

Approved March 28, 1988
Date

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT & TAXATION

The meeting was called to order by Senator Fred A. Kerr at
Chairperson

11:00 a.m./~~p.m.~~ on March 25, 1988 in room 519-S of the Capitol.

All members were present except:

Sen. Salisbury
Sen. Frey
Sen. Mulich

Committee staff present:

Tom Severn, Research
Chris Courtwright, Research
Don Hayward, Revisor's Office
Sue Pettet, Secretary to the Committee

Conferees appearing before the committee:

Mark Burghart, Dept. of Revenue
Ron Gaches, Boeing Corp.
Bud Grant, KCCI
Roland Smith, Wichita Ind. Business Assoc.
Bernard Koch, Wichita Chamber
T.C. Anderson, C.P.A.'s
John Eisele, Atty., Prof. Software Corp.
Rich McKee, Ks. Livestock Assn.
Rebecca Rice, Ks. Auctioneer Assoc.
Hank Booth, Ks. Assoc. of Broadcasters
Mark Ellen Conlee, Ks. Assoc. of Small Businesses

Chairman Kerr called the meeting to order and said the agenda would be to have a hearing on S.B. 738.

SENATE BILL 738

Mark Burghart testified. (Att. 1) He explained that the bill exempts, effective January 1, 1989, sales of machinery and equipment used directly and primarily for the purposes of manufacturing, assembling, processing, finishing, storing, warehousing or distributing articles of tangible personal property in this state for resale. This proposal was recommended to the Governor by his Task Force on Tax Reform, along with other groups. The Task Force was attempting to improve the competitiveness of the Kansas tax structure with other states. Such an exemption would:

1. Improve our competitive posture and remove a negative aspect in regard to other states.
2. Reduce directly the cost of capital investment and job creation in Kansas.
3. It is limited to machinery used directly in the production processes in primary job creation industries.
4. It will supplement our enterprise zone benefits which tend to focus on new businesses and facilities.

Mr. Burghart stated that the estimated fiscal impact of this to be \$16 million annually, and \$6.5 to \$7.0 million in FY 1989. He stated that the bill will clarify statutes.

Another section of the bill would clearly tax, without possible loopholes what is termed as "canned" or "multiple user software." In doing so, it resolves the issue of potential taxation of professional services, according to Mr. Burghart.

Ron Gaches testified. (Att. 2) He stated that if passed, the exemption will encourage the capital investment necessary to keep Kansas manufacturers competitive in national and international markets. He stated that a majority of states including most surrounding Kansas, have already eliminated this tax.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT & TAXATION,

room 519-S, Statehouse, at 11:00 a.m. on March 25, 1988

Bud Grant testified. (Att. 3) He stated that he was very concerned about the fiscal note quoted by the Department of Revenue. He said he does not see how it could possibly be more than \$5 million. He stated that because most businesses locating in Kansas are probably doing so in the already exempt enterprise zones, the main impact of S.B. 738 would be for existing businesses as they retool and upgrade.

Roland Smith testified. (Att. 4) He said that Wichita Independent Business Assoc. (WIBA) is an association of 1400 locally owned small businesses.

This exemption would give them a better chance to compete and expand, especially after the expected increases in tax caused by reappraisal. He said he thinks the exemption would be especially helpful to small businesses. They often are not in enterprise zones.

Bernard Koch testified. (Att. 5) He stated that they support S.B. 738 because they are concerned with targeting economic development efforts where they will have the most effect, mainly, encouraging replacement and addition of productive machinery. This would give the manufacturers a better chance to compete both regionally and internationally.

T.C. Anderson testified. (Att. 6) He stated that he supported the clarifying amendments to the computer software section of the Kansas sales tax law which are in S.B. 738. He said the language in subsection (s) closely parallels what was the Dept. of Revenue's interpretation on the taxation of computer software as of January 1982.

Mr. Eisele testified. (Att. 7) He stated that computer software is still in its infancy. As it evolves, so will the law around it. He asked for an amendment for "license to use". He said that since the Department has proposed the taxing of "canned" or "pre-written" software, and not any custom programming, he requested clarification in order that licensors outside of Kansas know clearly their obligations in licensing application software to Kansas residents, thereby making the marketing more fair and balanced.

Rich McKee testified. (Att. 8) He stated that the KLA supports S.B. 738 with the addition of one amendment, exempting sales tax for the sales of new farm machinery. This would be one way to return part of the windfall through sales tax exemptions. He stated that over the last five years, total cattle numbers have declined over 20%. Therefore, if Kansas does not increase its current market share of this business, jobs will be lost. The major competitor for this business is Texas, where no sales tax is collected on farm machinery.

Rebecca Rice testified. (Att. 9) She stated that last year an auctioneer was audited and told to pay \$12,000 worth of back sales tax based on sales for the service of auctioneering. She stated that the only exemption currently provided is if the sale is conducted at the residence of the owner of the personal property, and is not connected with property of another principal. This presents a dilemma. She stated that the Department of Revenue has expressed support for language in H.B. 2626, subsection (j) of K.S.A. 79-3602.

