

Approved \_\_\_\_\_  
Date 3/16/89

MINUTES OF THE House COMMITTEE ON Taxation x Keith Roe

The meeting was called to order by Representative Keith Roe at  
Chairperson

9:00 a.m./~~p.m.~~ on March 15, 1989 in room 519-S of the Capitol.

All members were present except:  
Representative Pottorff, excused  
Representative Dean, excused

Committee staff present:  
Tom Severn, Research  
Chris Courtwright, Research  
Don Hayward, Revisor's Office  
Lenore Olson, Committee secretary

Conferees appearing before the committee:  
Representative Roy  
John Luttjohann, Director of Taxation  
Dick Compton, Midwest Energy  
Larry Froscheuser, Junction City Economic Development Commission  
Jack Allston, Ellis County Coalition  
Representative Gross  
Bob Dyck, Ellis County Economic Development Corporation  
Roger Kroh, KS Industrial Development Association  
Bill Martin, Lawrence Chamber of Commerce  
Randy Burleson, Empire District Electric Co.  
David Cunningham, Board of Tax Appeals  
Bill Modrcin, attorney

Representative Roy testified in support of HB 2219, that this proposal is similar to the practice of the federal government of sharing proceeds with local units in drug cases. (Attachment 1)

John Luttjohann testified in support of HB 2219, and suggested an amendment that "sharing" should be equal to one-half of total collections under the drug tax act. (Attachment 2)

Chairman Roe concluded the hearing on HB 2219.

Dick Compton testified in support of HB 2529, but like it to include for profit entities leasing to industries qualifying under the constitutional amendment. (Attachment 3)

Larry Froscheuser testified in support of HB 2529, but stated that the proposed legislation achieves only half of what is needed in the State of Kansas. (Attachment 4)

Jack Allston testified in support of HB 2529, stating that passage would serve as an incentive for new and existing industry.

Representative Gross testified in support of HB 2529, and wants clarification in the law so that the risk money that is put up is not at risk.

Bob Dyck testified in support of HB 2529, and feels that the Ellis County Economic Development Corporation has been successful in bringing new industry to Kansas.

Roger Kroh testified in support of HB 2529, stating that if a company wishes to lease, the statutes do not allow abatements. (Attachment 5)

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Taxation,  
room 519-S, Statehouse, at 9:00 a.m./~~p.m.~~ on March 15, 1989

Bill Martin testified in support of HB 2529, stating that the 1986 Constitutional Amendment overlooked the fact that many expanding companies prefer not to purchase their facilities. Unfortunately, these firms do not qualify for property tax abatement unless they are involved in a lease/purchase agreement that meets strict guidelines. (Attachment 6)

Randy Burleson testified that he supports HB 2529.

David Cunningham testified on HB 2529, stating that the provisions of this bill raised several questions. (Attachment 7)

Bill Modrcin testified in opposition to HB 2529, stating that passage of this bill could be construed to eliminate current Constitutional exemptions from ad valorem taxation for leased property owned by private business used for economic development. (Attachment 8)

Mary Ellen Conlee, Executive Director of the Kansas Association for Small Business, submitted written testimony, but did not testify. (Attachment 9)

Chairman Roe concluded the hearing on HB 2529.

The meeting adjourned.

HOUSE COMMITTEE ON TAXATION

DATE 3/15/89

NAME	ADDRESS	REPRESENTING
Alan Steppat	Topeka	Pete McGill & Associates
Dana Furell	"	Budget
KEITH FARRIS	"	BOTA
David Cunningham	"	"
Bill Motecin	Overland Park	Ks. Avenue Prop
Jim Kamp	Topeka	League of Municipalities
KEVIN CARRICO	TOPEKA	John McClure 1060000
Joe Lieber	"	Ks. Co-op Council
Larry Froeschberger	Junction City Ks.	Economic Development HB-2525
Tom Hosty	KC, Ks	Rep Rendon-intern
Christopher Rigney	Topeka	High school student
Michael Duhon	Topeka Shawnee Heights 45	High school student
Bill Cochran	Topeka	High school student
Bobby Korman	Topeka	High School Student
Quincy [unclear]	Edinburg	High school student
D. WAYNE ZIMMERMAN	TOPEKA	KDOC
ED RIEMANN	Topeka	KDOC
Roger Kroh	Lenexa	KIDA
Bill Martin	Lawrence	Lawrence Chamber of Commerce
BUD GRANT	Topeka	KCCI
JOHN KOEVE	TOPEKA	KASB
Bob E. Miller	Russell	K9
Randy Burkson	Columbus	Empire Electric



WILLIAM R. ROY, JR.  
 REPRESENTATIVE, FIFTY-THIRD DISTRICT  
 STATE CAPITOL  
 TOPEKA, KANSAS 66612



TOPEKA

HOUSE OF  
 REPRESENTATIVES

March 15, 1989

COMMITTEE ASSIGNMENTS  
 VICE CHAIRMAN: RULES AND JOURNAL  
 MEMBER: FEDERAL AND STATE AFFAIRS  
 JUDICIARY  
 TAXATION

## TESTIMONY BEFORE HOUSE TAXATION COMMITTEE

HB 2219

In 1987, the Legislature enacted a tax on illegal drugs. As you may recall, the law requires that drug dealers as defined by the statute purchase tax stamps on marijuana for amounts exceeding 28 grams, on controlled substances of more than one gram sold by weight, and on controlled substances of 10 dosages or more not sold by weight. Persons who are found to possess taxable amounts of drugs who fail to pay the tax are also subject to a 100 percent penalty.

