

Kelly Schmidt, State Treasurer
In Support of SB 2362
Senate Finance & Tax
Sen. Dwight Cook, Chair
Sen. Kannianen, Vice-Chair
March 13, 2019

Mr. Chairman, members of the committee, I am Kelly Schmidt, State Treasurer. I stand in support of SB 2362 as it would clarify ambiguous statutes relating to the oil extraction tax allocations my office completes each month.

I would like to give you a brief history and the steps the Office of State Treasurer has taken to interpret the statutes and our attempts to clarify the ambiguity.

During the 2009-2011 biennium, as oil activity began to increase on the Fort Berthold Indian Reservation and the state was negotiating tribal agreements associated with this activity, our office thoroughly researched the related statutes within North Dakota Century Code. This was a concerted effort on our behalf to ensure we correctly and accurately allocated the state's share of oil and gas revenue from wells subject to the oil and gas agreement between the Three Affiliated Tribes and the State of North Dakota.

In researching the applicable statutes, the determination was made that the state's share of oil extraction revenue imposed on tribal lands was tribal revenue shared with the state and therefore separate and distinct from the oil extraction tax generated on land within the state. Based on statutory language referencing "state share", an interpretation was made to allocate the state's share of tribal revenue directly to the general fund bucket of the formula.

During our research, it became clear there were numerous conflicts among the related chapters which could lead to differing interpretations of the law. With these conflicts in mind, we sought guidance from the Attorney General's office. Upon reviewing the statutes in question and the pertinent legislative history, the Attorney General's office concluded the statute was indeed ambiguous and multiple conflicting interpretations could be reached. He also determined that we had reached a reasonable conclusion which did not contradict clear and unambiguous statutory language. The Attorney General's Office also advised we continue to make the allocations in this matter until clarification was received from the legislature.

In the 2011 legislative session, we worked diligently with numerous individuals and agencies to obtain clarification. We worked directly with OMB and the Governor's Office. We worked with legislators to remedy the inconsistencies. Numerous amendments were proposed and drafted during that session, none of these were included in the final passage of any bill. One bill containing clarifying language was ultimately killed in conference committee. With no changes to the specific statutes relating to this issue, our office continued to allocate these revenues based on our initial interpretation as suggested by the Attorney General's Office.

As part of our fiscal audit for the 2009-2011 biennium, the State Auditor's Office audited the allocation of oil and gas tax revenues and, specifically, our interpretation of the statutes relating to the oil extraction tax from tribal lands. We explained to them our process in making the determination and how we sought guidance directly from the Attorney General's Office on the issue. They subsequently requested confirmation of this guidance from the Attorney General's Office. That August 2012 email is included in your materials.

My office has worked diligently to ensure that all funds are being allocated and distributed correctly based on statute and as intended by the legislature. With the exponential growth of oil and gas revenues to the state and the continual changes made to the distributions and allocations of these funds, (one only has to look at the Prairie Dog bill this session) we extend an exorbitant amount of time and talent on oil and gas. My team and I work tirelessly before and during each legislative session to ensure bills containing changes to any of the oil and gas formulas are drafted in such a way that we are able to allocate and distribute the funds exactly as intended by the legislature and that no further conflicts are created. It is after the session we step up again to implement these biennial changes to ensure "the buckets" are filled and our counties, cities, schools, and townships receive their funds accurately.

We fully appreciate the opportunity to clarify this portion of the oil extraction tax allocations and would ask for your support of SB 2362 which provides the much needed clarification of this very ambiguous subject.