2019 SENATE TRANSPORTATION COMMITTEE

SB 2187

2019 SENATE STANDING COMMITTEE MINUTES

Transportation Committee
Lewis and Clark Room, State Capitol

SB 2187
1/17/2019
30960

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Liz Stenehjem

Explanation or reason for introduction of bill/resolution:

A bill relating to a motor vehicle excise tax exemption for motor vehicles used to transport the elderly or disabled; and to provide an effective date.

Minutes: 4 Attachments

Chairman Rust: Brought committee back to order.

Senator Judy Lee: This bill has to do with the entities that are providing services to individuals needing services, the elderly or disabled. In the case that was brought to our attention initially it was the facilities who are providing services to people with developmental disabilities. There has been some inconsistent enforcement of a law that has exempted these not-for-profits from the excise tax that has been charged and it's a fairly expensive item for these folks. So we would like to be able to confirm the fact that a past history of not having always charged that might be consistently enforced. I might suggest please, that you listen to the gentlemen behind me who will tell you what their experiences are in the agencies which they run, and they can much more specific about this, but it was they who brought it to my attention, and I think it is important that we pursue this. The bill is in your hands and I would encourage your serious consideration.

Chairman Rust: I see that you are eliminating the word 'bus' and replacing it with 'vehicle' which could be anything from a car to a bus.

Senator Lee: The situation has changed over the years, as I'm sure you are aware. We know longer have a lot of people with disabilities living in one place and it takes a bus to transport everybody to the same thing. As the needs and wishes of the individuals being served have become more and more important and we are doing actually a very fine job of addressing those needs in so many ways, it might be a minivan, or it might be some other kind facility that will just hold nine people or twelve people or something like that or eight. Because most of our group homes for example are much smaller than they used to be some time ago. So rather than having to buy a bus in order to get the exemption, which is sort of a cost ineffective way to do things, this would enable any of those vehicles that they would be using just for that purpose, and I think it's important that you have a little conversation with them, and I'm sure they're going to bring it up. About the fact that this isn't something that is going to be

used for any commercial purpose at all, this is just used to transport individuals served by those facilities. So it might be to take three people to their community settings where they work perhaps with a job coach during the day, something like that. But, they are in these facilities every day or represent groups or individuals that are and so they can be so much better at giving you specific examples of this. But, because of the diversity of services that we now have available and how people not only want different activities, but have jobs in different places, they're not all in the sheltered workshop, although I'm very familiar with the vocational training center in Fargo and there are people who really thrive in that setting as well, there has to be the kind of daytime setting the really works best for the folks with disabilities. So by having a smaller vehicle that's dedicated totally to providing services to the individuals who need those services, but not being used for any commercial use. That's what we're trying to limit this to, because that's what the intent was in the first place.

Chairman Rust: So that vehicle would be owned by that nonprofit?

Senator Lee: Yes.

Chairman Rust: Titled by that nonprofit.

Senator Lee: Yes.

Bruce Murry, Executive Director, North Dakota Association of Community Providers: See **Attachment #1** for testimony.

Senator Bakke: Are they wanting this amendment that is listed here instead of the language or in addition to the language you have?

Mr. Murry: My understanding was in addition.

Tom Newberger, Chief Executive Officer, Red River Human Services Foundation: See **Attachment #2** for testimony.

Jon Larson, Executive Director, Enable, Inc; and President, North Dakota Association of Community Providers (NDACP): See **Attachment #3** for testimony.

Senator Dwyer: Where does your funding come from?

Mr. Larson: Our funding comes almost exclusively through Medicaid, through the Department of Human Services. Virtually everybody that we support is a Medicaid recipient. We are a nonprofit organization and our budgets and reimbursement is covered by the Department of Human Services.

Brian Barrett, Lobbyist, Dakota Transit Association: On behalf of the association I would like to introduce the Executive Director of Souris Basin Transportation, Darrell Francis.

Darrell Francis, Executive Director, Souris Basin Transportation: See **Attachment #4** for testimony.

Senator Clemens: What would be an example of commercial use? You can still charge, where did that line come in?

Mr. Francis: That line came in from the Federal Transit Administration, they said we are not allowed to do charters. So we do not compete with Harlows, we do not compete with any of those big bus companies. If you did do something and they want to hire us they want us to take them to the casino or whatever, we would have go through the federal government, we would have to list it on the website, we use our personal funds to pay for the trip (because you can't use federal dollars).

Senator Fors: You replace 2-3 vehicles each year. How are you reimbursed for that vehicle, do you trade it in or sell it out right, do you receive any funds from the resale?

Mr. Francis: What we do is we follow the federal guidelines, they say for minivans 4 years or 100,000 miles, transit vans 5 years or 100,000 miles, buses 5 years or 150,000 miles. So we apply for the grant then the Department of Transportation would get funded by the federal government and they award contractors like us a vehicle or the amount of money. We don't trade in the vehicles; we sell them out-right to any other agency or the general public that needs it. That money we try to use toward our cash match for the vehicle.

Senator Bakke: Are you proposing that we just add this language?

Mr. Francis: Just add this language to what is existing.

Senator Bakke: So you have a contract with the Department of Transportation, but yet you're transporting non-elderly, non-disabled. They can just call you to get a ride, is there an income level? What do you charge for those rides? Flat fee?

Mr. Francis: Yes, we have a contract with the Department of Transportation. Yes, the general public can call for a ride. There are no income requirements and the charge is a flat rate of $2.50 just like we charge to the elderly and the disabled.

Chairman Rust: Seeing no further testimony the hearing on SB 2187 is closed.

2019 SENATE STANDING COMMITTEE MINUTES

Transportation Committee
Lewis and Clark Room, State Capitol

SB 2187
1/17/2019
31025

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Liz Stenehjem

Explanation or reason for introduction of bill/resolution:

A bill relating to a motor vehicle excise tax exemption for motor vehicles used to transport the elderly or disabled; and to provide an effective date.

Minutes: No Attachments

Committee Briefly discussed the bills that have been heard in committee but not acted on:

Chairman Rust: We have taken care of SB 2120, SB 2151 and SB 2160 today. So we will now be down to 7 bills to be heard. Anything else for the good of the committee?

Senator Bakke: Did we want to act on any of the bills we heard this morning?

Chairman Rust: I would like to give SB 2129 at least another day. It came from a Senator that's pretty passionate about that bill. I'd like to give at least a chance of having some time for that person. Sometimes I think it's courtesy a little bit for someone who is vested in that bill to give it a little extra time in case that person would like to go lobbying.

Discussion on SB 2187 began:

Senator Bakke: Are we waiting on a fiscal note on SB 2187? The bill for motor vehicles for dd and the elderly.

Chairman Rust: Yes, we are. I have the following on that; we need the Tax Department and the Department of Transportation to come here, then I think we need to do an amendment, so I do not see a vote on that bill either.

Senator Clemens: I got thinking about that testimony today on the vehicle excise tax. At this point I have a problem with the amendment that he submitted with his testimony, because he's asking the we give this exemption and in my opinion I think it's too open ended.

Chairman Rust: I think we'll take care of that when we get the amendment drafted. I'll probably see to it that an amendment gets drafted and then we're going to do and up or down vote on the amendment. There is no harm in having the amendment drafted, because the

amendment will require a DO PASS or DO NOT PASS vote, and at that time we will discuss it and debate it.

Senator Patten: I would like to echo the concern, because it looked like any entity that contracted with the Department of Transportation would be exempt as well. If I remember the wording correctly.

Chairman Rust: That's the reason why I think we want to get the Tax Department and the Department of Transportation here. Because, we need more information on that. If indeed these people have never paid it until October 2018, it kind of makes you wonder why.

Senator Bakke: I agree with Senator Clemens, he was talking about a certain percentage was for the disabled, 80% was for the disabled and the elderly. So you're getting tax exempt status when 20% of your business is still private, anybody can rent my vehicle. That seems a little unfair to people like your taxi companies, and other people like that who are driving people around.

Chairman Rust: But the bill would still have "this vehicle can only be used for the transportation of the elderly or disabled." He can't rent it out, he can't use it for something else, and the Department of Transportation as he said already has the title on it.

Senator Bakke: I just didn't understand how 20% of it was for his own private business and he wanted tax exemption.

Chairman Rust: It wasn't private business, it's public transportation.

Senator Bakke: But still, isn't that his business?

Chairman Rust: It also had the Tribal in there. We just need a little, well probably a lot of work and discussion on that one. I'll probably go up to Legislative Council and have them draft it, because once it got non-profit and tribal entities in there, there are a whole host of things that I don't understand about that yet either. But, what I think what we will do with that, like I said and we may pass that one out even next week, I'm not sure. It seems like there's a lot more than meets the eye.