In FY 1988, \$2,457.50 in revenues resulted from that tax. Through November in FY 1989, \$800 had been collected from the sale of stamps and \$1,699.50 in assessments had been collected. To date in FY 89, some \$10.2 million in assessments is outstanding.

Less than two weeks ago, the tax was upheld unanimously by the Kansas Supreme Court.

Our present law requires that all tax proceeds are to be paid to the state and remitted to the general fund. This came about because of the tight fiscal circumstances in which the state found itself in 1987. HB changes the law to share the tax proceeds -- specifically, the penalty assessments -- with the county where the illegal substances are found to be dedicated for the purpose of law enforcement. This is proposed in order to assist the county and district attorney in covering the cost of investigating and prosecuting any possible criminal case that may arise.

This proposal is similar to the practice of the federal government of sharing proceeds with local units in drug cases (article attached). This practice creates a great incentive for local law enforcement to collect delinquent taxes as well as fight illegal drugs. I recall only too well the comment that frequently accompanied the first applications of our drug tax in 1987. Local units were reluctant to fight challenges to the constitutionality of the tax because of the expense when they would see no compensating benefit.

I have discussed this proposal with local officials, and they are supportive. I urge your favorable consideration.

*3/15/89  
 Attachment 1*

# Drug arrest gets patrol <sup>CJ</sup> <sup>B-23-88</sup> \$16,739 check

U.S. Marshal Kent Pekarek turned \$16,739 over to the Kansas Highway Patrol Tuesday, a figure equal to 90 percent of the cash amount seized by the patrol in a drug arrest near Goodland last June.

A check was presented to Don Pickert, head of the Highway Patrol, as part of the National Asset Seizure and Forfeiture Program.

The program, set up by Congress in 1984, allows for 90 percent of the assets seized in a drug arrest to be returned to the arresting agency to be used for law enforcement purposes. Ten percent of the money is given to the federal Drug Enforcement Administration for administrative costs, according to Otto Privette, resident in charge of the DEA's Wichita office.

Last October, \$18,599 in cash and \$73,000 in jewelry seized during the June arrest was turned over to the U.S. Marshal Service in Topeka. On Tuesday, the highway patrol was presented with 90 percent of the cash amount. Pekarek said the patrol would also receive 90 percent from the sale of the jewelry, once authorization was received to sell it.

U.S. Attorney Ben Burgess, who was on hand for the occasion, said the program had proved effective because it allowed the money seized to go back into the budget of the arresting agency. He stressed that the money was considered a supplement to the budget, and that the agency's budget could not be cut in compensation for receipt of the extra money.

Pickert said this was the first time the Kansas Highway Patrol had received money under the National Asset Seizure and Forfeiture Program, but said he hoped it would not be the last.

He said there has been no decision yet on how to use the money.

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LEGISLATIVE ADMINISTRATIVE SERVICES

DATE: Sat. Mar. 4, 1989

- TOPEKA CAPITAL-JOURNAL
- WICHITA EAGLE-BEACON
- KANSAS CITY TIMES
- KANSAS CITY STAR
- COFFEYVILLE JOURNAL
- EMPORIA GAZETTE

- GARDEN CITY TELEGRAM
- HAYS DAILY NEWS
- HUTCHINSON NEWS
- LAWRENCE JOURNAL WORLD
- LEAVENWORTH TIMES
- MANHATTAN MERCURY

- OLATHE DAILY NEWS
- PARSONS SUN
- PITTSBURG MORNING SUN
- RUSSELL DAILY NEWS
- SALINA JOURNAL
- WINFIELD DAILY COURIER

## Drug tax deemed constitutional

The state's tax on marijuana and other illegal drugs was declared constitutional in a unanimous decision by the Kansas Supreme Court on Friday, reversing two prior decisions by judges in Shawnee and Osage counties who found the law unconstitutional.

The 1987 Kansas Marijuana and Controlled Substances Tax Act requires "dealers" of the illicit drugs to pay taxes on the substances. Anyone possessing 28 grams or more of marijuana or more than 1 gram of a controlled substance is required to pay the tax, which amounts to \$100 an

ounce in the case of marijuana.

Shawnee County District Attorney Gene Olander called the ruling "a great victory for law enforcement."

Osage County District Judge Donald White and Shawnee County District Judge Adrian Allen, in separate cases, last year declared the law unconstitutional, largely because they said it requires the self-reporting of a criminal activity and thus violated a person's Fifth Amendment right against self-incrimination.

The state attorney general's office appealed both rulings to the

Supreme Court, saying the tax act provides for anonymous and confidential payment of the tax, and therefore does not require a person to report his or her own criminal activity. The high court agreed.

"All information obtained through compliance with the act is confidential and may not be used as evidence in the prosecution for any crimes, other than enforcement of the act itself," the court's decision said.

