

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1155

2005 HOUSE FINANCE AND TAXATION

HB 1155

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1155**

House Finance and Taxation Committee

☐ Conference Committee

Hearing Date **January 17, 2005**

Tape Number

1

Side A

Side B

X

Meter #

9.7

Committee Clerk Signature

*Jania Stein*

Minutes:

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

**RICK CLAYBURG, STATE TAX COMMISSIONER** Testified in support of the bill See attached written testimony. Also, two copies of letters addressed to the State Tax Commissioner. See attached estimated biennial fiscal impact of allowing all tax deductions and tax credits on form ND-1 (Currently available on form ND-2 only)

**REP. BRANDENBURG** In looking at the amount of work, so few filing the long form, isn't that quite a task for the tax department to keep both forms?

**RICK CLAYBURGH** For a number of reasons, the maintaining of the two separate forms causes a fair amount of confusion. Software vendors look at the expenses of maintaining a system that supports North Dakota practitioners, right now, some of the larger companies will support both forms. We are the only state in the union that maintains two tax systems.

**REP. IVERSON** If we were to go to the short form, would they still be able to claim some of the deductions you get on the long form?

**RICK CLAYBURGH** Actually, the short form can take as many deductions and credits the legislature wants to put on. We don't have those problems anymore the way our form is set up. Specifically, to your question, you need to decide what credits and deductions which are associated with the long form, could be carried over to the short form. Right now, the legislature has passed deductions and credits that so few North Dakotans have any opportunity to take advantage of, the way it is set up, and the lower rates on the short form. A taxpayer has to overcome a significantly higher tax rate associated with the long form. Several times a year, I called by a taxpayer who is frustrated because they could not use, for example, the geothermal credit allowed on the long form, even though they spent a lot of money on it, thinking they were going to get it. When it came to using it, they would have paid more taxes by using the long form.

**REP. BELTER** There must be a significant difference in people using the two forms. What type of situation exists in the higher paying people?

**RICK CLAYBURGH** In the analysis, there are several different groups who benefit. Some low income people can benefit out of it, because they overcome some thresholds. If you look at Schedule A, for medical deductions, those are not constant, they fluctuate in and out of that. The most significant deduction that is allowed, that has the largest impact, is with those people taking the credit for long term care insurance premium deduction. Their average savings is about seventy eight dollars.

**REP. KELSH** If there is a taxpayer that has a long term contract, and part of that contract includes they may be able to take it on the short form, that will go away, if the legislature does not move that deduction to the short form?

**RICK CLAYBURGH** That is correct.

**REP. CONRAD** Asked whether a list could be presented with all of the deductions on the long form so that they could decide which ones we want to move over.

**RICK CLAYBURGH** Deferred the question to Joseph Becker who has a list.

**JOSEPH BECKER, STATE TAX DEPARTMENT** Presented a handout relating to a short form list of deductions. He went on to explain each deduction on the long and short forms.

See attached copy.

**RICK CLAYBURGH** Added comments relating to the number of taxpayers who use the long form for certain deductions.

**REP. BELTER** Asked for an example of some of the upper limit savings by taxpayers, are they saving thousands of dollars by using the long form?

**JOSEPH BECKER** I can't say we see anyone in the thousands of dollars, as a general rule, perhaps, a couple of hundred, maybe three hundred.

**REP. BELTER** The health care insurance deduction is one of the biggies?

**JOSEPH BECKER** On page 2 of the handout, the long term care premium credit, that is one of the major ones, and that is where we see the largest savings. You are looking at 684, but that is not the entire population of filers that have that type of policy, so not everyone is benefiting. They just happen to be in a situation where a combination of the deductions is getting them down in the lower rate.

**RICH CLAYBURGH** Intervened, and stated there are approximately 1400 - 1500 long term care policies sold, and there were only 684 taking advantage of it.

**REP. KELSH** Would the department be opposed to delaying the effective date on this bill, this is a sudden change, and there are probably a lot of taxpayers expecting to get this credit this year.

**RICK CLAYBURGH** This wouldn't occur until the 2005 tax year which would be filed in 2006. Our purpose here today is to lay this out for you for your guidance on this. Should be continue to operate these separate systems, if you want to sunset these in, it is a policy decision of the legislature, and we would be supportive of that. He stated he was contacted by several individuals who were concerned, but when talking to their tax practioner, they wouldn't save any money with the long form.

The fiscal impact would be approximately 96 million per year, if all individuals would use that. The largest amount of that though, is the deduction for the federal income tax, which I don't think from a policy perspective, you need to maintain, by sticking to the short form, that is approximately 70 million dollars which would be associated with that.

**REP. WRANGHAM** There will be approximately 7000 ND-2 forms filed, would you say that, because of the nature of the deductions that are qualified by this form, would that tend to be the lower income people?

**RICK CLAYBURGH** No, not necessarily. You will probably see a better indication if you look at the federal income tax section on that first page of the sheet. It probably is approximately 1500 - 2000 filers in the lower income group. The lower income individuals are generally the ones that would be able to take the benefit of the excess contribution over the medical expenses on the federal schedule A

**REP. BRANDENBURG** Looking at tax returns from ND-1 to ND-2, that has to be a large task to decide which credits go to the long form and the short form.

**RICK CLAYBURGH** That is a policy decision, this bill in front of you today does not address any of those credits, they are maintained in the statute, but they are not associated currently with ND-1. In order to do that, those specific sections of code would have to be amended to add the reference to the ND-1 form. The policy decision moving them from ND-1 to ND-2, you will have to look at it and decide. You can never look at tax policy as being fair, equitable and equal, because it just cannot happen. You cannot make changes in tax policy and tax law without impacting somebody, to what their current situation is. There becomes a point in economics and fairness. Going back to my original statement, currently, 98% of North Dakota taxpayers, cannot benefit by the deductions and exclusions that are in place.

**REP. IVERSON** There are some deductions here which we just aren't using, but there are some like line 25, 26 and 32, that people are using. What would be the impact if we were to move those over to the other form?

**RICK CLAYBURGH** Gave several deductions and the impact it gave using the short form.

**REP. BELTER** If we did away with ND-2, can you get us the figures what the impact is currently, such as long term care.

**RICK CLAYBURGH** We can do that on a select few but we have a number of the returns where their lines combined, you have five or six lines together, it is next to impossible to provide information from this. The overall net savings is \$153,000.

**REP. DROVDAL** These numbers you are giving us, are they the gross numbers on the ND-2, or are they the net numbers which the state would actually lose, using the ND-1?

**RICK CLAYBURGH** In answer to both numbers I provided, if this bill is passed, and no changes are made, general fund receipts under individual income tax, will increase by \$153,000 per year. That is the net number. If you were to take the deductions and credits that appear on the long form and move them to the short form, the impact would be approximately 96 million dollars net per year in reduction to general fund receipts.

**NEAL PERSON, CPA In corporate practice.** Testified in support of the bill. Stating he was in public practice since 1969. He stated he is a member of the taxation committee for the State Society of CPA's, who he is here to represent. About ten years ago, we did this same thing and everything kind of fizzled out. The reason he is here, he would like to see some savings for the tax department, and also, it is confusing not only for the tax department but the tax preparers. He stated he and his partner do about 800 tax returns per year in their office, they have not prepared form 2, except his partner prepared one, about fifteen years ago. From that perspective it is basically, a waste. The long form is totally an illogical form and totally unnecessary. From the point of view of the preparer, it is a time waster. Our tax rates with the ND-1 are very reasonable compared to other states, and overall, it would be timesaving and simplify our tax system.

**EUDORA STICKA, Retired** Testified in opposition of the bill. See attached written testimony.

With no further testimony, the committee hearing was closed.

**COMMITTEE ACTION** 1-17-05, Tape #2, Side A, Meter #33.1



The committee discussed some of the ideas they had relating to deductions to add to the short form which were on the long form. Committee members felt there is this long list of stuff that no one is using, and possibly the long form should be eliminated.

