

MINUTES OF THE HOUSE COMMITTEE ON TAXATION..

The meeting was called to order by Chairperson Phill Kline at 9:00 a.m. on January 30, 1997 in Room 519-S of the Capitol.

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:

Jonathan Small, Koch Industries, Inc., Wichita  
Bob Corkins, Kansas Chamber of Commerce & Industry, Topeka  
Janie Curtis, Curtis Machine Company, Dodge City  
Dave Gregory, Star Lumber, Wichita  
Art Brown, Mid-American Lumbermens Association  
Richard B. Chalker, Hallmark Cards, Kansas City  
Bryan Nuendorf, Grant Thornton, Kansas City  
Bernie Koch, Wichita Area Chamber of Commerce

Others attending: See attached list

Chair opened for bill introductions.

Moved by Rep. Mays, seconded by Rep. Ruff, introduction of bill to exempt municipal water facilities and operations from sales tax. Motion carried.

Moved by Rep. Vickery, seconded by Rep. Donovan, introduction of bill for property tax exemption for business machinery and equipment. Motion carried.

Moved by Rep. Franklin, seconded by Rep. Findley, introduction of bill that would exempt pollution control equipment in power plants from all property or ad valorem taxes. Motion carried.

Chair Kline opened hearing on:

**HB 2105 - Kansas tax equity and fairness act of 1997**

Jonathan Small, Koch Industries, Inc., Wichita (Attachment 1)  
Bob Corkins, Kansas Chamber of Commerce & Industry, Topeka (Attachment 2)  
Janie Curtis, Curtis Machine Company, Dodge City (Attachment 3)  
Dave Gregory, Star Lumber, Wichita (Attachment 4)  
Art Brown, Mid-American Lumbermens Association (Attachment 5)  
Richard B. Chalker, Hallmark Cards, Kansas City (Attachment 6)  
Bryan Nuendorf, Grant Thornton, Kansas City (Attachment 7)  
Bernie Koch, Wichita Area Chamber of Commerce (Attachment 8)

Chair closed hearings on **HB 2105**. Chairman Kline indicated a subcommittee would be appointed to study **HB 2105** and to report back to the Tax Committee.

The next meeting is scheduled for January 31, 1997.

Adjournment

Attachments - 8

# TAXATION COMMITTEE GUEST LIST

DATE: JANUARY 30, 1997

NAME	REPRESENTING
Judy Moler	KAC
Bernice Koch	Wichita Area Chamber
Hugh McKinnon	General Motors
Steve Richards	Yellow Corporation
Terry Friedrich	SPRINT
John LAFAYETTE	KDOR
BILL TARRELL	BOEING
<del>Ken Peterson</del>	KS Petroleum Council
Mark Barcellina	KDOCFH
Robert J Jones	STATE FARM Ins
RICHARD BODENWALD	TAXPAYERS
Bob Brown	mid-ton Pumpco
Ashley Sherard	Overland Park Chamber
Dave Northaus	Western Resources
Charity Caldwell	Topeka Chamber of Commerce
Ron Herman	Payless Shop Local
Jan Rasmussen	Board of Sex Appeals
Janna Johnson	KDOR - PWD
W. Hillard	State Farm Ins

TAXATION COMMITTEE GUEST LIST

DATE: JANUARY 30, 1997

NAME	REPRESENTING
Mike Kelley	KMCA
Arlan Holmes	DOB

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JONATHAN P. SMALL, CHARTERED  
Mercantile Bank Building  
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Topeka, Kansas 66612-2220  
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January 30, 1997

MEMORANDUM

TO: House Committee on Taxation

FROM: J. P. Small, Koch Industries, Inc and Kansas Tax Coalition

Re: 1997 House Bill 2105  
Tax Equity and Fairness Act

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Mr. Chairman and Members of the Committee I am Jonathan Small representing Koch Industries, Inc., headquartered in Wichita, Kansas, and I appear here this morning on behalf of the Kansas Tax Coalition, a group of companies and organizations doing business in the state of Kansas who have joined together to support meaningful reform of the relationship between the Kansas Department of Revenue and the Kansas Taxpayer. A list of those entities is attached to this memorandum.

