

Approved 2/17/87

Minutes of the House Committee on Taxation. The meeting was called to order by E. C. Rolfs, Chairman, at 9:00 a.m. on February 11, in room 519-S of the Capitol of the State of Kansas.

All members of the Committee were present.

Committee Staff Present: Tom Severn, Legislative Research
Chris Courtright, Legislative Research
Don Hayward, Revisor of Statutes
Millie Foose, Committee Secretary

Mr. E. A. Mosher, Executive Director, League of Kansas Municipalities, discussed Property Tax Exemptions for Economic Development Purposes and presented a manual on Policy and Procedures for Kansas Counties and Cities. (Attachment 1) Mr. Mosher said that though the manual was prepared by the staff of the League of Kansas Municipalities, the substantive part is the product of the Tax Force on Tax Exemptions for Economic Development. He discussed the standards for determining benefits and emphasized that a city or county can do less but never more than the law allows. He said it is very difficult to draft legislation that will cover different situations.

Mr. Gary Toebben, representing Kansas Industrial Developers Association, reported the organization's mission is creating jobs for Kansas and for the communities they represent, and that they are strong proponents for the passage of a constitutional amendment authorizing cities and counties to grant property tax exemption for economic development purposes. (Attachment 2) They will continue to support the continuation of the State's current policy of local control, until such time that local government requests additional state guidelines.

Richard Funk, representing Kansas Association of School Boards, discussed exemption of property for economic development purposes and suggested that a new bill should make it clear that it applies to newly constructed additions and will not exempt an entire existing building plus the new addition. (Attachment 3)

Bud Grant, representing Kansas Chamber of Commerce and Industry, discussed the amendment. He believes that at this time the 1987 Legislative should be very careful about doing anything in this area -- that 1987 should be used as a year to observe the implementation of this constitutional change by local units of government and pinpoint those areas in which legislation may be needed. (Attachment 4)

Mary Ellen Conlee, Executive Director for Kansas Association for Small Business, discussed the amendment which they supported in its original version. They made three suggestions: (1) That small expansions are eligible. (2) That paper work is reasonable. (3) That the abatement decision be made for a given period. (Attachment 5)

Keith Farrar, representing Board of Tax Appeals, presented some questions and comments. The questions concerned "existing business", "commencing business", "new employment", and other questions which they believe should be clarified. He said that some firms are very creative when defining questions like these. He believes that definitions should be spelled out very clearly so that there can be no doubt of the Legislature's intent. (Attachment 6)

The minutes of the February 10 meeting were approved.

There being no further business to come before the Committee, the meeting was adjourned.



E. C. Rolfs, Chairman

Preliminary Edition

Property Tax Exemptions for Economic Development Purposes

A Manual on Policy and Procedures for
Kansas Counties and Cities

League of Kansas Municipalities
January 1987

S P E C I A L N O T I C E

This is a preliminary report. A revised edition is scheduled following adjournment of the 1987 Kansas Legislature. This edition is based on existing state laws and recent opinions of the Attorney General. While the new constitutional amendment authorizing property tax exemptions for economic development purposes is self-enabling--no state legislation is constitutionally required--some legislation may be considered and adopted.

As of February 5, no bill has been introduced to affect local determination of property tax exemptions. Such bills may be introduced; they may or may not be passed. Nothing will be certain until the legislature adjourns, in mid-April.

Since many cities and counties and economic development groups are now developing policies for the granting of tax exemptions, this preliminary edition is distributed to contribute to that process. At this stage, it appears unlikely that a new law will be enacted which will require substantial changes to the model policies and procedures presented in this report. If major new laws are passed, the locally adopted "Statement of Policy and Procedures," based on Chapter 2 of this manual, could then be amended.

Notes on Property Tax Exemptions For Economic Development Purposes

Basis of Remarks to House Committee on Taxation

Wednesday, February 11, 1987

By E.A. Mosher, Executive Director,
League of Kansas Municipalities

1. Distribution of Report; Background Explanation
2. Task Force Problems and Concerns; Resolution--see below
3. Policy Recommendations:
 - a. No legislation is needed at this time
 - b. Some policy and practical problems may arise in the future, possibly necessitating legislation
 - c. One possibility: prohibit any city or county from granting an economic development exemption unless it has previously adopted by resolution a statement of policy and procedures governing such local exemptions.

Sample Problems and Concerns

Resolution

- | | |
|--|---|
| 1. Exemption subject to existing statutory exemption procedures? | 1. Yes, by PVD memorandum and OAG 86-168, p. 57, 58 |
| 2. Board of Tax Appeals have advisory discretion? | 2. No, by OAG 87-5, issued 1/13/87, p. 60; delegated to local units |
| 3. Practical problem of partial assessments and amount flexibility | 3. Grant full exemption, with in lieu tax payment requirements |
| 4. Jurisdiction question | 4. City within city; county outside city; county consultation with city in three mile area. Sec. 6 |
| 5. Minimum tax on existing property (KASB) | 5. Yes. Sec. 8, p. 14 |
| 6. Pirating prohibition? | 6. See Sec. 10, p. 15 |
| 7. Grant exemption or not? | 7. Use of "but for" principle--see Sec. 11, p. 15 |
| 8. How measure public benefits? | 8. Standards established. Sec. 12, p. 16 |
| 9. How much tax incentive? | 9. Criteria of standards in Sec. 12, plus local amount standards, Sec. 14, p. 17 and 38 |
| 10. Confidentiality of negotiations | 10. Administrative review committee, with later public hearing, Sec. 18, p. 19 |
| 11. Openness and public scrutiny | 11. Notice and public hearing required, Sec. 20, p. 19 |
| 12. Continued eligibility check | 12. Annual review may be required; cessation of exempt use notice |
| 13. Definition of manufacturing articles of commerce | 13. Use of "Standard Industrial Classification Manual." Sec. 28, p. 22 and 41 |
| 14. Definition of research and development | 14. See Sec. 22, p. 33 and 41; limited to improvement of either process of manufacturing or manufactured products, not <u>service</u> |

Preliminary Edition

Property Tax Exemptions for Economic Development Purposes

A Manual on Policy and Procedures for
Kansas Counties and Cities

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additional copies--\$5 each.

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**League of Kansas Municipalities
112 West Seventh Street
Topeka, Kansas 66603**

January 1987

**PROPERTY TAX EXEMPTIONS FOR
ECONOMIC DEVELOPMENT PURPOSES**

A Manual on Policy and Procedures for Kansas Counties and Cities

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Introduction

On August 5, 1986, the voters of Kansas approved a constitutional amendment authorizing counties and cities to grant property tax exemptions for certain economic development purposes, apparently reflecting their concern with the sluggish economy of the state. The approval of the amendment by the voters followed the passage of a series of economic development initiatives by the 1986 legislature, which included this amendment proposal.

The new constitutional, discretionary powers of counties and cities to provide for tax abatements by exemptions appear unique in Kansas history. The determination as to whether an exemption is actually granted to an eligible property is exercised by the elected governing body of the county and city, not by law of the legislature or by a specific constitutional provision. While the Constitution provides that the legislature "may limit or prohibit" the application of the amendment, the basic exemption power was extended by the voters, through the Constitution, directly to local governing bodies.

Purpose of Manual

The purpose of this manual is to assist cities and counties in exercising this constitutional power in an effective, fair and judicious manner. While much of the manual material is devoted to explanation and background information, the central thrust is a proposed model Statement of Policy and Procedures, to be adopted by individual local governing bodies. All Kansas counties and cities are urged to adopt such an official local statement, consistent with the model provisions insofar as possible. This local action is recommended by the Governing Body of the League of Kansas Municipalities and by the Kansas Association of Counties and the Kansas Association of School Boards.

The Policy and Procedures Statement section of this manual, found in Chapter 2, was prepared with the assistance of a Task Force on Tax Exemptions for Economic Development, established by the Governing Body of the League. The Task Force predicts that probably every business in Kansas which becomes legally eligible for a constitutional exemption will apply for an exemption, as a matter of enlightened self-interest. As a result, a written policy statement on tax exemptions is recommended for all cities and counties that anticipate any new or expanded business in the future that will be eligible for an exemption--primarily manufacturing.

The granting of tax exemptions, and the determination of an appropriate amount of in lieu payments that may be required as a condition of granting an exemption, will not be an easy job, nor will it be politically popular. "Monday morning quarterbacking" is to be expected. The power to exempt property has the potential for abuse, as well as for its good use for public purposes. While the promotion of jobs and economic development is clearly a number one state priority, and a priority of most Kansas counties and cities, a tax exemption is, in practical effect, a public subsidy in the form of a "tax expenditure." The exemption power must be used carefully and thoughtfully, to achieve public purposes. As noted in the Redwood-Kreider report (see Chapter 6, Part 3):

Allowing local option on tax abatements could encourage unproductive competition among local governments within the state and thus unnecessarily erode the fiscal capacity of these jurisdictions. On the other hand, without this tool, Kansas communities would be disadvantaged relative to competing communities in other states. There are few other tools available. On balance, we recommend the initiative on the basis of allowing Kansas local governments to make that decision in their particular circumstances.

The Task Force

While this manual was prepared by the staff of the League of Kansas Municipalities, the substantive part--Chapter 2 which sets forth a model local statement--is the product of the deliberations of the Task Force on Tax Exemptions for Economic Development. The statement represents the substantial consensus of the Task Force members, following a one-day meeting to review an advance draft, and subsequent draft review. The policy statement was also generally approved by the Governing Body of the League.

The members of the Task Force were as follows: John L. Carder, Mayor, Iola, President, League of Kansas Municipalities, Chairman; Fred D. Allen, Executive Secretary, Kansas Association of Counties, Topeka; Margo Boulanger, Mayor, Sedan; Paul "Bud" Burke, State Senator, Leawood; Roger Christianson, Director, Division of Industrial Development, Kansas Department of Commerce, Topeka; Chris Cherches, City Manager, Wichita; Charles H. Clark, Appraiser, Greenwood County, President, Kansas County Appraisers Association; Steve Commons, City Manager, Emporia; Gary Fleenor, Councilmember, Topeka; Bud Grant, Vice President, Kansas Chamber of Commerce and Industry, Topeka; John W. Koepke, Executive Director, Kansas Association of School Boards, Topeka; Gary Montague, City Manager, Shawnee; George W. Pyle, City Manager, Hutchinson; and David E. Warren, City Manager, Winfield. Special thanks is extended to Mr. Warren for his contributions to Chapter 2.

A Preliminary Report

Finally, it should be noted that this edition of this manual is labeled "preliminary." A revised edition is scheduled following adjournment of the 1987 Kansas Legislature. This edition is based on existing Kansas laws and recent opinions of the Attorney General. While the amendment is self-enabling--no state legislation is essential--some legislation may be considered and adopted. Suggested changes to improve the manual are welcome.

E.A. Mosher
Executive Director
League of Kansas Municipalities

January 30, 1987

CHAPTER 1

GENERAL EXPLANATION

Part 1—The Amendment in Brief

Part 2—Importance of the Amendment

Part 3—State and Constitutionally Required Procedures—Brief Review

Part 4—Basic Local Procedures

Part 5—Need for Written Local Statement

1. The Amendment in Brief

The Kansas Constitution, as a result of an amendment approved by the voters at the August 5, 1986 election, authorizes the governing bodies of cities and counties to grant property tax exemptions for certain economic development purposes. The complete provision, now constituting Section 13 of Article 11 of the Kansas Constitution, is reprinted in Chapter 6 of this manual. It can be briefly summarized as follows:

The Kansas Constitution permits counties and cities to "exempt from all ad valorem taxation all or any portion of the appraised valuation of" buildings, land and tangible personal property used exclusively by a new business for (A) manufacturing, (B) research and development, or (C) the storing of goods traded in interstate commerce. Further, such an exemption may be granted for existing buildings or new expansions to existing buildings, and for the land and associated new personal property, for these same purposes, to facilitate the expansion of the business, if new employment is created. The exemption may extend for up to 10 years.

The amendment also specifies that the legislature may limit or prohibit the granting of exemptions under this constitutional provision by an act uniformly applicable to all cities or counties.

Much of this manual consists of an explanation of the amendment and the procedures for its implementation. For background information as to the development and legislative consideration of the proposed amendment, see Chapter 6.

2. Importance of the Amendment

The new tax exemption amendment resulted from a series of economic development initiatives of the 1986 legislature, intended to improve the Kansas economy on a long-term basis. The importance of the amendment in actually securing the state's economic development objectives remains to be seen--notwithstanding protests, property taxes in Kansas are not generally so high as to constitute the determinant factor as to whether a new business is created or an existing business expanded. However, it appears highly probable that every business eligible for an exemption will seek at least some level of tax reduction, simply as a matter of the owners' enlightened self-interest. Whether or not implementation of the amendment will achieve its jobs and economic development objectives remains to be seen, a decision which must be deferred to future years. But it does constitute an important development tool for the state and for its local units.

How extensive the amendment will actually be used probably depends more on future economic growth conditions than on the willingness of cities and counties to grant exemptions. This is illustrated by the Kansas experience with the use of industrial development bonds (IDBs), where tax exempt bonds may be issued for "business purposes" with the bond facility exempt from property taxation. Even during the heyday of IDBs, prior

to the federally-imposed statewide cap on the amount of tax exempt IDBs, the amounts issued in Kansas for manufacturing purposes, and the number of local units which actually issued IDB bonds for manufacturing, were comparatively small. And this occurred notwithstanding the predisposition of most cities to make their IDB bond authority available for manufacturing establishments.

Under the 1986 federal Tax Reform Act, Kansas cities and counties may still issue tax exempt "private purpose" IDB bonds for manufacturing purposes, through 1989. The League's Task Force on this subject has predicted that the new \$250 million statewide cap on such "private purpose" bonds (\$150 million in 1988 and 1989) will not restrain the use of such bonds for manufacturing purposes during the next few years. Further, existing state laws continue the property tax exemption for IDB bond finance facilities, for the term of the bonds but not to exceed 10 years, with provisions for in lieu tax payment requirements. As a result, it appears probable that, through 1989, the new constitutional provision will be used primarily for manufacturing facilities where IDB bond financing is impossible, unneeded, or impractical.

3. State and Constitutionally Required Procedures—Brief Review

The constitutional provision, reprinted in Chapter 6, contains few requirements as to local procedures. Indeed, the only requirement is that the action be taken by resolution of the board of county commissioners or by ordinance of the governing body of the city. The city ordinance would be adopted in the same manner as other ordinances (see K.S.A. 12-3001, et seq). Similarly, the county resolution would require the normal majority vote. Publication in the official paper is not specifically required, but appears implicit.

While there may be some disagreement, the Attorney General has ruled that tax exemptions granted under the constitutional provision are subject to existing state laws governing the procedure for other types of property tax exemptions. This opinion is reproduced in Chapter 7, Part 2, of this manual. It was issued in response to a directive of the Property Valuation Division to require certain procedures by county appraisers as to economic development exemptions. (See Chapter 7, Part 1). The State Board of Tax Appeals requires certain forms to be used in this process.

The net effect of these several legal "state requirements" may be summarized as follows:

(1) The ordinance or resolution must be adopted by the governing body, identifying the property granted the exemption and specifying the term of the exemption.

(2) The applicant business files with the county appraiser the appropriate state form, together with a copy of the ordinance or resolution documenting the granting of the exemption.

(3) The county appraiser then reviews the application and supporting data and sends the completed form to the State Board of Tax Appeals.

(4) The State Board of Tax Appeals then grants or denies the exemption based on its legal and factual basis. (Note that OAG opinion No. 87-5, in Chapter 7, Part 3, provides that "the Board has no authority to review the advisability of granting a proposed exemption, as that policy decision has been delegated to the governing body of the city or county by Article 11, Section 13 of the Kansas Constitution.")

(5) The application for exemption must be renewed each year (see Chapter 7).

These are the basic state requirements. Local units may impose additional requirements, both as to procedures and policy, not less restrictive than those imposed by state law and the Constitution.

While not a state "requirement", it should be noted that existing state laws authorize the "voluntary" payment of in lieu taxes or charges by the owners of tax exempt property--see K.S.A. 12-147 and 12-148 in Chapter 8. Since the granting of a tax exemption is discretionary with the local governing body, it appears legally proper for the governing body to condition the exemption on the payment of such charges. This approach is proposed in this manual, as later discussed.

4. Basic Local Procedure

The centerpiece of this manual is not the explanation or background material but the proposed local Statement of Policy and Procedures on the granting of tax exemptions and incentives for economic development, found in Chapter 2. The general procedure proposed, consistent with the Constitution and statutory authorizations, is set forth in Section 4 of the city Statement and the county Statement. To fully understand how the 28-section Statement works, it is important to understand the general procedure, outlined in Section 4.

It will also be helpful to fully understand the meaning of the term "tax exemption-incentive," used throughout this report and the Statement. This is defined in Section 5 of the Statement. A "tax exemption" is simply an exemption of the property from ad valorem taxes. A "tax incentive" is a reduction in the payments made by the property, short of full taxation. Using the two-prong approach discussed below, the "tax incentive" constitutes the difference between what the property would pay if it were not exempt, and the amount paid under local in lieu payment requirements. It is sometimes called a "tax abatement."

The constitutional provision, and existing state laws, permit the use of two basic approaches in providing tax exemptions for economic development purposes. One approach is implicit in the wording of the amendment--those provisions which permit the county or city to exempt from taxation "all or any portion of the appraised valuation." Under this approach, the county or city would simply grant a percentage exemption, varying from one percent to 100 percent, to the property eligible for the exemption, with no in lieu payment requirement.

