

Approved: 3-26-96  
Date

MINUTES OF THE HOUSE COMMITTEE ON TAXATION..

The meeting was called to order by Chairperson Phill Kline at 9:09 a.m. on March 5, 1996 in Room 519-S of the Capitol.

All members were present except: Rep. Doug Lawrence

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

Conferees appearing before the committee:  
Vic Miller, Shawnee County Commissioner  
Larry Tucker, Reno County Treasurer  
Onan Burnett, USD 501, Topeka Public Schools  
Diane Gjerstad, Wichita Public Schools

Others attending: See attached list

Chair continued hearing from February 22, 1996 on:

**HB 2596 - Property tax payment amounts when appraised valuation amounts appealed or protested RE: Proposal No. 9**

Opponents:  
Vic Miller, Shawnee County Commissioner (Attachment 1)  
Larry Tucker, Reno County Treasurer (Attachment 2)

Closed hearing on **HB 2596**.

Chair opened hearing on:

**HB 2959 - Sales tax exemption for admission to certain school events**

Proponents:  
Onan Burnett, USD 501 Topeka Public Schools (Attachment 3)  
Diane Gjerstad, Wichita Public Schools (Attachment 4)

Written testimony only from:  
Rep. Dixie Toelkes (Attachment 5)  
Roger Toelkes, Shawnee Heights School District (Attachment 6)  
Chris Ridley, Washburn Rural High School (Attachment 7)

Chair closed hearing on **HB 2959**.

Information distributed to committee on:

**HB 2942** - Ann Koci, Kansas Department of Social & Rehabilitation Services (Attachment 8)  
**HB 2823** - Mark S. Beck, Director of Property Valuation, Department of Revenue (Attachment 9)  
**HB 2806** - Michael Lennen, City of Wichita (Attachment 10)

The next meeting is scheduled for March 6, 1996.

Adjournment 9:41 a.m.

Attachments - 10

TAXATION COMMITTEE GUEST LIST

DATE:           MARCH 5, 1996          

NAME	REPRESENTING
Harold Pitts	KCOA
RICHARD TRODEWALD	TAX Payers
LARRY TUCKER	RENO COUNTY TREASURER
Nancy Hempen	Dg. Co. Treas / KAC Pres.
Diane Gjerstad	USD 359 - Wichita
Paul Matthews	Western Resources
Christy Caldwell	Topeka Chamber of Commerce
Madeline Smith	KMNHA
Anne Spiess	Ks. Assoc. of Counties
Leutene Schneider	Ks LIVESTOCK ASSOC

Testimony before the House Committee  
on Assessment & Taxation  
February 22, 1996

Mr. Chairman and Members of the Committee:

My name is Vic Miller. I thank you for the opportunity to appear before you today. While I am a member of the Shawnee County Commission, my remarks today are my own and not delivered on behalf of the commission. My perspective has not necessarily developed as a commissioner, but includes my experience as a former director of the Property Valuation Division and as a property tax attorney representing both taxpayers and counties.

I am opposed to HB 2596. I recognize it is a compromise, but I do not believe it to be the answer to the problem. It creates a cumbersome procedure and offers little relief to those who have suffered from the misguidance or errors of taxing officials. I support the award of interest to taxpayers who, for whatever reason, have had to pay property taxes they did not owe. I respectfully disagree with my friends in county government who argue that the award of interest to the individual harmed by the wrongful actions of the government will result in any serious consequence to the populace as a whole.

The principle is simple. You wrongfully require that I give you my money. You keep it, get the use of it and even draw

interest on it yourself. You are required to refund my money that you had no right to take. Why should you not have to pay me interest?

Remember, if interest is paid to the individual, the cost is spread to the general population of the county. Isn't this fair? Why is it more fair to wrongfully deprive the individual of his money and allow the government (the general populace) to benefit?

I see nothing wrong with interest being awarded in all cases, but if you are truly looking for a real compromise, simply allow the Board of Tax Appeals to award interest in those instances where "good cause" is shown.

