

**2013 SENATE FINANCE AND TAXATION**

**SB 2090**

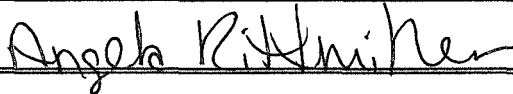
# 2013 SENATE STANDING COMMITTEE MINUTES

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

SB 2090  
1/16/2013  
Job Number 17280

Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 57-39.2-02.1, subsections 22 and 35 of section 57-39.2-04, sections 57-39.2-08.2 and 57-40.2-02.1, and subsections 10 and 18 of section 57-40.2-04 of the North Dakota Century Code, relating to sales and use tax on manufactured homes; and to provide an effective date.

### Minutes:

Testimony Attached

**Chairman Cook** opened the hearing on SB 2090.

**Myles Vosberg, Director of the Tax Administration Division, Office of State Tax Commissioner** - See attached testimony 1.

**Senator Oehlke** - When they figure the price of a manufactured home, this 3%, some of them have a lot of things in them, appliances, etc, is that included in that 3%?

**Myles Vosberg** - If it's all part of the transaction where those items are included in the mobile home they would be taxed at 3%. If purchased later they would be taxed at the 5%.

**Chairman Cook** - These are taxed at a 3% rate?

**Myles Vosberg** - Manufactured homes, mobile homes, yes.

**Chairman Cook** - Even when it was in sales tax chapter they were 3%?

**Myles Vosberg** - Under streamline manufactured homes were essentially carved out and the states could have a different rate for them if they wanted to and still be in compliance.

**Chairman Cook** - I always think of a manufactured home and a mobile home as 2 distinct different things. Are they the same?

**Myles Vosberg** - They are. I don't know that there is any definition of mobile home anymore in the law. The reference that we have in the bill, which refer to the definition in Chapter 41 is the uniform commercial code and that has a definition of a manufactured home. Then the standard in the building code that is monitored by the commerce department also refers to manufactured home.

**Chairman Cook** - Why wouldn't a mobile home park where a whole bunch of what I always thought were mobile homes, wouldn't these mobile homes have axles underneath them yet?

**Myles Vosberg** - In most cases I think they probably do.

**Chairman Cook** - So you take the skirting off, put some wheels on it and you pull it away. Where a manufactured home is set on a foundation and doesn't have an axle underneath.

**Myles Vosberg** - According to the law the manufactured home, the definition basically says it's a structure, one or more sections, it needs to be 8 feet wide or more, or 40 feet in length or more, or when it's erected it has more than 320 square feet, it's build on a permanent chase, designed to be used as dwelling with or without a permanent foundation when it's connected to utilities, then it refers to a structure where it meets the HUD codes that are for manufactured homes.

**Chairman Cook** closed the hearing on SB 2090.

**Chairman Cook** - We have a motion to amend that we overstrike the words on page 4 lines 21-23 starting from 'and of farm group purposes'.

Seconded by **Senator Burckhard**.

**Verbal vote 6-0-1.**

**Chairman Cook** - The amendment passes.

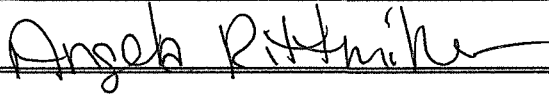
# 2013 SENATE STANDING COMMITTEE MINUTES

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

SB 2090  
1/23/2013  
Job Number 17606

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 57-39.2-02.1, subsections 22 and 35 of section 57-39.2-04, sections 57-39.2-08.2 and 57-40.2-02.1, and subsections 10 and 18 of section 57-40.2-04 of the North Dakota Century Code, relating to sales and use tax on manufactured homes; and to provide an effective date.

## Minutes:

Committee Work

**Chairman Cook** opened discussion on SB 2090.

**Chairman Cook** mentioned that the amendments passed.

**Senator Burckhard** - I'll move a **Do Pass as Amended and re-refer to Appropriations**.

Seconded by **Senator Dotzenrod**.