Committee was adjourned for the day.

2019 SENATE STANDING COMMITTEE MINUTES

Transportation Committee
Lewis and Clark Room, State Capitol

SB 2187
1/24/2019
31420

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Liz Stenehjem

Explanation or reason for introduction of bill/resolution:

A bill relating to a motor vehicle excise tax exemption for motor vehicles used to transport the elderly or disabled; and to provide an effective date.

Minutes: 1 Attachment

Chairman Rust: Look at SB 2187, remember this bill eliminates the words, “as a bus” and is for the transportation or the elderly and disabled provided that such motor vehicle may not be used for commercial purposes. Went through a summary of the testimony heard during the hearings for the bill.

Myles Vosberg: The question came up with Mr. Newberger who had come to the Department of Motor Vehicles to register vehicles, requested the exemption and the question came up as to whether they were taxable or not, because he indicated they had never paid tax before. Motor Vehicle came to the Tax Department and asked for our opinion and our interpretation of this section of the statute is that they were not exempt on all vehicles, the vehicle needed to be a bus and the way it’s worded here there is no definition of a bus. We looked at the definition of a bus for Motor Vehicle purposes and his testimony went into that. We also relied on other exemptions in the law where, I think the one in particular is for non-profit schools, where it just says a vehicle used to transport students. Because there is a reference here of bus and when that exemption was originally put in the law they were actually talking about buses, because there were federal grant programs that were available at that time to provide money for purchase of bus. So we felt that our interpretation was correct, that the intent of the current law really, truly was for buses. Mr. Newberger made the comment about the fact that they are a non-profit organization and they don’t pay tax, that’s kind of a common misconception of non-profit organizations in general. They are tax exemption from income tax, not necessarily exempt from sales tax, from motor vehicle excise taxes and so on. So unless there is a specific provision in the tax type law that says a non-profit is exempt from paying tax, which there is not in motor vehicle excise tax a non-profit organization is not exempt from paying motor vehicle excise tax just because they are non-profit. There are four situations in the motor vehicle excise tax law where under certain circumstances a non-profit organization can be exempt from paying motor vehicle excise tax. One of those is the one that we are talking about here with the bus, there’s also an exemption for parochial or private non-profit schools that are used for that transportation of students,

there's an exemption for a non-profit county or local historical society when they purchase vehicles and there is an exemption for a non-profit organization that purchases a vehicle to be awarded as a raffle prize, but then the winner of that vehicle then needs to register and pay tax on that vehicle. There is one more that passed I believe last session, that is a vehicle that's donated to a non-profit organization that's organized with a primary purpose of repairing and providing that vehicle to someone who needs it in order to, the language says, "to be self-sufficient member of the workforce," so they need a vehicle in order to be able to get to work. Those are the only exceptions for non-profit organizations in the law.

Chairman Rust: Does this bill sufficiently narrow it down so that it only applies to that group, or does it expand it beyond what we might think it does?

Mr. Vosberg: In my opinion SB 2187, by the language that's done there does take the requirement away from it from being a bus, but it's still limited to those non-profit, senior citizen or handicapped person's corporations and cannot be commercial. So if they would charge for the ride it wouldn't qualify.

Chairman Rust: (See **Attachment #1** for proposed amendment) Looking at what was proposed as an amendment it says, "any motor vehicle in the possession of and used exclusively by non-profit or tribal entity to provide public transportation." So that would then mean that these could be carrying other travelers, commercial travelers as well. This would expand it. I think it was Souris Basin that asked us about it.

Senator Bakke: So is this saying that any tribal vehicle, not just for the elderly and disabled? So any tribal organization or non-profit that has a vehicle?

Chairman Rust: Right. This is widening it.

Senator Bakke: I don't have a problem with all non-profits, but I'm wondering why all tribal?

Mr. Vosberg: I think the very last language here where it says they entered into a contract with the Department of Transportation, there is a finite list of groups and I know the Department of Transportation has done a little work on that and I think there are 33 organizations that have a contract with the Department of Transportation. Some of those are government, political subs, so they're county or city, so they're already exempt, but it would expand it to the remaining number of organizations that currently do not qualify for the exemption.

Senator Patten: When I read it in conjunction with the possible proposed amendment, then any non-profit or tribal entity would be exempt if they have the contract. There would be no requirement that be providing only for the elderly or disabled, is that correct?

Mr. Vosberg: That is the way I read it, yes.

Chairman Rust: One thing about the amendment that's here it will end up taking more money out of the Department of Transportation.

Senator Bakke: The vehicles that provide service to the elderly and disabled are they on a contract with the Department of Transportation as well in order to be exempt from the tax?

Mr. Vosberg: They are not currently under contract. They just need to meet that definition of being a senior citizen or handicapped person's non-profit organization.

Senator Clemens: Do you see a problem in the bill on line 7 "any motor vehicle in the possession of" rather than being "owned by" or something else?

Mr. Vosberg: The reason it's worded that way, and you'll see that language in a number of the other exemptions for motor vehicle excise tax, is for leased vehicles. Because, the organization itself doesn't own it, in that case a leasing company actually owns it.

Chairman Rust: I'm not so sure I'm not sorry that I had the amendment drawn up and given to you. I don't think I would ask to have the amendment introduced, because I'm not sure I want to expand beyond what the bill was.

Lindi Michlitsch: My interpretation of the amendment after speaking with Mr. Vosberg was that it would only include those 33 companies that had contract with our DOT transit section. That's how I understood it, so it wouldn't expand it to everyone.

Chairman Rust: Do they currently pay tax?

Ms Michlitsch: No, there are several of them that qualify as political subdivisions or other government agencies and they do not currently pay tax, so it would only apply to those non-profits that don't already currently qualify for the tax exemption. If you were to expand it based on how I understood the proposed amendment.

Senator Patten: Is there a specific process to determine who gets on that list or who you be inundated with a whole bunch of new applicants to become contracted with DOT? What's the standard for becoming part of that list?

Ms Michlitsch: I am not familiar with that process, since that is done through our local government section of DOT. I would have to refer to them, my understanding is that there is an application process that they have to go through and they receive funds through that application process, but that's as far as my knowledge goes.

Senator Bakke: So what you understand is with section 1 that's where we might have some additional people weighing in and trying to get the excise tax, but in section 2 they already are defined those 33 and as far as you know they would have to apply and be accepted before they could get into that place.

Ms Michlitsch: That's my understanding.

Chairman Rust: Committee members what's the feeling on this bill? Without a motion to amend the bill this goes away.

Senator Patten: Move a **Do Pass** on original bill.

Senator Bakke: Second **Do Pass** motion.

Chairman Rust: One of the things I was unsure of was the statement that had been made that “we never paid this until 2018 and now we’re paying it,” I have some information that says I the past there have been years where registrations have been paid. Do you have any information on that Mr. Vosberg?

Mr. Vosberg: When this issue first came up, naturally I had asked DOT to do some work, we got a list of the original entities that work with the developmental disability providers. We got a list of those organizations, DOT did a search of their records and found that most of those entities were paying tax on non-bus vehicles. So based on their research they found kind of a range of maybe $10,000-$15,000 maybe $20,000 a year that has been paid in the past.

Roll Call Vote was Taken: 5-1-0 Motion Passes

Date: 1/24/2019
Roll Call Vote # 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO: SB 2187

Senate Transportation Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Senator Patten Seconded By Senator Bakke

Senators	Yes	No	Senators	Yes	No
Senator Rust - Chairman	X		Senator Bakke	X	
Senator Clemens - Vice Chairman	X				
Senator Dwyer	X				
Senator Fors		X			
Senator Patten	X				

Total (Yes) 5 No 1

Absent 0

Floor Assignment Bakke

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

REPORT OF STANDING COMMITTEE

SB 2187: Transportation Committee (Sen. Rust, Chairman) recommends **DO PASS** (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2187 was placed on the Eleventh order on the calendar.

2019 HOUSE FINANCE AND TAXATION

SB 2187

2019 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2187
2/27/2019
32916

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill relating to a motor vehicle excise tax exemption for motor vehicles used to transport the elderly or disabled.

Minutes: Attachment 1-3

Chairman Headland: Opened hearing on SB 2187.

Bruce Murry, Executive Director of the North Dakota Association of Community Providers: Distributed written testimony, see attachment 1. Ended testimony at 2:58.

Vice Chairman Grueneich: How many vehicles do you have on the road right now? When you talk about purchasing a vehicle and being exempt from excise tax then you talk about the upgrades that would go with the vehicle, are we just talking about the vehicle then all the equipment to modify it would then be taxed? Would the exemption be on the vehicle or would the exemption be on the modified vehicle as it left the lot?