Rep. Belter suggested that he may appoint a sub committee to make the changes. He wanted to visit with the tax department before making any decision.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1155**

House Finance and Taxation Committee

☐ Conference Committee

Hearing Date **February 1, 2005**

Tape Number	Side A	Side B	Meter #
2	X		19.3

Committee Clerk Signature

Minutes:

**COMMITTEE ACTION**

**REP. DROVDAL** Gave a report on the sub committee who worked on the ND 1 and ND 2 tax forms, and the various deductions which are on the ND 2. The committee recommended that no exemptions be brought with the bill.

**REP. DROVDAL** Made a motion for a **DO PASS**

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

**13 YES      0 NO      1 ABSENT**

**REP. CONRAD** Was given the floor assignment.

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/03/2005

Bill/Resolution No.: HB 1155

**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			\$306,000			
Expenditures			(\$50,000)			
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.*

HB 1155 repeals the optional, "long form" individual income tax method.

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

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

If enacted, HB 1155 is expected to increase state general fund revenues by an estimated \$153,000 per year.

**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.*

Repeal of the optional "long form" individual income tax method is expected to reduce the Tax Department's administrative costs by an estimated \$25,000 per year.

**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  
**Phone Number:** 328-3402

**Agency:** Office of Tax Commissioner  
**Date Prepared:** 01/14/2005

Date: 6-1-20

**Roll Call Vote #:**

## 2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES

**BILL/RESOLUTION NO. HB 1155**

House **FINANCE & TAXATION**

## Committee

☐ Check here for Conference Committee

**Legislative Council Amendment Number**

### Action Taken

**Motion Made By**

**Seconded By**

**Representatives**  
**BELTER, WES, CHAIRMAN**  
**DROVDAL, DAVID, V-CHAIR**  
**BRANDENBURG, MICHAEL**  
**CONRAD, KARI**  
**FROELICH, ROD**  
**GRANDE, BETTE**  
**HEADLAND, CRAIG**  
**IVERSON, RONALD**  
**KELSH, SCOT**  
**NICHOLAS, EUGENE**  
**OWENS, MARK**  
**SCHMIDT, ARLO**  
**WEILER, DAVE**  
**WRANGHAM, DWIGHT**

**Yes**

**No**

## Representatives

**Yes      No**

**Total**

(Yes)

No

**Absent**

## Floor Assignment

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

**REPORT OF STANDING COMMITTEE (410)**  
February 1, 2005 5:14 p.m.

**Module No: HR-21-1623**  
**Carrier: Conrad**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1155: Finance and Taxation Committee (Rep. Belter, Chairman) recommends DO PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1155 was placed on the Eleventh order on the calendar.**

2005 SENATE FINANCE AND TAXATION

HB 1155

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1155**

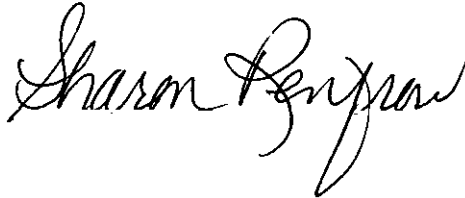
Senate Finance and Taxation Committee

☐ Conference Committee

Hearing Date **March 2, 2005**

Tape Number	Side A	Side B	Meter #
#1	X		23.4 - 61.3
		X	0.0 - 6.3

Committee Clerk Signature



Minutes:

**CHAIRMAN URLACHER** CALLED THE COMMITTEE TO ORDER AND OPENED THE HEARING ON HB 1155.

**RICK CLAYBURGH:** State Tax Commissioner appeared with written testimony stating this relates to elimination of ND-2 which is the old long form or the optional method of filing income taxes for ND. We have now what we call the ND-1 which is the required method and the ND-2 which is the optional method which is the long form.

**SEN. COOK:** If we were to try to move some of the credits available on the long form and make it attractive to certain filers, if we move them over to the short form, then of course those credits are available to the 98% of the tax filers who are presently using the short form simply because of the lower tax break which would then create of course a greater, change the fiscal note. How quick can you if we have a efforts to add some of the credits on the short form can you find quickly as far as what that fiscal impact would be?

**ANSWER;** we have in fact Mr. Becker will address some of those issues today, we have those numbers available. Currently as it stands now with the long form, the net affect is about is \$150,000 dollars associated with all the credits, deductions that are taken on the long form. If you move those over to the short form all that would exist now, the impact would be somewhere in the range closer to 90 million dollars. The standpoint is the majority of North Dakotan's cannot overcome the higher rate, the high rate on the short form ND-1 is 5.54% ranges from 2.1 up to 5.54%, the average is about 3.2% that North Dkaaotan's pay. On the long form the high rate is 10-1/2% and it does not take much to get up into those higher rates, so it doesn't take a lot of income to get up there, so you need to use a lot of deductions, credits to overcome those. 98% of North Dakotans can't overcome those higher rates to take advantage of the benefits of those credits and deductions that the Legislature's put on the long form.

**SEN. WARDNER:** will Joe have a list of the current those that can be deducted on the ND-2?

**ANSWER;** yes, also handed out 2 letters from 2 companies.

**SEN. TRENBEATH:** appeared in support and to propose an amendment to the bill which is an exemption or deduction which would allow retired military personnel who are over the age of 50 yrs old to deduct up to a maximum of \$5,000 of their retirement pay for the purposes of determining their tax liability in the State of ND. However, adjusted dollar for dollar against any social security that they would be receiving.

**SEN. COOK:** the deduction for retired military was referenced as one of the main reasons people used the long form during the study, but we also have deductions for retirement pay for service firefighters, police, highway patrol officers, yours is just addressing the military?

**ANSWER;** Yes



**RICK CLAYBURGH:** this HB 1155 does not eliminate any deductions, exclusions or credits that appear in law, all we're doing is eliminating the reference to the ND=2 or the long form of ND-2, so that all of those credits and deductions still are in law associated with corporate income tax return, etc. Its important not to label this as an elimination of those credits and deductions, all its doing is removing the reference for the long form.

**JOE BECKER:** Tax Dept. Appeared in support and gave a hand out entitled "Comparison of all deductions and credits allowed on ND-1 and ND-2. Regarding the amendment for the retired military, as far as the fiscal impact on that item, if that were moved over to the ND-1, its estimated about \$90,000 dollars. With the handout I gave you, it will give you a side by side comparison of the deductions that are allowed on the form ND-1 and the deductions that are allowed on the form ND-2, so you can see how they compare.

**SEN. WARDNER:** is there another form that could be , the commissioner did say there are other forms that some of this other stuff can be listed on, or did I misunderstand?

**ANSWER:** A number of the deductions and the number of credits run across the board in the income tax arena, some may even go over to the financial institution tax. The bill before you here is only going to eliminate those items that would be for the individual on the form ND-2.

**SEN. TOLLEFSON:** I notice you address in Section 1, the amendment which revolves quite a bit around investment in venture capital corporations.

**ANSWER:** what your seeing on page 1, that section of law 10-30.1 is the venture capital statute it has been inactive since 1991, however I should also note that in SB 2032 they are going to repeal that chapter for that reason. To answer your question, it is still current law and we are adding that language in there so that the corporation can still access that credit.

**SEN. TOLLEFSON:** there's been no consideration for investment tax credit, that's the old Myron G. Nelson Fund your referencing to.

**ANSWER:** In my handout item 11 its Small Business Construction Company Investment Credit, used to be called the Myron G. Nelson Fund.

**SEN. TOLLEFSON:** but now its standard investment in a venture capital organization wouldn't be applicable under, if we do away with ND-1?

**ANSWER:** Item 10, the Venture Capital corporation investment credit is under chapter 10-30.1, that chapter has specific requirements and limitations and a company has to be certified to operate there, we had 2 that were certified back in the 80's they grandfathered themselves out in 1991 and we've no activity under that section of the law since then. For all intensive purposes, there are no corporations eligible under item 10 and hasn't been used.