**Roll Call Vote 7-0-0**

Carried by **Senator Burckhard**.

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/24/2013**

Amendment to: SB 2090

- 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			\$(736,000)	\$(64,000)		
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).*

Eng. SB 2090 changes the tax base on which sales tax is imposed on manufactured housing from the retail sale to the dealer's cost if the transaction includes the installation of the manufactured home.

- 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 1 of Eng. SB 2090 changes the base on which the sales tax is computed to the dealer's cost of purchasing a manufactured home if the home is sold in conjunction with it's installation in this state.

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.*

It is estimated that Eng. SB 2090, if enacted, will reduce state general fund and state aid distribution fund revenues by approximately \$800,000 during the 2013-15 biennium.

- 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:** 01/24/2013

**FISCAL NOTE**  
**Requested by Legislative Council**  
**12/21/2012**

Bill/Resolution No.: SB 2090

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**Date Prepared:** 01/15/2013

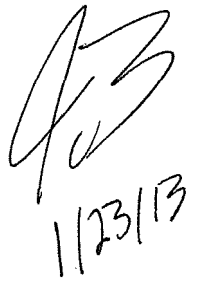




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Adopted by the Finance and Taxation  
Committee

January 23, 2013



Handwritten signature and date: 1/23/13

PROPOSED AMENDMENTS TO SENATE BILL NO. 2090

Page 4, line 21, overstrike "and of farm"

Page 4, overstrike line 22

Page 4, line 23, overstrike "agricultural purposes,"

Renumber accordingly

Date: 1-16-13  
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2090

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Adopt Amendment

Motion Made By Senator Oehlke Seconded By Senator Burckhard

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 \_\_\_\_\_

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

Verbal vote

Date: 1-23-13  
Roll Call Vote #: 2

2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2090

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number 13 8123 01001

Action Taken Do Pass as Amended & refer to Appropriation

Motion Made By Senator Burckhard Seconded By Senator Dotzenrod

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

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Burckhard

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

**REPORT OF STANDING COMMITTEE**

**SB 2090: Finance and Taxation Committee (Sen. Cook, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2090 was placed on the Sixth order on the calendar.

Page 4, line 21, overstrike "and of farm"

Page 4, overstrike line 22

Page 4, line 23, overstrike "agricultural purposes,"

Renumber accordingly

**2013 SENATE APPROPRIATIONS**

**SB 2090**

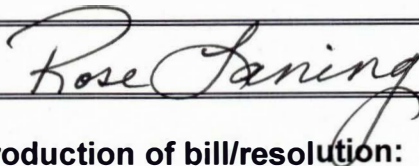
# 2013 SENATE STANDING COMMITTEE MINUTES

## Senate Appropriations Committee Harvest Room, State Capitol

SB 2090  
January 31, 2013  
Job # 18061

Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

A bill relating to sales and use tax on manufactured homes.

### Minutes:

Testimony attached # 1

**Chairman Holmberg** opened the hearing on SB 2090. All committee members were present except **Senator Robinson**.

Legislative Council - Adam Mathiak  
OMB - Laney Herauf

### **Myles Vosberg, Director, Tax Administration Division, State Tax Commissioner**

Testified in favor of SB 2090  
Testimony attached # 1

**Chairman Holmberg:** I don't see a lot of folks here testifying. Was there negative testimony in the Senate Finance and Tax committee?

**Myles Vosberg:** There was not. This is a bill introduced by the Tax Commissioner. I believe we were the only ones testifying at the hearing.

**Senator Warner:** There's a certain amount of housing in oil industry. There are things, maybe on skids, that are actually at the well site. Those would be considered non-installed?

**Myles Vosberg:** Generally they are not installed, the ones that are on skids. The ones that are on skids don't qualify for the definition of a manufactured home either because they aren't built on a chassis with wheels, etc.

