

FISCAL NOTE
Requested by Legislative Council
12/22/2014

Bill/Resolution No.: SB 2114

- 1 A. **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.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

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

SB 2114 requires snowmobiles and off-road vehicles be subject to sales and use tax.

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

If enacted, SB 2114 is expected to enhance compliance with tax obligations thereby increasing sales tax revenues. The amount of the increase cannot be estimated.

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

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*
- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*
- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 328-3402

Date Prepared: 01/12/2015

2015 SENATE TRANSPORTATION

SB 2114

2015 SENATE STANDING COMMITTEE MINUTES

Transportation Committee
Lewis and Clark Room, State Capitol

SB 2114
1/15/2015
Recording job number 22010

Subcommittee Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

to create and enact a new subsection to section 39-24-03 and a new subsection to section 39-29-03 of the North Dakota Century Code, relating to registration of snowmobiles and to registration of off-highway vehicles; to amend and reenact subsection 2 of section 57-40.3-01 of the North Dakota Century Code, relating to the definition of motor vehicle; and to provide an effective date.

Minutes:

Attachment: 1

Chairman Oehlke opened the hearing on SB 2114. All members, except Senator Rust, were present.

Myles Vosberg, Director of the Tax Administration Division of the Tax Commissioner's Office, in support of this bill, attached testimony #1. The issue being addressed through this bill is that a portion of purchasers do not self-report and pay use tax on snowmobiles and off-highway vehicles when not registered, pages 1-1 to 1-3 (1:00-6:38); explanation of bill 1-3 (6:39 - 8:00). Fiscal impact bottom of page 1-3; pointed out notes on page 1-4: the definition of "off-highway vehicle" because there are several classes; and the two sections of the bill which will be impacted by Parks and Recreation SB 2139 (8:15-9:48).

Chairman Oehlke: this doesn't affect licensing of these vehicles at all?

Myles Vosberg: correct, bill doesn't change any licensing or title requirements.

Vice Chairman Casper: will this end up in a greater expense for the snowmobile owner?

Myles Vosberg: it could in instances where there is a local tax that applies. Most of the local taxes are capped but not all of them. The total amount of increase probably won't be all that great in a lot of cases. There has been a trend to move away from the caps.

No other testimony in support, in opposition or neutral. **Chairman Oehlke** closed the hearing. Committee members agreed to wait until after the hearing of SB 2139 before proceeding on this one. Meeting adjourned.

2015 SENATE STANDING COMMITTEE MINUTES

Transportation Committee
Lewis and Clark Room, State Capitol

SB 2114
01/16/2015
Recording job number 22066

Subcommittee Conference Committee

Committee Clerk Signature

Doris E. Piroz

Explanation or reason for introduction of bill/resolution:

To create and enact a new subsection to section 39-24-03 and to section 39-29-03 of the North Dakota Century Code, relating to registration of snowmobiles and of off-highway vehicles; to amend and reenact subsection 2 of section 57-40.3-01 of the North Dakota Century Code, relating to the definition of motor vehicle; and to provide an effective date.

Minutes:

Attachment: 0

Chairman Oehlke opened the discussion on SB 2114, had been held pending hearing on SB 2139.

Senator Sinner: is this bill no longer needed?

Vice Chairman Casper: it is needed SB 2139 doesn't have the tax provisions in it, just the fee provisions.

Chairman Oehlke: in this one the sale tax would go into effect this summer, at the end of this biennium. Sales tax provision doesn't end up being handled by Parks and Recreation. Matthew, would that be correct?

Matthew Gardner, ND Parks & Recreation Department: the bill we just did is for snowmobiles, the one from the Tax Department is for snowmobiles and off-highway vehicles, so both bills would be needed.

Senator Campbell: would Parks & Recreation do the licensing?

Chairman Oehlke the Parks & Rec bill wouldn't go into effect until July 2016. This bill would change how the sales tax is addressed on those vehicles as of the end of the biennium (2015). If you don't want to pass this bill the sales tax would be an issue for another year.

Vice Chairman Casper moved do pass. **Senator Sinner** seconded the motion.

Roll call vote was taken: Yes 6 No 0 Absent 0

Carrier Vice Chairman Casper

REPORT OF STANDING COMMITTEE

SB 2114: Transportation Committee (Sen. Oehlke, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2114 was placed on the
Eleventh order on the calendar.

2015 HOUSE TRANSPORTATION

SB 2114

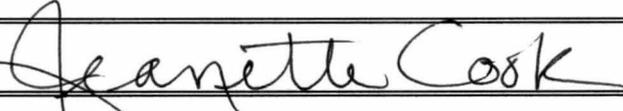
2015 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee
Fort Totten Room, State Capitol

SB 2114
3/5/2015
#24398

Subcommittee
Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A bill relating to registration of snowmobiles and to registration of off-highway vehicles; relating to the definition of motor vehicle; and to provide an effective date.