Item 11, the Myron G. Nelson Fund, its assets were moved over to a ND SBIC, that entity is operational but we have had no new investments since I think 92 and that line on the ND-2 has been silenced since then as well.

**SEN. COOK;** section 16, all the repealers, can you speak to them

**MR. BECKER** gave reference to all the chapters.

**RICK CLAYBURGH:** to provide an example. If you look on the back page of the credit of page 2 and look at the Long Term Insurance Premium Credit, there is 684 times that a tax payer took advantage of that in the 2003 tax year. That was probably one of the more significant uses of the long form and its use.

**REP. DROVDAL:** vice Chairman of the House Finance & Tax Committee appeared to answer questions and tell you what we did when we looked at it. We found out that only about 2% of the

population were currently using this form and saving only about \$22.66 savings. We had concerns with the individual taxpayer and I think we had 1 payer with a concern that we tried to see if we could grandfather in or something and we were unable to. We looked at the 2% that were using them and one of the things that surprised us was that at least half were nonresidents using our long form and the reason they were using was because we seem to be giving double dip to a number of nonresidents that we don't even give to our residents here on the taxes that they owed ND. We are down to 1% which we were concerned about because our idea was not to raise taxes. Another thing that surprised me was, if we transferred all of them over to the ND-1 form from the ND-2, the total cost would be from \$84 million to \$96 million, an additional loss revenue in the State of ND. What that tells me is that when we came out with a lower form, the lower tax rate when we came out with ND-1, we gave a tax break to ND citizens from 84 to 96 million dollars, which was good for us.

The short form would be about 66 to 73 million dollars more to the cost. So carrying it over wasn't a tremendous cost burden and the reason that they are saving that money is we're giving them that lower rate, we wanted to be able to end these deductions on 98%, 99% of our citizens. We did have a bill in front of our committee on the Long Term Health Care Insurance moving it over, it would have cost us 4.6 million dollars and it would not have increased one premium or would not have brought one more person on board. We also looked at who these people were too. We decided we would rather send a clean bill over to you and debate each of these deductions on its own merit. We did look at the beginning farmer and the beginning businessman because we were concerned that this may make a difference on their financial planning when they went into business. We found out that there were 17 beginning farms and beginning entrepreneurs, there

were 17 taxes payers claiming in 2002 of these 3 did not claim deductions after that another 9 switched to the ND-1 form on their own, that 12 out of the 17 and of those 3 are nonresidents, we were down to 3 people who were continuing to have this form in this particularly case and they seem to shift from the 6 in 2003, 6 taxpayers claimed 1 of the 8 deductions and 4 of those were none residents, we are down to 2 that are actually using those forms. We passed it through to you so we can debate and address it.

**SEN. WARDNER;** wanted a copy of the "Estimated Biennial Fiscal Impact of Allowing All Tax Deductions". Tax Dept. Handed it out.

**EUDORA STICKA:** a retired citizen appeared in opposition to the bill with written testimony stating she and her husband have used the long form for the past 14 years and it has saved them approximately \$3,000 in that period of time. Also that this form benefits lower income Civil Service Federal Retirees from past years who do not receive large benefits as the newer retirees do. It also benefits them as her husband does not receive social security.

No further testimony. Closed the hearing.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1155**

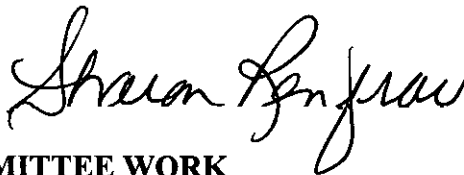
Senate Finance and Taxation Committee

☐ Conference Committee

Hearing Date **March 9, 2005**

Tape Number	Side A	Side B	Meter #
#2	X		24.1 - 34.3

Committee Clerk Signature



Minutes:

**COMMITTEE WORK**

**SEN. EVERY:** made a **MOTION FOR DO PASS** and **REFER TO APPROPRIATIONS**, seconded by Sen. Bercier.

**SEN. COOK:** I can assure you that if we eliminate this long form it will be a "me too" environment for the next few sessions as we pieces of legislation introduced to give tax credits and pensions on this form the next few sessions. They are just gonna line up and some of them should be considered. We better all have in minds a way if we're gonna do this some way of evaluating the merits in this "me too legislation".

**SEN. URLACHER:** I thinks that's the only thing I can see in the value as to bring it forward for evaluation as to movement because some of them probably will.

**SEN. EVERY:** I think we do have a pretty good evaluation of what or who they'll be and there is not that many of them. This kinda nails it down onto what we need and what we don't.

**SEN. COOK:** I would remind probably and that's a great indicator of who's it on the long form but I think if you look at that # 1 Long Term Care, you move that over to the short form, that same amount of credit, the majority of people who take long term care aren't using that credit, they're using the short form.

**SEN. URLACHER:** we haven't addressed the proposed amendments presented by Sen. Trenbeath and I think we should recognize them.

**SEN. WARDNER:** that puts this item on the ND-1

**SEN. EVERY:** withdrew motion and Sen. Bercier withdrew his second on the do pass and further made a **MOTION TO MOVE THE AMENDMENT (58196.0101)** , seconded by Sen. Bercier.

**ROLL CALL VOTE:** 2-4-0                      **MOTION FAILS.**

**SEN. EVERY:** made a **MOTION FOR DO PASS & REFER TO APPROPRIATIONS**, seconded by Sen. Bercier.

**ROLL CALL VOTE:** 4-2-0                      **MOTION FAILS.**

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

**SEN. WARDNER:** in all fairness with the Commissioner here we just see or I just see a flood of people coming in for exemptions on that long form, your right, we put stuff on this ND-2 to feel good, there's stuff on there and I'm telling ya its come over like gang busters and its on the record, this is a pigeon hole for that kind of stuff. Its there and people want to use it and I'm tellin ya, we're opening a can of worms.

**SEN. COOK:** comes to mind, there's a small percentage of people that use the long form and we've heard now here that a great deal of them are out of staters. But I recall from the study that

we had this interim where you can look back into the file report , the majority of people that use the long form, take advantage of it are low income people.

**RICK:** you if you want you could amend it and just eliminate the federal income tax deduction and that would basically dry up the long form, all the deductions would still be there but nobody uses anymore. The way that most people can get it anyway is only because you allow 5,000 people to deduct the federal income tax at the cost of \$315.00.

**ROLL CALL VOTE on DO NOT PASS, 4-2-0. Sen. Cook will carry the bill.**

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1155**

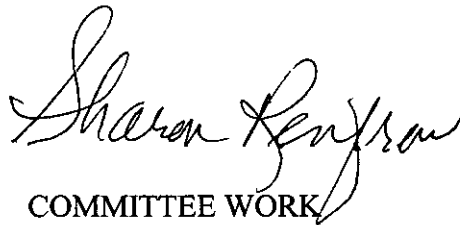
Senate Finance and Taxation Committee

☐ Conference Committee

Hearing Date **March 22, 2005**

Tape Number	Side A	Side B	Meter #
#1	X		0.1 - 1.8

Committee Clerk Signature

  
COMMITTEE WORK

Minutes:

**SEN. URLACHER:** we have 1155 before, we voted it out of this committee with a do not pass and later on an amendment was brought down by the Tax Commissioner. You've all had it and had time to review it, I don't think it makes it very friendly to the long form but I thought maybe in all honesty I would bring it before you and I don't know if we need any explanation on it.

**SEN. COOK:** the bill as introduced that we have coming out of here with a do not pass would have eliminated the long form, I think to eliminate the amendments would eliminate any benefit of the long form myself. I don't know if there would be many people left even be able to use the long form.

