



MINUTES

PROPERTY TAX EXEMPTIONS COMMITTEE

Second Meeting
2003 Interim
September 15 & 16, 2003

Legislative Conference Rooms 1 and 2
State Capitol
Pierre, South Dakota

(Note: Monday, September 15, 2003—Subcommittee Meetings regarding tax exempt property and property tax limitations were held in Aberdeen, Rapid City, and Sioux Falls.)

The second meeting of the interim Property Tax Exemptions Committee was called to order by Chair Hal Wick at 9:10 a.m., September 16, 2003, in Legislative Conference Rooms 1 and 2 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Kenneth Albers, Tom Dempster, H. Paul Dennert, Marguerite Kleven, Dave Knudson, Michael LaPointe, and Paul Symens; and Representatives Daryl Christensen, Joni Cutler, Justin Davis, Tom Hackl, Gary Hanson, Dale Hargens, Jim Hundstad, Al Koistinen, Alice McCoy, Keri Weems, and Hal Wick. Senator Patricia de Hueck was excused.

Staff members present included Fred Baatz, Principal Research Analyst; Jim Fry, LRC Director; Aaron Olson, Fiscal Analyst; and Teri Retrum, Senior Legislative Secretary.

(NOTE: For sake of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents are on file with the Master Minutes.)

Approval of Minutes

SENATOR KLEVEN MOVED, SECONDED BY REPRESENTATIVE WEEMS, THAT THE MINUTES OF THE FIRST MEETING (JUNE 10, 2003) BE APPROVED. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

Report of Subcommittees on Tax Exempt Property

Aberdeen

Representative Al Koistinen complimented Ms. Mary Worlie, Brown County Director of Equalization, on her efforts to line up the facilities toured by the subcommittee.

Representative Koistinen said that the subcommittee toured the following:

Eagles Club—Fifty percent tax exempt/fifty percent taxable;
Northern State University—Four-apartment complex which is totally nontaxable because of its affiliation with the University;

Angelhaus—Fully taxable home for elderly, particularly those afflicted with Alzheimer's;

Bethesda Townsquare—Non-taxable forty-unit facility which includes congregate living, assisted living, and a nursing home. The profits made on the congregate living facility help to offset nursing home costs;

Trinity Lutheran—Non-taxable facility; and

Primrose Place—Taxable congregate and assisted living facility.

Representative Koistinen said that all of the facilities were very nice, and it was interesting to see various types of taxable and tax exempt property.

Representative Koistinen reported that the public was able to provide input at the subcommittee's afternoon meeting. He said that everyone who wished to comment was given the opportunity.

Rapid City

Senator Marguerite Kleven expressed appreciation to Mr. Rob Miller, Pennington County Director of Equalization, for setting up the facilities for the subcommittee to tour.

Senator Kleven listed the following types of facilities visited:

Primrose—For-profit congregate and assisted living facility which provides meals and assistance with medication;

Westhills Village—Nonprofit organization which provided congregate, assisted living, and nursing home facilities but chose not to participate in Title 19;

Elks Club—Golf course is fully taxed; the building is partially tax exempt, and they discussed their charitable activities;

North American University—Privately owned tax exempt facility that provides educational services; and

YMCA—After-school programs throughout the city. Approximately twenty percent of the members' fees are subsidized by the YMCA.

Senator Kleven said that the facilities responded positively when asked whether they would be willing to pay local governments for services, such as fire fighting and police protection, if all such entities would be charged.

Senator Kleven commented that the public hearing in the afternoon went very well.

Sioux Falls

Chair Hal Wick said that Mr. Eli Whitney and Ms. Linda Lambeth from the Minnehaha County Office of Equalization guided the subcommittee through the city to look at nonprofit facilities. Chair Wick said that Ms. Lambeth told him “cutting down paperwork would be a great benefit” to the Office of Equalization.

Among the facilities visited by the subcommittee were:

Dow Rummel Nonprofit Center—Nine nonprofit facilities in the Center; property is currently all tax exempt;

Dow Rummel Village—Residential living units, apartments and cottages, and nursing home; expanding entire facility and adding approximately 110 beds; facility is almost all tax exempt;

Waterford at All States—For-profit congregate housing; fully taxable; is using tax increment financing (TIF) for historical renovation; total of 150 beds in the facility;

McKenna Hospital Project—For-profit and nonprofit components;

Avera Prince of Peace—Provides congregate housing, assisted living, and nursing home services; takes Medicare and Medicaid patients;

VFW—Agreement to pay sixteen percent of what the valuation is on the property because some of the use is for charitable purposes, some is not; rental storage units in the back are totally taxable;

Primrose—For-profit congregate and assisted living facility, fully taxable;

Good Samaritan Campus and Village Duplexes—100% tax exempt from property tax; corporate offices and training facility; and

Inn at Westport—Congregate and assisted living facility; 99% tax exempt.

