

2009 HOUSE TRANSPORTATION

HB 1131

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1131

House Transportation Committee

☐ Check here for Conference Committee

Hearing Date: January 8, 2009

Recorder Job Number: 6687

Committee Clerk Signature

Jeanette Cook

Minutes:

Chairman Ruby: We will start the hearing on HB 113, and the clerk will read the title.

The title was read.

Myles Vosberg, Director of Tax Administration for the Office of State Tax Commissioner,

spoke in support of HB 1131. See attached testimony #1.

Chairman Ruby: Are there any questions?

Representative Vigesaa: Myles, on your example in section 1 where you have individual has leased a vehicle, if they have a trade-in on a leased vehicle, would that be part of the down payment then?

Myles Vosberg: Yes, that is correct. Generally a trade-in is considered as a down payment.

Representative Weisz: How often do both of these events in these examples occur in a year?

Myles Vosberg: I can't give you a number, however, the number of vehicles that are destroyed, and the credit that is allowed is substantial. That happens on a regular basis.

Representative Weisz: I'm having difficulty in understanding why there is a blank fiscal note with this bill. There should be some negative fiscal effect that we are allowing, and then on the

nominal leases we should pick up a fair amount of revenue. Here we have a completely blank fiscal note.

Myles Vosberg: The provision in Section 1 that applies to the totally destroyed vehicles; we are administering it in that manner right now. In 2001 the method of taxing leased vehicles was changed. At that time, we inserted that language that is being deleted on line 21, where we limited the credit to the excise tax A, and the intent of that was so only apply that to this new lease. But the way we inserted it in the law it actually could apply to both the purchase situations or a lease situation. In a purchase situation we are administering it at this point in time. What we are proposing here, we are trying to clarify that and codify what we are doing right now. In Section 2 of the bill regarding the undervalued lease, that is not happening very frequently at all. It is a very minor situation, but the potential is there, and so we thought it would be appropriate to plug that hole, because that possibility exists.

Chairman Ruby: Are there any other questions?

Chairman Ruby: I understand the way you are applying this in Section 1, you are saying the tax is based on the trade-in, whether it was the damage or what you do with the trade-in at this time. Is that correct?

Myles Vosberg: Mr. Chairman, that is correct. When a vehicle is totally destroyed the law requires, for the purpose of this credit, that the insurance company give what they call a total loss statement to the individual that has the loss. That certifies the value of the total loss. So, when it comes to calculating the tax, it is treated just like a trade-in. The value is deducted from what would normally be the taxable purchase price, to determine the net tax due.

Chairman Ruby: Thinking about the lease and the nominal value, I was trying to think of a situation where the credit would be given more than they had paid in previously. Could you run through that again for me?

Myles Vosberg: Is your question regarding how the credit works on the lease vehicle?

Chairman Ruby: Yes.

Myles Vosberg: The taxation of a lease is based on the total consideration over the life of the lease, but it is paid up front. So to calculate the tax, you take the down payment, plus all the scheduled payments, add that together, and multiply it times the 5% tax rate. That tax is paid at the Motor Vehicle's register with DOT. Generally the value of the lease consideration is less than the entire value of the vehicle because it is only leased for a portion of the life of the vehicle. So, if a vehicle is totaled out that has been leased, we don't want the credit that is received on the replacement vehicle to be more than what they originally paid on the vehicle that was destroyed.

Chairman Ruby: You are trying to make the change to the way you apply the law now on the purchased vehicles. What have you been doing in the past with leased vehicles? Have you had to give more than was paid in?

Myles Vosberg: Mr. Chairman, no, because the way the law reads now the credit is limited upon all transactions to the amount of tax that is paid. So no one has gotten additional credit on the lease situation, but we have not held the line on the purchased vehicles because that was not the intent.

Chairman Ruby: OK. Are there any other questions? Is there anyone else here to testify in favor of HB 1131?

Matthew Larsgaard from the Automobile Dealer's Association of North Dakota stated that he represents approximately 100 franchising car dealers in the state, and his industry supports this legislation.

Chairman Ruby: Any questions? Thank you. Is there anyone else here to testify in favor of HB 1131? Is there any opposition to HB 1131?

There was no opposition.

Chairman Ruby: We will close the hearing on HB 1131. Is there any discussion?

Representative Schmidt: Mr. Chairman, I move a Do Pass.

Representative Thorpe seconded the motion.

Representative Thorpe: I'm confident that I understand what the bill is doing, and I only wish had a little more simplicity to it. It is a little convoluted, so I really wouldn't want to carry this to the floor.

Chairman Ruby: Any further discussion? Being none, the clerk will take the roll.

A roll call vote was taken. **Yea: 14 Nay: 0 Absent: 0**

Representative Weisz will carry the bill.

FISCAL NOTE
Requested by Legislative Council
12/23/2008

Bill/Resolution No.: HB 1131

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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

This bill has no fiscal impact.

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.*

This bill has no fiscal impact.

