

Approved: _____
04-27-07 Date

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairman Barbara Allen at 10:40 A.M. on March 20, 2007 in Room 519-S of the Capitol.

All members were present.

Committee staff present:

Chris Courtwright, Kansas Legislative Research Department
Martha Dorsey, Kansas Legislative Research Department
Gordon Self, Office of Revisor of Statutes
Nancy Kirkwood, Committee Assistant

Conferees appearing before the committee:

Senator Carolyn McGinn
Patty Dengler, Inter-Faith Ministries

Others attending:

See attached list.

Hearing on SB 383, Property tax exemption for certain housing for the elderly, persons with disabilities or persons with limited or low income owned by certain organizations was held.

Chairperson Allen recognized Senator McGinn, who stated SB 383 will encourage building housing projects for the homeless in Kansas. This type of housing is very important for elderly persons with disabilities and low income. Inter-Faith Ministries has done a great job in bringing a diverse group of people together. Because of the current language in statute, these projects are not property tax exempt; however, the statute intends to exempt these types of housing. Because of the legal structure of the project, they do not qualify for the exemption. No written testimony was provided.

Patty Dengler, Inter-Faith Ministries, furnished testimony in support of SB 383. (Attachment 1)

Written testimony in support of SB 383 was presented to the Committee from Robin Martinez, Hope, Inc. (Attachment 2)

Chris Wilson, Executive Director of Kansas Building Industry Association (KBIA), presented written testimony in support of SB 383 (Attachment 3)

The hearing closed.

Discussion and possible action

SB 382, Sales tax exemption for contractors constructing or reconstructing facilities at state correctional institutions, or privately constructed correctional institutions contracted for state use and ownership, was discussed.

Senator Derek Schmidt made a motion to adopt the KDOR's amendment with technical changes to SB 382. Senator Goodwin seconded the motion. The motion carried.

Senator Derek Schmidt moved an additional technical amendment on page 2, line 15 and 16 be made, and the Revisor have discretion to make the necessary change. Senator Donovan seconded the motion. The motion carried.

Senator Schmidt made a motion to further amend SB 382, as amended, by inserting the provisions of SB 126, Criminal classification and penalty for sales of tangible personal property or services without a tax registration certificate. Senator Jordan seconded the motion. The motion carried.

HB 2264, exclusion of Social Security benefits from Kansas adjusted gross income for income tax liability

CONTINUATION SHEET

MINUTES OF THE Senate Assessment and Taxation Committee at 10:40 A.M. on March 20, 2007 in Room 519-S of the Capitol.

purposes, was discussed.

Senator Schmidt made a motion to amend **HB 2264** by striking the contents of **HB 2264** and inserting the Johnson County provisions of **Sub SB 375**, Taxing authority and creation of Johnson county education research triangle authority and sales tax authority for public safety projects. Senator Apple seconded the motion. The motion carried.

Senator Schmidt made a motion to recommend **HB 2264**, as amended, favorably for passage and make it a substitute bill. Senator Apple seconded the motion. The motion carried.

SB 331, Income tax credits and grant program for development of certain historic sites, was discussed. Senator Derek Schmidt recommended the following changes to the bill: 1) Section one, reduce the proposed credit for not-for-profit entities from 35% to 30%, which would reduce the fiscal note by \$375,000, 2) Section two, credits not transferable, raising the cap to \$200,000 and making those credits refundable, 3) Section three, the operation grant program, on the funding mechanism, strike the proposed increase in the mortgage fee, making the grants subject to appropriations.

Senator Schmidt made a motion to amend **HB 2405** by striking the contents and replacing with the provisions of **SB 331**, as previously passed by this committee, and adding his three recommended changes, and making it a substitute bill. Senator Jordan seconded the motion. The motion carried.

Senator Schmidt moved to pass **Sub HB 2405** favorably for passage. Senator Jordan seconded the motion. The motion carried.

HB 2240, Sales taxation; sales tax exemptions; services for rebuilding of public utility facilities, was discussed.

