

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER
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DESCRIPTION

14412

2007 HOUSE FINANCE AND TAXATION

HB 1412

# 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1412 A

## House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: January 29, 2007

Recorder Job Number: 2140

Committee Clerk Signature

*Micki Schmidt*

Minutes:

Chairman Belter opened the hearing on HB1412 and asked for testimony in support of the Bill.

**Rep. Nancy Johnson: (See attachment #1)** I also have an amendment that Donnita Wald will walk you through.

**Chairman Belter:** Are there any questions?

**Donnita Wald, Legal Counsel for the Attorney General:** We would like to propose some small amendments. In looking at this Bill, we recognized that before the R & D tax credit, it is not on the nd1 or the nd2, even though we allow the pass through. The amendments that I drafted should take care of this. I will get them down here ASAP.

**Chairman Belter:** In other words, what we've got here is something we're already doing.

**Donnita Wald:** Only corporations are eligible for this credit right now.

**Representative Pinkerton:** Is this for sole proprietorships or only partnerships?

**Donnita Wald:** This would not be allowed for sole proprietorships.

**Representative Pinkerton:** Is there some reason in the tax code to be allowed for sole proprietorships?

**Donnita Wald:** I believe that federal taxes are the tax credit only for corp.'s.

**Representative Pinkerton:** It allows LLP's and LLC's.

**Donnita Wald:** Because those are separate corporate entities, those are different kinds of, the partnership isn't but the corporations are eligible for it.

**Chairman Belter:** Are there any other questions? If not, we'll close the hearing on HB 1412.

# 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1412 B

## House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: January 29, 2007

Recorder Job Number: 2180

Committee Clerk Signature *Mickie Schmielt*

Minutes:

Chairman Belter opened the hearing on HB 1412.

**Chairman Belter:** What does this amendment do?

**Representative Froseth:** It passes it down to the individual instead of the corporation.

**There was general discussion between the committee about the amendment.**

**Chairman Belter:** It's the Tax Departments amendment and we have to make the assumption that it is correct.

**Representative Brandenburg:** I would move the amendment.

**Representative Owens:** Second it.

**Chairman Belter:** Is there any discussion? **All in favor of the proposed amendment signify by saying aye. The motion carries.** Ok, what are your wishes?

**Representative Froseth:** I would move a Do Pass as Amended.

**Representative Pinkerton:** Second it.

**Chairman Belter:** Is there any discussion? Will the clerk read the roll; 11-y, 0-n, 3-absent; Rep. Froseth will carry HB 1412.

**FISCAL NOTE**  
 Requested by Legislative Council  
 01/16/2007

Bill/Resolution No.: HB 1412

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.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 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.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1412 allows the research and experimental expenditure tax credit to be claimed by passthrough entities. The credit is to be calculated at the passthrough entity level, and then passed through to individual partners, shareholders or members.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

There is no available information regarding the level of passthrough entity research that is occurring or that will occur should HB 1412 be enacted. The fiscal impact cannot be computed.

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

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

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

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

<b>Name:</b>	Kathryn L. Strombeck	<b>Agency:</b>	Office of Tax Commissioner
<b>Phone Number:</b>	328-3402	<b>Date Prepared:</b>	01/28/2007

Date: 1-29-07  
Roll Call Vote #: 1412

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

House \_\_\_\_\_ Finance & Tax \_\_\_\_\_ Committee

Check here for Conference Committee

Legislative Council Amendment  
Number \_\_\_\_\_

Action Taken Rep. Do Pass As Amended

Motion Made By Rep. Froseth Seconded By Rep. Brandenburg

Representatives	Yes	No	Representatives	Yes	No
Chairman Belter	✓		Rep. Froelich		
Vice Chairman Drovdal	✓		Rep. Kelsh		
Rep. Brandenburg	✓		Rep. Pinkerton	✓	
Rep. Froseth	✓		Rep. Schmidt	✓	
Rep. Grande			Rep. Vig	✓	
Rep. Headland	✓				
Rep. Owens	✓				
Rep. Weiler	✓				
Rep. Wrangham	✓				

Total (Yes) 11 No 2

Absent 3

Floor Assignment Rep. Froseth

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

**REPORT OF STANDING COMMITTEE**

**HB 1412: Finance and Taxation Committee (Rep. Belter, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). HB 1412 was placed on the Sixth order on the calendar.

Page 1, line 1, after the second "to" insert "section 57-38-30.3 and a new subsection to"

Page 1, after line 4, insert:

**"SECTION 1.** A new subsection to section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

A taxpayer filing a return under this section is entitled to the credit provided under section 2 of this Act."

