

2013 HOUSE FINANCE AND TAXATION

HB 1236

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1236
January 23, 2013
Job #17600

Conference Committee

Committee Clerk Signature

Mary Brecker

Explanation or reason for introduction of bill/resolution:

A Bill relating to payment of farm machinery gross receipts taxes under a lease agreement; relating to farm machinery gross receipts tax application in lease or rental agreements and what qualifies as used farm machinery for farm machinery gross receipts tax purposes.

Minutes:

Attached amendments #1, #2

Chairman Belter: Opened hearing on HB 1236.

Vice Chairman Headland: Introduced bill. I'm introducing HB 1236 because of a change that was needed under lease agreements when collecting and submitting gross receipts tax. There are some definition changes as to what constitutes renting and leasing in this bill and a provision that allows for trade allowance against a lease that would be new. Under section 4 I understand that we will probably need an amendment because there's possibility of collecting more tax than the lessee should be obligated to pay.

Representative Trottier: Can you give us a specific example on where the problem is?

Vice Chairman Headland: The problem became evident when it was unclear in a lease when the lease was bought out early whose responsibility it was to submit the tax, the leaser or the deal who sold the piece of machinery that was bought out. The old language referenced a three year term of lease as a qualifier of what constituted used. The technical aspects of this bill are difficult to understand so I would prefer the professionals help me through this.

Chairman Belter: Further testimony in support of 1236?

Vice Chairman Headland: I wonder if I shouldn't pass out this amendment because it changes section 4 of the bill and then maybe the tax department could explain it. See attached amendment #1.

Myles Vosberg, Director of Tax Administration Division for the Tax Commissioner's Office: I would like to go through the bill and explain the amendments. We are talking about farm machinery gross receipts tax which is a separate chapter of the law from the sales and use tax law. Farm machinery is subject to 3% gross receipts tax. The new

machinery is taxed but the used equipment is exempt. This bill attempts to deal with some complications with the definition we have in the gross receipts tax for used farm machinery. The definition for used farm machinery is that a farmer has purchased it and paid tax on it with a farmer outside the state of North Dakota owned the machinery before it came into North Dakota or it was leased or rented for a three year period. The complication with this bill became with the leased equipment that may or may not have been leased for three years. A lot of times the implement dealers that were selling the used equipment didn't have the documentation or the history behind what happened to this farm machinery and whether it had been leased for three years or not. This bill will also try to provide for trade in deduction by a farmer. If a farmer owns machinery and he wants to replace it with new machinery but lease that machinery or if a farmer is already leasing equipment from company A and wants to replace that equipment with new machinery but lease it from company B under the current law there's really no way to get a trade in deduction for that equipment that the farmer already owns or has leased. This bill creates a new definition for a lease or leasing on the top of page two. (Mr. Vosberg then reviewed the proposed amendments attached.)

Representative Drovdal: I'm still confused. There's a tax due on the product. Say the value of the equipment is \$50,000 and \$1,500 tax so if this is a lease purchase is that \$1,500 figured into that three year lease or the state ends up collecting that full responsibility of those lease payments?

Myles Vosberg: There's really an option here when the leasing company purchases that \$50,000 piece of equipment to lease they can pay the tax at that point and not have to collect tax on the lease payments. They will collect that one way or another from their customer. The other option is if they don't pay the tax on the purchase price the lease payments are subject to tax.

Representative Drovdal: Is it just the lease payment itself that is subject to 3% tax or is the total amount of tax worked into the payments so that the state collects the full amount by the end of the three years?

Myles Vosberg: If the leasing company is going to collect on the lease payments they can sum up all the lease payments without the tax and then apply the 3% to that and collect it and remit it to the tax department or as each payment comes due then the lease payment without any tax included in it is added on and collected from the farmer and remitted to the tax department. If the lease ends before the three year period they have to collect that tax even if the farmer chooses to get out of that lease and not make the remaining lease payments. One way or another the state is going to get tax on if the lease is longer than three years, if the lease is less than three years they will get tax on all the scheduled payments regardless of whether those payments were made or not.

Representative Drovdal: The total amount of three years of lease payments is not going to be the total value of the property. Is the state collecting the total value of the property in those three years because when property is done it doesn't have any tax on it anymore?

Myles Vosberg: They may not; it depends on the terms of the lease. Right now with the law the way it is we define "used" to be three years so if a farmer enters into a lease for ten

years they collect tax on the first three years of payments because at that time it is considered used and no longer subject to tax. Now and under the revisions the state may not get as much tax as if it were paid up front.

Chairman Belter: You can lease buildings and grain bins and things like that so does this fall under this same section.

Myles Vosberg: This does not. It needs to be tangible personal property so if its bins or a handling system that is real property like buildings it would not be subject to the tax.

Chairman Belter: Further testimony in support of 1236?

