

Approved

February 4, 1992

Minutes of the House Committee on Taxation. The meeting was called to order by Joan Wagon, Chairperson, at 9:10 a.m. on Wednesday, JANUARY 22, 1992 in room 519-S of the Capitol.

All members were present except:

Committee staff present:

Tom Severn & Chris Courtwright, Legislative Research; Bill Edds and Don Hayward, Revisors; Linda Frey, Committee Secretary; Douglas E. Johnston, Committee Assistant.

Conferees appearing before the committee:

Jonathan P. Small, representing the Kansas Automatic Merchandising Association; Jack Stevens, representing the Commercial Vending Co., Inc.; David Allen, representing the Hutchinson Vending Company; Pat Kuester, Cliff's Vending Inc.; Steve Stotts, Department of Revenue; Wayne Probasco, representing the Kansas Soft Drink Association; Hazel Kresyman, car wash owner from Columbus, Ks.; Ron Hein, Kansas Soft Drink Association; Jim Kaup, representing the League of Kansas Municipalities; Frances Kastner, representing the Kansas Food Dealers Association.

Chairman Wagon called the committee to order at 9:10 a.m. She discussed the committee agenda for the next week of the session and requested suggestions from committee members regarding scheduling bills for hearings and discussions.

Public hearings were opened on SB 305 regarding sales tax exemptions for coin-operated devices.

Jonathan P. Small, representing the Kansas Automatic Merchandising Association, spoke in favor of SB 305 (Attachment 1). He said SB 305 made three changes in current law regarding vending machines and the system with which they are taxed. He said the bill would raise approximately \$1.4 million in revenues and that the bill would benefit vendors, the state and local units of government. He said his association favored SB 305 because it forced accountability for taxes on all vendors. Small said Oklahoma had implemented a program similar to that proposed in SB 305 and that they were very successful because the program provided substantial new revenue and was simple to enact.

Committee members requested further information on the industry survey information discussed by Small, the average mark up of items sold in vending machines and the proposed sales tax formula in Small's testimony.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Taxation, room 519-S, State-house, at 9:10 a.m. on Wednesday, January 22, 1992.

In response to a question, Small indicated that the fiscal note he quoted may be higher than Department of Revenue estimates.

Rep. Vince Snowbarger questioned why the state should tax at the wholesale level, which would be a change in state policy, if an annual decal could be affixed to machines and result in easier enforcement of the tax law.

In response to a question, Small said SB 305 did not exempt local option sales taxes; that it did include a mechanism for collection of those taxes.

Jack Stevens, representing the Commercial Vending Co., Inc., spoke in favor of SB 305 (Attachment 2).

David Allen, representing the Hutchinson Vending Company, spoke in favor of the \$50 vending machine fee proposed in SB 305 (Attachment 3).

Pat Kuester, Cliff's Vending Inc., spoke in favor of SB 305 (Attachment 4).

Written testimony from Elizabeth Taylor, Kansas Tobacco-Candy Distributors and Vendors, Inc., was distributed (Attachment 5).

Steve Stotts, Department of Revenue, discussed the fiscal impact and implementation mechanism of SB 305 (Attachment 6).

There were several questions for Stotts regarding the ability of the state to track vending machine sales and the various mechanisms necessary for that.

In response to a question, Stotts said SB 305 could help the Department of Revenue establish greater accountability of sales tax liability because of the proposed annual decals and the collection of the tax at the wholesale level rather than the retail.

Further information was requested regarding the fiscal impact of SB 305.

In response to a question, Stotts said car washes were not, in his opinion, included in SB 305.

Wayne Probasco, representing the Kansas Soft Drink Association, spoke in opposition to SB 305 (Attachment 7). Probasco reviewed the history of the bill.

Hazel Kresyman, car wash owner from Columbus, Ks., spoke in

CONTINUATION SHEET

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opposition to SB 305 (Attachment 8).

Ron Hein, Kansas Soft Drink Association, spoke in opposition to SB 305 (Attachment 9).

Jim Kaup, representing the League of Kansas Municipalities, spoke in opposition to SB 305 (Attachment 10).

Frances Kastner, Director of Governmental Relations for the Kansas Food Dealers Association, spoke in opposition to SB 305 (Attachment 11).

Hearings were closed on SB 305. The committee adjourned at 10:50 a.m. The next meeting will be January 23.

GUEST LIST

COMMITTEE: Headquarters

DATE: 1-22-92

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Jonathan Small	TOPEKA KS	Kansas Automatic Merchand. Assn
Ron Hein	" "	Ks Soft Drink Assn
FRANCES KASTNER	" "	Ks Food Dealers Assn
George Goebel	" "	AARP-SLC-CCTF
HAROLD C. PITTS	" "	AARP-CCTF
Lawrence J Buccero	Leawood Ks	VEND-ALL K.A.M.A.
Richard L. Regnier	Leavenworth Ks	American Vending KAMFA
JACK STEVENS	WICHITA, Ks	COMMERCIAL VENDING CO. KAMA
ANAN ANDERSON	TOPEKA	KANSAS AUTOMATIC MERCH. ASSN.
Jane & W. McBride	TOPEKA	observer
LEE SCHMIDT	TOPEKA	LEE SCHMIDT VENDING KAMFA
Ron Oswald	LAURENCE	Cliff's Vending
Doyle Pepper	TOPEKA	DRINK-O-MAT CO. KAMA
Dennis Kuester	LAURENCE	Cliff's Vending
David Ptacek	Manhattan	Bird Distribution
David Allison	HITCHKINSON	HITCHKINSON VENDING
Dennis Zimmerman	WYSSA	Comm. for Exp. Pub. Council
Dan Haas	Overland Park	KCPZ
William Bradford	MERIDEN, KS	Drink-O-Mat Co. Inc.
Alan Steppatt	Topeka	Pete McMillan & Associates
BEV BRADLEY	TOPEKA	Ks Assoc. of Counties
WALT DARLING	TOPEKA	Ks Division of Budget
Bill Griffin	Topeka	Coca Cola
WILLIAM H. CLAY II	LENEXA	COCA-COLA BOTTLING CO. & MCDONALD'S, INC.





JONATHAN P. SMALL, CHARTERED

Attorney and Counselor at Law  
Suite 304, Capitol Tower  
400 West Eighth Street  
Topeka, Kansas 66603  
913/234-3686

TESTIMONY

KANSAS AUTOMATIC MERCHANDISING ASSOCIATION

PROPONENT: 1992 SENATE BILL 305

I am Jonathan Small, attorney and lobbyist for the Kansas Automatic Merchandising Association (KAMA), which is a non-profit trade association of vending businesses from across Kansas. It strongly supports Senate Bill 305.

I. PROPOSED AMENDMENTS

Senate Bill 305 amends present sales tax policy on vending machine and coin-operated music and game machines as follows:

A. All coin-operated music and game machines pay an annual fee of \$50.00 per machine. Sales tax would not be paid on games, music and related entertainment.

B. Product vending machines pay an annual fee of \$5.00 per machine.

C. All coin-operated machines will require an annual decal to be affixed to each machine.

D. Sales tax (4 1/4%) will be computed upon 135% of the net invoice cost of products sold through vending machines. The tax would be derived thus: 4 1/4% of 135% x vendor's net invoice cost.

II. CHANGE IN TAX POLICY NEEDED

A. Present sales tax program is inefficient and abuse is widespread: Substantial tax revenues are lost to the state and local governments.

KAMA surveys lead members to believe many operators of coin-operated machines do not pay sales taxes at all while many others pay less than the law requires. It is estimated as many as 1 in 3 machines pay little or no sales tax.

A substantial amount is being lost each year which affects 3 categories of taxes to state and local governments: state sales tax, local property tax, state income tax.

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**B. Present sales tax program's inconsistency creates a class which is discriminated against.**

The honest vendor cannot compete against the vendor that pays no sales tax and likely pays little if any personal property tax or income tax due on the retail sales.

**C. The coin-operated machine vendor is at a significant disadvantage because he cannot sell his products for the same amount as the regular retailer.**

The automatic merchandising industry historically has suffered handicap under the sales tax method imposed in Kansas as compared to the traditional "over-the-counter retailer": a vending machine does not allow for the collection of pennies which are easily and routinely collected by other retailers. The vending machine operator is required consequently to raise his prices by a whole nickel (the smallest denomination accepted by the machines) or else pay the sales tax himself. With the average machine only netting 3% to 4% profit annually, the increase in sales tax by just 1/2% has an immediate and painful consequence to the automatic retailer.

### **III. REASONABLY EXPECTED BENEFITS**

**A. The state general fund should receive an increase of over one million in tax revenues.** See Exhibit A. KAMA estimates that the combined effects of the bill will produce approximately \$1,483,975. The tax would keep pace with inflation.

The value of increased compliance by reporting personal property used in business to county appraisers cannot accurately be valued, but should increase substantially.

Further, increased reporting of income for income tax purposes should be realized as well.

**B. Auditing capability by Department of Revenue could be enhanced substantially and the process should be simplified.** The annual licensing requirements and decal will simplify the tracking of machines and locations which will give the department the added ability to determine who is reporting what amount of sales annually and from what machines. This should increase the department's ability to also audit the retailer by using the invoices from wholesaler to retailer. This audit enhancement would carry over to the income tax unit as well.

**C. Local personal property tax reporting to county appraiser will be enhanced.** The licensing requirements will also allow the Department of Revenue to share its information with county appraisers on the location and identification of machines.

