Approved: Phill Kline
Date

MINUTES OF THE HOUSE COMMITTEE ON TAXATION.

The meeting was called to order by Chairperson Phill Kline at 9:00 a.m. on January 17, 1995 in Room 519-S of the Capitol.

All members were present except: Rep. Robert Krehbiel - excused
Rep. Patricia Pettey - excused
Rep. Tony Powell - excused
Rep. Eugene Shore - excused

Committee staff present: Chris Courtwright, Legislative Research Department
Tom Severn, Legislative Research Department
Don Hayward, Revisor of Statutes
Ann McMorris, Committee Secretary

Conferees appearing before the committee:
Charles Warren, President, Kansas, Inc.
David Prager, Attorney, Dept. of Revenue

Others attending: See attached list

Secretary of Revenue John LaFaver welcomed the committee and indicated he was looking forward to sitting in on committee meetings as a spectator. Chairperson Kline congratulated the Secretary on his appointment, welcomed him to Kansas and thanked Secretary LaFaver for taking the time to speak to the committee and urged him to sit in on committee meetings at his pleasure.

Chairperson Kline called on Charles Warren, president, Kansas, Inc. to present the annual report of Kansas, Inc. on Cost-Effectiveness of Economic Development Property Tax Exemptions (required by 1994 HB 2556). (Attachment 1)

David Prager, attorney, Department of Revenue, briefed the committee on the singles tax case status. (Attachment 2)

Introduced constitutional amendments similar to 1994: **HCR 5017 and HCR 5021.**

Moved by Hayzlett, seconded by Donovan, **HCR 5017** and **HCR 5021** be introduced. Motion carried.

Chairperson Kline put committee on notice that other committee bill introductions may be considered this week.

The next meeting is scheduled for January 18, 1995.

TAXATION COMMITTEE GUEST LIST

DATE: 1-17-95

NAME	REPRESENTING
Ed Mosher	City of Topeka
HAROLD PITTS	observer
Bob Corkins	KCCI
[illegible]	Mid Am Lumbermens
JANET STUBBS	Ks. Bldg. IND. ASSN.
BILL JARRELL	BOEING
Harriet Lange	Ks Assn Broadcasters
Trudy Perkins	CPAK
Hal Hudson	NFIB/Kansas
Lynn Wilkinson	" "
WALT DARLING	KS DIVISION OF THE BUDGET
Mark Tallman	Ks Assoc. of School Boards
TOM WHITAKER	Ks MOTOR CARRIERS ASSN.
T.C. ANDERSON	KANSAS SOCIETY OF CPAs
Michelle Peterson	Ks Govermental Consulting
PAM SOMERVILLE	KS Auto Dealers ASSN
MATTHEW MARTIN	KAR
KAREN FRANCE	KAR
Mary Jane Stattelman	KS Farm Bureau

TAXATION COMMITTEE GUEST LIST

DATE: 1-17-95

NAME	REPRESENTING
JOHN LA FAVER	KDOR
Ken Baker	Raytheon Aircraft Co.
Paul M. Klotz	Assoc. of CMHC, KS, Inc
Timothy Paris	Kansas Inc
Dan Hermes	Division of the Budget
Steve Stotts	Revenue
MARK CIARDULLO	REVENUE
Vern Sabol	Revenue
David Prager	Revenue
Jon Newman	KS Governmental Consulting
Julie Hein	

KANSAS, INC.

Charles R. Warren, President

632 S.W. Van Buren, Suite 100, Topeka, Kansas 66603
(913) 296-1460 • fax (913) 296-1463

TESTIMONY

House Committee on Taxation

January 17, 1995

Evaluation of State Business Incentive Programs

Charles R. Warren, Ph.D.
President, Kansas, Inc.

Chairman Kline, members of the committee, I want to thank you for this opportunity to appear today and explain the work that is underway at Kansas, Inc. to increase the accountability of Kansas business incentive programs.

Kansas, Inc. believes strongly that all of our economic development programs, including grants and loans, as well as tax incentives to new and expanding business, should meet the highest standards of accountability. While we would argue that our economic development activities are essential to continued creation of jobs and the growth of our economy, we also believe that these program should be applied within a strategic framework, that decisions to fund specific projects or grant incentives to particular businesses should be subjected to a cost-benefit analysis, and that there should be periodic evaluation and reporting of the results of incentives.

Kansas, Inc. has developed a comprehensive, strategic plan for the economy. It addresses the needs of both rural and urban communities, and it sets the goal of increasing our standard of living through the promotion of higher-wage and higher skilled jobs.

The Legislature gave Kansas, Inc. the responsibility for evaluating economic development programs and tax incentives. We are responsible for reporting our findings to the Governor and the Legislature, and developing recommendations to provide continuous improvement in business assistance and incentives.

In the 1994 legislative session, our capacity to fulfill this responsibility was increased greatly. On our recommendation, bills were enacted to:

1. Require local governing bodies wishing to grant industrial revenue bond property tax exemptions to follow the same procedures required by statute for constitutional tax

House Taxation
1-17-95
Attachment 1-1

abatements. These requirements include: a) preparing an analysis of the cost and benefits of each exemption; b) monitoring the compliance of businesses receiving exemptions; and c) conducting a public hearings on the granting of exemptions.

2. Require local governments to estimate the impacts on state revenues resulting from property tax abatements or exemptions.

3. Fund the development, testing, and reproduction of a cost-benefit analysis model that can be made available to local governing bodies.

4. Require counties to file an annual report with the Property Valuation Division on tax exemptions and abatements and providing Kansas, Inc. access to such reports for purposes of evaluation.

5. Enabling the Department of Revenue to provide Kansas, Inc. with specific and detailed information on state income tax credits and sales tax exemptions for the purposes of evaluation.

6. Requiring applicants requesting funding from the Kansas Economic Initiatives and Opportunity Fund (KEIOF) to conduct a cost-benefit analyses of the projects submitted.

These actions have provided a framework for evaluation and accountability that we are now implementing. Today, I would like to provide you a status report on the actions we have taken and the results to date. I will present a report to you on the work we have undertaken with regard to evaluation of state income tax credits and sales tax exemptions. I would like to express our gratitude to the staff at the Department of Revenue for their extensive help and cooperation.

I am distributing to you a written status report on the project underway to develop a cost-benefit model for local property tax abatements and exemptions. We have contracted with the Kansas League of Municipalities to lead this effort. Chris McKenzie, Executive Director, would be pleased to present further information or answer questions at a later time.

I am also providing some recent data on the Kansas tax system. We have prepared a number of tables and charts that I believe you will find interesting. Some of this data is derived from a soon-to-be published report by the Institute of Public Policy and Business Research of the University of Kansas. Pat Oslund will complete our third report comparing taxes and business costs in Kansas with other selected states in February. I hope that we can provide you a briefing on those results during this session.

COMPARING KANSAS TAXES WITH OTHER STATES

The January issue of *Money* magazine contains a fifty state comparison of state and local taxes. The magazine uses one of several approaches to comparing tax burdens: creating an hypothetical family and calculating the taxes paid in each state. In Kansas, this family, whose earned income is $79,000, pays a total of $7,159 in state and local taxes (income, sales, property and gasoline). This ranks Kansas as the 16th lowest state in tax burden at that income level. 34 states have higher taxes. The most interesting comparison is property taxes. I have provided a table constructed from the magazine that shows Kansas as ranking 43rd in property taxes. In other words, only seven states have lower property taxes for this hypothetical family.

We have prepared a document for you that provides several tables comparing our taxes with other states. These tables are based on data from the U.S. Census Bureau for the year 1992. The Census Bureau is the only reliable source for making state-to-state comparisons. It does not reflect the changes made in the Kansas tax system since that date, however. I would like to review the ten findings we have listed at the front of the document titled, *Assessing Kansas' Tax Burden Among the Fifty States.*

The second document, *Comparison of Kansas Tax Rates With Selected States*, was derived from the KU tax study that is forthcoming.

1. The effective tax rate for 1993 on residential property is estimated to be 1.23 percent and on commercial property at 2.69 percent.

2. In 1991, the effective tax rate on commercial property was estimated to be 3.73 percent. That rate has been reduced by 28 percent because of school finance reform and the constitutional amendment that lowered the classification rate from 30 to 25 percent.

3. The combined state and local potential maximum sales tax rate in Kansas is 7.9 percent. The actual highest rate is 7.65 percent. Colorado and Illinois have sales tax rates that can go to 8.0 percent, while New York's rates can go to 8.5 percent.

4. On a comparison basis, for a family with adjusted gross income of $45,000, Kansas has the lowest individual income tax rates in our region. Illinois and California have lower rates.

5. With regard to corporate income tax rates, Colorado, Illinois, Missouri, and Oklahoma have lower rates than Kansas. At corporate incomes below $50,000, only Missouri has a rate lower than Kansas.

Preliminary Report on:

Kansas Enterprise Zone
Sales Tax Exemptions

1992 through 1994

Presented to:

House Committee on
Taxation

The Kansas Legislature

Kansas, Inc.

January 17, 1995

1-4

TABLE 1

- Numbers of projects have decreased each year.

- Investment exempted from tax has increased each year, particularly during 1994, with a 72% increase over 1993.

- The fact that the number of projects went down while investment went up, indicates manufacturing capital investment is rising.

- During the period between Nov 93 and Nov 94, the Manufacturing Sector of the Kansas economy saw a 1.17% growth in employment.
(3 previous periods showed either no growth or declines in employment in Manufacturing)

- Using Revenue's assumptions, total foregone Sales Tax revenues in 1994 was $34.1 million.

CHART GROUP 1

- 71% of the exempt investment has been made in manufacturing industries.

- The spike in Retail in 94 was due to one very large single retail investment in one rural community.

CHART GROUP 2

- Shows dollar values of investment by industry.

CHART GROUP 3

- The NE Region of the state saw more exempt investment than the other regions for the first time in 1994.

- That advance was attributable mostly to a surge in Manufacturing investment in the NE.

CHART GROUP 4

- In evidence of the success of the 1992 rewrite of the Enterprise Zone Act, exemptions granted in connection with Retail and other "market tied" businesses was drastically reduced in the two Metropolitan Regions of the state between 1992 and 1994.

During this period, businesses had the option of applying for sales tax exemption under the old law or the revised law.

All exemption certificates issued during 1994 were issued under the revised E-Zone statute.

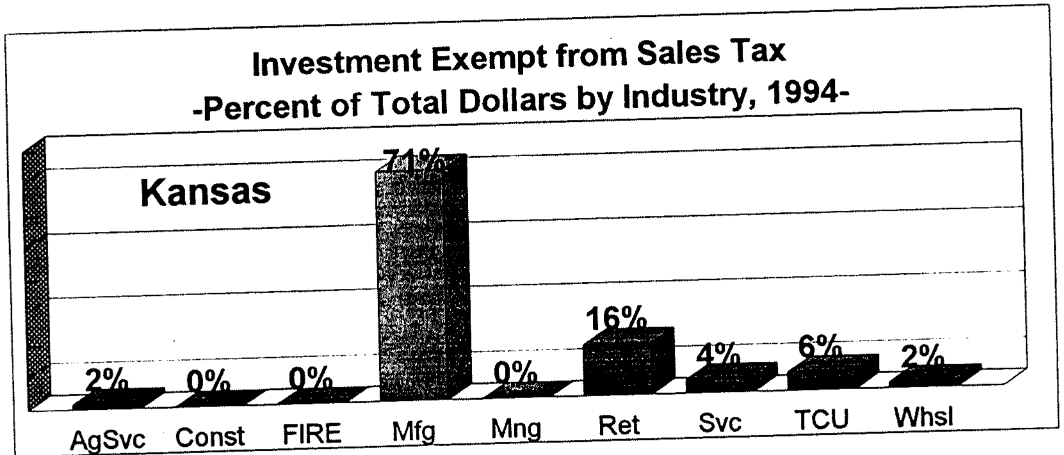
	1992	1993	1994	Chg 92-93	Chg 93-94
Total Projects	318	293	250	-7.9%	-14.7%
Total Investment Exempted	$409,196,879	$462,361,295	$793,847,458	13.0%	71.7%
Estimated State Sales Tax Foregone					
Materials	$10,025,324	$11,327,852	$19,449,263		
Labor	$7,570,142	$8,553,684	$14,686,178		
Total Foregone Tax	$17,595,466	$19,881,536	$34,135,441	13.0%	71.7%

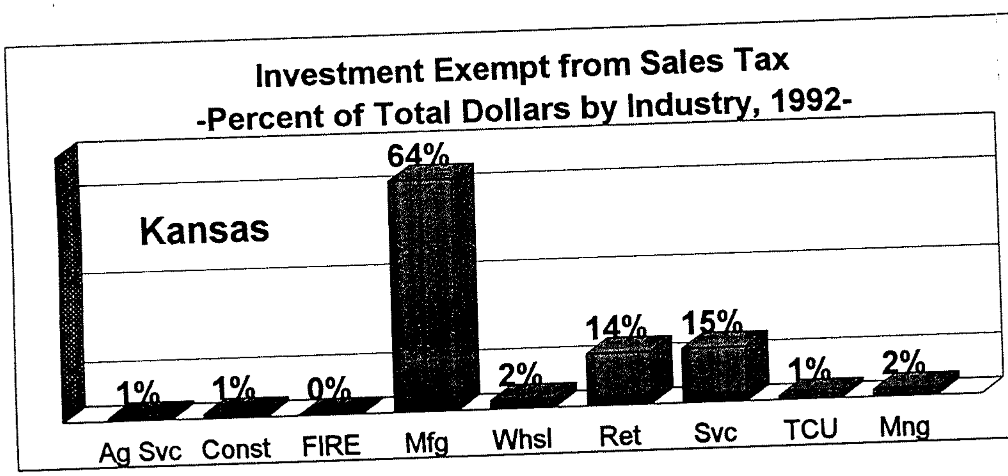
Assumptions:
Revenue estimates 1/2 of investment is made in materials and 1/2 is made in labor costs.

