Approved February 10, 1986
Date

MINUTES OF THE SENATE COMMITTEE ON LABOR, INDUSTRY AND SMALL BUSINESS.

The meeting was called to order by Senator Dan Thiessen at
Chairperson

1:30 ~~a.m.~~/p.m. on Monday, February 3, 1986 in room 529-S of the Capitol.

All members were present except:
Chairman, Senator Dan Thiessen (excused)
Senator Jack Steineger (excused)

Committee staff present:
Jerry Ann Donaldson, Research Department
Gordon Self, Revisor
Marion Anzek, Committee Secretary

Conferees appearing before the committee:
Larry Wolgast, Secretary Department of Human Resources
A.J. Kotich, Kansas Department of Human Resources
Paul Bicknell, Chief of Contributions, Department of Human Resources
Rob Hodges, Kansas Chamber of Commerce and Industry KCCI
Wayne Maichel, Exec. V.Pres, Kansas State Federation of Labor

The meeting was called to order by Vice Chairman, Senator David Kerr at 1:30 p.m. to discuss SB376:concerning the employment security law, relating to definition of certain terms.

The Vice Chairman recognized Larry Wolgast to review and explain the views of the Department of Human Resources and background of SB376.

The following conferees appeared in support of SB376.

Larry Wolgast told the committee SB376 is not a conformity issue, but it is an attempt to make definitions uniform with those of the Federal Government, and would be a dis-service to the employers of the State, to not agree with it. It is the definition of wages as they pertain to what we count for un-employment insurance benefits. A complete synopsis of the specific changes, within the law are in (See Attachment A), and these changes will conform with the Federal Social Security Act Amendments of 1983, and the Deficit Reduction Act of 1984.

Mr. Wolgast also explained to the committee members of the effect on Kansas employers when IRS, under FUTA laws, considers certain items as wages and Kansas does not, such as sick pay and tips. (See Attachment B).

Senator Norvell asked Mr. Wolgast if SB376 is in mandate by the Federal Government or is it one that we are doing voluntarily to correspond with Federal legislation?

Mr. Wolgast this is voluntary, and was a recommendation last year by the Advisory Council. The only part that is not the Federal mandate, is about the 21 days K.S.A. 44-703(0) (1) of Attachment A and the reason is that the employee works the whole month and gets paid the 1st of the month, we found that last year 675 employers went bankrupt for a total of about 1.3 million dollars. When the employer is broke and cannot pay, the credits for the employee are not counted. Therefore we put this section in SB376 which states that 21 days after the employee should have been paid, they will have been deemed to be paid in order that they can get their unemployment credit for wages earned for that particular month.

Senator Norvell asked if the Advisory Council set the figure at "$20.00 or more" for any employee earning this amount in tips to turn in a written report to their employer?

Mr. Wolgast stated this is Federal law, and was not set by the Advisory Council.

Senator Morris stated this has been Federal law since 1956, and it has to be $20.00 before they are required to report, there are forms for reporting and have been for many years. We are trying to make it uniform with the Federal

law, otherwise the employer has to keep 2 sets of records, one for Kansas earnings without the tips, and the Federal with the tips.

Senator Daniels when we talk about renumeration other than money, are we talking about American Express, memberships to Country Clubs, etc., and is this all contained in that type of remuneration, that would be a benefit to the employee, that is supposed to be reported?

Mr. Wolgast most of the examples in Attachment A are forms of remuneration, other than wages. Your answer is yes, whether those specific ones you asked about are included, I'm not sure, but other things like sick pay, insurance, medical coverage and annuities.

A. J. Kotich in answer to Senator Daniels about the credit cards, if it is a requirement of the job, then it would be included, but if it is something other than a requirement of the job, then they would not have to report it.

Senator Daniels if it is a requirement of the job to have these and yet they are used also for personal use, such as an automobile, where do they draw the line?

Mr. Kotich I think for personal use, that would probably be different, and they would have to report that, verses a requirement of the job.

