

# MICROFILM DIVIDER

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



ROLL NUMBER

DESCRIPTION

2336

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10/22/03  
Date

2003 SENATE FINANCE AND TAXATION

SB 2336

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2336

Senate Finance and Taxation Committee

Conference Committee

Hearing Date February 4, 2003

Tape Number	Side A	Side B	Meter #
1	X		36-3039

Committee Clerk Signature *Mary Kay Peterson*

Minutes:

Senator Urlacher opened the hearing on SB2336. All committee members are present. This bill relation to a motor vehicle excise tax on leased vehicles.

Senator Tony Grindberg (mtr #55) - Introduced bill SB2336 and his basis for supporting the bill  
Todd Fischer, Fischer Leasing (mtr #165) - Supports amending 2336. Gave detailed information on taxing of leased vehicles. Referenced summary sheet (exhibit A) and consumer/commercial leasing (exhibit b). Both attached.

Gary Anderson, State Tax Department (mtr #1750) - Clarified Tax Departments position on the bill. Reviewed the proposed amendment and Senator Grindberg's request. Also clarified the wording of lease.

Bob Lamp, Auto Dealers Association of ND (mtr #2270) - Supports bill and amendment if it pertains to commercial leasing only, consumer portion has worked well.

Senator Wardner (mtr #2618) - Questioned if amendment should zero in on commercial leasing.

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Senate Finance and Taxation Committee

Bill/Resolution Number SB2336

Hearing Date February 4, 2003

Mr. Lamp (mtr #2657) - A different amendment would need to be proposed to separate consumer and commercial leasing.

Senator Wardner (mtr #2722) - Does that sound OK? To separate consumer and commercial leasing.

Mr. Fischer (mtr #2745) - Sounds good. Suggested the trigger could be the titling of the vehicle.

Senator Urlacher (mtr #2969) - Does the committee wish a redraft on the amendment?

Senator Wardner (mtr# 2985) - My opinion, take Mr. Lamp's recommendations and redraft amendment.

Senator Urlacher (mtr# 3016) - Given no further testimony, will request the Tax Department to redraft amendment. Closed hearing on SB2336.

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2336

Senate Finance and Taxation Committee

Conference Committee

Hearing Date February 5, 2003

Tape Number	Side A	Side B	Meter #
X		X	5586-end

Committee Clerk Signature *Mary Kay Wilkey*

Minutes:

Senator Urlacher opened the discussion on SB2336. All committee members are present. This bill relates to motor vehicle excise taxes on leased vehicles.

Senator Wardner (mtr #5659) - Lobbyist requested we leave the consumer portion as it is and change the commercial portion.

Rick Clayburgh, State Tax Commissioner (mtr #5815) - Additional amendments are being prepared

Senator Urlacher - Hold on SB2336 until amendments can be addressed. Closed discussion.

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2336

Senate Finance and Taxation Committee

Conference Committee

Hearing Date February 11, 2003

Tape Number	Side A	Side B	Meter #
1		X	1418-4535
2	X		70-1400
Committee Clerk Signature <i>Maureen Kelly</i>			

Minutes:

Senator Urlacher opened the discussion on SB2336. All committee members are present. This bill relates to motor vehicle excise tax.

Senator Wardner (mtr #1461) - Has amendments that could apply. Request Mr. Fischer to come forward for questions. Requested clarification on problems with this bill and how consumer vs. commercial is handled.

Mr. Fischer (mtr #1761) - Defined commercial leasing and multilevel services offered. Also went over the use of leased vehicles and changes that can occur in the middle of the lease agreement.

Senator Wardner (mtr #2060) - Question regarding penalties on leased vehicle of mileage is over the contract amount.

Mr. Fischer (intr #2090) - Explained commercial lease accounts and the focus on the payoff amount of the lease along with the value.

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*10/22/03*  
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Senate Finance and Taxation Committee

Bill/Resolution Number SB2336

Hearing Date February 11, 2003

Gary Anderson, State Tax Department (mtr #2303) - Referenced handout that defined several proposed amendments.

Senator Urlacher (mtr #2700) - Verified that is seemed amendment .0104 would be the best option.

