

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman Kenny Wilk at 9:00 A.M. on February 26, 2008 in Room 519-S of the Capitol.

All members were present.

Committee staff present:

Chris Courtwright, Legislative Research Department
Gordon Self, Office of Revisor of Statutes
Ryan Hoffman, Legislative Research Department
Rose Marie Glatt, Committee Secretary

Conferees appearing before the committee:

Representative Whitham
Secretary Wagnon, KDOR
John Peterson, Kansas Health & Fitness Association
George McCrary, Kansas Health & Fitness Association
Grey Ferris, Kansas Health & Fitness Association
Mark Desetti, KNEA & KASB

Others attending:

See attached list.

It was noted that minutes from the Taxation meetings on: February 5, 6, 7, 8, 12, 13 and 15th were sent electronically to the Taxation committee on February 19th. By consensus they were considered approved on February 26th.

Representative Holland requested a bill be introduced regarding a sales tax exemptions for Toys for Tots. Representative Menghini seconded the motion. The motion carried.

HB 2938 - Sales tax exemption for certain 501 (c) (3) nonprofit organizations.

The Chairman directed the Committee's attention to a list of tax exemption bills pertaining to *non-profit organizations* (Attachment 1). The Chairman said they would return to the bill next week, anticipating the roll out of a consensus work product. The bill would be one the Committee would support through the legislative process for passage in the House.

Gordon Self briefed the Committee on **HB 2938**, a bill requested by Representative Whitham. He provided a brief history of activities leading up to the bill, which is a generalized approach for consideration of granting sales tax exemptions for non-profits. The bill would be effective January 1, 2009, and any organization that had been provided an exemption under law, prior to that date, would retain their exemption, even if they do not meet the criteria in new section I.

On January 1st, sales tax exemptions will be granted in the following cases:

- 1) Sales of personal tangible property and services purchased by organizations that are 501 (3) (c). These organizations are limited to the listing in line 19-23 of the bill. Organizations that would qualify for tax exemption, would be required to follow a procedure set up by KDOR..
- 2) Fund-raising for all 501 (c) (3) for fund-raising activities. The gross receipts from the sale of admissions or tickets to fund raising activities or events not exceeding one day and not exceeding two such activities or events per year.
- 3) Establish an appeal procedure if an organization is not in agreement with the Department's opinion and is denied an exemption to the tax imposed by this act. Secretary of Revenue must develop rules & regulations to set up a clear procedure to make a determination to substantiate such organizations qualifications for exemptions.

CONTINUATION SHEET

MINUTES OF THE House Taxation Committee at 9:00 A.M. on February 26, 2008 in Room 519-S of the Capitol.

The Chairman opened the public hearing **HB 2938**.

Representative Whitham reviewed the history of sales tax exemptions beginning with the Hodge report in 1970 to the formulation of a standing tax committee criteria list in 2005. He said the real question is who will be granted sales and use tax exemptions, as they move forward.

HB 2938 suggests:

- 1) You should be a 501 (c) (3) organization, or an organization that could be.
- 2) You must meet the criteria of the bill, and suggestions are listed in the bill. The bill only applies to purchases and is limited to those organizations providing services that are most valuable for communities and people that are unable to provide services for themselves. The fiscal note is approximately \$10.2 million. This bill also states that any 501 (c) (3) organization may have some limited fund-raising activities, and that is an additional increase of \$11 million dollars.
- 3) Grandfather in existing organizations. In a given time they will have to reapply for an exemption and meet the criteria outlined in the new bill. He expressed doubt that without the grandfather's clause it probably wouldn't make it through the House. The fiscal note was discussed.

Secretary Wagon, KDOR, commended Representative Whitham for his summary remarks on **HB 2938**. She distributed two documents: *Proposal for Exemption of Non-Profit Organizations from Kansas Sales and Use Tax* (October 24, 2007) (Attachment 2) and *Sales Tax Treatment for Not-For-Profit Entities* (October 24, 2007) (Attachment 3).

She made the following suggestions:

- 1) The first question the committee should ask is *What is the responsibility of the state to grant exemptions for non-profit organizations?*
- 2) As they study the list of current non-profits they should ask *Why are those groups on the list?* In her opinion the list should be limited to organizations functioning as quasi state agencies that are currently receiving some kind of state or federal funding.
- 3) She suggested they use the group designations, listed on page 7 of Attachment 2, as illustrations in determining guidelines.
- 4) Exemptions for fund raising need to be specific. Tax exemptions should not be given to caterers serving food at fund raisers, only to the event tickets. Perhaps the committee should consider striking *on behalf of language*.
- 5) Secretary Wagon explained the current process of numbered applications that expire every three years. She requested that the Department be allowed to retain that system.

The Chairman asked Secretary Wagon to prepare a balloon with the Department's suggestions and bring it back to the Committee. He also asked her for additional data and the fiscal note on bills that would qualify under the new program. She agreed to do so.

John Peterson, Kansas Health & Fitness Association (Attachment 4), said Kansas needs to establish standardized procedures for awarding sales tax exemptions to organizations and standardized treatment for those exemptions once awarded. He offered another option contained in a balloon amendment (Attachment 5). The following language *Except that, notwithstanding language to the contrary, only sales of personal property and services purchased by the organization and gross receipts as allowed in section I (a) (2) shall qualify for the exemption* would be added to: New Section 1 (c); Section 2, (v); and Section 3. He said under his amendment all organizations, both those grand-fathered in and those who are newly applied, would have the same treatment. The exemption would only apply to direct purchases and to isolated fund raising sales.

George McCrary, Kansas Health & Fitness Association, testified that only organizations that are truly benevolent should be exempt from sales taxes (Attachment 6). Those organizations that compete with the private sector on a regular basis should not have exemptions from paying and collecting sales tax.

CONTINUATION SHEET

MINUTES OF THE House Taxation Committee at 9:00 A.M. on February 26, 2008 in Room 519-S of the Capitol.

Grey Ferris, Kansas Health & Fitness Association, stressed that sales should be taxed, and when they are not, it creates a competitive disadvantage for others. They support **HB 2938** with the changes Mr. Peterson suggested (Attachment 7).

Mark Desetti, KNEA & Kansas Association of School Boards appeared in support of **HB 2938**. He said the bill would bring consistency and clarity to the issue of non-profit sales tax exemptions. He suggested, in the event they adopt the amendment brought forth by John Peterson, they need to consider an extended time frame instead of a one day isolated event for such organizations that sell items such as cookies, popcorn, etc. (Attachment 8).

Kathy Damron, on behalf of the YMCA's of Kansas, said they endorse the bill as drafted by Representative Whitham. They do not support Mr. Peterson's amendment, as it would impose a tax on the membership for such organizations like YMCA's and YWCA's and Jewish community centers. She said those organizations are different from "for-profit health clubs" in that they are the number one provider of childcare in Kansas, as well as providers of after-school programming. No one is turned away by lack of ability to pay, thus they believe they have earned the current tax status (No written testimony).

April Holman, Kansas Action for Children, stood in opposition to **HB 2938**. Their organization does not receive any state or federal funding and is not tax exempt. Their position is not a reflection of the value they place on not-for-profit organizations and the good work they do in Kansas. Rather they believe instead of adopting more exemptions to the sales tax, which further weakens the sales tax base, a comprehensive modernization of the Kansas tax system is needed (Attachment 9).

Discussion followed concerning:

- 1) The current application and review process for not-for-profit organizations. The simpler method is to tax what a small non-profit purchases and exempt sales.
- 2) There would be no administration difference between a program under a specified date verses a sunset clause.
- 3) Merit of the Peterson's amendment

The Chairman requested that the Department bring back the fiscal note on John Peterson's proposal. Richard Cram agreed to do so.

The meeting was adjourned at 10:25 A.M. The next meeting will be March 5 2008.

HOUSE TAXATION COMMITTEE

DATE: Feb 26, 2008

NAME	REPRESENTING
Mark Desetti	KNETA
April Holman	Kansas Action for Children
TK Shivel	KS Legal Services
Melissa Ness	St Francis Community Services
Lath Damon	YMCA's of Kansas
Chad Austin	KS Hosp Association
RONALD RICHEY	NAFRE
ROBERT CLEMENTS	CHILD WELFARE CO.
KATIE FIREBANGH	Kearney and Associates
KEVIN GREGG	KMCA
Greg Ferris	Kansas Health & Fitness Assoc
George A. McCrary	Kansas Health & Fitness Assoc.
John Peterson	Ks Health + Fitness Assn
Marlee Carpenter	KS Chamber
Corey R Bass	LKM
Mark Wondyke	SEIF
Brandon Yorkley	Budget
David R. Corbin	KDOR
Richene Crum	KDOR

HOUSE TAXATION COMMITTEE

DATE: 2-26-08

NAME	REPRESENTING
Joan Weyh	V DOR

HOUSE TAXATION SALES TAX EXPEMPTIONS
FOR NON-PROFIT ORGANIZATIONS
2008

HS Taxation
2-26-08
Attachment 1

	A	B	C	D	E
1	DATE ASSIGNED	SPONSOR	BILL #	SUBJECT	DATE HEARD
2					
3					
4	1/23/2007	BILL BY COLLTON	HB 2154	SALES TAX EXEMPTION FOR THE AMERICAN CANCER SOCIETY, INC.	
5	1/23/2007	BILL BY OLSON AND GEORGE	HB 2155	SALES TAX EXEMPTION FOR PURCHASE OF REPLACEMENT MOTOR VEHICLE IN CERTAIN CIRCUMSTANCES.	
6	1/29/2007	BILL BY TREASTER	HB 2296	SALES TAX EXEMPTION FOR FIRST CALL FOR HELP, INC.	
7	1/31/2007	BILL BY HOLLAND, GOYLE, LUKERT, RUFF AND WILLIAMS	HB 2296	SALES TAX EXEMPTION FOR INTERNATIONAL ASSOCIATION OF LIONS CLUBS.	
8	2/2/2007	BILL BY POWERS	HB 2336	SALES TAX EXEMPTION FOR CERTAIN SALES OF COINS, BULLION AND CURRECNCY.	
9	2/7/2007	BILL BY GORDON	HB 2404	SALES TAX EXAEMPTION FOR NONPROFIT AREA AGENCIES ON AGING.	
10	2/8/2007	BILL BY COLLTON & PROEHL	HB 2435	SALES TAX EXEMPTION FOR CERTAIN PURCHASES BY 501 C-3	
11	2/13/2007	BILL BY GOICO	HB 2501	SALES TAX EXEMPTION FOR CERTAIN PURCHASES OF SCHOOL SUPPLIES, COMPUTERS AND CLOTHING DURING LIMITED PERIOD.	

