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The Committee on Appropriations and the Committee on Revenue met at 1:30 p.m. on Friday, November 6, 2015, for the purpose of presentation of the 2015 Tax Expenditure Report. Appropriations Committee senators present: Heath Mello, Chairperson; Robert Hilkemann, Vice Chairperson; Kate Bolz; Tanya Cook; Ken Haar; John Stinner; and Dan Watermeier. Senators absent: Bill Kintner; and John Kuehn. Revenue Committee senators present: Mike Gloor, Chairperson; Paul Schumacher, Vice Chairperson; Lydia Brasch; Al Davis; Burke Harr; Jim Scheer, and Kate Sullivan. Senators absent: Jim Smith.

SENATOR GLOOR: Good afternoon. I'm going to call to order the joint hearing of the Appropriations and Revenue Committees. I'm Senator Mike Gloor. I lost the coin flip. I am chairing today's meeting. (Laughter) I'm Chair of the Revenue Committee. This is a public hearing but with invited testimony only from the Department of Revenue, so there will be no public testimony. As is always the case, we have frequent fliers in the audience, I know this, but please check your cell phones, probably the senators too. I just caught mine about 30 seconds ago. Please turn off your cell phones. I'm going to start the meeting by having the senators here--and again, this is a joint meeting of Appropriations and Revenue--introduce themselves. And let's start with Senator Scheer. Senator Scheer.

SENATOR SCHEER: Jim Scheer, District 19, which is Madison and just a little hunk of Stanton County.

SENATOR SULLIVAN: Kate Sullivan of Cedar Rapids, representing District 41, a nine-county area in central Nebraska.

SENATOR DAVIS: Al Davis, from District 43, which is north-central and western Nebraska.

SENATOR BRASCH: Lydia Brasch, District 16, Cuming County, Burt County, and Washington County.

SENATOR SCHUMACHER: Paul Schumacher, District 22. That's Platte County and parts of Colfax and Stanton County.

SENATOR MELLO: Heath Mello, District 5, south Omaha.

SENATOR GLOOR: Go ahead, Mike.

MICHAEL CALVERT: Michael Calvert, Legislative Fiscal Analyst.

SENATOR GLOOR: Laurie.

LAURIE VOLLERTSEN: Laurie Vollertsen, committee clerk.

SENATOR HILKEMANN: Robert Hilkemann, District 4, which is west Omaha.

SENATOR COOK: I'm Tanya Cook, District 13, northeast Omaha and Douglas County.

SENATOR HAAR: Ken Haar, Legislative District 21, which is northwest Lincoln and northwest Lancaster County.

SENATOR WATERMEIER: Dan Watermeier from Syracuse, representing southeast Nebraska, District 1.

SENATOR STINNER: John Stinner, District 48, Scotts Bluff County.

SENATOR BOLZ: Senator Kate Bolz, District 29, south-central Lincoln.

SENATOR GLOOR: I know this audience understands this, but there are other hearings going on today so some senators will need to do some trade-offs here and spend their time at other meetings, and some may need to come and go and go and come. I'm going to go to, for purposes of the record, I'm going to go to script here. This is a joint hearing required pursuant to Section 77-385 state law. Statute requires biennial report on the estimated cost of tax exemptions. It's a biennial report issued every even-numbered year. New sections added to the law in 2013 require periodic special reports on exemptions in certain specified services. This is the year for one of those special reports. Statute requires that for 2015 and every fourth year thereafter the report shall analyze the actual or estimated revenue loss caused by the tax expenditures described in subdivision (2)(d) through (f) of Section 77-382. Section (d) relates to motor vehicles, motorboat trade-ins; merchandise trade-ins; certain medical equipment and medicine; newspapers; laundromats; telefloral deliveries; motor vehicle discounts for the disabled; and political campaign fund-raisers. Section (e): motor fuels; energy used in industry; energy used in ag; aviation fuel; and minerals, oil, and gas severed from real property. Section (f): food for home consumption; supplemental nutrition assistance program--SNAP; school lunches; meals sold by hospitals; meals sold by institutions at a flat rate; food for the elderly, handicapped, and Supplemental Security Income recipients; and meals sold by churches. And with that, I'd like to welcome Department of Revenue acting Tax Commissioner Leonard Sloup. It's all yours, sir.

