

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2330

2005 SENATE FINANCE AND TAXATION

SB 2330

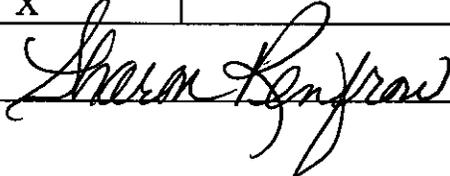
2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2330

Senate Finance and Taxation Committee

Conference Committee

Hearing Date February 2, 2005

Tape Number	Side A	Side B	Meter #
#1	X		30.5 -61.7
		X	0.0 - 12.9
#2	X		47.4 - 56.1
Committee Clerk Signature 			

Minutes:

SEN. CHRISTMANN: prime sponsor of the bill appear to support stating this bill was brought forth because of bank taxes and 5/7 of it is distributed to the county and in a case where maybe there is a dispute with the IRS or things like that that take time to get all the details figured out, a few years pass by and if the bank is owed a refund, we have nothing in law to allow that law to allow that refund to happen. And unlike corporate tax or an individual income tax where you would get that refund, the bank is just out the loss through no fault of their own. So this bill aims to correct that.

SEN. NETHING: cosponsor of the bill appeared to support stating this is a particular problem that this bill is going to address that relates to what I call a situation of no fault of anybody. It was just a matter of the Federal Govt. Being involved and a taxation process and in the meantime the State law kicked in, there was a payment made under the state law of taxes and then the federal resolved the matter in favor of the tax payer and now the tax payer (with that resolution

by the federal govt.) The tax payer would not have had the obligation to the State. The problem is there is no way to bring this situation back to a fairness that should have and would have occurred.

SEN. COOK: was this tax that was paid that shouldn't have been, was that at any point when it was resolved by the Fed. Govt. Deemed unconstitutional.

ANSWER; I don't recall that term being used, I think it was more of other factors involved.

CHUCK STROUP: on the Board of Directors for Stutsman County State Bank appeared stating his purpose here today is to introduce some people that will be speakers here this morning and to introduce people in the audience, so that you know who they are.

TIM LECLAIR: a partner with the public accounting firm of Eide Bailly LLP appeared in support with written testimony and to explain the attachments. Also stating that SB 2330 is necessary to provide a fair and equitable resolution to a state tax problem our client has been struggling with for the past year and one half.

SEN. WARDNER: so what has happened is the 5/7 portion of your taxes paid that went to the counties that your looking to accrue.

ANSWER: yes, that's correct, but they would like interest on their refund as well, both the 2% and 5% as well.

SEN. EVERY: you say that the state tax problem was clearly the result of inequities in the tax law that existed in 1996 and prior years. I'm assuming that you have discussed this with the tax dept. and I'm wondering why they haven't submitted legislation of their own to correct the problem.

ANSWER: I can't speak for the tax dept. As to why they haven't, we do represent a large number of financial institutions and I think their situation is fairly unique. The 1997 changes does take care of the problem for years after 1996, its only those who had a problem in a pre 1997 year that would be impacted by the old law.

SEN. WARDNER: besides this one, is there any other claims laying out there, you work in this so are you aware of any other situations?

ANSWER: not aware of any more in this same situation

SEN. WARDNER: if we pass this, would it take care of your bank and no one else?

ANSWER: that is my opinion.

SEN. BERCIER: if this would pass, could this a be a me too situation where other banks would start coming in?

ANSWER: again we don't know of any others out there, this really only impacts the 1996 and prior years. Years after 1997 are taken care of.

SEN. EVERY: I'm wondering, what makes this unique to Stutsman County Bank? They can't be the only bank that's every had this examination in the last 7 years?

ANSWER: again, we are not aware of any, but I'm sure in the years prior to 1996 it probably has come up before. I would imagine some of the unfairness of the inequities that exist are the reason why the 1997 legislature made the change they did at that time.

SEN. EVERY: what triggered the examination?

ANSWER: income, I don't know if I'm at liberty to get into the details of my finance examination but it was an IRS examination of income tax reporting matter. The IRS felt that

income had to be reported in the 96 year, we had reported it originally 97-98 year and upon appeal we compromised on it. It was a timing issue.

SEN. TOLLEFSON: its really the uniqueness of the timing that has created the problem, am I correct?

ANSWER; it is exactly a timing issue and the year that it happened in.

SEN. TOLLEFSON: the second thing is the interest that's totally allowed, why would this be an exception?

ANSWER; we feel its in the interest of equity, they were required to pay interest on the tax that they paid in, in 1999 they paid \$61,000 and its in the interest of equity and fairness we feel they ought to be, they deserve interest also and they receive a refund and that is available now under the statute.

JON JENSEN: appeared in support with written testimony and is an Attorney with Pierson Christianson Law firm in Grand Forks and provide representation for Stutsman County State Bank through their audit with the IRS.

In reference to a proposed question by Sen. Wardner about the funds and where they were paid to and the recognition that is some of the funds would have gone directly to Stutsman County. Our proposed legislation does request that this refund if this legislation passes be paid from the general fund. And we are requesting that primarily because we believe that it would create an undue hardship on Stutsman County, although Stutsman county benefited and the institutions of support within Stutsman County benefited, we think the undue hardship would fall on Stutsman County if it was required to pay the entire claim for refund. We also don't think that Stutsman County is necessarily responsible for this legislative structure. We think that the legislature

didn't intend to correct this problem when it passed the 1997 legislation but someone fell through the cracks so to speak.

DONNITA WALD: Tax Dept. - is this the only situation where a tax payer has been denied a refund because of an RAR, under the old bank tax law, NO. It was generally understood that there was a 1 year time period to file a claim for a refund. And the reason for that is that under the old bank tax law, the money was paid directly to the counties and the counties distributed to their various little subdivisions. They did not have a refund reserve.

SEN. WARDNER: we had this change in the law, so there was a lock down, but there must have been a period of time where we said in which we give a window of opportunity. How a window of opportunity relates to the situation and then the IRS

ANSWER: in 1997 when we rewrote the bank tax laws and enacted the financial institutions tax, there was a concern that when you repeal a tax you also repeal all of its refund provisions and your ability to get a refund, so recognizing this what the 97 legislature did was to create a very short period of time and said if you would have been entitled to a 96 refund, you can take it against your 97 financial institutions tax refund and that would then reduce the amount that was paid to the county. So it kinda maintained the status quo for 1 year. With the RAR's and the federal audit, the law requires that you report those to us when a final determination has been made. The new bank tax law gives you a window of time to do that no matter the tax year was, except for 96, from 97 on it was fixed. But that 96 tax year is still got that 1 year thing in there.

SEN. EVERY: Why hasn't the Tax Dept. Submitted their own fiscal note and on the fiscal note it says its unknown, I would guess that if this thing were retroactive and we were paying 12% to those refunds, that would be a pretty hefty fiscal note.

ANSWER: In response to your first question, our job is to administer the laws in the past, I think we would be doing this every year if we introduced a bill for every time somebody disliked the way that the law applies to them. With regard to fiscal note, the potential for others is out there but can't put a figure on there but would suspect its more.

SEN. WARDNER: so because of this audit had to do with 96 tax returns, that's the reason that there was a lock down on that after they paid it because it dealt with the return from that year.

ANSWER: without speaking specifically to this situation, any tax payer with a 96 refund claim under the old bank tax would be denied a refund.

SEN. COOK; is there a date in the future where this potential of other refunds would no longer be there?

ANSWER; I don't know. It depends on what the IRS does and how long it takes

SEN. BERCIER: So your saying that the Tax Dept. Negotiated that bank probably should have protested paying their taxes rather than being a good corporate entity?

ANSWER: no, I think the law was set up to protect the counties funds. Because once the county gets the money, they distribute it and they spend it.

SEN. BERCIER: if it was paid in good faith, there is no recourse.

DONNITA: taxes aren't fair.

Closed the hearing.

AFTERNOON COMMITTEE WORK

SEN. TOLLEFSON: I have a problem with, I think your opening the door and the Tax Dept.

Says they don't even know how many others.

SEN. WARDNER: I agree with Sen. Tollefson, but if the IRS goes back into those years then we could have others.

SEN. EVERY: made a motion for **DO NOT PASS**, seconded by Sen. Wardner.

SEN. BERCIER: I don't just think that when the principal, when you collect the tax even though its spent by a county or anybody and you find that its, you should get a rebate, there should be some way that they can get some fairness out of it.

SEN. COOK: I should point out here that there is 2 options for them to, if this was to pass, one is to have it credited against current liability and the other is for a refund. I thought if we took refunded out of there, it might change the fiscal note to the point where they could, but we should all understand that that option has 2 different consequences, if they take it against the current liability, then that's against future tax that would not collected then and then that would affect the distribution to counties. I thought we could make it better by taking out refund, but I guess we can't.