**D. Compliance with the sales tax law will be substantially improved.** All retailers will be forced to pay their share of the taxes lawfully due thereby significantly reducing the discriminatory affects of the present tax policy.

The industry, like as has happened in Oklahoma, will help the state enforce tax policy applying to the coin-operated industry. It is reasonable to expect that the visual nature of compliance with license requirements coupled with the simplified auditing needs will improve the department's enforcement efficiency.

#### **IV. CHANGES TO SB 305**

We ask that you bring fairness to a system that has for too long penalized the vending automatic retail industry. We do not ask for tax treatment which is precedent setting. See Exhibit B.

Well over half of the states in this country recognize the differences in retail marketing between the traditional over-the-counter retailer and the automatic merchandiser. Exhibit C. Kansas should address this competitive dissimilarity by the passage of Senate Bill 305.

KAMA, on behalf of its automatic retailers asks your help to balance the scales in the market place and give automatic retailers an opportunity to compete on a level playing field.

It makes this request sincerely believing that to pursue the suggested amendments will disadvantage none and will benefit all.

Your help is very much appreciated.

Respectfully submitted,

Jonathan P. Small  
Attorney/Lobbyist  
304 Capitol Tower Bldg.  
400 W. 8th Street  
Topeka, KS 66603  
(913) 234-3686

IS0121T1



FISCAL NOTE  
SALES TAX: 1991 SB 305

\$ 244,500	Gross license fee for product vending <sup>1</sup>
1,630,000	Gross license fee income music/game vending <sup>2</sup>
1,847,475	Gross sales tax from product vending machines computed as follows:  $32,200,000 \times 135\% \times .0425 = 1,847,475^3$
<hr/>	
3,721,975	Total revenue produced from operation of 1991 SB 305
462,000	Reasonably expected revenue increase from increased compliance <sup>4</sup>
4,183,975	Gross potential revenue to state
1,483,975	Net potential gain over present expected reve- nues for FY 92. <sup>5</sup>

1/ computed thus: 48,900 product vending machines licensed at \$5.00 per machine

2/ computed thus: 32,600 game and music machines licensed at \$50.00 per machine

The number of product vending machines is derived from a survey of machines actually licensed in Oklahoma; which is 98,000 machines. Demographically, Kansas should have 83% of that number which is 81,500 machines. It is estimated by the industry members that approximately 40% of this number represents music and games.

3/ Department of Revenue estimates gross receipts for FY 92 as 64,400,000. The national average product mark up represents 50% of retail sales price. (NAMA Report)

4/ Industry survey conservatively estimates more than one in four product machines does not presently pay sales, personal property tax or income tax. Increased compliance could alone increase the amount of sales tax collected by as much as 25% of that collected presently (estimated gross for FY 92: \$2,700,000) = \$462,000.

5/ Note: this increase does not attempt to take into account potential increase to state from income tax or increase to local taxing units from personal property tax.

IS0121D2

Exhibit     A

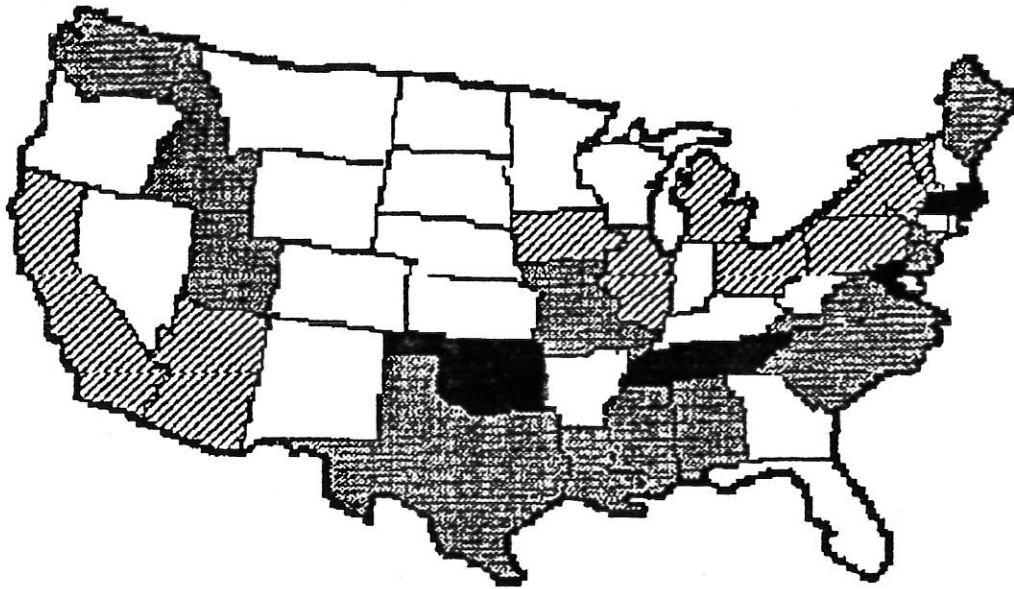
EXAMPLES OF DIFFERENT POINT OF SALE

- 92-19-10.       Repossessed property
- 92-19-11.       Purchased for resale but used by purchaser
- 92-19-15.       Undertakers and funeral directors
- 92-19-16.       Gifts, premiums, prizes, trading stamps, coupons
- 92-19-43.       Tax due upon registration of a vehicle by a dealer
- 92-19-66.       Material removed from inventory by a contractor reported at cost
- 92-19-66c.      Contractor as final user or consumer of tools, equipment and machinery
- 92-19-23.       Existing Reg. on coin-operated devices

Exhibit

B

# SALES TAX TREATMENT OF SALES THROUGH VENDING MACHINES IN THE UNITED STATES



STATES IMPOSING SALES TAX BASED ON A PERCENTAGE OF WHOLESALE OR RETAIL PRICE

- ALABAMA
- IDAHO
- LOUISIANA
- MAINE
- MISSISSIPPI
- MISSOURI
- NEW JERSEY
- NORTH CAROLINA
- SOUTH CAROLINA
- TEXAS
- UTAH
- VIRGINIA
- WASHINGTON



STATES EXEMPTING CERTAIN VENDED SALES OF FOOD PRODUCTS

- ARIZONA
- CALIFORNIA
- ILLINOIS
- IOWA
- MICHIGAN
- NEW YORK
- OHIO
- PENNSYLVANIA
- VERMONT



STATES PROVIDING OTHER SIGNIFICANT SALES TAX TREATMENT

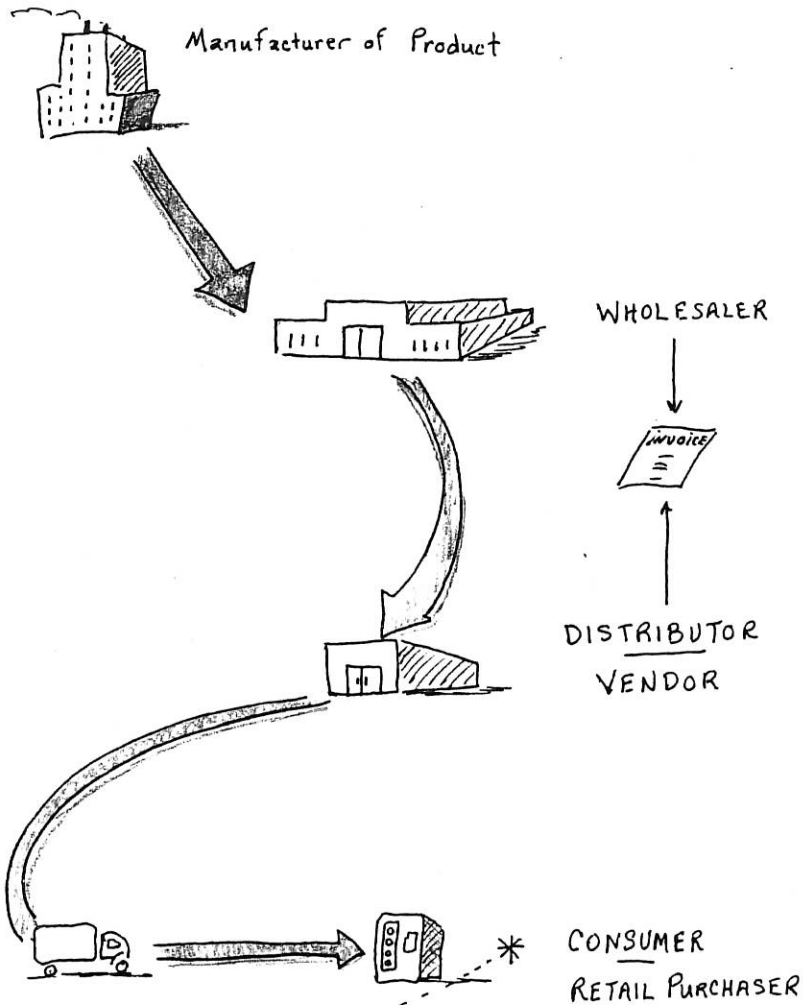
- MARYLAND
- MASSACHUSETTS
- OKLAHOMA
- TENNESSEE