**Senator Warner:** Certain park model mobile homes use... Years ago we had a definitional problem when they're used as lake cabins whether they are a recreational vehicle or a mobile home. Could you refresh my memory?

**Myles Vosberg:** I believe they are treated as mobile homes, but I'd have to check on that to be sure.

**Senator Warner:** Are there zoning laws that requires all manufactured homes to be bolted down, regardless of where they are in the state. Or is that a local jurisdiction?

**Myles Vosberg:** The laws that went into place, about three sessions ago, required the Division of Community Services of the Commerce Department to establish a program to adopt standard installation rules, etc., so all homes within the state of ND are required to be installed under these standards.

**Senator Warner:** That would only affect when they are bought and sold. If there were some that had been owned previous to that, they were probably grandfathered in and may not be installed the same.

**Myles Vosberg:** This is true. This only applies to new homes that are sold from the beginning of when the program went into place so now all new homes, if you're moving a used home, the standards would not apply.

**Senator Warner:** There are some out there, whereas a condition of the bank loan or the insurance company will require it, even though it's staying on the same lot, that people that moved it off, put it on pads and had to move it back again.

**Chairman Holmberg** asked for any additional questions or if anyone else wanted to testify.

**Senator Mathern Moved Do Pass on SB 2090.**  
**Senator Erbele seconded**

**Discussion - none.**

**This would be referred back to Finance and Tax.**

**A roll call vote was taken. Yea: 11    Nay: 1    Absent: 1**  
**Motion carried.**

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/24/2013**

Amendment to: SB 2090

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**Name:** Kathryn L. Strombeck

**Agency:** Office of Tax Commissioner

**Telephone:** 328-3402

**Date Prepared:** 01/24/2013

**FISCAL NOTE**  
**Requested by Legislative Council**  
**12/21/2012**

Bill/Resolution No.: SB 2090

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**Name:** Kathryn L. Strombeck

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**Telephone:** 328-3402

**Date Prepared:** 01/15/2013

Date: 1-31-13

Roll Call Vote# 1

2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES

BILL/RESOLUTION NO. 2090

Senate Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Mathern Seconded By Erbele

Senators	Yes	No	Senator	Yes	No
Chairman Ray Holmberg	✓		Senator Tim Mathern	✓	
Co-Vice Chairman Bill Bowman	✓		Senator David O'Connell		✓
Co-Vice Chair Tony Grindberg	✓		Senator Larry Robinson		
Senator Ralph Kilzer	✓		Senator John Warner	✓	
Senator Karen Krebsbach	✓				
Senator Robert Erbele	✓				
Senator Terry Wanzek	✓				
Senator Ron Carlisle	✓				
Senator Gary Lee	✓				

Total (Yes) ~~11~~ 11 No 1

Absent 1

Floor Assignment Finance + Tax, Sen Buerkhard

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

**REPORT OF STANDING COMMITTEE**

**SB 2090, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman)**  
recommends **DO PASS** (11 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING).  
Engrossed SB 2090 was placed on the Eleventh order on the calendar.

**2013 HOUSE FINANCE AND TAXATION**

**SB 2090**

# 2013 HOUSE STANDING COMMITTEE MINUTES

## House Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2090  
March 6, 2013  
Job #19494

Conference Committee

Committee Clerk Signature

*Mary Brucher*

### Explanation or reason for introduction of bill/resolution:

A Bill relating sales and use tax on manufactured homes.

### Minutes:

*See attached testimony #1.*

**Chairman Belter:** Opened hearing on SB 2090.

**Myles Vosberg, Director of the Tax Administration Division for the Office of State Tax Commissioner:** See attached testimony #1.