Matthew Larsgaard, North Dakota Implement Dealers Association: Refer to attached testimony #2.

Representative Froseth: When you say that a combine is used two years and then sold at auction, there are no sales tax collected on equipment sold at auction sale but there would still be one year left on this term so who's responsibility is it then?

Matthew Larsgaard: I can tell you from the dealer standpoint if the dealer were to purchase that piece of equipment at auction that machine would be defined as used and if it went on lease again and exceeded one year tax would be due only on the sum of the first year lease payments. If it were sold as new then tax would be collected based on the full purchase value of the machine. As far as who's liable for that tax whether it's the dealer or the auctioneer I don't know the answer to that question.

Vice Chairman Headland: In that very situation would not the unknowing farmer purchasing that piece of equipment have the responsibility of paying that tax? A farmer understands that we exempt used equipment from taxation so there's going to be some difficulty in that transaction occurring. I think this is the issue we are trying to clear up.

Matthew Larsgaard: Part of the intent of this bill is to eliminate the question of tax liability with farm machinery. An individual that purchases new farm machinery they will have paid tax on the full purchase price. The machine is then defined as used. If this bill passes in the future when an individual enters into a lease agreement for new farm machinery they will not be able to get out of that lease without paying the full tax that would be due under the law. One individual could lease the equipment for one year then it's taxed. Another individual could lease that machinery and it's taxed. Going into that third year we could have three individuals renting a piece of equipment. This is rare but it's a possible scenario under current law.

Representative Hatlestad: Wouldn't it be much simpler that as soon as the deal is finished the tax be paid?

Matthew Larsgaard: In a lease scenario as well?

Representative Hatlestad: Absolutely.

Matthew Larsgaard: The difficulty with that is in this example of a \$50,000 piece of equipment and if that is purchased a tax due on that piece of equipment is \$15,000. If that machinery is only leased for three years and the lease payments were \$100,000 per year then the tax due would only be \$9,000. Under current law the opportunity for a producer to lease farm machinery and realize that tax benefit exists so that is what we are trying to maintain with the language. Whether or not the tax policy should be to tax full lease agreement similar to a purchase contract is up to this body to decide if it's fair or not.

Chairman Belter: Further testimony in support of 1236?

Dana Bohn, Executive Director of the Farm Credit Council: Refer to attached testimony #3.

Chairman Belter: Any further testimony in support to 1236? Any testimony in opposition to 1236? Any neutral testimony to 1236?

Representative Hatlestad: My concern is if we're charging sales tax on new equipment but you'd only pay three years of the lease and then we don't charge you anymore taxes because it's used in a sense I've saved \$6,000 in tax money by leasing it instead of buying it.

Matthew Larsgaard: That is correct if there are no trades but typically on a capital purchase or a first purchase on a loan the majority of the time there is a trade so it's a net invoice. You're right that if it's a capital purchase and it's straight out no trade there is more tax initially. As you trade equipment on a capital purchase side and do the same thing on the lease side some of our analysis shows that by year three you're actually collecting more tax on the lease than you are on capital purchases because of the trade.

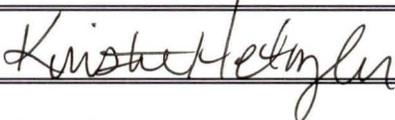
Chairman Belter: Any other questions? Closed hearing on HB 1236.

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1236
January 30, 2013
Job 18024

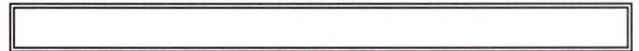
Conference Committee



Explanation or reason for introduction of bill/resolution:

A Bill relating to payment of farm machinery gross receipts taxes under a lease agreement; relating to farm machinery gross receipts tax application in lease or rental agreements and what qualifies as used farm machinery for machinery gross receipts tax purposes.

Minutes:



Myles Vosberg, Tax Department: Reviewed amendments. (ended 4:50)

Representative Owens: We are setting up the ability to get a discount off the price of the new verses trade in. The only difference is in current law you would then create lease of 3 years and you pay taxes only on that 3 year amount, so if that 3 year amount just purchasing it would have been 10,000 let's say and the trade in was 6,000 so now the person is only paying through the 3 year lease, sales tax on the 4,000 it is not on the entire purchase price.

Myles Vosberg: You have to separate this bill into two sections, 1 that deals with the trade in that really has nothing to do with leases where you only pay tax on say 3 years' worth of payments. When a trade in credit is allowed, the leasing company must pay tax on the full difference. The second part deals with the pure lease situation where there is no trade in and there is just new equipment that is being leased.

Representative Owens: Am I getting any trade in value for the old one with a new lease?

