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Revenue Committee
February 28, 2008

[LB944 LB1037 LB1038]

The Committee on Revenue met at 1:30 p.m. on Thursday, February 28, 2008, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB944, LB1037, and LB1038. Senators present: Ray Janssen, Chairperson; Merton "Cap" Dierks, Vice Chairperson; Carroll Burling; Chris Langemeier; Don Preister; Ron Raikes; and Tom White. Senators absent: Abbie Cornett. []

SENATOR JANSSEN: Good afternoon, ladies and gentlemen. Welcome to the Revenue Committee. For the record, my name is Ray Janssen, Nickerson, Nebraska, representing the 15th Legislative District. The committee members that are here today are: Senator Don Preister to my far left; Senator Carroll Burling to his right; Vice Chair of the committee Senator "Cap" Dierks. Let's see, our...oh, here comes Senator Langemeier; committee clerk is on my far right, Erma James; legal counsel, George Kilpatrick, on my right pages today are Sarah and Tim. Please turn your cell phones off. I know you've heard it a thousand times. We have a very small crowd here today and it will really echo, so make sure you shut those off. Sign-in sheets for the testifiers are on the table by each door, and they need to be completed by everyone if you're wishing to testify. And if you want to fill one out and don't wish to testify, you may turn one into the clerk and that will be counted either you were a proponent or an opponent of that particular piece of legislation. Clipboards in the back of the room to sign on if you don't wish to testify, but you want to be known that you're here. The agenda which we will follow is posted on the door outside. First, we take the introducers representing the bill, followed by proponents, then the opponents, then those in a neutral position. Only the introducer will have an opportunity for closing remarks. Please spell your name when you come to testify for the record. If you have a handout, please bring ten copies for the committee and the staff. If you have only the original, be glad to make copies for you. That is all of the preatorial announces that I have. And we will begin today's hearing with LB944. Senator Synowiecki, welcome to the Revenue Committee. []

SENATOR SYNOWIECKI: (Exhibit 1) Thank you, Mr. Chairman, members of the committee. My name is John Synowiecki. I represent District 7 in the Legislature, and I am introducing today LB944. In 2006, I brought forth a bill that would have exempted sales tax on museum memberships, admissions, and the purchases of art. The art purchase aspect of that bill was passed by the Legislature in 2006. In 2007, because cultural tourism is one of our fastest growing industries, I reintroduced the museum membership and admission sections of that bill. It became quite apparent to me that the opinion of the committee that the fiscal impact on that particular legislation was too large. You might recall we had the former chairman of this committee testify in support of the bill last year on the portion dealing with the clarification of purchases for performing art. He felt it was a clarification and not a new exemption. We also, you might recall, brought in President Harry Truman who provided this committee a bit of history and a little bit of entertainment on the subject. Well, I'm here before you again

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and I think I'm listening to what you are telling me and then I've included in LB944 a significantly pared down bill that only clarifies that purchases by nonprofit museum as it relates to performing arts, which would include things like costumes, production materials, and play scripts. In reference to the performing arts, it has come to my attention that we advertently left out a definition for "performing arts" and would offer an amendment for your consideration. The proposed fiscal impact with this bill has decreased from approximately \$1 million to \$75,000, and it may be possibly less than that. I don't think it's any secret that our community theaters struggle. Yet, they play an integral part of helping us retain and attract people, stimulate local economies, provide entertainment, community pride, education, and history. As a member of the Appropriations Committee, I am distinctly well aware of the great caution we must preserve relative to our state budget. And I think this bill is significantly scaled down version of the original initiatives that I brought to this committee. With that, Mr. Chairman, members of the committee, I'd entertain any questions. There will be an individual testifying after me as well. [LB944]

SENATOR JANSSEN: Sure. Any questions of Senator Synowiecki? [LB944]

SENATOR SYNOWIECKI: And I'll get that amendment to the committee. The page went to make copies of the proposed amendment. [LB944]

SENATOR JANSSEN: Okay. That would be fine. [LB944]

SENATOR SYNOWIECKI: Thank you. [LB944]

SENATOR JANSSEN: You want to stick around and close? [LB944]

SENATOR SYNOWIECKI: I probably will get back to the Appropriations Committee. [LB944]

SENATOR JANSSEN: Okay. [LB944]

SENATOR SYNOWIECKI: So I will waive closing. [LB944]

SENATOR JANSSEN: Fine. Don't see any questions, so thank you. [LB944]

SENATOR SYNOWIECKI: Thank you. [LB944]

SENATOR JANSSEN: We'll take proponents first, those in favor of the bill. [LB944]

TIM SCHMAD: (Exhibits 2-5) Before I begin, I would like to take a moment to thank Senator Synowiecki who represents some of the finest tourism attractions in our state. [LB944]

