



MINUTES

PROPERTY TAX EXEMPTIONS COMMITTEE

First Meeting
2003 Interim
June 10, 2003

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

The first meeting of the interim Property Tax Exemptions Committee was called to order by Chair Hal Wick at 10:10 a.m., June 10, 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, Patricia de Hueck, Tom Dempster, H. Paul Dennert, Marguerite Kleven, Dave Knudson, Michael LaPointe, and Paul Symens; and Representatives Daryl Christensen, Justin Davis, Tom Hackl, Gary Hanson, Dale Hargens, Al Koistinen, Alice McCoy, Keri Weems, and Hal Wick. Representatives Joni Cutler and Jim Hundstad were excused.

Staff members present included Fred Baatz, Principal Research Analyst; 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.)

Opening Remarks

Chair Hal Wick reported that the Executive Board of the Legislative Research Council granted his request to divide the Property Tax Exemptions Committee into three subcommittees to meet simultaneously for one day in Aberdeen, Rapid City, and Sioux Falls. He said that it is his intention that each subcommittee would tour types of tax exempt properties in the morning and receive testimony from the public and affected entities in the afternoon. The subcommittee members would then meet in Pierre the following day to discuss their findings.

Chair Wick also said that the Board granted his request to expand the committee's scope to include input from special taxing districts, cities, towns, and townships regarding property tax exemptions.

Tax Exempt Property—What is Permitted

Previously mailed documents from the Legislative Research Council include copies of a paper titled Levy Limits and Code Sites (Document #1); copies of a document titled "Opt Out Information for All Taxing Districts Except School Districts For Taxes Payable in Calendar Year 2004 (Document #2); and copies of a document titled "Your Property Taxes (Document #3).

Mr. Paul Kinsman, Department of Revenue and Regulation, discussed tax exempt property in South Dakota. He said that government property in the state is exempt from taxation, except state-owned shooting areas and school land that is held in public trust. Mr. Kinsman said that the determining factor to qualify as tax exempt property is whether the function and use of that property, in some way, relieves a burden to the public.

Mr. Kinsman said that there are a number of state statutes that address exempt property and that he would conservatively estimate the market value of exempt property to exceed \$1.5 billion.

Among the property that is tax exempt is property owned by religious, benevolent, or charitable groups as long as the property is used for religious, benevolent, or charitable purposes. Mr. Kinsman said that benevolent organizations, such as Elks and Moose; patriotic organizations; nonprofit corporations, such as hospitals, adjustment training centers, congregate housing, etc., may also be tax exempt. Mr. Kinsman said that up to eighty acres of agricultural land owned by religious, benevolent, or charitable organizations are tax exempt as long as that land is used for charitable, benevolent, or religious purposes, such as a bible camp. Property owned by educational institutions which is accredited or approved as a school is tax exempt. Agricultural structures valued up to \$10,000 are tax exempt. South Dakota has a homestead exemption. A house owned by an individual who is a paraplegic and a veteran is exempt from taxation. Property used as employee day care is tax exempt. In lieu of property taxes, Mr. Kinsman said that rural electric utilities and certain phone companies pay taxes on gross receipts. After discussing other exemptions, Mr. Kinsman said that the purpose for which the property is being used is the determining factor for tax exempt status.

Responding to committee questions, Mr. Kinsman said that a Tax Increment Financing District (TIF) provides for taxes to be used to pay for bonds and is basically an economic development tool, and the majority of the TIFs are credited for industrial or commercial purposes. He said that legislation would be needed to authorize the Department of Revenue and Regulation to fund the required FTEs and tools required to value all the exempt property in the state and compile the information. Mr. Kinsman said that a comparison of South Dakota's property tax system to other states is available.

County Perspectives

Mr. Richard Howard, Executive Director of the South Dakota Association of County Commissioners (SDACC), referenced previously mailed documents (Document # 4) and said that counties rely heavily on property taxes to provide operating capital. He said that the counties are responsible for providing services within the county from the revenue generated from property taxes. He estimated that counties lose from 1.4 to 1.9 billion dollars of assessed value due to tax exemptions on certain property. Mr. Howard said that concerns surrounding tax exempt property center on the question of fairness and who makes up for that lost revenue. Mr. Howard said that results of a SDACC survey (included in Document #4) of all counties show that every opt out attempt that was referred to a vote failed.