HOUSE TAXATION SALES TAX EXPEMPTIONS
FOR NON-PROFIT ORGANIZATIONS
2008

1-2

	A	B	C	D	E
12	2/14/2007	BILL BY COLLOTON	HB 2513	SALES TAX EXEMPTION FOR DELIVERY CHARGES OF DIRECT MAIL IN CERTAIN CIRCUMSTANCES.	
13	2/14/2007	IAN STAPLES, KU STUDENT SENATE	HB 2517	SALES TAX EXEMPTION FOR CERTAIN PURCHASES OF BOOKS AND ELECTRONIC OR PRINT INSTRUCTIONAL MATERIAL FOR COLLEGE COURSE WORK.	
14	2/15/2007	BILL BY WOLF	HB 2518	SALES TAX EXEMPTION FOR THE GOLDEN BELT COMMUNITY CONCERT ASSOC.	
15	2/15/2007	BILL BY SLOAN	HB 2524	SALES TAX EXEMPTION FOR THE KANSAS HERPETOLOGICAL SOCIETY.	
16	2/19/2007	BILL BY HOLLAND	HB 2538	SALES TAX EXEMPTION OFR OXYGEN DELIVERY EQUIPMENT.	
17	3/2/2007	BILL BY TAFFENELLI	HB 2560	PROPERTY TAX EXEMPTION FOR CERTAIN HOMES PROVIDED FOR VETERANS WHO ARE PARAPLEGICS OR MULTIPLE AMPPUTEES AND THEIR SPOUSES.	
18	2/6/2008	REP. POWERS	HB 2764	AN ACT CONCERNING SALES TAXATION; RELATING TO EXEMPTIONS; CERTAIN SALE OF COINS, BULLION AND CURRENCY	
19	2/8/2008	BILL BY TAXATION	HB 2784	SALES TAX EXEMPTION FOR KS STATE FIREFIGHTERS ASSOCIATION	

HOUSE TAXATION SALES TAX EXPEMPTIONS
FOR NON-PROFIT ORGANIZATIONS
2008

1-3

	A	B	C	D	E
20	2/8/2008	BILL BY REP. HOLLAND, DAVIS, SLOAN	HB 2796	SALES TAX EXEMPTION FOR THE DOUGLAS COUNTY SENIOR SERVICES, INC.	
21	2/8/2008	BILL BY TRIMMER AND KING	HB 2797	SALES TAX EXEMPTION FOR CERTAIN ORGANIZATIONS FOR SENIORS.	
22	2/12/2008	INTRODUCTION BY METZKER		SALES TAX EXEMPTIONS RELATING TO THE GM FAIRFAX RETIREES CLUB AND THE VETERANS VOICES WRITING PROJECT	
23	2/19/2008	Bill request by John Peterson		Tax exemptions - Health & Fitness	
24	2/22/2008	ons	HB 2925	Sales tax exemption for Franklin county agricultural society, Paola senior CENTER, Anderson county fair association, Lin county fair association, Miami county fair association and Douglas county senior services, inc.	
25	2/22/2008	Bill by Taxation	HB 2929	Sales tax exemption for Kansas art education association.	
26	2/22/2008	Bill by Rep. Proehl	HB 2933	Sales tax exemption for Stella Wells Christmas Basket, inc.	
27					
28					
29	SENATED ASSESSMENT AND TAXATION COMMITTEE TAX EXEMPTION BILLS 2008				
30	2/22/2008	Bill by Assessment and Taxation	SB592	Sales tax exemption for the mirror, inc.	
31	2/22/2008	Bill by Assessment	SB 593	Sales tax exemption for Kansas legal	

HOUSE TAXATION SALES TAX EXPEMPTIONS
FOR NON-PROFIT ORGANIZATIONS
2008

1-4

	A	B	C	D	E
32	2/22/2008	Bill by Assessment and Taxation	SB 602	Sales tax exemption for wayside waifs, inc.	
33	2/22/2008	Bill by Assessment and Taxation	SB 631	Sales tax exemption for Kansas CASA association, inc.	
34	2/22/2008	Bill by Assessment and Taxation	SB 632	Sales tax exemption for St. Francis community services, inc. and its subsidiaries	
35	2/22/2008	Bill by Assessment and Taxation	SB 633	Sales tax exemption for Franklin county agricultural society, Paola senior CENTER, Anderson county fair association, Lin county fair association, Miami county fair association and Douglas county senior services, inc.	
36	2/22/2008	Bill by Assessment and Taxation	SB 635	Sales tax exemption for east central Kansas economic opportunity corporation.	

Proposal for Exemption of Non-Profit Organizations from Kansas Sales and Use Tax
October 24, 2007

Exempting non-profit organizations from Kansas sales and use tax has been a continuing discussion in the legislature since the tax was enacted in 1937. There is often misunderstanding among retailers, organizations, and legislators regarding the exempt status of an organization. Recent discussions on exempting non-profit organizations have been elevated due to:

1. the requirement that exempt entities must be issued a Kansas exempt number as required in KSA 79-3692 (enacted in 2004);
2. the increase in legislative requests for exempt status; and
3. the increase in lost revenues due to more granting of exemptions.

The purpose of this paper is to provide some history on exempting non-profit organizations and to propose an approach towards dealing with the issue. The discussion is limited to Internal Revenue Code 501 (c)(3) organizations. Organizations exempt under other subsections of the Code would continue to be subject to sales tax. In addition, the department has issued a paper titled "Sales tax treatment for Non-for-Profit Entities" which presents more detail on each entity exemption, the differences in the exemptions, and various fiscal impacts.

Background

In 1970, the Joint Committee on the State Tax Structure (a.k.a. Hodge Commission) studied the tax system. They examined the philosophy, equity, effectiveness of tax administration, and the relationship of the taxes to the goal of adequately financing governmental needs without adversely affecting economic growth. As part of their findings, the Commission recommended extensive revisions including eliminating all sales tax exemptions for purchases by religious, benevolent and charitable institutions.

Non-profit organizations are exempt from federal and state income taxes and in many cases are exempt from Kansas property taxes. The committee found that the imposition of sales taxes represented a reasonable contribution to the costs of government by the otherwise tax exempt organizations. In the years that followed, most of the exemptions were repealed based on the Hodge Commission recommendations. However, during the past decade, many of those rescinded exemptions have been restored, and numerous other organization exemptions have been added.

For many years, the department published blank exemption certificates that organizations could complete to request sales tax exemption from a retailer. There were no controls over the use of these forms. Anyone who believed they met an exemption definition

would complete the form and present it to the retailer. Many retailers had (and some still have) the notion that all non-profit organizations are exempt from sales tax and accepted the completed form. In 2004, with the requirement that all exempt entities be issued a Kansas exemption number and certificate before they can claim exemption. Retailers are more aware of their obligations to document exempt sales and their liability if they do not have the proper documentation to justify an exempt sale.

Many organizations have been denied exempt entity status. In the nearly three (3) years that the certificates have been issued, over 1,000 have been formally denied exempt entity status. At least that many have called the department and, when informed they were not exempt, did not file a request for exempt status. Most of the exemptions passed by the legislature during the last 3 years arise from requests by organizations denied exempt entity status by the department.

Today Kansas exempts 10,000 non-profit organizations at a loss of state and local sales and use tax revenue estimated at \$42.5 million annually. Each year more and more organizations petition the legislature for, and are granted, exempt status. It becomes increasingly difficult to "draw the line" and say yes to some and no to others, particularly when requests are for worthy causes or organizations. As a result, the list of exemptions grows annually. In recent years, most requests are to grant exemption to specifically named organizations and not for groups or categories of non-profit causes.

The current trend is to approve every request, thus narrowing the tax base. Each of these requests, no matter how small, when added to the other exemptions, soon becomes a large dollar amount – and represents money no longer available for other state priorities, such as education, health care, or infrastructure. This not only narrows the state tax base, but also negatively impacts cities and counties through the loss of local sales and use tax revenues.

In addition to providing an exemption on purchases, the current trend is to provide organizations with exemption on items they sell to the general public, giving them a competitive advantage over Kansas retailers. There are no restrictions on what can be sold. Exempting sales is difficult to control, because statutes provide that sales made "on behalf of" the organization are exempt. The trend to exempt sales made by the organization was initially to allow localized and annual fund-raising activities without the organization worrying about the charging and remittance of tax to the department. However, it has grown to include sales made in competition with for-profit businesses - providing for an unfair artificial competitive advantage to these select groups. Currently the following sales are exempt:

- Youth Development programs (ii): Girl Scouts, Boy Scouts, 4-H, Big Brothers, Big Sisters, etc.
- Medical Education and other organizations (vv)
- International Lions Club (vv)
- Parent Teacher Associations and Organizations (yy)
- Homeless shelters (ppp)
- Special Olympics Kansas (lll)

- Marillac Center (mmm)
- Public libraries (ooo)
- TLC For Children and Families (qqq)
- County Law Libraries (rrr)
- Catholic Charities or Youthville (sss)
- Kansas Children's Service League (uuu)
- Jazz in the Woods (vvv)
- Frontenac Education Foundation (yyy)
- Victory in the Valley (aaa)

Exempting sales by nonprofit organizations is not sound tax policy for two reasons: 1) many of these groups are competing with for-profit businesses and therefore have a competitive advantage, and 2) the exemption cannot be verified and lends itself to abuse. Exempting an organization's fund-raising activities may be appropriate, but to exempt all sales made by these organizations seems excessive.

Instead of exempting all sales made by an organization, the department recommends that the exemption be limited to purchases, and the "isolated or occasional sales" tax laws specifically address fundraising sales. This will be covered in more depth, but the general approach would be to allow exemption for occasional event ticket sales and other fund raising activities to enable these groups to conduct true fundraising events without charging tax. This approach would enable a non-profit organization to conduct routine fund-raising events but include limits to ensure the organization is not engaged in what should be considered a taxable business. It would provide leeway to accommodate non-profit organizations but at the same time have safeguards to prevent abuse of the isolated and occasional sale statute.

Another problem with the current legislative practice of approving exemptions for all organizations that come forth is the lack of fairness and consistency in state policy. Situations exist where an organization is exempt in one city and that same organization in a neighboring city is not exempt because of how the legislation was written. It can only be expected that the requests for exemption will escalate and it will be nearly impossible for the legislature to deny exemption status to these entities.

With the large population base on the state's eastern border, some organizations and businesses argue the exemption hurts business because the state of Missouri exempts most if not all 501 (c)(3) organizations from paying sales tax. They argue that Kansas organizations obtain a Missouri exemption and purchase their supplies in Missouri vs. Kansas or have their meetings and conventions in Missouri. The department has heard this argument from several organizations and businesses.

Appendix B provides a table of how the other states treat 501 (c) (3) organizations for sales tax exemption purposes.

A new policy direction

As a result of the changing environment for exempt entities, the legislature has asked the department for suggestions on how to mend the system. The department offers the following proposal.

If the legislature adopted requirements and criteria for determining the eligibility of the organization for exemption, then those determinations can be made by the department, relieving legislators of saying "no" to constituents. If the organization disagrees with the department's ruling, it can still request an exemption from the legislature.

The department has analyzed the current exemptions and suggests some generic criteria that the legislature could consider adopting. This criteria could be used by the department in making exemption determinations.

Proposed Legislation

The basic principles of the proposed legislation are as follows:

1. The Legislature will determine the overall policy establishing the types of non-profit groups that should qualify for exemption.
2. Only direct purchases by the non-profit organization would be exempt. This would include the direct purchase of tangible personal property and services.
3. Sales made by the organization would not be exempt except for fundraising sales (to be addressed later). Language exempting sales made "on behalf of" an organization should be eliminated from the statute.
4. Use of the phrase, "on behalf of" for purchases that a few organizations currently have would be replaced with project exemption certificate (PEC) language. The "on behalf of" language allows an organization purchases to be exempt even if purchased by someone other than the non-profit organization. This language creates challenges to verify exempt sales and opens the door to fraud and misuse. Instead, if the legislature wishes indirect construction purchases to be exempt, they would use the project exemption language that is currently used for several exempt entities such as hospitals, schools and political subdivisions for construction, renovation, reconstructing, remodeling, and restoration projects.
5. Exempt status would only apply to organizations that are recognized by the IRS as 501 (c) (3) organizations, or for organizations not required by the IRS to have a 501(c)(3) determination letter, satisfactory verification that the organization is not used or held for profit. Additionally, the organization would have to be registered with the Secretary of State's office and have a current annual report on file with the Secretary of State's office. Proof of 501 (c) (3) status and current filing with Secretary of State would be required to obtain an exemption. The IRS does not require religious organizations or organizations with gross receipts of \$5,000 or less to register with the IRS. For the purposes of administering the exemption, rules would be put into place that would provide the department the ability to substantiate such organization's qualification for exempt status.