DONNITA WALD, Tax Dept. Sen. Cook is correct, it doesn't do anything to the fiscal note by taking the refunded language out of there and two, it would reduce the amount that goes into the financial institution distribution fund. So then all of the counties would bear the loss.

ROLL CALL VOTE: 5-1-0 Sen. Wardner will carry the bill

SEN. BERCIER: I just have a hard time that when you collect something and find that you have a reimbursement coming or should and then you don't get it.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **SB 2330**

Senate Finance and Taxation Committee

Conference Committee

Hearing Date **February 3, 2005**

Tape Number	Side A	Side B	Meter #
# 1	X		22.7 - 46.6
Committee Clerk Signature <i>Sharon Benjow</i>			

Minutes:

SEN. URLACHER; we have a request to reconsider SB 2330 for a possible amendment.

SEN. WARDNER: made a **MOTION TO RECONSIDER OUR PREVIOUS ACTION OF DO NOT PASS**, seconded by Sen. Cook.

VOICE VOTE; 5-1-0 Sen. Every voted no.

SEN. CHRISTMANN: appeared in front of the committee to suggest an amendment and handed out a memorandum presented to him by Tim LeClair. I have concluded to maybe limit state liability initially here and if you would want to amend it to where its just withheld from future tax obligations of the entity. Most anything would be workable that would allow it to stay alive and keep moving. I do think that when a tax payer whether its a financial institution, a corporation or an individual, if through no fault of your own, you assess to much taxes and then you prove that you didn't owe that much, I think there ought to be some way to get it back.

SEN. URLACHER; the reason brought this back to you is because it seemed to be during the discussion, that the fear was bringing back for a number of years to get the unknown taxes that are out there. I guess I'll ask the Tax Dept. If those amendments would lock it in and if the committee is in mind to consider it.

SEN. CHRISTMANN: I appreciate that and I would just elaborate on a sentence or two here from Mr. LeClair, that the statute of limitations on a federal tax change is 3 years after the due date.

DONNITA WALD: Tax Dept. Stating we do know that there are some that have gotten denied who have filed.

SEN. WARDNER; question on amounts these other entities filed for, were they similar amounts?

ANSWER; one of the first case I had was way more than this.

SEN. COOK: asked question about current situation

DONNITA; I cannot answer without a release from the tax payer.

SEN. WARDNER: I have a problem with taking out of the State general fund. We said earlier that if we open this up, there will be others

SEN. BERCIER; I think it would be unfair to put it on Stutsman County, they weren't in control of the process that trusted the money then distributed out to them. So their going to be losing \$20,000 of income.

SEN. WARDNER; there are other situations not in the financial tax world where there has been a lock down. This isn't the only situation.

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Senate Finance and Taxation Committee

Bill/Resolution Number SB 2330

Hearing Date February 3, 2005

SEN. BERCIER: if know if you underpaid then you certainly have to pay it back, so if you overpay it I don't know why you can't get em back. Underpay, they get em, over pay your out of luck and moves the amendment, seconded by Sen. Every.

ROLL CALL VOTE; 1-4-1 Amendment fails.

SEN. EVERY: made a **MOTION FOR DO NOT PASS**, seconded by Sen. Wardner.

ROLL CALL VOTE: 4-1-1

SEN. URLACHER: with the committee's permission, I will hold the vote open for Sen. Cook who had to leave the committee and couldn't be here for all of the discussion.

Sen. Cook voted; **5-1-0**

FISCAL NOTE
 Requested by Legislative Council
 02/17/2005

Amendment to: SB 2330

1A. **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.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			(\$14,187)			
Expenditures						
Appropriations						

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

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
			(\$170,354)					

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

Engrossed SB 2330 creates a credit for a financial institutions taxpayer.

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.*

Engrossed SB 2330 authorizes a taxpayer to offset current financial institutions tax liabilities by an amount of a refund previously denied because it was beyond the scope of the refund statutes. The fiscal impact of the bill was testified to by the taxpayer and includes the interest provided for in the bill.

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, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	02/22/2005

FISCAL NOTE
 Requested by Legislative Council
 01/20/2005

Bill/Resolution No.: SB 2330

1A. **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.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

SB 2330 authorizes certain retroactive refunds of financial institutions tax revenue currently considered beyond the refund statute. The bill allows tax to be refunded from the general fund that was originally remitted directly to the counties by the financial institutions. The bill also authorizes that the general fund pay interest at the rate of 12% per annum on those retroactive refunds.

It is not known how many refund claims will be filed in total if SB 2330 is enacted.

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, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	02/01/2005

REPORT OF STANDING COMMITTEE (410)
February 2, 2005 5:20 p.m.

Module No: SR-22-1746
Carrier: Wardner
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2330: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends DO NOT PASS (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2330 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE (410)
February 4, 2005 10:09 a.m.

Module No: SR-23-1859
Carrier: Wardner
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2330: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends DO NOT PASS (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2330 was placed on the Eleventh order on the calendar.

2005 SENATE APPROPRIATIONS

SB 2330

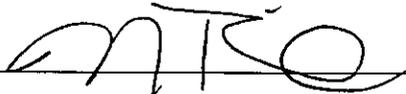
2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2330

Senate Appropriations Committee

Conference Committee

Hearing Date 02/11/05

Tape Number	Side A	Side B	Meter #
1	x		2,175-3951
Committee Clerk Signature 			

Minutes: **Chairman Holmberg** called meeting to order on SB 2330.

Sen. Christmann, District 33 appeared before the committee to provide background and overview of SB 2330. Sen. Christmann stated to the committee that SB 2330 came out of the Finance committee with a do not pass recommendation. Sen. Christmann stated that the goal of the bill as its written would be to have the state general fund just pay it back. Sen. Christmann asked the committee for more time to fix the problem and to implement a solution.

Sen. Robinson: (2520) It is my understanding that more than 1 bank is in a similar situation. And that one in your district is in trouble other than district 12.

Sen. Christman: District 12, there is not one in my district although the bank in my district is part owner of the bank in district 12.

Sen. Richard Wardner, District 37, Member of Finance and Tax Committee appeared to address the committee stating that if a solution is made they will have no objections to the bill. It was sent to Appropriations because the committee ran out of time.

No questions were asked of Sen. Wardner.

Sen Bercier, District 9 appeared before the committee because he feels there is an inequity.

No questions were asked of Sen. Bercier

Mark Johnson, Association of Counties appeared before the committee to state that there was a great deal of cloudiness on the bill since it has come to the appropriations committee.. Mr.

Johnson stated that he wanted to clarify some information. This is a distributed tax the county collects from the bank, it is then distributed to the cities then on to school districts, parts etc.

Sen. Andrist: It seems to me that the goal should be that the people who got the money should pay the bill for it.

Mr.. Johnson (3799): I agree, the problem is that prior to 1997, the had 1 year to claim a refund, now it is 90 days.

No further questions were asked.

Chairman Holmberg closed meeting on SB 2330.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2330

Senate Appropriations Committee

Conference Committee

Hearing Date February 15, 2005

Tape Number	Side A	Side B	Meter #
2	1		4,036
Committee Clerk Signature <i>Janet Parks for Jenny Brunck</i>			

Minutes:

Chairman Holmberg opened the hearing on SB 2330.

Senator Christmann testified for SB 2330. He introduced amendments to SB 2330, regarding a bank assessed taxes which they disputed for a few years and the bank had to pay interest on the disputed amount, paid the disputed taxes to prevent further interest, pending outcome of the dispute, they won and discovered they paid too much, the 2/7 to the general fund was paid back, the 5/7 to the county has no provision to be refunded. This bill fixes that problem. He described the provisions of the amendment allowing for refunds from the state, and county plus interest.

Senator Christmann moved approval of the amendment. The motion was seconded. Discussion followed. A verbal vote was taken. The motion carried.

Senator Robinson asked what happens if this happens to another bank.

Senator Christmann indicated that to prevent this, there is a time limit of requesting this on this bill, February 15, 2005 (today). There will be one and only one case.

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Senate Appropriations Committee

Bill/Resolution Number 2330

Hearing Date February 15, 2005

Senator Mathern asked if the parties involved couldn't give up their confidentiality.

Senator Christmann indicated in this case, they have given up their confidentiality.

Deneta Wold, Tax Commissioner's Office, indicated that the tax assessed that bank had not been repaid and this bill will cover that.

Senator Robinson stressed concerns about others, not yet identified, who come through with this same type of issue.

Senator Krauter asked for update and clarification of bill as he was absent during discussion.

Senator Tallackson, is this fair to counties or just the bank.

Senator Fischer moved **DO PASS as AMENDED**, **Senator Schobinger** seconded. A roll call vote was taken with 12 yes, 3 no and 0 absent. **Senator Christmann** will carry the bill.

Chairman Holmberg closed the hearing.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2330

Page 1, line 2, remove "refundable"

Page 1, line 3, remove "and" and after "date" insert "; and to provide an expiration date"

Page 1, line 7, remove "refundable"

Page 1, line 12, remove "refundable" and replace "may" with "must"

Page 1, line 13, remove "either", remove "current", and replace "or refunded to the" with "as provided in this section."