Mr. Howard briefly discussed the tax exempt congregate housing facility in Hutchinson County and the issues involved in that court case and introduced Mr. Gills Stern, Hutchinson County Commission, who explained the court case from the commission's perspective. Mr. Stern said that the commissioners support congregate living facilities but they believe that such a facility should be available to everyone who requires that type of facility in order to receive tax exempt status. He said that the commission denied the exemption to the congregate housing facility owned by the Freeman Community Hospital because it only offered a continental breakfast, meals on wheels, and required a resident contribution of \$55,000, \$65,000, or \$75,000 and that rent was based on the contribution, so the facility was not available to all people in the county. Mr. Stern said that the hospital appealed the tax exempt status; the county won in circuit court and lost in the Supreme Court.

Court Cases on Tax Exempt Property

Mr. David Wiest, Attorney General's Office, summarized the following cases and the disposition of each in the Supreme Court of South Dakota: *Freeman Community Hospital and Nursing Home v. Hutchinson County* (Document #5); *Appeal of the Denial of the Real Estate Tax Exemption for Black Hills Legal Services, Inc.* (Document #6); and *Associated School Boards of South Dakota, Inc., v. Hughes County, South Dakota* (Document #7)—(The Opinions were mailed to committee members prior to the meeting.)

Mr. Wiest also noted *Lutherans Outdoors in South Dakota v. South Dakota State Board of Equalization*. He said that the facility owned by the Church was used both for exempt purposes and non-exempt purposes. The camp was used for church functions and, on occasion, was rented to groups or people in the community for various functions. Mr. Wiest said that this fits the definition of a mixed-use facility, and the Supreme Court provided the rules for the dichotomy between the two uses.

The committee recessed at 11:55 a.m. and reconvened at 1:18 p.m.

The Process, Issues, and Examples

Ms. Mary Worlie, Brown County Director of Equalization, distributed a copy of information that she gathered from taxable and exempt nursing homes, assisted living, and senior apartments in Brown County showing their tax exempt status; and a list of tax exempt property values for Brown County, with accompanying pictures (Document # 8).

Mr. Rob Miller, Pennington County Director of Equalization, said that there is a lot of church-owned property in Pennington County, which, if it is used for church related activities, is tax exempt. Twenty-nine percent of the property in the county is partially tax exempt, such as the Elks Club in Pennington County—the golf course is not tax exempt, but the benevolent activities held in the lodge are tax exempt.

Mr. Miller said that many properties are bought and sold and certain property can “go from tax exempt to taxable status. In this instance, the property is considered as growth when it moves on the tax rolls for budget purposes.”

Mr. Mark Smith, Hughes County State's Attorney, said that, as a state's attorney, he gives advice to the county on what the law requires concerning exemptions. State's attorneys also become involved in the process if there is an appeal.

Tax Limitations and Opt Outs—A Historical Perspective

Mr. Larry Gabriel, Secretary of the Department of Agriculture, gave a historical perspective of property taxes, the tax limitations, and opt outs. Mr. Gabriel said that he is a rancher and was a county commissioner before becoming a state representative, and then coming to his current position as Secretary of the Department of Agriculture. He said that in his legislative capacity, he served as both a member and Chair of the House Taxation Committee. Secretary Gabriel discussed the evolution of the property tax in South Dakota and how legislators enacted different pieces of legislation in many attempts to address property taxes and the fairness issues surrounding those taxes.

At this time, Ms. Colleen Skinner, Department of Revenue and Regulation, distributed copies of a table showing how many commercial and industrial facilities receive tax exempt status in South Dakota (Document #9); copies of a paper listing SDCL 13-13-10.2.—Determining assessed value for tax incremental districts; SDCL 13-13-20.4—Actual assessed valuation for certain property given reduced valuation; and SDCL 13-13-73.1—Real property valuation of manufactured homes to be excluded from calculation (Document #10); and copies of a document showing the reasons for value added to the taxable base of a district (growth) and supporting materials (Document #11).