The Coalition strongly supports 1997 House Bill 2105. It represents the collective efforts of and an enormous investment by many members of the Coalition over the past nine months. It also reflects a productive and collaborative labor between the Coalition and members of the Department of Revenue and the Governor's staff over the past sixty days. We compliment them for their sincere and substantial commitment to this Bill and the goals we have all tried to obtain. This working relationship has generated a valuable dialogue between us.

We are pleased with House Bill 2105 and genuinely persuaded that it is a measured, healthy antidote to what the taxpayer community, particularly the business side of the house, has perceived at times in recent years as a painfully one-sided relationship. It is also important to point out that the components of the bill comprise a fragile but appropriate balance between the two sides in the process of give and take over what should or should not be our mutual objectives. And, because of this it is our hope that you will allow the bill to remain free of amendments as it is considered by this body.

We believe the Bill serves as a portent of a much healthier partnership between collector and taxpayer and a significant enhancement to our Kansas business climate. If passed it should herald a new spirit of cooperation instead of confrontation and litigation. We are encouraged by this and urge you to consider House Bill 2105 favorably. Thank you.

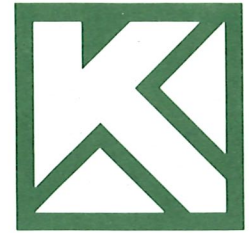
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Attachment 1-1

# KANSAS TAX COALITION

Allen Gibbs & Houlick  
Arco  
Arthur Andersen & Company  
Boeing  
Burlington Northern Sante Fe  
Cargill  
Coleman  
Colgate  
Commercial Properties Association of Kansas  
ConAgra, Inc.  
COST--Comm. on State Taxation  
Deloitte Touche  
Dillons  
Ernst & Young  
Farmland Industries, Inc.  
General Motors  
Grant Thornton  
Hallmark Cards Inc  
Hills Pet Nutrition  
Kaneb  
Kansas Aggregate Producers  
Kansas Bankers Association  
Kansas Chamber of Commerce & Industry  
Kansas City Power & Light  
Kansas Petroleum Council  
Kansas Railroads  
Kansas Ready Mixed Concrete Association  
KIOGA  
Koch Industries, Inc.  
Learjet, Inc.  
Mid America Lumbermens Association  
National Federation of Independent Business  
Phillips Petroleum Company  
Proctor & Gamble  
Raytheon Aircraft  
Rent-A-Center  
Sprint  
Tax Executives Institute  
Texaco, Inc.  
Western Resources  
Wichita Independent Business Association  
Wichita Area Chamber of Commerce  
Yellow Corporation

# LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry



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HB 2105

January 30, 1997

## KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the  
House Taxation Committee

by

Bob Corkins  
Director of Taxation

Honorable Chair and members of the Committee:

My name is Bob Corkins, director of taxation for the Kansas Chamber of Commerce and Industry, and I appreciate the opportunity to express our members' support of the Kansas Tax Equity and Fairness Act of 1997. We hope that you will all soon appreciate the important strides this proposal would take toward making this state's tax appeal system a more reasonable and efficient process for everyone.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 47% of KCCI's members having less than 25 employees, and 77% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

First, there are a couple of brief points to note about some of the publicity regarding the Kansas Department of Revenue over the last several months. With respect to the *CFO Magazine* article, its accuracy is completely immaterial. If there are even just a handful of major and influential business executives that hold the *perception* that our tax administration qualifies Kansas for a "Top-6 blacklist" of states to avoid, some bold reforms are needed to turn that perception around. With respect to any alleged culpability of any KDOR personnel in fostering our present tax climate, KCCI will play absolutely no role in pointing fingers. We will focus exclusively on substantive changes to laws and regulations that safeguard fairness to taxpayers without regard to any individual that may be in this or any future administration.

It's clearly time for some good news, and that is what HB 2105 delivers. The Department of Revenue, with its assent to this package, has cleared the way for changes which many legislators and their constituents have sought for years:

- \* interest on property tax refunds
- \* a substantially faster KDOR appeals process
- \* fair penalties for delinquent property taxes
- \* vastly clearer retailer standards for accepting exemption certificates
- \* simple "truth-in-taxation" property tax statements

Other reforms contained in the bill certainly deserve an elaboration which I don't have time to convey at this moment. If you ask, I'll be happy to oblige. There are, however, two general observations which I'd like to emphasize: the equalization, neutrality and universality of interest charges; and, the remarkably streamlined KDOR appeals process.