The second basic approach is a two-prong approach: (1) granting a 100 percent exemption, but (2) conditioning this exemption on a requirement that in lieu property tax payments, in some amount, be paid by the benefitting property. This is the basic approach used in this manual and the model Statement of Policy and Procedures. The Task Force commends this two-prong approach as the most practical and workable method available. This "full-exemption-with-in-lieu-payments" practice is a common procedure used for IDB bond facilities, and is thus familiar to many local officials as well as businesses. It can provide some amount certainty to the applicant business, not possible when the exemption is in the form of a percentage of assessed valuation. It can be used to secure the continued payment of the amount of taxes previously paid on the property, an important concern of school districts and other taxing units.

This recommended approach also permits more sophisticated methods of establishing the amount of the tax incentive than is possible under the partial exemption approach. For example, a local unit that wants to relate the amount of tax incentive to the number of jobs created, or to some other criteria, would find it possible under this approach. Finally, the Task Force believes this two-prong approaches will simplify administrative procedures. Since a 100 percent exemption is granted (with in lieu payment requirements), the county appraiser will not be confronted with the problem of partial assessments.

5. Need For Written Local Statement

Nothing in the Kansas Statutes, nor the Constitution, requires a city or county to officially adopt a written statement of policy and procedures governing the issuance of tax exemptions for economic development purposes. Why adopt one? Why tie ourselves down, rather than judge each application on its separate facts? Why not wait and deal with the request when we have to?

These are good, practical questions. Many city and county governing bodies are uncomfortable in dealing with process and policies. The preference is often to delay action until it is really necessary, then deal with the practical situation of the moment.

There seem to be some especially compelling reasons why an official statement of policy and procedures should be adopted in the property tax exemption area. Here are some reasons, particularly applicable to tax exemptions:

(1) Sooner or later, some procedures and policies, whether written or unwritten, will have to be developed. Why not do it in advance?

(2) Those promoting economic development on behalf of the city or county need to know what the rules of the game are going to be, and need some appreciation as to what the governing body will or will not do when confronted with an exemption request.

(3) If developed in writing, potential applicants for an exemption can be given something, and know in advance what the procedures are and how the governing body will probably react.

(4) If a standard set of procedures and policies are adopted by cities and counties throughout the state, the state legislature may have greater confidence in the wisdom and discretion of local units. Legislators will at least know that local exemption-incentive decisions will be made in an orderly and rational basis.

(5) A common set of standards will enhance some uniformity throughout the state, facilitating a statewide, intergovernmental approach to economic development. Ideally, perhaps, an individual city or county might be better off if every other unit established some procedures and standards--except them. Then the "loner" could free wheel it, make broad promises, eliminate all paper work, top anyone else's offer, or engage in pirating from other Kansas communities--they would be subject to no rules as to how to play the game, but every other player would be! It is suggested that this temporary advantage might be short-lived. Indeed, it might invite state legislative restraints, or the creation of some "super-duper" state agency in Topeka that decides what's good for each city or county.

In addition to these exemption-oriented reasons, there are some other general reasons to support the policy statement process of governing. For example, they provide a tool for governance, giving the governing body a systematic method or process by which to determine specific public policy actions. In addition, they are impersonal, tend to reduce accusation of favoritism, and may prevent unintended favorable treatment to individuals or property. Government becomes more of a "rule of law" than "rule of men". Similar situations are treated similarly, because everyone knows what the policy is.

CHAPTER 2

STATEMENT OF POLICY AND PROCEDURES

Part 1—Local Review, Revision and Adoption

Part 2—Model Statement for Cities

Part 3—Model Statement for Counties

NOTE: The model city Statement in Part 2 and county Statement in Part 3 are virtually identical, except for (1) the substitution of the word "county" for "city" and related needed changes, and (2) Section 6 as to jurisdiction. The City and County parts are separated to simplify local revision and adoption.

1. Local Review, Revision and Adoption

Following a quick reading of the applicable Statement, it is suggested that local officials then review the Statement in detail, using the section-by-section explanations appearing in Chapter 3.

While cities and counties are encouraged to adopt a local Statement consistent with those recommended provisions, local adaptation to local conditions also appears advisable. For example, Section 12, establishing standards for determining benefits, needs to be related to local conditions and local goals. Section 14, relating to the amount of tax incentives, is written in a form to encourage the addition of language which would help focus future decisions as to the actual amount of tax incentives granted. In several instances, references to certain office titles or dates are required, such as (November 15).

For another example of possible needed local adaptation, see Section 18 as to creating an administrative review committee. The rationale for this proposed committee is briefly stated in Chapter 3. In some local cases, an administrative review committee may not be needed. The makeup of the committee could also be revised.

Procedure for Adoption

Following local adaptation, the Statement should be formally adopted by the governing body, by resolution. Publication of this resolution is not required. The resolution could either adopt the Statement by reference or include the Statement in the full resolution. An appropriate form would be as follows:

RESOLUTION NO. _____

Be it Resolved, by _____

that the Statement of Policy and Procedures (set forth below) (attached to the official copy of this resolution) be adopted.

It is suggested that the adopted Statement be prepared in a form appropriate for general distribution to applicants for tax exemptions-incentives and other persons. The application form (see Chapter 4) could be attached to the Statement.

NOTE TO CITY AND COUNTY CLERKS: See letter of transmittal as to the availability of printed Statements from the League.

Statement of Policy and Procedures

Tax Exemptions and Incentives for Economic Development

CITY OF _____, KANSAS

<u>Section</u>	<u>Section</u>
1. Purpose	15. Application Required
2. General Objective	16. Application and Renewal Fees
3. Legal Authority	17. Initial Review Procedures
4. General Procedure	18. Administrative Review Committee
5. "Tax Incentive" Defined	19. Initial Governing Body Action
6. Jurisdiction	20. Notice and Hearing
7. Nominal Tax Determination	21. Letters of Intent
8. Minimum Payment In Lieu of Taxes	22. Annual Renewal
9. Special Assessments	23. Transfer of Ownership or Use
10. Pirating	24. Distribution of Revenue
11. Application of "But-For" Principle	25. Exemption Ordinance
12. Standards for Determining Benefits	26. Exemption Forms
13. No Exemptions	27. Waiver of Statement Requirements
14. Amount of Tax Incentives	28. Definitions

Section 1. Purpose. The purpose of this statement is to establish the official policy and procedures of the City of _____ for the granting of property tax exemptions and tax incentives for real and personal property used for economic development purposes, in accordance with the provisions of Section 13 of Article 11 of the Constitution of the State of Kansas.

Section 2. General Objective. The securing of private economic growth and development and the addition of new jobs within the community are important current and long-term objectives of this City. The granting of property tax exemptions and tax incentives is one of the tools available under Kansas law to help secure these public objectives. This Statement is intended to establish the procedure and policy standards to govern the fair, effective and judicious use of the power to grant such exemptions and tax incentives in this City.

Section 3. Legal Authority. The governing bodies of Kansas counties and cities may exempt certain property used for economic development purposes from taxes for a

maximum of 10 years, in accordance with the provisions of Section 13 of Article 11 of the Kansas Constitution, subject to such limitations or prohibitions as may be enacted by the legislature that are uniformly applicable to all cities and counties. This authority is discretionary with the City, and the City may provide for tax exemptions-incentives in an amount and for purposes more restrictive than that authorized by the Constitution or any such legislation. Pursuant to its home rule powers, the City may (1) require the owners of any property for which an exemption is requested to provide certain information, (2) condition the granting of an exemption to an agreement providing for the payment of in lieu charges or taxes under the provisions of K.S.A. 12-147 and 12-148, and (3) require the payment of initial application and annual renewal fees reasonably necessary to cover the costs of administration.

Section 4. General Procedure. The following basic procedure shall govern the issuance of tax exemptions-incentives within this City: (1) The applicant business shall apply for a tax exemption-incentive by filing a written application as provided in Section 15. (2) The City shall then determine whether the requested tax exemption-incentive (a) may be lawfully granted, and (b) should be granted, with the amount thereof later determined. (3) If it is determined that some tax exemption-incentive should be granted, a 100 percent exemption of that property of the business legally eligible for exemption shall be provided, but subject to an agreement of the business to make an in lieu tax payment as may be required by the City. (4) The amount of the tax incentive, which will be an amount less than the taxes otherwise payable if the property were not exempt, will then be determined in accordance with this Statement. (5) Upon the failure of the business to fully and timely pay the in lieu tax payments, as may be required as a condition of the granting of an exemption, or to provide reports or other information requested by the City and reasonably necessary for the implementation of this policy, the City may either deny, revoke, or not renew, the authorization of such an exemption. All requests for a tax exemption-incentive for

economic development purposes shall be considered and acted upon in accordance with this Statement.

Section 5. "Tax Incentive" Defined. Various words and terms used in this Statement are defined in Section 28. The terms "tax incentive" or "tax exemption-incentive" shall mean the difference between the amount of ad valorem property taxes the affected business would pay if there were no city-granted exemption and the amount required to be paid as in lieu taxes or charges. For example, if the taxes required with no exemption were \$5,000, and the required in lieu payments were \$3,000, the "tax incentive" would be \$2,000.

Section 6. Jurisdiction. The City shall grant tax exemptions-incentives only as to property located within the City. The City encourages the Board of County Commissioners to consult with the City as to applications outside the City and within the three-mile area.

Section 7. Nominal Tax Determination. All tangible property of a business receiving a tax exemption-incentive under this Statement shall be annually assessed by the county appraiser in the same manner as if it were not exempt, but the amount thereof shall not be placed on the assessment rolls. The amount of the property taxes which would be payable shall also be determined annually by the county clerk and treasurer, in the same manner as if the property were not exempt, but such amount shall not be placed on the tax rolls. Separate assessment and tax calculations shall be made for the land, for the improvements thereon, and for any tangible personal property associated therewith, of the exempt business. The appropriate county officers are requested to provide the City with this information as early as possible, but not later than (November 15) of each year.

Section 8. Minimum Payment In Lieu of Taxes. Any applicant receiving a tax exemption-incentive pursuant to this Statement shall be required to make a minimum

payment in lieu of taxes which equals the amount of property tax which was paid or was payable for the most recent year on the appraised valuation of the real estate, including either buildings together with land or land only, prior to the construction of new buildings or added improvements to buildings on such property or prior to the acquisition of the property by the new business. The purpose of requiring this minimum in lieu tax payment is to insure that the city, county, school district and any other taxing jurisdictions affected by the exemption will not receive less tax revenue from the exempted property than was received prior to the exemption. For extraordinary reasons, such as when vacant buildings are acquired for a new business, or when the market value of the property decreases, this requirement may be waived in part or in whole by the governing body, as provided in section 27.

Section 9. Special Assessments. Any tax exemption granted for real property under this Statement shall not affect the liability of such property for any special assessments levied or to be levied against such property.

Section 10. Pirating. It shall be the policy of the City to discourage applications for tax exemptions-incentives, or to grant such tax incentives, which deliberately encourage and cause the pirating of business from another Kansas community to this community, or from this community to another Kansas community. It is the intent of the City to avoid participation in "bidding wars" between cities or areas competing for the location of new businesses or expansion of existing businesses, through attempts to offer the largest tax incentive or other public inducement, which is detrimental to the state's economy and the public interest.

Section 11. Application of "But-For" Principle. Any tax exemption-incentive granted by the City shall be subject to the "but-for" principle, i.e., the tax incentive must make such

a difference in determining the establishment or expansion of the business that the business would not otherwise be established or expanded in the City but for the availability of the tax incentive. It is the policy of the Governing Body that private businesses should not be subsidized with public funds, the indirect consequences of tax exemptions-incentives, unless some public good results and the public subsidization can reasonably be expected to make a significant difference in achieving economic growth and development and the creation of new jobs within the City.

Section 12. Standards for Determining Benefits. The City will consider granting tax exemptions-incentives only upon a clear and factual showing of direct economic benefit to the City through advancement of its economic development goals, including the creation of additional jobs and the stimulation of additional private investment. The Governing Body, in determining the amount and term of a tax exemption-incentive to be granted, shall consider various factors including, but not limited to, the following:

- (a) The appraised valuation of the property in relation to the economic benefit to the City of increased employment.
- (b) The gain in tax revenue which may result from the new or expanded business, including the increase in the property tax base upon the expiration of the exemption.
- (c) The contribution that the new or expanded business will make towards increased employment and earnings within the community.
- (d) The number of new jobs created directly by the business in relation to the amount of tax incentives granted.
- (e) The kinds of jobs created in relation to the type of skills available from the local labor market.
- (f) The utilization by the business of labor skills and abilities of unemployed persons in the community.
- (g) The degree to which the business improves the diversification of the economy of the City and its environs.
- (h) The degree to which the ultimate market for the manufactured products is outside the community, recognizing that outside markets bring in "new money" to the local economy.

- (i) The potential of the business for future expansion and additional job creation.
- (j) The beneficial impacts the business may have by creating other new jobs and businesses, including the utilization of local products or other materials and substances in manufacturing.
- (k) The beneficial economic impact the business will have on a particular area of the City, including designated enterprise zones and areas of needed revitalization or redevelopment.
- (l) The compatibility of the location of the business with land use and development plans of the City and the availability of existing infrastructure facilities and essential public services.
- (m) The extent to which additional direct or indirect public costs to the City and to other local units would be necessary, such as the cost of the extension of public facilities.
- (n) The extent to which the economic and employment benefits of the tax incentive accrue to the residents and taxpayers of those taxing subdivisions which indirectly "subsidize" the business as a result of the forgone tax revenue.

Section 13. No Exemptions. (1) No tax exemption shall be granted if the exemption would create, in the judgment of the Governing Body, an unfair advantage for one business over another competing business within the City. (2) No tax exemption shall be granted to any business which commenced operations prior to August 5, 1986, nor for the expansion of a business unless such expansion created new employment.

Section 14. Amount of Tax Incentives. The two primary objectives of the City in granting tax exemptions for economic development are to (1) provide needed jobs, and (2) expand the economic and tax base of the City. The City recognizes that a simple system of determining the amount of tax incentives to be granted to reach these objectives may not always be equitable if applied uniformly to different kinds of businesses. As a result, in determining the actual amount of tax incentive granted, the City shall consider the factors and criteria set forth in Section 12 of this Statement. In addition, the City shall consider the following standards:

* * *

Section 15. Application Required. The City will not consider the granting of any tax exemption-incentive unless the business submits a full and complete application, and provides such additional information as may be requested by the Governing Body. The (title of officer) is hereby authorized and empowered to prepare a standard application form which, upon completion, will provide the Governing Body with adequate and sufficient information to determine whether a tax incentive should be granted and the amount thereof. The accuracy of the information provided in the application shall be verified by the applicant. Any misstatement of or error in fact may render the application null and void and may be cause for the repeal of any ordinance adopted in reliance on said information.

Section 16. Application and Renewal Fees. Any business requesting a tax exemption pursuant to this Statement shall pay to the City an application fee of (\$250), which shall be submitted at the same time the application form required by Section 15 is submitted. In addition, any business which has been granted a tax exemption shall pay an annual renewal fee in the amount of (\$100.)

Section 17. Initial Review Procedure. On receipt of the completed application form and the required fee, the (officer) shall determine (a) whether the application is complete and sufficient for review, and (b) whether the applicant business is eligible for an exemption under the Kansas Constitution, this Statement and any other applicable laws. If the application is incomplete, the (officer) shall immediately notify the applicant, noting the need for such changes or additions as deemed necessary. If questions arise as to whether the business is legally eligible for an exemption, the matter shall be referred to the city attorney, who shall consult with the applicant business. If the application is found complete, and is for a purpose which appears to be authorized by law, the (officer) shall so notify the Administrative Review Committee.

Section 18. Administrative Review Committee. There is hereby created an Administrative Review Committee, which shall be composed of the mayor or other member of the Governing Body designated by the mayor, who shall serve as chairman, the city (clerk), and the city (manager), which shall meet on call of the chairman. The purpose of the Administrative Review Committee shall be to receive and review requests and applications for tax exemptions-incentives, to gather and review such additional information as may be deemed necessary, to conduct preliminary negotiations with the applicant business, and to make such recommendations as deemed advisable to the Governing Body. Administrative Review Committee records, including applications for tax exemptions, may be withheld from public disclosure under the Kansas Open Records Act as provided for under subsections (20) and (31) and other subsections of K.S.A. Supp. 45-221, but shall be available for public inspection when otherwise required by law. The committee is authorized to issue administrative letters of intent when requested by the applicant upon a finding that the public interest requires confidentiality in order to successfully negotiate the location of the prospective business within the city or the expansion of an existing business. Such administrative letters of intent shall not be binding on the Governing Body, and shall be superseded by any final action by the Governing Body or by any letter of intent issued by the Governing Body under Section 21.

Section 19. Initial Governing Body Action. Upon receiving the recommendations of the Administrative Review Committee, the Governing Body shall first determine whether to reject the requested exemption or to further consider the request. Upon a favorable vote for further consideration, the Governing Body shall either (1) issue a letter of intent as provided by Section 21, or (2) schedule a public hearing thereon.

Section 20. Notice and Hearing. No tax exemption shall be granted by the City prior to a public hearing thereon, except by waiver of this requirement under Section 27. Notice

of the public hearing shall be published at least seven days prior to the hearing in the official city newspaper, giving the time and place, and the hearing may be held at a regular or special meeting of the Governing Body. The city clerk shall thereupon notify the board of county commissioners, the superintendent of the appropriate school district, and the clerk of any other taxing jurisdiction, excluding the state, which derives or could derive property taxes from the affected business, advising them of the scheduled public hearing and inviting their review and comment. Upon request, the city clerk shall provide any such public agency with a copy of the application. The applicant business shall be invited, but not required, to attend the public hearing.

