.
  - b. The election is applicable for all companies in a unitary group and for all companies filing a consolidated North Dakota return.
  - c. The election is binding for five consecutive taxable years after making the election, at which time the election lapses. The election under this subsection also includes the election to use the sales factor under subsections 3 and 4 for the taxable years those subsections apply.
  - d. Unless a taxpayer makes another election under subsection 4 in the taxable year immediately following the final year of the binding effect of the election under this subsection, the taxpayer must file under subsection 1 for a period of three taxable years before it may make a new election under subsection 4.
3. For the first two taxable years beginning after December 31, 2017, a taxpayer that is not a passthrough entity may elect to apportion business income to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus six times the sales factor, and the denominator of which is eight.
    - a. The election must be made on the return as originally and timely filed in the form and manner prescribed by the tax commissioner.

- b. The election is applicable for all companies in a unitary group and for all companies filing a consolidated North Dakota return.
  - c. The election is binding for five consecutive taxable years after making the election, at which time the election lapses. The election under this subsection also includes the election to use the sales factor under subsection 4 for the taxable years that subsection applies.
  - d. Unless a taxpayer makes another election under subsection 4 in the taxable year immediately following the final year of the binding effect of the election under this subsection, the taxpayer must file under subsection 1 for a period of three taxable years before it may make a new election under subsection 4.
4. For taxable years beginning after December 31, 2019, a taxpayer that is not a passthrough entity"

Page 2, line 2, replace "can" with "may"

Renumber accordingly

# CORPORATION INCOME TAX

SB 2292  
2-16-15  
#1

## CURRENT LAW

### Filing Requirements

Every corporation engaged in business in North Dakota or having sources of income in North Dakota must file a North Dakota corporation income tax return. Most returns are due on the 15th day of the fourth month following the close of the tax year. Returns filed by cooperatives are due on the 15th day of the ninth month following the close of the tax year. Returns of tax-exempt organizations reporting unrelated business taxable income are due on the 15th day of the fifth month after the close of the tax year. Payment is made with the return.

A corporation is required to pay estimated tax on a quarterly basis if:

- the estimated tax due exceeds \$5,000, and
- the previous year's total tax liability exceeded \$5,000.

### Starting Point for Calculating Tax

The starting point for calculation of corporation income tax is federal taxable income. North Dakota income tax law is perpetually federalized for this starting point.

### Apportionable Income

A corporation's apportionable income is determined by adjusting the corporation's federal taxable income.

Additions to federal taxable income include:

- All income, franchise or privilege taxes measured by income which were deducted on the federal return.
- Interest on state and local obligations (excluding North Dakota).
- Special deductions and net operating loss deductions taken on the federal return.
- The amount of the U.S. production activities income deducted in calculating federal taxable income.
- Amounts related to contributions to an Endowment Fund and the Housing Incentive Fund, to the extent a North Dakota credit has been claimed.

Deductions from federal taxable income include:  
• State income tax refunds.  
• Interest from U.S. obligations.

- Nonbusiness income (net of related expenses) from sources outside North Dakota.

### North Dakota Taxable Income

North Dakota taxable income is that portion of a corporation's apportionable income which is derived from, or attributable to, sources within North Dakota.

A corporation whose business activity is conducted solely within North Dakota is a nonapportioning corporation. North Dakota taxable income is the entire apportionable income reduced by any net operating loss carryforward attributable to North Dakota sources.

Parent and subsidiary corporations, which operate totally within North Dakota and file a federal consolidated tax return, must file a state consolidated corporation income tax return using the combined report method.

A corporation whose activity is conducted both within and without North Dakota is an apportioning corporation. North Dakota taxable income is computed by multiplying the apportionable income by an apportionment factor. This amount is reduced by any net operating loss carryforward attributable to North Dakota sources, and any applicable income exemptions. The apportionment formula includes property, payroll and sales factors, and is calculated as follows:

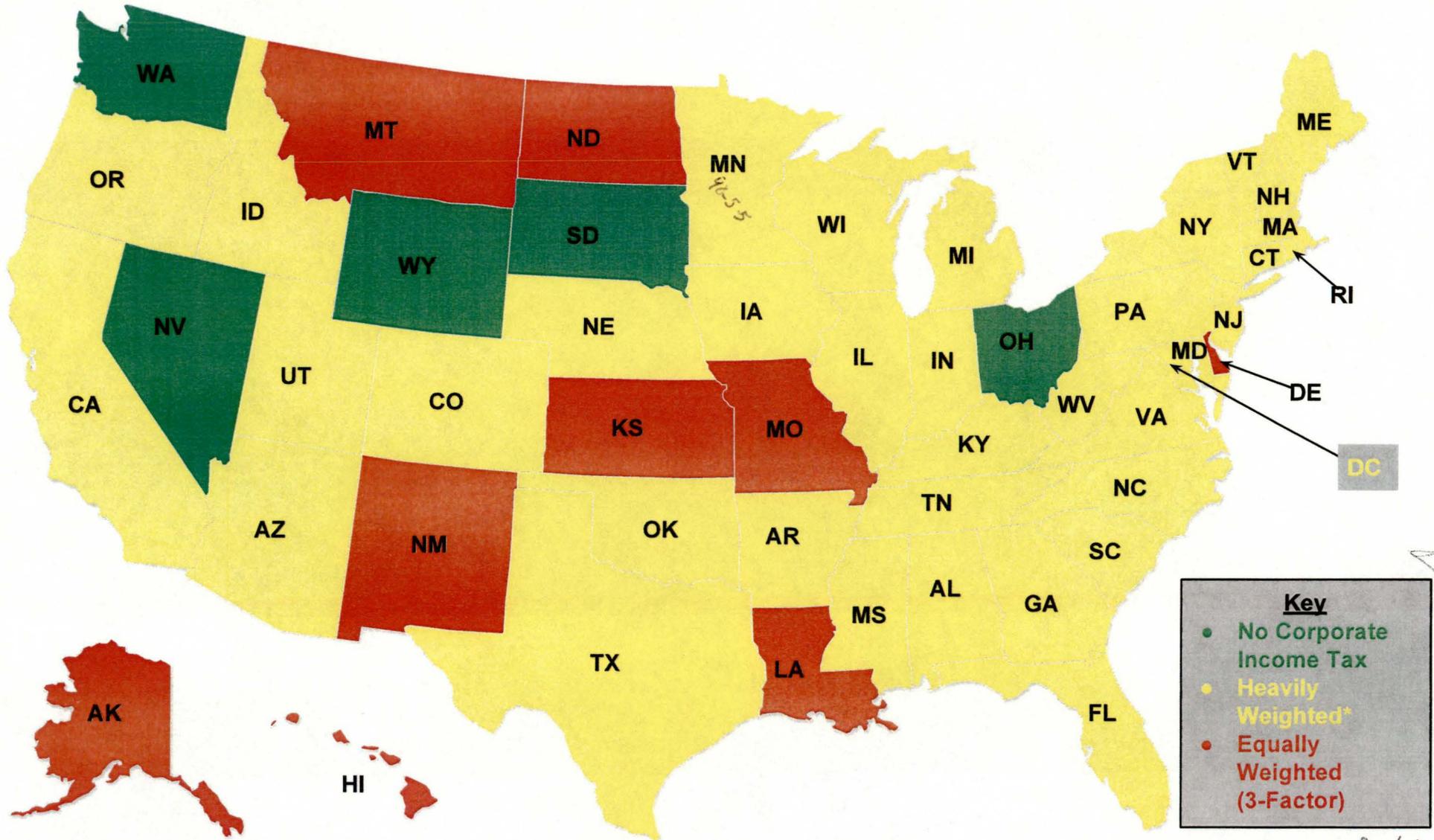
$$\left( \frac{\text{ND Property}}{\text{Total Property}} + \frac{\text{ND Payroll}}{\text{Total Payroll}} + \frac{\text{ND Sales}}{\text{Total Sales}} \right) \div 3$$

### Unitary Report and Water's Edge Election

A unitary combined report is required when two or more corporations are conducting a unitary business. A unitary business is one in which the activities of two or more affiliated corporations depend upon, contribute to, or are integrated with each other. The combined report includes the total apportionable income of all members of the unitary group. To be included in a combined report, an affiliated corporation must have more than 50% of its voting stock owned directly or indirectly by a common parent, which is also a member of the group.

North Dakota applies the unitary concept on a worldwide basis. In other words, total apportionable income includes income of all affiliated companies of the unitary group,

# 2015 Apportionment: Sales Factor Weight



\* Currently 24 states have adopted (or are currently considering adopting) a single sales factor formula. These states include: CA, CO, CT, DC, GA, IA, IL, IN, ME, MI, MN, MS, NE, NJ, NY, OR, PA, RI, SC, TN (pending), TX, UT, VA (pending), and WI. The remaining 13 states classified as heavily weighted states have adopted a double weighted sales factor. These states include: AL, AR, AZ, FL, ID, KY, MA, MD, NC, NH, OK, VT, and WV.

Testimony of Jon Godfread  
Greater North Dakota Chamber of Commerce  
SB 2292  
February 16, 2015

SB 2292  
2-16-15  
#3  
GNDC  
Greater North Dakota Chamber

Mr. Chairman and members of the committee, my name is Jon Godfread, I am the Vice President of Government Relations for the Greater North Dakota Chamber, the champions for business in North Dakota. GNDC is working on behalf of our more than 1,100 members, to build the strongest business environment in North Dakota. GNDC also represents the National Association of Manufacturers and works closely with the U.S. Chamber of Commerce. As a group we stand in in Support of SB 2292.

SB 2292 seeks to end the current disincentive for companies to locate facilities or hire additional workers in North Dakota. By allowing the election of a single sales factor apportionment formula, there will be an incentive to invest, expand, or retain current investments in North Dakota. This will also improve our business climate rankings as we are compared to other states. North Dakota currently has a very good business climate, but as companies look to relocate, invest, or even perhaps shift assets, SB 2292 will bring North Dakota in line with many other states and thus allow our good business climate to compete.

SB 2292 will impact any company that sells across the State's boarder; it would eliminate the disincentive against investing in North Dakota. Single sales factor apportionment strengthens the economy for local and multistate businesses alike. Local businesses with limited ability to expand outside of North Dakota would no longer face a higher tax bill for expansion in North Dakota.

Other states in our region have moved to a single sales factor formula, Minnesota just completed a move to the single sales factor apportionment. Other states including Colorado, Nebraska, Wisconsin, and Iowa all have single sales factor formula, and Idaho has a heavily weighted sales factor. Montana, currently still has a three factor formula, thus making the change now would make investment in North Dakota more attractive than investment in Montana.

I have included letters from many of our states larger employers in the packed, but I wanted to take a moment to talk about small businesses in North Dakota and how SB 2292 could help them as well. Importantly, a single sales factor would be positive for smaller regional manufacturers, particularly those located near boarders who are more likely to locate new manufacturing facilities, warehouses, offices, and employees in surrounding states. For our smaller members who are not able to move or locate expansion outside of North Dakota, a single sales factor would eliminate the disproportionately higher tax bill they face if they choose to expand in North Dakota.

Lastly, it's important to note that this would be a voluntary election, a business decision, and thus, no business would be hurt by SB 2292, as it would be a choice made by the business under SB 2292.

Thank you, the GNDC urges a DO PASS on SB 2292.

Champions  Business

PO Box 2639 P: 701-222-0929  
Bismarck, ND 58502 F: 701-222-1611

www.ndchamber.com

3.1



# McDermott Will & Emery

Boston Brussels Chicago Dusseldorf Frankfurt Houston London Los Angeles Miami  
Milan Munich New York Orange County Paris Rome Seoul Silicon Valley Washington, D.C.  
Strategic alliance with MWE China Law Offices (Shanghai)

Stephen P. Kranz  
Attorney at Law  
skranz@mwe.com  
+1 202 756 8180

February 2, 2015

Senator Dwight Cook  
Chairman, Finance and Taxation Committee  
North Dakota Senate  
1408 17th Street SE  
Mandan, ND 58554-4895

Senator Lonnie J. Laffen  
Vice Chairman, Finance and Taxation Committee  
North Dakota Senate  
3549 15th Avenue South  
Grand Forks, ND 58201-3706

Re: **Testimony Before Senate Committee on Finance and Taxation  
In Support of SB 2292 -- Single Sales Factor Apportionment**

Dear Senator Cook and Senator Laffen:

Chairman Cook, Vice Chairman Laffen, and members of the Senate Finance and Taxation Committee, thank you for the opportunity to provide testimony in support of SB 2292, a bill to adopt elective single sales factor apportionment.

My name is Stephen Kranz; I am a Partner at the law firm of McDermott Will & Emery in Washington, D.C., where I specialize in state and local tax. I appear before you today as an expert in the field of state taxation and the use of formulary apportionment in taxing corporations. I am also a proud native of North Dakota.

As North Dakota considers adopting single sales factor apportionment, the local and national economy watches with interest. The single sales factor bill would eliminate the current disincentive for companies to locate facilities or hire additional workers in North Dakota. Eliminating this disincentive will create new investment and retain current investment in North Dakota's expanding economy. It will also enhance North Dakota's business rankings vis-a-vis other States.

As a bit of background on formulary apportionment, States with corporate income taxes use what is called an apportionment formula to determine what ratio of a corporation's income is taxable by the State. Fifty years ago, the standard formula consisted of the average of three ratios: a property ratio; a payroll ratio, and a sales ratio. The numerator of each ratio was the corporation's in-state

U.S. practice conducted through McDermott Will & Emery LLP.

500 North Capitol Street N.W. Washington, D.C. 20001-1531 Telephone: +1 202 756 8000 Facsimile: +1 202 756 8087 www.mwe.com

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SB 2292

value of the factor (e.g., property or payroll) and the denominator was the total value of the corporation's factor.

Over time States have moved away from three-factor apportionment to formulas that rely more on the sales factor – that is their tax regimes are based more on the sales a corporation makes in the state than on property or employees located in the State. Twenty States have single sales factor apportionment and many others have more heavily weighted sales factors. Indeed, as can be seen in the attached chart, only a handful of States still have equally weighted three-factor apportionment.

