

Approved: 3-5-97
Date

MINUTES OF THE HOUSE COMMITTEE ON TAXATION.

The meeting was called to order by Chairperson Phill Kline at 9:00 a.m. on February 10, 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:

James Maag, Kansas Bankers Association
David B. Schlosser, Southwestern Bell Mobile Systems
Eric Arner, asst. city attorney, City of Lenexa
Beccy Swanwick, League of Kansas Municipalities
Harriet Lange, Kansas Association of Broadcasters
Robert Hilton, KNZA, Hiawatha
Gary McNair, KSNT-TV, Topeka
Hank Booth, KLWN/KLZR, Lawrence

Others attending: See attached list

Chair opened for introduction of bills:

James Maag, Kansas Bankers Association, offered an amendment to KSA 79-32. 117. (Attachment 1)

Moved by Rep. Donovan, seconded by Rep. Shore, introduction of a bill to amend KSA 79-32,117 with the following language "(xi ii) that portion of any income of a bank organized under the laws of this state or any other state or a national banking association organized under the laws of the United States which is organized as a Subchapter S Corporation under Internal Revenue Code Section 1361, which accrues to the taxpayer who is a stockholder of such corporation and which is not distributed to the stockholder as dividends of the corporation". Motion carried.

Chair opened hearing on:

HB 2006 - Property tax treatment of cellular communication towers and associated real property.

Proponents:

David B. Schlosser, Southwestern Bell Mobile Systems (Attachment 2)
Eric Arner, asst. city attorney, City of Lenexa (Attachment 3)
Beccy Swanwick, League of Kansas Municipalities (Attachment 4)

Written testimony only:
Don Siefert, City of Olathe (Attachment 5)

Chair closed hearing on **HB 2006.**

Chair noted that Chris Courtwright had prepared and distributed a memorandum on **HB 2105 - The Kansas Tax Equity and Fairness Act of 1997 (IKEFA)** (Attachment 6)

Chair opened hearing on:

HB 2047 - Sales tax exemption for broadcasting machinery and equipment

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON TAXATION, ROOM 519-S Statehouse, at 9:00 a.m.
February 10, 1997.

Proponents:

Harriet Lange, Kansas Association of Broadcasters (Attachment 7)
Robert Hilton, KNZA, Hiawatha (Attachment 8)
Gary McNair, KSNT-TV, Topeka (Attachment 9)
Hank Booth, KLWN/KLZR, Lawrence

Chair closed hearing on **HB 2047**.

The next meeting is scheduled for February 11, 1997.

Adjournment.

Attachments - 9

TAXATION COMMITTEE GUEST LIST

DATE: FEBRUARY 10, 1997

NAME	REPRESENTING
Eric Arner	City of Lenexa
Harriet Lange	KAB
HANK BOOTH	KAB
Gary McNeil	KAB
Robert Hilton	KAB
Katy Hilton	KAB
George Banbee	Banbee & Assoc's
JEFF RUSSELL	SPRINT
Brenda Parks	Jonathan Small
Jay Scott Easter	Liberty Cellular Inc.
STEVE KEARNEY	LIBERTY CELLULAR INC.
John Reinhart	Kansas Press Assn
Steve Montgowersy	Greater KC Chamber
Ju Huang	DOR
Kathy Taylor	Ks Bankers Assn.
Ed Spiess	Peterson Public Affairs
Oregina Star	ATET
DAN B SCHROEDER	PETE McGUIRE & ASSOC.
Richard Martin	Sprint PCS

TAXATION COMMITTEE GUEST LIST

DATE: Feb 10, 1997

NAME	REPRESENTING
ROXSEN E. KOCH	Nextel Communications
Bill Anderson	Water Dist #1 of Jo Co
P. Haskins	City of Topeka
Kelly Kuitala	City of Overland Park
Becky Swanwick	League of KS Municipalities
DUD GRANT	KCCI
Dave Holtz	Western Resources

KSA 79-32,117© is hereby amended to read as follows:

(xiii) that portion of any income of a bank organized under the laws of this state or any other state or a national banking association organized under the laws of the United States which is organized as a Subchapter S Corporation under Internal Revenue Code Section 1361, which accrues to the taxpayer who is a stockholder of such corporation and which is not distributed to the stockholder as dividends of the corporation.

TESTIMONY PRESENTED
TO THE
HOUSE
TAXATION
COMMITTEE
BY
DAVID B. SCHLOSSER
OF
PETE MCGILL & ASSOCIATES
ON BEHALF OF
SOUTHWESTERN BELL
MOBILE SYSTEMS
HOUSE BILL 2006
10 FEBRUARY 1997

**Testimony of David B. Schlosser
of Pete McGill & Associates
on behalf of Southwestern Bell Mobile Systems
regarding HB 2006
before the House Taxation Committee
10 February 1997**

Mr. Chairman and members of the committee, good morning. Thank you for the opportunity to speak about House Bill 2006. My name is David Schlosser, and I work with Pete McGill & Associates to represent the interests of Southwestern Bell Mobile Systems in Kansas. I am also appearing today on behalf of an informal coalition of wireless communication companies that operate in Kansas.

