ARIZONA HOUSE OF REPRESENTATIVES
Fifty-first Legislature – First Regular Session

COMMITTEE ON WAYS AND MEANS

Minutes of Meeting
Monday, February 11, 2013
House Hearing Room 1 -- 2:00 p.m.

Chairman Lesko called the meeting to order at 2:15 p.m. and roll call was taken by the secretary.

Members Present

Mr. Cardenas
Mr. Gallego
Mr. Mesnard
Mr. Olson
Mr. Petersen
Mr. Wheeler
Mr. Kwasman, Vice-Chairman
Mrs. Lesko, Chairman

Members Absent

None

Committee Action

HB2456 – DPA (5-3-0-0)
HB2519 – HELD AT REQUEST OF SPONSOR
HB2531 – DPA (7-1-0-0)
HB2535 – DP (7-0-0-1)
HB2544 – DP (5-3-0-0)

CONSIDERATION OF BILLS

HB2519 - assignment of tax lien - HELD AT REQUEST OF SPONSOR

Chairman Lesko announced that HB2519 will be held at the request of the sponsor.

HB2535 – independent functional utility – DO PASS

Vice-Chairman Kwasman moved that HB2535 do pass.

Stephanie Jaffa, Majority Research Analyst, explained that currently only value derived from work related to tangible personal property that does not become a permanent attachment to a structure, project, development, or improvement, is deducted from the gross proceeds of sales or gross income of the business before computing the tax base for prime contracting (Attachment 1). Currently, the term *permanent attachment* means at least one of the following:

- To be incorporated into real property
- To become so affixed to real property that it becomes a part of the real property

- To be so attached to real property that removal would cause substantial damage to the real property from which it is removed

Ms. Jaffa explained that HB2535 strikes all references to *permanent attachment* and instead includes as a deduction value derived from work related to tangible personal property that has independent functional utility after installation. The bill specifies that *independent functional utility* means that the machinery, equipment, or other tangible personal property, to which will be referred to collectively as *property*, can substantially perform its function without attachment to real property, which must include more than:

- Assembling the property
- Connecting items of property to each other
- Connecting the items, whether as individual items or as a system of items, to water, power, gas, communication, or another service
- Bolting down or burying the property or otherwise affixing the property to real property or real property improvements to stabilize or protect the tangible personal property during operation

Mr. Olson, sponsor, explained that if equipment is purchased to be used in manufacturing an item, the item is subject to a transaction privilege tax (TPT) but the equipment is not. Arizona Department of Revenue's (DOR) aggressive approach is to consider this equipment as part of the real estate and therefore subject to prime contracting classification and tax. HB2535 corrects this issue and states that even if equipment is attached to the floor, it is still exempt from TPT if it can be used with or without the real property.

Kevin McCarthy, President, Arizona Tax Research Association, spoke in support of HB2535 and stated Arizona is unique in its charges of a prime contracting tax on materials, which are exempt at retail but taxed on the back end. It is exemptive retail that is ensnared in prime contracting classification, according to the DOR, if it becomes attached to the property.

Pat Derdenger, Tax Attorney, Steptoe & Johnson, testified in support of HB2535 and spoke about permanent attachment exemptions and issues. He elaborated on personal property versus real property in tax standards and gave examples of different business products, production, labor, and material classification exemptions. Mr. Derdenger explained, in response to a Member's question, that this proposed TPT legislation would take care of this challenging area.

Chairman Lesko announced the name of those who signed up as neutral on HB2535 but did not speak:
Sean Laux, Legislative Liaison, Department of Revenue

Vice-Chairman Kwasman announced the names of those who signed up in support of HB2535 but did not speak:
Allison Bell, Senior Government Affairs Representative, APS
Farrell Quinlan, State Director, National Federation of Independent Business
Michael DiMaria, Director of Legislative Affairs, CenturyLink
Gretchen Kitchel, Senior Public Affairs Representative, SRP
Matt Derr, Administrator, Corporate Public Affairs, Southwest Gas Corporation
Jason Bagley, Government Affairs Manager, Intel Corporation

Ryan Peters, Intergovernmental Programs Administrator, League of Arizona Cities and Towns

Question was called on the motion that HB2535 do pass. The motion carried by a roll call vote of 7-0-0-1 (Attachment 2).

HB2544 – city parcel tax; prohibition – DO PASS

Vice-Chairman Kwasman moved that HB2544 do pass.

Casey Baird, Majority Legislative Intern, explained that HB2544 prohibits a municipality from levying or assessing a municipal-wide tax or fee against property owners based on the parcel or on the size or value of the property in order to fund a public service provided by the municipality (Attachment 3).