Thank you again. I would be happy to entertain questions and would close by asking that, no matter the final form, that the bill not be localized to Shawnee County.



Rep. J.C. Watts Jr., R-Okla., at right, shared a laugh with a line of well-wishers Monday morning after the Kansas Prayer Breakfast at the Ramada Inn Downtown. Watts, a star quarterback for the Oklahoma Sooners in the early 1980s, was the featured speaker at the breakfast, sponsored by Topeka Fellowship Inc.

— David Eulitt/  
The Capital-Journal

## s message of faith

ve helped teach him that he can be too grown-up, sophisticated or ed to outgrow his need for a relation- th God.

s said that except for one weekend he rned home to Norman, Okla., from gton, D.C., during the Congressional lone exception was a weekend when taping a segment for the "700 Club," us television program in Virginia, Va.

Friday nights, I want to be in my Watts said. "On Sunday morning, I o be in my church." ides his Congressional duties, Watts ssociate pastor at Sunnyslane ern Baptist Church in Del City, Okla. ing his speech, Watts alluded to a ure passage in the 18th chapter of ew in which the disciples asked Jesus them who was the greatest in the king- f heaven.

us responded by stating that unless ciples were like little children, they l not enter the kingdom of heaven. tts then recalled his daughter's birth- arty, in which her balloon had burst. aughter calmly carried the balloon's ed remains to him and asked him to

"That's the way children are," Watts said. "They believe their earthly father can do just about anything."

He said people need to have the same trusting attitude toward God, believing that he is able to fix the broken balloons of their lives.

Watts said he has reason to have confidence in God, considering that God has every hair on his head numbered.

"Ten years ago, that would have been quite a challenge," Watts said, "because I wore an Afro that probably wouldn't have gotten through those double doors."

When he was elected in 1994, Watts became the first black Republican voted to Congress from south of the Mason-Dixon line since the Reconstruction.

Rep. Sam Brownback, R-Kan., another member of the 1994 freshman Republican Congressional class, called Watts "one of the spiritual leaders in all of Congress" during introductory remarks.

Others at the breakfast were: Gov. Bill Graves, Lieutenant Gov. Sheila Frahm, State Treasurer Sally Thompson, Attorney General Carla Stovall, Insurance Commissioner Kathleen Sebelius, Topeka Mayor Butch Felker, Sheriff Dave Meneley and Police Chief Dean Forster.

# County will pay interest on property tax refunds

By BILL BLANKENSHIP  
The Capital-Journal

**P**roperty tax refund checks issued by Shawnee County will be a little bigger in the future as commissioners on Monday agreed to pay interest to taxpayers.

A resolution introduced by Commissioner Vic Miller got a necessary second vote from Commissioner Winnie Kingman. Commissioner Don Cooper was absent.

Miller called the measure a matter of fairness to taxpayers who get refunds only when the county has erred somehow in appraising property or levying taxes upon it.

Although the taxpayer gets the erroneous amount of taxes refunded, there is no compensation for being denied use of that money during the time it took to resolve the tax appeal.

The resolution adopted Monday would pay the taxpayer interest at an annual rate of 5 percent due on the time between when the taxes were paid and the refund was issued.

Commissioners will review and adjust the interest rate annually.

The policy of paying interest starts with 1996 taxes. Miller said the appraiser's office has a much better handle on reappraisal so he didn't anticipate the county would pay out much interest relative to the total amount of taxes collected.

However, Miller said interest payments could make a difference to individual taxpayers.

Kristie Caldwell of the Greater Topeka Chamber of Commerce endorsed the move, saying it would be a benefit to local businesses. County Treasurer Rita Cline also spoke in favor of the change.

The policy change makes Shawnee County the only county in the state to pay interest on property tax refunds.

Miller would like to see such refunds a matter of state law. He will testify for that change at 9 a.m. today before the House Taxation Committee, which is reviewing a bill regarding payment of property taxes under protest. The panel meets in room 519-S of the Statehouse.

