

sales tax was refunded it, therefore, had not ought to be in the base but then you have business equipment that sales tax is not refunded, but they don't have to put it in the base. Now they maybe expense the cost as opposed to depreciate the cost, I don't know, but I would think my interpretation it ought to be depreciable because it was a cost that would be associated with the purchase of the particular piece of equipment. Again, I have a lot of concern with enactment of any substantive change that may create the basis for a lawsuit. I would still much prefer that a suit is filed with LB 1, a friendly suit, if you please, in order to have the issue as it was enacted, which I think is pretty clean as far as depreciable and nondepreciable, as to class, for personal property determining whether or not there is any tax paid. And if we start to deviate from that, it seems to me that we just simply begin to add potential problems on down into the future, including the new provisions that the court laid out in this last suit on LB 829. And while this is one of these where I know my personal interest is to vote yes, but I have a lot of concern as a public policy issue and everything that's at stake for stability that we should not make these kinds of changes until LB 1 and that policy has been approved by the courts.

PRESIDENT MOUL: Thank you, Senator Warner. Senator Schmit.

SENATOR SCHMIT: Madam Chairman, I appreciate Senator Withem allowing additional debate on this issue. I believe it's important that we understand that nothing is ever static in any kind of legislative process, most of all in the tax procedure. If you were to read the press reports of the last several years, one would believe that the Legislature has gone plumb haywire in the last several years and has embarked upon a deliberate policy of trying to enact unconstitutional personal property tax exemptions. No one, and if so, only very rarely and in very obtuse language has anyone tried to explain that various courts have over the past 18 or 19 years found many of the constitutional or many of the personal property tax exemptions that we enacted to be constitutional. LB 518, which I introduced in 1977, was held to be constitutional but that the distribution formula had to be changed. As Senator Warner pointed out during the hearing, this most recent opinion did dwell somewhat upon that statute and point out that because it did replace the lost revenue dollar for dollar it was a constitutional bill, whereas, subsequent language and statutes which did not replace revenue lost dollar for dollar were not.