Page 1, replace lines 14 through 17 with ~~For~~ For purposes of this subsection:

a. The taxpayer is entitled to a credit of:

- (1) The amount of the overpayment that was made under chapter 57-35 plus the amount of any interest paid by the taxpayer on this portion of the overpayment; and
- (2) Interest at the rate of two and one-half percent per year on the uncredited amount under paragraph 1 from the date tax and interest under paragraph 1 was paid by the taxpayer to December 31, 2006.

b. The taxpayer is entitled to a credit of:

- (1) The amount of the overpayment that was made under chapter 57-35.2 plus the amount of any interest paid by the taxpayer on this portion of the overpayment; and
- (2) Interest at the rate of two and one-half percent per year on the unrefunded amount under paragraph 1 from the date tax and interest under paragraph 1 was paid by the taxpayer to April 15, 2006.

c. For purposes of determining distributions to and by counties under section 57-35.3-09 in any year a credit under subdivision a is claimed:

- (1) The balance in the financial institution tax distribution fund and the amount of the payment received by each county from the state shall be determined as if any credit allowed under subdivision a had not been claimed and the full amount of the tax otherwise due had been timely paid;
- (2) The credited amount under subdivision a must be deducted from the distributions that would otherwise be made to and by the county that received the tax overpayment until the sum of the deductions under this paragraph equals the amount of the credit under subdivision a; and

- (3) The deductions from distributions made by a county to each distributee must be proportionate to the overpayment of tax received by each distributee.
- d. The entire amount of the credit under subdivision a must be deducted from the portion of the tax payable by the taxpayer that would be deposited in the financial institution tax distribution fund. The entire amount of the credit under subdivision b must be deducted from the amount payable by the taxpayer that would be deposited in the state general fund.
- e. The amount of the credit under subdivision a is limited to not more than fifty percent of the taxpayer's liability under this chapter that would be payable to the county that received the overpayment unless the board of county commissioners of that county approves allowing a greater amount of the credit. The board of county commissioners must notify the tax commissioner, by December thirty-first of the taxable year for which the credit will be claimed, if the board of county commissioners approves allowing a greater amount of the credit under this subdivision.
- f. Any amount not allowed as a credit because of the limitations under this section may be carried forward to the next taxable year."

Page 1, remove lines 14 through 17

Page 1, line 18, after "APPLICATION" insert "- EXPIRATION DATE"

Page 1, line 19, after "2001" insert ", and is ineffective for any refund claim filed after February 15, 2005"

Renumber accordingly

Date 2-15-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2330

Senate SENATE APPROPRIATIONS Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Fischer Seconded By Schobinger

Senators	Yes	No	Senators	Yes	No
CHAIRMAN HOLMBERG	/		SENATOR KRAUTER	/	
VICE CHAIRMAN BOWMAN	/		SENATOR LINDAAS	/	
VICE CHAIRMAN GRINDBERG	/		SENATOR MATHERN		/
SENATOR ANDRIST	/		SENATOR ROBINSON		/
SENATOR CHRISTMANN	/		SEN. TALLACKSON		/
SENATOR FISCHER	/				
SENATOR KILZER	/				
SENATOR KRINGSTAD	/				
SENATOR SCHOBINGER	/				
SENATOR THANE	/				

Total (Yes) 12 No 3

Absent 0

Floor Assignment Christmann

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

REPORT OF STANDING COMMITTEE

SB 2330: Appropriations Committee (Sen. Holmberg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). SB 2330 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "refundable"

Page 1, line 3, remove "and" and after "date" insert "; and to provide an expiration date"

Page 1, line 7, remove "refundable"

Page 1, line 12, remove "refundable" and replace "may" with "must"

Page 1, line 13, remove "either", remove "current", and replace "or refunded to the" with "as provided in this section."

Page 1, replace lines 14 through 17 with "For purposes of this subsection:

a. The taxpayer is entitled to a credit of:

- (1) The amount of the overpayment that was made under chapter 57-35 plus the amount of any interest paid by the taxpayer on this portion of the overpayment; and
- (2) Interest at the rate of two and one-half percent per year on the uncredited amount under paragraph 1 from the date tax and interest under paragraph 1 was paid by the taxpayer to December 31, 2006.

b. The taxpayer is entitled to a credit of:

- (1) The amount of the overpayment that was made under chapter 57-35.2 plus the amount of any interest paid by the taxpayer on this portion of the overpayment; and
- (2) Interest at the rate of two and one-half percent per year on the unrefunded amount under paragraph 1 from the date tax and interest under paragraph 1 was paid by the taxpayer to April 15, 2006.

c. For purposes of determining distributions to and by counties under section 57-35.3-09 in any year a credit under subdivision a is claimed:

- (1) The balance in the financial institution tax distribution fund and the amount of the payment received by each county from the state shall be determined as if any credit allowed under subdivision a had not been claimed and the full amount of the tax otherwise due had been timely paid;
- (2) The credited amount under subdivision a must be deducted from the distributions that would otherwise be made to and by the county that received the tax overpayment until the sum of the deductions under this paragraph equals the amount of the credit under subdivision a; and

- (3) The deductions from distributions made by a county to each distributee must be proportionate to the overpayment of tax received by each distributee.
- d. The entire amount of the credit under subdivision a must be deducted from the portion of the tax payable by the taxpayer that would be deposited in the financial institution tax distribution fund. The entire amount of the credit under subdivision b must be deducted from the amount payable by the taxpayer that would be deposited in the state general fund.
- e. The amount of the credit under subdivision a is limited to not more than fifty percent of the taxpayer's liability under this chapter that would be payable to the county that received the overpayment unless the board of county commissioners of that county approves allowing a greater amount of the credit. The board of county commissioners must notify the tax commissioner, by December thirty-first of the taxable year for which the credit will be claimed, if the board of county commissioners approves allowing a greater amount of the credit under this subdivision.
- f. Any amount not allowed as a credit because of the limitations under this section may be carried forward to the next taxable year."

Page 1, line 18, after "**APPLICATION**" insert "- **EXPIRATION DATE**"

Page 1, line 19, after "2001" insert ", and is ineffective for any refund claim filed after February 15, 2005"

Renumber accordingly

2005 HOUSE FINANCE AND TAXATION

SB 2330

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2330

House Finance and Taxation Committee

Conference Committee

Hearing Date **March 9, 2005**

Tape Number	Side A	Side B	Meter #
1	X		1
Committee Clerk Signature <i>Janice Stein</i>			

Minutes:

REP. WES BELTER, CHAIRMAN Called the committee hearing to order.

SEN. RANDY CHRISTMANN, DIST. 33 Introduced the bill. Testified in support of the bill.

This bill has to do with one bank and one county and the political subdivisions. He stated he talked with the auditor of Stutsman County. What happened was with the IRS, whether something was taxable or not and the bank was assessed a tax back in the 90's, and paid it under protest, and it was known by the county and the state, that it was being protested. After a few years of deliberation, the IRS found partially, in the bank's favor and it was nontaxable. The state paid back the state's share, however, there is no provision for the county to pay back their share nor the interest that was attached to it. Gave a brief history of financial institution's tax. He submitted a handout clarifying the situation. See attached copy. The issue revolved around the 1996 tax year. \$125,000 went to the county and \$50,000 went to the state, those amounts were being protested. Both the state and the county were collecting interest on their share while it was

being protested at about the rate of twelve percent per year. In 1999, the bank protested and paid all of the tax due to alleviate the excessive interest. In 2003, the IRS ruled in the bank's favor, that it was an overpayment. The state paid back the \$50,000 but not the interest. I think the interest ought to be paid back. The county has not paid back the overpayment or the interest. I am suggesting that from 1999, the bank is only asking for 2.5% per year interest on what they are owed over these years. I think the bank is being very reasonable.

Sen. Christmann explained each section of the bill. If this IRS situation should happen to another bank, since 1997, the provisions will be in law for them to get their money back.

SEN. DAVE NETHING, DIST. 12 Co-sponsor of the bill. I stand before you with mixed emotions. I am here on behalf of this bill which benefits a financial institution in Jamestown, of which I have no financial interest in, but on the other hand, the folks that are being asked to pay the bill, I am one of their taxpayers. If I would be one hundred percent successful, I would be taking money out of my own pocket in order to help pay this bill. Overriding what it does to me personally, is the fact that we have a taxpayer in our district that did everything possible to do, which was right, and now ends up needing to be here to help remedy a wrong that the taxpayer didn't create. The issue here is fairness to the taxpayer. There is a theory in law called "unjust enrichment", if you receive something you are not entitled to, you should then reimburse the person who provided the funds.

REP. CONRAD Is the county involved when a taxpayer pays something under protest?

SEN. NETHING I don't know what transpired between the taxpayer and the county, I think there will be people here to answer that question.

