

Approved Wednesday, March 20, 1991  
Date

MINUTES OF THE Senate COMMITTEE ON Assessment and Taxation

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

11:00 a.m./~~p.m.~~ on Wednesday, February 27, 1991 in room 519-S of the Capitol.

All members were present except:

Committee staff present:

Don Hayward, Assistant Revisor  
Bill Edds, Assistant Revisor  
Tom Severn, Research Department  
Chris Courtwright, Research Department  
Marion Anzek, Committee Secretary

Conferees appearing before the committee:

Senator Gerald Karr  
Mark Burghart, General Legal Counsel, KS Department of Revenue  
Jim Yonally, Director of KS. Chapter-National Federation of Independent Business  
Don Schnacke, KS Independent Oil & Gas Association  
Bob Corkins, KS Chamber of Commerce and Industry  
Mark Beshears, Secretary-KS Department of Revenue  
Terry Fry, President-Real Estate & Trust Law Section-KS Bar Association

Chairman Dan Thiessen called the meeting to order at 11:13 a.m. and turned attention to SB201, recognizing Senator Gerald Karr, Chief sponsor of the bill.

SB201: AN ACT relating to income taxation; imposing an alternative minimum tax upon corporation income.

THE FOLLOWING ARE PROPONENTS OF SB201

Senator Gerald Karr said the 1987 Governor's Task Force on Tax Reform did recommend the alternative tax, and was recommended as a "piggy-back" onto the federal alternative minimum tax, created as part of the federal Tax Reform Act of 1986.

He said, in 1988, the Legislature passed HB2453, and he said, it did include an alternative minimum tax to begin in 1989, and he said, "that helper" was the closest of a special interim study during the summer and he said, this did result in a repeal of the tax, before it even started.

He said, the intent of the bill before the committee was to develop and present a bill that was not a "piggy-back" bill, he said, it is a Kansas bill.

He said, SB201 has been reworked and should produce the desired effect of accomplishing the same basic effect of the federal AMT; i.e., adjusting for the treatment of preference items given under regular tax law and ensuring that more corporations pay at least a minimum income tax, as required by the federal government. (ATTACHMENT 1)

Chairman Thiessen asked Senator Karr if he had a revenue estimate? Senator Karr said the revenue estimate, back to the time of the Task Force and the passage was \$6.M. The KS Alternative Minimum Tax before us, is probably closer to \$3.M. He said, it is not as significant, compared to the Revenue needs.

Mark Burghart, General Counsel, KS Department of Revenue said he was not necessarily appearing as an proponent, but he had a detailed memorandum which explains how AMT would be computed in KS. under SB201.

He said, he just wanted to point out to the committee members, the differences between what you have before you today and what was on the books temporarily two years ago. He said, the budget they have passed and would have gone into effect in 1989, basically would have hit the wrong source of taxpayers, and it would have been targeted, and the burden would have fallen upon the smaller corporation taxpayers in KS. He said he felt SB201 will take care of that problem, and he said they put in an exemption amount of \$40,000, and the foreign dividends source income will go back to the tax base for the larger taxpayers. (ATTACHMENT 2)

Jim Yonally said he was appearing before the committee in Opposition to SB201. He

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Assessment and Taxation

room 519-S, Statehouse, at 11:00 a.m./p.m. on Wednesday, February 27, 1991

said, a few years ago the bill was repealed before the tax was actually imposed. He said, what what they heard from their members during that time, was that most of them had to hire an accountant to determine whether they were going to have to pay any tax or not.

He said, in practically all cases where members reported their experience to them, the business didn't or wouldn't have owed any tax. He said, however they were out the cost of the accountant's services.

He urged the committee members not to include small businesses, if they are looking favorably on the bill. (ATTACHMENT 3)

Don Schnacke said KIOGA has been in opposition to the concept of the alternative minimum tax in the state of Kansas since 1988, and he said, they were involved in the 1989 appeal. He said, the reason for that is the basic taxes we pay, and they speak to the idea of the severance tax and the ad valorem tax, and what the KS Inc. study has said about those excessive taxes that are on our industry in KS and with their making recommendations to the Legislature to not raise taxes, but to lower taxes, and he said, this alternative minimum tax would be another tax that their industry would be confronted with. He said, by filling out the return they would have to determine whether or not they were subject to the tax, and he said many of their members would not pay the tax, because of the nature of what is going on .

He said, they did offer in 1989 before the appeal, that if Kansas does adopt a state alternative minimum tax, then the Kansas Legislature should consider following the State of Iowa, and exclude a percentage depletion as a preference item, which is the heart of their industry and how they calculate the alternative tax.

He said, the alternative tax on the federal level has been the biggest disincentive to their industry, among the independent oil people. (ATTACHMENT 4)

Bob Corkins KCCI said he was tesifying in opposition to SB201. He said, their initial reaction concerns the presently high level of corporate income taxes, which the state already proposes. He said, of our neighboring states only Nebraska has a higher corporate rate, the other neighboring states are running behind and Missouri gives corporations a reduction for federal income taxes paid, which places Missouri much lower than Kansas, when a simple rate comparision is done.

