

2013 SENATE FINANCE AND TAXATION

SB 2092

2013 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2092
1/21/2013
Job Number 17414

Conference Committee

Committee Clerk Signature

Angea Rittmiller

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact subsection 8 of section 57-40.3-04 of the North Dakota Century Code, relating to the motor vehicle excise tax exemption for certain motor vehicles in the possession of and used by permanently physically disabled persons.

Minutes:

Testimony Attached

Chairman Cook opened the hearing on SB 2092.

Dan Rouse, Office of State Tax Commissioner, introduced SB 2092. See attached testimony 1, and proposed amendments, attachment 2.

Chairman Cook - This doesn't happen often.

Dan Rouse - That is correct. I understand it's less than a half dozen times a year at most.

Chairman Cook - And just going ahead and doing what makes common sense doesn't work. I suppose someone might audit you and say you can't do that?

Dan Rouse - What I saw here was a practice that was in place without recognition of it in the statute. It's something that I think you could explain away, but what I'm trying to achieve here is the general philosophy that we have been taught over the years is, if you are going to have a refund mechanism in place, which has been in place for years, it ought to be recognized in the state law. If you don't have the refund process recognized in the law you ought not be issuing the refunds. This just recognizes the practice.

Chairman Cook - Is it safe for me to assume that when this person is standing at D.O.T. that it's noticeable that they are handicap? Is there a question there?

Dan Rouse - I'm not a medical professional and I haven't been there to see this take place, but I would submit that permanent physical disabilities can run from soft tissue injuries, mental injuries that arise to that level, etc. That aside the law that has been in place for years is clear that you must have that statement, that is your ticket to the exemption.

Chairman Cook - They still have to pay the registration or excise tax?

Dan Rouse - That is the one option right now, is go ahead and pay it and go ahead and get the refund. This would recognize it in the law.

Chairman Cook - Under no circumstances can they get the registration without paying the excise tax.

Dan Rouse - It's not supposed to work that way. That is correct.

Chairman Cook asked for further support, then opposed and neutral testimony.

Chairman Cook closed the hearing on SB 2092.

Brief discussion followed.

Senator Oehlke moved to adopt the amendments.

Seconded by **Senator Dotzenrod**.

Verbal vote 5-0-2

Senator Oehlke moved to **Do Pass SB 2092**.

Seconded by **Senator Dotzenrod**.

Chairman Cook - I'll ask the clerk to take the roll on a Do Pass as Amended.

Chairman Cook the motion passes, **5-0-2**.

Carried by **Senator Oehlke**.

13.8124.01001
Title.02000

Adopted by the Finance and Taxation
Committee

January 21, 2013



1-22-13

PROPOSED AMENDMENTS TO SENATE BILL NO. 2092

Page 1, line 21, remove "within sixty days of application for registration and"

Page 1, line 22, remove "payment of the tax due under this chapter"

Page 1, line 23, replace "section 57-40.4-02" with "chapter 57-40.4"

Renumber accordingly

Date: 1-27-13
Roll Call Vote #: 2

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2092

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.8124.01001 title.02000

Action Taken Do Pass as Amended

Motion Made By Senator Oehlke Seconded By Senator Dotzenrod

Senators	Yes	No	Senator	Yes	No
Chairman Dwight Cook	X		Senator Jim Dotzenrod	X	
Vice Chairman Tom Campbell	X		Senator Connie Triplett		
Senator Joe Miller					
Senator Dave Oehlke	X				
Senator Randy Burckhard	X				

Total (Yes) 5 No 0

Absent 2

Floor Assignment Senator Oehlke

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

REPORT OF STANDING COMMITTEE

SB 2092: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2092 was placed on the Sixth order on the calendar.

Page 1, line 21, remove "within sixty days of application for registration and"

Page 1, line 22, remove "payment of the tax due under this chapter"

Page 1, line 23, replace "section 57-40.4-02" with "chapter 57-40.4"

Renumber accordingly

2013 HOUSE FINANCE AND TAXATION

SB 2092

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2092
March 6, 2013
Job #19495

Conference Committee

Committee Clerk Signature

Mary Buckner

Explanation or reason for introduction of bill/resolution:

A Bill relating to the motor vehicle excise tax exemption for certain motor vehicles in the possession of and used by permanently physically disabled persons.

Minutes:

Attached testimony #1.

Chairman Belter: Opened hearing on SB 2092.

Dan Rouse, Legal Counsel for the North Dakota Office of State Tax Commissioner:
See attached testimony #1.

Representative Klein: Is it a set period of time?

Dan Rouse: On line 22 page 1 we say the refund must be in accordance with chapter 57-40.4 and within that chapter is the three year period of time.

Chairman Belter: Further testimony in support of 2092? Any opposition to 2092? Any neutral testimony? We will close the hearing on SB 2092.

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2092
March 6, 2013
Job #19515

Conference Committee

Committee Clerk Signature *Mary Brucher*

Minutes:

Chairman Belter: This bill deals with the timing of registration for vehicles for disabled people. What are the committee's wishes?