Why are States moving towards the sales factor? The answer is simple, property and payroll factors punish corporations for the property that they own in a State and for people they hire in a State. Consider the following example,

1. A corporation has \$100 million of income. It has 25% of its payroll, property, and sales in North Dakota. The North Dakota corporate income tax rate is 4.53%. The company's corporate income tax liability is as follows:

$$\text{\$100 million} * (1/4 \text{ property} + 1/4 \text{ payroll} + 1/4 \text{ sales})/3 * 4.53 = \text{\$1.13 million}$$

2. Now assume that the company wants to invest in a large facility in North Dakota and that its property in North Dakota would increase from \$20 million to \$100 million and its payroll in North Dakota would increase from \$2 million to \$10 million. Its North Dakota tax liability doubles as follows:

$$\text{\$100 million} * (5/8 \text{ property} + 5/8 \text{ payroll} + 1/4 \text{ sales})/3 * 4.53 = \text{\$2.26 million}$$

3. If the company instead makes that investment in another State, its North Dakota tax liability is reduced dramatically as follows:

$$\text{\$100 million} * (1/8 \text{ property} + 1/8 \text{ payroll} + 1/4 \text{ sales})/3 * 4.53 = \text{\$.75 million}$$

Plainly, the three factor apportionment formula discourages investments in North Dakota property and North Dakota employees. This fact is true for companies large and small alike. Any company that sells across the State's border is hurt by the current apportionment formula. SB 2292 would eliminate this bias against investing in North Dakota and companies would be taxed on sales to, not investment in, North Dakota.

Single sales factor apportionment strengthens the economy for local and multistate businesses alike. Local businesses with limited ability to expand out-of-state would no longer face a higher tax bill for expansion in North Dakota. Similarly, multistate businesses will be less likely to look outside North Dakota for investment.

Senator Dwight Cook  
Senator Lonnie J. Laffen  
February 2, 2015  
Page 3

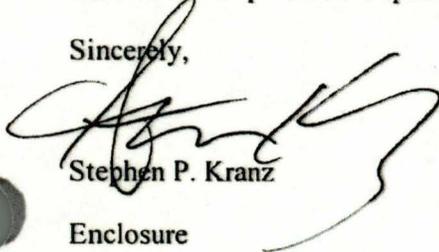
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SR 2292

Importantly, SB 2292 would make North Dakota more favorable when compared to its neighbors. South Dakota has no corporate income tax. Minnesota just completed a move to single sales factor apportionment, making investment into the State more attractive. Montana continues to use three factor apportionment, so SB 2292 would give North Dakota a competitive edge. Other States in the region have single sales factor structures including Colorado, Nebraska, Wisconsin, and Iowa and Idaho has a three factor formula with the sales fraction being more heavily weighted.

Lastly, the election is an important element of the structure. This is a feature that differentiates SB 2292 from many other single sales factor States. The election provides businesses flexibility based on their current economic condition. It's also simple – companies that want to continue doing what they are already doing are free to do so. No business in the state would be hurt by passage of SB 2292.

Thank you for your consideration in this matter. I urge you to adopt SB 2292 and put my home state on the map of States open to investment.

Sincerely,



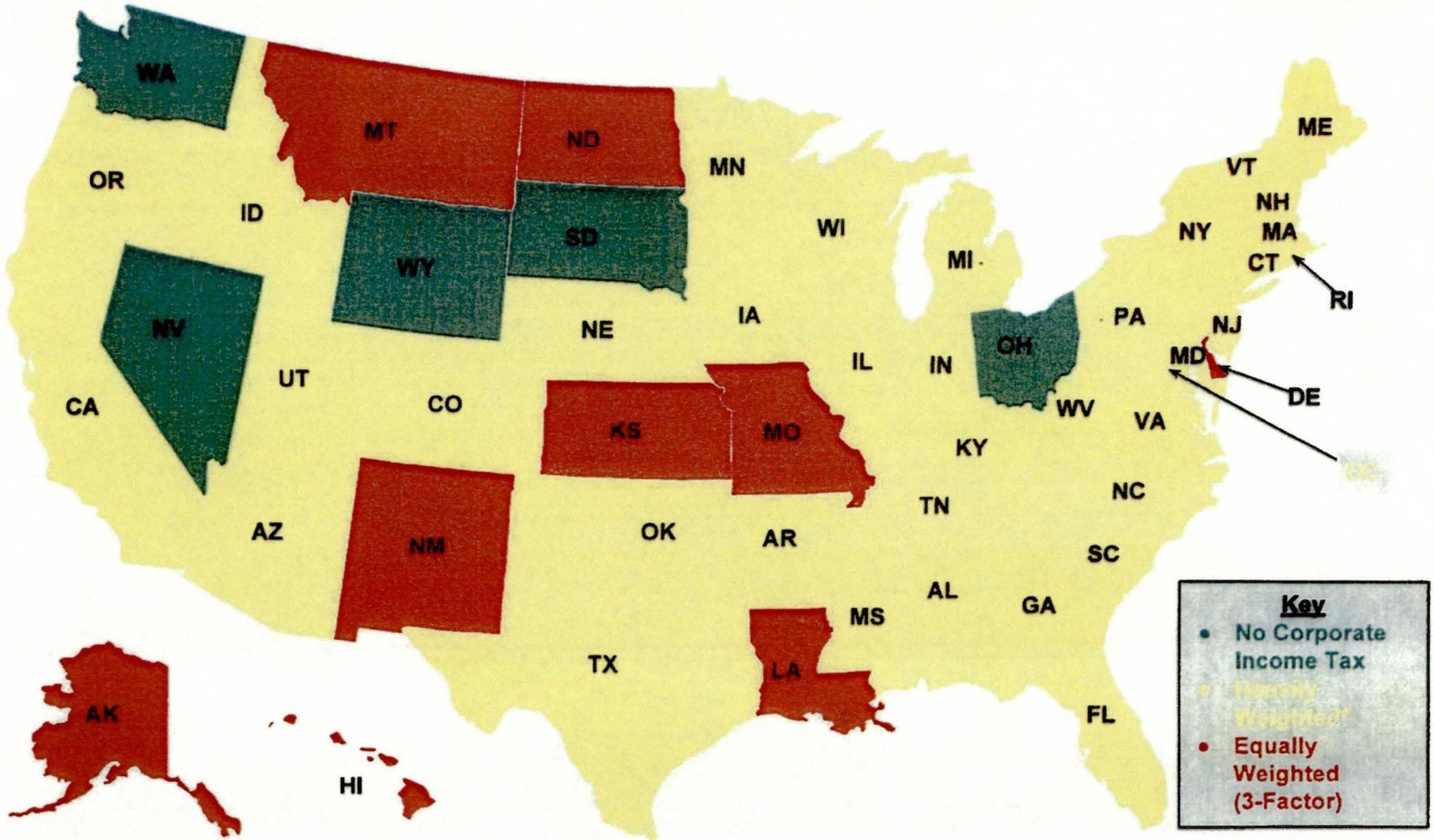
Stephen P. Kranz

Enclosure

- cc: Senator Brad Bekkedahl
- Senator Jim Dotzenrod
- Senator Dave Oehlke
- Senator Connie Triplett
- Senator Jessica Unruh

3.4

# 2015 Apportionment: Sales Factor Weight



\* Currently 24 states have adopted (or are currently considering adopting) a single sales factor formula. These states include: CA, CO, CT, DC, GA, IA, IL, IN, ME, MI, MN, MS, NE, NJ, NY, OR, PA, RI, SC, TN (pending), TX, UT, VA (pending), and WI. The remaining 13 states classified as heavily weighted states have adopted a double weighted sales factor. These states include: AL, AR, AZ, FL, ID, KY, MA, MD, NC, NH, OK, VT, and WV.

35

8/22/2012  
LH



**JOHN DEERE**

Deere & Company  
801 17<sup>th</sup> Street, NW, Suite 200  
Washington, D.C. 20006 USA  
Phone: 202-423-2271 Fax: 202-296-0011  
Mobile : 202-997-9022  
Email: IlesThomasE@JohnDeere.com

#2  
SB 2292  
2.2.15

**Thomas E. Iles**  
Director, State Public Affairs  
**Public Affairs Worldwide**

Beijing	Brussels
Cary	Des Moines
Moline	Moscow
Olathe	Pune
Sao Paulo	Washington

## SB 2292: North Dakota - Single Sales Factor Formula

**Position:** John Deere supports the enactment of SB 2292 during the 2015 North Dakota Legislative Session. The legislation would allow for a taxpayer to elect to apportion business income to the state utilizing the Single Sales Factor Formula (SSFF).

**Background:** SB 2292 – SSFF is currently in the Senate Finance & Taxation Committee and provides for an elective Single Sales Factor Formula while keeping the current statutory regime in place. If enacted, SB 2292 would eliminate increases in corporate income taxes for businesses adding property or payroll in the state.

### **Position Rationale:**

- **North Dakota Economic Growth:** SB 2292 would encourage business to maintain investment in property and employees within North Dakota while also encouraging expansion and location to the state.
- **Other States:** 22 states currently utilize a Single Sales Factor Formula, with many of these close to North Dakota (i.e. Minnesota, Iowa, Illinois, Wisconsin and Nebraska). Enactment of SB 2292 would also improve North Dakota's national ranking on tax and business environment studies.
- **Business Flexibility:** Management's location and expansion decisions can be based upon the economy and their respective markets for products and services, with the knowledge that their tax burden would be consistent.
- **Multistate Tax Compact:** The contained provisions within SB 2292 provide protection for the state of North Dakota while also simplifying the tax system.

**Summary:** The enactment of SB 2292 would significantly enhance economic growth in the state, reduce the tax burden of growing businesses and provide for a more competitive environment, while simplifying the North Dakota tax system.

**Attachment: John Deere Presence in North Dakota**

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# John Deere Presence in North Dakota



Deere & Company (NYSE: DE) is a world leader in providing advanced products and services and is committed to the success of customers whose work is linked to the land - those who cultivate, harvest, transform, enrich and build upon the land to meet the world's dramatically increasing need for food, fuel, shelter and infrastructure. Since 1837, John Deere has delivered innovative products of superior quality, built on a tradition of integrity. For more information, visit John Deere at its worldwide website at [www.JohnDeere.com](http://www.JohnDeere.com).

## John Deere Quick Facts

<b>Net Sales &amp; Revenues</b>	<b>&gt;\$36 billion*</b>
<b>Employees</b>	<b>&gt;59,000*</b>
• <b>U.S. &amp; Canada</b>	<b>&gt;29,000</b>
<b>Facilities</b>	
• <b>States</b>	<b>18</b>
• <b>Countries</b>	<b>36</b>
<b>Research &amp; Development - \$1.5 billion* (\$4.1 million/day)</b>	
<small>* Figures taken from Deere &amp; Company Annual Report 2014</small>	

## Who We Are in North Dakota

- **Employees**
  - >950 work as part of John Deere's major business operations
  - >850 live in the state
  - >80 retirees
- **Suppliers & Dealers**
  - >130 contracts (approximately \$77 million)
  - 47 dealerships

## Facility Locations

**Fargo** - John Deere Electronic Solutions— Electronics Design & Mfg.

**Valley City** - John Deere Seeding Group—Air Seeding Equipment



## John Deere is a Power for Good



Deere & Company's corporate citizenship efforts continued making a meaningful impact in 2014 through support of citizenship activities, whose main focus includes solutions for world hunger, improved educational opportunities, and community development. John Deere employees also enriched their communities through extensive volunteer efforts which increased incomes and the standard of living for smallholder farmers in India and Sub-Saharan Africa. Deere also provided funding for programs focusing on science, technology, engineering and math (STEM) in communities in Brazil, India and the U.S. John Deere and the John Deere Foundation also made significant investments in our home communities worldwide to ensure their economic vibrancy for years to come. In all, our investments in 2014 improved the lives of more than 9.4 million people around the world.

## Protecting the Environment

John Deere is committed to reducing our environmental footprint worldwide. The company has established the following enterprise eco-efficiency goals to be achieved by 2018. These goals are designed to encourage improved performance and innovation, as well as raise internal and public awareness of our environmental stewardship:



Reduce Greenhouse gas emissions and energy consumption per ton of production 15% from 2012 through 2018.



Reduce water consumption per ton of production 15% from 2012 through 2018.



Increase amount of enterprise waste recycled to 75% of total waste by 2018.



Use life cycle engineering to create products and services that meet customer needs and

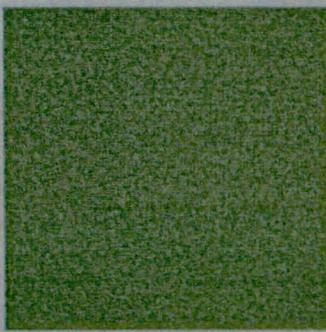
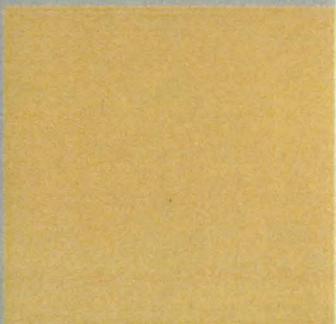
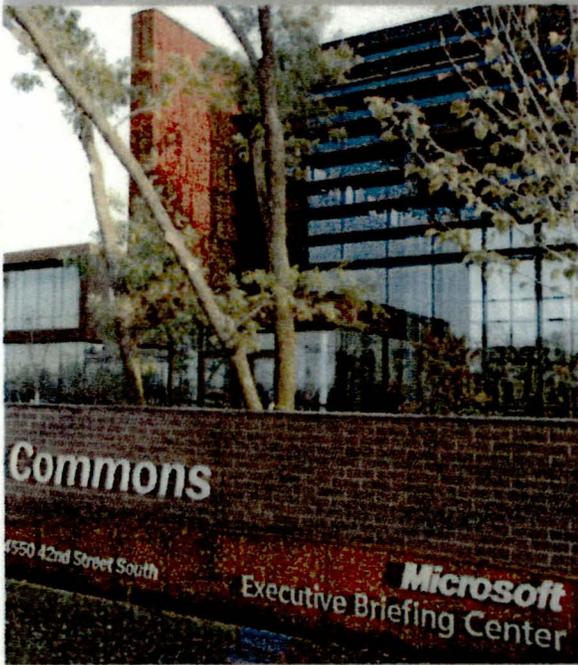
## Promoting Alternative Energy



John Deere supports utilization of biofuels as a method of increasing energy stability and independence, reducing greenhouse gas emissions, and generating agricultural and other rural economic opportunities throughout the world.