Myles Vosberg: There are two methods that tax can be paid on a lease. When the leasing company buys the equipment to lease to a farmer they can pay the tax on the purchase price up front. Then there is no tax on the lease payments. The other option is to structure a lease and pay tax on 3 years' worth of payments. If a trade is going to be allowed, it's only allowed under the 1st option. The other part of this bill, under current law says in order for equipment to be considered used it has to be leased for 3 years and that is where the problem comes in. (ended 10:00)

Representative Owens: I do a lease for three years but ended it after two years, I still owe one more year of taxes?

Myles Vosberg: That is correct.

Representative Hatlestad: If I have a three year lease and at the end of the three years I can buy the equipment, do I pay tax at the end of that three years?

Myles Vosberg: You will not because once you pay tax on 3 years' worth of payments, it qualifies as used.

Representative Hatlestad: In a sense I am going to pay less than what the original tax bill was on the equipment?

Myles Vosberg: It depends on how you look at it, because right now the definition of used?

Representative Hatlestad: If I would have had to have paid a full tax bill at the beginning of the lease, let's say 15,000 but in 3 years I have only paid 6,000 in tax, then I walk away from the other 9,000?

Myles Vosberg: There are situations where a customer will pay less on a lease rather than on an outright purchase.

Representative Owens: I'm going to lease a new piece of equipment from you, I can pay up front 3 years' worth of taxes, not the whole tax since it's a lease. Or I can pay the 3 years over the course but at no point do I pay all of it unless I am purchasing it?

Myles Vosberg: That is correct but once you've paid three years of payments it is considered used. Then if you bought the used equipment, there is no additional tax?

Representative Owens: If I agreed to a five year lease to shrink my payments, at the end of 3 years I do not owe anymore sales tax?

Myles Vosberg: That is correct.

Representative Drovdal: If I sign a three year lease and I go two years and decide I want to get out of it, I pay the 3rd year tax.

Myles Vosberg: Correct, you are required to pay 3 years' worth even if you decide to get out of your lease early.

Representative Drovdal: I would have to pay that right?

Myles Vosberg: Right.

Vice Chairman Headland: Isn't it true that the terms of the lease today could result in a different tax paid?

Myles Vosberg: That is true. This bill is trying to accomplish a certainty to determine when equipment is used or not. Whether one pays more taxes on a purchase or a lease already exists.

Rep Headland: Moves to adopt amendment.

Rep Dockter: Second.

Vote:

Rep Dockter: Motions Do Pass as Amended.

Rep Klein: Second.

Yes: 13

No: 1

Absent: 0

Carried by: Owens.

FISCAL NOTE
Requested by Legislative Council
01/15/2013

Bill/Resolution No.: HB 1236

- 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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 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.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 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).*

HB 1236 changes the taxation of certain farm machinery that is subject to lease arrangements.

- 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.*

Section 3 will result in a loss of sales tax revenue due to an exemption for leased equipment. Section 4 will result in an increase in sales tax revenue by setting a minimum number of months upon which sales tax on lease payments is due. The fiscal impact of these offsetting components of the bill 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 is also 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: 01/17/2013

January 31, 2013

1078
1/31/13
TD

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1236

Page 2, after line 9 insert:

"1."

Page 2, after line 16, insert:

- "2. Tangible personal property owned or leased and in possession of a farmer may be used as a trade-in to reduce the taxable purchase price of farm machinery or irrigation equipment used exclusively for agricultural purposes if:
- a. The retailer selling farm machinery or irrigation equipment to a lessor, for the purpose of leasing to a farmer, also purchases the machinery or equipment owned or leased and in possession of the farmer. The purchase price paid by the retailer for the equipment owned or leased and in the possession of a farmer is the trade-in value for purposes of this section;
 - b. The retailer's sale of farm machinery or irrigation equipment to a lessor for the purpose of leasing to a farmer and the retailer's purchase of equipment owned or leased and in the possession of a farmer are documented by an invoice or other documents prepared by the retailer to substantiate the trade-in relationship;
 - c. The lessor purchasing the farm machinery or irrigation equipment for the purpose of leasing to a farmer pays the taxes imposed under this chapter on the purchase price of the equipment less the trade-in value in subdivision a; and
 - d. The retailer and the lessor maintain records documenting compliance with the requirements in subdivisions a, b, and c.
3. For purposes of this section, "farmer" means any person that leases farm machinery as defined in this chapter or irrigation equipment to be used exclusively for agricultural purposes."