**SEN. URLACHER:** so is there any desire to consider the amendments? If not, if there is no motion to consider, why we'll close the hearing.



Date: 3-9-05  
Roll Call Vote #: 1

**2005 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. HB 1155**

Senate

Finance and Taxation

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

*Do Pass & Rep to Approp's*

Motion Made By

*Every*

Seconded By

*Bercier*

Senators  
Sen. Urlacher  
Sen. Wardner  
Sen. Cook  
Sen. Tollefson

Yes No

Senators  
Sen. Bercier  
Sen. Every

Yes No

*With drew*

Total (Yes)

No

Absent

Floor Assignment

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

**PROPOSED AMENDMENTS TO HOUSE BILL 1155 (#58196.0100)**

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to repeal subdivision c of subsection 1 of section 57-38-01.2 of the North Dakota Century Code, relating to the federal income tax deduction for individual income tax purposes; and to provide an effective date.

**SECTION 1. REPEAL.** Subdivision c of subsection 1 of section 57-38-01.2 of the North Dakota Century Code is repealed.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2004."

Renumber accordingly

*By Tax Commissioner*

Date: 3-9-05  
Roll Call Vote #: 2

**2005 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. HB 1155**

Senate

Finance and Taxation

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

*Adopt Amendment*

Motion Made By

*Every*

Seconded By

*Bercier*

Senators	Yes	No	Senators	Yes	No
Sen. Urlacher		✓	Sen. Bercier	✓	
Sen. Wardner		✓	Sen. Every	✓	
Sen. Cook		✓			
Sen. Tollefson		✓			

Total (Yes)

*2*

No

*4*

Absent

*0*

Floor Assignment

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

Date: 3-9-05  
Roll Call Vote #: 3

**2005 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. HB 1155**

Senate

**Finance and Taxation**

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

*Do Pass*

Motion Made By

*Every*

Seconded By

*Bercier*

Senators	Yes	No	Senators	Yes	No
Sen. Urlacher		✓	Sen. Bercier	✓	
Sen. Wardner		✓	Sen. Every	✓	
Sen. Cook		✓			
Sen. Tollefson		✓			

Total (Yes)

No

Absent

Floor Assignment

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

Date: 3-9-05  
Roll Call Vote #: 4

**2005 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. HB 1155**

Senate

Finance and Taxation

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Do Not Pass

Motion Made By

COOK

Seconded By

wardner

Senators	Yes	No	Senators	Yes	No
Sen. Urlacher	✓		Sen. Bercier		✓
Sen. Wardner	✓		Sen. Every		✓
Sen. Cook	✓				
Sen. Tollefson	✓				

Total (Yes)

4

No

2

Absent

0

Floor Assignment

COOK

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

**REPORT OF STANDING COMMITTEE (410)**  
March 9, 2005 3:40 p.m.

**Module No: SR-43-4563**  
**Carrier: Cook**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1155: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends DO NOT PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1155 was placed on the Fourteenth order on the calendar.

**2005 TESTIMONY**

HB 1155



Rick Clayburgh  
Commissioner

STATE OF NORTH DAKOTA

## OFFICE OF STATE TAX COMMISSIONER

STATE CAPITOL, 600 E. BOULEVARD AVE., DEPT. 127, BISMARCK, NORTH DAKOTA 58505-0599

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### TESTIMONY BEFORE THE HOUSE FINANCE AND TAXATION COMMITTEE HOUSE BILL 1155 JANUARY 17, 2005

Chairman Belter and Members of the Committee:

For the record, I am Tax Commissioner Rick Clayburgh. My purpose for being here today is to testify on behalf of House Bill 1155 relating to the elimination of the Form ND-2, the Optional Method (previously known as Form 37) income tax return. This form is more commonly referred to as "the Long Form."

This is not the first time the Legislature has been presented with a bill to repeal the Long Form. The most recent proposal was presented to the Legislature in 1995. At that time, about six percent of all filers used ~~on~~ the Long Form.

We are bringing this issue to you at this time for several reasons. First, the number of Long Form filers continues to decline. For tax year 2003, only two percent of our filers used the Long Form, accounting for less than one-half of one percent of our individual income tax revenue. The average benefit for those using the Long Form was less than \$25.

This decline may be attributable in part to the rewrite of the "Short Form" by the 2001 Legislature. Prior to 2001, the starting point for the Short Form was federal tax liability. In 2001, this was changed to federal taxable income, the same starting point used on the Long Form, but with lower tax rates. The lower rates affiliated with the new Short Form method benefit nearly all of our individual income tax filers.

(Over)



Second, for the handful of those using the Long Form, most need to claim multiple deductions and credits before they overcome the higher rates on that form. As a result, most North Dakotans cannot take advantage of the deductions and credits offered on the Long Form.

Third, technology continues to change the way tax returns are prepared, filed, and processed. Software vendors, those companies that develop tax return preparation programs for both tax professionals and individuals, may not support the Long Form due to the expense of programming and the low number of users.

Also, electronic filing is rapidly becoming the preferred method for filing federal and state income tax returns. For tax year 2003, about 40 percent of all returns were e-filed through the joint Federal-State e-filing program, which is only available for the Short Form. Again, this is because the cost to program the Long Form for e-filing outweighed the benefit to offer the service due to the limited number of taxpayers who use that form.

Finally, the State incurs expenses for a tax system we have to maintain in order to process and administer a tax type that generates a relatively small amount of revenue.

For these reasons, we ask that you consider whether the State of North Dakota should continue to maintain two separate and distinct tax systems and the corresponding expenses; and whether it is fair that 98 percent of our taxpayers subsidize a tax system that provides minimal benefit for a few.

Mr. Chairman, members of the Committee, we ask that you give this proposal favorable consideration. Joe Becker will now present additional information relating to use of the Long Form. As always, our staff is here to assist you in your deliberations. Thank you.



A WoltersKluwer Company

**CCH Tax and Accounting**

9111 E. Douglas, Suite 200

Wichita, KS 67207

(316) 612-5000

#B1155

January 14, 2005

Rick Clayburgh, Tax Commissioner  
Office of State Tax Commissioner  
600 E. Boulevard Ave.  
Bismarck, ND 58505

Rick Clayburgh:

I have been made aware that your legislature will be considering the elimination of North Dakota forms ND-2, Schedule 2, Schedule 3, and Schedule 4. As a developer of tax software, CCH Tax and Accounting is in favor of this change. We currently must calculate returns using both ND-1 and ND-2 in order to determine which method yields the better result. Eliminating the ND-2 and the related schedules would simplify our programming. While it is not possible for me to associate a specific dollar amount of savings related to this change, I can say that it would save use time currently spent supporting these forms in our graphics, programming, and testing departments.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Robert J. Sorenson'.

Robert J. Sorenson  
Assistant Manager  
CCH Tax and Accounting



6220 Greenwich Drive, San Diego, California 92122

January 17, 2005

Chuck Picard  
Office of State Tax Commissioner  
600 E. Boulevard Ave.  
Dept. 127  
Bismark, ND 58505-0599

Dear Chuck:

Per your request, I have solicited feedback from affected teams for our TurboTax, ProSeries, and Lacerte software packages regarding the possible impacts of the elimination of Form ND-2 and related schedules.

On the forms design side of things, the elimination of this form and schedules would cut our workload by about 25%, a savings of approximately one week from our current efforts. On the programming side, it looks like something closer to a 45% decrease in overall work required to put the programs together, which translates into somewhere between two weeks and two months saved, depending on the exact changes in implementation required. We would also like to ask that, if such a change is to be made, guidance be issued as early as possible regarding the revisions to the remaining forms required for next year. This will allow us to do the upfront revisions during the summer rather than in the middle of tax season when our schedule is very tight.

We appreciate being asked for our input on this significant change to North Dakota's individual income tax returns and hope that the information above will be helpful in your decision making in this matter. Please let me know if we can be of any further help in this or any other matter.