Mr. Olson, sponsor, explained this bill is proposed due to a city's effort to impose a property tax without following the requirements in statute or the Arizona Constitution by calling it a parcel tax. Property tax or a secondary tax such as a bond would require voter input and approval. HB2544 would prevent a city council board from averting the requirements and levying a tax approved by only a majority vote of a board. In response to a Member's question, he stated the city was Paradise Valley.

Kevin McCarthy, President, Arizona Tax Research Association, spoke in support of HB2544 and explained that last year Paradise Valley came to the Legislature with a bill to impose a tax on property, but the legislation did not pass. The city council, by a majority vote, then imposed a parcel tax. Mr. McCarthy explained how the Arizona Constitution and Arizona Revised Statutes regulate property taxes making it clear that a city or town cannot, on its own, develop a new tax outside of state law, and explained how the system became so chaotic. This legislation is not special legislation, he clarified, it does apply to all cities, and it is strongly encouraged.

Andrew Miller, Town Attorney, Paradise Valley, spoke in opposition to HB2544 because it seems to be specific to Paradise Valley, which has a minimal government and not a lot of administrable services. He explained that the town has faced issues in providing fire protection services and in attaining funding to sustain these services. The town did adopt an agreement to implement a tiered parcel fee to which there has been very little objection. In response to a Member's question about creating a property tax instead of a parcel tax, Mr. Miller answered that after surveys and public meetings, a property tax is a broad income base while the parcel tax is more specific to the town's need. He cited that in the state's existing case law it quotes that municipalities are not allowed to refer to the voters something the city has the power to do.

Vice-Chairman Kwasman announced the names of those who signed up in support of HB2544 but did not speak:
Farrell Quinlan, State Director, National Federation of Independent Business
Tom Farley, Lobbyist, Arizona Association of REALTORS ®
Scot Mussi, Free Enterprise Club
Jeff Sandquist, National Association of Industrial and Office Properties

Question was called on the motion that HB2544 do pass. The motion carried by a roll call vote of 5-3-0-0 (Attachment 4).

HB2531 – income tax; instant depreciation – DO PASS AMENDED

Vice-Chairman Kwasman moved that HB2531 do pass.

Stephanie Jaffa, Majority Research Analyst, explained Arizona currently requires that a balance of over $25,000 for property, for which an expense deduction was taken in pursuant to section 179 of the Internal Revenue Code, be added to the gross income for the purpose of computing Arizona adjusted gross income. HB2531 lifts the $25,000 cap to property purchased and placed in service before January 1, 2013 (Attachment 5).

Mr. Mesnard moved that the Mesnard two-line amendment to HB2531 dated 2/7/13 (Attachment 6) be adopted.

Ms. Jaffa explained that the two-line amendment dated 2/7/13 makes a technical change to clarify that the restriction applies to property purchased and placed in service in the taxable year beginning January 1, 2013 (Attachment 6).

Mr. Mesnard explained this bill conforms to section 179 in the Internal Revenue Code and aligns Arizona with other states. It helps promotes small businesses with a depreciation on purchases. He stated the fiscal impact will be in the first year and will be recouped in the following years.

Stephen Slivinski, Senior Economist, Goldwater Institute, spoke in favor of HB2531 stating it is good tax policy. He explained the increased benefits to small business, which includes favorable competition with other states.

Sean Laux, Legislative Liaison, Department of Revenue, neutral on the bill, answered questions on HB2531 from Members about the impact on the state's revenue.

Vice-Chairman Kwasman announced the names of those who signed up in support of HB2531 but did not speak:
Tom Jenney, Director, Americans for Prosperity
Matt Derr, Administrator, Corporate Public Affairs, Southwest Gas Corporation
Garrick Taylor, Vice President, Arizona Chamber of Commerce and Industry
Farrell Quinlan, State Director, National Federation of Independent Business
Scot Mussi, Free Enterprise Club
Steven Neil, representing self

Question was called on the motion that the Mesnard two-line amendment to HB2531 dated 2/7/13 (Attachment 6) be adopted. The motion carried.

Vice-Chairman Kwasman moved that HB2531 as amended do pass. The motion carried by a roll call vote of 7-1-0-0 (Attachment 7).

HB2456 – revenue allocation districts – DO PASS AMENDED

Vice-Chairman Kwasman moved that HB2456 do pass.

Mr. Mesnard moved that the Mesnard two-page amendment to HB2456 dated 02/05/2013 (Attachment 9) be adopted.

Ryan Sullivan, Assistant Research Analyst, explained HB2456 allows municipalities to form revenue allocation districts within their respected boundaries for the purpose of funding economic development projects. Under the plan, the district will be funded via incremental revenue increases from primary property taxes and transaction privilege tax (TPT). Property taxes would be frozen at the current base level or base roll which would be the assessment for the year and the amount of the base roll would then be deducted from the current year's tax roll with the positive difference in increment value being allocated to the district. Similarly, municipal TPT generated in the year preceding the district's formation would constitute the base TPT with anything above the established base allocated to the district going forward (Attachment 8).