Page 1, line 13, after the underscored period insert "An individual taxpayer may take the credit passed through under this subsection against the individual's state income tax liability under sections 57-38-29 and 57-38-30."

Renumber accordingly



2007 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1412

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1412

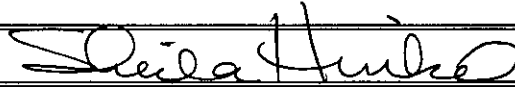
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **March 5, 2007**

Recorder Job Number: **4327**

Committee Clerk Signature



*R&D Expenditures tax credit*

**Nancy Johnson – District 37 – Dickinson - In Favor**

**TESTIMONY # 1** ends 2:20m

**S Wanzek:** This is an IRS question, how did they determine that your activities were in research and development in your business? I'm trying new things on the farm...

**Nancy J:** Because I do a lot of things and creating things all the time, I'm not a good person to answer that. I don't know about farm things.

**S Wanzek:** The criteria, once they determine, you did qualify, you ran into this glitch.

**Nancy J:** That's what happened. As they were doing their audit, they thought I would qualify. Did some research and went to a company that does tax credits for information and viewed how we were doing business and qualified for Federal refund. Then we had to pay back on the state as it didn't flow through.

**S Potter:** There's nothing in here that allows credits as they pass through accumulate and somehow be more than 100% of what was spent on Research and Development?

**Questions? Support? Neutral?**

**Mary Loftsgard – Supervisor ND State Tax Department – In Neutral**

Here to clarify a few things. This credit is just for corporations as it is in the, it is not available for individuals. The credit is available to S corporations right now, however available only on the entity level, and not as a pass through credit. It piggy-backs off the Federal credit. The credit now is 8% of the 5 million dollars and 4% of the research expenses above 1.5 million. If you calculate a credit that is greater than your tax liability, you can only take the credit to the extent of your tax liability, we don't create a refundable credit. You can carry the credits back 3 years and forward 15. HB 1027 does speak to other modifications to the signability and saleability of credits. Bill seeks to allow any partnership, limited liability company, etc. would calculate the credit on the entity level and the credit would be passed through to the members of sub-Chapter L department of partnership, etc. and those individuals would then take the credit on their income tax returns.

**S Potter:** Let's say there is a million dollars of creditable R&D. \$80,000 tax credit is available, there is nothing in this bill that will allow it to go beyond, but distributes to each person's ability to claim the credit.

**Mary L:** Yes

**S Behm:** R&D has an expense of \$100,000 and they're allowed to claim 8% tax credit on that amount? Is that correct.

**Mary L:** Yes

**S Andrist:** I'm trying to understand, using S Potter's example, a million dollar's credit equates to an \$80,000 credit which an ordinary corporation would take against it's taxes, but if the S corporation has no tax liability, which it doesn't, and it had 10 stockholders, they would each be able to get \$8000 of that of the tax credit, is that what the bill does?

**Mary L:** Yes

**S Wanzek:** At the Federal level, does some have to be added back? Is it revenue or income?  
Can you explain the add-back? The component that changes their income.

**Mary L:** What might have happened, if this was a year when they were allowed a federal tax reduction, it reduces the reduction on ND return. On the Federal level, whatever your expenses are determined, you can't also expense them. You take it as an expense on the deductions or you can turn the expense into a credit.

***Representative Johnson returned to podium***

**Representative Johnson:** Whatever we got back from the Federal, we had to pay back to the state.

**S Wanzek:** That's what I anticipated. When got into the Federal determination, you either take it as a credit or an expansion. If you take it as an expense, there aren't many tax rates that are lower than 8% if you give it as an expense credit. The tax rate better be lower than 8.  
I understand the state level one.

**Questions?**

**S Wanzek:** As I understand it, the major issue in ND is allowed to pass down to individuals in Chapter S Corporation.

**Motion for a DO PASS HB 1412 by S Andrist**

**Second by S Wanzek**

**Roll Vote for DO PASS Engrossed HB 1412 6-0-1 Passed**

**Carrier: Potter**

Date: 3-5-07

Roll Call Vote: 1

### 2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1412

Senate INDUSTRY BUSINESS & LABOR Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS.