## y asks judge to withdraw court order

Buchele's court- hy she shouldn't empt of his earli- ting Hamilton to

the file.

At the same time, Hamilton contended Buchele has ordered her to hand over records to

filing said. Dismissing the charge would make Buchele's court order and the order to appear on Wednesday moot, Hamilton's fil-

a Feb. 12 hearing, Buchele instruct- ed her on Feb. 16 to appear at the contempt hearing Wednesday.

On June 29, Siefer, then 19, was detained east of Soldier Creek by

TO : HOUSE TAXATION COMMITTEE  
FROM: LARRY TUCKER, RENO COUNTY TREASURER  
RE : HOUSE BILL 2596

Thank you Mr. Chairman and members of the House taxation committee. I have previously submitted written testimony to you on February 22, 1996, however, since I was unable to present any verbal remarks, I would again like to summarize some of the reasons why I and the Kansas County Treasurer's Association are opposed to this legislation.

1. Administration.

As outlined in the proposed bill, the taxpayer would be given the option of paying last year's tax or the undisputed amount. Although in most cases, a simple process, it will be difficult to compare last year's tax when changes occur in the property description. What about property that is split from the previous year? What about changes in classification? What about significant changes in improvements?

These are but just a few examples of the problems in trying to administer this program at the County level. Again, there are other alternatives that would simplify the process and concerns of most taxpayers.

2. Costs.

Reno County does not employ an in house computer programmer. All such work must be contracted out to consultants. We have estimated that it will cost our County from \$ 8,000 to \$ 10,000 to implement this procedure the first year.

Our county is already up against the budget tax lid. We cannot afford any more unfunded mandates.

3. Confusion.

Most taxpayers require assistance in completing tax protest forms. Changes that make the procedure more complicated will cause more confusion and frustration. The administrative problems noted above will only add to this concern.

4. Unfairness.

Why should those who pay their taxes under protest, be subject to a penalty if they should lose, while those who appeal in the spring under the equalization hearings are not ? Is this fair ?

And why should those who file frivolous tax protests by paying a lesser tax due, be subject to a penalty of only 10%, while those who cannot pay their taxes by the due date, are subject to a 12% penalty.

5. Alternatives.

Instead of this proposal, as state and local officials, let's seek other alternatives.

Three part payment - As introduced in Senate Bill 602, the taxpayer would be allowed to pay their property tax in one-third installments. The protest procedure would not have to be changed and no new computations would be required.

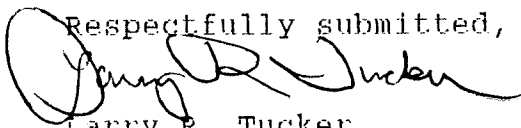
Reasonable interest on refunds - A reasonable interest, based upon current Treasury Bill investment rates, could be paid on top of the tax refund. Such rates could be adjusted semi-annually by the Division of Accounts & Reports and provide the taxpayer with a reasonable return on the tax amount protested. Using a 5% rate, this would have cost Reno County less than \$ 1,500 in added interest in 1995.

Focus should be on valuation - Taxpayers do not protest tax levies. They protest valuations. Changing the protest procedure will not correct the problem of poor valuations. To address this problem, the state should focus on other areas such as added enforcement, penalties and education.

House Bill 2596 will not solve the problems noted above. In addition, it will be difficult to administer, add unfunded mandates to counties, confuse and frustrate taxpayers and introduce new inequities into the tax assessment and collection process.

I ask this committee to oppose H. B. 2596 and challenge you and the legislature to again work with local officials to seek solutions to this issue. I would be happy to answer any questions.

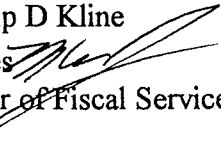
Respectfully submitted,



Larry R. Tucker  
Reno County Treasurer



# MEMO

**To:** Honorable Phillip D Kline  
**From:** Michael W Jones   
General Director of Fiscal Services  
**Subject:** HB 2959  
**Date:** March 5, 1996

Thank you for the opportunity to provide a couple of additional points for your committee's consideration as you review the merits of HB 2959.