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# Microsoft Fargo Campus

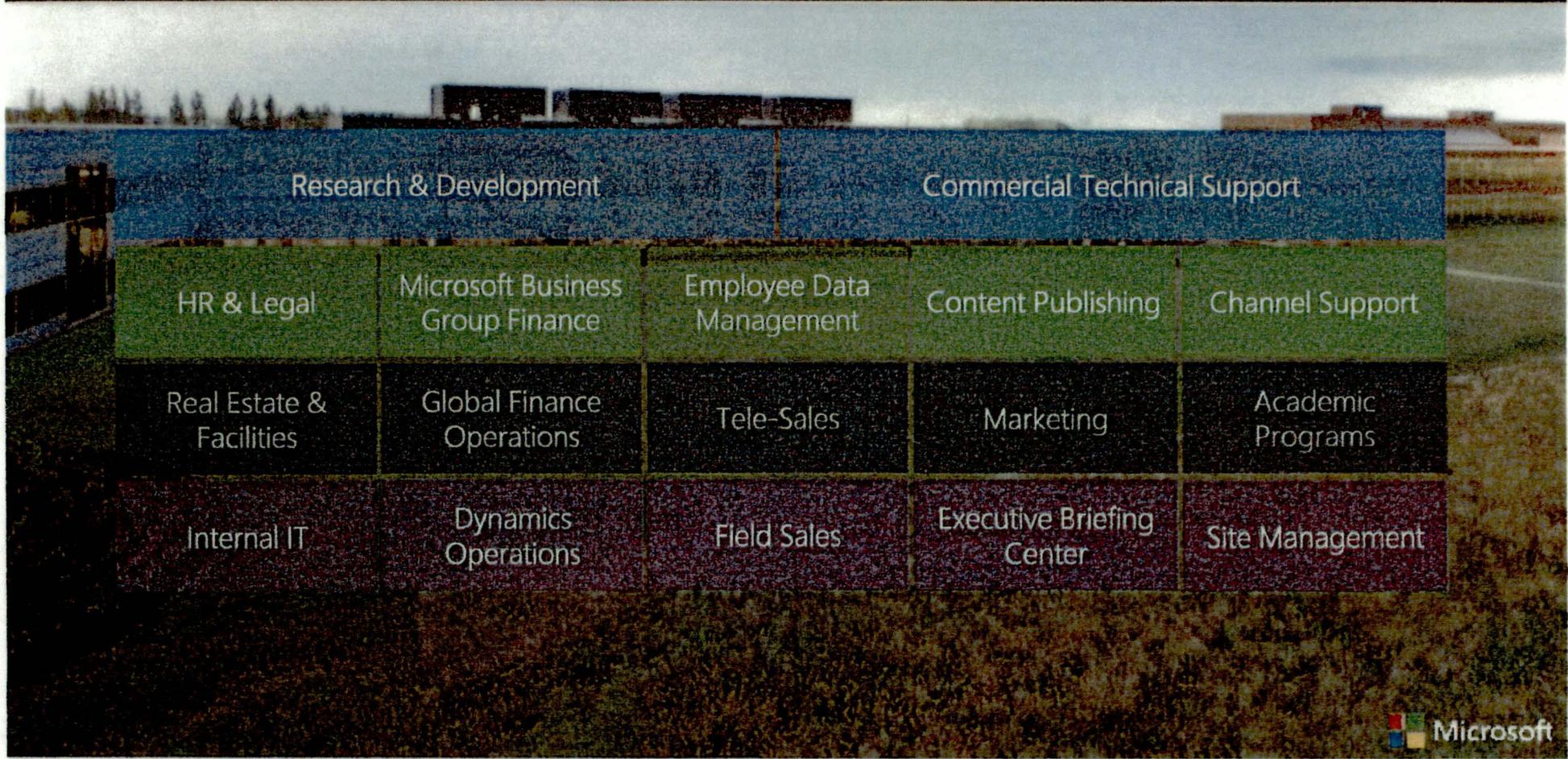


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# Microsoft Campus in Fargo

## Business Groups



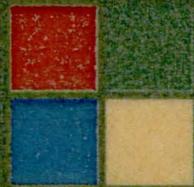
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# Microsoft

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Clark Equipment Company  
250 East Beaton Drive  
Fargo, North Dakota 58078  
678 714 6310



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SB2292  
2-2-15

January 31, 2015

Senator Dwight Cook  
Chairman, Finance and Taxation Committee  
North Dakota Senate  
1408 17th Street SE  
Mandan, ND 58554-4895  
[dcook@nd.gov](mailto:dcook@nd.gov)

Re: Support for SB 2292 – Elective Single Sales Factor Legislation

Dear Senator Cook:

I am the North America Tax Director for Clark Equipment Company, doing business as Bobcat Company, and write to you in support of Senate Bill 2292, which will adopt a single sales factor apportionment formula. We manufacture Bobcat<sup>®</sup> compact equipment in North Dakota and have customers globally, including a significant number throughout the United States. All of our North America manufacturing facilities for Bobcat equipment are located in North Dakota, including locations in Gwinner, Wahpeton and Bismarck. We also have non-manufacturing facilities in West Fargo and Bismarck. All of these facilities combined carry an assessed value exceeding \$67 million and employ more than 2,000 people.

Over the past several years, we have made significant investments in our facilities and workforce in the state of North Dakota. Our Gwinner facilities, where we began our business more than 50 years ago, have seen upgrades and enhancements in excess of \$20 million. And in Bismarck alone, we expended \$6.5 million to renovate our manufacturing facility, and recently opened a \$43 million Acceleration Center, ushering in a generation of advanced product innovation and accelerated learning to benefit customers, dealers and employees worldwide. The Acceleration Center is home to many of our engineers and other employees who are responsible for the initial design, prototype engineering, prototype manufacturing, computer simulation and testing of ideas and concepts for equipment that reaches a global marketplace.

We are proud to call North Dakota our home; each machine that we ship out of our facilities boasts hand crafted pride of the hard working people of North Dakota. We are a chief exporter for our state – selling our products across the globe. In fact, we produced our 1 millionth loader last summer and continue to change the way the world works, all from our home in North Dakota.

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As noted previously, I write in support of Senate Bill 2292 which will adopt a single sales factor apportionment. Under North Dakota's current three factor apportionment tax structure, if our sales to customers in North Dakota remain the same, and we hire additional people or continue to expand our facilities as we have steadily been doing, our tax liability increases. Conversely, if we hire more people outside of North Dakota or if we had built our Acceleration Center outside of North Dakota, our tax liability in North Dakota would decrease even though our North Dakota sales do not change. As our company considers future plans to hire and expand, North Dakota is at a disadvantage because of this unbalanced apportionment structure.

Adopting a single sales factor apportionment will increase the relative tax liability of out-of-state corporations or those with little investment in the state (i.e., those that do not own property or payroll in North Dakota). A single sales factor apportionment will encourage "in-state corporations" to invest more in property and payroll in North Dakota and will provide an incentive to "out-of-state corporations" to invest "in state" in property and payroll in North Dakota.

We are proud to call North Dakota home. However, in our work across the United States, we find that most states now have a sales factor apportionment and very few states apply the three factor apportionment formula. Adopting a sales factor apportionment in North Dakota will provide a more level playing field for North Dakota multistate corporations, and will ease the inequity faced by North Dakota manufacturers, like us, who export much of our product. Senate Bill 2292 would tax us based on the revenue we make selling to customers in the state and eliminate the current penalty for hiring people in North Dakota. It would also encourage additional investment in North Dakota properties. In short, Senate Bill 2292 makes North Dakota more attractive for our business. We hope you will give strong consideration and support for Senate Bill 2292.

Sincerely,



Kathleen M. Merkel

North America Director of Tax

- cc: Senator Lonnie J. Laffen (by e-mail [llaffen@nd.gov](mailto:llaffen@nd.gov))
- Senator Brad Bekkedahl (by e-mail [bbekkedahl@nd.gov](mailto:bbekkedahl@nd.gov))
- Senator Jim Dotzenrod (by e-mail [jdotzenrod@nd.gov](mailto:jdotzenrod@nd.gov))
- Senator Dave Oehlke (by e-mail [doehlke@nd.gov](mailto:doehlke@nd.gov))
- Senator Connie Triplett (by e-mail [ctriplett@nd.gov](mailto:ctriplett@nd.gov))
- Senator Jessica Unruh (by e-mail [nruh@nd.gov](mailto:nruh@nd.gov))

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SB 2292  
2-2-15

SENT VIA EMAIL: dcook@nd.gov

January 29, 2015

Senator Dwight Cook  
Chairman, Finance and Taxation Committee  
North Dakota Senate  
1408 17th Street SE  
Mandan, ND 58554-4895

Re: Support for SB 2292 – Elective Single Sales Factor Legislation

Dear Senator Cook:

On behalf of CNH Industrial America LLC (CNHI) we write to you in support of SB 2292, which would adopt elective single sales factor apportionment in the State of North Dakota.

CNH Industrial is a global manufacturer of CaseIH and New Holland brands of agricultural equipment, Case and New Holland brands of construction equipment and the FPT brand of engines and powertrains. Our brands have dealers and customers in all fifty states and over 160 countries around the globe. We currently have operations in several states including the CNHI Plant in Fargo. The CNHI Fargo Plant occupies over 750,000 square feet on an 86 acre site and employs approximately 1,000 people. Over the last ten-years CNHI has invested over \$70 million in our Fargo operations.

The CNHI Fargo Plant is the center-of-excellence for the design and manufacture of large four-wheel drive agricultural tractors, large rubber-track agricultural crawler tractors and high production wheel loaders marketed under the respective brands identified above. The CNHI Fargo Plant also produces operator cabs for sprayers, fertilizer applicators and construction equipment produced at CNHI production sites in Europe and Brazil. Over 40% of the plant's total annual production is exported to CNHI operations, dealers and customers around the world.

Under North Dakota's current three factor apportionment tax structure, if our sales to customers in North Dakota do not change, our tax liability goes up if we hire more people in North Dakota or expand our property footprint in North Dakota. Conversely, if we hire additional people outside North Dakota or expand facilities outside North Dakota, our tax liability in North Dakota decreases even though our North Dakota sales have not changed.

As our company considers future plans to hire and expand, North Dakota is at a disadvantage (versus sites CNHI operates in Minnesota, Wisconsin, Illinois and Iowa) because of the discriminatory structure that exists. Adopting elective single sales factor

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apportionment would fix this discrimination and would tax based on the revenue we make selling to customers in the State. SB 2292 would eliminate the penalty for hiring people in North Dakota and would encourage additional investment in North Dakota.

CNH Industrial America LLC believes SB 2292 makes North Dakota more attractive for our business, as well as our suppliers, and we encourage the committee to act favorably on this legislation.

Please feel free to call upon us if you require any additional input.

Sincerely,

George Whitaker  
State Government Affairs  
CNH Industrial America LLC  
621 State St.  
Racine, WI 53404

Office: 262-636-4959  
Email: [george.whitaker@cnhind.com](mailto:george.whitaker@cnhind.com)

Rick Aide  
North America Tax Director  
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Racine, WI 53404

Office: 262-636-6004  
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Vice Chairman Lonnie Laffen ([llaffen@nd.gov](mailto:llaffen@nd.gov))  
Senator Brad Bekkedahl ([bbekkedahl@nd.gov](mailto:bbekkedahl@nd.gov))  
Senator Jim Dotzenrod ([jdotzenrod@nd.gov](mailto:jdotzenrod@nd.gov))  
Senator Dave Oehlke ([doehlke@nd.gov](mailto:doehlke@nd.gov))  
Senator Connie Triplett ([ctriplett@nd.gov](mailto:ctriplett@nd.gov))  
Senator Jessica Unruh ([jkunruh@nd.gov](mailto:jkunruh@nd.gov))  
Senator Carolyn Nelson ([cnelson@nd.gov](mailto:cnelson@nd.gov))

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# CORPORATION INCOME TAX

## CURRENT LAW

### Filing Requirements

Every corporation engaged in business in North Dakota or having sources of income in North Dakota must file a North Dakota corporation income tax return. Most returns are due on the 15th day of the fourth month following the close of the tax year. Returns filed by cooperatives are due on the 15th day of the ninth month following the close of the tax year. Returns of tax-exempt organizations reporting unrelated business taxable income are due on the 15th day of the fifth month after the close of the tax year. Payment is made with the return.

A corporation is required to pay estimated tax on a quarterly basis if:

- the estimated tax due exceeds \$5,000, and
- the previous year's total tax liability exceeded \$5,000.

### Starting Point for Calculating Tax

The starting point for calculation of corporation income tax is federal taxable income. North Dakota income tax law is perpetually federalized for this starting point.

### Apportionable Income

A corporation's apportionable income is determined by adjusting the corporation's federal taxable income.

- Additions to federal taxable income include:
- All income, franchise or privilege taxes measured by income which were deducted on the federal return.
  - Interest on state and local obligations (excluding North Dakota).
  - Special deductions and net operating loss deductions taken on the federal return.
  - The amount of the U.S. production activities income deducted in calculating federal taxable income.
  - Amounts related to contributions to an Endowment Fund and the Housing Incentive Fund, to the extent a North Dakota credit has been claimed.

- Subtractions from federal taxable income include:
- State income tax refunds.
  - Interest from U.S. obligations.

- Nonbusiness income (net of related expenses) from sources outside North Dakota.

### North Dakota Taxable Income

North Dakota taxable income is that portion of a corporation's apportionable income which is derived from, or attributable to, sources within North Dakota.

A corporation whose business activity is conducted solely within North Dakota is a nonapportioning corporation. North Dakota taxable income is the entire apportionable income reduced by any net operating loss carryforward attributable to North Dakota sources.

Parent and subsidiary corporations, which operate totally within North Dakota and file a federal consolidated tax return, must file a state consolidated corporation income tax return using the combined report method.

A corporation whose activity is conducted both within and without North Dakota is an apportioning corporation. North Dakota taxable income is computed by multiplying the apportionable income by an apportionment factor. This amount is reduced by any net operating loss carryforward attributable to North Dakota sources, and any applicable income exemptions. The apportionment formula includes property, payroll and sales factors, and is calculated as follows:

$$\left( \frac{\text{ND Property}}{\text{Total Property}} + \frac{\text{ND Payroll}}{\text{Total Payroll}} + \frac{\text{ND Sales}}{\text{Total Sales}} \right) \div 3$$

### Unitary Report and Water's Edge Election

A unitary combined report is required when two or more corporations are conducting a unitary business. A unitary business is one in which the activities of two or more affiliated corporations depend upon, contribute to, or are integrated with each other. The combined report includes the total apportionable income of all members of the unitary group. To be included in a combined report, an affiliated corporation must have more than 50% of its voting stock owned directly or indirectly by a common parent, which is also a member of the group.

North Dakota applies the unitary concept on a worldwide basis. In other words, total apportionable income includes income of all affiliated companies of the unitary group,



March 11, 2015

BY E-MAIL

Representative Craig Headland  
Chairman, Finance and Taxation Committee  
North Dakota House of Representatives  
4950 92nd Avenue SE  
Montpelier, ND 58472-9630  
[cheadland@nd.gov](mailto:cheadland@nd.gov)

Representative Mark S. Owens  
Vice Chairman, Finance and Taxation Committee  
North Dakota House of Representatives  
5865 Fountain Vista Drive  
Grand Forks, ND 58201-2820  
[mowens@nd.gov](mailto:mowens@nd.gov)

Re: **Testimony Before House Committee on Finance and Taxation  
In Support of SB 2292 -- Single Sales Factor Apportionment**

Dear Mr. Headland and Mr. Owen:

Chairman Headland, Vice Chairman Owen, and members of the House Committee on Finance and Taxation, thank you for the opportunity to provide testimony in support of SB 2292, a bill that would phase in elective single sales factor apportionment.