Minutes:

Attachment #1

Chairman Dan Ruby opened the hearing on SB 2114.

Myles Vosberg, Director Tax Administration Division, North Dakota Office of State Tax Commissioner, spoke to introduce and support SB 2114. Written testimony was provided. See attachment #1.

Representative Chris Olson: You mentioned boats; are there any other vehicles that are subject to tax as the bill proposes?

Myles Vosberg: I don't believe so.

Chairman Dan Ruby: Is one of the differences that the excise tax would go into the Highway Distribution Fund, and the sales tax goes into the General Fund?

Myles Vosberg: Both of these taxes go into the General Fund. There is a certain portion that is carved out for the State Aid Distribution Fund. This won't change any distribution of revenue. (57-40.3 Section 10)

There was no further support for SB 2114.

There was no opposition to SB 2114.

The hearing on SB 2114 was closed.

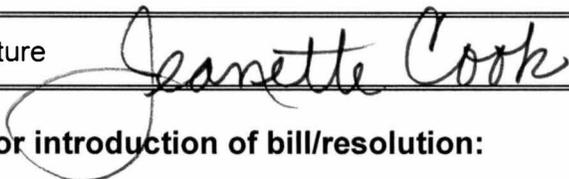
2015 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee
Fort Totten Room, State Capitol

SB 2114
3/6/2015
#24431

Subcommittee
Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A bill relating to registration of snowmobiles and to registration of off-highway vehicles; relating to the definition of motor vehicle; and to provide an effective date.

Minutes:

Chairman Dan Ruby brought SB 2114 back before the committee for discussion.

Representative Robin Weisz: I am not a big fan of the bill. You have to pay another 2-3% sales tax above other vehicles. Under current law when you register a used snowmobile you will still have to pay the excise tax. I think it is consistent to leave the snowmobiles in the Motor Vehicle section.

Representative Robin Weisz moved a DO NOT PASS on SB 2114.
Vice Chairman Lisa Meier seconded the motion.

Representative Chris Olson: My impression is that this is a compliance issue, and they are just trying to make it easier to capture tax because some people are not self-reporting. But, I will support the motion.

Vice Chairman Lisa Meier: It is not only for snowmobiles, it for other off road vehicles as well.

There was no further discussion on SB 2114.

A roll call vote was taken: Aye 9 Nay 2 Absent 3
The motion carried.

Representative Robin Weisz will carry SB 2114.

REPORT OF STANDING COMMITTEE

SB 2114: Transportation Committee (Rep. Ruby, Chairman) recommends DO NOT PASS
(9 YEAS, 2 NAYS, 3 ABSENT AND NOT VOTING). SB 2114 was placed on the
Fourteenth order on the calendar.

2015 TESTIMONY

SB 2114



1-1

Testimony—

Senate Transportation Committee

Senate Bill 2114

January 15, 2015

Prepared by Myles Vosberg, Director Tax Administration Division
North Dakota Office of State Tax Commissioner
Phone: 701-328-3471
E-mail: msvosberg@nd.gov

Introduction

Good morning Chairman Oehlke and members of the Senate Transportation Committee. For the record, I am Myles Vosberg, Director of the Tax Administration Division of the Tax Commissioner's Office. I am here today on behalf of the Commissioner to testify in support of Senate Bill 2114, which will subject snowmobiles and off-highway vehicles to sales tax rather than motor vehicle excise tax.

Background

Under current law, snowmobiles and off-highway vehicles¹ are defined as motor vehicles in Century Code Chapter 57-40.3 and are subject to 5 percent motor vehicle excise tax when the vehicle is required to be registered under North Dakota law. Most snowmobile and off-highway vehicles are registered in North Dakota; however, the registration laws for both snowmobiles and off-highway vehicles contain an exemption from registration if the vehicle is used exclusively on privately held land. Vehicles exempt from registration are also exempt from motor vehicle excise tax. However, vehicles exempt from motor vehicle excise tax are subject to state sales tax. In other words, snowmobiles and off-highway vehicles are subject to motor vehicle excise tax if registered or are subject to sales tax if not registered.