He said KCCI supports a rate reduction in the corporate income tax rate. (NO ATTACHMENT)

Chairman Thiessen concluded hearings on SB201 and turned attention to SB188 recognizing Mark Beshears.

Mark Beshears said SB188 is a new concept for the State of Kansas, and he said, we now have what is known as the Inheritance Tax, which is a tax on property receipts on decedent's estate, and it is imposed upon different classes of distributee's, whether they are a surviving spouse, a lineal ancestor, brother, sister, cousin or stranger to the deceased.

He said, what SB188 does is in essence, scrap our present inheritance tax, and goes to what is known as an estate tax concept, to in essence conform with the Federal Estate Tax.

He said, the reason he is here today as a proponent of SB188 is both, from the standpoint of a private practitioner, because he has dealt with the inheritance tax since 1976 and also as a tax administrator, responsible for collecting and administrating the present inheritance tax.

He said, the present inheritance tax is overly complex, it is burdensome on tax practitioners. He said, most people who work in this area do not understand it's complexities, approximately 75% of the returns filed with the Department of Revenue have to be adjusted and corrected, and there are very few practitioners who know how to fill out the returns correctly and he said SB188 would embody a large panarama of federal regulations that practitioners have come to know over the years in having to work with Federal and State tax. He said, the tax brackets contained in SB188 in essence, provide revenue neutrality, and the present Kansas Inheritance Tax raises about \$40.M and he said, the way the bill is presently drafted, the tax brackets raise about \$40.M, so the bill you have before you is revenue neutral. (ATTACHMENT 5a and 4b)

Terry Fry, President of Real Estate and Trust Law Section, of The Kansas Bar Association said, he was also a member of the Executive Committee of the Tax Section, and he said, both sections endorse the change in the inheritance tax to the estate tax concept.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Assessment and Taxation,  
room 519-s, Statehouse, at 11:00 a.m./~~pm~~ on Wednesday, February 27, 1991

He said, they had been working with the Department of Revenue for a number of years and he said, he felt it is a much simpler system that resolves a lot of problems that practitioners have. He said, the issue of the calculation of tax, to remote beneficiaries, is a rare occasion when the remote beneficiary acts as bearers of the tax, on the amount being received by that remote beneficiary. Most decedents who have wills, usually provide in their wills that all of their death taxes will be paid from the residue even though the amount of the tax might be determined with reference, to who actually is going to receive the estate, itself. He said, for example one half of the residue to a friend, which is a class E beneficiary and the other one half of the estate to a child. (NO ATTACHMENT)

Senator Audrey Langworthy moved to adopt the minutes of February 20, 1991, 2nd by Senator Sheila Frahm. The motion carried.

Chairman Dan Thiessen adjourned the meeting at 11:46 a.m.

GUEST LIST

COMMITTEE: SENATE  
ASSESSMENT & TAXATION

DATE: WED. 2-27-91

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
R ANDERSON	OTTAWA	SWUB Co. TOPEKA
Wendell STROM	TOPEKA	AARP-CETF
HAROLD PATTIS	TOPEKA	AARP-CETF
John M. B. ...	TOPEKA	Office ...
Jim Yonally	Overland Park	NFIS
Bob Corkins	Topeka	KCCI
Christy Young	Topeka	Topeka Chamber of Com.
Mary Mendace	Topeka	Assoc. Pers.
Quinta A. ...	Topeka	Intern. for Sen. Lee
Drewa Cottor	"	Peoples Nat. Gas
Lee Libes	Topeka	KLA
ALAN COBB	WICHITA	KASB
FRANCES KASTNER	TOPEKA	K's Food Dealers Assn
Pauline Clark	WICHITA	Walmart
John Peterson	Topeka	
BOB GRAY	TOPEKA	KCCI
Dech Dykes	Topeka	Topeka Chamber of Com.
Mary E. ...	Topeka	K's Hotel Owners Assn
<del>...</del>	<del>...</del>	<del>...</del>
Steve ...	Overland Park	Yellow Freight Sys.
Pat Higgins	Topeka	Gov. Office
Theron E Fry	Wichita	KBA
Ron Smith	Topeka	KBA
Carol Ireland	Topeka	KDR
Tom Shaw	Topeka	KDR





# State of Kansas

## Senate Chamber

GERALD "JERRY" KARR  
SENATOR, SEVENTEENTH DISTRICT  
CHASE, LYON, MARION, MORRIS,  
OSAGE COUNTIES  
R.R. 2 BOX 101  
EMPORIA, KANSAS 66801



### Office of Democratic Leader

STATE CAPITOL  
TOPEKA, KANSAS 66612-1565  
913-296-3245

COMMITTEE ASSIGNMENTS  
MEMBER: ASSESSMENT & TAXATION  
INTERSTATE COOPERATION  
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LEGIS. BUDGET COMM.  
EDUCATION  
STATE BUILDING CONSTRUCTION  
LEGIS. COORDINATING COUNCIL  
STATE FINANCE COUNCIL

**STATEMENT BY SENATOR GERALD "JERRY" KARR  
BEFORE THE SENATE ASSESSMENT & TAXATION COMMITTEE  
CONCERNING SENATE BILL 201  
AN ALTERNATIVE MINIMUM TAX UPON CORPORATION INCOME  
FEBRUARY 27, 1991**

Thank you, Mr. Chairman, for the opportunity to appear before the Senate Assessment and Taxation Committee. I would like today to introduce Senate Bill 201, an alternative minimum tax upon corporation income.

