

TOPEKA BAR ASSOCIATION
534 S. Kansas Avenue, Suite 1130, Topeka, KS

TO: House Judiciary Committee
FROM: Topeka Bar Association
DATE: March 15, 2012
RE: Opposition to HB 2763

Good day Chairman and members of the Committee. My name is Mary Christopher, and I am testifying on behalf of the Topeka Bar Association. The Topeka Bar Association is a professional association with roughly 600 attorney members in the Topeka and Shawnee County area.

The Topeka Bar Association is opposed to HB 2763 because it does not provide an exemption for the consumption tax on professional services. This would include a tax on the services performed by professionals such as engineers, architects, appraisers, accountants and attorneys. The Topeka Bar Association understands legislators want to hear from their constituents in order to understand how this tax will impact the practice of law. Our position is that the imposition of a consumption tax on professional services is not only bad for business in general, but it imposes an additional burden on low-income citizens and puts our businesses and law firms at a competitive disadvantage.

Many unique situations arise during the delivery of legal services. These situations are not suited to the imposition of a consumption tax. In the case of legal services, attorneys will have to collect a tax from their clients for the provision of legal services in Kansas and the expenses of representation. If an hourly fee option is chosen, the applicable taxes would have to be added to the client's monthly bill. This is bad for business and will convince some clients to seek representation by out-of-state attorneys, decreasing available revenue within the state.

Corporate clients will merely refuse to pay such a tax and will expect the attorney to "eat the cost" as part of the attorney's overhead. This will increase the cost of doing business and cause a decline in income tax revenue. In addition, this would essentially impose a third layer of State taxation upon attorneys in private practice who already are subject to taxation of their personal income and firm income.

If a contingent fee option is chosen, any consumption tax would have to be deducted from the client's recovery after the attorneys' fees have been calculated and approved by the court. In calculating such a consumption tax, contingent fee arrangements pose several administrative problems which will have to be addressed. For example, will the tax be imposed

on total recovery; total recovery minus attorney fees (which will be taxed separately as income); or total recovery minus attorney fees and costs (which can be substantial)? If costs are to be deducted, will "costs" consist only of statutory court costs, or include costs of depositions, expert witnesses, telephone calls, costs of duplication and messenger service? Simply determining what part of the recovery will be subject to taxation presents a daunting task. In addition, contingent fee cases are used much more often in cases involving low-income citizens than the wealthy or corporations. Such a tax would be considered regressive—despite its constant rate—because it is more burdensome for low-income taxpayers than high-income taxpayers.

In this fragile economy, we are all looking for ways for our businesses to succeed. The elimination of the consumption tax exemption for professional services will result in hardship on legal professionals by imposing yet another cost of doing business in the State of Kansas. The passage of HB 2763 will mean an additional tax burden on professionals that will have the consequence of discouraging the development of new business within the state, decrease the available revenue stream and result in our best and brightest professionals seeking employment outside this state.

The Topeka Bar Association recognizes the need for legislators to balance the state budget and is a strong proponent of good tax policy. However, there are many policy reasons and potential problems in imposing a consumption tax on professional legal services. For instance, one case may involve legal representation in multiple states; questions will doubtlessly arise as to which services should be included within the definition of taxable legal professional services.

Moreover, as members of the Bar, the attorneys of the TBA provide countless hours of pro bono services as a way of serving our community. In other words, the members of our profession reduce the taxpayers' burden by donating legal services and "pay it forward" with active community involvement.

Eliminating the exemption for professional legal services is bad for business in general, places an additional burden on low-income citizens and puts Kansas attorneys and law firms at a competitive disadvantage. The nearly 600 members of the Topeka Bar Association believe this is a critical matter and we urge the legislature to reject HB 2763.