Prepared by: NAMA, Department of Government Affairs  
July 14, 1989

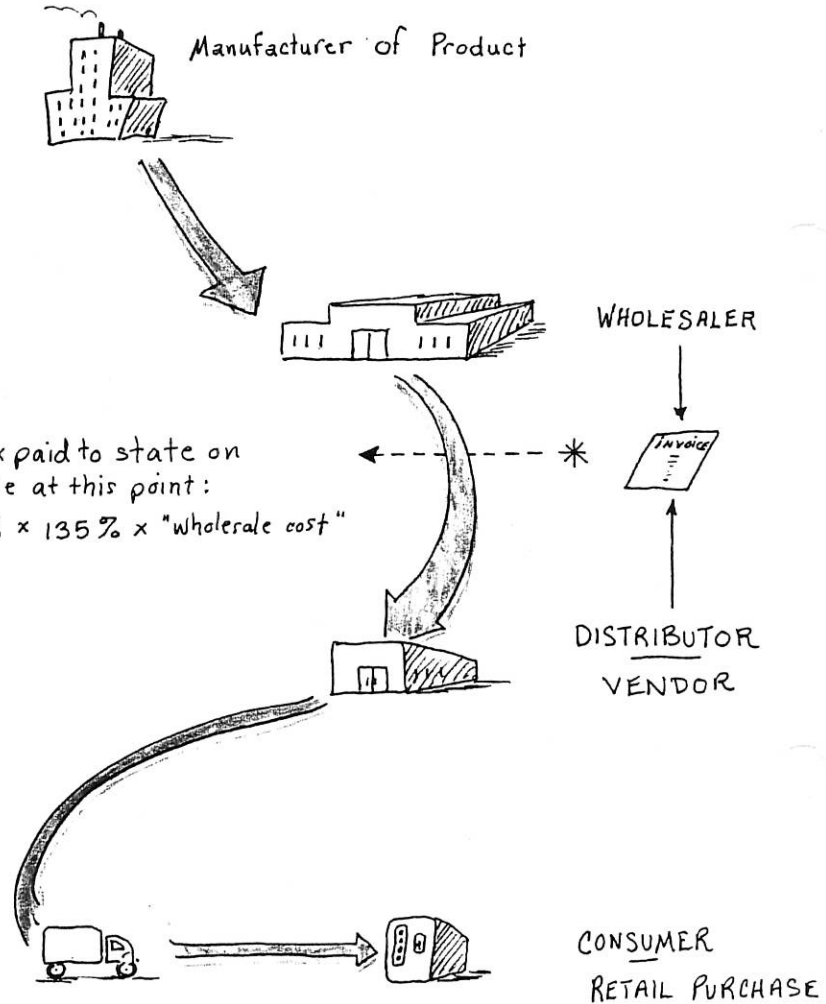
Exhibit   C

KSA 79-3603

1991 SB 305



\* Sale tax paid to state on sale to consumer:  
 "4/4% x gross receipts from machine"



\* Sale tax paid to state on sale at this point:  
 4/4% x 135% x "wholesale cost"

Exhibit       
 D

1-7



# Commercial Vending Company, Inc.

117 NORTH HANDLEY  
WICHITA, KANSAS 67203  
(316) 264-2863

Dear Representatives:

I have been in the vending business since 1965. Since that time, I have seen more and more businesses lease or buy their own vending machines. When I am out making sales calls seeking new accounts, I will run across many accounts that have their own machines. Every time I do I will ask if they are paying sales tax on their sales. Most of the time I will get an answer like "I didn't know I had to pay sales tax" or "I don't know, I will have to check into that. Are we suppose to pay sales tax?" In many cases these businesses truly don't know they are suppose to pay sales tax on vending sales, but in just as many cases they do know they are suppose to pay and don't because they know it is very difficult if not impossible for the state to catch them. Wouldn't it be nice if every vending machine had a sticker on it that said "vending machine sales are taxable."

Senate Bill 305 seeks an alternative form of taxation for vending and amusement machine sales. This would not only put us on equal ground with other retailers and vendors, but would also insure the state of an easier job of enforcing compliance with sales tax.

Thirty-eight of forty-five States which charge sales tax on vended sales, have an alternative form of taxation on vending sales. This illustrates how much the need is accepted.

Every day there is a section in the newspaper called "Own Your Own Business". Legitimate vending operators call these ads "Blue Sky Promotions". In these ads they try to sell people on the idea of getting into the vending machine business. One reason they will tell people this business is so lucrative is because they don't have to pay sales or income tax. Consequently there are lots of individuals who own their own vending machines and don't pay their taxes.

There are two good ways to help the Department of Revenue audit businesses and insure that everyone is paying their taxes. One is by putting a license on every coin operated machine in the state and two is by making people pay sales tax on their invoice rather than on retail sales. Now when the state goes into a business they can see if all the vending machines have a license on them and

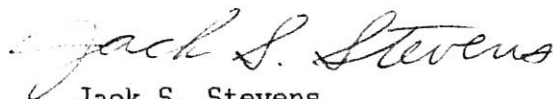
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they can audit invoices to see if all sales tax was paid that should have been. Both of these ideas are in Senate Bill 305.

Today you are going to here from several different organizations and individuals who are opposing Senate Bill 305. Some who are going to oppose the bill, don't know the true workings of the bill. They have been made to believe that the license fee for vending machines is \$50 per machine. It is not \$50 it is \$5. The amusement machine operator has been made to believe his license fee is \$50 plus he has to pay sales tax. This is not true. The amusement operator pays \$50 per machine instead of paying sales tax. So, I am asking you as the committee to understand those two very important points. There is also going to be the accusation that the honest business people who are trying to push this bill through are going to receive a windfall in tax savings. I can tell you the actual facts are some people are going to have a modest savings, some people are going to experience no savings, some are going to experience an actual increase in their tax bill, and the ones who aren't paying sales tax are going to experience a huge increase in their sales tax. But, the real purpose of this bill is not to save people money or cost people money, it is to make sure everyone is on an equal basis and paying their fair share of sales tax. To say anything more is to try and divert your attention away from the real purpose of this bill.

In closing, I would like to say the two main points of this bill are not positive financial notes to our business. The license fee is going to cost all of us more money, and paying sales tax on our invoices means we pay more sales tax immediately upon receiving any cost increases. But, the honest business people of this industry are tired of losing accounts to the dishonest operators. Please help put us all on a level playing field. Vote in favor of Senate Bill 305.

Thank You



Jack S. Stevens  
Commercial Vending Co, Inc

T J HUTCHINSON VENDING COMPANY

ROBERT L. ALLEN

Phone 316-663-2113

416 N. Main

HUTCHINSON, KANSAS 67501

SENATE BILL #305

Good Morning! My name is David Allen and I am part-owner, with my father and brother, of Hutchinson Vending Company in Hutchinson. We operate coin-operated games, providing low-cost entertainment, primarily in convenience stores, bowling centers, and taverns. While our company also operates merchandise vending machines, I am here primarily to speak in favor of the \$50 Amusement Device decal proposed in Senate Bill #305.

We feel that the \$50 decal will eliminate unfair competition from coin-operated games (both privately and commercially-operated) that currently are not paying any sales tax (or income tax for that matter). For example, when the drinking age was increased from 18 to 21, many taverns became unprofitable and closed. Many other tavern/club operators acquired their own games in order to receive all the game revenue, rather than using a vending operator's machines (for which a 50/50 split is standard practice) to help offset the overall decline in their business. Nothing wrong here so far, except that "off the record" private surveys we have conducted show that many locations report none or only a portion of the income these machines take in. Obviously, it is quite hard for the State to verify these

collections, if in fact, the machines can even be located. If all coin-operated games were required to display the \$50 decal, or be seized by the State, the verification/tax collection problem would be eliminated and the playfield would be leveled between competitors in our industry.

The \$50 decal would provide another benefit to the State of Kansas in the form of advance collection of sales taxes since the decals would be purchased in bulk at the beginning of each licensing period.

Therefore, we favor the \$50.00 annual machine license for the following reasons:

(1) it will eliminate unfair competition from vending operators and private owners towards those of us who pay 100% of the sales taxes due the State;

(2) it will insure that the State of Kansas is receiving ALL the sales tax that is due from each coin-operated machine on location;

(3) the purchase of the required decal will be easily verified by enforcement personnel;

(4) the state of Kansas will benefit from the advance collection of sales taxes;

(5) it is very likely that substantial NEW revenue to the state will be generated from those privately-owned games not currently paying any, or only a portion of, the sales tax and income tax due.

In closing, I would just like to say that in these days of ever-increasing tax obligations, such as the recent



drastic increase in real estate taxes, small family businesses such as ours are having increasing trouble surviving. We are not, however, asking for a handout or an exemption from sales taxes, but a more equitable system of taxation that will bring us up to the same level as other retailers in the State. We feel that senate Bill #305 will do just that for us.

*David H. Allen*



"Over 30 Years of Serving the Finest"

Cliff's Vending, Inc.  
Total Refreshment Services

2200 Delaware Lawrence, Kansas 66046  
Phone 1-913-843-3274

## TESTIMONY IN SUPPORT OF SB 305

Dear Members of House Committee,

Thank you for this opportunity to meet with you to discuss a very important tax equity bill, Senate Bill 305. As a vending operator in the state of Kansas, I support Bill 305 for a number of reasons.

The vending company I represent has been operating since 1965. We have worked long and hard to build up a strong customer base in Kansas, and stable employment for our employees, who are all Kansas residents. The last five years has seen a dramatic decrease in the average net profit for National Automatic Merchandising Association operating companies in the \$750,000 - \$1,500,00 sales category. The average net profit in 1989 for these companies was 1/3 of 1% before income taxes. In 1990, these same companies experienced a .7% loss. This includes data from vendors operating in states where there are already tax equity laws in place. From 1985 to 1990 there has been a 130% decrease in profits. The reason for this decline is simple.