Senator Wardner (mtr #2767) - Requested example of .0104 working.

Mr. Fischer (mtr #2797) - Gave example of how .0104 would work in his business.

Senator Wardner (mtr #3089) - Requested comment from Mr. Lamp on amendment .0104.

Mr. Lamp (mtr #3216) - Clarified his position on the amendment. Works with many large lease companies, do not have a problem with legislation as is. Concerned about dealers tracking information and future audits by the Tax Department.

Senator Urlacher (mtr #3629) - Is Mr. Lamp opposed to .0104?

Mr. Lamp (mtr #3652) - There is one that states "exclusively" would not be opposed to that.

Senator Tollefson - Is this bill necessary?

Mr. Lamp (mtr #3700) - Dealers in the leasing business are OK with current legislation.

Mr. Anderson (mtr #3827) - Defined who would be liable for tracking.

Roger Johnson, United Lease (mtr #3955) -Gave examples of how this bill would work if passed.

Senator Urlacher (mtr #4510) - Recessed the hearing

Tape 2, Side A

Senator reopened discussion on SB2336

Senator Wardner (#71) - Amendment has been proposed. Has questions for Gary Anderson from the State Tax Department.

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Senate Finance and Taxation Committee  
Bill/Resolution Number SB2336  
Hearing Date February 11, 2003

Gary Anderson (mtr #157) - Clarified the amendment preferred by the lease company. Explained how the prior legislation was working, and how the legislation would expand with this bill.

Senator Nichols (mtr #486) - Has additional questions about the mechanics of the transaction.

Mr. Anderson (mtr #533) - Gave an example of how companies are effected with current and future legislation.

Senator Wardner - Clarified that if legislation not changed, leasing companies should not be giving a tax credit on transaction.

Mr. Anderson (mtr #642) - Attorney General opinion applies to existing laws and explained how the Attorney Generals opinion applied.

Senator Wardner (mtr #782) - Question on the next step. What do they do with cars that have been returned?

Mr. Anderson (mtr #825) - Not involved in that part of the transaction. Deferred to Mr. Fischer for the answer.

Todd Fischer (mtr #880) - Explained what they do with the returned cars. Usually sold immediately at a dealer auction.

Senator Wardner (mtr #1041) - What is the benefit of the amendment?

Mr. Fischer - Amendment clarifies the language in regards to leasing companies.

Senator Urlacher - How does this fit with other dealers?

Bob Lamp, Automobile Dealers Association (mtr #1135) - Tax credit is a benefit afforded to dealers that have followed the procedures in place to become a dealer.

Senator Seymour (mtr #1207) - Does the amendment level the playing field?

Mr. Lamp - Does the opposite. Dealers have huge investments in their dealerships.

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Senate Finance and Taxation Committee

Bill/Resolution Number SB2336

Hearing Date February 11, 2003

Senator Wardner (mtr #1385) - All questions have been answered.

Senator Urlacher - Closed the discussion on SB2336.

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2336

Senate Finance and Taxation Committee

Conference Committee

Hearing Date February 12, 2003

Tape Number	Side A	Side B	Meter #
2	X		490-2100

Committee Clerk Signature *[Handwritten Signature]*

Minutes:

Senator Urlacher opened the discussion on SB2336. All committee members are present. This bill relates to a motor vehicle excise tax.

Senator Wardner (mtr #524) - Passed out a summary sheet showing several different amendment options.

Senator Syverson (mtr #665) - The intent could be accomplished using .0104 and .0101.

Senator Urlacher (mtr #742) - Can the same result be accomplished by the leasing company obtaining a dealers license? Directed question to Bob Lamp.

Bob Lamp (mtr #830) - Licensed dealers do have these options available. Are some fees involved in getting a dealer license.

Senator Urlacher (mtr #949) - Same requirements for a leasing company to get a dealer license?

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Operator's Signature

10/22/03  
Date

Page 2  
Senate Finance and Taxation Committee  
Bill/Resolution Number SB2336  
Hearing Date February 12, 2003

Mr. Lamp (mtr #953) - That question best answered by the Attorney General. Gave information on the Attorney General opinion effects leasing and benefits they may see. Also have information on how a franchise works.

