

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1328

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Dennis Halliwell
Operator's Signature

10/3/03
Date

2003 HOUSE FINANCE AND TAXATION

HB 1328

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1328

House Finance and Taxation Committee

Conference Committee

Hearing Date January 20, 2003

Tape Number	Side A	Side B	Meter #
1		X	45.9 to tape #2, Side A

Committee Clerk Signature *Janice Stein*

Minutes:

REP. WESLEY BELTER, CHAIRMAN Called the hearing to order.

REP. TODD PORTER, DIST. 34, MANDAN Introduced the bill. He gave a report of the situation which arose during the last interium. See attached written testimony.

REP. BELTER Is that the way most raffles are done?

TODD PORTER I am not sure on a lot of them. What we have been doing with this organization, is one pickup per year. We also do T.V's, and other items. If through their franchise, they floor plan it, and just, basically, allow the organization to display it, there isn't a transaction that takes place. One of the other things that comes up with this, is, in the past, especially with vehicles, and during the recession, a lot of the car manufacturers say, if you buy it now because they know you are giving it away in September, if you buy it now before the end of this month, there is a two thousand dollar rebate which expires at the end of this month. That is

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an additional two thousand dollars that the charitable organization makes for their cause. It depends on how the manufacturer or the company you are purchasing this from, floor plans the items.

MILES FOSBERG, STATE TAX DEPARTMENT Testified in a neutral position. Answered the question Rep. Belter asked about what other organizations do. It has been the tax department's position that, a nonprofit organization can take the vehicle and display it for the short period of time, while selling the raffle tickets, without purchasing that vehicle. When the winner takes possession, the ownership is just transferred directly from the dealership to the winner, then the winner pays the tax, that avoids that double taxation. Gave an explanation of the fiscal note.

REP. BELTER Do your records currently show that there are two vehicles per month being raffled?

MILES FOSBERG Stated it is based on calls they get from various nonprofit organizations who are planning on having a raffle. They don't have concrete numbers.

REP. BELTER Currently, you don't have two cars or vehicles that are getting taxed twice, do you?

MILES FOSBERG We are estimating that right now, there are more raffles than two vehicles per month, but two of them per month get taxed by the nonprofit organization and then again by the winner of the vehicle.

REP. WEILER You say there are two vehicles per month getting double taxed?

MILES FOSBERG Stated that is their estimate. The nonprofit organizations do not purchase the vehicle, they just promote the raffle, and the dealership, perhaps, lets them display it for a

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short period of time, when the winner is selected, the invoice is made directly from the dealer to the winner.

REP. SCHMIDT Asked whether that two vehicles per month includes the casinos.

MILES FOSBERG Stated, that would include the casinos.

REP. DROVDAL Is the five percent you pay when you title your vehicle, is that use tax or excise tax

MILES FOSBERG It is motor vehicle excise tax.

REP. DROVDAL Stated that when he used to be involved in raffles, dealers would take a vehicle and put it on a demo program and allow us to display it, using a demo plate, is that no longer allowed under the current laws?

MILES FOSBERG I think that is still allowed, as far as the tax laws go. The tax department does not have a problem with a dealer displaying a vehicle at a location of the raffle, for a short period of time.

There are two sections to this bill, one is the sales and use tax, and one is the motor vehicle excise tax. Under the sales and use tax law, when a nonprofit organization, currently, purchases something for raffle, they would have to pay the tax, but the winner does not have to pay the tax.

REP. WINRICH Questioned the term "charitable organization", we have dealt with a number of laws recently, that restricted, in some cases, what happens with nonprofit organizations that work primarily in the conservation area. Are there different categories of charitable organizations, what kind of a definition does that have under tax law?

MILES FOSBERG There are different categories. Normally, you can consider a 501C3, which is the most common, there are other types or other categories. The way the law is written, I

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would assume that, it wouldn't have to be a formal charitable organization established recognized by the IRS. Someone could organize a benefit for a charitable cause, for a short time period, for that particular cause, the way the bill is written.