Bruce Murry: The approximate number of vehicles is somewhere between 100-120 statewide. The historical application of this law would be to charge tax on neither the vehicle or the upgrades. We've had providers assessed for total value of the upgrades by the motor vehicle division even though it was done by a separate provider.

Representative Trottier: How long do they keep a vehicle on average?

Bruce Murry: That depends on the size of the organization and how often they use the vehicles, so possibly around 5-10 years.

Tom Newberger, Chief Executive Officer for Red River Human Services Foundation: Distributed written testimony, see attachment 2. Ended testimony at 11:20.

Chairman Headland: Further support?

Darrell Francis, Executive Director for Souris Basin Transportation: Distributed written testimony, see attachment 3. Ended testimony at 17:40.

Chairman Headland: Further support?

Pat Hansen, South Central Adult Services: If we buy a vehicle over 10 passengers then we are not subject to the tax. The minivans are more cost effective than a larger 15 passenger bus. I currently have two minivans on order which I will be paying over $2,000 for in excise taxes. Our funding comes from federal and state taxes, the county mill levies, and the state mill levies match for elders which help support that also. Almost everything we are putting in is tax money. We're paying for taxes with tax money. I would encourage you to change that bill and add the nonprofit statement in there. It's becoming more of an issue in the rural parts of the state with not purchasing the 15 passenger buses if we don't have to. It saves us in operating and in the purchase of the vehicles there's about a $25,000 difference.

Chairman Headland: You said to add the nonprofit language?

Pat Hanson: There is a statement in Darrell's testimony, number eight. The way the bill stated prior to this it would still exclude some of our nonprofits. I think we should have contracts with the DOT because there needs to be regulations. We are strongly regulated by the feds and the state so I think the qualification that we are under contract with the DOT is a good thing to add in there. This way you won't have random people going out and trying to start something.

Representative Trottier: In Darrell's testimony he listed the 14 passenger bus at $80,000 and the tax was $4,000. There wouldn't be any tax on a 14 passenger bus, is that right?

Pat Hanson: Evidently not. We've never been charged tax on any vehicles before. In the century code it states any nonprofits that have buses but in part 39 it defines a bus as over 10 passengers. That was where the issue came up. I haven't tried to license one that's over 10 passengers.

Chairman Headland: Is there further testimony in support? Is there any opposition? Are there any questions on the proposed amendment? Could someone from the tax department explain how this fits?

Myles Vosberg, Tax Commissioner's Office: This would be an additional exemption separate from the one that's proposed in the bill?

Chairman Headland: Correct.

Myles Vosberg: This language is very clean and clear cut because it references the contract with the North Dakota Department of Transportation. It limits it to those who have contracts.

Chairman Headland: Could you get us an additional revenue estimate on the revenue reduction?

Myles Vosberg: We could work with the Motor Vehicle Department on that.

Representative Toman: It looks like it could be any mass transit system that is under contract with NDDOT, not just the ones who testified today. CAT could change their status then they would be tax exempt, is that correct?

Myles Vosberg: After testimony in the Senate there are 33 entities now who have contracts. I'm sure there are qualifications and restrictions on who could enter under that contract. There could be additional contracts at some point so then they would fall underneath this exemption.

Representative Trottier: Did the tax department just start putting this into effect?

Myles Vosberg: The question came from motor vehicle about whether an entity qualified for an exemption and that's when we did the research and looked at the definition of a bus. In some cases, yes, entities were not paying tax when they should have been under our interpretation of the law, so this would correct that.

Vice Chairman Grueneich: Out of the 33 entities on the road, would there be a way to find out how many vans are out there?

Myles Vosberg: I'd pass that question on to DOT or motor vehicle.

Lindy Michlitsch, Motor Vehicle Division, North Dakota Department of Transportation: I don't have that information here but we can work with the Department of Transportation-Transit because they will have all that information since they have the contracts with these specific ones.

Chairman Headland: Can you find that information out for us?

Lindy Michlitsch: Yes.

Chairman Headland: Is there anything else? Seeing none we will close the hearing on SB 2187.

2019 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2187
3/4/2019
33110

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill relating to a motor vehicle excise tax exemption for motor vehicles used to transport the elderly or disabled.

Minutes: Attachment 1

Representative Dockter: Distributed written testimony, see attachment 1. This is the exemption for the nonprofits. Reviewed the handout. There's not a lot of fiscal impact. There wasn't really a problem for four years but it has since come to light so we're trying to address the nonprofits.

Chairman Headland: Are these all the same?

Representative Dockter: Two are the same.

Chairman Headland: What are your wishes with this bill?

Representative Dockter: In testimony dated February 27, 2019 from Darrell Francis on page two they asked for an amendment.

Chairman Headland: Would they be used for any other purpose? Are they paying excise tax on their state fleet?

Myles Vosberg, Office of State Tax Commissioner: As I understand this would be a new exemption and would exempt all of the motor vehicles purchased by the 33 transit organizations that have a contract with DOT to provide public transportation.

Representative B. Koppelman: It seems like this amendment would expand the purpose on what is on this bill because everything seems to be tailored only to the elderly and the disabled. Public transit ca be accessed by others who are not disabled. Are we looking to expand this to a wider area?

Chairman Headland: I had that question but that's what the committee needs to decide.

Representative Dockter: They just asked if we could look at the amendment.

Representative Ertelt: Could you remind us when the tax department started to treat vehicles in this way when they were taxed and before they were not taxed?

Myles Vosberg: This started about a year and a half ago when one of these entities came in to license a van and DOT questioned it because of the language in the existing law that refers to a bus or used as a bus. They came to us for interpretation and unless the vehicle met the definition of a bus it qualified.

Representative Ertelt: This has not been treated the same throughout the years so should we be considering retroactivity on this bill and go back to June of 2017?

Chairman Headland: The money has been paid. I don't believe the tax department has a fund set aside to retroactively send this money back. I would resist making it retroactive.

Representative B. Koppelman: With the suggested amendment where you're exempting any sort of public transit, was that something that changed in the last 18 months where we didn't used to tax any public transit as long as they had a contract with the DOT and now we are trying to fix it?

Myles Vosberg: This would be an additional level of exemption by going to the transits. Not all of these organizations were receiving these exemptions. Some of them requested exemptions when they licensed, titled, and received vehicles which was done in error. It is incorrect to say that as a general policy everything switched and now these organizations are subject to tax.

Representative B. Koppelman: The correct thing to say is that a public transit in the past may have received an exemption if it was for disabled or elderly but otherwise wouldn't have received an exemption for buses for individuals that weren't disabled or elderly.

Myles Vosberg: I think that's a correct statement. Some transit entities are already exempt because they are political subs. The nonprofit entities and the tribal ones should not have been exempt in the first place. Some in the original part of this bill were tax exempt but not as a general rule and they should not have been.

Representative Dockter: In testimony they have the exemption for a certain size and now these organizations are using minivans which is why this came about to be more efficient.

Representative B. Koppelman: I am very supportive of the bill on that end but I'm not in favor of the amendment because I think it's creating an expansion for privately owned transit systems who are contracting for some period of time with DOT.

Vice Chairman Grueneich: You said there are 33 nonprofits now who can take advantage of this exemption.

Myles Vosberg: There are 33 entities that currently have contracts with DOT. Some of them are political subs already, a few of them are tribal, and quite a few are nonprofit organizations.

Vice Chairman Grueneich: How would someone go about expanding this?

Myles Vosberg: All of these entities who have contracts with DOT have federal funds involved. The impetus behind the contracts is federal funding that's provided for public transportation.

Chairman Headland: We'll talk about this bill later.

2019 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2187
3/11/2019
33495

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill relating to a motor vehicle excise tax exemption for motor vehicles used to transport the elderly or disabled.

Minutes: Attachment 1

Representative Dockter: Distributed proposed amendment, see attachment 1. Line eight was part of the testimony. **MADE A MOTION TO ADOPT THE AMENDMENT.**

Representative Eidson: SECONDED

Chairman Headland: Discussion?

Representative B. Koppelman: Is the intent to expand what we currently exempt the tax on? The current law is geared toward nonprofits, senior citizens, or handicapped persons-type mobility. This is going to expand it to any sort of transit system for any person who isn't handicapped or disabled that rides a public transit system. Is that your intent to expand that with this amendment?

Representative Dockter: The person who testified wanted this amendment but there was nothing mentioned about the expansion.

Representative B. Koppelman: The amendment they suggested appeared to be an expansion. The group requesting the amendment operates a public transit that affects more people than just the elderly or disabled. I think they wanted it system-wide. They wanted to be excise tax free regardless of who they were serving.

Representative Dockter: In his testimony dated February 27, 2019, that list is made up of 33 public transit systems. We're trying to help them. I would say this is probably an expansion.