The 1987 Governor's Task Force on Tax Reform recommended that a state alternative minimum tax (AMT) for corporations be enacted which would conform to and "piggy-back" onto the federal alternative minimum tax, created as part of the federal Tax Reform Act of 1986. The federal AMT is an attempt to adjust for inequities thought to arise when, under regular tax law, certain kinds of income are given special or "preference" treatment. The current federal AMT is an income tax that is parallel to the regular corporate tax and replaced the former surtax. In creating the federal AMT, it was the intent of Congress to accelerate the payment of tax attributable to the use of deferral preference deductions from income tax, rather than tax these items permanently. Certain adjustments and tax preferences are made to the regular taxable income which

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ATT. 1

ultimately result in the AMT.

In 1988, the Legislature passed House Bill 2453 which (1) eliminated the carryback of corporation net operating losses, (2) allowed a two-factor (sales & property) income apportionment option for corporations whose payroll in Kansas exceeds 200% of their property and sales in the state, and (3) imposed a Kansas alternative minimum tax on corporations to begin in 1989. The conference committee on House Bill 2453 agreed that the AMT issue should be an interim study topic to judge whether implementation was necessary.

The 1988 interim study concluded that the AMT represented a substantial economic development disincentive because no surrounding states imposed it. The committee also concluded that since percentage depletion would not have been one of the preference items under the Kansas AMT as it is under the federal AMT, the Kansas alternative minimum tax would be particularly onerous on the oil and gas industry, already suffering from low oil prices. The interim study committee recommended in Senate Bill 4 that the AMT be repealed. The AMT was subsequently repealed by the 1989 legislature. The interim study committee also recommended in Senate Bill 5 that the 1989 legislature lower the Kansas corporate base and surtax rates by 0.25 percent each and that the level at which the surtax rate becomes effective be raised from the current \$25,000 of corporate taxable income to \$50,000. That bill died in the Senate Assessment and Taxation Committee.

It has been alleged that the 1988 Kansas AMT legislation,

as drafted, had some flaw or flaws that would have resulted in not producing the type of tax policy that was intended by creation of a Kansas AMT. 1991 Senate Bill 201 has been reworked and should produce the desired effect of accomplishing the same basic effect of the federal AMT; i.e., adjusting for the treatment of preference items given under regular tax law and ensuring that more corporations pay at least a minimum income tax, as required by the federal government.

At this time, I would be very pleased to answer any questions the committee might have. Thank you.





## KANSAS DEPARTMENT OF REVENUE

Office of the Secretary  
Robert B Docking State Office Building  
915 SW Harrison St  
Topeka Kansas 66612-1588

### MEMORANDUM

To: The Honorable Dan Thiessen, Chairman  
Senate Committee on Assessment and Taxation

From: Mark A. Burghart, General Counsel  
Kansas Department of Revenue

Date: February 27, 1991

Subject: S.B. 201 - Kansas Alternative Minimum Tax  
on Corporations

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The purpose of this memorandum is to: (1) review the rationale for the alternative minimum tax (AMT); (2) review the specific provisions of S.B. 201 creating the Kansas AMT; and (3) provide an analysis of the types of businesses believed to be affected by the AMT.

#### GENERAL RATIONALE

The purpose of the AMT (both state and federal) is to ensure that no taxpayer who has substantial economic income can avoid significant tax liability by using exclusions, deductions and credits. The AMT works by disallowing the benefit provided by the various tax deductions and allowances. For federal purposes, federal taxable income would be adjusted as follows:

#### ADJUSTMENTS

1. Accelerated depreciation on new property
2. Mining, exploration and development costs
3. Long-term contracts
4. Pollution control facilities
5. Installment sales
6. Circulation expenses (personal holding companies only)
7. Merchant marine fund
8. Earnings and profits adjustment
9. Net operating losses.

Once the federal taxable income of the corporation has been adjusted, the items of tax preference are then taken into account:

General Information (913) 296-3909  
Office of the Secretary (913) 296-3041 • Legal Services Bureau (913) 296-2381  
Audit Services Bureau (913) 296-7719 • Planning & Research Services Bureau (913) 296-3081  
Administrative Services Bureau (913) 296-2331 • Personnel Services Bureau (913) 296-3077

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PREFERENCES

1. Accelerated depreciation on depreciable real property and depreciable leased personal property placed in service before 1987
2. Depletion
3. Intangible drilling costs
4. Tax-exempt interest on certain activity bonds
5. Appreciated property charitable deduction
6. Amortization of certified pollution control facilities placed in service before 1987.

Adjustments differ from preferences only in that adjustments involve the substitution of a special alternative minimum tax treatment of an item for the regular tax treatment, while a preference involves the addition of the difference between the special alternative tax treatment and the regular tax treatment. Some of the adjustments could be negative amounts which results in an alternative minimum taxable income which is lower than federal taxable income. Tax preferences cannot be negative.