Senator Daniels how does this all fit in when the employer pays less than the minimum wage, and then expects the employee to make up the difference in tips, and the employee still has to report all of their tips?

Mr. Paul Bicknell currently in our law, we utilize tips as taxable when they are used to meet either the State or Federal minimum wage law. Under the Federal Unemployment Tax Law all tips are now reportable.

Senator Daniels if the employer pays much less than the minimum wage, say $2.40 and says you as the employee must make up the remainder of that, up to the minimum wage with your tips, and if you don't make it up, I guess we will have to. How does that affect the Workers Unemployment, if they get laid off, is that determined on their salaries, and are the salaries determined at the less than mimimum wage amount?

Mr. Bicknell in those particular cases, if the employee does not make minimum wage with tips, then the employer does have to make up the difference. Some employers would get by without paying the minimum wage by utilizing the tips, but in other cases where the employee does not make enough tips, then the employers have to make up the difference.

Senator Morris $2.01 is the actual minimum cash wage out of $3.35. The $1.34 can be picked up as a tip credit if the employee has actually earned that amount in tips, if not, then the employer has to pay it. Up to now, he did not have to match, and we are talking about Federal, for Unemployment purposes. Anything over the $3.35 was matched, now all tips that are reported will be subject to Unemployment Tax.

Mr. Wolgast the stricken language on line 510 of SB376, is out of conformity with the Federal, because that is exactly what the Federal does, furnish it for the convenience of the employer. That is why we put it back in, on line 664.

Senator Norvell in general terms, who is benefited the most, the employer or the employee?

Mr. Wolgast the employer is benefited the most. It could make a difference to the employee, in terms of their account or unemployment insurance, but it could be an immediate improvement to the employer, because in some cases the employer would be saving $534.00 based on this example of $10,000. in Attachment B.

Senator Norvell does this have an adverse affect upon the employee?

Mr. Kotich No. There is a give and take, for example on the sick pay this saves the employer a considerable amount of tax dollars, and it also provides wage credits for the employee that they would not have otherwise.

Senator Feleciano the last statement you made about the employer which would create wage credits for the employee, obviously you are going to treat the $10,000. as income, are you not? It seems to me that would create an adverse effect on the employee, presently he is not paying taxes on that, but now he would be paying taxes on that $10,000.

Mr. Wolgast this would be on unemployment tax which the employee does not pay anything on. Under this particular example, the employee would not have any benefit because they are not reportable to the State, so when he filed his claim those wage credits would not be usable for his claim, but they are required to be reported to the Federal Government, and taxed to the Federal Government, which does not provide any benefits as far as a claim is concerned. It is utilized for Administration cost for the Federal and State system.

Vice Chairman, David Kerr if the net effect of the bill, is to expand the definition of the base, then should that employee become unemployed at some time, they will have a larger base to draw on, is that correct? Isn't the net effect of the bill, that in most cases you have expanded the definition of the base?

Mr. Wolgast To question #1, that is true. Question #2, in most cases, but if you numbered them 1 through 5, there are probably more exclusions than inclusions, but the inclusions include a larger segment, tips will increase the wage credit for a large number of employers in the State, by including all the tips, and also the exclusion of the wage credits for wages that aren't paid, would be another area where you would be able to increase the wage credits for the employer, the sick pay is another large area that would provide wage credits for the employer. Other ones, like the stock option plan, and things that are exclusions are very small, as far as taking away the wage credits for the employee.

Senator Feleciano I find it hard to understand how under the umbrella of conformity, when you take away a tax, can be conformity. My question, when you take away $534.00, this loss is to whom?

Mr. Wolgast to the FUTA tax. The way the FUTA tax works, it goes to Washington and to our fund, to pay administration, which in a round about way comes back to us.

Senator Feleciano so if we follow this example, we could multiply this, then at what time would this $534.00 be traded?

