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CHURCH CONSTRUCTION: SALES/USE TAX EXEMPTION

House Bill 4163 as enrolled
Public Act 274 of 1998
Sponsor: Rep. Jessie Dalman

House Bill 4743 as enrolled
Public Act 275 of 1998
Sponsor: Rep. Kirk A. Profit

House Committee: Tax Policy
Senate Committee: Finance
Second Analysis (7-28-98)

THE APPARENT PROBLEM:

Churches, synagogues, mosques, temples, and other houses of worship are exempt from the sales and use taxes when purchasing goods and supplies for their use (as are other non-profits). For example, if church members buy construction materials and a volunteer work crew undertakes a construction project, no sales or use taxes are due on those materials. However, if a church hires a contractor to carry out a project at church property, the contractor is obligated to pay sales or use taxes on materials used or consumed in the undertaking. According to testimony before the House Tax Policy Committee, such exemptions were available from 1949 to 1970, when they were repealed. Today, exemptions exist only for materials purchased by contractors working on nonprofit hospitals and nonprofit housing. Health and shelter are important human needs, but churches and other houses of worship also serve important spiritual and material needs. Indeed, reportedly, more than ever, churches are taking on an expanded role in addressing community problems. Some people believe that the current sales and use tax exemptions for construction materials be extended to those cases when contractors are working on church property.

THE CONTENT OF THE BILLS:

The bills would exempt from the sales and use taxes the purchase of tangible personal property purchased by a person engaged in the business of constructing, altering, repairing, or improving real estate for others if the property is to be affixed to or made a structural part of a sanctuary.

The term "sanctuary" would be defined as only that portion of a building that is owned and occupied by a regularly organized church or house of religious worship that is used predominantly and regularly for public worship. The term would include a sanctuary to be constructed that is owned, occupied, and used as described. A "regularly organized church or house of religious worship" would mean a religious organization qualified under Section 501 (c) (3) of the federal Internal Revenue Code.

House Bill 4163 would amend the General Sales Tax Act (MCL 205.54p). House Bill 4743 would amend the Use Tax Act (MCL 205.94m). The two bills are tie-barred to one another.

FISCAL IMPLICATIONS:

The Senate Fiscal Agency has estimated the annual loss in sales tax collections at \$4 million and in use tax collections at \$1 million. (SFA analysis dated 6-15-98)

ARGUMENTS:

For:

The bills would extend to churches and other houses of religious worship the sales and use tax exemptions currently enjoyed by nonprofit hospitals and nonprofit housing. This restores an exemption that tax specialists say was available to churches (and some other entities) from 1949 to 1970. The bills provide tax relief (at a small cost to the state) to churches --

valuable and unique institutions that are carrying out all manner of important work for the people of the state.

Against:

A number of concerns have been expressed about this bill. For one thing, it provides the tax exemption not to a church or religious organization, but to a contractor. Providing a tax exemption to a business based on the nature of the customer is quite rare and problematic. Second, there is the issue of which organizations or buildings qualify as churches. Reportedly, this and similar exemptions were eliminated in 1970 because of contractor abuse. Further, there are proposals afoot to apply this kind of exemption to many other entities, including schools, universities, local government, airports, and others. Taken together, such exemptions would result in significant revenue losses. And it is hard to see the justification for singling out churches for the extension of the sales and use tax exemptions.

Response:

As enacted, the bills deal with the issue of how the exemption is to apply by specifying that the exemptions are only for the "sanctuary" (or public worship) portions of church buildings and only for those organizations that qualify as religious institutions under the federal tax code.

Rebuttal:

There are obvious questions. How is this tax exemption to be policed to ensure that materials are used only for a "sanctuary"? Is the exemption clear enough; that is, is it obvious what constitutes a "sanctuary" under the bills? Or what qualifies as "public worship"? Do classrooms for religious education qualify? Choir rehearsal rooms?

Analyst: C. Couch

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.