Representative Ertelt: If you're not intending to expand but rather address the elderly and disabled transportation would you be amenable to further amending to add "for transportation of the elderly or disabled"?

Representative Dockter: I have no problem with that. It will really just take the amendment out.

Representative Ertelt: I believe there are some vehicles used exclusively for that by the transit system but they're not necessarily nonprofit.

Representative B. Koppelman: I would challenge that assumption. All the entities have some sort of nonprofit status. In testimony from Tom Newberger the old language says "bus" while the new language uses "minivan" or other vehicles instead of buses. I think the bill that came to us is just fine to take care of that. Unless we have an absolute desire to expand this then I would not support the amendment.

Chairman Headland: I tend to agree with you, Representative B. Koppelman.

Representative Dockter: I brought this on behalf of the organization.

Chairman Headland: Do you know what the cost of an expansion would be?

Representative Dockter: This will cost over $55,050.90 for the biennium.

Chairman Headland: That was provided from DOT?

Representative Dockter: No, that was from Bruce Murry. They pay sales tax on the accessories for things like a lift and different things they need to help the disabled. It would be the same if this bill passes. This would just be in reference to excise tax.

VOICE VOTE: MOTION FAILED

Representative Dockter: MADE A MOTION FOR A DO PASS

Representative Blum: SECONDED

Chairman Headland: Discussion?

ROLL CALL VOTE: 13 YES 0 NO 1 ABSENT
MOTION CARRIED

Representative Eidson will carry this bill.

19.0106.01000

Sixty-sixth
Legislative Assembly
of North Dakota

Introduced by

Senators J. Lee, Mathern, Sorvaag

Representatives Dockter, Holman, Mitskog

A BILL for an Act to amend and reenact subsection 7 of section 57-40.3-04 of the North Dakota Century Code, relating to a motor vehicle excise tax exemption for motor vehicles used to transport the elderly or disabled; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 57-40.3-04 of the North Dakota Century Code is amended and reenacted as follows:

7. Any motor vehicle in the possession of and used ~~as a bus~~ exclusively by a nonprofit senior citizens' or handicapped persons' corporation for transportation of the elderly or disabled; provided, that ~~such bus~~ the motor vehicle may not be used for commercial activities.
8. Any motor vehicle in the possession of and used exclusively by a public transit provider under contract with the NDDOT to provide public transit services.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2019.

Date: 3-14-19
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2187

House Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: Strike "a bus" section 1 attachment #1
Add "for transportation of the elderly or disabled." #7
Add "motor vehicle"

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep Dockter Seconded By Rep. Eidson

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland			Representative Eidson		
Vice Chairman Grueneich			Representative Mitskog		
Representative Blum					
Representative Dockter					
Representative Ertelt					
Representative Fisher					
Representative Hatlestad					
Representative Kading					
Representative Koppelman					
Representative Steiner					
Representative Toman					
Representative Trottier					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice Vote: Motion Failed

Date: 3-11-19
Roll Call Vote #: 2

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2187

House Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Dockter Seconded By Rep. Blum

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland	X		Representative Eidson	X	
Vice Chairman Grueneich	X		Representative Mitskog	A	
Representative Blum	X				
Representative Dockter	X				
Representative Ertelt	X				
Representative Fisher	X				
Representative Hatlestad	X				
Representative Kading	X				
Representative Koppelman	X				
Representative Steiner	X				
Representative Toman	X				
Representative Trottier	X				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Eidson

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

REPORT OF STANDING COMMITTEE

SB 2187: Finance and Taxation Committee (Rep. Headland, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2187 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

SB 2187

SB 2187 #1
1/17/19 pg 1

SENATE TRANSPORTATION COMMITTEE
SENATOR RUST, CHAIRMAN
SENATE BILL 2187
TESTIMONY OF BRUCE MURRY
JANUARY 17, 2019

Chairman Holmberg, and members of the Senate Appropriations Committee, I am Bruce Murry, Executive Director of the North Dakota Association of Community Providers. NDACP is a membership organization of 32 licensed developmental disability (DD) service providers throughout North Dakota. Most of our members are nonprofit organizations.

When our members first helped people with developmental disabilities live in the community, it was common to use large buses for transportation. Over time, the agencies that accredit our services have pointed out that a large commercial vehicle does not really fit into a residential neighborhood. In addition, people we serve have individualized transportation needs and schedules, and we need to help each of them achieve their goals. We have adapted our practices to avoid stigmatizing people we serve and now use smaller vehicles.

I'd like to introduce Tom Newberger of the Red River Human Services Foundation to better explain how this bill is important to preserve the affordability of our services.

Thank you for your consideration, and I would be happy to answer any questions.

NDacp
Bruce Murry
Executive Director
Phone (701) 390-1021
Cell (701) 220-4933
1500 E Capitol Ave
Suite 200
Bismarck, ND 58501
brucemurry@ndacp.org
NDACP.org
North Dakota Association of Community Providers

1/17/19 #2
SB2187 pg1

Testimony
Senate Bill 2187 – Motor Vehicle Excise Tax Exemption
Senate Transportation Committee
Senator David Rust, Chairman
January 17, 2019

Chairman Rust and members of the Senate Transportation Committee, for the record, my name is Tom Newberger. I am the Chief Executive Officer for Red River Human Services Foundation. We provide services to people with Developmental Disabilities in Fargo, West Fargo and Wahpeton, North Dakota. I am here today in support of SB 2187.

I would like to begin with a few details of why SB 2187 was developed. It started in 2017 when our agency purchased a used minivan for people in our services. This minivan is used to transport people from their homes to our Day Programs and to various appointments, such as medical and dental appointments. When we purchased the minivan in 2017, we were informed by the dealer that we had to pay excise/sales tax on the vehicle. My response to the dealer was we are a tax exempt organization and we have never paid excise/sales tax on a vehicle before. They agreed to not charge us and asked us to contact the North Dakota Department of Transportation, which we then did. The Transportation Department said per law, we are required to pay excise/sales tax on the minivan to which I disagreed. However, we paid the sales tax of approximately $1,286.00 on the minivan and on another one purchased in November of 2017 for $17,000 and we paid approximately $850 in excise taxes.

I am very concerned about paying excise tax on vehicles because the bottom line is the people in our programs have to pay this cost. Per North Dakota Administrative Code section 75-04-05-01(57), people in our programs must pay for the costs of vehicles used for transporting "clients." People in our programs receive Social Security or Medicaid funding and food stamps. Most if not all are at or below the poverty level. Some people receive as few as $25 per month for spending money and some are not even able to pay us for their room and board costs.

To resolve this situation, we contacted Senator Judy Lee from District 13 in West Fargo. Senator Lee worked with the Department of Transportation and Joe Morrissette, the Deputy Tax

Commissioner for the Office of State Tax Commissioner. After several in person discussions and various emails, Emily Thompson, Legal Counsel for the North Dakota Legislative Council was brought into the discussions. Based on her input (see attachment #1), she agreed that Developmental Disability Providers should NOT be paying excise tax on the purchase of vehicles per North Dakota Century Code. Specifically, Emily Thompson said is her November 20, 2017 e-mail to Senator Lee that *"The Exemption in NDCC 57-40.3-04(7) has remained unchanged since 1977and provides an excise tax exemption for: 'any motor vehicle in the possession of and used as a bus exclusively by the nonprofit senior citizens' or handicapped persons' corporation; provided that such bus may not be used for commercial activities.'"*

Based on this law, Developmental Disability providers were exempt from excise taxes. However, according to Emily Thompson, the Tax Department's legal Division "recently reviewed the language of the exemption. As the word "bus" is not defined in Chapter 57-40.3…the 'Tax' Department relied on the definition of "bus" in Title 39, which pertains to motor vehicles." In Title 39, a bus is defined as carrying more than ten passengers. According to Emily Thompson, "It appears the Department denied the exemption for the vehicle you noted based on their plain reading of the definition of a "bus" as a vehicle designed to carry "more than ten passengers."

In summary, vehicles we purchase for people we support have been exempt from excise taxes for decades. The Tax Department starting using Title 39 recently to invoked excise taxes on vehicles purchased by Developmental Disability providers. As stated before, people in our programs cannot afford these costs and the fiscal impact on the State, per Joe Morrissette from the Office of State Tax Commissioner, is $10,000 to $20,000 per year per his February 27, 2018 email. See attachment #2.

Thank you and I will be happy to answer any questions you may have.