TIM LECLAIR, CPA, EIDE BAILLY, LLP Testified in support of the bill. See attached written testimony. Also, submitted written testimony from Jon Jensen, with Pearson Christensen, PLLP, Grand Forks, ND See attached copy.

REP. JOE KROEBER, DIST. 12, JAMESTOWN I was co-sponsor of the original bill which would have made the IRS amend the payment for responsibility to the state's general fund. It was the North Dakota State Tax Department which denied the \$125,000 payment and accrued interest citing administrative interpretations of the North Dakota Century Code, which existed prior to 1997, which was repealed with the 1997 legislative changes. The amended bill has changed the funding source to Stutsman County. As you have already heard, this will pose a hardship to Stutsman County. This will also impose a hardship to our schools, and our city. Stutsman County is not responsible for the inequities in the bank tax structure. They are not responsible for the ruling of the IRS, only in the difference of the interpretation of that law. I therefore, oppose the bill in its present form. I would appreciate your consideration in amending back the original funding source which is the general fund, or killing the bill.

REP. BELTER Saying the bank is correct, asking for its money back because there were mistakes made, and asking for a proper refund of taxes

REP. KROEBER Looking into this with a great more detail then I did when I signed on to the bill, what I see is the real problem comes with the IRS interpretation and also with us, when we changed the law. This was in place before we changed the law, now we are going to go back and in retrospect, we are going to make an exception now for this one overpayment. It has to do with the IRS, the State Tax Department and when we took and changed the law.

REP. CONRAD Is the county informed when when somebody pays under protest?

REP. KROEBER Deferred the question to the county auditor.

JOE SYKORA, BUSINESS MANAGER FOR JAMESTOWN PUBLIC SCHOOLS

Testified in opposition of the bill. See attached written testimony.

REP. WEILER You asked the question, how far are we going to go back? Referred to an effective date in the bill, of February 15, 2005, which is already passed, which means no more claims can be filed, am I correct in that?

JOE SYKORA Had no comment.

REP. HEADLAND Did I hear you say the amount which it impacted the school was \$70,000?

JOE SYKORA I got those figures from Paul Johnson, the county auditor, I believe our share is about forty five percent.

REP. BELTER I appreciate the hardship on the school district, but the fact of the matter is, because of the IRS ruling, the bank paid more in taxes than it should have, consequently, your school district received money it should not have received. From that standpoint, if you have received something you shouldn't have received, isn't it also appropriate that you should somehow reimburse those monies under reasonable terms?

JOE SYKORA Based on the information before me, I don't profess to be an expert of the IRS and all of the terminology from eight years ago, it sounds as though we received dollars we shouldn't have received.

REP. CONRAD Did you have any information that this was being paid under protest and that you had a second to decide, no we better not budget this?

JOE SYKORA I don't remember any information that there was a potential refund or a potential overpayment of a financial institution.

REP. WEILER Have you ever experienced that situation where you heard there was money coming in, but it was under protest, so what do you do with that under that circumstance?

JOE SYKORA My first thought, if there is ever a chance that money is being protested for a taxpayment, I would set money aside until that issue is resolved. Therefore, we maybe wouldn't be in this situation.

REP. WEILER You apparently don't have any rules in place to force you to set some money aside?

JOE SYKORA At this time, I don't believe there is anything in century code that would require school districts to do something like that.

DWAINE HEINRICH, PRESIDENT OF THE JAMESTOWN CITY COUNCIL Testified in opposition of the bill. See attached written testimony.

NOEL JOHNSON, STUTSMAN COUNTY AUDITOR, Testified in opposition of the bill. See attached written testimony. He went on the answer Rep. Conrad's question stating they were not informed of the problem of overpayment. Normal taxpayers, if they protest their taxes, we segregate that money for sixty days. They have to file an abatement within that sixty days, if they do, then those monies freeze in that account. We have been to court many times over property tax issues. If the taxpayer prevails, they will get a portion of the protested amount from the protest account plus a prorata share of interest. Obviously, we are not a party in this, we are the beneficiary of the dollars, maybe there should have been some vehicle in place for the state to segregate these monies, then they could have dipped into that pool.

DONNITA WALD, STATE TAX DEPARTMENT Testified in a neutral position.

Commented on a couple of issues. Related to Rep. Conrad's question whether there was

notification, North Dakota does not have payment under protest provision. So there is no vehicle to give notification. Nationally, in general, these provisions are found to be burdensom, that is why North Dakota doesn't have those provisions. In lieu of that, for other taxes, not the bank taxes, we do pay twelve percent annually. Under the old bank tax law, there was a one year statute for refunds. The bank tax was collected and paid to the county, at that point in time. The old bank tax, was a franchised tax, as opposed to an income tax, and was created in lieu of a property tax that the banks would pay, so many of the procedures and the one year refund, as was testified to earlier, were kind of taken and put into the old bank tax. Counties did not physically have a refund either.

REP. CONRAD There have been other people who have had overpayment and lost it if they didn't get it back within one year?

DONNITA WALD That is correct.

With no further testimony, the committee hearing was closed.

COMMITTEE ACTION Tape #2, Side A, Meter # 24.2

Committee members discussed all the pros and cons of the bill. Some members felt the bill should be amended back to its original form. Committee members felt the bank would get its money back even if it was at a lesser interest rate. It would be a big hardship for the political subdivisions. Some committee members felt it should probably be handled by the courts. Some committee members felt the state had the responsibility to fix the situation as they had the knowledge of the situation, but the counties did not. Some committee members felt the counties, schools, etc., got more money then they were entitled to, so it should be paid back.

After the lengthy discussion, the bill was held to act on at a later date.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **SB 2330**

House Finance and Taxation Committee

Conference Committee

Hearing Date **March 14, 2005**

Tape Number	Side A	Side B	Meter #
1	X		29.9
Committee Clerk Signature			

Minutes:

COMMITTEE ACTION

This is the problem with the Stutsman County Bank. Some committee members felt the bank had a one year window to file a claim, and they didn't do it. Some committee members felt political subdivisions have money in reserve to pay this bank for revenue they received in error. Some member felt the courts should take care of the problem, it should not be done by legislation. Some committee members felt the bank can't be responsible for all of it, since it took IRS two years to straighten it out.

REP. BRANDENBURG Made a motion for a **do pass**.

REP. IVERSON Second the motion. **MOTION CARRIED.**

7 YES 6 NO 1 ABSENT

REP. HEADLAND Was given the floor assignment.

Date: 3/4/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2330

House: FINANCE & TAXATION Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Brandenburg Seconded By Rep. Iverson

Representatives	Yes	No	Representatives	Yes	No
BELTER, WES, CHAIRMAN	✓				
DROVDAL, DAVID, V-CHAIR	✓				
BRANDENBURG, MICHAEL	✓				
CONRAD, KARI		✓			
FROELICH, ROD		✓			
GRANDE, BETTE	✓				
HEADLAND, CRAIG	✓				
IVERSON, RONALD	✓				
KELSH, SCOT		✓			
NICHOLAS, EUGENE	A				
OWENS, MARK		✓			
SCHMIDT, ARLO		✓			
WEILER, DAVE		✓			
WRANGHAM, DWIGHT	✓				

Total (Yes) 7 No 6

Absent 1

Floor Assignment Rep. Headland

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

REPORT OF STANDING COMMITTEE (410)
March 14, 2005 11:44 a.m.

Module No: HR-46-4848
Carrier: Headland
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2330, as engrossed: Finance and Taxation Committee (Rep. Belter, Chairman)
recommends **DO PASS** (7 YEAS, 6 NAYS, 1 ABSENT AND NOT VOTING).
Engrossed SB 2330 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

SB 2330



CPAs & BUSINESS ADVISORS

Senate Finance & Taxation Committee Hearing
Senate Bill NO. 2330
February 2, 2005

Mr. Chairman and committee members, I am testifying in favor of SB2330.

My name is Tim LeClair. I am a partner with the public accounting firm of Eide Bailly LLP. I have been a practicing Certified Public Accountant for more than 24 years and have worked with financial institution tax matters for most of my career. I have been in charge of services provided to Stutsman County State Bank for the past 15 years.

SB2330 is necessary to provide a fair and equitable resolution to a state tax problem our client has been struggling with for the past year and one half. The state tax problem is clearly the result of inequities in the tax law that existed in 1996 and prior years. Along with my testimony, I have enclosed a timeline reflecting dates of changes to our client's 1996 state tax liability, which I hope will help you understand the inequity of the 1996 statute regarding the taxation of banks.

Prior to 1996, financial institutions were subject to a ND bank tax **and** a ND privilege tax. The combined tax rate was 7% same as it is now. The tax law that financial institutions were subject to in 1996 and prior years did not provide financial institutions the tax remedies and rights that were available to other corporate taxpayers at that time and currently available to banks since the 1997 changes. Those inequities included:

- No right to a state tax refund as a result of an IRS audit more than one year after the tax was paid, while remaining liable for increases in a state tax liability due to an IRS audit more than one year after the tax was paid.

