

1999 HOUSE FINANCE AND TAXATION

HB 1056

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1056

House Finance and Taxation Committee

Conference Committee

Hearing Date January 6, 1999

Tape Number	Side A	Side B	Meter #
# 1	X		0 -25
1	X		35 - 43
Committee Clerk Signature <i>Jamie Stein</i>			

Minutes:

REP. BELTER Opened the hearing.

REP. BEN TOLLEFSON, Minot, Introduced the bill as the prime sponsor. Stated this is a very simple bill which only adds a couple of words to an existing law. Current law allows and makes refunds to those persons or organizations that pay sales tax in excess of what should have been paid. After sixty days, if that refund is not made, you may collect ten percent interest on that tax refund. Ten percent is a pretty good investment today. What drew everyone's attention was the sales use tax refund that the Tax Department had to make to an organization, a manufacturing organization to the tune of \$3,018,441.37 plus interest. The interest was \$386,367.12. It would be easy to say that an organization could overpay their sales tax obligation to the State of North Dakota and wait before they applied for the refund and collect ten percent on that investment.

That could be a good investment. This bill would correct this situation. It would modify the last three sentences of the law. Most refunds are processed in thirty to sixty days. For all practical purposes, this change in the law could do away with most interest paid on any type of overpayment of sales tax.

REP. BELTER Asked whether this would discourage anyone from making an intentional overpayment.

REP. TOLLEFSON You would discourage them from taking too long to make application for refund. This would make it possible for the Tax Department to not do anything until the application was made for refund and they would accomplish that before sixty days was up. Once that was done, there would be no interest paid on the refund.

REP. BELTER Asked at what point would a payor know whether they had made an overpayment.

REP. TOLLEFSON Stated a good bookkeeper would know.

REP. GROSZ Regarding the three million dollar overpayment, they must have thought they owed it or they wouldn't have paid it. If they paid it in and then applied for a refund later, aren't they penalized then because of some other silly law we have?

REP. TOLLEFSON That could possibly be, the way I understand this, you run into more of this tax refund that would have interest, would be a contractual type of arrangement. The one that I used as an example was a big situation, it wasn't a single purchase, it probably extended over a year or two years. The contractor who bought the equipment, by law, had to pay sales tax on it, then make an application for refund from the Tax Department, once that was accomplished

if it is over a sixty day period, they get the ten percent interest. How do they know if it should not be paid or if they need a refund. I would think a good accountant could tell them how this works. Maybe the state does have a responsibility.

REP. GROSZ The fiscal note is \$350,000, so evidently there is a lot of overpayment somewhere and unless people are making an investment, as you say. There must be problems in a biennium, if people are paying this unnecessarily or wrongly.

REP. TOLLEFSON In discussion with the tax department, we were trying to come up with a solution that would probably be best for everyone, including a variable interest rate. Ten percent is a great interest on your money, if you can get it. A variable interest creates problems within the department. This bill seemed to be the best answer.

GARY ANDERSON, DIRECTOR FOR SALES AND SPECIAL TAXES - TAX DEPART.

Testified neither for nor against the bill. Mr. Anderson gave a brief history regarding some of the refunds that had been processed. He also gave an explanation on the fiscal note.

He stated most of the refunds were processed within a sixty day time frame. Some of the refunds were caused by mistakes that were discovered six months after payment. He stated the manufacturing sector operated a little differently. Generally, they get a letter of exemption, prior to a project. If they have a contractor that works for them, that contractor is not immuned to the tax. He has to pay the tax for the material he installed, then the manufacturer comes back to the tax department for a refund for taxes paid. A claim for refund may not be made in a manufacturing situation until the conclusion of a project, which may take more than sixty days beyond the purchase of that material. We have to look at hundreds of transactions that we have to verify, often we do that by having our field representation going out and review the

material and invoices and make sure the taxes were paid. With the retail sector, it is not quite as dramatic. With a retailer, they may have been collecting taxes from a customer, who several months later, finally gives them a resale slip, and tells them it was all for resale, it shouldn't have been taxed. Generally, there aren't as many transactions involved so the claim for refund process isn't as difficult to finalize and issue that refund out. With the manufacturers, the sheer number of transactions involved, it can extend out.

