2013 HOUSE FINANCE AND TAXATION

HB 1240

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1240
January 22, 2013
Job #17510

☐ Conference Committee

Committee Clerk Signature Mary Brucker

Explanation or reason for introduction of bill/resolution:

A Bill relating to sales tax exemption for charitable nonprofit organizations.

Minutes:

Attached testimony #1, amendment #2, testimony #3, #4, #5, #6

Chairman Belter: Opened hearing on HB 1240.

Representative Mock: Introduced bill. The bill was brought to me by nonprofit organizations, not only in Grand Forks but across the state identified as a high priority on their agenda. Nonprofits provide a tremendous service to our communities. There are about 3,500 nonprofit organizations that operate in and around our state. In this bill any purchases made by a 501 (c) (3) in North Dakota would be exempt from paying sales tax. Many states have a similar exemption for nonprofits largely because they are organized for charitable purposes. There are tax deductible contributions made to the nonprofits. The more money that nonprofits can keep in their organizations the more benefits they can provide to the people of their community. We propose this to be for 501 (c) (3) because of the public good and they are a pure charitable purpose. There is a proposed amendment by one of our co-sponsors, Representative Fehr. As one of the sponsors we support this proposed amendment. As a director of a nonprofit organization I work with the volunteers and the supporters that benefit our communities and I can think of no greater joy than to work with the nonprofits and help make sure they can expand their capacity to help all North Dakotans.

Representative Fehr: See attached testimony #1 and amendment #2.

Vice Chairman Headland: The American Legion, VFW, and the Am Vets all serve alcohol. Are you asking that we get rid of these taxes that the state currently collects on sales of alcoholic beverages?

Representative Fehr: I belong to posts that do not have clubs and we don't serve alcohol. There are some members here from clubs and they can address that question. I don't know what their budget looks like because I'm not part of a post that has a club but I'm assuming that they have supplies (food, alcohol, etc.) Whether or not they fall under the 501 (c) (19) and whether or not they pay sales tax I will defer to them.

Dana Schaar, Executive Director of North Dakota Association of Nonprofit Organizations: Refer to attached testimony #3.

Representative Drovdal: I belong to several nonprofits and recognize the important contributions they make in their particular areas throughout the state and it's appreciated. In North Dakota we have three legs of our funding at the state level; sales tax, income tax, and energy tax. Nonprofits don't pay the energy tax, we don't charge you income tax, and if we allow the sales tax to go. Nonprofits use the services that the state provides whether it's keeping the highways open or whatever. Don't you feel that there are some obligations to the nonprofits to help cover some of the costs for the state providing their services?

Dana Schaar, Executive Director of North Dakota Association of Nonprofit Organizations: We certainly recognize the tax structure in North Dakota and that services are necessary however, we believe through their designation of the 501 (c) (3), a charitable nonprofit that it is given because of their charitable educational purpose so that is helping government make better communities and serve those purposes. We believe that is part of the partnership between governments and nonprofits to meet the needs of the people.

Vice Chairman Headland: The federal and state government has allowed for set ups of 501 (c) (3) to provide an opportunity for their donors to contribute to charity. I believe donors receive a tax credit for doing so. Is that enough of a reason and enough of a benefit to a charity to opt out of sales tax?

Dana Schaar: Certainly 501 (c) (3) nonprofits have qualified donors to get a tax deduction for contributions to charitable nonprofits. A lot of nonprofits operate on donations only. If they are paying it on sales tax they are using the donations they received from the community to pay sales tax instead of meeting their mission. We recognize that there are services that have to be provided and nonprofits benefit from them as do other citizens but we still believe this is money that can go into the mission to support the work of the nonprofits.

Representative Marie Strinden: I echo Representative Drovdal's remarks that nonprofits help across the state and fill in for what the government can't or won't do. Can you give us a list of the states around us that offer this same exemption for nonprofits?

Dana Schaar: Minnesota has a similar sales tax reduction to what we are asking in this bill. South Dakota's exemptions are also similar to ours currently and Montana does not have a sales tax.

Jaclyn Bugbee, Executive Director of Ruth Meiers Hospitality House in Bismarck: Refer to attached testimony #4.

Chairman Belter: You said in your testimony that you had $50,000 in sales tax relief. You mean that you pay $50,000.

Jaclyn Bugbee: Roughly with a $1.5 million budget, $400,000 is salaries and the rest are utilities. I pay about $1 million whether it's supplies for general maintenance or paying for the food for our soup kitchens as we provide our homeless with a meal in the morning and

at night, we provide them with all their bedding so most of our purchases are supplies to assist the homeless.

Chairman Belter: The food is not taxed currently.

Jaclyn Bugbee: It's not but some of it is depending on what it is. We are looking at about $50,000 at the end of this year with our increased budget.

Representative Drovdal: You say 85% of your budget is by donations made by individuals which is great and we can be proud of North Dakotans who support the nonprofits. Aren't there some programs that the state of North Dakota is helping you with?