- No provision for refund of interest on overpayments, while being subject to interest on amounts due.

The 1997 legislature recognized the inequities of the prior tax law and leveled the playing field for financial institutions for years after 1996. The 1997 legislative changes revamped the entire bank tax structure, resolving many problems in the pre-1997 bank tax law and providing financial institution tax filing rights similar to other corporate taxpayers. The statute since the 1997 changes now references the general income tax provisions governing corporate taxpayers for rules regarding the administration of the bank tax law, including adjustments of tax liabilities arising from federal changes and payment of interest. Currently, if a Federal examination change is made, a corresponding adjustment is made for state tax purposes – regardless of whether the change is for a refund or a balance due.

Our client, Stutsman County State Bank, has found themselves trapped in the inequity that existed in the prior tax law. I believe their problem is very unusual because of the fact pattern that exists and has resulted in their predicament. Please permit me to explain.

The bank was subject to an IRS examination in January 1999 over significant income tax reporting issues arising in the 1996 tax year. The IRS examination, which concluded in March 1999, resulted in a significant increase in income. In April 1999, the bank filed amended state tax returns and remitted the increase in state taxes to the state in the amount of \$361,000. At that time they were not sure if they were going to appeal the IRS examination changes and they filed the amended state tax returns to stop the accrual of interest on the state tax liability. (At 1% per month, 12% annually, interest accumulates rather quickly!) They paid statutory interest on the balance due of approximately \$61,000. The bank did request a waiver and refund of the interest paid in June 1999, which was promptly denied in July 1999.

In August 1999, SCSB, on the advice of legal counsel, decided to appeal the IRS examination adjustment. After a long, drawn out appeal process, the bank partially prevailed in the appeal in March 2003 resulting in a significant decrease in taxable income. As a result of the IRS appeal and settlement, SCSB submitted refund claims with the State of ND in May 2003 for refund of taxes of \$176,000, plus interest. The state of ND granted a refund of only \$50,219 (the 2% privilege tax) in June 2003, and denied the balance of the refund claim, including interest, citing administrative interpretations of NDCC provisions that existed prior to 1997, and were repealed with the 1997 legislative changes.

It is my observation that SCSB has paid more tax to ND than what is fair and equitable because of the inequity of provisions in the pre-1997 bank tax statute, as interpreted by the ND Tax Department. Banks, for years prior to 1997, are required to pay additional tax due, plus interest, as a result of a federal tax examination change. However, banks may be denied a refund stemming from federal tax examination change because the statute, prior to 1997, as interpreted by the ND tax department, does not allow a taxpayer the right to a state tax refund as a result of an IRS examination more than one year after the tax was paid. In the case of Stutsman County State bank, the period of time for an adjustment that could result in a refund of the state bank tax expired in the same month that the original IRS examination commenced! Also, banks are not allowed any interest on refunds arising in pre-1997 years, while being required to pay interest on any balance due for pre-1997 years.

We believe the proposed bill is necessary in the interest of fairness to taxpayers, including SCSB, to provide access to remedies and rights available to other corporate taxpayers as intended by the 1997 legislation.

**Stutsman County State Bank
Timeline of State Tax Changes - 1996 Tax Year**

<u>DATE</u>		<u>ND Taxable Income</u>	<u>Form 49 5% Tax</u>	<u>Form 39B 2% Tax</u>	<u>Interest Paid</u>
January 1, 1997	Effective date of tax law change for banks: Date of enactment of NDCC 57-35.3 Date of repeal of NDCC 57-35 Date of repeal of NDCC 57-35.2				
July 1, 1997	Original 1996 tax returns filed July 1997: Bank and Trust Company Tax Return (ND Form 49) Bank Privilege Tax Return (ND Form 39B)	\$ 3,347,585	\$ 167,379	\$ 66,952	
May 5, 1998	Amended state tax returns filed for decrease in Federal tax deduction resulting from amended Federal tax return.	111,332	5,567	2,227	
July 2, 1998	Amended state tax returns filed for increase in Federal tax deduction resulting from amended Federal tax return.	(4,437)	(222)	(89)	
		<u>\$ 3,454,480</u>	<u>\$ 172,724</u>	<u>\$ 69,090</u>	
January 15, 1999	Final due date for payment of 1997 bank tax. Also, last date for filing claim for refund of 1996 Bank & Trust Company tax per ND Tax Dept. administrative position on interpretation of pre-1997 bank tax law.				
January 1999	IRS examination commenced in January 1999.				
March 1999	IRS examination concluded.				
April 6, 1999	Amended state tax returns for increase in income and change in federal tax deduction resulting from IRS examination changes.	5,158,918	257,946	103,178	
April 23, 1999	Assessed and paid interest on balance due as reported on amended tax return - Form 49, \$36,112; Form 39B, \$24,763.				\$ 60,875
June 24, 1999	Requested waiver and refund of interest - denied on July 16, 1999	<u>\$ 8,613,398</u>	<u>\$ 430,670</u>	<u>\$ 172,268</u>	<u>\$ 60,875</u>
August 3, 1999	Appeal of IRS examination issues commenced.				
March 2003	Obtained compromise settlement with IRS on appeal of examination issues.				
May 15, 2003	Amended state tax returns for decrease in income resulting from IRS appeal changes	(2,510,944)	(125,547)	(50,219)	0
		<u>\$ 6,102,454</u>	<u>\$ 305,123</u>	<u>\$ 122,049</u>	<u>\$ 60,875</u>
June 26, 2003	Received \$50,219 refund of ND Privilege Tax (no interest), refund of ND Bank Tax of \$125,547 and interest denied.				

Senate Finance and Taxation Committee Hearing
Senate Bill No. 2330
February 2, 2005

Testimony of Jon Jensen, Partner, Pearson Christensen, PLLP, Grand Forks, ND, speaking in support of SB 2330.

Mr. Chairman and Committee Members: I am here today to express my support and testify in favor of SB 2330. I am a partner in the law firm of Pearson Christensen, PLLP. After working as a judicial law clerk for the late Chief Justice Ralph Erickstad, I entered private practice in 1991, concentrating on tax litigation and tax controversies. In 1999, our law firm was engaged by Stutsman County State Bank to assist them in determining their correct federal and state tax liabilities for the 1996 tax year.

Mr. LeClair has provided the Committee with a thorough and comprehensive review of the efforts Stutsman County State Bank has undertaken to determine its correct federal and North Dakota tax liabilities for the 1996 tax year. In summary, after filing its original federal income tax return for the 1996 tax year, Stutsman County State Bank was informed by the Internal Revenue Service that an adjustment of its 1996 federal tax liability was being considered. Stutsman County State Bank disagreed with the proposed adjustment but, acting in good faith, paid the proposed federal liability and the corresponding increase in its liability to the State of North Dakota. Stutsman County State Bank then initiated administrative procedures to determine the correct liability. Ultimately, the position of the Internal Revenue Service was determined to be incorrect and Stutsman County State Bank received a refund of a portion of the additional federal tax and interest on the refund that had been paid.

Upon filing a claim for refund of a portion of the additional tax that had been paid by Stutsman County State Bank, Stutsman County State Bank discovered that the state tax department was interpreting the operative law (N.D.C.C. § 57-35-12) as prohibiting the requested refund. Under the Commissioner's reading of the operative law, a financial institution would have been barred from ever seeking a refund as the result of the changes initiated by the Internal Revenue Service;

the Internal Revenue Service audit was not even initiated and Stutsman County State Bank was not aware of the potential change until after the timeframe interpreted by the Commissioner would have expired. Stutsman County State Bank believes that the operative statute, coupled with subsequent legislative changes and parallel income tax refund statutes, compels the conclusion that a refund should be allowed. A logical and reasonable interpretation of the statute would allow for a claim or refund consistent with statutes that were enacted by the legislature prior to the final determination letter of the Internal Revenue Service.

While there are significant interpretation differences between its position and that of the State Tax Commissioner's office, the State Tax Commissioner's office apparently agrees that the result is particularly harsh when applied to Stutsman County State Bank because under no circumstances could Stutsman County State Bank have ever received a refund; it actually paid the additional North Dakota tax after the time period interpreted by the Commissioner's office would have expired. Please note that we are not suggesting that the State Tax Commissioner supports our position, but it is our understanding that the State Tax Commissioner's office does not oppose the legislation and has adopted a neutral position. We understand and respect the interpretation of the Commissioner's office and are simply in a situation where their interpretation of the law differs from that of a taxpayer. Stutsman County State Bank is fortunate to have had positive contact with the State Tax Commissioner's office and the State Tax Commissioner's representatives in dealing with this matter.