Automatic merchandisers are at a distinct disadvantage when sale tax percentages go up. History shows that the trend is for taxes to continually rise. When sales tax percentages go up, automatic vendors have three choices. They can raise their prices by \$.05, risking loss of sales to other competitors who can adjust their prices by smaller increments, like a grocery or convenience store. As you can see, we can't compete on the same level as a retailer. Another more common solution is for the vendor to simply absorb the tax increase. As we have seen, any increase in sales tax severely hurts profits. Or the vendor can simply not pay their fair share of sales tax. Everyday there are ads in the newspapers advertising a good cash business: a vending route.

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A restructuring of the sales tax regarding sales through vending machines would be good for automatic vendors. It would put vending companies on a more even playing field with competitors who are able to collect small tax increases directly from their customers. It would allow vending machine operators the opportunity to compete fairly with each other in the market place by full compliance with Kansas tax laws. A new tax basis for calculating sales tax would simplify vending operators administrative costs by eliminating the need to keep track of varying sales tax rates. Bill 305 would also help to equalize the tax burden within the industry by eliminating operators and owners who neglect to pay sales tax.

Bill 305 would also be good for the state of Kansas. this legislation will help the state and local governments to police the industry by using a new set of tools to reduce the abuse of the present sales tax system in Kansas.

Vending operators provide a valuable service to our customers. These customers include offices, both government and private, factories, schools, hospitals and nursing homes. We deliver food to these locations, therefore offering employees an alternative to leaving the location for their meals. This translates into reduced gasoline usage, and we all benefit from that. Vending is an important industry, and vendors need to be taken seriously.

Bill 305 is not designed to give anyone a tax exemption, break, or advantage over anyone else. It would simply provide a different system that will at last give vending operators a fighting chance to compete fairly with the traditional retailer.

Thank you for your consideration, and I hope you will support Bill 305.

Sincerely,



Pat Kuester  
Cliff's Vending Inc.  
2200 Delaware Street

Lawrence, Kansas 66046  
(913) 843-3274

VENDING PROFIT & LOSS ANALYSIS FOR ALL COMPANIES  
REPORTING FOR 1990

	COMPANY SIZE				YOUR COMPANY	ALL COMPANIES	
	Under \$1,000,000 AVERAGE	\$1,000,000-\$4,999,999 AVERAGE	\$5,000,000-\$9,999,999 AVERAGE	More than \$10,000,000 AVERAGE		1990	1989
RETAIL SALES	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Cost of Sales	51.1	49.0	48.0	44.3		45.4	45.4
Gross profit	48.9	51.0	52.0	55.7		54.6	54.6
PAYROLL EXPENSES							
Route & Location	—	9.3	9.7	10.3	—	10.2	9.9
Maintenance & Repair	—	2.5	2.7	2.3	—	2.5	2.3
Warehouse	—	.7	.8	.7	—	.7	—*
Supervisory	—	2.0	2.4	1.9	—	1.9	2.2
Administrative & all others	—	6.0	5.6	4.7	—	4.8	5.5
Fringe Benefits & payroll taxes	—	4.0	3.9	5.9	—	5.4	4.8
Sub-total PAYROLL EXPENSES	21.0	24.5	25.1	25.8		25.5	24.7
OPERATING EXPENSES							
Commissions to Locations	5.9	6.6	7.7	9.0	—	8.5	7.7
Depreciation on Vending Equipment	—	4.7	4.6	4.5	—	4.4	4.2
Depreciation on Buildings	—	.2	.2	.1	—	.1	.8
Depreciation on Vehicles	—	.8	1.0	.6	—	.6	—**
Other Depreciation	—	.5	.5	.4	—	.4	1.3
Rent & Lease Costs — Vending Equipment	—	.3	.1	.3	—	.3	—**
Rent & Lease Costs — Buildings	—	1.1	.9	.8	—	.8	—**
Other Rent & Lease Costs	—	.2	.3	.6	—	.5	—**
Sales, use or occupational taxes	—	3.2	3.4	3.5	—	3.5	3.4
All other taxes except income and payroll taxes	—	.5	.4	.8	—	.7	.5
Vending machine maintenance & repair costs	—	1.5	1.5	1.0	—	1.1	1.0
Vehicle expense	—	2.1	1.8	1.7	—	1.7	1.7
Insurance premiums	—	1.3	1.0	.7	—	.8	.7
Other operating expenses	—	4.1	3.4	5.7	—	5.6	4.0
All other expenses	21.6	—	—	—	—	—	—
Sub-total OPERATING EXPENSES	27.5	27.1	26.8	29.7		29.0	25.3
TOTAL EXPENSES	48.5	51.6	51.9	55.5		54.5	50.0
OPERATING PROFIT	.4	(.6)	.1	.2	—	.1	4.6
Parent Company Overhead Allocation	—	.4	.5	1.1	—	1.0	2.0
Interest Expense	—	1.2	.8	.5	—	.6	.8
Other Income	—	1.5	1.5	2.1	—	1.9	1.5
PROFIT BEFORE INCOME TAXES	.4	(.7)	.3	.7		.4	3.3
Number of Companies Reporting	74	99	26	22		221	178
Sales Per Employee	—	\$100,362	\$102,667	\$116,590		\$115,346	\$106,481

\* Warehouse personnel payroll was combined with Administrative & all others in 1989.

\*\* Depreciation and rent costs for buildings, vending equipment and all other fixed assets were combined in 1989.





# Kansas Tobacco-Candy Distributors & Vendors, Inc.

Elizabeth E. Taylor - Executive Director

**President**

**RONDA WASSENBERG (06-92)**  
Marysville, Kansas

**Vice President**

**TOM GUTHRIE (06-92)**  
Kansas City, Kansas

**Secretary**

**ROBERT PIOTROWSKI (06-91)**  
Fort Scott, Kansas

**Treasurer**

**RON OSWALD (06-91)**  
Lawrence, Kansas

**Chairman of the Board of Directors**

**JOE WESTERMAN (06-92)**  
Iola, Kansas

**Directors**

**DUANE ZARGER (06-92)**  
Leavenworth, Kansas

**MICHAEL MADDOCK (06-92)**  
Overland Park, Kansas

**JOHN FRAZEE (06-92)**  
Paola, Kansas

**DAVID GREENE (06-92)**  
El Dorado, Kansas

**GEORGE LAWRENCE (06-91)**  
Hutchinson, Kansas

**DOYLE PEPPER (06-91)**  
Topeka, Kansas

**FRANK ROTH (06-91)**  
Salina, Kansas

**Directors at Large**

**KENNETH HAGMAN**  
Pittsburg, Kansas

**DAVE MINICH**

Overland Park, Kansas

**FRED STEVENS**

Wichita, Kansas

**GALE CYNOVA**

Junction City, Kansas

TESTIMONY IN SUPPORT OF SENATE BILL 305

House Assessment & Taxation Committee  
January 22, 1992

The Kansas Tobacco and Candy Distributors and Vendors Association supports the efforts of the Kansas Automatic Merchandising Association through introduction and sponsorship of SB 305.

The Kansas Tobacco and Candy Distributors and Vendors Association is made up of grocery wholesalers and vendors across Kansas who sell products such as groceries, paper goods, snacks, juices, produce and specialty items as well as tobacco and candy.

Membership in KTCDV and KAMA overlaps to a great deal except for the KAMA members who are strictly in the music or games business.

KTCDV has agreed that KAMA will continue to be the lead sponsor on the vending issue and that KTCDV will offer our support of their position. Please know that the position offered by KAMA is fully supported by KTCDV.

For additional information, please feel free to contact Elizabeth E. Taylor, Executive Director or Ronda Wassenberg, Markan Sales (Marysville), President of KTCDV.

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## MEMORANDUM

TO: Ms. Gloria M. Timmer, Director  
Division of Budget

DATE: January 16, 1992

FROM: Kansas Department of Revenue

RE: S.B. 305, as Amended  
by Senate Committee

### BRIEF OF BILL:

Senate Bill 305, as amended by Senate Committee, would amend K.S.A. 12-189a, 79-3603 and 79-3606 relating to coin-operated vending machines.

New Section 1 provides definitions for several different types of coin-operated devices.

New Section 2 prescribes annual fees of \$50.00 for coin-operated music or amusement devices and \$5.00 for each coin-operated vending device. A person operating a device on a temporary basis would have the ability to apply for a special decal from the Department of Revenue which would be affixed to the device. The decal would be valid for any number of 30-day periods less than a full year. The fee for this special decal would be 1/10 of the annual rate for coin-operated amusement or music devices and 1/2 of the annual rate for coin-operated vending devices for each 30-day period for which the decal is issued.

New Section 3 would provide procedures for collection of the fees via the issuance of decals. The person operating a coin-operated device would make application for a decal to the Department of Revenue.

New Section 4 requires the fee to be paid annually on a half calendar year basis. Upon receipt of fee payment, the Department of Revenue would issue a decal for the remainder of the fee year on the basis of the current and remaining half of such fee year.

New Section 5 would establish a \$100 penalty for operating a device without a decal. This penalty would be in addition to the owed fee.

New Section 6 would permit any authorized agent of the Department of Revenue or any law enforcement office to seize a coin-operated device which does not display a decal.