REP. WINRICH Are you saying there is no definition?

MILES FOSBERG I am saying, charitable organization, is not defined in the sales tax statute. 501C3, is a nonprofit organization and is not subject to income tax. There are other sub categories in the 501C3.

KEITH KAISER, DIRECTOR OF THE MOTOR VEHICLE DIVISION, Testified in a neutral position. He commented on Section 2 where it talks about the fact that there would be no tax due on the charitable organization, if the winner was subject to tax on a later date, under this chapter. That would fit fine, except when the winner is not from North Dakota. This needs to be cleaned up a little further to cover that situation.

REP. BELTER Are you saying, the way it is written, we do have a problem with someone winning out of state, the charitable organization would then be taxed?

KEITH KAISER That is correct. As I read Section 2, the bill talks about a tax exemption for the charitable organization, if the winner of that raffle, is also subject to the tax, which would be fine if the winner is from North Dakota. But, if the winner happens to be from out of state, they would not be subject to the excise tax laws in North Dakota. I think there would then be a taxing problem for the organization.

REP. BELTER TO REP. PORTER I am assuming, it would be your intent, if a Minnesotan wins, that the organization would not pay the tax?

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REP. PORTER Stated he hadn't given it that much thought. He gave an example if someone from Moorhead buys a vehicle in Fargo, they are not subject to a tax, so he couldn't understand in the situation of a charitable organization raffle, why, because an out of state person purchases a raffle ticket, they would have to pay a tax. The problem discussed with the tax department was in the different franchises floor planning a vehicle, to help the charitable organizations.

REP. DROVDAL The other concern which was brought up is the definition of charitable organizations. What is your intent as to the definition of a charitable organization?

REP. PORTER I don't believe, because the prize exceeds a certain dollar amount, in order to have this raffle, you have to have a permit from the Attorney General's Office direct.

REP. SCHMIDT Gave an example of selling vehicles at an auction, he questioned whether a person who bought a vehicle in North Dakota, but was from Minnesota, did not pay a tax.

KEITH KAISER Addressed Rep. Schmidt's question. He stated that excise tax law is a titling tax, it is imposed at the time someone titles a vehicle in North Dakota. When a vehicle is sold to a nonresident, there is no tax imposed in North Dakota, because your vehicle is not being titled in North Dakota. A nonresident pays that tax at whatever the rates are in their home state.

REP. DROVDAL Is that true of Minnesota, South Dakota and Montana, that there is a registration tax such as ours?

KEITH KAISER States do different things. Montana does not have a general sales tax on motor vehicles, or an excise tax as we do. Minnesota does, and South Dakota does, their rate may be different, but they have, essentially, the same process. We do have reciprocity agreements, in that, if a resident of North Dakota buys a vehicle in Arizona and paid the tax, they don't have to pay the tax here.

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The hearing was closed, however Rep. Clark, who could not be at the hearing, would give his testimony at another date.

REP. BYRON CLARK, DIST. 24, FARGO Sponsor of the bill, testified in support of the bill.

He introduced the bill because he saw the potential of double taxation issue for the nonprofits who are purchasing cars to give away in raffles. They are required to pay taxes on that. He stated it came to his attention because there was a nonprofit organization who was audited by the tax department, and got their wrists slapped because they gave a car away in a raffle, and should have paid taxes on it. They hadn't done it in the past. He stated he didn't know of any nonprofits who are currently doing that.

With no further testimony, the hearing was closed.

COMMITTEE ACTION 1-21-03, Tape #2, Side A, Meter #9.0

REP. CLARK Presented amendments to the committee members, which were prepared by the Legislative Council.

REP. CLARK Made a motion to adopt the amendments as presented.

REP. IVERSON Second the motion, motion carried by voice vote.

REP. KELSH Made a motion for a **DO PASS AS AMENDED**

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

13 YES 0 NO 1 ABSENT

REP. KLEIN Was given the floor assignment.

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