LEONARD SLOUP: (Exhibit 1) Good afternoon. I am Leonard J. Sloup, acting Tax Commissioner. The basis for department staff appearing today is to present the 2015 Interim Tax Expenditure Report which is required by the Tax Expenditure Reporting Act. The report presented today provides sales tax expenditure information on consumer goods, energy, and food, which is required and presented every fourth year. I would like to introduce George Kilpatrick, legislative liaison and tax policy attorney, and Hoa Phu Tran, revenue economist manager of the department who's areas have compiled and will present this report. Thank you.

SENATOR GLOOR: Thank you, Commissioner Sloup.

GEORGE KILPATRICK: Well, good afternoon, everyone. My name is George Kilpatrick, liaison for the department. I've met some of you but not all of you. I've been the liaison for probably seven months. I'm here to present the first half, I guess, of the Tax Expenditure Report, some of the introductory stuff and a little more history. I noticed that when this meeting was set there was a couple of hours set aside for it. Len wanted me to do this because I'm long-winded. No, that's not true. (Laughter)

SENATOR GLOOR: Don't hold yourself to that standard.

GEORGE KILPATRICK: We have precisely 24 slides, so I suspect that we will not use all of that time. But we did try and supplement. Because this is the interim report between the two major reports, there’s even less material than there would be were this an even year, even-numbered year. So with that, we'll move on. Well, I guess maybe I don't have to read this one since Chairman Gloor did basically repeat the authority and the requirement to have this hearing and to have a Tax Expenditure Report. The purpose of the report is to enable the Legislature to better determine sectors of the economy which are receiving indirect subsidies, the loss of such potential revenue in an area of the tax base which may force higher tax rates on the rest of the base. Again, this has been a report that's been around since 1979. It's been released on even years since the beginning of '92, so it's got a fairly long history. The requirement to have these supplemental ones in between is relatively new. I think this is the first one we've done like this. That's essentially the summary of what will be done this time, which is consumer goods, energy, and food. Two thousand sixteen, actually there is a requirement that the report cover general business, lodging and shelter, miscellaneous, nonprofits, government categories. But of course, because in 2016 we'll be releasing the entire report and having a meeting like this to go over the entire report, it doesn't separate really in the presentation. It's just to note that all of these sectors are covered somewhere along the line. Two thousand seventeen will be more recent sales tax exemptions, services purchased for nonbusiness use, and telecommunications. The statute, 77-381, defines a tax expenditure: "a revenue reduction that occurs in the tax base of the state or political subdivision as the result of an exemption, deduction, exclusion, tax deferral, credit, or preferential rate." This is sales tax, and that list of items for this year's report is what we're talking about generally as exemptions from sales tax for one reason or another. And the Tax Expenditure Report is used to quantify. Because we have so much time, we'll start at the beginning. (Laughter) Sales tax has been around since sales and income tax were both enacted in 1967 to reduce the state...what used to be a state property tax. Many of the exemptions, in fact, many of those on this list today, have been there from the very, very beginning. Certain of them are certainly common among other states and, for tax policy reasons that are universally accepted, would never be part of the sales tax base. Sales for resell, I'm sorry, components, ingredients to make up products, inter...what we call intermediate goods, are never really considered part of the tax base, are not ever considered subject to sales tax in any state that actually has the tax. But defining the sales tax for a moment, the sales tax base is all sales of tangible personal property unless exempted. That's how our base is defined. And there's...plus, there's items of other types of transactions that are not sales of tangible personal property. But in order to be part of the tax base and, therefore, to be excepted from the tax base, they have to be specifically included, enumerated, described somewhere else. So to a certain extent, that examples of those things that are other than sales of tangible personal property are listed there: lodging, admissions. There are some selected services and items like that. In more detail, the next slide describes the sales tax base again: sales, leases, rentals, installations, applications, and repairs of tangible personal property. So if it's tangible in the sense that recognizable with the senses and has a mass, it's in the sales tax base unless excepted. And the reason I point this out, I guess, is it explains a little bit about what things are in the Tax Expenditure Report and what things are not. The Tax Expenditure Report does include sales for resale, ingredients that make up products and stuff that I mentioned earlier and no state would tax or has taxed or generally would not be considered that should be subject to tax because those are sales of tangible personal property and they're in the base unless excluded. Meanwhile, when we get on the other items, like the services or the admissions, the lodgings or the other items that are...might be sales of intellectual property, sales of services, they are not in the base in the first place unless they are specifically provided in the statute. And what that means is things like sale for resale are in the Tax Expenditure Report. Things like legal services, accounting services are not because they are never in the base and, therefore, they're never excluded from the base. It's in the way that the tax base is defined and the definitions provided in the statute that defines what the report looks like. So that's really the only reason that I spend as much time as I do talking about what actually is in the tax base. Often, people say, well, you tax goods and you tax services. Well, there's a number of things that may not be well-classified in either place that we mentioned before, things like lodging, things like sales of an intangible right, entertainment, or intellectual entertainment property, including software, which sort of has characteristics of both but isn't necessarily clearly either one; warranties, guarantees, service agreements, lodging. And then admissions really are a right, an intangible right, to be at a particular location for a particular purpose. So then when we talk about services, they tend to be a relatively modest number I guess that our specific list...there's some examples there. That's not complete, of course, but there are a number of them. There are ways to classify them which are helpful at least within the department in trying to determine how we process or look at certain issues. Some...there's a few exemptions that are based on the identity of who's selling, not very many incidentally, but there are a few. School lunches are exempt because they're sold by schools. Churches have a once-a-year sale that they can conduct. It's within the occasional sale exemption and they are allowed to not count that because they are a church and those are things that they sell. Hospital rooms, hospital food, that sort of thing are all exempt because of the nature of the seller. There are some that are way more common and more familiar to you, I'm sure, that are based upon the nature of the item sold: food, groceries, food for home consumption. We generally...most people just call that...Senator Harr.