Budget Requests and Property Taxes

Mr. Howard testified that there have been eighteen opt out attempts—of those eighteen, eight were successful, and ten were unsuccessful. He said that the ten opt outs which were unsuccessful were referred to a vote; the eight successful opt out attempts were not referred to a vote. Mr. Howard said that it is getting to the point where more counties are going to opt out. He said that counties are allowed up to forty percent unobligated cash reserves; however, counties are spending down their reserves to make up for revenue shortfalls, and eight counties have spent down their reserves to below ten percent. Mr. Howard said that it is safe to say that, in the upcoming years, more counties will be asking to opt out.

Chair Wick asked Mr. Howard for a list of counties that are within ten to twenty percent of their cash reserves.

Ms. Gail Brock, South Dakota Association of Towns and Townships, said that the towns and townships in South Dakota run a frugal budget—the average township has \$31,000 in reserve, but many townships have less than the average in reserve.

Public Testimony

Mr. Chuck Schroyer, Pierre, South Dakota, the attorney representing the Associated School Boards of South Dakota in *Associated School Boards of South Dakota, Inc., v. Hughes County, South Dakota*, and Mr. Jeremiah Murphy, Sioux Falls, South Dakota, the attorney representing the Freeman Community Hospital in the *Freeman Community Hospital and Nursing Home v. Hutchinson County*, addressed the issues from their respective clients' perspective and some of the reasoning involved in the decision by the Supreme Court in each case.

Mr. Schroyer also addressed concerns that the YMCA organizations have in regard to the growing number of health and fitness facilities. These facilities are in competition with YMCA organizations, and the YMCAs want to retain their tax exempt status.

Mr. Dan Nelson, Sioux Falls Area Chamber of Commerce, said that South Dakota needs to consider what incentives the state has to offer to entities that would further economic development.

Mr. Jim Thares, Aberdeen, South Dakota, said that all of his Primrose Retirement Facilities are on the tax rolls of the county. He said that the facilities provide the same services as the tax exempt facilities. Mr. Thares said that each type of facility alleviates a burden and should be treated the same when it comes to tax exempt status.

Ms. Nancy Barron, Spearfish, South Dakota, said that she and her husband operate a for profit assisted living center in Spearfish. She said there were three other for profit facilities when they built theirs; now there are three nonprofit centers in the area, which are exempt from taxes. Ms. Barron said that all assisted living facilities should be treated the same because they provide the same services.

Committee Discussion

Regarding the committee's expanded scope of study, Chair Wick read the following motion and the disposition of the motion from the Executive Board Minutes of June 9, 2003:

SENATOR DEMPSTER MOVED, SECONDED BY SENATOR DENNERT, THAT THE EXECUTIVE BOARD APPROVE THE REQUEST OF THE INTERIM COMMITTEE ON PROPERTY TAX EXEMPTIONS TO EXPAND ITS STUDY SCOPE TO INCLUDE TOWNSHIPS, SPECIAL DISTRICTS, CITIES, AND TOWNS; AND THAT THE EXECUTIVE BOARD APPROVE THE INTERIM COMMITTEE'S REQUEST TO HOLD REGIONAL MEETINGS IN ABERDEEN, RAPID CITY, AND SIOUX FALLS. SUCH APPROVAL INCLUDES AUTHORIZATION FOR PAYMENT OF THE EXPENSES ATTENDANT TO THE REGIONAL MEETINGS.

SENATOR DEMPSTER'S MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

The committee agreed to hold the three subcommittee meetings on Monday, September 15, 2003, in Aberdeen, Rapid City, and Sioux Falls. The full committee will meet in Pierre on Tuesday, September 16, 2003, to discuss the findings of the subcommittees in the morning and to receive public testimony in the afternoon. The committee set October 15 and 16, 2003, as its third meeting date.

Adjournment

REPRESENTATIVE WEEMS MOVED, SECONDED BY REPRESENTATIVE HANSON, THAT THE COMMITTEE BE ADJOURNED. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

The committee adjourned at 4:30 p.m.



All Legislative Research Council committee minutes and agendas are available at the South Dakota Legislature's Homepage: <http://legis.state.sd.us>. Subscribe to receive electronic notification of meeting schedules and the availability of agendas and minutes at **MyLRC** (<http://legis.state.sd.us/mylrc/index.cfm>).