Jaclyn Bugbee: Currently the only funding we receive from the state comes from emergency solution grants. That funding is an allocation to the state from HUD. The state receives about anywhere between $300,000-$400,000 each year from HUD and the state matches $50,000 of that to support all of the organizations in the state that provide shelters and other solutions. We get a reimbursement of our utility costs which is about $29,000 a year. The other amount of money that I get from the state and federal government is funding to support the homeless that have a disability and we can assist them with rent assistance which is a direct allocation from HUD and we get $39,000 a year from that.

Representative Trottier: You're saying that you submit $50,000 a year in sales tax.

Jaclyn Bugbee: We are in the process of adding an additional emergency shelter which will house 120 men from the current 25 that we can provide for. With that and the additional supplies we are looking at close to $50,000 in sales taxes we provide on a 5% sales tax. Most of our funding is supply based.

Representative Trottier: Do you know what it would have been in 2011?

Jaclyn Bugbee: I don't have that with me but I could get you that information.

Representative Marie Strinden: I assume your nonprofit organization is like the one I head where you don't pay income tax but you pay quite a large amount of money from employment tax. What are you paying into the state?

Jaclyn Bugbee: I normally budget about 10% of payroll taxes. Our current budget has our salaries just shy of $480,000 and with the expansion we are in the process of it will add another four full time employees to that so we are looking at a budget of almost $600,000 so about $60,000 is what we budget for payroll taxes. I don't have that exact number but a lot of my budget is for salaries to provide the services or supplies to provide for those in need.

Gayle Klopp, Co-Executive Director of Charles Hall Youth Services, Bismarck: Refer to attached testimony #5.

Representative Klein: In that last paragraph you relate Charles Hall to some others. Can you give me an example of which ones that are different than yours?

Gayle Klopp: The 501 (c) (3) that are hospitals and education institutions don't pay sales tax.

Representative Trottier: Do you have any idea how much sales tax you paid last year?

Gayle Klopp: I think it was probably in the neighborhood of $20-25,000 because the majority of our budget is salaries.

Vice Chairman Headland: Your organization provides noble causes and provides services to a lot of citizens that need help. You're reliant on donations and if we lessened the taxpayer's obligations overall I think that would put them in a position to be better able to donate to any charitable type organizations. If we pass this bill it takes away our ability to provide broad relief to taxpayers in the form of lower rates. If we're looking at a big package would you be better off not supporting this bill and supporting a bill that would provide a bigger tax load reduction to the citizens and in return hoping for more charitable donating?

Gayle Klopp: I don't think so. I would much rather not pay sales tax and have to go out and get donations. It's not easy to get donations and it costs money to get donations.

Vice Chairman Headland: I understand that and I think part of the reason for that is a citizen's obligation to pay taxes in a lot of cases have become so great that there's just not the money for the charitable donations. This makes a charitable organization more reliable on the scraps from the government versus having to work for donations. I'm not saying this because I completely disagree with it but I think long term moving in this direction probably hurts you more than it helps you.

Gayle Klopp: That's the decision you're here for today.

Representative Drovdal: You state the Bakken is the reason for more demands when in fact the Bakken has actually provided a lot of dollars for donations. In my area they are really pleased with the volume their getting. I hate to see the Bakken used as an excuse. The Bakken is located in northwestern North Dakota. Do you have facilities out there that you are serving that you would have that great of an impact from the Bakken?

Gayle Klopp: We don't have facilities out there but we have children we serve from the entire state. We get children sent to us from all across the state.

Representative Drovdal: Not necessarily because of the Bakken formation.

Gayle Klopp: I think it has increased the need for social services. I think there are more children in foster care today than there was before it.

Representative Owens: In regards to sales tax you list hospitals. Hospitals are exempt from collecting sales tax; they are not exempt from paying it when they purchase goods and services.

Jaclyn Bugbee: Hospitals are exempt from paying sales tax, clinics are not.

Gayle Klopp: I think the clinics are included in the fiscal note for this bill.

Representative Marie Strinden: It's not that you're just helping people from across the state but you are helping the government with services that they can't or won't provide. It sounds like you're doing a lot of things in your organization that if you didn't exist the state would have to step in and take care of. Is that true?

Gayle Klopp: And we're supported by the state as well.

Murray Sagsveen, member of the board of directors of the North Dakota Association of Nonprofit Organizations: See attached testimony #6.

Lonnie Wangen, Commissioner of Veterans Affairs: Each service organization in the state is having a very difficult time in keeping up with their memberships and fundraising so they can provide the services to the veterans we have in the state of North Dakota. They pay for the national service officers up at the regional office at the Veterans Hospital. Veterans from the state and out of state residences come to our state and get the services they need. We are constantly getting called to help veterans but all the coffers are depleted from helping so many veterans. We passed the hats and many of the service members are digging into their own pockets to provide the help. Anything we can do to help the veterans service organizations keep more money in their hands to help our veterans I ask you to please support.

Chairman Belter: Any further testimony in support of 1240? Any opposition to 1240? Any neutral testimony?

Representative Klein: I'd like to ask the tax department a question please. In regards to educational institutions, like Rasmussen College, are they covered and don't pay taxes?

Myles Vosberg: There is an exemption for educational institutions in the law. Even a private educational institution, as long as its providing courses similar to what the state would do, does qualify for a sales tax exemption on their purchases.