SENATOR HARR: Thank you. Is there anywhere in statute or otherwise case law that defines what is a charitable activity that would be exempt from sales tax?

GEORGE KILPATRICK: That defines what's a charitable activity? Well, charitable activities aren't necessarily exempt from sales tax. The answer is I would not say that there's a definition, not within sales tax, that I'm familiar with.

SENATOR HARR: Okay.

GEORGE KILPATRICK: But there are many...charities aren't necessarily exempt from sales tax. There's any number of them that pay sales tax on things that they buy. Well, the rest of the list are...I think we can...you probably are familiar with those--prescription drugs, motor fuels--but there's any number of things. There's a number of them that are based upon the identity of the buyer. And we'll see some of those same things that we talk about the identity of the seller: schools, government, churches, etcetera. When they buy their materials, they can be exempt. The way we deal with charitable exemptions and the like is there's an application process to be considered a charitable organization or a religious organization or a cemetery organization or an educational association. There's an application that they fill out. There's some...sometimes there's usually a questionnaire that we ask them some about their organization, what they do and that sort of thing. Then they may qualify for an exemption. That's very common in the religious area. When the slide says churches, I should be more precise. It actually...the statute says religious organizations, so it is a bit broader than simply churches. There are religious organizations that are not churches and that are exempt from sales tax on their purchases. And then finally the buyer's intended use for the item, and often these are...there may be more than one reason for an exemption or more than one classification. The note at the top says, because of one or more of the following characteristics. So for example, manufacturing machinery or equipment is a very good example. It does have to be manufacturing machinery or equipment but it also has to be purchased by someone engaged in the business of manufacturing. So there's an identity of the buyer element that applies to that as well because of the way the statute is structured. So while it's useful to think of them in categories, often one category doesn't describe the entire exemption as well as we would like or as well as might be convenient sometimes. I believe this was in last year, these slides, but generally there's some...some of you probably remember the Tax Modernization Committee. Its findings, at least, was that compared to our most border states, with the notable exemption of taxing agricultural machinery and equipment repair parts and residential energy consumption, Nebraska's sales tax considered as a whole is very much like our neighboring states. The repair parts then were exempted by LB96 the very next year, which is what's on the next slide. The Tax Modernization Committee report also recommended examining whether further consumer services should be added to the tax base, implement a refundable credit for residential heating as opposed to...as a recommendation, I guess, other than simply exempting utility purchases, which many states do, and then maintaining compliance with Streamlined Sales and Use Tax Agreement, which we have throughout its existence. There are a number of reasons that you probably hear for sales tax exemptions. Maybe there's no reason to put this slide in here. You've probably heard more of these than what we've listed. In fact, when we were going over this show, I said, you know, there's probably more reasons for sales tax exemptions than there are actual sales tax exemptions. But nonetheless, some of the more common ones are it's a necessity; it shouldn't be imposed upon low-income people; there might be equity considerations; the product might be subject to a different tax in lieu thereof, like motor fuels, directed for a different purpose; and then finally, it's not a product sold at retail, it's an intermediate good and those kinds of things. Energy is listed there as the example, but there's others. And you're done with me, unless there are other questions. Perhaps I should pause and ask.