Page 3, line 8, remove "either"

Page 3, line 8, remove "collect and remit to the tax"

Page 3, replace lines 9 through 14 with:

":

- 1. Pay the taxes imposed under this chapter on the purchase price of the equipment that was purchased for the purpose of leasing;
- 2. On a lease with a term of three or more years, collect and remit to the commissioner the full amount of tax due under this chapter based on the cumulative value of three years of lease payments or collect the tax due on each lease payment under the agreement for three years and remit those

20/2

amounts to the tax commissioner as those amounts are collected. If a lease agreement with a term of three years or more is terminated before tax on three years of lease payments has been remitted, the lessor shall collect and remit to the tax commissioner any remaining uncollected taxes on the three-year period; or

3. On a lease with a term of less than three years, collect and remit to the commissioner the full amount of tax due under this chapter on the cumulative value of the lease payments or collect the tax due on each lease payment under the agreement for the term of the lease and remit those amounts to the tax commissioner as those amounts are collected. If a lease agreement with a term of less than three years is terminated before the end of the lease, the lessor shall collect and remit to the tax commissioner any remaining uncollected taxes on the full term of the lease."

Renumber accordingly

Date: 1-30-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1236

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. Headland Seconded By Rep. Dockter

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			Rep. Marie Strinden		
Rep. Glen Froseth					
Rep. Mark Owens					
Rep. Patrick Hatlestad					
Rep. Wayne Trottier					
Rep. Jason Dockter					
Rep. Jim Schmidt					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voie Vote
Motion carried

Date: 1-30-13
 Roll Call Vote #: 2

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1236**

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. Dockter 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	✓		Rep. Marie Strinden	✓	
Rep. Glen Froseth	✓				
Rep. Mark Owens	✓				
Rep. Patrick Hatlestad	✓				
Rep. Wayne Trottier	✓				
Rep. Jason Dockter	✓				
Rep. Jim Schmidt	✓				

Total (Yes) 13 No 1

Absent 0

Floor Assignment Rep. Owens

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

REPORT OF STANDING COMMITTEE

HB 1236: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). HB 1236 was placed on the Sixth order on the calendar.

Page 2, after line 9 insert:

"1."

Page 2, after line 16, insert:

- "2. Tangible personal property owned or leased and in possession of a farmer may be used as a trade-in to reduce the taxable purchase price of farm machinery or irrigation equipment used exclusively for agricultural purposes if:
- a. The retailer selling farm machinery or irrigation equipment to a lessor, for the purpose of leasing to a farmer, also purchases the machinery or equipment owned or leased and in possession of the farmer. The purchase price paid by the retailer for the equipment owned or leased and in the possession of a farmer is the trade-in value for purposes of this section;
 - b. The retailer's sale of farm machinery or irrigation equipment to a lessor for the purpose of leasing to a farmer and the retailer's purchase of equipment owned or leased and in the possession of a farmer are documented by an invoice or other documents prepared by the retailer to substantiate the trade-in relationship;
 - c. The lessor purchasing the farm machinery or irrigation equipment for the purpose of leasing to a farmer pays the taxes imposed under this chapter on the purchase price of the equipment less the trade-in value in subdivision a; and
 - d. The retailer and the lessor maintain records documenting compliance with the requirements in subdivisions a, b, and c.
3. For purposes of this section, "farmer" means any person that leases farm machinery as defined in this chapter or irrigation equipment to be used exclusively for agricultural purposes."

Page 3, line 8, remove "either"

Page 3, line 8, remove "collect and remit to the tax"

Page 3, replace lines 9 through 14 with:

":

- 1. Pay the taxes imposed under this chapter on the purchase price of the equipment that was purchased for the purpose of leasing;
- 2. On a lease with a term of three or more years, collect and remit to the commissioner the full amount of tax due under this chapter based on the cumulative value of three years of lease payments or collect the tax due on each lease payment under the agreement for three years and remit those amounts to the tax commissioner as those amounts are collected. If a lease agreement with a term of three years or more is terminated before tax on three years of lease payments has been remitted, the

lessor shall collect and remit to the tax commissioner any remaining uncollected taxes on the three-year period; or

3. On a lease with a term of less than three years, collect and remit to the commissioner the full amount of tax due under this chapter on the cumulative value of the lease payments or collect the tax due on each lease payment under the agreement for the term of the lease and remit those amounts to the tax commissioner as those amounts are collected. If a lease agreement with a term of less than three years is terminated before the end of the lease, the lessor shall collect and remit to the tax commissioner any remaining uncollected taxes on the full term of the lease."

Renumber accordingly

2013 SENATE FINANCE AND TAXATION

HB 1236

2013 SENATE STANDING COMMITTEE MINUTES

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

HB 1236
3/13/2013
Job Number 19881

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact section 57-39.5-06 of the North Dakota Century Code, relating to payment of farm machinery gross receipts taxes under a lease agreement; to amend and reenact sections 57-39.5-01, 57-39.5-01.1, and 57-39.5-02 of the North Dakota Century Code, relating to farm machinery gross receipts tax application in lease or rental agreements and what qualifies as used farm machinery for farm machinery gross receipts tax purposes; and to provide an effective date.

Minutes:

Testimony Attached

Chairman Cook opened the hearing on HB 1236.