Chairman Belter: Are there other organizations that are specifically pointed out in the code that are eligible for this?

Myles Vosberg: There are and I think hospitals are one that would be exempt also schools, nursing homes, and intermediate care facilities, are the major ones. A substantial portion of the fiscal note with this bill is the clinics that are part of a nonprofit hospital or other clinics not associated with a hospital but are also nonprofit. That's a pretty good chunk of the fiscal note, about $20 million.

Chairman Belter: So you're saying there are clinics that currently don't have an exemption that will now get it under this?

Myles Vosberg: You are correct. Clinics currently are required to pay sales tax even though hospitals are not. If you have an entity that all in the same entity has a hospital and a clinic the clinic portion still has to pay tax but those costs associated with the hospital are not subject to tax.

Chairman Belter: If you have a clinic within a hospital facility is that clinic paying tax?

Myles Vosberg: That clinic today is paying tax.

Chairman Belter: Essentially all clinics are paying tax.

Myles Vosberg: That's correct.

Chairman Belter: Could you tell us from this fiscal note how much of this would be made up of clinic money?

Myles Vosberg: The way we calculated this fiscal note is that we got a break down of information on the costs based on various types of nonprofit organizations that fall into the 501 (c) (3) category. Then we estimated a taxable component of those expenditures that would be subject to sales tax. I would have to do some calculations. Total hospitals and clinics, mental healthcare all together have about $3.1 billion in costs and we estimated that 5% of that total group would be subject to sales tax. That's about $158.7 million of expenditures subject to sales tax out of the total $262 million which is the basis of the fiscal note so more than 50% of it.

Chairman Belter: Of this $18 million would be clinic?

Myles Vosberg: Yes.

Vice Chairman Headland: You've seen the proposed amendment to add the 501 (c) (19) and I'm assuming there will be a fiscal impact that would increase the amount of the fiscal note so if you could get us that it would be appreciated.

Myles Vosberg: I was not aware of the amendment before the hearing so we haven't calculated that fiscal impact.

Chairman Belter: Is there any further testimony to 1240? We will close the hearing on HB 1240.

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1240
February 6, 2013
Job #18433

☐ Conference Committee

Committee Clerk Signature Mary Brucker

Explanation or reason for introduction of bill/resolution:

A Bill relating to sales tax exemption for charitable nonprofit organizations.

Minutes:

Representative Drovdal: Made a motion to move the amendments 3001.

Representative Hatlestad: Seconded.

Vice Chairman Headland: Could Representative Drovdal explain the amendment?

Representative Drovdal: It adds all the nonprofits on there.

Chairman Belter: Any other discussion?

VOICE VOTE: MOTION CARRIED.

Representative Froseth: Wouldn't that increase the fiscal note?

Chairman Belter: I'm sure it would. What are your wishes on this?

Representative Froseth: Made a motion for a Do Not Pass.

Representative Dockter: Seconded.

ROLL CALL VOTE: 9 YES 5 NO 0 ABSENT
MOTION CARRIED FOR DO NOT PASS AS AMENDED.

Representative Trottier will carry this bill.

FISCAL NOTE
Requested by Legislative Council
02/07/2013

Amendment to: HB 1240

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			$(18,090,000)	$(1,570,000)		
Expenditures						
Appropriations						

1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed HB 1240 provides a sales tax exemption for charitable nonprofit organizations and posts/organizations of past and present members of the US Armed Forces.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

If enacted, engrossed HB 1240 is expected to reduce state general fund and state aid distribution fund revenues by an estimated $19.66 million, for the 18 months in the 2013-15 biennium for which it would be in effect. This fiscal impact is for the non-profit charitable organizations only. The engrossed bill expands the exemption for sales made to certain military organizations - such as the VFW Associations and American Legion Posts. We cannot estimate the additional state general fund and state aid distribution fund revenue reduction that would result from this expanded sales tax exemption.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 328-3402

Date Prepared: 02/08/2013

FISCAL NOTE
Requested by Legislative Council
01/15/2013

Bill/Resolution No.: HB 1240

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			$(18,090,000)	$(1,570,000)		
Expenditures						
Appropriations						

1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1240 provides a sales tax exemption for charitable nonprofit organizations.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

If enacted, HB 1240 is expected to reduce state general fund and state aid distribution fund revenues by an estimated $19.66 million, for the 18 months in the 2013-15 biennium for which it would be in effect.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn L. Strombeck
Agency: Office of Tax Commissioner
Telephone: 328-3402
Date Prepared: 01/19/2013

13.0093.03001
Title.04000

Prepared by the Legislative Council staff for
Representative Fehr
January 19, 2013

VK
2/6/13

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1240

Page 1, line 8, after the underscored closing bracket insert "or section 501(c)(19) of the Internal Revenue Code [26 U.S.C. 501(c)(19)]"

Renumber accordingly

Date: 2-6-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1240

House Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment 3001

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Drovdal Seconded By Rep. Hatlestad

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley Belter			Rep. Scot Kelsh		
Vice Chairman Craig Headland			Rep. Steve Zaiser		
Rep. Matthew Klein			Rep. Jessica Haak		
Rep. David Drovdal			Rep. Marie Strinden		
Rep. Glen Froseth					
Rep. Mark Owens					
Rep. Patrick Hatlestad					
Rep. Wayne Trottier					
Rep. Jason Dockter					
Rep. Jim Schmidt					