Without the enactment of this legislation, financial institutions such as Stutsman County State Bank were placed in the difficult situation of having to choose between being good corporate citizens of the State of North Dakota or adopting the position of challenging the potential tax payable to the State of North Dakota before there had been a resolution of the dispute with the Internal Revenue Service. Stutsman County State Bank chose to be a good corporate citizen and paid the additional North Dakota tax liability even before a final determination had been made that it would owe that liability. Ultimately, both the State of North Dakota and Stutsman County State Bank benefited from the final determination of the Internal Revenue Service. Stutsman County State Bank received a partial refund while the State of North Dakota received additional tax revenue and the beneficial usage of that tax revenue from the date of the payment.

Stutsman County State Bank anticipates that the Committee may have some questions regarding payment of the refund of the bank tax and interest from the general fund. The original tax payment was remitted to Stutsman County and benefited the County and the institutions it supports. However, we believe it would be an undue hardship to Stutsman County and institutions it supports to require Stutsman County to fund the refund claim payment. Stutsman County State Bank is not responsible for the inequities in the bank tax structure or the difference in interpretation of that law. We have proposed, and we believe that it is equitable, that the bank tax refund and interest be paid from the general fund of the State of North Dakota. The general fund was the source of the privilege tax refund which has been received by Stutsman County State Bank.

Thank you for the opportunity to address these issues. Senate Bill No. 2330 provides fairness and equity, both of which are goals that are undoubtedly pursued by the North Dakota State Legislature.

Memorandum

Date: February 2, 2005

To: Senator Christmann

From: Tim LeClair; Eide Bailly LLP
Jon Jensen; Pearson Christensen, PLLP

Cc: Harvey Huber, President
Stutsman County State Bank

Subject: Senate Bill 2330 Senate Finance & Taxation Committee Hearing

Dear Senator Christmann,

Thank you for your testimony and comments in support of SB 2330 this morning. We appreciate your sponsorship of the bill. We would like to take this opportunity to address the testimony of Ms. Wald, the ND Tax Department representative, regarding the bill.

With regard to the question on whether other claims could be submitted to the Tax Department for refund and Ms. Wald's reference to an open case from 1978. We believe Ms. Wald was making a general comment on the fact that it sometimes takes a long time for Federal tax issues to get resolved. It is unlikely that the 1978 open case is a financial institution case that would be eligible for submitting a claim under the proposed bill.

We believe the applicability of the bill is very limited because the bill addresses only **financial institution taxpayers** for years prior to 1997. As of December 31, 1996 there were only 126 financial institutions in the State of ND. In addition, the statute of limitations for Federal tax changes is generally three years after the due date of the return or the date the tax return is filed, which ever is later. The date for the IRS to propose a change for the 1996 tax year would have expired on March 15, 2000 in most cases. In addition, the bill is drafted to permit only claims filed after December 31, 2001. Therefore, for another case to arise, it would have to be a financial institution with a federal examination still in process, or that was completed after 12/31/01 and the taxpayer filed a timely claim with the state of ND for refund. We are not personally aware of any other claims that are pending.

If the perceived openness of the SB2003 is a stumbling block for the bill to proceed through the Senate, we would support an amendment to the bill that would limit the effective date of claims filed under the bill. In an earlier draft of the bill, we had proposed language such as the following to limit the scope of the bill:

Section 2. RETROACTIVE APPLICATION AND EXPIRATION DATE.

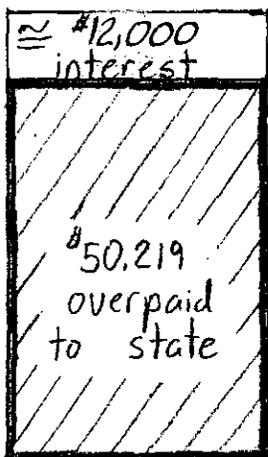
This Act shall ~~apply retroactively~~ and prospectively to all claims filed after December 31, 2001 and through June 30, 2006. After June 30, 2006 this Act is ineffective.

Last, in our post-hearing discussion with Senator Cook, he questioned whether the bill should carry a fiscal note since it is not an appropriations bill. The bill impacts revenue, not appropriations, and therefore would have a fiscal note of \$0.

Please do not hesitate to contact us if any questions on SB 2330 or the above information. If you believe it would be effective for us to email any of the above comments directly to members of the Senate Finance & Taxation Committee, please let us know.

SEN. CHRISTMANN

This page contains estimates. Figures are unofficial

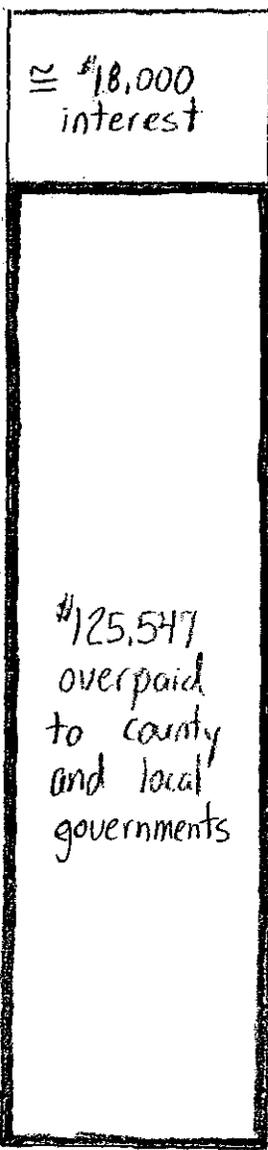


2 1/2 % annual int. from April of 1999 through Mar of 2006

≈ \$14,000

Repaid by state after March 2003 IRS decision

TAX WAS FOR 1996 TAX YEAR. PAID WITH INTEREST IN APRIL OF 1999.



2 1/2 % interest from April of 1999 through Dec of 2006

≈ \$170,000



CPAs & BUSINESS ADVISORS

House Finance & Taxation Committee Hearing
Senate Bill NO. 2330
March 9, 2005

Mr. Chairman and committee members, I am testifying in favor of SB2330.

My name is Tim LeClair. I am a partner with the public accounting firm of Eide Bailly LLP. I have been a practicing Certified Public Accountant for more than 24 years and have worked with financial institution tax matters for most of my career. I have been in charge of services provided to Stutsman County State Bank for the past 15 years.

SB2330 is necessary to provide a fair and equitable resolution to a state tax problem our client has been struggling with for the past 1½ years. The state tax problem is clearly the result of inequities in the tax law that existed in 1996 and prior years. Along with my testimony, I have enclosed a timeline reflecting dates of changes to our client's 1996 state tax liability, which I hope will help you understand the inequity of the 1996 statute regarding the taxation of banks.

Prior to 1996, financial institutions were subject to a ND bank tax and a ND privilege tax. The combined tax rate was 7% same as it is now. The tax law that financial institutions were subject to in 1996 and prior years did not provide financial institutions the tax remedies and rights that were available to other corporate taxpayers at that time and currently available to banks since the 1997 changes. Those inequities included:

- No right to a state tax refund as a result of an IRS audit more than one year after the tax was paid, while remaining liable for increases in a state tax liability due to an IRS audit more than one year after the tax was paid.

- No provision for refund of interest on overpayments, while being subject to interest on amounts due.

The 1997 legislature recognized the inequities of the prior tax law and leveled the playing field for financial institutions for years after 1996. The 1997 legislative changes revamped the entire bank tax structure, resolving many problems in the pre-1997 bank tax law and providing financial institutions' tax filing rights similar to other corporate taxpayers. The statute, since the 1997 changes, now references the general income tax provisions governing corporate taxpayers for rules regarding the administration of the bank tax law, including adjustments of tax liabilities arising from federal changes and payment of interest. Currently, if a Federal examination change is made, a corresponding adjustment is made for state tax purposes – regardless of whether the change is for a refund or a balance due.

Our client, Stutsman County State Bank, has found themselves trapped in the inequity that existed in the prior tax law. I believe their problem is very unusual because of the fact pattern that exists and has resulted in their predicament. Please permit me to explain.

The bank was subject to an IRS examination in January 1999 over significant income tax reporting issues arising in the 1996 tax year. The IRS examination, which concluded in March 1999, resulted in a significant increase in income. In April 1999, the bank filed amended state tax returns and remitted the increase in state taxes to the state in the amount of \$361,000. At that time they were not sure if they were going to appeal the IRS examination changes and they filed the amended state tax returns to stop the accrual of interest on the state tax liability. (At 1% per month, 12% annually, interest accumulates rather quickly!) They paid statutory interest on the balance due of approximately of \$61,000. The bank did request a waiver and refund of the interest paid in June 1999, which was promptly denied in July 1999.

In August 1999 on the advice of legal counsel, SCSB decided to appeal the IRS examination adjustment. After a long, drawn out appeal process, the bank partially prevailed in the appeal in March 2003 resulting in a significant decrease in taxable income. As a result of the IRS appeal and settlement, SCSB submitted refund claims with the State of ND in May 2003 for refund of taxes of \$176,000, plus interest. The state of ND granted a refund of only \$50,219 (the 2% privilege tax) in June 2003, and denied the balance of the refund claim, including interest, citing administrative interpretations of NDCC provisions that existed prior to 1997, and were repealed with the 1997 legislative changes.