Representative Headland signed in as supportive of this bill and allowed **Matthew Larsgaard, ND Implement Dealers Association** to introduce the bill and also handed out proposed amendments. (attachments 1 & 2)

Vice Chairman Campbell - Will this give an incentive for operators to do one year leases then so they don't have that 3 years of tax upfront?

Matthew Larsgaard - Typically right now the majority of leases have terms of 5-7 years. I do not think that will change with this bill.

Dana Bohn, North Dakota Farm Credit Council - See attached testimony 3.

Chairman Cook closed the hearing on HB 1250.

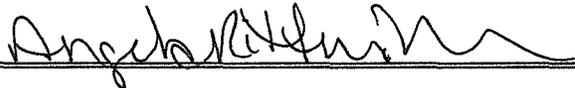
2013 SENATE STANDING COMMITTEE MINUTES

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

HB 1236
3/18/2013
Job Number 20068

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact section 57-39.5-06 of the North Dakota Century Code, relating to payment of farm machinery gross receipts taxes under a lease agreement; to amend and reenact sections 57-39.5-01, 57-39.5-01.1, and 57-39.5-02 of the North Dakota Century Code, relating to farm machinery gross receipts tax application in lease or rental agreements and what qualifies as used farm machinery for farm machinery gross receipts tax purposes; and to provide an effective date.

Minutes:

Chairman Cook opened discussion on HB 1236.

Senator Miller - I'll move the proposed amendments.

Seconded by **Senator Triplett**.

Verbal Vote 6-0-1

Senator Miller - I'll move a Do Pass as Amended.

Seconded by **Senator Oehlke**.

Roll Call Vote 6-0-1

Carried by **Senator Miller**.

FISCAL NOTE
Requested by Legislative Council
03/19/2013

Amendment to: HB 1236

- 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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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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).*

Engrossed HB 1236 with Senate Amendments changes the taxation of certain farm machinery that is subject to lease arrangements.

- 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.*

Section 3 will result in a loss of sales tax revenue due to an exemption for leased equipment. Section 4 will result in an increase in sales tax revenue by setting a minimum number of months upon which sales tax on lease payments is due. This amendment adds a provision for leases less than three years, which will result in additional sales tax revenue. The fiscal impact of these offsetting components of the bill 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.*

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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 is also 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: 03/20/2013

FISCAL NOTE
Requested by Legislative Council
02/01/2013

Amendment to: HB 1236

- 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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
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Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 328-3402

Date Prepared: 02/02/2013

FISCAL NOTE
Requested by Legislative Council
01/15/2013

Bill/Resolution No.: HB 1236

- 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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 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.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 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).*

HB 1236 changes the taxation of certain farm machinery that is subject to lease arrangements.

- 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.*

Section 3 will result in a loss of sales tax revenue due to an exemption for leased equipment. Section 4 will result in an increase in sales tax revenue by setting a minimum number of months upon which sales tax on lease payments is due. The fiscal impact of these offsetting components of the bill 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 is also 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: 01/17/2013

March 18, 2013

JJ
3/18-13

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1236

Page 2, line 4, replace ""Rent"" with ""Rental""

Page 2, line 11, remove "with the same lessor"

Page 4, line 10, remove "due under this chapter on the cumulative value of the lease"

Page 4, remove lines 11 and 12

Page 4, line 13, replace "are collected" with "calculated on the equivalent value of three years of lease payments. The equivalent value of three years of lease payments is the sum of the lease payments under the agreement divided by the term of the lease in months times thirty-six. The tax may be collected and remitted to the commissioner in equal installments with each lease payment over the term of the lease"

Page 4, line 15, replace "full term of the lease" with "equivalent value of three years of lease payments"

Renumber accordingly

Date: 3-18-13
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1736

Senate Finance & Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0285.03001 ^{file} 04000

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

Motion Made By Senator Miller Seconded By Senator Triplett

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

Total (Yes) 6 No 0

Absent 1

Floor Assignment _____

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

Date: 3-18-13
 Roll Call Vote #: 2

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1234**

Senate Finance & 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 Senator Miller Seconded By Senator Oehlke

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

Total (Yes) 6 No 0

Absent 1

Floor Assignment Senator Miller

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

REPORT OF STANDING COMMITTEE

HB 1236, as engrossed: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1236 was placed on the Sixth order on the calendar.

