ARIZONA HOUSE OF REPRESENTATIVES
Forty-seventh Legislature – First Regular Session

COMMITTEE ON WAYS AND MEANS

Minutes of Meeting
Monday, January 24, 2005
House Hearing Room 4 -- 1:30 p.m.

Chairman Huffman called the meeting to order at 1:40 p.m. and attendance was noted by the secretary.

Members Present

Mr. Brown
Mrs. Gorman
Mrs. Kirkpatrick
Mrs. Landrum Taylor
Mr. Nichols
Ms. Reagan
Mr. Stump
Mr. Yarbrough, Vice-Chairman
Mr. Huffman, Chairman

Committee Action

H.B. 2056 – DP (9-0-0-0)
H.B. 2134 – DP (9-0-0-0)
H.B. 2136 – DP (8-0-1-0)
H.B. 2252 -- HELD
H.B. 2133 – DPA (8-1-0-0)
H.B. 2135 – DPA (8-1-0-0)
H.B. 2156 – DP (9-0-0-0)

Speakers Present

Kitty Decker, Senior Economist/Majority Research Staff
(Names of persons who did not speak, pages 3, 7, 8 and 9)
Barry Aarons, Lobbyist, Tucson Convention & Visitors Bureau
Jonathan Walker, President/Chief Executive Officer, Tucson Convention & Visitors Bureau
Roger Beadle, President, Yuma Convention & Visitors Bureau
Representative Ted Downing
Michael Racy, Lobbyist, Pima County; Arizona Association of Property Tax Analysts
Tom Tracy, Southern Arizona Lodging & Resort Association
Norman Botsford, President/Chief Executive Officer, University Physicians, Incorporated
Doug Metcalf, Attorney, University Physicians, Incorporated
Thomas Naifeh, representing himself
George Basch, representing himself
Les Abrams, President, Arizona Association of Property Tax Analysts
Anthony Forschino, Legislative Liaison, Arizona Department of Revenue
Barb Dickerson, Chair, Practitioner Committee, Arizona Tax Research Association
Gretchen Kitchel, Senior Public Affairs Representative, Pinnacle West Capital Corporation
Russell Smoldon, Salt River Project

OPENING REMARKS

Chairman Huffman stated that meetings were not held the last two weeks due to the Members being sworn in and Martin Luther King Day, so there are only five meetings left to hear all of the bills. He believes it will work out, but he does not want to not be able to hear bills because there is no more time, so if many are left during the last few meetings, longer meetings may be necessary.

The Members introduced themselves.

ADOPTION OF COMMITTEE RULES

Chairman Huffman noted that the proposed rules are model Committee rules, but in order to provide flexibility, there is no deadline for filing amendments. There is, however, a greater chance of an amendment being adopted if it is distributed prior to the meeting so the other Members have time to review.

> **Vice-Chairman Yarbrough moved that the rules proposed for the House Ways and Means Committee as distributed be adopted (Attachment 1). The motion carried.**

INTRODUCTION OF STAFF

Chairman Huffman introduced the Staff: Kitty Decker, Senior Economist; Chris Kotterman, Majority Research Staff; Brian Wentzel, Majority Intern; Francine Upshaw, Jason Silva (not present), and Emily Nock, Pages; and Linda Taylor, Committee Secretary.

APPOINTMENT OF COMMITTEE OF REFERENCE

Chairman Huffman appointed the following Members to the Committee of Reference:

Mr. Huffman, Chairman
Ms. Reagan
Mr. Brown
Mrs. Kirkpatrick
Mr. Yarbrough

CONSIDERATION OF BILLS

H.B. 2252, property tax administration – HELD

> **Chairman Huffman announced that H.B. 2252 will be held.**

H.B. 2156, income tax credit review schedule – DO PASS

Kitty Decker, Senior Economist/Majority Research Staff, explained that H.B. 2156 updates the income tax credit review schedule based on the recommendations of the Joint Legislative Income Tax Credit Review Committee (Summary, Attachment 2).

Vice-Chairman Yarbrough moved that H.B. 2156 do pass. The motion carried by a roll call vote of 9-0-0-0 (Attachment 3).