Representative Hatlestad: Made a motion for a Do Pass.

Representative Klein: Seconded.

ROLL CALL VOTE: 12 YES 0 NO 2 ABSENT

Representative Schmidt will carry this bill.

Date: 3-6-13
 Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2092**

House Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Hattestad Seconded By Rep. Klein

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley Belter	✓		Rep. Scot Kelsh	✓	
Vice Chairman Craig Headland	✓		Rep. Steve Zaiser	✓	
Rep. Matthew Klein	✓		Rep. Jessica Haak	✓	
Rep. David Drovdal	AB		Rep. Marie Strinden	AB	
Rep. Glen Froseth	✓				
Rep. Mark Owens	✓				
Rep. Patrick Hattestad	✓				
Rep. Wayne Trottier	✓				
Rep. Jason Dockter	✓				
Rep. Jim Schmidt	✓				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Schmidt

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

REPORT OF STANDING COMMITTEE

SB 2092, as engrossed: Finance and Taxation Committee (Rep. Belter, Chairman)
recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING).
Engrossed SB 2092 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

SB 2092

**TESTIMONY OF THE OFFICE OF STATE TAX COMMISSIONER
BEFORE THE
SENATE FINANCE AND TAXATION COMMITTEE**

SENATE BILL 2092

JANUARY 21, 2013

Good Morning, Chairman Cook and members of the Senate Finance and Taxation Committee. My name is Daniel L. Rouse, Legal Counsel for the North Dakota Office of State Tax Commissioner. I stand today on the Tax Commissioner's behalf, in support of Senate Bill No. 2092. We also have amendments to propose. I will review both the Bill and proposed amendments.

CURRENT LAW

The Tax Department utilizes the services of the Department of Transportation (DOT) to act as the Tax Department's agent for the collection of motor vehicle excise tax imposed under N.D.C.C. Chapter 57-40.3. From time-to-time, unique situations arise where DOT will ask our input as to the application of the various motor vehicle excise tax provisions, including exemptions, North Dakotans may be eligible to enjoy. One such unique set of circumstances arises on occasion and prompted our office to propose this legislation to eliminate a barrier we believe exists to the enjoyment of an exemption by otherwise qualified disabled applicants.

Under the present law before you, individuals with restricted driver's licenses (due to a permanent physical disability) who are limited to the operation of motor vehicles equipped with special controls to compensate for their disability, or permanently physically disabled individuals who have either surrendered or have been denied a driver's license because of their disability, are entitled to an exemption from the motor vehicle excise tax that would ordinarily be imposed on the purchase of a motor vehicle for that individual's use (or use by another on that disabled person's behalf). However, in order for that disabled individual to receive the exemption at the time of application for title and registration at DOT, the individual must provide a statement to DOT that indicates the individual either has the above-described restricted driver's license or has surrendered or not been issued a driver's license because of the disability.

On occasion, an otherwise qualified disabled applicant will attempt to title and register a motor vehicle, but will not have the required statement to document the disability and thus enjoy

the exemption at that moment. DOT's past practice has been to respond in one of two ways: one, to "suspend" processing of the application for title and registration pending receipt of the statement of disability, which effectively precludes the disabled individual from walking out of DOT with any ability to operate or have someone else operate on their behalf the motor vehicle in question (because the motor vehicle is not titled and registered); or two, to process the application for title and registration, require the disabled applicant to pay the motor vehicle excise tax, and then come back later to obtain a refund of those taxes paid (the motor vehicle excise taxes, not the registration fees). The challenge this latter scenario poses is that DOT is without statutory authority to issue those refunds at a later point in time. N.D.C.C. Chapter 57-40.4 is an entire chapter of the Century Code devoted to the circumstances and method of when and how a refund of motor vehicle excise tax imposed under N.D.C.C. Chapter 57-40.3 may be issued to a qualified individual. But here's the twist: there are only two such circumstances: one, either the tax was paid in error; or two, the tax was otherwise not due on the transaction at the time of application for title and registration. Ironically, neither of these circumstances describe the permanently disabled applicant described in N.D.C.C. § 57-40.3-04(8). In other words, in this situation, either the applicant has the statement DOT requires to process the application for title and registration and approve the exemption, or the applicant is required to pay the motor vehicle excise tax. If the applicant does not have the required statement, *the tax is due* ("... a copy of the statement *must* be attached to the application..."), and, if the applicant pays the tax due, because the tax is required to be paid due to the lack of the statement, the tax would *not have been paid in error*.

PROPOSED CHANGE TO THE LAW

Senate Bill 2092 would fix this technical problem. But DOT and the Tax Department have also determined that the Bill, and the amendments before you, are both necessary to fix the problem. Specifically, the Bill, when read together with the proposed amendments, would reinforce the position of DOT (and the Tax Department) that if the applicant did not have the required statement, motor vehicle excise tax must be paid. However, the Bill, with the amendments, would provide the statutory authority for DOT to allow the disabled individual to come back to DOT within the same three year period in existing law for those claiming refunds now under N.D.C.C. Chapter 57-40.4 (for taxes paid in error or taxes that were not otherwise

due) to claim a refund. The Bill, when read together with the amendments, also instructs both the disabled individual and DOT that the process and manner in which applications for -- and the processing of -- refunds, must be carried out as provided in N.D.C.C. Chapter 57-40.4.