Sincerely,

Denise M. Elliott  
Project Manager, Image Development

Rick Clayburgh -  
HB 1155

Table 3

**Estimated Biennial Fiscal Impact  
Of Allowing All Tax Deductions  
and Tax Credits on Form ND-1  
(Currently Available on Form ND-2 only)**

<b>Deductions Currently Allowed on Form ND-2 Only</b>	<b>Estimated Biennial Fiscal Impact of Allowing on Form ND-1</b>			
Military pay exclusion	\$	(430,000)	to	\$ (538,000)
Additional military pay exclusion		(65,000)	to	(81,000)
Military retirement pay exclusion		(90,000)	to	(113,000)
Income from federal civil service pension, etc.		(785,000)	to	(981,000)
Interest income from sale of land to beginning farmer		(10,000)	to	(13,000)
Rental income from leasing land to beginning farmer		(108,000)	to	(135,000)
Gain from sale of land to beginning farmer		(25,000)	to	(31,000)
Interest income from North Dakota financial institutions		(2,315,000)	to	(2,894,000)
Interest/Rental income and Gain from sale to a beginning entrepreneur		(486,000)	to	(608,000)
Medical expenses not allowed due to federal AGI limits		(4,617,000)	to	(5,771,000)
Additional exemption for MFJ, HH, or QW		(2,085,000)	to	(2,606,000)
Federal income tax deduction		(66,720,000)	to	(73,392,000)
<b>Subtotal: Estimated Biennial Fiscal Impact of Tax Deductions if they were made available on Form ND-1</b>	<b>\$</b>	<b>(77,736,000)</b>	<b>to</b>	<b>\$ (87,163,000)</b>
<b>Tax Credits Currently Allowed on Form ND-2 Only</b>				
Credit for contributions to nonprofit private colleges in ND	\$	(1,200,000)	to	(1,800,000)
Credit for contributions to nonprofit private high schools in ND		(1,000,000)	to	(1,500,000)
Long-term care insurance credit		(4,600,000)	to	(5,750,000)
<b>Subtotal: Estimated Biennial Fiscal Impact of Tax Credits if they were made available on Form ND-1</b>	<b>\$</b>	<b>(6,800,000)</b>	<b>to</b>	<b>\$ (9,050,000)</b>
<b>Total: Estimated Biennial Fiscal Impact of Tax Deductions and Tax Credits if they were made available on Form ND-1</b>	<b>\$</b>	<b>(84,536,000)</b>	<b>to</b>	<b>\$ (96,213,000)</b>

**IGNATIUS STICKA**

**From:** "IGNATIUS STICKA" <STICK@BIS.MIDCO.NET>  
**To:** <WBELTER@STATE.ND.US>  
**Sent:** Sunday, January 16, 2005 11:31 AM  
**Subject:** HB 1155

I would like to encourage a No Vote on HB 1155, which would eliminate the Optional Long Form Income Tax Return.

We have been using this form to our advantage for the past 14 years ever since my husband retired from the U.S. Post Office with Federal Retirement. Using this form has saved us approximately \$3,000 in that period of time.

This form benefits lower income Federal Retirees from past years who do not receive large benefits as the newer retirees do. It gives a deduction for the 7.5% medical expense which is disallowed if you itemize deductions on your Federal Return. It also gives a Tax Credit for Long Term Care Insurance and for contributions to Non-profit Private Colleges and High Schools. Unless you make allowances for these credits on the Short Form, it is in effect a Tax Increase for certain individuals.

I have been a Volunteer Tax Counselor through RSVP for about 10 years and prepare about 30 Tax Forms each year. I use the State Long Form on 3 of them, which figures to 10%. I believe that amount justifies the continued use of this form. I believe more people could take advantage of this form, but they don't realize how much it could benefit them.

Eudora Sticka  
Ignatius Sticka

1/16/2005

GOOD MORNING CHAIRMAN BELTER AND MEMBERS OF THE FINANCE AND TAXATION COMMITTEE.

MY NAME IS EUDORA STICKA AND I AM RETIRED. I AM A VOLUNTEER TAX COUNSELOR FOR RSVP.

I AM HERE TO URGE A DO NOT PASS ON HB 1155, WHICH WOULD ELIMINATE THE OPTIONAL LONG FORM INCOME TAX RETURN.

**Becker, Joe J.**

**From:** Becker, Joe J.  
**Sent:** Friday, January 28, 2005 4:52 PM  
**To:** Drovdal, David O.  
**Cc:** Strombeck, Kathy L.; Wald, Dee A.; Clayburgh, Rick S.; Weigel, Jill M.  
**Subject:** Subcommittee on House Bill 1155

Representative Drovdal,

I'm getting back to you regarding the subcommittee meeting on House Bill 1155 (elimination of the Form ND-2 system). You asked us to find out more about the taxpayers claiming the beginning farmer and beginning entrepreneur income deductions allowed on Form ND-2. Following is a summary of our findings.

**2002 tax year**

17 taxpayers claimed one of the above deductions in 2002. Of these, 3 will not claim the deduction in a future year. Another 9 switched from Form ND-2 to Form ND-1 in 2003 (on which the deductions are not allowed)—whether they'll switch back in 2004 we can't say. Of the 17 taxpayers claiming a deduction, 3 of them were nonresidents.

**2003 tax year**

6 taxpayers claimed one of the above deductions in 2003. Of these, 4 of them were nonresidents.

It is not possible to determine the number of years the contracts will run without contacting the taxpayer to obtain a copy of the contract for review. Assuming that we did have an opportunity to examine every contract, that in itself doesn't tell us everything. Even though a contract extends beyond 2003, that is no guarantee that the taxpayer will actually claim the deduction in 2004 or after. Our review of the returns for 2002 and 2003 show that even though a taxpayer qualifies for the deduction, the taxpayer does not necessarily claim it for every year of the contract. In other words, the taxpayer doesn't necessarily benefit from the deduction every year of the contract, and the taxpayer will switch to Form ND-1 in a year when the deduction isn't beneficial. As evidence of this, 9 of the taxpayers who claimed the deduction in 2002 switched to Form ND-1 (and therefore didn't claim the deduction) even though they were still eligible for it.

In summary, there are a handful of taxpayers who may have contracts extending beyond 2003. However, as explained in the preceding paragraph, without examining those contracts, we can't say for sure if they do extend beyond 2003 or for how long. Further, even if a contract does extend beyond 2003, that is not an indicator that the taxpayer will actually use Form ND-2 and claim the deduction in tax years 2004 and after.

Also note that if an existing contract is grandfathered in on Form ND-1, to allow the taxpayer to claim the full amount of the deduction on Form ND-1 (that would have been allowed on Form ND-2) will either (1) give the taxpayer a benefit he or she would not necessarily have enjoyed on Form ND-2 or (2) give the taxpayer a benefit that will exceed the benefit enjoyed on Form ND-2.

If we can be of further assistance, do not hesitate to let us know.