SENATOR GLOOR: Are there any questions? Senator Harr has a question again.

SENATOR HARR: Can you back up a slide, please?

GEORGE KILPATRICK: Sure.

SENATOR HARR: So you say you have product is subject to an alternative tax--motor fuels.

GEORGE KILPATRICK: Uh-huh.

SENATOR HARR: How do we track the motor fuels tax?

GEORGE KILPATRICK: We track the motor fuels tax by where, by it is...well, first of all, the tax is levied at the wholesale level.

SENATOR HARR: Okay.

GEORGE KILPATRICK: So that's where it's paid and that's, when you say track, well, first of all, I know what you mean but I guess to explain to the rest of the folks, what we know is what was subject to tax at essentially the jobber or the distributor level, wherever those distributors happen to be located. And they're located often outside of cities, for obvious reasons, I guess. These large tank farms don't necessarily make good neighbors. And so often they're outside cities altogether. But that's where the tax gets imposed, whether it's determined that it's being essentially in Nebraska and taxed at that level. The form wise is done by the distributors keeping track of the amount imported minus the amount that's sent to some other location, and then they pay a tax on the difference. So that's how it's being taxed.

SENATOR HARR: So the importer pays the tax at the farm level, I guess, the storage level?

GEORGE KILPATRICK: The storage level, yes.

SENATOR HARR: Okay. And then that money is used to...for what purpose?

GEORGE KILPATRICK: The motor fuel tax?

SENATOR HARR: Yeah.

GEORGE KILPATRICK: Well, there's, as you know, the Highway Trust Fund for that portion is 53 and a third percent. Then there's another 46 and two-thirds percent that goes to the Highway Allocation Fund. And it's distributed to either the state for the roads program...and it's combined with the other funds, of course--registration fees and so forth, sales tax on motor vehicles--and is distributed to the state. Again, 53 and a third for state highways, and then the other 46 and two-thirds percent split between cities and counties through the Highway Allocation Fund. It's supplemented by the additional amount for the highway. I'm forgetting the name of the fund that was invented a couple of years ago on LB84, but that's distributed in a slightly different fashion.

SENATOR HARR: And is any of that money distributed in proportion to how or where the gas is actually purchased? So, for instance,...

GEORGE KILPATRICK: No.

SENATOR HARR: So no.

GEORGE KILPATRICK: It's distributed where...the city formula is based upon lane miles, population, and registrations. The county money has a seven- or nine-factor formula that I don't remember offhand. Larry might know, who isn't going to be testifying I guess but he might know. But it includes things including registration but also talks about bridges over a certain length and capacity and so forth. There's a number of factors on the county distribution formula. The state portion goes to highway projects that are approved by the Highway Commission, and then plus repairs and maintenance as needed. So that's how it's distributed. The most prominent population factor is probably the city formula.

SENATOR HARR: And do you know how much of that total fund then goes to the cities?

GEORGE KILPATRICK: Sure, 23 and a third percent of the trust fund and then a little bit lower portion of the extra amount that was for the project,...

SENATOR HARR: And by cities...

GEORGE KILPATRICK: ...what I call LB84, the fund I can't remember the name of.

SENATOR HARR: So 23 and a third go to the cities.

GEORGE KILPATRICK: Correct, of the trust fund.

SENATOR HARR: Of the trust fund. And what is the definition of a city?

GEORGE KILPATRICK: An incorporated municipality.

SENATOR HARR: Okay. And do you know how much of that gas is actually purchased in the cities then?

GEORGE KILPATRICK: No, we do not.

SENATOR HARR: Okay. And why is that?

GEORGE KILPATRICK: Because it's collected at the wholesale level and there is no recordkeeping of the destination of where the trucks actually drop off the motor fuel at the retail level.