Interest payments in the tax appeal context should reflect the time value of money and nothing else. Interest is not a penalty. Its application should not be designed to create any disadvantage for any party in a pending dispute. Does the threat of liability for paying interest often affect tax negotiations? Of course it does, particularly if your arguments are losing. But any such affect is coincidental and interest, on its face, should be neutral. Therefore each side of each dispute, the

Government and the taxpayer, should be subject to the same interest rate whether applicable to the conclusion of tax overpayment or underpayment. Furthermore, these tenets of interest should be applied to sales tax, property tax and income tax issues alike, HB 2105 would accomplish all of the above.

The Kansas Tax Equity and Fairness Act would also abolish the formal hearing now required at KDOR for excise and income tax appeals. Taxpayers have no choice but to go through this formal *denovo* hearing, investing the time and legal expense of presenting their case from scratch, before any chance of reaching the State Board of Tax Appeals (BOTA). A case before BOTA must also be heard *denovo*, just as would a further appeal on up to District Court. This means any taxpayer who pursues their case to District Court must currently present evidence and establish their arguments from a clean slate at three separate levels. By abolishing the formal KDOR hearing, HB 2105 would easily knock off one to three years from the process and it would encourage more settlements in the new nine-month (maximum) informal negotiation stage at the Department.

Companies of all types and sizes would benefit from the reforms of this bill and, in fact, repeated instructions from every sector of our membership have directed KCCI to work at bringing them about for years (you'll hear from some of them in a moment). For the grassroots of Kansas businesses on up, HB 2105 represents a significant constructive advance. We see a window of opportunity to make some truly meaningful process improvements in 1997 and urge your favorable action on this measure.

Thank you for your time and consideration.



P R E S E N T E D T O:

H O U S E C O M M I T T E E O N T A X A T I O N

CHAIRMAN PHILL KLINE and MEMBERS OF THE COMMITTEE

JANUARY 30, 1997

BY

JANIE CURTIS

VICE PRESIDENT and CO-OWNER

CURTIS MACHINE COMPANY, INC.

DODGE CITY, KANSAS 67801

316-227-7164 (PHONE)

316-227-2971 (FAX)

TESTIMONY OF JANIE CURTIS

I am testifying today in support of the Kansas Taxpayer Fairness Act, and particularly the provisions authorizing the payment of interest on property tax refunds.

For several years, Curtis Machine Company was unable to pay its property taxes due to financial crisis. Had the company failed, 126 employees in Ford County would have lost their jobs. During this time, Ford County was assessing us property taxes based on incorrect values on both our real and personal property. We were advised that we could protest those values by "Paying them Under Protest" but since we were unable to pay them, we were unable to protest them.

We were successful in turning the Company around, and in 1993 we initiated action to pay our property taxes, with interest in full. We presented our valuation records and information to Ford County, and in March of 1994 the Ford County Appraiser's office issued a revised valuation summary that was acceptable to us. After our attempts to arrange payment based on those amounts on a cooperative basis with Ford County failed, we paid the full amount originally assessed in the spring of 1994, together with interest

computed for various years at between 12% to 18%. Our total payment to the County was nearly \$900,000 ---- almost half of which was interest the County charged us for not paying what we owed.

Since the County Appraiser's office had recalculated our appropriate taxable values in amounts we agreed with before we ever paid our taxes, we expected that our payments under protest would be quickly resolved. Instead, now nearly three years later, Ford County has filed so many motions and interim appeals to prevent the Board of Tax Appeals from even hearing our case that we do not even have a hearing date scheduled. We do not believe that we even have a valuation dispute with the County any more; we have revised valuation calculations on Ford County Appraiser's Office stationary that we agree with. However, legal games by Ford County's attorney on this case has meant that the County has had our money for three years, with no end in sight. Our attorney advises us that due to this action, we could be 2-3 years from disposing of all of these obstacles and getting an order from the Board of Tax Appeals consistent with the Appraiser's office valuations. And if that order were appealed, as they have appealed all other rulings in this matter to date, another 2 years could be added onto the time frame before we could have a final refund order. That would be a total of as much as 8 years from the date we made our payment until the date we get our refund. Worse, we are told that the County is not required under

current law to pay us any interest for holding all of our money all of those years!