Chair Wick said that the subcommittee also was provided an overview of the Sioux Valley Hospital Complex.

Report of Subcommittees on Property Tax Limitations

Senator Kleven said that some county officials were critical of the statute that requires sales that are over 150 percent of the assessed value to be excluded from the sales ratios used in assessing property. She said that county officials criticized congregate housing and opt outs. According to Senator Kleven, county officials also said that Chapter 34-12 should be clarified. Dissatisfaction with tax incremental financing districts was expressed at the meeting. Senator Kleven said that all in attendance at the public hearing supported assessment of all nonprofit facilities for fire and police protection.

Representative Koistinen said that most of the testimony in Aberdeen centered on congregate housing and assisted living facilities. A desire for a level playing field regarding property taxes was expressed. Representative Koistinen said that some individuals suggested that criteria be developed in order for a facility to qualify as an assisted living facility.

Regarding the meeting in Aberdeen, Senator Paul Dennert told the committee that a gentleman said that all property tax exemptions should be eliminated and that many in the audience agreed with this individual.

Public Testimony

Mr. Jim Iverson, Bethel Lutheran Home, said that the Bethel Lutheran Home has a ninety-eight percent occupancy rate. It provides charitable care to the elderly; eight out of twelve residents are Medicaid eligible. Mr. Iverson attributes the quality care given to residents of assisted living centers as one of the reasons for the declining nursing home occupancy. He said that terms should be clearly defined regarding assisted living and congregate care facilities.

Senator Dave Knudson said that it would be interesting to put actual statistics to the notion that the declining nursing home population is attributable to the services provided by assisted living and congregate care facilities.

Mr. Ken McFarland, Minnehaha County, said that the committee should find out what the counties have in reserve. He recommended that the criteria for 501(c)(3)s be more clearly defined.

Senator Ken Albers asked who decides how much benevolent and fraternal organizations have to give back to the community in order to qualify for tax exempt status.

Mr. Miller responded that there is not a dollar requirement for those organizations to qualify for tax exempt status. He said that county boards of equalization determine tax exempt status based on use of the facility and the time involved with a charitable activity.

Representative Jim Hundstad said that there needs to be a better definition of the laws to determine what it takes to become nontaxable.

Senator Tom Dempster said that citizens and organizations do not mind paying taxes, but they do want them to be fair and equitable.

Senator Knudson said that there are various categories of care with different elements. He said that there are six or seven tests that a public charity must meet. There is a wide variety in the specificity of requirements.

Representative Joni Cutler said that the definition of congregate housing is being stretched. She said that some of the congregate housing facilities being constructed seem to be basically not much more than nice, new apartments. Representative Cutler expressed support for a more clear definition of congregate housing.

Representative Daryl Christensen said that assisted living is not congregate housing, so if the committee goes in the direction of defining the two terms, it would be a very involved process.

Chair Wick said that the committee should be mindful that most of the congregate housing and assisted living facilities were built under the current definitions set in statute.

The committee recessed at 10:40 a.m. and reconvened at 11:00 a.m.

Revenue Sources for Local Governments

Mr. Marty Guindon, Auditor General, distributed copies of a booklet titled "City, County, School and Township Governmental Funds Revenue Summary" (Document #1). Mr. Guindon said that he used data from 1995, which is pre-tax limitation data, through 2002, the most current data, when preparing his presentation. The data was gathered from information provided by 261 out of 304 cities, 64 out of 66 counties, all school districts, and 785 out of 945 townships. Mr. Guindon said that he did not include enterprise funds because they are meant to be self-funded. He said that the information is unaudited but is materially correct and can be useful for spotting trends.

Senator Knudson complimented Mr. Guindon on the charts showing city governmental funds revenues by type, county governmental revenues by type, school governmental funds revenues by type and township governmental revenues by type and said that he would like to see the same types of bar charts showing state funds revenues by type.

Senator Dennert said that county governments do not receive a big part of the property tax revenue; the counties receive about twenty to twenty-five percent of the tax revenue.

Property Tax Limitations—The Mechanics

Mr. Michael Kenyon and Ms. Colleen Skinner, Department of Revenue and Regulation, distributed copies of "Opt Outs, Taxes, and Tax Limitation Information" (Document #2); "Exempt Property Reports" (Document #3); and an application for full or partial property tax exempt status (Document #4).

Mr. Kenyon talked about the property tax limitation passed by the 1995 Legislature. He said that school district budgets are not capped as are the budgets of other taxing districts. Mr. Kenyon's presentation included charts showing opt outs through property taxes payable in 2003 and opt outs through property taxes payable in 2004, so far. He also noted that Brown County will vote on an opt out later this week, and Watertown will vote later today.

Ms. Skinner said that the information in the distributed report for tax exempt property is only as good as the information received from the property owners.