SENATOR HARR: Okay. And do you know...well, what percentage of the population live within cities?

GEORGE KILPATRICK: Percentage of the entire population of the state? I don't know offhand. It's fairly large.

SENATOR HARR: Large meaning 50 percent, 20 percent?

GEORGE KILPATRICK: Oh, no, it's way over that.

SENATOR HARR: More than 20?

GEORGE KILPATRICK: In all cities it would be...well, we've got to be 80-85-90 percent. I'm not sure.

SENATOR HARR: Eighty-five, ninety...

GEORGE KILPATRICK: But it's going to be a very large percentage of the population.

SENATOR HARR: Okay. Thank you.

SENATOR GLOOR: Senator Schumacher.

SENATOR SCHUMACHER: Thank you, Senator Gloor. Just a quick question on what's taxable and how you draw the line between what's taxable or not. A business has a computer system inside and it's got the hardware to run whatever programs there are, but it has no programs to run. And so it hires a consulting firm to come in and write the programs to run on its hardware. Service, taxable? Is it a tangible taxable?

GEORGE KILPATRICK: The tax...in the example...in the specific example you gave, hired a firm outside to furnish software, it would be taxable to that firm.

SENATOR SCHUMACHER: No, hired them to come in. The guy is coming in, they (inaudible), or gals, and they program the computers.

GEORGE KILPATRICK: If they're doing it...if it's internal labor, if it's employees that are doing the programming, there isn't a sales trans...what we would call a sales transaction that would be subject to tax in a case like that. When you're hiring it from an outside firm, it would be delivering or providing, furnishing software. What the statute actually says is furnishing software is taxable. So in the case where you have someone else do it, it's taxable; if you have your own employees do it, it would not be.

SENATOR SCHUMACHER: Is there any rational distinction for that difference?

GEORGE KILPATRICK: It's the definition of sale.

SENATOR SCHUMACHER: Okay. It's just one of those things that we have.

GEORGE KILPATRICK: It creates results that sometimes taxpayers think are irrational.

SENATOR SCHUMACHER: Thank you.

SENATOR GLOOR: Seeing no other questions, Senator Harr.

SENATOR HARR: Sorry. To follow-up on that, so let me get this straight. If I am streaming, let's say I go to...is Blockbuster still around?

GEORGE KILPATRICK: I don't think so.

SENATOR HARR: Okay. But if I go to a video store, I pay sales tax to...and I rent a movie, I pay sales tax on it. But if I download it from the Internet...

GEORGE KILPATRICK: It's taxable.

SENATOR HARR: It is taxable.

GEORGE KILPATRICK: It's taxable because it's a digital product under the definition. Audiovisual works are one of the digital items specifically made subject to tax in Nebraska.

SENATOR HARR: And audio books or books that I download will also...

GEORGE KILPATRICK: Books are the same, yes, and digital codes,...

SENATOR HARR: Are we...

GEORGE KILPATRICK: ...which is a key, but.

SENATOR HARR: And does that go back to self-reporting? I don't recall...

GEORGE KILPATRICK: If you're going to get on...assuming that the retailer did not collect it then, yes, it's a use tax obligation that you would have.

SENATOR HARR: I don't think they're...does Netflix collect them, to your knowledge, for downloading?

GEORGE KILPATRICK: If you're saying that it's largely avoided, I think you're correct.

SENATOR HARR: Okay.

SENATOR GLOOR: Thank you, Mr. Kilpatrick. And are we handing the baton off to Mr. Hoa Phu Tran?