When we were late in paying taxes, the County assessed us high rates of interest for the time period that we did not pay them what we owed. It is unfair that, when the tables are turned, the County can not pay us what we are owed for several years, and when they are finally forced to make that payment, they can do so without interest. Why should they get to keep our money all these years as an interest free loan? I am requesting that you and the legislature provide financial disincentives to taxing authorities who continue to delay matters that are pending. In my view, taxing authorities need to be required to pay interest at the same per centage as the taxpayer was assessed. This needs to be true for all outstanding claims as well as all new cases that are filed.

I urge you to balance the scales, and make the taxing authorities live by the same rules they make us live by. If they can charge interest on late payments, then they should be forced to pay interest when they make payments late. Please adopt the interest on refund provisions of this Act.

Kansas House Committee  
House Bill 2105  
January 30, 1997

Thank you for the opportunity to come before you. My name is Dave Gregory. I am the Director of Marketing and Merchandising for STAR LUMBER & SUPPLY of Wichita. However, two years ago my position at STAR LUMBER was Director of Information Systems where I worked very closely with sales tax collections.

We at STAR LUMBER & SUPPLY have been very interested in the sales tax exemption certificate portion of this bill, since we were audited by the Department of Revenue in 1994. The Sales Tax Exemption Certificate issue has been the most important issue of the Kansas Retail Council as well.

The "Good Faith" wording of the sales tax exemption certificate portion of this bill represents language and concepts that STAR LUMBER embraces. And, as an immediate past President of the Kansas Retail Council, I speak on behalf of the Kansas Retail Council in endorsing this language.

We believe that the Sales Tax Exemption Certificate and "Good Faith" wording will reduce the unfair burden placed on retailers to investigate their customers who present them with Sales Tax Exemption Certificates.

It may interest you to know that STAR's original sales tax assessment exceeded \$400,000 and the Department of Revenue ultimately reduced the sum to \$30,000. House Bill 2015 should guide the department to more realistic and accurate original assessments by normalizing interpretation of the regulations. This bill will reduce retailer's fear of doing business in Kansas.

House Bill 2105 will reduce retailer/customer confrontations while improving the Retailer/Department of Revenue relationship.

The bill before you today will answer many of the inequities and go a long way towards reducing the retailer's burden of performing extraordinary ethics investigations in regard to sales tax exemption certificates.



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816/931-2102 FAX 816/931-4617

## MID-AMERICA LUMBERMENS ASSOCIATION

### TESTIMONY FOR THE HOUSE COMMITTEE ON TAXATION

House Bill # 2105

January 30, 1997

Mr. Chairman, members of the House Taxation Committee, my name is Art Brown, and I represent the Retail Lumber and Building Material dealers in the State of Kansas through the Mid-America Lumbermens Association. I appear before you today as a proponent of House Bill #2105, the tax equity and fairness act.

Earlier in this session, a comment was made by a former KDOR employee about the e-mail incident involving the Wichita Eagle. In essence he said that such dialogue as was said to have taken place was not all that uncommon in the old days. ( This is not a direct quote.) We in the business community would certainly agree with that statement. It would seem the policy of the Revenue Dept. towards the business community was that the beatings would continue until morale improved.

In looking at the product we see before us today, it is very apparent that this attitude has changed significantly. We applaud this combined effort of the Dept. of Revenue, the Governor and the Tax Coaliton for a bill we give our strongest support.

There is a lot to like about this bill. Having one of our members work through the appeals process, I can personally attest it was a little over a 2 year process before a final



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settlement was reached. By making this a 270 day process instead, we can assure you this section of the bill ( section 10 ) will be well received. Certainly the equalization of interest rates on overpayments and underpayments is an issue that will be graciously embraced by all citizens, not just business owners. ( Section 1 )

The provision which spells out in Statute that KDOR employees will not be evaluated by production quotas or tax assessments is again, an item that will sit well with all taxpayers. ( Section 16 )

The real focus of my testimony has to do with New Section 19, found on page 16 and starting on line 24.

We can honestly say that this definition goes a long way towards the "hold harmless" type of protection that would eliminate a retailer from being an arm of collection for the Revenue Dept.

