

Citibank Takes \$30 million Tax Fight To State Supreme Court

BY JAMES NORD
Associated Press

PIERRE — Citibank's efforts to reclaim \$30 million in overpaid taxes have reached the South Dakota Supreme Court, where the financial group argued Wednesday against "inequity" in the way the state has dealt with bank franchise taxes.

Supreme Court justices heard oral arguments in Citibank's appeal in a case that goes back to a 2012 refund claim from Citibank on state bank franchise taxes it paid between 1999 and 2002.

The Internal Revenue Service in 2012 reduced Citibank's taxable income for the earlier period, which lowered the state bank franchise tax payment since that is based on federal taxable income.

South Dakota's Department of Revenue rejected Citibank's claim, and the state has argued that the firm didn't request a refund until after the three-year legal window in state law had passed. Citibank said it complied with state regulations and filed a timely refund request after the federal tax agency finished its review of the financial group's books, when it learned its final tax outcome.

Andrew Fergel, a Department of Revenue attorney, told the justices that Citibank should have asked for the refund within the statute of limitations — even though the federal audit wasn't finished — in order to comply with state law.

A circuit court judge had dismissed the bank's appeal of an administrative appeal in 2013, and Citibank brought the case to the state Supreme Court.

The financial group also points to a 2007 payment of \$4.3 million to the state for underpaid taxes between 1993 and 1998, which the state accepted even though the three-year legal window had closed.

"(Citibank) did what they were supposed to do — they paid it," Thomas Welk, an attorney for Citibank, told the high court. "So if the logical extension of (the state's) argument is three years and we're done, then they shouldn't have kept the money, and we're entitled to the money back plus interest."

The financial group said in a statement that it's "willing to explore and develop possible alternatives to recover the overpayment while minimizing the impact of the refund on state finances."

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recovery is to get things back to normal for those people in need of an extra helping hand," Garvin said.

In turn, the joint effort has taken on a mission of finding resources for residents in the six counties.

"The goal of this committee is to see all of our fellow residents fully recover from the tornado," the team says on its online site. "Volunteer help, financial help and some personal support and guidance may be available for those interested."

At first, Cedar County relief efforts came at the county and local levels, Garvin said. In later months, he learned about the multi-county effort for northeast Nebraska.

The regional effort uses a model originating with the Federal Emergency Management Agency (FEMA), Garvin said.

"They've done this in other parts of the United States," he said. "When Wayne (Nebraska) had its tornado in October 2013, they formed the Wayne County Long Term Recovery Team. They based their efforts on what citizens were telling them."

Wayne County provided an excellent model, on a smaller scale, for the type of recovery needed across northeast Nebraska following last June's tornadoes, Garvin said. The approach came on top of initial recovery efforts from volunteer and faith-based organizations and other sources, he said.

Cedar County officials were interested in the multi-county effort but weren't sure if the county's situation fit the long-term organization.

"We went to the meetings, but we didn't know if this applied to us," he said. "We were seeing the plight of the Pilger area, where people were displaced. They got hit far worse than we did."

But then, the Northeast Nebraska Long-Term Care Recovery Team started running advertisements in Cedar County newspapers and shoppers, Garvin said. The ads generated responses from people with previously unknown damages, he added.

"The ads were saying, 'Call us if you have needs and live in this county.' They started getting calls from Cedar County," he said. "We didn't know about a lot of those needs until last November. We weren't hearing it from the public. Once we learned there were unmet needs in the county, we asked if we could get involved (with the team)."

First, the Cedar County Commissioners needed to sign off on the county's involvement, Garvin said. The recovery team's representatives met with Cedar County officials, and the commissioners gave their approval for joining the effort.

The long-term recovery committee gathers weekly and has held its meetings in Pilger, Garvin said. The committee brings together a wide variety of members, including ministerial associations, elected officials and emergency managers.

"They have a lot of experience to draw upon. We have some people on the committee who have done this before," he said. "And, as with everything else, numbers never hurt. There might be re-

sources allocated if we've got five or six (counties) that may not be available to just one."

The recovery team is looking for individuals to call tornado survivors. The calling will take place Wednesday (Jan. 21) at 6:30 p.m. in the Stanton County Courthouse in Stanton, Nebraska. Interested volunteers can call Stanton County zoning administrator LaLene Bates at (402) 439-2224 or (402) 658-5060.