It is my observation that SCSB has paid more tax to ND than what is fair and equitable because of the inequity of provisions in the pre-1997 bank tax statute, as interpreted by the ND Tax Department. Banks, for years prior to 1997, are required to pay additional tax due, plus interest, as a result of a federal tax examination change. However, banks may be denied a refund stemming from a federal tax examination change in a pre-1997 year because the interpretation of the ND tax department does not permit a bank the right to a state tax refund more than one year after the tax was paid. In the case of Stutsman County State bank, the period of time for an adjustment that could result in a refund of the state bank tax expired in the month preceding the month in which the original IRS examination concluded! Also, banks are not allowed any interest on refunds arising in pre-1997 years, while being required to pay interest on any balance due arising in pre-1997 years.

The bill is very limited in scope because it addresses ONLY financial institution taxpayers with a timely claim for a pre-1997 tax year filed after December 31, 2001 and before February 15, 2005. The statute of limitations for federal claims for the 1996 tax year expired on March 15, 2000. There were only 126 financial institutions in the state as of December 31, 1996, and it doubtful there were any other banks with an IRS examination with complicating circumstances resulting in an extension of the federal statute of limitations to after December 31, 2001. Based on my inquiries to some of the

larger financial institutions in the state and accounting firms representing financial institutions, I am not aware of any other claims that are pending.

The bill provides a credit that the taxpayer may use against future taxes rather than a refund. In addition, the credit can not exceed 50% of the taxpayer's actual tax liability in subsequent years, without the approval of the County Commission for a larger credit (greater than 50% of tax liability). Our computation of the estimated credit amount is included below.

We believe the proposed bill is necessary in the interest of fairness to taxpayers, including SCSB, to provide access to remedies and rights available to other corporate taxpayers as intended by the 1997 legislation.

**NORTH STAR HOLDING COMPANY
STUTSMAN COUNTY STATE BANK
SB2330 CREDIT CALCULATION**

DISTRIBUTION FUND (COUNTY) PORTION:				ESTIMATED CREDIT
<u>5% BANK & TRUST CO. TAX</u>	<u>RATE</u>	<u>DATE</u>	<u>BALANCE</u>	
Refund per return		2/15/1998	125,547.00	125,547.00
Interest at 12% per Annum	12.00%	4/15/1999	143,047.91	17,500.91
Interest at 2.5% per Annum	2.50%	12/31/2006		27,600.41
				<u>170,648.32</u> (1)
GENERAL FUND PORTION:				
<u>2% PRIVILEGE TAX</u>	<u>RATE</u>	<u>DATE</u>	<u>BALANCE</u>	
Refund per return		4/15/1997 (2)	50,219.00	-
Interest at 12% per Annum	12.00%	4/15/1999	11,804.90	11,804.90 (2)
Interest at 2.5% per Annum	2.50%	4/15/2006		2,067.48
				<u>13,872.38</u>
TOTAL CREDIT (ESTIMATED)				<u><u>184,520.70</u></u>

(1) - Credit under this part cannot exceed 50% of taxpayers liability for the 5% portion of state tax. Unlimited carryover.

(2) - per NDCC 57-38-35.2 interest is paid from the due date of the tax return, except no interest is due for the month in which the return was required to be filed. Therefore interest was calculated from May 1, 1997.

**Stutsman County State Bank
Timeline of State Tax Changes - 1996 Tax Year**

<u>DATE</u>		<u>ND Taxable Income</u>	<u>Form 49 5% Tax Paid (Rec'd)</u>	<u>Form 39B 2% Tax Paid (Rec'd)</u>	<u>Interest Paid (Received)</u>	<u>Total ND Tax & Int. Paid (Rec'd)</u>
January 1, 1997	Effective date of tax law change for banks: Date of enactment of NDCC 57-35.3 Date of repeal of NDCC 57-35 Date of repeal of NDCC 57-35.2					
July 1, 1997	Original 1996 tax returns filed July 1997: Bank and Trust Company Tax Return (ND Form 49) Bank Privilege Tax Return (ND Form 39B)	\$ 3,347,585	\$ 167,379	\$ 66,952		\$ 234,331
May 5, 1998	Amended state tax returns filed for decrease in Federal tax deduction resulting from amended Federal tax return.	111,332	5,567	2,227		7,794
July 2, 1998	Amended state tax returns filed for increase in Federal tax deduction resulting from amended Federal tax return.	(4,437)	(222)	(89)		(311)
February 15, 1998	Due date for payment of 1996 Bank & Trust Company Tax	\$ 3,454,480	\$ 172,724	\$ 69,090	\$ -	\$ 241,814
January 1999	IRS examination of 1996 tax year commenced.					
February 15, 1999	Final due date for filing claim for refund of 1996 Bank & Trust Company Tax per ND Tax Department interpretation of pre-1997 bank tax law.					
March 1999	IRS examination of 1996 tax year concluded.					
April 6, 1999	Amended state tax returns for increase in income and change in federal tax deduction resulting from IRS examination changes.	5,158,918	257,946	103,178		361,124
April 23, 1999	Assessed and paid interest on balance due as reported on amended tax return - Form 49, \$36,112; Form 39B, \$24,763.				60,875	60,875
June 24, 1999	Requested waiver and refund of interest - denied on July 16, 1999	\$ 8,613,398	\$ 430,670	\$ 172,268	\$ 60,875	\$ 663,813
August 3, 1999	Appeal of IRS examination issues commenced.					
March 2003	Obtained compromise settlement with IRS on appeal of examination issues.					
May 15, 2003	Amended state tax returns for decrease in income resulting from IRS appeal changes	(2,510,944)	(125,547)	(50,219)	0	(175,766) (1)
		\$ 6,102,454	\$ 305,123	\$ 122,049	\$ 60,875	\$ 488,047
June 26, 2003	(1) - Received \$50,219 refund of ND Privilege Tax (no interest), refund of ND Bank Tax of \$125,547 and interest denied.					

House Finance and Taxation Committee Hearing
Senate Bill No. 2330
March 8, 2005

Written Testimony of Jon Jensen, Partner, Pearson Christensen, PLLP, Grand Forks, ND, speaking in support of SB 2330.

Mr. Chairman and Committee Members: I am here today to express my support and testify in favor of SB 2330. I am a partner in the law firm of Pearson Christensen, PLLP. After working as a judicial law clerk for the late Chief Justice Ralph Erickstad, I entered private practice in 1991, concentrating on tax litigation and tax controversies. In 1999, our law firm was engaged by Stutsman County State Bank to assist them in determining their correct federal and state tax liabilities for the 1996 tax year.

Mr. LeClair has provided the Committee with a thorough and comprehensive review of the efforts Stutsman County State Bank has undertaken to determine its correct federal and North Dakota tax liabilities for the 1996 tax year. In summary, after filing its original federal income tax return for the 1996 tax year, Stutsman County State Bank was informed by the Internal Revenue Service that an adjustment of its 1996 federal tax liability was being considered. Stutsman County State Bank disagreed with the proposed adjustment but, acting in good faith, paid the proposed federal liability and the corresponding increase in its liability to the State of North Dakota. Stutsman County State Bank then initiated administrative procedures to determine the correct liability. Ultimately, the position of the Internal Revenue Service was determined to be incorrect and Stutsman County State Bank received a refund of a portion of the additional federal tax and interest on the refund that had been paid.

Upon filing a claim for refund of a portion of the additional tax that had been paid by Stutsman County State Bank, Stutsman County State Bank discovered that the state tax department was interpreting the operative law (N.D.C.C. § 57-35-12) as prohibiting the requested refund. Under the Commissioner's reading of the operative law, a financial institution would have been barred from ever seeking a refund as the result of the changes initiated by the Internal Revenue Service;

the Internal Revenue Service audit was not even initiated and Stutsman County State Bank was not aware of the potential change until after the timeframe interpreted by the Commissioner would have expired. Stutsman County State Bank believes that the operative statute, coupled with subsequent legislative changes and parallel income tax refund statutes, compels the conclusion that a refund should be allowed. A logical and reasonable interpretation of the statute would allow for a claim or refund consistent with statutes that were enacted by the legislature prior to the final determination letter of the Internal Revenue Service.

While there are significant interpretation differences between its position and that of the State Tax Commissioner's office, the State Tax Commissioner's office apparently agrees that the result is particularly harsh when applied to Stutsman County State Bank because under no circumstances could Stutsman County State Bank have ever received a refund; it actually paid the additional North Dakota tax after the time period interpreted by the Commissioner's office would have expired. Please note that we are not suggesting that the State Tax Commissioner supports our position, but it is our understanding that the State Tax Commissioner's office does not oppose the legislation and has adopted a neutral position. We understand and respect the interpretation of the Commissioner's office and are simply in a situation where their interpretation of the law differs from that of a taxpayer. Stutsman County State Bank is fortunate to have had positive contact with the State Tax Commissioner's office and the State Tax Commissioner's representatives in dealing with this matter.