A corporation would be liable for the federal AMT if federal taxable income, plus or minus the adjustments plus the preference items equal more than the base exemption amount of \$40,000. This exemption amount is phased-out at the rate of \$.25 for each \$1.00 by which the alternative minimum taxable income (AMTI) exceeds \$150,000. The current AMT federal rate is 20%.

KANSAS ALTERNATIVE MINIMUM TAX (S.B. 201)

The existence of an AMT would improve the equity of the current tax system by eliminating the possibility of avoiding state taxes through excessive use of tax preferences. By basing the state AMT directly on the federal tax, Kansas will gain the equity benefits of the federal AMT, but will not increase significantly the compliance cost for corporations. All state calculations will be based on figures derived for federal or other state income tax purposes. Adoption of a state AMT should also improve the stability of the corporation income tax and state revenues generally by eliminating situations where tax preferences are used to eliminate liability or create net operating losses.

The state alternative minimum tax (AMT) for corporations proposed in S.B. 201 would conform to and "piggy-back" on the federal alternative minimum tax. The AMT computation also parallels to a certain extent the methodology which is utilized by the states of Iowa, Florida, New York and North Dakota in computing their AMT.

The state AMT rate (4%) would be applied against the Kansas alternative minimum taxable income of a corporation. A \$40,000 exemption is to be applied against the Kansas alternative minimum taxable income. This exemption is phased out at the rate of \$.25 for each dollar of alternative minimum taxable income in excess of \$150,000. This feature is new and was not contained in the prior AMT repealed in 1989. It will have the effect of exempting marginal taxpayers from the AMT. Those corporations which are not required to compute the federal AMT would still be required to file an AMT for Kansas purposes. Banks and savings and loan institutions subject to the provisions of K.S.A. 79-1106 et seq. would be specifically exempted from the Kansas AMT provisions.

The tax base against which the Kansas AMT rate is applied is relatively simple to compute. (Preliminary state form is attached) If a taxpayer completes the federal AMT computation and a regular Kansas corporate income tax return, the basic information required for the state AMT calculation is present.

The Kansas AMT calculation is as follows:

Federal Alternative Minimum Taxable Income (Prior to NOL)  
+/- Modifications: K.S.A. 79-32,138 and 79-32,117 (except Fed. NOL & Foreign dividend exclusion)  
Modified Alternative Minimum Taxable Income  
x Apportionment Percentage (same as for regular tax)  
Net Alternative Minimum Taxable Income  
- Kansas Alternative Tax Net Operating Loss  
Kansas Alternative Minimum Taxable Income  
- Exemption amount (\$40,000)  
x Tax @ 4%  
Tentative Kansas Alternative Minimum Tax  
- Income Tax (before credits)  
Kansas Alternative Minimum Tax

The Kansas AMT calculation begins with federal alternative minimum taxable income (prior to alternative tax net operating loss deduction) which appears on line 8 of federal Form 4626. This particular figure includes all adjustments and tax preference items required at the federal level. Certain additional modifications are then required for state purposes. These are the same modifications which are required by K.S.A. 1990 Supp. 79-32,138 for the regular Kansas corporate tax computation. For instance, federal interest would be deducted and taxes based on income would be added to federal alternative minimum taxable income.

It is important to note that these modifications appear on Kansas Form K-120 and require no additional effort on the part of the taxpayer to compile. Once these modifications have been made, the resulting income base is apportioned to Kansas by using the same apportionment ratio that was computed for the regular Kansas corporate tax and which appears on Form K-120.

In keeping with the overriding intent to create a separate and independent income tax system in the same fashion as the Internal Revenue Code, it was necessary to statutorily create a separate alternative tax net operating loss for the Kansas AMT calculation. The alternative tax net operating loss provision closely parallels the regular NOL provision under K.S.A. 79-32,143. The alternative tax NOL may not be carried back but may be carried forward for 10 years.

The state AMT calculation was designed to mirror the computation of the regular Kansas corporate tax and the federal alternative minimum tax to the greatest extent possible. To a certain degree, that objective was accomplished. For that reason the process of computing the Kansas AMT is not envisioned to be a time consuming exercise or require extraordinary record-keeping requirements on the part of the taxpayer. Unfortunately, due to the nature of certain of the tax preference items, it was considered necessary to create a Kansas AMT credit to be applied against a taxpayer's regular tax liability. This is an area which the Legislature may wish to examine closely. The creation of the AMT credit does add a degree of complexity to the AMT calculation.

It was the intent of Congress to accelerate the payment of tax attributable to the use of deferral preference deductions rather than to permanently tax these items. The AMT credit takes into account the notion that to the extent that a tax preference or adjustment causes deferral, rather than permanent avoidance of tax liability, some adjustment is required with respect to years after the taxpayer has been required to treat the item as a preference because, in those later years, such a preference or adjustment causes an increase in the regular tax liability. Without the credit mechanism, a permanent tax increase would be implemented. Some states have no such credit. Deferral preference items would include such items as depreciation and intangible drilling costs. Preference items of a permanent nature (exclusion preferences) would include depletion and tax exempt interest.

