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

COMMITTEE ON WAYS AND MEANS

Minutes of Special Meeting
Thursday, February 21, 2013
House Hearing Room 1 -- 2:10 p.m. or on adjournment of
Special Ways and Means Committee meeting

Chairman Lesko called the meeting to order at 4:13 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

HB2037 - DPA S/E (8-0-0-0)
HB2332 - DISCUSSED & HELD
HB2446 - DPA S/E (5-3-0-0)
HB2617 - DPA (6-1-0-1)
HCR2004 - DP (7-0-0-1)
HCR2011 - DP (7-0-0-0)

CONSIDERATION OF BILLS

HB2446 - technical correction; limited partnership - DO PASS AMENDED S/E
S/E: property tax; religious institution; exemption

Stephanie Jaffa, Majority Research Analyst, explained that the Olson four-page strike-everything amendment to HB2446 dated 2/19/13 (Attachment 1) removes the requirement for property to be used or held primarily for religious worship in order to be eligible for the tax exemption for religious property. Instead, the exemption would apply to property that is used by a religious association or institution that is not held for profit, to generate taxable income, or used for the private benefit of any individual. Property that is held but not currently being used by a religious association would also be tax exempt if all of the following are true:

- The property is not used or held for profit or to generate taxable income.
- The religious association or institution certifies its intent to retain and use the property for its religious mission.
- The property is not used for the private benefit of any individual.

The strike-everything amendment also excludes from the tax exemption, occupied housing, unless the housing is provided as a parsonage as compensation for ministerial services, or as a dormitory for students of a religious institution, or as temporary shelter for individuals in need of services. The exemption would be limited to three houses provided as parsonages per religious association or institution (Attachment 2).

Mr. Olson, sponsor, explained that the strike-everything amendment to HB2446 is a delicate issue, especially when government has to decide if a church is a church and when the county assessor's office is put in the position to decide if that property is awarded a tax exempt status. He stated that many meetings have been held with county assessors and currently there is not an agreement. This legislation may help to establish correct criteria that the assessors could look to, in statue, when determining if a property will qualify for a religious property tax exemption.

Keith Russell, Maricopa County Assessor, spoke in opposition to the strike-everything amendment to HB2446. His concern with the amendment is that it will change the criteria that assessors use to qualify an application to receive the religious exemption. Currently, in order for property to qualify, it must be used primarily for religious worship and it must be nonprofit. The language that is being stricken in the amendment and the language that is being added will put the scrutiny into the financial aspects of the church. Assessors do not want to go to churches and ask them to examine their books. If the only criteria assessors have to determine who gets this exemption are based upon finances; worship will be difficult to define.

Mr. Russell gave an example of changes that would be made under this amendment relating to the Salvation Army, which is currently under the exempt status. Their leadership staff is partly compensated with housing for being employed. This legislation changes the number of occupants and could create a problem for that organization.

Mr. Gallego commented that there was a sex club that was masking itself as a religious organization and it took quite a while to shut them down because of the ambiguity of the law.

Mr. Russell agreed as to how difficult it is to define *religious organization* and answered Members' questions on specific religions being affected. Donation of land will be affected and the term *religious worship* is being removed and *religious association or institution* is being added. He explained that the Legislature writes the law, the county assessors enforce and interpret it, and clarification comes from the court when the lawsuits are settled.

Josh Kredit, Legislative Counsel, Center for Arizona Policy, testified in support of the strike-everything amendment to HB2446 and stated three components of the bill. The first component is dealing with vacant land, addressed earlier by Mr. Russell. The second clarifies that a church does not need to present a 501(c)(3) determination letter from the Internal Revenue Service (IRS) to qualify for a property tax exemption. To avoid excessive entanglement between government and churches, the IRS simply recognizes churches as tax exempt without engaging in further evaluation. Mr. Kredit cited a court case supporting the concept that the strike-everything amendment will clarify and the emphasis on the determination letters. The third component addresses the issue of *primarily for religious worship* and removes that phrase. The problem is that each assessor uses its own discretion to determine what is and is not worship. The goal of the strike-everything amendment is to minimize interference in the churches' activities by governmental entities.

Chairman Lesko restated the three components and asked specifically about land qualifications. Mr. Kredit clarified that any land that the church owns would qualify for the exemption. He also stated that component number three is the most disputed.