Without the enactment of this legislation, financial institutions such as Stutsman County State Bank were placed in the difficult situation of having to choose between being good corporate citizens of the State of North Dakota or adopting the position of challenging the potential tax payable to the State of North Dakota before there had been a resolution of the dispute with the Internal Revenue Service. Stutsman County State Bank chose to be a good corporate citizen and paid the additional North Dakota tax liability even before a final determination had been made that it would owe that liability. Ultimately, both the State of North Dakota and Stutsman County State Bank benefited from the final determination of the Internal Revenue Service. Stutsman County State Bank received a partial refund while the State of North Dakota received additional tax revenue and the beneficial usage of that tax revenue from the date of the payment.

Stutsman County State Bank anticipates that the Committee may have some questions regarding payment of the refund of the bank tax and interest from the general fund. The original tax payment was remitted to Stutsman County and benefited the County and the institutions it supports. However, we believe it would be an undue hardship to Stutsman County and institutions it supports to require Stutsman County to fund the refund claim payment. Stutsman County State Bank is not responsible for the inequities in the bank tax structure or the difference in interpretation of that law. We have proposed, and we believe that it is equitable, that the bank tax refund and interest be paid from the general fund of the State of North Dakota. The general fund was the source of the privilege tax refund which has been received by Stutsman County State Bank.

Our office does a significant amount of tax controversy work in and out of North Dakota. We are not aware of any other taxpayers who would have a claim. In our opinion, the possibility of another taxpayer with a claim has been eliminated by the recent amendments to the legislation that were made with the assistance of the State Tax Department.

Thank you for the opportunity to address these issues. Senate Bill No. 2330 provides fairness and equity, both of which are goals that are undoubtedly pursued by the North Dakota State Legislature.

- rec. 1
- a
 - 1 Entitles bank to credit for tax overpayment and interest received by county.
 - 2 Entitles bank to credit for $2\frac{1}{2}\%$ interest from April of 1999 until Dec. 31, 2006
 - b
 - 1 Entitles bank to credit for interest received by state.
 - 2 Entitles bank to credit for $2\frac{1}{2}\%$ interest from April of 1999 until April 15, 2006
 - c
 - 1 Protects other counties from being impacted by credits.
 - 2 Applies credit to payment to specific county that was unjustly enriched.
 - 3 Allows county to allocate withholding to political subdivisions that were unjustly enriched.
 - d Allocates the bank's withholding to the state and county.
 - e Allows the county to receive at least half their tax due each year
 - f Allows bank to carry credit forward to subsequent successive years until the credit is exhausted.
(most likely more than 2 years)
- Sec. 2 Prevents unforeseen and unanticipated other claims

Chairman Belter and members of the House Finance & Taxation Committee.

My name is Joe Sykora, Business Manager for Jamestown Public Schools. Please note I don't profess to be an "expert" when it comes to every line in the bill and its terminology, however, the money side of things I do understand, but the theory or reason behind the language I don't understand. Our school district is opposed to SB 2330 for the following four reasons.

First, it is interesting to note for the first time in eight years Jamestown Public Schools, the City of Jamestown, and Stutsman County are being asked to make a reimbursement from what I understand, is an overpayment of financial institutional taxes after the IRS finalized a ruling that took place a few years ago. There was no correspondence from our state tax department regarding a local bank making an overpayment with the *possibility* of a future refund. Communication between our local bank, the state tax department, and subsequently to Stutsman County appears to be non-existent in this case. In passing SB 2330, what type of precedent will the legislature be sending regarding "correcting the past"? Is one year enough? What about two? Maybe it should be five? Does this legislation "open the door" to any and all type of refunds with no statute of limitations?

Second, SB 2330 was initially written to have the state pay 12% interest on the refund. That amount was quickly dismissed and changed to 2.5% interest on the refund to be paid by Jamestown Public Schools, the City of Jamestown, and Stutsman County. My question to the committee is the reasoning behind having these three entities pay interest on the refund? The entities accepted the revenue like any other revenue budgeted that year. Funds were used to support general fund expenditures in that fiscal year. Jamestown Public Schools did not take the dollars and subsequently go to the bank and open a new savings account with the purpose of "stashing" the money to earn interest.

This weekend when you head back to your home districts I would ask each of you to visit with a neighbor, spouse, etc. regarding this specific situation. Ask for their comments after describing the financial institution taxes and how they are collected by the state tax department, and then the disbursement process to the school district, city, and county. Don't forget the number of years that have passed. If there is overwhelming support by your neighbors, spouse, etc. to bill the school district, city, and county the 2.5% interest as a part of a potential refund, then it must make sense. However, if they look at you in disbelief that "someone" is passing the buck and the wrong group are being asked to pay a potential interest penalty, then its time to defeat SB 2330.

Third, state statute is updated, changed, revised, or new language is written every two years with the legislative process. Changes are made prospective, that is they take affect from this point forward unless an emergency clause is attached. For example, many years ago a motorist was caught speeding going 70 miles per hour on the interstate. The speed limit on the interstate was later changed to 70 mph. Can the motorist get a refund because that statute on the speeding limit changed? New statute is enacted to cover situations which can not be corrected because of the past, but, to cover those same situations which could arise in the future.

The last reason is the financial hardship to Jamestown Public Schools. It is true Jamestown has a \$16,000,000 general fund budget and how would a small refund be a hardship. If the refund is forced upon the school district, it would be the equivalent of two regular classroom teachers at Jamestown Public Schools. Last year our district decreased expenditures by \$800,000 to meet our budget. This year we are decreasing expenditures by another \$500,000 to meet our budget. The trend will continue.

In summary, our district is apposed to SB 2330 and would like to see a DO NOT PASS from this committee. I will be happy to answer any questions that you might have.

Joe Sykora
Business Manager
Jamestown Public Schools
3-9-2005

March 9, 2005

Representative Wesley R. Belter, Chairman
Finance and Taxation Committee
North Dakota House of Representatives

RE: Senate Bill 2330

Mr. Chairman and members of the committee:

My name is Dwaine Heinrich. I am here today at the request of the Jamestown City Council in my capacity as chairman of the City Council Finance and Legal Committee and as president of the Jamestown City Council to speak in opposition to Senate bill 2330.

First and foremost, we recognize that the financial institution involved in this legislative action is a solid and respected member of our community. We understand that they very likely overpaid their 1997 financial institution taxes as per a 2003 settlement with the Internal Revenue Service. By the time this settlement was reached with the IRS time had expired for filing a claim for a refund of taxes paid in North Dakota.

This bill as initially written would have required a refund from the Administrating agency. The law is written and administered by the state and accordingly the refund would have come from state funds. The bill was amended to put the cost of refund on the local entities.

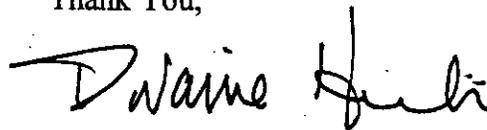
The Jamestown City Council is concerned as to when they can have confidence that funds distributed by the state are theirs to keep if the state legislature enacts this precedent.

The taxes in question were paid based upon current law. The taxpayer is not entitled to a refund unless the legislature enacts this retroactive change into law. Financial institution taxes are administered by the state, if the state chooses to change the law to refund the tax and/or the interest, the refund should be from state money.

The city of Jamestown is, not surprisingly, facing difficult decisions on how to balance it's budget in the next few years. Adding about \$45,000 to our challenge of balancing the budget because of a mistake not made by, or an exception to the rules, not made by the city of Jamestown, is what we are here to oppose today.

Thank you very much for your attention and consideration. Our City Administrator Jeff Fuchs is present here today. Mr. Chairman should you or any member of the committee have questions either Mr. Fuchs or I will attempt to answer them.

Thank You,



Dwaine Heinrich
dwaineheinrich@heinrichandcompany.com
701.952.2250

House Finance and Taxation Committee

SB 2330

Testimony of Noel A. Johnson, Stutsman County Auditor

March 9, 2005

Mr. Chairman, members of the Committee, my name is Noel Johnson, Stutsman County Auditor. I am speaking in opposition to Senate Bill 2330 on behalf of the Stutsman County Commission. We concur with the comments made by Mr. Heinrich and Mr. Sykora.

Stutsman County is opposed to any legislation that provides for a refund for taxes from EIGHT years ago. This legislation benefits one taxpayer, but it sets a precedent. It is possible that future legislatures will be asked to provide enabling legislation for other individuals.

Most tax law provides a limited window for refunds. The general public does not have the ability to change law for their individual benefit. We have no argument with the taxpayer. They are a valued member of our community. If the legislature feels they are entitled to a refund, we believe the refund should come from the \$4,000,000 that the financial institutions pay to the state.