My name is Stephen Kranz; I am a Partner at the law firm of McDermott Will & Emery in Washington, D.C., where I specialize in state and local tax. I appear before you today as an expert in the field of state taxation and the use of formulary apportionment in taxing corporations. I am also a native of North Dakota.

As North Dakota considers adopting single sales factor apportionment, the local and national economy watches with interest. The single sales factor bill would eliminate the current disincentive for companies to locate facilities or hire additional workers in North Dakota. Eliminating this disincentive will create new investment and retain current investment in North Dakota's expanding economy. It will also enhance North Dakota's business rankings vis-a-vis other States.

As a bit of background on formulary apportionment, States with corporate income taxes use what is called an apportionment formula to determine what ratio of a corporation's income is taxable by the

State. Fifty years ago, the standard formula consisted of the average of three ratios: a property ratio; a payroll ratio, and a sales ratio. The numerator of each ratio was the corporation's in-state value of the factor (e.g., property or payroll) and the denominator was the total value of the corporation's factor.

Over time States have moved away from three-factor apportionment to formulas that rely more on the sales factor -- that is their tax regimes are based more on the sales a corporation makes in the state than on property or employees located in the State. Twenty States have single sales factor apportionment and many others have more heavily weighted sales factors. Indeed, as can be seen in the attached chart, only a handful of States still have equally weighted three-factor apportionment.

Why are States moving towards the sales factor? The answer is simple, property and payroll factors punish corporations for the property that they own in a State and for people they hire in a State. Consider the following example,

1. A corporation has \$100 million of income. It has 25% of its payroll, property, and sales in North Dakota. The North Dakota corporate income tax rate is 4.53%. The company's corporate income tax liability is as follows:

$$\text{\$100 million} * (1/4 \text{ property} + 1/4 \text{ payroll} + 1/4 \text{ sales})/3 * 4.53 = \text{\$1.13 million}$$

2. Now assume that the company wants to invest in a large facility in North Dakota and that its property in North Dakota would increase from \$20 million to \$100 million and its payroll in North Dakota would increase from \$2 million to \$10 million. Its North Dakota tax liability doubles as follows:

$$\text{\$100 million} * (5/8 \text{ property} + 5/8 \text{ payroll} + 1/4 \text{ sales})/3 * 4.53 = \text{\$2.26 million}$$

3. If the company instead makes that investment in another State, its North Dakota tax liability is reduced dramatically as follows:

$$\text{\$100 million} * (1/8 \text{ property} + 1/8 \text{ payroll} + 1/4 \text{ sales})/3 * 4.53 = \text{\$.75 million}$$

Plainly, the three factor apportionment formula discourages investments in North Dakota property and North Dakota employees. SB 2292 would eliminate this bias against investing in North Dakota. Companies would be taxed on sales to, not investment in, North Dakota.

Single sales factor apportionment strengthens the economy for local and multistate businesses alike. Local businesses with limited ability to expand out-of-state would no longer face a higher tax bill for expansion in North Dakota. Similarly, multistate businesses will be less likely to look outside North Dakota for investment.

Representative Craig Headland  
Representative Mark Owens  
March 11, 2015  
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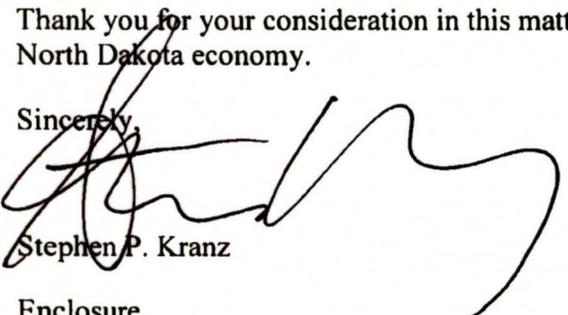
Importantly, SB 2292 would make North Dakota more favorable when compared to its neighbors. South Dakota has no corporate income tax. Minnesota just completed a move to single sales factor apportionment, making investment into the State more attractive. Montana continues to use three factor apportionment, so SB 2292 would give North Dakota a competitive edge. Other States in the region have single sales factor structures including Colorado, Nebraska, Wisconsin, and Iowa and Idaho has a three factor formula with the sales fraction being more heavily weighted.

The election is an important element of the structure. This is a feature that differentiates SB 2292 from most other single sales factor States. The election provides businesses flexibility based on their current economic condition. It's also simple – companies that want to continue doing what they are already doing are free to do so. Additionally, elections are generally viewed as favorable by the business world, which should increase the perception of North Dakota as a good place for business.

Lastly, the bill phases in full single sales factor apportionment over the next several years. This means that during that period the property and payroll factors remain part of the apportionment formula. However, the relative importance of these factors decreases over time. This is a nice addition to the bill that should help North Dakota and corporate taxpayers alike efficiently move to an elective regime that uses only the sales factor.

Thank you for your consideration in this matter. I urge you to adopt SB 2292 and enhance the North Dakota economy.

Sincerely,

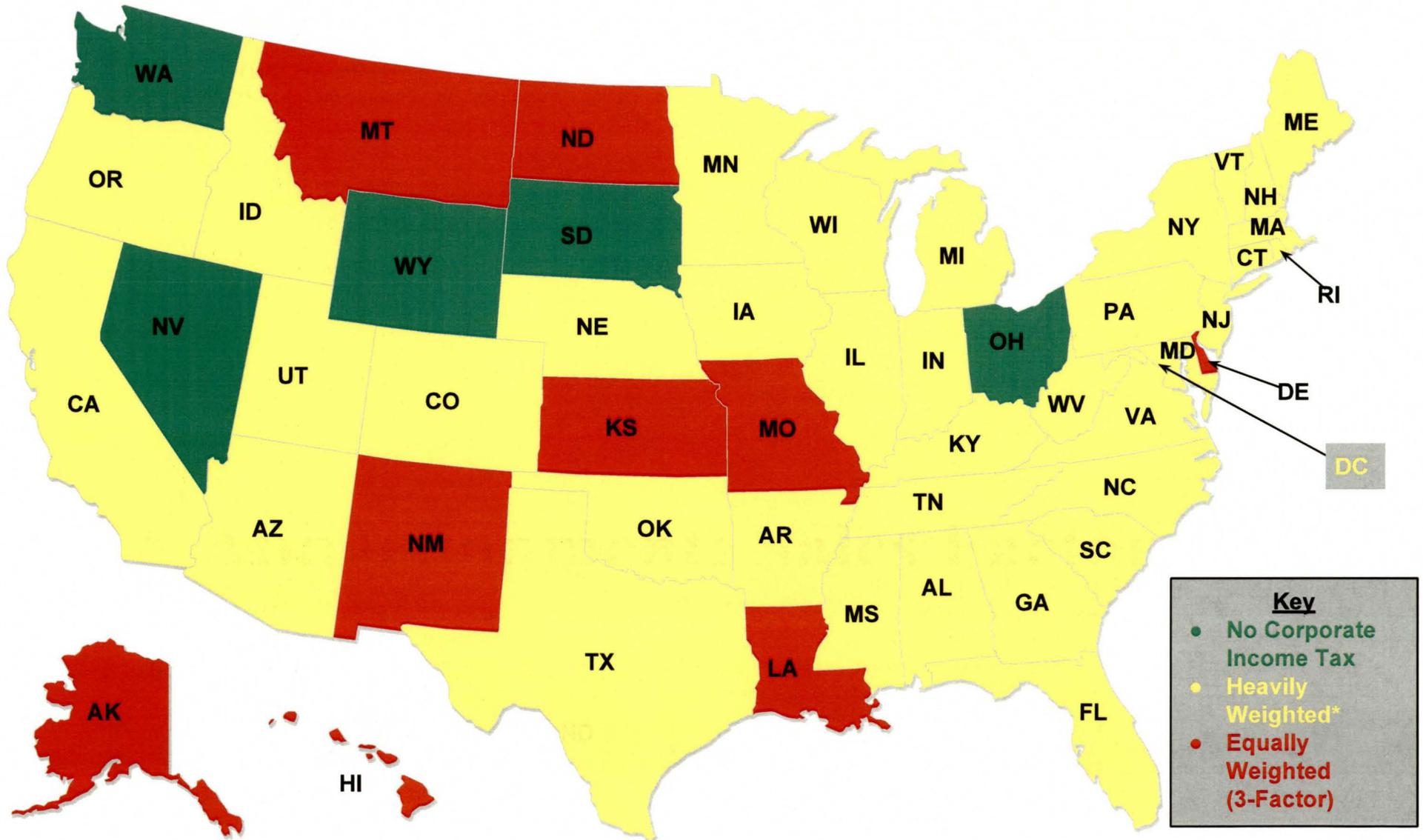


Stephen P. Kranz

Enclosure

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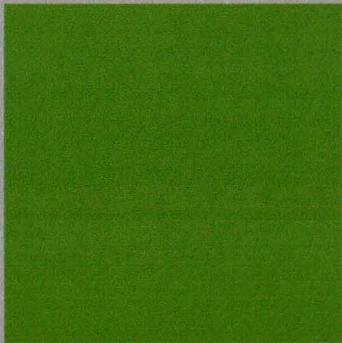
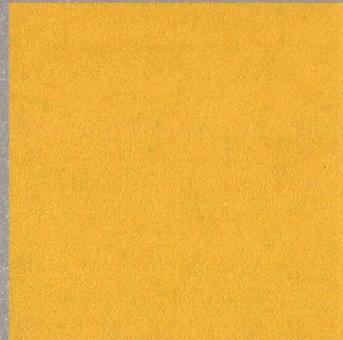
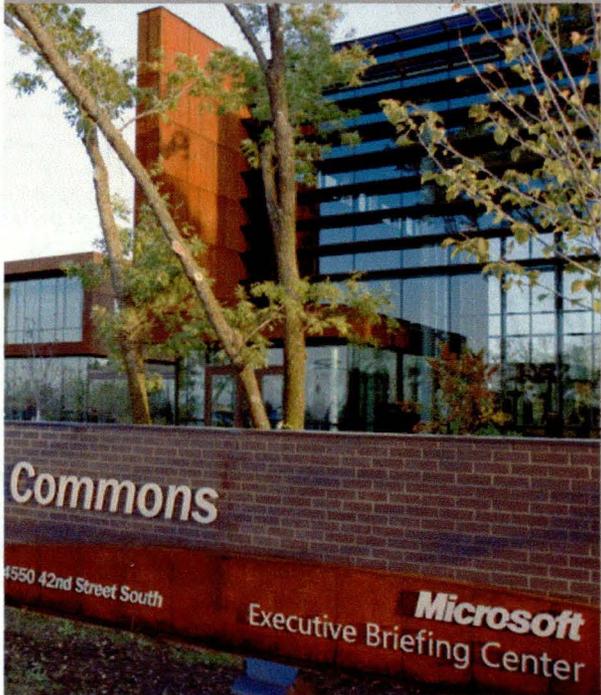
# 2015 Apportionment: Sales Factor Weight



\* Currently 24 states have adopted (or are currently considering adopting) a single sales factor formula. These states include: CA, CO, CT, DC, GA, IA, IL, IN, ME, MI, MN, MS, NE, NJ, NY, OR, PA, RI, SC, TN (pending), TX, UT, VA (pending), and WI. The remaining 13 states classified as heavily weighted states have adopted a double weighted sales factor. These states include: AL, AR, AZ, FL, ID, KY, MA, MD, NC, NH, OK, VT, and WV.

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# Microsoft Fargo Campus



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# Microsoft Campus in Fargo

## Business Groups

Research & Development

Commercial Technical Support

HR & Legal

Microsoft Business  
Group Finance

Employee Data  
Management

Content Publishing

Channel Support

Real Estate &  
Facilities

Global Finance  
Operations

Tele-Sales

Marketing

Academic  
Programs

Internal IT

Dynamics  
Operations

Field Sales

Executive Briefing  
Center

Site Management



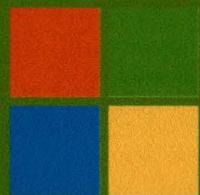
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# Microsoft

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SB 2292  
3-11-15  
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**Testimony of Keith Lund, President  
Economic Development Association of North Dakota  
In Support of SB 2292  
March 11, 2015**

Chairman Headland and members of the House Finance and Taxation Committee, I'm Keith Lund, vice president of the Grand Forks Region Economic Development and president of the Economic Development Association of North Dakota (EDND). On behalf of EDND, I would like to express our support for SB 2292.

EDND represents more than 80 state economic development organizations on the front line of economic development efforts throughout North Dakota. The primary purpose of the organization is to support the creation of new wealth and the diversification of North Dakota's economy.

North Dakota's three-factor apportionment formula places North Dakota at a distinct disadvantage when seeking investment in certain industries, particularly in the area of information technology. This bill would allow North Dakota corporations to choose under which formula (three-factor apportionment or sales) they would be taxed. This would place North Dakota in the most competitive position.

EDND supports improving the state's economic and business climate through the creation and support of a competitive taxation and regulatory environment. Therefore, we urge the committee's support of SB 2292.

Testimony of Jon Godfread  
Greater North Dakota Chamber of Commerce  
SB 2292  
March 11<sup>th</sup>, 2015

Mr. Chairman and members of the committee, my name is Jon Godfread, I am the Vice President of Government Relations for the Greater North Dakota Chamber, the champions for business in North Dakota. GNDC is working on behalf of our more than 1,100 members, to build the strongest business environment in North Dakota. GNDC also represents the National Association of Manufacturers and works closely with the U.S. Chamber of Commerce. As a group we stand in Support of SB 2292.

SB 2292 seeks to end the current disincentive for companies to locate facilities or hire additional workers in North Dakota. By allowing the election of a single sales factor apportionment formula, there will be an incentive to invest, expand, or retain current investments in North Dakota. This will also improve our business climate rankings as we are compared to other states. North Dakota currently has a very good business climate, but as companies look to relocate, invest, or even perhaps shift assets, SB 2292 will bring North Dakota in line with many other states and thus allow our good business climate to compete.

SB 2292 will impact any company that sells across the State's boarder; it would eliminate the disincentive against investing in North Dakota. Single sales factor apportionment strengthens the economy for local and multistate businesses alike. Local businesses with limited ability to expand outside of North Dakota would no longer face a higher tax bill for expansion in North Dakota.

Other states in our region have moved to a single sales factor formula, Minnesota just completed a move to the single sales factor apportionment. Other states including Colorado, Nebraska, Wisconsin, and Iowa all have single sales factor formula, and Idaho has a heavily weighted sales factor. Montana, currently still has a three factor formula, thus making the change now would make investment in North Dakota more attractive than investment in Montana.