Hank Booth testified. (Att. 10) He stated that his organization wishes to encourage an amendment which would specifically exempt services rendered by ad agencies and broadcast stations, by adding "The following shall be exempt from the tax imposed by this act..." except as otherwise provided in this act, all sales of services rendered by an advertising agency of licensed broadcast station or any member, agent or employee thereof." In response to a question, he stated that he felt the amended bill if adopted, would have no fiscal impact and would be revenue neutral.

Mary Ellen Conlee testified. She stated that she felt the \$16 million fiscal impact quoted by the Department was extremely high. She also said she represented small businesses, and it would be an incentive for them.

Senator Burke moved to adopt the minutes of the March 24th meeting. Sen. Thiessen seconded. Motion carried.
Meeting adjourned.

ASSESSMENT AND TAXATION

OBSERVERS
(PLEASE PRINT)

DATE	NAME	ADDRESS	REPRESENTING
3/25/88	MARK BURGART	TOPEKA	REVENUE
	JOHN LUTTJOHANN	✓	✓
	Law Vack	"	KSCPA
	T.O. Anderson	"	KSCPA
	Rebecca Rice	Topeka	Ks. Auctioneers
	Bob Wilson	St. George	Ks. Auctioneers
	Jerry Pitney	Wamego	Ks. Auctioneers
	Jim Gantner	Topeka	SWBT
	Bob Bradley	Topeka	KS Assoc of Counties
	FRANCES KASTNER	Topeka	Ks Food Dealers
	Gordon Hibbard	Manhattan	Kansas Farm Bureau
	Paul E. Fleener	Manhattan	Kansas Farm Bureau
	Rich McKee	Topeka	K.A.A.
	Lynn Scannell	Topeka	Kansas Advertising Coalition
	Bob McKee	Topeka	
	John Cassile	Overland Park	Cottman
	Ken Gaches	WICHITA	Boeing
	Coland Amato	Wichita	WIBA
	Mr. W. S. Potts	Topeka	Ks Assoc. Small Bus.
	Mary Ellen Collee	Wichita	Ks Assoc. for Small Bus.
	Bernie Koch	"	Wichita Chamber
	BOB GRANT	TOPEKA	KCCI
	Harriet Lange	"	Ks Assn Broadcast
	Hank Booth	Lawrence	Ks Assn Broadcast

MEMORANDUM

TO: The Honorable Fred A. Kerr, Chairman
Senate Committee on Assessment and Taxation

FROM: Harley T. Duncan
Secretary of Revenue

RE: SB 738

DATE: March 25, 1988

Thank you for the opportunity to appear before you today on SB 738 which exempts sales of certain machinery and equipment from the state and local retail sales and compensating use tax and clarifies the application of the sales and use tax to computer software. The manufacturing machinery component is part of Governor Hayden's tax reform plan, and on behalf of the Administration, I recommend your passage of both components of the bill.

MANUFACTURING MACHINERY AND EQUIPMENT

The bill exempts, effective January 1, 1989, sales of machinery and equipment used directly and primarily for the purposes of manufacturing, assembling, processing, finishing, storing, warehousing or distributing articles of tangible personal property in this state for resale. The bill goes to some lengths to define what is and is not intended to be covered by the exemption. The language is the result of a thorough review of similar statutes in other states as well as similar statutes in Kansas. Our intent is to be maximize the understanding of the exemption and minimize the litigation of the issue.

This proposal was recommended to the Governor by his Task Force on Tax Reform among other groups including Kansas Inc. In arriving at its recommendation, the Task Force was attempting to improve the competitiveness of our tax structure with other states and to recommend initiatives which could have a real effect on business decisions. In its deliberations, the Task Force reviewed certain research work sponsored by Kansas Inc.

The research, conducted by the University of Kansas Institute for Policy and Business Research, estimated the total federal, state and local tax burden that a new or expanding firm would face over a 15-year period in Kansas and the surrounding states of Colorado, Iowa, Missouri, Nebraska, and Oklahoma.

With respect to all taxes, Kansas ranks third on average for all the industries as a group. Kansas is also about at the midpoint for each industry except that it ranks toward the high end for telecommunications and below average for motor vehicle and construction machinery manufacturing. The lowest tax state is Missouri in all instances. Kansas is generally grouped in the middle with Colorado and Oklahoma while Nebraska and Iowa tend to have higher burdens in this study. The Kansas Inc. study found that Kansas tended to rank higher in the corporation

income tax and the sales tax than for other taxes. As shown below, with some exceptions, the Kansas rank for sales and corporation income tax was generally fifth highest among the six states analyzed. This is generally consistent across all industry groups.