Section 21. Letters of Intent. Upon receiving the recommendations of the Administrative Review Committee, the Governing Body may issue a letter of intent, setting forth in general terms its proposed plans for granting a tax exemption-incentive and any conditions thereto. Such letters of intent shall be issued only with the approval of the Governing Body, and as an expression of good faith intent, but shall not in any way bind the City to the granting of an exemption-incentive. Such letters of intent shall expire six months after issuance, but may be renewed. A public hearing shall not be required prior to the issuance of letters of intent. No elected or appointed officer, employee or committee of the City, and no chamber, board, development council or other public or private body or individual, shall be authorized to speak for and commit the Governing Body to the granting of a tax exemption-incentive. Letters of intent issued by the Governing Body shall supersede any letters issued by the Administrative Review Committee.

Section 22. Annual Renewal. The extent and term of any tax exemption-incentive granted shall be subject to annual review and determination by the Governing Body to insure that the ownership and use of the property and any other qualifying criteria of the business for the tax exemption-incentive continue to exist. The review shall be completed by not

later than February 1 of each year. The City may require an annual renewal application to be filed or other information necessary to assure the continued qualification of the exempt business.

Section 23. Transfer of Ownership or Use. No exemption or tax incentives granted by the City shall be transferred as a result of a change in the majority ownership of the business. Any new owner shall file a new application for a tax exemption-incentive. Further, the City shall be notified by the business of any substantive change in the use of a tax exempt property (see Section 26).

Section 24. Distribution of Revenue. The granting of tax exemptions-incentives by the City is hereby declared to be a contract under the provisions of K.S.A. 12-147. The in lieu of taxes payment which may be required of a business granted a tax exemption under this Statement shall be paid to the county treasurer, with notice of the amount and date paid provided to the City. The county treasurer is directed to apportion the payment, under the provisions of subsection (3) of K.S.A. 12-148, to the general fund of all taxing subdivisions, excluding the state, which levy taxes on property where the business is situated. The apportionment shall be based on the relative amount of taxes levied, for any and all purposes, by each of the applicable taxing subdivisions.

Section 25. Exemption Ordinance. The city clerk shall provide a copy of the ordinance, as published in the official city newspaper, granting an exemption from taxation to the applicant for use in filing an initial request for tax exemption as required by K.S.A. 79-213, and by K.S.A. 79-210 for subsequent years.

Section 26. Exemption Forms. A copy of the exemption applications required by K.S.A. 79-213 and 79-210, and the statement required by K.S.A. 79-214 for the cessation of an exempt use of property, shall be filed with the city clerk by the property owner.

Section 27. Waiver of Statement Requirements. The Governing Body reserves the right to grant or not to grant a tax exemption-incentive under circumstances beyond the scope of this Statement, or to waive any procedural requirement. However, no such action or waiver shall be taken or made except upon a finding by the Governing Body that a compelling or imperative reason or emergency exists, and that such action or waiver is found and declared to be in the public interest.

Section 28. Definitions. For the purpose of this Statement, in application to this City, the words or phrases as used in either the Constitution or this Statement shall have meaning or be construed as follows:

- (a) "Applicant" shall mean and include the business, property owner or owners, and their officers, employees and agents.
- (b) "Associated therewith" as used with respect to tangible personal property shall mean being located within, upon or adjacent to buildings or added improvements to buildings.
- (c) "Commenced operations" shall mean the start of the business activity housed in the building for which a tax exemption-incentive is requested.
- (d) "Economic development purposes" shall mean the establishment of a new business or the expansion of an existing business, engaged in manufacturing articles of commerce, conducting research and development, or storing goods or commodities which are sold or traded in interstate commerce, which results in additional employment.
- (e) "Expansion" shall mean the enlargement of a building or buildings, construction of a new building, the addition of tangible personal property, or any combination thereof, which increases the employment capacity of a business eligible for a tax exemption-incentive and which results in the creation of new employment.
- (f) "Manufacturing articles of commerce" shall mean a business engaged in the mechanical or chemical transformation of materials or substances into new products, as defined in the "Standard Industrial Classification Manual."
- (g) "Research and development" shall mean the application of science or technology to the improvement of either the process of manufacturing or manufactured products or both.
- (h) "Storing goods or commodities which are sold or traded in interstate commerce" shall refer to the business of storing property which may be exempt from ad valorem taxation under the provisions of K.S.A. 79-201f.
- (i) "Tangible personal property" shall mean machinery and equipment used during the term of the tax exemption which may be granted.

Statement of Policy and Procedures

Tax Exemptions and Incentives for Economic Development

COUNTY OF _____, KANSAS

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1. Purpose
2. General Objective
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5. "Tax Incentive" Defined
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Section

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28. Definitions

Section 1. Purpose. The purpose of this statement is to establish the official policy and procedures of the County of _____ for the granting of property tax exemptions and tax incentives for real and personal property used for economic development purposes, in accordance with the provisions of Section 13 of Article 11 of the Constitution of the State of Kansas.

Section 2. General Objective. The securing of private economic growth and development and the addition of new jobs within the area are important current and long-term objectives of this County. The granting of property tax exemptions and tax incentives is one of the tools available under Kansas law to help secure these public objectives. This Statement is intended to establish the procedure and policy standards to govern the fair, effective and judicious use of the power to grant such exemptions and tax incentives in this County.

Section 3. Legal Authority. The governing bodies of Kansas counties and cities may exempt certain property used for economic development purposes from taxes for a

maximum of 10 years, in accordance with the provisions of Section 13 of Article 11 of the Kansas Constitution, subject to such limitations or prohibitions as may be enacted by the legislature that are uniformly applicable to all cities and counties. This authority is discretionary with the County, and the County may provide for tax exemptions-incentives in an amount and for purposes more restrictive than that authorized by the Constitution or any such legislation. Pursuant to its home rule powers, the County may (1) require the owners of any property for which an exemption is requested to provide certain information, (2) condition the granting of an exemption to an agreement providing for the payment of in lieu charges or taxes under the provisions of K.S.A. 12-147 and 12-148, and (3) require the payment of initial application and annual renewal fees reasonably necessary to cover the costs of administration.

Section 4. General Procedure. The following basic procedure shall govern the issuance of tax exemptions-incentives within this County: (1) The applicant business shall apply for a tax exemption-incentive by filing a written application as provided in Section 15. (2) The County shall then determine whether the requested tax exemption-incentive (a) may be lawfully granted, and (b) should be granted, with the amount thereof later determined. (3) If it is determined that some tax exemption-incentive should be granted, a 100 percent exemption of that property of the business legally eligible for exemption shall be provided, but subject to an agreement of the business to make an in lieu tax payment as may be required by the County. (4) The amount of the tax incentive, which will be an amount less than the taxes otherwise payable if the property were not exempt, will then be determined in accordance with this Statement. (5) Upon the failure of the business to fully and timely pay the in lieu tax payments, as may be required as a condition of the granting of an exemption, or to provide reports or other information requested by the County and reasonably necessary for the implementation of this policy, the County may either deny, revoke, or not renew, the authorization of such an exemption. All requests for a tax

exemption-incentive for economic development purposes shall be considered and acted upon in accordance with this Statement.

Section 5. "Tax Incentive" Defined. Various words and terms used in this Statement are defined in Section 28. The terms "tax incentive" or "tax exemption-incentive" shall mean the difference between the amount of ad valorem property taxes the affected business would pay if there were no county-granted exemption and the amount required to be paid as in lieu taxes or charges. For example, if the taxes required with no exemption were \$5,000, and the required in lieu payments were \$3,000, the "tax incentive" would be \$2,000.

Section 6. Jurisdiction. It shall be the policy of the County to consider applications for tax exemptions-incentives only as to property located outside of incorporated cities. Further, the County shall consult with the applicable city or cities if an application relates to a business located or to be located within three miles of a city.

Section 7. Nominal Tax Determination. All tangible property of a business receiving a tax exemption-incentive under this Statement shall be annually assessed by the county appraiser in the same manner as if it were not exempt, but the amount thereof shall not be placed on the assessment rolls. The amount of the property taxes which would be payable shall also be determined annually by the county clerk and treasurer, in the same manner as if the property were not exempt, but such amount shall not be placed on the tax rolls. Separate assessment and tax calculations shall be made for the land, for the improvements thereon, and for any tangible personal property associated therewith, of the exempt business. The appropriate county officers are requested to provide the Board of County Commissioners, hereinafter referred to as the "Board," with this information as early as possible, but not later than (November 15) of each year.

Section 8. Minimum Payment In Lieu of Taxes. Any applicant receiving a tax exemption-incentive pursuant to this Statement shall be required to make a minimum payment in lieu of taxes which equals the amount of property tax which was paid or was payable for the most recent year on the appraised valuation of the real estate, including either buildings together with land or land only, prior to the construction of new buildings or added improvements to buildings on such property or prior to the acquisition of the property by the new business. The purpose of requiring this minimum in lieu tax payment is to insure that the county, school district and any other taxing jurisdictions affected by the exemption will not receive less tax revenue from the exempted property than was received prior to the exemption. For extraordinary reasons, such as when vacant buildings are acquired for a new business, or when the market value of the property decreases, this requirement may be waived in part or in whole by the Board, as provided in section 27.

Section 9. Special Assessments. Any tax exemption granted for real property under this Statement shall not affect the liability of such property for any special assessments levied or to be levied against such property.

Section 10. Pirating. It shall be the policy of the County to discourage applications for tax exemptions-incentives, or to grant such tax incentives, which deliberately encourage and cause the pirating of business from another Kansas community to this community, or from this community to another Kansas community. It is the intent of the County to avoid participation in "bidding wars" between counties and cities or areas competing for the location of new businesses or expansion of existing businesses, through attempts to offer the largest tax incentive or other public inducement, which is detrimental to the state's economy and the public interest.

Section 11. Application of "But-For" Principle. Any tax exemption-incentive granted by the County shall be subject to the "but-for" principle, i.e., the tax incentive must make

such a difference in determining the establishment or expansion of the business that the business would not otherwise be established or expanded in the County but for the availability of the tax incentive. It is the policy of the Board that private businesses should not be subsidized with public funds, the indirect consequences of tax exemptions-incentives, unless some public good results and the public subsidization can reasonably be expected to make a significant difference in achieving economic growth and development and the creation of new jobs within the County.

Section 12. Standards for Determining Benefits. The County will consider granting tax exemptions-incentives only upon a clear and factual showing of direct economic benefit to the County through advancement of its economic development goals, including the creation of additional jobs and the stimulation of additional private investment. The Board, in determining the amount and term of a tax exemption-incentive to be granted, shall consider various factors including, but not limited to, the following:

- (a) The appraised valuation of the property in relation to the economic benefit to the County of increased employment.
- (b) The gain in tax revenue which may result from the new or expanded business, including the increase in the property tax base upon the expiration of the exemption.
- (c) The contribution that the new or expanded business will make towards increased employment and earnings within the community.
- (d) The number of new jobs created directly by the business in relation to the amount of tax incentives granted.
- (e) The kinds of jobs created in relation to the type of skills available from the local labor market.
- (f) The utilization by the business of labor skills and abilities of unemployed persons in the community.
- (g) The degree to which the business improves the diversification of the economy of the County and its environs.
- (h) The degree to which the ultimate market for the manufactured products is outside the community, recognizing that outside markets bring in "new money" to the local economy.

- (i) The potential of the business for future expansion and additional job creation.
- (j) The beneficial impacts the business may have by creating other new jobs and businesses, including the utilization of local products or other materials and substances in manufacturing.
- (k) The beneficial economic impact the business will have on a particular area of the County, including designated enterprise zones and areas of needed revitalization or redevelopment.
- (l) The compatibility of the location of the business with land use and development plans of the County and the availability of existing infrastructure facilities and essential public services.
- (m) The extent to which additional direct or indirect public costs to the County and to other local units would be necessary, such as the cost of the extension of public facilities.
- (n) The extent to which the economic and employment benefits of the tax incentive accrue to the residents and taxpayers of those taxing subdivisions which indirectly "subsidize" the business as a result of the forgone tax revenue.

Section 13. No Exemptions. (1) No tax exemption shall be granted if the exemption would create, in the judgment of the Board, an unfair advantage for one business over another competing business within the County. (2) No tax exemption shall be granted to any business which commenced operations prior to August 5, 1986, nor for the expansion of a business unless such expansion created new employment.

Section 14. Amount of Tax Incentives. The two primary objectives of the County in granting tax exemptions for economic development are to (1) provide needed jobs, and (2) expand the economic and tax base of the County. The County recognizes that a simple system of determining the amount of tax incentives to be granted to reach these objectives may not always be equitable if applied uniformly to different kinds of businesses. As a result, in determining the actual amount of tax incentive granted, the County shall consider the factors and criteria set forth in Section 12 of this Statement. In addition, the County shall consider the following standards:

* * *

Section 15. Application Required. The County will not consider the granting of any tax exemption-incentive unless the business submits a full and complete application, and provides such additional information as may be requested by the Board. The (title of officer) is hereby authorized and empowered to prepare a standard application form which, upon completion, will provide the Board with adequate and sufficient information to determine whether a tax incentive should be granted and the amount thereof. The accuracy of the information provided in the application shall be verified by the applicant. Any misstatement of or error in fact may render the application null and void and may be cause for the repeal of any resolution adopted in reliance on said information.

Section 16. Application and Renewal Fees. Any business requesting a tax exemption pursuant to this Statement shall pay to the County an application fee of (\$250), which shall be submitted at the same time the application form required by Section 15 is submitted. In addition, any business which has been granted a tax exemption shall pay an annual renewal fee in the amount of (\$100.)

Section 17. Initial Review Procedure. On receipt of the completed application form and the required fee, the (officer) shall determine (a) whether the application is complete and sufficient for review, and (b) whether the applicant business is eligible for an exemption under the Kansas Constitution, this Statement and any other applicable laws. If the application is incomplete, the (officer) shall immediately notify the applicant, noting the need for such changes or additions as deemed necessary. If questions arise as to whether the business is legally eligible for an exemption, the matter shall be referred to the County's legal advisor, who shall consult with the applicant business. If the application is found complete, and is for a purpose which appears to be authorized by law, the (officer) shall so notify the Administrative Review Committee.

Section 18. Administrative Review Committee. There is hereby created an Administrative Review Committee, which shall be composed of the chairman of the Board or other member of the Board designated by the chairman, who shall serve as committee chairman, the county (clerk), and the county (_____), which shall meet on call of the committee chairman. The purpose of the Administrative Review Committee shall be to receive and review requests and applications for tax exemptions-incentives, to gather and review such additional information as may be deemed necessary, to conduct preliminary negotiations with the applicant business, and to make such recommendations as deemed advisable to the Board. Administrative Review Committee records, including applications for tax exemptions, may be withheld from public disclosure under the Kansas Open Records Act as provided for under subsections (20) and (31) and other subsections of K.S.A. Supp. 45-221, but shall be available for public inspection when otherwise required by law. The committee is authorized to issue administrative letters of intent when requested by the applicant upon a finding that the public interest requires confidentiality in order to successfully negotiate the location of the prospective business within the city or an expansion of an existing business. Such administrative letters of intent shall not be binding on the Board, and shall be superseded by any final action by the Board or by letter of intent issued by the Board under Section 21.

Section 19. Initial Board Action. Upon receiving the recommendations of the Administrative Review Committee, the Board shall first determine whether to reject the requested exemption or to further consider the request. Upon a favorable vote for further consideration, the Board shall either (1) issue a letter of intent as provided by Section 21, or (2) schedule a public hearing thereon.

Section 20. Notice and Hearing. No tax exemption shall be granted by the County prior to a public hearing thereon, except by waiver of this requirement under Section 27.

Notice of the public hearing shall be published at least seven days prior to the hearing in the official county newspaper, giving the time and place, and the hearing may be held at a regular or special meeting of the Board. The county clerk shall thereupon notify the the superintendent of the appropriate school district, and the clerk of the township and any other taxing jurisdiction, excluding the state, which derives or could derive property taxes from the affected business, and the clerk of any city located within three miles of the property advising them of the scheduled public hearing and inviting their review and comment. Upon request, the county clerk shall provide any such public agency with a copy of the application. The applicant business shall be invited, but not required, to attend the public hearing.

Section 21. Letters of Intent. Upon receiving the recommendations of the Administrative Review Committee, the Board may issue a letter of intent, setting forth in general terms its proposed plans for granting a tax exemption-incentive and any conditions thereto. Such letters of intent shall be issued only with the approval of the Board, and as an expression of good faith intent, but shall not in any way bind the County to the granting of an exemption-incentive. Such letters of intent shall expire six months after issuance, but may be renewed. A public hearing shall not be required prior to the issuance of letters of intent. No elected or appointed officer, employee or committee of the County, and no chamber, board, development council or other public or private body or individual, shall be authorized to speak for and commit the Board to the granting of a tax exemption-incentive. Letters of intent issued by the Board shall supersede any letters issued by the Administrative Review Committee.

Section 22. Annual Renewal. The extent and term of any tax exemption-incentive granted shall be subject to annual review and determination by the Board to insure that the ownership and use of the property and any other qualifying criteria of the business for the

tax exemption-incentive continue to exist. The review shall be completed by not later than February 1 of each year. The County may require an annual renewal application to be filed or other information necessary to assure the continued qualification of the exempt business.