Total (Yes) No

Absent

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Voice Vote

Motion Carried

Date: 2-6-13
Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1240

House Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken: ☐ Do Pass ☒ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Froseth Seconded By Rep. Dockter

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley Belter	✓		Rep. Scot Kelsh		✓
Vice Chairman Craig Headland	✓		Rep. Steve Zaiser		✓
Rep. Matthew Klein	✓		Rep. Jessica Haak		✓
Rep. David Drovdal	✓		Rep. Marie Strinden		✓
Rep. Glen Froseth	✓				
Rep. Mark Owens	✓				
Rep. Patrick Hatlestad		✓			
Rep. Wayne Trottier	✓				
Rep. Jason Dockter	✓				
Rep. Jim Schmidt	✓				

Total (Yes) 9 No 5

Absent 0

Floor Assignment Rep. Trottier

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1240: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (9 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1240 was placed on the Sixth order on the calendar.

Page 1, line 8, after the underscored closing bracket insert "or section 501(c)(19) of the Internal Revenue Code [26 U.S.C. 501(c)(19)]"

Renumber accordingly

2013 TESTIMONY

HB 1240

HB 1240 Testimony

Good morning, Mr Chairman and members of the Committee:
I am Representative Alan Fehr, District 36.
I am here to testify in support of HB 1240 and to offer an amendment.
Over the past 25 years I have gained considerable experience with nonprofits. I have been a volunteer with many nonprofits, I've been involved in starting a nonprofit, and my wife is the executive director of a nonprofit.
Many nonprofits are small organizations with a handful of employees who organize many volunteers and activities that help people and serve their communities. They operate very efficiently because employees typically are driven by a sense of purpose and dedication, volunteering considerable time beyond what they are paid.
At a time when we are trying to reduce the size of our government, we need our hardworking nonprofits to run their programs that help people. However, they have seen dramatic changes in funding since the terrorist attacks of 9/11 and even less funding over the past five years as the nation's economic downturn has substantially reduced availability of grant funding.
We expect this trend to continue and funding to continue to be in short supply.
Nonprofits are mainly funded by grants and donations. This bill and the exemption from sales tax will not fund their programs but it will allow them to keep more of the funding that they have secured.
This bill specifically names 501(c)(3) nonprofits. I am offering an amendment to also include 501(c)(19) nonprofits – Veteran organizations. This includes, but is not limited to, the American Legion, VFW, and AMVETS, all organizations of which I am a life member and volunteer my time. These organizations serve Veterans, their families, and their communities. They play a vital role in welcoming home our deployed service members, helping them adjust to civilian life, encouraging them to seek help of needed, and advocating for their interests.
I am asking for your support of HB 1240 and this amendment to include 501(c)(19) Veteran organizations.
I would welcome any questions.

Other Mutual Financial Organizations

Every other organization included in this section must show in its application the state in which the organization is incorporated and the date of incorporation; the character of the organization; the purpose for which it was organized; its actual activities; the sources of its receipts and the disposition thereof; whether any of its income may be credited to surplus or may benefit any private shareholder or individual; whether the law relating to loans, investments, and dividends is being complied with; and, in general, all facts relating to its operations that affect its right to exemption.

The application must include detailed information showing either that the organization provides both reserve funds for and insurance of shares and deposits of its member financial organizations or that the organization provides reserve funds for shares or deposits of its members and 85% or more of the organization's income is from providing reserve funds and from investments. There should be attached a conformed copy of the articles of incorporation or other document setting forth the permitted powers or activities of the organization; the bylaws or other similar code of regulations; and the latest annual financial statement showing the receipts, disbursements, assets, and liabilities of the organization.

501(c)(19) - Veterans' Organizations

A post or organization of past or present members of the Armed Forces of the United States must file Form 1024 to apply for recognition of exemption from federal income tax. You should follow the general procedures outlined in chapter 1. The organization must also meet the qualifications described in this section.

Examples of groups that qualify for exemption are posts or auxiliaries of the American Legion, Veterans of Foreign Wars, and similar organizations.

To qualify for recognition of exemption, your application should show:

1. That the post or organization is organized in the United States or any of its possessions,
2. That at least 75% of the members are past or present members of the U.S. Armed Forces and that at least 97.5% of all members of the organization are past or present members of the U.S. Armed Forces, cadets (including only students in college or university ROTC programs or at armed services academies) or spouses, widows, widowers, ancestors, or lineal descendants of any of those listed here, and
3. That no part of net earnings inure to the benefit of any private shareholder or individual.

In addition to these requirements, a veterans' organization also must be operated exclusively for one or more of the following purposes.