Ranking of Kansas by Industry and by Tax
Tax Liability of Hypothetical New and Expanding Firms

Industry	Income	Unemp.	Ppty.	Franch.	Sales	Total
Meat Products	5	2	1	4	5	3
Grain Mill Products	5	4	1	4	5	4
Misc. Plastic Products	3	6	1	4	5	2
Fabricated Structured Metal	5	3	1	4	5	3
Construction and Rel. Machinery	3	3	1	4	5	2
Electronic Components and Acc.	5	3	1	4	5	3
Motor Vehicles and Acc.	5	3	1	4	5	2
Telecommunications	2	3	5	4	1	5
Data Processing and Computer Ser.	4	4	5	4	2	4
Average	4.11	3.44	1.89	4.00	4.22	3.11

SOURCE: Darwin Daicoff and Patricia Oslund, **Tax Structure of Kansas and Nearby States**, Part 2, Hypothetical Firm Study. Final Report to Kansas, Inc., Report No. 131, October, 1987, Institute for Policy and Research, University of Kansas, Lawrence, KS.

Based on this information, as well as other studies by Drs. Redwood and Krider and testimony of such groups as KCCI and other businesses, the Task Force and the Governor recommended a sales tax exemption for manufacturing and distribution machinery and equipment as its number one priority for business tax changes. This exemption has the following strategic benefits to recommend it.

- It will improve our competitive posture and remove an area where we tend to stand out (in a negative sense) from the majority of states.
- It will reduce directly the cost of capital investment and job creation in Kansas, rather than being an indirect inducement.
- It is limited to machinery used directly in key production processes in primary job creation industries. This is intended to maximize the impact of the state's investment.
- It will supplement our enterprise zone benefits which tend to focus on new businesses and facilities by aiding existing firms (which are responsible for creating 80 percent of all new jobs) to maintain their capital stock and thereby their employees.

We estimate the fiscal impact of this measure at \$16 million annually, and at \$6.5 to \$7.0 million in FY 1989. This is based on statistics from the Census of Manufacturers, the Annual Survey of Manufacturers and estimates of the proportion of equipment currently exempt under the enterprise zones.

COMPUTER SOFTWARE

In the computer software area, the bill expands upon the current language which is open-ended, but unclear, to identify precisely the types of software which would be taxable. Under the bill, all software developed for and sold to more than one end user is taxable. Further, modifications to an already developed software package are taxable if done for more than one end user.

On the other hand, software which is developed for only one end user (custom software) is not taxable and modifications to a canned software package are not taxable if done for only one end user. The cost of the original canned package would, however, remain taxable. The bill also provides that if software is originally designed for one use and subsequently sold to more than one user, the original sale remains exempt.

Finally, the bill clarifies current law to provide that software is taxable in these instances regardless of whether it is transferred under a lease, a right to use, a license to use or an outright sale. Also, maintenance contracts on taxable software are taxable.

In short, the bill will clarify significantly our statutes. It will clearly tax, without possible loopholes, what is termed as canned or multiple user software. It will clearly exempt custom or single user software. In so doing, it resolves the issue of potential taxation of professional services. This language was developed jointly with the Kansas Society of CPAs and is believed to resolve all outstanding issues to the satisfaction of all parties.

Thank you for the opportunity to appear before you. I would be glad to attempt to answer any questions.

Testimony before
Senate Assessment and Taxation Committee
regarding SB 738
presented by Ron Gaches
Boeing Public Affairs Manager

Thank you Mr. Chairman for this opportunity to speak in support of the machinery and equipment sales tax exemption contained within SB 738. This proposal is one of the highest priority issues of 1988 for Kansas manufacturers. If passed, the exemption will encourage the capital investment necessary to keep Kansas manufacturers competitive in national and international markets. New and more secure jobs in the manufacturing sector should be the result.

Boeing supports this exemption even though our facilities in Sedgwick County would not directly benefit from its enactment because they are located in an enterprise zone and therefore already exempt. Nonetheless, many of our subcontractors and many other smaller manufacturers are not located in enterprise zones. These firms are scattered throughout the state, many of them located outside of the state's major metropolitan areas.

Recent studies by the Department of Commerce indicate only a small portion of Kansas manufacturers are active in international markets. Many who have engaged in international trade have made only limited sales overseas. Elimination of the sales tax on machinery and equipment will help make Kansas firms more price competitive in these international markets. The bottom line here is jobs.

A majority of all states, including most surrounding Kansas, have already eliminated this tax. The opportunity to create jobs in the manufacturing sector is very real. Kansas already has a well established manufacturing base. Most of these firms are small or medium sized. Elimination of the tax on capital investment can serve as a stimulus to this investment. The jobs that can be created are relatively high paying positions.

We encourage your support for the sales tax exemption on machinery and equipment. As a component of the state's economic development efforts we believe this exemption is more important than the corporate income tax reduction the committee has already acted on. Thank you for your consideration of these comments.

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

SB 738

March 25, 1988

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

Senate Committee on Assessment and Taxation

by

Bud Grant
Vice President

Mr. Chairman and members of the committee. My name is Bud Grant and I appreciate the opportunity of appearing before the committee today in support of SB 738.

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.