Mr. Wolgast when the employer files their annual Federal forms, they are allowed a credit of those wages, which are reportable to the State against their Federal Employee Tax. No matter what your rate is to the State, in this example we utilize the 6/10 of 1% tax rate. The Federal Government allows a credit of 5.4% against their 6.2% rate. So you come up with an 8/10 of 1% net tax difference in the Federal Government each year, providing you are allowed that credit.

Senator Feleciano providing they take a loss, who takes it, the Federal Government or the State?

Mr. Wolgast the loss would be to the trust fund, which comes back to support us, but in the long run we would be looking at savings. We don't get all the trust fund back anyway, we only get about 70% back. In this example the Federal Government would lose. In a sense the money is ours but the Federal controls it. It can only be spent on Employment Security in the State, but they have control. By including it in wages, it then goes into our trust fund.

Senator Daniels on page 2 of Attachment A regarding payments for sickness or accident disability, now taxable to the employer, if the payments are made by a third party such as an Insurance Company, the Insurance Company will be considered the employer and responsible for reporting the contributions relating to the payments, is this correct?

Mr. Wolgast currently, and effective January 1, 1985, as far as the Federal Government is concerned, the Federal Employee Tax. The third party is considered the employer and would be taxed at the rate of 6.2%, with the

inclusion of the State law. They would tax that same employer at what ever the rate would be within the State, and then they would allow that 5.4% credit against the Federal.

Senator Daniels on the same page regarding death benefits, what are the exceptions that have been removed after June 30, 1985?

Mr. Wolgast That refers to the death benefits and if the employee in his employment has not the option to receive, and has not paid into any part of the premimums or has paid and withdrawn from the plan and upon termination of the plan. Basically it provided some specific plans that if you had the option and participated then that definitely would be taxable.

Senator Morris I notice the effective date is upon publication of the statute book, normally July 1. Are you doing anything about that, and are you still going to have to keep 2 sets of records?

Mr. Wolgast I would say, that probably this year we will have to.

Senator Morris it seems to me you need to get this into conformity as soon as you can, and it would be better to have it upon publication. I see this as the only major benefit.

Vice Chairman, David Kerr asked if the committee members had any more questions concerning SB376, having none, he called upon Rob Hodges.

Rob Hodges As a member of the Advisory Council, during one of our meetings over a year ago, the Department brought to our meeting the things that are contained in this bill and asked that we bless this. We asked many of the same questions that were asked here today, such as who will benefit, and who will get hurt. It is our understanding that this is not an Unemployment Compensation benefit question. It is a question of whether or not the employer should be required to maintain 2 sets of records. There have been different ways in reporting, and it was the feeling of the Advisory Council that we decided what the Department was recommending to us was something that should be recommended, and we did that.

Wayne Maichel we too, at the AFL-CIO, certainly support this bill, primarily it would do one thing, allow employers to keep one set of records.

Vice Chairman, David Kerr concluded the hearings on SB376, and asked Senator Morris if he had anything else.

Senator Morris I would prefer that the whole committee be here, but I do have a couple of requests that I would like to see introduced as committee bills. A couple of years ago, I believe it was 1984, we suggested we change the base wage computation from 3 to 5 years, so it could spread out the shock, when an employer increased his payroll. Right now it is kind of a dis-incentive to employ new people or expand. At that time the Department advised us that it would be late 1985 before they could go to a 5 year, to have those figures available. Now it is 1986, and I am proposing that be done. In other words, when you figure the average wage, that you use the 5 year period, instead of 3 years. The other one I would like to see is when you are figuring the weekly benefit amount, to go to the highest 2 consecutive quarters, instead of like we do now, the highest quarter. The person, most permanently attached to the work force will get the benefit, rather than the one that goes to work for a quarter, and then is off work, or works 2 quarters out of the year. Many times a person that works 4 quarters, draws less benefits, because he has no high wage in one quarter. I will wait and let the committee, think about this before I would request them.

Senator Feleciano moved that the minutes of the March 27, 1985 meeting be approved, seconded by Senator Daniels, and the motion carried.