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:	Shannon L. Sauer	Agency:	NDDOT
Phone Number:	328-4375	Date Prepared:	01/05/2009

Date: 1-8-09

Roll Call Vote #: _____

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1131

House TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do pass ☐ Don't Pass ☐ Amended

Motion Made By Schmidt Seconded By Thorpe

Representatives	Yes	No	Representatives	Yes	No
Representative Ruby - Chairman	✓		Representative Delmore	✓	
Rep. Weiler - Vice Chairman	✓		Representative Griffin	✓	
Representative Frantsvog	✓		Representative Gruchalla	✓	
Representative Heller	✓		Representative Potter	✓	
Representative R. Kelsch	✓		Representative Schmidt	✓	
Representative Sukut	✓		Representative Thorpe	✓	
Representative Vigesaa	✓				
Representative Weisz	✓				

Total Yes 14 No 0

Absent 0

Bill Carrier Rep. Weisz

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

REPORT OF STANDING COMMITTEE

HB 1131: Transportation Committee (Rep. Ruby, Chairman) recommends DO PASS
(14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1131 was placed on the
Eleventh order on the calendar.

2009 SENATE FINANCE AND TAXATION

HB 1131

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1131

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 03/02/2009

Recorder Job Number: 9970

Committee Clerk Signature



Minutes:

Chairman Cook: Opened hearing on HB 1131.

Myles Vosberg, Director of Tax Administration, Office of State Tax Commissioner: See Attachment #1 for testimony in support of the bill.

6.38 **Chairman Cook:** Are there a lot of circumstances that vehicles are leased at a nominal value?

Myles Vosberg: There are not at this time.

7.20 **Matthew Larsgaard, Automobile Dealers Association of North Dakota:** Appeared to testify in support of the bill.

Chairman Cook: Any further testimony? (no)

Senator Triplett: Question for Myles Vosberg. In your example 1, if you have someone leasing the \$30,000 vehicle for total consideration of less than half of its value, on theory I suppose that at the end of three years they are going to return it to the leasing company that will then sell it and get the rest of their value; so why would the individual get the full amount of the insurance payment in the first place as opposed to it being prorated with the leasing company?

Myles Vosberg: Right now they would not. There is language that would restrict the amount of credit that a taxpayer can receive and it restricts it to the amount paid. The problem that we have is that language as it is in the law right now also applies to the purchase transactions, and so if you look at the language of the law and interpret it strictly right now in example 2 that I had, the credit would be limited to \$250. Because of that trade in situation, that is what we are trying to clarify. It doesn't impact the lease vehicle trade in.

Senator Triplett: I think that the example isn't a real world example, but if it doesn't matter anyway relative to the statute.

Myles Vosberg: Number two could be a real example. The whole idea behind a lease transaction is to not require the lessee to pay tax on the full value of the vehicle when they are only going to have it for a portion of the time.

Senator Triplett: It was the piece about the insurance company paying the claim for the full amount of the value when the implication....

Myles Vosberg: On the lease transaction? You are correct, they will not pay.

Senator Anderson: I would never have been aware of this situation. Who alerts people to this?

Myles Vosberg: I would assume that it happens frequently.

Chairman Cook: The insurance company does.

Senator Dotzenrod: I am confused on Situation 1. Individual X doesn't own this vehicle, it is owned by someone else. So if it gets in a hail storm and it is totaled, to me the person that has the loss is the person that owns the vehicle. All he has put into the vehicle is the lease payments; there is a loss of higher than paid. It surprises me that the lease holder gets the amount in a check for the full value.

Myles Vosberg: It is unlikely that the lessee is going to get the full amount. The leaser would get the payment because they are the title holder.

Senator Dotzenrod: The check would be written out to the lessee and he is going to have to give some of it to the vehicle owner.

Myles Vosberg: I would guess the check would be made out to the leaser.

Senator Dotzenrod: That would make sense to me.

Chairman Cook: You are only using this example to show the comparison between ownership and the flaw you are trying to correct has nothing to do with leases, correct?

Myles Vosberg: Actually the language that restricts the tax to the credit to the tax paid was put into the law when the law was changed to tax the lease payments rather than the purchase price of the vehicle upfront. We put this language in here and it had unintended consequences that it could apply to both the lease and the purchase situation, and we only intended for it to apply to the lease situation.

Chairman Cook: Closed hearing on HB 1131.

Chairman Cook: Committee your wishes?

Senator Triplett: Moved a Do Pass.

Senator Oehlke: Seconded.

A Roll Call vote was taken: Yea 6, Nay 0, Absent 1 (Senator Miller).

Senator Oehlke will carry the bill.

Date: 03/02/09

Roll Call Vote #: }

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.: 1131

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Senator Triplett Seconded By Senator Oehlke

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman	✓		Sen. Arden Anderson	✓	
Sen. Joe Miller - Vice Chairman	—	—	Sen. Jim Dotzenrod	✓	
Sen. David Hogue	✓		Sen. Constance Triplett	✓	
Sen. Dave Oehlke	✓				

Total: Yes 6 No 0

Absent 1 (Miller)

Floor Assignment Senator Oehlke

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

REPORT OF STANDING COMMITTEE (410)
March 2, 2009 3:45 p.m.