Joseph J. Becker  
ND Office of State Tax Commissioner  
Phone: (701) 328-3451  
E-mail: [jjbecker@state.nd.us](mailto:jjbecker@state.nd.us)



**North Dakota  
Office of State Tax Commissioner**

Rick Clayburgh, Tax Commissioner

# Memo

**To:** Representative Drovdal  
**From:** Joseph Becker, Auditor III/Research Specialist  
Individual Income Tax Section  
**Date:** February 1, 2005  
**Re:** HB 1155 (Elimination of Form ND-2 method)

Phone: 701.328.3451  
E-mail: [jjbecker@state.nd.us](mailto:jjbecker@state.nd.us)

You requested my comments on the idea of grandfathering in those taxpayers who used Form ND-2 in a previous year because they benefited to some degree from its use. The following comments are offered for your consideration in this regard:

- Our sampling of Form ND-2 returns, as well as our past twenty-plus years of experience in examining returns, shows that taxpayers do not consistently use Form ND-2 from year to year. Depending on each tax year's situation, taxpayers switch between Form ND-1 and Form ND-2, regardless of the type of deduction or credit involved. Therefore, it is not possible to determine with certainty which taxpayers who used Form ND-2 in one year will necessarily do so again the next.
- It cannot be assumed that certain taxpayers have always benefited (or will continue to benefit) from the use of Form ND-2. Our review of returns doesn't support this assumption. Granted, there are some taxpayers that have filed Form ND-2 fairly consistently, but as our office has testified, the number of these taxpayers and their tax savings has been small.
- With respect to each deduction or credit allowed only on Form ND-2, there are many taxpayers who are eligible for it. Take the civil service pension exclusion for example. While there may be a dozen or so taxpayers who claimed this exclusion on Form ND-2 and were able to save some tax dollars by doing so, there are thousands of other civil service retirees who are just as eligible for the exclusion (but don't claim it because their tax is lower on Form ND-1). Allowing one civil service retiree to claim part or all of the pension exclusion on Form ND-1 as part of a grandfathering provision will prompt all of the other civil service retirees to ask why they are not allowed the same break.



- As our office has testified to, more than one deduction and/or credit was required to overcome the higher tax rates on Form ND-2. This complicates any determination of which taxpayers to grandfather in.
- Should a grandfathering provision of some sort be considered by the Committee, please note that simply allowing the deduction or credit in full on Form ND-1 will provide a greater benefit to the taxpayer than was enjoyed on Form ND-2. Therefore, the Committee may want to consider adopting some limitation on the amount of the deduction or credit allowed. One suggested approach would be to require the taxpayer to complete a supplemental worksheet on which the tax would be calculated under the Form ND-2 method to determine if the tax under the Form ND-2 method would be lower than the Form ND-1 tax, and, if so, allow a credit for the difference. To adopt a method that may allow more of a benefit on Form ND-1 than that enjoyed on Form ND-2 would, I think, spark interest on the part of other taxpayers who cannot benefit.
- I've attached a copy of a previous e-mail message covering our findings of a review of Form ND-2 returns on which there is a beginning farmer or beginning entrepreneur deduction.

If I can be of further help to the Committee, do not hesitate to contact me.

# Comparison of all deductions allowed on Form ND-1 and Form ND-2

Page 1

► The number in parentheses ( ) in the column for Form ND-2 shows the number of returns on which the deduction was claimed. If there's no number, separate statistics are not available.

► Generally, taxpayers who benefited from using Form ND-2 needed to have more than one deduction and/or tax credit to overcome the higher tax rates on Form ND-2 as compared to those on Form ND-1.

For each item in the list, an X in either (or both) of the columns on the right indicates the form on which the item is allowed by law.

	Form ND-1 (Main Method)	Form ND-2 (Optional method)	
1 Interest on U.S. obligations exemption	X	X	
2 Native American income exemption	X	X	
3 U.S. Railroad Retirement Board benefit exemption	X	X	
4 Nonresident military income adjustment	X	X	
5 30% net long-term capital gain exclusion	X		
6 Income from a pass-through entity subject to the ND financial institution tax	X	X	
7 Renaissance zone income exemption	X	X	
8 New or expanding business income exemption	X	X	
9 National Guard/Reserve member federal duty income exclusion	X	X	
10 U.S. armed forces active duty pay exclusion (up to \$1,000)		X	(165)
11 U.S. armed forces overseas active duty pay exclusion (up to \$300 per month)		X	(55)
12 U.S. armed forces retirement pay exclusion (up to \$5,000)		X	(26)
13 Federal civil service retirement pay exclusion (up to \$5,000)		X	} (114)
14 ND city firefighter relief association pay exclusion (up to \$5,000)		X	
15 ND city police officer retirement pay exclusion (up to \$5,000)		X	
16 ND highway patrol officer retirement pay exclusion (up to \$5,000)		X	
17 Beginning farmer deduction: Interest on contract for deed for sale of farmland		X	(<5)
18 Beginning farmer deduction: Income from lease of farmland (up to \$25,000)		X	(6)
19 Beginning farmer deduction: Gain from sale of farmland		X	(8)
20 Deduction for interest from banks or similar institutions (up to \$300/\$600, if joint)		X	(770)
21 Beginning entrepreneur deduction: Interest on contract for deed for sale of business		X	(<5)
22 Beginning entrepreneur deduction: Income from lease of business (up to \$25,000)		X	(<5)
23 Beginning entrepreneur deduction: Gain from sale of business		X	(<5)
24 Deduction for investment in a venture capital corporation (up to \$5,000/\$10,000, joint)		X	0
25 Deduction of medical expenses in excess of 7.5% of adjusted gross income		X	(2,698)
26 \$300 exemption if married filing jointly, head of household, or qualifying widower		X	(4,540)
27 Deduction of \$1,750 for adopting a child under age 21 (year of adoption)		X	
28 Deduction of up to \$1,000 of cost of adopting a child under age 21 who is mentally retarded, blind or disabled (year of adoption)		X	
29 Deduction of \$750 for an adopted child under age 21 who is mentally retarded, blind or disabled (annual)		X	
30 Exclusion of gain from sale of property due to exercise of eminent domain		X	0
31 Exclusion of gain from sale of stock in a corporation that relocates to ND		X	0
32 Federal income tax deduction		X	(5,913)

# Comparison of all tax credits allowed on Form ND-1 and Form ND-2

Page 2

The number in parentheses ( ) in the column for Form ND-2 shows the number of returns on which the tax credit was claimed. If there's no number, separate statistics are not available.

For each item in the list, an X in either (or both) of the columns on the right indicates the form on which the item is allowed by law.

- ▶ Generally, taxpayers who benefited from using Form ND-2 needed to have more than one deduction and/or tax credit to overcome the higher tax rates on Form ND-2 as compared to those on Form ND-1.

	<b>Form ND-1</b> (Main Method)	<b>Form ND-2</b> (Optional method)
1 Credit for income tax paid to another state (North Dakota residents only)	X	X
2 Family member care credit	X	X
3 Seed capital investment credit	X	X
4 Agricultural commodity processing facility investment credit	X	X
5 Renaissance zone credit	X	X
6 Credit for unused federal credit for prior year minimum tax	X	
7 Credit for contribution to a nonprofit private college in North Dakota		X (11)
8 Credit for contribution to a nonprofit private high school in North Dakota		X (14)
9 Long-term care insurance premium credit		X (684)
10 North Dakota venture capital corporation investment credit		X 0
11 North Dakota Small Business Investment Company investment credit		X 0
12 North Dakota certified nonprofit development corporation investment credit		X 0
13 Credit for installing a geothermal, solar or wind energy device credit		X (<5)
14 Credit for employing a developmentally disabled or chronically mentally ill person		X (<5)

## Additional pertinent information:

- ▶ The total net tax liability for the 2003 tax year generated by—

**Form ND-2** \$777,825 ( 0.38%)

**All returns** \$202,391,835 (100.00%)

- ▶ Of the total Form ND-2 returns filed, only 2,950 were filed by North Dakota residents.

**Number of Form ND-2 filed** 6,971 ( 2.00%)

**Number of Form ND-1 filed** 310,436 (98.00%)

- ▶ The administrative cost savings of repealing Form ND-2 is estimated to be \$25,000 per year.
- ▶ In addition to the administrative cost savings, it is estimated that there will be a positive fiscal impact of \$153,000 per year.
- ▶ Based on a sampling of Form ND-2 returns, the average savings for those taxpayers using Form ND-2 was \$22.66.
- ▶ The tax rates on Form ND-2 are significantly higher than those on Form ND-1—

	<b>Form ND-1</b>	<b>Form ND-2</b>
Lowest rate	2.10%	2.67%
Highest	5.54%	12.00%

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1155

Page 1, line 1, after "Act" insert "to create and enact a new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code, relating to an individual income tax deduction for retired military personnel pay;"

Page 7, after line 13, insert:

**"SECTION 14.** A new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Reduced by any amount, up to a maximum of five thousand dollars, received by any person fifty years of age or older as retired military personnel pay for service in the United States army, navy, air force, coast guard, or marine corps or reserve components of any of those military branches. The adjustment provided by this subdivision must be reduced by any amount received pursuant to the federal Social Security Act."