Most retailers that sell motor vehicles collect motor vehicle excise tax for the convenience of their customers; however, current law does not require the retailer to collect this tax. Customers may choose to complete the registration process and pay any motor vehicle excise tax themselves. When customers

elect to complete the registration process themselves, the current law requires the Director of the Department of Transportation to verify all required tax due has been paid before completing the title and registration processes. If a vehicle dealer does not collect tax and the purchaser decides not to register the vehicle because it will be used exclusively on private land, the purchaser is liable to report the purchase and pay the 5 percent use tax to the Tax Commissioner. The issue we are trying to address through Senate Bill 2114 is that a portion of these purchasers do not self-report and pay use tax on the snowmobiles and off-highway vehicles when not registered

Retailers are required to collect sales tax on all sales of tangible personal property unless the sales and use tax statutes provide a specific exemption. By imposing sales tax on all retail sales of snowmobiles and off-highway vehicles rather than motor vehicle excise tax, the sales tax would be collected at time of sale for all retail vehicle sales within the state. The purchaser will have no opportunity to avoid paying tax at the time of purchase. Collecting sales tax will be nothing new and will not be an additional responsibility for vehicle dealers because dealers are already collecting sales tax on sales of parts and accessories and are filing sales and use tax returns with the Tax Commissioner. None of the registration requirements for snowmobile or off-highway vehicles will be changed by Senate Bill 2114. The process to title and register snowmobile and off-highway vehicles will continue just as it is today.

There are two main differences between motor vehicle excise tax and sales taxes that should be noted in this discussion. First, vehicles subject to motor vehicle excise tax are subject to tax every time the vehicle changes ownership unless the transfer of ownership meets one of the exemptions identified in the excise tax law. Sales tax, however, only applies to retail sales, which are essentially sales made by an individual or entity that is in the business of selling these products. Casual sales by owners are not subject to sales tax. For example, if an individual owns a snowmobile for personal use and wants to sell that snowmobile to another individual, that transaction would be a casual sale exempt from sales tax if Senate Bill 2114 is approved. The second main difference between the two tax types is that snowmobiles and off-highway vehicles subject to state sales tax will now also be subject to local sales taxes. The state sales tax rate and the motor vehicle excise tax rate are both 5 percent, but vehicles currently subject to motor vehicle excise tax are not subject to any local sales taxes.

Finally, I want to mention that the Department of Parks and Recreation has sponsored Senate Bill 2139, which also proposes that snowmobiles be removed from the definition of "motor vehicle" and subjected to sales tax rather than motor vehicle excise tax. Senate Bill 2139 involves other title and

registration changes not included in this bill, but does not include any changes for off-highway vehicles. Because Senate Bills 2114 and 2139 amend some of the same areas of law, we would be happy to work with the Senate Transportation Committee and the Department of Parks and Recreation to coordinate the two bills and make sure we do not create any conflicts within the law².

Explanation of bill

Section 1 of the bill will create a new section within the snowmobile registration law and requires the Director of the Department of Transportation to verify that all sales or use tax due on a snowmobile has been paid prior to issuing a title or license registration. If the snowmobile was purchased from a North Dakota dealership, the purchaser will have an invoice from the dealer showing tax paid on the purchase price. However, if for any reason tax was not paid, the owner would be required to remit tax to the Tax Commissioner before the registration process with DOT could be completed. This same process is in place at North Dakota Game and Fish for boat registration and it works quite well. The most common reason tax has not been paid on a boat before registration is that the boat was purchased from an out-of-state dealer. I assume this will be true for snowmobiles and off-highway vehicles as well.

Section 2 of the bill will create a new section in the off-highway vehicle registration law and contains the same language as Section 1 except it applies to off-highway vehicles rather than snowmobiles.

Section 3 of the bill removes off-highway vehicles and snowmobiles from the definition of a motor vehicle in the motor vehicle excise tax law. By doing so, these vehicles will no longer be subject to motor vehicle excise tax and will be subject to sales tax.

Fiscal impact

We know from auditing vehicle dealers that some snowmobile and off-highway vehicle purchases are escaping tax because the dealer is not required to collect motor vehicle excise tax and, in some cases, the purchaser does not register the vehicle and fails to remit use tax due as required by law. We do not know to what extent this problem exists. Requiring vehicle dealers to collect sales tax on all snowmobile and off-highway vehicle sales will no doubt generate additional revenue. We also know a limited number of snowmobile and off-highway vehicle sales will be casual sales and no longer subject to tax. Overall, we expect there will be a net increase in revenue generated by the changes of Senate Bill 2114, but we cannot determine the amount of increase.

Conclusion

We believe the changes in Senate Bill 2114 will help improve compliance regarding the taxation of snowmobiles and off-highway vehicles and we ask for favorable consideration by the Senate Transportation Committee. Thank you.