We wish to point out one part of the bill which we think may bear watching, or need a very subtle change. I turn the Committees attention to page 17 lines 38-40. I really don't know how many of you have ever used the Dept. of Revenue tax guides. They do a very adequate job in explaining tax policy in language the average business owner can understand. The tax guide being discussed in this section is guide 19-89-2. Our concern comes from the language about acceptance of an exemption certificate in good faith for the sale of farm machinery or equipment not listed in this tax guide as long as the purchaser provides a specific statement describing the qualifying use. We get a sense this could put the retailer in an position of adversity with his customer. Obtaining such a statement from some of the Farmers and Ranchers in

this State is many times easier said than done. We leave this matter to the wisdom of the Committee.

We fee that it is important that we express the thought that not only by statute should this bill be "taxpayer friendly," but also by the Rules and Regulations the Dept. of Revenue will set up to administer these new Statutes. You will notice I have attached K.A.R. 92-19-25a to my testimony to illustrate my point. It states that in the opinion of the Director of Revenue, if a retailer takes a blanket certificate on a taxable sale, the retailer can be held responsible for that tax if the Director determines that the retailer knew OR SHOULD HAVE KNOWN that the sale in question was not a tax exempt sale. We will NOT point any fingers at the Secretary of Revenue, or any past Secretary of Revenue, but it is our strong opinion that the language in this K.A.R. is ambigious and entirely too discretionary. We would hope that the language in this regulation is substantially modified to protect the retailer. I repeat, this is just one K.A.R. of many that is used to administer tax policy and implement statutes. We feel we know what the INTENT of this bill is, we are only pointing out that in the adoption of the Rules and Regs. that will ultimately be used to administer this bill, should it become law, that they too, would have the INTENT of being as "user friendly" as the bill itself. We would be remiss if we did not acknowledge the tenacity of members of this Committee to also push the agenda forward in the area of "good faith." The "nuts and bolts" work done in last years sub-committees show up in a positive way in this bill you see before you. I would at this time like to thank Representative Shore and Representative Franklin for



**Chairing the sub-committees in the 1996 session that addressed many of the issues that ended up in this bill. Several key points relating to "good faith" and the sharing of documentation from the Department are a result of the dialogue from those meetings.**

**We would also thank the Chairman of the House Taxation Committee. For 2 years including interums, we have tried to bring this issue to closure. You have worked with us in this endeavor. We stand shoulder to shoulder with you on the comments you made in regard to "good faith" at the House Taxation Committee meeting earlier this week ( Jan. 28th.) You thought enough of the "good faith" issue to hold sub-committee hearings on this issue last year. Your positive support on this matter is deeply appreciated by our members.**

**To all the key policy makers who were instrumental in crafting this bill, we say thank you. This is a good bill and we very much would like to see it passed in its present form into law.**

**Thank you for this opportunity to visit with you about this most important issue for our membership. I stand ready to answer any questions you may have about my testimony.**

108; K.S.A. 1986 Supp. 79-3606 as amended by L. 1987, Ch. 64, Sec. 1 as further amended by Ch. 292, Sec. 32; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1987; amended May 1, 1988.)

**92-19-25.** (Authorized by K.S.A. 79-3609, 79-3610, 79-3611, 79-3618, K.S.A. 1971 Supp. 79-3602, 79-3603; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; revoked May 1, 1987.)

**92-19-25a. Exemption certificates.** (a) All retail sales are presumed taxable unless specifically exempt. Each retailer shall be responsible for determining the validity of a purchaser's claim for exemption. In determining the validity of any claim for exemption, the retailer shall have a duty to make a reasonable and prudent inquiry of the purchaser regarding the item purchased and the basis for the exemption claimed. If the retailer determines the sale is not subject to tax, the retailer shall secure a completed exemption certificate from the purchaser. The certificate shall set out in detail the reason for the claim to exemption. Each retailer shall attempt to secure the exemption certificate either prior to billing the purchaser or prior to delivering the property. However, the retailer's responsibility for securing a certificate continues even though the purchaser may strike the tax from the billing or otherwise raises an exemption claim for the first time after receiving delivery or billing for the property. If the retailer does not obtain a proper exemption certification, the retailer shall have the burden of proving the sale was exempt.