The Vice Chairman adjourned the meeting at 2:21 p.m..

GUEST LIST

COMMITTEE: SENATE LABOR, INDUSTRY & SMALL BUSINESS DATE: 2-3-1986

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Rob Hodges	Topeka	KCCI
AJ Kolbet	Topeka	DHR
Paul Bicknell	"	"
Wayne Maichis	"	Ks AFL-CIO
Larry Wolgast	"	DHR

2-3-86
ATT A

P.L. 98-21 (Social Security Act Amendments of 1983)
P.L. 98-369 (The Deficit Reduction Act of 1984)

K.S.A. 44-703(o)(1)

(o) "Wages" means all compensation for services including commissions and bonuses and the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash, shall be estimated and determined in accordance with rules and regulations prescribed by the secretary. Compensation payable to an individual which has not been actually received by that individual within 21 days after the end of the pay period in which the compensation was earned shall be considered to have been paid on the 21st day after the end of that pay period. Effective January 1, 1986, gratuities, including tips received from persons other than the employing unit, shall be considered wages when reported in writing to the employer by the employee. Employees must furnish a written statement to the employer, reporting all tips received if they total $20.00 or more for a calendar month whether the tips are received directly from a person other than the employer or are paid over to the employee by the employer. This includes amounts designated as tips by a customer who uses a credit card to pay the bill.

EXAMPLE: A company's pay period ends on the last day of a month and the pay day is on the fifth working day of the next month. Under present law, if the company does not meet payroll commitments for the month of January and then files bankruptcy the employees would not have wage credits for that month until the bankruptcy court disburses the January wages. Under the proposed definition of wages, the amount of earnings not paid would be considered paid on February 21. These wages would then be available for unemployment benefit computation. The Agency could also present a claim to the court for taxes due on the unpaid earnings. Under present law this can not be done.

This paragraph also includes tips in the definition of wages beginning January 1, 1986.

K.S.A. 44-703(o)(2)(A):

The term "wages" shall not include: (2) the amount of any payment (including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of such employee's dependents under a plan or system established by an employer which makes provisions for employees generally, for a class or classes of employees or for such employees or a class or classes of employees and their dependents, on account of (A) sickness or accident disability, except in the case of any payment made to an employee or such employee's dependents, this subparagraph shall exclude from the term "wages" only payments which are received under a workmen's compensation law. Any third party which makes a payment included as wages by reason of this subparagraph (2)(A) shall be treated as the employer with respect to such wages,

Attachment A 2/3/86
Senate Labor, Industry
and Small Business

Sickness or accident disability payments are now taxable to the employer. Payments made to employees for sickness or accident disability by a third party, such as an insurance company, are taxable. The third party will be considered the employer and is responsible for reporting the payments and paying contributions relating to the payments.

K.S.A. 44-703(o)(2)(B)

The term "wages" shall not include: (2) The amount of any payment (including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of such employee's dependents under a plan or system established by an employer which makes provision for employees generally, for a class or classes of employees or for such employees or a class or classes of employees and their dependents, on account of (B) medical and hospitalization expenses in connection with sickness or accident disability,

Medical or hospitalization expenses in connection with sickness or accident disability are not taxable. Medical and hospitalization payments were not taxable prior to January 1, 1985. No change in this paragraph.

K.S.A. 44-703(o)(2)(C)

The term "wages" shall not include: (2) The amount of any payment (including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of such employee's dependents under a plan or system established by an employer which makes provision for employees generally, for a class or classes of employees or for such employees or a class or classes of employees and their dependents, on account of (C) death;

Death benefits remain non-taxable. However, the exceptions 44-703(o)(2)(D)(i) and (ii) (under present law) have been removed after June 30, 1985.

K.S.A. 44-703(o)(3)

The term "wages" shall not include: (3) any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six calendar months following the last calendar month in which the employee worked for such employer;

This paragraph removes from the definition of wages, payments relating to sickness and accident disability which are paid to the employee after the expiration of six calendar months following the last calendar month in which the employee worked for the employer.