Senator Urlacher (mtr #1260) - No further questions, the bill and the amendments are before us.

Senator Syverson moves to amend SB2336 with amendment .0101 and .0104. 2nd by Senator Wardner.

Senator Nichols (mtr #1361) - Resistant to the amendments and the bill. Not enough research before the committee to understand properly.

Roll call vote to amend as proposed 2 yea, 4 nay, 0 absent. Amendments die for lack of support.

Senator Wardner (mtr #1530) - Question directed to Gary Anderson of the Tax Department.

What does this bill do for us.

Gary Anderson, State Tax Department (mtr #1567) - Clarified the intent of the bill as it is.

Further question and answer between Senator Wardner and Mr. Anderson.

Senator Syverson moves a Do Pass on SB2336. Motion dies for lack of a second.

Senator Tollefson moves a Do Not Pass. 2nd by Senator Nichols. Roll call vote 5 yea, 1 nay, 0 absent. Carrier is Senator Nichols.

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**FISCAL NOTE**  
 Requested by Legislative Council  
 01/28/2003

Bill/Resolution No.: SB 2336

1A. **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.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			(\$69,000)	(\$6,000)		
Expenditures						
Appropriations						

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

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

SB 2336 provides certain options for paying the motor vehicle excise tax on leased vehicles. If enacted, SB 2336 is expected to reduce revenues by \$75,000 during the 2003-2005 biennium.

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, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

Name:	Kathryn L. Strombeck	Agency:	Tax Dept.
Phone Number:	328-3402	Date Prepared:	02/03/2003

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10/22/03  
 Date

30762.0101  
Title.

Prepared by the Legislative Council staff for  
Senator Grindberg  
February 3, 2003

PROPOSED AMENDMENTS TO SENATE BILL NO. 2336

Page 1, line 1, after "reenact" insert "subsection 5 of section 57-40.3-01 and"

Page 1, after line 4, insert:

**"SECTION 1. AMENDMENT.** Subsection 5 of section 57-40.3-01 of the North Dakota Century Code is amended and reenacted as follows:

5. "Purchase price" means the total amount paid for the motor vehicle whether received in money or otherwise; provided, however, that when a motor vehicle or other tangible personal property that will be subject to a sales or use tax imposed by chapter 57-39.2 or 57-40.2 when sold or used is taken in trade as a credit or as part payment on a motor vehicle taxable under this chapter, the credit or trade-in value allowed by the person selling the motor vehicle shall be deducted from the total selling price to establish the purchase price of the vehicle being sold and the trade-in allowance allowed by the seller on a motor vehicle accepted as a trade-in shall constitute the purchase price of a motor vehicle accepted as a trade-in. If a motor vehicle is purchased by an owner who has had a motor vehicle stolen or totally destroyed, a credit or trade-in credit shall be allowed in an amount not to exceed the total amount the purchaser has been compensated by an insurance company for the loss but not to exceed the total amount of motor vehicle excise tax paid. The purchaser must provide the director of the department of transportation with a notarized statement from the insurance company verifying the fact that the original vehicle was a total loss and stating the amount compensated by the insurance company for the loss. The statement from the insurance company must accompany the purchaser's application for a certificate of title for the replacement vehicle. In instances in which a licensed motor vehicle dealer places into the dealer's service a new vehicle for the purpose of renting, leasing, or dealership utility service, or in which a leasing company places into lease service a vehicle for the purpose of renting or lease service, the reasonable value of the vehicle replaced shall be included as trade-in value provided the vehicle replaced has been subject to motor vehicle excise tax under section 57-40.3-02 and if the new vehicle is properly registered and licensed. "Purchase price" when the motor vehicle is acquired by gift or by any other transfer for a nominal or no monetary consideration also includes the average value of similar motor vehicles, established by standards and guides as determined by the director of the department of transportation. "Purchase price" when a motor vehicle is manufactured by a person who registers it under the laws of this state means the manufactured cost of such motor vehicle and manufactured cost means the amount expended for materials, labor, and other properly allocable costs of manufacture except that, in the absence of actual expenditures for the manufacture of a part or all of the motor vehicle, manufactured cost means the reasonable value of the completed motor vehicle."