New Section 7 makes the operation of a device without a decal a misdemeanor, punishable by a fine of not more than \$200 and/or imprisonment in the county jail for a maximum period of thirty days.

New Section 8 would define a vendor as a retailer for purposes of K.S.A. 79-3602, and the vendor would be deemed the ultimate consumer for all tangible personal property sold through a coin-operated vending device. The sale would occur at the time the property is purchased for resale by the vendor.

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New Section 9. would amend K.S.A. 12-189a to make all sales made from a coin-operated music or amusement device subject to the taxes levied and collected by all cities and counties under K.S.A. 12-189a.

Section 10 would amend K.S.A. 1990 Supp 79-3603(f) by making the 4.25% state sales tax applicable to 135% of the net invoice costs of a vendor for all sales of tangible personal property intended for sale through a coin operated vending device, whether automatic or manually operated.

Section 11 would amend K.S.A. 1990 Supp. 79-3606 by adding a paragraph, (uu), to exempt from the retailers' sales tax, all sales of tangible personal property through a coin operated device.

It is assumed that this legislation would be amended to take effect January 1, 1993.

#### FISCAL IMPACT:

Passage of this bill could increase annualized revenues in fiscal year 1993 by about \$1.042 million. Assuming a January 1, 1993 effective date and a one month lag, FY 1993 should receive only 5/12ths of this amount or \$434,000.

This bill provides for two sources of revenue. First there would be the revenue from sales of decals representing the annual fee. Information from Oklahoma indicates about 110,000 machines are licensed under their law. Based on state population figures Kansas should be equal to 78% of Oklahoma, or about 85,800 machines. The industry estimates that 40% of the total machines are music and games, or about 34,320.

The total revenue generated from the license fees would be about \$1.973 million. The annual fee on game and music machines would generate \$1.716 million (34,320 x \$50), and the annual fee on vending machines would generate \$.257 million (51,480 x \$5). The general fund would receive all of this revenue where it only receives 16/17ths of the revenue collected from sales taxes.

The second source of revenue is from the collection of sales tax on 135% of the net invoice costs of the vendor. The most current information available is from the 1987 Census of Retailers and Service Industry. In 1987 Kansas gross receipts reported for Coin Operated Amusement Device Operators (SIC 7993) was \$17.2 million, which is the same amount as reported in 1982, and for Automated Merchandising Machine Operators (SIC 5962) gross receipts were \$47.2 million, which is 3% below gross receipts reported in 1982. The sales tax collections on 135% of net invoice cost is computed by assuming the gross receipts figure for Automated Merchandising Machine Operator's represents a 50% mark-up. The estimated sales tax collections on the 135% of net invoice cost is estimated to be about \$1.806 million (\$47.2 x .667 x 1.35 x 4.25%). The general fund would receive 16/17ths of this amount or \$1.700 million.

The total revenue generated by the annual fees **and** the sales tax on 135% of net invoice cost would therefore be about \$3.779 million (i.e. \$1.973 + 1.806), of which the general fund would receive about \$3.673.

Under the present law, assuming no growth in gross receipts from 1987 to 1993, and applying the current sales tax rate of 4.25%, annualized collections in FY 1993 would be about \$2.737 million (i.e. [ $\$17.2 + \$47.2$ ] X .0425). Of this annualized amount, the general fund would receive only 16/17ths or \$2.576 million.

The net impact of the bill would therefore be an annualized increase of about \$1.042 million (i.e.  $\$3.779 - \$2.737$ ).

ADMINISTRATIVE IMPACT:

Note: The following administrative impact was submitted with this bill in the 1991 session. Time did not permit the recomputation of administrative costs but they will be recomputed if there is action on this bill.

The Department of Revenue would need to notify all retailers and other persons affected by this legislation of the changes which this legislation would make, and develop new registration forms and decals.

The costs associated with the above would be as follows:

Commodities

30,000 Notices @ \$.01 each	\$ 300
30,000 Address Cards @ \$.02 each	600
30,000 Envelopes @ \$10.00 per M	600
30,000 Postage @ \$.248 each	7,440
10,000 Registration Applications @ .01¢	100
15,000 Decals @ \$.05 each	750
10,000 return envelopes @ \$12.00 per 500	<u>240</u>
TOTAL COMMODITIES	\$10,030

TOTAL COSTS INCURRED IN FY 1991 \$10,030

APPROVED BY:



Mark Beshears  
Secretary of Revenue

Officer  
As of Nov. 1, 1991

Ron Richardson  
President  
Coca-Cola Bottling Co.  
P. O. Box 365  
Wichita, KS 67201  
(316) 682-1553

Wayne Probasco  
Executive Director

Charles D. Wilson  
Vice-President/Treasurer  
7-Up Bottling Co.  
Topeka, KS 66603

Randy Downing  
Secretary  
Pepsi-Cola General  
Bottlers, Inc.  
Olathe, KS 66061

Laurent C. Debauge  
Ex-Officio  
Coca-Cola Bottling Co.  
Emporia, KS 66801

**K S D A**  
KANSAS SOFT DRINK ASSOCIATION

Directors  
Term Expires 1993

Dan L. Hodges  
Mid-Continent Bottlers,  
Lenexa, KS

Greg Lyon  
Pepsi-Cola Bottling Co.,  
Wichita, KS

Bill Clay  
Coca-Cola Mid-America  
Lenexa, KS

Directors  
Term Expires 1995

John Bennett  
Pepsi-Cola Bottling Co.  
Salina, KS

Dan Wassenberg  
Pepsi-Cola Bottling Co.,  
Manhattan, KS

January 22, 1992

In Re: Senate Bill No. 305 - An Act relating to coin-operated vending devices

Chair Wagon and Members of the House Taxation Committee:

1. My name is Wayne Probasco. I am an attorney in Topeka and represent the Kansas Soft Drink Association.
2. The Kansas Soft Drink Association is strongly opposed to Senate Bill No. 305. The Association views this bill as solely a special interest bill for a special group to reduce their sales tax obligation.
3. Unfortunately, we were not aware that S.B. 305 was introduced in the 1991 session. Otherwise, we would have appeared before the Senate Assessment and Taxation Committee and strongly opposed the bill.
4. In the 1989 Session a similar bill, H.B. 2533, had a hearing before the House Taxation Committee on March 20. Members of our Association and several other people opposed the bill. No action was taken by the Committee, but it was approved for an interim study, Proposal 11, and was assigned to the Special Committee on Assessment and Taxation.
5. A hearing was held before that committee on August 1, 1989. The Association appeared by members and opposed the bill. Also, according to my memorandum dated August 2, 1989, John Luttjohann, Director of Taxation, testified and my notes state:

"John Luttjohann, Director of Taxation, testified that this proposed amendment by KAMA with regard to taxing wholesale receipts would be a radical departure from the present method of sales tax

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collections; there would be additional administrative problems; that the registration of vending machines would be an additional cost and problem; he stated that the fiscal note, though rough, indicated that there would probably be a sales tax loss between 4.4 and 8.8 million dollars per year."

6. On September 7, 1989, the Special Committee on Assessment and Taxation considered Proposal No. 11, which according to my notes states the following:

"Special Committee on Assessment and Taxation Proposal No. 11 -- Taxation of Vending machine Sales Review the application of the sales tax to vending machine sales and study alternative forms of taxation, including the proposal in H.B. 2533.

As I am sure you all know, the above-captioned committee held a hearing on the above-captioned proposal on August 1, 1989.

After this was announced, there was a short silence, then Sen. Montgomery moved that "no action be taken", Sen. Francisco seconded the motion. Chairman Roe then asked for any discussion. There followed silence of perhaps 10 seconds. The chairman then asked that all in favor of the motion say 'Aye' and it appeared that all voted in favor; in any event, he then asked for those who were not in favor to vote 'no' and there were no votes voices."

7. Our Association members service, take care of, own and operate for themselves and others thousands of soft drink vending machines. Our Association is opposed to this bill for the following reasons:

- a. It does not want to become a part of any special tax considerations and/or for special tax favors.
- b. It wants to be treated, as all other groups, under the sales tax provisions.
- c. This bill, if made into law, would cause considerable problems in bookkeeping reporting, differences in calculations, for not only sales tax, but also in preparing records on the soft drink machines, records, reporting, etc.



- d. We are highly opposed to the decal system, penalties and criminal possibilities, including jail time. Temporary placements, record reporting, different calculations - all this would require additional burdens and overhead.
  - e. The Department of Revenue would have to set up a separate method in handling this type sales tax receipts, special forms, special employees, special audits, investigations - a police system.
8. Attached is a summary of S.B. 305, but substantially the bill relating to coin-operated vending machines states:
- a. Place an annual tax - \$50 on music and amusement machines and \$5 on all the others.
  - b. The Dept. of Revenue is delegated the authority to tax and regulate these machines by rules and regulations by issuing decals to place on them.
  - c. The operator or business is liable for penalty and/or criminal act if decal is not on machine. Ambiguous as to owner, operator, business, lessee as to responsibility.
  - d. If no decal, the Dept. of Revenue to seize machine, deliver to it and can then sell machine;
  - e. Penalty is \$100; criminal liability \$200, 30 days in jail, loss of cash. Also, machine seized and sold. (This is not the kind of business that our people want to be involved in.)