EXAMPLE: An individual becomes ill and starts sick leave on August 7, 1985. At this time the individual also starts drawing "sick pay". The individual continues drawing sick pay until June 1, 1986, at which time he returns to work for the same employer. The sick payments made to the employee from August 8, 1985, through February 28, 1986, are

taxable and would be reported on the Employer's Quarterly Wage Report and Contribution Return. Payments from March 1, 1986, through June 1, 1986, are not taxable and would not be reported.

K.S.A. 44-703(o)(4)(A)

The term "wages" shall not include: (4) any payment made to, or on behalf of, an employee or such employee's beneficiary: (A) From or to a trust described in section 401(a) of the Internal Revenue Code which is exempt from tax under section 501(a) of the Internal Revenue Code at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust;

A trust described in section 401(a) of the Internal Revenue Code is a trust created and forming part of a stock bonus, pension or profit sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries.

K.S.A. 44-703(o)(4)(B)

The term "wages" shall not include: (4) any payment made to, or on behalf of, an employee or such employee's beneficiary: (B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a) of the Internal Revenue Code;

The annuity plans described in 403(a) are retirement annuities or retirement annuities and medical benefits for retired employees. The payments made by the employer to purchase the annuity plan and payments made from the plan to retired employees are not taxable.

K.S.A. 44-703(o)(4)(C)

The term "wages" shall not include: (4) any payment made to, or on behalf of, an employee or such employee's beneficiary: (C) under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in section 405(a) of the Internal Revenue Code;

A qualified bond purchase plan is a plan whereby the employer purchases United States bonds in the name of his employees. These bonds may be redeemed by the employee only after the employee has attained the age of 59 1/2 years or has become disabled. The bonds must be non-transferrable.

K.S.A. 44-703(o)(4)(D)

The term "wages" shall not include: (4) any payment made to, or on behalf of, an employee or such employee's beneficiary; (D) under a simplified employee pension plan if, at the time of the payment, it is reasonable to believe that the employee will be entitled to a deduction under section 219(b)(2) of the Internal Revenue Code;

Section 219 of the Internal Revenue Code deals with retirement savings. Section 219(b)(2) sets the limits to the amount the employer may contribute to the plan. Generally, the amount the employer may contribute to the plan and

not include in the term "wages" is $2,000. per year per employee. This plan is similar to and may be in conjunction with Individual Retirement Accounts (IRA's).

K.S.A. 44-703(o)(4)(E)

The term "wages" shall not include: (4) any payment made to, or on behalf of, an employee or such employee's beneficiary: (E) under or to an annuity contract described in section 403(b) of the Internal Revenue Code, other than a payment for the purchase of such contract which was made by reason of a salary reduction agreement (whether evidenced by a written instrument or otherwise);

Section 403(b) of the Internal Revenue Code describes annuity contracts purchased by employers described in 401(c)(3) and exempt from tax under section 501(a) of the Internal Revenue Code. These are non-profit employers. This section also applies to employers which are public schools. The annuity contracts must be purchased by the employer to be non-taxable under the Kansas Employment Security Law. If the annuity is purchased by the employer through the salary reduction of an employee, the amount is taxable.

EXAMPLE: An employee for a school district has a monthly salary of $2,000. Through an agreement with the school district, the employee's salary is reduced to $1,800. per month. The remaining $200. is used by the school district to purchase an annuity for the employee. For the purposes of the Kansas Employment Security Law, the school district must report and pay contributions on the entire $2,000. per month.

Using the same example except that the school district pays the employee $2,000. and in addition purchases annuities for the employee totaling $200. per month, only the $2,000. is taxable to the school district.