¹ Subsection 2 of N.D.C.C. 39-29-01

“Off-highway vehicle” means any motorized vehicle not designed for use on a highway and capable of cross-country travel on land, snow, ice, marsh, swampland, or other natural terrain. An off-highway vehicle must be classified into one of the following categories:

- a. Class I off-highway vehicle is a vehicle that does not qualify as road capable under chapters 39-21 and 39-27, has a seat or a saddle designed to be straddled by the operator, and has handlebars for steering control of two wheels.
- b. Class II off-highway vehicle is fifty inches [1270.00 millimeters] or less in width, weighs one thousand two hundred pounds [544.31 kilograms] or less, and travels on three or more nonhighway tires; or is sixty-five inches [1651 millimeters] or less in width, weighs two thousand pounds [907.19 kilograms] or less, and travels on four or more nonhighway tires.
- c. Class III off-highway vehicle weighs less than eight thousand pounds [3628.74 kilograms]; travels on skis, runners, tracks, or four or more tires; has a seat; has a wheel, handlebars, or steering for steering control; and is designated for or capable of cross-country on or over land, water, sand, snow, ice, marsh, swampland, or other natural terrain, but does not include a vehicle registered by the department under chapter 39-04 or 39-24.

² Possible areas of conflict between SB 2114 (Tax Commissioner) and SB2139 (Parks and Recreation) that may need harmonization:

Section 1 – current registration law administered by Motor Vehicle Section of the Department of Transportation. SB2139 moves registration responsibility to Department of Parks and Recreation and will eliminate title requirement for snowmobiles.

Section 4 – effective date of SB 2114 is July 1, 2015 and effective date of SB2139 is July 1, 2016.



SB 2114
3-5-15
#1
1 of 4

**North Dakota State Tax Commissioner's
Testimony before the House Transportation Committee
Senate Bill 2114**

March 5, 2015

Prepared by Myles Vosberg, Director Tax Administration Division
North Dakota Office of State Tax Commissioner
Phone: 701-328-3471
E-mail: msvosberg@nd.gov

Introduction

Good afternoon Chairman Ruby and members of the House Transportation Committee. For the record, I am Myles Vosberg, Director of the Tax Administration Division of the Tax Commissioner's Office. I am here today on behalf of the Commissioner to testify in support of Senate Bill 2114, which will subject snowmobiles and off-highway vehicles to sales tax rather than motor vehicle excise tax.

Background

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elect to complete the registration process themselves, the current law requires the Director of the Department of Transportation to verify all required tax due has been paid before completing the title and registration processes. If a vehicle dealer does not collect tax and the purchaser decides not to register the vehicle because it will be used exclusively on private land, the purchaser is liable to report the purchase and pay the 5 percent use tax to the Tax Commissioner. The issue we are trying to address through Senate Bill 2114 is that a portion of these purchasers do not self-report and pay use tax on the snowmobiles and off-highway vehicles when not registered.

Retailers are required to collect sales tax on all sales of tangible personal property unless the sales and use tax statutes provide a specific exemption. By imposing sales tax on all retail sales of snowmobiles and off-highway vehicles rather than motor vehicle excise tax, the sales tax will be collected at time of sale for all retail vehicle sales within the state. The purchaser will have no opportunity to avoid paying tax at the time of purchase. Collecting sales tax will be nothing new and will not be an additional responsibility for vehicle dealers because dealers are already collecting sales tax on sales of parts and accessories and are filing sales and use tax returns with the Tax Commissioner. None of the registration requirements for snowmobile or off-highway vehicles will be changed by Senate Bill 2114. The process to title and register snowmobile and off-highway vehicles will continue just as it is today.

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Finally, I want to mention that the Department of Parks and Recreation requested Senate Bill 2139, which also proposes that snowmobiles be removed from the definition of "motor vehicle" and subjected to sales tax rather than motor vehicle excise tax. Senate Bill 2139 involves other title and

registration changes not included in this bill, but does not include any changes for off-highway vehicles. Because Senate Bills 2114 and 2139 amend some of the same areas of law, we would be happy to work with the House Transportation Committee and the Department of Parks and Recreation, if needed, to coordinate the two bills and make sure we do not create any conflicts within the law.

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Section 3 of the bill removes off-highway vehicles and snowmobiles from the definition of a motor vehicle in the motor vehicle excise tax law. By doing so, these vehicles will no longer be subject to motor vehicle excise tax and will be subject to sales tax.

Fiscal impact

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- c. Class III off-highway vehicle weighs less than eight thousand pounds [3628.74 kilograms]; travels on skis, runners, tracks, or four or more tires; has a seat; has a wheel, handlebars, or steering for steering control; and is designated for or capable of cross-country on or over land, water, sand, snow, ice, marsh, swampland, or other natural terrain, but does not include a vehicle registered by the department under chapter 39-04 or 39-24.