Senator Donovan moved to adopt KDOR's balloon amendment to **HB 2240**, with exception of the deletion of "repair". Senator Pine seconded the motion. The motion carried.

Senator Donovan made a motion to pass **HB 2240**, as amended, favorably. Senator Pine seconded the motion. The motion carried.

Chairperson Allen asked the Committee if it was interested in working any other bills in the Tax Committee. It was determined more information was needed before working **SB 383**. The Chair requested a definitive answer on how many entities it would apply to and what the fiscal note would be.

Chairperson Allen said there were no future scheduled meetings at this time, however if needed, the Committee could possibly meet on Thursday.

The meeting adjourned at 11:25 a.m.

SENATE
ASSESSMENT & TAXATION COMMITTEE

GUEST LIST

DATE: Mar 20

NAME	REPRESENTING
Carolyn McGinn	State Senate
MARK CIARDALLO	KS DEPT OF REW
Steve Stotts	KDOR
Marie Beck	KDOR
David R. Corbin	KDOR
Wes Ashton	Aquila
LISA BENLON	AMERICAN CANCER SOCIETY
Tony Folsom	KDOR
Roger Hamm	KDOR
Ben Cleaves	DOB
John Bright	Conlee Consulting Group
LARRY R BAER	LKM
April Holman	Kansas Action for Children
Will Deer	Federico Consulting
Fed Warner	RS GOV CONSULTING
Matthew Smith	KMHA
Kathy Olsen	KS Bankers Assn.
Chris Wilson	KBIA

SENATE
ASSESSMENT & TAXATION COMMITTEE

GUEST LIST

DATE: 4 Mar 20

NAME	REPRESENTING
Sam Muyskens	Inter-Faith Ministries
Patricia Deagle	Inter-Faith Ministries
Scott Gates	State Treasurer's Office

WRITTEN TESTIMONY

TO THE SENATE ASSESSMENT AND TAXATION COMMITTEE

BY PATRICIA DENGLER, COUNSEL FOR INTER-FAITH MINISTRIES WICHITA, INC.

PRESENTED ON MARCH 20, 2007

Support for S.B. 383, which proposes to amend K.S.A. 79-201z

Thank you, Senator Allen and committee members, for allowing this hearing on S.B. 383. This bill amends K.S.A. 79-201z, a statute that exempts certain real and tangible personal property from *ad valorem* taxation. I am counsel for Inter-Faith Ministries Wichita, Inc., a Kansas not-for-profit tax-exempt corporation and I am here to testify in support of S.B. 383.

The current statute has limited application. It only assists not-for-profit community housing development organizations (CHDO) recognized by the Kansas Housing Resource Corporation that provide housing for the elderly, persons with disabilities or persons with limited or low income. My client and another entity that supports this bill, HOPE, Inc., would not presently qualify for the exemption even though these organizations serve the specified populations since most CHDOs join with for-profit entities to utilize income tax credits as one method for financing the development.

The amendment expands the types of legal entities allowed to benefit from the exemption, but retains the requirement of the purpose for the housing developments. The first types of entities included in the amendment are limited partnerships or limited liability companies formed for the purpose of developing low income housing to utilize tax credits under Section 42 of the Internal Revenue Code of 1986, as amended. The limited partnership or the limited liability company must have a not-for-profit, tax-exempt corporation as a general

partner or managing member. In other words, the not-for-profit entity retains control over the operation of the housing project.

In many low income housing developments owned and operated by not-for-profit corporations, a limited partnership or limited liability company will be formed to access Section 42 income tax credits for financing purposes. The limited partner or non-managing member will generally be a for-profit entity. The Section 42 program gives states the equivalent of nearly \$5 billion in annual budget authority to issue tax credits for the acquisition, rehabilitation, or new construction of rental housing targeted to lower-income households. The tax credits add another component available to entities that may not have all of the funding available, either through government grants or individual or corporate contributions. The non-profit will transfer its tax credits to a for-profit entity in exchange for the financing to develop affordable housing for low income persons. The Kansas Department of Housing administers the Section 42 program.