CONCLUSION

In order for DOT, as the Tax Department's agent in this area of taxation, to effectively and equitably carry out its duties, and to ensure that those disabled individuals who are qualified to enjoy the long-standing exemption found in N.D.C.C. § 57-40.3-04(8), this Bill, and the proposed amendments, are necessary. Passage of this Bill will allow both agencies to properly administer this area of law. More importantly, however, passage of this Bill and the proposed amendments will continue the legacy of the Legislative Assembly to grant permanently physically disabled individuals an exemption from the motor vehicle excise tax on their motor vehicles.

For these reasons, I respectfully request that the Senate Finance and Taxation Committee give Senate Bill 2092, and the proposed amendments, favorable consideration. I'll be happy to answer any questions you may have.

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Prepared by the
Office of State Tax Commissioner
January 21, 2013

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**TESTIMONY OF THE OFFICE OF STATE TAX COMMISSIONER
BEFORE THE
HOUSE FINANCE AND TAXATION COMMITTEE**

ENGROSSED SENATE BILL 2092

MARCH 6, 2013

Good Morning, Chairman Belter and members of the House Finance and Taxation Committee. My name is Daniel L. Rouse, Legal Counsel for the North Dakota Office of State Tax Commissioner. I stand today on the Tax Commissioner's behalf, in support of Engrossed Senate Bill No. 2092.

CURRENT LAW

The Tax Department utilizes the services of the Department of Transportation (DOT) to act as the Tax Department's agent for the collection of motor vehicle excise tax imposed under N.D.C.C. Chapter 57-40.3. From time-to-time, unique situations arise where DOT will ask our input as to the application of the various motor vehicle excise tax provisions, including exemptions, North Dakotans may be eligible to enjoy. One such unique set of circumstances arises on occasion and prompted our office to propose this legislation to eliminate a barrier we believe exists to the enjoyment of an exemption by otherwise qualified disabled applicants.

Under the present law before you, individuals with restricted driver's licenses (due to a permanent physical disability) who are limited to the operation of motor vehicles equipped with special controls to compensate for their disability, or permanently physically disabled individuals who have either surrendered or have been denied a driver's license because of their disability, are entitled to an exemption from the motor vehicle excise tax that would ordinarily be imposed on the purchase of a motor vehicle for that individual's use (or use by another on that disabled person's behalf). However, in order for that disabled individual to receive the exemption at the time of application for title and registration at DOT, the individual must provide a statement to DOT that indicates the individual either has the above-described restricted driver's license or has surrendered or not been issued a driver's license because of the disability.

On occasion, an otherwise qualified disabled applicant will attempt to title and register a motor vehicle, but will not have the required statement to document the disability and thus enjoy the exemption at that moment. DOT's past practice has been to respond in one of two ways:

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p. 2

one, to “suspend” processing of the application for title and registration pending receipt of the statement of disability, which effectively precludes the disabled individual from walking out of DOT with any ability to operate or have someone else operate on their behalf the motor vehicle in question (because the motor vehicle is not titled and registered); or two, to process the application for title and registration, require the disabled applicant to pay the motor vehicle excise tax, and then come back later to obtain a refund of those taxes paid (the motor vehicle excise taxes, not the registration fees). The challenge this latter scenario poses is that DOT is without statutory authority to issue those refunds at a later point in time. N.D.C.C. Chapter 57-40.4 is an entire chapter of the Century Code devoted to the circumstances and method of when and how a refund of motor vehicle excise tax imposed under N.D.C.C. Chapter 57-40.3 may be issued to a qualified individual. But here’s the twist: there are only two such circumstances: one, either the tax was paid in error; or two, the tax was otherwise not due on the transaction at the time of application for title and registration. Ironically, neither of these circumstances pertain the permanently disabled applicant described in N.D.C.C. § 57-40.3-04(8). In other words, in this situation, either the applicant has the statement DOT requires to process the application for title and registration and approve the exemption, or the applicant is required to pay the motor vehicle excise tax. If the applicant does not have the required statement, *the tax is due* (“... a copy of the statement *must* be attached to the application...”), and, if the applicant pays the tax due, because the tax is required to be paid due to the lack of the statement, the tax would *not have been paid in error*.

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#103

CONCLUSION

In order for DOT, as the Tax Department's agent in this area of taxation, to effectively and equitably carry out its duties, and to ensure that those disabled individuals who are qualified to enjoy the long-standing exemption found in N.D.C.C. § 57-40.3-04(8), this Bill is necessary. Passage of this Bill will allow both agencies to properly administer this area of law. More importantly, however, passage of this Bill will continue the legacy of the Legislative Assembly to grant permanently physically disabled individuals an exemption from the motor vehicle excise tax on their motor vehicles.

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