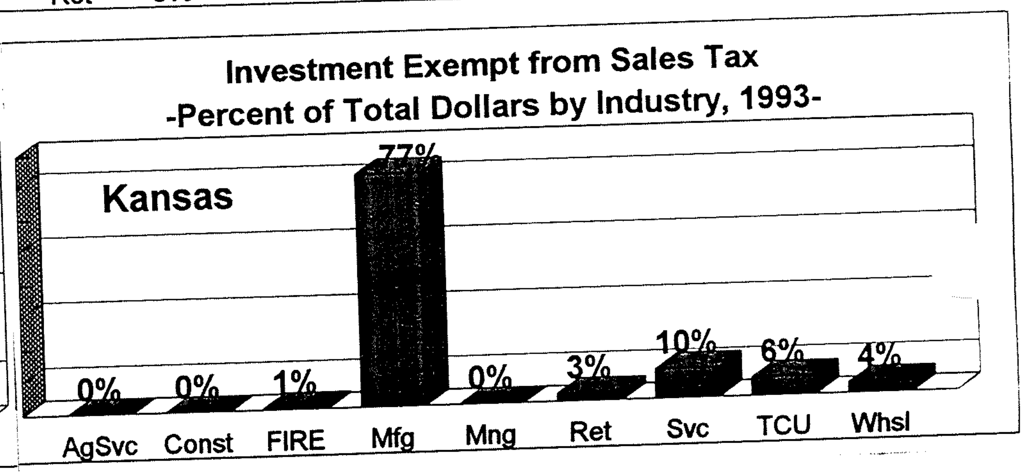
Tax on Material/Equipment 4.9%
Tax on Labor on Original Construction 2.5%
Tax on Labor on Remodeling 4.9%

1-6

TABLE 1

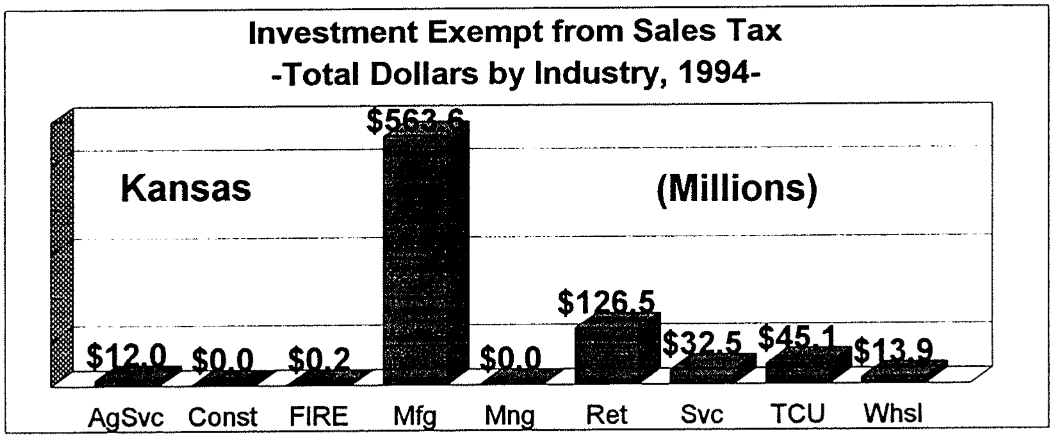


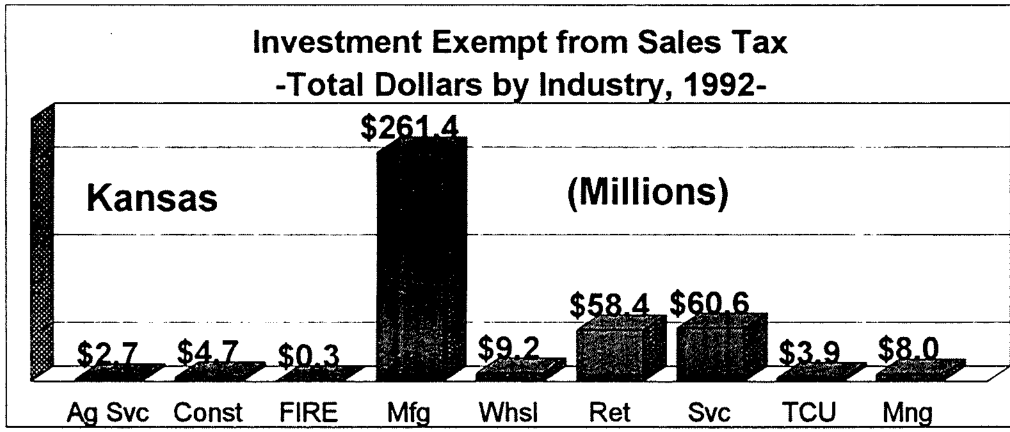


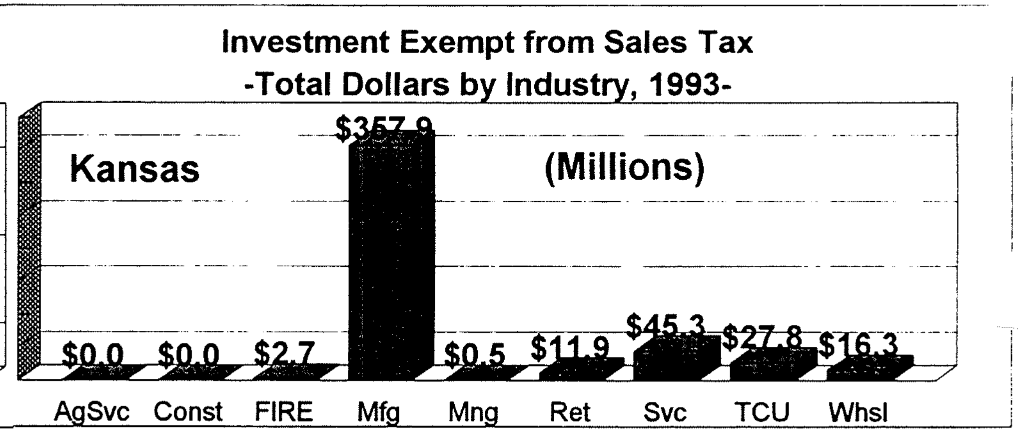


1-7

CHART GROUP 1

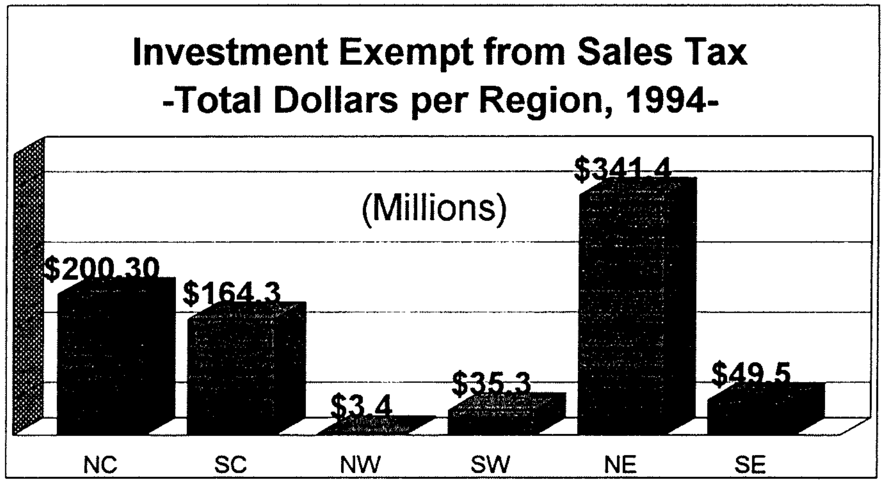


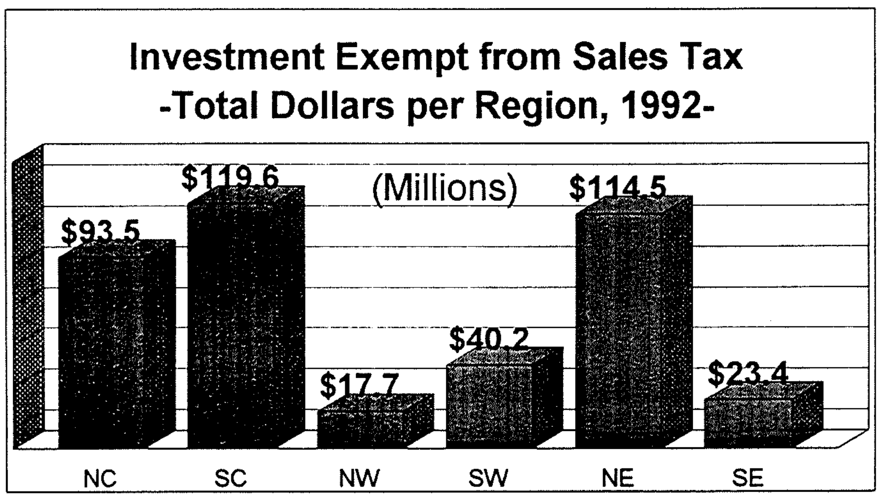


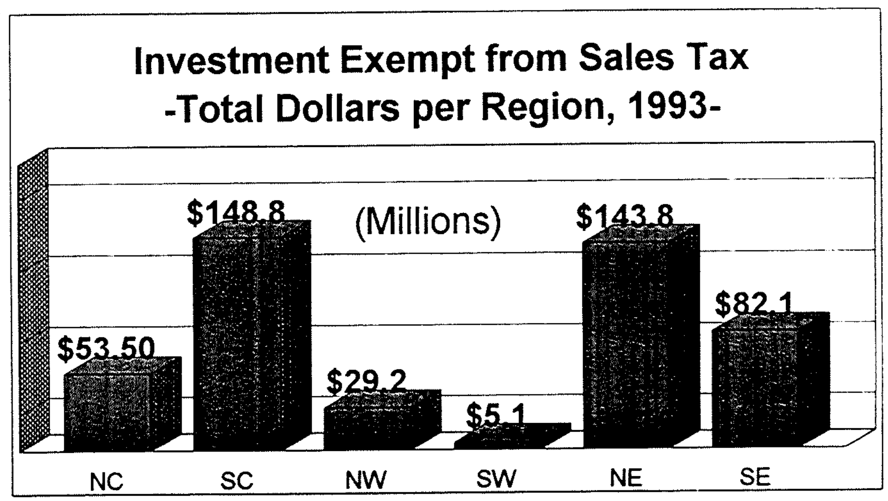


8-1

CHART GROUP 2

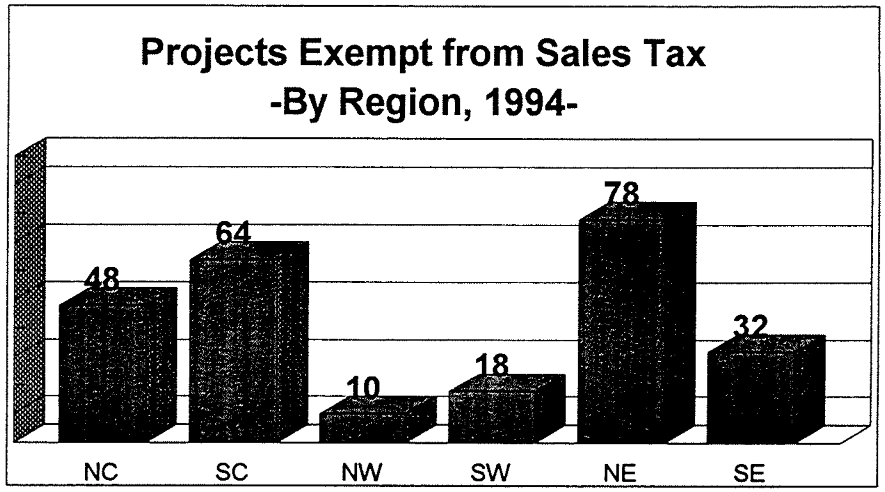


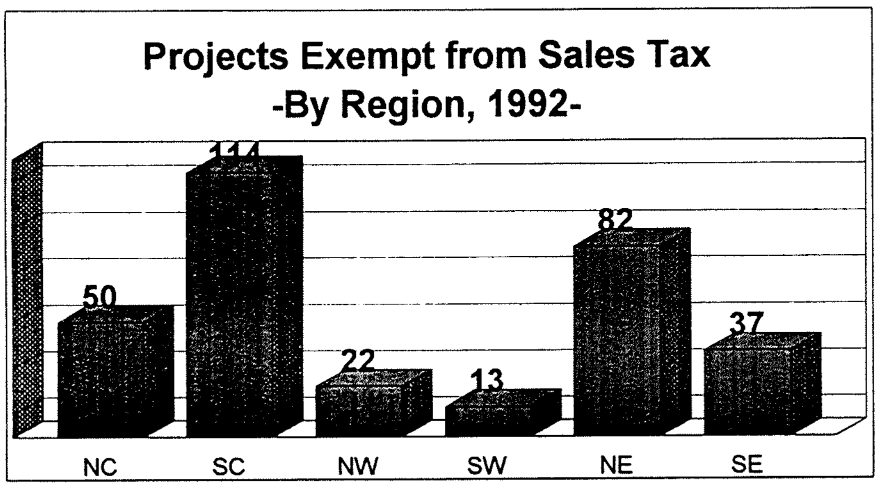




I-9

CHART GROUP 3





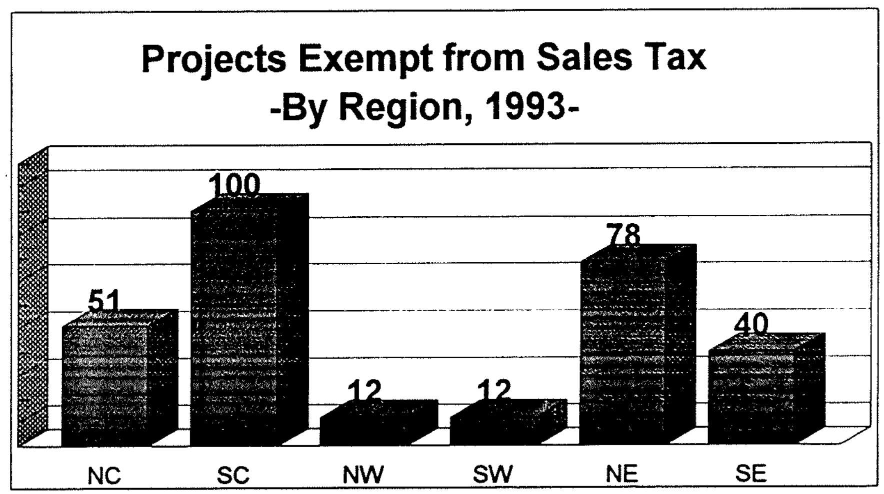
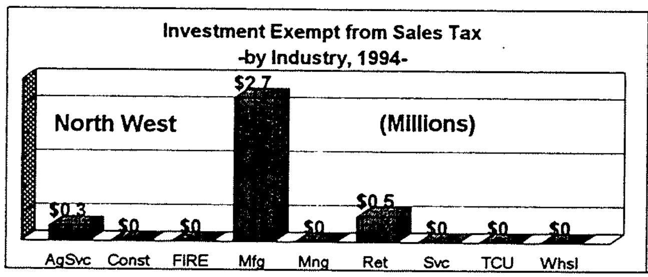
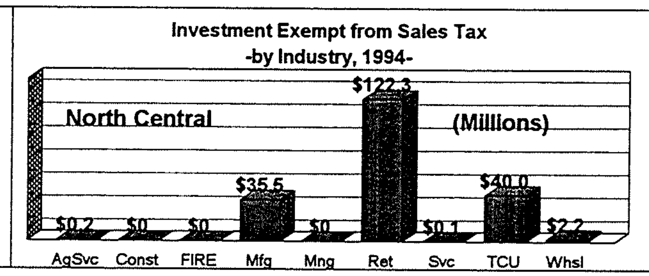
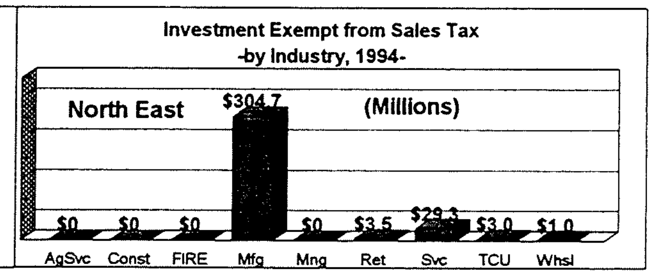
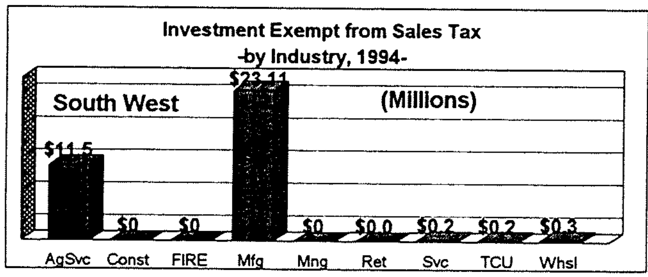


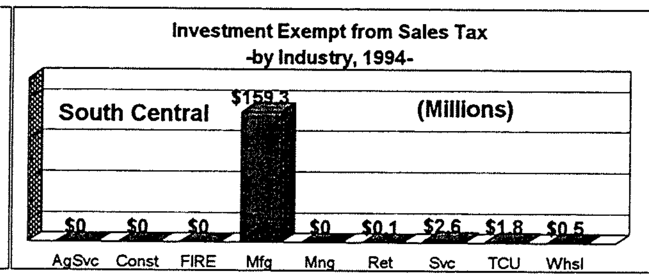
CHART GROUP 3 Cont.