H.B. 2133, county excise taxes; hotels – DO PASS AMENDED

Kitty Decker, Senior Economist/Majority Research Staff, explained that H.B. 2133 increases the maximum Pima County tax rate on hotels from 2 percent to 6 percent (Summary, Attachment 4). A proposed amendment clarifies that this is not a new tax for the purpose of economic development funding for Pima County (Attachment 5).

Chairman Huffman noted that the following persons are in favor of H.B. 2133:

Larry Lucero, Manager, Government Affairs, Tucson Electric Power Company
Susan Charlton, Attorney, Diamond Ventures
Marc Garcia, Vice President of Community Affairs, Greater Phoenix Convention & Visitors Bureau

Barry Aarons, representing Tucson Convention & Visitors Bureau, spoke in favor of H.B. 2133. He related that there are over 4,000 rooms in unincorporated areas of Pima County. This is a very unusual circumstance, and because of that, there is a limitation on the amount of funding that is available for tourism promotion in Pima County. This legislation merely gives Pima County the home rule option of being able to increase the tax. The County worked very hard with the different stakeholder groups to develop the distribution formula, and everyone seems satisfied. He added that tourism generates roughly $30 billion worth of economic activity employing 450,000 people, and Tucson is the #2 gateway community for visitors in the State. Having this promotional activity available for Pima County would create economic vitality for all areas surrounding Pima County and southern Arizona, as well as other parts of the State.

Jonathan Walker, President/Chief Executive Officer, Tucson Convention & Visitors Bureau, stated that he is in full support of H.B. 2133 as is the entire hospitality and tourism community in southern Arizona, specifically Pima County. This is a great example of a public-private partnership that is a win-win situation for everyone.

Roger Beadle, President, Yuma Convention & Visitors Bureau, requested support for H.B. 2133. He said this bill is very important because it does not ask the Legislature to raise the tax, but rather allows the County to self-determine its own economic development. It will allow for increased tourism marketing, which is critically important not only to Pima County, but the State of Arizona, as well as other economic development activities.

Representative Ted Downing, stated that he and Representative Olivia Cajero Bedford strongly support the bill and share a common interest in seeing tourism developed. Some good people are working on it and there is a wonderful future ahead.

Michael Racy, Lobbyist, Pima County, in favor of H.B. 2133, stated that this legislation would not have come up without the consensus partnership between private enterprise and the County. He is looking forward to exploiting some of the opportunities in economic development, stadium funding, and tourism this bill will allow to be pursued.

Tom Tracy, Southern Arizona Lodging & Resort Association, spoke in favor of H.B. 2133. He related that he served on the Tucson Economic Development and Tourism Advisory Committee this summer, and this bill was developed through that Committee with a wide range of public support from virtually every segment of industry throughout the entire area. In addition, the Members of the Association were polled individually, and without exception there was support from all major properties and primary hotels throughout the entire region.

Mrs. Kirkpatrick explained that the proposed amendment was recommended by Legislative Council and the Rules Committee. Sixteen percent of revenue from the bill goes to economic development, and the section cited in the bill states that there can be no new tax on a particular industry for economic development, so the proposed amendment clears up any ambiguity.

Vice-Chairman Yarbrough moved that H.B. 2133 do pass.

Mrs. Kirkpatrick moved that the four-line proposed Kirkpatrick amendment to H.B. 2133 dated 1/19/05 4:27 PM ((Attachment 5) be adopted. The motion carried.

Vice-Chairman Yarbrough moved that H.B. 2133 as amended do pass. The motion carried by a roll call vote of 8-1-0-0 (Attachment 6).

H.B. 2136, property tax exemption; health care – DO PASS

Kitty Decker, Senior Economist/Majority Research Staff, explained that H.B. 2136 exempts health care providers in contracts with the University of Arizona (UA) College of Medicine from property taxes, and refunds the organizations for taxes from 2000 to 2004 (Summary, Attachment 7). She added that a group called University Physicians, Incorporated (UPI), which is a nonprofit health care organization affiliated with the College of Medicine in Tucson, was advised in 2000 by the county assessor that their property was taxable. The group protested the taxes and is in litigation on the issue. The bill would provide statutory clarity and relief. There is also a mechanism for refunding back taxes in the bill.