The unanimous decision covering both cases was written by Justice Richard W. Holmes.

DATE:

Dat.

3-4-89

TOPEKA CAPITAL-JOURNAL  
 WICHITA EAGLE-BEACON  
 KANSAS CITY TIMES  
 KANSAS CITY STAR  
 COFFEYVILLE JOURNAL  
 EMPORIA GAZETTE

GARDEN CITY J  
 HAYS DAILY NE  
 HUTCHINSON NE  
 LAWRENCE JOUR  
 LEAVENWORTH J  
 MANHATTAN MEF

By John Petterson  
 Kansas Correspondent

TOPEKA — The Kansas Supreme Court upheld Friday the constitutionality of a 2-year-old law that requires dealers of illegal drugs to buy tax stamps issued by the state.

In a unanimous opinion written by Justice Richard Holmes, the court said the Kansas law does not violate the U.S. Constitution's Fifth Amendment prohibition against self-incrimination.

"There is clearly no merit to the argument that the information allegedly compelled by the statutes could be used against a dealer in a federal prosecution," the court said.

The Legislature enacted the law in 1987 as a means of providing an additional penalty to be assessed against persons convicted of selling illegal drugs and as a method of raising revenue. The law says information provided when obtaining the stamps cannot be used for any other purpose.

Dealers found in possession of illegal drugs without state tax stamps can be assessed the tax, plus a 100 percent penalty. The law also provides further criminal penalties of up to five years in prison and a \$10,000 fine.

Since the law went into effect on July 1, 1987, the state has sold \$3,900 worth of marijuana tax

stamps and has assessed penalties of about \$10 million. So far it hasn't collected any of the penalties.

Sam VanLeeuwen, a Kansas Revenue Department spokesman, said Friday that some of the stamps were sold to collectors, "but we also think some went to people who wanted them to comply with the law."

VanLeeuwen said the department is preparing to assess \$7.5 million more in drug taxes now that the law has been declared constitutional.

In its opinion, the court said the state law provides sufficient immunity from self-incrimination for stamp buyers to provide Fifth Amendment protections.

The court reversed rulings in district courts in Shawnee and Osage counties that the drug tax law was invalid. In both cases, judges held that the act violated the Fifth Amendment privilege against self-incrimination.

In Shawnee County, a court found that the act exposed individuals to the risk that information gathered by the state could be used later against them in a federal prosecution.

When the act was declared unconstitutional, drug tax charges were dropped.

The Supreme Court reversed that ruling and returned the case for further proceedings.

The Osage County court held that the "immunity clauses of the law could lead to investigatory searches, a use which is barred by the (Fifth Amendment) privilege."

The state appealed that ruling and the Supreme Court sustained the appeal.

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KANSAS DEPARTMENT OF REVENUE

*Division of Taxation*

Robert B. Docking State Office Building  
Topeka, Kansas 66625-0001

**MEMORANDUM**

TO: THE HONORABLE KEITH ROE, CHAIRMAN  
HOUSE COMMITTEE ON TAXATION

FROM: JOHN R. LUTTJOHANN *jr*  
DIRECTOR OF TAXATION

RE: HOUSE BILL 2219

DATE: MARCH 15, 1989

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Thank you for the opportunity to appear today in support of House Bill 2219.

This bill provides that the Director of Taxation will remit any penalties collected pursuant to the illegal drug stamp tax act to the county treasurer of the county where the unstamped marijuana or controlled substance was seized. The county treasurer will credit this money for use solely for law enforcement purposes.

It is estimated that passage of this legislation would have a minimal negative impact on State General Fund Receipts.

For fiscal year 1988, \$200 in penalties was collected. It is anticipated, however, that the collection of penalties will increase due to two factors. The Kansas Supreme Court recently issued a favorable decision on the constitutionality of the Drug Tax law, and the expected enhancement of our enforcement efforts by the formation of a Criminal Audit Unit within the Department of Revenue.

We would suggest one possible amendment. If the committee's desire is to provide some tangible incentive to local units of government to assist in assessment of the tax, perhaps the "sharing" should be equal to one-half of total collections under the drug tax act. There have been situations where a district court judge has conditioned parole on payment of the tax, but not the penalty. In such a situation, the local units of government would not benefit. In addition, we would avoid some administrative difficulty in determining whether a partial payment or collection should be applied to tax or penalty.

I would be happy to respond to any questions which you may have.

*3/15/89  
Attachment 2*

House Bill 2219  
Attachment  
Background information on the Drug Tax

The illegal drug tax was enacted during the 1987 Legislative Session, to be effective after July 1, 1987. The rates of tax imposed are as follows:

Marijuana -	\$3.50 per gram, or portion thereof.
Controlled substance sold by weight-	\$200.00 per gram, or portion thereof.
Controlled substance not sold by weight-	\$2000.00 for every 50 dosage units, or portion thereof.

A dealer is defined in the act as one who possesses more than 28 grams of marijuana, more than **one gram of any controlled substance sold by weight, or 10 or more dosage units of any controlled substance not sold by weight.** A dealer is in violation of the act if he possessed these quantities without having the necessary tax stamps affixed.

The Department has a different tax stamp for each of the three categories listed above which may be purchased anonymously.