Section 23. Transfer of Ownership or Use. No exemption or tax incentives granted by the County shall be transferred as a result of a change in the majority ownership of the business. Any new owner shall file a new application for a tax exemption-incentive. Further, the County shall be notified by the business of any substantive change in the use of a tax exempt property (see Section 26).

Section 24. Distribution of Revenue. The granting of tax exemptions-incentives by the County is hereby declared to be a contract under the provisions of K.S.A. 12-147. The in lieu of taxes payment which may be required of a business granted a tax exemption under this Statement shall be paid to the county treasurer, with notice of the amount and date paid provided to the County. The county treasurer is directed to apportion the payment, under the provisions of subsection (3) of K.S.A. 12-148, to the general fund of all taxing subdivisions, excluding the state, which levy taxes on property where the business is situated. The apportionment shall be based on the relative amount of taxes levied, for any and all purposes, by each of the applicable taxing subdivisions.

Section 25. Exemption Resolution. The county clerk shall provide a copy of the resolution, as published in the official county newspaper, granting an exemption from taxation to the applicant for use in filing an initial request for tax exemption as required by K.S.A. 79-213, and by K.S.A. 79-210 for subsequent years.

Section 26. Exemption Forms. A copy of the exemption applications required by K.S.A. 79-213 and 79-210, and the statement required by K.S.A. 79-214 for the cessation of an exempt use of property, shall be filed with the county clerk by the property owner.

Section 27. Waiver of Statement Requirements. The Board reserves the right to grant or not to grant a tax exemption-incentive under circumstances beyond the scope of this Statement, or to waive any procedural requirement. However, no such action or waiver shall be taken or made except upon a finding by the Board that a compelling or imperative reason or emergency exists, and that such action or waiver is found and declared to be in the public interest.

Section 28. Definitions. For the purpose of this Statement, in application to this County, the words or phrases as used in either the Constitution or this Statement shall have meaning or be construed as follows:

(a) "Applicant" shall mean and include the business, property owner or owners, and their officers, employees and agents.

(b) "Associated therewith" as used with respect to tangible personal property shall mean being located within, upon or adjacent to buildings or added improvements to buildings.

(c) "Commenced operations" shall mean the start of the business activity housed in the building for which a tax exemption-incentive is requested.

(d) "Economic development purposes" shall mean the establishment of a new business or the expansion of an existing business, engaged in manufacturing articles of commerce, conducting research and development, or storing goods or commodities which are sold or traded in interstate commerce, which results in additional employment.

(e) "Expansion" shall mean the enlargement of a building or buildings, construction of a new building, the addition of tangible personal property, or any combination thereof, which increases the employment capacity of a business eligible for a tax exemption-incentive and which results in the creation of new employment.

(f) "Manufacturing articles of commerce" shall mean a business engaged in the mechanical or chemical transformation of materials or substances into new products, as defined in the "Standard Industrial Classification Manual."

(g) "Research and development" shall mean the application of science or technology to the improvement of either the process of manufacturing or manufactured products or both.

(h) "Storing goods or commodities which are sold or traded in interstate commerce" shall refer to the business of storing property which may be exempt from ad valorem taxation under the provisions of K.S.A. 79-201f.

(i) "Tangible personal property" shall mean machinery and equipment used during the term of the tax exemption which may be granted.

CHAPTER 3

EXPLANATION OF MODEL STATEMENT

This chapter provides an explanation and background information as to various sections of the Statement of Policy and Procedures set forth in chapter 2.

Section 1—Purpose. Self-explanatory.

Section 2—General Objective. Self-explanatory. Revisions to emphasize local priorities are appropriate. For example, in areas of high unemployment the primary purpose might be the securing of new jobs, rather than economic development in general.

Section 3—Legal Authority. This section briefly outlines the principal legal aspects of the exemption procedure and process. This section does not include reference to the existing statutory procedures covering exemptions--see Chapter 7.

Section 4—General Procedure. This section simply provides an overall summary of the basic procedures established by the Statement, to help explain how the various pieces fit together. If changes are made in some of the procedures in the following sections, this section may need revision.

Section 5—"Tax Incentive" Defined. While other definitions are covered in Section 28, the frequent use of the phrase "tax incentive" or "tax exemption-incentive" makes this section advisable at the beginning of the Statement.

Section 6—Jurisdiction. This provision sets forth a recommended jurisdiction provision for cities and for counties. It states that the city has jurisdiction exclusively, and only, as to property within the city. The county board would have jurisdiction as to applications for exemptions as to property outside of any city and, in addition, would agree to consult with any applicable city as to the exemption for a business located or to be located within three miles of the city. The three-mile area is the extraterritorial planning jurisdiction of cities. The review process is somewhat similar to jurisdiction issues relating to the issuance of industrial revenue bonds, as discussed below.

The Constitution provides that the "board of county commissioners of any county or the governing body of any city may, by resolution or ordinance, as the case requires, exempt from all ad valorem taxation..." It appears clear that city governing bodies have no legal jurisdiction as to applications for exemptions of property located outside cities, since they do not have taxing authority in the outside area. However, cities are located within a county. May a county board unilaterally, with or without consultation with the city in which the applicant business is located, determine whether an exemption may be granted as to property located within a city?

The apparent intent is no--the county has jurisdiction only as to applicants located outside cities; cities have legal jurisdiction only within the city. Intergovernmental agreements as to consultation are clearly possible, based on mutual consent.

With one exception, there is no known legislative history indicating any written legislative intent as to jurisdiction. The exception is found in the minutes of the April 8, 1986 meeting of the Senate Assessment and Taxation Committee, in its consideration of HCR 5047. The minutes provide: "There was discussion about what entity would actually grant the exemption. The Revisor (of Statutes representative) said the location of the property would determine whether the city or county grants the exemption."

A similar jurisdiction issue occurred several years ago when the statute authorizing cities to issue industrial development revenue bonds (IDBs) was extended to counties. K.S.A. 12-1741a and 12-1741b were adopted in 1981, to deal with this issue. This statute is reprinted in Chapter 8 of this manual.

K.S.A. 12-1741a contains provisions restricting the issuance of IRBs at locations outside the actual territory of the issuing city or county. (Prior to this statute, cities could issue IRBs to finance facilities located anywhere.) Under this section, cities are now prohibited from issuing IRBs for facilities located in the unincorporated area more than three miles beyond the city limits, without "having first received approval of the board of county commissioners of the county in which such facility is to be located."

Subsection (b) of K.S.A. 12-1741b provides that "no county shall issue revenue bonds authorized herein to finance facilities located within the corporate limits of a city or within three miles of the corporate limits of a city or within another county without the issuing county having first received approval of the governing body of the city or county in which the facility is to be located."

As noted above, Section 6 of the statement proposes a jurisdictional agreement based on the IDB bond provisions. However, the city's influence over county actions in the three mile area would be of a consulting nature, since only the county has legal power to grant exemptions outside cities.

Section 7—Nominal Tax Determination. This section and its required procedure is essential when in lieu tax payment requirements are related to the amount of taxes that would be otherwise payable by the property, were it not exempt. For example, if the objective is to provide a tax incentive equivalent to 50 percent of the taxes otherwise payable, the "otherwise payable" amount must be known. Further, it will provide information necessary to annually monitor the program during the maximum 10-year period of the exemption.

Section 8—Minimum Payment in Lieu of Taxes. The intent of this section is to assure that the taxing units having authority to levy taxes on the property involved will receive, in the future, not less than the amount paid by the property prior to the granting of the exemption. This is a common provision in industrial development bond policies. If only new improvements and new personal property is involved, this provision appears easy to administer—only payment for land taxes is required. However, uncertainties as to a fair amount may occur in certain fact situations. The last sentence provides for a variation of the payment requirement at the level of previous taxes, such as when vacant buildings are acquired for a new business or when the market value of the property has decreased. It appears advisable that this minimum payment amount be stipulated in the ordinance or resolution granting the exemption. See Chapter 5, Part 5.

Section 9—Special Assessments. Generally, property exempt from ad valorem taxes is not exempt for special improvement assessments. However, special assessments are considered to be "taxes" under certain state laws. As a result, the section appears advisable to avoid any surprises to the affected property owner or other misunderstanding.

Section 10—Pirating. This section presents a statement of good faith intent. It permits open war for interstate business transfers, with an intent to avoid intrastate wars. Intrastate business migration has and will occur in the future, for reasons not related to the levels of property taxation. The intent of this section is to avoid the competitive use of tax incentives as decisive factors in business location changes.

Section 11—Application of "But For" Principle. This section is one of the most substantive policy provisions of the entire Statement. It is intended to prevent the use of tax exemption-incentives that do not accomplish the intent of the Constitution--the new or expanded business would have occurred notwithstanding the tax incentive, and the "public subsidization" therefor serves no public purpose except to expand the profits of the business. IDB bonds, and their accompanying property tax exemption, have been denied by certain cities in the past, which later found that the business developed notwithstanding the denial. When all existing known facts are available, a judgment will ultimately be required by the governing body. It is not a mathematical decision.

While the "but for" principle triggers a determination as to whether or not an exemption is granted, the tax incentive amount may be varied, under the Statement, to reflect probabilities. For example, when the property tax level does not appear critical to the decision to locate or expand within the city or county, the net incentive might be set at 25 percent of the taxes otherwise payable. If the tax level is critical to the bottom line business decision, the incentive could be set up to the 100 percent tax level, less the minimum payment required under Section 8.

Section 12—Standards for Determining Benefits. This section sets forth the standards or criteria the city or county will use in determining the amount of the tax incentive. While they could also be used to determine whether an exemption should be granted, the "but-for principle" in Section 11 is intended to be the determining criteria on this decision.

Most of the factors listed are those found in many city and county industrial revenue bond policy statements, with variations. While all cities and counties are encouraged to use these criteria, the addition of other standards, and their respective weighing as to importance, is needed to meet local conditions. For example, an area with substantial unemployment may want to give primary consideration to the number of new jobs to be created. In contrast, cities in a growth area may want to focus on the general economic and tax base considerations, or focus on businesses that pay high salaries. One of the advantages of the constitutional provision is that it provides local discretion to meet local needs and conditions.

Some of the criteria relate to the location of the prospective business within different areas of the city or county. For example, under criteria (k), location of the prospective business in an area of needed revitalization could trigger a larger tax incentive than when the business is created in a new industrial park which has drained-off business from older areas of the city.

Criteria (n) needs special attention. Some units may wish to refuse an exemption to a prospective business where the total local public costs involved exceed the public benefit to the unit involved. From a statewide perspective, economic growth and new jobs are clearly important. However, while the rewards of an exemption may accrue to the state and to the general area, the cost burden may be on another set of governmental units and taxpayers. For example, the burden (lost taxes) of the tax incentive might fall with a certain city and school district, while most of the employees reside outside the city and in another school district--the state individual income tax rebate shares from taxes paid by employees go to the school district of the employee's residence, which may not be the district which forgoes the property taxes.

Section 13—No Exemptions. This section is self-explanatory. A similar provision is commonly found in IRB bond policies relating to retail businesses. The application form, found in Chapter 4, requires the applicant to identify competitive businesses in the area.

Section 14—Amount of Tax Incentives. Sooner or later, the hard decision must be made as to how much--how much in lieu taxes should be required, in addition to the amount required under Section 8. The criteria in Section 12 is designed to assist the governing body in making this fundamental decision. The actual amount must be a local decision.

Note the blank space at the end of Section 14. *Each local unit is encouraged to set forth its own provision which permits focusing in on the amount actually granted.*

Following is an illustration of an amount standard which could be used where the city or county wishes to focus primarily on the number of new jobs created. The amounts are illustrative only and could be increased or decreased.

In determining the actual amount of tax incentive granted, the City shall consider the factors and criteria set forth in Section 12 of this Statement. As a general rule, the amount of tax incentive granted shall be within the parameters set forth below.

<u>Year</u>	<u>An Amount Up to the % Below of Taxes Otherwise Payable If Not Tax Exempt, But Not Less Than the Minimum In Lieu Payment Required Under Section 8</u>	<u>But Not More Than the Amount Below for Each New Employee</u>	<u>Plus Prior Year's "Tax" Under Section 8</u>
1st	100%	\$1,000	\$ _____
2nd	90%	\$900	\$ _____
3rd	80%	\$800	\$ _____
4th	70%	\$700	\$ _____
5th	60%	\$600	\$ _____
6th	50%	\$500	\$ _____
7th	40%	\$400	\$ _____
8th	30%	\$300	\$ _____
9th	20%	\$200	\$ _____
10th	10%	\$100	\$ _____

For the purposes of the above, employee means employment for not less than 2,000 hours per calendar year. The hours of part-time or temporary employees may be consolidated to obtain a full-time equivalent of 2,000 hours.

Another example of an amount standard, which might be applied to a business expansion, is as follows:

In determining the actual amount of tax incentive granted, the City shall consider the factors and criteria set forth in Section 12 of this Statement. As a general rule, the amount of tax incentive granted for to an eligible business expansion shall not exceed the following:

- (a) a tax incentive equal to \$350 for each new job created that results from the expansion; plus
- (b) a percentage of the taxes otherwise payable based on the percentage amount that the additional investment compares to the assessed valuation of the existing business. For example, if a business with an assessed value of \$1 million expands and the additional facilities and personal property would be assessed at \$330,000, the expansion equals a 33% investment in the original business and the improvements could, therefore, qualify for a maximum 33% tax incentive.

Any locally-established amount standard should leave some discretion with the governing body. Otherwise, the criteria or standards to determine public benefits set forth in Section 12 are irrelevant.

One of the many problems facing local units will relate to dealing with prospective new businesses which have widely varying ratios of property value to number of employees. Should a business with an assessed valuation of \$1 million and prospective employment of 10 persons be treated the same as a \$1 million business which employees 50 people? Similarly, how do you reflect prospective salary levels, if at all; given a similar property investment, should a business with 10 employees at minimum wage levels receive the same tax incentive as a business averaging \$25,000 in salaries?

No one said it would be easy. But someone has to make the decision!

Section 15—Application Required. Self-explanatory. See Chapter 4.

Section 16—Application and Renewal Fees. Self-explanatory. The amount should be revised to reflect local conditions. As an application fee, the amount would not be refunded if the exemption is denied.

Section 17—Initial Review Procedure. The title of an appropriate local official needs to be inserted.

Section 18—Administrative Review Committee. This section creates an administrative review committee to do advance work prior to consideration by the governing body. It is similar to the administrative review committees that exist in some cities for the handling of IDB bonds. It proposes the mayor or county board chairman as a member and chairman of the committee, and two principal city or county staff members.

The provision for such a committee is clearly optional. However, as a practical matter, some "in house" review and preliminary negotiations must occur in these situations, whether or not formalized by a structure. In some instances, these preliminary negotiations are highly sensitive. Individuals exploring the feasibility of a new or expanded business may deal with a number of communities and private negotiations are often a condition, whether we like it or not. A business looking at five different cities, for example, may not want to make the public of four cities mad, and only one happy.

References to the Kansas Open Records Act should be noted. It is probable that meetings of the administrative review committee are subject to the Kansas Open Meetings Law (K.S.A. 75-4317 et seq.) The required public hearing process envisions that, ultimately, everything becomes open, and before any final decisions are made.

Section 19—Initial Governing Body Action. Self-explanatory. It presumes the existence of an administrative review committee.

Section 20—Notice and Hearing. The ordinances of cities and the resolutions of county boards must be passed at an open public meeting. Further, this Statement requires a published notice and public hearing, subject to waiver as provided in Section 27.

In addition to published notice to the general public, the Statement requires that the taxing units affected by the proposed exemption be individually notified, advising them of the scheduled public hearing and inviting their review and comment.

Section 21—Letters of Intent. The letter of intent process is extensively used in IDB bond considerations. These are intended to be an expression of good faith intent. It is suggested that these letters of intent be seriously considered, to avoid encouraging expectations by a business which may not later be delivered.

Section 22—Annual Renewal. While the final ordinance or resolution deals with the term of the exemption, an annual review appears appropriate. This section requires the review to be completed by not later than February 1, since applications for renewed exemptions must be filed with the county assessing officer by not later than March 1 (see K.S.A. 79-210, and the OAG opinion in (Chapter 7).

Section 23—Transfer of Ownership or Use. The term "majority ownership" is used to avoid unnecessary actions when minor changes are made, which may occur in corporate ownership. Change of use requires a renewed exemption request, as noted in Section 26, under the OAG opinion.

Section 24—Distribution of Revenue. Self-explanatory. The cited statutes are set forth in Chapter 8. Note the requirement of payment to the general fund.

Section 25—Exemption Ordinance. Self-explanatory. See Chapter 5.

Section 26—Exemption Forms. Self-explanatory. See Chapter 7 for the applicable statutes.

Section 27—Waiver of Statement Requirements. Policy statements are intended to be guides to public decision making. They are normally adopted by resolution, and thus may be amended by the governing body at any time. As a result, waiver provisions are common. It should be noted, however, that this waiver provision is "tougher" than that found in some other policy statements, such as those dealing with IDB bonds. Under Section 27, a waiver may be made only upon a finding by the governing body that a compelling or imperative reason or emergency exists, and that such action or waiver is found and declared to be in the public interest. The provision is included to assure some integrity and real meaning to the Statement. If the Statement is generally ignored, it shouldn't be adopted in the first place. If the Statement imposes some requirements or procedures found unsatisfactory, these should be amended, rather than capriciously waived and ignored. The Governing Body of the League suggests that the public hearing requirement of Section 20 be waived only in accordance with Section 27.