She related to Mrs. Landrum Taylor that to her knowledge, UPI is the only organization that would be affected by the bill. The taxes paid amount to about $200,000 per year. In 2000, about $189,000 was paid; in 2001, $244,000; and the amount varied between those numbers in the last three years.

Mr. Huffman stated that other nonprofit hospitals in Pima County are not paying the property taxes that are assessed on UPI. The group is unique in the tax code in that it was created by an agreement with the Arizona Board of Regents (BOR), but it is still a nonprofit health care provider. There is a dispute in Pima County as to where the organization falls in the property tax area, so he believes this is a situation where the Legislature needs to provide some clarity.

Norman Botsford, President/Chief Executive Officer, UPI, in favor of H.B. 2136, agreed that the organization is rather unique. It was created in 1984 to provide clinical services for the full-time positions of the College of Medicine. A tax-exempt status was received, and the organization has operated under the Internal Revenue Service (IRS) rules for tax exemption since that time.

About the year 2000, the Pima County assessor chose to charge the company personal property and real estate taxes on their facilities, which include several clinics the company owns and rents, clinics within the UA and University Medical Center (UMC) complex and administrative building. The taxes have been paid under protest ever since. About $895,000 in taxes has been paid to date and another $195,000 in legal fees is associated with the case. He noted that several other nonprofits in the health care arena worked with the Legislature to seek relief under the statute, including the community health centers, Pima County Friends of the Library, and the Regional Behavioral Health Authority (RBHA) in Flagstaff. The Mayo Clinic, which is probably the closest kind of organization to UPI, i.e., a nonprofit physician practice that operates a hospital, has not had to approach the Legislature, but worked through the problem with the Maricopa County assessor and does not have to pay personal property or real estate taxes. Their practice provides all of the care at UMC, several other hospitals around Tucson, and most recently entered a long-term relationship to assume operation of the former Kino Community Hospital now known as University Physicians Hospital of Kino.

Doug Metcalf, Attorney, UPI, spoke in favor of H.B. 2136. He stated that when UPI was formed, a 501(c)3 letter was received from the Internal Revenue Service, which means it is a tax-exempt charitable organization for tax purposes. A tax exemption was obtained from the Pima County assessor in 1988 and the assessor granted the exemption every year through 1999, but then changed the policy. UPI has been in litigation for four years now. He asked the Members' support to clarify the legislation so UPI will be exempt, no more money has to be spent on attorney fees, and the company can get back to providing health care.

Chairman Huffman noted that Ed Wren, Legislative Counsel, University Physicians, Incorporated, is in favor of H.B. 2136.

Vice-Chairman Yarbrough moved that H.B. 2136 do pass. The motion carried by a roll call vote of 8-0-1-0 (Attachment 8).

H.B. 2134, board of equalization; property valuation – DO PASS

Kitty Decker, Senior Economist/Majority Research Staff, explained that H.B. 2134 requires the State Board of Equalization (SBOE) to consider all competent evidence, including valuation of similar property in appeal hearings when evidence is presented by the taxpayer (Summary, Attachment 9).

Michael Racy, Lobbyist, Arizona Association of Property Tax Agents, in favor of H.B. 2134, testified that the current procedure at SBOE states that the value of similarly situated property "may" be considered, whereas the statute says the assessor "shall" consider similarly situated property. It is all part of the same appeals process, but when cases move to the SBOE where the information "may" be considered, some hearing officers do and some do not. If the property owners have the information, it is being submitted currently, so the legislation does not add any more time or complexity to the cases. It only says that if it is submitted, it has to be considered in making the final decision. This does not supersede or preempt the market cost or income approaches to value in any way.

Thomas Naifeh, representing himself, in favor of H.B. 2134, indicated that he is a State certified general real estate appraiser. He stated that Title 42, Subsection 16-107, states that a county

board of equalization "shall" listen to how other property is valued. It has always been his belief that property taxes must be fair and equitable. When legislation passed in 1994 and the system became bifurcated, the individual counties remained with the wording "shall." Unfortunately, SBOE no longer recognizes the inequity that is being created, which is the reason for the bill.

George Basch, representing himself, stated that he is a property tax consultant in Phoenix. He indicated that Ms. Decker and Ms. Racy clearly stated the helpful impact to taxpayers this bill would provide and asked for the Members' support.