Page 2, line 4, replace ""Rent"" with ""Rental""

Page 2, line 11, remove "with the same lessor"

Page 4, line 10, remove "due under this chapter on the cumulative value of the lease"

Page 4, remove lines 11 and 12

Page 4, line 13, replace "are collected" with "calculated on the equivalent value of three years of lease payments. The equivalent value of three years of lease payments is the sum of the lease payments under the agreement divided by the term of the lease in months times thirty-six. The tax may be collected and remitted to the commissioner in equal installments with each lease payment over the term of the lease"

Page 4, line 15, replace "full term of the lease" with "equivalent value of three years of lease payments"

Re-number accordingly

2013 TESTIMONY

HB 1236

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1236

Page 2, line 10, overstrike "When tangible personal property is taken in trade or in a series of trades as a credit or" and insert immediately thereafter "1. When tangible personal property is taken in trade or in a series of trades as a credit or"

Page 2, line 11, remove "or lease agreement with the same lessor which is"

Page 2, after line 16, insert:

- "2. Tangible personal property owned or leased and in possession of a farmer may be used as a trade-in to reduce the taxable purchase price of farm machinery or irrigation equipment used exclusively for agricultural purposes if:
- a. The retailer selling farm machinery or irrigation equipment to a lessor, for the purpose of leasing to a farmer, also purchases the machinery or equipment owned or leased and in possession of the farmer. The purchase price paid by the retailer for the equipment owned or leased and in the possession of a farmer is the trade-in value for purposes of this section;
 - b. The retailer's sale of farm machinery or irrigation equipment to a lessor for the purpose of leasing to a farmer and the retailer's purchase of equipment owned or leased and in the possession of a farmer are documented by an invoice or other documents prepared by the retailer to substantiate the trade-in relationship;
 - c. The lessor purchasing the farm machinery or irrigation equipment for the purpose of leasing to a farmer pays the taxes imposed under this chapter on the purchase price of the equipment less the trade-in value in subsection a, and;
 - d. The retailer and the lessor maintain records documenting compliance with the requirements in subsections a, b, and c.
 - e. For purposes of this section, "farmer" means any person that leases farm machinery as defined in this chapter or irrigation equipment to be used exclusively for agricultural purposes."

Page 3, line 8; replace "either shall collect and remit to the tax" with "may."

Page 3, line 8, replace lines 9 through 14 with:

1. Pay the taxes imposed under this chapter on the purchase price of the equipment that was purchased for the purpose of leasing;
2. On a lease with a term of three or more years, collect and remit to the commissioner the full amount of tax due under this chapter based on the cumulative value of three years of lease payments or collect the tax due on each lease payment under the agreement for three years and remit those amounts to the tax commissioner as they are collected. If a lease agreement with a term of three years or more is terminated before tax on three years of lease payments has been remitted, the lessor shall collect and remit to the tax commissioner any remaining uncollected taxes on the three year period; or
3. On a lease with a term of less than three years, collect and remit to the commissioner the full amount of tax due under this chapter on the cumulative value of the lease payments or collect the tax due on each lease payment under the agreement for the term of the lease and remit those amounts to the tax commissioner as they are collected. If a lease agreement with a term of less than three years is terminated before the end of the lease, the lessor shall collect and remit to the tax commissioner any remaining uncollected taxes on the full term of the lease.

Renumber accordingly

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House Bill 1236
Testimony before House Finance & Taxation Committee
Matthew C. Larsgaard, MBA
North Dakota Implement Dealers Association
9:15 a.m., January 23, 2013

1/22/13

Mr. Chairman and members of the committee, my name is Matthew Larsgaard and I am appearing in support of House Bill 1236 on behalf of the North Dakota Implement Dealers Association which consists of our state's 125 farm equipment dealers.

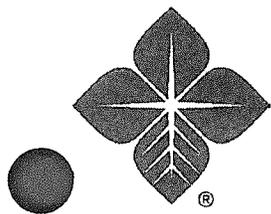
Under current law, "used" farm machinery is exempt from gross receipts or sales tax. One of three conditions must exist for farm machinery to be defined as "used" for tax purposes: 1. tax has been paid on a previous sale; or 2. the equipment was originally purchased outside of ND and previously owned by a farmer; or 3. the equipment has been under lease or rental for three years or more.

With respect to #3, it has been very difficult for some dealers to identify the tax history of various late model equipment that has been subject to a lease agreement, dealer-to-dealer trade, or purchased at an auction. For example, a combine may have been leased by Farmer A for one year, Farmer B then leases the combine for one year, and finally at the very end of the second year the combine may be sold at auction. This combine has now been through two harvests and may have several hundred hours on it however, under this scenario the combine would still be defined as "new" for tax purposes. A dealer that purchases this combine at auction may have no idea if the machine should be defined as "new" or "used" for tax purposes as there is no way to verify the equipment's tax history which would determine any future tax liability.

This bill accomplishes two things: 1. it creates a trade-in deduction for "used" equipment that is taken in trade for a lease of new equipment; and 2. it will, within a couple of years, eliminate the dealers' obligation to verify equipment tax history by requiring that the full amount of tax due be collected within the term or buyout of the initial lease agreement. Thus, the tax implication question regarding equipment that was formerly leased will be eliminated. Dealers will know that any equipment coming out of a lease will be defined as "used" in future retail transactions.