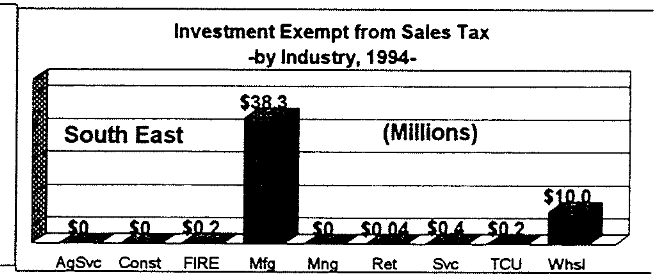
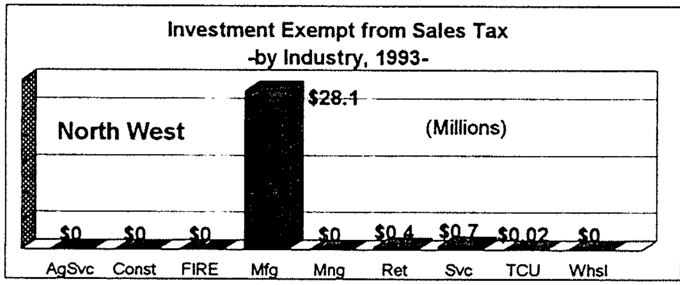
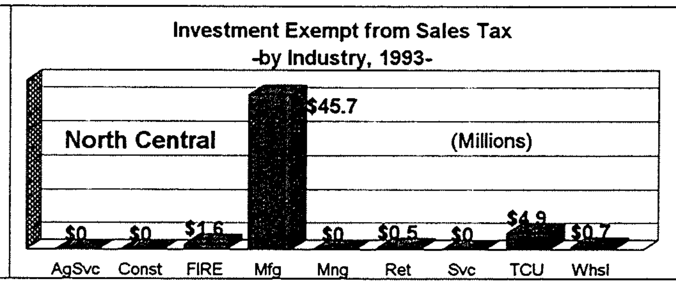
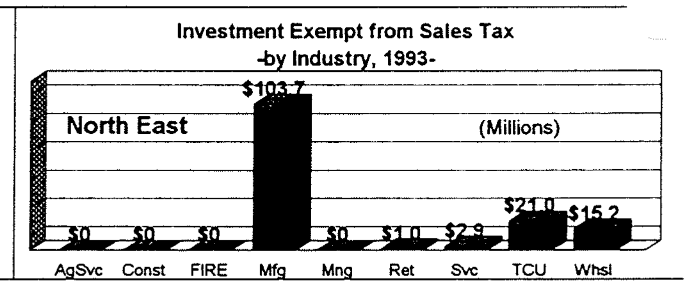
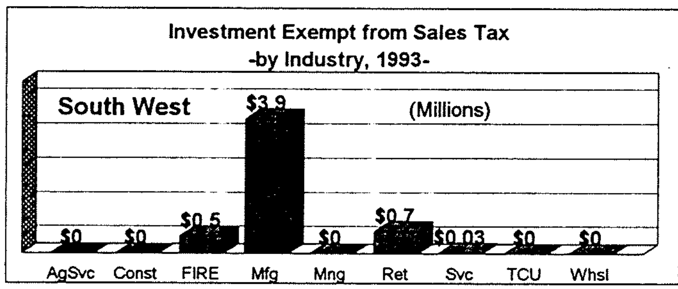


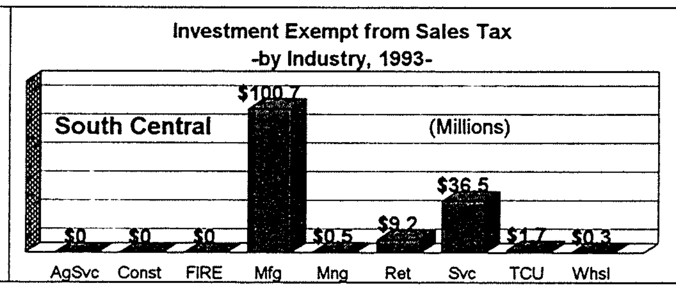
CHART GROUP 4











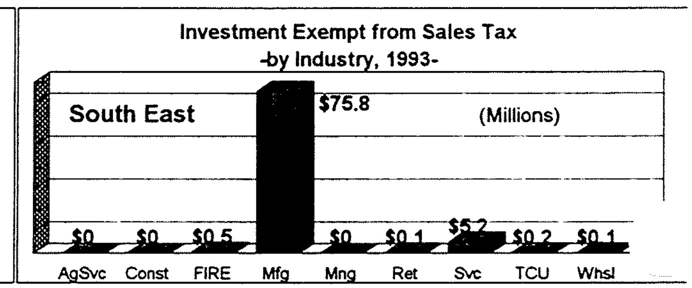
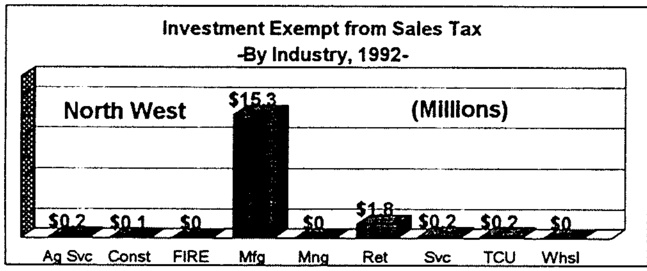
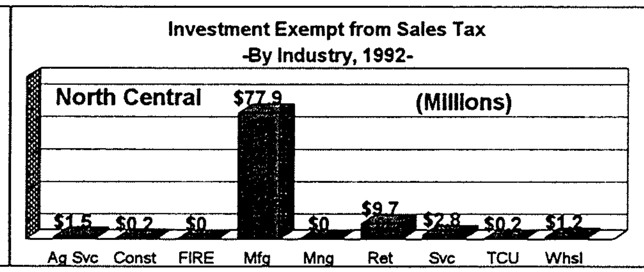
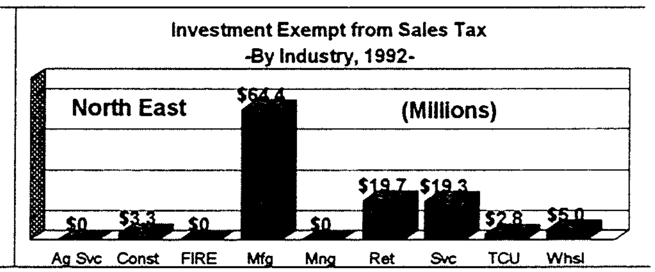
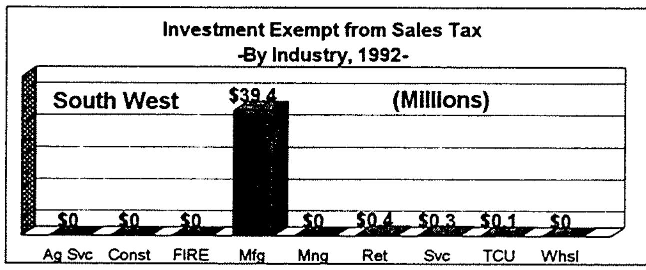


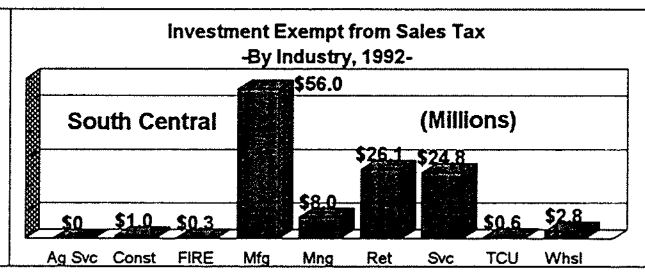
CHART GROUP 4 Cont.











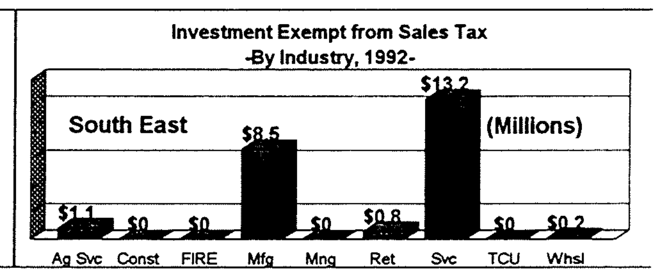
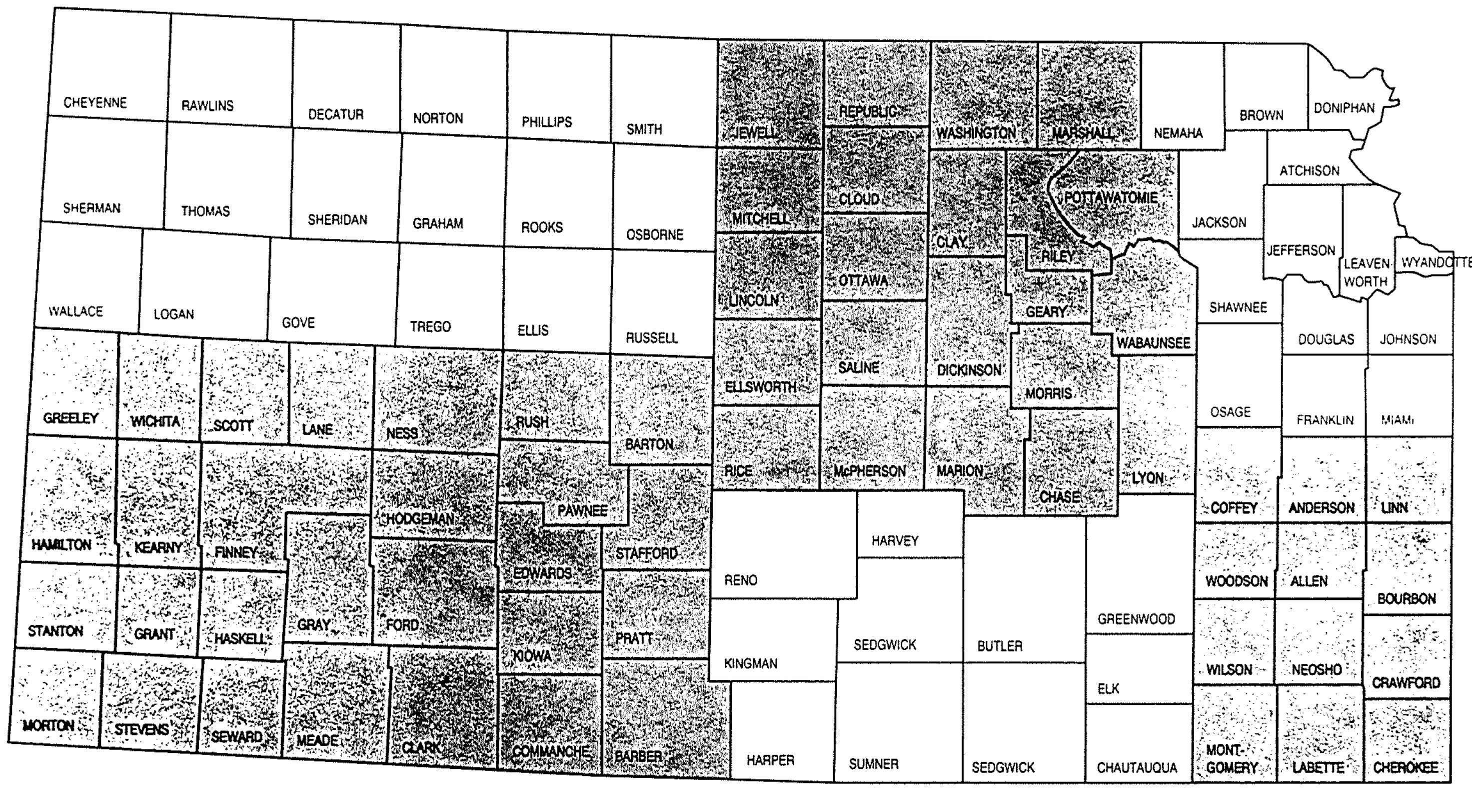


CHART GROUP 4 Cont.

The Regions of Kansas



1-14

House Committee on
Taxation

The Kansas Legislature

STATUS REPORT

EVALUATION OF STATE TAX INCENTIVES

Testimony of:

Charles Warren

KANSAS, INC.

JANUARY 17, 1995

1-15

Background

In 1994, the Kansas Legislature passed H.B. 2556 which gave Kansas, Inc. the responsibility to prepare an annual report evaluating the cost effectiveness of the various income tax credits and sales tax exemptions enacted to encourage economic development within the state. To make that evaluation possible, H.B. 2556 also gave the Department of Revenue authorization to provide Kansas, Inc. access to information on the firms that have taken advantage of state income tax credits and sales tax exemptions.