Following are the amounts which have been collected since the enactment of the drug tax:

	<u>FY88</u>	<u>FY89 (to date)</u>
Sale of Stamps	\$2,457.50	\$1,598.00
Tax Collected	\$ 200.00	\$1,699.50
Penalty Collected	\$ 200.00	\$ -0-

\$10,283,268.00 has been assessed since the enactment of the drug tax. The vast majority of the assessments are in the administrative appeals process.

**House Bill 2529**  
**Comments of Dick Compton**  
**Ellis County Economic Development Corporation**  
**House Taxation Committee – March 15, 1989**

Mr. Chairman and distinguished members of the committee, I sincerely appreciate the opportunity to appear before you in support of House Bill 2529.

(oral statement regarding Midwest Energy support for this proposal)

House Bill 2529 has been drafted to clarify the intent of the constitutional amendment approved by the states electorate in 1986. By way of review; and without going into a great deal of detail, the legislature voted in the 1986 session to submit an economic development property tax abatement question to the voters of our state in the form of a constitutional amendment.

I believe the reason the question was submitted by the legislature to the States electorate and the reason it received overwhelming support from Kansas' voters is basically two fold.

1. Property tax abatements were recognized by the legislature and the state's electorate as an incentive that is effectively used to attract new and expanding industry throughout much of the nation, and
2. there was broad recognition within the legislature and the state's electorate that to be successful in attracting new industry, our economic development professionals needed to be competitive with other areas of the country.

*3/15/89*  
*Attachment 3*

Property tax abatements are only one incentive – but they do represent an important tool in the business of providing expanded job opportunity through industrial recruitment.

To address the problem that H.B. 2529 corrects, I would like to refer you to a copy of the ballot on the constitutional question used in the August primary of 1986. In the sixth line of the second paragraph of this question, you will note the use of the word "exclusively." I have underscored it for your easy reference. This language is interpreted by the Board of Tax Appeals to preclude their ability to approve an application for property tax abatement by the owner of real estate when the real estate is leased to a new industry.

I think we are all aware that our tax laws and especially our property tax abatement laws are frequently abused. More than likely this potential abuse is what prompted the drafters of the constitutional question to use the restrictive language they did. I commend them for their wisdom. As a tax payer, I certainly would not encourage or endorse any other concept.

On the other hand – with the very restrictive interpretation by the Board of Tax Appeals – the economic development property tax abatement amendment is not accomplishing its intended purpose. In many cases, new industry would prefer to lease the buildings necessary for their production processes as opposed to owning them. This is done for a variety of reasons and can generally be traced to an inability to finance a major real estate purchase, or a desire to maintain working capital, or both. For the tax abatement amendment to work, the lessor of a property must have the ability to flow a property tax savings to the lessee in the form of reduced lease rates. Absent

this ability, Kansas economic development professionals are unable to compete with their counterparts in other states for new job producing industry in lease situations.

If you would please refer to the bill now, I would like to address the clarification we consider essential to meet and carry out the intent of the constitutional amendment. The language in lines 20 through 40 is almost verbatim from the constitutional amendment. Beginning at line 40, it is made clear that the Board of Tax Appeals can approve an application by a "not for profit" corporation for property tax abatement in the event a new industry, meeting all requirements of the constitution, leases the buildings it must have to house its processes.

The proposed clarification restricts the abatement to "not for profit" community based development corporations organized under Section 501 (c) (6) of the internal revenue service code of 1986. In my judgement; the abatement should also be available to for profit entities leasing to industries qualifying under the constitutional amendment. Candidly, in working with the drafters of this proposal, I and the other supporters involved were concerned that the legislature may not be receptive to a proposal that would include "for profit" organizations. We concluded that our chances for legislative approval would be improved if we limited application to the several "not for profit" organizations around the state that are in place specifically for community development and improvement.

As you consider this proposal, please lend weight to the following points.

1. The constitutional amendment approved by the electorate in 1986 specifically grants tax abatement authority for economic development purposes to local units of government.
2. My local unit of government (The Hays City Commission) will approve a tax abatement on the building owned by Ellis County Economic Development Corporation in Hays and leased to Alaniz & Sons of Mt. Pleasant, Iowa. The Commissioners know us, they are familiar with the valuable service we are providing the community and they are appreciative of the commitment by our contributors.
3. Had Ellis County Economic Development Corporation sold the shell building it constructed – a property tax abatement application approved by local governmental authorities would most likely be approved by the Board of Tax Appeals.
4. Because of the lease – the Board of Tax Appeals is forced, in their judgement, due to constitutional language, to reverse what our local unit of government determines to be in its best interest.
5. The taxes involved are 99% local (City, County, School District, etc.).
6. If you approve this proposal – the immediate effect will be to only one Kansas community. To my knowledge, Hays is the only community with a "not for profit" development corporation owning property that is leased to a qualifying new industry. A shell building exists in Columbus that is owned by a "not for profit" organization similar to the one in

Hays. The Columbus building is new and still empty. In the event this building is leased rather than sold, this proposed clarification would also apply there. My understanding is that a group in Lawrence will be constructing a building for sale or lease in the near future and this clarification could also apply in their situation. It is rumored Hutchinson and Liberal are also contemplating shell building programs.