I have included letters from many of our states larger employers in the packed, but I wanted to take a moment to talk about small businesses in North Dakota and how SB 2292 could help them as well. Importantly, a single sales factor would be positive for smaller regional manufacturers, particularly those located near boarders who are more likely to locate new manufacturing facilities, warehouses, offices, and employees in surrounding states. For our smaller members who are not able to move or locate expansion outside of North Dakota, a single sales factor would eliminate the disproportionately higher tax bill they face if they choose to expand in North Dakota.

Lastly, it's important to note that this would be a voluntary election, a business decision, and thus, no business would be hurt by SB 2292, as it would be a choice made by the business under SB 2292.

Thank you, the GNDC urges a DO PASS on SB 2292.



Clark Equipment Company  
250 East Beaton Drive  
Fargo, North Dakota 58078  
678 714 6310

#5 p.2



March 3, 2015

Representative Craig Headland  
Chairman, Finance and Taxation House Standing Committee  
North Dakota House of Representatives  
1408 17th Street SE  
Mandan, ND 58554-4895  
[theadland@nd.gov](mailto:theadland@nd.gov)

Re: Support for SB 2292 – Elective Single Sales Factor Legislation

Dear Chairman Headland:

I am the North America Tax Director for Doosan Infracore International and the Bobcat Company and write to you in support of SB 2292, which would phase in an elective single sales factor apportionment formula. We manufacture Bobcat® compact equipment and have customers throughout the United States. All of our North America manufacturing facilities for our Bobcat® compact equipment are in North Dakota, including the following facilities with the assessed value:

West Fargo	\$5,500,000
Gwinner	\$24,000,000
Wahpeton	\$6,000,000
Bismarck	\$67,100,000

In 2014 we expanded our Bismarck facilities and opened the new Acceleration Center, ushering in a generation of advanced product innovation and accelerated learning to benefit customers, dealers and employees worldwide. The facility is the home to our engineers and other employees who are responsible for the initial design, prototype engineering, prototype manufacturing, computer simulation and testing of ideas and concepts. The Acceleration Center in Bismarck is the key engineering facility for all of the Bobcat® compact equipment distributed globally. We employ in excess of 2,000 people at our North Dakota facilities.

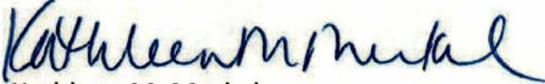
Under North Dakota's current three factor apportionment tax structure, if our sales to customers in North Dakota remain the same, but we hire additional people or continue to expand our facilities as we have steadily been doing, our tax liability increases. Conversely, if we hire more people outside of North Dakota or if we had built our Acceleration Center outside of North Dakota, our tax liability in North Dakota would decrease even though our North Dakota

sales do not change. As our company considers future plans to hire and expand, North Dakota is at a disadvantage because of this discriminatory apportionment structure.

Adopting a single sales factor apportionment will increase the relative tax liability of out-of-state corporations or those with little investment in the state (i.e., those that do not own property or payroll in North Dakota). A single sales factor apportionment will encourage "in-state corporations" to invest more in property and payroll in North Dakota and will provide an incentive to "out-of-state corporations" to invest "in state" in property and payroll in North Dakota.

Most states now have a single sales factor apportionment and very few states apply the three factor apportionment formula. Adopting a sales factor apportionment in North Dakota will provide a more level playing field for North Dakota multistate corporations, and will fix the discrimination faced by North Dakota manufacturers who export much of their product. SB 2292 would tax us based on the revenue we make selling to customers in the State and eliminate the current penalty for hiring people in North Dakota. It would also encourage additional investment in North Dakota properties. In short, SB 2292 makes North Dakota more attractive for our business. We hope you will give strong consideration and support for SB 2292.

Sincerely,



Kathleen M. Merkel  
North America Director of Tax



**JOHN DEERE**

#5p.4

**Deere & Company**  
801 17<sup>th</sup> Street, NW, Suite 200  
Washington, D.C. 20006 USA  
Phone: 202-423-2271 Fax: 202-296-0011  
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Email: llesThomasE@JohnDeere.com

**Thomas E. Iles**  
Director, State Public Affairs  
**Public Affairs Worldwide**

Beijing	Brussels
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Moline	Moscow
Olathe	Pune
Sao Paulo	Washington

## **SB 2292: North Dakota - Single Sales Factor Formula**

**Position:** John Deere supports the enactment of SB 2292 during the 2015 North Dakota Legislative Session. The legislation would allow for a taxpayer to elect to apportion business income to the state utilizing the Single Sales Factor Formula (SSFF).

**Background:** After passing the North Dakota Senate on a vote of 46 to 1, SB 2292 – SSFF is currently in the House Finance & Taxation Committee and provides for an elective Single Sales Factor Formula while keeping the current statutory regime in place. If enacted, SB 2292 would eliminate increases in corporate income taxes for businesses adding property or payroll in the state.

### **Position Rationale:**

- **North Dakota Economic Growth:** SB 2292 would encourage business to maintain investment in property and employees within North Dakota while also encouraging expansion and location to the state.
- **Other States:** 22 states currently utilize a Single Sales Factor Formula, with many of these close to North Dakota (i.e. Minnesota, Iowa, Illinois, Wisconsin and Nebraska). Enactment of SB 2292 would also improve North Dakota's national ranking on tax and business environment studies.
- **Business Flexibility:** Management's location and expansion decisions can be based upon the economy and their respective markets for products and services, with the knowledge that their tax burden would be consistent.
- **Multistate Tax Compact:** The contained provisions within SB 2292 provide protection for the state of North Dakota while also simplifying the tax system.

**Summary:** The enactment of SB 2292 would significantly enhance economic growth in the state, reduce the tax burden of growing businesses and provide for a more competitive environment, while simplifying the North Dakota tax system.

# John Deere Presence in North Dakota



Deere & Company (NYSE: DE) is a world leader in providing advanced products and services and is committed to the success of customers whose work is linked to the land - those who cultivate, harvest, transform, enrich and build upon the land to meet the world's dramatically increasing need for food, fuel, shelter and infrastructure. Since 1837, John Deere has delivered innovative products of superior quality, built on a tradition of integrity. For more information, visit John Deere at its worldwide website at [www.JohnDeere.com](http://www.JohnDeere.com).

## John Deere Quick Facts

<b>Net Sales &amp; Revenues</b>	<b>&gt;\$36 billion*</b>
<b>Employees</b>	<b>&gt;59,000*</b>
• U.S. & Canada	>29,000
<b>Facilities</b>	
• States	18
• Countries	36
<b>Research &amp; Development - \$1.5 billion* (\$4.1 million/day)</b>	
<small>* Figures taken from Deere &amp; Company Annual Report 2014</small>	

## Who We Are in North Dakota

- **Employees**
  - >950 work as part of John Deere's major business operations
  - >850 live in the state
  - >80 retirees
- **Suppliers & Dealers**
  - >130 contracts (approximately \$77 million)
  - 47 dealerships

## Facility Locations

**Fargo** - John Deere Electronic Solutions— Electronics Design & Mfg.

**Valley City** - John Deere Seeding Group—Air Seeding Equipment



## • John Deere is a Power for Good



Deere & Company's corporate citizenship efforts continued making a meaningful impact in 2014 through support of citizenship activities, whose main focus includes solutions for world hunger, improved educational opportunities, and community development. John Deere employees also enriched their communities through extensive volunteer efforts which increased incomes and the standard of living for smallholder farmers in India and Sub-Saharan Africa. Deere also provided funding for programs focusing on science, technology, engineering and math (STEM) in communities in Brazil, India and the U.S. John Deere and the John Deere Foundation also made significant investments in our home communities worldwide to ensure their economic vibrancy for years to come. In all, our investments in 2014 improved the lives of more than 9.4 million people around the world.

## • Protecting the Environment

John Deere is committed to reducing our environmental footprint worldwide. The company has established the following enterprise eco-efficiency goals to be achieved by 2018. These goals are designed to encourage improved performance and innovation, as well as raise internal and public awareness of our environmental stewardship:



Reduce Greenhouse gas emissions and energy consumption per ton of production 15% from 2012 through 2018.



Reduce water consumption per ton of production 15% from 2012 through 2018.



Increase amount of enterprise waste recycled to 75% of total waste by 2018.



Use life cycle engineering to create products and services that meet customer needs and

## • Promoting Alternative Energy



John Deere supports utilization of biofuels as a method of increasing energy stability and independence, reducing greenhouse gas emissions, and generating agricultural and other rural economic opportunities throughout the world.

SENT VIA EMAIL: cheadland@nd.gov

March 5, 2015

Representative Craig Headland  
Chairman, Finance and Taxation Committee  
North Dakota Assembly  
4950 92nd Avenue SE  
Montpelier, ND 58472

Re: Support for SB 2292 – Elective Single Sales Factor Legislation



Dear Chairman Headland:



On behalf of CNH Industrial America LLC (CNHI) we write to you in support of SB 2292, which would adopt elective single sales factor apportionment in the State of North Dakota.



CNH Industrial is a global manufacturer of CaseIH and New Holland brands of agricultural equipment, Case and New Holland brands of construction equipment and the FPT brand of engines and powertrains. Our brands have dealers and customers in all fifty states and over 160 countries around the globe. We currently have operations in several states including the CNHI Plant in Fargo. The CNHI Fargo Plant employs approximately 1,000 people and over the last ten-years CNHI has invested over \$70 million in our Fargo operations.



The CNHI Fargo Plant is the center-of-excellence for the design and manufacture of large four-wheel drive agricultural tractors, large rubber-track agricultural crawler tractors and high production wheel loaders marketed under the respective brands identified above. The CNHI Fargo Plant also produces operator cabs for sprayers, fertilizer applicators and construction equipment produced at CNHI production sites in Europe and Brazil. Over 40% of the plant's total annual production is exported to CNHI operations, dealers and customers around the world.

Under North Dakota's current three factor apportionment tax structure, if our sales to customers in North Dakota do not change, our tax liability goes up if we hire more people in North Dakota or expand our property footprint in North Dakota. Conversely, if we hire additional people outside North Dakota or expand facilities outside North Dakota, our tax liability in North Dakota decreases even though our North Dakota sales have not changed.

As our company considers future plans to hire and expand, North Dakota is at a disadvantage (versus sites CNHI operates in Minnesota, Wisconsin, Illinois and Iowa) because of the discriminatory structure that exists. Adopting elective single sales factor

apportionment would fix this discrimination and would tax based on the revenue we make selling to customers in the State. SB 2292 would eliminate the penalty for hiring people in North Dakota and would encourage additional investment in North Dakota.

CNH Industrial America LLC believes SB 2292 makes North Dakota more attractive for our business, as well as our suppliers, and we encourage the committee to act favorably on this legislation.

Thank you for your leadership and please feel free to call upon us if you require any additional input.

Sincerely,

*Eric Olson*

Eric Olson  
Plant Manager - Fargo  
CNH Industrial America LLC  
3401 1<sup>st</sup> Avenue North  
Fargo, ND 58102.

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*George Whitaker*

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*Rick Aide*

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cc: Sent via email –

Vice Chairman Mark Owens ([mowens@nd.gov](mailto:mowens@nd.gov))  
Representative Jason Dockter ([jddockter@nd.gov](mailto:jddockter@nd.gov))  
Representative Glen Froseth ([gfroseth@nd.gov](mailto:gfroseth@nd.gov))  
Representative Jessica Haak ([jehaak@nd.gov](mailto:jehaak@nd.gov))  
Representative Patrick Hatlestad ([phatlestad@nd.gov](mailto:phatlestad@nd.gov))  
Representative Tom Kading ([tkading@nd.gov](mailto:tkading@nd.gov))  
Representative Matthew Klein ([mklein@nd.gov](mailto:mklein@nd.gov))  
Representative Alisa Mitskog ([amitskog@nd.gov](mailto:amitskog@nd.gov))  
Representative Mary Schneider ([mschneider@nd.gov](mailto:mschneider@nd.gov))  
Representative Vicky Steiner ([vsteiner@nd.gov](mailto:vsteiner@nd.gov))  
Representative Marie Strinden ([mjstrinden@nd.gov](mailto:mjstrinden@nd.gov))  
Representative Nathan Toman ([nptoman@nd.gov](mailto:nptoman@nd.gov))  
Representative Wayne Trottier ([wtrottier@nd.gov](mailto:wtrottier@nd.gov))  
Representative Kathy Hogan ([khogan@nd.gov](mailto:khogan@nd.gov))

SB 2292  
3-11-15  
# 6 p. 1

### Apportionment of Corporate Income

The political appeal of an apportionment formula that weights the sales factor more heavily than the property and payroll factors is that it tends to reduce the tax liabilities of in-state corporations, while potentially increasing the tax liabilities of out-of-state corporations. Specifically, placing more weight on the sales factor tends to pull a large percentage of an out-of-state corporation's income within the taxing jurisdiction of the state because the corporation's major activity within the state—sales of its product—is weighted more heavily than its payroll and property activities. For corporations that are based in the state, however, placing more weight on the sales factor provides tax relief because those corporations generally own significantly more property and incur more payroll costs (factors that are given relatively less weight in the apportionment formula) within the state than do out-of-state corporations.

Example:

XYZ Corporation realized \$1.5 million of taxable income from the sales of its products in State A and State B. XYZ is taxable by both states, and its gross sales, payroll, and property are allocated between the states as follows:

	State A	State B	Total
Gross Sales	\$2,000,000	\$2,000,000	\$4,000,000
Payroll	1,500,000	0	1,500,000
Property	2,500,000	0	2,500,000
Income Tax Rate	10%	5%	

If State A uses an equally weighted sales factor in its three-factor apportionment formula, \$1,249,500 of XYZ's taxable income is apportioned to State A.

\$2,000,000/\$4,000,000	=	50%
\$1,500,000/\$1,500,000	=	100%
\$2,500,000/\$2,500,000	=	<u>100%</u>
Sum of apportionment factors	=	250%
Average		<u>/3</u>
Apportionment Factor for State A		83.3%
Taxable income		<u>\$1,500,000</u>
Taxable income apportioned to State A		\$1,249,500
Tax Rate		<u>10%</u>
Tax due to State A		<u>\$124,950</u>

If, instead, State A uses a double-weighted sales factor in its three-factor apportionment formula, only \$1,125,000 of XYZ's taxable income is apportioned to State A.

\$2,000,000/\$4,000,000 = 50%; 50% * 2	=	100%
\$1,500,000/\$1,500,000	=	100%
\$2,500,000/\$2,500,000	=	<u>100%</u>
Sum of apportionment factors	=	3000%
Average		<u>/4</u>
Apportionment Factor for State A		75%
Taxable income		<u>\$1,500,000</u>
Taxable income apportioned to State A		\$1,125,000
Tax Rate		<u>10%</u>
Tax due to State A		<u>\$112,500</u>

Because State A imposes a higher rate of tax, it is to XYZ's advantage to have as little taxable income as possible subject to tax in the state. If the apportionment formula adopted by State A double weights the sales factor, XYZ will save \$12,450 of state income tax which would represent a 10% savings.