Progress toward Fruition

Upon passage of H.B. 2556, staff at Kansas, Inc. began coordinating with the Kansas Department of Revenue to acquire the information necessary to conduct the required analysis. Information on firms which were granted sales tax exemption certificates in connection with the Kansas Enterprise Zone Act was relatively easy to obtain, as the Department of Revenue routinely records this information in a database. The Department furnished Kansas, Inc. a copy of that database in September of 1994. That database contains information on all sales tax exemption certificates issued since January 1992. The Department regularly forwards copies of all exemptions certificates issued to Kansas, Inc. on a monthly basis.

Information on income tax credits claimed by companies is more difficult to collect. The Department of Revenue keeps aggregate statistics on tax credits claimed, but for our purposes, more business-specific information must be collected.

To that end, several meetings between the Department of Revenue and Kansas, Inc. were held to develop a questionnaire that is filed with a taxpayer's corporate tax return to report whether that taxpayer has claimed one of eight tax credits. No confidential financial or sales information is requested by the questionnaire. Its objective is simply to build a comprehensive list of businesses having claimed tax credits. From that list a sample population will be surveyed.

Corporate income taxpayers and/or their tax preparers are required, pursuant to H.B. 2556 (1994), to complete this questionnaire and return it along with their corporate income tax statement. The Department of Revenue will collect these questionnaires and forward them to Kansas, Inc. on a monthly basis.

Evaluation Timetable

Enterprise Zone Incentives

As stated above, Kansas, Inc. has data on businesses having received sales tax exemption certificates during the latest three year period. A preliminary report containing analysis of information contained in that database has been prepared and will be presented later in this discussion.

To fulfill that requirements of H.B. 2556, Kansas, Inc. will survey businesses issued exemptions certificates under the new or revamped version of the Kansas Enterprise Zone. As you will remember, the 1992 Legislature enacted a new Kansas Enterprise Zone Act which reconfigured the original program. The new version links sales tax exemptions and related tax credits to the type of business. In addition, Enterprise Zones established in the earlier program were eliminated and E-Zone benefits were extended state-wide with enhanced levels of benefits being made available in certain non-metropolitan areas.

These businesses (or a statistically correct sampling) will be surveyed early in 1995 to determine whether the sales tax exemption they received achieved the intended purpose. The survey will also collect information necessary to evaluate the value of the Job Creation Tax Credit and the Investment Tax Credit, also allowed for under the Kansas Enterprise Zone Act. (Businesses must qualify for the Job Creation Tax Credit in order to receive the Sales Tax Exemption or the Investment Tax Credit.)

Kansas, Inc. is committed to presenting an insightful analysis of the present Enterprise Zone incentives as they are written today during the 1996 Legislative Session.

Other Incentives

The Department of Revenue will mail 35,000 corporate income tax packages beginning in December 1994. The Department of Revenue expects to receive the first returns and completed questionnaires during February, 1995, with those remaining coming in steadily throughout the following 11 to 12 month period. (Corporate tax years, unlike individual income tax years, may or may not follow the standard calendar year.)

The businesses having indicated by questionnaire that they took advantage of income tax credits will be surveyed as soon as a sufficient number have been identified. The surveys will ask questions necessary to determine whether the income tax credit they received actually achieved the intended purpose. The income tax credits to be analyzed and reported on are the Job Creation and Investment Tax Credit, the Research and Development Tax Credit, the income and privilege tax credit for Certified Kansas Venture Capital Companies and Seed Capital Pools, the credit for Workforce Training and Education and Investment Tax Credit (HPIP), and the Community Service Tax Credit (SB 230).

Kansas, Inc. anticipates survey results and in-depth analysis of tax credits taken by Kansas business for the most recent tax year will be presented to the House Taxation and Senate Assessment and Taxation Committee during the 1996 Legislative Session.

Status Report

Uniform Cost-Benefit Methodology and Software
Local Government Property Tax Abatements

January 10, 1995

Prepared by

Kansas League of Muncipalities
for Kansas, Inc.

The following is a status report of the activities-to-date of the project to develop a uniform cost-benefit methodology and computer software for property tax abatements granted by Kansas local governments.

Project Overview

The 1994 Kansas Legislature authorized the development of a uniform cost-benefit model for use by local governments in evaluating property tax abatement requests. Under the law prior to January 1, 1995, local governments were required to conduct a cost-benefit analysis before granting a constitutional property tax abatement. House Bill 2555 extended this requirement to exemptions granted for property financed with industrial revenue bonds effective January 1, 1995. HB 2555 also required the cost-benefit analysis to include the effect of the exemption on state revenues. While a cost-benefit analysis is required, the law does not identify the methodology or form of such analysis.

House Bill 2557 of 1994 allocated $100,000 of Economic Development Initiative Fund moneys to Kansas, Inc. for the development of a cost-benefit model for use by local governments to meet the requirements of HB 2555. HB 2557 provided that the funding be applied to the development, testing, and reproduction of the cost-benefit model and its companion PC-based software. Once completed, the cost-benefit software is to be distributed free-of-charge to Kansas cities and counties.

Providing oversight for the project is the Committee on Tax Abatement Methodology. This committee includes:

- Charles Warren, Kansas, Inc.
- Chris McKenzie, League of Kansas Municipalities
- Richard Carlson, Pottawatomie County
- Gerald Cook, Salina Chamber of Commerce
- David Porter, WI/SE Partnership for Growth
- Larry Powell, City of Pittsburg

The Board of Tax Appeals was invited to participate on the committee, but declined.

The Role of the League of Kansas Municipalities

Recognizing the benefits of a partnership, Kansas Inc. contracted with the League of Kansas Municipalities to provide contract administration and training services in the development of the cost-benefit software. The amount of the contract with the League is $40,383. Under its agreement with Kansas Inc., the League is responsible to:

- Coordinate and staff meetings and activities of the Committee on Tax Abatement Methodology;
- Develop and disseminate a Request for Proposals (RFP) for professional services consulting in the development of the cost-benefit model methodology and computer software;
- Review and analyze RFP responses and recommend a consultant to the Committee;
- Provide day-to-day oversight in the development of the model methodology and computer software;
- Coordinate and facilitate testing of the model methodology and computer software;
- Distribute the final computer software to Kansas cities and counties; and
- Provide training to local officials in the use and interpretation of the cost-benefit software.

A consultant has been selected and the cost-benefit model and software are under active development.

Consultant Selected: Impact DataSource

As the result of a nationwide, competitive selection process, Impact DataSource of Austin and Bryan, Texas, was selected by the Committee to develop the cost-benefit model and computer software. This firm specializes in fiscal impact analyses of economic development activities. The amount of the contract with Impact DataSource is $59,617.

Preliminary Design of Software

It is anticipated that the computer software will be built upon a platform of commercially available spreadsheet and database software. The cost-benefit software will be extremely user-friendly, easily customized by local government users, and flexible in its information reporting.

Schedule to Completion

Begun in August 1994, this project is expected to culminate with the training of local government officials beginning in April 1995. Impact DataSource anticipates completing the development and testing of the cost-benefit software by the end of March 1995. The project to develop a uniform cost-benefit model and computer software for property tax abatements is well under way. The project should be completed by the middle of 1995 and will be on budget.

Money Magazine's Property Tax Listings for Hypothetical Family, January, 1995

Rank	State	Property Tax
1	New Hampshire	$5,091.00
2	New Jersey	$4,710.00
3	Rhode Island	$4,319.00
4	Connecticut	$4,317.00
5	Maine	$3,504.00
6	Wisconsin	$3,339.00
7	South Dakota	$3,269.00
8	Michigan	$3,183.00
9	Massachusetts	$3,049.00
10	Maryland	$3,035.00
11	Vermont	$2,802.00
12	Texas	$2,730.00
13	Oregon	$2,728.00
14	Nebraska	$2,706.00
15	North Dakota	$2,694.00
16	Illinois	$2,669.00
17	New York	$2,610.00
18	Washington	$2,537.00
19	Pennsylvania	$2,480.00
20	Florida	$2,475.00
21	Arizona	$2,423.00
22	California	$2,302.00
23	Georgia	$2,215.00
24	New Mexico	$2,165.00
25	Montana	$2,134.00
26	Alaska	$2,132.00
27	Ohio	$2,033.00
28	South Carolina	$2,032.00
29	Iowa	$1,986.00
30	Minnesota	$1,921.00
31	Mississippi	$1,901.00
32	Virginia	$1,882.00
33	Tennessee	$1,844.00
34	Colorado	$1,736.00
35	North Carolina	$1,729.00
36	Indiana	$1,699.00
37	Nevada	$1,686.00
38	Kentucky	$1,676.00
39	Idaho	$1,666.00
40	Louisiana	$1,659.00
41	Arkansas	$1,656.00
42	Utah	$1,563.00
43	**Kansas**	**$1,509.00**
44	Missouri	$1,478.00
45	West Virginia	$1,477.00
46	D.C.	$1,473.00
47	Hawaii	$1,469.00
48	Delaware	$1,408.00
49	Oklahoma	$1,171.00
50	Wyoming	$1,129.00
51	Alabama	$836.00

1-20

Research Report

Assessing Kansas' Tax Burden Among the Fifty States

January, 1995

1-21

Kansas, Inc.

632 S.W. Van Buren, Suite 100•Topeka, Kansas 66603•913-296-1460

Assessing Kansas' Tax Burden Among the Fifty States

1) Kansas ranked 31st in total state and local taxes collected in FY 1992, with revenues totaling $4.939 billion. (Table 1)

2) Kansas state and local taxes increased 31.3% from 1981 to 1992, after adjustments for inflation. This increase ranked 35th nationwide. (Figure 1)

3) Kansas state and local taxes per capita totaled $1,964.11, ranking 28th nationwide. (Figure 2)

4) Local tax revenues were greater in Kansas than in Iowa, Missouri, Nebraska, and Oklahoma. (Figure 3, IPPBR)

5) Kansas taxes per capita remain substantially lower that the rest of the nation, but higher than the region. Taxes per capita declined in Kansas from 1991 to 1992. (Figure 4, IPPBR)

6) Kansas was less dependent on *individual income taxes* than were other states in the region and the U.S. However, Kansas relied more upon *corporate income taxes* than did all other states in the region. (Figure 5, IPPBR)

7) Kansas local governments received more revenue from *property taxes* than the regional and national averages. Local *sales tax* revenues were less than the regional average and were comparable to the national average. (Figure 6, IPPBR)

8) Total state and local taxes were 10.13% of Kansas' total personal income for FY 1992. Kansas ranked 32nd in the nation in state and local taxes as a percent of total personal income. (Figure 7)

9) Per capita state and local taxes grew by 13.26% in Kansas between the years 1981 and 1992, after adjustments for inflation. Kansas ranked 31st nationwide in percentage tax growth per capita. (Figure 8)

10) *Total personal income* increased slightly more than *state and local taxes* between the years 1981 and 1992. Total state and local tax revenues grew by 108.25%, while total personal income for the same years grew by 109.31%. (Figure 9)