1. To promote the social welfare of the community (that is, to promote in some way the common good and general welfare of the people of the community).
2. To assist disabled and needy war veterans and members of the U.S. Armed Forces and their dependents and the widows and orphans of deceased veterans.
3. To provide entertainment, care, and assistance to hospitalized veterans or members of the U.S. Armed Forces.
4. To carry on programs to perpetuate the memory of deceased veterans and members of the Armed Forces and to comfort their survivors.
5. To conduct programs for religious, charitable, scientific, literary, or educational purposes.
6. To sponsor or participate in activities of a patriotic nature.
7. To provide insurance benefits for its members or dependents of its members or both.
8. To provide social and recreational activities for its members.

Auxiliary unit. An auxiliary unit or society of a veterans' organization can apply for recognition of exemption provided that the veterans' organization (parent organization) meets the requirements explained earlier in this section. The auxiliary unit or society must also meet all the following additional requirements.

1. It is affiliated with, and organized in accordance with, the bylaws and regulations formulated by the parent organization.
2. At least 75% of its members are either past or present members of the U.S. Armed Forces, spouses of those members, or related to those members within two degrees of kinship (grandparent, brother, sister, and grandchild represent the most distant allowable relationship).
3. All of its members either are members of the parent organization, spouses of a member of the parent organization, or related to a member of such organization within two degrees of kinship.
4. No part of its net earnings inure to the benefit of any private shareholder or individual.

Trusts or foundations. Trusts or foundations for a veterans' organization also can apply for recognition of exemption provided that the parent organization meets the requirements explained earlier. The trust or foundation must also meet all the following qualifications.

1. The trust or foundation is in existence under local law and, if it is organized for charitable purposes, has a dissolution provision similar to charitable organizations. (See Articles of Organization in chapter 3 of this publication.)
2. The corpus or income cannot be diverted or used other than for:
   a. The funding of a veterans' organization, described in this section,
   b. Religious, charitable, scientific, literary, or educational purposes or for the prevention of cruelty to children or animals, or
   c. An insurance set aside.
3. The trust income is not unreasonably accumulated and, if the trust or foundation is not an insurance set aside, a substantial portion of the income is in fact distributed to the parent organization or for the purposes described in item 2(b).
4. It is organized exclusively for one or more of the purposes listed earlier in this section that are specifically applicable to the parent organization.

Tax treatment of donations. Donations to war veterans' organizations are deductible as charitable contributions on the donor's federal income tax return. At least 90% of the organization's membership must consist of war veterans. The term war veterans means persons, whether or not present members of the U.S. Armed Forces, who have served in the U.S. Armed Forces during a period of war (including the Korean and Vietnam conflicts, the Persian Gulf war, and later declared wars).

501(c)(20) - Group Legal Services Plan Organizations

An organization or trust created in the U.S. for the exclusive function of forming a part of a qualified group legal services plan or plans cannot be exempt under section 501(c)(20) after June 30, 1992. However, an organization that has already received a determination or ruling letter from the IRS recognizing its exemption under section 501(c)(20) may, if it otherwise qualifies, request a ruling or determination modifying its exemption from section 501(c)(20) to section 501(c)(9) effective July 1, 1992.

501(c)(21) - Black Lung Benefit Trusts

If your organization wishes to obtain recognition of exemption as a black lung benefit trust, it must file its application by letter and include a copy of its trust instrument. The general procedures to follow for obtaining recognition are discussed in chapter 1 of this publication. This section describes the additional (or specific) information to be provided upon application.

Requirements. A black lung benefit trust that is established in writing, created or organized in the United States, and contributed to by any person (except an insurance company) will qualify for tax-exempt status if it meets both of the following requirements. The trust must be irrevocable and there can be no right or possibility or reversion of the corpus or income of the trust to the coal mine operator or other creator, except that the creator may recover excess contributions.

1. Its only purpose is:

   a. To satisfy in whole or in part the liability of that person (generally, the coal mine operator contributing to the trust) for, or with respect to, claims for compensation arising under federal or state statutes for disability or death due to pneumoconiosis,

   b. To pay the premiums for insurance that covers only that liability,

   c. To pay the administrative and other incidental expenses of that trust (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the trust and processing of black lung claims against such person arising under federal or state statutes, and

   d. To pay accident and health benefits or insurance premiums and other administrative expenses for retired coal miners and their spouses. The amount of assets available for such use is generally limited to 110% of the present value of the liability for black lung benefits.

2. No part of its assets can be used for, or diverted to, any purposes other than:

   a. The purposes described in 1,

   b. Payments into the Black Lung Disability Trust Fund or into the general fund of the U.S. Treasury (other than in satisfaction of any tax or other civil or criminal liability of the person who established or contributed to the trust),

   c. Investment in public debt securities of the U.S., obligations of a state or local government that are not in default as to principal or interest, or time or demand deposits in a bank or an insured credit union located in the United States. (These investments are restricted to the extent that the trustee determines that a portion of the assets is not currently needed for the purposes described in 1.)

An annual information return is required of exempt trusts described in section 501(c)(21). Form 990-BL, Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Persons, must be used for this purpose. A trust that normally has gross receipts in each tax year of no more than $50,000 is excepted from this filing requirement. However, it must submit an annual electronic notice, Form 990-N (*e-Postcard*).

Excise taxes. See Chapter 5 for information on the excise tax that may be imposed on the organization.

