

the legislation that was enacted in which the refund portion of the centrally assessed businesses, industries in the state, went to the U.S. Federal District Court and that 4 percent was thrown out as discriminatory and, under LB 1, 2 percent applies both...uniformly to both the centrally assessed as well as others. So there is uniform treatment. The option, if you did nothing, is that they will have been required to have paid nothing now because the 4 percent was thrown out as discriminatory, so they are at zero. So LB 1 does put that rate uniform for all those who would be subject to a surcharge on depreciation.

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

SENATOR LAMB: Thank you, Madam Chair. I have a question for Senator Warner. Some of the legal people that we talked to believe that the surcharge is a de facto state property tax and therefore unconstitutional. Do you agree with that assessment?

SENATOR WARNER: LB 1, as it is drafted, there is no...it is an excise tax or income tax. As I think I indicated, there are...of course, we don't know what our Nebraska court will do compared to other states, but it is accurate to say that, to my knowledge at least, there is no state that has a surcharge precisely as spelled out in LB 1 but there are states who treat for income tax purposes or excise tax purposes that they treat depreciation differently than we do and do tax it differently. The more common one, I suppose, is one which was discussed as an add-back. In fact, that was proposed, as I recall, at one of the hearings we had on LB 1 at the first special sess...or, yeah, first special session, but I do not believe, as structured here, that this constitutes a property tax, there just simply is no reference to that anywhere in the legislation and in the fact that the court didn't say that either in the Supreme Court decision. They merely said that the taxes that were imposed were for a replacement of a tax that was illegally...unconstitutionally, I should say, exempted and, therefore, they threw it out.

SENATOR LAMB: To just follow up, Senator, has any...has there been a request for an Attorney General's opinion on this question?

SENATOR WARNER: Not by me. There was a request, you will recall, generally that was enacted...or that was requested