7. Local governmental units that grant economic development property tax abatements do not view these abatements as a concession. Because, in fact they are not giving up anything they had. The old "a piece of something as opposed to all of nothing" cliché is probably more true here than in most instances when used. The economic development tax abatement would probably be more fairly characterized as an investment in the future economic health of the area. The payoff on this investment will come through increased job opportunity and the potential for an improved tax base.
8. Local "not for profit" development corporations are not organized for the purpose of making money for investors. None of the contributors will ever see any direct return in the form of earnings or a return of original capital contribution. A list of contributors to Ellis County Economic Development Corporation is attached to this testimony in the event you would like it for review.

In visiting with individual members of the committee regarding this proposal, I was asked if I would object to a provision in the bill that would prohibit a

property tax abatement in the event of the pirating of industry from one Kansas community to another. The answer is – I would not object and properly worded would support such language. I was also asked if I would object to a provision granting school districts approval authority over the granting of economic development tax abatements. In our particular instance, we don't care, but the question may be broad enough from a policy point of view to warrant further hearings and consideration by the legislature.

Since this proposal was drafted, it has been pointed out that some of the "not for profit" development groups around the state are organized under Internal Revenue Service Code sections other than 501 (c) (6). In the event the committee determines this proposal worthy of passage, I would suggest an amendment be offered that would strike the (6) from 501 (c) (6) in line 45 so the legislation would apply to all not for profit 501 (c) corporations.

Thank you for the opportunity to appear before you. I would be happy to answer any questions you may have.

# # #



OFFICIAL BALLOT  
STATE OF KANSAS  
CONSTITUTIONAL AMENDMENT BALLOT

\_\_\_\_\_ COUNTY  
PRIMARY ELECTION, AUGUST 5, 1986

To vote in favor of any question submitted upon this ballot, make a cross or check mark in the square or parentheses to the right of the word "Yes"; to vote against it, make a cross or check mark in the square or parentheses to the right of the word "No."

No

QUESTION NUMBER 2

Shall the following be adopted?

Article 11 of the constitution of the state of Kansas is amended by adding a new section thereto to read 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."

"Explanatory statement. This proposed amendment would authorize cities and counties to grant property tax exemptions for economic development purposes.

"A vote for the proposed amendment would allow the governing body of a city or county to exempt property of a new manufacturing, research and development or commodity or goods storing business or property necessary to facilitate the expansion of any such existing business if, as a result of such expansion, new employment is created, from property taxation for a period not to exceed 10 years.

A vote against the proposed amendment will continue the existing law that the legislature is the only authority to grant property tax exemptions."

Yes

No

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# Ellis County Economic Development Corporation

P.O. Box 714 • Hays, Kansas 67601

## Contributors

News Publishing Co.	507 Main Street	Hays, Kansas 67601
Allied, Inc.	503 E. 10th Street	Hays, Kansas 67601
Hadley Regional Medical Center	201 E. 7th Street	Hays, Kansas 67601
Brungardt, Hower, Ward, Elliott & Pfeifer	209 E. 13th Street	Hays, Kansas 67601
Farmers National Bank	1010 E. 27th Street	Hays, Kansas 67601
St. Anthony Hospital	2220 Canterbury Road	Hays, Kansas 67601
Van Doren Development Corporation	P.O. Box 1008	Hays, Kansas 67601
Van Doren Industries, Inc.	P.O. Box 1008	Hays, Kansas 67601
First National Bank	1200 Main Street	Hays, Kansas 67601
Golden Belt Savings & Loan	1101 E. 27th Street	Hays, Kansas 67601
Adams, Brown, Beran & Ball	718 Main, Suite 224	Hays, Kansas 67601
Schwaller Lumber Co., Inc.	Centennial Blvd.	Hays, Kansas 67601
Dreiling Oil, Inc.	2918 Hillcrest	Hays, Kansas 67601
King Financial Services Corp.	103 W. 13th Street	Hays, Kansas 67601
Dillons Stores Division #61	1902 Vine	Hays, Kansas 67601
Dillons Stores Division #14	27th & Hall	Hays, Kansas 67601
Paul MacDonald Chev. & Imports	2917 Vine	Hays, Kansas 67601
Jeter & Moran, Attorneys	First Nat'l Bank Bldg.	Hays, Kansas 67601
Insurance Planning, Inc.	3006 Broadway	Hays, Kansas 67601
Dinges Properties	2904 Country Lane	Hays, Kansas 67601
Shade Construction Co.	418 E. 9th Street	Hays, Kansas 67601
Hays Rotary Club	2017 Vine Street	Hays, Kansas 67601
Daco, Inc.	2604 General Hays Road	Hays, Kansas 67601
Midwest Energy, Inc.	1330 Canterbury Road	Hays, Kansas 67601
Uptown Pizza Company	120 E. 12th Street	Hays, Kansas 67601
Peoples Heritage Federal Savings	12th & Fort Street	Hays, Kansas 67601
McHays, Inc.	2705 Vine Street	Hays, Kansas 67601
KAYS, Inc.	2300 Hall	Hays, Kansas 67601
James Lincoln-Mercury GMC, Inc.	I-70 & Hwy 183, North	Hays, Kansas 67601
Ellis State Bank	916 Washington	Ellis, Kansas 67637
James Motor Company, Inc.	108 E. 13th Street	Hays, Kansas 67601
Fort Hays State University	600 Park	Hays, Kansas 67601
Bucher, Willis & Ratliff	2209 Canterbury Road	Hays, Kansas 67601
Ellis County Committee for Environmental Awareness	First Nat'l Bank Bldg.	Hays, Kansas 67601