**Vice Chairman Headland:** Isn't our use tax 5% or what is the deal with manufactured homes?

**Myles Vosberg:** Manufactured homes are mobile homes and have a special rate and they are taxed at 3%.

**Representative Schmidt:** Isn't this the same type of bill as the grain bins bill?

**Myles Vosberg:** A component of it is the same. Most states have special rules for mobile homes of one kind or another. In Minnesota or South Dakota if they sell a mobile home with installation from those states and deliver it into North Dakota the tax applies here. We are attempting to do the same thing here and balance it so that if you sell a mobile home in North Dakota and deliver it out of state the tax will apply where it is delivered. You're right, it is the opposite of the grain bin situation but for most other things other than mobile homes it is where the contractor first owns the good that is installed that is taxed. In that bill we were trying to keep it the same for the grain bins because the states are all treated the same so we were trying to maintain North Dakota in that same manner.

**Representative Schmidt:** Why?

**Myles Vosberg:** I think because of the portability and manufactured homes have been treated differently traditionally. In sales and use tax laws mobile homes or manufactured homes are treated in a different manner just like a different tax rate.

**Representative Zaiser:** Wouldn't it make more sense for North Dakota to have its own tax structure to be consistent with itself rather than for us to be consistent with other states just for the sake of being similar to other states?

**Myles Vosberg:** For the dealers in North Dakota that may make it a little easy because they could treat every transaction the same but on the other hand I think it's more of a competition issue. If those mobile home dealers that remove those mobile homes into Minnesota or South Dakota have to pay our tax first it may put them at a competitive disadvantage when they try to do business across the border.

**Representative Froseth:** How many mobile home manufacturers are there in the state?

**Myles Vosberg:** I don't think we have any manufacturers here but the dealers purchase from the manufacturers and bring them to North Dakota. If they distribute outside the state is where this issue comes into play.

**Representative Hatlestad:** On page 4 you indicated they pay a 3% sales tax on manufactured homes so on page 4 why do we only charge it on the dealer cost? Do we do that with lumber going into a regular home or any other product? Don't we charge it on the selling price?

**Myles Vosberg:** I think maybe its terminology here. The dealers cost is like a contractor buying lumber and that's their cost. A dealer buys a mobile home from the manufacturer that is their cost. We are always looking at the cost or the purchase price paid by whoever is doing the installation.

**Chairman Belter:** Further testimony in support of 2090? Any opposition to 2090? Any neutral testimony? We will close the hearing on 2090.



# 2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee  
Fort Totten Room, State Capitol

SB 2090  
March 6, 2013  
Job #19514

Conference Committee

Committee Clerk Signature

*May Buckey*

**Minutes:**

**Chairman Belter:** This is the manufactured home bill. What are the committee's wishes?

**Vice Chairman Headland:** Made a motion for a Do Pass.

**Representative Dockter:** Seconded.

**Representative Klein:** This kind of fits in with the one we passed originally that had to do with the grain bins so make them all the same?

**Chairman Belter:** No this is a different deal.

**Vice Chairman Headland:** If you're referencing the fact that it's going to make it so we do the transaction the same as other states then the answer is yes but I think it is doing the opposite of what that other bill did. It is relieving the state of their tax when the mobile home goes out of state.

**Representative Klein:** This would then fit in with surrounding states?

**Chairman Belter:** Correct.

**ROLL CALL VOTE: 12 YES 0 NO 2 ABSENT**

**Representative Trottier will carry this bill.**

**FISCAL NOTE**  
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**01/24/2013**

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**12/21/2012**

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

SB 2090 changes the tax base on which sales tax is imposed on manufactured housing from the retail sale to the dealer's cost if the transaction includes the installation of the manufactured home.

- 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 1 of SB 2090 changes the base on which the sales tax is computed to the dealer's cost of purchasing a manufactured home if the home is sold in conjunction with its installation in this state.

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.*

It is estimated that SB 2090, if enacted, will reduce state general fund and state aid distribution fund revenues by approximately \$800,000 during the 2013-15 biennium.