The question was asked earlier, what if someone intentionally overpays on his tax, some taxpayers just pay tax on everything because it is easier, then allow the tax department to do a review at our expense to determine what is taxed and what isn't. We don't see a lot of that but it happens.

REP. BELTER Asked whether Mr. Anderson thought that people really were not over paying intentionally.

GARY ANDERSON I believe most of the refunds are based on nonintentional errors.

REP. WINRICH Stated, one of the dates in this bill mentions date of return, do the manufacturers not provide a return, they simply pay the taxes then file an application for refund?

GARY ANDERSON The manufacturers often times, do file returns as other retailers as well, but, because of the manufacturing exemption, they don't treat it like a manufacturing sales operation, because the mechanics are so much more complex. They are reliant on what the contractor is doing for them. Oftentimes, they don't have that information available to them until conclusion of the project, or set up some other arrangement to have it given to them over a period of time.

REP. WINRICH The amount of overpayment is not necessarily calculated at the time the

return is filed?

GARY ANDERSON Stated that was correct.

REP. GROSZ Asked what the interest was, when they were late and how is the fee set for money that was not paid in the first place?

GARY ANDERSON If you underpay a tax return, the penalty is 5% and the interest is 1% per month. First month is five percent, each month thereafter is one percent. With the taxpayers out there, people don't want to pay money in if they don't have to. A retailer could be making sales to someone charging a tax and remitting it to us. A retailer has to remit tax whether they are collecting from their customer or not.

REP. RENNERFELDT Stated that the bill should be set up just for manufacturers.

GARY ANDERSON Stated he just wanted to point out that there is a distinction between the manufacturing segment and the retail segment, because of the nature of the refund involved. It is more a timing sequence here with the manufacturers. The retailer has a smaller volume of transactions that probably created this problem.

RON NESS, President of the North Dakota Retail Assn., Testified in opposition of the bill.

It appears the retail industry may lose \$66,000 of refunds that are due to them as a result of this bill. Many of these small businesses don't have professional accountants, they do these tax returns on their own, they certainly don't want to underpay because the penalties are severe, no business person, in my estimation will try to overpay, trying to take advantage of ten percent. This money is due the retailers, we think it should be paid to them with interest.

REP. FROELICH If the fee was the same kind of fee, the Retail Assn. wouldn't have a problem with that would they?

RON NESS, The penalty is five percent for late filing and then one percent per month, we are not in opposition of the bill for creating a fairness. If there are some inequities going on because of the ten percent, that is not our opposition. Our opposition is there is it appears as though there is going to be an amount of money due those retailers that they won't be getting as a result of this bill.

REP. WARNER Asked when the interest starts accruing on underpaid accounts, the first day?

RON NESS Referred the question to someone from the tax department.

GARY ANDERSON Answered, stating sixty days from the point , there are different conditions, underpaid is from day one, overpaid is sixty days.

With no further testimony, the hearing was closed.

COMMITTEE ACTION

REP. WARNER Made a motion for a DO NOT PASS.

REP. FROELICH Second the motion.

Discussion was held, regarding suggestions for the retailers and also manufacturers to file for their refunds. It was also suggested that possibly there should be a little more research done before acting on the bill.

The bill was acted upon with the following:

14 Yes 0 No 1 Absent MOTION CARRIED

REP. WARNER Was given the floor assignment.

COMMITTEE ACTION Tape #2, Side A, Meter 2 - 7

REP. MICKELSON Made a motion to reconsider the action by which the bill was passed out of committee. REP. NICHOLAS Second the motion. MOTION CARRIED.