Tax treatment of donations. Contributions by a taxpayer (generally, the coal mine operator) to a black lung benefit trust are deductible for federal income tax purposes under section 192. The deduction is limited, and any excess contributions are subject to an excise tax of 5%. Form 6069, *Return of Excise Tax on Excess Contributions to Black Lung Benefit Trust Under Section 4953 and Computation of Section 192 Deduction,* is used to compute the allowable deduction and any excise tax liability. The form does not have to be filed if there is no excise tax liability. For more information about these contributions, see Form 6069 and its instructions.

501(c)(2) - Title-Holding Corporations for Single Parent Corporations

If your organization wants to obtain recognition of exemption from federal income tax as a corporation organized to hold title to property, collect income from that property, and turn over the entire amount less expenses to a single parent organization that is exempt from income tax, it must file its application on Form 1024. The information to submit upon application is described in this section. For a discussion of the procedures for obtaining recognition of exemption, see chapter 1, Application Procedures.

You must show that your organization is a corporation. If you are in doubt as to whether your organization qualifies as a corporation for this purpose, contact your IRS office.

A title-holding corporation will qualify for exemption only if there is effective ownership and control over it by the distributee exempt organization. For example, the distributee organization may control the title-holding corporation by owning its voting stock or possessing the power to select nominees to hold its voting stock.

Corporate charter. The corporate charter must confine the purposes and powers of your organization to holding title to property, collecting income from the property, and turning the income over to an exempt organization. If the charter authorizes your organization to engage in activities that go beyond these limits, its exemption may not be recognized even if its actual operations are so limited. If your organization's original charter does not limit its powers, you can amend the charter to conform to the required limits and submit evidence with your application that the charter has been amended.

Payment of income. You must show that your corporation is required to turn over the entire income from the property, less expenses, to one or more exempt organizations.

Actual payment of the income is required. A mere obligation to use the income for the exempt organization's benefit, or the fact that such organization has control over the income does not satisfy this requirement.

Expenses. Expenses may reduce the amount of income required to be turned over to the tax-exempt organization for which your organization holds property. The term expenses (for this purpose) includes not only ordinary and necessary expenses paid or incurred, but also reasonable additions to depreciation reserves and other reserves that would be proper for a business corporation holding title to and maintaining property.

In addition, the title-holding corporation can retain part of its income each year to apply to debt on property to which it holds title. This transaction is treated as if the income had been turned over to the exempt organization and the latter had used the income to make a contribution to the capital of the title-holding corporation that in turn applied the contribution to the debt.

Waiver of payment of income. Generally, there is no payment of rent when the occupant of property held by your title-holding corporation is the exempt organization for which your corporation holds the title. In this situation, the statutory requirement that income be paid over to the exempt organization is satisfied if your corporation turns over whatever income is available.

Application for recognition of exemption. In addition to the information required by Form 1024, the title-holding corporation must furnish evidence that the organization for which title is held has obtained recognition of exempt status. If that organization has not been specifically notified in writing by the IRS that it is exempt, the title-holding corporation must submit the necessary application and supporting documents to enable the IRS to determine whether the organization for which title is held qualifies for exemption. A copy of a ruling or determination letter issued to the organization for which title is held will be proof that it qualifies for exemption. However, until the organization for which title is held obtains recognition of exempt status or proof is submitted to show that it qualifies, the title-holding corporation cannot obtain recognition of exemption.

Tax treatment of donations. Donations to an exempt title-holding corporation generally are not deductible as charitable contributions on the donor's federal income tax return.

13.0093.03001
Title.

Prepared by the Legislative Council staff for
Representative Fehr
January 19, 2013

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1240

Page 1, line 8, after the underscored closing bracket insert "or section 501(c)(19) of the Internal Revenue Code [26 U.S.C. 501(c)(19)]"

Renumber accordingly

NDANO NORTH DAKOTA ASSOCIATION OF NONPROFIT ORGANIZATIONS

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#3

Testimony by Dana Schaar, NDANO Executive Director

House Finance & Taxation Committee

In Support of HB 1240

Tuesday, January 22, 2013

Chairman Belter and Members of the Committee, my name is Dana Schaar, and I am the executive director of the North Dakota Association of Nonprofit Organizations (NDANO). We are here in support of House Bill 1240.

NDANO represents more than 180 nonprofit members throughout North Dakota with diverse mission areas – from human services and the environment to education and the arts. We are committed to strengthening communities and enhancing quality of life through engaging and ensuring a strong charitable sector.

Charitable nonprofits work in every community across our state and they exist for the good of all North Dakotans. As you consider this legislation, we ask you to reflect on the valuable contributions the nonprofit sector makes every day in the lives of the people of North Dakota and to consider our positive track record of partnering with government to address some of our state's most pressing problems. Charitable nonprofits work to protect and educate children, train the workforce, nurse the sick, support our elders, care for returning soldiers, provide food and shelter, foster faith, elevate the arts, protect natural resources, and more.

There are approximately 3,500 public charities in our state. Most of these nonprofits are small, community-based organizations. In fact, more than 80 percent of the state's charitable nonprofits have annual revenue of less than $100,000 per year and more than 65 percent have less than $50,000. This means that, for most charities, limited dollars are available to meet pressing needs.