1. The processing of sales tax on gate receipts in most cases costs more to administer than is remitted to the Department of Revenue. Many of our tax payments are less than \$10.00 and rarely in excess of \$100.00.
2. Almost all the spectators at middle school plays, games or concerts are made up of close family members. Thus, the sales tax becomes a tax on parental involvement in their child's educational development.
3. Admission charges to these school events are collected to help offset the cost of running these programs. For every cent of tax paid, another cent of general fund support for the program is required. Thus the school's general fund picks up the cost of the tax on admissions to school sponsored events.

As funding for public schools gets tighter and tighter, continued support for sports, drama, and music gets more difficult.

dm

House Taxation  
3-5-96  
Attachment 3



**Testimony on H.B. 2959**

**House Committee on Taxation  
Representative Phill Kline, chairman**

March 5, 1996

Submitted by Diane Gjerstad, Wichita Public Schools

Mr. Chairman, members of the committee:

The director of athletics for the Wichita Public Schools has been involved with athletics in four states. Kansas has the unique distinction of being the only state that charges sales tax on gate receipts in his experiences.

The high schools and middle schools in Wichita pay at least \$15,000 each year in sales tax on tickets to athletic events. Albeit a modest amount to the state, it would be a substantial amount for our schools, particularly in a time of decreasing revenues, as we are now facing.

The avoidance of sales tax would help to defray rising costs. These costs are primarily security and game administration. In recognition of rising costs the Board of Education implemented a pay to play fees for the 95-96 school year. Each student pays \$50, with a reduced fee based on need (\$25 reduced lunch, \$15 free lunch). Additionally, gate receipts have declined over the past 10 years.

I would urge your favorable consideration of H.B. 2959. Thank you.

House Taxation  
3-5-96  
Attachment 4

DIXIE E. TOELKES  
REPRESENTATIVE, 53RD DISTRICT  
SHAWNEE COUNTY  
3336 SE MEADOWVIEW DR.  
TOPEKA, KANSAS 66605  
(913) 267-7105



TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
MEMBER: EDUCATION  
LOCAL GOVERNMENT  
SELECT COMMITTEE ON  
JUVENILE CRIME  
VICE-CHAIR: SHAWNEE COUNTY DELEGATION

STATE CAPITOL BUILDING, ROOM 272-W  
TOPEKA, KANSAS 66612-1504  
(913) 296-7650

Thank you for allowing me to speak to you on HB 2959.

I am Dixie Toelkes. I was asked by the Kansas State Interscholastic Athletic Administrators' Association to introduce this bill.

In 1983 there was a law passed that made schools non-exempt from state sales tax on admissions to any activities. This means that all gate receipts from ballgames and ticket sales for plays, etc., are taxed at a rate of 4.9%. This has made it very difficult to make the budget stretch to meet all the demands placed upon it.

The only change made in the statute is on page 2, lines 13 through 17, to add admissions to school activities to exempt status.

I thank you for your consideration. I will be happy to answer questions.

A handwritten signature in cursive script that reads "Rep. Dixie Toelkes". The signature is written in black ink and is positioned in the lower-left quadrant of the page.

My name is Roger Toelkes. I want to thank your committee for allowing me to speak on behalf of HB 2959.

I have been involved with athletic teams in high schools for 38 years, as a teacher, coach, and activities director. During those years we have increased from boys only sports of football, basketball, and track to both boys and girls athletics that includes 17 different sports at our school.

The public keeps demanding more and more athletic opportunities for their sons and daughters. With the high cost of post secondary education, parents are seeking athletic scholarships to help pay the costs of higher education. In the past 5 years we have added 10 new teams to our athletic menu. Financial support for these activities comes mainly from gate receipts. Football and basketball gate receipts are the only two sports that make enough money to help support the other 15.