(b) The sale of services enumerated within the sales tax act are presumed to be taxable unless specifically exempt. When an enumerated service is claimed to be exempt, the person furnishing the service is required to obtain and maintain an exemption certificate in the same manner as a retailer of tangible personal property. If the retailer does not obtain a proper exemption certificate, the retailer shall have the burden of proving the sale was exempt.

(c) Each retailer shall keep a record of each exempt sale of property and services made during each calendar month, showing the date, amount, customer's name and address, item or service sold, and other pertinent information to support a claim for deduction taken on the monthly return. Each retailer shall make all

exemption certificates available to the director of taxation for inspection. An exemption certificate shall be retained by the retailer for a period of not less than three years.

The director of taxation shall recognize an exemption certificate when in substantially the following form:

**EXEMPTION CERTIFICATE**

The undersigned purchaser certifies that the sale to him of tangible personal property or service by \_\_\_\_\_, of \_\_\_\_\_, Kansas,

is exempt from the tax levied by the Kansas retailers' sales and compensating tax act for the following reasons: \_\_\_\_\_

The undersigned understands and agrees that if he uses the property or service other than as stated above or for any purpose which would not exempt the sale under the act, he becomes liable for the tax.

Date \_\_\_\_\_ Purchaser \_\_\_\_\_ (Signature)

Address \_\_\_\_\_

A retailer making recurring exempt sales of the same type to the same purchaser need not secure a separate exemption certificate for each transaction but may accept, at the retailer's own risk, a blanket exemption certificate covering future sales. If the retailer honors a blanket exemption certificate on a taxable sale, the retailer may be held responsible for the tax if the director determines the retailer knew or should have known the sale was not exempt. (Authorized by K.S.A. 79-3618; implementing K.S.A. 79-3609, 79-3610, 79-3611, K.S.A. 1986 Supp. 79-3602, 79-3603 as amended by L. 1986, Ch. 386, Sec. 1; effective May 1, 1987.)

**92-19-26.** (Authorized by K.S.A. 79-3618, K.S.A. 1971 Supp. 79-3606; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; revoked May 1, 1987.)

**92-19-27.** (Authorized by K.S.A. 79-3608, K.S.A. 1973 Supp. 79-3602, 79-3618; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended Jan. 1, 1974; revoked May 1, 1987.)

**92-19-27a. Sales for resale; Kansas resale exemption certificates.** (a) Kansas sales tax is imposed upon retail sales only. Retail sales are sales to final users or consumers. If the retailer timely accepts a properly completed Kansas resale exemption certificate in good faith, the retailer shall be relieved of liability for sales tax or the duty to collect use tax. The

retailer may accept a resale exemption certificate only from another retailer of tangible personal property who holds a valid sales or compensating (use) tax number.

(b) The director of taxation shall recognize a Kansas resale exemption certificate when in substantially the following form:

**KANSAS RESALE EXEMPTION CERTIFICATE**

\_\_\_\_\_ (Name of purchaser)

\_\_\_\_\_ (Address of purchaser)

I hereby Certify: That I hold valid retail sales or compensating tax number \_\_\_\_\_ issued pursuant to the Kansas sales and compensating tax law; that I am engaged in the business of \_\_\_\_\_

The tangible personal property described below is the property that I shall purchase from:

\_\_\_\_\_ resold by me in the form of \_\_\_\_\_; Provided, however, That in the event the property is used for any purpose other than \_\_\_\_\_, or display while holding it for the purpose of business, it is understood that the purchaser shall be liable for the Kansas sales and compensating tax, measured by the purchaser's net sales tax. Description of property to be purchased: \_\_\_\_\_

\_\_\_\_\_ 19 \_\_\_\_\_ (Signature or initials)

A general description of property to be purchased for resale. Each purchaser shall provide a general description of resale property at the retailer's own risk and shall be liable for tax on sales when a resale exemption certificate is not of the type normally accepted in the purchaser's business. If a purchaser's resale exemption certificate is not of the type normally accepted in the purchaser's business, the purchaser shall require the purchaser to provide a resale exemption certificate in which the purchaser certifies that the particular property is purchased for resale in the normal course of the purchaser's business.