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SENATOR JANSSEN: Would you please state your name please first? Thank you.
[LB944]

TIM SCHMAD: Oh, I'm sorry. My name is Tim Schmad, S-c-h-m-a-d...thank Senator Synowiecki for his being a long time supporter and for his willingness to be an advocate for what...try to help us grow in helping Nebraska's economy grow. As I said, my name is Tim Schmad. I'm here testifying in support of LB944. In the interest of time, I'm here representing the following individuals and organizations. The Nebraska Association of Community Theaters of which there are 23 nonprofit theatres across the state, and I do have a handout here, a map of all the theaters that are represented that I'm representing today. I represent the Omaha Community Playhouse of which I am the executive director. I represent the Nebraska Arts Council, and I'm also representing the Nebraska Hotel and Motel Association. Thank you for allowing me to take this opportunity today. Senator Synowiecki, as he pointed out, we heard your message last year. We are back therefore with a trimmer proposal that does not include memberships or admissions for sales tax, and only includes extending the current exemption to purchases of the production-related items that Senator Synowiecki mentioned, such as costumes, paint, necessary mechanical equipment and so forth. Senator Synowiecki pointed out last year's fiscal impact was \$1 million. This note this year according to our calculations would be a revenue loss of less than \$75,000 statewide. Of that savings to community theaters across the state, the Omaha Community Playhouse would realize less than half that amount. So you might be sitting back there saying to yourself why would this guy who is executive director of the largest community theater in the country bother, shall we say, take the time over two years to save a relatively small amount of dollars to the playhouses annual budget. My answer is very simple: Every nonprofit community theater in the state struggles to make ends meet day to day. Four years ago, I had to reduce our staff at the playhouse by 30 percent. Just last month, I read where the Lied Center announced where it laid off six full-time employees. So whether it is a \$25,000- to \$30,000-a-year savings to the playhouse or a \$700 to \$1,000 savings to the Hastings Community Theater, it is significant for what we are trying to keep alive in the state of Nebraska. Someone once said about community theatres, "community theater is the most important theater in the United States. It is the grassroots theater of this country. The people who participate in community theater cross all boundaries of race, sex, religion, economics, aid, or social strata." But I realize I am here today speaking in front of the Revenue Committee. So allow me to mention the following: Annually the Omaha Community Playhouse alone generates over \$245,000 to the state of Nebraska. This number is based off our admissions and memberships, along with payroll taxes we pay. And this does not include the revenues generated by our patrons at local restaurants, lodging facilities, and other associated expenses. Simply put, we are asking you to assist us in growing or in some areas simply maintaining our organizations so that we can continue to offer to the citizens of Nebraska an important cultural fabric of our society. An example of that, the Minden Opera House. Another example of that is

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the David City Opera House, and here is a handout speaking about how much a treasure the David City Opera House is to that community. And with all that comes revenue too. There is a reason why our cities and economic developers include performing arts theaters in their pitches as they try to attract and retain people in our state. We believe it is an important quality of life factor and a revenue generator. I do not wish to burden you with a lot of feel-good stories about community theaters and what they generate, but allow me to just give you one example. Each year, thanks to a generous donor, underprivileged youngsters come to the Omaha Community Playhouse to see our annual holiday production of Christmas Carol. It is the first time that 99 percent of those youngsters have ever been in a performing arts theater. This year, a youngster came up to me and he asked me where the screen was. He could not believe he was actually going to see live people on stage. You should have seen his wide eyes as he anticipated the curtain going up. Indeed, community theater is the most important theater in the United States when it comes to changing people's lives. The substance of LB944 is not a new exemption, we believe, but a clarification of an existing one. It involves nonprofits that struggle to survive, yet if given this exemption can be economic drivers for communities in all parts of our state. I greatly appreciate the time you've given me and I would certainly welcome any questions you might have. Before that, I also have some handouts from some letters that have been sent to various committee members and perhaps some did not receive those. And then there's a copy of my testimony. Thank you. [LB944]

SENATOR JANSSEN: Any questions? Senator Langemeier. [LB944]

SENATOR LANGEMEIER: Thank you, Chairman Janssen. Tim, thanks for your testimony. You talked about laying people off in Omaha and at the Lied Center. What's the future diagnosis for the survival of this in Nebraska? [LB944]

TIM SCHMAD: Survival of community theaters or arts? [LB944]

SENATOR LANGEMEIER: Yeah. I mean, can this be reversed or is it... [LB944]

TIM SCHMAD: Well, obviously I believe it can. Sometimes you have to make those tough decisions that I referenced that I made four years ago in laying off people. Sometimes what I have found because I do not have a theatrical background, I have a nonprofit organizational background and fund raising background, but what I found was in evaluating our organization is that we could reduce staff and make things work. Unfortunately some arts organizations do not have the capabilities or the economic structure to be able to hire let's say someone from the business side of things to really look after that. So in many instances, we have artistic people trying to make business decisions, and perhaps that doesn't always turn out the way at least I would view the way you should run a business in order to survive. So while I've painted a somewhat gloomy picture of some things...and it is a struggle from day to day. Trust me, when I