NDANO supports a sales tax exemption on purchases by charitable nonprofits for two primary reasons. First, we believe that all charitable nonprofits should be treated equally under state law. Currently, some nonprofits are exempt, primarily health and education-related

organizations, while others must pay sales tax. Charitable nonprofits not currently exempt are mostly small and medium-sized community-based nonprofits, such as homeless shelters, churches, museums, and youth groups. Existing state law is confusing, and some businesses believe all nonprofits are exempt from paying sales tax. NDANO often receives invoices that do not include sales tax, so we have to contact the business to let them know we do pay sales tax. Several of our members have also experienced incorrect billing.

Second and most important, a sales tax exemption would provide more funding for mission. As an example, extending the exemption would allow more money to be directed to programming or services that directly serve children and youth, victims of domestic violence, and those with physical limitations or mental health issues, among others. Charitable nonprofits would be able to use their funding to benefit the public and serve North Dakota communities instead of paying sales tax. And donors want their contributions to support mission, not pay taxes. While this exemption will result in a loss of government revenue, these funds will stay in our state and be spent in communities that depend on nonprofit programs and services. Small charities will likely save only a few hundred dollars per year and this may not seem like much, but for many it means the difference in providing food for those who are hungry or coats for those who are cold.

As a sector, nonprofits are essential partners with government in meeting the challenges facing our state and ensuring a high quality of life for every North Dakotan. In this time of prosperity for the State of North Dakota, we ask you to support this legislation that will have a relatively small impact on government revenue but a significant and positive impact on the ability of nonprofits to serve people and communities in need. We hope that you will agree that a strong charitable nonprofit sector is vital to the health of North Dakota, and that this is a small step that will make a big difference by providing more money for mission.

NDANO asks for your support for a do pass recommendation on House Bill 1240. Thank you.

#3 p. 3

Supporters of House Bill 1240

Abused Adult Resource Center	Bismarck
Association of Fundraising Professionals-Northern Plains Chapter	Fargo
Best Friends Mentoring Program & Western Wellness Foundation Inc.	Dickinson
Bethel Lutheran Foundation	Williston
Beyond Shelter, Inc.	Fargo
Bismarck State College Foundation	Bismarck
Bridging the Dental Gap	Bismarck
Central Dakota Children's Choir	Bismarck
Charles Hall Youth Services	Bismarck
Community Action Partnership	Dickinson
Community HealthCare Association of the Dakotas	Bismarck
Community of Care	Arthur and Casselton
Dickinson Adult Learning Center	Dickinson
Eastern Dakota Housing Alliance, Inc.	Fargo
Emergency Food Pantry	Fargo
FARRMS	Medina
Global Friends Coalition	Grand Forks
Great Plains Assistance Dogs Foundation	Jud
Guardian and Protective Services, Inc.	Bismarck and Mandan
High Five Summer Youth Camp Inc	Dickinson
Home On The Range	Sentinel Butte
Humane Society of Grand Forks DBA Circle of Friends Humane Society	Grand Forks
Jeremiah Program	Fargo
Legal Services of North Dakota	Bismarck
Lillian and Coleman Taube Museum of Art	Minot
Lisbon Area Health Services	Lisbon
Minot Area Homeless Coalition	Minot
Minot Public School Foundation	Minot
Neighborhood Development Enterprises, Inc.	Minot
North Dakota Coalition for Homeless People	Bismarck
Northern Lights Youth Services, Inc.	Hillsboro
Northern Plains Dance	Bismarck
Pathfinder Parent Center	Minot
Prairie Learning Center Foundation	Raleigh
Sacred Heart Benedictine Foundation	Richardton
Service Dogs for America	Jud
Sleepy Hollow Theatre & Arts Park	Bismarck
Theatre B	Fargo
United Way of Dickinson	Dickinson
United Way of Grand Forks, East Grand Forks and Area	Grand Forks

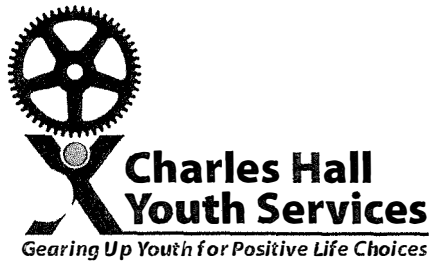
Jaclyn Bugbee, Executive Director
1800 E. Broadway Ave.
Bismarck, ND 58502
(701) 222-2108

Chairmen Belter and members of the House Finance and Tax Committee, my name is Jaclyn Bugbee and I am the Executive Director of Ruth Meiers Hospitality House in Bismarck. For those of you unfamiliar with our organization, we provide services to support the homeless and those who are at risk of homelessness. We are currently the only homeless shelter west of Fargo and Grand Forks.

With the increase in individuals coming to North Dakota to find employment and a means to support their families, we have grown over 50% in the last 12 months. From assisting with referral services to those at risk, to feeding 45-50 each day in our Stone Soup Kitchen or providing a night's rest in our shelters, we serve over 200 individuals each day. This comes at an increased cost. Currently, our budget is just over one million dollars. With the expansion of our emergency shelter beds currently underway, our budget will increase to 1.5 million dollars.