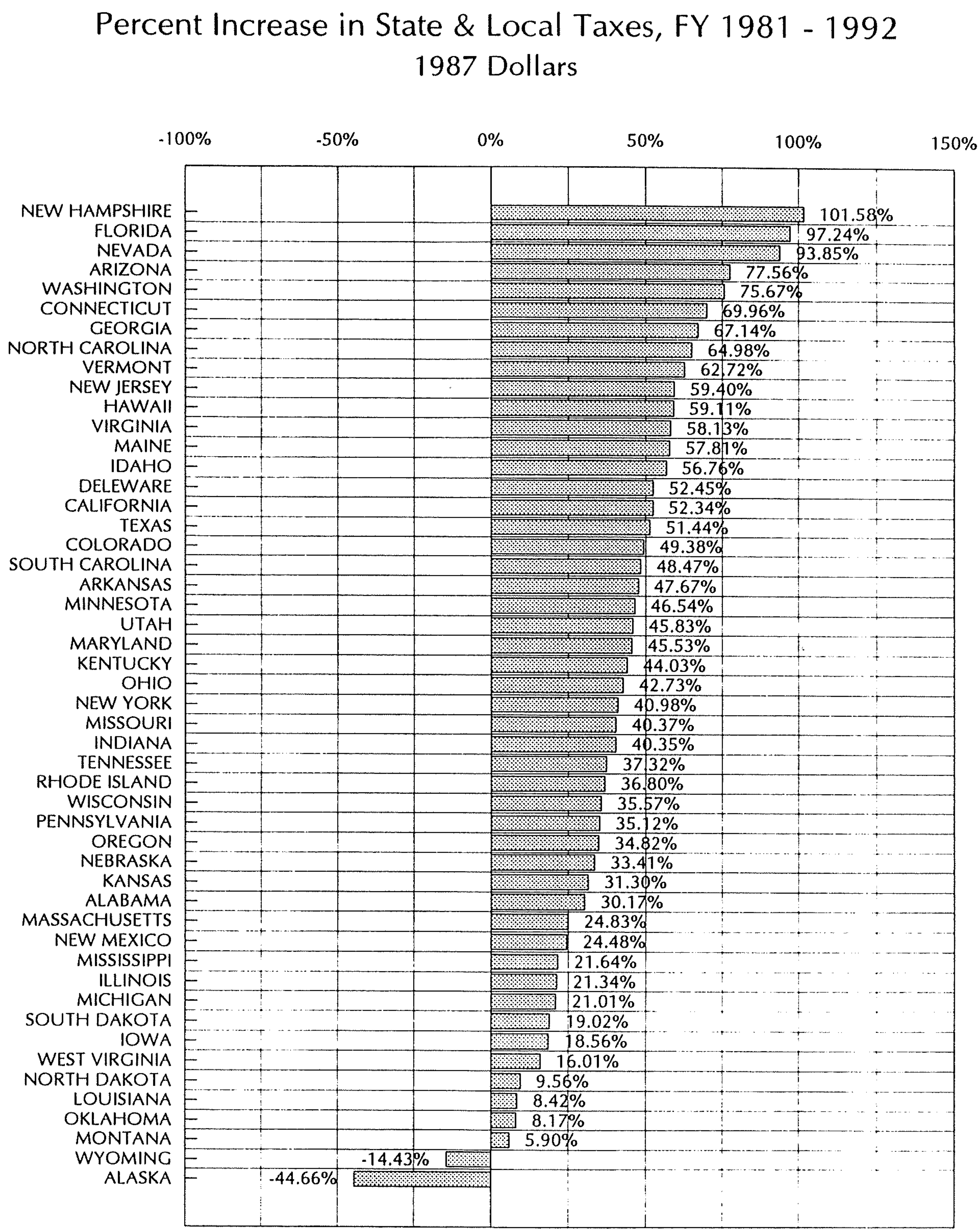
Table 1

Total State & Local Taxes

	Total State & Local Taxes FY 1981	Total State & Local Taxes FY 1992	Rank
CALIFORNIA	$29,828,300,000	$72,073,742,000	1
NEW YORK	$28,618,300,000	$63,993,572,000	2
TEXAS	$13,671,000,000	$32,838,328,000	3
PENNSYLVANIA	$12,257,200,000	$26,268,472,000	4
FLORIDA	$8,284,900,000	$25,919,228,000	5
ILLINOIS	$13,306,000,000	$25,609,314,000	6
NEW JERSEY	$9,050,800,000	$22,882,217,000	7
OHIO	$9,424,800,000	$21,336,525,000	8
MICHIGAN	$10,682,100,000	$20,503,351,000	9
MASSACHUSETTS	$7,731,800,000	$15,309,017,000	10
VIRGINIA	$5,057,100,000	$12,684,150,000	11
NORTH CAROLINA	$4,737,700,000	$12,397,236,000	12
GEORGIA	$4,666,000,000	$12,369,401,000	13
WASHINGTON	$4,286,800,000	$11,944,237,000	14
WISCONSIN	$5,399,000,000	$11,609,642,000	15
MARYLAND	$4,967,900,000	$11,467,141,000	16
MINNESOTA	$4,767,400,000	$11,081,160,000	17
INDIANA	$4,540,100,000	$10,106,757,000	18
CONNECTICUT	$3,722,900,000	$10,036,231,000	19
MISSOURI	$3,883,400,000	$8,646,070,000	20
ARIZONA	$2,750,900,000	$7,747,332,000	21
TENNESSEE	$3,394,700,000	$7,393,684,000	22
LOUISIANA	$4,115,100,000	$7,076,326,000	23
COLORADO	$2,960,200,000	$7,013,534,000	24
KENTUCKY	$2,884,000,000	$6,588,521,000	25
OREGON	$2,913,000,000	$6,229,106,000	26
ALABAMA	$2,875,800,000	$5,937,421,000	27
SOUTH CAROLINA	$2,423,400,000	$5,706,939,000	28
IOWA	$3,028,400,000	$5,694,685,000	29
OKLAHOMA	$3,054,600,000	$5,240,594,000	30
KANSAS	**$2,372,000,000**	**$4,939,746,000**	**31**
ARKANSAS	$1,551,200,000	$3,633,180,000	32
MISSISSIPPI	$1,792,600,000	$3,458,601,000	33
HAWAII	$1,344,200,000	$3,392,340,000	34
NEBRASKA	$1,528,900,000	$3,235,101,000	35
UTAH	$1,331,900,000	$3,080,795,000	36
WEST VIRGINIA	$1,632,100,000	$3,003,188,000	37
NEW MEXICO	$1,432,700,000	$2,828,753,000	38
NEVADA	$882,300,000	$2,712,857,000	39
MAINE	$1,062,600,000	$2,659,775,000	40
NEW HAMPSHIRE	$731,500,000	$2,338,839,000	41
ALASKA	$2,569,000,000	$2,254,758,000	42
RHODE ISLAND	$1,034,600,000	$2,244,870,000	43
IDAHO	$763,200,000	$1,897,659,000	44
DELEWARE	$669,100,000	$1,617,873,000	45
MONTANA	$866,300,000	$1,455,181,000	46
VERMONT	$505,000,000	$1,303,398,000	47
NORTH DAKOTA	$643,300,000	$1,117,937,000	48
SOUTH DAKOTA	$587,000,000	$1,108,157,000	49
WYOMING	$800,000,000	$1,085,772,000	50