While budgets continue to decrease, the public still wants safe equipment and nice uniforms. Out of our gate receipts we must meet expenses for the following : officials fees, training room supplies, equipment, workers to help conduct games, security guards, and numerous entry fees. Equipment prices, and officials pay rise in cost almost yearly.

HB 2959 would certainly help us finance our budgets, that are constantly being reduced, somewhat easier. Shawnee Heights middle school and high school in the 1994-95 school year paid a total of \$8506.93 sales tax on gate receipts, fundraisers, or any items charged to the public. We are truly a nonprofit institution and by exempting these sales taxes, it would help pay for updated and safe equipment for boys and girls athletic teams and keep them functioning at a level the public expects.

Re: School Bill consideration  
on taxation

Last school year Topeka- Washburn Rural High School received revenue in the areas as follows:

1. gate receipts from public admissions to events held(both sports cultural events such as the musical)
2. revenues generated by many of our organizations who conducted fund raisers to supplement their budgets
3. fees assessed in the area of physical education that include parents buying specified uniforms for their students
4. high school dance admissions out of which the expenses for the dances are also paid for.

These were the major areas that drew the bulk of revenue. Of the \$236, 552 taken in by our high school bookkeeper, approximately \$11,600 was paid out in taxes based on a rate of approximately 5%.

Schools are, and will continue to face some very crucial financing issues. As you are faced with some very broad financing considerations of which school and education is simply one piece to a very large consideration state-wide, schools may be facing their most critical time in relation to budgeting.

Districts, like ours across the state, are facing the prospects of reduction in spending due to losing state aid. When you're talking about cutting programs in a school district such as ours I'm sure that we are not wanting to, nor will be able to cut algebra from our curriculum. You are unlikely to see physical science or chemistry cut. I doubt if anyone wants to entertain the prospects of cutting some very vital and useful elective areas. These areas provide a strong incentive to young people and teach them skills and disciplines that they are likely to apply to their every day life.

Most likely districts will look to cut costs in the areas of extracurricular, most obviously in the areas of activities and athletics. I was an active student and extracurricular participant. Sometimes I was more active and productive in the area of activities than I was in the area of classwork. When I look back on my high school experience, I don't recall specifics about what I did in my history class. I'd be hard-pressed to remember what my French teacher's name was. What I remember most was the football and basketball games, the student council activities, band trips, the golf meets and the relationships made through my participation in those activities. I'm sure that your experiences are similar.

I've been at Auburn-Washburn since 1978. I've been associated with the athletics and activities ever since in the capacities of coaching and administration. Since 1988 to present the athletic programs went from numbering ten sports to seventeen. Like our district, other districts have met the public demands for similar additional opportunities provided for their students.

For each sport added there is the added expenses in the areas of coaches salaries, equipment, transportation, uniforms, official's fees, game administration which includes paying workers to score and time events, entry fees, etc. and the list goes on and on.

The nearly \$12,000 we paid out in taxation would certainly go a long way to support the cost of these programs. The line item budget at our district level that supports just the equipment and the uniforms is annually only about \$50,000. You can see for yourself what a large percentage of that budget the taxes we paid represents.

One question you might be tempted to ask is a very logical one- 'If schools are faced with such overwhelming budgetary considerations, why don't they simply look to cut costs and eliminate activities?'

We know that currently we have about 70% of our student body involved in some form of extracurricular activities. This, of course, takes into account the participants in sports, but also takes in the students involved in student government, debate, forensics and clubs. We also know that students who take ownership in their school, who have a vested interest in any program in our school, have a much higher ratio for success than those who do not participate in anything school related.

Please consider academics and extracurricular as one entity as each supports the other in so many ways. Also consider very seriously this measure and any measure that can support education through increased funds.



KANSAS DEPARTMENT OF SOCIAL  
AND REHABILITATION SERVICES

915 SW HARRISON STREET, TOPEKA, KANSAS 66612

ROCHELLE CHRONISTER, SECRETARY

February 23, 1996

Representative Phillip Kline, Chairman  
House Committee on Taxation  
Statehouse  
Topeka, Kansas 66612

Dear Representative Kline:

As we had discussed yesterday, attached are our responses to questions that arose regarding HB 2942, which provides tax reductions for Kansans purchasing long term care insurance. For the items that require data runs, we will have the information by early next week. On the issue regarding other states' initiatives in this area, we will have a report back to you by the end of March.