This particular recovery effort is geared toward private individuals and businesses, Garvin said. Public entities are following a different procedure for assistance.

He emphasized the long-term recovery team maintains confidentiality in dealing with parties needing assistance. In fact, he said he didn't know any names or even the types of aid that were being handled for Cedar County.

"One of the big things, they have volunteer caseworkers who are trained through the Red Cross. These caseworkers handle calls and maintain the anonymity of the people requesting help or receiving help," he said.

"Once they receive a call (concerning someone in need), a caseworker is assigned to follow up on the request. This way, it remains confidential as far as who or what has been requested."

Some Cedar County residents may receive a call asking if they need long-term assistance, Garvin said. However, those calls shouldn't be confused with current phone scams, he said.

"Since I work in the 911 center, we've been getting a lot of calls (from residents) about phone scams going on. (Scammers) have been working about a month in Cedar County," the emergency manager said, "The callers say people owe back taxes, and if you don't pay the taxes right away, they will come arrest you. Or people are traveling, and they're told their grandson has been hurt in an accident and needs money."

"If you get these kinds of calls, contact law enforcement and don't give out any personal information over the phone. But we don't want people thinking the long-term recovery calls are a scam."

During his weekly meetings with the long-term recovery team, Garvin said he has noticed signs of Pilger's recovery. However, some damages — both material and emotional — may still lie below the surface for many tornado victims.

"We may just be scratching the surface with Cedar County. There may be stuff out there that we don't know about," he said.

"The bottom line is, we can't help if we don't know about it."

Besides Bates, the Northeast Nebraska Long-Term Recovery Team officers are Wayne city administrator Lowell Johnson; Northeast Nebraska Public Health Department emergency response coordinator Kim Schultz; and Pilger tornado volunteer coordinator Becky Petersen.

For more information, call the recovery hotline at (402) 468-8005.

You can follow Randy Dockendorf on Twitter at twitter.com/RDockendorf. Discuss this story at www.yankton.net.

Daugaard Plan Calls For Tax Increase Every Year

BY BOB MERCER
State Capitol Bureau

PIERRE — During his first term, Gov. Dennis Daugaard held to his 2010 campaign against raising taxes. Starting his second term this week, Daugaard proposed raising motor-fuel taxes every year going forward.

His plan would add 2 cents per gallon in 2015 and another 2 cents in 2016 and another 2 cents in 2017 and so forth into the future. If the Legislature adopts his approach this year, it would take an act by the Legislature in some future year to stop the annual increases.

The Republican governor sees the automatic increases as a way to stay abreast of inflation on road and bridge projects. Daugaard was in the state Senate when the Legislature last approved increases in motor-fuels taxes in 1999. He voted for the increases in 1999, by the way, twice.

The automatic increases now under consideration are part of a broader plan Daugaard outlined Tuesday for highway and bridge funding in his State of the State speech to the Legislature.

He told lawmakers that the 22 cents of state tax approved in 1999 for a gallon of basic gasoline would be 45 cents today if the tax had been indexed to inflation costs.

The additional 2 cents this year would raise an estimated \$13,750,000 per year, according to the governor. If fuel usage remained constant in the future, an additional 2 cents each year would raise an additional \$13,750,000.

Rep. Mike Verchio, R-Hill City, said the automatic increases would be the first time he's seen that technique. He is the House Transportation Committee chairman and supports the method.

"I think it's long overdue. We have to compensate sometime for inflation," Verchio said Wednesday. "I think this is really the answer."

There isn't much room to gain new

At A Glance

The estimated revenues from the various increases in taxes and fees for funding roads and bridges as suggested Tuesday by Gov. Dennis Daugaard to the Legislature are:

- Motor vehicle excise tax rate increased to 4 percent from 3 percent on purchases: \$26,100,000.
- Increases in motor-fuel tax rates per gallon (basic rate would rise to 24 cents from 22 cents): \$13,750,000.
- Increases of 10 percent in vehicle-registration fee amounts: \$8,700,000.
- Non-commercial truck registration fee amounts increased to 70 percent of commercial rates: \$2,000,000.
- State government would receive the excise tax and motor-fuel revenues of \$39,850,000. Local governments would share the registration revenues of \$10,700,000.

efficiencies on highways and bridges, according to Daugaard.

"Unfortunately, our current funding approach has not kept pace with highway construction costs," he said.