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get back, I'll be faced with next year's budget and figure out how to do it. But with fund raising efforts and with good management I believe at least in our example we can make it happen. And that's kind of why I've spent two years striving to get this exemption. It's "relatively small," you know, \$25,000-\$30,000. But for the playhouse, \$25,000 a year means a lot, and certainly \$700,000 a year means a lot to the Hastings Community Theater. So I just felt I wouldn't be doing my job for the community playhouse specifically if I didn't give it an effort to feel what I believe certainly could help us generate more revenue. And I could make the argument that giving us tax relief generates revenue rather than takes away revenue. But that can be a long discussion. So that's why I'm here. [LB944]

SENATOR LANGEMEIER: Thank you. [LB944]

SENATOR JANSSEN: Any other questions? Don. [LB944]

SENATOR PREISTER: Tim, you already answered the question I was going to ask, and that's why would somebody who has so many other responsibilities spend two years working on a relatively small amount of return? But the reason that it's small is because you've scaled back the bill and this only includes the set, the props, the costume kinds of things. So it's a much smaller dollar amount that we're talking, \$50,000 to \$75,000. [LB944]

TIM SCHMAD: Correct. Yes and we learned our lesson, shall we say, last year. [LB944]

SENATOR PREISTER: Well, I wanted to comment on that because frequently we get the same bills doing the same thing without any changes coming back year after year. So your having heard the concerns and then taking that into account and coming back with a scaled down version, I do appreciate. One of the things that you said also that I'm not sure I heard completely, but you commented on the economic impact that the Omaha Community Playhouse makes on Omaha. I don't remember the exact number. Was \$200-and-some thousand that you said? [LB944]

TIM SCHMAD: That's the amount of dollars going to the state of Nebraska and what we pay sales and admissions tax and those related items. It doesn't count, it does not count the tax dollars that we generate or that our patrons generate by spending money at restaurants and so forth. That's strictly what the Omaha Community Playhouse generates. [LB944]

SENATOR PREISTER: So that's the sales tax on everything there and employee tax, everything that you would collect and would be remitted to the state. [LB944]

TIM SCHMAD: Correct. [LB944]

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SENATOR PREISTER: Okay. Thank you. [LB944]

SENATOR JANSSEN: Any other questions? Seeing none, thank you very much for being with us today. [LB944]

TIM SCHMAD: Okay. Thank you very much and, Senator, I hear this is your last hearing of your career here at the...so I thank you for all your service that you've done here. [LB944]

SENATOR JANSSEN: Thank you. Thank you. [LB944]

SENATOR WHITE: Oh, but no. He's running in four years. [LB944]

TIM SCHMAD: Oh, okay. [LB944]

SENATOR WHITE: He and Ernie are just taking a well-needed vacation. (Laughter). [LB944]

SENATOR JANSSEN: Leave of absence. Any other proponents? Any opponents? Anyone in a neutral capacity? Seeing none, Senator Synowiecki waived closing. That ends the hearing on that particular bill. And Senator Dierks, I have the next two bills. Can I introduce those in succession? [LB944]

SENATOR DIERKS: You may do that. Be my guest. []

SENATOR JANSSEN: Can I do them both? []

SENATOR WHITE: You're the boss. You can do what you're going to do (laugh). (Inaudible) []

SENATOR LANGEMEIER: It's Carroll's last hearing. It's Don's last hearing. []

SENATOR WHITE: Carroll, Don. You're just chopped liver, gentlemen. []

SENATOR RAIKES: Actually that's an improvement in my reputation (laugh). I'll take that. []

SENATOR LANGEMEIER: He's moving on (inaudible) next week, right? []

SENATOR LANGEMEIER: All these years is starting to pay off. []

SENATOR WHITE: Don't you have a confirmation or something next week? []

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SENATOR RAIKES: We might. I don't know. I haven't thought about that. Dang. []

SENATOR DIERKS: Senator Janssen. []

SENATOR JANSSEN: (Exhibits 6&7) Thank you, the honorable Senator Dierks. For the record, my name is Ray Janssen, representing the 15th Legislative District, here today to introduce you two very important bills, LB1037 and I think that if you will also allow me to I will introduce them both, Senator... [LB1037 LB1038]

SENATOR DIERKS: You bet. [LB1037 LB1038]