I'm sure that you all recall that the Economic Development study prepared by the Institute for Public Policy and Business Research at the University of Kansas which considered the elimination of the state sale's tax on the purchase of new

A & T 3/25/88
Att. 13

manufacturing machinery and equipment a major requirement if Kansas is to compete in the area of economic development. From that report "...Kansas will lose its attractiveness relative to competing states if its tax structure and levels contain significant anomalies or fail to send the right signals about business climate. In particular, the state must avoid having a tax not generally found in other states that negatively impacts business in any significant way. The Kansas tax structure does contain some impediments to business development, and the tax burden on business perceived as slightly high."

There is little doubt that one of the major anomalies which exists in Kansas' tax structure is the state's practice in collecting the sales and use tax on machinery and equipment. Kansas is the only state in this region which does not exempt all machinery and equipment from such taxes but with 42 states not offering such an exemption.

The most important fact about SB 738 is the benefit which it would provide to existing Kansas businesses. However, a sales tax exemption is already available for those firms locating in enterprise zones. Because of that and because of the income tax credits available in enterprise zones, I feel that it is safe to assume that the great majority of manufacturing facilities relocating into Kansas are locating in these zones. This means that the greatest impact of SB 738, should it be enacted, would be on existing Kansas businesses as they retool and upgrade their equipment in an attempt to remain competitive with manufacturing facilities in other states. The passage of SB 738 would be one of the most important things that legislature can do in 1988 for the Kansas manufacturing community.

I would like to share with you Mr. Chairman, one concern that I have about the fiscal note with the passage of this bill. As I understand it, the Department of Revenue estimates a reduction in revenue to the state general fund of approximately \$16 million should SB 738 be enacted. I recognize that the Department of Revenue has used reliable sources to estimate this revenue loss. However, if my calculations are

correct, it would require the Kansas manufacturing community, that is those manufacturers outside of enterprise zones, to purchase \$400 million of new machinery and equipment each and every year in order for the state to experience a \$16 million reduction in revenues. Please keep in mind, these are manufacturers outside of enterprise zones and they are expected to spend \$400 million on new machinery and equipment each and every year. If these figures are correct, it will take an economy much better than we have today.

We ask for committee support of SB 738 and would be pleased to attempt to answer any questions.

March 25, 1988

STATEMENT TO: SENATE ASSESSMENT AND TAXATION COMMITTEE
SUBJECT : SENATE BILL NO. 738
FROM : WICHITA INDEPENDENT BUSINESS ASSOCIATION

Chairman Kerr, members of the Committee and staff, I am Roland Smith, Executive Director of the Wichita Independent Business Association. WIBA is an association of 1400 locally owned small businesses in the Wichita trade area. There is over 350 different categories of businesses in WIBA. There are several businesses in WIBA that the sales tax exemption on business machinery would give them a better chance to compete, expand and stay afloat when upgrading their equipment with the latest technology.

We believe there is going to be a substantial increase in taxes to many small businesses as a result of classification and reappraisal and many may not be able to survive unless there is relief in other tax areas. The return of the so called "Corporate Income Tax Windfall" should not be traded for this exemption as it too is important to continued survival for many small businesses.

The provision in this bill relating to custom software is much needed in this day of rapidly changing high technology and fierce competitiveness in the computer software business and business using custom software.

WIBA supports Senate Bill No. 738 and would request this Committee recommend it to the Senate to be passed.

Thank you! I will be glad to answer any questions.

— A & T 3/25/88 —

TESTIMONY
BERNIE KOCH
WICHITA AREA CHAMBER OF COMMERCE
SENATE BILL 738

SENATE ASSESSMENT AND TAXATION COMMITTEE
MARCH 25, 1988

Mr. Chairman, members of the committee...

Thank you for the opportunity to testify today on Senate Bill 738, which eliminates the sales tax on business machinery and equipment. The Wichita Area Chamber of Commerce supports this exemption because between 1984 and 1987, over two million manufacturing jobs were lost in this country. One-third of those people are still out of work. Over half of those who found work took 30 to 50 percent pay cuts.

Foreign competitors have become more aggressive. For example, each Japanese worker is supported by twice the plant and equipment as his or her American counterpart. We have allowed manufacturing, the engine of economic growth, to wither, while aggressive competitors played our own game better than we were willing to play it.

In our region of the country, our three neighboring states of Missouri, Colorado, and Oklahoma can boast a sales tax exemption on machinery and equipment. That serves as a considerable disadvantage when we in Kansas pursue a manufacturer. It also hurts us when our own manufacturers decide to expand. Why stay here, when you can go across the border and avoid paying sales tax on your machinery and equipment?

Recently, Wichita Chamber President Tim Witsman visited a metal products manufacturer in Wichita which employs less than 100 people. The manager was anxious to replace old machinery and modernize his operation. The oldest of the equipment still bore the "War Products Administration" insignia along with the words, "Do not finish." That was an instruction not to place a finish on the machine but to hurry it into the war effort.

By government policies that discourage the replacement of productive equipment, we have handed our business to foreign

competition without a contest.