425 NORTH WASHINGTON • BOX 1976 • JUNCTION CITY, KANSAS 66441 • (913) 762-1976

HAROLD O. WILSON - Chairman

## T E S T I M O N Y

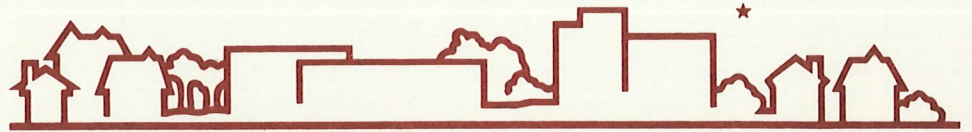
MARCH 15, 1989

My name is Larry Froschheuser. I am executive director of the Junction City-Geary County Economic Development Commission. I am happy to testify today on House Bill No. 2529.

The proposed legislation achieves only half of what is needed in the State of Kansas in that it does give ten-year tax exemption but only to an already exempt organization that fits under the Federal Internal Revenue Code as a 501 (c) (6) organization. We have in the State of Kansas a half dozen private organizations who are truly incubators, i.e. they are willing to put their money and take their gamble on unproven industry. We have such an incubator organization in our community known as First Kansas Venture. They too should be granted the same privileges as those of us who are tax-exempt. Three out of five industrial prospects that I am currently working with will ultimately be located in a private venture incubator but only if they can afford to. We are known as a state that identifies with free enterprise and I encourage you to give every consideration to extending the same benefit.

Thank you for allowing me time to speak before this committee.

*3/15/89  
Attachment 4*



March 15, 1989

TESTIMONY SUPPORTING H.B. 2529

Roger Kroh, Second Vice President  
Kansas Industrial Development Association  
Lenexa Economic Development Council  
11900 W. 87th Street Parkway, Suite 115  
Lenexa, Kansas 66215  
(913) 888-1826

Chairman Roe and Committee members, I am Roger Kroh, Director of Lenexa Economic Development Council, and also here representing the Kansas Industrial Development Association.

House Bill 2529 is what I would term a house-keeping measure. When the Legislature adopted the statutes allowing cities to exempt land, buildings and tangible personal property from taxes for new and growing companies, we all thought that we had implemented the incentive needed to lure jobs and investment to Kansas. Unfortunately, as with many statutes, as we begin to work with them on a day-to-day basis we soon found glitches needing ironed out. This bill attempts to correct one problem which has arisen over the past year -- that is that cities leasing buildings have not been able to offer tax exemptions.

The majority of new companies lease buildings instead of buying

*3/15/89  
Attachment 5*

them because it allows them more flexibility as they grow. Companies simply do not know how much space they will need in 5 to 10 years. To meet this need to lease, many communities have formed not-for-profit groups that construct speculative buildings to have available. While we would like to think that companies choose our cities because of our industrious workforce, educational facilities and quality of life, we often find that the major reason a company lands wherever it lands is because the right building was available at the right time. If the city does not have these speculative buildings which the not-for-profit group has constructed, they frequently aren't even considered.

If a company wants to buy a building, the State statutes in their current form allows us to offer tax exemptions as an incentive. But, if the company wishes to lease, like so many want to do, the statutes do not allow us to offer the abatements. KIDA asks that this discrepancy be corrected.

Outside metropolitan areas where private industrial developers rarely go, the only way speculative space can be made available is by these not-for-profit groups who ban together in places like Ottawa and Hays to construct speculative space. This is the only way their cities can be competitive. I would encourage you to give these communities the ability to offer tax exemptions to companies wishing to lease their buildings.

Finally, let me say that in order for our cities to be most effective in luring companies to Kansas with our incentive packages, it would be ideal if tax exemptions could be given to companies leasing buildings from for-profit organizations. But, in our discussions with the Board of Tax Appeals and several Legislators, there appears to be a sufficient amount of resistance to doing this. So, that is why this proposed bill just ask that not-for-profit community groups be given the ability to give tax exemptions to companies wishing to lease. Hopefully in the future we can discuss the question of tax exemptions for companies leasing to for-profit corporations.

Thank you for your consideration and I would be happy to answer any questions.

testimony before the  
HOUSE TAXATION COMMITTEE

by

William A. Martin, CID  
Director of Economic Development  
Lawrence Chamber of Commerce  
Box 581  
Lawrence, Kansas 66044  
(913) 843-4411

March 15, 1989

Economic development today is extremely competitive. Only communities with innovative programs can be successful in creating jobs.

For years, non-profit local development corporations have built speculative or tenant-specific buildings to attract job creating enterprises. Lawrence is about to construct an 80,000 square foot speculative building using \$975,000 raised locally.