Renumber accordingly



Rick Clayburgh  
Commissioner

STATE OF NORTH DAKOTA

## OFFICE OF STATE TAX COMMISSIONER

STATE CAPITOL, 600 E. BOULEVARD AVE., DEPT. 127, BISMARCK, NORTH DAKOTA 58505-0599

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Hearing/Speech Impaired 800-366-6888 (TTY Relay North Dakota)

[www.ndtaxdepartment.gov](http://www.ndtaxdepartment.gov)

### TESTIMONY BEFORE THE SENATE FINANCE AND TAXATION COMMITTEE HOUSE BILL 1155 MARCH 2, 2005

Chairman Urlacher and Members of the Committee:

For the record, I am Tax Commissioner Rick Clayburgh. My purpose for being here today is to testify on behalf of House Bill 1155 relating to the elimination of the Form ND-2, the Optional Method (previously known as Form 37) income tax return. This form is more commonly referred to as "the Long Form."

This is not the first time the Legislature has been presented with a bill to repeal the Long Form. The most recent proposal was presented to the Legislature in 1995. At that time, about six percent of all filers used on the Long Form.

We are bringing this issue to you at this time for several reasons. First, the number of Long Form filers continues to decline. For tax year 2003, only two percent of our filers used the Long Form, accounting for less than one-half of one percent of our individual income tax revenue. The average benefit for those using the Long Form was less than \$25.

This decline may be attributable in part to the rewrite of the "Short Form" by the 2001 Legislature. Prior to 2001, the starting point for the Short Form was federal tax liability. In 2001, this was changed to federal taxable income, the same starting point used on the Long Form, but with lower tax rates. The lower rates affiliated with the new Short Form method benefit nearly all of our individual income tax filers.

(Over)

Second, for the handful of those using the Long Form, most need to claim multiple deductions and credits before they overcome the higher rates on that form. As a result, most North Dakotan's cannot take advantage of the deductions and credits offered on the Long Form.

Third, technology continues to change the way tax returns are prepared, filed, and processed. Software vendors, those companies that develop tax return preparation programs for both tax professionals and individuals, may not support the Long Form due to the expense of programming and the low number of users.

Also, electronic filing is rapidly becoming the preferred method for filing federal and state income tax returns. For tax year 2003, about 40 percent of all returns were e-filed through the joint Federal-State e-filing program, which is only available for the Short Form. Again, this is because the cost to program the Long Form for e-filing outweighed the benefit to offer the service due to the limited number of taxpayers who use that form.

Finally, the State incurs expenses for a tax system we have to maintain in order to process and administer a tax type that generates a relatively small amount of revenue.

For these reasons, we ask that you consider whether the State of North Dakota should continue to maintain two separate and distinct tax systems and the corresponding expenses; and whether it is fair that 98 percent of our taxpayers subsidize a tax system that provides minimal benefit for a few.

Mr. Chairman, members of the Committee, we ask that you give this proposal favorable consideration. Joe Becker will now present additional information relating to use of the Long Form. As always, our staff is here to assist you in your deliberations. Thank you.

# Comparison of all deductions allowed on Form ND-1 and Form ND-2

Page 1

For each item in the list, an X in either (or both) of the columns on the right indicates the form on which the item is allowed by law.

The number in parentheses ( ) in the column for Form ND-2 shows the number of returns on which the deduction was claimed for the 2003 tax year. If there's no number, separate statistics are not available.

	Form ND-1 (Main Method)	Form ND-2 (Optional method)	
1 Interest on U.S. obligations exemption	X	X	
2 Native American income exemption	X	X	
3 U.S. Railroad Retirement Board benefit exemption	X	X	
4 Nonresident military income adjustment	X	X	
5 30% net long-term capital gain exclusion	X		
6 Income from a pass-through entity subject to the ND financial institution tax	X	X	
7 Renaissance zone income exemption	X	X	
8 New or expanding business income exemption	X	X	
9 National Guard/Reserve member federal duty income exclusion	X	X	
10 U.S. armed forces active duty pay exclusion (up to \$1,000)		X	(165)
11 U.S. armed forces overseas active duty pay exclusion (up to \$300 per month)		X	(55)
12 U.S. armed forces retirement pay exclusion (up to \$5,000)		X	(26)
13 Federal civil service retirement pay exclusion (up to \$5,000)		X	(114) This is the total for these four items.
14 ND city firefighter relief association pay exclusion (up to \$5,000)		X	
15 ND city police officer retirement pay exclusion (up to \$5,000)		X	
16 ND highway patrol officer retirement pay exclusion (up to \$5,000)		X	
17 Beginning farmer deduction: Interest on contract for deed for sale of farmland		X	(<5)
18 Beginning farmer deduction: Income from lease of farmland (up to \$25,000)		X	(6)
19 Beginning farmer deduction: Gain from sale of farmland		X	(8)
20 Deduction for interest from banks or similar institutions (up to \$300/\$600, if joint)		X	(770)
21 Beginning entrepreneur deduction: Interest on contract for deed for sale of business		X	(<5)
22 Beginning entrepreneur deduction: Income from lease of business (up to \$25,000)		X	(<5)
23 Beginning entrepreneur deduction: Gain from sale of business		X	(<5)
24 Deduction for investment in a venture capital corporation (up to \$5,000/\$10,000, joint)		X	0
25 Deduction of medical expenses in excess of 7.5% of adjusted gross income		X	(2,698)
26 \$300 exemption if married filing jointly, head of household, or qualifying widower		X	(4,540)
27 Deduction of \$1,750 for adopting a child under age 21 (year of adoption)		X	
28 Deduction of up to \$1,000 of cost of adopting a child under age 21 who is mentally retarded, blind or disabled (year of adoption)		X	
29 Deduction of \$750 for an adopted child under age 21 who is mentally retarded, blind or disabled (annual)		X	
30 Exclusion of gain from sale of property due to exercise of eminent domain		X	0
31 Exclusion of gain from sale of stock in a corporation that relocates to ND		X	0
32 Federal income tax deduction		X	(5,913)

# Comparison of all tax credits allowed on Form ND-1 and Form ND-2

Page 2

For each item in the list, an X in either (or both) of the columns on the right indicates the form on which the item is allowed by law.

The number in parentheses ( ) in the column for Form ND-2 shows the number of returns on which the deduction was claimed for the 2003 tax year. If there's no number, separate statistics are not available.

	Form ND-1 (Main Method)	Form ND-2 (Optional method)
1 Credit for income tax paid to another state (North Dakota residents only)	X	X
2 Family member care credit	X	X
3 Seed capital investment credit	X	X
4 Agricultural commodity processing facility investment credit	X	X
5 Renaissance zone credit	X	X
6 Credit for unused federal credit for prior year minimum tax	X	
7 Credit for contribution to a nonprofit private college in North Dakota		X (11)
8 Credit for contribution to a nonprofit private high school in North Dakota		X (14)
9 Long-term care insurance premium credit		X (684)
10 North Dakota venture capital corporation investment credit		X 0
11 North Dakota Small Business Investment Company investment credit		X 0
North Dakota certified nonprofit development corporation investment credit		X 0
Credit for installing a geothermal, solar or wind energy device credit		X (<5)
14 Credit for employing a developmentally disabled or chronically mentally ill person		X (<5)

## Additional information:

- ▶ The total net tax liability for the 2003 tax year generated by—

Form ND-2.....\$777,825 ( 0.38%)

All returns .....\$202,391,835 (100.00%)

- ▶ Of the total Form ND-2 returns filed for the 2003 tax year, only 2,950 were filed by North Dakota residents.