- 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:** 01/15/2013

Date: 3-6-13  
 Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2090**

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

Total (Yes) 12 No 0

Absent 0

Floor Assignment Rep. Trottier

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

**REPORT OF STANDING COMMITTEE**

**SB 2090, as engrossed: Finance and Taxation Committee (Rep. Belter, Chairman)**  
recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING).  
Engrossed SB 2090 was placed on the Fourteenth order on the calendar.

**2013 TESTIMONY**

**SB 2090**



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**TESTIMONY OF THE OFFICE OF STATE TAX COMMISSIONER  
BEFORE THE  
SENATE FINANCE AND TAXATION COMMITTEE**

**SENATE BILL 2090**

**January 16, 2013**

Chairman Cook, members of the Senate Finance and Taxation Committee, I am Myles Vosberg, Director of the Tax Administration Division the Office of State Tax Commissioner and I am here today on behalf of the Commissioner to testify in support of Senate Bill 2090.

**BACKGROUND**

This bill addresses the application of sales and use taxes to manufactured homes, currently referred to as mobile homes in the sales tax statutes. North Dakota sales and use tax laws require retailers to collect sales tax on the selling price of tangible personal property sold within the state. However, when a contractor attaches tangible personal property to real property, the transfer of ownership of that tangible personal property is not a retail sale. The contractor is viewed the final consumer of that tangible personal property in performance of the contract and must pay sales or use tax on his purchase price or cost of the property.

Manufactured homes are no exception to this rule. If a manufactured home dealer sells a home and as part of the contract agrees to “install” the manufactured home, the dealer is required to pay sales or use tax on its purchase price of the home and will incorporate the cost of the tax into the contract price for sale and installation of the home. This practice is no different than a traditional home builder that constructs a home by purchasing concrete, lumber, doors, windows and other components. The contractor pays sales or use tax on all the materials incorporated into the home, but does not collect sales tax from the new home owner.

The question that arises and that we intend to clarify with Senate Bill 2090 is how to define when a manufactured home is installed into real property. Because installation requirements and standards have evolved and improved in recent years, we believe the definition of “installation” is currently unclear and we recommend that installation under

the current manufactured home standards be considered installed into real property for application of sales and use taxes.

New installation standards and requirements were adopted during the 2003 North Dakota legislative session. The legislation established a manufactured home installation program and required the Division of Community Services of the Department of Commerce to administer the program. The program includes adopting installation standards and developing a program to certify manufactured home installers and installation inspectors. The current standards apply to the first installation of all manufactured homes installed in North Dakota.

Until recently, the Tax Department has always considered a manufactured home to be installed, and therefore, subject to tax on the dealer's cost, only if the frame of the home had been bolted to a permanent foundation. Manufactured homes that were installed in any other manner were retail sales of tangible personal property and the dealers were instructed to collect sales tax on the full selling price of the home including delivery charges. Discussions with representatives of the manufactured homes industry and with the Division of Community Services have led us to the conclusion that manufactured homes installed under the current standards should be treated as installed into real property.

Under the new standards, new manufactured home installation generally requires concrete pads or piers with footings below the frost line. The I-beam frame of the home is attached to the concrete pad or pier by one of several approved methods. Although the installation is set up so that the manufactured home may be moved at a later date, one can easily argue that the home is installed into real property.

Because all new manufactured homes are subject to these standards, we believe all new manufactured homes should be considered installed for sales and use tax purposes if the home is installed following the approved standards and tax should apply to the dealers cost when the dealer sells the home with installation as part of the contract terms. Manufactured homes sold without installation would remain a retail sale subject to sales tax on the complete retail selling price.

## **EXPLANATION OF THE BILL**

The term “mobile home” is replaced throughout the bill with “manufactured home.” Mobile home is an outdated term and no longer used by the manufactured home industry nor is it used in statutes relevant to installation of manufactured homes.