The retailer shall be presumed to have accepted the certificate in good faith unless the retailer can overcome the presumption by showing that the retailer's ongoing exemption certificate is not of the type normally accepted in the purchaser's business;

\_\_\_\_\_ (Signature or initials)

\_\_\_\_\_ (Signature or initials)

\_\_\_\_\_ (Signature or initials)

**House Bill No. 2105 -- Kansas Taxpayer Fairness Act**

**House Taxation Committee**

Testimony by

Rick Chalker

Division Vice President for Tax

Hallmark Cards, Inc.

January 30, 1997

Good morning, Rep. Kline and members of the committee.

My name is Rick Chalker. I am division vice president of tax for Hallmark Cards in Kansas City. Prior to joining Hallmark I was with the accounting firm of Ernst & Young for 32 years and specialized in taxation.

I am pleased to be here today to testify in support of the Taxpayer Fairness Act, House Bill 2105. I would like to make a brief statement, and then I will answer your questions.

I am testifying today on behalf of a number of different companies, both large and small, who have joined together to support the Taxpayer Fairness Act. Earlier, you heard Mr. Small identify representatives from a number of these companies.

Our group supports the Taxpayer Fairness Act. It is designed to ease the administrative burden many Kansans face in paying state taxes. It will streamline the tax system, and it will improve the interaction between taxpayers and their government by providing fair, timely and understandable information.

With that background, I will highlight four key provisions of the bill. They are: interest on overpayments, dispute resolution, access to Department of Revenue decisions and sales tax administration. Then I will explain their purpose and provide you with information about how these changes will improve tax administration in Kansas – for taxpayers and for tax administrators.

The first provision will allow taxpayers to receive interest on sales and property tax overpayments. It also will equalize the amount of interest paid for income tax refunds with underpayments. Taxpayers will receive interest on overpayments at the same rate as underpayments for all types of taxes. We believe this change is fair to taxpayers as well as to government. In most states, taxpayers are paid interest on tax overpayments.

The second provision will result in the speedier resolution of disputes involving sales, use and income taxes. Taxpayers will benefit from an expedited dispute resolution process because it will reduce the costs of a formal hearing at which an attorney is required. The bill will permit taxpayers to represent themselves at an informal hearing with the Department of Revenue. Taxpayers will not be subject to the discovery process. Taxpayers also will be able to move to the next level of appeal no later than nine months following the date they file an appeal. Currently, the formal hearing process can take up to three years to complete. So, the time it takes to resolve a dispute will be reduced by as much as two-thirds. Most states require only one administrative hearing with varying degrees of formality, and making this change would place Kansas among those states that provide taxpayers greater flexibility.

The third provision will require the Department of Revenue to make available rulings, announcements and other interpretative positions so that taxpayers are aware of and have access to the department's view of the tax statutes and regulations. For example, two taxpayers in similar factual circumstances may receive disparate treatment without being aware of such treatment. Publishing such information will create an environment of fairness and open communication between the department and taxpayers.

We believe this change also will reduce the number of taxpayer appeals. Taxpayers will be aware of routine facts and decisions. The availability of this information will result in improved taxpayer compliance.

The final section I will discuss includes two provisions that simplify the administration and collection of the Kansas sales tax. The first provision protects sales taxpayers, who in good faith, accept completed exemption certificates (typically resale exemption certificates) from purchasers who, in fact, may not be entitled to exemption. If a sales taxpayer acts in good faith and accepts a completed certificate, there would be no further burden on the sales taxpayer. This provision is especially helpful to small business taxpayers who lack the resources to monitor certificates closely.

The second sales taxpayer provision allows purchasers, under certain circumstances, to bypass vendors and to recover sales tax erroneously paid directly from the Department of Revenue. This change would simplify the complex process and reduce the burden of pursuing the recovery of sales tax paid to vendors.

We support this act because it equalizes interest on overpayments and underpayments as well as streamlines the dispute resolution process. The act also provides taxpayer access to Department of Revenue information and improves sales tax administration. As you have heard, these four changes and the others contained in the Taxpayer Fairness Act will streamline our tax system. It will strengthen the relationship between taxpayers and their government. These changes will provide fair, timely and understandable information. We encourage your support of House Bill 2105, the Kansas Taxpayer Fairness Act.