The goal of this type of project is simple -- attract a firm that will create jobs, recover the initial investment and, hopefully, build another similar facility. The ideal situation would be to sell the building, but many companies prefer to lease their facilities.

The 1986 Constitutional Amendment allowing property tax exemptions for manufacturing, warehousing and research and development firms was a positive step in making Kansas competitive. What was overlooked was the fact that many expanding companies prefer to lease their facilities. Unfortunately, these firms do not qualify for property tax abatement unless they are involved in a lease/purchase agreement that meets strict guidelines.

The Lawrence Chamber of Commerce supports HB 2529 which would extend to property leased by a community based 501(c)(6) economic development corporation the property tax exemptions currently allowed to manufacturing, warehousing and research and development firms.

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Attachment 6*

## THE STATE OF KANSAS



## BOARD OF TAX APPEALS

Docking State Office Building, 10th Floor  
Topeka, Kansas 66612-1582  
AC-913 296-2388

Keith Farrar, Chairman

Fred L. Weaver, Member  
Victor M. Elliott, Member  
Conrad Miller, Jr., Member  
Charles F. Laird, Member

## MEMORANDUM

*D.C.*

TO: Rep. Keith Roe, Chairman, House  
Assessment and Taxation

DATE: March 15, 1989

FROM: Keith Farrar, Chairman Board of Tax Appeals

SUBJECT: Expansion of Exemption for Economic Development

RE: House Bill 2529

The provisions of this bill raised several questions. The problem this proposed language attempts to resolve is whether property which is leased but used exclusively by the lessee for manufacturing, research and development or storage of goods or commodities shipped or traded in Interstate Commerce will qualify for exemption. The Constitutional Amendment does not provide that leasing is a qualifying or exemptible use; therefore, the Board has denied requested exemptions when the property is owned by one party and leased to another even though the lessee may be using the property exclusively for manufacturing, research and development or storage. The language in House Bill 2529 would allow leasing to occur; however, it raises several questions.

Specific questions that the Board believes should be considered:

1. This language may be an unconstitutional delegation of legislative authority. Article 11, Section 13 does not permit a delegation of additional exemptions to cities or counties. It does allow limitations to be enacted and the courts have consistently held that the legislature may grant statutory exemptions beyond those allowed in the constitution. What the courts have also held is that the legislature may not delegate its authority to local governing bodies.

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2. Who decides that there is an economic development purpose, the corporation or the local community officials?
3. What does "community based" mean and does the definition set forth adequately define this term?
4. What can an economic development corporation do and can its activities be limited?
5. Would the Board of Tax Appeals have the authority to monitor these issues or would questions as to what is an appropriate economic development purpose be solely a policy question for the local corporation and/or community to determine?
6. For what tax year should the exemption commence?
7. Should other legislation be considered which would define or describe other terms? Formula(s) similar to income tax benefits in enterprise zones?
8. The Board questions this change because it allows accumulation of private capital by the not-for-profit corporation on the pretense that some public benefit supports it. By enacting this change, control of present and future economic development passes from the public forum into private corporations. Those who are favored by this proposal compete with other growth companies, but are not expected to share in the common burden of supporting schools or other services. The existence of another tax-exempt property actually raises the property tax bill to its competitors. The Board

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Memorandum to Rep. Keith Roe  
March 15, 1989  
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has already heard cases where private businesses asked for a lower value because their property suffered from economic obsolescence due to its inability to compete with exempt businesses.

In summary, the language attached will solve the problem presented. While the Board has serious reservations regarding passage of this type of language, it is recognized that this is a policy matter to be determined by the Legislature.

MEMORANDUM

TO: Mr. Michael O'Keefe, Director  
Division of Budget

DATE: March 14, 1989

FROM: Kansas Department of Revenue

RE: House Bill 2529  
as Introduced

BRIEF OF BILL:

House Bill 2529, as introduced, is an independent act that would allow county or city governing bodies to exempt from all ad valorem taxation for ten years all buildings, land and personal property of businesses commencing operations after December 31, 1987 or expansions after December 31, 1987 if they are engaged in the business of manufacturing, research and development, or storing goods and commodities which are sold or traded in interstate commerce; if new employment is created.

Further, property rented or leased, with or without an option to purchase, from a community-based, not-for-profit economic development corporations organized under the laws of this state which is exempt from federal income taxation pursuant to section 501(c)(6) of the federal internal revenue code of 1986, as in effect on January 1, 1989. shall be deemed to be used exclusively for the purposes of this section if such property is actually used only for such purposes and the moneys received from such rental or lease are used solely for economic development purposes by such corporation.

This bill is effective for tax years beginning after December 31, 1987. It is effective from and after publication in the statute book.

FISCAL IMPACT:

It is estimated that, while the fiscal impact would be substantial, most of the tax shift was created by the Constitutional exemption of this property.

ADMINISTRATIVE IMPACT:

None.

ADMINISTRATIVE PROBLEMS AND COMMENTS:

This bill, in large part, is a legislative restatement of the Constitutional exemption of property for economic development purposes. However, this bill goes further by defining exclusive use to include rented or leased property under certain circumstances. Courts have traditionally held that rented or leased property does not meet the exclusive use test.