The state AMT provision would allow a credit against the regular tax for any AMT which had been paid on a deferral preference item in an earlier tax year. This particular provision will require the taxpayer to maintain records which reflect the year of a tax preference and the state apportionment percentage for that year. This tracing requirement is made necessary by the fact that the apportionment percentage of a corporation changes from year to year. The precise manner in which the preference items are accounted for in the credit computation would be a proper subject for administrative regulations.

#### BUSINESSES AFFECTED

The Department has attempted to identify those taxpayer groups which would be most affected by a state AMT. One would think that those taxpayers in a given industry group which rely heavily on certain preferences would be similarly affected. However, we have learned that the impact will be determined in large part by the individual characteristics of each taxpayer. It may be stated with a fair degree of accuracy that any taxpayer with high capitalization and low regular tax would be most affected by the AMT.

#### FISCAL NOTE

It is estimated that passage of this bill could increase Fiscal Year 1992 State General Fund Revenues by about \$3 million.

For estimating purposes, it is assumed that calendar year and fiscal year can be equated, that the relationship between the federal AMT rate of 20% and the proposed Kansas rate of 4% would hold, and that the corporations subject to each would be proportionately the same. The last reported federal corporate income tax report showing the federal AMT separately is for Tax Year 1987 (published December, 1990). This shows \$112.844 billion in regular and \$2.229 billion in AMT. The federal AMT is thus 1.98% of the regular corporate tax. The Kansas Fiscal Year 1992 Consensus Estimate for (regular) corporate income tax is \$147 million. Applying the federal 1.98% to \$147 million yields an estimate of \$2.9 million.

I would be happy to respond to any questions you might have.





# NFIB Kansas

National Federation of  
Independent Business

## TESTIMONY

on Senate Bill 201

Senate Committee on Assessment and Taxation

Mister Chairman, and members of the committee, my name is Jim Yonally, Director of the Kansas chapter of the National Federation of Independent Business. I am pleased to speak on behalf of over 7,500 small businesses in Kansas who are members of our organization, and express our opposition to Senate Bill 201.

You may recall that a measure imposing an alternative minimum tax was passed by the legislature a few years ago. The effective date in that bill was delayed for a year. At the next legislative session, the ATM was repealed, before the tax was actually imposed. What we heard from our members during that time was that most of them had to hire an accountant to determine whether they were going to have to pay any tax or not.

In practically all cases where members reported their experience to us, the business didn't, or wouldn't, have owed any tax. However, they were out the cost of the accountant's services.

If the committee feels there is some overriding need to impose this tax, we would ask that small businesses, as those are already defined by statute, be exempted. At least, provide some clear threshold of corporate taxable income, below which it would not be necessary to perform further calculations. Surely the revenue the state would derive from most small businesses would not be significant anyway.

In short, we urge you to not look favorably on this bill, or at least provide some protection for a section of our economy that has suffered enough recently.

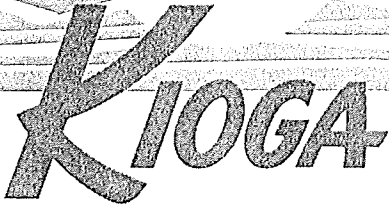
I appreciate the opportunity to share the views of our members on this important topic.

State Office  
10039 Mastin Dr.  
Shawnee Mission, KS 66212  
(913) 888-2235



The Guardian of  
Small Business

2-27-91  
ATT 3



## KANSAS INDEPENDENT OIL & GAS ASSOCIATION

105 SOUTH BROADWAY • SUITE 500 • WICHITA, KANSAS 67202  
(316) 263-7297 • FAX (316) 263-3021  
1400 MERCHANTS NATIONAL BANK BLDG. • TOPEKA, KANSAS 66612  
(913) 232-7772 • FAX (913) 232-0917

February 27, 1991

**TO: Senate Committee on Assessment and Taxation**

**RE: SB 201**

Thank you for allowing us to appear in opposition to SB 201. We appeared in opposition to a Kansas alternative minimum tax back in 1988 and 1989 when the tax was finally repealed.

Your committee is familiar with the basic taxes paid by our industry. The combination of the severance tax and ad valorem tax has been identified by Kansas, Inc. as making Kansas one of the highest taxed oil and gas producing states in the nation in its taxing policies on oil and gas production. Our industry also pays income and sales taxes in Kansas as a part of our entire tax burden. Enacting a state alternative minimum tax would add yet another tax, while Kansas, Inc. is recommending that you lower, not raise, taxes on our industry.

The Chairman of the KIOGA Tax Committee testified at prior year hearings as follows:

1. Such a tax would put Kansas corporations at a competitive disadvantage with our neighbor states, none of which have such a tax. In fact, Kansas would become only one of a handful of states nationwide with such a tax and might be perceived as furthering an "anti-business" attitude.
2. A Kansas alternative minimum tax would add substantially to the complexity of the current taxation system and the burdens of taxpayers to comply therewith.

We did recommend to the legislature in 1988 and 1989 that if Kansas does adopt an alternative minimum tax, the Kansas legislature is urged to follow the lead of the State of Iowa and exclude percentage depletion as a preference item when calculating the tax. Percentage depletion is a very necessary tax incentive to motivate investment and activity in our industry.