HOA PHU TRAN: All right. Again, my name is Hoa Phu Tran, economist for the Department of Revenue in research. Next we will talk about how we came up with all this estimation in the packet that's in front of you. To come up with all this estimation, we utilize various source of data, including mostly federal data set, freely and openly to the public. This includes the U.S. Census Bureau; BEA, which is the Bureau of Economic Analysis; Department of Agriculture, Education, Energy. Basically, we try to come up with the data set at the national level to scale back down to the state level to see what the sales level of that particular exemption may be, and then derive the tax from there. In the case that if we have something that is being taxed right now and we exempted it, we want to exempt it, then we have internal data which we can use to derive the estimate. We also use data from other state agencies, such as Department of Motor Vehicles for the trade-in vehicle part and Nebraska Energy Office. And then for the nonprofit organization, we use the IRS Form 990 information return to capture some of the information from them to come up with our estimate. But at the same time, some of this are very detailed. In some cases, we can't derive an estimate due to there's no such data that we can rely on to come up with a reliable estimate. In those cases, we listed that the estimate is not available. We went out and we actually look at other states, how they're doing things. We talk to them. We survey how, the methodology, the data source. So it's very comparable to most other states on how they do...go about in estimating this tax expenditure. One thing to keep in mind is all the estimate in this estimation are static and they're not dynamic, meaning the estimation take on does not account for change in consumer behavior, business behavior, or whatever the case may be. It's just taking the fact that let's say you exempt something and the company or individual might save a certain amount of money. We did not assume that they're going to spend that in the...to stimulate economic growth. So they are static, not dynamic. And all estimates are independent of each other, meaning you cannot add up all the estimations in the packet you have. And assuming, let's say, you repeal all these exemptions and the sum of all the exemptions is what you're going to get, because a lot of things are overlapping in different categories. So look at them as independent exemptions and not to do any data manipulation. Estimate are for, in the packets, are for fiscal year '14-15 revenue estimation. So under consumer goods, we have motor vehicle/ motorboat trade-in, meaning we exempt the sales tax on the different...on the trade-in value, which is you only pay the sales tax on the difference of the new vehicle versus the old vehicle. The estimate of that has come in roughly $68 million. Merchandise trade-in, very similar to the motor vehicle trade-in, but we just don't have the data to...nobody keeps track of how many DVDs are traded in for a newer movie or a game, something like that. So there's no...we cannot come up with the estimate for that. Certain medical equipment and medication, basically all drugs that is doctor prescription are sales tax exempt, and everything that is also paid under the Medicaid program. The estimate of this if $145 million. Keep in mind that the estimate here is the amount spent, total amount spent on medical equipment and medicine, regardless of who is paying, meaning if you are to exempt, to remove this from the sales tax exemption, we can't tax whatever Medicare is paying. So the $145 million includes those in the base. So if you repeal this, you're not going to get $145 million based on the estimate, because some of these items you can't tax by federal law. Newspaper, estimate about $4 million. Newspaper is defined as if it's issued at least once a week then it's sales tax exempt, roughly $4 million. Laundromat, this is basically all coin-operated machinery except for washing motor vehicles, estimated at roughly $400,000. Telefloral service, amount received by Nebraska florists who fulfill an order from another state order, come in roughly very minimal at $200,000. Similarly for motor vehicle discounts for the disabled, very minimal, roughly $16,000. Under consumer goods, political campaign fund-raiser, fee for admission, prepared food charged by ballot question committee, all that is tax exempt, sales tax exempt, on a political campaign fund-raiser, and there's no estimate for this either. Under energy, we have motor fuel. Again, motor fuel is subject to a motor fuel tax. Exempt sales tax would cost roughly $242 million estimate. Energy used in industry, so if 50 percent or more of the energy purchased is used for manufacturing, generating electricity, processing, or by a hospital, this is sales tax exempt, estimate at $128 million. Energy used in agriculture, same thing. If more than 50 percent of the energy purchased is to be used for agriculture activity, then it's sales tax exempt. Costs are estimated at $39 million. Aviation fuel, estimate at $7 million. Minerals, oil, gas, and severed from real property comes in roughly at $9 million. Under the food section, we have food for home consumption, food ingredients, except for prepared food or food sold through vending machine, are sales tax exempt. Grocery, all that stuff, estimate at $156 million. Supplemental Nutrition Assistance Program benefit or whatever is bought under that program is tax exempt. And federal taxation of SNAP purchase is not allowed, roughly $13 million on the estimate. Under food again we have school lunch. This includes K-12, colleges, provided meals to student, those are all sales tax exempt, costs roughly $8 million. Meals sold by hospital...yes.

SENATOR MELLO: Mr. Chairman.

SENATOR GLOOR: Go ahead.

SENATOR MELLO: Hoa Phu, I've got a question on the food for home consumption. Looking at the report itself, the description it gives is food or food ingredients, except prepared food and food sold through vending machines. Is that then a candy bar bought at a grocery store is sales tax exempt, but a candy bar bought at a vending machine there is a sales tax on the candy bar? Is that the way I would interpret this?