Section 28—Definitions. It is emphasized that the definitions are used "in application to this city" or "in application to this county." This fact is particularly important in respect to subsection (f) and subsection (g), as explained below.

It should be also noted that a county or city may do less than that authorized by the Constitution, but not more. In other words, a local unit can narrow the application of the exemption authority, but can't expand it!

Research and Development. For example, the term "research and development" (see subsection (g)) is not defined in the Constitution and could conceivably apply to services. An attorney or a farmer, for example, could insist that they are involved in research and development, and with some justification. Subsection (g) restrains this possible broad interpretation by confining the research and development exemption to businesses which relate their operations to manufacturing or manufactured products or both. The thrust is to eliminate the granting of exemptions for research and development that is service oriented, rather than product or manufacturing oriented. For example, a medical research facility involved in developing products for manufacturing would be eligible for an exemption, while a medical research facility providing a service would not be. Whether constitutionally permitted or not, the Task Force suggests that the research development exemption be restrained to manufacturing or products, not services.

Manufacturing. "Manufacturing articles of commerce" (see subsection (g)), is not defined by the Constitution, nor is there any clearly applicable statutory definition. The definition used in the Statement is the definition found in the federal "Standard Industrial Classification Manual," a commonly used reference book, as discussed below.

In the absence of a constitutional or clear statutory definition of manufacturing, some common, valid definition is locally required. There are a large number of definition source options. For example, federal laws governing the issuance of tax exempt "private purpose" (IDB) bonds for manufacturing is significant. (Indeed, part of the motivation for proposing the amendment was the probability that IDB bonds for manufacturing purposes would be stopped by Congress; see the December 1986 issue of Kansas Government Journal as to the new cap amount on tax exempt IDB bonds, which may no longer be used for service-related purposes; exempt IDB bonds for manufacturing are terminated at the end of 1989.) The term "manufacturing facility" is defined by 26 USCS § 103 relating to federal tax exemptions of the interest on IDB bonds. This section provides that the term "manufacturing facility" means any facility which is used in the manufacturing or production of tangible personal property (including the processing resulting in a change in the condition of such property.)"

The definition used in subsection (f) of the Statement is based on the definitions included in the "Standard Industrial Classification Manual," issued in 1972 by the Executive Office of the President, Office of Management and Budget. This official and widely used government publication describes manufacturing as follows:

"The manufacturing division includes establishments engaged in the mechanical or chemical transformation of materials or substances into new products. These establishments are usually described as plants, factories, or mills and characteristically use power driven machines and materials handling equipment. Establishments engaged in assembling component parts of manufactured products are also considered manufacturing if the new product is neither a structure nor other fixed improvement. Also included is the blending of materials such as lubricating oils, plastics, resins, or liquors.

"The materials processed by manufacturing establishments include products of agriculture, forestry, fishing, mining, and quarrying as well as products of other manufacturing establishments. The new product of a manufacturing establishment may be "finished" in the sense that it is ready for utilization or consumption, or it may be "semifinished" to become a raw material for an establishment engaged in further manufacturing. For example, the product of the copper smelter is the raw material used in electrolytic refineries; refined copper is the raw material used by copper wire mills; and copper wire is the raw material used by certain electrical equipment manufacturers.

"The materials used by manufacturing establishments may be purchased directly from producers, obtained through customary trade channels, or secured without recourse to the market by transferring the product from one establishment to another which is under the same ownerships. Manufacturing production is usually carried on for the wholesale market, for interplant transfer or to order for industrial users, rather than for direct sale to the domestic consumer."

The definition in subsection (g), which determines local use, may be narrower than that authorized by the Constitution, or that which may be prescribed by state law or court decisions in the future. Since the granting of any exemption is discretionary with the local governing body, the unit can set its own restraints. It simply may not go further than constitutionally permissible.

Storing Goods. Subsection (h) makes a cross reference to K.S.A. 79-201f as to warehouse tax exemptions. The relation of this statute and the constitutional provision needs further examination, beyond the scope of this edition.

CHAPTER 4
APPLICATION FORMS

Part 1—General Explanation
Part 2—Sample Application Form

1. General Explanation

Section 15 of the Statement requires a written application form be completed for any tax exemption-incentive to be considered by the local unit. It directs a local officer, to be designated in the Statement, to "prepare a standard application form which, upon completion, will provide the (City) (County) with adequate and sufficient information to determine whether a tax incentive should be granted and the amount thereof."

Local adaptation is advisable, although some statewide consistency is suggested. Local changes are clearly required if significant changes are made to the model Statement.

Since the preparation of the application form is delegated to an individual officer, review and approval by the governing body is not required. However, governing body members may want to make certain that the application form provides the information required, that is available from the applicant, to consider the request.

County Adaptation. The sample form has been prepared for cities. For county use, only a few modifications are required.

NOTE TO CITY AND COUNTY CLERKS: See letter of transmittal as to the availability of printed application forms from the League.

CITY OF _____, KANSAS

**APPLICATION FOR PROPERTY TAX EXEMPTION
FOR ECONOMIC DEVELOPMENT PURPOSES**

TO: City Clerk, City of _____, Kansas

Exemption from ad valorem property taxation pursuant to Article 11, Section 13 of the Kansas Constitution is requested for all or any portion of the appraised valuation of property used exclusively for the purpose of manufacturing articles of commerce, conducting research and development, or storing goods or commodities which are sold or traded in interstate commerce, as described herein. This application is submitted in conformance with the applicable Statement of Policy and Procedures of the City and it is understood that the City may require in lieu payments for property which becomes tax exempt. The attached sheets, if any, are submitted as a part of this application.

Part I - Applicant Identification

Name of Applicant Firm: _____

Contact Person (Name and Title): _____

Address:

Street or P.O. Box

City State Zip

Telephone Number: _____

List the names and percent of ownership of all principal owners and officers of the Applicant Firm:

If applicant is a tenant, identify property owner(s):

Name(s): _____

Mailing Address:

Street or P.O. Box

City State Zip

Telephone Number: _____

Part II - Property Identification. List only taxable property for which an exemption is requested.

_____ Land. Attach legal description of property and plat showing location of buildings, added improvements to buildings, or both.

_____ Building(s). Attach description.
_____ Added improvements to buildings. Attach description.
_____ Tangible personal property. Attach list of each item with identifying nomenclature. Proof of purchase after August 5, 1986 must be provided for each item on list.

Part III- Business Information

Type of business organization _____
(i.e., corporation, subsidiary, partnership, sole proprietorship, etc.)

Date and place business organized or incorporated _____

Name of parent company, if applicable _____

Type of business _____

Line or lines of products manufactured or research and development conducted, or goods or commodities stored in buildings, for which tax exemption is requested:

Percentage of building occupied by applicant business qualifying for tax-exemption: _____ %.

List principal competition of the business within the City.

Name and location of the firms: _____

Describe nature of competition: _____

Business is (_____ new) or (_____ existing). (Please check one)

If new business:

Date operations will commence _____

If business is relocated to this City, give previous location(s):

If construction of a new building for a new business is involved, give anticipated date of completed construction: _____

If existing business:

Date expansion will be completed _____

Purpose of expansion _____

Does expansion involve?:

- _____ Acquisition of existing building
- _____ Enlargement of existing building
- _____ Construction of new building

Describe how property identified above facilitates the expansion of such existing business: _____

Part IV - Employment Data

A. New Business: Number of employees on date operations commence(d): _____

B. Existing Business: Describe how expansion has or will create new employment:

C. Type and Number of Employees:

Job Classification	Before Expansion (Give M/D/Yr) ____/____/____	After operations commenced or expansion completed (Show only new jobs in each of next 5 yrs)				
		19____	19____	19____	19____	19____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
TOTAL NO. EMPLOYEES	_____	_____	_____	_____	_____	_____
CUMMULATIVE NO. OF EMPLOYEES	_____	_____	_____	_____	_____	_____

Part V - Appraised Value of Property Identified in Part II Above

(To be completed by County Appraiser)

Date of Valuation: _____

Buildings: _____

Added Improvements to Buildings: _____

Land: _____

Tangible Personal Property: _____

SIGNED _____ Date _____
 County Appraiser

Part VI - Taxes Due and Payable in Current Tax Year on Property Identified in Part II for which Exemption is Requested (To be completed by County Treasurer)

Taxes for Year: 19_____

Building(s) \$ _____

Land \$ _____

Personal Property \$ _____

Total \$ _____

SIGNED _____ Date _____
County Treasurer

Part VII - Description of Public Benefits

Please attach a narrative description, of not to exceed two pages, of the public benefits which you believe will occur if the requested exemption is granted. Address all relevant factors, including those found in Section 12 of the City's Statement of Policy and Procedures.

Part VIII - "But-For" Principle

Please attach a narrative description, of not to exceed one page, as to why you believe the applicant business meets the requirement of Section 11 of the Statement of Policy and Procedures.

Part IX - Financial Responsibility

Attach a description of the businesses' financial situation. This may include a financial statement, audit and other relevant information to assess the stability of the business. Indicate whether there is any pending or threatening litigation effecting the viability of the business.

Part X - Certification of Applicant

I, _____, hereby certify that the foregoing and attached information is true and correct to the best of my knowledge.

Further, it is understood that additional information may be requested by the City to assist the Governing Body in its consideration of this matter.

Date _____ Signed _____
Name

_____ Title

Part XI: Acknowledgement of Receipt:

Receipt is hereby acknowledged:

Date _____ City Clerk _____

CHAPTER 5

ORDINANCE-RESOLUTION; TERM AND PAYMENTS

Part 1—Term of Exemption

Part 2—In Lieu Payment Required

Part 3—Sample City Exemption Ordinance

Part 4—Sample County Exemption Resolution

Part 5—Sample Resolution Fixing In Lieu Payment

The legal procedure for the granting of an exemption under the Constitution and applicable statutes briefly reviewed in Chapter 1. A sample ordinance and resolution to provide the exemption is set forth below. The provisions of this legal action can be brief, since a 100 percent exemption is granted if any level of tax incentive is provided. However, some discussion as to the term of the exemption is important. Further, some provisions as to in the lieu payments may be included in the ordinance or resolution.

1. Term of Exemption

The Constitution provides that the exemption granted "shall be in effect for not more than 10 calendar years after the calendar year in which the business commences its operations or the calendar year in which expansion of an existing business is completed, as the case requires." Thus, 10 years is the maximum, but there is local discretion as to whether the exemption is for less than 10 years. It is important that the term be described by the ordinance or resolution, since the statutes governing the tax exemption process requires not only initial approval by the State Board of Tax Appeals, according to the OAG opinion reprinted in Chapter 7, but that there also be an annual exemption certificate process. Under K.S.A. 79-210 (see Chapter 7, Part 3), an exemption claim must be filed with the county appraiser each year, following initial state board action. As a result, either the property owner must provide, or the appraiser obtain, the applicable ordinance or resolution to legally determine whether the exemption exists for the coming year.

The two-prong approach used in the Statement--a 100 percent exemption, but with in lieu payments--facilitates this term determination. For example, a 100 percent exemption might be granted for 10 years, but the in lieu payment agreement require an increasing level of in lieu payments each year to the level of full taxes for the tenth year. However, the general objective should be to phase out and eliminate the tax exemption as soon as possible, as required for the public interest.

2. In Lieu Payment Required

Some place, and some way, there must be an official determination by the governing body as to the actual amount of the payment or charges to be made by the exempt property owner in lieu of taxes. The ordinance below provides that the annual minimum fixed amount, set under Section 8 of the Statement, will be specified in the exemption ordinance or resolution. This is the base minimum amount, intended to assure affected taxing subdivisions of continued revenue from the existing property.

In addition, some additional amount will normally be required by cities and counties where less than a 100 percent tax incentive is granted. This amount, determined under Section 14 of the Statement, may be fixed annually for the maximum term of the exemption, may be on a flat or graduated scale basis, or could be modified annually. To deal with this situation, it is recommended that a separate resolution of the governing body be adopted which establishes the amount. The city ordinance or county resolution legally establishing the exemption could then make a cross-reference to this "amount resolution."

3. Sample City Exemption Ordinance

ORDINANCE NO. _____

An Ordinance Exempting Certain Property From Ad Valorem Taxation for Economic Development Purposes and Providing for Certain In Lieu Payments.

Be it Ordained, by the Governing Body of the City of _____, Kansas:

Section 1. In accordance with Section 13 of Article 11 of the Kansas Constitution, and pursuant to Resolution No. _____ (the number of the resolution which adopted the Statement of Policy and Procedures), the following property, commonly referred to as the (name of company) property, is hereby exempt from ad valorem taxation for a term of _____ calendar years: (description of property)

Section 2. The annual amount of the in lieu tax payment required of the owners of said property shall be not less than \$ _____ (amount determined under Section 8 of Statement), and such additional amount as set forth in Resolution No. _____. Said amounts shall be paid to the county treasurer, at the same time as any ad valorem taxes on such property would be payable, and shall be distributed to the several affected taxing subdivisions as provided by Section 24 of the Statement adopted by Resolution No. _____.

Section 3. A copy of this ordinance, duly certified, shall be provided to the owner of the property and to the county appraiser, clerk and treasurer.

Section 4. This ordinance shall be published once in the official city newspaper.

Passed by the Governing Body of the City of _____ this _____ day of _____, 1987.

Mayor

ATTEST:

City Clerk

4. Sample County Exemption Resolution

RESOLUTION NO. _____

A Resolution Exempting Certain Property From Ad Valorem Taxation for Economic Development Purposes and Providing for Certain In Lieu Payments.

Be it Resolved, by the Board of County Commissioners of _____, County, Kansas:

Section 1. In accordance with Section 13 of Article 11 of the Kansas Constitution, and pursuant to Resolution No. _____ (the number of the resolution which adopted the Statement

of Policy and Procedures), the following property, commonly referred to as (name of company) property, is hereby exempt from ad valorem taxation for a term of _____ calendar years: (description of property)

Section 2. The annual amount of the in lieu of payment required of the owners of said property shall be not less than \$ _____ (amount determined under Section 8 of Statement), and such additional amount as set forth in Resolution No. _____. Said amounts shall be paid to the county treasurer, at the same time as any ad valorem taxes on such property would be payable, and shall be distributed to the several affected taxing subdivisions as provided by Section 24 of the Statement adopted by Resolution No. _____.

Section 3. A copy of the resolution, duly certified, shall be provided to the owner of the property and to the county appraiser and treasurer.

Section 4. This resolution shall take effect on publication in the official county newspaper.

Adopted this _____ day of _____, 1987 by the Board of County Commissioners, _____ County, Kansas.

Chairman

Member

Member

Attest: _____
County Clerk

City Clerk

5. Sample Resolution Fixing in Lieu Payments

RESOLUTION NO. _____

Be it Resolved, by the (Governing Body of the City of _____) (Board of County Commissioners of _____ County):

Section 1. As a condition precedent to the adoption of (an ordinance) (a resolution) granting an exemption from ad valorem taxes for economic development purposes to the property, commonly referred to as the _____ property, certain in lieu payments shall be required, which shall be payable to the county treasurer for distribution to the several affected taxing subdivisions in accordance with Resolution No. _____. The total amount annually paid shall include the fixed annual amount of \$ _____, determined in accordance with Section 8 of the Statement adopted by Resolution No. _____. In addition, the property owner shall pay the following additional amount in the indicated years,

determined in accordance with Section 14 of the Statement: 198__ : \$ ____ . 198__ :
\$ ____ (etc.)

Section 2. The county treasurer shall advise the (city clerk) (county clerk) of any deficiency or failure to receive such payments and the (Governing Body) (Board of Commissioners) shall determine whether the (ordinance) (resolution) granting the exemption shall be repealed.

(Adoption clause)

CHAPTER 6

THE CONSTITUTIONAL PROVISION

- Part 1—Brief Explanation
- Part 2—The Amendment
- Part 3—Legislative History

1. Brief Explanation

Section 13 of Article 11 of the Kansas Constitution permits counties and cities to "exempt from all ad valorem taxation all or any portion of the appraised valuation of" buildings, land and tangible personal property used exclusively by a new business for (A) manufacturing, (B) research and development, or (C) the storing of goods traded in interstate commerce. Further, such an exemption may be granted for existing buildings or new expansions to existing buildings, the land, and associated new personal property, for these same purposes, to facilitate the expansion of an existing business if new employment is created. The exemption may extend for up to 10 years. The amendment also specifies that the legislature may limit or prohibit the granting of exemptions under this constitutional provision by an act uniformly applicable to all cities or counties.

2. The Amendment

Section 13 of Article 11 of the Constitution of the State of Kansas reads as follows:

"§ 13. Exemption of property for economic development purposes; procedure; limitations. (a) The board of county commissioners of any county or the governing body of any city may, by resolution or ordinance, as the case requires, exempt from all ad valorem taxation all or any portion of the appraised valuation of: (1) All buildings, together with the land upon which such buildings are located, and all tangible personal property associated therewith used exclusively by a business for the purpose of: (A) Manufacturing articles of commerce; (B) conducting research and development; or (C) storing goods or commodities which are sold or traded in interstate commerce, which commences operations after the date on which this amendment is approved by the electors of this state; or (2) all buildings, or added improvements to buildings constructed after the date on which this amendment is approved by the electors of this state, together with the land upon which such buildings or added improvements are located, and all tangible personal property purchased after such date and associated therewith, used exclusively for the purpose of: (A) Manufacturing articles of commerce; (B) conducting research and development; or (C) storing goods or commodities which are sold or traded in interstate commerce, which is necessary to facilitate the expansion of any such existing business if, as a result of such expansion, new employment is created.

