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DESCRIPTION

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10/2/03  
Date

2003 HOUSE TRANSPORTATION

HB 1205

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10/2/03  
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1205

House Transportation Committee

☐ Conference Committee

Hearing Date February 13, 2003

Tape Number	Side A	Side B	Meter #
1	x		2.0 to 9.8
		x	20.4 to 22.8
Committee Clerk Signature <i>Lauren B. Zerk</i>			

Minutes:

Rep. Weisz opened the hearing on HB 1205, a bill for an Act to amend and reenact subsection 5 of section 57-40.3-04 of the North Dakota Century Code, relating to a motor vehicle excise tax exemptions for transfers of vehicles from certain trusts; and to provide an effective date.

Rep. Maragos: Representing District 3, Minot introduced HB 1205 on behalf of practicing lawyer in his district. She provided written testimony which Rep. Maragos read. A copy of her ( Judith Howard ) written testimony is attached.

Rep. Bernstein: What about a car that is an estate?

Keith Kyser: ND DOT -- There is an exemption in the excise tax law that provides for an exemption for transfer of a vehicle as an inheritance.

Rep. Headland: the way I understand this is --- nobody is being tax for a transfer out of an estate

---

Keith Kyser: That is correct but this bill addresses transfers out of a trust.

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*10/2/03*  
Date

Page 2  
House Transportation Committee  
Bill/Resolution Number HB 1205  
Hearing Date February 13, 2003

Rep. Ruby: Why is the wording providing for 'A' vehicle -- does that imply there can be only one vehicle transferred -- or is that a matter of form?

Keith Kyser we looked at that also --- while we didn't draft the bill we believe that is cleaning up the language -- probably because the tax is applied on a per vehicle basis.

Rep. Weisz closed the hearing on HB 1205 as there was no one wishing to appear either for or against the bill. ( 9.8 )

Action ( tape 1 side B ) ( 20.4 ) Chairman Weisz opened the discussion for action on HB 1205. Rep. Zaiser moved a 'Do Pass' motion for HB 1205. Rep. Headland seconded the motion. On a roll call vote the motion carried 13 Ayes 0 Nays 0 Absent.

Rep. Bernstein was designated to carry HB 1205 on the floor.

End of Record ( 22.1 )

**FISCAL NOTE**  
Requested by Legislative Council  
01/09/2003

Bill/Resolution No.: HB 1205

**1A. State fiscal effect:** Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

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

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

The fiscal impact of this bill is expected to be less than \$5,000.

**3. State fiscal effect detail:** For information shown under state fiscal effect in 1A, please:

**A. Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

**B. Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

**C. Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

Name:	Keith Kiser	Agency:	ND Dept. of Transportation
Phone Number:	328-2734	Date Prepared:	01/13/2003

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Date: 2/13/03  
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1205

House TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30392.0100

Action Taken Do Pass

Motion Made By Rep. Zaiser Seconded By Rep. Headland

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman	✓		Lois Delmore	✓	
Kathy Hawken - Vice Chairman	✓		Arlo E. Schmidt	✓	
LeRoy G. Bernstein	✓		Elwood Thorpe	✓	
Mark A. Dosch	✓		Steven L. Zaiser	✓	
Pat Galvin	✓				
Craig Headland	✓				
Clara Sue Price	✓				
Dan J. Ruby	✓				
Dave Weiler	✓				

Total Yes 13 No 0

Absent 0

Floor Assignment Rep Bernstein

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

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Dannan Hall  
Operator's signature

12/2/03  
Date

**REPORT OF STANDING COMMITTEE (410)**  
February 13, 2003 12:10 p.m.

Module No: HR-28-2568  
Carrier: Bernstein  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**  
HB 1205: Transportation Committee (Rep. Weisz, Chairman) recommends **DO PASS**  
(13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1205 was placed on the  
Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-28-2568

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Operator's Signature

*10/2/03*  
Date

2003 SENATE TRANSPORTATION

HB 1205

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Deanna G. Galt  
Operator's Signature

10/2/03  
Date



2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1205

Senate Transportation Committee

☐ Conference Committee

Hearing Date 3-06-03

Tape Number	Side A	Side B	Meter #
1	X		2475-3325
Committee Clerk Signature <i>Mary K Monson</i>			

Minutes:

**Chairman Senator Thomas Trenbeath** opened the hearing on HB 1205 relating to a motor vehicle excise tax exemption for transfers of vehicles from certain trusts and to provide an effective date.

**Representative Andy Maragos** (District 3) Introduced HB 1205 and a letter of testimony from Judith Howard. (See attached.) There was no testimony against this bill in the House.

Everybody concluded that it is a good bill and does what it attempts to do to close the loophole regarding the transfer of assets in trusts.

**Gary Anderson** (Tax Department) Presently the law provides that there is an exemption for a family member to give a vehicle to another family member. It also addresses trusts. However, if a person transfers his vehicle to a trust and later decides to give the vehicle as a gift to a family member, an excise tax is imposed. This is a flaw in the existing law. HB 1205 would allow transfer out of a trust without tax obligation.

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*Dorinda Ballentine*  
Operator's Signature

*10/2/03*  
Date

Page 2  
Senate Transportation Committee  
Bill/Resolution Number HB 1205  
Hearing Date 3-06-03

The hearing on HB 1205 was closed

Senator Mutch moved a Do Pass. Seconded by Senator Nething. Roll call vote 5-0-1.