Module No: SR-37-3856
Carrier: Oehlke
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1131: Finance and Taxation Committee (Sen. Cook, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1131 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

HB 1131

Attachment
#1

TESTIMONY OF THE OFFICE OF STATE TAX COMMISSIONER
BEFORE THE
HOUSE TRANSPORTATION COMMITTEE

Same given
to Senate

HOUSE BILL 1131

January 8, 2009

Chairman Ruby, members of the House Transportation Committee, I am Myles Vosberg, Director of Tax Administration for the Office of State Tax Commissioner and I am here today to testify in support of House Bill 1131.

BACKGROUND

This bill, which was introduced at the request of the Tax Commissioner, relates to motor vehicle excise tax imposed on leased vehicles. The bill proposes two amendments. The amendment in Section 1 relates to the tax credit a lessee may receive when replacing a leased vehicle that is stolen or totally destroyed, and the amendment in Section 2 addresses the taxable value of a motor vehicle lease when a lessee enters into a lease for a nominal value.

When a vehicle is purchased, motor vehicle excise tax is due on the net purchase price, which is the vehicle purchase price less any credit received for a trade-in. When certain motor vehicles (cars and light trucks) are leased, tax is due on the total amount of consideration that will be paid over the term of the lease. Total lease consideration is normally the sum of any down payment plus all lease payments over the term of the lease.

Under the existing motor vehicle excise tax law, when a motor vehicle is stolen or totally destroyed, the owner or lessee of that vehicle is allowed a credit or "trade-in credit" to reduce the motor vehicle excise tax paid on a replacement vehicle. The trade-in credit is equal to the amount received from an insurance company in compensation for the loss. However, the reduction in tax on the replacement vehicle may not exceed the tax paid on the destroyed vehicle.

EXPLANATION OF THE BILL

Section 1- Credit for a vehicle that is a total loss. The purpose of Section 1 is to clarify that the limitation in the tax credit for a totally destroyed vehicle applies to leased vehicles but not to purchased vehicles. The amendment in Section 1 will codify existing administrative practice regarding the trade-in credit.

The following examples will help illustrate why the amendment is needed.

Example 1: Individual X leases a vehicle valued at \$30,000 for three years. The terms of the lease are a down payment of \$2,000 plus thirty-six monthly payment of \$350. The total lease consideration is \$14,600 [$\$2,000 + (36 * \$350) = \$14,600$] and the motor vehicle excise tax due at the time of lease is \$730 [$\$14,600 * 5\%$]. Sometime after leasing the vehicle, Individual X is

caught in a hail storm and the vehicle is a total loss. Individual X's insurance company pays a claim of \$28,000 for the vehicle and provides Individual X a total loss statement certifying the \$28,000 loss.

Individual X will be eligible to receive the trade-in credit on a replacement vehicle, but the tax credit will be limited to \$730, which is the amount of tax paid on the leased vehicle. If the credit were not limited, Individual X would be able to receive a credit of \$1,400 [$\$28,000 \times 5\%$], which is \$670 more than the original tax paid on the destroyed vehicle.

Example 2: Individual Y purchases a \$30,000 vehicle. The seller accepts a trade-in vehicle of \$25,000 plus \$5,000 cash. The net purchase price is \$5,000 [$\$30,000 - \$25,000$] and the motor vehicle excise tax due at the time of purchase is \$250 [$\$5,000 \times 5\%$]. Soon after purchasing the vehicle, Individual Y is caught in a hail storm and the vehicle is a total loss. Individual Y's insurance company pays a claim of \$28,000 for the vehicle and provides Individual Y a total loss statement certifying the \$28,000 loss.

In example 2, Individual Y will be eligible to receive the full credit of \$1,400 [$\$28,000 \times 5\%$]. Even though Individual Y paid only \$250 of tax at the time of purchase, Individual Y also paid tax on the trade-in vehicle when he or she purchased it. Therefore, an inequity would exist if the credit for Individual Y would be limited to the \$250 tax paid at the time of purchase.

Section 2 – Taxable value of a leased vehicle. Section 2 of the bill authorizes the Department of Transportation to determine the taxable value of motor vehicle leases in cases where vehicles are leased for a nominal value. Currently, similar language exists in the motor vehicle excise tax law for vehicles that were acquired by gift or purchased for a nominal value, but no such language exists for leased vehicles. The existing language applicable to vehicles acquired for nominal or no value is found in lines 14 through 17 on page 2 of the bill.

Under existing law, an individual or company may purchase a vehicle for lease without paying tax, and then lease that vehicle to another party for a minimal amount. Without the proposed language in Section 2, the minimal lease consideration becomes the taxable amount of the lease.

CONCLUSION

Section 1 of House Bill 1131 will clarify the trade-in credit allowed for a totally destroyed vehicle and not limit the credit for purchased vehicles. Section 2 will provide the Department of Transportation the authority it needs to fairly value vehicles leased for a nominal value. The Tax Commissioner recommends a "do pass" for House Bill 1131. Thank you for your consideration.