SB2187 #2
1/17/19 Pg 3

Tom Newberger

From: Tom Newberger
Sent: Wednesday, January 16, 2019 8:39 PM
To: Tom Newberger
Subject: FW: Motor Vehicle Excise Tax Inquiry

ATTACHMENT #1

From: Thompson, Emily L.
Sent: Monday, November 20, 2017 8:39 PM
To: Lee, Judy E. <jlee@nd.gov>
Subject: Motor Vehicle Excise Tax Inquiry

Good Evening, Senator Lee:

I received your motor vehicle excise tax exemption inquiry. The exemption in North Dakota Century Code Section 57-40.3-04(7) has remained unchanged since its original enactment in 1977 and provides an excise tax exemption for:

> Any motor vehicle in the possession of and used as a bus exclusively by a nonprofit senior citizens' or handicapped persons' corporation; provided, that such bus may not be used for commercial activities.

According to the legislative history (*attached*) the exemption was enacted as a result of excise tax being applied to buses purchased with federal funds. At the time, the Highway Department was administering a federal funding program that provided various senior citizen associations funds to purchase buses to transport seniors. The Highway Department, Tax Department, and Motor Vehicle Registrar all agreed an excise tax exemption was justifiable as the buses were being purchased with federal funds.

I spoke with a representative of the Tax Department, and it appears the Department's Legal Division recently reviewed the language of the exemption. As the word "bus" is not defined in Chapter 57-40.3, and the Tax Commissioner has authority pursuant to Section 57-40.3-12 to prescribe rules and regulations to administer the Chapter, the Department relied on the definition of "bus" in Title 39, which pertains to motor vehicles. Section 39-01-01(4) provides:

> "Bus" means every motor vehicle designed for carrying more than ten passengers and used for the transportation of persons, and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation. Provided, every motor vehicle designed for carrying not more than fifteen persons and used for a ridesharing arrangement, as defined in section 8-02-07, is not a "bus".

It appears the Department denied the exemption for the vehicle you noted based on the plain reading of the definition of a "bus" as a vehicle designed to carry "more than ten passengers". I would be curious as to whether the vehicle might fall under the other definition of a bus in Section 39-01-01(4), which states a bus means "every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation." This definition does not contain the "more than 10

passengers" restriction and one might be able to argue that at least part of the fees paid by the clients of the facility equate to compensation for transporting those clients. The definition of "room," in the context of room and board charges to clients, may support this argument as North Dakota Administrative Code Section 75-04-05-01(25) defines "room" as:

> [T]he cost associated with the provision of shelter, housekeeping staff or purchased housekeeping services and the maintenance thereof, including depreciation and interest or lease payments of a vehicle used for transportation of clients.

If the Tax Department does not view the vehicle in question as meeting either definition of a bus, a legislative fix is always an option and would only entail a slight modification to Section 57-40.3-04(7) as follows:

> Any motor vehicle in the possession of and used ~~as a bus~~ exclusively by a nonprofit senior citizens' or handicapped persons' corporation; provided, that ~~such bus~~ the motor vehicle may not be used for commercial activities.

This change would put the exemption language more on par with the exemption language for motor vehicles used to transport students. The exemption for students in Section 57-40.3-04(10) provides:

> Motor vehicles acquired by, or leased and in the possession of, any parochial or private nonprofit school to be used for the transportation of students; provided, that to qualify a school must normally maintain a regular faculty and curriculum and must have a regularly organized body of students in attendance, and provided that the vehicles are not to be used for commercial activities.

I hope you find this analysis helpful. Please feel free to contact me if you would like any additional information.

Best regards,

Emily Thompson
Legal Counsel
North Dakota Legislative Council
600 East Boulevard Ave
Bismarck, ND 58505
emilythompson@nd.gov
701.328.2916

SB2187 #2
1/17/19 pg5

Tom Newberger

To: Tom Newberger
Subject: FW: Copy of Providerstaxpaid.xlsx
Attachments: Tax pd VehicleUsedAsBus.xlsx

ATTACHMENT #2

From: Morrissette, Joe R. [mailto:jrmorrissette@nd.gov]
Sent: Tuesday, February 27, 2018 5:06 PM
To: Lee, Judy E.
Cc: Vosberg, Myles S.; Strombeck, Kathy L.; Tom Newberger; Thompson, Emily L.
Subject: FW: Copy of Providerstaxpaid.xlsx

Judy,

We finally received some information from DOT. It is not as clear as it could be…but probably enough information to draw some conclusions regarding the fiscal impact. Based on the information we have, the complete exemption from motor vehicle excise tax for all vans purchased by DD service provider organizations seems to be in the range of $10,000 to $20,000 per year. Motor vehicle taxes paid by DD service providers in 2016 for all vans was only $11,191 and that is the only year specifically identified. So, we are making some assumptions regarding the timing of the tax amounts for the other vehicles listed.

I hope this information is helpful and if there is anything I can do to assist from OMB, please let me know.

Joe

I have copied:

- Tom Newberger to keep him informed.
- Kathy Strombeck who would likely be asked to complete a fiscal note on any proposed legislation.
- Myles Vosberg who should be your contact with the Tax Department for this issue beginning March 1, since I will be at OMB beginning March 1.
- Emily Thompson who would probably be tasked with drafting any proposed legislation.

SB 2187 #3
1/17/19 pg 1

Testimony on SB 2087
Senate Transportation Committee
January 17, 2019

Chairman Rust and members of the committee, my name is Jon Larson. I am the executive Director of Enable, Inc, a licensed service provider for people with intellectual disabilities in Bismarck and Mandan. I am also privileged to serve as the current president of our state association, the North Dakota Association of Community Providers (NDACP). I am speaking in support of passage of this bill.

Enable, Inc. serves approximately 120 individuals with disabilities in the Bismarck Mandan area in locations scattered throughout the two cities. Transportation costs are a significant portion of our operating budget because our system uses small residential settings located throughout the community. Many of the people we support have a physical disability in addition to their intellectual disability. This requires that most our vehicles are equipped with a ramp or lift which can nearly double the cost of acquiring a new vehicle. The current average cost of one of these vehicles is between $48,000 and $54,000 depending on the size and make of the vehicle.

Enable, Inc. is a non-profit charitable organization and is currently exempt from income, property and sales tax. This excise tax is really the only area in which we pay taxes.
The application of the current rule has been applied to us inconsistently over the past several years. Prior to two to three years ago, the excise tax was applied only to the vehicle portion of our purchase and the mobility conversion was not taxed. The current interpretation of the law by the motor vehicle department has now been to apply the excise tax on the entire acquisition cost the vehicle.

The savings to our organization, if you pass this bill, will be approximately $7,000 to $7,500 per year. This would assist us in holding down the costs of transportation for the people we support and to allow us to us those dollars for more effective means of meeting the needs of the people we support.

Thank-you for your continued support and for this opportunity to talk to you today. I would be glad to answer any questions you may have.

Jon Larson, Executive Director Enable, Inc.
President, North Dakota Association of Community Providers (NDACP)

Testimony
Senate Bill 2187
Senate Transportation Committee
January 17, 2019

Chairman Rust and members of the committee, my name is Darrell Francis and I am the Executive Director of Souris Basin Transportation -a non-profit organization that is a public transportation provider funded with Federal dollars and State Aid for Public Transit funds through a contract with the ND Department of Transportation.

I appear before you this morning asking for your favorable consideration of Senate Bill 2187 on behalf of the public transit providers, relating to a motor vehicle excise tax exemption for vehicles used by transit agencies to provide public transportation which includes elderly and disabled riders. We are not asking for something new. Until 5 months ago, public transit providers never paid excise tax. There are 2 separate issues that have come up. Even if you are a non-profit "senior citizens" organization, if you buy a vehicle not considered a "bus" which is less than 10 passengers you are now charged excise tax. If you a non-profit transit provider incorporated as a "transit agency" like mine you now pay excise tax on all vehicles that are purchased.

There are 33 public transit providers in the state. Nine of them are political subdivisions and therefore are not subject to excise tax. Seventeen entities are non-profits that were incorporated as "senior or handicapped" organizations which lead us to believe that if you agree to the rewording of section 7 that all those organizations would no longer have to pay excise tax - which they never had to pay before.

There are 4 other non-profit "transit providers" who never had to pay excise tax before and 3 tribes that are public transit providers. We believe that the tribes are probably already exempt from paying excise tax

on public transit vehicles, but did not find that specific exemption in 57-40.3-04.

We are asking that a line be added to SB 2187 that says "**all non-profit or tribal entities that contract with NDDOT to provide public transit are exempt from paying excise tax on all vehicles.**"

Souris Basin Transit provided 71,358 public transit rides for the Elderly and Disabled in a 10 county region, including Minot and the Bismarck area in 2108.

We purchase our vehicles through the ND State Bid Procurement Contracts. The Federal Transit Administration provides North Dakota Transit agencies, such as ours, funds to purchase accessible minivans, transit vans, and buses at 80/20 ratio. The 20 % would be local dollars, some coming from North Dakota State Aid for Public Transit dollars, other local grants and fundraising dollars.