"(b) Any ad valorem tax exemption granted pursuant to subsection (a) shall be in effect for not more than 10 calendar years after the calendar year in which the business commences its operations or the calendar year in which expansion of an existing business is completed, as the case requires.

"(c) The legislature may limit or prohibit the application of this section by enactment uniformly applicable to all cities or counties.

"(d) The provisions of this section shall not be construed to affect exemptions of property from ad valorem taxation granted by this constitution or by enactment of the legislature, or to affect the authority of the legislature to enact additional exemptions of

property from ad valorem taxation found to have a public purpose and promote the general welfare."

3. Legislative History

What is now Section 13 of Article 11 of the Kansas Constitution was originally HCR 5047 at the 1986 legislative session, and became Chapter 423, 1986 Session Laws of Kansas. It was introduced by then Representative Mike Hayden and 62 others and was called Initiative No. 6 of the Legislative Commission on Kansas Economic Development, chaired by Representative Braden. It was also referred to as Redwood-Kreider Recommendation No. 5, discussed below. On first passage, HCR 5047 received a vote of 99 to 26 in the House; the Senate amended the resolution, on recommendation of the Senate Committee on Assessment and Taxation, and passed the amended resolution by a vote of 28 to 11. The House then conceded to the Senate amendments, by a vote of 96 to 28. The voters approved the amendment at the polls on August 5, 1986, by a vote of 181,685 to 171,166.

HCR 5047 was one of a series of economic development initiative passed by the 1986 legislature--see the July 1986 issue of Kansas Government Journal. However, the written material and testimony on the amendment is quite limited. Of special significance is the report on this issue in the so-called Redwood-Kreider report. This report is entitled "Kansas Economic Development Study: Findings, Strategy, and Recommendations." Presented below is a reprint of this report, taken from the June, 1986 revised Executive Summary:

- "6. Allow local taxing jurisdictions to give property tax abatements for new and expanding manufacturing facilities, research and development facilities, equipment and machinery, and for a limited scope of non-manufacturing facilities having a potential for job creation. The authority to grant the abatement should be detached from the issuance of industrial revenue bonds.

...

"There are at least thirty-two states now providing a tax exemption or moratorium on one or more of the above types of property. Iowa currently offers property tax abatement on new research facilities and Missouri provides a twenty-five year property tax incentive for redevelopment of urban areas. Neither state ties the abatement of property taxes to IRBs. Kansas allows a moratorium on land and capital improvements and equipment only if purchased with industrial revenue bonds. The federal income tax exclusion on interest earnings from industrial revenue bonds is being phased out. Thus, the total quantity of industrial revenue bonds issued in Kansas will decline, thereby limiting local jurisdictions opportunities to offer tax abatements. The detachment of tax abatements for the described properties from the issuance of industrial revenue bonds will provide communities with a continuing capacity to compete on an equal footing with other states' communities.

"Allowing local option on tax abatements could encourage unproductive competition among local governments within the state and thus unnecessarily erode the fiscal capacity of these jurisdictions. On the other hand, without this tool, Kansas communities would be disadvantaged relative to competing communities in other states. There are few other tools available. On balance, we recommend the initiative on the basis of allowing Kansas local governments to make that decision in their particular circumstances."

Reproduced on the next page is a sheet from a March 19, 1986 memorandum to all members of the legislature, re: "Report of the Legislative Commission on Kansas Economic Development." Committee records show that the chairman of the commission, Representative Jim Braden, distributed this sheet to the House and Senate committees on assessment and taxation during committee consideration of HCR 5047.

INITIATIVE NO. 6: PROPERTY TAX ABATEMENT FOR ECONOMIC DEVELOPMENT

REDWOOD/KRIDER REC. NO.: 5

BILL NO.: HCR 5047

A. Statement of Need:

Local government plays a vital role in economic development. Recommendation No. five of the Interim Kansas Economic Development Study provides that county and municipal governments should continue to encourage economic development in their jurisdictions by granting property tax abatements to enterprises that have the potential for primary job creation. These abatements have, in the past, been limited to improvements funded by industrial revenue bonds. With the phasing out federally taxed exempt, IRB's, local Kansas governments will lose the authority to grant property tax abatements.

B. Mission Statement

The purpose of this constitutional amendment is to encourage local economic development efforts for by giving municipal and county governments the option to grant property tax exemptions for new and expanding manufacturing facilities, research and development facilities, equipment and machinery, and other activity having the potential for job creation.

This is a highly targeted exemption only for wealth and job creating new economic activity.

C. Provisions of HCR 5047

1. HCR 5047 proposes to amend the constitution to create a targeted property tax exemption.

a. The board of county commissioners or governing body of a city may exempt from ad valorem taxation:

1. Buildings, land and tangible personal property of a business for the purpose of manufacturing, fabricating, assembling, processing, or finishing articles of commerce, research and development, and warehousing engaged in interstate commerce in this state and which is starting operations after approval of this act.

2. Modifications made to existing business for the purpose of manufacturing, fabricating, assembling, processing or finishing articles of commerce, research and development, and warehousing engaged in interstate commerce in this state which is expanding operations after approval of this act.

b. An exemption or partial exemption is allowed for up to 10 years after commencement of operations.

c. The legislature may limit or prohibit the application of this section by enactment uniformly applicable to all cities or counties.

D. Other States:

At least 32 other states now offer such an option.

CHAPTER 7

EXEMPTION PROCEDURE—STATE REQUIREMENTS

Part 1—Property Valuation Division Memorandum

Part 2—Attorney General Opinion No. 86-168

Part 3—Attorney General Opinion No. 87-5

Part 3—Property Tax Exemption Procedural Statutes

1. Property Valuation Division Memorandum

The following reproduces a memorandum sent to all county appraisers on September 26, 1986, by Victor W. Miller, Director, Division of Property Valuation, Kansas Department of Revenue.

"This office has received numerous inquiries relative to the property tax exemption for economic development purposes by cities and counties as approved by the Kansas electorate in the August 5, 1986 election.

"It is the position of the Division of Property Valuation that such exemption requests are subject to the provisions of K.S.A. 79-213 and K.S.A. 79-210. K.S.A. 79-213 provides in part that "[a]ny property owner requesting an exemption from the payment of ad valorem property taxes assessed, or to be assessed, against their property shall be required to file an initial request for exemption, on forms approved by the board of tax appeals and provided by the county appraiser." K.S.A. 79-210 provides in part that "[t]he owner or owners of all property which is exempt from the payment of property taxes under the laws of the state of Kansas for a specified period of years shall in each year after approval thereof by the board of tax appeals claim such exemption on or before March 1 of each year in which such exemption is claimed. . . ." (Emphasis added.)

"The constitutional amendment provides that the ad valorem tax exemption granted pursuant thereto shall be in effect for not more than 10 calendar years after the calendar year in which the business commences its operations or the calendar year in which expansion of an existing business is completed. Thus the exemption is "for a specified period of years" and K.S.A. 79-210 applies. The exemption request must be renewed annually on or before March 1.

"The Board of Tax Appeals is the paramount taxing authority in the State of Kansas. Northern Natural Gas Co. v. Dwyer, 208 Kan. 337, 492 P.2d 147 (1971), cert. denied 406 U.S. 967 (1972).

"It was the intent of the legislature in enacting K.S.A. 79-213 and K.S.A. 79-210 to provide an exclusive statutory remedy before the Board of Tax Appeals in all cases involving a claim of tax exemption by any property owner. Tri-County Public Airport Authority v. Board of Morris County Commissioners, 233 Kan. 960, 666 P.2d 698 (1983).

"Thus, while the board of county commissioners of any county or the governing body of any city may, by resolution or ordinance, as the case requires, exempt from all ad valorem taxation all or any portion of certain property for economic development purposes, AN EXEMPTION ORDER MUST BE OBTAINED FROM THE BOARD OF TAX APPEALS BEFORE ANY COUNTY APPRAISER REMOVES SUCH PROPERTY FROM THE TAXABLE ROLL."

NOTE: See Part 2 for Attorney General Opinion No. 86-168, which essentially sustains the legal validity of the above memorandum.

2. Attorney General Opinion No. 86-168

The following reproduces Attorney General Opinion No. 86-168, issued December 3, 1986:

Re: Taxation--Property Exempt From Taxation--Claim to be Filed Each year
Kansas Constitution--Finance and Taxation--Exemption of Property for Economic Development Purposes

Synopsis: While cities and counties may grant economic development tax exemptions pursuant to Article 11, Section 13 of the Kansas Constitution, the Board of Tax Appeals is authorized under K.S.A. 79-213 (as amended) to examine the legal and factual basis of any such exemption and to determine its merits. Additionally, under K.S.A. 79-210 an economic development tax exemption must be claimed (by the property owner) in each year after approval thereof by the board of tax appeals. Cited herein: K.S.A. 79-210, 79-213 as amended by L. 1986, ch. 370, §2; Kan. Const., Art. 11, §13 (L. 1986, ch. 423, §1).

* * *

Dear Mr. Schwartz:

You request our opinion as to whether the tax exemption procedure prescribed by K.S.A. 79-210 and K.S.A. 79-213 (as amended by L. 1986, ch. 370, §2) applies to tax exemptions granted under the provisions of Article 11, Section 13 of the Kansas Constitution (Chapter 423 of the 1986 Session Laws of Kansas). That constitutional provision permits the board of county commissioners of any county or the governing body of any city to exempt property satisfying certain economic development criteria from property taxation for a period not to exceed 10 years. Subsection (c) of the aforesaid provision provides that the legislature may limit or prohibit the exemption of property for economic development purposes "by enactment uniformly applicable to all cities and counties."

K.S.A. 79-213 (as amended by L. 1986, ch. 370, §2) prescribes the procedure under which property owners file requests for tax exemptions, and provides as follows:

(NOTE: See subsection (a) through (n) of K.S.A. 79-213, as amended, in Part 3.)

K.S.A. 79-210 requires the owners of all property which is exempt for a specified period of years to claim the exemption "in each year after approval thereof by the board of tax appeals." The statute further provides as follows:

"All claims for exemption from the payment of property taxes shall be made upon forms prescribed by the director of property valuation and shall identify the property sought to be exempt, state the basis for the exemption claimed and shall be filed in the office of the assessing officer of the county in which such property is located. The assessing officers of the several counties shall list and value for assessment, all property located within the county for which no claim for exemption has been filed in the manner hereinbefore provided."

K.S.A. 79-210 and K.S.A. 79-213 (as amended) were enacted prior to the adoption of Article 11, Section 13 of the Kansas Constitution by voters on August 5, 1986, and committee minutes and other records of legislative proceedings are not helpful in determining whether

the legislature intended, in submitting the constitutional amendment to voters, that economic development tax exemptions would be subject to the tax exemption procedures prescribed by the aforesaid statutes. In our judgment, subsection (c) of the constitutional amendment, which allows the legislature to limit or prohibit the application of the amendment by enactments which are uniformly applicable to all cities or counties, does not imply that pre-existing tax exemption procedures are inapplicable to economic development tax exemptions. Therefore, in determining the applicability of such statutory procedures to economic development tax exemptions, we are guided by the following principles of constitutional law:

"[A]n amendment of the constitution must be held to amend the existing statute law to agree with such an amendment. An amendment operates to supersede or modify statutory provisions relating to the same subject matter only insofar as the statutory provisions are repugnant to, or inconsistent with, the controlling organic provisions contained in the amendment. The exception must be noted, however, that where the constitutional provision is not self-executing, in some instances an inconsistent state statute is not thereby superseded. If it is self-executing, it necessarily annuls all inconsistent acts of the legislature passed prior to its adoption.

"Implied repeals of statutes by later constitutional provisions are not favored any more than in the case of implied repeal of one statute by another. An enlarged meaning, beyond the import of its words will not be given to a constitutional provision in order to repeal a statute by implication. To effect a repeal by implication the inconsistency between existing legislation and a new constitutional provision must be irreconcilable; that is, the inconsistency must be obvious, clear, and strong. If the statute and constitutional provision by any fair course of reasoning can be reconciled or harmonized this must be done and the statute allowed to stand. The final test in determining whether a statute is repealed by implication by a constitutional provision is: Has the legislature, under the new constitutional provision, the present right to enact statutes substantially like the statutes in question? If the legislature has that right, then clearly, the statute survives under the new constitution." (Emphasis added.) 16 Am.Jr.2d, Constitutional Law §68."

Although the Kansas Supreme Court has not recently considered the question, a case from early statehood indicates that Kansas adheres to the principle that previously enacted statutes must, if possible, be reconciled and harmonized with later constitutional provisions. See Prouty v. Stover, 11 Kan. 235 (1873).

In accordance with the above-cited authorities, it is our opinion that K.S.A. 79-213 (as amended) and Article 11, Section 13 of the Kansas Constitution may be harmonized. In our judgment, while cities and counties may grant economic development tax exemptions pursuant to the constitutional amendment, the Board of Tax Appeals is authorized under K.S.A. 79-213 (as amended) to examine the legal and factual basis of any such exemption and to determine its merits. Additionally, under K.S.A. 79-210 an economic development tax exemption must be claimed (by the property owner) in each year after approval thereof by the board of tax appeals.

In conclusion, it is our opinion that the tax exemption procedure prescribed by K.S.A. 79-210 and K.S.A. 79-213 (as amended by L. 1986, ch. 370, §2) applies to economic development tax exemptions granted under the provisions of Article 11, Section 13 of the Kansas Constitution.

3. Attorney General Opinion No. 87-5

The following reproduces Attorney General Opinion No. 87-5, issued January 13, 1987:

Re: Taxation--Property Exempt From Taxation--Claim to be Filed Each Year
Constitution of the State of Kansas--Finance and Taxation--Exemption of
Property for Economic Development Purposes.

Synopsis: Under the provisions of K.S.A. 1986 Supp. 79-213, the Board of Tax Appeals is authorized to examine the legal and factual basis of an economic development tax exemption granted pursuant to Article 11, Section 13 of the Kansas Constitution. However, the Board has no authority to review the advisability of granting a proposed exemption, as that policy decision has been delegated to the governing body of the city or county by Article 11, Section 13 of the Kansas Constitution. Cited herein: K.S.A. 1986 Supp. 79-213; Kan. Const., Art. 11, §13.

* * *

Dear Mr. Mosher:

You request clarification of Attorney General Opinion No. 86-168. Specifically, you ask whether the Board of Tax Appeals is authorized under K.S.A. 1986 Supp. 79-213 to review the advisability of an economic development tax exemption granted pursuant to Article 11, Section 13 of the Kansas Constitution.

In Attorney General Opinion No. 86-168, we concluded, in part, as follows:

"While cities and counties may grant economic development tax exemptions pursuant to Article 11, Section 13 of the Kansas Constitution, the Board of Tax Appeals is authorized under K.S.A. 79-213 (as amended) to examine the legal and factual basis of any such exemption and to determine its merits." (Emphasis added.)

The underscored portion of the above-quoted excerpt emanated from language in subsection (i) of K.S.A. 1986 Supp. 79-213, and was included in the opinion to emphasize that the Board of Tax Appeals could deny an exemption if it found that there was no legal or factual basis therefor. We did not intend to imply that the Board has discretion to review the advisability of a proposed exemption, as we believe that policy decision has been delegated to the governing body of the city or county by Article 11, Section 13 of the Kansas Constitution.

In summary, it is our opinion that under the provisions of K.S.A. 1986 Supp. 79-213, the Board of Tax Appeals is authorized to examine the legal and factual basis of an economic development tax exemption granted pursuant to Article 11, Section 13 of the Kansas Constitution. However, the Board has no authority to review the advisability of granting a proposed exemption, as that policy decision has been delegated to the governing body of the city or county by Article 11, Section 13 of the Kansas Constitution.

4. Property Tax Exemption Procedural Statutes

Presented below are the statutes applicable to the process of securing property tax exemptions. The application of these statutes to the constitutional provision on tax exemptions for economic development is dealt with in Part 1. K.S.A. 79-213, below, is as amended by Chapter 370, 1986 Session Laws of Kansas.

"79-210. Property exempt from taxation; claim to be filed each year; forms, content and filing of claims; rules and regulations. The owner or owners of all property which is exempt from the payment of property taxes under the laws of the state of Kansas for a specified period of years shall in each year after approval thereof by the board of tax appeals claim such exemption on or before March 1 of each year in which such exemption is claimed in the manner hereinafter provided. All claims for exemption from the payment of property taxes shall be made upon forms prescribed by the director of property valuation and shall identify the property sought to be exempt, state the basis for the exemption claimed and shall be filed in the office of the assessing officer of the county in which such property is located. The assessing officers of the several counties shall list and value for assessment, all property located within the county for which no claim for exemption has been filed in the manner hereinbefore provided. The secretary of revenue shall adopt rules and regulations necessary to administer the provisions of this section."

79-211. Repealed

79-212. Repealed

"79-213. (a) Any property owner requesting an exemption from the payment of ad valorem property taxes assessed, or to be assessed, against their property shall be required to file an initial request for exemption, on forms approved by the board of tax appeals and provided by the county appraiser.

"(b) The initial exemption request shall identify the property for which the exemption is requested and state, in detail, the legal and factual basis for the exemption claimed.

"(c) The request for exemption shall be filed with the county appraiser of the county where such property is principally located.

"(d) After a review of the exemption request, and after a preliminary examination of the facts as alleged, the county appraiser shall recommend that the exemption request either be granted or denied, and, if necessary, that a hearing be held. If a denial is recommended, a statement of the controlling facts and law relied upon shall be included on the form.