The issue we face is not whether we are willing to make an investment in our state's future. We are all obviously committed to that end. The issue is...how do we best achieve that end at the state level?

Faced with under-investment in plant and machinery, and with neighbors who exempt what we tax, it seems poor policy to tax business inputs, thus increasing costs of production and reducing the company's ability to compete in the marketplace.

If we are concerned with targeting our economic development efforts where they will have the most effect, surely we must encourage the replacement and addition of productive machinery. You will be encouraging that sector of our economy which creates the most additional jobs and has the greatest probability of doing well in the new global economy. Please give our manufacturers a better chance to compete both regionally and internationally.

Thank you.



**Kansas Society of
Certified Public Accountants**

FOUNDED OCTOBER 17, 1932

400 CROIX / P.O. BOX 5654 / TOPEKA, KANSAS 66605-0654 / 913-267-6460

Senate Committee On Assessment and Taxation

Testimony of The Kansas Society of Certified Public Accountants

RE: SB 738

March 25, 1988

Mr. Chairman, members of the committee: I am T. C. Anderson, Executive Director of the 2,000 member Kansas Society of Certified Public Accountants.

I appear today in support of the clarifying amendments to the computer software section of the Kansas sales tax law which are incorporated into SB 738.

These amendments are a culmination of many meetings between the Kansas Department of Revenue and Kansans involved in software design, Supreme Court decisions and appeals to the Board of Tax Appeals.

The language in subsection(s) closely parallels what we believe was the Department of Revenue's interpretation on the taxation of computer software as of January 1982.

Mr. Chairman, the Kansas Society appreciates the many hours given to this issue by the Kansas Department of Revenue and the legislature.

I'll stand for questions.

LAW OFFICE
JOHN C. EISELE, CHARTERED
SUITE 100, CLOVERLEAF 3 BUILDING
6405 METCALF
OVERLAND PARK, KANSAS 66202

To The
Senate Assessment and Taxation Committee
of the
Kansas Legislature

March 25, 1988
Regarding Taxation of Computer Software
and
SB 738

___ A & T 3/25/88

Att. 7

Mr. Chairman, Members of the Committee:

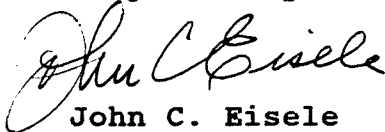
My name is John C. Eisele. I am a lawyer from Overland Park, Kansas. As such, I represent several computer software firms, the majority of which are based in Kansas. My principal client, which I represent here today, is PDA, Inc., a company which specializes in custom computer program design, analysis and programming.

While we do not consider the Idaho code, after which the provisions in HB2626 and SB738 are patterned, to be the ideal bill, with the additions indicated and referred to in my letter to you on March 23, 1988, and as indicated on the attached pages from SB738 which I obtained yesterday, it is workable and enforceable. And, at this moment, while I'm sure Computerland and like stores are collecting and paying sales tax on software licensed through their stores -- and the Department of Revenue is glad to have it -- there is no basis in law for the collection and payment thereof. (AT&T Technology/Bota case decided by the Kansas Supreme Court in February 1988) The proposed amendments in your bill and HB2626 will cure that problem, I believe. But in order to make it still more certain, the additions I have suggested are necessary. And even then, enforcement of the taxation provisions of Article 37 will be a nightmare because -- call it what you will -- computer software is intangible -- nothing more than a compilation of ideas in a most intangible form. But since the Department has proposed the taxing of "canned" or "pre-written" software, and not any custom programming, my client has asked that I request of you that your efforts result in a statute that is clear to the world in order that licensors outside of Kansas know clearly their obligations in licensing application software to Kansas residents, thereby making the marketing arena a fair and balanced one.

Computer software is still in its infancy. As it evolves, so will the law around it -- retrospectively, as is always the case. And likewise the taxing of it. SB738 and HB2626, with the changes I've suggested, is a good beginning.

Thank you for your consideration.

Respectfully submitted,



John C. Eisele

SENATE BILL No. 738

By Committee on Ways and Means

3-17

0016 AN ACT relating to sales taxation; concerning the definition,
0017 taxation and exemption of certain sales of property and ser-
0018 vices; amending K.S.A. 1987 Supp. 12-190, 79-3602, 79-3603,
0019 79-3606 and 79-3642 and repealing the existing sections.

0020 *Be it enacted by the Legislature of the State of Kansas:*

Note 1.

0021 Section 1. K.S.A. 1987 Supp. 79-3602 is hereby amended to
0022 read as follows: 79-3602. (a) "Persons" means any individual,
0023 firm, copartnership, joint adventure, association, corporation,
0024 estate or trust, receiver or trustee, or any group or combination
0025 acting as a unit, and the plural as well as the singular number;
0026 and shall specifically mean any city or other political subdivision
0027 of the state of Kansas engaging in a business or providing a
0028 service specifically taxable under the provisions of this act.

0029 (b) "Director" means the state director of taxation.