Les Abrams, President, Arizona Association of Property Tax Analysts, stated that he supports this legislation, which will bring Maricopa and Pima counties in line with the rest of the counties throughout the State.

Chairman Huffman noted that Susan Charlton, Attorney, Diamond Ventures, is in favor of H.B. 2134.

Vice-Chairman Yarbrough moved that H.B. 2134 do pass. The motion carried by a roll call vote of 9-0-0-0 (Attachment 10).

H.B. 2135, tax appeals; administrative hearings – DO PASS AMENDED

Kitty Decker, Senior Economist/Majority Research Staff, explained that H.B. 2135 creates a 180-day time frame for the Arizona Department of Revenue (DOR) or the Office of Administrative Hearings (OAH) to schedule a formal administrative hearing from the time taxpayers request an appeal (Attachment 11). She added that if the taxpayer requests a hearing and DOR does not set up the hearing, it is up to DOR to issue the denial. A proposed amendment states that if the taxpayer requests a hearing and DOR does not set up the hearing, the taxpayer deems the petition denied, and instead of waiting for DOR to send the notice, the taxpayer would send a written notice to DOR saying the time frame was not met, the petition is considered denied, and the taxpayer can move forward to Tax Court or the State Board of Tax Appeals (Attachment 12).

She related to Mr. Brown that some hearings have not been held in a timely manner, so certain individuals thought the hearings could be settled and taxpayers could move on if there were some timelines in statute. It is not a crisis situation at this point.

Anthony Forschino, Legislative Liaison, Arizona Department of Revenue, opposed H.B. 2135. He stated that with this bill, if a taxpayer requests an informal hearing, but does not then request a formal hearing, DOR cannot pursue the next step, so the audit would be in limbo. DOR also would not have the ability to request an extension. Sometimes taxpayers are asked for information and the taxpayer refuses to provide the information, so cases go beyond 180 days even after a formal hearing is requested. It is not certain with the bill when a taxpayer requests a formal hearing, if the taxpayer has the option to get out of the formal hearing. By being stuck at 180 days, DOR may even have to take more aggressive action like sending subpoenas out to obtain additional information. Often in hearings, not all of the requested information is obtained so new information must be reviewed, which drags out a hearing. He understands the 180 days, but would like to get to a point where there may be reasons to go beyond.

Mr. Forschino related to Mrs. Landrum Taylor that a low percentage of protests were not resolved or scheduled for a hearing within the 180 days. He indicated to Mrs. Kirkpatrick that he does not have a proposal for resolution, but he is willing to meet with the Sponsors and proponents of the bill to develop something that works.

Chairman Huffman noted that the following persons are in favor of H.B. 2135:

Gretchen Kitchel, Senior Public Affairs Representative, Pinnacle West Capital Corporation
Michael Preston Green, Lobbyist, El Paso Corporation; Arizona Restaurant & Hospitality Association

Barb Dickerson, Chair, Practitioner Committee, Arizona Tax Research Association, testified in support of H.B. 2135. She conveyed that this legislation is the result of concern by members of the Practitioner Committee that contrary to other deadlines specified in statute regarding taxpayers' appeal rights there are no firm deadlines for when a hearing must take place. The normal process is that DOR issues a deficiency assessment and the taxpayer has 45 days to appeal from the date of receipt, except an individual income taxpayer who has 90 days. Once the appeal is filed, the taxpayer must specify if they want to go through an informal conference, and if necessary, go on to a formal hearing or go right to a formal hearing. In most cases, taxpayers will opt for the informal conference in order to resolve the situation. The process is one in which the taxpayer provides additional information to try to understand where the auditor is coming from in order to resolve the audit. The informal conference may consist only of a single meeting, or as a result of that, the taxpayer and informal conferees, usually the auditor and supervisor, sign an agreement that additional information will be provided within a certain time frame. At some point, DOR will issue an amended assessment if additional information is provided along with a document asking if the taxpayer agrees or wants to go to formal hearing. The problem is that there is no deadline to go to formal hearing.