"(e) The county appraiser, after making such written recommendation, shall file the request for exemption and the recommendations of the county appraiser with the board of tax appeals.

"(f) Upon receipt of the request for exemption, the board shall docket the same and notify the applicant and the county appraiser of such fact.

"(g) After examination of the request for exemption, and the county appraiser's recommendation related thereto, the board may fix a time and place for hearing, and shall notify the applicant and the county appraiser of the time and place so fixed. In any case where a party to such request for exemption requests a hearing thereon, the same shall be granted. In all instances where the board sets a request for exemption for hearing, the county shall be represented by its county attorney or county counselor.

"(h) In the event of a hearing, the same shall be originally set not later than 90 days after the filing of the request for exemption with the board.

"(i) When a determination is made as to the merits of the request for exemption, the board shall enter its order thereon and give notice of the same to the applicant, the county attorney and the county appraiser by sending to each a certified copy of its order.

"(j) The date of the order, for purposes of filing an appeal to the district court, shall be the date that a certified copy of the order is mailed to the party seeking to appeal.

"(k) During the pendency of a request for exemption, and in the event that taxes have been assessed against the subject property, no interest shall accrue on any unpaid tax for the year or years in question from the date the request is filed with the county appraiser until the expiration of 30 days after the board issued its order thereon.

"(l) In the event the board grants the initial request for exemption, the same shall be effective beginning with the date of first exempt use.

"(m) In conjunction with its authority to grant exemptions, the board shall have the authority to abate all unpaid taxes that have accrued from and since the date of first exempt use. In the event that taxes have been paid during the period where the subject property has been determined to be exempt, the board shall have the authority to order a refund of taxes for a period not to exceed three years.

"(n) The provisions of this section shall not apply to farm machinery and equipment exempted from ad valorem taxation by K.S.A. 79-201j, and amendments thereto, or to personal property exempted from ad valorem taxation by section 1.

"79-214. Property exempt from taxation; statement required upon cessation of exempt use; failure to file, penalty. Within 30 days after any property exempted from property taxation ceases to be used exclusively for an exempt purpose, the owner thereof shall file with the county appraiser of the county where such property is located a statement that the property has ceased to be used for an exempt purpose. Any person required to file a statement pursuant to this section who fails to timely file such statement shall be subject to the same penalties prescribed by K.S.A. 79-1422, and amendments thereto, for the late filing of statements listing property for taxation purposes."

CHAPTER 8

CHARGES ON EXEMPT PROPERTY—TAX BREAKS

Part 1—General Statute

Part 2—Statutes on IDB Bond Property

Part 3—Use of Tax Breaks

1. General Statute

The model Statement of Policy and Procedures and the ordinances and resolutions in Chapter 2 utilize the general statute quoted below. Section 24 of the Statement specifically refers to subsection (3) of K.S.A. 12-147, to provide for the distribution of the payments to the general fund of the applicable taxing units.

It should be noted that the statute envisions that the making of payments is voluntary with the property owner, and that it is a contract, presumably written. It is doubtful that this formality is a practical necessity, since the granting of the exemption is discretionary with the governing body. If the property owner does not pay the required amount, the ordinance or resolution granting the exemption can be simply repealed.

A written contract may be advisable if, upon failure to pay, the city or county will want to use civil remedies to enforce delinquent collections.

"12-147. Tax subdivisions authorized to enter into agreements with owners of tax exempt property for payments in lieu of taxes. Every taxing subdivision of the state of Kansas is hereby authorized and empowered to enter into contracts for the payment of service charges in lieu of taxes, with the owner or owners of property which is exempt from the payment of ad valorem taxes under the laws of the state of Kansas and is further authorized to receive and expend revenue resulting therefrom in the manner hereinafter provided.

"12-148. Same; contract provisions; apportionment of revenues. Contracts for the payment of service charges in lieu of taxes shall provide for the making of payments thereunder to the county treasurer of the county receiving such payments or the county in which any other taxing subdivision receiving such payments is located. The county treasurer shall apportion and pay moneys from such payments in the following manner: (1) If the contract under which such payment is made with a single taxing subdivision and designates the fund or funds to which such revenue shall be applied, the county treasurer shall place such revenue in the designated fund or funds of such subdivision;

"(2) if the contract is made with a single taxing subdivision but does not specify the fund or funds to which the revenue shall be applied the county treasurer shall apportion such revenue among the tangible property tax supported funds of the taxing subdivision, except bond and interest funds, in the proportion that the tax levy for each such fund bears to the total of all tax levies made for all such funds;

"(3) if the contract provides for the allocation of such revenue to more than one taxing subdivision but designates the particular funds of such subdivisions to which the same shall be applied, the county treasurer shall allocate such funds in the manner provided in the contract;

"(4) if the contract provides for the allocation of such revenue to more than one taxing subdivision but does not designate the fund or funds to which the same shall be

applied the county treasurer shall apportion and pay moneys from such payments into the several tangible property tax supported funds of such taxing subdivisions, other than bond and interest funds, in the proportion that the tax levy for each of such funds bears to the total of the tax levies made for such funds of such subdivisions.

"12-149. Same; budgeting of revenues. All revenues received under contracts authorized under the provisions of this act shall be budgeted and expended in the manner provided by law."

2. Statutes on IDB Bond Property

K.S.A. 79-201a, relating to publicly owned property exempt from taxation, provides for the exemption from taxation, for up to 10 years, of property constructed or purchased with the proceeds of economic development revenue bonds (IDBs) issued under K.S.A. 12-1740, et seq. If the property is constructed or purchased "wholly" with the proceeds of such revenue bonds, the property is fully exempt. If the property is constructed or purchased "in part" with the proceeds of such bonds, it is "exempt from taxation to the extent of the value of that portion of the property financed by revenue bonds." While the exemption is for up to 10 years, the exemption applies only as long as the property is "owned" by the county or city, with bonds outstanding.

Provisions as to the payment of in lieu taxes by such exempt property is covered by the Economic Development Revenue Bonds Act, K.S.A. 12-1740, et seq. Presented below is Section 12-1742 from this act relating to in lieu payments. K.S.A. 12-1741a and K.S.A. 1985 Supp. 12-1741b are also included, dealing with the location of such facilities.

"12-1741a. Location of facilities; approval required, when. (a) No city shall issue revenue bonds authorized herein to finance facilities located in unincorporated territory situated more than three miles beyond the nearest point of the issuing city's limits without such city having first received approval of the board of county commissioners of the county in which such facility is to be located. No city shall issue revenue bonds authorized herein to finance facilities located in unincorporated territory lying within three miles of its corporate limits but within the county or counties in which any portion of such city is located, without such city having first notified the board of county commissioners of the county or counties of the proposed issuance. No city shall issue revenue bonds authorized herein to finance facilities located within the corporate limits of another city without the issuing city first having received approval of the governing body of the city in which the facility is to be located.

"(b) No city shall issue revenue bonds authorized herein to finance a facility located outside the county or counties in which any portion of such city is located without such city having first received approval for the issuance of such bonds from the board of county commissioners of the county in which the facility is to be located.

"(c) No city or county shall issue revenue bonds for facilities to be located on property which is owned by another city or county without the issuing city or county first having received approval of the governing body of the city or county which owns the property.

"12-1741b. Issuance of revenue bonds by counties; lease-purchase agreements. (a) Subject to the provisions of K.S.A. 12-1744a and 12-1744b, as amended, any county shall have power to issue revenue bonds, the proceeds of which shall be used for the purpose of paying all or part of the cost of purchasing, acquiring, constructing, reconstructing, improving, equipping, furnishing, repairing, enlarging or remodeling of facilities for agricultural, commercial, hospital, industrial, natural resources, recreational development

and manufacturing purposes. Any county shall also have the power to enter into leases or lease-purchase agreements by resolution with any person, firm or corporation for the facilities. Except as otherwise provided in subsection (b) of this section, the facilities may be constructed within the county or its environs without limitation as to distance, providing the board of county commissioners declares that the facility, if in being, would promote the welfare of the county.

"(b) No county shall issue revenue bonds authorized herein to finance facilities located within the corporate limits of a city or within three miles of the corporate limits of a city or within another county without the issuing county having first received approval of the governing body of the city or county in which the facility is to be located. Approval of a city governing body shall not be required to finance the construction of facilities located on real estate, the title to which is in the county issuing the revenue bonds. The use of such real estate shall be subject to all zoning regulations, subdivision regulations and building code regulations of the city.

"12-1742. Same; conditions of agreement; apportionment of payments in lieu of taxes; administrative costs; valuation excluded from adjusted valuation of school districts. Such agreements shall provide for a rental sufficient to repay the principal of and the interest on the revenue bonds. Such agreements may also provide that the lessee shall reimburse the city or county for its actual costs of administering and supervising the issue. All fees paid in excess of such actual costs and any other obligation assumed under the contract shall be deemed payments in lieu of taxes and distributed as provided herein. If the agreement provides for a payment in lieu of taxes to the city or county, such payment shall immediately upon receipt of same be transmitted by the city or county to the county treasurer of the county in which the city is located. Payments in lieu of taxes received pursuant to agreements entered into after the effective date of this act shall include all fees or charges paid for services normally and customarily paid from the proceeds of general property tax levies, except for extraordinary services provided for the facility or an extraordinary level of service required by a facility. Payments in lieu of taxes may be required only upon property for which an exemption from ad valorem property taxes has been granted by the state board of tax appeals. The county treasurer shall apportion such payment among the taxing subdivisions of this state in the territory in which the facility is located. Any payment in lieu of taxes shall be divided by the county treasurer among such taxing subdivisions in the same proportion that the amount of the total mill levy of each individual taxing subdivision bears to the aggregate of such levies of all the taxing subdivisions among which the division is to be made. The county treasurer shall pay such amounts to the taxing subdivisions at the same time or times as their regular operating tax rate mill levy is paid to them. Based upon the assessed valuation which such facility would have if it were upon the tax rolls of the county, the county clerk shall compute the total of the property taxes which would be levied upon such facility by all taxing subdivisions within which the facility is located if such property were taxable. The valuation of the facility shall not be included in the computation of the adjusted valuation of a school district under the provisions of K.S.A. 72-7040, or amendments thereto."

3. Use of Tax Breaks

The purpose of this manual is not to review the advisability or the pros and cons of tax abatements, tax breaks, tax exemptions or whatever other form of "public inducements" used to encourage private business development. This has been a topic of research for at least 50 years, and probably a discussion topic for centuries. Some people think they work; others don't. Some say they're good, while others accept them only as a necessary evil, if at all. Some advocate their use as a positive growth tool, while others support them only because of the competition that exists elsewhere. Even a full review of the arguments is beyond the scope

of this report. However, one recent analysis of the Kansas situation is worth noting: An article by Bill Bartel, Staff Writer, published in the January 7, issue of The Wichita Eagle-Beacon. Presented below are excerpts from this article.

It's likely many cities and counties in Kansas will be giving property tax breaks to new or expanding companies in the coming years.

Not because companies need the help to survive. Not because local officials like the idea. They'll be doing it, say development consultants and government leaders, because everybody else is doing it.

When Kansas voters approved an Aug. 5 ballot issue that allows local governments to exempt some industries from paying all or part of their property taxes for as long as 10 years, proponents of the change said it would give city and county officials an attractive bait to lure new companies and jobs to their communities.

BUT IN reality, property tax breaks generally aren't a deciding factor in a company's decision to build in Kansas or any state, and the breaks can cost communities more than they are worth, say many development consultants and government leaders.

"Our conclusion is that tax incentives, in general, are not an effective tool for economic development and should not be a major or significant part of an economic plan for a state or a community," said University of Kansas professor Charles Krider, who helped conduct a study of Kansas' long-range economic development plans.

A private analysis of property tax breaks in other states, done to assist Krider and fellow KU professor Tony Redwood's research, showed the tax exemptions can be more expensive than they are worth.

"Property tax abatements are not cost-effective" and hurt a city's financial ability to provide streets, sewers and other services, "which are much more important incentives in economic development," according to the study by ASLAN, a Washington-based consulting firm.

Ted Lyman of SRI International, a consulting firm hired by Wichita area leaders to help plan the region's growth, said property tax abatements are far down the list of amenities important to growing companies. They're important, but only under limited circumstances, Lyman said.

"When it comes down to deciding between two places that have very good education systems, exciting downtowns, exciting quality of life, lots of capital and entrepreneurship, a tie breaker could well be a cost of doing business," he said.

Bob Ady, vice president of Fantus Company, a Chicago consulting firm that has helped more than 7,000 companies find sites for new plants, said the offering of property tax breaks "was never a major factor" in a firm's final choice.

THE ECONOMIC development experts said labor supply, transportation needs, quality of life and environment often are much more important to companies than local taxes.

But government officials said, even if the tax breaks aren't necessarily needed by companies and are costly to a community, they're part of the game. To stay competitive, communities have to be willing to give away something.

"If everybody else is using those and it's part of the environment you're living in, you have to do it, too," said Sedgwick County Administrator Tim Witsman.

Krider, who had recommended that communities be allowed to offer the tax exemptions, said he supported allowing the breaks in Kansas because it gives the state's communities equal footing with cities in at least 32 states that already allow such tax exemptions.

As cities and counties in Kansas begin setting up policies for giving tax breaks, experts said many communities may have difficulties in making decisions about when to give the tax exemptions and how much they will cost the city in tax revenue.

While no present property taxes would be exempted, communities would lose new tax dollars that might be used to provide services such as streets, police and fire protection or schools for that new company and its employees.

"You have to look at what it cost you to attract new jobs and what is the payout," said Marvin Wynn, the Wichita Area Chamber of Commerce's new economic development director.

WYNN SAID tax exemptions should be seen as a part of a total package of assistance that might be given to a new or expanding company. It would be unfair, he said, to isolate it from other development incentives that a city or county might offer.

Tax exemptions may be most effective along state borders such as the Kansas City area, where Kansas and Missouri are competing head-to-head for new development, said David Barclay, deputy director of the Kansas Department of Economic Development.

Wichita City Manager Chris Cherches said larger cities such as Wichita probably will have the staff to closely analyze a company's requests to determine whether its tax break request is truly necessary and exactly how much it will cost.

But in many smaller Kansas communities, such expertise isn't available.

There's also concern that Kansas communities would start bidding wars among themselves as they try to lure companies to the region.

The League of Kansas Municipalities presently is trying to draw up guidelines for cities and counties to follow in handling tax exemption requests to prevent such intrastate competition.

"It will give the cities and counties some basis for making a decision. In the absence of these guidelines, you'll have entrepreneurs going from city to city trying to get the best deal," said League attorney Jim Kaup.

"If they're going to grant tax exemptions every time somebody walks in the door, the Legislature would have every reason to step in and stop them," Kaup said. "Part of our objective is to make sure the law is used responsibly."

BUT THERE is little room for bargaining with eligible companies after the policies are set, said Roger Vaughan, a national economic development consultant, researcher and author. Companies are going to be demanding every dime they can because they know the breaks are available, Vaughan said.

"There is a myth that you use tax abatements in negotiating with companies," said Vaughan. "It's hard for a city to negotiate because a prospective company knows exactly how much (in) tax breaks it can get."

February 11, 1987

KANSAS INDUSTRIAL DEVELOPERS ASSOCIATION

Testimony Before the
House Taxation Committee

by
Gary Toebben
President

My name is Gary Toebben, I'm with the Lawrence Chamber of Commerce and I am speaking to you today as President of the Kansas Industrial Developers Association.

Our association consists of 120 economic development professionals from across the state. Our members work for cities, counties, chambers of commerce and private firms involved in business recruitment. Our responsibilities include helping existing industry to expand, encouraging small business startups and attracting new business and industry from out-of-state. We all share a common mission; creating jobs for Kansas and for the communities we represent.

The members of our organization were strong proponents within our communities for the passage of the constitutional amendment authorizing cities and counties to grant property tax exemptions for economic development purposes. We believe that this tool is essential as we compete with other communities in other states.

The Kansas Industrial Developers Association applauds the work of the League of Kansas Municipalities in researching and formulating a policy and procedures manual for cities and counties to use in determining how and when to provide a property tax exemption. The League's recommendations are well thought out and represent the kind of guidelines our members would encourage every city and county in the state to consider.

With the guidelines recommended by the League and the Attorney General's opinion No. 87-5, which defines the Authority of the State Board of Tax Appeals, the Kansas Industrial Developers Association does not recommend any additional state legislation at this time.

For many years, cities and counties have used local discretion in determining payments in lieu of property taxes on projects financed by Industrial Revenue Bonds. Local officials were aware that policies varied between cities and counties but each city and county considered it's own unique economic situation and adopted a policy that best served the needs of their city or county.

The Redwood-Krider Report speaks to this issue in chapter 6, part 3:

"Allowing local option on tax abatements could encourage unproductive competition among local governments within the state and thus unnecessarily erode the fiscal capacity of these jurisdictions. On the other hand, without this tool, Kansas communities would be disadvantaged relative to competing communities in other states. There are few other tools available. On balance, we recommend the initiative on the basis of allowing Kansas local governments to make that decision in their particular circumstances."

To our knowledge, the current State policy of allowing cities and counties to control decisions related to local property tax exemptions has not resulted in "unproductive competition among local governments within the state." Local officials have used good judgement that reflected the unique economic situation of their city or county.

The Kansas Industrial Developers Association supports the continuation of the State's current policy of local control. We will continue that support until such time that local government requests additional state guidelines. Or, until it becomes clear that a lack of good judgement at the local level is resulting in a considerable amount of unproductive competition and the pirating of firms from one locality to another.