Note 2.

0030 (c) "Sale" or "sales" means the exchange of tangible personal
0031 property, as well as the sale thereof for money, and every
0032 transaction, conditional or otherwise, for a consideration, consti-
0033 tuting a sale, including the sale or furnishing of electrical energy,
0034 gas, water, services or entertainment taxable under the terms of
0035 this act and including, except as provided in the following
0036 provision, the sale of the use of tangible personal property by
0037 way of a lease or the rental thereof *regardless of the method by*
0038 *which the title, possession or right to use the tangible personal*
0039 *property is transferred.* The term "sale" or "sales" shall not
0040 mean the sale of the use of any tangible personal property used
0041 as a dwelling by way of a lease or rental thereof for a term of more
0042 than 28 consecutive days.

0043 (d) "Retailer" means a person regularly engaged in the busi-
0044 ness of selling tangible personal property at retail or furnishing

Note 1.: The word "Definitions" was inadvertently omitted.

Note 2.: While "license to use" was deleted from H.B.2626 as a result of then legitimate concerns of the Kansas Society of CPA's and others, such concerns were "cured" by subsequent modification to KSA 79-3603(s). The words should be reinserted. To NOT do so clearly supports the proposition that the Legislative intent is to NOT impose sales or use tax on the fees generated in the granting a license to use.

0045 electrical energy, gas, water, services or entertainment, and
0046 selling only to the user or consumer and not for resale.

0047 (e) "Retail sale" or "sale at retail" means all sales made
0048 within the state of tangible personal property or electrical en-
0049 ergy, gas, water, services or entertainment for use or consump-
0050 tion and not for resale.

Note 3. 0051 (f) "Tangible personal property" means corporeal personal
0052 property ~~and computer software.~~

0053 (g) "Selling price" means the total cost to the consumer
0054 exclusive of discounts allowed and credited, but including
0055 freight and transportation charges from retailer to consumer.

0056 (h) "Gross receipts" means the total selling price or the
0057 amount received as defined in this act, in money, credits, prop-
0058 erty or other consideration valued in money from sales at retail
0059 within this state; and embraced within the provisions of this act.

0060 The taxpayer, may take credit in the report of gross receipts for
0061 (1) an amount equal to the selling price of property returned by
0062 the purchaser when the full sale price thereof, including the tax
0063 collected, is refunded in cash or by credit; (2) an amount equal to
0064 the allowance given for the trade-in of property.

0065 (i) "Taxpayer" means any person obligated to account to the
0066 director for taxes collected under the terms of this act.

0067 (j) "Isolated or occasional sale" means the nonrecurring sale
0068 of tangible personal property, or services taxable hereunder by a
0069 person not engaged at the time of such sale in the business of
0070 selling such property or services. Any religious organization
0071 which makes a nonrecurring sale of tangible personal property
0072 acquired for the purpose of resale shall be deemed to be not
0073 engaged at the time of such sale in the business of selling such
0074 property. Such term shall include any sale by a bank, savings and
0075 loan institution, credit union or any finance company licensed
0076 under the provisions of the Kansas uniform consumer credit code
0077 of tangible personal property which has been repossessed by any
0078 such entity.

0079 (k) "Service" means those services described in and taxed
0080 under the provisions of K.S.A. 79-3603 and amendments thereto.

0081 (l) "Ingredient or component part" means tangible personal

Note 3.: In KSA 79-3602(f), Delete "and computer software", and
insert the following after "property":

"; the term, Tangible Personal Property", for the purpose
of KSA 79, Articles 36 and 37, shall also include any
computer software program which is not a custom computer
program, all as contemplated by KSA 79-3603(s)."



2044 Fillmore • Topeka, Kansas 66604 • Telephone: 913/232-9358
Owns and Publishes The Kansas STOCKMAN magazine and KLA News & Market Report newsletter.

STATEMENT
OF THE
KANSAS LIVESTOCK ASSOCIATION
TO THE
COMMITTEE ON
ASSESSMENT AND TAXATION
SENATOR FRED KERR, CHAIRMAN
SENATOR DAN THIESSEN, VICE CHAIRMAN
WITH RESPECT TO SB 738
PRESENTED BY
RICH MCKEE
EXECUTIVE SECRETARY, FEEDLOT DIVISION
MARCH 25, 1988

Mr. Chairman and members of the committee, I am Rich McKee representing the Kansas Livestock Association. KLA represents a broad range of over 9,000 livestock producers. These members raise cattle, swine, dairy, and sheep. In addition, many KLA members produce grain, hay, and other feedstuffs.

The Kansas Livestock Association supports Senate Bill 738, with the addition of one amendment. That amendment being an exemption from sales tax for the purchase of new farm machinery.

The KLA membership, discussed at some length, the tax issues facing the

1988 legislature. The two main issues being sales tax and income tax reform. Each very closely related. As discussed by the legislature, there are numerous ways to return the windfall. One option is to return part of the windfall through sales tax exemptions. A sales tax exemption for the purchase of new farm machinery would provide specific relief of higher state income taxes to agriculture.