Senator Dennert said that if the requirements to qualify for tax exempt property are changed and results in additional taxable property, that taxable property should be treated as "new growth."

The committee recessed at 11:55 a.m. and reconvened at 1:13 p.m.

Public Testimony

Mr. Ken Senger, South Dakota Association of Health Care Organizations, testified that the association opposed any attempts to end or limit the status of congregate housing. He said that congregate housing is not required to be licensed by the state. Mr. Senger said that there are fewer than thirty congregate housing facilities in South Dakota—only four facilities have been constructed since 1998. He said that the number of elderly living in South Dakota could increase by fifty percent over the next fifteen years. Mr. Senger said that the state needs congregate housing as part of the nonprofit health care continuum. He said that nonprofit facilities enrich the community and the state.

Responding to Senator Dempster, Mr. Senger stated that to change the requirements now would create problems for existing congregate care facilities.

Mr. Jeremiah Murphy, Sioux Falls, South Dakota, and representing Avera Hospital said that studies have shown that providing elderly residents with even one nutritious meal per day can postpone a nursing home stay. Mr. Murphy said that the purpose of congregate care and assisted living facilities is to keep people out of nursing homes as long as possible.

Senator Garry Moore, Yankton, South Dakota, said that the whole truth is not being told regarding congregate care and assisted living. He said that perhaps all tax exempt property should be put on the tax rolls.

Mr. Dick Howard, South Dakota Association of County Commissioners, said that counties receive twenty-four to twenty-five percent of property tax revenue. He said that as of December 31, 2002, nine counties have spent down their cash balances to below ten percent. Mr. Howard said that many counties are spending down their unobligated cash balances to provided local government services, and many counties will have to opt out of the property tax

unless changes are made to the current cap on property taxes. Mr. Howard submitted copies of his testimony and supporting documents (Document #5).

Ms. Patty McGee, Sully County Auditor, said that opting out of the cap on property taxes hurts counties and that counties currently are having difficulty maintaining services.

The committee recessed at 3:00 p.m. and reconvened at 3:12 p.m.

Committee Discussion and Staff Directives

Chair Wick requested that staff draft legislation changing the point in time to measure the unobligated cash balances of counties.

Representative Hundstad asked staff to draft legislation which states that a municipality cannot commit the tax dollars that would be received by other units of government when permitting the creation of a TIF district.

Chair Wick said that the request does not fit within the scope of the committee's study; however, he stated that Representative Hundstad could still ask for the draft and then discuss with the Executive Board its appropriateness to the purview of the committee's study, or he could introduce such legislation on his own in the upcoming session.

Representative Hundstad requested that staff draft his proposal for discussion at the next meeting.

Senator Dennert asked for draft legislation to remove the property tax cap on local governments.

Senator Symens said that the committee should review definitions regarding congregate housing and, if they are not clear, prepare legislation to clarify the definitions and provide further criteria. Legislation was requested.

Senator Albers said that he agrees with Senator Symens that definitions regarding congregate housing need to be addressed; however, he said that he would want to grandfather existing facilities and set an emergency clause for those facilities built hence.

Senator Knudson said that while he does not object to a definition change, perhaps a cleaner statement of the status quo would suffice. Legislation was requested.

Representative Cutler requested staff to provide a summary of what other states define as congregate housing and whether those types of facilities are given a tax exemption.

Senator Knudson asked if a facility electing to participate in Medicaid can allow just one or two Medicaid recipients as a condition of operation to receive tax exempt status.

Representative McCoy said that it would be interesting to explore the possibility that tax exempt status could be based on how many Medicaid recipients a facility accepts.

Senator Dennert requested legislation making all congregate, assisted living, and nursing homes exempt from property taxation.

Representative Weems asked that the term, continuum of care, be included in a definition of congregate care.

Senator Dempster said that the state receives the benefit from congregate housing, but local governments incur the costs; if the social benefits are important to the state then the local governments should be reimbursed by the state for costs incurred. Legislation was requested to require the state to reimburse counties for the cost of exempting congregate living facilities.

Senator Kleven said that cost of services, such as fire and police protection, rendered to nonprofit facilities should be reimbursed to local governments, perhaps a fee based on square footage of a facility. Legislation was requested.

Senator Dennert said that the committee might want to include county governments. He said that he wants to look at the assessment approach because the revenue could be shared with the counties.

Senator Kleven also said that the Secretary of State should review each entity that has 501(c)(3) status to determine if it meets the criteria. Legislation was requested.

Senator Kleven said that perhaps the 150 percent rule should be deleted.

Next Meeting Date and Adjournment

The committee set October 15 and 16, 2003, as its next meeting dates.

SENATOR DEMPSTER MOVED, SECONDED BY REPRESENTATIVE KOISTINEN, THAT THE COMMITTEE BE ADJOURNED. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

The committee adjourned at 3:55 p.m.



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