9. Then on page 6 of this bill the present law, taxing the gross receipts from any coin-operated device, is repealed, and the following language is inserted:

"135% of the net invoice cost of a vendor for all sales of tangible personal property intended for sale through a coin-operated vending machine, whether automatic or manually operated.

Then on page 18 of this bill under the sales tax exemption the following is added:

"(uu) All sales of tangible personal property through a coin-operated device."

10. This bill is ambiguous and certainly not clear as to who

would be liable for these penalties and these criminal liabilities. It could be the owner of the machine; it could be the owner of the building; it could be a lessee of the building; it could be the person who operates the machine for the product.

11. One of the major problems would be handling the administrative areas of getting decals placed on these various machines and then policing the entire state, seizing machines and going through that procedure, then proceeding with the criminal actions against these various people. The Dept. of Revenue would have to set up a separate method in handling this type sales tax receipts. Special forms, special employees, special audits, etc.

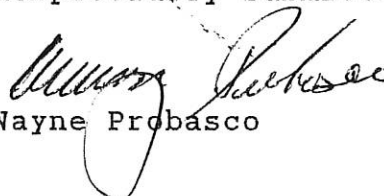
12. Administratively, it becomes more complicated. The special sales tax levies that have been imposed in various municipalities over the state the past several years. There would need to be more records and bookkeeping problems.

13. If this type selling is found to be a savings, competition being what it is, certainly it is within contemplation to see that McDonald's, Burger King, Pizza Hut or any other high volume operator would very likely be selling many of their products through a vending machine, or any other product for that matter.

14. I noticed in the local newspaper last week, (see copy attached), that the Governor has proposed to lower the sales tax on exempt items. Possibly the proponents of this bill should seek that direction.

15. The Kansas Soft Drink Association does not want to become involved in any special interest legislation or more governmental regulation and is strongly opposed to Senate Bill 305.

Respectfully submitted,

  
Wayne Probasco

SUMMARY OF SENATE BILL NO. 305  
By Committee on Assessment and Taxation

Sec. 1

(a) "Coin-operated amusement device" is defined as to provide music, amusement or entertainment.

(b) "Coin-operated music device".

(c) "Coin-operated vending device", includes the above but also dispenses tangible personal property.

(d) "Coin-operated vending device means . . . dispenses tangible personal property.

(e) "Music device".

(f) "Vendor", person who purchases tangible personal property for resale in a coin-operated vending device.

Sec. 2.

(a) A person who operates or permits to be operated at his place of business all coin-operated devices shall pay an annual fee of: \$50.00 for coin-operated music device or coin-operated amusement device; for each coin-operated vending device \$5.00.

(b) The Department of Revenue to issue a decal for each coin-operated device based on a calendar year basis, each year divided into two parts, but decal may be issued on 30 day periods.

Sec. 3.

Any person operating a coin-operated device or operating on their premises shall apply to the Department of Revenue for a decal for each device, along with an application to be filled out and to comply with any rules and regulations of the Department of Revenue.

Sec. 4.

Decal years on a calendar year basis beginning on January 1 and is divided into two halves.

Sec. 5

Any operator of the device or a person on whose place of business has a device without a decal shall be liable for the annual fee and also be liable for a penalty in the amount of \$100.00.

Sec. 6

Any device placed on a location without a decal shall, along with the cash in the receptacle, is considered forfeited to the state and may be sealed and released to the Department of Revenue; upon being seized shall be delivered to the Department of Revenue; the Department shall then hold a hearing on the matter; the operator shall be given 10 days notice of the hearing; if the Department finds that the device and also the cash is forfeited to the Department, shall direct a sale; give 10 days notice, posting in 5 convenient places; the sale shall be by cash, the proceeds applied: (a) to the payment of costs of seizure and sale; (b) the payment of any taxes, including penalties; (c) the balance remitted to the owner. Cash contained in device forfeited. This is a final order and may be appealed.

Sec. 7

Any person responsible for the operation without a decal shall be guilty of a misdemeanor and upon conviction punished by a fine not exceeding \$200.00 or by imprisonment in a county jail for 30 days, or both.

Sec. 8

Vendor is deemed to be the retailer and is the ultimate consumer and pays the sales tax to the state.

Sec. 9

Sales from the following due to taxes levied by all cities and counties: sales from coin-operated music device or a coin-operated amusement device.

Thereafter there appears the sales tax law, K.S.A. 79-3603(f); this section now states the gross receipts from the operation of any coin-operated device dispensing or providing tangible personal property, amusement or other services, except laundry services, whether automatic or manually operated; that is stricken and new wording is: One Hundred Thirty-five Percent (135%) of the net invoice cost of a vendor for all sales of tangible personal property intended for sale through a coin-operated vending device, whether automatic or manually operated.

Sec. 11

K.S.A. 79-3606, there is a list of exemptions from this imposed tax. (uu) All sales of tangible personal property through a coin-operated device.



\$5,000, according to one official.

The president, whose approval ratings have been sinking as the economy slides, has promised to come up with a plan "to bring his country back to work again." He is expected to lay out main elements in a speech on Jan. 28 and his proposed federal budget the next day.

The package is expected to include provisions to allow savers to roll Individual Retirement Accounts into family savings accounts that could be used for specific

- spend on health insurance
- Cut capital gains tax
- Allow rollover of IRA funds into family savings accounts

purposes, said the officials, who spoke on condition of anonymity. Currently taxpayers can't use the funds they put in their IRAs without penalty until age 59.

The administration also is planning cuts in Medicare spending, but one offi-

and the changing needs of U.S. defense in the post Cold War era.

Fitzwater, however, declined to talk about specifics.

On Capitol Hill, meanwhile, Senate Majority Leader George Mitchell called for cutting \$100 billion from the Pentagon budget and putting aside deficit constraints to heal the ailing economy.

"The Cold War is over. It's time to take down the artificial budget walls which prevent us from shifting our priorities

be adjusted, encouraging purchases that would help get the economy moving again. Without any change, the personal exemption for 1992 would be \$2,300 a person.

Bush again will call for a cut in the capital gains tax, with a top marginal rate of 19.6 percent expected on assets held three years, down from the current 28 percent, an official said. That change

Continued on page 2-A, col. 1

Saddam, if he wouldn't sit on Brent Spivey said, "Our country is mentally unwell." White House anniversary has started a leadership in the world. The nation "Saddam Hussein poses its existence process," which White read before Democrats. "We must set in Tsongas. Turning Americans "How many face debt and ex In his st and I rema dam until a Recalling the war, Bu of that effo government ing army a is secure fr of Iraq's ar under interi has been gr

## Taxing exempt items

Gov. Finney wants to begin taxing some sales tax-exempt items at 1 percent, rather than the statewide rate of 4.25 percent. The items below, taken from a list of 32, generally are the biggest revenue producers.

- Electricity, gas and water used in production
- Interstate long-distance telephone calls
- Intrastate long-distance telephone calls
- Participation in city- and county-sponsored recreation
- Services done in original construction of buildings and other structures
- Motor vehicle gasoline and diesel fuel
- Property purchased by interstate carriers
- School textbooks
- Lease or rental of films, records or tapes
- Sale of motor vehicles, trailers or aircraft to non-residents
- Farm machinery
- Electricity, natural gas and water used by residential customers
- Liquefied petroleum gas used by residential customers
- Repair of railroad rolling stock
- Used mobile homes
- Lottery tickets
- Manufacturing machinery and equipment
- Seeds and trees



Amie DeFrain/The Capital Journal

# Finney proposes lower sales tax on exempt items

By ROGER MYERS  
The Capital Journal

Gov. Joan Finney revealed Thursday she wants to raise \$105 million for public schools by imposing a lower sales tax rate on 32 items that presently are exempt.

The governor also said that if all sales tax exemptions were repealed, the state's tax base would broaden enough to allow the sales tax to be reduced to 3.5 percent from the existing 4.25 percent rate.

But a key legislator on the tax issue, House Taxation Committee Chairwoman Joan Wagnon, D-Topeka, said she fears Finney's proposal to repeal sales tax exemptions "is politically impossible" without the governor's help.

"Three years ago, when I started trying to push this load of rocks uphill (repeal of exemptions), it made a whole lot of sense to give up exemptions if everybody benefited," Wagnon said. "The common good would outweigh the special interests. How optimistic I was."

"Now, it could be politically possible for the governor to get this passed. If the governor wants to put all of the muscle and all of the clout that goes with that office behind this proposal, she can get it through.

But I can't do it by myself."

The governor unveiled her proposals during an unusual early morning meeting with the entire House Taxation Committee in her Statehouse office.

Finney had proposed in her State of the State message to the lawmakers Tuesday that they raise the additional revenue by repealing some sales tax exemptions. She didn't specify which ones she wanted abolished.

Mark Beshears, secretary of the Kansas Department of Revenue, presented a list of sales tax exemptions Finney would like repealed and said the governor is proposing taxing those items at the rate of 1 percent. That would raise \$83 million in its first year of operation, and \$105 million on an annualized basis, he said.

Beshears said that if all sales tax exemptions were repealed and the statewide sales tax rate reduced to 3.5 percent, the state would receive \$130.5 million in the first year and \$193.7 million on an annualized basis.

A new or increased tax yields less in its first year of operation because there is a long period between the time the levy takes

Continued on page 2-A, col. 1

**IN**

- Accent
- Advice
- Briefly
- City/Cou
- Classifie
- Comics
- Crosswc
- Daily rec
- Deaths &
- Editorial
- Entertain
- Finance

*720-17-92*

JANUARY 22, 1992

MADAM CHAIRMAN AND MEMBERS OF THE TAXATION COMMITTEE:

THANK YOU FOR THIS OPPORTUNITY TO TESTIFY BEFORE YOU ON SENATE BILL #305.