**Example:**

Assume the same facts as those in the previous example. If state B adopts a sales only apportionment formula, 50% of XYZ's income will be taxable by state B even though State A will tax 75% or 83.3% of XYZ's income (depending on the weighting of the sales factor).

\$2,000,000/\$4,000,000	=	50%
Taxable income		X \$1,500,000
Apportioned to State B		\$750,000

**Advantages of Increasing the Sales Factor:**

Single sales factor is typically enacted for two reasons. First, it is argued that SSF makes a state a more attractive place for businesses to expand their property and payroll: if the property and payroll factors are ignored in calculating a state's corporate tax, then a business can hire employees or build a plant in a state without incurring any additional corporate tax. Second, SSF is sometimes enacted in response to threats from companies that already have substantial in-state employment and property. For example, Massachusetts adopted SSF in response to threats from Raytheon that it would reduce its employment in the state unless it was adopted.

**Potential Disadvantages:**

While some companies will benefit from SSF, other companies will actually pay more. Manufacturing companies that have more of their property and payroll in-state (and sell more of their products to customers in other states) will benefit from SSF, but companies with little in-state employment and property that sell proportionately more of their products in-state will be hurt by SSF. Whether SSF will reduce, or increase, states corporate income tax revenue depends on the importance of the state for purposes of producing goods and services relative to its importance as a market for those goods and services.

A company that sells products in SSF state, but does so only by shipping products into the state (therefore has no nexus) will not have to pay any income tax to the state. But if such company makes even a small investment of employees in property in the state, it will immediately have much of its income apportioned to the state because of the sales factor. This may provide a disincentive for the company to invest in the state.

**Solution:**

However, we believe that these disadvantages can be negated by enacting the optional election of either a single sales factor (or heavily weighted sales factor) or the current equally weighted 3 factor. This strategy has been adopted in other states, some states have even made this election for certain classes of business, example Massachusetts has a heavily weighted sales factor for all business, but a single weighted sales factor for its manufacturing industry. There are options, and by offering the election and allowing the business community to make that choice, the disadvantages above can be negated, leaving a positive impact to our business community, which should help in our ongoing goal of diversifying our economy.

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2292

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 5 of section 57-38-04 and sections 57-38.1-09, 57-59-01, 57-59-05, 57-59-06, and 57-59-08 of the North Dakota Century Code, relating to apportionment of business income and the multistate tax compact; to repeal section 57-59-02 of the North Dakota Century Code, relating to the optional computation provision of the multistate tax compact; and to provide an effective date.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Subsection 5 of section 57-38-04 of the North Dakota Century Code is amended and reenacted as follows:

5. Whenever business activity is carried on partly within and partly without this state by a nonresident of this state as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, the entire income therefrom must be allocated to this state and to other states, according to the provisions of chapter 57-38.1 but only according to the apportionment method provided under subsection 1 of section 57-38.1-09, providing for allocation and apportionment of income of corporations doing business within and without this state.

**SECTION 2. AMENDMENT.** Section 57-38.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.1-09. Business income.**

1. All Except as permitted under subsections 2 through 4, all business income must be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.
2. For the first two taxable years beginning after December 31, 2017, a taxpayer that is not a passthrough entity may elect to apportion business income to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus two times the sales factor, and the denominator of which is four.
  - a. The election must be made on the return as originally and timely filed in the form and manner prescribed by the tax commissioner.
  - b. The election is applicable for all companies in a unitary group and for all companies filing a consolidated North Dakota return.
  - c. The election is binding for five consecutive taxable years after making the election, at which time the election lapses. The election under this subsection also includes the election to use the sales factor under subsections 3 and 4 for the taxable years those subsections apply.

- d. Unless a taxpayer makes another election under subsection 4 in the taxable year immediately following the final year of the binding effect of the election under this subsection, the taxpayer must file under subsection 1 for a period of three taxable years before it may make a new election under subsection 4.
3. For the first two taxable years beginning after December 31, 2019, a taxpayer that is not a passthrough entity may elect to apportion business income to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus six times the sales factor, and the denominator of which is eight.
    - a. The election must be made on the return as originally and timely filed in the form and manner prescribed by the tax commissioner.
    - b. The election is applicable for all companies in a unitary group and for all companies filing a consolidated North Dakota return.
    - c. The election is binding for five consecutive taxable years after making the election, at which time the election lapses. The election under this subsection also includes the election to use the sales factor under subsection 4 for the taxable years that subsection applies.
    - d. Unless a taxpayer makes another election under subsection 4 in the taxable year immediately following the final year of the binding effect of the election under this subsection, the taxpayer must file under subsection 1 for a period of three taxable years before it may make a new election under subsection 4.
  4. For taxable years beginning after December 31, 2021, a taxpayer that is not a passthrough entity may elect to apportion business income to this state by multiplying the income by the sales factor. A taxpayer electing to file using a single sales factor must comply with the following:
    - a. The election must be made on the return as originally and timely filed in the form and manner prescribed by the tax commissioner.
    - b. The election is applicable for all companies in a unitary group and for all companies filing a consolidated North Dakota return.
    - c. The election is binding for five consecutive taxable years after making the election, at which time the election lapses.
    - d. Unless a taxpayer makes another election under this subsection in the taxable year immediately following the final year of a prior single sales factor election, the taxpayer must file under subsection 1 for a period of three taxable years before it may make a new single sales factor election.

**SECTION 3. AMENDMENT.** Section 57-59-01 of the North Dakota Century Code is amended and reenacted as follows:

**57-59-01. Multistate tax compact.**

The multistate tax compact is hereby entered into law and entered into with all jurisdictions legally joining therein, in the form substantially as follows:

**MULTISTATE TAX COMPACT**

**ARTICLE I - PURPOSES**

The purposes of this compact are to:

1. Facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes.
2. Promote uniformity or compatibility in significant components of tax systems.
3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.
4. Avoid duplicative taxation.

**ARTICLE II - DEFINITIONS**

As used in this compact:

1. "Capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety.
2. "Gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax.
3. "Income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions.
4. "Sales tax" means a tax imposed with respect to the transfer for a consideration of ownership, possession, or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller, or which is customarily separately stated from the sales price, but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles.
5. "State" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, or any territory or possession of the United States.
6. "Subdivision" means any governmental unit or special district of a state.
7. "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of ~~articles~~ article III, IV, and V of this compact shall apply only to the taxes specifically designated therein ~~and the provisions of article IX of this compact shall apply only in respect to determinations pursuant to article IV.~~

# 1 p. 4

- 8. "Taxpayer" means any corporation, partnership, firm, association, governmental unit, or agency or person acting as a business entity in more than one state.
- 9. "Use tax" means a nonrecurring tax, other than a sales tax, which (a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession, or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property, and (b) is complementary to a sales tax.

**ARTICLE III - ELEMENS OF INCOME TAX LAWS**

**Taxpayer Option, State and Local Taxes**

- 1. ~~Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party state or pursuant to the laws of subdivisions in two or more party states may elect to apportion and allocate the taxpayer's income in the manner provided by the laws of such state or by the laws of such states and subdivisions without reference to this compact, or may elect to apportion and allocate in accordance with article IV. This election for any tax year may be made in all party states or subdivisions thereof or in any one or more of the party states or subdivisions thereof without reference to the election made in the others. For the purposes of this subsection, taxes imposed by subdivisions shall be considered separately from state taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein article IV is employed for all subdivisions of a state may the sum of all apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation that would be assignable to that state if the apportionment or allocation were being made with respect to a state income tax.~~

**Taxpayer Option, Short Form**

- 2. ~~Each party state or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return, whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property, and whose dollar volume of gross sales made during the tax year within the state or subdivision, as the case may be, is not in excess of one hundred thousand dollars may elect to report and pay any tax due on the basis of a percentage of such volume, and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The multistate tax commission, not more than once in five years, may adjust the one hundred thousand dollar figure in order to reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon adoption by the commission, shall replace the one hundred thousand dollar figure specifically provided herein. Each party state and subdivision thereof may make the same election available to taxpayers additional to those specified in this subsection.~~

**Coverage**

3. Nothing in this article relates to the reporting or payment of any tax other than an income tax.

#### ARTICLE IV - DIVISION OF INCOME

1. As used in this article, unless the context otherwise requires:
- (a) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.
  - (b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.
  - (c) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.
  - (d) "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, or any type of insurance company.
  - (e) "Nonbusiness income" means all income other than business income.
  - (f) "Public utility" means any business entity (1) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipeline, or the production, transmission, sale, delivery, or furnishing of electricity, water, or steam; and (2) whose rates of charges for goods or services have been established or approved by a federal, state, or local government or governmental agency.
  - (g) "Sales" means all gross receipts of the taxpayer not allocated under subsections of this article.
  - (h) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.
  - (i) "This state" means the state in which the relevant tax return is filed or, in the case of application of this article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.
2. Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion that taxpayer's net income as provided in this article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of the taxpayer's income from activities subject to this article, the taxpayer may elect to allocate and apportion the taxpayer's entire net income as provided in this article.

3. ~~For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if (a) in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (b) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.~~
4. ~~Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in subsections 5 through 8 of this article.~~
5.
  - (a) ~~Net rents and royalties from real property located in this state are allocable to this state.~~
  - (b) ~~Net rents and royalties from tangible personal property are allocable to this state: (1) if and to the extent that the property is utilized in this state, or (2) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.~~
  - (c) ~~The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.~~
6.
  - (a) ~~Capital gains and losses from sales of real property located in this state are allocable to this state.~~
  - (b) ~~Capital gains and losses from sales of tangible personal property are allocable to this state if (1) the property had a situs in this state at the time of the sale, or (2) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.~~
  - (c) ~~Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.~~
7. ~~Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.~~
8.
  - (a) ~~Patent and copyright royalties are allocable to this state: (1) if and to the extent that the patent or copyright is utilized by the payer in this state, or (2) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.~~

- (b) ~~A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.~~
  - (c) ~~A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.~~
- 9. ~~All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.~~
  - 10. ~~The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.~~
  - 11. ~~Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.~~
  - 12. ~~The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.~~
  - 13. ~~The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.~~
  - 14. ~~Compensation is paid in this state if:~~
    - (a) ~~The individual's service is performed entirely within the state;~~
    - (b) ~~The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or~~
    - (c) ~~Some of the service is performed in the state and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.~~

15. ~~The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.~~
16. ~~Sales of tangible personal property are in this state if:~~
- ~~(a) The property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or~~
  - ~~(b) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (1) the purchaser is the United States government, or (2) the taxpayer is not taxable in the state of the purchaser.~~
17. ~~Sales, other than sales of tangible personal property, are in this state if:~~
- ~~(a) The income-producing activity is performed in this state; or~~
  - ~~(b) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.~~
18. ~~If the allocation and apportionment provisions of this article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:~~
- ~~(a) Separate accounting;~~
  - ~~(b) The exclusion of any one or more of the factors;~~
  - ~~(c) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or~~
  - ~~(d) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.~~

## **ARTICLE V-- ELEMENTS OF SALES AND USE TAX LAWS**

### **Tax Credit**

1. Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by the purchaser with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

### **Exemption Certificates, Vendors May Rely**

2. Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

**ARTICLE VIIV - THE COMMISSION**

**Organization and Management**

- 1. (a) The multistate tax commission is hereby established. It shall be composed of one "member" from each party state who shall be the head of the state agency charged with the administration of the types of taxes to which this compact applies. If there is more than one such agency the state shall provide by law for the selection of the commission member from the heads of the relevant agencies. State law may provide that a member of the commission be represented by an alternate but only if there is on file with the commission written notification of the designation and identity of the alternate. The attorney general of each party state or the attorney general's designee, or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission, but shall not vote. Such attorneys general, designees, or other counsel shall receive all notices of meetings required under subdivision e of subsection 1 of this article.
- (b) Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.
- (c) Each member shall be entitled to one vote. The commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.
- (d) The commission shall adopt an official seal to be used as it may provide.
- (e) The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular, and special meetings. Notices of special meetings shall include the reasons therefor and an agenda of the items to be considered.
- (f) The commission shall elect annually, from among its members, a chairman, a vice chairman, and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and it shall fix the executive director's duties and compensation. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.
- (g) Irrespective of the civil service, personnel, or other merit system laws of any party state, the executive director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix their duties and compensation. The commission bylaws shall provide for personnel policies and programs.

- (h) The commission may borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental entity.
- (i) The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.
- (j) The commission may establish one or more offices for the transacting of its business.
- (k) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party states.
- (l) The commission annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission, and shall include the nature, amount, and conditions, if any, of the donation, gift, grant, or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

#### **Committees**

- 2. (a) To assist in the conduct of its business when the full commission is not meeting, the commission shall have an executive committee of seven members, including the chairman, vice chairman, treasurer, and four other members elected annually by the commission. The executive committee subject to the provisions of this compact and consistent with the policies of the commission, shall function as provided in the bylaws of the commission.
- (b) The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the commission, including problems of special interest to any party state and problems dealing with particular types of taxes.
- (c) The commission may establish such additional committees as its bylaws may provide.

#### **Powers**

- 3. In addition to powers conferred elsewhere in this compact, the commission shall have power to:
  - (a) Study state and local tax systems and particular types of state and local taxes.
  - (b) Develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a view toward

encouraging the simplification and improvement of state and local tax law and administration.

- (c) Compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws.
- (d) Do all things necessary and incidental to the administration of its functions pursuant to this compact.

#### **Finance**

- 4. (a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.
- (b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-tenth in equal shares; and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, and sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this subsection.
- (c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under subdivision i of subsection 1 of this article; provided, that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under subdivision i of subsection 1, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.
- (d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the commission.
- (e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.
- (f) Nothing contained in this article shall be construed to prevent commission compliance with laws relating to audit or inspection of

accounts by or on behalf of any government contributing to the support of the commission.

**ARTICLE VIII - UNIFORM REGULATIONS AND FORMS**

1. Whenever any two or more party states, or subdivisions of party states, have uniform or similar provisions of law relating to an income tax, the commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax, or prescribing uniform tax forms. ~~The commission may also act with respect to the provisions of article IV of this compact.~~
2. Prior to the adoption of any regulation, the commission shall:
  - (a) As provided in its bylaws, hold at least one public hearing on due notice to all affected party states and subdivisions thereof and to all taxpayers and other persons who have made timely request of the commission for advance notice of its regulation-making proceedings.
  - (b) Afford all affected party states and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the commission.
3. The commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

**ARTICLE VIII - INTERSTATE AUDITS**

1. This article shall be in force only in those party states that specifically provide therefor by statute.
2. Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records, or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local government or governments for which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.
3. The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property, or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, the person may be required to attend for such purpose at any time and place fixed by the commission within the state of which the person is a resident; provided, that such state has adopted this article.