Renumber accordingly

Page No. 1

30762.0101

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10/22/03  
Date

30762.0104  
Title.

Prepared by the Legislative Council staff for  
Senator Wardner  
February 10, 2003

PROPOSED AMENDMENTS TO SENATE BILL NO. 2336

Page 1, line 12, after "vehicle" insert "that is used primarily for business purposes"

Renumber accordingly

Page No. 1

30762.0104

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**REPORT OF STANDING COMMITTEE (410)**  
February 12, 2003 4:48 p.m.

Module No: SR-27-2505  
Carrier: Nichols  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**  
SB 2336: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends **DO NOT PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2336 was placed on the Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-27-2505

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2003 TESTIMONY

SB 2336

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Exhibit A

**SUMMARY SHEET FOR SENATE BILL 2336**

**House Bill 1201, which passed in 2001, did help North Dakota consumers who choose to lease. SB 2336 is introduced because HB 1201 does not work well for commercial/business users that choose to lease. We believe the change to allow the lessor and lessee the option to be taxed on the purchase price as introduced will be good for small business and improve the existing law.**

**Problems with House Bill 1201:**

**Early terminations**

**Trade Ins with financed amounts**

**Lease extensions/renewals**

**Unfair burden and tax increase to businesses that choose to lease**

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### **Early terminations**

When a lessee terminates a lease early, they will pay the full tax for the term of the lease.

It is not unusual for a lease to terminate early.

Some reasons a significant number of leases are terminated early:

- Vehicle dissatisfaction
- Job change and in turn vehicle needs change
- Change of driving patterns that affect the original annual mileage estimates
- Customer prefers to terminate the lease and own the vehicle
- Vehicle obsolescence based on the original intent; i.e.: change in usage on commercial accounts
- Insurance totals
- Company financial situations change
- Bonding issues
- Tax issues

**Trade Ins with financed amounts:**

Under the existing law a lease trade credit is based on the equity with no consideration given to the amount financed.

**Example:**

**Assumptions:**

Cost of new unit	\$30,000
Trade Value	10,000
Trade Payoff	13,000

**Taxable value on purchase:**

\$30,000
<u>(10,000)</u>
20,000

**Taxable value of rentals for lease based on**

\$30,000
(10,000)
<u>13,000</u>
\$33,000

**Lease extensions/renewals**

The lessee in many cases is not able to determine the exact extension renewal period for various reasons and prefers a month-to-month renewal based on such factors as:

- New order has not arrived
- New model introduction not out yet
- Evaluation of replacement based on market resale conditions
- Change in usage for unit projected
- Deferring decision due to cash flow and projected business climate
  - Examples are farmers and contractors waiting till spring or summer to determine their needs
- Budget restraints from one year to the next
- Manufacturers production constraints, component delays, strikes, etc.

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**Unfair burden and tax increase to businesses that choose to lease**

Increase tax burden versus purchasing when it comes to:

- Early terminations
- Trade with a financed balance
- Leases that are bought out at lease end
- Loss of trade credit on leases entered into before July 1, 2001

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## Talking points SB 2336

- 1) Current law works well for consumer leases that have no intent of ownership.
- 2) Lessees do not have to go to original dealer to receive a tax trade credit under the new or old law.
- 3) ND presently allows the option on equipment leases.
- 4) The tax is collected up front on both options.
- 5) Other states including California allow an option.
- 6) Any trades, leases or purchases, existing or old law, title has to be in the customers/owners name. Administratively there should be no difference then the way it is currently being done.
- 7) Collecting sales tax on monthly lease payments is not uncommon. What is uncommon is to charge tax on lease payments, and require the full amount to be paid up front.

Exhibit B.

**There is a distinction between Consumer and Commercial Leasing.**

**CONSUMER LEASING** is where an individual leases primarily for personal usage. Consumer leasing is more payment driven for the cheapest payment and what's the best deal being offered today. Should I buy because of the 0% financing, size of rebate, or should I lease because of the cheap payment being offered?