K.S.A. 44-703(o)(4)(F)

The term "wages" shall not include: (4) any payment made to or on behalf of, an employee or such employee's beneficiary: (F) under or to an exempt governmental deferred compensation plan as defined in section 3121(v)(3) of the Internal Revenue Code;

Section 3121(v)(3) of the Internal Revenue Code describes exempt governmental deferred compensation plans such as KPERS in the State of Kansas. In the case of KPERS and other Kansas retirement plans the portion paid by the state and the portion paid by the employee are non-taxable.

K.S.A. 44-703(o)(4)(G)

The term "wages" shall not include: (4) any payment made to, or on behalf of, an employee or such employee's beneficiary (G) to supplement pension benefits under a plan or trust described in any of the foregoing provisions of this subparagraph to take into account some portion or all of the increase in the

cost of living, as determined by the Secretary of Labor, since retirement but only if such supplemental payments are under a plan which is treated as a welfare plan under section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974;

Section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974 provides that supplemental income payments, under which the pension benefits of retirees or their beneficiaries are supplemented to take into account some portion or all of the increases in the cost of living (as determined by the Secretary of Labor) since retirement, shall be treated as welfare plans.

K.S.A. 44-703(o)(5)

The term "wages" shall not include: (5) The payment by an employing unit (without deduction from the remuneration of the employee) of the tax imposed upon an employee under section 3101 of the Internal Revenue Code with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor;

Employer payments of the employee's share of social security for domestic and agricultural employees is not taxable. These payments are taxable and considered wages for all other employers. Agricultural labor for the purposes of this paragraph is defined in K.S.A. 44-703(w)(1) and should not be confused with agricultural businesses listed in the Standard Industrial Classification Manual.

K.S.A. 44-703(o)(6)

The term "wages" shall not include: (6) remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business;

Only payments made to individuals in mediums other than cash are not taxable.

EXAMPLE: The owner of a clothing store hires his neighbor to paint the ceiling of his store. For his service, the neighbor receives a new suit of clothes. This payment is not taxable. However, using the same example, the neighbor receives $500. cash instead of a suit. The $500. cash payment is taxable.

K.S.A. 44-703(o)(7)

The term "wages" shall not include: (7) remuneration paid to or on behalf of an employee if and to the extent that at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217 of the Internal Revenue Code relating to moving expenses;

Payments made by an employer for moving expenses are not considered wages to the employee if the payment is for:

1. **moving household goods and personal affects from the former to the new residence;**

2. traveling (including meals and lodging) from the former residence to the new residence;

3. traveling (including meals and lodging) after obtaining employment, from the former residence to the general location of the new principal place of work and return for the principal purpose of searching for a new residence;

4. meals and lodging while occupying temporary quarters in the general location of the new principal place of work during any period of 30 consecutive days after obtaining employment; or

5. qualified residence sale, purchase or lease expenses.

Items three and four shall not exceed $1,500. and item five aggregate amount shall not exceed $3,000. reduced by the amount received for three and four.

K.S.A. 44-703(o)(8)(A) & (B)

The term "wages" shall not include: (8) any payment or series of payments by an employer to an employee or any of his dependents which is paid: (A) upon or after the termination of an employee's employment relationship because of death or retirement for disability; and

(B) under a plan established by the employer which makes provisions for employees generally, a class or classes of employees or for such employees or a class or classes of employees and their dependents,

other than any such payment or series of payments which would have been paid if the employee's employment relationship had not been so terminated;

EXAMPLE: Upon the death or disability retirement of an individual, one months salary remained unpaid. The payment of the salary is considered wages and taxable. Any other payment to the individual's estate or the individual if retired for disability would not be taxable if the payments are part of a plan for all employees or a class of employees.

K.S.A. 44-703(o)(9)

The term "wages" shall not include: (9) remuneration for agricultural labor paid in any medium other than cash;

This paragraph is self explanatory and there is no change in our present policy.