6. The department would be given authority to promulgate rules and regulations on how entities can apply for an exemption and how those exemptions are reviewed. The non-profit organization would have to verify in the application that they meet the statutory criteria. Types of criteria include:
 - a. proof of 501 (c) (3) status,
 - b. bylaws, articles of incorporation or other documentation describing the organization's activities
 - c. financial report of income and expenditures
 - d. other documentation needed for the department to make a determination.
7. The Legislature would have the opportunity through the rule and regulation process to review the department's process. An effective date of January 1, 2009 is suggested, to allow rules and regulations to be published and to set up the administrative process. The appeal process on denials would remain the same as under current procedures- the appeal goes through our existing informal conference process to BOTA.
8. If only selected groups were granted exempt status, the new exemption statute would give the authority to the department to issue an exemption certificate based on the legislative policy. It is suggested that general group categories be listed for exempt status with the department given the responsibility to define those groups. Examples of the types of regulations that would be enacted under this scenario are presented in Appendix A. If a non-profit organization provides more than one type of program and the organization as a whole does not qualify for exemption, the department would be able to apply the exemption to the organization's programs that meet the criteria, rather than to exempt the entire organization.

Fundraising Sales

The legislature included exemption of sales made by an organization in most new exemptions enacted recently. Exempting sales without any restrictions gives organizations an unfair competitive advantage over for-profit businesses and further erodes the tax base for the financing of government operations. Exempting fundraising sales may be appropriate. Nevertheless, it is recommended that some guidelines be imposed to limit the exempt sales to what is typically considered fundraising events. For fundraising sales to be exempt, the event must be held by a nonprofit organization.

Suggested statutory principles are presented below. The following would be exempt:

- Admission fees to a fundraising dinner or day-long event.
- The sale of an organization's developed publications (i.e. recipe book, organizational history, etc).
- Auctions held by the organization, limited to two annually. Can include auctions in which an auctioneer is hired to conduct the auction. All items must be donated to qualify for exempt status. No consignment items can be auctioned and the event must be held in a location other than one that is regularly used to conduct auctions (regularly used means if an auction was conducted in the location in the prior 12 months – not including the exempt organization's fundraising auction).
- All proceeds from any fundraising event must be dedicated to the organization's nonprofit purpose.

- Purchases made by the organization for the fundraising activity would be taxable. The exception would be if the organization is a registered retailer and purchasing for resale in which case they can claim the resale exemption.
- The sales must be made by members of the exempt entity and not by a retailer, franchisee, licensee or other for-profit business.

The following would be taxable:

- All sales made by permanent brick-and-mortar retail businesses.
- All sales that compete directly with private businesses. Examples would be concession stands, retail booths, food trailers, firework stands, etc.
- All sales that exceed \$500,000 annually, to be adjusted annually for inflation. With the submission of annual financial statement, the exempt entity will remit the state and local sales tax for sales over \$500,000. The local tax will be paid based on the rate in effect at the entity mailing address.
- All sales by any organization that holds itself out as being engaged in the business of selling tangible personal property or providing services of the type being sold.
- Any sales that occur in a retail business building or on its premises during regular business hours.

Fiscal Impact

It is estimated the fiscal impact of exempting all direct purchases by all non-profit 501(c)(3) organizations would reduce state sales tax revenue by an additional \$25 million. If all non-profit 501 (c) (3) organizations were exempt, it would end the practice of these organizations coming to the legislature each year to seek exemption.

If only selected types of groups were authorized exempt status on purchases as suggested in the proposal above, the fiscal impact would be: \$11.2 million in reduced state sales tax revenue on purchases.

Adopting the department's recommendation to expand the isolated and occasional sales law to include certain fundraising activities of non-profits would reduce state sales tax revenue by \$10 million.

Administrative Impact

Adopting application requirements and providing proof of eligibility will require additional resources in the department. If all exempt entities are required to register with the Secretary of State, there is a registration fee of \$35 to cover the administration of the registration process and the filing of the annual return. The Secretary of State will need to be contacted to determine the impact on their operations.

In the department, the types of activities that would be required with this proposal include:

1. Reviewing requests for exempt status, including organization documents and financial statements.

2. Annual review of fundraising sales
3. Issuance of exemption certificate
4. Periodic re-issuance of certificates
5. Responding to request for lost certificates, responding to questions, etc.

The staff required for the administration of the exemption process would depend on the number of organizations granted exempt status. It is anticipated the staffing requirements would be 2 – 3 full-time staff. Computer programming and support would be needed to expand and/or improve existing systems in place for processing exemption certificates but this would be a cost that can be absorbed by the department.

Suggested Group Designations

If a group approach was used, the department suggests these types of groups for consideration for exempt status.

- A) Adoption and Foster Care Providers (Direct purchases)
 - Limited to those organizations participating in state contract to focus on kids in state custody (not exempt)
 - Private agencies or services by social workers, lawyers, etc. that do private adoptions would not be exempt.

- B) Aging Services (Direct Purchases)
 - Area Agencies on Aging (not exempt, although considered in 2007)
 - Congregate meal sites for elderly or disabled(exempt)
 - Home delivered meals elderly or disabled (exempt)
 - Community Senior Citizen Centers

- C) Child & Family Disability & Welfare Agencies (Direct and Indirect (PEC) purchases)
 - Providers of child abuse prevention (not exempt)
 - Family preservation (not exempt)
 - Family resource centers (not exempt)
 - Residential treatment centers for children with special emotional and behavioral needs (partial exempt)
 - Nonprofit nursing home, assisted living facility, interim care home for medical supplies and equipment (currently exempt)
 - Organizations providing health, employment, recreation or social services to disabled children, adults, or veterans (partial exempt)
 - An example of one such organization that is already exempted by name is providing young adult day services to individuals with developmental disabilities and assisting families in avoiding institutional or nursing home care for a developmentally disabled member of their family.
 - Special Olympics (exempt)

- D) Domestic Violence programs (Direct purchases)
 - Prevention of violence through public education (partial exempt)

- Emergency shelters (not exempt)
 - Batters program (partial exempt)
 - Counseling and other supportive services (not exempt)
 - Services to children in violent families (partial exempt)
 - Safety programs for children and families (not exempt)
- E) Drug Abuse and Alcoholism Addiction Services (Direct purchases)
- Not currently exempt
- F) Food Banks serving low-income people (Direct purchases)
- Not currently exempt
 - Include Food Distribution Warehouses (exempt)
 - Include Food Distribution in exchange for community service (exempt)
- G) Health Organizations (Direct purchases)
- Indigent Health clinics (not exempt)
 - Rural Health Clinics (exempt)
 - Faith Based Clinics ((not exempt)
 - Aids/HIV prevention programs (not exempt)
 - Hospices (not exempt)
 - Community Mental Health Centers (exempt)
 - Organizations serving mentally ill persons (partial exempt)
 - National Health Organizations raising money for research into various diseases: Cancer, Heart, Diabetes, etc. (partial exempt)
- H) Homeless Assistance programs (Direct purchases)
- Homeless Shelters (already exempt)
 - Transitional housing programs (not exempt)
- I) Housing (Direct and indirect purchases)
- Habitat for Humanity (exempt)
 - Mennonite Housing (not exempt)
 - Weatherize homes for the poor or elderly or lower-income families (exempt)
 - Generally, organizations constructing, repairing or reconstructing houses for elderly or lower-income families
- J) Other Poverty assistance programs (Direct purchases)
- Programs aiding low income people to help them get out of poverty
- K) Religious Organizations (Direct and Indirect (PEC) purchases)
- Currently churches are exempt

Organizations Not Recommended for Exemption

The department does not recommend exempting any organization that is not a 501(c) (3) nonprofit organization. These include civic leagues, labor unions, fraternal organizations and benevolent societies such as Rotary, Lions, Elks, Masonic lodges, etc. , business leagues, pleasure, recreational or social clubs, veteran organizations (VFW, American Legion).

These activities do have community benefit and their interest is in exempting their sales or fund-raising activities, which they would obtain from the proposed fundraising legislation. There is no tax policy reason to exempt their purchases from sales tax. Some of these organizations may have received exempt status as a 501 (c) (3) in error as they should have been classified under another subsection of the IRS code. Of all these types of organizations, only the Lions Clubs have an exemption, granted in the 2007 session. It is recommended their exemption be revoked – they would have their sales exempt under the proposal if they meet the fundraising criteria.

A number of legislative proposals (with some becoming law) have been introduced that expand the sales tax exemption to specific groups that teach music, dance, art, etc. These are all wonderful things to have in the community, but there is not a compelling reason for the state to support them with an exemption on their purchases. It is not recommended all music, drama, arts, dance organizations, even if educational, be exempted. Again, their fund raising sales would be exempt under the proposal.

In KSA 79-3603, the sales tax imposition statute, there is an exemption for triennial cultural events (e) and youth nonprofit recreation (m) admissions, including those charged by political subdivisions for participation in sports, games and other recreational activities (for example, swimming pool admissions by a city). There is no sound tax policy reason for a city's or YMCA's pool admission to be exempt from sales tax. Organizations like YMCA and YWCA complained that city/county recreation facilities didn't charge sales tax, so they wanted to be exempt for reasons of unfair competition. (Likewise for profit business competing with the Y's complain about the Y's exempt status.) However, the difference is that the city/county facilities are paid for by taxes levied on their residents whereas the Y's are not.

Current exemptions to be replaced under proposal

The following are the entity-specific exemptions that are in current law. Many of the description groups presented above were drawn from these current exemptions. Part of the reason for this is to ensure all similar institutions receive the same treatment and that all groups currently exempt continue to receive an exemption on their purchases. It is recommended that all of these exemptions be removed from the statute, with one or two exceptions, as they would be exempt under one of the group descriptions listed above. As mentioned earlier, many of the organizations primarily wanted fundraising sales to be exempt, and most of their sales would qualify for exemption under the fundraising recommendation presented in this paper.

