

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman Kenny Wilk at 9:00 A.M. on February 26, 2008 in Room 519-S of the Capitol.

All members were present.

Committee staff present:

Chris Courtwright, Legislative Research Department
Gordon Self, Office of Revisor of Statutes
Ryan Hoffman, Legislative Research Department
Rose Marie Glatt, Committee Secretary

Conferees appearing before the committee:

Representative Whitham
Secretary Wagnon, KDOR
John Peterson, Kansas Health & Fitness Association
George McCrary, Kansas Health & Fitness Association
Grey Ferris, Kansas Health & Fitness Association
Mark Desetti, KNEA & KASB

Others attending:

See attached list.:

It was noted that minutes from the Taxation meetings on: February 5, 6, 7, 8, 12, 13 and 15th were sent electronically to the Taxation committee on February 19th. By consensus they were considered approved on February 26th.

Representative Holland requested a bill be introduced regarding a sales tax exemptions for Toys for Tots. Representative Menghini seconded the motion. The motion carried.

HB 2938 - Sales tax exemption for certain 501 (c) (3) nonprofit organizations.

The Chairman directed the Committee's attention to a list of tax exemption bills pertaining to *non-profit organizations* (Attachment 1). The Chairman said they would return to the bill next week, anticipating the roll out of a consensus work product. The bill would be one the Committee would support through the legislative process for passage in the House.

Gordon Self briefed the Committee on **HB 2938**, a bill requested by Representative Whitham. He provided a brief history of activities leading up to the bill, which is a generalized approach for consideration of granting sales tax exemptions for non-profits. The bill would be effective January 1, 2009, and any organization that had been provided an exemption under law, prior to that date, would retain their exemption, even if they do not meet the criteria in new section I.

On January 1st, sales tax exemptions will be granted in the following cases:

- 1) Sales of personal tangible property and services purchased by organizations that are 501 (3) (c). These organizations are limited to the listing in line 19-23 of the bill. Organizations that would qualify for tax exemption, would be required to follow a procedure set up by KDOR..
- 2) Fund-raising for all 501 (c) (3) for fund-raising activities. The gross receipts from the sale of admissions or tickets to fund raising activities or events not exceeding one day and not exceeding two such activities or events per year.
- 3) Establish an appeal procedure if an organization is not in agreement with the Department's opinion and is denied an exemption to the tax imposed by this act. Secretary of Revenue must develop rules & regulations to set up a clear procedure to make a determination to substantiate such organizations qualifications for exemptions.

The Chairman opened the public hearing **HB 2938**.

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Representative Whitham reviewed the history of sales tax exemptions beginning with the Hodge report in 1970 to the formulation of a standing tax committee criteria list in 2005. He said the real question is who will be granted sales and use tax exemptions, as they move forward.

HB 2938 suggests:

- 1) You should be a 501 (c) (3) organization, or an organization that could be.
- 2) You must meet the criteria of the bill, and suggestions are listed in the bill. The bill only applies to purchases and is limited to those organizations providing services that are most valuable for communities and people that are unable to provide services for themselves. The fiscal note is approximately \$10.2 million. This bill also states that any 501 (c) (3) organization may have some limited fund-raising activities, and that is an additional increase of \$11 million dollars.
- 3) Grandfather in existing organizations. In a given time they will have to reapply for an exemption and meet the criteria outlined in the new bill. He expressed doubt that without the grandfather's clause it probably wouldn't make it through the House. The fiscal note was discussed.

Secretary Wagon, KDOR, commended Representative Whitham for his summary remarks on **HB 2938**. She distributed two documents: *Proposal for Exemption of Non-Profit Organizations from Kansas Sales and Use Tax* (October 24, 2007) (Attachment 2) and *Sales Tax Treatment for Not-For-Profit Entities* (October 24, 2007) (Attachment 3).

She made the following suggestions:

- 1) The first question the committee should ask is *What is the responsibility of the state to grant exemptions for non-profit organizations?*
- 2) As they study the list of current non-profits they should ask *Why are those groups on the list?* In her opinion the list should be limited to organizations functioning as quasi state agencies that are currently receiving some kind of state or federal funding.
- 3) She suggested they use the group designations, listed on page 7 of Attachment 2, as illustrations in determining guidelines.
- 4) Exemptions for fund raising need to be specific. Tax exemptions should not be given to caterers serving food at fund raisers, only to the event tickets. Perhaps the committee should consider striking *on behalf of* language.
- 5) Secretary Wagon explained the current process of numbered applications that expire every three years. She requested that the Department be allowed to retain that system.

The Chairman asked Secretary Wagon to prepare a balloon with the Department's suggestions and bring it back to the Committee. He also asked her for additional data and the fiscal note on bills that would qualify under the new program. She agreed to do so.

John Peterson, Kansas Health & Fitness Association (Attachment 4), said Kansas needs to establish standardized procedures for awarding sales tax exemptions to organizations and standardized treatment for those exemptions once awarded. He offered another option contained in a balloon amendment (Attachment 5). The following language *Except that, notwithstanding language to the contrary, only sales of personal property and services purchased by the organization and gross receipts as allowed in section I (a) (2) shall qualify for the exemption* would be added to: New Section 1 (c); Section 2, (v); and Section 3. He said under his amendment all organizations, both those grand-fathered in and those who are newly applied, would have the same treatment. The exemption would only apply to direct purchases and to isolated fund raising sales.

George McCrary, Kansas Health & Fitness Association, testified that only organizations that are truly benevolent should be exempt from sales taxes (Attachment 6). Those organizations that compete with the private sector on a regular basis should not have exemptions from paying and collecting sales tax.

Grey Ferris, Kansas Health & Fitness Association, stressed that sales should be taxed, and when they are not, it creates a competitive disadvantage for others. They support **HB 2938** with the changes Mr. Peterson suggested (Attachment 7).

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Mark Desetti, KNEA & Kansas Association of School Boards appeared in support of **HB 2938**. He said the bill would bring consistency and clarity to the issue of non-profit sales tax exemptions. He suggested, in the event they adopt the amendment brought forth by John Peterson, they need to consider an extended time frame instead of a one day isolated event for such organizations that sell items such as cookies, popcorn, etc. (Attachment 8).

Kathy Damron, on behalf of the YMCA's of Kansas, said they endorse the bill as drafted by Representative Whitham. They do not support Mr. Peterson's amendment, as it would impose a tax on the membership for such organizations like YMCA's and YWCA's and Jewish community centers. She said those organizations are different from "for-profit health clubs" in that they are the number one provider of childcare in Kansas, as well as providers of after-school programming. No one is turned away by lack of ability to pay, thus they believe they have earned the current tax status (No written testimony).

April Holman, Kansas Action for Children, stood in opposition to **HB 2938**. Their organization does not receive any state or federal funding and is not tax exempt. Their position is not a reflection of the value they place on not-for-profit organizations and the good work they do in Kansas. Rather they believe instead of adopting more exemptions to the sales tax, which further weakens the sales tax base, a comprehensive modernization of the Kansas tax system is needed (Attachment 9).

Discussion followed concerning:

- 1) The current application and review process for not-for-profit organizations. The simpler method is to tax what a small non-profit purchases and exempt sales.
- 2) There would be no administration difference between a program under a specified date versus a sunset clause.
- 3) Merit of the Peterson's amendment

The Chairman requested that the Department bring back the fiscal note on John Peterson's proposal. Richard Cram agreed to do so.

The meeting was adjourned at 10:25 A.M. The next meeting will be March 5 2008.