Daugaard's total plan would raise \$50.5 million during the first year and more in the subsequent years as additional increases took effect.

A much broader plan proposed by the Legislature's interim committee on highway needs and financing calls for \$100 million of increases.

Some of the pieces are similar in the two plans. The committee's proposal, Senate Bill 1, would add taxes on some vehicles and fuels that Daugaard's plan avoids. Daugaard hasn't submitted his bill yet.

South Dakota's basic tax structure charges 22 cents per gallon on straight gasoline and a different rate of 8 cents

per gallon on alcohol fuels. The rates are essentially blended when gasoline and alcohol are combined for different grades of ethanol.

On the motor-fuels taxes, the committee proposed a schedule of 10 increases on gasoline, starting July 1, 2016, when the rate would rise to 22.55 cents per gallon, and continuing through 2025, when it would reach 28.16 cents per gallon.

By contrast, the governor's plan would take the rate to 24 cents on July 1, 2015, and then start the annual increases of 2 cents per year, reaching 44 cents in 2025 and continuing up from there.

On alcohol-fuels taxes, the committee's proposal called for the 2 cents per year approach but with an ending point. SB 1 would raise the alcohol-fuels tax by 2 cents this year to 10 cents per gallon and add 2 cents more annually until reaching 22 cents per gallon in 2021.

Both proposals call for increasing the excise tax on purchases of motor vehicles to 4 percent from the current 3 percent. That would raise \$26.1 million the first year, according to the governor's estimate.

The two plans also would give counties and townships more leeway to raise additional property taxes to spend on roads and bridges.

That's something Rep. Burt Tulson, R-Lake Norden, has been battling to get for several years. "I'm quite pleased they have that in there," Tulson said.

Verchio served on the interim committee and said he voted for the final proposal so the Legislature could discuss it.

"It's way too broad and I thought it would dead on arrival," he said. "I wouldn't vote for it if it got to the House floor."

"I can support the governor's plan," he continued. "But don't get me wrong. Fifty million is still a lot of money."

Senators Announce Bills To Recruit, Retain Veterans

BY ANNA GRONEWOLD
Associated Press

LINCOLN, Neb. — A coalition of Nebraska lawmakers vowed Wednesday to push for expanded veteran benefits in a state where the group's unemployment rate of 5.8 percent is nearly double the state average.

Six senators, led by Sue Crawford of Bellevue, announced at a news conference bills detailing hiring preferences, tax exemptions and workforce training.

In 2011, the White House projected 1 million service members would leave the armed forces in the following five years. Crawford said many who retired from the military after 2001 return to an economy where they have higher rates of unemployment than veterans who retired earlier and non-veteran peers.

Crawford's measure would allow private companies to have voluntary hiring preferences for veterans and spouses of disabled veterans. It also goes with a measure passed last year that gives veterans a preference in the hiring process for state and government jobs. At least 12 states, including Iowa, have adopted similar programs, she said.

Other bills announced Wednesday include one by Sen. Adam Morfeld of Lincoln to more effectively transfer military training to civilian experience and another to

subsidize on-the-job training for veterans.

Of the 71,000 veterans in the Nebraska workforce, almost 4,000 are actively seeking employment, said subsidy bill sponsor Sen. Jeremy Nordquist of Omaha. The bill would grant businesses up to \$12,000 for the first six months to cover on-the-job training costs for veterans.

"We need to fight for our veterans like they have fought for our country and state," Nordquist said.

The bills, while aimed at Nebraska's more than 143,000 veterans, also attract skilled military retirees to the state's workforce, Nebraska Chamber of Commerce Vice President Jamie Karl said. In 2013, 52 percent of business leaders in 35 Nebraska communities said they had difficulty recruiting qualified employees. Karl said the proposed legislation would enhance the Chamber's Good Life for Veterans initiative, which connects unemployed veterans with employers.

"It's not a silver bullet, but it is part of the puzzle to solve our workforce problems," Karl said of the year-old initiative.

Sen. Merv Riepe of Ralston also introduced a resolution Wednesday to provide veterans with direct access to local health care services rather than force them to travel long distances to federal veterans hospitals. And Sen. Tommy Garrett of Bellevue said he plans to introduce a bill later this week further exempting military retirement from state income tax.