Statute Cite (79-3606)	Current Exempt Entity	New Group Category
(v)	Contractors preparing meals for the homebound elderly, disabled, indigent or homeless (i.e. Meals on Wheels)	B) Aging Services
(hh)	Nonprofit nursing home, assisted living facility, interim care home for medical supplies and equipment	C) Child & Family Disability & Welfare Agencies
(ii)	Nonprofit, nonsectarian, comprehensive youth development organizations	K) Youth Programs
(jj)	Community-based mental retardation facilities or mental health centers	G) Health Organizations
(ll)	Nonprofit public health corporations for educational materials	No longer needed, all orgs would be exempt.
(oo)	Community action groups & agencies for weatherization of low-income homes	I) Housing
(qq)	Nonprofit museums and historical societies	M) Museums & Historical societies
(rr)	Sale of personal property that will admit purchaser to an annual event sponsored by a nonprofit organization	Rescind, sales would be exempt under fundraising
(tt)	Nonprofit organization for constructing Kansas Korean War Memorial	Leave as is
(vv)	Kansas chapters of Medical Education Organizations	
	American Diabetes Association -Kansas Affiliate,	G) Health Organizations
	American Heart Association, Kansas	G) Health Organizations
	Alliance for the Mentally Ill,	G) Health Organizations
	Kansas Mental Illness Awareness Council	G) Health Organizations
	American Lung Association	G) Health Organizations
	Alzheimer's Disease and Related Disorders Assn., Inc	G) Health Organizations
	Parkinson's disease association	G) Health Organizations
	National Kidney Foundation (of KS and Western MO)	G) Health Organizations
	The Cystic Fibrosis Foundation, Heart of America Chapter	G) Health Organizations
	Spina Bifida Association	G) Health Organizations
	Heartstrings Community Foundation	C) Child & Family Disability & Welfare Agencies
	CHWC	I) Housing
	Cross-Lines Cooperative Council	G) Health Organizations
	Dreams Work	C) Child & Family Disability & Welfare Agencies
	KSDS	L) Zoos and Animal Care
	Lyme Association of Greater Kansas City	G) Health Organizations
	Dream Factory	C) Child & Family Disability & Welfare Agencies
	Ottawa Suzuki Strings	Rescind, sales would be exempt under fundraising
	International Association of Lions Clubs	Rescind, sales would be exempt under fundraising
	Johnson County Young Matrons	Rescind, sales would be exempt under fundraising
	American Cancer Society	G) Health Organizations

	Community Services of Shawnee	J) Poverty Assistance Programs
	Angel Babies Association	G) Health Organizations
(ww)	Habitat for Humanity for housing project materials	I) Housing
(xx)	Nonprofit zoos	L) Zoos and Animal Care
(yy)	Parent-Teacher Associations and Organizations	K) Youth Programs
(aaa)	Nonprofit Religious Organizations	N) Religious Organizations
(bbb)	Nonprofit food distribution program organizations in exchange for community service	F) Food Banks
(ccc)	Primary care clinics and health centers serving the medically underserved	G) Health Organizations
(ggg)	Kansas Academy of Science	O) Scientific Organizations
(hhh)	Domestic violence shelters as members of the Kansas Coalition against Sexual and Domestic Violence (KCSDV)	D) Domestic Violence programs
(iii)	Food products distributed by nonprofit food distribution program to other nonprofit food distribution programs.	F) Food Banks
(lll)	Special Olympics Kansas	C) Child & Family Disability & Welfare Agencies
(mmm)	Marillac Center	C) Child & Family Disability & Welfare Agencies
(nnn)	West Sedgwick County - Sunrise Rotary Club and Sunrise Charitable Fund	Rescind, sales would be exempt under fundraising
(ooo)	Public libraries (sales only, purchases exempt as political subdivision)	Rescind, some sales may be exempt under fundraising
(ppp)	Homeless shelters	H) Homeless Assistance programs
(qqq)	TLC for Children and Families	C) Child & Family Assistance
(rrr)	County Law Libraries	Rescind, some sales may be exempt under fundraising
(sss)	Catholic Charities or Youthville	C) Child & Family Disability & Welfare
(ttt)	Governor's Hometown Museum	M) Museums & Historical societies
(uuu)	Kansas Children's Service League	C) Child & Family Disability & Welfare
(vvv)	Jazz in the Woods	Rescind, sales exempt under fundraising
(www)	Frontenac Education Foundation	Rescind, sales exempt under fundraising
(xxx)	Booth Theatre Foundation	M) Museums and Historical Societies (as expanded, sales would be exempt under fundraising)
(yyy)	TLC Charities Foundation	C) Child & Family Assistance
(zzz)	Rotary Club of Shawnee Foundation	Rescind, some sales may be exempt under fundraising
(aaaa)	Victory in the Valley	G) Health Organizations

Appendix A Regulation examples

The following are examples of the type of definitions the Department would include in regulations to describe the different groups of exempt entities.

A community health center (CHC)/federally qualified health centers/look-alike is defined as an entity that receives funding from Section 330 of the Health Center Consolidation Act and thus meets the requirements of 42 U.S.C. Section 254(b); generally meaning an entity that serves a population that is medically underserved, or a medically underserved population (MUP) comprised of migratory and seasonal agricultural workers, the homeless, and residents of public housing.

Primary health care services are provided as defined by 42 USC Section 254(b), either through the staff and supporting resources of the center or through contracts or cooperative arrangements. Community Health Centers, also known as Federally Qualified Health Centers or FQHCs, are organized as non-profit, consumer-directed health care corporations that provide a range of “enabling services” such as interpretation, transportation, and case management, in addition to primary health care. FQHCs accept all forms of insurance, provide reduced fee care to the uninsured, and are required to see all individuals regardless of ability to pay. Federal Torts Claims Act coverage and access to reduced priced prescription drugs through the 340B drug program are benefits of the FQHC program. A federally qualified health center look-alike is defined as entity which has been determined by the Health Resources and Services Administration (HRSA) to meet the definition of an federally qualified health center as defined by the Social Security Act § 1905(l)(2)(B), but does not receive funding from Section 330 of the Health Center Consolidation Act. There are nine Kansas-based FQHC and one FQHC Look-Alike in KS (GraceMed).

Primary care clinics are Rural Health Clinics (RHC) located in federally designated medically underserved areas (MUA) or health professional shortage areas (HPSA) in a non-urban locale. There are approximately 177 rural health clinics in Kansas. RHCs may be privately owned, a non-profit organization, or a public entity (the privately owned clinics would not be exempt). It must be staffed at least 50% of the time by a mid-level provider, such as nurse practitioner or physician assistance, and provide outpatient primary health care. Cost-based reimbursement through Medicare and Medicaid is available but RHCs are not eligible for 330 grant funding. There is no legal mandate to see uninsured patients regardless of ability to pay, as there is with each other clinic model.

Indigent health care clinics are defined in the Kansas Administrative Regulations-Kansas Department of Health & Environment (KAR 28-53-1(d)) as an outpatient medical care clinic designed to provide direction of a qualified person licensed to practice medicine and surgery and licensed by the Kansas Board of Healing Arts. They type and scope of services provided may vary significantly from clinic to clinic. A number of indigent clinics employ administrative staff to coordinate donated services of health professionals, as well as providing assistance with prescriptions through samples and manufacture’s

indigent drug programs. These clinics are eligible for malpractice coverage through the Kansas Torts Claims Act but do not receive cost-based reimbursement from Medicare or Medicaid. Several indigent clinics in Kansas are faith-based, while some are community-based.

Faith-based indigent health care clinics are not-for-profit organizations that provide care to uninsured and Medicaid beneficiaries. The organizations are generally affiliated with a faith-based organization and may rely upon that organization for financial support. Faith-based clinics basically mirror the make-up of indigent health care clinics. There are approximately twenty indigent clinics in Kansas.

Family preservation services are short-term, family-focused, and community-based services designed to help families cope with significant stresses or problems that interfere with their ability to nurture their children. The goal of family preservation services is to maintain children with their families, or to reunify them, whenever it can be done safely. These services developed largely in response to an over-reliance on out-of-home care that characterized services in the 1970s.

Family preservation services grew out of the recognition that children need a safe and stable family and that separating children from their families is traumatic for them, often leaving lasting negative effects. These services build upon the conviction that many children can be safely protected and treated within their own homes when parents are provided with services and support and empowered to change their lives.

Family preservation services are most often provided to families that have come to the attention of the child welfare, mental health, or juvenile justice systems because of child abuse or neglect, child behavioral health challenges, delinquency, or serious parent-child conflict. These services are applicable to families that are at risk of disruption/out-of-home placement across systems.

Kinship Care is a program designed to help support a child who resides outside of his or her own home, either temporarily or for the long term, with the relative (such as an adult brother or sister, a first cousin, a nephew or niece, an uncle or aunt or a grandparent, among others).

Kinship Care supports the concept of children residing with a relative to alleviate family stress or temporary familial problems, rather than being placed in a foster home or other type of out-of-home placement. For children who do come to the attention of the child welfare system, Kinship Care creates another placement option for a child who may not be able to continue living at home with his or her parents. It should not, however, be used when a foster care placement is in the best interests of the child.

Family Resource Centers provide innovative programs and services that meet the needs of each community they serve including: resource and referral services, early childhood education, parent education and support, family/adult education program (GED, ESL, job readiness, youth programs (pre/after school activities, summer camps) and emergency basic needs (food/clothing banks, respite care, transportation, baby needs)

Appendix B How Other States Treat Nonprofit Organizations

Issues Relating to Specific Industries or Transactions > IRC §501 Organization Exemptions >

Which Entities Are Exempt from State's Sales/Use Tax?

The chart entries are based on state tax department responses to surveys. The links to CCH paragraphs are to general information on the same or related subject matter, which may not include a discussion of specific details treated by the survey.

State	Which Entities Are Exempt from State's Sales/Use Tax?	Comments	CCH ¶
Alabama	None are exempt.		60-580
Arizona	See Arizona Transaction Privilege Tax Procedure 93-4. Exemptions are limited and specific.		60-580
Arkansas	Only specifically listed Arkansas organizations		60-580
California	None are exempt.		60-580
Colorado	501(c)(3)		60-580
Connecticut	501(c)(3); 501(c)(13).		60-580
District of Columbia	501(c)(3)		60-580
Florida	501(c)(3); 501(c)(4); 501(c)(12).		60-580
Georgia	501(c)(3), only those enumerated under O.C.G.A. 48-8-3; 501(c)(19).		60-580
Hawaii	See Hawaii Rev. Stat. Sec. 237-23 for specific requirements.		60-580
Idaho	Nonprofit hospitals, educational institutions, health related entities, and other organizations listed in Idaho Code §63-36220.		60-580
Illinois	Organizations that make application to the Department and are determined to be exclusively religious, educational, or charitable, receive an exemption identification "E" number. See 86 Ill. Admin. Code §130.2007.		60-580
Indiana	501(c)(3); 501(c)(4); 501(c)(6); 501(c)(8); 501(c)(10); 501(c)(19).		60-580
Iowa	501(c)(3)		60-580
Kansas	Specifically identified entities.		60-580
Kentucky	501(c)(3)		60-580
Louisiana	None are exempt.		60-580
Maine	As provided by State.		60-580
Maryland	501(c)(3); 501(c)(4); 501(c)(13), see Tax-General 11-204; veterans' organizations, their auxiliaries, or their units exempt under 501(c)(19) are exempt on purchases from 7/1/06 through 6/30/09.		60-580
Massachusetts	501(c)(3)		60-580
Michigan	501(c)(3); 501(c)(4); See Rev. Admin. Bulletin 1995-3.		60-580
Minnesota	501(c)(3), if organized for religious, charitable, or educational purposes. Must apply for and obtain a sales tax exempt number to qualify.		60-580
Mississippi	None are exempt.		60-580

Missouri	There is no automatic exemption based on Section 501. These entities are only exempt per 144.030.2(19) and (20) RSMO.	60-580
Nebraska	Organizations created exclusively for religious and educational purposes under chapters 79 and 80 of Nebraska statutes.	60-580
Nevada	Organizations created for religious, charitable, or educational purposes who meet specific statutory criteria.	60-580
New Jersey	501(c)(3)	60-580
New Mexico	501(c)(3); 501(c)(6).	60-580
New York	501(c)(3); 501(c)(19); others may qualify if organized for charitable, religious or other qualifying reasons.	60-580
North Carolina	None are exempt.	60-580
North Dakota	501(c)(3); 501(c)(4); 501(c)(6); 501(c)(8); 501(c)(10); 501(c)(15); 501(c)(19).	60-580
Ohio	501(c)(3)	60-580
Oklahoma	Only those specifically named in the statutes.	60-580
Pennsylvania	Entity must be a "purely public charity."	60-580
Rhode Island	See Regulation SU 96-48.	60-580
South Carolina	Only specific types of charities. See Code Section 12-35-2120(41).	60-580
South Dakota	The organization must meet the criteria set out in ARSD 64:06:01:38 to qualify for exempt status.	60-580
Tennessee	501(c)(3); 501(c)(19).	60-580
Texas	501(c)(3); 501(c)(4); 501(c)(8); 501(c)(10); 501(c)(19).	60-580
Utah	501(c)(3)	60-580
Vermont	501(c)(3)	60-580
Virginia	501(c)(3); 501(c)(4); the Department of Taxation administers the exemption qualification process and has established eligibility criteria.	60-580
Washington	Nonprofit organizations are subject to sales/use tax when making purchases as consumers unless specific exemptions apply.	60-580
West Virginia	Exempt under certain circumstances; see Publication TSD-320 at www.state.wv.us/taxrev/taxdoc/tsd1.htm .	60-580
Wisconsin	See Wis. Stat. §77.54(9a).	60-580
Wyoming	501(c)(3); some 501(c)(4).	60-580