LEGAL IMPACT:

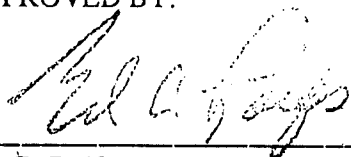
House Bill 2529 appears to be unconstitutional. Art. 11, Sect. 13 of the Constitution of the State of Kansas (commonly referred to as The "Economic Development

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Amendment") provides in part: "The legislature may limit or prohibit the application of this section by enactment uniformly applicable to all cities or counties." (Emphasis added.)

The language commencing on line 41 and through line 50 seems to offend the above-referred Constitutional provision, because it would expand, not "limit" or "prohibit" the application of "The Economic Development Amendment."

APPROVED BY:

A handwritten signature in cursive script, appearing to read "Ed C. Rølf", written over a horizontal line.

Ed C. Rølf  
Secretary of Revenue

STATEMENT OF WILLIAM M. MODRCIN

My name is William M. Modrcin. I am a licensed Kansas attorney with the firm of Morris & Larson with offices at 10670 Barkley, Overland Park, Kansas, (913) 345-1233. I appear before this committee in opposition to House Bill 2529 because passage of that Bill could be construed to eliminate current Constitutional exemptions from ad valorem taxation for leased property owned by private business used for economic development .

Two of my clients with an interest in this matter are Kansas Avenue Properties and Prime Investments, Inc. Kansas Avenue Properties owns approximately 4.3 acres located at Kansas Avenue and I-635 in Kansas City, Wyandotte County, Kansas. A warehouse building encompassing approximately 56,720 square feet is located on the property. It is anticipated that when this project is fully operational it will add between 300-350 new jobs in the Kansas City area.

The Kansas Avenue Properties facility is designed to attract distribution facilities for companies that do not want to tie up their capital through facility ownership. This facility becomes competitive with similar facilities located on the Missouri side in terms of lease rates only because of the tax exemption. The tax exemption benefit is passed on to the lessees.

Prime Investments owns a ten-acre tract in the Armourdale district in Kansas City, Kansas. The ten-acre tract and two buildings located thereon are leased long-term to Cedrite

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Technologies. Cedrite uses the ten acres owned by Prime plus 14 additional acres owned by Cedrite for the manufacture of railroad ties. The total value of the project is approximately \$8 million. It is anticipated that Cedrite will employ approximately 120 persons once the plant becomes fully operational.

Cedrite uses its long-term lease with Prime as a financing tool. Cedrite did not want to own the entire project initially for economic reasons, and has entered into a long-term lease with an option to purchase with Prime. All tax exemptions under this lease benefit Cedrite.

Neither of these projects would have been economically feasible except for the exemption for economic development purposes contained in the Kansas Constitution, Article 11, Section 13. Both of these projects have been approved for this tax exemption by the city of Kansas City, Kansas.

Passage of House Bill 2529 could be construed to terminate the tax exemptions which made these projects possible. House Bill 2529 would apparently grant tax exemption for economic development purposes only to property owned by a community-based, not-for-profit economic development corporation. A Shawnee County District Court Judge has ruled that Article 11, Section 13, grants tax exempt status to leased property used for economic development purposes without qualification. While this decision is expected to be appealed to the Kansas Supreme Court, passage of this Bill in its current form could overrule this decision on a practical basis. For these reasons, I am testifying in opposition to the Bill. Should

the language contained in House Bill 2529, limiting the exemption to a community-based, not-for-profit economic development corporation be deleted, so that the tax exemption for leased property used for economic development could be used by both for-profit and not-for-profit groups, I would support such legislation as a legislative clarification of existing law.

KANSAS ASSOCIATION FOR SMALL BUSINESS  
532 North Broadway  
Wichita, KS 67214

Testimony before the House Taxation Committee

Re: HB 2529 - March 15, 1989

I am Mary Ellen Conlee, Executive Director of the Kansas Association for Small Business. Several of our member companies have expanded operations, created new jobs and utilized the local option property tax abatement programs offered by cities and counties in Kansas.

Tim O'Sullivan, an attorney in Wichita, has worked with our association and these companies as their applications for abatement were presented to the Board of Tax Appeals. The issue of leased equipment and buildings has been one area of concern. This issue appears to have three component parts:

1. leased equipment where the lease is a financing tool;
2. leased buildings where the leaseholder is also the majority stockholder of the corporation;
3. leased equipment or buildings where the leaseholder is a community based not-for-profit economic development corporation.

After consultation with the Board of Tax Appeals' attorney regarding the fact situations and legal interpretations in the cases which Kansas Association For Small Business companies brought before the Board, favorable rulings have been granted in situations where leasing has been a financing tool for equipment purchases. In Phase II of some of these expansions the Board of Tax Appeals will need to address the issue of a building which is leased to a corporation by an individual who is also the owner of the qualifying corporation.

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We are concerned that specific reference to the not-for-profit economic development corporation leasing arrangement will result in an exclusion of other leasing arrangements which may be legally defensible. Tim O'Sullivan will be presenting his concerns and suggestions in letter form to the committee after he has had an opportunity to confer with David Cunningham, attorney for the Board of Tax Appeals.

Thank you for the opportunity to bring these questions to your attention.

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