

MEMORANDUM FOR FINANCE COMMITTEE TAX LAS

From: Senate Finance Committee staff
Date: March 2, 2009
Re: Mayor Ronald Kirk Nomination

This memo describes the results of the Senate Finance Committee staff review of the tax returns of Mayor Ronald Kirk for 2005, 2006 and 2007 in connection with his nomination to be the United States Trade Representative. Mayor Kirk was nominated for the position on January 20, 2009 and his paperwork was submitted to the Committee on January 23, 2009.

Background

Mayor Kirk's nomination team informed Finance Committee staff that in October, 2008 the mayor paid additional tax in the amount of \$2,188 and additional interest in the amount of \$139 for tax year 2006 after he was notified by the IRS that he had failed to report a speaking honorarium of \$5,000 and dividend income of \$819. The return was prepared by a paid tax preparer and filed jointly with his wife. The IRS identified the unreported income during a routine matching of Form 1099 income with the Kirks' tax return.

After reviewing Mayor Kirk's tax returns for 2005, 2006 and 2007, Finance Committee staff submitted several questions to Mr. Kirk on February 6, 2009. The questions included a request for clarification of his practice of assigning honoraria to Austin College and whether the honoraria should have been reported as taxable income, substantiation of various charitable donations and other miscellaneous tax questions. Mayor Kirk provided written responses to the questions on February 17, 2009. He met with Finance Committee staff on February 19, 2009 for a due diligence meeting and to answer tax questions that had not been resolved by his written responses. Mayor Kirk submitted additional information to Committee staff on February 24, 2009 and February 28, 2009.

The results of the staff review of Mayor Kirk's information are described below. Mayor Kirk has agreed to promptly file amended returns reflecting the adjustments discussed in this memo. Staff estimates the total tax adjustments on Mayor Kirk's amended returns for 2005, 2006 and 2007 will be approximately \$9,975.

Honoraria

Background

Mr. Kirk's nomination questionnaire explained that he routinely asked that his speaking honoraria be assigned to Austin College, his alma mater, to help fulfill a pledge he had made to the college for a scholarship fund. Since he asked for the honoraria to be assigned to Austin College, he did not think the honoraria were taxable income to him. His paid preparer also thought this was proper. The questionnaire indicated that Mr. Kirk had assigned speaking fees

to Austin College on approximately 16 different occasions. In all, \$37,750 of honoraria were not reported as income for tax years 2004, 2005, 2006 and 2007.

Mayor Kirk followed a consistent pattern of assigning the honoraria to Austin College without reporting the honoraria as income or deducting them as charitable donations. In 2005, he differed from his general pattern by deducting 4 honoraria totaling \$7,500 as charitable donations that he had not included in income. Mayor Kirk did not work through an agent, and the arrangements to have the honoraria paid to Austin College appear to have been informal.

Findings

Mayor Kirk has determined that the honoraria received from his various speaking engagements that were assigned to the Austin College scholarship fund should have been reported as income and then deducted as charitable donations. The estimated income tax effect of these adjustments, including taking into account the honoraria already deducted as charitable donations, is approximately \$5800.

Charitable Donations

Background

Finance Committee staff asked Mayor Kirk to provide substantiation for certain charitable contributions. In response, he submitted donee acknowledgements, cancelled checks, and explanations for how the fair market values of non-cash donations were determined.

Findings

The mayor's information generally met the recordkeeping requirements for the amounts in question. Amended returns will adjust charitable donations in the amount of \$900 because a donee acknowledgement was not provided, and to reduce the fair market value of a TV from \$3,000 to \$1,500; charitable donations for 2006 may be increased to include a deduction of \$1500 that was overlooked when the original 2006 tax return was filed. The net tax effect of these adjustments is estimated to be approximately \$300.

Other Various Business-Related Tax Issues

Background

Mayor Kirk reduced his net partnership income by certain unreimbursed business expenses including tax and accounting fees and season tickets to the NBA Mavericks. Staff had questioned whether the accounting fees were personal in nature, and for substantiation that certain entertainment expenditures were ordinary and necessary business expenses used to entertain clients.

Findings

Mayor Kirk paid \$7,079, \$7,969 and \$10,170 in tax and accounting fees in 2005, 2006 and 2007, respectively. He deducted 90% of the fees on Schedule E (the form on which his law firm partnership income was reported), and the remaining 10% were deducted on Schedule A (itemized deductions). Taxpayers are permitted to allocate tax and accounting fees among various tax forms commensurate with the effort required to prepare each form. The 90% allocation to Schedule E on the Kirk returns appeared to be too high. Mayor Kirk has reviewed these fees and he will adjust the allocation on the amended returns he intends to file. To the extent the fees are shifted from Schedule E to Schedule A, he will receive no tax benefit because the amounts will fall below the 2% adjusted gross income threshold for miscellaneous itemized deductions. The income tax effect of this adjustment is estimated to be approximately \$1,000. _

Mayor Kirk deducted as entertainment expenses the cost of NBA Mavericks tickets in the amount of \$6,208, \$7,035 and \$4,139 in 2005, 2006 and 2007, respectively. He has substantiated \$9,900 of the total \$17,382 as qualifying entertainment expenses and will amend his returns accordingly. The tax effect of the adjustments to entertainment expenses is estimated to be approximately \$2,600.

Self-Employment Tax

The adjustments to the honoraria, tax and accounting fees and Mavericks tickets will increase Mayor Kirk's net self-employment income and increase the Medicare portion of his self-employment tax. The estimated additional Medicare tax he will owe on his amended returns is approximately \$275.