We spoke with Department of Revenue staff, and they are amending their fiscal impact on the bill to include the offsetting savings that would occur if the insurance coverage is purchased by individuals who would otherwise exhaust their personal assets and become eligible for Medicaid. The Department of Revenue had estimated that if 275,000 persons purchase coverage and use the income deduction, State General Fund revenue would be reduced by \$7 million. However, on the Medicaid side of the equation, the annual SGF cost of a person in a nursing facility is about \$7500 (\$18,200 including federal and state funds). If 1,000 nursing facility residents currently on Medicaid (about one-twelfth of the current Medicaid residents) had purchased such policies, the savings would outweigh the foregone revenue.

Even with the implementation of the Living Independence for Everyone (LIFE) initiative and the potential increase in elderly persons served in community settings, additional long term care insurance coverage can offset Medicaid community long term care costs.

We will continue to follow up with research regarding this issue.

Sincerely,

A handwritten signature in cursive script that reads "Ann E. Koci".

Ann E. Koci  
Commissioner

AEK:BRM

House Taxation  
3-5-96  
Attachment 8-1

Kansas Department of Social and Rehabilitation Services  
Adult and Medical Services Commission

February 22, 1996

ANSWER TO LEGISLATIVE QUESTIONS REGARDING HB 2942

**Question:** What percentage of the nursing facility population spends down to become Medicaid eligible?

**Answer:** Generally, a person must transfer assets three years prior to seeking Medicaid eligibility. There is a formula that allows some consumers to transfer a smaller amount of assets within a shorter period of time. The agency queried the resident assessment data base to determine the number of residents that were admitted to a nursing facility as private paying and later became Medicaid eligible.

From October, 1993 to current, there were 18,344 residents admitted into nursing facilities as private pay. Of this total, 1,015 residents became Medicaid eligible, or 5.5%. There are still 5,892 private pay residents of the total 18,344 in nursing facilities who at some point could still become Medicaid eligible.

**Question:** What is the average length of stay of a nursing facility resident?

**Answer:** The average length of stay of a discharged Medicaid resident is 1.8 years. It should be noted that there are 2,824 residents that have been in nursing facilities since July, 1990. This is the date when this data started being tracked. If the on-going group is included with the residents who have been discharged, the average length of stay is 2.7 years.

**Question:** How long does it take for a person, who is admitted as private pay, to convert to a Medicaid eligible?

**Answer:** The resident assessment data base was queried and those nursing home residents who were admitted private pay and later converted to Medicaid eligibles took on average 210 days.

**Question:** Are other States using a tax credit as an incentive to encourage long-term care insurance coverage?

**Answer:** The answer is not readily available. Staff will contact other States to determine if the tax credit has been implemented, and will provide a response to the committee by the end of March, 1996.

Mark S. Beck, Director  
Kansas Department of Revenue  
915 SW Harrison St.  
Topeka, KS 66612-1585



(913) 296-2365  
FAX (913) 296-2320  
Hearing Impaired TTY (913) 296-2366

Division of Property Valuation

MEMORANDUM

TO: Rep. Phill Kline, Chairperson  
House Assessment & Taxation Committee

FROM: Mark S. Beck, Director of Property Valuation *[Signature]*

DATE: February 23, 1996

SUBJECT: H.B. 2823

During the Division's testimony on House Bill 2823, which amends K.S.A. 1995 Supp. 19-430 to require full time county appraisers in counties having a population of more than 25,000<sup>1</sup>, a request was made for a list of counties having between 20,000 and 30,000 population. Those counties are as follows:

Barton	28,896
Cherokee	22,054
Ellis	26,015
Ford	28,477
Franklin	23,207
Labette	23,148
McPherson	28,101
Miami	24,723
Sumner	26,436

This information was taken from the Kansas Statistical Abstract, University of Kansas, Charles E. Krider, Executive Director. Source: U.S. Bureau of the Census, January, 1995.