MY NAME IS HAZEL KRESYMAN. I AM HERE ON BEHALF OF ALL COIN OPERATED CAR WASH OWNERS IN THE STATE OF KANSAS.

MY HUSBAND, RAY, AND I, AND OUR SON, STEVE KRESYMAN OWN AND OPERATE COIN OPERATED CAR WASHES IN THE STATE OF KANSAS IN CHEROKEE COUNTY. WE ALSO OWN COIN OPERATED CAR WASHES IN THE STATES OF MISSOURI AND OKLAHOMA.

CHEROKEE COUNTY IS LOCATED IN THE SOUTHEAST CORNER OF THE STATE AND IS BORDERED BY THE STATE OF MISSOURI AND OKLAHOMA.

CAR WASH OWNERS IN THE STATE OF KANSAS PAY SALES TAX ON THEIR GROSS EARNINGS. CAR WASH OWNERS IN THE STATE OF MISSOURI AND OKLAHOMA DO NOT PAY SALES TAX ON GROSS EARNINGS. IT IS MY UNDERSTANDING THAT ONLY 14 STATES DO COLLECT SALES TAX FROM COIN OPERATED CAR WASHES.

I DO FEEL THAT SALES TAX IS THE ONLY FAIR TAX. TAXING A CONSUMERS ONLY WHEN A PRODUCT IS PURCHASED, AND PASSED FROM THE BUSINESS OWNER TO THE CONSUMER. A COIN OPERATED CAR WASH CANNOT PASS THIS TAX TO THE PERSON USING THE SERVICE AT THE CAR WASH. COIN OPERATED BUSINESSES SELL ONLY A SERVICE TO THEIR CUSTOMERS NOT A PRODUCT.

I FEEL THAT THE FARMER RECEIVED A TAX BREAK WHEN FARM MACHINERY WAS EXEMPTED FROM THE PERSONAL PROPERTY TAX ROLL. IN 1989 WITH RE-APPRAISAL THE BUSINESS MAN RECEIVED A TAX BREAK WITH THE EXEMPTION OF MERCHANTS AND MANUFACTURERS INVENTORY. A CAR WASH DOES NOT HAVE AN INVENTORY, THEREFORE DID NOT RECEIVE ANY TAX RELIEF. IN FACT WITH RE-APPRAISAL THE TAX BURDEN WAS EVEN GREATER.

House Taxation  
Attachment 8  
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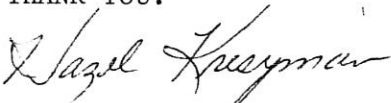
FOR EXAMPLE AND COMPARRISON OF REAL ESTATE AND PERSONAL PROPERTY TAXES ON OUR  
SONS CAR WASH IN BAXTER SPRINGS, KANSAS, HIS 1991 TAXES ARE \$2,276.66 ON A  
FOUR (4) BAY, ONE (1) AUTOMATIC THAT WAS BUILT IN 1990. HIS CAR WASH OWNED  
IN MIAMI, OKLAHOMA, THAT IS FIVE (5) BAYS, ONE (1) AUTOMATIC THE 1991 REAL  
ESTATE AND PERSONAL PROPERTY IS \$1,453.00. TAXES PAID IN KANSAS WAS \$823.66  
HIGHER FOR A SMALLER CAR WASH AND ONE OF LESSER VALUE.

I FEEL THAT A SALES TAX IMPOSED ON COIN OPERATED BUSINESSES IS UNFAIR. THE  
COIN OPERATED CAR WASH HAS BEEN UNFAIRLY TAXED FOR MANY YEARS IN THE STATE  
OF KANSAS. BEING LOCATED IN THE SOUTHEAST CORNER OF THE STATE AND BORDERING  
MISSOURI AND OKLAHOMA, A KANSAS BUSINESS CANNOT CHARGE MORE FOR A SERVICE  
THAN THE SAME BUSINESS IN BORDERING CITIES IN OTHER STATES FOR THE SAME  
SERVICE THAT DOES NOT HAVE TO PAY SALES TAX.

I FEEL THAT NO COIN OPERATED BUSINESS SHOULD BE SUBJECT TO SALES TAX. I ALSO  
FEEL THAT SINCE COIN OPERATED LAUNDRY MATS, VENDING MACHINES, PINBALL MACHINES,  
ETC. HAVE NOT BEEN SUBJECT TO SALES TAX AND COIN OPERATED CAR WASHES HAVE HAD  
TO PAY SALES TAX ON GROSS EARNMINGS FOR YEARS CAR WASH OWNERS HAVE BEEN UNFAIRLY  
TAXED FOR YEARS.

I WILL GLADLY ANSWER ANY QUESTIONS.

THANK YOU.



HAZEL KRESYMAN

**HEIN, EBERT AND ROSEN, CHTD.**  
ATTORNEYS AT LAW  
5845 SW 29th Street, Topeka, Kansas 66614  
Telefax: (913) 273-9243  
(913) 273-1441

*Ronald R. Hein  
William F. Ebert  
Eric S. Rosen*

**HOUSE TAXATION COMMITTEE  
TESTIMONY RE: SB 305  
Presented by Ronald R. Hein  
on behalf of the Kansas Soft Drink Association  
January 22, 1992**

Madame Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Kansas Soft Drink Association.

You have already heard Wayne Probasco relate the myriad of concerns that the Kansas Soft Drink Association has with SB 305 as currently drafted.

Some points, especially the fiscal ramifications, require additional analysis.

The testimony which the KAMA gave to the Senate Taxation Committee re: SB 305 last year states, "KAMA surveys lead members to believe many operators of coin operated machines do not pay sales taxes at all while many others pay less than the law requires. It is estimated as many as one in three machines pay little or no sales tax."

SB 305 creates two categories of vending machines: one includes a product; and the other is music devices or amusement games, which do not utilize any tangible product. Looking at Attachment 1 to my testimony, it is clear that SB 305 would raise the revenues collected from the music/amusement devices significantly, but would lower the sales tax revenues on product devices, utilizing figures supplied by the 1991 fiscal note on SB 305 by your Division of Budget (Attachment 2).

Following up on KAMA's testimony to the Committee, it would appear that if there is any abuse of the system, under-reporting, or non-reporting, it must be occurring in the music device or amusement device portion of the industry. It is obviously common sense that the easiest place to cheat, if there is going to be any cheating, is if there is no product to track. The KSDA has no objections to the portion of SB 305 that would place a \$50 per device charge upon amusement devices or music devices, if the Legislature in their wisdom feels that is a way to prevent cheating by under-reporting or non-reporting of receipts.

However, as to the portion of the automatic vending machines that deals with product, it is quite clear that imposing a sales tax on the invoice cost will actually generate less revenue for the State of Kansas. At a time when the State is badly in need of tax

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01-22-92*

venue, it doesn't seem to make sense to reduce the sales tax on products. If the KAMA is concerned about catching the cheaters, that can be done without changing the tax related to "product" vending machines.

Referring again to the 1991 fiscal note (Attachment 2) the Division of Budget estimated annual expenditures at \$77,000 in salaries and wages. However, in 1989, the Department of Revenue testified that the State of Oklahoma utilizes 25 enforcement agents to check on the registrations of machines. I see no analysis of a similar cost for the State of Kansas to enforce the registration. If that additional cost is factored into the 1991 fiscal note, it would be a net loss to the State of Kansas, even though there was a fee increase of approximately \$1.8 million on the industry.

KAMA suggests in their testimony in 1991 that the Legislature "give automatic retailers an opportunity to compete on a level playing field." If the Legislature adopts SB 305, it will inherently be creating an unlevel playing field, to the advantage of the Automatic Merchandising Association. The members of the KAMA purchase products in significant volume, and therefore are able to get a lower invoice cost than the smaller mom-and-pop operations which may utilize vending machines. Most of the smaller volume sales are left to the members of the Kansas Soft Drink Association to deal with. With the invoice priced to the large merchandising companies being lower, if the sales tax is tied to the invoice cost, then the tax paid by the large vendors would be less than the tax paid by the smaller mom-and-pop operators per unit, even if the retail price of the product is the same. The small mom-and-pop operation is already at a competitive disadvantage by virtue of the higher invoice cost, and then to add a higher state tax per unit onto their backs does not in any way create a level playing field. It does create an economic advantage for the large merchandising companies.

Lastly, the bill presents significant problems to the soft drink industry when a machine is registered and a stamp is placed on it. When the machine breaks down and needs to be repaired, and another machine is substituted, does a new stamp have to be purchased and records changed to reflect the new address of the machine with the Department of Revenue? Does the old stamp have to be removed and a new one acquired on the machine being repaired? There are no answers to these questions presented in the bill.

The Kansas Soft Drink Association is as interested in administrative efficiency as anyone else, but it will be a nightmare to attempt to enforce and apply this law. For example, in a small retail operation with a vending machine, where they fill the machine with their own stock, there is a different invoice price for each can of soda pop which goes into the machine, based upon the date that the stock was acquired, the type of product (diet, caffeine free, etc.), the brand of the product, whether the product was pulled from a case or a 6-pack (which affects the invoice price), etc. In short, it will be an absolute nightmare to attempt to determine the invoice price on these types of vendors. What may be simplistic for a large merchandiser who orders soda pop by the pallet, will turn into an administrative/economic nightmare for the small vendor, and thus, will turn out to be a nightmare for the Kansas Soft Drink Association and its members.