4. The commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this article and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order being sought is situated. The provisions of this subsection apply only to courts in a state that has adopted this article.
5. The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.
6. Information obtained by any audit pursuant to this article shall be confidential and available only for tax purposes to party states, their subdivisions, or the United States. Availability of information shall be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit, and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this article shall be construed to require any taxpayer to keep records for any period not otherwise required by law.
7. Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party states or any of their subdivisions are not superseded or invalidated by this article.
8. In no event shall the commission make any charge against a taxpayer for an audit.
9. As used in this article, "tax", in addition to the meaning ascribed to it in article II, means any tax or license fee imposed in whole or in part for revenue purposes.

**ARTICLE IX--ARBITRATION**

- ~~1. Whenever the commission finds a need for settling disputes concerning apportionments and allocations by arbitration, it may adopt a regulation placing this article in effect, notwithstanding the provisions of article VII.~~
- ~~2. The commission shall select and maintain an arbitration panel composed of officers and employees of state and local governments and private persons who shall be knowledgeable and experienced in matters of tax law and administration.~~
- ~~3. Whenever a taxpayer who has elected to employ article IV, or whenever the laws of the party state or subdivision thereof are substantially identical~~

with the relevant provisions of article IV, the taxpayer, by written notice to the commission and to each party state or subdivision thereof that would be affected, may secure arbitration of an apportionment or allocation, if the taxpayer is dissatisfied with the final administrative determination of the tax agency of the state or subdivision with respect thereto on the ground that it would subject the taxpayer to double or multiple taxation by two or more party states or subdivisions thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein, and agrees to be bound thereby.

4. The arbitration board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the commission's arbitration panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the arbitration panel. The two persons selected for the board in the manner provided by the foregoing provisions of this subsection shall jointly select the third member of the board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No member of a board selected by lot shall be qualified to serve if that member is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residence within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this subsection.
5. The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's incorporation, residence, or domicile, in any state where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.
6. The board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses. The board shall act by majority vote.
7. The board shall have power to administer oaths, take testimony, subpoena, and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena, and upon application by the board, any judge of a court of competent jurisdiction of the state in which the board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoena, and the court may punish failure to obey the order as a contempt. The provisions of this subsection apply only in states that have adopted this article.
8. Unless the parties otherwise agree the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the board in such manner as it may determine. The commission shall fix a schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No officer or employee of a state or local government who serves as a member of a board shall be entitled to compensation therefor unless that person is required on account of that person's service

to forego the regular compensation attaching to that person's public employment, but any such board member shall be entitled to expenses.

9. ~~The board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the board shall be final for purposes of making the apportionment or allocation, but for no other purpose.~~
10. ~~The board shall file with the commission and with each tax agency represented in the proceeding: the determination of the board; the board's written statement of its reasons therefor; the record of the board's proceedings; and any other documents required by the arbitration rules of the commission to be filed.~~
11. ~~The commission shall publish the determinations of boards together with the statements of the reasons therefor.~~
12. ~~The commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party states.~~
13. ~~Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceeding.~~

#### **ARTICLE XVII - ENTRY INTO FORCE AND WITHDRAWAL**

1. This compact shall enter into force when enacted into law by any seven states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof. The commission shall arrange for notification of all party states whenever there is a new enactment of the compact.
2. Any party state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.
3. ~~No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.~~

#### **ARTICLE XVIII - EFFECT ON OTHER LAWS AND JURISDICTION**

Nothing in this compact shall be construed to:

1. Affect the power of any state or subdivision thereof to fix rates of taxation, except that a party state shall be obligated to implement subsection 2 of article III of this compact.
2. Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax; provided, that the definition of "tax" in subsection 9 of article ~~VIII~~VI may apply for the purposes of that

article and the commission's powers of study and recommendation pursuant to subsection 3 of article ~~VI~~ may apply.

- 3. Withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation, ~~limited liability company,~~ or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body.
- 4. Supersede or limit the jurisdiction of any court of the United States.

**ARTICLE ~~XIII~~ - CONSTRUCTION AND SEVERABILITY**

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

**SECTION 4. AMENDMENT.** Section 57-59-05 of the North Dakota Century Code is amended and reenacted as follows:

**57-59-05. Legal counsel.**

The chief counsel of the state tax department or the chief counsel's designee shall attend the meetings of the multistate tax commission as the legal counsel representing the state of North Dakota as provided for by subdivision a of subsection 1 of article ~~VI~~ of section 57-59-01.

**SECTION 5. AMENDMENT.** Section 57-59-06 of the North Dakota Century Code is amended and reenacted as follows:

**57-59-06. Selection of representatives to meet with commission member.**

The state tax commissioner shall appoint two persons who are representatives of subdivisions affected or likely to be affected by the multistate tax compact from among persons nominated by the association of counties and league of cities. The state tax commissioner, and any alternate designated by the state tax commissioner, shall consult with these appointees, in accordance with subdivision b of subsection 1 of article ~~VI~~ of section 57-59-01. The state tax commissioner shall also consult regularly with the chairman and ranking minority party member of the finance and taxation committees of the senate and house of representatives as provided for in subdivision b of subsection 2 of article ~~VI~~ of section 57-59-01.

**SECTION 6. AMENDMENT.** Section 57-59-08 of the North Dakota Century Code is amended and reenacted as follows:

# 1 p. 17

**57-59-08. Interaudits.**

Article ~~VIII~~VI of the multistate tax compact relating to interaudits shall be in force in and with respect to the state of North Dakota.

**SECTION 7. REPEAL.** Section 57-59-02 of the North Dakota Century Code is repealed.

**SECTION 8. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2014."

Renumber accordingly

1.  
SB 2292  
4-8-15

# SB 2292: Transition to Optional Single Sales Factor Apportionment

## Senate Approved (Second Engrossment)

Transition would start in 2015 tax year and would be fully implemented for the 2019 tax year.



## House Approved (Second Engrossment with House Amendments)

Transition would start in 2018 tax year and would be fully implemented for the 2022 tax year.



1.2  
SB2292  
4-8-15

### Possible Compromise – Option A

Transition would start in 2018 tax year and would be fully implement for the 2020 tax year.



### Possible Compromise – Option B

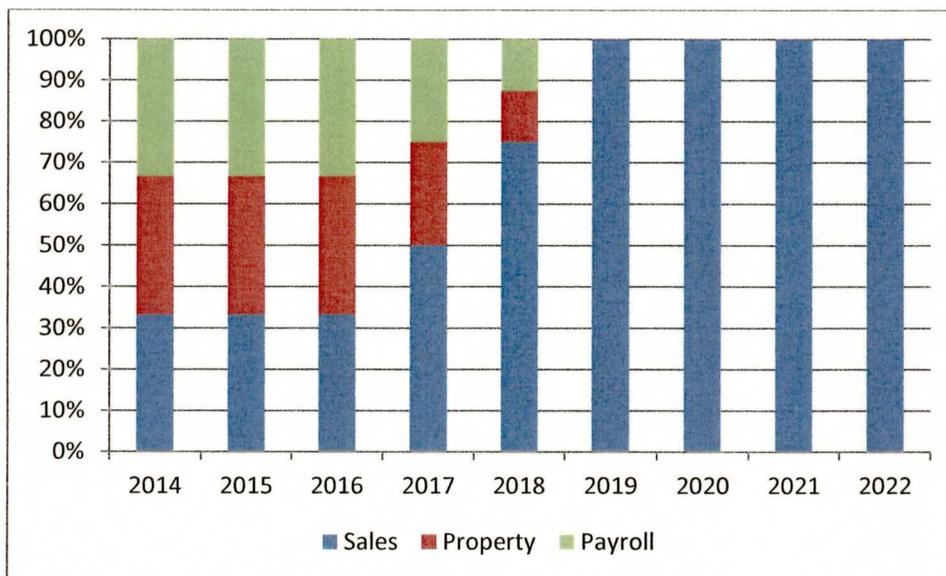
Transition would start in 2016 tax year and would be fully implement for the 2020 tax year.



1.3  
8B2292  
4-8-15

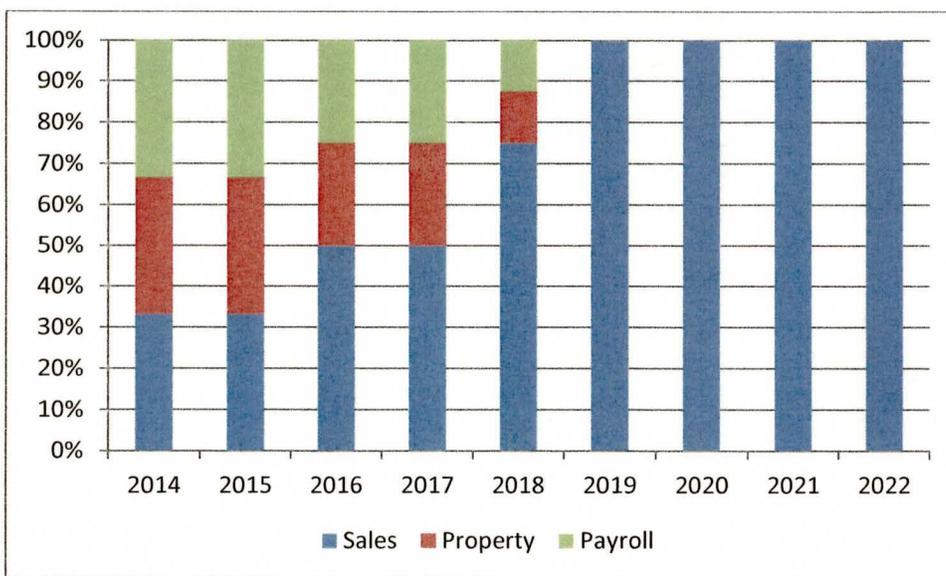
### Possible Compromise – Option C

Transition would start in 2017 tax year and would be fully implement for the 2019 tax year.



### Possible Compromise – Option D

Transition would start in 2016 tax year and would be fully implement for the 2019 tax year.



1.  
SB 22-92  
4-13-15

**Cook, Dwight C.**

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**From:** Thompson, Emily L.  
**Sent:** Friday, April 10, 2015 9:32 PM  
**To:** Cook, Dwight C.  
**Cc:** Walstad, John M.  
**Subject:** Fiscal Effect of the Amendments to SB 2292  
**Attachments:** 2292 Amendments.pdf

Good evening, Senator Cook:

I received information back from Kathy regarding the fiscal effect of the attached amendments to Senate Bill 2292. For the 2015-17 biennium, there is expected to be an estimated reduction of -\$15 million; for the 2017-19 biennium, an estimated reduction of -\$48 million; and for the 2019-21 biennium, an estimated reduction of -\$118 million. Kathy did note that all of these estimates are based on the current makeup of the corporate tax base and subject to change. She also noted that since we do not have an official forecast beyond the 2015-17 biennium, those estimates further in the future are simply speculative.

If you would like any additional information, please feel free to contact me.

Have a good weekend!

***Emily Thompson***  
Counsel  
North Dakota Legislative Council  
600 East Boulevard Ave  
Bismarck, ND 58505  
[emilythompson@nd.gov](mailto:emilythompson@nd.gov)  
701.328.2916

April 10, 2015

2,  
SB 2292  
4-13-15

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2292

That the House recede from its amendments as printed on pages 1019-1033 of the Senate Journal and pages 1137-1151 of the House Journal and that Reengrossed Senate Bill No. 2292 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 5 of section 57-38-04 and sections 57-38.1-09, 57-59-01, 57-59-05, 57-59-06, and 57-59-08 of the North Dakota Century Code, relating to apportionment of business income and the multistate tax compact; to repeal section 57-59-02 of the North Dakota Century Code, relating to the optional computation provision of the multistate tax compact; and to provide an effective date.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Subsection 5 of section 57-38-04 of the North Dakota Century Code is amended and reenacted as follows:

5. Whenever business activity is carried on partly within and partly without this state by a nonresident of this state as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, the entire income therefrom must be allocated to this state and to other states, according to the provisions of chapter 57-38.1 but only according to the apportionment method provided under subsection 1 of section 57-38.1-09, providing for allocation and apportionment of income of corporations doing business within and without this state.

**SECTION 2. AMENDMENT.** Section 57-38.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.1-09. Business income.**

1. All Except as permitted under subsections 2 through 4, all business income must be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.
2. For the first two taxable years beginning after December 31, 2015, a taxpayer that is not a passthrough entity may elect to apportion business income to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus two times the sales factor, and the denominator of which is four.
  - a. The election must be made on the return as originally and timely filed in the form and manner prescribed by the tax commissioner.
  - b. The election is applicable for all companies in a unitary group and for all companies filing a consolidated North Dakota return.

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- c. The election is binding for five consecutive taxable years after making the election, at which time the election lapses. The election under this subsection also includes the election to use the sales factor under subsections 3 and 4 for the taxable years those subsections apply.
  - d. Unless a taxpayer makes another election under subsection 4 in the taxable year immediately following the final year of the binding effect of the election under this subsection, the taxpayer must file under subsection 1 for a period of three taxable years before it may make a new election under subsection 4.
3. For the first taxable year beginning after December 31, 2017, a taxpayer that is not a passthrough entity may elect to apportion business income to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus six times the sales factor, and the denominator of which is eight.
- a. The election must be made on the return as originally and timely filed in the form and manner prescribed by the tax commissioner.
  - b. The election is applicable for all companies in a unitary group and for all companies filing a consolidated North Dakota return.
  - c. The election is binding for five consecutive taxable years after making the election, at which time the election lapses. The election under this subsection also includes the election to use the sales factor under subsection 4 for the taxable years that subsection applies.
  - d. Unless a taxpayer makes another election under subsection 4 in the taxable year immediately following the final year of the binding effect of the election under this subsection, the taxpayer must file under subsection 1 for a period of three taxable years before it may make a new election under subsection 4.
4. For taxable years beginning after December 31, 2018, a taxpayer that is not a passthrough entity may elect to apportion business income to this state by multiplying the income by the sales factor. A taxpayer electing to file using a single sales factor must comply with the following:
- a. The election must be made on the return as originally and timely filed in the form and manner prescribed by the tax commissioner.
  - b. The election is applicable for all companies in a unitary group and for all companies filing a consolidated North Dakota return.
  - c. The election is binding for five consecutive taxable years after making the election, at which time the election lapses.
  - d. Unless a taxpayer makes another election under this subsection in the taxable year immediately following the final year of a prior single sales factor election, the taxpayer must file under subsection 1 for a period of three taxable years before it may make a new single sales factor election.