The following breakdown of Accessible vehicles pricing and Excise tax is: Minivans: $40,000. ($2,000 for excise tax.) , Transit Vans: $59,000 ($2,950), 14 passenger bus: $80,000 ($4,000). Our organization buys 2 to 5 vehicles a year, which be about $12,000.

Four agencies in the past 5 months have paid this unexpected excise tax of approximately $14,000. The Federal Transit Administration has provided the necessary capital dollars for replacement vehicles. The increased cost of paying excise tax will just deplete funding for vehicles faster.

I thank you for your time in consideration of testimony. I will be happy to answer any questions.

SB 2187 #1
1/24/19
pg 1

19.0106.01001
Title.

Prepared by the Legislative Council staff for
Senator Rust
January 23, 2019

PROPOSED AMENDMENTS TO SENATE BILL NO. 2187

Page 1, line 1, after "to" insert "create and enact a new subsection to section 57-40.3-04 of the North Dakota Century Code, relating to a motor vehicle excise tax exemption for motor vehicles used to provide public transportation; to"

Page 1, after line 10, insert:

"**SECTION 2.** A new subsection to section 57-40.3-04 of the North Dakota Century Code is created and enacted as follows:

Any motor vehicle in the possession of and used exclusively by a nonprofit or tribal entity to provide public transportation pursuant to a contract entered with the department of transportation."

Renumber accordingly

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2-27-19
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HOUSE FINANCE AND TAXATION COMMITTEE
REPRESENTATIVE CRAIG HEADLAND, CHAIRMAN
SENATE BILL 2187
TESTIMONY OF BRUCE MURRY, NDACP
FEBRUARY 27, 2019

Chairman Headland, and members of the House Finance and Taxation Committee, I am Bruce Murry, Executive Director of the North Dakota Association of Community Providers. NDACP is a membership organization of 32 licensed developmental disability (DD) service providers throughout North Dakota.

Our president, Jon Larson of Enable, Inc., in Bismarck, was unable to be here today. I'd like to share the testimony he offered in the Senate Transportation Committee. Enable, Inc. is a relatively typical, mid-sized community service provider.

Chairman [Headland] and members of the committee, my name is Jon Larson.

Enable, Inc. serves approximately 120 individuals with disabilities in the Bismarck Mandan area in locations scattered throughout the two cities. Transportation costs are a significant portion of our operating budget because our system uses small residential settings located throughout the community. Many of the people we support have a physical disability in addition to their intellectual disability. This requires that most our vehicles are equipped with a ramp or lift which can nearly double the cost of acquiring a new vehicle. The current average cost of one of these vehicles is between $48,000 and $54,000 depending on the size and make of the vehicle.

Enable, Inc. is a non-profit charitable organization and is currently exempt from income, property and sales tax. This excise tax is really the only area in which we pay taxes.

The application of the current rule has been applied to us inconsistently over the past several years. Prior to two to three years ago, the excise tax was applied only to the vehicle portion of our purchase and the mobility conversion was not taxed. The current interpretation of the law by the motor vehicle department has now been to apply the excise tax on the entire acquisition cost the vehicle.

The savings to our organization, if you pass this bill, will be approximately $7,000 to $7,500 per year. This would assist us in holding down the costs of transportation for the people we support and to allow us to us those dollars for more effective means of meeting the needs of the people we support.

Thank-you for your continued support and for this opportunity to talk to you today. I would be glad to answer any questions you may have.

Jon Larson, Executive Director Enable, Inc.
President, North Dakota Association of Community Providers (NDACP)

NDacp

Bruce Murry
Executive Director

Phone: (701) 390-1021
Cell (701) 220-4933

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brucemurry@ndacp.org
NDACP.org

North Dakota Association of Community Providers

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2-27-19
p. 1

Testimony
Senate Bill 2187 – Motor Vehicle Excise Tax Exemption
House Finance and Taxation Committee
Rep. Craig Headland, Chairman
February 27, 2019

Chairman Headland and members of the House Finance and Taxation Committee, for the record, my name is Tom Newberger. I am the Chief Executive Officer for Red River Human Services Foundation. We provide services to people with Developmental Disabilities in Fargo, West Fargo and Wahpeton, North Dakota. I am here today in support of SB 2187.

I would like to begin with a few details of why SB 2187 was developed. It started in 2017 when our agency purchased a used minivan for people in our services. This minivan is used to transport people from their homes to our Day Programs and to various appointments, such as medical and dental appointments. When we purchased the minivan in 2017, we were informed by the dealer that we had to pay excise/sales tax on the vehicle. My response to the dealer was we are a tax exempt organization and we have never paid excise/sales tax on a vehicle before. They agreed to not charge us and asked us to contact the North Dakota Department of Transportations, which we then did. The Transportation Department said per law, we are required to pay excise/sales tax on the minivan to which I disagreed. However, we paid the sales tax of approximately $1,286.00 on the minivan and on another one purchased in November of 2017 for $17,000 and we paid approximately $850 in excise taxes.

I am very concerned about paying excise tax on vehicles because the bottom line is the people in our programs have to pay this cost. Per North Dakota Administrative Code section 75-04-05-01(25), people in our programs must pay for the costs of vehicles used for transporting "clients." People in our programs receive Social Security or Medicaid funding and food stamps. Most if not all are at or below the poverty level. Some people receive as few as $25 per month for spending money and some are not even able to pay us for their room and board costs.

To resolve this situation, we contacted Senator Judy Lee from District 13 in West Fargo. Senator Lee worked with the Department of Transportation and Joe Morrissette, the Deputy Tax

Commissioner for the Office of State Tax Commissioner. After several in person discussions and various emails, Emily Thompson, Legal Counsel for the North Dakota Legislative Council was brought into the discussions. Based on her input (see attachment #1), she agreed with me that Developmental Disability Providers should NOT be paying excise tax on the purchase of vehicles per North Dakota Century Code. Specifically, Emily Thompson said is her November 20, 2017 e-mail to Senator Lee that *"The Exemption in NDCC 57-40.3-04(7) has remained unchanged since 1977and provides an excise tax exemption for: 'any motor vehicle in the possession of and used as a bus exclusively by the nonprofit senior citizens' or handicapped persons' corporation; provided that such bus may not be used for commercial activities.'"*

Based on this law, Developmental Disability providers were exempt from excise taxes. However, according to Emily Thompson, the Tax Department's legal Division "recently reviewed the language of the exemption. As the word "bus" is not defined in Chapter 57-40.3…the 'Tax' Department relied on the definition of "bus" in Title 39, which pertains to motor vehicles." In Title 39, a bus is defined as carrying more than ten passengers. According to Emily Thompson, "It appears the Department denied the exemption for the vehicle you noted based on their plain reading of the definition of a "bus" as a vehicle designed to carry "more than ten passengers."

In summary, we have been exempt from excise taxes on vehicles for over thirty years. The Tax Department starting using Title 39 recently which than then invoked excise taxes on vehicles purchased Developmental Disability providers. As stated before, people in our programs cannot afford these costs and the fiscal impact on the State, per Joe Morrissette from the Office of the State Tax Commissioner, is $10,000 to $20,000 per year per his February 27, 2018 email. See attachment #2.

Thank you and I will be happy to answer any questions you may have.

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SB 2187
2-27-19
P. 3

Tom Newberger

From: Tom Newberger
Sent: Wednesday, January 16, 2019 8:39 PM
To: Tom Newberger
Subject: FW: Motor Vehicle Excise Tax Inquiry

ATTACHMENT #1

From: Thompson, Emily L.
Sent: Monday, November 20, 2017 8:39 PM
To: Lee, Judy E. <jlee@nd.gov>
Subject: Motor Vehicle Excise Tax Inquiry

Good Evening, Senator Lee:

I received your motor vehicle excise tax exemption inquiry. The exemption in North Dakota Century Code Section 57-40.3-04(7) has remained unchanged since its original enactment in 1977 and provides an excise tax exemption for:

> Any motor vehicle in the possession of and used as a bus exclusively by a nonprofit senior citizens' or handicapped persons' corporation; provided, that such bus may not be used for commercial activities.

According to the legislative history (*attached*) the exemption was enacted as a result of excise tax being applied to buses purchased with federal funds. At the time, the Highway Department was administering a federal funding program that provided various senior citizen associations funds to purchase buses to transport seniors. The Highway Department, Tax Department, and Motor Vehicle Registrar all agreed an excise tax exemption was justifiable as the buses were being purchased with federal funds.