Number of Form ND-2 filed .....6,971 ( 2.00%)

Number of Form ND-1 filed .....310,436 (98.00%)

- ▶ A sampling of Form ND-2 returns filed for the 2003 tax year showed the average tax savings to be \$22.66.
- ▶ Generally, taxpayers who benefited from using Form ND-2 needed to have more than one deduction and/or tax credit to overcome the higher tax rates on Form ND-2.

Form ND-2.....Low-2.67% /High-12.00% (The high rate is 116% higher on Form ND-2)

Form ND-1.....Low-2.10% /High- 5.54%

- ▶ It cannot be assumed from the numbers shown on pages 1 and 2 of this handout that taxpayers who used Form ND-2 for the 2003 tax year have always benefited, or will continue to benefit, from its use.

The administrative cost savings of repealing Form ND-2 is estimated to be \$25,000 per year.

- ▶ In addition to the administrative cost savings, it is estimated that there will be a positive fiscal impact of \$153,000 per year.



**Estimated Biennial Fiscal Impact  
Of Allowing All Tax Deductions  
and Tax Credits on Form ND-1  
(Currently Available on Form ND-2 only)**

<b>Deductions Currently Allowed on Form ND-2 Only</b>	<b>Estimated Biennial Fiscal Impact of Allowing on Form ND-1</b>
Military pay exclusion	\$ (430,000)
Additional military pay exclusion	(65,000)
Military retirement pay exclusion	(90,000)
Income from federal civil service pension, etc.	(785,000)
Interest income from sale of land to beginning farmer	(10,000)
Rental income from leasing land to beginning farmer	(108,000)
Gain from sale of land to beginning farmer	(25,000)
Interest income from North Dakota financial institutions	(2,315,000)
Interest/Rental income and Gain from sale to a beginning entrepreneur	(486,000)
Medical expenses not allowed due to federal AGI limits	(4,617,000)
Additional exemption for MFJ, HH, or QW	(2,085,000)
Federal income tax deduction	(66,720,000)
<b>Subtotal: Estimated Biennial Fiscal Impact of Tax Deductions if they were made available on Form ND-1</b>	<b>\$ (77,736,000)</b>
<b>Tax Credits Currently Allowed on Form ND-2 Only</b>	
Credit for contributions to nonprofit private colleges in ND	\$ (1,200,000)
Credit for contributions to nonprofit private high schools in ND	(1,000,000)
Long-term care insurance credit	(4,600,000)
<b>Subtotal: Estimated Biennial Fiscal Impact of Tax Credits if they were made available on Form ND-1</b>	<b>\$ (6,800,000)</b>
<b>Total: Estimated Biennial Fiscal Impact of Tax Deductions and Tax Credits if they were made available on Form ND-1</b>	<b>\$ (84,536,000)</b>

Good Morning Chairman Urlacher and members of the Senate Finance & Taxation Committee.

My name is Eudora Sticka and I am retired. I am a Volunteer Tax Counselor for RSVP.

I am here to urge a DO NOT pass on HB 1155, which would eliminate the Optional Long Form Income Tax Return.

We have been using this form to our advantage for the past 14 years ever since my husband retired from the U.S. Post Office with Civil Service Federal Retirement. Using this form has saved us approximately \$3,000 in that period of time.

This form benefits lower income Civil Service Federal Retirees from past years who do not receive large benefits as the newer retirees do. It also benefits us as my husband does not receive Social Security.

It gives a deduction for the 7.5% medical expense which is disallowed if you itemize deductions on your Federal Return. It also gives a Tax Credit for Long Term Care Insurance and for contributions to Non-profit Private Colleges and High Schools. Unless you make allowances for these credits on the Short Form, it is in effect a Tax increase for certain individuals.

I have been a Volunteer Tax Counselor through RSVP for about 10 years and I prepare about 30 Tax Forms each year. I use the Long Form on 3 of them, which figures to 10%. I think that amount justifies the continued use of this Form. I just completed a recent Return which resulted in a \$160 saving for the individual. I believe more people could take advantage of this form, but they don't realize how much it could benefit them.

Thank you for your time.

Eudora Sticka  
Ignatius Sticka




North Dakota Office of State Tax Commissioner

# 2004 Individual Income Tax

Rick Clayburgh, Tax Commissioner

## Form ND-1

Top 10 tips to getting  
your refund faster:

1. E-File - see page 15 for details.  

2. Use Direct Deposit - see page 12 for details.
3. Use the correct form.
4. Type or clearly print your name, address, and correct Social Security number.
5. Double check your math.
6. Sign your return.
7. Attach every Form W-2 and 1099 showing North Dakota tax withholding.
8. Attach a copy of your federal return.
9. Use the correct postage.
10. File early.

HB 1155  
Dear Taxpayer,

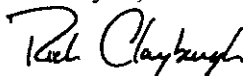
Electronic filing has become a popular income tax filing option. Last year about 40 percent of North Dakota's taxpayers used e-file to file their state income tax. And, many taxpayers were eligible to e-file free of charge through the IRS Free File consortium. If you didn't e-file your state income tax last year, I hope you will consider it this year.

E-file reduces errors and prevents processing delays. And, if you are expecting a refund, when you use Direct Deposit you get your refund more quickly. When you use these electronic options, you also help reduce the cost of government. It costs the Office of State Tax Commissioner less money to process an electronic return than a paper return. Please turn to page 15 in the booklet to learn more about electronic options.

I hope you will take a minute to visit our Web site at [www.ndtaxdepartment.com](http://www.ndtaxdepartment.com). You can download forms and find out about other electronic options such as Direct Deposit and paying your taxes by credit card.

I also encourage you to let us know what you think we are doing well and what we can do to improve service to you. Please phone, write, or e-mail your comments to us using the contact information on the back cover of this booklet.

Thank you,



Rick Clayburgh,  
Tax Commissioner

If you need forms or want  
to find out more about  
North Dakota's taxes, visit  
our Web site.  
[www.ndtaxdepartment.com](http://www.ndtaxdepartment.com)



Pay your taxes with  
your credit card.  
See page 3 for more  
information.

Contact  
Tax Dept for  
Copy



HB 1155  
North Dakota Office of State Tax Commissioner

# 2004 Individual Income Tax

Rick Clayburgh, Tax Commissioner

## Form ND-2

### Are you using the right form?

If not, you may be  
paying too much tax!

See page 3  
for more  
information.

### Do you owe Use tax?

Did you purchase  
goods in another  
state? If you did,  
you may have to pay  
a use tax.

See inside front  
cover for more  
information.

Dear Taxpayer,

Your choice of forms will affect the amount of tax you have to pay. The majority of taxpayers have a lower tax on Form ND-1. For help in choosing the right form, turn to page 3 and read **Which form to use**.

If you would like to file electronically, you will need to use the Form ND-1. When you use these electronic options, you also help reduce the cost of government. It costs the Office of State Tax Commissioner less money to process an electronic return than a paper return. I hope you will consider e-file this year.

Please take a minute to visit our Web site, [www.ndtaxdepartment.com](http://www.ndtaxdepartment.com). You can download tax forms and other informational publications, and read about other electronic options, such as Direct Deposit and paying your taxes by credit card.

I also encourage you to let us know what you think we are doing well and what we can do to improve service to you. Please phone, write, or e-mail your comments to us using the contact information on the back cover of this booklet.

Thank you,

Rick Clayburgh  
Tax Commissioner

If you need forms or want  
to find out more about  
North Dakota's taxes, visit  
our Web site.

[www.ndtaxdepartment.com](http://www.ndtaxdepartment.com)



Pay your taxes with  
your credit card.  
See page 2 for more  
information.

Contact  
agency for  
copies of form