Mr. Chairman, this concludes my testimony. Thank you.

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North Dakota Farm Credit Council

AgCountry Farm Credit Services Farm Credit Services of Mandan Farm Credit Services of North Dakota

**Testimony of Dana Bohn
North Dakota Farm Credit Council Executive Director
HB 1236
January 23, 2013**

Chairman Belter and members of the House Finance and Taxation Committee, my name is Dana Bohn. I am here today on behalf of the North Dakota Farm Credit Council (NDFCC) to express our support for and concerns about HB 1236.

NDFCC is comprised of three farmer/rancher-owned independent Farm Credit associations that provide credit and financial services to farmers, ranchers and agribusinesses of all sizes and income ranges in every county in North Dakota. As one of the state's largest ag lenders, North Dakota Farm Credit associations provide about \$7.2 billion in credit and financial services to nearly 20,900 customers.

This legislation relates to the payment of sales tax on leased farm equipment. It impacts Farm Credit Services because we purchase farm equipment from various dealerships and then lease that equipment out to our customers. We understand that there has been a lot of confusion regarding the collection of sales tax on subsequent resale and recognize the complexities of the sales tax collection because we work with it first hand through our dealership leasing program.

I have with me today Jessica Fyre, who is the assistant general counsel for AgCountry Farm Credit Services in Fargo and Mike Schaefer VP of retail finance for AgCountry Farm Credit Services to help explain some of the issues we have encountered with sales tax on leased farm equipment, discuss how this legislation could help address those issues, and review some areas of the bill that we feel need additional clarification (amending).

Thank you for the opportunity to appear before you today to express our concerns about and support for HB 1236.

Independently owned and operated associations serving North Dakota and northwest and west central Minnesota.

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House Bill 1236
Testimony before Senate Finance & Taxation Committee
Matthew C. Larsgaard, MBA
North Dakota Implement Dealers Association
2:00 p.m., March 13, 2013

3/11/13

Mr. Chairman and members of the committee, my name is Matthew Larsgaard and I am appearing in support of House Bill 1236 on behalf of the North Dakota Implement Dealers Association which consists of our state's 125 farm equipment dealers.

Under current law, "used" farm machinery is exempt from gross receipts or sales tax. One of three conditions must exist for farm machinery to be defined as "used" for tax purposes: 1. tax has been paid on a previous sale; or 2. the equipment was originally purchased outside of ND and previously owned by a farmer; or 3. the equipment has been under lease or rental for three years or more.

With respect to #3, it has been very difficult for some dealers to identify the tax history of various late model equipment that has been subject to a lease agreement, dealer-to-dealer trade, or purchased at an auction. For example, a combine may have been leased by Farmer A for one year, Farmer B then leases the combine for one year, and finally at the very end of the second year the combine may be sold at auction. This combine has now been through two harvests and may have several hundred hours on it however, under this scenario the combine would still be defined as "new" for tax purposes. A dealer that purchases this combine at auction may have no idea if the machine should be defined as "new" or "used" for tax purposes as there is no way to verify the equipment's tax history which would determine any future tax liability.

This bill accomplishes two things: 1. it creates a trade-in deduction for "used" equipment that is taken in trade for a lease of new equipment; and 2. it will, within a couple of years, eliminate the dealers' obligation to verify equipment tax history by requiring that the full amount of tax due be collected within the term or buyout of the initial lease agreement. Thus, the tax implication question regarding equipment that was formerly leased will be eliminated. Dealers will know that any equipment coming out of a lease will be defined as "used" in future retail transactions.

It is important to understand that the primary purpose of this bill is to provide more clarity to existing law and also add a trade-in deduction option for lease agreements. This bill is not intended to create or diminish any tax benefits. In fact, we believe it will actually result in additional tax revenue as some farm equipment is mistakenly being sold as "used" even though it should actually be considered "new" for tax purposes.

Mr. Chairman, this concludes my testimony. Thank you.

Matthew C. Larsgaard, MBA
Automobile Dealers Association of North Dakota

Bill Review and Explanation:

Page 2, lines 1-6: creates a definition of "Leasing" and "Renting".

Page 2, lines 17-19: states that equipment owned by a farmer may be used as a trade-in deduction for a lease of new machinery under the following conditions:

- A. Page 2, lines 20-24: a dealer who sells equipment to a lessor, for the purpose of leasing to a farmer, must also purchase the trade-in equipment from the farmer. The price paid for the trade-in equipment is considered the trade-in value.
- B. Page 2, lines 25-28: requires proper documentation to be maintained that establishes the relationship between the dealer's sale of equipment to the lessor and the dealer's purchase of the trade-in equipment.

C. Page 2, lines 29-31: states that tax is due on the purchase price of the new equipment less the trade-in value of the used equipment.