If the committee requires any additional information please advise.

<sup>1</sup> Presently, K.S.A. 1995 Supp. 19-430 requires counties having more than 20,000 population to have full time county appraisers.



**KANSAS HOUSE BILL NO. 2806**

Supplemental Comments  
presented to the  
**HOUSE COMMITTEE ON TAXATION**  
February 26, 1996

Michael Lennen of  
Morris, Laing, Evans, Brock & Kennedy, Chartered

On behalf of:  
The City of Wichita, Kansas

We have reviewed the Revenue Department's draft fiscal note on House Bill 2806 and offer the following observations:

1. The Department provides no data and apparently has undertaken no study to support its purely speculative guess that the "magnitude of sales tax dollar loss from amendments in this bill is estimated to be in the millions."

2. The Department asserts that "the last sentence of the amended language on Page 2, line 4 through 7, would cause the state to lose in excess of \$250,000 on one audit assessment alone." The referenced language relates to the prohibition on assessments occurring after January 1, 1996, on sales of property or services exempted by provisions of H.B. 2806 which transactions occurred prior to the effective date of the bill.

Although it is not identified, the single audit apparently refers to the City of Wichita audit. How the Department calculated the \$250,000 "loss" is unknown, as is the allocation of such "loss" between state and local sales taxes. Moreover, since the assessment has not yet been paid and significant portions of it will be vigorously contested, the validity of any quantification of "lost" revenues is subject to serious question. In any event, we note the Wichita audit covered a three year period from June 1, 1992, through May 31, 1995.

Assuming the accuracy of the Department's claims, the annual revenue impact would be less than \$85,000. How such fiscal impact should be projected on a statewide basis is uncertain. It is clear, however, that, because of the magnitude of its municipal water utility operations, Wichita would account for a significant portion of any statewide effect.

3. The fiscal note indicates that, as to property used in common by the subdivision and its utility department, sales tax is currently "being collected on a pro-rata basis." We would advise that the Department has imposed no pro-rata allocation on the computer purchased by the City of Wichita and used in part by the Water Utility. The purchase price of the computer was \$366,000. The entire amount is included in the tax base in the sales and use tax assessment levied against the City.

Moreover, the Department's Information Guide 19-93-1, Political Subdivisions, states:

The law does not allow cities to prorate the amount of sales tax to be paid the retailer when an item of service is to be used only part time in the business of selling gas, water, electricity or heat to others. For example, if a city purchases a pick-up truck which will be used half-time by the city's water department (taxable) and half-time by the city's streets and roads department (nontaxable), the sales tax law does not provide such city with authority to prorate the sales tax and pay the dealer sales tax on half of the cost of the pick-up. Thus, the rule is - if the item is to be used at all in the business of selling gas, water, electricity or heat to others then, sales tax is due on the total selling price.

4. In discussing the section of the bill which states that property predominantly used by a political subdivision or which is used in common by the utility department and other departments of a subdivision shall be "deemed" not to be used for a taxable business purpose, the Department poses two questions: who makes the determination to "deem" the property taxable or exempt and what is "predominant use?" The questions are apparently