Another reason why an exemption of the purchase of new farm machinery is good policy, is the creation, or in some cases maintaining, jobs in Kansas. The livestock industry, specifically the cattle feeding industry, is a highly competitive industry. It is a mobile industry, dealing with a transient product. Livestock will be shipped wherever the cost of production is the most efficient. **Over the last five years, total cattle numbers have declined over 20%.** Because of this sharp decline in total cattle numbers, Kansas feedyards are in a mad scramble for cattle. If Kansas does not increase its current market share of this business, jobs will be lost. Not only jobs at the feedyard itself, but also the numerous jobs created outside the feedyard, trucking, veterinarians, nutritionists, and many others. The major competitor for this business is Texas. No sales tax is collected on farm machinery there.

For the reasons listed above, the Kansas Livestock Association supports SB 738, with an amendment exempting the purchase of new farm machinery and equipment. Thank you for considering our position.

TESTIMONY TO THE SENATE
ASSESSMENT AND TAXATION COMMITTEE
BY REBECCA RICE, LEGISLATIVE COUNSEL,
KANSAS AUCTIONEERS ASSOCIATION
March 24, 1988

Mr. Chairman, and members of the committee:

My name is Rebecca Rice, and I and Ron Hein are Legislative Counsel for the Kansas Auctioneers Association, an association of professional auctioneers doing business in Kansas.

This last summer, an auctioneer was audited and told to pay \$12,000 worth of back sales tax based upon sales for which he had provided the service of auctioneering. The back taxes for that particular auctioneer were eventually abated in whole, but the Department issued a revenue ruling (most recently 19-87-5, copy attached) and has promulgated a regulation (KAR 92-19-8) which changes the manner by which sales tax is collected when auctioneers are involved.

The current proposal in the regulation is that all sales of personal property by one person for the benefit of another, whether the commission is on a commission or a flat fee basis, are deemed to be sales at retail, and sales tax must be collected. The only exemption currently provided is if the sale is conducted at the residence of the owner of the personal property, and is not commingled with property of another principal.

On its face, that might seem acceptable, but in practice, it presents quite a dilemma. In order to understand the problem, we need to examine the history of the act and the existing exemptions. The reason estate and auction sales have not been previously taxed is due primarily to the exemption for "occasional sales". As I understand the legislative intent, the occasional sale exemption was designed to permit an individual selling their own property on an occasional and non-recurring basis to be exempt from collecting sales tax.

The occasional sale exemption remains for those individuals able to conduct their own garage sale, farm sale or estate sale. However, some individuals, due to physical infirmity, old age, incapacity, or some other reason, are not able or do not wish to conduct their own sales. Those are the people who are willing to pay someone else to conduct the sale for them.

The department's present regulation will continue to allow individuals to sell their property tax free while utilizing the services of an auctioneer if an individual has a residence where the sale can take place and they do not attempt to commingle anyone else's property with their own including anyone within the household.

I have listed several examples of what could result from the proposed regulation:

1. An individual dies and it becomes necessary to conduct an estate sale. Assume it is winter, therefore the sale cannot be held outside, and there is insufficient room in the residence. Therefore, the property must be moved to a warehouse to be sold and sales tax must be collected.

2. A blind person living in her own home wants to sell an old refrigerator. She's concerned about conducting the sale herself. Her neighbor is having an auction at her house. The neighbor invites the blind lady to bring her refrigerator over to her auction where there will be a crowd. That act "taints" the auction, and makes all proceeds taxable.

3. A man who is renting an apartment is in an auto accident and will require extensive hospitalization, and the possibility of extended nursing home care. His family and friends cancel the lease on his apartment, and remove his property from the apartment. He subsequently determines that he will be confined to a nursing home for the rest of his life due to his injuries and decides to liquidate his household furnishings. He asks his relatives to sell off his assets. They do so without hiring an auctioneer, and conduct the sale at his brother's garage. Sales tax must be paid.

4. Two sisters living together die in a joint auto accident. Household furniture and other assets have been housed together, but were not jointly owned. The family decides to sell all the assets at the house where the two sisters lived. Sales tax must be collected and paid because there is more than a single principal.

The examples are endless, and represent real life situations to auctioneers, lawyers, executors, and others who need to sell property on behalf of others.

We addressed this problem with the House Assessment and Taxation Committee and we were able to reach a compromise. The compromise was included in HB 2626. The compromise language is set out for your consideration.

; and (2) any sale of tangible personal property made by an auctioneer or agent on behalf of a single principal or household if such sale is nonrecurring and the principal or household is not engaged at the time of such sale in the business of selling tangible personal property.

In HB 2626, the above language was amended into subsection (j) of K.S.A. 79-3602. We hope you will consider including this language in SB 738 or SB 446, the tax exemption legislation for CRP seed.