Gilbertson: State Should Examine Prevalence Of Elder Abuse

BY JAMES NORD
Associated Press

PIERRE — South Dakota has had early success with a program to attract attorneys to rural areas and with an overhaul of the state's criminal justice system, and now should examine the prevalence of the financial abuse of the elderly in the state, Supreme Court Chief Justice David Gilbertson said Wednesday.

Gilbertson, in his State of the Judiciary speech to lawmakers, discussed proposals he said are making a difference in South Dakota and highlighted new policies he wants to pursue.

He sang the praises of the pilot program lawmakers passed in 2013 to lure attorneys to rural areas of the state, which is believed to be the first of its kind. He also highlighted a criminal justice overhaul passed the same year aimed at boosting rehabilitation rates and reducing corrections spending, with an increased focus on violent and career criminals.

Drug and drunken driving courts have been keeping offenders out of prison and saving the state money, Gilbertson said.

He used the preliminary successes of that overhaul to push for similar changes in South Dakota's juvenile justice system, which is a key focus for Gov. Dennis Daugaard this legislative



Gilbertson

session. Officials want to decrease the number of juveniles committed to the care of the state Department of Corrections and instead use

local programming to keep low-level offenders in their communities.

Gilbertson said it's also necessary to turn the state's eye toward elder abuse in South Dakota and to take a strong stand against it. People have the perception that financial scams against the elderly typically happen over the telephone or Internet, he said, but most are committed by a member of the victim's family.

"People have to be aware there's a problem," Gilbertson said. "We don't know how large the problem is, but I'm sure it's larger than everybody expects."

Daugaard said after the speech he was unsure how the issue might be addressed through legislation, but added, "It's something I'd be very open to looking at."

Gilbertson also introduced the newest Supreme Court justice, Janine Kern, whom Daugaard appointed to replace Justice John Koenkamp, who retired in December.

Consultant: Neb. Can Avoid New Prison Construction

LINCOLN, Neb. — Nebraska can avoid spending more than \$306 million on new prison facilities if the state expands its probation, parole and community-based services to address crowding, a consultant told lawmakers Wednesday.

The plan, proposed by the Council of State Governments Justice Center, would cost the state an estimated \$32.8 million over five years and could reduce the prison population by 10 percent over five years. With crowding eased, the state wouldn't have to spend \$261 million on prison construction and \$45 million in operational costs in that time span, said Marc Pelka, the group's program director.

The report "proves that over a five-year period, this is a sustainable pathway for us not only to reduce our population, but also improve public safety," said Sen. Heath Mello of Omaha, a member of a working group that sought to address the problem.

Nebraska lawmakers have pegged prison reform as a top priority this year given the steady increase in inmates in recent years. Sen. Les Seiler, chairman of the Judiciary Committee, said he expects lawmakers will introduce five to six bills by the week's end.

The statewide prison population reached more than 159 percent of its design capacity last month, with 5,221 inmates. Without new prison beds, the population is expected to hit 170 percent of capacity within five years. The rising numbers have raised the prospect of a lawsuit from the American Civil Liberties Union.

State Sen. Colby Coash introduced a prisons bill Wednesday that would set aside the full \$261 million to expand the prison system. Coash said he didn't want to spend the money, but filed the bill to illustrate the cost of inaction.

"Should the problems in corrections continue to be ignored, my bill is the only option," Coash said.

The Council of State Governments Justice Center is a national nonprofit that helps state analyze and reform their criminal justice systems. Their \$32.8 million alternative includes the cost of hiring more probation officers, offering more community-based treatment to reduce recidivism and training and upgrades for parole supervisors. It also counts the expense of a new statewide database, which it said would reduce sentencing disparities by showing judges

what is handed down for similar criminal offenses in different parts of the state.

Nebraska's prison population has grown even as violent crime and property-related offenses, such as burglary and theft, have declined.

Pelka said several factors are driving up the numbers, including enhanced penalties for drug, drunken-driving and weapons convictions, as well as a lack of treatment services for offenders who are in prison or were recently released. Without programming and supervision, Pelka said many of the inmates who are

released end up violating their parole and returning to prison because many sentences are too short for effective rehabilitation.

The Nebraska County Attorneys Association agreed with some of the consultant's suggestions, but in a statement said it took issue with others. Many offenders who are imprisoned for less severe crimes have plea-bargained down from a more severe sentence, and are usually offered diversion programs to keep them out of prison, the association said.

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