North Dakota Legislative Council
Prepared for the Taxation Committee
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MOTOR VEHICLE EXCISE TAX CREDIT EXPANSION STUDY - BACKGROUND MEMORANDUM

Senate Bill No. 2299 (2021) (appendix), provides for a study of the desirability and feasibility of providing a credit against the purchase of a motor vehicle in an amount not to exceed the total amount the person received for the private sale of the vehicle being replaced for purposes of calculating the motor vehicle excise tax. The study must include a review of the current law applied to credits for trade-ins, motor vehicle sale industry practices, vehicles of a certain age, and the potential fiscal and technological impact on the state. The study also must consider the potential for tax fraud, the effect on child support collections, and implications regarding consumer protection.

BACKGROUND

In addition to the study directive provided in Senate Bill No. 2299, the provision of a motor vehicle excise tax credit against the purchase price of a replacement vehicle in an amount not to exceed the amount the person received for the sale of the vehicle the person is replacing was proposed in Senate Bill No. 2312 (2021), which failed to pass. Senate Bill No. 2312, in part, required the purchaser of the vehicle being replaced to provide the seller a copy of the motor vehicle purchaser's certificate required under North Dakota Century Code Section 57-40.3-05. The bill required the seller to attach a copy of the purchaser's certificate to the seller's application for a certificate of title for the replacement vehicle. The bill allowed the credit to be claimed within 3 years of the date of sale listed on the purchaser's certificate. The fiscal note for Senate Bill No. 2312 estimated a revenue reduction of $38,926,788 per biennium as a result of providing the credit. The fiscal note also indicated the Department of Transportation would require two additional full-time equivalent positions to process the additional workload resulting from the credit, at a cost of $247,056 per biennium.

Testimony provided on Senate Bill No. 2312 indicated concerns regarding the unequal motor vehicle excise tax treatment applied to the purchase of a replacement vehicle when the vehicle being replaced was traded-in at the dealership versus sold in a private party sale. Currently, a trade-in credit only is allowed on retail motor vehicle sales.

Testimony provided by a representative of the Department of Transportation indicated the expanded application of the credit would result in a significant increase in staff time to verify ownership and eligibility for the credit, increased service delivery time per transaction, and significant opportunities for misuse.

Testimony provided by a representative of the Automobile Dealers Association in opposition to the expansion of the credit highlighted various concerns. Testimony indicated more stringent consumer protection regulations apply to transactions entered by motor vehicle dealers than those entered by private parties, which might expose consumers to fraud or overestimated prices. The potential for avoidance of child support payments also was raised as a concern. Testimony indicated a lien is placed on a motor vehicle owned by an individual with an outstanding child support obligation. When the vehicle is sold, a motor vehicle dealer conducts a lien search and remits any required amount of the sale price to the Child Support Enforcement Division. In a private sale, the lien likely will go unnoticed unless it is marked on the title, which is uncommon. Concerns also were expressed regarding the potential for tax fraud in the absence of a sound method for validating the date of the sale and the purchase price of the motor vehicle sold in a private sale. Testimony highlighted a partial solution to the issue Senate Bill No. 2312 sought to remedy. Testimony referenced "in and out" or "paper trade" transactions, which allow a purchaser to purchase a vehicle from a dealer and sell the vehicle they are replacing to a third party through the dealer, rather than directly. This practice allows the consumer to realize a tax credit on the trade-in.

In addition to the directive to study the law applied to vehicles of a certain age in Senate Bill No. 2299, a motor vehicle excise tax exemption also was proposed for the sale of vehicles of a certain age in Senate Bill No. 2255 (2021), which failed to pass. Senate Bill No. 2255 provided an exemption from motor vehicle excise tax for the sale

of a vehicle that is at least 40 years old. The Department of Transportation indicated approximately 6,900 vehicles at least 40 years old are sold each year in the state. Based on the data provided by the Department of Transportation, the estimated reduction in general fund and state aid distribution revenues anticipated as a result of the exemption was $1.3 million for the 2021-23 biennium.

Testimony provided on Senate Bill No. 2255 indicated the vehicle age threshold of 40 years was selected because that is the age required for vehicles to qualify for antique license plates for a one-time registration fee of $10.

MOTOR VEHICLE EXCISE TAX IMPOSITION

Pursuant to Section 57-40.3-02, any vehicle required to be registered in North Dakota is subject to a motor vehicle excise tax of 5 percent of the purchase price of the motor vehicle. The purchase price of a motor vehicle equals the sales price less any trade-in amount, or the fair market value of the vehicle if the vehicle is acquired in a manner other than by purchase. The tax is in addition to motor vehicle registration fees imposed for license plates. The tax is collected by the Director of the Department of Transportation who acts as an agent of the Tax Commissioner.

RECENT LEGISLATION

In addition to Senate Bill Nos. 2312 and 2255, which failed to pass, one additional bill relating to the imposition of motor vehicle excise tax was introduced during the 2021 legislative session. Senate Bill No. 2277, which was enacted by the 67th Legislative Assembly, created a motor vehicle excise tax exemption for any motor vehicle transferred from an individual to a former spouse of the individual if the transfer results from a divorce decree and occurs within 1 year after the date the divorce became final.

SUGGESTED STUDY APPROACH

The committee may wish to proceed with the study by seeking input from various stakeholders, including the Tax Department, the Department of Transportation, the Child Support Enforcement Division, the Automobile Dealers Association, and the public regarding the feasibility and desirability of providing a credit against the purchase of a motor vehicle in an amount not to exceed the total amount the person received for the private sale of the vehicle being replaced for purposes of calculating the motor vehicle excise tax.

ATTACH:1