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Sales tax treatment for Not-for-Profit Entities
October 24, 2007

The sales tax treatment for nonprofit entities has evolved over the years. Certain exemptions were granted in the early years of the Kansas sales tax while others are recent additions. Dealing with legislative requests to expand exempt status to specific nonprofit entities is a yearly activity. The greatest change in the exemptions occurred in recent years in the 1998. Exemptions for nonprofit zoos, religious organizations, habitat for humanity, medically underserved organizations, parent teacher associations/organizations and food distribution program organizations were enacted. In 2006 and 2007 a significant number of exemptions passed, many for specifically named organizations. Unlike previous statutory exemptions, those enacted in 2006 and 2007 not only exempted the purchases of the organizations but also sales made by or on behalf of them. In both years, additional organizations were added to the medical educational organizations within K.S.A 79-3606 (vv) (it should be noted that the organizations being added are not medical educational organizations) and new exemptions were added as listed in K.S.A 79-3606 (iii) through (aaaa). In 2007 the most significant exemption added was for the International Lions Clubs. This is the first time since 1998 that an exemption has been passed for a large community organization with hundreds of clubs.

In 1970 an extensive review by the Joint Committee on the State Tax Structure (aka the Hodge Report) was completed. As a result of that study, the legislature amended the statutes to make purchases by religious, benevolent or charitable organizations subject to tax. In 2005, a legislative special committee reviewed the sales tax treatment for nonprofit organizations and made policy recommendations to the 2006 Legislature. The committee recommended the "standing tax committees develop criteria similar to those utilized in the early 1970's to help the Legislature evaluate all future requests for sales tax exemptions." The Committee did not recommend expanding sales tax exemption to all 501 (c) (3) entities.

A trend in recent years has been to expand the exemption to include sales made "by or on behalf of" an organization. Allowing individuals and other entities to make sales on behalf of the exempt organization creates the potential for loss of control over the exemption. The exempt organization is given an artificial competitive advantage over retail businesses that must collect sales tax on their sales of similar items.

The information below provides a summary of the current nonprofit entity exemptions, the fiscal impact of the current nonprofit entity exemptions, the fiscal impact of certain proposals to expand nonprofit entity exemptions, and sales tax treatment of nonprofit entities by neighboring states.

Organizations currently receiving tax exempt status in Kansas

The following entities currently are exempt from sales tax.

<u>Cite</u>	<u>Organization</u>
79-3606 (b)	State of Kansas and its agencies, Kansas political subdivisions (cities, counties, townships school districts), Nonprofit hospitals, Nonprofit blood, tissue and organ banks
79-3606 (c)	Nonprofit educational institutions (colleges, universities, trade schools, etc. providing education above grade 12), Elementary and secondary schools

CiteOrganization

79-3606 (s)	Kansas groundwater management districts, Rural water districts and water supply districts
79-3606 (v)	Contractors preparing meals for the homebound elderly, disabled, indigent or homeless (such as Meals on Wheels)
79-3606 (z)	Port authority
79-3606 (hh)	Nonprofit nursing home, assisted living facility, interim care home for medical supplies and equipment
79-3606 (ii)	Nonprofit, nonsectarian, comprehensive youth development organizations
79-3606 (jj)	Community-based mental retardation facilities or mental health centers
79-3606 (ll)	Nonprofit public health corporations for educational materials
79-3606 (oo)	Community action groups/agencies for weatherization of low-income homes
79-3606 (qq)	Nonprofit museums and historical societies
79-3606 (rr)	Sale of personal property that will admit purchaser to an annual event sponsored by a nonprofit organization
79-3606 (ss)	Public broadcasting stations (radio and TV)
79-3606 (tt)	Nonprofit organization for constructing Kansas Korean War Memorial
79-3606 (uu)	Rural volunteer fire fighting organizations
79-3606 (vv)	Kansas chapters of these Medical Education Organizations: American Diabetes Association - Kansas Affiliate, American Heart Association, Kansas Alliance for the Mentally Ill, Kansas Mental Illness Awareness Council, American Lung Association, Alzheimer's Disease and Related Disorders Assn., Inc., Parkinson's disease association, National Kidney Foundation (of KS and Western MO), The Cystic Fibrosis Foundation, Heart of America Chapter, Spina Bifida Association, Heartstrings Community Foundation, CHWC, Cross-Lines Cooperative Council, Dreams Work, KSDS, Lyme Association of Greater Kansas City, Dream Factory, Ottawa Suzuki Strings, International Association of Lions Clubs, Johnson County Young Matrons, American Cancer Society, Community Services of Shawnee, Angel Babies Association.
79-3606 (ww)	Habitat for Humanity for housing project materials
79-3606 (xx)	Nonprofit zoos
79-3606 (yy)	Parent-Teacher Associations and Organizations
79-3606 (zz)	Free-Access Radio and TV Stations – equipment used directly and primarily for producing broadcast signal
79-3606 (aaa)	Nonprofit Religious Organizations
79-3606 (bbb)	Nonprofit food distribution program organizations in exchange for community service
79-3606 (ccc)	Primary care clinics and health centers serving the medically underserved
79-3606 (ggg)	Kansas Academy of Science
79-3606 (hhh)	Domestic violence shelters as members of the Kansas Coalition against Sexual and Domestic Violence (KCSDV)
79-3606 (iii)	Food products distributed by nonprofit food distribution program to other nonprofit food distribution programs.
79-3606 (lll)	Special Olympics Kansas
79-3606 (mmm)	Marillac Center
79-3606 (nnn)	West Sedgwick County - Sunrise Rotary Club and Sunrise Charitable Fund
79-3606 (ooo)	Public libraries (sales only, purchases exempt as political subdivision)
79-3606 (ppp)	Homeless shelters
79-3606 (qqq)	TLC for Children and Families
79-3606 (rrr)	County Law Libraries
79-3606 (sss)	Catholic Charities or Youthville
79-3606 (ttt)	Governor's Hometown Museum
79-3606 (uuu)	Kansas Children's Service League
79-3606 (vvv)	Jazz in the Woods
79-3606 (www)	Frontenac Education Foundation
79-3606 (xxx)	Booth Theatre Foundation
79-3606 (yyy)	TLC Charities Foundation
79-3606 (zzz)	Rotary Club of Shawnee Foundation
79-3606 (aaaa)	Victory in the Valley
74-99b12	Kansas Bioscience Authority

Of the above organizations, all must be registered with the Internal Revenue Service (IRS) as 501 (c) (3) nonprofit organizations except for the entities below. Entities not required to be recognized as 501 (c) (3) nonprofit organizations to receive the sales tax exemption are:

- 79-3606 (ii) Nonprofit, nonsectarian, comprehensive youth development organizations
- 79-3606 (yy) Parent-Teacher Associations and Organizations
- 79-3606 (zz) Free-Access Radio and TV Stations – equipment used directly and primarily for producing broadcast signal (these would be privately)
- 79-3606 (oo) Community action groups/agencies for weatherization of low-income homes
- 79-3606 (lll) Special Olympics Kansas
- 79-3606 (nnn) West Sedgwick County - Sunrise Rotary Club and Sunrise Charitable Fund

As mentioned, some sales tax exemptions contain language allowing for purchases made “by or on behalf” of the entity to be exempt from tax. This allows individuals or contractors to make purchases on behalf of the organization without any real control over who is making the purchase. Prior to the use of the “by or on behalf of” language, it was the practice to include in certain exemptions involving construction projects the ability to make exempt indirect purchases through the use of project exemption certificates. Entities that have the “by or on behalf of” language in their exemption are:

<u>Cite</u>	<u>Organization</u>
79-3606 (s)	Kansas groundwater management districts, rural and city water supply districts
79-3606 (z)	Port authority
79-3606 (tt)	Nonprofit organization for constructing Kansas Korean War Memorial
79-3606 (uu)	Rural volunteer fire fighting organizations
79-3606 (ggg)	Kansas Academy of Science
79-3606 (hhh)	Domestic violence shelters as members of the Kansas Coalition against Sexual and Domestic
79-3606 (mmm)	Marillac Center
79-3606 (ppp)	Homeless shelters
79-3606 (www)	Frontenac Education Foundation
79-3606 (aaaa)	Victory in the Valley

Exemptions for the following entities contain statutory language providing for indirect purchases through the issuance of project exemption certificates:

- 79-3606 (b) State of Kansas and its agencies, Kansas political subdivisions (cities, counties, townships school districts), Nonprofit hospitals, Nonprofit blood, tissue and organ banks (statute prohibits the state of Kansas from issuing project exemption certificates – materials purchased by contractors are subject to tax)
- 79-3606 (c) Nonprofit educational institutions (colleges, universities, trade schools, etc. providing education above grade 12), Elementary and secondary schools
- 79-3606 (aaa) Nonprofit Religious Organizations
- 79-3606 (ccc) Primary care clinics and health centers serving the medically underserved
- 79-3606 (iii) Food products distributed by nonprofit food distribution program to other nonprofit food distribution programs.
- 79-3606 (qqq) TLC for Children and Families
- 79-3606 (sss) Catholic Charities or Youthville
- 79-3606 (ttt) Governor’s Hometown Museum
- 79-3606 (uuu) Kansas Children’s Service League
- 79-3606 (xxx) Booth Theatre Foundation
- 79-3606 (yyy) TLC Charities Foundation

In addition to the entity's purchases being exempt from sales tax, exemptions for the following organizations provide that sales of tangible personal property by the organization, or by or on behalf of the organization, are exempt from sales tax.

- 79-3606 (ii) Nonprofit, nonsectarian, comprehensive youth development organizations
- 79-3606 (vv) Kansas chapters of these Medical Education Organizations: American Diabetes Association - Kansas Affiliate, American Heart Association, Kansas Alliance for the Mentally Ill, Kansas Mental Illness Awareness Council, American Lung Association, Alzheimer's Disease and Related Disorders Assn., Inc., Parkinson's disease association, National Kidney Foundation (of KS and Western MO), The Cystic Fibrosis Foundation, Heart of America Chapter, Spina Bifida Association, Heartstrings Community Foundation, CHWC, Cross-Lines Cooperative Council, Dreams Work, KSDS, Lyme Association of Greater Kansas City, Dream Factory, Ottawa Suzuki Strings, International Association of Lions Clubs, Johnson County Young Matrons, American Cancer Society, Community Services of Shawnee, Angel Babies Association.
- 79-3606 (yy) Parent-Teacher Associations and Organizations
- 79-3606 (lll) Special Olympics Kansas
- 79-3606 (mmm) Marillac Center
- 79-3606 (ooo) Public libraries
- 79-3606 (ppp) Homeless shelters
- 79-3606 (qqq) TLC for Children and Families
- 79-3606 (rrr) County Law Libraries
- 79-3606 (sss) Catholic Charities or Youthville
- 79-3606 (uuu) Kansas Children's Service League
- 79-3606 (vvv) Jazz in the Woods
- 79-3606 (www) Frontenac Education Foundation
- 79-3606 (yyy) TLC Charities Foundation
- 79-3606 (aaaa) Victory in the Valley

501 (c) (3) Non-profit entities in Kansas

Data on the number and types of 501 (c) non-profit organizations that exist in Kansas are available from the IRS. This information is extracted from the IRS Business Master File (BMF). Table 1 (attached) lists the number of organizations who have 501 (c) nonprofit status using the classification codes of the IRS.¹ The 501 (c) (3) organizations are those that are shaded.