In summary the Kansas Industrial Developers Association encourages the legislature not to introduce legislation this session which would limit the authority of local government in decisions related to property tax exemptions for economic development purposes.

From
KASB

7. expend funds received from the federal government for any public purpose in accordance with the federal law authorizing the same.

History: L. 1980, ch. 350; L. 1986, ch. 432; Aug. 5, 1986.

CASE ANNOTATIONS

34. Legislative approval of port authority not unconstitutional state involvement in internal improvement. *State ex rel. Tomasic v. Kansas City, Kansas Port Authority*, 230 K. 19, 22, 630 P.2d 692 (1981).

35. Prohibition is on the state as a state; legislature may authorize public or private corporations or individuals to construct internal improvements. *State ex rel. Tomasic v. Kansas City, Kansas Port Authority*, 230 K. 404, 421, 636 P.2d 760 (1981).

36. Industrial revenue bond 10-year tax exemptions (79-201a *Second*) not state involvement in works of internal improvements. *State ex rel. Tomasic v. City of Kansas City*, 237 K. 572, 588, 701 P.2d 1314 (1985).

§ 13. Exemption of property for economic development purposes; procedure; limitations.

(a) The board of county commissioners of any county or the governing body of any city may, by resolution or ordinance, as the case requires, exempt from all ad valorem taxation all or any portion of the appraised valuation of: (1) All buildings, together with the land upon which such buildings are located, and all tangible personal property associated therewith used exclusively by a business for the purpose of: (A) Manufacturing articles of commerce; (B) conducting research and development; or (C) storing goods or commodities which are sold or traded in interstate commerce, which commences operations after the date on which this amendment is approved by the electors of this state; or (2) all buildings, or added improvements to buildings constructed after the date on which this amendment is approved by the electors of this state, together with the land upon which such buildings or added improvements are located, and all tangible personal property purchased after such date and associated therewith, used exclusively for the purpose of: (A) Manufacturing articles of commerce; (B) conducting research and development; or (C) storing goods or commodities which are sold or traded in interstate commerce, which is necessary to facilitate the expansion of any such existing business if, as a result of such expansion, new employment is created.

(b) Any ad valorem tax exemption

New Structures

Unclear Portion

MAKE IT CLEAR THAT THIS SECTION ONLY APPLIES TO NEWLY CONSTRUCTED ADDITIONS AND WILL NOT EXEMPT AN ENTIRE EXISTING BUILDING PLUS THE NEW ADDITION

Authority

granted pursuant to subsection (a) shall be in effect for not more than 10 calendar years after the calendar year in which the business commences its operations or the calendar year in which expansion of an existing business is completed, as the case requires.

(c) The legislature may limit or prohibit the application of this section by enactment uniformly applicable to all cities or counties.

(d) The provisions of this section shall not be construed to affect exemptions of property from ad valorem taxation granted by this constitution or by enactment of the legislature, or to affect the authority of the legislature to enact additional exemptions of property from ad valorem taxation found to have a public purpose and promote the general welfare.

History: L. 1986, ch. 423; Aug. 5, 1986.

Article 12.—CORPORATIONS

87. Board of regents held not subject to building code ordinances of Kansas City for construction at K.U. Medical Center. *State ex rel. Schneider v. City of Kansas City*, 228 K. 25, 28, 29, 31, 612 P.2d 578.

88. City action may go beyond state legislation so long as there is no conflict therewith and state has not preempted field. *Andersen Construction Co. v. City of Topeka*, 228 K. 73, 79, 612 P.2d 595.

89. A city has no standing to challenge the annexation procedures of another city. *City of Lenexa v. City of Olathe*, 228 K. 773, 620 P.2d 1153.

90. Legislature vested with full power and authority over alteration of city boundaries by annexation. *City of Lenexa v. City of Olathe*, 229 K. 391, 625 P.2d 423.

91. Board of county commissioners lacks standing to challenge appeal procedure under 19-223 as violative of due process rights of owners of land sought to be annexed by city. *Board of Johnson County Commissioners v. City of Lenexa*, 230 K. 632, 634, 641, 640 P.2d 1212 (1982).

92. Home rule power discussed; city ordinance requiring approval of planning commission approved subdivision plat in conflict with 12-705b and invalid. *Moore v. City of Lawrence*, 232 K. 353, 356, 654 P.2d 445 (1982).

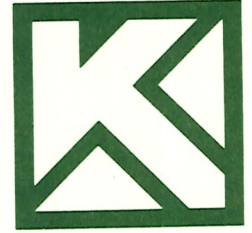
93. Powers of municipalities limited with regard to matters outside sphere of local affairs and government. *Capital Electric Line Builders, Inc. v. Lennen*, 232 K. 652, 653, 658 P.2d 365 (1983).

94. Statute prohibiting annexation of military reser-

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry

500 First National Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321



A consolidation of the
Kansas State Chamber
of Commerce,
Associated Industries
of Kansas,
Kansas Retail Council

February 11, 1987

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the
House Committee on Taxation

by

Bud Grant
Vice President

Mr. Chairman, members of the committee. My name is Bud Grant and I am here on behalf of the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to offer a few very brief comments about the voter approved constitutional amendment dealing with property taxation exemptions.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

The question before the committee concerning what implementing legislation might or might not be required is an important question. You should all feel some pride in having supported the placing of this question on the ballot and the resulting significant support it received from Kansas voters.

This hearing is similar to a hearing held before the Senate committee on Assessment and Taxation last Thursday, in which KCCI did not testify in order that we might have the opportunity to hear comments of others before making our comments. After hearing those comments, KCCI agrees with the majority of those who testified at that hearing that the legislature in 1987 should be very careful about doing anything in this area. The attorney general's opinion which was requested by the Secretary of Economic Development as to the role of the Board of Tax Appeals, I think has answered the one major question. What is the role of the Board and should it have a role at all? KCCI agrees with the decision of the attorney general that the board should rule on the legality of the exemptions, but not on the merit of the exemption.

Beyond that, 1987 should be used as a year to observe the implementation of this constitutional change by local units of government and pinpoint those areas in which legislation may be needed. To attempt far reaching interpretations at this time would be an attempt to fix something that we don't know is broken.

I had the pleasure during the fall of working with the League of Kansas Municipalities to develop a manual for use by Kansas cities and counties when working with this constitutional amendment. After this committee has had a chance to review it, I feel strongly that you will agree that it is well thought out and does deal with most of the possible questions of implementation in advance.

Thank you Mr. Chairman for the opportunity for these few comments. I would be pleased to attempt to answer any questions.



KANSAS ASSOCIATION FOR SMALL BUSINESS

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TESTIMONY PRESENTED TO THE
HOUSE TAXATION COMMITTEE
FEBRUARY 11, 1987

Representative Rolfs, Members of the Committee, I am Mary Ellen Conlee, Executive Director for the Kansas Association for Small Business--an association of nearly 100 small businesses in Kansas. A majority of these companies are small manufacturers, industrial supply companies, foundries and others who service manufacturing companies. While some of our companies have 100 employees, most have less than 25.

The Kansas Association for Small Business supported the constitutional amendment which you are considering this morning. When its original version addressed property tax abatements for new business, we asked that the proposal be expanded to include existing business expansion. The legislature heard then, and hears now, that most economic growth will come from nurturing our small existing businesses. In fact three or four of our companies are planning expansions and looking at the tax incentives in this program.

Therefore, we ask that a program for property tax abatements be sensitive to the small business expansion as well as major expansions. A tax abatement on the purchase of a \$50,000.00 machine or a \$100,000.00 building expansion resulting in one or two more employees may provide the extra push necessary to begin a process of growth for a small aircraft parts manufacturer.

The IDB program, while supported by small manufacturers, often frustrated them because it was not responsive to small business growth. For example, a large aircraft company could receive IDB's and the resulting lower interest rates and tax abatements for a major expansion. A small manufacturer, in turn, often needed to purchase new machinery to respond competitively to that new growth, but had to pay for its expansion with going interest rates and full taxes because that expansion was too small for IDB's.

The Kansas Association for Small Business therefore asks that the local property tax abatement program be available for the small expansions in machinery and buildings. At this point the Board of our Association believes that programs for implementation can be designed at the local level--with each

House
Staff

Attachment 5

2-11-87

er We Can Make A Difference!

Testimony
February 11, 1987
page 2

city representing its need for economic development in its implementation of the program.

We will work with local governing bodies to assure--

1. That small expansions are eligible
2. That paperwork be reasonable
3. That the abatement decision be made for a given period, i.e. five or ten years, without an annual review. In figuring the numbers on an expansion decision, a company cannot be faced with the abatement being pulled after a year or two.

We believe that a "but for" determination is unreasonable. Even with IDB's, the language written to support a "but for" commitment was usually an example of persuasive writing, not the compelling reason for a business decision. With IDB's the local tax incentives were only a part of a larger financial package. It is unlikely for an expansion of an existing business that the abatement would be truly a "but for" factor.

The implementation of the local property tax abatement program approved by the voters is a signal to business that expansion is encouraged. In summary, if the state decides to write implementing language or guidelines, we ask that you be sensitive to Kansas's existing small manufacturers.

MEMORANDUM

TO: Repr. Edward Rolfs, Chairman House Assessment & Taxation
Committee

FROM: Fred L. Weaver, Chairman, Board of Tax Appeals *FLW*

DATE: February 11, 1987

RE: House Concurrent Resolution No. 5047
Amending Article 11 of the constitution
of the State of Kansas adding new section 13.

The following are questions and comments regarding the application of this amendment to the Kansas constitution. This amendment exempts certain property which is used in a manner that fosters economic development. It allows the governing body of counties and cities the Authority to offer 10 year exemptions if certain criteria are met. The Attorney General and the Director of Property Valuation have held, however, that only the Board of Tax Appeals has the authority to actually order property removed from the tax rolls. (See Exhibits "A" and "B" attached).

With this responsibility in mind, the Board has reviewed the amendment and would raise the following questions:

First, we believe a major policy question must be answered. What is the purpose of this amendment? To promote new business to locate in this state and the expansion of existing business or is it to promote the relocation or expansion of business within this state or both. Upon close examination one can logically conclude that without legislative restriction this amendment will hasten the demise of rural Kansas communities which are already suffering severely from economic conditions beyond their control. Small communities cannot compete with larger ones because they must of necessity utilize the property tax where large ones can rely on other resources (See Exhibit C). The Board has other questions concerning interpretation and meaning of various portions of the amendment as well:

1. How is the phrase "commencing operation" to be interpreted? What is to be considered commencing operation? Where must a "business" commence operation in order to qualify? Can a business relocate within the same county (Rossville to Topeka)? Or in the same City and qualify for exemption? To Topeka from Cherokee County where there is 10% unemployment? Example: a grain elevator goes bankrupt, closed for six months, purchased by grain elevator in next county, will this qualify as new business commencing operation?
2. Is an "old" or "existing" business to be considered a "new" business if acquired by new owners?

What is to be considered "commencing business"? (Topeka instance)

3. What is to be considered "new employment" (when jobs move from Pratt to Wichita? or Independence to Coffeyville)?

How much "new employment" is necessary in order to qualify for exemption?

How long must new employees work at the facility?

Will the the amount of the exemption or the length of the exemption be tied to the number of new jobs?

Will evidence of indirect employment versus direct employment be sufficient to qualify the property for exemption? If yes, how much? (The so called multiplier factor).

4. What does "associated therewith" mean? Should it be interpreted to encompass for example, adding a building and machinery to expand an assembly line. Would the existing machinery, building and land being associated with the "new" qualify for exemption? Does it include rolling stock such as vehicles?
 5. What property will be considered "necessary" to facilitate an expansion of an existing business?
 6. What is an "article of commerce?"
 7. What is or is not be considered "manufacturing? Should the definition in K.S.A. 79-1005 be used or some other statutory definition?
- What personal property should be considered exemptible? How much? Only the newly acquired or all personal property in the facility? Only the newly acquired and that part of the existing personal property necessary to operate the new portion of the business?
8. Will state assessed property qualify for this exemption? E.g. will the addition of the 4th generator at Jeffery be exempt? What about new and/or additional construction at Wolf Creek? If exempt, how much of facility? Generation of electricity has been interpreted to mean manufacturing.
 9. Should school district and/or other taxing subdivision be involved in the decision making process since their tax base is directly affected, particularly if an existing business is to be exempted?
 10. Under the provisions of (C) regarding the storage of property, will there be a threshold level of interstate commerce necessary to qualify for exemption?



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

December 3, 1986

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3731

ATTORNEY GENERAL OPINION NO. 86-168

Charles J. Schwartz
Secretary
Kansas Department of Economic Development
400 W. 8th, Fifth Floor
Topeka, Kansas 66603-3957

Re: Taxation--Property Exempt From Taxation--Claim to
be Filed Each Year

Kansas Constitution--Finance and
Taxation--Exemption of Property for Economic
Development Purposes.

Synopsis: While cities and counties may grant economic
development tax exemptions pursuant to Article 11,
Section 13 of the Kansas Constitution, the Board of
Tax Appeals is authorized under K.S.A. 79-213 (as
amended) to examine the legal and factual basis of
any such exemption and to determine its merits.
Additionally, under K.S.A. 79-210 an economic
development tax exemption must be claimed (by the
property owner) in each year after approval thereof
by the board of tax appeals. Cited herein: K.S.A.
79-210, 79-213 as amended by L. 1986, ch. 370,
§2; Kan. Const., Art. 11, §13 (L. 1986, ch.
423, §1).

*

*

*

Dear Mr. Schwartz:

You request our opinion as to whether the tax exemption
procedure prescribed by K.S.A. 79-210 and K.S.A. 79-213 (as

EXHIBIT A



KANSAS DEPARTMENT OF REVENUE

M E M O R A N D U M

TO: All County Appraisers

FROM: Victor W. Miller, ^{WM} Director
Division of Property Valuation

DATE: September 26, 1986

SUBJECT: Exemption of Property for
Economic Development Purposes
(House Concurrent Resolution No. 5047)

This office has received numerous inquiries relative to the property tax exemption for economic development purposes by cities and counties as approved by the Kansas electorate in the August 5, 1986 election.

It is the position of the Division of Property Valuation that such exemption requests are subject to the provisions of K.S.A. 79-213 and K.S.A. 79-210. K.S.A. 79-213 provides in part that "[a]ny property owner requesting an exemption from the payment of ad valorem property taxes assessed, or to be assessed, against their property shall be required to file an initial request for exemption, on forms approved by the board of tax appeals and provided by the county appraiser." K.S.A. 79-210 provides in part that "[t]he owner or owners of all property which is exempt from the payment of property taxes under the laws of the state of Kansas for a specified period of years shall in each year after approval thereof by the board of tax appeals claim such exemption on or before March 1 of each year in which such exemption is claimed. . . ." (Emphasis added.)

The constitutional amendment provides that the ad valorem tax exemption granted pursuant thereto shall be in effect for not more than 10 calendar years after the calendar year in which the business commences its operations or the calendar year in which expansion of an existing business is completed. Thus the exemption is "for a specified period of years" and K.S.A. 79-210 applies. The exemption request must be renewed annually on or before March 1.

The Board of Tax Appeals is the paramount taxing authority in the State of Kansas. Northern Natural Gas Co. v. Dwyer, 208 Kan. 337, 492 P.2d 147 (1971), cert. denied 406 U.S. 967 (1972).

It was the intent of the legislature in enacting K.S.A. 79-213 and K.S.A. 79-210 to provide an exclusive statutory remedy before the Board of Tax Appeals in all cases involving a claim of tax exemption by any property owner. Tri-County Public Airport Authority v. Board of Morris County Commissioners, 233 Kan. 960, 666 P.2d 698 (1983).

Thus, while the board of county commissioners of any county or the governing body of any city may, by resolution or ordinance, as the case requires, exempt from all ad valorem taxation all or any portion of certain property for economic development purposes, AN EXEMPTION ORDER MUST BE OBTAINED FROM THE BOARD OF TAX APPEALS BEFORE ANY COUNTY APPRAISER REMOVES SUCH PROPERTY FROM THE TAXABLE ROLL.

VWM/WEW/dpb

cc: Board of Tax Appeals
Julene L. Miller, Deputy Attorney General
Harley T. Duncan, Secretary of Revenue
Fred Kerr, State Senator
James D. Braden, State Representative
Edward C. Rolfs, State Representative
Bud Grant, KCCI
Ernie Mosher, League of Kansas Municipalities
Fred Allen, Kansas Association of Counties

Property tax exemption could give edge to Topeka

A constitutional amendment that would allow cities and counties to exempt from property taxes new manufacturing, research and development and warehousing facilities could give Topeka an advantage over some other cities in attracting new businesses.

The prime reason that the property tax exemption could put Topeka on the economic development "high ground" is that Topeka has gradually reduced the proportion of its city budget that comes from property taxes, City Auditor Charles Holt said.

"Twenty years ago, 35 to 40 percent of the city's budget was property tax revenue. Now, we've been whittling it down to where less than 20 percent of the city's budget comes from that source," he said.

Fees, licenses and the 1 percent local sales tax — Topeka's major revenue source — make the property tax base for the city less of a concern than it might be for cities with heavier dependence on property taxes, Holt said.

"It's a little cheaper for us. A property tax exemption doesn't cost us as much as it costs a lot of cities, because such a small percentage of our city budget comes from property taxes," he said.

Topeka also has geared up an array of other inducements for new businesses, including the possible waiver of building permit and inspection fees, free municipal utility hookups, or a deferred payment program for other municipal improvements needed by a firm.