Source: Government Finances, FY 1981, FY 1992

Figure 1

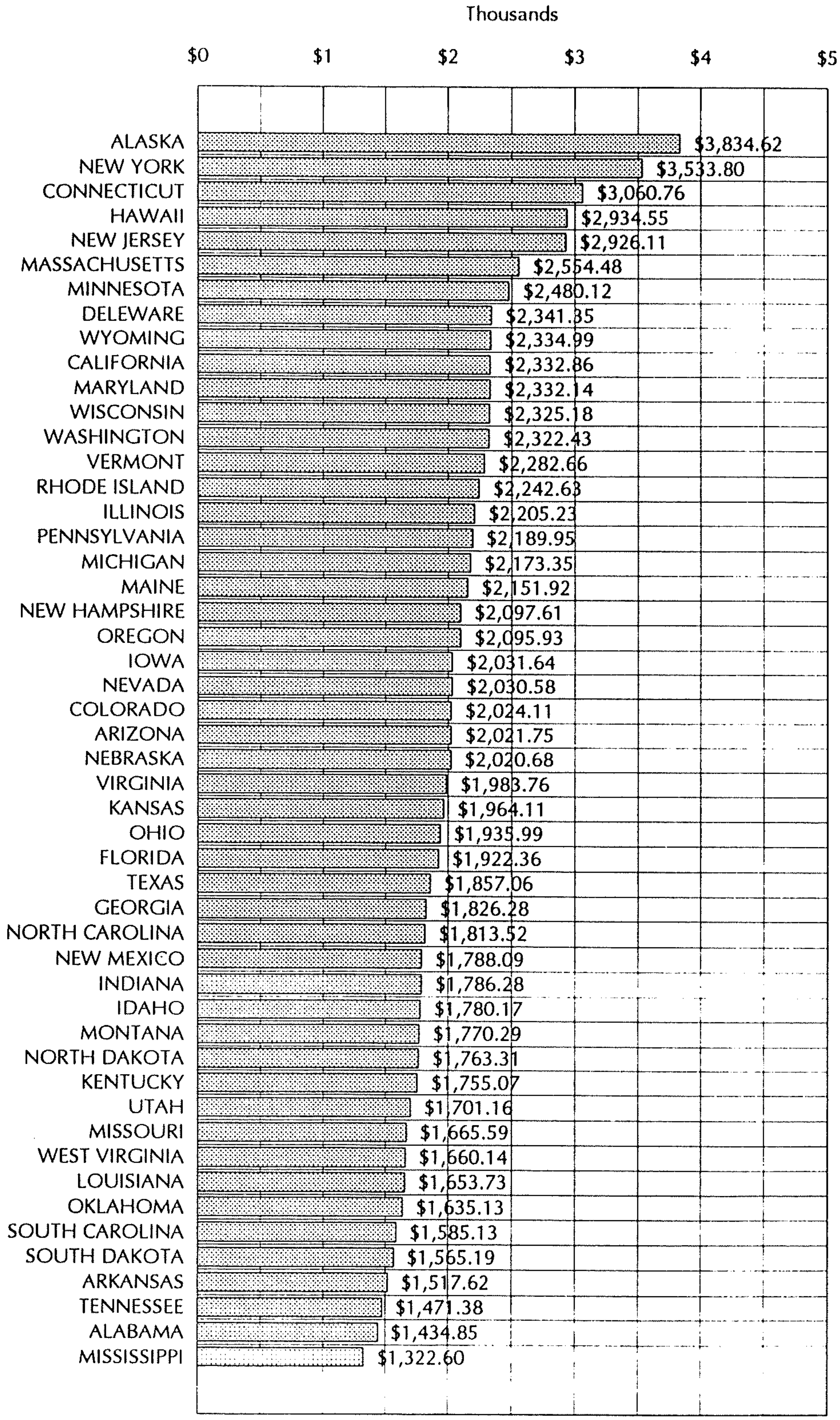


Source: Government Finances, FY 1981, 1992

Figure 2

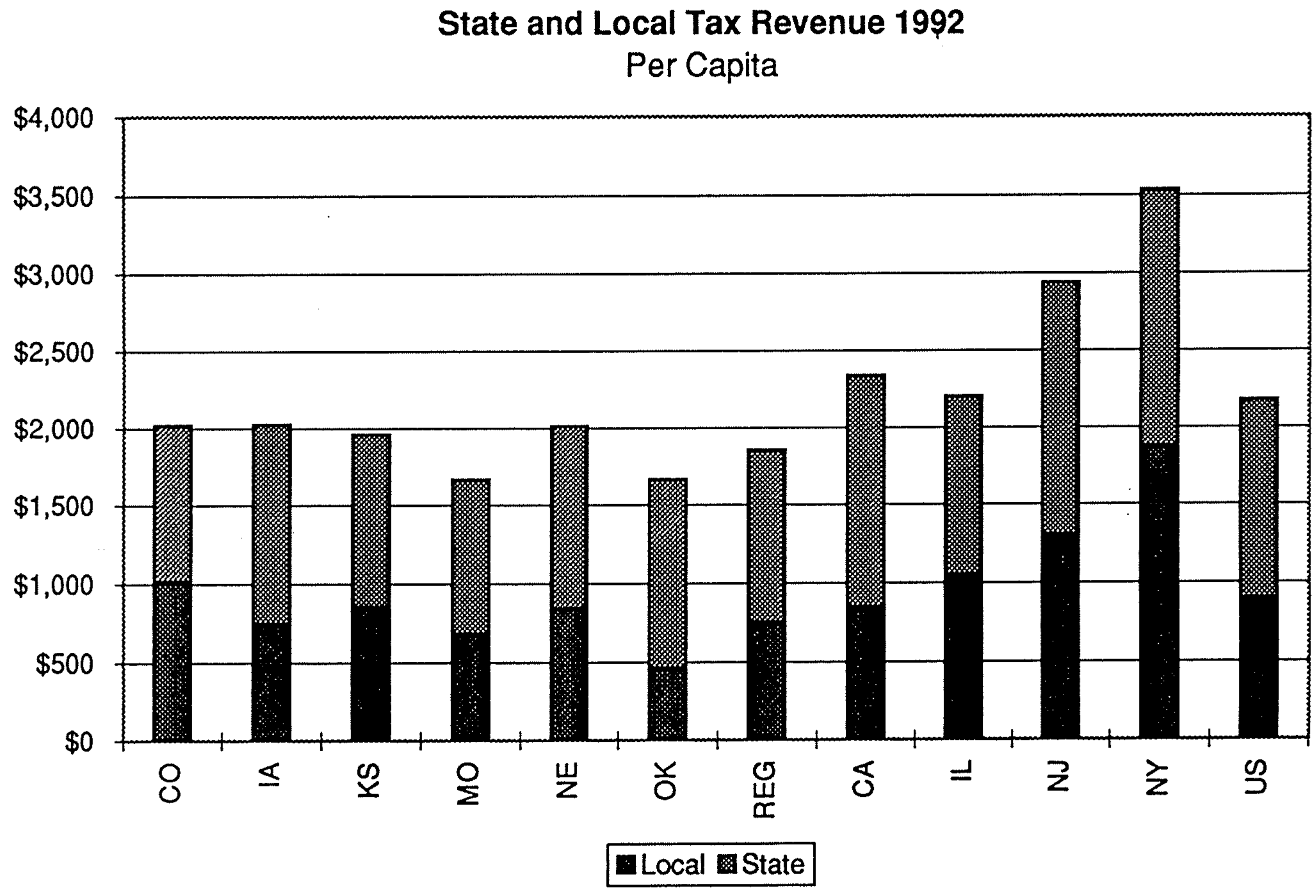
State & Local Taxes Per Capita

FY 1992



Source: Government Finances, U.S. Census Bureau

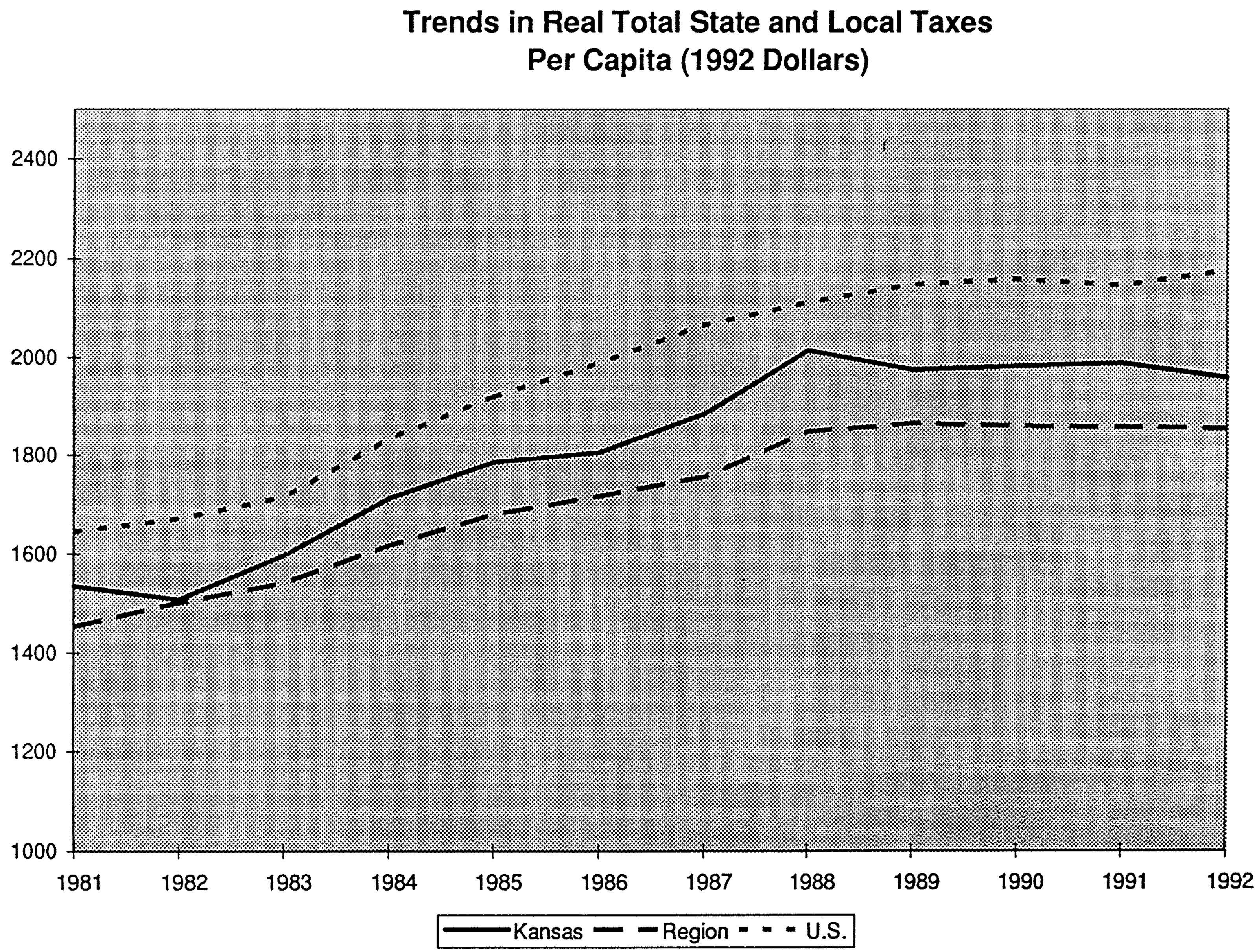
Figure 3



1-26

IPPBR 1994
Source: Government Finances and State Government Finances

Figure 4

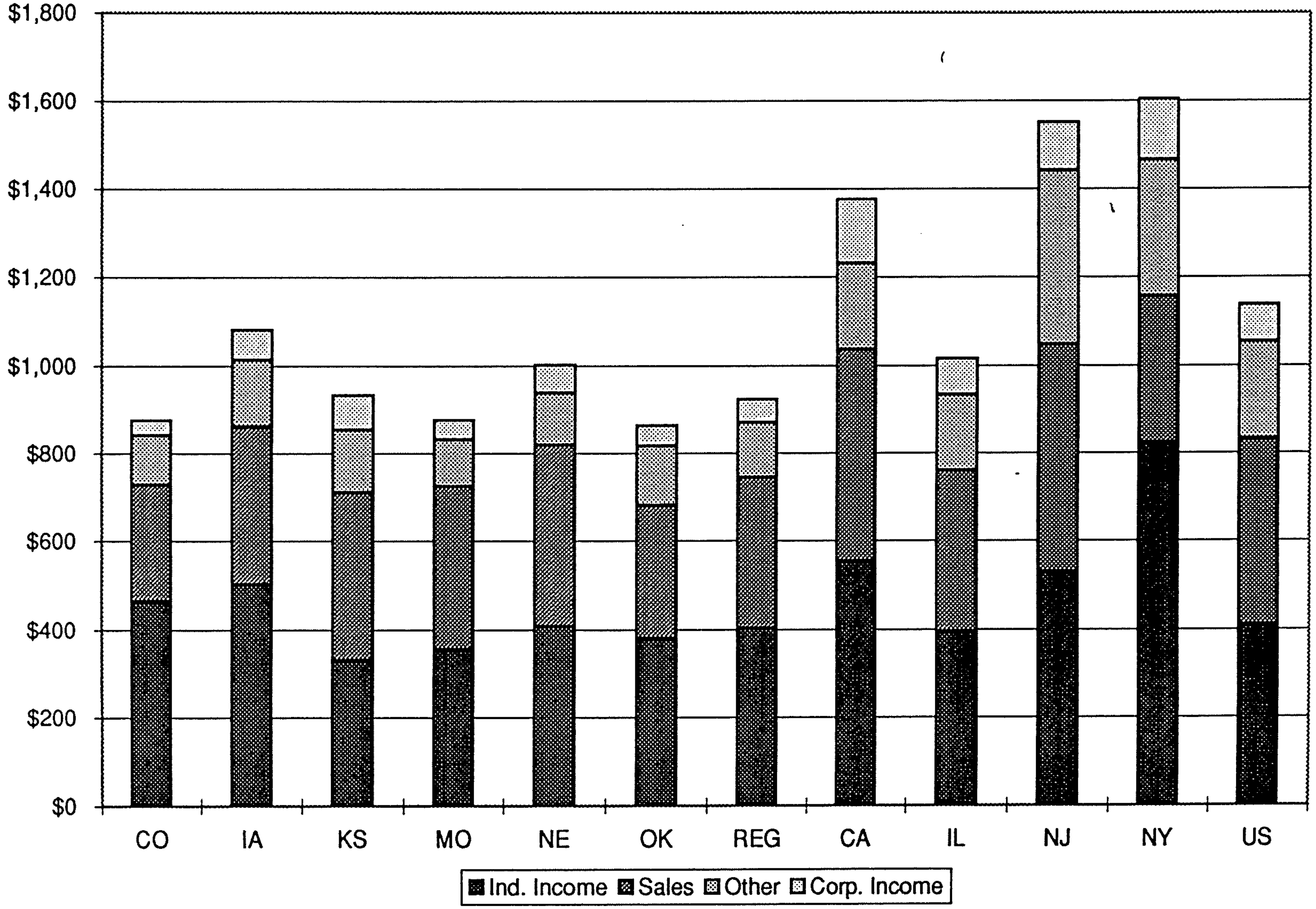


Trends in Real Total State and Local Taxes
Per Capita (1992 Dollars)
2400
2200
2000
1800
1600
1400
1200
1000
1981
1982
1983
1984
1985
1986
1987
1988
1989
1990
1991
1992
Kansas
Region
U.S.