We do believe that the Department of Revenue regulation is a change in previous tax policy and is of a substantial nature which is reserved for legislative action. In order to rectify this problem we would ask for your help and for your support in returning to the tax policy prior to this regulation which was to not tax isolated and occasional sales regardless of how they are conducted.

Thank you for your consideration and I will attempt to answer any questions.

TESTIMONY
BEFORE THE SENATE ASSESSMENT AND TAXATION COMMITTEE
RE: SB 738
by Hank Booth, KLWN/KLZR, Lawrence
Legislative Chairman
Kansas Association of Broadcasters
March 25, 1988

Mr. Chairman, and Members of the Committee:

I am Hank Booth, legislative chairman for the Kansas Association of Broadcasters (KAB). The KAB is a state trade association representing over 100 radio stations and 20 television stations in Kansas.

We appreciate the opportunity to appear before you to offer for your consideration an amendment to SB 738, which would specifically exempt services rendered by ad agencies and broadcast stations, by adding to Sec. 3.: K.S.A. 79-3606. The following shall be exempt from the tax imposed by this act:.... "except as otherwise provided in this act, all sales of services rendered by an advertising agency or licensed broadcast station or any member, agent or employee thereof." The purpose of this language is to maintain the status quo; it is revenue neutral. Additionally, this is the same language in HB 2626, which was scheduled to be adopted by the House this morning.

The necessity for this clarifying language was brought about due to the promulgation of a Department of Revenue (DOR) regulation last year. Although DOR has written a new draft of the regulation, they have not yet revoked the one filed last year. If the regulation is allowed to go into effect on May 1, a wide range of services previously not subject to taxation, will be taxable.

We had the opportunity to sit down with the director of taxation on February 18, to express some of our concerns with the new draft of the regulation. It was a productive meeting, but it was clear at the conclusion of the meeting that we still had a major disagreement about

what constitutes tangible personal property.

In the last couple of days, Secretary Duncan suggested that we sit down again to try to work out our differences and we look forward to that meeting. We have not yet had the opportunity to do that, so we want this committee, which plays a major role in setting tax policy, to be aware of our concerns.

The Department has indicated that it is not their intent to tax intangible personal property or creative services, yet their new draft appears to do just that. Attached is the new draft of the regulation which applies to broadcasters, with our concerns highlighted.

The basis for our argument is that broadcast stations are not retailers which produce promotionals or ad campaigns for general use or sale. Their services are developed for a specific use for a specific customer and these transactions constitute the sale of personal services (or 'ideas', if you will), rather than the sale of tangible personal property and therefore should not be subject to taxation. Additionally, in a letter to one of our member television stations following a 1985 audit, DOR stated "production revenues are not taxable under the Kansas Sales Tax Act."

We wonder how the service an ad agency or television station provides in the production of a safety film for Goodyear, differs from that of a programmer who develops a custom computer program for the exclusive use of a single end user; or that of an attorney who does a 40-page legal brief for a client; or that of a CPA who puts some creative thinking into your tax return. In all of these cases the transfer of the tangible property is incidental to the client's interest and is an inconsequential element of the professional services rendered.

DOR maintains that some of our services like editing, sound mixing,

re-recording and dubbing "alter" tangible personal property and therefore are subject to taxation. The video tape containing Goodyear's safety film is not altered and looks and feels the same as it did before the film went into production; as does the stack of paper before the legal brief is typed onto it; as does the tax return once your figures have been added; as does the computer disk or tape once the custom software program has been developed.

We question the need for a regulation concerning advertising services. To our knowledge, no other profession is being considered as the basis of a sales tax regulation. We wonder why the advertising profession is being singled out. We sell ideas - just like attorneys, CPAs, architects and engineers.

Thank you for your consideration.

DRAFT

The following revenue ruling addresses the application of the Kansas Retailers' Sales Tax Act as said act pertains to the broadcasting industry.

(a) The sale of advertising space in publications, or air time on radio or television is not subject to Kansas sales tax.

(b) Media placement of radio and television commercials is not subject to Kansas sales tax. A business producing or creating a radio or television advertisement must pay sales tax on all purchases and leases of tangible personal property and purchases of taxable services used to produce or create a radio or television advertisement. Any advertising projects which are cancelled or abandoned prior to the production or media placement of the radio or television advertisement are subject to this regulation. Examples of items or services which, when purchased or leased to produce or create a radio or television advertisement, are subject Kansas sales tax are: film, video or audio tape; negatives, props, make-up, costumes, editing, sound mixing, re-recording, dubbing, lighting and sound equipment, cameras and artwork. This is not a complete or exclusive list, but is illustrative of tangible personal property and services which are subject to Kansas tax when purchased or leased to produce or create a radio or television advertisement.

(c) The creation or production of advertising or promotionals embodied in the form of film, tape, negative, video or other media, which are not placed with broadcast media are subject to Kansas sales tax when said property is sold and delivered to the final user or consumer in Kansas. The business may purchase without sales tax the raw film stock and other physical component parts of property actually transferred to the customer. Sales tax is to be collected from the customer by the business on the total selling price of the finished product.