I'm not exactly certain of the number of KCC licensed oil and gas operators in Kansas today. Not long ago there were 3500. Many are very small operators with minimum production and many are organized as corporations. We oppose the mandatory language in SB 201 that requires all Kansas corporations to go to the expense and effort to file an alternative minimum tax return. It is unnecessary, cumbersome, and expensive for these small business and operators to comply.

Donald P. Schnacke

2-27-91  
ATT. 4

## MEMORANDUM

TO: Mr. Louis Chabira, Deputy Director      DATE: February 25, 1991  
Division of Budget

FROM: Kansas Department of Revenue      RE: S.B. 188, as Introduced

### BRIEF OF BILL:

Senate Bill 188, as introduced, would create the "Kansas estate tax act" and repeal all statutes which currently impose the Kansas inheritance tax. The bill reflects the recommendations of the Department of Revenue. The change from an inheritance tax to an estate tax represents a fundamental difference in the manner of taxing property at death.

This act would take effect July 1, 1991, and would be applicable to the estates of all decedents dying after December 31, 1991.

### FISCAL IMPACT:

The actual fiscal impact of any proposal dealing with inheritance or estate taxes is contingent upon the size of the estates in any given year and in the case of inheritance tax, the relationship of the distributees to the decedent. The Department of Revenue has developed an estimating model based upon actual returns filed during tax year 1987. This model compares the total tax liability incurred on those estates under current law with the tax liability which would have been incurred had the provisions of S.B. 188 been in effect at that time.

This analysis shows that the overall effective tax rate, for all estates, remains unchanged. (1.9% both under current law and under this proposal) Total tax collections would have been reduced by less than .5%, or \$198,083. The effective tax rate on all estates under \$500,000 is reduced by the provisions of this act. The effective tax rate on estates over \$500,000 increases from an effective rate of 2.3% to an estimated effective rate of 2.9%. Please see the detail analysis attached.

### ADMINISTRATIVE PROBLEMS AND COMMENTS:

This bill would require revision of forms and instructions; however, it would eliminate many forms now in use. This would be a simpler tax to administer; it would eliminate many complicated formulas now in use and could effectively reduce many current administration problems.

### ADMINISTRATIVE COSTS:

There will be costs associated with implementation; however, the Department believes at this time that the costs could be absorbed within the current budget request for printing and forms design.

2-27-91  
ATT. 5-A



LEGAL COMMENTS:

None

APPROVED BY:

Mark Beshears

Mark Beshears,  
Secretary of Revenue

Kansas Department of Revenue

Kansas Inheritance Tax - Tax Year 1987 Data  
Current Law

Kansas Gross Estate Brackets	Returns	Kansas Gross Estate	Taxable Estate	Total Tax	Average Tax	Effective Rate
\$0 - \$50,000	4,645	\$107,364,459	\$92,571,965	\$603,460	\$130	0.6%
\$50,000 - \$150,000	3,849	\$350,616,628	\$314,446,661	\$3,486,734	\$906	1.0%
\$150,000 - \$300,000	1,928	\$406,399,036	\$358,194,443	\$6,750,062	\$3,501	1.7%
\$300,000 - \$500,000	763	\$291,397,479	\$253,862,018	\$6,505,107	\$8,526	2.2%
\$500,000 - over	697	\$1,002,728,048	\$666,748,248	\$22,851,260	\$32,785	2.3%
	11,882	\$2,158,505,650	\$1,685,823,335	\$40,196,623	\$3,383	1.9%

Kansas Department of Revenue

Kansas Inheritance Tax - Tax Year 1987 Data  
Senate Bill 188

Kansas Gross Estate Brackets	Returns	Kansas Gross Estate	Taxable Estate	Total Tax	Average Tax	Effective Rate
\$0 - \$50,000	4,645	\$107,388,509	\$0	\$0	\$0	0.0%
\$50,000 - \$150,000	3,849	\$350,616,628	\$127,754,610	\$1,250,560	\$325	0.4%
\$150,000 - \$300,000	1,928	\$406,158,686	\$263,831,854	\$4,397,512	\$2,281	1.1%
\$300,000 - \$500,000	763	\$291,397,479	\$216,401,065	\$5,107,290	\$6,694	1.8%
\$500,000 - over	697	\$1,002,728,048	\$633,634,275	\$29,243,178	\$41,956	2.9%
	11,882	\$2,158,289,350	\$1,241,621,804	\$39,998,540	\$3,366	1.9%

Kansas Department of Revenue

Kansas Inheritance Tax - Tax Year 1987 Data  
Senate Bill 188

Fiscal Impact

Kansas Gross Estate Brackets	Returns	Kansas Gross Estate	Taxable Estate	Total Fiscal Impact	Average Fiscal Impact	Effective Rate
\$0 - \$50,000	4,645	\$107,388,509	\$0	(\$603,460)	(\$130)	0.0%
\$50,000 - \$150,000	3,849	\$350,616,628	\$127,754,610	(\$2,236,174)	(\$581)	0.4%
\$150,000 - \$300,000	1,928	\$406,158,686	\$263,831,854	(\$2,352,550)	(\$1,220)	1.1%
\$300,000 - \$500,000	763	\$291,397,479	\$216,401,065	(\$1,397,817)	(\$1,832)	1.8%
\$500,000 - over	697	\$1,002,728,048	\$633,634,275	\$6,391,918	\$9,171	2.9%
	11,882	\$2,158,289,350	\$1,241,621,804	(\$198,083)	(\$17)	1.9%