1-27

Figure 5

State Tax Revenue Sources 1992
Per Capita

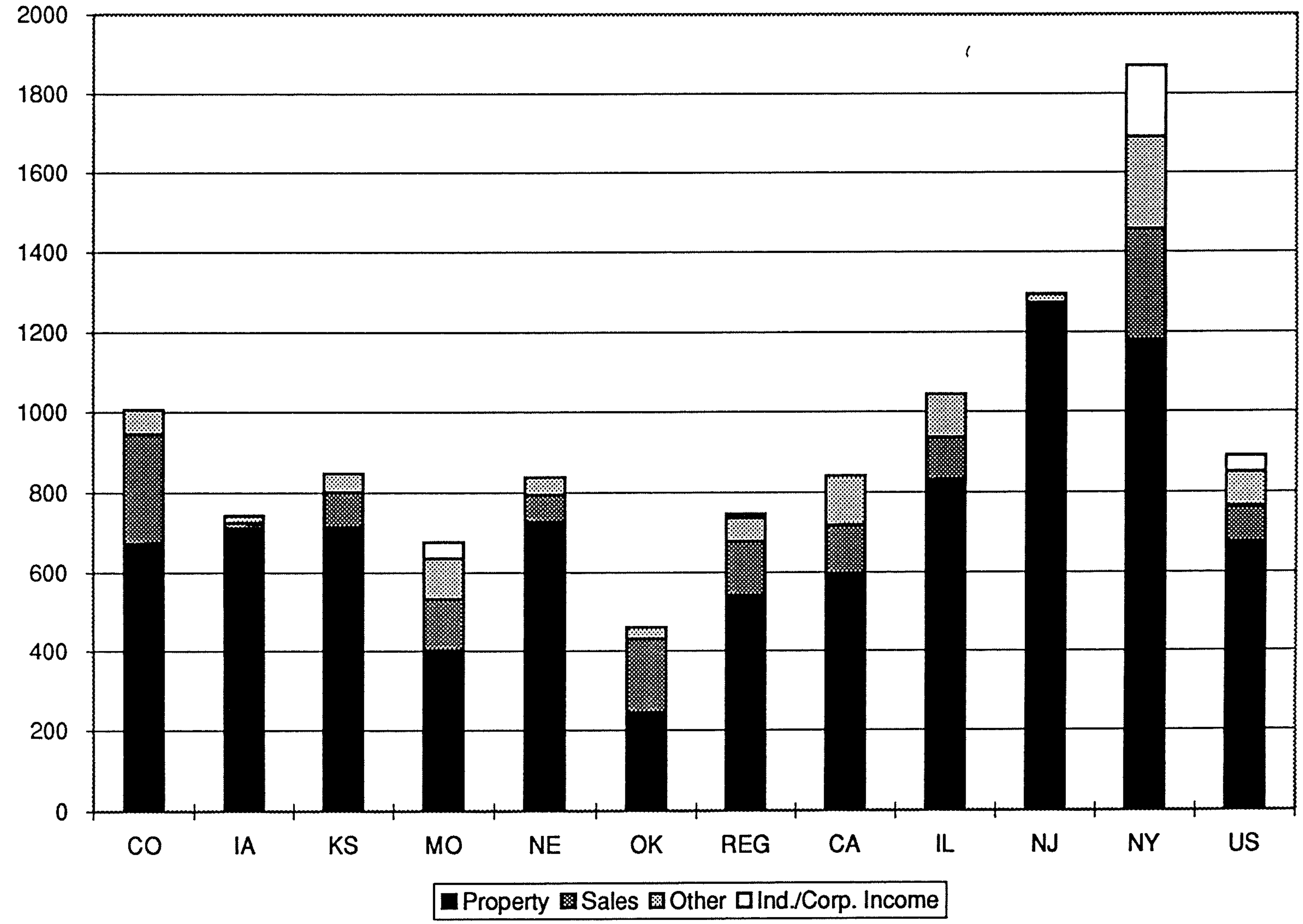


1-28

IPPBR 1994
Source: State Government Finances

Figure 6

Local Tax Revenue Sources 1992
Per Capita

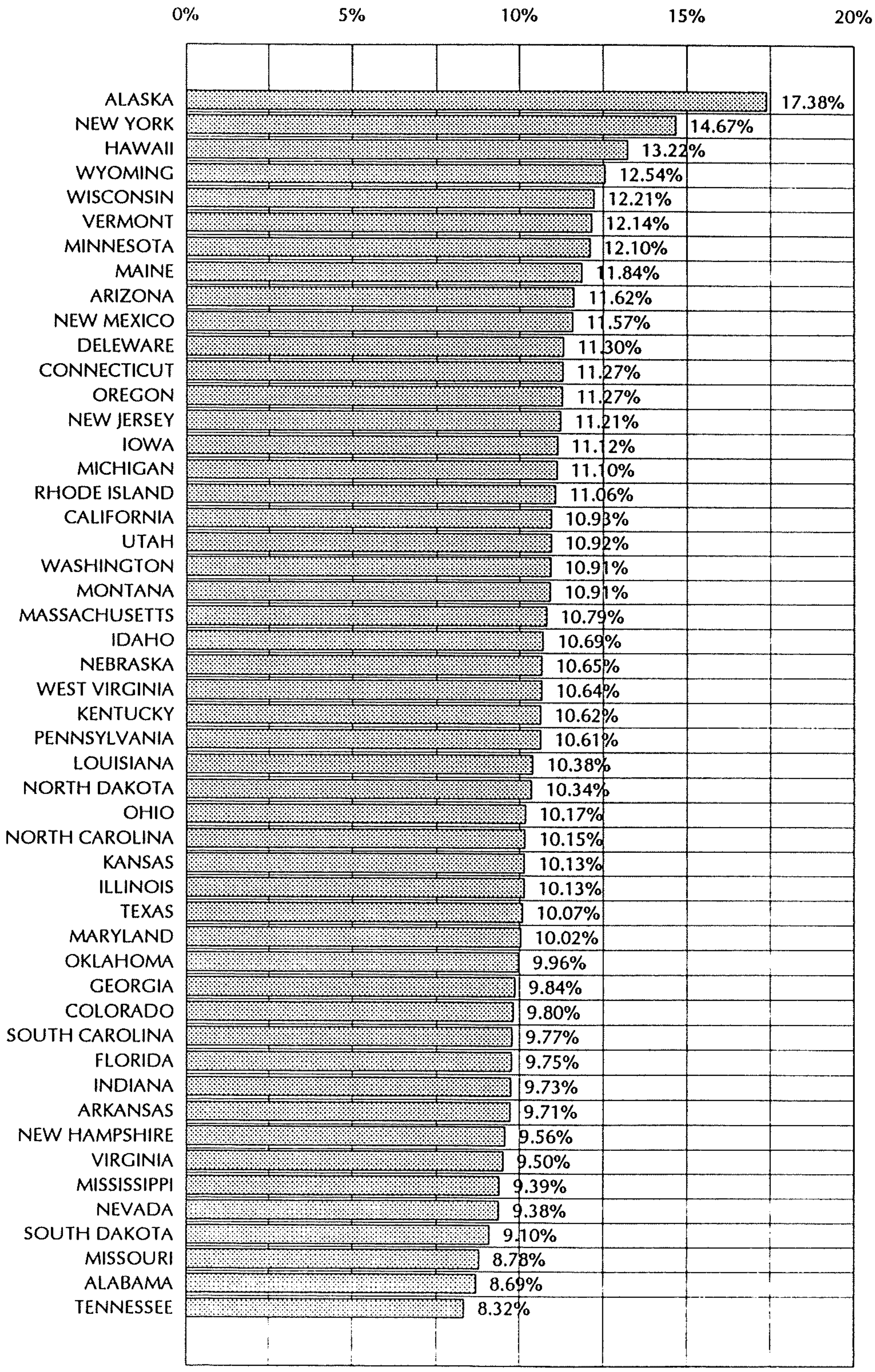


1-29

IPPBR 1994
Source: Government Finances

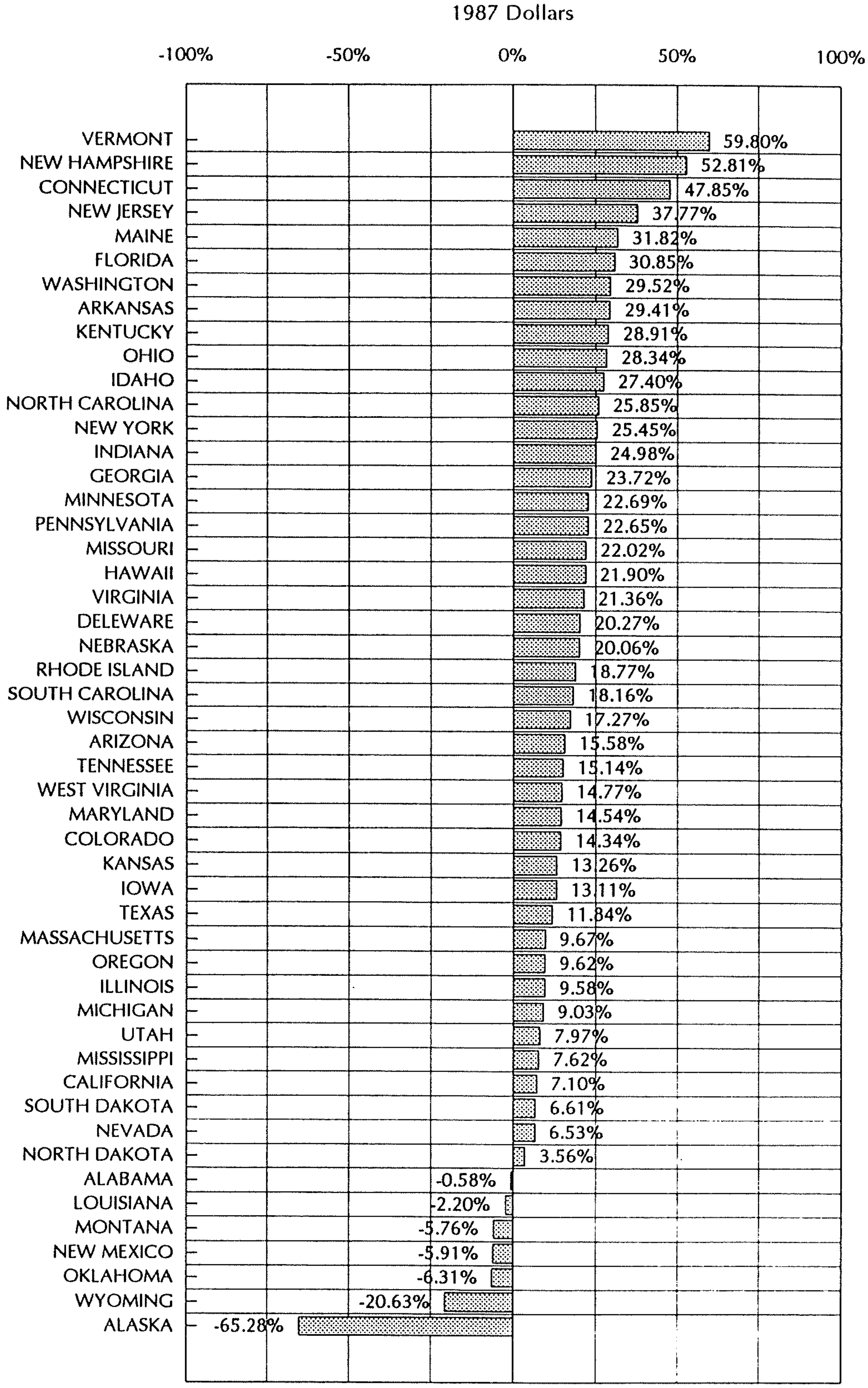
Figure 7

State & Local Taxes as Percent of Total Personal Income, FY 1992



Source: Government Finances, U.S. Dept. of Commerce, Bureau of the Census

Figure 8
Percent Growth in Per Capita State & Local Taxes
FY 1981 - 1992

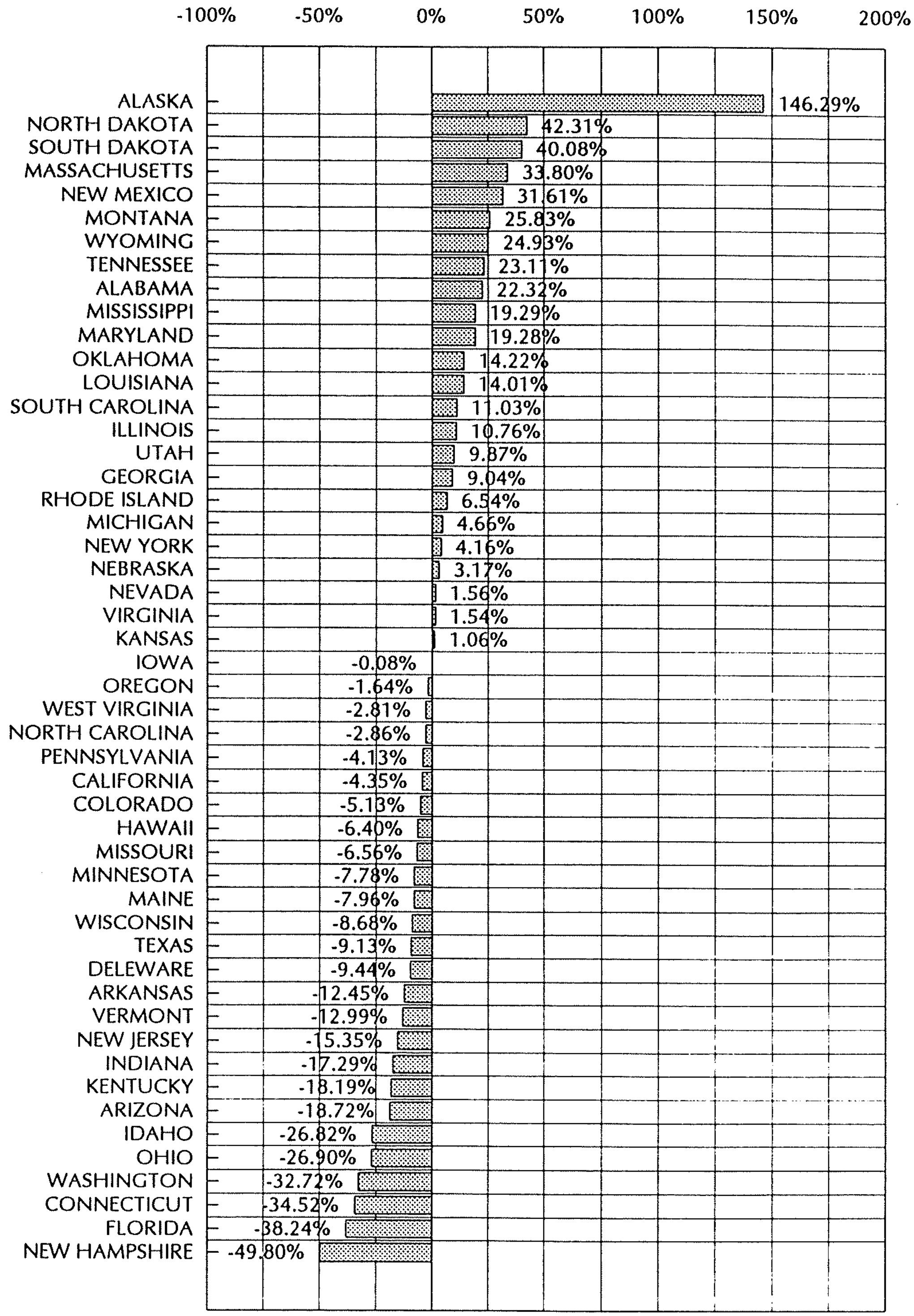


Source: Government Finances, U.S. Dept. of Commerce, Bureau of the Census

Figure 9

Total Personal Income Growth v. State & Local Tax Growth, FY 1981 - 1992

Positive Number = Greater Income Growth



Source: Government Finances, FY 1981, 1992
Regional Economic Information System, Bureau of Economic Analysis

Research Report

Comparison of Kansas Tax Rates With Selected States

Prepared by the
Institute for Public Policy
And Business Research

University of Kansas
Lawrence, Kansas

January, 1995

Kansas, Inc.
632 S.W. Van Buren, Suite 100 ✢ Topeka, Kansas 66603 ✢ 913-296-1460

1-33

Local Property Tax Rates and Ratios Kansas and Nearby States

State	Average Mill Levies		Statutory Assessment Ratios (%) [1]		Estimated Actual Assessment Ratios (%) [2]		Statewide Effective Tax Rates (%) [3]	
Colorado (1993)	Statewide	84.21	Residential	12.86	Residential	12.86	Residential	1.08
	Metro	90.98	Commercial/Ind.	29.00	Commercial/Ind.	29.00	Commercial/Ind.	2.44
	Nonmetro	66.46	Mach./Equip.	29.00	Mach./Equip.	29.00	Mach./Equip.	2.44
			Inventories	0	Inventories	0	Inventories	0
Iowa (1993)	Statewide	30.24	Residential	68.04	Residential	68.04	Residential	2.06
	Metro	34.75	Commercial/Ind.	100.00	Commercial/Ind.	100.00	Commercial/Ind.	3.02
	Nonmetro	27.24	Mach./Equip.[4]	30.00	Mach./Equip.	30.00	Mach./Equip.	.90
			Inventories	0	Inventories	0	Inventories	0
Kansas (1993)	Statewide	114.08	Residential	11.50	Residential	10.75	Residential	1.23
	Metro	123.78	Commercial/Ind.	25.00	Commercial/Ind.	23.58	Commercial/Ind.	2.69
	Nonmetro	104.91	Mach./Equip.	25.00	Mach./Equip.	25.00	Mach./Equip.	2.85
			Inventories	0	Inventories	0	Inventories	0
Missouri (1993)	Statewide	55.88	Residential	19.00	Residential	20.14	Residential	1.13
	Metro	61.33	Commercial/Ind.	32.00	Commercial/Ind.	33.60	Commercial/Ind.	2.22
	Nonmetro	41.67	Mach./Equip.	33.33	Mach./Equip.	33.33	Mach./Equip.	1.86
	Surtax[4]	10.26	Inventories	0	Inventories	0	Inventories	0
Oklahoma (1993)	Statewide	85.25	Residential	11.34	Residential	11.33	Residential	0.97
	Metro	92.25	Commercial/Ind.	11.34	Commercial/Ind.	11.59	Commercial/Ind.	0.99
	Nonmetro	72.34	Mach./Equip.	12.60	Mach./Equip.	12.60	Mach./Equip.	1.07
			Inventories	12.60	Inventories	12.60	Inventories	1.07
Nebraska (1993)	Statewide	24.44	Residential	100.00	Residential	90.00	Residential	2.20
	Metro	27.87	Commercial/Ind.	100.00	Commercial/Ind.	92.00	Commercial/Ind.	2.25
	Nonmetro	21.96	Mach./Equip.	100.00	Mach./Equip.	100.00	Mach./Equip.	2.44
			Inventories	0	Inventories	0	Inventories	0

[1] Colorado adjusts the residential assessment ratio so that residential property forms a fixed percentage of the property tax base. Iowa adjusts the residential assessment ratio yearly. Oklahoma assessment ratios are determined locally with the range of 9% to 15% (statewide averages shown).

[2] Actual assessment ratios are based on information from statewide sales/assessed value studies where available (KS, MO, OK, NE).

[3] The effective property tax rate is defined as the amount of taxes per $100 actual market value of property. In terms of this table, the effective tax rate is estimated by [statewide average mill levy/1000 * estimated actual assessment ratio]

[4] Industrial machinery and equipment are assessed at 30% of acquisition cost. Other personal property exempt.

[5] The surtax applies to commercial and industrial real estate only.

DRAFT IPPBR

1-34

State and Local Sales Taxes 1994

State	State Sales Tax	Local Sales Tax
Colorado	3%	combined city and county rates range from 0.1% to 5.0%.
Iowa	5%	up to 1%
Kansas	4.9%	May be levied up to 1% county, 1% city for general use. Additional 1% county or city many be used for health care services.
Misouri	4.225%	city and county up to 2% each.
Nebraska	5%	up to 1.5%
Oklahoma	4.5%	cities up to 2% plus counties up to 4%
California	6%	1.25% base. Up to 1.25% additional in some communities.
Illinois	6.25% [	current rates up to 2.75%
New Jersey	6%	0%
New York	4%	4.25% in NYC. Other communities impose up to 4.5%.

Individual Income Tax

State	Rate	Federal Deductibility	Comparison Rate[1]
Colorado	5% flat rate on taxable income.	No	3.21%
Iowa	Graduated in 9 stepped increments from 0.4% to 9.98%. Highest bracket effective at $47,700.	Yes	5.27%
Kansas	Graduated with three brackets each for married and single taxpayers. Marginal rates for married filers begin at 3.5% for incomes below $30,000 and end at 6.45% for incomes over $60,000. Rates for single filers begin at 4.4% for incomes below $20,000 and end at 7.75% for incomes over $30,000.	No	2.62%
Missouri	Graduated in 10 stepped increments from 1.5% to 6%. Highest bracket effective at $9000.[2]	Partial[3]	3.65%
Nebraska	Rates for married couples filing jointly range between 2.62% of the first $4,000 of taxable income and 6.99% of taxable income over $46,750. Rates for single individuals range between 2.62% of the first $2,400 and 6.99% of taxable income over $26,500.	No	2.77%
Oklahoma	Choice of two options. If federal income taxes are deducted, eight increments graduated from 0.5% to 7%. Top bracket effective at $21,000 for married persons filing jointly, and $10,000 for all others. If federal income taxes are not deducted, 11 increments graduated from 0.5% to 10%. Top bracket effective at $24,000 for married persons filing jointly, and $16,000 for others.	Option	4.48%
California	Graduated in 8 stepped increments from 1% to 11%. For single and for married filing separately, top bracket effective at $212,381. For married joint taxpayers and surviving spouses with dependents, top bracket effective at $424,761. For unmarried heads of households, top bracket effective at $289,082.	No	2.08%
Illinois	3% flat rate on federal adjusted gross income	No	2.73%
New Jersey	Rates range from 2% to 7%. Top bracket effective at $75,000 for married individuals filing separately and singles and at $150,000 for married individuals filing jointly, heads of households and surviving spouses. After 1994, rates reduced to 1.7% to 6.58%.	No	2.00%
New York	Rates range from 4% to 7.875%. Top bracket effective at $26,000 for married individuals filing jointly and surviving spouses, at $17,000 for heads of households, and at $13,000 for singles and married individuals filing separately.[4]	No	4.26%

[1] Comparison rate is for a married couple with two dependents, filing jointly, with federal adjusted gross income of $45,000. The state tax liability (1993) was calculated using each state's tax tables and forms. Comparison rate = (state taxes / federal AGI).

[2] The cities of Kansas City and St. Louis, Missouri, impose at tax of 1% of earnings.

[3] First $5,000 of federal income tax for single filers and first $10,000 for joint filers is deductible.

[4] New York City imposes additional income tax with rates from 2.51% to 4.46%. Yonkers imposes tax equal to 15% of NY state income taxes.

SOURCES: Information provided by individual state departments of revenue, State Tax Review, Commerce Clearing House, Inc., 1994, State Tax Guide, Commerce Clearing House, Inc., 1994, and All States tax Guide, RIA Inc., 1994.

State Corporate Income Tax Rates, Federal Deductibility, and Effective Tax Rates

State	Rate	Adjusted Rate[1]	Federal Deductibility
California	Flat 9.3%	9.3%	No
Colorado	Flat 5%	5.0%	No
Illinois	Flat 4.8%	4.8%	No
Iowa	First $25,000 -- 6% Next $75,000 -- 8% Next $150,000 -- 10% Over $250,000 -- 12%	5.0% 6.6% 8.3% 10.0%	50% of federal income tax is deductible
Kansas	First $50,000 -- 4.0% Over $50,000 -- 7.35%	4.0% 7.35%	No
Missouri	Flat 5% [2]	3.3%	100% of federal income tax is deductible
Nebraska	First $50,000 -- 5.58% Over $50,000 -- 7.81%	5.58% 7.81%	No
New Jersey	Flat 9%	9.0%	No
New York	Flat 9%	9.0%	No
Oklahoma	Flat 6%	6.0%	No

[1] The calculation assumes a marginal federal tax rate of 34%.
MARGINAL ADJUSTED RATE = STATUTORY RATE x (1 - .34 x deductibility fraction).

[2] Missouri also has a local corporate income tax in the cities of Kansas City and St. Louis. This earnings tax is equal to 1% of net profits from activities in the city.

SOURCES: Information provided by individual state departments of revenue, state statutes, and *State Tax Guide*, Commerce Clearing House, Inc., 1994.