Table 1 lists 17,558 nonprofit 501(c)-type entities in Kansas by category. The categories shown on Table 1 with the largest number of organizations are listed below. Those with an asterisk (*) are 501 (c) (3) organizations.

Entity	Number
*Charitable Organizations	6,280
*Religious Organizations	2,297
*Educational Organization	2,196
Fraternal Beneficiary Society, Order or Associations	1,148
Social Welfare Organizations	954
Post or Organizations of War Veterans	694
Civic Leagues	677
Pleasure, Recreational, or Social Clubs	619
Labor Organizations	442

The religious organizations shown in the IRS data are only those with 501(c)(3) designation. The number shown is likely too low, because religious organizations, integrated auxiliaries of churches, and associations of churches are not required to be registered with the IRS as 501(c)(3)'s. Not all are included in the IRS's database.

Other organizations not registered with the IRS are organizations that have gross receipts of not more than \$5,000 per tax year. In addition, political subdivisions (government instrumentalities) are not included in the IRS data.

¹ For additional information on obtaining nonprofit status see Instructions for Form 1023 and publication 557 from the IRS.

3-4

Prior to 2005, the department did not have an accurate account of the entities exempt from sales tax. To claim exemption, an entity needed only to print and complete a blank sales tax exemption certificate. A listing of entities submitting letters requesting exempt status was maintained, but this accounted for a small subset of the total number of exempt entities.

In 2004, there was a significant change in how the department processed entity sales tax exemption certificates. House Bill 2375 (K.S.A 79-3692), required the department to issue numbered sales tax exemption certificates to exempt entities. Table 2 (attached) lists the number of tax-exempt entity certificates issued by the department as of July 1 2007, along with an estimated fiscal impact. Some key points:

- A reason for the significantly larger number of religious organizations vs. the IRS is the difference in requirements. The department requires each church to have its own exemption certificate whereas the IRS may registers churches at the synod or diocese level or does not require registration.
- Nonprofit organizations selling tangible personal property admitting a purchaser into an annual event (79-3606(rr)) are thought to number less than 5. These are organizations that sell a button or wooden coin to a purchaser that would admit the purchaser into the event. An example was Railroad Days in Topeka.

When Tables 1 and 2 are reviewed in terms of the number of nonprofit entities that are subject to Kansas sales tax, it is estimated that there are 10,000 nonprofit 501 (c) (3) entities required to pay sales tax on their purchases. It is estimated that there are several thousand more organizations, clubs, and groups existing as nonprofit entities that are not registered with the IRS.

Fiscal Impact

- Table 2 provides the fiscal impact for those entities that are currently exempt from sales tax. For fiscal year 2009, the loss of state sales tax revenue is estimated at \$420 million. The loss of local sales tax revenue is \$105 million. This amount includes political subdivisions and educational institutions.
- Non-profit entities (excluding political subdivisions and educational institutions) that are currently exempt have an impact of \$30 million on purchases and \$4 million on sales, for a total of \$34 million in state sales tax. The loss of local sales tax would be \$7.5 million.
- The fiscal impact of exempting all nonprofit organizations, estimated at 24,000 would result in the loss of an additional \$40.3 million on purchases and \$18 million on sales made. It should be noted that not all non-exempt nonprofit organizations are currently collecting sales tax on fundraising events.
- The fiscal impact of exempting all 501 (c) (3) nonprofit entities currently subject to sales tax is estimated to reduce state revenues by an additional \$25 million on purchases and \$10 million on sales.

Methodology: Calculation of fiscal impact for 501 (c)(3) organizations currently subject to tax – purchases only.

Data available on 501-type organizations from the Internal Revenue Service is used to develop an estimate. The data from the IRS Statistics of Income report shows there are over 17,000 nonprofit 501-type organizations in the State of Kansas. However, that estimate does not include most religious organizations as they are not required to file with the IRS. Based on the department's issuance of exemption certificates, it is estimated there are 24,000 nonprofit 501-type organizations in the State. In terms of 501(c) (3) organizations in Kansas, the IRS reports there are 11,000. However with the missing religious and other organizations and based on the certificates issued, it is estimated the actual number is 20,000. The IRS reports all 501 organizations had income of \$12.2 billion with 501(c) (3) organizations making up \$9 billion of that amount. Of that amount, 15% was identified as originating from organizations already exempt from sales tax. Nationally, expenditures account for 48% of the organization's income and 75% of the expenditures are for costs not subject to sales tax, such as wages and building rent. Therefore, 25% of the expenditures are subject to sales tax.

Based on the IRS data, it is estimated that 501 (c) organizations are estimated to have taxable expenditures of \$1.25 billion, which would generate \$70.3 million in state sales tax. Nonprofit 501(c) (3) organizations are estimated to have \$975 million in expenditures subject to sales tax, which would generate \$55 million in state sales tax. The IRS does not require organizations with gross receipts of less than \$5,000 to register. Although this may be a significant number of organizations, the dollar impact would be minimal.

Methodology: Calculation of fiscal impact for 501 (c)(3) organizations currently subject to tax –sales made.

Recent legislative exemptions have provided for sales made by or on behalf on an organization to be exempt from sales tax. Currently, an estimated 1,000 entities have their sales exempt from sales tax. The state sales tax lost from sales made by these organizations is estimated at \$4 million annually. From a review of Kansas sales tax statistics, state sales tax collections of \$15 million is estimated as being received from nonprofit 501(c) entities, such as schools, churches, civic, veteran, fraternal, and social organizations. In addition, based on phone conversations with nonprofit organizations, there are a significant number that are not collecting sales tax on their sales - estimated to amount to an additional \$3 million of sales tax that is not being collected.

Neighboring States Tax Treatment for nonprofit organizations

As noted, Kansas limits sale tax exemptions to specific groups and activities. To apply for an exemption, an entity submits a letter stating its purpose, attaching a copy of the IRS 501 (c) (3) nonprofit letter and bylaws or articles of incorporation. There is no specific application form to complete. The department provides an on-line application in which the organization provides certain information. No additional documentation is required, unless there is uncertainty as to the eligibility of the organization. Our neighboring states have the following exemptions and application requirements:

State	Exempt Entities	Application Requirements
Missouri	Exempts most 501(c)(3) organizations, including religious, civic, charitable, social, fraternal and service organizations, and educational institutions.	Requires the completions of application and submission of IRS 501 (c) (3) nonprofit letter, certificate of incorporation (if applicable), copy of organizations bylaws and 3 years of financial history.
Nebraska	Similar to Kansas. Exemptions are limited to a few specialized organizations, such as 24-hour child caring services, services to the blind, health clinic, home health care, hospitals, nursing homes, religious organizations and educational institutions.	Requires the completions of application and copy of license (if applicable), certificate of incorporation, and copy of organizations bylaws.
Colorado	Exempts most 501(c)(3) organizations, including religious, civic, charitable, social, fraternal and service organizations, and educational institutions	Requires the completions of application and submission of IRS 501 (c) (3) nonprofit letter, certificate of incorporation, financial statement and copy of Colorado Certificate of Good Standing from Secretary of State's Office
Oklahoma	Similar to Kansas. Exemptions are limited to a few specialized organizations, such as religious institutions, educational organizations, museums, meals on wheels & food programs for the elderly, children's homes, boy/girl scouts, youth camps, community based health clinics, blood banks, cultural organizations for disadvantaged children and federal qualified health care facilities.	Requires the completions of application and submission of IRS 501 (c) (3) nonprofit letter, certificate of incorporation, financial statement and other documentation that may be applicable to the specific exemption.

Table 1
IRS Nonprofit Entities in Kansas

Subsection Code	Classification Code	Description	Count	Ks Exempt
1	1	Government Instrumentality	14	Yes
2	1	Title-Holding Corporation	67	
3	1	Charitable Organization	6280	Partial
3	2	Educational Organization	2196	Partial
3	3	Literary Organization	23	
3	4	Organization to Prevent Cruelty to Animals	61	
3	5	Organization to Prevent Cruelty to Children	6	
3	6	Organization for Public Safety Testing	9	
3	7	Religious Organization	2297	Yes
3	8	Scientific Organization	22	
4	1	Civic League	677	
4	2	Local Association of Employees	85	
4	3	Social Welfare Organization	954	
5	1	Agricultural Organization	195	
5	2	Horticultural Organization	8	
5	3	Labor Organization	442	
6	1	Board of Trade	256	
6	2	Business League	712	
6	3	Chamber of Commerce	151	
6	4	Real Estate Board	10	
7	1	Pleasure, Recreational, or Social Club	619	
8	1	Fraternal Beneficiary Society, Order or Association	1,148	
9	1	Voluntary Employees' Beneficiary Assn (Non-Govt. Emps.)	115	
9	2	Voluntary Employees' Beneficiary Association (Govt. Emps.)	11	
10	1	Domestic Fraternal Societies and Associations	247	
11	1	Teachers Retirement Fund Assoc.		
12	1	Benevolent Life Insurance Assoc.	11	
12	2	Mutual Ditch or Irrigation Co.	6	
12	3	Mutual Cooperative Telephone Co.	11	
12	4	Organization Like Those on Three Preceding Lines	20	
13	1	Burial Association	100	
13	2	Cemetery Company	69	
14	1	Credit Union	14	
14	2	Other Mutual Corp. or Assoc.		
15	1	Mutual Insurance Co. or Assoc. Other Than Life or Marine	8	
17	1	Supplemental Unemployment Compensation Trust or Plan	2	
19	1	Post or Organization of War Veterans	694	
25	1	Title Holding Co. for Pensions, etc.	2	
92	1	4947(a)(1) - Private Foundation (Form 990PF Filer)	25	
Total			17,558	