SENATOR JANSSEN: ...at the same time. I'll do LB1037 first, followed by LB1038. LB1037 is the bill that the Revenue Committee introduces from time to time to assure that there's always a way to deal with conditions that arise within the constitutional and the rules of the Legislature. The bill itself doesn't do anything, but it might make it possible for the committee to make a needed change in sales or income tax later in the year if that should arise. We're all aware of the economic conditions will make it much harder to balance the budget this year than it has been for a couple of years. I do not anticipate that the Legislature will seek to increase taxes. Nonetheless, that could change and if it does, a bill like LB1037 could be used as a vehicle to advance to the floor the preferred proposal of this committee. Let me give you an example. The economic stimulus package enacted by Congress and the President called for larger immediate expensing of capital purchases under the Internal Revenue Code Section 179. In 2002 and '03, when Congress did the same thing as part of a stimulus package, for those years, Nebraska changed our income tax statute to deny the excess expensing for state and income tax purposes, and allow deductions later. This was one of the numerous things the Legislature had to do to balance the budget in 2002 and '04. I think that "Cap" and Ron and Carroll and Don were here, too, when we had to do that. This year, the excess immediate expensing is anticipated to reduce Nebraska individual and corporate income tax receipts by \$4.6 million for 2007 and '08, and \$17 million for '08 and '09. I agree with the Governor that these losses can be absorbed and we should not act to deny this excess immediate expensing. But however, you know, things change. Conditions may change or this committee may decide on its own to present an alternative to the Legislature. If that happens, this bill, LB1037, sometimes comes in handy. I would ask the committee if you see fit, to send it with a majority of support of the Revenue Committee, send to the floor. Both LB1037 will open up both the income tax and sales tax statute and allow changes to be made to either or both. These changes are not specific by the bill and it could be determined by the committee at a later date if you see fit. That ends my testimony on LB1037. Any questions? [LB1037 LB1038]

SENATOR DIERKS: Questions anybody? Guess not. [LB1037 LB1038]

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SENATOR JANSSEN: I think you all understand what we're doing here I'm sure. Okay. Then I will open on LB1038. George has written a few things out here for me, so I'll just read that if it's all right with you, Mr. Vice Chair. [LB1037 LB1038]

SENATOR DIERKS: Yes. Go right ahead. [LB1037 LB1038]

SENATOR JANSSEN: Okay. In January of 2006, the Kentucky Court of Appeals decided the case of Davis v. Kentucky Department of Revenue. Blah, blah, blah. The Kentucky court ruled that the practice of taxing income from municipal bonds issued by other states and their political subdivisions, while exempting Kentucky's municipal bonds violated the commerce clause of the United States Constitution. The United States Supreme Court granted...I can't say the name...certiorari or whatever it is. I don't know what it means. And the case was argued in November of 2007. There has been no decision as of today. If the Supreme Court affirms the Kentucky court, the common practice of exempting income only from instate municipal bonds issues will be brought to an end. Nearly every state with an income tax, including Nebraska, follows this practice. Nebraska would have to either tax all municipal bonds income or exempt it all. One or the other. According to the Department of Revenue, exempting all municipal bond income would lower the state's revenues by about \$7 million per year. Three years of refund liability would be as much as \$22 million. If the state could tax all municipal bond income, including that from preexisting issues, the additional revenue generated would be about \$13 million a year. However, the Department of Revenue has cast doubt upon the state's power to tax income from municipal bonds where the bond indenture, and the promises made when the bonds were issued included the state income tax exemption. One possibility might be to tax all municipal bond income from 2008 and '09 until refunds can be paid. And exempting all, beginning in 2010. This would generate a positive \$4.7 million in '08 and '09. This may not be possible either. The bill was introduced in...well, let's see LB1038 was introduced to allow the Legislature to respond to the possibility of an unfavorable Supreme Court opinion in Davis v. Kentucky Department of Revenue. I asked the Speaker to designate this LB1038 a Speaker priority so that if a decision comes down while we're in session, the committee could react and the bill could have some chance of passage. He denied this request, but promised a bill would be available if the need arises. Given the seven-day rule, we might want to keep this bill alive so that it could be amended and advanced late in session and then moved to another vehicle for final passage. That's the idea. [LB1037 LB1038]

SENATOR DIERKS: Thank you. Questions for Ray? No questions. [LB1037 LB1038]

SENATOR JANSSEN: Good. Couldn't answer them anyway. (Laughter). [LB1037 LB1038]

SENATOR LANGEMEIER: I like honesty. I love the brutal honesty. [LB1037 LB1038]

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SENATOR DIERKS: Anybody in support of either LB1037 or LB1038? Opponents of LB1037 or LB1038? Anyone in opposition? Anyone in a neutral position? That will close the hearing on LB1037 and LB1038. [LB1037 LB1038]

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Disposition of Bills:

LB944 - Held in committee.
LB1037 - Held in committee.
LB1038 - Held in committee.

Chairperson

Committee Clerk