I spoke with a representative of the Tax Department, and it appears the Department's Legal Division recently reviewed the language of the exemption. As the word "bus" is not defined in Chapter 57-40.3, and the Tax Commissioner has authority pursuant to Section 57-40.3-12 to prescribe rules and regulations to administer the Chapter, the Department relied on the definition of "bus" in Title 39, which pertains to motor vehicles. Section 39-01-01(4) provides:

> "Bus" means every motor vehicle designed for carrying more than ten passengers and used for the transportation of persons, and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation. Provided, every motor vehicle designed for carrying not more than fifteen persons and used for a ridesharing arrangement, as defined in section 8-02-07, is not a "bus".

It appears the Department denied the exemption for the vehicle you noted based on the plain reading of the definition of a "bus" as a vehicle designed to carry "more than ten passengers". I would be curious as to whether the vehicle might fall under the other definition of a bus in Section 39-01-01(4), which states a bus means "every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation." This definition does not contain the "more than 10

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passengers" restriction and one might be able to argue that at least part of the fees paid by the clients of the facility equate to compensation for transporting those clients. The definition of "room," in the context of room and board charges to clients, may support this argument as North Dakota Administrative Code Section 75-04-05-01(25) defines "room" as:

> [T]he cost associated with the provision of shelter, housekeeping staff or purchased housekeeping services and the maintenance thereof, including depreciation and interest or lease payments of a vehicle used for transportation of clients.

If the Tax Department does not view the vehicle in question as meeting either definition of a bus, a legislative fix is always an option and would only entail a slight modification to Section 57-40.3-04(7) as follows:

> Any motor vehicle in the possession of and used ~~as a bus~~ exclusively by a nonprofit senior citizens' or handicapped persons' corporation; provided, that ~~such bus~~ the motor vehicle may not be used for commercial activities.

This change would put the exemption language more on par with the exemption language for motor vehicles used to transport students. The exemption for students in Section 57-40.3-04(10) provides:

> Motor vehicles acquired by, or leased and in the possession of, any parochial or private nonprofit school to be used for the transportation of students; provided, that to qualify a school must normally maintain a regular faculty and curriculum and must have a regularly organized body of students in attendance, and provided that the vehicles are not to be used for commercial activities.

I hope you find this analysis helpful. Please feel free to contact me if you would like any additional information.

Best regards,

Emily Thompson
Legal Counsel
North Dakota Legislative Council
600 East Boulevard Ave
Bismarck, ND 58505
emilythompson@nd.gov
701.328.2916

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p. 5

Tom Newberger

To: Tom Newberger
Subject: FW: Copy of Providerstaxpaid.xlsx
Attachments: Tax pd VehideUsedAsBus.xlsx

ATTACHMENT #2

From: Morrissette, Joe R. [mailto:jrmorrissette@nd.gov]
Sent: Tuesday, February 27, 2018 5:06 PM
To: Lee, Judy E.
Cc: Vosberg, Myles S.; Strombeck, Kathy L.; Tom Newberger; Thompson, Emily L.
Subject: FW: Copy of Providerstaxpaid.xlsx

Judy,

We finally received some information from DOT. It is not as clear as it could be…but probably enough information to draw some conclusions regarding the fiscal impact. Based on the information we have, the complete exemption from motor vehicle excise tax for all vans purchased by DD service provider organizations seems to be in the range of $10,000 to $20,000 per year. Motor vehicle taxes paid by DD service providers in 2016 for all vans was only $11,191 and that is the only year specifically identified. So, we are making some assumptions regarding the timing of the tax amounts for the other vehicles listed.

I hope this information is helpful and if there is anything I can do to assist from OMB, please let me know.

Joe

I have copied:

- Tom Newberger to keep him informed.
- Kathy Strombeck who would likely be asked to complete a fiscal note on any proposed legislation.
- Myles Vosberg who should be your contact with the Tax Department for this issue beginning March 1, since I will be at OMB beginning March 1.
- Emily Thompson who would probably be tasked with drafting any proposed legislation.

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Testimony
Senate Bill 2187
House Finance and Taxation Committee
February 27, 2019

Chairman Headland and members of the committee, my name is Darrell Francis and I am the Executive Director of Souris Basin Transportation, a non-profit organization that is a public transportation provider funded with Federal dollars and State Aid for Public Transit funds through a contract with the ND Department of Transportation. I am also a member of the Dakota Transit Association which represents the 33 public transit organizations in our state.

I appear before you this morning asking for your favorable consideration of Senate Bill 2187 on behalf of the public transit providers, relating to a motor vehicle excise tax exemption for vehicles used by transit agencies to provide public transportation which includes elderly and handicapped riders. Souris Basin provided 71,358 public transit rides for the Elderly and Disabled in a 10 county central region, including Minot and the Bismarck area in 2018.

We are not asking for something new. Until October 2018, no public transit provider ever paid excise tax. There are 2 separate issues that have come up. Even if you are a non-profit "senior citizens" organization and public transit provider, if you buy a vehicle not considered a "bus" (which is less than 10 passengers) you are now charged excise tax. If a non-profit transit provider incorporated as a "transit agency", like mine, you now pay excise tax on all vehicles that are purchased.

There are 33 public transit providers in the state. Nine of them are political subdivisions and therefore are not subject to excise tax as outlined in subsection 2 of the exemptions. Seventeen entities are non-profits that were incorporated as "senior or handicapped" organizations which lead us to believe that if you agree to the rewording of section 7 as proposed that all those organizations would no longer have to pay excise tax - which they never had to pay before.

There are 4 other non-profit "transit providers" and 3 tribes that are public transit providers who never had to pay excise tax before. To avoid any confusion in the future we are asking the committee to add the following amendment to this bill, Insert after line 7:

8. Any motor vehicle in the possession of and used exclusively by a public transit provider under contract with the NDDOT to provide public transit services.

Renumber Accordingly

We purchase our vehicles through the ND State Bid Procurement Procedures. The Federal Transit Administration provides North Dakota Transit agencies, such as ours, funds to purchase accessible minivans, transit vans, and buses at 80/20 ratio. The 20 % would be local dollars, some coming from North Dakota State Aid for Public Transit dollars, other local grants and fundraising dollars. One thing that the committee members may not be aware of is the ND DOT is listed as lien holder on every public transit vehicle purchased using Federal Funds.

The following breakdown of Accessible vehicles pricing and Excise tax is:
Minivans: $40,000. (Add $2,000 for excise tax.)
Transit Vans: $59,000 ($2,950)
14 passenger bus: $80,000 ($4,000)
Our organization buys 2 to 5 vehicles a year. (Approximately $9,000 to $20,000 per year for excise tax) .

Four agencies in the past 5 months have paid this unexpected excise tax bill of approximately $14,000. The Federal Transit Administration has provided the necessary capital dollars for replacement vehicles. The increased cost of paying excise tax will just deplete funding for vehicles faster.

I thank you for your time in consideration of this testimony. I will be happy to answer any questions.

All Vehicles				
Vehicle Type	Non-Profit Organization	Political Subdivision	Sovereign Entity	Total
AO - Automobile	3	4		7
BR - Over-the-Road Bus	3			3
BU - Bus		59	1	60
CU - Cutaway Bus	72	42	12	126
MB - Minibus	2			2
MV - Minivan	79	29	4	112
SV - Sport Utility Vehicle	1			1
VN - Van	10	14	3	27
Grand Total	**170**	**148**	**20**	**338**

Vehicles except buses				
Vehicle Type	Non-Profit Organization	Political Subdivision	Sovereign Entity	Total
AO - Automobile	3	4		7
MV - Minivan	79	29	4	112
SV - Sport Utility Vehicle	1			1
VN - Van	10	14	3	27
Grand Total	**93**	**47**	**7**	**147**

Average Cost by Vehicle	
Non-Profit Organization	**$55,050.90**
AO - Automobile	$13,284.00
BR - Over-the-Road Bus	$514,133.67
CU - Cutaway Bus	$60,732.05
MB - Minibus	$20,450.00
MV - Minivan	$36,095.12
SV - Sport Utility Vehicle	$31,346.00
VN - Van	$46,143.22
Political Subdivision	**$178,919.60**
BU - Bus	$359,006.62
CU - Cutaway Bus	$74,390.43
MV - Minivan	$35,972.58
VN - Van	$32,246.10
Sovereign Entity	**$60,358.93**
BU - Bus	$91,743.00
CU - Cutaway Bus	$68,213.00
MV - Minivan	$39,750.00
VN - Van	$40,724.00

- TAX 2-year

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Reorder from MADA Services (651) 291-2400 • (800) 652-9029

[redacted] Motors

DODGE CHRYSLER Jeep RAM

Stock #: [redacted] Date: 09/21/2018 Salesperson [redacted]

Buyer Name: (Last) [redacted] INC (First) N/A (Middle) N/A

Co-Buyer Name: (Last) N/A (First) N/A (Middle) N/A

Address [redacted] City [redacted] State: ND County: [redacted] Zip: [redacted]