HOA PHU TRAN: Yes. Yes.

SENATOR MELLO: Any distinction why, just basing it on the selling? I mean food for consumption, is that not different in regards to buying it from a free-standing facility versus an enclosed facility?

GEORGE KILPATRICK: The rule used to be that it was food that was capable of being purchased with food stamps, back in the olden days. Prior to Streamlined, that was the definition.

And so generally, we've...those are the same rules. I mean it's kind of...it's different. I don't want to say it's the same. There are some distinctions. But that's where we started. And again, at that time, you couldn't have purchased either a restaurant meal or a candy bar with food stamps.

SENATOR MELLO: And I used "candy bar" specifically. Candy bar is exempted because it's candy and as is soda or anything. I mean it's food for consumption.

GEORGE KILPATRICK: Well, but if you buy it in a grocery store, it would be exempt. But if you buy it at a concession stand or a vending machine, it would be taxable.

SENATOR MELLO: Okay.

GEORGE KILPATRICK: It's the way the statute is, but that was the thinking.

SENATOR MELLO: Okay. Thank you.

SENATOR GLOOR: Senator Schumacher.

SENATOR SCHUMACHER: Just a clarification on the energy used in alcohol...alcohol (laugh) agriculture, for example. If more than 50 percent of the electricity delivered to your meter is used for farm or 50 percent of the propane delivered to your place is used for farming, and your residential nonbusiness thing is connected to the same meter or propane tank, then you aren't taxed on that fuel. Is that correct?

GEORGE KILPATRICK: That's correct.

SENATOR SCHUMACHER: If you live in town with the same house, same propane tank, same meter, are you taxed?

GEORGE KILPATRICK: Yes.

SENATOR SCHUMACHER: Thank you.

SENATOR GLOOR: Senator Davis.

SENATOR DAVIS: Just want to make a correction to that, because we have propane and we have electricity, both of which are taxed. (Inaudible).

GEORGE KILPATRICK: It may not be over 50 percent usage. I don't know. Typically these...typically that energy is, as you can imagine, typically it's irrigation is what it's being used for.

SENATOR SCHUMACHER: Well, maybe he's found a tax break for you. (Laugh)

SENATOR DAVIS: (Laugh)

SENATOR GLOOR: Go ahead.

HOA PHU TRAN: All right. Meals sold by hospitals are tax exempt. This is if you're a patient, you order food through the hospital-provided service, then it's tax exempt. If you are a visitor, you go to a place in the hospital and buy food for yourself, then it's not tax exempt because it's not really a part of the hospital. So estimate costs, roughly $1 million. Meals sold by institutions at a flat rate, food, prepared food provided at the fraternity, sorority, summer camps, whoever, charges a flat rate to attend and does include food in there, those are not taxed, sales...doesn't have to pay a sales tax, estimate of $1 million. Food for elderly, handicapped, and SSI recipients, estimate of $34 million. This is basically Meals on Wheels. And meals sold by churches, again, those are tax exempt and it's not available for an estimate. And with that, I would like to thank one of our staff, John Stavick, who put all this report together and does a tremendous job on providing all the estimates through a very difficult process with sorting out all the data sets. With that, thank you. And again (inaudible).

SENATOR GLOOR: Any additional questions for our presenters or for Commissioner Sloup?

GEORGE KILPATRICK: I would add that an angel came up behind me during the presentation and gave me the allocation of funds for road purpose for counties, which is a separate formula. I say an angel because I didn't see who it was, but it might have been my friend Larry but I'm not sure. There are seven factors in the county distribution formula: rural population of each county and also the total population of each county; lineal feet of bridges 20 feet or more in length, and then there's some other detail after that; motor vehicle registrations; motor vehicle registrations--what's the difference between four and five; there isn't any--total miles of county or township roads within the county; and the value of farm products moved out of the county. So population is a factor in the county formula. It's not as significant a factor as it is (inaudible).

SENATOR GLOOR: Did that generate any additional questions? Seeing none, thank you. And hearing no further questions and having nothing further on the agenda, that completes the business of this committee. Thank you all for your attendance. Thank you for the great attendance by both committee members. And have a good Friday.