The second types of entities included in the amendment are not-for-profit, tax-exempt corporations or limited liability companies.

This amendment will continue to assist not-for-profit corporations or limited liability companies involved in housing developments but it will expand the number of eligible entities and thus, the number of projects. We believe that this is an appropriate and beneficial solution to the affordable housing problem faced by senior citizens, disabled and low income Kansans.

Let me explain why the current statute and other exemption statutes inhibit the development of affordable housing for these populations. My client's situation will serve as one example. In addition, HOPE, Inc. also has testimony in support of this amendment that provides another example.

Inter-Faith Ministries has existed in Wichita for over 120 years. It brings diverse faith-based groups, individuals and businesses together to enhance the area's response to human need. One of its ministries works on solutions to the homeless and chronic homeless problem in Sedgwick County. It owns and operates a temporary shelter, Inter-Faith Inn, which allows short-term stays for the homeless or jobless, and another shelter, Ti'Wiconi Safe Haven, which provides temporary housing and care for the chronically mentally ill homeless population. Both of these shelters received *ad valorem* exemptions based on humanitarian services which serve a community need, K.S.A. 79-201 Ninth.

The third phase of Inter-Faith Ministries' homeless ministry is what brings us here today in support of S.B. 383. Beginning in 2002, IFM opened two permanent apartment housing developments with supportive services, Villa Central and Villa North. One project, which has 37 units, is owned by a limited partnership but operated by IFM as the general partner. Its funding sources were the acquisition of Section 42 low income tax credits, supportive services housing grants under the McKinney-Vento Homeless Assistance Act, a HUD grant, a conventional loan and contributions. The second project, which has 24 units, is owned by Inter-Faith Development Corporation, a Kansas not-for-profit corporation which is a controlled subsidiary of IFM. It was financed with HUD funding through the HOME Investment Partnership program administered by the City of Wichita, HUD supportive services and housing grants and contributions.

The residents of both of these apartment projects are chronic homeless disabled due to mental illness, drug and alcohol abuse or physical disabilities. The residents include the elderly, men, women and families with children. What distinguishes both of these projects from other apartment developments is that IFM provides supportive services, or case

management, to steer the residents to a productive existence. The services are tailored to the individual's needs. Case managers are available on-site during the day and on-call during the remaining hours. These services assist the residents in finding and attending job training, referrals and transportation to medical appointments, support groups that meet on-site and after-school programming for the children. The residents do not pay for the supportive services but they do pay below market rent, which includes utilities. Many receive assistance through Section 8 vouchers for housing. Safe and affordable housing stabilizes one aspect of a low income person's existence so he or she can devote attention to job training, health care and other needs while becoming a productive member of the community.

The affordable permanent housing with supportive services developments of IFM fit into the goals of the United States Interagency Council on Homelessness to end chronic homelessness in ten years. This council was set up by President George W. Bush with all cabinet secretaries serving as members. It is chaired by the Secretary of the Department of Housing and Urban Development.

Beginning in 2004, IFM applied for exemptions from *ad valorem* taxation based on:

- K.S.A. 79-201b Fourth, which exempts housing for limited or low income elderly and handicapped persons or cooperative housing with financing received under two specific federal statutes which are part of the National Housing Act;
- K.S.A. 79-201 Ninth, which exempts property used predominantly for humanitarian services that meet a demonstrated community need; and,
- Article 11, Section 1(b) of the Kansas Constitution, which exempts property used exclusively for charitable purposes.

Sedgwick County supported both of these applications.

Last year, the Board of Tax Appeals denied both applications. BOTA viewed both projects simply as housing with financing that did not come from the sources referenced in

K.S.A. 79-201b Fourth. Based upon a Kansas Court of Appeals decision, BOTA determined that the applicable exemption statute was the one which specifically addressed low income housing, rather than the more general exemption statute dealing with property used for providing humanitarian services. The housing exemption statute had to be considered as it was currently written regardless of the fact that the funding programs may have been replaced or supplemented by new programs since the state statute was last substantively amended in 1988.