Kansas Department of Revenue  
Testimony in Support of Senate Bill 188  
Before the Senate Assessment and Taxation Committee  
Wednesday, February 27, 1991

Background

The Kansas Inheritance Tax was first enacted in 1909, repealed in 1913, and reenacted in 1915. Since 1915, it has undergone several revisions.

The inheritance tax was the subject of major studies conducted by the 1977 Interim Committee on Assessment and Taxation, and the 1984 Kansas Tax Review Commission. The 1977 Committee was concerned with the many differences between the Kansas Inheritance Tax and the Federal Estate Tax, and that those differences created various administrative problems with respect to the Kansas Inheritance Tax. Although the 1977 Committee concluded that it was not then advisable to conform totally to Federal estate tax law, it did feel that more conformity would be advantageous. It also concluded that Kansas should retain the inheritance tax concept with different tax rates and exemptions for different classes of heirs. As a result of the work of the 1977 Committee, the Kansas Inheritance Tax was substantially rewritten, and legislation implementing much of the 1977 Committee's recommendation was enacted by the 1978 Kansas Legislature.

The inheritance tax was again the subject of a major study in 1984 by the Kansas Tax Review Commission. It was noted by the Commission that several bordering and other states had recently simplified their laws by eliminating traditional methods of taxing estates. Members of the 1984 Commission were also particularly concerned with whether the present law was unduly complex. They were equally concerned about whether the level of compliance with the present system of taxation, and whether the same might be maximized by adoption of an alternate method. In conducting its study, the 1984 Commission operated from an initial premise that its recommendation should result in revenue neutrality. After studying the current system, and alternative systems, the 1984 Commission recommended that the present inheritance tax law be retained in preference to changing to an estate tax or a pick-up tax.

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## Types of Death Taxes

There are three basic types of death tax systems:

- A. Inheritance Tax. An inheritance tax is levied on the beneficiary of a decedent's estate. Inheritance taxes may generally be structured to achieve a particular tax incidence policy in that different classes of beneficiaries may be subjected to selective tax rates and exemptions.
- B. Estate Tax. Another tax system is the estate tax, which is similar to the federal estate tax. Instead of being imposed upon the beneficiary, an estate tax is levied on the net value of the decedent's estate. It taxes the right of the decedent to transfer property without regard to the beneficiary of any bequest. The estate tax lacks the flexibility of an inheritance tax in that selective tax rates and exemptions may not be applied to particular classes of beneficiaries, but has the advantage of ease of computation and administration.
- C. Pick-Up Tax. Another tax system is the pick-up tax which taxes the estate in an amount equal to the federal credit for state death taxes. Under federal estate tax law, each estate is allowed a 100% credit against its federal estate tax liability for a certain level of state death taxes based on the value of the decedent's estate. Under a pick-up tax system, the estate tax liability is equal to the federal credit allowed. Absent a state death tax, liability in an amount at least equal to the state death tax credit would be owed to the federal government. Stated differently, a state pick-up tax system does not increase total federal and state death tax liability, but merely causes a portion of the death tax liability to be paid to the state instead of to the federal government.

## Present Law.

The Kansas inheritance tax, like all inheritance tax systems, levies a tax on the beneficiary of assets from a decedent's estate. It is regarded as an excise tax on the right to receive property resulting from the decedent's death. The Kansas inheritance tax achieves a tax incident policy in that different classes of heirs are subjected to selective rates and exemptions.

The current inheritance tax system of Kansas generates approximately 35 to 40 million dollars in annual revenues. Approximately 1,000 returns are filed each month, of which approximately 40% are taxable. Ten to 15 percent of the returns which are filed involve estates large enough to be required to file federal estate tax returns.

The tax has remained relatively unchanged since 1982 when an exemption was provided for all property left to a surviving spouse, replacing the former exemption of \$250,000. For other beneficiaries varying exemptions and tax rates are applied, depending upon the the relationship of the beneficiary to the decedent. A minimum tax is imposed in the form of a pick-up tax when the same exceeds the direct inheritance tax liability. The pick-up tax is the equivalent of the federal credit for state death taxes allowed in the computation of the federal estate tax under the provisions of the Internal Revenue Code.

Inheritance tax is computed in the following manner. First, a gross estate value is computed by adding the value of basically the same assets of the decedent's estate that comprise the gross estate for federal estate tax purposes. Second, an adjusted gross estate value is computed by deducting the value of certain assets that are beyond the jurisdiction of Kansas to tax (i.e., property in other states) and other exempt assets (i.e., certain life insurance proceeds, exempt government securities, unpaid mortgage indebtedness and losses during administration). Third, a taxable or distributable estate is computed by deducting debts and expenses of the estate and federal estate taxes paid. The next step is to determine the proper exemption amounts and rates to be applied. At this point, the state inheritance tax law come into play in that substantial differences are found between the federal system and the state system.