HB 1240 would allow nonprofits such as mine to utilize funds we pay for purchases to hire additional case managers to continue to support those in need. I strongly encourage you to support this bill and provide some relief for our organization. With over 85% of my funding coming from individuals and other private entities, an additional 50,000 in sales tax relief would truly make a difference.

Thank you again for allowing myself and other members of NDANO to speak to you this morning. I would be happy to answer any questions at this time.



Testimony of Gayle Klopp
Co-Executive Director of Charles Hall Youth Services, Bismarck

To
House Finance and Taxation Committee
In Support of HB 1240
Tuesday, January 22, 2013

Chairman Belter and Members of the Committee, my name is Gayle Klopp, and I am co-executive director of Charles Hall Youth Services. I am testifying today in support of HB 1240 on behalf of Charles Hall Youth Services.

Charles Hall is a faith-based, social service not-for-profit organization which has served North Dakota families for almost 50 years. As a community-based nonprofit, our mission is to assist at-risk youth in making a successful transition from troubled adolescence to mature adulthood. The goal of our multi-disciplinary programming is to help high-risk youth develop emotional stability and psychological resiliency, physical health, and genuine self-esteem.

We serve at-risk girls and boys, ages 10 – 21, of all ethnic groups and from all backgrounds. Approximately 50% of the youth we serve are Native American, representing Mandan, Hidatsa, Arikara, Dakota, Lakota, and Chippewa heritage. In just the past two years, we've witnessed growing diversity in the children we serve, especially with Hispanic and African-American youth.

With exponential growth in the Bakken, new demands are being placed on the nonprofit sector to meet human needs, support families, and play a significant role in keeping our communities healthy. The role our agency plays in our state community is important, as the acuity level of youth entering foster care continues to rise, and the age of youth is getting younger. Local, state and national media daily point to the bombardment of social pressures, fragile home environments, drug and alcohol abuse, and mental health issues on our families and communities.

PO BOX 1995 | BISMARCK ND 58502-1995 | OFFICE: 701.255.2773 | FAX: 701.255.6261 | www.charleshallyouthservices.com
Member: Council for Health and Human Service Ministries of the United Church of Christ; Missouri Slope Areawide United Way; Festival of Children Foundation

There are no quick fixes to the challenges facing communities today. It will take a strong nonprofit sector, partnered with effective government and a thriving business sector to strengthen our community landscape and ensure a better tomorrow for our children.

During the past decade, Charles Hall Youth Services has served over 1,000 high-risk youth with mental health services, basic needs, health and educational programming. As a member of North Dakota's Residential Child Care Facilities Association, Charles Hall is known for relationship-based programming, which includes experiential education, arts mentoring, strengths-based case management and therapy, tribally-appropriate programming, trauma-informed practices, independent life skills education and community service. We are part of North Dakota's essential not-for-profit sector that is building community, fostering civil society, strengthening our state's social fabric, and stimulating the economy. Currently, Charles Hall Youth Services pays state sales tax.

Exempting all charitable nonprofits from payment of sales tax would enable those funds to be directed toward programming and services that directly advance the missions of organizations like Charles Hall Youth Services to benefit individuals, families, our larger public and communities across our state.

All of North Dakota's charitable nonprofit organizations deserve equal treatment under state law. The fact that 501(c)(3) social service nonprofits like Charles Hall do not receive equal treatment regarding sales tax when compared with other often larger nonprofits (e.g., educational institutions, hospitals), has been a concern for numerous nonprofits in our state over the years. We join other nonprofits in asking state legislators to provide a sales tax exemption on gross receipts from sales to all organizations in our state which maintain a tax exempt status under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)]. Please support HB 1240.

Testimony in Support of House Bill 1240
to the
House Finance and Tax Committee

Good morning! I am Murray G. Sagsveen, a member of the board of directors of the North Dakota Association of Nonprofit Organizations (NDANO), testifying in support of House Bill 1240.

I have been the general counsel of nonprofit organizations for most of the past 27 years. What I have learned, during that quarter century, is that nearly all 501(c)(3) tax-exempt nonprofits barely get by financially as they try to serve the homeless, the medically underserved, the abused, the poor, and others in need.

Although the fiscal note was not posted on the website as of yesterday evening, I would like to focus on the fiscal impact – both to the state's revenue and to the state's nonprofit organizations.

What happens if this bill becomes law? Assume, for example, that the fiscal note explains that the impact on the state's revenue will be $10 million – or even $20 million – each biennium. That, of course, would be a significant loss of revenue. However, consider the context. Governor Dalrymple explained, in his budget message on December 5, 2012: "In the 2013-2015 biennium, our General Fund ongoing revenues will total about $4.8 billion." Accordingly, a $10 million loss in revenue would only be 0.2083% of the estimated revenue; a $20 million loss in revenue would only be 0.4166%.

Then consider what happens if this bill does not become law. Charities will continue to pay sales tax on purchases, which diverts the $10 million or $20 million each biennium from essential services to the homeless, the medically underserved, the abused, the poor, and others in need. The bottom line: a percent of each donor's contributions go into the state's treasury instead of the needed services provided by the charity.

I urge you to vote "do pass" on House Bill 1240.