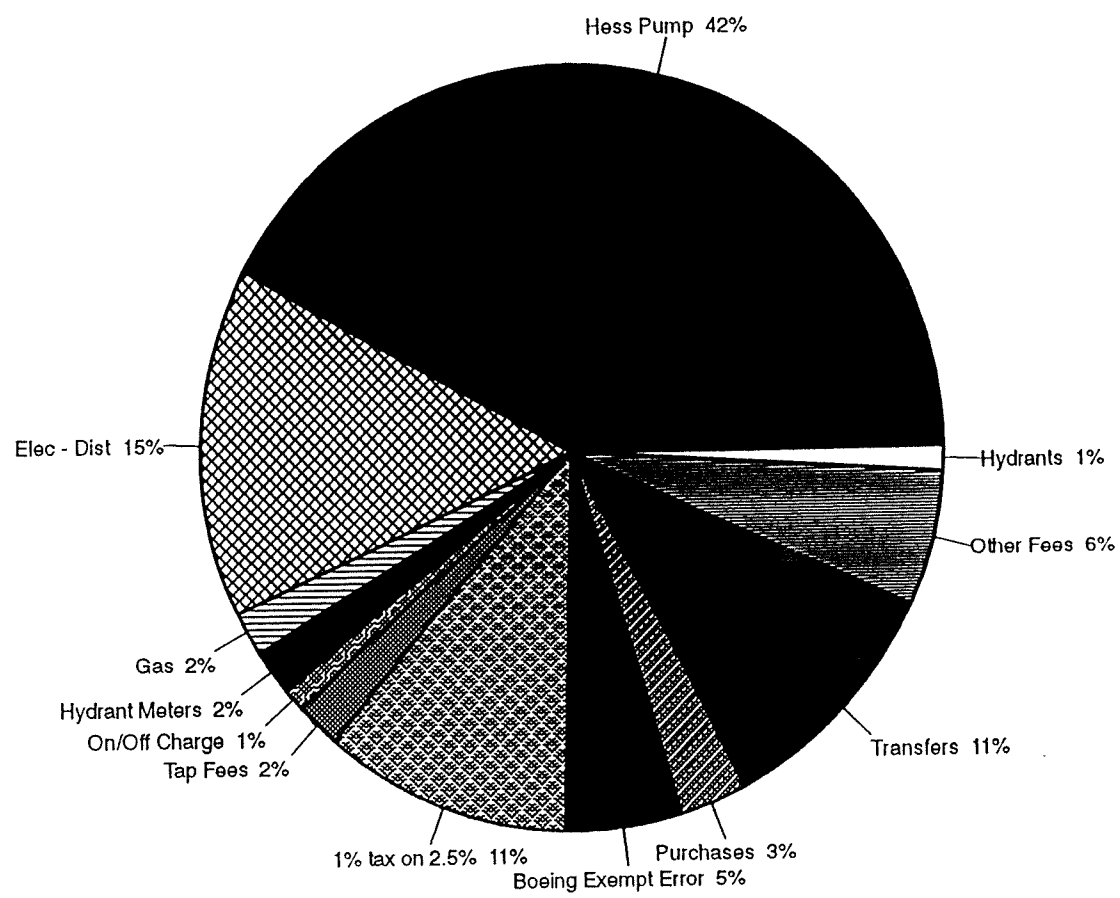
asked for rhetorical rather than substantive purpose. In the first instance, by enacting H.B. 2806, the Legislature will have been the "deeming" entity. In response to the second question, we would simply note that the primary or predominant use of particular items of property or services for sales tax imposition purposes is a determination that is made in the ordinary course of sales tax enforcement by state taxing officials. If the Department has suggestions for definitional clarity, they should be offered and seriously considered by the Legislature.

5. The Department's comments about private enterprises having non-taxable departments or divisions competing with municipal utilities is mystifying. Perhaps a legislator could ask a departmental representative for clarification. We could then respond intelligibly to that portion of the fiscal note. We would point out the Department's own regulations provide that interdepartmental transfers of property or services between divisions of a single legal entity are non-taxable. K.A.R. 92-19-72. In the City of Wichita audit, however, the Department has assessed sales tax on services provided by various City departments to the Water Utility - all of which are part of the same legal entity.

6. The Department's assertion that the "for resale" section appears to eliminate subsection 2 is wholly erroneous. The Department is certainly aware of the distinction between "sales for resale" and "retail sales." H.B. 2806 would merely exempt those purchases of property or services used in making sales for resale. For the Wichita water utility, for example, this would basically include wholesale sales to rural water districts or to other municipal water utilities.

# City of Wichita

## Summary of Taxable Issues - Water



January 26, 1996