She said the worst case scenario was 882 days from when the practitioner requested a formal hearing until the formal hearing was granted. In other cases, it was in excess of a year. The purpose of the legislation is to have a time frame and structure in which to get these cases, once there is a formal hearing request, to a formal hearing. It does not impact the time frame for DOR to conduct an audit or the time frame for an informal conference and additional information gathering. To the point of dragging on forever without DOR being able to request a formal hearing, DOR's current procedures require that the taxpayer be asked at a certain point if they want to go to a formal hearing or accept the current results as satisfactory.

Ms. Dickerson added that during the entire time of the appeal, interest continues to accrue, so the longer the period drags out where the taxpayer cannot go to formal hearing or have the case resolved, the more interest is due, through no fault of their own in this particular instance, if the taxpayer ultimately loses. If the taxpayer is asking for a refund, the taxpayer should be able to obtain the money on a more expeditious basis. She would be willing to work with DOR on any concerns.

Chairman Huffman noted that the following persons are in favor of H.B. 2135:

Jennifer Schuldt, Senior Research Analyst, Arizona Tax Research Association
Derek Palanchian, Senior Manager, Wentworth Webb & Postal, LLC

Chairman Huffman stated that he would be glad to work with DOR to see if something can be worked out, but he hopes they will have "more meat on the bone" as to actual concerns. DOR rightfully has the ability to control the audit process, so continuing to preserve the protection of taxpayers as they go through this process by making sure they have rights to actually be heard and issues resolved in a timely manner is not unreasonable.

Vice-Chairman Yarbrough moved that H.B. 2135 do pass.

Vice-Chairman Yarbrough moved that the six-line proposed Huffman amendment to H.B. 2135 dated 1/19/05 2:14 PM (Attachment 12) be adopted. The motion carried.

Vice-Chairman Yarbrough moved that H.B. 2135 as amended do pass. The motion carried by a roll call vote of 8-1-0-0 (Attachment 13).

H.B. 2056, utility property tax valuation formula – DO PASS

Kitty Decker, Senior Economist/Majority Research Staff, explained that H.B. 2056 clarifies the property tax treatment of Contributions in Aid of Construction (CIAC) for electric and gas utilities (Summary, Attachment 14).

Gretchen Kitchel, Senior Public Affairs Representative, Pinnacle West Capital Corporation, spoke in favor of H.B. 2056. She noted that while the utility companies have been in dispute with DOR, they have been working amicably on resolving this issue prospectively. She explained that utilities are required to do certain things and not required to do other things. The most common example is when a new development goes in, and most of the development is in Maricopa County and some in Pima County, utilities are not requiring underground lines, but in today's world, houses cannot be sold unless the power lines are underground. The Arizona Corporation Commission does not require utilities to pay for the undergrounding, but developers will be able to sell a house for more money if the lines are underground, so the developers pay the difference between overhead and undergrounding the lines. That money is called CIAC. At issue is whether a utility must pay property taxes on that added value, and the utilities' position is that is their asset and they should not have to pay. The legislation clarifies that prospectively, beginning with this tax year, the utility does not have to pay tax on those contributions. The emergency clause is included in order to resolve this for the current tax year.

Chairman Huffman noted that Anthony Forschino, Legislative Liaison, Arizona Department of Revenue, is neutral on H.B. 2056.

Chairman Huffman noted that the following persons are in favor of H.B. 2056:

Tom Jones, Chief Executive Officer, Grand Canyon State Electric Cooperative Association
Larry Lucero, Manager, Government Affairs, Tucson Electric Power Company
Martin Shultz, Vice President, Pinnacle West Capital Corporation; Arizona Public Service Company

Russell Smoldon, Salt River Project, testified in favor of H.B. 2056. He remarked that no utility he knows of has paid a contribution to date, and the utilities have been successfully working with DOR to make sure this problem is fixed going forward. Something will be worked out on the two years in question, but they have been successful over the years in building this new formula and putting it in place. This is the last piece of the puzzle that needs to be fixed going forward.

Vice-Chairman Yarbrough moved that H.B. 2056 do pass. The motion carried by a roll call vote of 9-0-0-0 (Attachment 15).

Without objection, the meeting adjourned at 3:03 p.m.

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Linda Taylor, Committee Secretary
January 27, 2005

(Original minutes, attachments, and tape are on file in the Office of the Chief Clerk.)