DRAFT IPPBR

Table 4
Allocation Methods for Income of Multi-State Firms

California	Three factor formula using property, payroll, twice sales over 4. Companies can use once sales over three if over 50% are from extractive or agricultural business.
Colorado	Choice of two factor formula (1/2 sales, 1/2 property), or three factor formula (1/3 each sales, property, payroll). For companies with no other Colorado activity except sales, with no owned or rented real estate in Colorado, and with gross sales under $100,000, an alternative is to pay 0.5% of gross receipts on sales in Colorado.
Illinois	Three factor formula based on 1/3 each property, payroll, and sales.
Iowa	Single factor formula based on sales only. Sales in Iowa defined as shipped to or delivered to Iowa destinations.
Kansas	Three factor formula (1/3 each sales, property, payroll). For firms with a payroll factor exceeding 200% of the average of the property factor and the sales factor, a two factor formula based 50% on sales and 50% on property is an option.
Missouri	Choice of single factor formula based on sales only or a three factor formula (1/3 each sales, property, payroll). When the sales only formula is used, sales considered to be in Missouri include all sales with destinations and origins in Missouri, plus 50% of sales with destinations in Missouri and origins outside Missouri, plus 50% of sales with origins in Missouri and destinations outside Missouri.
Nebraska	A single factor formula based on sales only was phased in between 1988 and 1992. Nebraska sales are sales shipped to or delivered to Nebraska destinations.
New Jersey	Three factor formula using local/ total ratios of tangible property, receipts, payroll.
New York	Three factor formula (property, twice receipts, payroll)
Oklahoma	Three factor formula (1/3 each sales, property, payroll).

SOURCES: Information provided by individual state departments of revenue, state statutes, and *State Tax Guide*, Commerce Clearing House, 1994.

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION ELEVEN

ERIC PEDEN,	)	
Plaintiff,	)	
vs.	)	Case No. 93 CV 415
	)	
STATE OF KANSAS, et al.	)	
Defendants.	)	

MEMORANDUM OF DECISION

THIS MATTER COMES on before the Court on the Motion of both parties for Summary Judgment in their favor. It is conceded that this is a matter that should be disposed of on the legal issues by summary judgment in favor of the whichever party should legally prevail. There is no substantial dispute about the facts of the case to the effect that the Plaintiff is a single taxpayer and will be responsible for payment of 1993 taxes as such. The Statement of Fact #4 by the Plaintiff is as follows:

> "For the calendar years 1988, 1989, 1990, 1991 and 1992, Plaintiff paid income tax to the State of Kansas at a rate that exceeded the highest income tax rate that applied to taxpayers filing under the status of 'married filing joint'. For the calendar year 1993 Plaintiff will be required to pay by April 15th, 1994, income tax to the State of Kansas at a rate that will exceed the highest income tax rate that will apply to taxpayers filing under the status of 'married filing joint.'"

House Taxation
1-17-95
Attachment 2-1

The State concedes these facts but makes some additional statements of fact in its response to Plaintiff's motion.

Both parties concede that the single issue before the Court for determination is whether it is permissable for the State of Kansas to tax unmarried individuals at income tax rates which exceed the highest rates charged to married individuals. The Plaintiff alleges that this is a unique constitutional issue in that the Kansas tax rate structure discriminates against unmarried individuals contrary to the Equal Protection clause of the 14th Amendment of the United States Constitution, and Article 11, Section 2 of the Kansas Constitution. The Defendants, on the other hand, urge that the discrimination, if any exists, is permissable by reason of the great latitude that courts allow Legislatures and their Administrative agencys in formulating a tax structure. The State indeed concedes that the tax rates complained of by the Plaintiff are discriminatory as between a single taxpayer and a married couple taxpayers claiming joint return status. Plaintiff asserts that this discriminatory distinction has no rational basis and therefore must be condemned as unconstitutional. Plaintiff's examples do demonstrate that rates of tax charged single taxpayers are higher and remain higher in the upper brackets than married taxpayers, and this disparity is never corrected. Again, both Plaintiff and Defendant are in agreement that the issue must be resolved by application of the two-pronged

2-2

rational basis test that is (1) whether there is a legislative purpose for the classification, and (2) whether the classification rationally furthers that legislative purpose. There has been no rational basis for the distinction articulated by the Kansas Legislature, the Kansas Courts, or the executive agencies administering the Kansas tax law. In the Court's view the weakness of the Defendant's attempt to rationalize this disparity is exhibited by the lengths to which the Defendant goes to postulate some reasonable explanation for the obvious discrimination. Even recognizing that the Defendant State is allowed a great deal of latitude, the Court finds no rational basis for the discrimination. The fact that supposedly married couples have a greater economic burden is highly speculative and subject to a great deal of question and uncertainty. That the public policy of the State of Kansas promotes marriage through its tax structure is almost fanciful when analytically examined. The same can be said of the proposition that married individuals are less likely to relocate and will remain a stable economic unit for the State for longer periods of time. This leaves "ease of administration" and again this Court finds that to be speculative and conjectural. None of the reasons, therefore, advanced by the State would seem to justify the gross disparity and discrimination that exists in the tax rate structure between single individuals and married individuals. Therefore the Court adopts

2-3

the Plaintiff's theories and rationale and declares that the tax rate structure attacked is vulnerable on a constitutional theory and should be struck down.

Plaintiff correctly observes that historically splitting mechanisms and their variations have been approved by the Federal Courts as a method of legitimately "discriminating" in favor of married and against single taxpayers. Also approved were various adjustments to accomodate taxpayers in "non-community property" states. Plaintiff Memorandum pp 9-12. This all occurred in the federal system where there is a comprehensive legislative history of dealing with these issues. There is a total lack of legislative history or indeed any real analytical treatment of this problem of discrimination by the State of Kansas. There can be no disagreement that there are disciminatorily higher rates of tax paid by single Kansas taxpayers and there is no rational justification for such.

Judgment is therefore granted on the Plaintiff's Motion for Summary Judgment and the Defendant's Motion for Summary Judgment is denied.

Matthew J. Dowd
MATTHEW J. DOWD
DISTRICT JUDGE
DIVISION ELEVEN

DATE: 9-7-94

Individual Income Tax: the Peden v. State Litigation
Kansas Department of Revenue, David Prager, III, Attorney
House Committee on Assessment and Taxation
January 17, 1995

Background of the Peden litigation. In April of 1993, Eric Peden, a single taxpayer and an attorney, filed a petition in Shawnee County District Court. He contended that the Kansas individual income tax rate structure in K.S.A. 79-32,110 was unconstitutional under the Equal Protection Clauses of the Kansas and Federal Constitutions. He complained of discrimination because the income tax rates charged to unmarried taxpayers exceed the highest income tax rate charged to married taxpayers on a joint return. Mr. Peden sought relief in the form of a declaratory judgment pursuant to K.S.A. 60-1701, injunctive relief pursuant to 42 U.S.C. §1983 (a federal civil rights statute), and income tax refunds for tax years 1988 through 1992. He also filed a Motion for Class Certification. A class action certification would have expanded the lawsuit to include other single taxpayers.

The Department answered Mr. Peden's petition, replied to his Motion for Class Certification and also filed a Motion to Dismiss his refund claims based upon the district court's lack of subject matter jurisdiction. On January 4, 1994, the court granted the Department's Motion to Dismiss Mr. Peden's refund claims. The court held that the his administrative remedies were full and adequate and must be exhausted. (This is the same ruling that Judge Allen made in the military retiree case. Refund claims would have to be filed with the Department by each taxpayer.) The court also denied Mr. Peden's motion to certify a class action.

Both Mr. Peden and the Department filed Motions for Summary Judgment. On September 7, 1994, the court issued a Memorandum Decision granting Mr. Peden's motion for summary judgment. In a subsequent three page opinion, which contains no case citations or legal authorities, the district court held that the higher tax rates as applied to single taxpayers were unconstitutional. (A copy of the decision is attached.) The court held that single taxpayers were treated differently under income tax rates higher than the highest rates applicable to jointly-filing, married taxpayers. It also held that there was no rational basis to support the different tax rate treatment of single taxpayers.

Judge Dowd's decision was unexpected. Contrary to his decision, the court decisions in this area have generally upheld different tax treatment between single and married taxpayers. The U.S. Tax Court and the Supreme Court of Oklahoma have held that the greater financial burdens for married taxpayers are a rational basis for them to pay less tax than a single taxpayer. *Kellems v. Comm'r*, 58 T.C. 556 (1972), aff'd 474 F.2d 1399 (2nd Cir. 1973), and *Sowders v. Oklahoma Tax Comm'n*, 552 P.2d 698 (1976). In addition, the Kansas courts have acknowledged that in Kansas the "public policy relating to marriage is to foster and protect it, to make it a permanent and public institution, to encourage the parties to live together and to prevent separation." *Ranney v. Ranney*, 219 Kan. 428 (1976). The district court decision in *Peden* failed to consider that the state's interest in supporting the institution of marriage could be a rational basis for taxing married taxpayers at a lower rate than single taxpayers. Finally, the *Peden* decision also failed to consider the judicial principle that the Legislature is allowed wide latitude in enacting tax classifications.

After the September 1994 decision, Mr. Peden filed three post-trial motions. He asked the court to award him attorney's fees under 42 U.S.C. §1988, to reconsider certifying a class action and to reconsider its denial of a tax refund. Judge Dowd notified the parties that he would not rule on these motions until an appellate court first ruled on the constitutionality of K.S.A. 79-32,110.

The journal entry of the *Peden* decision was filed on November 4, 1994. The Department filed a Notice of Appeal on November 7, 1994. The appeal was filed with the Kansas Supreme Court pursuant to K.S.A. 60-2101(b), which provides that when a district court rules a Kansas statute is unconstitutional, the appeal shall be filed directly with the Kansas Supreme Court. The issues on appeal are whether the court erred in finding that there were no material issues of fact and whether the court erred in finding there was rational basis to support the different tax rates for married and single taxpayers.

After the filing of the journal entry, Mr. Peden filed three additional post-trial motions similar to his first three post-trial motions. He again asked the court to award attorney's fees and to reconsider both the class action and income tax refund issues. Judge Dowd stated that "if the plaintiff insisted", the court would take up the attorney's fees issue but the court said it would not address the motions for reconsideration. As of the date of this memo, no further action has been taken on the post-trial motions.

After the Notice of Appeal was filed, Mr. Peden filed a Motion to Dismiss with the Kansas Supreme Court. He is contending that the appeal was prematurely filed because there is no final appealable order until the district court rules on the post-trial motions. The Department contends that because Judge Dowd stated that he would not rule on the post-trial motions until the appeals court had acted, the judge did in fact rule on the motions for reconsideration by refusing to consider them. As of the date of this memo, the Kansas Supreme Court has not ruled on Mr. Peden's Motion to Dismiss.

Legislative Background and Fiscal Exposure. The income tax statute at issue in this appeal is K.S.A. 79-32,110. This statute was amended by the Kansas Legislature in 1988. Prior to 1988, Kansas income tax rates for joint filers and single filers were the same although the brackets were different. At that time, married couples filing jointly paid about 74% of the total amount of Kansas income taxes collected while individuals filing under the statuses of single, head of household or married filing separate paid about 26%. When changes were made to the income tax statutes in 1988, the Legislature sought to retain these same relative burdens. This was accomplished through differential rates for married individuals filing jointly and all others. When the income tax statutes were changed in 1992, the Legislature increased the difference between the rates for married joint filers and other filers.

Under Judge Dowd's decision, the estimated, <u>potential</u> refund liability (not including interest) would be $16 million per year or $48 million dollars for the three open tax years (1991, 1992 and 1993). If the final ruling is that the single filer rates for each bracket must be identical to the brackets for married individuals, then the tax refund liability would be $50 million per year or $150 million for the three year period.

Possible Legislative Options:

1) Do nothing and await the outcome of the judicial proceedings.

2) Consider the enactment of a shortened, refund claim limitation statute to protect the state from fiscal disruption. Many other states have statutorily limited the ability of taxpayers to obtain refunds of unconstitutional taxes. For example, refunds would be limited to refund claims that are filed within 120 days of when the tax was paid.

3) Consider the amendment of K.S.A. 79-32,110 to equalize the married and other rates.

4) Other?

The Department has not been advised by the Graves administration to propose any of these options at this time.

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION ELEVEN

RECEIVED
LEGAL SERVICES
NOV 7 - 1994
DEPARTMENT OF REVENUE

ERIC PEDEN, Plaintiff,	)	
v.	)	Case No. 93 CV 415
STATE OF KANSAS, et al., Defendants.	)	

JOURNAL ENTRY

The above entitled cause was heard on September 2, 1994, on Plaintiff's Motion for Summary Judgment and Defendants' Cross Motion for Summary Judgment, with Plaintiff appearing by counsel of Eric C. Peden and Steven J. Schleicher of the law firm Schleicher, Latz, Loyd & Patterson, P.C., and Defendants appearing by counsel of Frank S. Reeb and Vernon L. Jarboe of the Legal Services Bureau, Kansas Department of Revenue. All parties filed briefs and statements of material facts regarding their respective motions, and the Court heard the pleadings, the evidence and arguments of counsel, and upon due consideration, the Court issued a Memorandum of Decision dated September 7, 1994.

On this 4 day of November, 1994, Judgment is entered as follows:

2-10

I.

This Court has jurisdiction of the parties and of the subject matter of the action under Counts I, II and III of Plaintiff's Petition, and Judgment is hereby entered in favor of the Plaintiff and against the Defendants on Plaintiff's claims pursuant to Counts I, II and III of Plaintiff's Petition.

II.

The provisions of K.S.A. 79-32,110 in effect from 1988 to the present, and as applied prospectively, are hereby declared to be null, void and inoperative, as being in conflict with the Fourteenth Amendment of the Constitution of the United States, to the extent that the income tax rates applicable to unmarried individuals exceed the highest income tax rates charged to married individuals filing under the status of "married filing joint."

III.

The provisions of K.S.A. 79-32,110 in effect from 1988 to the present, and as applied prospectively, are hereby declared to be null, void and inoperative, as being in conflict with Article 11, §2 of the Constitution of the State of Kansas, to the extent that the income tax rates applicable to unmarried individuals exceed the highest income tax rates charged to married individuals filing under the status of "married filing joint."

IV.

The provisions of this Judgment applicable to the Defendants shall also apply to any of the respective Defendants' successors, officers, agents, servants, employees and representatives, together with any other person, firm or agency acting in or on a Defendant's behalf or under a Defendant's direction and control.

V.

The findings are reasons of the Court as contained in its Memorandum of Decision dated September 7, 1994, are hereby incorporated by reference herein.

VI.

The Court hereby reserves jurisdiction to modify this Judgment and to make any further orders or judgments in this cause as may be considered necessary or appropriate for the construction or carrying out of this Judgment, for the modification or supplementation of any of its provisions, for the enforcement of compliance with it and/or for the punishment of violations.

IT IS SO ORDERED.

Matthew J. Dowd

MATTHEW J. DOWD
DISTRICT JUDGE
DIVISION ELEVEN

DATED: 11-4-94