Table 2
Kansas Exempt Entities and Fiscal Impact

<u>Statute Cite</u> <u>(KSA 79-3606)</u>	<u>Exempt Entity</u>	<u>Count</u>	<u>Estimated FY 08</u> <u>Fiscal Impact</u> <u>(in Millions)</u>	<u>Estimated FY 09</u> <u>Fiscal Impact</u> <u>(in Millions)</u>
b	Political Subdivisions, Hospitals, Blood Banks	2,577	\$ 319.7	\$ 330.9
c	Educational Institutions	1,986	\$ 56.49	\$ 58.47
s	Groundwater Management Districts, Rural Water and city water *	315	\$ 0.04	\$ 0.04
v	Meals on Wheels programs	64	\$ 0.80	\$ 0.83
z	Port Authority	3	Minimal	Minimal
hh	Nursing Homes	192	\$ 1.00	\$ 1.04
ii	Nonsectarian Comprehensive Multidiscipline Youth Development Programs	1,157	\$ 2.54	\$ 2.63
jj	Community Mental Health Facility	92	\$ 2.33	\$ 2.41
ll	Public Health Educational Materials	43	\$ 0.08	\$ 0.08
oo	Weatherize low-income housing	51	Minimal	Minimal
qq	Nonprofit Museum or Historical Society	391	\$ 0.37	\$ 0.38
rr	Sale of personal property admits purchaser to an annual event	5	Minimal	Minimal
ss	Public Broadcasting Stations	28	Minimal	Minimal
tt	Korean War Memorials	2	Minimal	Minimal
uu	Rural Fire Fighting Organizations	431	Minimal	Minimal
v v	Designated Health Organizations	141	\$ 0.76	\$ 0.79
ww	Habitat for Humanity	27	\$ 0.11	\$ 0.12
xx	Nonprofit Zoos	11	\$ 0.58	\$ 0.60
yy	Parent Teacher Organizations	533	\$ 0.55	\$ 0.57
zz	Free Access Radio or Television Stations	133	\$ 0.92	\$ 0.95
aaa	Religious Organizations	6,387	\$16.76	\$ 17.35
bbb	Food Distribution Programs	1	Minimal	Minimal
ccc	Primary Health Clinic for the Medically Underserved	36	\$ 0.37	\$ 0.38
ggg	Kansas Academy of Science	1	Minimal	Minimal
hhh	Domestic Violence Shelters	33	\$ 0.06	\$ 0.06
(iii)	Food products from nonprofit food distribution program to other nonprofit food distr. programs	1	\$ 0.23	\$ 0.24
(lll)	Special Olympics Kansas	1	\$ 0.03	\$ 0.03
(mmm)	Marillac Center	1	\$ 0.05	\$ 0.05
(nnn)	West Sedgwick County- Sunrise Rotary Club and Sunrise Charitable Fund	1	\$ 0.02	\$ 0.02
(ooo)	Public libraries (sales only, purchases exempt as political subdivision)		\$ 0.01	\$ 0.01
(ppp)	Homeless shelters	12	\$ 0.1	\$ 0.11
(qqq)	TLC for Children and Families	1	\$ 0.17	\$ 0.17
(rrr)	County Law Libraries	7	\$ 0.1	\$ 0.1
(sss)	Catholic Charities or Youthville	5	\$ 0.62	\$ 0.64
(ttt)	Governor's Hometown Museum		\$ 0.1	\$ 0.11
(uuu)	Kansas Children's Service League	1	\$ 0.15	\$ 0.15
(vvv)	Jazz in the Woods	1	\$0.01	\$0.01
(www)	Frontenac Education Foundation	1	Minimal	Minimal

Table 2
Kansas Exempt Entities and Fiscal Impact
Concluded

<u>Statute Cite</u> <u>(KSA 79-3606)</u>	<u>Exempt Entity</u>	<u>Count</u>	<u>Estimated FY 08</u> <u>Fiscal Impact</u> <u>(in Millions)</u>	<u>Estimated FY 09</u> <u>Fiscal Impact</u> <u>(in Millions)</u>
(xxx)	Booth Theatre Foundation	1	\$0.3	\$0.31
(yyy)	TLC Charities Foundation	1	Minimal	Minimal
(zzz)	Rotary Club of Shawnee Foundation	1	Minimal	Minimal
(aaaa)	Victory in the Valley	1	\$0.02	\$.02
	Total	14,673	\$405.37	\$419.57

* the fiscal impact is only for the 5 groundwater management districts. Rural water districts and city water departments are exempt from sales tax on their purchases if they pay the clean drinking water fee. The clean drinking water fee is estimated to collect \$2.75 million in fiscal year 2007, which is estimated to be the value of the sale tax exemption they are receiving.

TESTIMONY
John C. Peterson
KANSAS HEALTH & FITNESS ASSOCIATION
BEFORE THE HOUSE COMMITTEE ON ASSESSMENT & TAXATION
HB 2938 AND HB ____ (bill number not yet assigned)
February 26, 2008

Mr. Chairman, members of the Committee. My name is John Peterson and I appear on behalf of the Kansas Health & Fitness Association.

Kansas needs to establish standardized procedures for awarding sales tax exemptions to organizations and standardized treatment for those exemptions once awarded.

Your Special Committee on Taxation this last Summer studied the issue of sales tax exemptions. On October 24, 2007, the Department of Revenue submitted a proposal for exemption of nonprofit organization for the Kansas sales and use tax. That document proposed a standardized procedure under which basic principals would be employed:

1. The Legislature would determine the overall policy establishing the types of nonprofit organizations.
2. Only direct purchases by nonprofit organizations would be exempt.
3. Sales of goods or services by organizations would not be exempt except for occasional fundraising sales.

Under their proposal, organizations which qualify as 501(c)(3) which fall under 11 categories of services would be able to apply to the Department and receive sales tax exempt status. Those categories include:

1. Adoption and foster care services
2. Aging services
3. Child and family disability and welfare agencies
4. Domestic violence programs
5. Drug abuse and alcoholism addiction services
6. Food banks serving low income
7. Health organizations
8. Homeless assistance programs
9. Housing
10. Other poverty assistance programs
11. Religious organizations

The Interim Committee, in their report to the Legislature, stated in their Conclusions and Recommendations that they strongly recommended the Legislature consider establishing objective standards for granting sales tax exemptions and expressed its strong support for making this a high priority.

The question becomes, if you establish standardized procedures and a level playing field for treatment of those who are exempt, how do you treat organizations already exempt? There are three options. One option is to grandfather in all organizations currently exempt for all purposes that they are now exempt. Some are exempt for both direct and indirect purchases, some are exempt for sales of goods and services, and some are exempt for purchases of goods and services—some for both. That total grandfathering is the approach taken by House Bill 2938.

The other extreme would be to remove all current sales tax exemptions for organizations and require them to meet the newly established criteria.

There is a third option which I believe constitutes middle ground and that option is contained in a House bill which has been approved for introduction by this Committee but has not yet been introduced or assigned a bill number. That option would be to grandfather in all existing exempt organizations but, then have the same rules apply to them as will apply to newly approved organizations. Specifically they would be exempt for direct purchase and they would not be exempt for sales of goods and services to the public except for isolated fundraising events.

We would urge this middle ground as being fair and equitable to all and would urge your support either to amend HB 2938 or to approve that legislation at the appropriate time.

HOUSE BILL No. 2938

By Committee on Taxation

2-25

9 AN ACT concerning sales taxation; relating to certain exemptions; non-
10 profit organizations; amending K.S.A. 2007 Supp. 79-3603, 79-3606
11 and 79-3692 and repealing the existing sections.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 New Section 1. (a) The following shall be exempt from the tax im-
15 posed under the Kansas retailers' sales tax act: (1) All sales of personal
16 property or services purchased by organizations which are exempt or
17 would be exempt from federal income taxation pursuant to section
18 501(c)(3) of the federal internal revenue code, and which such personal
19 property and services are used for the purpose of providing adoption and
20 foster care services, aging services, child and family disability and welfare
21 services, domestic violence services, drug abuse and alcohol addiction
22 counseling services, food bank services for persons of low income, health
23 care research and services and services for individuals who are deaf. Only
24 sales of personal property and services purchased by the organization for
25 programs of such organization which provide the services specified in the
26 subsection shall qualify for the exemption provided by this subsection;
27 and

28 (2) the gross receipts from the sale of admissions or tickets to fund
29 raising activities or events not exceeding one day and not exceeding two
30 such activities or events per year, all sales of tangible personal property
31 or services donated for fund raising purposes, and all sales of publications
32 developed by an organization for fund raising purposes, all by an organ-
33 ization which is exempt from federal income taxation pursuant to section
34 501(c)(3) of the federal internal revenue code, and which such sales are
35 dedicated to further the religious, charitable, scientific, testing for public
36 safety, literary or educational purpose, or any other purpose specified by
37 section 501(c)(3) of the federal internal revenue code, of the organization.

38 (b) Any organization which is denied an exemption to the tax imposed
39 by this act in which the organization believes that the organization should
40 have been provided such exemption may request an informal conference
41 with the secretary of revenue under K.S.A. 79-3226, and amendments
42 thereto, within 60 days of notice of such denial for a determination of
43 whether such organization should be provided an exemption under the

PROPOSED AMENDMENT

John C. Peterson

Kansas Health & Fitness

provisions of this section.

(c) Nothing in this section shall affect the exemption status of any organization which was provided an exemption from the tax imposed by this act prior to January 1, 2009.

(d) The secretary of revenue shall adopt rules and regulations to carry out the provisions of this act. Such rules and regulations shall include provisions to: (1) Provide a clear procedure to be utilized by the organization to make application for an exemption, and the department of revenue to review and make determinations to substantiate such organization's qualification for exemption status, including proof of exempt status under section 501(c)(3) of the federal internal revenue code or for organizations not required by the federal internal revenue service to have a section 501(c)(3) determination letter, satisfactory verification that the organization is not used or held for profit, proof that the organization has registered with the office of secretary of state and has a current annual report on file with such office, and other documentation needed by the department to make a determination of exemption status; and (2) provide a clear procedure for the organization to seek a review of any adverse determination of exemption status.

(e) The provisions of this section shall apply on and after January 1, 2009.

Sec. 2. K.S.A. 2007 Supp. 79-3603 is hereby amended to read as follows: 79-3603. For the privilege of engaging in the business of selling tangible personal property at retail in this state or rendering or furnishing any of the services taxable under this act, there is hereby levied and there shall be collected and paid a tax at the rate of 5.3%. Within a redevelopment district established pursuant to K.S.A. 74-8921, and amendments thereto, there is hereby levied and there shall be collected and paid an additional tax at the rate of 2% until the earlier of the date the bonds issued to finance or refinance the redevelopment project have been paid in full or the final scheduled maturity of the first series of bonds issued to finance any part of the project upon:

(a) The gross receipts received from the sale of tangible personal property at retail within this state;

(b) the gross receipts from intrastate, interstate or international telecommunications services and any ancillary services sourced to this state in accordance with K.S.A. 2007 Supp. 79-3673, and amendments thereto, except that telecommunications service does not include: (1) Any interstate or international 800 or 900 service; (2) any interstate or international private communications service as defined in K.S.A. 2007 Supp. 79-3673, and amendments thereto; (3) any value-added nonvoice data service; (4) any telecommunication service to a provider of telecommunication services which will be used to render telecommunications services, including

except that, notwithstanding language to the contrary, only sales of personal property and services purchased by the organization and gross receipts as allowed in section I (a) (2) shall qualify for the exemption.

1 connection therewith. The tax imposed by this subsection shall be appli-
2 cable to the services of repairing, servicing, altering or maintaining an
3 item of tangible personal property which has been and is fastened to,
4 connected with or built into real property;

5 (r) the gross receipts from fees or charges made under service or
6 maintenance agreement contracts for services, charges for the providing
7 of which are taxable under the provisions of subsection (p) or (q);

8 (s) on and after January 1, 2005, the gross receipts received from the
9 sale of prewritten computer software and the sale of the services of mod-
10 ifying, altering, updating or maintaining prewritten computer software,
11 whether the prewritten computer software is installed or delivered elec-
12 tronically by tangible storage media physically transferred to the pur-
13 chaser or by load and leave;

14 (t) the gross receipts received for telephone answering services;

15 (u) the gross receipts received from the sale of prepaid calling service
16 and prepaid wireless calling service as defined in K.S.A. 2007 Supp. 79-
17 3673, and amendments thereto; and

18 (v) the gross receipts received from the sales of bingo cards, bingo
19 faces and instant bingo tickets by licensees under K.S.A. 79-4701, et seq.,
20 and amendments thereto, shall be taxed at a rate of: (1) 4.9% on July 1,
21 2000, and before July 1, 2001; and (2) 2.5% on July 1, 2001, and before
22 July 1, 2002. From and after July 1, 2002, all sales of bingo cards, bingo
23 faces and instant bingo tickets by licensees under K.S.A. 79-4701 et seq.,
24 and amendments thereto, shall be exempt from taxes imposed pursuant
25 to this section.