Motion Made By Andrist Seconded By Wanzek

Senators	Yes	No	Senators	Yes	No
Chairman Klein, Jerry	✓		Senator Behm, Arthur	✓	
Senator Hacker, Nick VC	✓		Senator Heitkamp, Joel	NP	
Senator Andrist, John	✓		Senator Potter, Tracy	✓	
Senator Wanzek, Terry	✓				

Total Yes ~~11~~ 6 No 0

Absent 1

Floor Assignment Potter

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

**REPORT OF STANDING COMMITTEE (410)**  
March 5, 2007 12:15 p.m.

**Module No: SR-41-4438**  
**Carrier: Potter**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1412, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1412 was placed on the Fourteenth order on the calendar.**

2007 TESTIMONY

HB 1412

#1

HB 1412 A

1-29-07 AM



# NORTH DAKOTA HOUSE OF REPRESENTATIVES



Representative Nancy Johnson  
District 37  
1308-A Empire Road  
Dickinson, ND 58601-3615

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360

COMMITTEES:  
Industry, Business and Labor  
Political Subdivisions

HB 1412  
January 19, 2007

Thank you Chairman Belter and members of the Finance and Tax Committee.

HB 1412 is here before you because during tax preparation this past year the accounting firm that does our annual audit and prepares the tax returns for our company recommended that we apply for Federal R&D tax credits. They felt that some of the work we do in our manufacturing plant would qualify.

The accounting firm suggested an accounting group that specializes in R&D tax work. Our company followed the suggestion by our accountants and with the help of these specialists applied for the tax credits. After they began their work, they found out that we did indeed qualify for the tax credits, but that they did not pass-through to "sub-chapter S corporations" filing in North Dakota.

North Dakota provides for an 8% R&D tax credit for companies organized as a "C-Corp" but does not extend this benefit to pass-through entities. Because the R&D Credit calculation at the federal level has an "add-back" component to taxable income, it inadvertently causes additional taxes (and penalties) at the state level. The tax specialists recommended to our company that North Dakota should consider changing the R&D tax code.

After learning about this I contacted State Tax Commissioner, Cory Fong, and Commerce Commissioner Shane Goettle. HB 1027 from the Interim Committee on Economic Development has some R&D provisions in it, but rather than muddy those waters, Commissioners Fong and Goettle recommended that I file a separate bill. That is the bill you have before you.

There is someone here from the tax department to answer questions on any technical information because, bluntly, I don't know how this works.

I want you to note that the effective date on this bill is for the 2007 tax year. It will not affect our company retroactively.

Thank you for your attention and I ask for your DO PASS recommendation.



Proposed Amendments to HB 1412

Page 1, line 1, replace "subsection" with "subsections", replace "section" with "sections" and insert immediately thereafter "57-38-30.3 and"

Page 1, after line 4 insert:

"Section 1. A new subsection to section 57-38-30.3 is created and enacted as follows:

"A taxpayer filing a return under this section is entitled to the credit provided under Section 2 of this Act."

Page 1, line 13, after the period insert "An individual taxpayer may take the credit passed through under this subsection against the individual's state income tax liability under sections 57-38-29 and 57-38-30."

HB 1412  
Senate Industry, Business and Labor Committee  
Chairman Jerry Klein  
March 5, 2007  
Representative Nancy Johnson

HB 1412 is before you because during tax preparation this past year the accounting firm that does our annual audit and prepares the tax returns for our company recommended that we apply for Federal R&D tax credits. They felt that some of the work we do in our manufacturing plant would qualify.

The accounting firm suggested an accounting group that specializes in R&D tax work. Our company followed the suggestion by our accountants and with the help of these specialists applied for the tax credits. After they began their work, they discovered that we did indeed qualify for the tax credits, but that they did not pass-through to "sub-chapter S corporations" filing in North Dakota.

North Dakota provides for an 8% R&D tax credit for companies organized as a "C-Corp" but does not extend this benefit to pass-through entities. Because the R&D credit calculation at the federal level has an "add-back" component to taxable income, it inadvertently causes additional taxes (and penalties) at the state level. The tax specialists recommended to our company that North Dakota should consider changing the R&D tax code.

After learning about this, I contacted State Tax Commissioner Cory Fong, and Commerce Commissioner Shane Goettle. HB 1027 from the Interim Committee on Economic Development has some R&D provisions in it, but rather than muddy those waters, Commissioners Fong and Goettle recommended that I file a separate bill. That is the bill you have before you. It was amended on the House side to allow an individual taxpayer to take the tax credit on the individual's state income tax liability.

Dee Wald is here from the tax department to answer questions on any technical information.

I ask you to notice, too, that the effective date of this bill is for the tax year 2007. It will not retroactively affect our company.

I ask for your Do Pass recommendation and would be happy to respond to questions.

#1  
1412