#### Problems With Present Law.

The present inheritance tax system faces many problems. Perhaps the most often heard, general expression of dissatisfaction is that the present inheritance tax is complicated and confusing. Many practitioners have expressed or implied their confusion and frustration with the current system and increasing numbers of practitioners are deferring the work of determining an estate's tax liability to the Department of Revenue.

When asked to identify those areas of the present law which they find the most difficult to comprehend, practitioners provided a long and varied list. Some point to the inconsistencies which exist between the state's inheritance tax concept and the estate tax concept which exists on the federal level. Others concentrate on those portions of the law which require special procedures or special computations which are virtually unique to the State of Kansas.

Under the present law, self-assessment is becoming less and less frequent as adjustments by the Department of Revenue become more common. At present many, if not in fact most, practitioners have simply given up trying to complete the calculations and elect to have the Department of Revenue compute the tax liability on taxable estates. This is perhaps not surprising when one considers that as many as seventy-five percent (75%) or more of all taxable returns are adjusted by the Department of Revenue due to errors or omissions in the computation of tax.

The fact that the computations which must be made under the present system are complex is understandable since, by its nature, an inheritance tax concept requires the computation of distributive shares and that these shares be computed precisely. Making these computations involves a great deal of document interpretation, fractional and terminable interests must frequently be determined, and the proration of deductions, share amounts and exemptions are frequently required. The number of computations required permits many chances for math errors and computations can be very complex and time consuming regardless of the ultimate tax consequences.

Adding to the computational burden which presently exists is the fact that, under an inheritance concept, there cannot be a de minimus filing threshold to protect small estates. For inheritance tax purposes, an estate's taxability is determined by its distribution, not by its size. In addition, taxability may be affected by the presence or absence of non-Kansas assets regardless of the size of the estate.

In addition to all of the confusion which surrounds the computational requirements of the present system, uncertainty as to the potential tax liability of a given estate requires that there be broad collection enforcement powers available to the Department of Revenue, and the existence of these powers complicates title clearance procedures. Simply stated, the problem is that the potential for widely different tax results

between estates of similar size and composition (and different only in distribution) prohibits development of a system for classifying property for automatic or simplified title clearance. Those engaged in title clearance must adopt strict rules concerning the transfer of assets or assume the risk of evaluating the tax potential for each particular estate. In practice, clearance for nearly every security and every parcel of real estate must be obtained from the Department of Revenue despite authorities to transfer which are present under both the Inheritance Tax Act and the Probate Code.

In summary, it is safe to say the design of the present inheritance tax system for simplification, self-assessment, conformity to federal law, and ease of title clearance has not been accomplished. The present law is perceived as being complex and time consuming by most practitioners, and experience shows that many practitioners feel so intimidated by the present law, or are so fearful of adjustment, that the tax is not self-assessed. Due to conceptual difficulties, conformity to federal law is often impossible, or becomes so strained as to produce unacceptable results, and title clearance is almost totally dependent upon the Department of Revenue despite provisions of the present Inheritance Tax Act and the Probate Code.

#### Proposed Change.

In an effort to correct many of the deficiencies of the present system, the Kansas Bar Association has advanced a proposal to replace the present inheritance tax with an estate tax. This proposal has now been introduced in both the House and Senate. [House Bill 2242; Senate Bill 188.] The Department of Revenue supports this legislation.

#### Advantages of Estate Tax System.

Among the advantages of an estate tax, perhaps the most important is that the concept of an estate tax is generally well understood. There is a large body of federal law which can be looked to for guidance and, as a rule, most practitioners have a fair understanding of the estate tax concept, whether from their educational background or from experience. With this understanding comes an increase in acceptance of the law and this should in turn result in increased full, and voluntary, compliance.

Most practitioners would agree that the estate tax concept permits ease of computation and would encourage more self-assessment. Document interpretation is minimized, and the need for the determination of fractional or terminable interests is reduced or eliminated, as is the need for prorational computations. The computations which are required are more straight forward, and fewer in number; factors which should allow practitioners to feel more comfortable with their calculations, thereby inviting more self-assessment.

The estate tax concept permits the creation of a de minimus filing threshold. This filing threshold makes it possible to quickly determine the need to file a return for, and the potential tax liability of, an estate, and permits special handling of small estates. Both tax and title clearance for small estates are greatly simplified.

Under an estate tax concept, tax rates can be structured to provide for revenue increase, neutrality, or decrease as desired. Since the estate itself is responsible for payment of the tax, problems of collection from uncooperative heirs are minimized. At the same time, the estate can elect to shift the tax burden to specific heirs or beneficiaries by using tax to residue clauses in wills or trusts.

Many of the Kansas statutes which currently exist under the inheritance tax system which deal with the inclusion and valuation of assets, adjustment to the gross estate, and deductions for debts and expenses are retained in much the same form, as are many which deal with administration. For the most part, only those which deal with the imposition of tax and the establishment of rates have undergone major revision. Others which foster greater conformity to federal law have been added.