**Section 1** of the bill amends the imposition section of the sales tax law to state that tax will apply to the gross receipts (selling price) in the case of a retail sale or on the dealers cost if the home is sold in conjunction with installation. Installation means installed under the standards approved by the Division of Community Services under the manufactured home installation program authorized under N.D.C.C. 54-21.3-08. The new language in the imposition section begins on line 19 of page 3. The remaining amendments in Section 1 are replacing the word “mobile” with “manufactured” or are minor technical drafting changes.

All of the amendment in **Sections 2, 3 and 5** are replacement of “mobile” with “manufactured” or are technical drafting changes similar to Section 1.

**Section 4** amends the use tax law. Under the use tax law, tangible personal property that is purchased or stored in North Dakota by a contractor is subject to our use tax on the contractor’s cost even if that property is removed from North Dakota and installed into real property outside of this state. Under our new interpretation of “installation,” without further changes in the use tax law, dealers would be required to pay 3 percent use tax to North Dakota if a manufactured home were removed from inventory in this state and installed in another state. The language beginning on line 21 of page 5 of the bill removes the requirement for dealers to pay use tax on manufactured homes possessed in North Dakota and subsequently sold and installed in another state. This provision will treat manufactured home sales with installation in the same manner as the surrounding states. Montana does not have a sales or use tax and neither Minnesota nor South Dakota imposes their use tax on a manufactured home that is removed from those states and installed in North Dakota.

In the past, most sales of manufactured homes in North Dakota have been subject to sales tax on the full retail selling price. As a result, the amendments proposed in SB 2090 will reduce the amount of revenue generated on sales of manufactured homes. The

estimated reduction of \$800,000 for the next biennium is due to imposing tax on the dealers cost in most cases rather than on the full retail selling price.

#### **CONCLUSION**

We believe the amendments in SB 2090 more properly reflect the type of transaction that occurs when a manufactured home is sold with installation. Modern day installation standards more closely resemble an installation into real property that in the past. The Tax Commissioner respectfully requests that you give favorable consideration to Senate Bill 2090. Thank you and I will be happy to address any questions you may have.

*Myles Vosberg #1*

**TESTIMONY OF THE OFFICE OF STATE TAX COMMISSIONER  
BEFORE THE  
SENATE APPROPRIATIONS COMMITTEE**

**SENATE BILL 2090**

**January 31, 2013**

Chairman Holmberg, members of the Senate Appropriations Committee, I am Myles Vosberg, Director of the Tax Administration Division the Office of State Tax Commissioner and I am here today on behalf of the Commissioner to testify in support of Senate Bill 2090.

**BACKGROUND**

This bill addresses the application of sales and use taxes to manufactured homes, currently referred to as mobile homes in the sales tax statutes. North Dakota sales and use tax laws require retailers to collect sales tax on the selling price of tangible personal property sold within the state. However, when a contractor attaches tangible personal property to real property, the transfer of ownership of that tangible personal property is not a retail sale. The contractor is viewed the final consumer of that tangible personal property in performance of the contract and must pay sales or use tax on his purchase price or cost of the property.

Manufactured homes are no exception to this rule. If a manufactured home dealer sells a home and as part of the contract agrees to "install" the manufactured home, the dealer is required to pay sales or use tax on its purchase price of the home and will incorporate the cost of the tax into the contract price for sale and installation of the home. This practice is no different than a traditional home builder that constructs a home by purchasing concrete, lumber, doors, windows and other components. The contractor pays sales or use tax on all the materials incorporated into the home, but does not collect sales tax from the new home owner.

The question that arises and that we intend to clarify with Senate Bill 2090 is how to define when a manufactured home is installed into real property. Because installation requirements and standards have evolved and improved in recent years, we believe the definition of "installation" is currently unclear and we recommend that installation under

the current manufactured home standards be considered installed into real property for application of sales and use taxes.

New installation standards and requirements were adopted during the 2003 North Dakota legislative session. The legislation established a manufactured home installation program and required the Division of Community Services of the Department of Commerce to administer the program. The program includes adopting installation standards and developing a program to certify manufactured home installers and installation inspectors. The current standards apply to the first installation of all manufactured homes installed in North Dakota.