D. Page 3, lines 1-2: requires both the dealer and the lessor to maintain records which document compliance with previous subsections a, b, and c.

Page 3, lines 3-5: creates a definition of "farmer".

Page 3, lines 19-23, identifies the list of criteria that must be used to define farm equipment as "used" for tax purposes.

Page 3, line 26, is the beginning of the section that defines the tax due under a lease agreement when there is no trade-in deduction. One of the next three paragraphs must be fulfilled in order for the tax obligation to be satisfied:

1. Page 3, lines 29-30, requires the tax to be calculated on the full purchase price of the equipment; or
2. Page 4, lines 1-8, on a lease with a term of three or more years, tax must be calculated based on the sum of the first three years of lease payments; or
3. Page 4, lines 9-15,

Current language, on a lease with a term of less than three years, tax must be calculated based on the cumulative value of the lease payments.

Amended, on a lease with a term of less than three years, tax must be calculated based on the equivalent sum of three years of lease payments.

North Dakota Implement Dealers Association

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1236

3/12/13 - B

Page 2, line 11, remove "with the same lessor"

Page 2, line 4, replace "Rent" with "Rental"

Page 4, lines 10-13, replace "due under this chapter on the cumulative value of the lease payments or collect the tax due on each lease payment under the agreement for the term of the lease and remit those amounts to the tax commissioner as those amounts are collected"

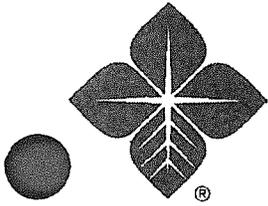
with

"calculated on the equivalent value of three years of lease payments. The equivalent value of three years of lease payments is the sum of the lease payments under the agreement divided by the term of the lease in months times thirty-six. Tax may be collected and remitted to the commissioner in equal installments with each lease payment over the term of the lease"

Page 4, line 15, replace "full term of the lease" with "equivalent value of three years of lease payments"

The amended paragraph would read:

3. On a lease with a term of less than three years, collect and remit to the commissioner the full amount of tax calculated on the equivalent value of three years of lease payments. The equivalent value of three years of lease payments is the sum of the lease payments under the agreement divided by the term of the lease in months times thirty-six. Tax may be collected and remitted to the commissioner in equal installments with each lease payment over the term of the lease. If a lease agreement with a term of less than three years is terminated before the end of the lease, the lessor shall collect and remit to the tax commissioner any remaining uncollected taxes on the equivalent value of three years of lease payments.



North Dakota Farm Credit Council

AgCountry Farm Credit Services Farm Credit Services of Mandan Farm Credit Services of North Dakota

**Testimony of Dana Bohn
North Dakota Farm Credit Council Executive Director
Engrossed HB 1236
March 13, 2013**

Chairman Cook and members of the Senate Finance and Taxation Committee, my name is Dana Bohn. I am here today on behalf of the North Dakota Farm Credit Council (NDFCC) to express our support for Engrossed HB 1236, which was initiated to clarify who is responsible for paying tax on the sale of farm machinery and equipment that is subject to a lease for less than three years.

NDFCC is comprised of three farmer/rancher-owned independent Farm Credit associations that provide credit and financial services to farmers, ranchers and agribusinesses of all sizes and income ranges in every county in North Dakota. As one of the state's largest ag lenders, North Dakota Farm Credit associations provide about \$7.2 billion in credit and financial services to nearly 20,900 customers.

Engrossed HB 1236 impacts Farm Credit Services because we purchase farm equipment from various dealerships and then lease that equipment out to our customers. We understand that there has been a lot of confusion regarding the collection of sales tax on subsequent resale and recognize the complexities of the sales tax collection because we work with it firsthand through our dealership leasing program.

New farm machinery is subject to a 3% gross receipt tax, but used farm machinery is exempt. One of the definitions of used farm machinery is that it is rented or leased for a three-year period. At times, leases may be terminated before the end of the three-year period. The implement dealer may subsequently sell the seemingly used equipment without documentation on how long it was leased or if the sales tax has been paid in full. Engrossed HB 1236 requires that the full amount of sales tax due be collected if the initial lease agreement is terminated early. Within a few years, it will eliminate the dealer's obligation to

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verify equipment tax history. In addition, similar to a sale transaction, this bill also allows a lessee to utilize a trade-in to reduce the tax obligations due under a lease.

Two of our staff members from AgCountry Farm Credit Services in Fargo (Jessica Fyre, assistant general counsel, and Mike Schaefer, vice president of retail finance) worked with the North Dakota Implement Dealers Association and the North Dakota Tax Department on HB 1236 and the House amendments. We believe the bill provides the necessary clarification regarding who is responsible for paying tax on the sale of farm machinery and equipment that is subject to a lease for less than three years.

Thank you for the opportunity to appear before you today to express our support for Engrossed HB 1236.