Discussion by the committee members clarified that this bill, if passed, would let the transfer from a trust to a family member be tax exempt.

Passed. Floor carrier is Senator Espegard.

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10/2/03  
Date

Date: 3-6-03  
Roll Call Vote #:

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1205

Senate TRANSPORTATION Committee

☐ Check here for Conference Committee

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

Action Taken Do pass

Motion Made By Senator Mutch Seconded By Senator Nething

Senators	Yes	No	Senators	Yes	No
Senator Thomas Trenbeath, Chair	✓		Senator Dennis Bercier		
Senator Duaine Espegard, V. Chair	✓		Senator Ryan Taylor	✓	
Senator Duane Mutch	✓				
Senator Dave Nething	✓				

Total (Yes) 5 No 0

Absent 1

Floor Assignment Senator Espegard

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

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Doreen Hall  
Operator's Signature

10/2/03  
Date

**REPORT OF STANDING COMMITTEE (410)**  
March 6, 2003 11:56 a.m.

Module No: SR-40-4062  
Carrier: Espogard  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**  
**HB 1205: Transportation Committee (Sen. Trenbeath, Chairman) recommends DO PASS**  
**(5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1205 was placed on the**  
**Fourteenth order on the calendar.**

(2) DESK (3) COMM

Page No. 1

SR-40-4062

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*Dorena Hall*  
Operator's Signature

10/2/03  
Date

2003 TESTIMONY

HB 1205

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10/2/03  
Date

**Judith E. Howard***Attorney and Counselor at Law*  
Member of National Network of Estate Planning Attorneys  
Member of National Academy of Elder Law Attorneys**Channing T. Schmidt***Attorney and Counselor at Law*  
Member of National Network of Estate Planning Attorneys  
Member of National Academy of Elder Law Attorneys

February 28, 2003

Chairman Trenbath and Members of the Transportation Committee:

I am Judith Howard. I have practiced law in Minot for the past 25 years. My practice is limited to estate planning. I am testifying in favor of this bill for the following reasons:

I am concerned about an apparent inconsistency regarding taxing the transfer of motor vehicles depending on whether an individual transfers a motor vehicle from themselves to certain persons or from their revocable living trust to those same persons.

A revocable living trust is an estate planning tool that is an increasingly preferred method of estate planning for individuals because of its flexibility. It allows individuals to remain in control of their assets while they are alive, to plan for themselves and their loved ones in the event they become disabled, and to direct where their assets are to go on their death.

A revocable living trust must have the individual's assets in it in order for it to work. Therefore, all of the individual's assets must be transferred to the trust. However, in practical terms, a revocable living trust is just another name for the individual. Even though the individual's assets have been transferred to the trust the individual is still in control. The individual can put things into the trust, take things out of the trust and even change its terms. There is no new tax ID number for the trust; the individual's social security number is used for the trust. The trust does not file a tax return because the trust does not exist as far as the IRS is concerned. The individual who created the trust files a 1040 tax return, just as any other individual does.

This brief background on revocable living trusts and the fact that the revocable living trust is just another name for an individual is important when considering HB 1205 bill before the committee today.

The present law [NDCC Sec. 57-40.3-04(5)] allows the transfer of a motor vehicle between certain persons without an excise tax. The transfers that are exempt from the motor vehicle excise tax are transfers between a husband, wife, parent and child, brothers and sisters, or a transfer into a trust in which the trustor and beneficiary occupy one of those relationships. Therefore, no excise tax is owed when a vehicle is transferred from an individual's name to the individual's trust or to the individual's spouse's trust.

However, if an individual transfers his motor vehicle to his revocable living trust and later decides he wishes to gift the vehicle to his spouse, child or sibling, a motor vehicle excise tax of 5% is imposed when the transfer is made out of the trust. In other words, there is no excise tax owed when a vehicle is transferred into the individual's revocable living trust, but there is an excise tax owed

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Page 2

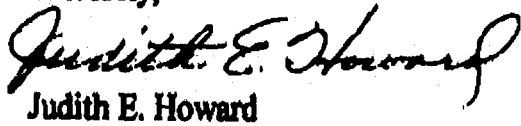
when a vehicle is transferred from the individual's revocable living trust to his spouse, child or sibling. This does not make sense. The revocable living trust is just another name for the individual. Therefore, the individual and his trust should be treated alike.

I believe the law should be changed so that individuals and their revocable living trusts are treated alike for purposes of the motor vehicle excise tax. There is no reason the individual's trust should be treated differently from the way the individual would be treated. There is no motor vehicle excise tax when transferring a motor vehicle into the individual's trust so long as the trustor and beneficiary occupy the position of husband, wife, parent and child, or brothers and sisters. Likewise, I believe there should be no motor vehicle excise tax when transferring a motor vehicle out of an individual's trust so long as the recipient is the husband, wife, parent and child or brothers and sisters.

I believe the intent of the law is to eliminate excise taxes on gifts of motor vehicles between certain family members. Changing the law as I have requested would not impair the intent of the law; indeed, it would make the law applicable where the intent of the law is intended to be applied but cannot under the law as it reads today.

Thank you.

Sincerely,

  
Judith E. Howard

JEH/mks

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