26 *Any nonprofit organization provided an exemption from the imposition*
27 *of the tax imposed by this act prior to January 1, 2009, shall retain such*
28 *exemption, and as such, any requirements imposed by the provisions of*
29 *section 1 et seq., and amendments thereto, shall have no effect on such*
30 *organization's exemption status pursuant to this section.*

31 Sec. 3. K.S.A. 2007 Supp. 79-3606 is hereby amended to read as
32 follows: 79-3606. *Any nonprofit organization provided an exemption from*
33 *the tax imposed by this act prior to January 1, 2009, shall retain such*
34 *exemption, and as such, any requirements imposed by the provisions of*
35 *section 1 et seq., and amendments thereto, shall have no effect on such*
36 *organization's exemption status pursuant to this section.* The following
37 shall be exempt from the tax imposed by this act:

38 (a) All sales of motor-vehicle fuel or other articles upon which a sales
39 or excise tax has been paid, not subject to refund, under the laws of this
40 state except cigarettes as defined by K.S.A. 79-3301 and amendments
41 thereto, cereal malt beverages and malt products as defined by K.S.A. 79-
42 3817 and amendments thereto, including wort, liquid malt, malt syrup
43 and malt extract, which is not subject to taxation under the provisions of

except that, notwithstanding language to the contrary, only sales of personal property and services purchased by the organization and gross receipts as allowed in section I (a) (2) shall qualify for the exemption.

except that, notwithstanding language to the contrary, only sales of personal property and services purchased by the organization and gross receipts as allowed in section I (a) (2) shall qualify for the exemption.

**KHFA SUPPORTS FAIR, EQUITABLE AND CONSISTENT
TREATMENT FOR ALL NOT FOR PROFITS AND SUPPORTS
CONSISTENT TREATMENT BETWEEN FOR PROFITS AND NOT
FOR PROFITS WHEN THEY REGULARLY SELL PRODUCTS OR
SERVICES TO THE GENERAL PUBLIC.**

The Kansas Health and Fitness Association supports changes in the treatment of sales tax exemptions for not-for-profits. Despite the fact that KHFA member clubs pay and collect millions of dollars annually in state and local taxes, we are not against truly benevolent not-for-profits receiving sales tax exemptions. These exemptions should be limited to purchases and some fund raising activities. However, not all non-profits should qualify for tax exemption. Kansas needs to establish a systematic approach to the granting of exemptions and subsequently treat all of the expert organizations in a similar fashion.

Only organizations that are truly benevolent should be exempt from sales taxes. There are many organizations that exist purely for the assistance of Kansans. They provide services that no private business would provide. These organizations would include the Boys and Girls Clubs, Big Brothers Big Sisters, Girl and Boy Scouts, Churches, American Diabetes Association, American Heart Association, and other similar organizations. These organizations should be exempt from sales taxes on purchases and limited fund raising sales activities.

Other organizations may provide services that the Federal, State or Local governments would have to provide in the absence of these organizations. The American Red Cross provides countless services that government would have to provide if the Red Cross was not there. KHFA believes when an organization clearly provides services in lieu of the government providing these services they should enjoy tax benefits.

Last summer the Kansas Department of Revenue identified 11 categories of services that should qualify and we have incorporated those 11 categories in legislation recommended to this Committee.

However, even if exempt, organizations that compete with the private sector on a regular basis should not have exemptions from paying and collecting sales tax. If an organization has a regular place of business, provides similar services that are provided by tax paying businesses, and/or offers for sale the goods or services on a regular basis, these organizations should not be exempt from collecting or paying sales tax. Allowing organizations that compete with the private sector cost the State of Kansas in many ways. First, these non-profits do not collect and remit sales tax to

the state. The unfair advantage this creates for tax paying businesses could force some to close. This costs the State revenues from not only sales taxes but also income and property taxes.

Groups and organizations that regularly sell goods and/or services should collect sales taxes. There is a significant difference between non-profits who occasionally sell items for fund raising and organizations that regularly sell goods and/or services. The organizations that regularly sell goods and/or services have the means to collect sales tax and should be required to do so. Their financial status is not in jeopardy as it is not the tax exempt that pays tax on these items that are sold, but consumers. These consumers should pay taxes based on the product sold, not the location of the purchase.

Finally, allowing non-profits who compete against tax paying companies to enjoy competitive advantages is contrary to the basic rules of tax fairness that has molded Kansas law for many years. It is not fair for an organization to sell similar goods and/or services as a private business and to be granted an unfair competitive edge. If someone can buy the same thing from one provider for a lower price due to a State regulation on taxes than they can from another, this is clearly unfair and not the intent of past legislatures. While pure fairness in taxation may not be possible, when it is possible and easy to remedy, the Legislature should make the necessary changes.

Whether or not you choose to “grandfather in” existing exempt organizations, those exemptions should be under the same rules as will exist for organizations who qualify in the future—direct purchases, isolated fundraising but not extend to the regular sale of goods and services.

The Kansas Health and Fitness Association requests that the Committee forward legislation to the House for a vote that would: 1) Exempt truly benevolent organizations from paying sales tax on purchases, 2) Exempt limited sales of products or services that are used for once a year fund raising activities, 3) Exempt Churches from sales tax, **and most importantly, 4) Require all exempt organizations that regularly sell a good and/or service to collect sales tax on those sales.**

Thank you for holding a hearing on this important matter. Please let me know if you have questions.

TESTIMONY
Greg Ferris
KANSAS HEALTH & FITNESS ASSOCIATION
BEFORE THE HOUSE COMMITTEE ON ASSESSMENT & TAXATION
HB 2938 AND HB ____ (bill number not yet assigned)
February 26, 2008

Mr. Chairman, members of the Committee. My name is Greg Ferris and I am here today representing the Kansas Health & Fitness Association.

As we all know the true definition of a "fair tax" is one someone else pays. As long as I don't have to pay it, it is fair. However, the Kansas Legislature has a history of trying to approach tax matters in a way that treats Kansans the same where possible. The reason this Committee is holding this hearing is to try to accomplish this equal treatment.

Kansans have also had a history of supporting non-profit organizations. Citizens and government alike see the benefits of non-profit organizations and their service to Kansas. The result of this is that the Legislature has granted certain tax benefits to some non-profits. However, the current system has put the Legislature in the unenviable position of picking and choosing on a case by case basis which organizations deserve tax advantages. This process is further complicated by the fact that if you don't ask for a bill to be introduced to cover your non-profit, you probably have no chance at any exemption.

This Committee is correct in trying to bring some sense to this process. KHFA encourages you to adopt the approach that has been recommended by the Department of Revenue. Exempting sales tax on direct purchases of certain qualifying non-profits and limited fund raising activities would clarify the process and the rules. Requiring all non-profits to collect sales tax on the sales of goods or services would create revenue for the State, without putting hardship on non-profits. The non-profit would not pay the tax, the purchasers of the goods or services would pay these tax.

The requirement for non-profits to collect sales tax on the sale of goods and services would correct an error that exists in Kansas. Currently many Kansans are discriminated against when they buy certain goods or services. This is because the tax collected is not based on the good purchased, but from whom it was purchased. This makes no logical sense and would be remedied by the recommendation of the Department of Revenue.

When a non-profit sells goods or services, on a regular basis, which are also sold by tax paying companies it creates an unintended competitive advantage to the non-profit. This allows the non-profit to sell the good or service for at least six to seven percent less than a tax paying business. The consequence of this is that the State loses significant revenues and some business must close their doors because they cannot compete. This multiplies the loss to the State as these companies no longer pay income or school taxes.

Finally I would encourage you not to grandfather all tax exemptions that currently exist. As stated there currently exists a discrimination that should and can be resolved. It is fine if an organization is grand fathered in respect to purchases. But in no way should this grand fathering extend to the regular sales of goods and services.

Thank you for allowing me to speak to you today. I will be glad to answer any questions.



**Mark Desetti, Testimony
House Taxation Committee
February 26, 2008**

House Bill 2938

Also representing the Kansas Association of School Boards

Mr. Chairman, members of the committee, thank you for the opportunity to appear before you today to share our thoughts on **HB 2938**. I would like to note that I am speaking today for both KNEA and the Kansas Association of School Boards.

I also want to clarify that since the bill was not available to read, I am basing this testimony on my understanding of what the bill is intended to do. I am sure that there a plenty of committee members who will correct me if I am wrong!

This bill would bring consistency and clarity to the issue of non-profit sales tax exemptions. As you know the state statute on exemptions individually lists each entity receiving an exemption. The statute is now up to quadruple letters as more and more exemptions are granted. There is a belief that once one group discovers that another has an exemption, they come up and ask for theirs. Probably each of these groups is a worthy organization and deserving of consideration but it seems to us that a consistent system for the granting of such exemptions would make the whole system more fair and keep the impact on the state's revenue stream predictable within the limited predictability of sales taxes in general.

This bill first grandfathers in all existing groups and ensures their continued exemptions. That is a built-in protection for those that already enjoy exemptions.

Secondly the bill establishes that 501c3 organizations would not pay sales taxes on their own purchases.

In addition the bill establishes an exemption from sales tax collections on isolated fundraisers. Girl Scout cookies – the most cited exemption – are protected because they constitute an annual fundraiser with a time limit.


Passage of this bill would make it unnecessary for each individual organization to come before the tax committee seeking its own exemptions. Everyone would be treated fairly and would know the rules. It is a step forward in stabilizing the system and as such we support it.

It is also my understanding that either this bill or another version of it would include a provision that required 501c3 organizations to collect sales tax on services that they sell. This provision would get to the issue of "unfair competition" that has sometimes been raised in the committee.

We do not have a position on this particular provision. We simply would urge the committee to pass a consistent policy on sales tax exemptions as a means of bringing fairness and consistency to the tax system.

As a final note, we continue to believe that the legislature should make a comprehensive examination of the entire tax system to ensure that our many provisions result in a system that will provide stable funding for all state services and that is fair to both citizens and business.

FISCAL FOCUS

Budget and Tax Policy in  Perspective

April Holman
Legislative Testimony
House Bill 2938
House Taxation Committee
February 26, 2008

Good morning Chairman Wilk and members of the Committee. On behalf of Kansas Action for Children (KAC), I would like to thank you for this opportunity to testify on House Bill 2938.

KAC is a not-for-profit child advocacy organization that has been in existence since 1979. KAC promotes policies that aid family economic stability because instability creates stress and the potential for harm to children through less consistent medical care, fewer opportunities for early learning and the potential for lower performance in school.

Our opposition to House Bill 2938 is not in any way a reflection of the value we place on not-for-profit organizations and the good work that they do in Kansas. Our opposition to the passage of additional sales tax exemptions is part of a larger concern about the erosion of the sales tax base. The sales tax is a key source of revenue to the State General Fund (SGF), which is in turn a key source of funding for state government and for programs and services vital to children and families. The number of sales tax exemptions in Kansas has more than doubled in the past 15 years, resulting in a significant reduction in possible SGF revenues.

We believe that instead of adopting more exemptions to the sales tax, a comprehensive modernization of the Kansas tax system is needed. Recent reports from the Kansas Department of Revenue show that Kansas taxes disproportionately impact the poor and that both the sales tax and property tax bases have been eroded significantly in recent years. This has resulted in tax shifts as well as revenue shortfalls and the need in some years to increase tax rates. In order to address these issues as well as the changing nature of the Kansas economy, we believe that a comprehensive plan should be created for modernizing Kansas taxes. If we can update and improve the efficiency of our tax system the need for exemptions will not longer be an issue. To this end, we respectfully oppose the passage of additional sales tax exemptions and request that the committee consider a broader solution to problems with the Kansas tax system.