Mr. Sullivan explained the amendment dated 02/05/2013 in Representative Mesnard's name clarifies that "project costs" do not include the repayment of general obligation bonds, revenue bonds, property corporation leases, or certificates of participation issued by a municipality in which the district is located. Furthermore, project costs do not include payments owned by municipalities to any third party for the operation and maintenance of an arena, stadium, or sports facility (Attachment 9).

Representative Phil Lovas, sponsor, stated this bill was proposed last year but was vetoed by the Governor. He believes that, with the amendment, HB2456 will address any concerns and clarify the bill's intent. Currently there are limited tools in statute for revenue and HB2456 has safeguards built in regarding the types of investments and use of funds.

Eric Emmert, East Valley Chambers of Commerce Alliance, spoke in favor of HB2456. He stated that the Chamber represents about 5,500 small businesses in the East Valley and this bill is a good tool with sufficient safeguards of funds which can be used for infrastructure development.

Scott Powell, Economic Development Analyst, Arizona Association for Economic Development, spoke in favor of HB2456 and stated the ability for site preparation and infrastructure for economic development is severely needed in Arizona and this bill clearly addresses this issue. He responded to Members' questions and concerns as to how the revenue districts are formed, the overseeing council and the distribution or use of the revenue funds. Mr. Powell explained the various methods other states have enacted for the collection of revenue and clarified Chairman Lesko's statement as to the collection and disbursement of taxes staying in the district versus going into the general fund.

Paul Sharpe, Ventures West, spoke in favor of HB2456 stating that this would help support the opportunity to develop the English Village at Lake Havasu City (Attachment 10). The majority of the shoreline is on state land but a fraction is privately owned and the plan is to create a private marina with condominiums and hotels bringing tourism to Arizona. Since the land area is limited, parking would have to be underground and this bill would help with funds for the project.

Chairman Lesko announced the names of those who signed up as neutral on HB2456 but did not speak:
Sean Laux, Legislative Liaison, Department of Revenue

Vice-Chairman Kwasman announced the names of those who signed up in opposition to HB2456 but did not speak:
Dave Kopp, Manager, Americans for Prosperity
Tom Jenney, Director, Americans for Prosperity
Stephen Slivinski, Senior Economist, Goldwater Institute

Vice-Chairman Kwasman announced the names of those who signed up in support of HB2456 but did not speak:
Nick Simonetta, Government Affairs Consultant, City of Peoria
Steve Kemp, City Attorney, City of Peoria
Patrice Kraus, Intergovernmental Affairs Coordinator, City of Chandler
Richard Hubbard, President/CEO, Valley Partnership
Shirley Gunther, Intergovernmental Affairs Manager, City of Avondale
F. Rockne "Roc" Arnett, President, East Valley Partnership
Mary Ann Miller, Tempe Chamber of Commerce
Brian Tassinari, Lobbyist, Lake Havasu City
Brent Stoddard, Director of Intergovernmental Programs, City of Glendale
Kathy Tilque, CEO, Gilbert Chamber of Commerce
Tom Farley, Lobbyist, Valley Partnership
Brett Jones, Vice President of Operations, Arizona Construction Association
Lisa Krueger, Lake Havasu Area Chamber of Commerce
Mike Dvorak, Peoria Chamber of Commerce
Benjamin Bitter, Management Analyst, City Manager's Office, City of Casa Grande
Heather Bernacki Wilkey, Director, Government Affairs, Arizona Association for Economic Development
Leah Hubbard, Intergovernmental Relations Coordinator, Town of Gilbert
Deanna Kupcik, President, Buckeye Valley Chamber of Commerce
Amanda Rusing, Government Affairs Associate, Arizona Planners Association
Ryan Peters, Intergovernmental Programs Administrator, League of Arizona Cities and Towns
Scott Butler, City of Mesa
Sharolyn Hohman, Southwest Valley Chamber of Commerce

Question was called on the motion that the Mesnard two-page amendment to HB2456 dated 02/05/2013 (Attachment 9) be adopted. The motion carried.

Vice-Chairman Kwasman moved that HB2456 as amended do pass. The motion carried by a roll call vote of 5-3-0-0 (Attachment 11).

Without objection, the meeting adjourned at 3:45 p.m.

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Tracey Gardner, Committee Secretary
March 19, 2013

(Original minutes, attachments and audio on file in the Office of the Chief Clerk; video archives available at http://www.azleg.gov)