Thank you very much for permitting us to testify today, and I will be happy to answer any questions.

	Product	Music/Games
Current Tax Revenue	\$2,006,000 <sup>1</sup>	\$ 731,000 <sup>2</sup>
SB 305	<u>1,344,020<sup>3</sup></u>	<u>1,630,000<sup>4</sup></u>
Increase (Decrease)	\$ ( 661,980)	\$ 899,000
		( 661,980)
Revenues Increased		227,020
Cost to Set Up--DOR		( 97,066)
Annual Cost to Administer		<u>( 77,108)</u>
TOTAL FY 93 <sup>5</sup>		\$ 52,846
25 Field Agents (DOR Testimony) <sup>6</sup>		<u>( 425,000)</u>
LOSS TO STATE--SB 305		\$ ( 372,154)

<sup>1</sup> 6/4/91 Fiscal Note (\$47.2 million x 4.25%)

<sup>2</sup> 6/4/91 Fiscal Note (\$17.2 million x 4.25%)

<sup>3</sup> 6/4/91 Fiscal Note sum of annual fee  
(48,804 x \$5=244,020) and sales tax (\$1.1 million)

<sup>4</sup> 6/4/91 Fiscal Note (32,536 x \$50)

<sup>5</sup> 6/4/91 Fiscal Note

<sup>6</sup> 25 agents at \$17,000 per year (estimated) (including fringe benefits) (travel, lodging costs not included)



## DIVISION OF THE BUDGET

Room 152-E  
State Capitol Building  
Topeka, Kansas 66612-1578

(913) 296-2436  
FAX (913) 296-0231

DAN FINNEY, GOVERNOR

June 4, 1991

The Honorable Dan Thiessen, Chairperson  
Committee on Assessment and Taxation  
Senate Chamber  
Third Floor, Statehouse

Dear Senator Thiessen:

SUBJECT: Fiscal Note for SB 305 by Committee on Assessment  
and Taxation

In accordance with KSA 75-3715a, the following fiscal note  
concerning SB 305 is respectfully submitted to your committee.

SB 305 would impose an annual fee due each January 1st of:

1. \$50 for each coin-operated music or amusement device;  
or
2. \$3 for each coin-operated vending device.

The owner would display a decal on the coin-operated device  
which would indicate payment of the annual fee.

The Retailer's Sales Tax Act would be amended to include a  
sales tax rate of 4.25 percent imposed on 135 percent of the  
vendor's net invoice costs for all sales through a  
coin-operated vending device. Under current law, the sales tax  
rate of 4.25 percent is applied to the gross receipts from  
operation of a coin-operated device. All sales through a  
coin-operated device would be exempt from retailer's sales tax.

The bill would be effective July 1, 1991.

The Department of Revenue estimates the net impact of this  
bill could increase revenues in FY 1992 by about \$200,000. The  
State General Fund would receive about \$190,000 with the  
remaining revenue credited to the Highway Fund.

This bill provides for two sources of revenue. First,  
there would be the revenue from sale of decals representing the  
annual fee. The department estimates 81,340 machines in the  
state. The industry estimates that 40 percent of the total  
machines are music and games, or about 32,536.



The total revenue generated from the license fees would be about \$1.8 million. The annual fee on game and music machines would generate \$1.63 million (32,536 X \$50), and the annual fee on vending machines would generate \$146,412 (48,804 X \$3).

The second source of revenue is from the collection of sales tax on 135 percent of the net invoice costs of the vendor.

The department estimates \$2.7 million would be received for sales tax at a 4.25 percent rate as follows:

Coin operated amusement devices	\$17.2 million
Automated merchandising machines	<u>47.2 million</u>
Total	\$64.4 million
4.25 percent sales tax	\$ 2.7 million

The sales tax collections on 135 percent of net invoice cost is computed by assuming the gross receipts figure for Automated Merchandising Machine Operators represents a 150 percent mark-up. The estimated sales tax collections on the 135 percent of net invoice cost is estimated to be about \$1.1 million ( $\$47.2 \times .415 \times 135 \times 4.25$  percent).


The total revenue generated by the annual fees and the sales tax on 135 percent of net invoice cost is estimated to be about \$2.9 million. Based on the estimated gross receipts from the two classifications the sales tax revenue under current law should be about \$2.7 million. The net impact of the bill would be an increase of about \$200,000 in FY 1992 sales tax revenues.

The Department of Revenue estimates administrative costs to notify all retailers and develop new registration forms and decals in FY 1991 associated with this bill include:

1. 4.0 additional FTE	\$77,108
2. Commodities	10,030
3. Contractual services	3,822
4. Capital Outlay	2,634
5. Computer related	<u>3,472</u>
Total	\$97,066

Annual expenditures would include \$77,108 in salaries and wages.

Sincerely,

  
Louis S. Chabira  
Deputy Director

cc: Mark Beshears, Revenue



**League  
of Kansas  
Municipalities**

**MUNICIPAL  
LEGISLATIVE  
TESTIMONY**

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL 112 W. 7TH TOPEKA, KS 66603 (913) 354-9565 FAX (913) 354-4186

**TO:** House Committee on Taxation  
**FROM:** Jim Kaup, Acting Executive Director and General Counsel  
**RE:** SB 305—Taxes on Coin-Operated Devices  
**DATE:** January 22, 1992

On behalf of the League and its member cities, I would advise this committee that on its face SB 305 appears to conflict with the League's 1991 convention-adopted Statement of Municipal Policy. Our Statement provides: "We generally oppose any further exemptions to the base of state and local sales taxes, including sales from coin-operated machines."

We want to be fair about this matter, and acknowledge that there may today be enough evasion of existing state and local sales taxes on coin-operated machines to merit a change from the current law. The League also acknowledges that most of our reservations to the original bill were dealt with last session by the Senate amendments to SB 305.

**Local Fees and Taxes.** On the Senate side, we had proposed the deletion of original Section 8 (page 4). We advised the Senate committee that cities and counties did not need statutory recognition of their home rule powers to levy fees or taxes on coin-operated devices, and that the original section, as drafted, was a limitation on local government powers, rather than an authorization. The Senate did strike original Section 8.

**Application of Local Sales Taxes.** Perhaps in response to our concerns about narrowing the sales tax base, the Senate amendments to the bill include what is now Section 9, to continue the local sales tax on sales from coin-operated music devices and coin-operated amusement devices.

**SB 305, as Amended.** As we understand the present bill:

(1) each coin-operated device dispensing products would be subject to a \$5 annual state fee, with the state sales tax and any applicable local sales taxes applied to 135% of the net invoiced cost of the products, rather than to the retail price, and

(2) each coin-operated device dispensing music or entertainment would: (a) be subject to a \$50 state fee, (b) be exempt from state sales taxes, and (c) be subject to local sales taxes.

In conclusion, we note again that the Senate-passed bill meets most of our objections to SB 305. If the 135% of invoice cost and the \$50 state fee are expected to result in no loss in state or local revenues, then, while the League does not support the bill, we have no strong opposition to it if the substantive provisions remain unchanged.

House Taxation  
Attachment 10  
01-22-92

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EXECUTIVE DIRECTOR  
JIM SHEEHAN  
Shawnee Mission

January 22, 1992

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DIRECTOR OF  
GOVERNMENTAL AFFAIRS

FRANCES KASTNER

I am Frances Kastner, Director of Governmental Affairs for the Kansas Food Dealers Association. Our membership includes manufacturers, distributors, wholesalers, and retailers of food products throughout the State of Kansas.

At this time, our retail members ARE PAYING STATE AND LOCAL RETAIL SALES TAX on merchandise sold through vending machines located on their property. The coins are removed from the machines and recorded as a retail sale. SB 305 would change that method of accounting.

Passage of SB 305 could be detrimental to the State by DECREASING THE AMOUNT OF SALES TAX currently paid by our retailers since the tax would be based upon 135% of the COST instead of the retail SALE PRICE. For example: Sales tax paid on the invoiced amount of a 60 cent candy bar could be LESS than the sales tax collected on the selling price of 60 cents. Provisions in SB 305 could also be construed as "price fixing" since all retailers will need to charge at least 35% more than the cost or lose money on vending machine sales.

Several ADDITIONAL COSTS TO THE RETAILER are: A change in the accounting procedures to comply with reporting of vending machine sales based on the invoice, and the \$5.00 charge for the decal on each vending machine operating in a public place. We assume the vending machines in areas NOT OPEN TO THE PUBLIC would be exempt from the \$5.00 fee.

Kansas retailers collect and transmit sales tax without any cost to the State, and we see the passage of this bill as adding more paperwork for the business person WITHOUT ANY COMPENSATION. Even though we believe retailers should be given an Administrative Allowance for collecting state and local sales tax, we realize that when our State is operating under tight budgetary controls it is not the time to expect any compensation. By the same token, this is not a good time to foist upon businesses another accounting procedure or a new fee. We ask you to NOT FAVORABLY RECOMMEND SB 305.

I appreciate the opportunity to present our views, and will be happy to answer any questions you may have.

*Frances Kastner*  
Frances Kastner, Director  
Governmental Affairs, KFSA

*House Taxation  
Attachment II  
01-22-92*