As K.S.A. 79-201z is currently written, these projects, and possibly others around the state that are organized to solve the affordable housing for low income citizens, are not able to receive exemption from *ad valorem* taxation. If these projects are only going to be considered as housing, there are no other statutory housing exemptions for which they would qualify. This situation can be corrected with the proposed amendment in S.B. 383.

Today, the executive director of Inter-Faith Ministries, Rev. Sam Muyskens, is present to also address any questions you may have about this proposed amendment. Thank you.

WRITTEN TESTIMONY

TO THE SENATE ASSESSMENT AND TAXATION COMMITTEE

BY ROBIN S. MARTINEZ, COUNSEL FOR HOPE, INC.

PRESENTED ON MARCH 20, 2007

Support for S.B. 383, which proposes to amend K.S.A. 79-201z

Thank you, Senator Allen and committee members, for allowing me the opportunity to present written testimony regarding S.B. 383. This bill is important because I believe it will enhance the ability of not-for-profit organizations to develop affordable housing for residents of Kansas. S.B. 383 amends K.S.A. 79-201z, which exempts certain real and personal property from *ad valorem* taxation. I serve as legal counsel for HOPE, Inc. (HOPE), a Kansas not-for-profit corporation that is recognized as a community housing development organization (CHDO) by the Kansas Housing Resource Corporation (KHRC). I am submitting this written testimony on behalf of HOPE in support of S.B. 383.

Over the past two years, HOPE has developed two affordable housing projects in Wichita. These projects, known as HOPE Village and Legacy Square Apartments, were developed using a combination of conventional loans, low-income housing tax credits and historic tax credits. HOPE is currently developing a third affordable housing project in Wichita, to be designated as the Mullen Court Apartments. Under Federal law and land use restrictive covenants entered into as a condition of KHRC's support for these projects, occupancy at these projects is targeted to low and very low-income individuals.

Ostensibly, HOPE should be able to obtain relief from *ad valorem* taxation on the real and personal property utilized in its projects pursuant to K.S.A. 79-201z. However, the current statute has limited utility because it limits tax exemption to real and personal property "solely owned" by not-for-profit corporations recognized as CHDOs by KHRC. We believe this limitation is problematic in light of the manner in which affordable housing projects are generally financed.

According to the U.S. Government Accountability Office (GAO), the low income housing tax credit authorized under Section 42 of the U.S. Tax Code is the largest federal program used to fund the development and rehabilitation of affordable housing in the United States. The program, which was created in 1986 and made permanent in 1993, is an indirect federal subsidy used to finance the construction and rehabilitation of affordable rental housing for low and very low-income persons. Congress created the program as an incentive to encourage the development of more low-income housing because affordable housing projects typically generate insufficient profits to warrant investment by private developers.

The low income housing tax credit gives investors a reduction in their federal tax liability in exchange for financing the development of affordable rental housing. Investors' equity contributions subsidize low-income housing development, thus allowing units to rent at below-market rates. In return, investors receive tax credits paid in annual allotments, generally over 10 years.

Under the terms of Section 42 of the U.S. Tax Code, projects must meet eligibility requirements for at least 30 years after completion of the project. In effect, this means that project owners must keep the units rent restricted and available to low-income tenants.

However, even with the incentives provided by the low income housing tax credit program, economics create barriers to the development of affordable housing. This is particularly the case in urban or developing areas where land costs are generally higher and low-income rents tend to be substantially below market-rate. While I do not have data to support this supposition, I am of the opinion that these economics are also present in rural areas based on studies that have underscored the income disparity between rural communities and urban or metropolitan areas.

Due to these difficulties, development of affordable housing has increasingly been undertaken by not-for-profit organizations. The conundrum lies in that by virtue of their tax-exempt not-for-profit status, these organizations cannot utilize the federal income tax credits provided by the low income housing tax credit program. Consequently, not-for-profit corporations financing affordable housing projects through utilization of low income housing tax credits will generally form limited partnerships or limited liability companies that allow for equity investment on the part of private investors who receive a special allocation of tax credits in exchange for their investment in the project. When creating such an ownership structure, the not-for-profit corporation generally maintains control

of the project by serving as either the general partner or managing member of the entity.