**House Taxation Committee**

**House Bill No. 2105 – Kansas Taxpayer Fairness Act**

Testimony by

Bryan C. Neuendorf  
State & Local Tax Practice Leader - Central Region  
Grant Thornton LLP

January 30, 1997

Good morning. My name is Bryan Neuendorf. I am the State and Local Tax Practice Leader for Grant Thornton's Central Region and have practiced in this specialization for more than thirteen years. For those of you that are not familiar with Grant Thornton, Grant Thornton is the seventh largest accounting and management consulting firm in the United States. Our primary focus is to serve small to middle-market companies. Many would say, and perhaps you would agree, that these companies are the backbone of the Kansas and U.S. economy. I am before you today to represent the voice of these small to middle-market companies and to testify in support of House Bill 2105.

Before I begin discussing the specific provisions of the Tax Equity and Fairness Act, it is important for us to remember that like the Federal tax system, the Kansas tax system relies heavily on taxpayer voluntary compliance. Logically, any legislative changes that provide for an easing of the administrative burden or a streamlining of the tax system will improve taxpayers willingness and ability to voluntarily comply. This bill should improve the current Kansas tax system.

For the remainder of my time I would like to focus on three provisions of the bill that directly impact the small to middle-market companies. My goal is to provide you with examples of how the current structure works and explain why this bill improves the process and eases the administrative burden placed upon Kansas taxpayers.

It is my experience that as many taxpayers overpay their sales/use taxes as underpay their sales/use taxes. Under the current system, taxpayers who have paid sales/use tax to their vendor in error are required to file a refund request with their vendor (the retailer). The taxpayer is at the mercy of the retailer to timely file the refund request with the Department of Revenue. In some cases, the retailer refuses or is unavailable to



request the refund of the tax. One provision of this tax bill authorizes taxpayers to pursue refunds directly from the Department. In addition, it allows for an offset of vendors sales/use tax overpayments against any tax underpayments when under examination by the Department.

Another provision of this bill that I would like to discuss is the provision that eliminates the current formal hearing process and replaces it with an informal conference with the secretary or their designee. For those of you that may not know, taxpayers currently may have an informal conference with the Audit Bureau to discuss resolution of any disputes. This provision allows for the elimination of one level of administration and provides a structured informal hearing process whereby taxpayers do not have to be represented by counsel.

And last of all I would like to discuss the provision that requires the publication of the Department of Revenue decisions. Many states provide or make available administrative rulings, notices, and policy directives of their respective revenue departments. This accomplishes three objectives: 1) provides taxpayers with guidance on the Department's view of the tax statutes and regulations; 2) similar taxpayers will be treated alike; and 3) it should substantially reduce disputes with the Department.

In closing I would like to emphasize that this Taxpayer Fairness Act is a positive step to improving the system and should strengthen the relationship between taxpayers and their government. Thank you for allowing me to speak to you today on behalf of the small and middle-market businesses. I would be happy to answer any question you may have.

Testimony on House Bill 2105  
House Taxation Committee  
January 30, 1997

Bernie Koch  
Wichita Area Chamber of Commerce

Mr. Chairman, members of the committee, thank you for the opportunity to appear today in support of House Bill 2105, the Tax Equity and Fairness Act of 1997. I'm Bernie Koch, Vice President for Government Relations with The Wichita Area Chamber of Commerce.

One of our new positions adopted by our State Legislative Committee and our Board of Directors this year reads this way: "The Chamber supports reform within the Kansas Department of Revenue in order to provide consistent tax rulings and predictable tax environment." That's why I'm here supporting this measure.

This bill contains many positive elements, but there are two in particular that I would like to mention.

The first is the requirement to make available to taxpayers all administrative rulings of the Department of Revenue. Not only do I think this will help taxpayers understand what is expected of them, I believe it will also help the Revenue Department be consistent by keeping it on its toes.

A taxpayer who received a ruling from Revenue that seemed contrary to a previous ruling for someone else could point out that inconsistency. The taxpayer would be able to show that their actions were based on a reasonable presumption that they were preparing their taxes and paying them correctly.

The other part of this measure that caught my attention was the informal conference procedure. I believe this could go a long way toward better and less adversarial communications between taxpayers and the Revenue Department.

All of the provisions of this bill seem to be improvements, so in conclusion, we support House Bill 2105 and ask you to support it as well.

Thank you for the opportunity to make comments.