K.S.A. 44-703(o)(10)

The term "wages" shall not include: (10) any contribution, payment, or service provided by an employer which may be excluded from the gross income of an employee, such employee's spouse or dependents, under the provisions of section 120 of the Internal Revenue Code relating to amounts received under qualified group legal services plans;

A qualified group legal services plan is a separate written plan of an employer for the exclusive benefit of his employees or their spouses or dependents to provide them with specified benefits consisting of personal legal services through pre-payment of, or provision in advance for, legal fees in whole or in part by the employer.

K.S.A. 44-703(o)(11)

The term "wages" shall not include: (11) any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 or 129 of the Internal Revenue Code which relates to educational assistance programs and dependent care assistance programs;

An educational assistance program is a separate written plan of an employer for the exclusive benefit of his employees to provide such employees with educational assistance. The program must meet these requirements:

1. The program shall benefit employees who qualify under a classification set up by the employer and found not to be discriminatory in favor of employees who are officers, owners, or highly compensated, or their dependents. There shall be excluded from consideration employees not included in the program who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that educational assistance benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.

2. Not more than 5 percent of the amounts paid or incurred by the employer for educational assistance during the year may be provided for the class of individuals who are shareholders or owners (or their spouses or dependents), each of whom (on any day of the year) owns more than 5 percent of the stock or of the capital or profits interest in the employer.

3. A program must not provide eligible employees with a choice between educational assistance and other remuneration includable in gross income. The business practices of the employer (as well as the written program) will be taken into account.

4. A program is not required to be funded.

5. Reasonable notification of the availability and terms of the program must be provided to eligible employees.

A dependent care assistance program is a separate written plan of an employer for the exclusive benefit of his employees to provide such employees with dependent care assistance which meets these requirements:

1. The contributions or benefits provided under the plan shall not discriminate in favor of employees who are officers, owners, or highly compensated, or their dependents.

2. The program shall benefit employees who qualify under a classification set up by the employer and found not to be discriminatory in favor of employees described in paragraph (1), or their dependents. There shall be excluded from consideration employees not included in the program who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that dependent care benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.

3. Not more than 25 percent of the amounts paid or incurred by the employer for dependent care assistance during the year may be provided for the class of individuals who are shareholders or owners (or their spouses or dependents), each of whom (on any day of the year) owns more than 5 percent of the stock or of the capital or profits interest in the employer.

4. A program is not required to be funded.

5. NOTIFICATION OF ELIGIBLE EMPLOYEES-Reasonable notification of the availability and terms of the program shall be provided to eligible employees.

6. The plan shall furnish to an employee, on or before January 31, a written statement showing the amounts paid or expenses incurred by the employer in providing dependent care assistance to such employee during the previous calendar year.

K.S.A. 44-703(o)(12)

The term "wages" shall not include: (12) the value of any meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119 of the internal revenue code;

There shall be excluded from gross income of an employee the value of any meals or lodging furnished to him, his spouse, or any of his dependents by or on behalf of his employer for the convenience of the employer, but only if,

1. in the case of meals, the meals are furnished on the business premises of the employer, or

2. in the case of lodging, the employee is required to accept such lodging on the business premises of his employer as a condition of his employment.

SPECIAL RULES

1. In determining whether meals or lodging are furnished for the convenience of the employer, the provisions of an employment contract or of a State statute fixing terms of employment shall not be determinative of whether the meals or lodging are intended as compensation.

2. In determining whether meals are furnished for the convenience of the employer, the fact that a charge is made for such meals, and the fact that the employee may accept or decline such meals shall not be taken into account.

3. A) If i) an employee is required to pay on a periodic basis a fixed charge for his meals,

and

ii) such meals are furnished by the employer for the convenience of the employer, there shall be excluded from the employee's gross income an amount equal to such fixed charge.

B) Paragraph (A) shall apply

i) whether the employee pays the fixed charge out of his stated compensation or out of his own funds,

ii) only if the employee is required to make the payment whether he accepts or declines the meals.

K.S.A. 44-703(o)(13)

The term "wages" shall not include: (13) any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died;

Self explanatory.