David Hook, Pastor, representing self, spoke in support of the strike-everything amendment to HB2446. He recounted his church's experience with purchasing 37 acres of land in Pima County and having only a portion, which was occupied by a building, be exempt. The church is currently appealing the decision. Pastor Hook believes that this legislation will bring consistency to this grey area.

Vice-Chairman Kwasman announced the names of those who signed up as neutral on the strike-everything amendment to HB2446 but did not speak:
Leonard Clark, representing self
Sean Laux, Legislative Liaison, Department of Revenue

Vice-Chairman Kwasman announced the names of those who signed up in opposition to the strike-everything amendment to HB2446 but did not speak:
Jen Sweeney, Deputy Director, Arizona Association of Counties
Paul Petersen, Attorney/Assessor Representative, Maricopa County Assessor

Vice-Chairman Kwasman moved that HB2446 do pass.

Mr. Olson moved the Olson four-page strike-everything amendment to HB2446 dated 2/19/13 (Attachment 1) be adopted. The motion carried.

Vice-Chairman Kwasman moved that HB2446 as amended do pass. The motion carried by a roll call vote of 5-3-0-0 (Attachment 3).

HB2332 - qualifying charitable organization credit; certification - DISCUSSED & HELD

Chairman Lesko announced that HB2332 is for discussion only.

Casey Baird, House Majority Intern, explained that currently individuals who donate to a qualifying charitable organization are eligible to receive a tax credit of up to $200. An organization must spend at least 50 percent of its total budget on Temporary Assistance for Needy Families (TANF) recipients, low income residents, or chronically ill or physically disabled children in order to be classified as a qualifying charitable organization. HB2332 expands the definition of qualifying charitable organizations to include an organization that spends 100 percent of its total budget on a specific program area for these qualifying services (Attachment 4).

Don Isaacson, Lobbyist, YMCA, testified in support of HB2332 and spoke about legislation that was enacted called the "working poor tax credit", which channels funds to organizations that serve the working poor defined as:

- Receiving TANF
- Low income
- Ill or physically disabled groups

It allows individuals or married couples to take an income tax credit if they itemize and for organizations that spend over 50 percent. Mr. Isaacson cited that HB2332 identifies other 501(c)(3) organizations that do not meet the qualification of over 50 percent but have specific dedicated programs in those defined areas, such as the YMCA, which channels its money back into the organization. The budget figures must to be worked out but he thanked the Committee for discussing the bill.

Vice-Chairman Kwasman announced the names of those who signed up in support of HB2332 but did not speak:
Patrick McWhortor, President/CEO, Alliance of Arizona Nonprofits

Vice-Chairman Kwasman announced the names of those who signed up as neutral on HB2332 but did not speak:
Leonard Clark, representing self
Sean Laux, Legislative Liaison, Department of Revenue

Vice-Chairman Kwasman announced the names of those who signed up in opposition to HB2332 but did not speak:
Willie Stubbs, representing self

HB2037 - technical correction; malpractice claim review - DO PASS AMENDED S/E
S/E: tax credit; unified sports programs

Stephanie Jaffa, Majority Research Analyst, explained that currently a tax credit for the amount of any fees or cash contributions by a taxpayer or on the taxpayer's behalf to a public school for the support of extracurricular activities or character education programs is allowed in the amount of $200 for an individual or $400 for a married couple filing jointly. The Lesko three-page strike-everything amendment to HB2037 dated 2/19/13 (Attachment 5) expands that tax credit to include contributions for the support of unified sports programs, which are defined as inclusive programs that combine high school students with and without intellectual disabilities on sports teams (Attachment 6).

Representative Heather Carter, sponsor, explained the unified sports program in conjunction with the Special Olympics and stated that the HB2037 strike-everything amendment is consistent with the tax credits for after-school programs. Ms. Carter clarified this is for school-aged children and the Special Olympics assume all the costs associated with this program; the children are not charged a fee.

Kate Fassett, Special Olympics Arizona, spoke in support of the strike-everything amendment to HB2037 and explained that the program is taking people with or without eligible disabilities and putting them on a competitive sports field together on teams, which is currently not allowed. HB2037 will allow parents a choice when giving to their school and giving to the program their child is participating in. It is a unified sports program that is having a great success and is completely paid for by the Special Olympics.