Home Phone: [redacted] Bus Phone [redacted] Buyer DOB: N/A Co-Buyer DOB: N/A

Buyer D.L. #: [redacted] Co-Buyer D.L. #: [redacted]

Buyers Insurance Co.: [redacted]

PLEASE ENTER MY ORDER FOR: New XX Used ☐ Demo ☐ Lienholder [redacted] Address [redacted]

YEAR	MAKE	MODEL	BODY	TRANSMISSION	COLOR	INTERIOR
2018	RAM	PROMASTER WIND	2500 High Roof	6-Speed Auto	Bright White C	

VIN #	LIC. #	TAB EXP. DATE	STATE	MILEAGE	DELIVERED ON OR ABOUT
[redacted]133652			MN	127	09/21/2018

Buyer Email:

Co-Buyer Email:

CASH PRICE OF VEHICLE	30,852.00
FREIGHT	N/A
DEALER INSTALLED OPTIONS	
Fleet Solid type 3	
Accessories cummings Carlisle w & Lift	20,599.00
TOTAL	51,451.00

REGISTRATION TAX	92.50	LESS TRADE-IN ALLOWANCE (–)	N/A
PLATE FEE	N/A	TRADE DIFFERENCE	51,451.00
PUBLIC SAFETY VEHICLE FEE	N/A		
TRANSFER TAX	N/A	MOTOR VEHICLE SALES TAX	2,572.55
TITLE/TRANSFER FEE	N/A		N/A
STATE/DEPUTY FILING FEE	N/A	SERVICE CONTRACT	N/A
LIEN RECORDING FEE	N/A	MAINTENANCE CONTRACT	N/A
WHEELAGE TAX	N/A	OTHER STATE & LOCAL SALES TAXES	N/A
TRANSIT TAX	N/A	N/A	N/A
	N/A	DOCUMENT ADMINISTRATION FEE	99.25
	N/A	OPTIONAL ELECTRONIC TRANSFER FEE	N/A
TOTAL LICENSE & FEES			92.50
		SUBTOTAL	54,215.30
		LESS AMOUNT SUBMITTED WITH ORDER (–)	N/A
		PLUS BALANCE OWING TO LEINHOLDER ON TRADE IN (+)	N/A
		TOTAL AMOUNT DUE ON DELIVERY	54,215.30

TRADE-IN DATA

YEAR	MAKE	MODEL	BODY STYLE
N/A	N/A	N/A	N/A

VIN # N/A

LIEN HOLDER'S NAME N/A

ADDRESS N/A

LICENSE PLATE #	LICENSE STATE	EXP. DATE
N/A	N/A	N/A

MILEAGE NOW N/A TRANSMISSION N/A

DOES YOUR TRADE-IN HAVE A BRANDED TITLE OR INSURANCE SALVAGE HISTORY? YES ☐ NO ☐

IS THE POLLUTION CONTROL EQUIPMENT ON YOUR TRADE-IN INTACT AND IN OPERATING CONDITION? YES ☐ NO ☐

Dealer's Disclaimer of Warranty

Unless the vehicle is sold with a separate written dealer warranty or the dealer enters into a service contract with the buyer, the vehicle is sold "AS IS". Dealer expressly disclaims all warranties, either express or implied, including the implied warranties of merchantability and fitness for a particular purpose. The entire risk of the quality and performance of the vehicle is with the buyer.

Important: A manufacturer warranty may apply.

The front and back of this CONTRACT comprise the entire CONTRACT affecting this purchase. The DEALER will not recognize any verbal agreement, or any other agreement or understanding of any nature. You certify that you are 18 years of age or older and acknowledge receiving a copy of this contract.

The terms of this CONTRACT were agreed upon and the CONTRACT signed in the dealership on the date noted at top of this form.

IMPORTANT: THIS MAY BE A BINDING CONTRACT AND YOU MAY LOSE ANY DEPOSITS IF YOU DO NOT PERFORM ACCORDING TO ITS TERMS.

NOTICE OF SALESPERSON'S LIMITED AUTHORITY This

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[redacted] Motors

DODGE CHRYSLER Jeep RAM

Stock #: [redacted] Date: 12/13/2017 Salesperson: [redacted]

Buyer Name: (Last) [redacted] INC (First) N/A (Middle) N/A

Co-Buyer Name: (Last) N/A (First) N/A (Middle) N/A

Address [redacted] City [redacted] State: ND County: [redacted] Zip: [redacted]

Home Phone: [redacted] Bus Phone: [redacted] Buyer DOB: N/A Co-Buyer DOB:

Buyer D.L. #: [redacted] Co-Buyer D.L. #: [redacted]

Buyers Insurance Co.: [redacted]

PLEASE ENTER MY ORDER FOR: New XX Used ☐ Demo ☐ Lienholder Address

YEAR	MAKE	MODEL	BODY	TRANSMISSION	COLOR	INTERIOR
2018	RAM	PROMASTER CARG	2500 High Roof	6-Speed Auto	Bright White C	

VIN #	LIC. #	TAB EXP. DATE	STATE	MILEAGE	DELIVERED ON OR ABOUT
[redacted]15297			MN	98	12/13/201

Buyer Email:

Co-Buyer Email:

CASH PRICE OF VEHICLE	30,297.00
FREIGHT	N/A
DEALER INSTALLED OPTIONS	
Fleet Sale	
Accessories Cummings conversion & Lift	20,649.00
TOTAL	50,946.00

EPL 100-1533

TRADE-IN DATA

YEAR	MAKE	MODEL	BODY STYLE
N/A	N/A	N/A	N/A

VIN # N/A

LIEN HOLDER'S NAME N/A

ADDRESS N/A

LICENSE PLATE #	LICENSE STATE	EXP. DATE
N/A	N/A	N/A

MILEAGE NOW N/A TRANSMISSION N/A

DOES YOUR TRADE-IN HAVE A BRANDED TITLE OR INSURANCE SALVAGE HISTORY? YES ☐ NO ☐

IS THE POLLUTION CONTROL EQUIPMENT ON YOUR TRADE-IN INTACT AND IN OPERATING CONDITION? YES ☐ NO ☐

REGISTRATION TAX	81.00	LESS TRADE-IN ALLOWANCE (–)	N/A
PLATE FEE	N/A	TRADE DIFFERENCE	50,946.00
PUBLIC SAFETY VEHICLE FEE	N/A		
TRANSFER TAX	N/A	MOTOR VEHICLE SALES TAX	2,547.30
TITLE/TRANSFER FEE	N/A		N/A
STATE/DEPUTY FILING FEE	N/A	SERVICE CONTRACT	N/A
LIEN RECORDING FEE	N/A	MAINTENANCE CONTRACT	N/A
WHEELAGE TAX	N/A	OTHER STATE & LOCAL SALES TAXES	N/A
TRANSIT TAX	N/A	N/A	N/A
	N/A	DOCUMENT ADMINISTRATION FEE	99.25
	N/A	OPTIONAL ELECTRONIC TRANSFER FEE	N/A
TOTAL LICENSE & FEES			81.00
		SUBTOTAL	53,673.55
		LESS AMOUNT SUBMITTED WITH ORDER (–)	N/A
		PLUS BALANCE OWING TO LEINHOLDER ON TRADE IN (+)	N/A
		TOTAL AMOUNT DUE ON DELIVERY	53,673.55

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The terms of this CONTRACT were agreed upon and the CONTRACT signed in the dealership on the date noted at top of this form.

IMPORTANT: THIS MAY BE A BINDING CONTRACT AND YOU MAY LOSE ANY DEPOSITS IF YOU DO NOT PERFORM ACCORDING TO ITS TERMS.

NOTICE OF SALESPERSON'S LIMITED AUTHORITY. This contract is not valid unless signed and accepted by Sales Manager or Officer of Dealership

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19.0106.01000

Sixty-sixth
Legislative Assembly
of North Dakota

Introduced by

Senators J. Lee, Mathern, Sorvaag

Representatives Dockter, Holman, Mitskog

A BILL for an Act to amend and reenact subsection 7 of section 57-40.3-04 of the North Dakota Century Code, relating to a motor vehicle excise tax exemption for motor vehicles used to transport the elderly or disabled; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 57-40.3-04 of the North Dakota Century Code is amended and reenacted as follows:

7. Any motor vehicle in the possession of and used ~~as a bus~~ exclusively by a nonprofit senior citizens' or handicapped persons' corporation for transportation of the elderly or disabled; provided, that ~~such bus~~ the motor vehicle may not be used for commercial activities.
8. Any motor vehicle in the possession of and used exclusively by a public transit provider under contract with the NDDOT to provide public transit services.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2019.