K.S.A. 44-703(o)(14)

(14) notwithstanding the foregoing provisions of this subsection (o), "total wages" mean the gross amount paid by an employer to such employer's employees with respect to a week, month, year or other period as required by subsection (e)(2) of K.S.A. 44-710, and amendments thereto.

There is no change in this paragraph. [Previously K.S.A. 44-703(o)(4)]

K.S.A. 44-703(o)

Nothing in any paragraph of subsection (o), other than paragraph (1), shall exclude from the term "wages" (1) Any employer contribution under a qualified cash or deferred arrangement, as defined in section 401(k) of the internal revenue code, to the extent that such contribution is not included in gross income by reason of section 402(a)(8) of the Internal Revenue Code;

This paragraph means that nothing in K.S.A. 44-703(o) except paragraph (2)(A) which sets out the taxable wage base will exclude employer contributions to 401(K) plans from the definition of wages. Employer contributions are now taxable. A 401(k) plan is a cash or deferred arrangement which is part of a profit sharing or stock bonus plan.

or

K.S.A. 44-703(o)

Nothing in any paragraph of subsection (o), other than paragraph (1), shall exclude from the term "wages": (2) any amount treated as an employer contribution under section 414(h)(2) of the Internal Revenue Code.

In the case of any plan established by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing, where the contributions of employing units are designated as employee contributions but where any employing unit picks up the contributions, the contributions so picked up shall be treated as employer contributions.

EXAMPLE: If the State of Kansas would pay the employee's share of KPERS without a deduction from the employee, then the employee's share would become taxable. Under new K.S.A. 44-703(o)(2)(D)(vi) (see page 4), both the State's portion and the employee's portion are not considered wages.

K.S.A. 44-703(o)

Any amount deferred under a nonqualified deferred compensation plan shall be taken into account for purposes of this section as of the later of when the services are performed or when there is no substantial risk of forfeiture of the rights to such amount. Any amount taken into account as wages by reason of this paragraph, and the income attributable thereto, shall not thereafter be treated as wages for purposes of this section. For purposes of this paragraph, the term "nonqualified deferred compensation plan" means any plan or other arrangement for deferral of compensation other than a plan described in paragraph (o)(4).

An example would be:

Under the plan the employee must be employed by a firm for two years before the employee is guaranteed a return from the plan. The payments to the plan during the first two years would not be taxed until the employee's second anniversary date. Subsequent payments would be taxed when the service is performed by the employee.

2-3-86
ATT B

Affect on Kansas employers when IRS, under FUTA laws, considers certain items as wages and Kansas does not, such as sick pay and tips.

EXAMPLE:

During a calendar year an employer pays $10,000. to employees in sick pay and tips.

Employer's Kansas contribution rate is 0.06%. Under existing law Kansas tax on the $10,000. is zero. Also the employees do not get credit for this amount when unemployment benefits are computed. Since the $10,000. is not considered wages in Kansas, the employer must pay the full 6.20% to IRS.

$10,000.00 x 6.20% = $620.00

If Kansas law would consider sick pay and tips as wages as IRS does the employer would pay:

$10,000.00 x .06% = $6.00

to the State and wages could be used for unemployment benefits.

The employer would pay to IRS:

$10,000.00 x 6.20% =	$620.00
Less credit allowed for Kansas Payment	
$10,000.00 x 5.40% =	$540.00
Total amount due IRS =	$620.00
	- 540.00
	$ 80.00

Total payment by Kansas employer under proposed amendments:

IRS	$80.00
Kansas	6.00
TOTAL	$86.00

Total payment by Kansas employer under existing law:

IRS	$620.00
Kansas	.00
TOTAL	$620.00

Savings to Kansas employer if S.B. 376 is passed:

$620.00
- 86.00
$534.00

Also double record keeping is eliminated and employees get to use the wage credits for unemployment benefits.

Attachment B 2/3/86
Senate Labor, Industry
and Small Business