Mr. Olson discussed his concern with this type of tax credit and also clarified the age status mentioned in the strike-everything amendment.

Vice-Chairman Kwasman announced the names of those who signed up in support of the strike-everything amendment to HB2037 but did not speak:
Nadine Armstrong, Senior Director of Operations and Quality Assurance, Special Olympics Arizona

Vice-Chairman Kwasman announced the names of those who signed up as neutral on the strike-everything amendment to HB2037 but did not speak:
Leonard Clark, representing self
Sean Laux, Legislative Liaison, Department of Revenue

Vice-Chairman Kwasman moved that HB2037 do pass.

Chairman Lesko moved that the Lesko three-page strike-everything amendment to HB2037 dated 2/19/13 (Attachment 5) be adopted. The motion carried.

Vice-Chairman Kwasman moved that HB2037 as amended do pass. The motion carried by a roll call vote of 8-0-0-0 (Attachment 7).

HCR2004 - taxes; fees; purpose; transfer; prohibition - DO PASS

Casey Baird, House Majority Intern, explained HCR2004 proposes an amendment to the Arizona Constitution that prohibits taxes or fees collected by the state for a specific purpose from being appropriated for any other purpose. Any funds remaining after the repeal of a tax or fee designated for a specific purpose may be directed to the state General Fund. The Secretary of State is required to submit this Proposition to the voters at the next general election (Attachment 8).

Representative Steve Montenegro, sponsor, stated that HCR2004 is intended for government to be more responsible and accountable in their spending without dipping into other funds. If the income tax fee is repealed, the money would be sent to the General Fund and not elsewhere.

Sydney Hay, Arizona Mining and Industry Get Our Support (AMIGOS) Trade Association, spoke in favor of HCR2004. She referenced a ballot proposition last year which, if passed, would have affected the Legislature's ability in making budget decisions and setting spending priorities for our state. AMIGOS was against that proposition, although it had a good benefit which was to stop the fund sweeps. AMIGOS is in support of HCR2004, and she stated that when there is a tax increase for a specific purpose and that purpose ends, either reallocate the tax or refund it but prevent those funds from being swept to fill other unintended gaps.

Discussion ensued on fund sweeps and Vice-Chairman Kwasman asked if HCR2004 applied to cities and counties. Ms. Hay replied it only applies to the state.

Vice-Chairman Kwasman announced the names of those who signed up in support of HCR2004 but did not speak:
Farrell Quinlan, State Director, National Federation of Independent Business

Vice-Chairman Kwasman announced the names of those who signed up as neutral on HCR2004 but did not speak:
Leonard Clark, representing self

Vice-Chairman Kwasman moved that HCR2004 do pass. The motion carried by a roll call vote of 7-0-0-1 (Attachment 9).

HB2617 - school tuition organizations; preapproval; entities - DO PASS AMENDED

Ryan Sullivan, Assistant Research Analyst, explained HB2617 directs the Department of Revenue (DOR) to establish a website to process requests from School Tuition Organizations (STO) for preapproval of a taxpayer's intended contribution amounts (Attachment 10). The bill specifies the allowable tax credit that may be apportioned to a member of a limited liability company (LLC) is the amount of tax liability for the member's share of the profits, calculated at the effective tax rate for the member's total income. The allowable tax credit that may be apportioned to a stockholder in a small business corporation that makes an election to distribute earnings first, pursuant to federal law, is the amount of tax liability for the stockholder's share of income calculated at the effective tax rate for the stockholder's total income. HB2617 allows members of LLCs and stockholders in small business corporations that are apportioned a credit, to take any additional income tax credits provided in statute. The previously stated provisions are applied to both the tax credit allowed for contributions to an STO that provides education scholarships and tuition grants to children of low income families and an STO that provides education scholarships and tuition grants to children with disabilities or children in foster care.