S.B. 383 is important because it facilitates the development of affordable housing in Kansas by recognizing the realities of the marketplace. Critically, the amendment allows limited partnerships and limited liability companies to obtain exemption from *ad valorem* taxation of real and personal property, yet it specifies that such entities must be formed for the purpose of developing affordable housing utilizing the federal low income housing tax credit, and most importantly, that such entities have a not-for-profit corporation as their general partner or managing member. This last element is significant, in that it ensures that not-for-profit organizations will retain legal and operational control of affordable housing projects developed in such a manner.

As previously noted, HOPE has developed two affordable housing projects in Wichita. Both of HOPE's projects were partially financed through the low income housing tax credit program and, consequently, were organized as limited partnerships with HOPE serving as the general partner and private investors admitted as limited partners. Last year, HOPE's development entities applied for exemption from *ad valorem* taxation under K.S.A. 79-201z. These applications were supported by Sedgwick County. However, earlier this year, the Board of Tax Appeals denied the applications because each applicant had a for-profit limited partner, which precluded it from satisfying the statute's current requirement that projects be "solely owned" by not-for-profit CHDOs recognized by KHRC.

While we recognize the desire of the Board of Tax Appeals to strictly construe current law, there continues to be a shortage of affordable housing that is available to very low-income and, more significantly, extremely low-income renters. Nationally, according to the U.S. Department of Housing and Urban Development (HUD), in 2003 there were 78 rental units affordable to extremely low-income renters for every 100 such households, but only 44 were available for these households (the remainder being occupied by higher-income households).¹ According to HUD, the geographical distribution of this shortage covers all areas of the country, including the Midwest.

As K.S.A. 79-201z is currently written, HOPE's projects, and those of similar organizations throughout Kansas that are undertaking the critical mission to provide affordable, safe and sanitary housing for low-income and very low-income residents of the state, are not able to obtain exemption from *ad valorem* taxation for real and personal property used to provide such affordable housing. The need for development and rehabilitation of affordable housing clearly exists. Other than food, nothing is more basic than shelter. While adoption of S.B. 383 is not a magic bullet that will in and of itself solve the need to create more affordable rental housing for our low-income citizens, we believe it will help. Consequently, we urge you to adopt S.B. 383 in order to assist not-for-profit organizations such as HOPE provide affordable, safe and sanitary housing to meet the real needs of our communities.

¹ U.S. Department of Housing and Urban Development, *Affordable Housing Needs: A Report to Congress on the Significant Need for Housing* (2003).



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**STATEMENT OF THE KANSAS BUILDING INDUSTRY ASSOCIATION
TO THE SENATE ASSESSMENT AND TAXATION COMMITTEE**

SENATOR BARBARA ALLEN, CHAIR

REGARDING S.B. 383

MARCH 20, 2007

Chairman Allen and Members of the Committee, I am Chris Wilson, Executive Director of Kansas Building Industry Association (KBIA). KBIA is the statewide trade and professional organization of the home building industry. We appreciate your hearing of S.B. 383 and the opportunity to submit comments in support of this bill.

S.B. 383 corrects a problem with housing for the elderly, persons with disabilities or persons with limited or low income being eligible for property tax exemptions. This type of housing is very important to Kansas and is the type that has been exempted under current statutes. However, the legal structure for these projects does not qualify under the current language in the statute. These projects have the support of their local S.B. 383 corrects that by expanding the types of legal entities allowed to benefit from the exemption, but retains the requirement of the purpose for the housing developments. These projects have the support of

Assessment & Taxation
Date 3-20-07
Attachment # 3

CHRISTINA M. WILSON, Executive Director

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their community and county for the exemption – they just don't quite fit the current statute.

We urge the Committee to recommend S.B. 383 favorable for passage.

Assessment & Taxation
Date
Attachment #

Assessment & Taxation
Date 3-20-07
Attachment # 3-2