**SECTION 3. AMENDMENT.** Section 57-59-01 of the North Dakota Century Code is amended and reenacted as follows:

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**57-59-01. Multistate tax compact.**

The multistate tax compact is hereby entered into law and entered into with all jurisdictions legally joining therein, in the form substantially as follows:

**MULTISTATE TAX COMPACT**

**ARTICLE I - PURPOSES**

The purposes of this compact are to:

1. Facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes.
2. Promote uniformity or compatibility in significant components of tax systems.
3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.
4. Avoid duplicative taxation.

**ARTICLE II - DEFINITIONS**

As used in this compact:

1. "Capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety.
2. "Gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax.
3. "Income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions.
4. "Sales tax" means a tax imposed with respect to the transfer for a consideration of ownership, possession, or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller, or which is customarily separately stated from the sales price, but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles.
5. "State" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, or any territory or possession of the United States.
6. "Subdivision" means any governmental unit or special district of a state.

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7. "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of ~~articles~~ article III, IV, and V of this compact shall apply only to the taxes specifically designated therein ~~and the provisions of article IX of this compact shall apply only in respect to determinations pursuant to article IV.~~
8. "Taxpayer" means any corporation, partnership, firm, association, governmental unit, or agency or person acting as a business entity in more than one state.
9. "Use tax" means a nonrecurring tax, other than a sales tax, which (a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession, or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property, and (b) is complementary to a sales tax.

### ARTICLE III - ELEMENTS OF INCOME TAX LAWS

#### ~~Taxpayer Option, State and Local Taxes~~

1. ~~Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party state or pursuant to the laws of subdivisions in two or more party states may elect to apportion and allocate the taxpayer's income in the manner provided by the laws of such state or by the laws of such states and subdivisions without reference to this compact, or may elect to apportion and allocate in accordance with article IV. This election for any tax year may be made in all party states or subdivisions thereof or in any one or more of the party states or subdivisions thereof without reference to the election made in the others. For the purposes of this subsection, taxes imposed by subdivisions shall be considered separately from state taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein article IV is employed for all subdivisions of a state may the sum of all apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation that would be assignable to that state if the apportionment or allocation were being made with respect to a state income tax.~~

#### ~~Taxpayer Option, Short Form~~

2. ~~Each party state or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return, whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property, and whose dollar volume of gross sales made during the tax year within the state or subdivision, as the case may be, is not in excess of one hundred thousand dollars may elect to report and pay any tax due on the basis of a percentage of such volume, and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The multistate tax commission, not more than once in five years, may adjust the one hundred thousand dollar figure in order to reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon adoption by the commission, shall replace the one hundred thousand~~

dollar figure specifically provided herein. Each party state and subdivision thereof may make the same election available to taxpayers additional to those specified in this subsection.

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**Coverage**

- 3. Nothing in this article relates to the reporting or payment of any tax other than an income tax.

**ARTICLE IV - DIVISION OF INCOME**

- 1. As used in this article, unless the context otherwise requires:
  - (a) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.
  - (b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.
  - (c) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.
  - (d) "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, or any type of insurance company.
  - (e) "Nonbusiness income" means all income other than business income.
  - (f) "Public utility" means any business entity (1) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipeline, or the production, transmission, sale, delivery, or furnishing of electricity, water, or steam; and (2) whose rates of charges for goods or services have been established or approved by a federal, state, or local government or governmental agency.
  - (g) "Sales" means all gross receipts of the taxpayer not allocated under subsections of this article.
  - (h) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.
  - (i) "This state" means the state in which the relevant tax return is filed or, in the case of application of this article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.
- 2. Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion that taxpayer's net income as

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provided in this article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of the taxpayer's income from activities subject to this article, the taxpayer may elect to allocate and apportion the taxpayer's entire net income as provided in this article.

- 3. For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if (a) in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (b) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.
- 4. Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in subsections 5 through 8 of this article.
- 5. (a) Net rents and royalties from real property located in this state are allocable to this state.  
(b) Net rents and royalties from tangible personal property are allocable to this state: (1) if and to the extent that the property is utilized in this state, or (2) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.  
(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.
- 6. (a) Capital gains and losses from sales of real property located in this state are allocable to this state.  
(b) Capital gains and losses from sales of tangible personal property are allocable to this state if (1) the property had a situs in this state at the time of the sale, or (2) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.  
(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.
- 7. Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.
- 8. (a) Patent and copyright royalties are allocable to this state: (1) if and to the extent that the patent or copyright is utilized by the payer in this

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state, or (2) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

9. All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

10. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

11. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

12. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

13. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.

14. Compensation is paid in this state if:

(a) The individual's service is performed entirely within the state;

(b) The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(c) Some of the service is performed in the state and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (2) the base of operations or the place from which the service is directed or controlled

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is not in any state in which some part of the service is performed, but the individual's residence is in this state.

- 15. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.
- 16. Sales of tangible personal property are in this state if:
  - (a) The property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or
  - (b) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (1) the purchaser is the United States government, or (2) the taxpayer is not taxable in the state of the purchaser.
- 17. Sales, other than sales of tangible personal property, are in this state if:
  - (a) The income-producing activity is performed in this state; or
  - (b) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.
- 18. If the allocation and apportionment provisions of this article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:
  - (a) Separate accounting;
  - (b) The exclusion of any one or more of the factors;
  - (c) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or
  - (d) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

**ARTICLE V-- ELEMENTS OF SALES AND USE TAX LAWS**

**Tax Credit**

- 1. Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by the purchaser with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

**Exemption Certificates, Vendors May Rely**

- 2. Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption

authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

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## ARTICLE VIIV - THE COMMISSION

### Organization and Management

1. (a) The multistate tax commission is hereby established. It shall be composed of one "member" from each party state who shall be the head of the state agency charged with the administration of the types of taxes to which this compact applies. If there is more than one such agency the state shall provide by law for the selection of the commission member from the heads of the relevant agencies. State law may provide that a member of the commission be represented by an alternate but only if there is on file with the commission written notification of the designation and identity of the alternate. The attorney general of each party state or the attorney general's designee, or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission, but shall not vote. Such attorneys general, designees, or other counsel shall receive all notices of meetings required under subdivision e of subsection 1 of this article.
- (b) Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.
- (c) Each member shall be entitled to one vote. The commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.
- (d) The commission shall adopt an official seal to be used as it may provide.
- (e) The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular, and special meetings. Notices of special meetings shall include the reasons therefor and an agenda of the items to be considered.
- (f) The commission shall elect annually, from among its members, a chairman, a vice chairman, and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and it shall fix the executive director's duties and compensation. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.
- (g) Irrespective of the civil service, personnel, or other merit system laws of any party state, the executive director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix their duties and

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compensation. The commission bylaws shall provide for personnel policies and programs.

- (h) The commission may borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental entity.
- (i) The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.
- (j) The commission may establish one or more offices for the transacting of its business.
- (k) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party states.
- (l) The commission annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission, and shall include the nature, amount, and conditions, if any, of the donation, gift, grant, or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

**Committees**

- 2. (a) To assist in the conduct of its business when the full commission is not meeting, the commission shall have an executive committee of seven members, including the chairman, vice chairman, treasurer, and four other members elected annually by the commission. The executive committee subject to the provisions of this compact and consistent with the policies of the commission, shall function as provided in the bylaws of the commission.
- (b) The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the commission, including problems of special interest to any party state and problems dealing with particular types of taxes.
- (c) The commission may establish such additional committees as its bylaws may provide.

**Powers**

- 3. In addition to powers conferred elsewhere in this compact, the commission shall have power to:
  - (a) Study state and local tax systems and particular types of state and local taxes.

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- (b) Develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a view toward encouraging the simplification and improvement of state and local tax law and administration.
- (c) Compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws.
- (d) Do all things necessary and incidental to the administration of its functions pursuant to this compact.

**Finance**

- 4. (a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.
- (b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-tenth in equal shares; and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, and sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this subsection.
- (c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under subdivision i of subsection 1 of this article; provided, that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under subdivision i of subsection 1, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.
- (d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the commission.
- (e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

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- (f) Nothing contained in this article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

**ARTICLE ~~VII~~IV - UNIFORM REGULATIONS AND FORMS**

1. Whenever any two or more party states, or subdivisions of party states, have uniform or similar provisions of law relating to an income tax, the commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax, or prescribing uniform tax forms. ~~The commission may also act with respect to the provisions of article IV of this compact.~~
2. Prior to the adoption of any regulation, the commission shall:
  - (a) As provided in its bylaws, hold at least one public hearing on due notice to all affected party states and subdivisions thereof and to all taxpayers and other persons who have made timely request of the commission for advance notice of its regulation-making proceedings.
  - (b) Afford all affected party states and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the commission.
3. The commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

**ARTICLE ~~VIII~~VI - INTERSTATE AUDITS**

1. This article shall be in force only in those party states that specifically provide therefor by statute.
2. Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records, or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local government or governments for which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.
3. The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property, or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, the person may be required to attend for such purpose at any time and place fixed by the commission within the state of

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which the person is a resident; provided, that such state has adopted this article.

4. The commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this article and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order being sought is situated. The provisions of this subsection apply only to courts in a state that has adopted this article.
5. The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.
6. Information obtained by any audit pursuant to this article shall be confidential and available only for tax purposes to party states, their subdivisions, or the United States. Availability of information shall be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit, and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this article shall be construed to require any taxpayer to keep records for any period not otherwise required by law.
7. Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party states or any of their subdivisions are not superseded or invalidated by this article.
8. In no event shall the commission make any charge against a taxpayer for an audit.
9. As used in this article, "tax", in addition to the meaning ascribed to it in article II, means any tax or license fee imposed in whole or in part for revenue purposes.

**ARTICLE IX—ARBITRATION**

1. ~~Whenever the commission finds a need for settling disputes concerning apportionments and allocations by arbitration, it may adopt a regulation placing this article in effect, notwithstanding the provisions of article VII.~~
2. ~~The commission shall select and maintain an arbitration panel composed of officers and employees of state and local governments and private persons who shall be knowledgeable and experienced in matters of tax law and administration.~~

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3. ~~Whenever a taxpayer who has elected to employ article IV, or whenever the laws of the party state or subdivision thereof are substantially identical with the relevant provisions of article IV, the taxpayer, by written notice to the commission and to each party state or subdivision thereof that would be affected, may secure arbitration of an apportionment or allocation, if the taxpayer is dissatisfied with the final administrative determination of the tax agency of the state or subdivision with respect thereto on the ground that it would subject the taxpayer to double or multiple taxation by two or more party states or subdivisions thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein, and agrees to be bound thereby.~~
4. ~~The arbitration board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the commission's arbitration panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the arbitration panel. The two persons selected for the board in the manner provided by the foregoing provisions of this subsection shall jointly select the third member of the board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No member of a board selected by lot shall be qualified to serve if that member is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residence within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this subsection.~~
5. ~~The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's incorporation, residence, or domicile, in any state where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.~~
6. ~~The board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses. The board shall act by majority vote.~~
7. ~~The board shall have power to administer oaths, take testimony, subpoena, and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena, and upon application by the board, any judge of a court of competent jurisdiction of the state in which the board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoena, and the court may punish failure to obey the order as a contempt. The provisions of this subsection apply only in states that have adopted this article.~~
8. ~~Unless the parties otherwise agree the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the board in such manner as it may determine. The commission shall fix a schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No officer or employee of a state or local government~~

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~~who serves as a member of a board shall be entitled to compensation therefor unless that person is required on account of that person's service to forego the regular compensation attaching to that person's public employment, but any such board member shall be entitled to expenses.~~

- ~~9. The board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the board shall be final for purposes of making the apportionment or allocation, but for no other purpose.~~
- ~~10. The board shall file with the commission and with each tax agency represented in the proceeding: the determination of the board; the board's written statement of its reasons therefor; the record of the board's proceedings; and any other documents required by the arbitration rules of the commission to be filed.~~
- ~~11. The commission shall publish the determinations of boards together with the statements of the reasons therefor.~~
- ~~12. The commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party states.~~
- ~~13. Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceeding.~~

**ARTICLE XVII - ENTRY INTO FORCE AND WITHDRAWAL**

- 1. This compact shall enter into force when enacted into law by any seven states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof. The commission shall arrange for notification of all party states whenever there is a new enactment of the compact.
- 2. Any party state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.
- 3. ~~No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.~~

**ARTICLE XVIII - EFFECT ON OTHER LAWS AND JURISDICTION**

Nothing in this compact shall be construed to:

- 1. Affect the power of any state or subdivision thereof to fix rates of taxation, except that a party state shall be obligated to implement subsection 2 of article III of this compact.
- 2. Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax; provided, that the definition

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of "tax" in subsection 9 of article ~~VIII~~VI may apply for the purposes of that article and the commission's powers of study and recommendation pursuant to subsection 3 of article ~~VII~~IV may apply.

3. Withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation, ~~limited liability company~~, or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body.
4. Supersede or limit the jurisdiction of any court of the United States.

**ARTICLE ~~XIII~~ - CONSTRUCTION AND SEVERABILITY**

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

**SECTION 4. AMENDMENT.** Section 57-59-05 of the North Dakota Century Code is amended and reenacted as follows:

**57-59-05. Legal counsel.**

The chief counsel of the state tax department or the chief counsel's designee shall attend the meetings of the multistate tax commission as the legal counsel representing the state of North Dakota as provided for by subdivision a of subsection 1 of article ~~VII~~IV of section 57-59-01.

**SECTION 5. AMENDMENT.** Section 57-59-06 of the North Dakota Century Code is amended and reenacted as follows:

**57-59-06. Selection of representatives to meet with commission member.**

The state tax commissioner shall appoint two persons who are representatives of subdivisions affected or likely to be affected by the multistate tax compact from among persons nominated by the association of counties and league of cities. The state tax commissioner, and any alternate designated by the state tax commissioner, shall consult with these appointees, in accordance with subdivision b of subsection 1 of article ~~VII~~IV of section 57-59-01. The state tax commissioner shall also consult regularly with the chairman and ranking minority party member of the finance and taxation committees of the senate and house of representatives as provided for in subdivision b of subsection 2 of article ~~VII~~IV of section 57-59-01.

**SECTION 6. AMENDMENT.** Section 57-59-08 of the North Dakota Century Code is amended and reenacted as follows:

**57-59-08. Interaudits.**

Article ~~VIII~~<sup>VI</sup> of the multistate tax compact relating to interaudits shall be in force in and with respect to the state of North Dakota.

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**SECTION 7. REPEAL.** Section 57-59-02 of the North Dakota Century Code is repealed.

**SECTION 8. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2014."

Renumber accordingly