Until recently, the Tax Department has always considered a manufactured home to be installed, and therefore, subject to tax on the dealer's cost, only if the frame of the home had been bolted to a permanent foundation. Manufactured homes that were installed in any other manner were retail sales of tangible personal property and the dealers were instructed to collect sales tax on the full selling price of the home including delivery charges. Discussions with representatives of the manufactured homes industry and with the Division of Community Services have led us to the conclusion that manufactured homes installed under the current standards should be treated as installed into real property.

Under the new standards, new manufactured home installation generally requires concrete pads or piers with footings below the frost line. The I-beam frame of the home is attached to the concrete pad or pier by one of several approved methods. Although the installation is set up so that the manufactured home may be moved at a later date, one can easily argue that the home is installed into real property.

Because all new manufactured homes are subject to these standards, we believe all new manufactured homes should be considered installed for sales and use tax purposes if the home is installed following the approved standards and tax should apply to the dealers cost when the dealer sells the home with installation as part of the contract terms. Manufactured homes sold without installation would remain a retail sale subject to sales tax on the complete retail selling price.

## **EXPLANATION OF THE BILL**

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**Section 4** amends the use tax law. Under the use tax law, tangible personal property that is purchased or stored in North Dakota by a contractor is subject to our use tax on the contractor’s cost even if that property is removed from North Dakota and installed into real property outside of this state. Under our new interpretation of “installation,” without further changes in the use tax law, dealers would be required to pay 3 percent use tax to North Dakota if a manufactured home were removed from inventory in this state and installed in another state. The language beginning on line 21 of page 5 of the bill removes the requirement for dealers to pay use tax on manufactured homes possessed in North Dakota and subsequently sold and installed in another state. This provision will treat manufactured home sales with installation in the same manner as the surrounding states. Montana does not have a sales or use tax and neither Minnesota nor South Dakota imposes their use tax on a manufactured home that is removed from those states and installed in North Dakota.

In the past, most sales of manufactured homes in North Dakota have been subject to sales tax on the full retail selling price. As a result, the amendments proposed in SB 2090 will reduce the amount of revenue generated on sales of manufactured homes. The

estimated reduction of \$800,000 for the next biennium is due to imposing tax on the dealers cost in most cases rather than on the full retail selling price.

## **CONCLUSION**

We believe the amendments in SB 2090 more properly reflect the type of transaction that occurs when a manufactured home is sold with installation. Modern day installation standards more closely resemble an installation into real property that in the past. The Tax Commissioner respectfully requests that you give favorable consideration to Senate Bill 2090. Thank you and I will be happy to address any questions you may have.



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**TESTIMONY OF THE OFFICE OF STATE TAX COMMISSIONER  
BEFORE THE  
HOUSE FINANCE AND TAXATION COMMITTEE**

**SENATE BILL 2090**

**March 6, 2013**

Chairman Belter, members of the House Finance and Taxation Committee, I am Myles Vosberg, Director of the Tax Administration Division the Office of State Tax Commissioner and I am here today on behalf of the Commissioner to testify in support of Senate Bill 2090.

**BACKGROUND**

This bill addresses the application of sales and use taxes to manufactured homes, currently referred to as mobile homes in the sales tax statutes. North Dakota sales and use tax laws require retailers to collect sales tax on the selling price of tangible personal property sold within the state. However, when a contractor attaches tangible personal property to real property, the transfer of ownership of that tangible personal property is not a retail sale. The contractor is viewed the final consumer of that tangible personal property in performance of the contract and must pay sales or use tax on his purchase price or cost of the property.

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In the past, most sales of manufactured homes in North Dakota have been subject to sales tax on the full retail selling price. As a result, the amendments proposed in SB 2090 will reduce the amount of revenue generated on sales of manufactured homes. The

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**CONCLUSION**

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