**COMMERCIAL LEASING** is a lease designed primarily for business purposes. Commercial Leasing encompasses some similar, yet totally different set of questions when looking at the leasing decision. Who will be providing the leasing product and services? When is the appropriate time to cycle an unit?

**Following are services provided by leasing companies:**

- Fleet lessors become an extend fleet manager for companies in managing their vehicle portfolios
- Analysis of vehicles for intended usage
- Vehicle selection which includes:
  - Best in class selection, resale values, proper equipment, engine size, color issues, maintenance requirements and costs of operating.
- Mileage Analysis
- Market Analysis for resale values
- Lifecycle Cost Analysis including cost per mile to operate different vehicles
- Maintenance recommendations
- Vehicle Depreciation Analysis
- Recommended lease terms and cycling based on each vehicles usage and mileage, whether it is 5,000 miles per year or 60,000 miles per year
- Company car guideline recommendations
- Employee reimbursement vs. employer provided vehicles
- Safety policies and programs
- Analysis of fleet incentives and rebate incentives
- Advising on new models and changes on old ones
- Multiple point delivery throughout the United States
- Title services, registration and licensing
- Assist in registering and moving vehicles from one state to another

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- **Tax and accounting issues:**
  - Capital vs. Operating lease
  - Off Balance Sheet financing – F.A.S.B. #13
  - Leveraged leases
  - Luxury Auto limitations
  - Depreciation issues
  - Section 179 deductions
  - Business usage vs. personal usage on employee provided autos
  - Lease income inclusions
  - Reimbursement issues
  - Mileage rate analysis
  - Gas card recommendations

**Other reasons for leasing include:**

- Conserve working capital
- Reinvest money into inventory, etc
- Free up credit lines
- Improves cash flow
- Various tax issues
- Simplified accounting
- Off Balance Sheet financing
- Nationwide vehicle delivery
- Bonding issues

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Overview of Senate Bill 2336  
and Amendments

30762.0100 (Senate Bill No. 2336)

- Option to pay tax up front based on "purchase price" or on "lease consideration"
- Option would apply to any lease of one year or more on motor vehicle having actual vehicle weight of 10,000 lbs. or less
- All other motor vehicle leases only pay on "purchase price"

30762.0103 (Amendment)

- Tax must be paid up front based on "lease consideration" for consumer leases
- Consumer lease is defined as any lease of one year or more on motor vehicle having actual vehicle weight of 10,000 lbs or less that is not used **PRIMARILY** for business purposes
- All other motor vehicle leases, including those primarily used for business purposes only pay tax on "purchase price"

\* 30762.0104 (Amendment)

- Tax must be paid up front based on "lease consideration" for any lease of one year or more on motor vehicle having actual vehicle weight of 10,000 lbs or less that is not used **PRIMARILY** for business purposes
- Any lease of one year or more on motor vehicle having actual vehicle weight of 10,000 lbs. or less used **PRIMARILY** for business purposes has option to pay tax up front based on "purchase price" or on "lease consideration"

30762.0105 (Amendment)

- Tax must be paid up front based on "lease consideration" for consumer leases
- Consumer lease is defined as any lease of one year or more on motor vehicle having actual vehicle weight of 10,000 lbs or less that is not used **EXCLUSIVELY** for business purposes
- All other motor vehicle leases, including those exclusively used for business purposes only pay tax on "purchase price"

30762.0106 (Amendment)

- Tax must be paid up front based on "lease consideration" for any lease of one year or more on motor vehicle having actual vehicle weight of 10,000 lbs or less that is not used **EXCLUSIVELY** for business purposes
- Any lease of one year or more on motor vehicle having actual vehicle weight of 10,000 lbs. or less used **EXCLUSIVELY** for business purposes has option to pay tax up front based on "purchase price" or on "lease consideration"

\*\* "Primarily" means more than fifty percent (50%) of the time

Prepared by GL Anderson  
Office of State Tax Commission  
February 11, 2003

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*Deanna Hall*  
Operator's Signature

10/22/03  
Date