Amendments were presented to the committee which were prepared by the Legislative Council for Rep. Tollefson. The amendments would only apply to claims which would exceed \$100,000 in overpayment. Rep. Belter read a note from Rep. Tollefson and John Walstad regarding the explanation of the amendments. Members felt the amendments did not improve anything.

REP. GRANDE Made a motion for a DO NOT PASS.

REP. CLARK Second the motion. MOTION CARRIED

14 Yes 1 No 0 Absent

REP. WARNER Was given the floor assignment.

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: HB 1056

Amendment to: _____

Requested by Legislative Council

Date of Request: 12-23-98

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts. Please provide breakdowns, if appropriate, showing salaries and wages, operating expenses, equipment, or other details to assist in the budget process. In a word processing format, add lines or space as needed or attach a supplemental sheet to adequately address the fiscal impact of the measure.

Narrative: If enacted HB 1056 is expected to increase revenues by \$350,000 in the 1999-2001 biennium.

2. State fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	0	0	+\$322,000	+\$28,000	0	0
Expenditures						

3. What, if any, is the effect of this measure on the budget for your agency or department:

a. For rest of 1997-99 biennium: _____

(Indicate the portion of this amount included in the 1999-2001 executive budget:)

b. For the 1999-2001 biennium: _____

(Indicate the portion of this amount included in the 1999-2001 executive budget:)

c. For the 2001-03 biennium: _____

County, city, and school district fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

If additional space is needed
attach a supplemental sheet.

Signed: _____

Typed Name: Kathryn L. Strombeck

Department: Tax

Date Prepared: 1-5-99

Phone Number: 328-3402

Please type or use black pen to complete

Date 1-6-99

Roll call vote # 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1056

House HOUSE FINANCE & TAX Committee

Subcommittee on _____

Conference Committee

Identify or check where appropriate

Reconsidered

Legislative Council Amendment Number _____

Action Taken D N P

Motion Made By Rep Warner Seconded By Rep. Winrich

Representatives	Yes	No	Representatives	Yes	No
BELTER	✓		WINRICH	✓	
RENNERFELDT	✓				
CLARK	✓				
FROELICH	✓				
GRANDE	✓				
GROSZ	✓				
HERBEL	✓				
KROEBER	✓				
MICKELSON	✓				
NICHOLAS	A				
RENNER	✓				
SCHMIDT	✓				
WARNER	✓				
WIKENHEISER	✓				

Total 14 0
(Yes) (No)

Absent 1

Floor Assignment Rep. Warner

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

DO NOT USE HIGHLIGHTER ON ANY FORMS

Please type or use black pen to complete

Date 1-13-99

Roll call vote # 2

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1056

House HOUSE FINANCE & TAX Committee

Subcommittee on _____

Conference Committee

} Identify or check where appropriate

Legislative Council Amendment Number _____

Action Taken Do Not Pass ~~as amended~~

Motion Made By Rep. Grande Seconded By Rep. Clark

Representatives	Yes	No	Representatives	Yes	No
BELTER	✓		WINRICH	✓	
RENNERFELDT	✓				
CLARK	✓				
FROELICH	✓				
GRANDE	✓				
GROSZ	✓				
HERBEL	✓				
KROEBER	✓				
MICKELSON		✓			
NICHOLAS	✓				
RENNER	✓				
SCHMIDT	✓				
WARNER	✓				
WIKENHEISER	✓				

Total 14 1
(Yes) (No)

Absent 0

Floor Assignment Rep. Warner

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

DO NOT USE HIGHLIGHTER ON ANY FORMS

REPORT OF STANDING COMMITTEE (410)
January 14, 1999 8:50 a.m.

Module No: HR-08-0579
Carrier: Warner
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1056: Finance and Taxation Committee (Rep. Belter, Chairman) recommends DO NOT PASS (14 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1056 was placed on the Eleventh order on the calendar.