Mr. Sullivan explained the Olson two-page amendment dated 2/20/13 (Attachment 11) clarifies the manner in which tax credits for an LLC taxed as a partnership or as a sole proprietor will be apportioned and clarifies the manner in which tax credits for any corporation will be apportioned. It limits the amount of apportioned tax credit applied against the income tax of a member of an LLC or a stockholder in a corporation to the taxpayer's income included in Arizona adjusted gross income, multiplied by the effective tax rate on all Arizona adjusted gross income. It defines *effective tax rate* as the gross income tax computed before any credits, divided by the Arizona adjusted gross income and removes qualifying language relating to LLCs from the definition of *taxpayer* so that all LLCs are included.

Mr. Olson, sponsor, stated HB2617 provides opportunities to those who attend private schools using a scholarship from a STO and increases the amount taxpayers can qualify for the tax credit when they give a contribution to the STO. It also expands this option to LLCs and S type corporations.

Sydney Hay, American Federation for Children, spoke in favor of HB2617 and stated that each tax credit program operates differently and is often confusing. She explained that HB2617 will increase contributions for individual and married couples, and improve cap limitations and the application process for corporations.

Christina Martinez, United States Hispanic Leadership Institute (USHLI), Hispanic Council for Reform and Educational Options, spoke about the organizations and their support of HB2617 and also the opportunity to participate in providing scholarships to Latinos and low income families.

Andrew Cunningham, Pastor, representing self, spoke in favor of HB2617 stating that he appreciates the benefit this will offer children who are waiting to go to a school of their choice but have no money. He cited that approximately 15,000 families want that choice; 68 percent of the student population receives assistance through these organizations.

Sean Laux, Legislative Liaison, Department of Revenue (DOR), spoke as neutral on HB2617 and stated some primary concerns. DOR cannot administer this legislation as written and there are no provisions to actually claim the tax credit on the tax form. Also there is no effective date, which makes implementation difficult for DOR and the taxpayer. Regarding Ms. Hay's explanation on the administration process, the post office box system will be converting to an email system beginning July 1, 2013.

Vice-Chairman Kwasman announced the names of those who signed up in support of HB2617 but did not speak:
Ron Johnson, Executive Director, Catholic Conference
Farrell Quinlan, State Director, National Federation of Independent Business
Deborah Sheasby, Legal Counsel, Center for Arizona Policy
Melissa Keckler, Political Coordinator, American Federation for Children
Harry Miller, Executive Director, Tuition Organization for Private Schools

Vice-Chairman Kwasman announced the names of those who signed up as neutral on HB2617 but did not speak:
Leonard Clark, representing self

Vice-Chairman Kwasman announced the names of those who signed up in opposition to HB2617 but did not speak:
Janice Palmer, Governmental Relations Analyst, representing self

Vice-Chairman Kwasman moved that HB2617 do pass.

Mr. Olson moved that the Olson two-page amendment to HB2617 dated 2/20/13 (Attachment 11) be adopted. The motion carried.

Vice-Chairman Kwasman moved that HB2617 as amended do pass. The motion carried by a roll call vote of 6-1-0-1 (Attachment 12).

HCR2011 - personal property tax exemption amount - DO PASS

Casey Baird, House Majority Intern, explained that HCR2011 proposes an amendment to the Arizona Constitution that would, upon voter approval, increase the full cash value of the business personal property exemption for commercial and agricultural business personal property to an amount that is equal to the annual earnings of 50 Arizona workers (Attachment 13). The measure would maintain the current exemption cap of $50,000 adjusted annually for inflation for personal property acquired before tax year 2015. In 2012, SCR1012 referred a similar proposition to the voters, Proposition 116, which did not pass.

Vice-Chairman Kwasman, sponsor, explained HCR2011 and the failure of Proposition 116, which was due to the confusing nature of the political organizations around its passage.

Farrell Quinlan, State Director, National Federation of Independent Business, spoke in support of HCR2011 and advised they were the instigators of Proposition 116. It is a complicated area of the law and voters will need to be educated on this issue.

Vice-Chairman Kwasman announced the names of those who signed up as neutral on HCR2011 but did not speak:
Leonard Clark, representing self
Sean Laux, Legislative Liaison, Department of Revenue

Vice-Chairman Kwasman moved that HCR2011 do pass. The motion carried by a roll call vote of 7-0-0-1 (Attachment 14).

Without objection, the meeting adjourned at 5:54 p.m.

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Tracey Gardner, Committee Secretary
May 23, 2013

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