The wireless carriers and the Johnson County Appraiser, Paul Welcome, have worked together on HB 2006 since it was pre-filed by the interim tax committee. Our cooperative efforts resulted in some slight changes to the language of HB 2006, which have been shared with the Chairman and the Revisors, and are attached to this testimony. The changes do not alter the intent of HB 2006, but make the intent and execution of HB 2006 more clear and fair. I would like to give you a simplified and brief overview of what HB 2006 does to current law. I will then be happy to rely on some of the tax experts here to answer any complicated questions you may have.

There are two important and separate parts to HB 2006. The first part, contained in Section One, alters Kansas tax law slightly to allow county appraisers to send the portion of a landowner's property tax bill that is attributable to the presence of a telecommunications tower on that landowner's parcel directly to the telecommunications company. Under current law, when a landowner leases some of his land to a telecommunications company to put up a tower, the appraiser sends the entire property tax bill to the landowner. The landowner then bills the telecommunications company for the amount his appraisal went up because he rents space to the telecommunications company. Section One, which both the Johnson County Appraiser and the wireless carriers want, will simplify the process of sending out property tax bills. It will also simplify an appeal by the telecommunications company, who must now appeal through the property owner from whom it leases the land.

The second part, contained in Section Two, has to do with the presence of a telecommunications tower on tax-exempt properties, such as a church steeple or a municipal water tower. Under current law, the presence of a commercial property on a tax-exempt property negates tax-exempt status for the host property. Section Two makes clear that the presence of a telecommunications tower on tax-exempt property, as defined in KSA 79-201, does not interfere with the host property's tax-exempt status. Section Two also allows the county appraiser to send the property tax bill directly to the telecommunications company.

The intent of HB 2006 is to simplify the assessment, collection, and appeal of property taxes for county appraisers, property owners who lease land to telecommunications companies, and telecommunications companies. Everyone involved agrees on the importance of those intentions. We ask for your favorable consideration of HB 2006.

HOUSE BILL No. 2006

By Special Committee on Property Taxation

12-17

AN ACT relating to property taxation; relating to the treatment of certain communication towers and real property associated therewith for such purposes.

Be it enacted by the Legislature of the State of Kansas:

Section 1. For all purposes associated with property taxation, any interest created in real property by lease or other lawful conveyance for the purpose of the location of a cellular communication tower or relay site, or both, is hereby declared to be personal property for all such purposes, and all provisions of law applicable to the taxation of personal property shall apply to any such interest.

Sec. 2. Any real property, or portion thereof, which is otherwise exempt from property taxation pursuant to the provisions of K.S.A. 79-201, 79-201a and 79-201b, and amendments thereto, and which is leased or otherwise conveyed for use in the location of a cellular communication tower or relay site, or both, shall be deemed to be used exclusively for the purposes of such sections.

Sec. 3. The provisions of this act shall be applicable to all taxable years commencing after December 31, 1996.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

Section 1. For all purposes associated with property taxation, the provisions of K.S.A. 70-412 notwithstanding, that portion of the fair market value of real property attributable to the leasing of real property, or the creation of any other interest of less than fee simple in real property, for the purpose of the placement of a telecommunications tower, antenna, or relay site upon the real property shall be entered on the assessment role separate from the remaining fair market value. Such portion of the fair market value shall be separately taxed to the owner of such telecommunications tower, antenna, or relay site as real property at the same classification and same tax rate as the real property upon which the telecommunications tower, antenna, or relay site is located; provided, however, in the event the real property upon which the telecommunications tower, antenna, or relay site is located is exempt from property taxation, such portion of the fair market value shall be taxed to the owner of such telecommunications tower, antenna, or relay site as real property at 25% of value. Such tax shall be a lien on the interest in the real property of such owner of the telecommunications tower company and shall be collected in the same manner as the collection of other taxes on real property.

change to include another section applying to public, tax-exempt property: "79-201a, 79-201b, and 79-201g"

change: "telecommunications"

change: ", antenna,"

change effective date: "December 31, 1995"

TESTIMONY TO HOUSE SPECIAL COMMITTEE ON PROPERTY TAXATION

RE: House Bill 2006

Eric R. Arner - Assistant City Attorney, City of Lenexa

Monday, February 10, 1997

Mr. Chairman and Members of the Committee:

Good morning. My name is Eric Arner and I am an Assistant City Attorney with the City of Lenexa. I am here this morning on behalf of the City of Lenexa, in support of House Bill 2006. In our opinion, House Bill 2006 is much needed legislation. The additions to K.S.A. 79-201(a) making telecommunications towers and relay sites exempt from property and ad valorem tax is a very important issue for the City of Lenexa. For the next few minutes I would like to outline the reasons for our support.

First, since the passage of the Telecommunications Act of 1996, the City of Lenexa has been the object of multiple inquiries regarding the development of wireless communications facilities. I'm sure statewide, Lenexa is not alone with respect to those types of inquiries. I believe we are in the first wave of a series of inquiries. Currently, wireless providers are looking for coverage, which translates into tall towers. This coverage phase will make up the bulk of the initial inquiries. As soon as the coverage phase is done, we believe providers will be coming back to our City and inquiring about smaller rooftop type facilities to deal with capacity issues. For various reasons, it is obvious to us that the providers consider municipal property among the most desirable. For the coverage phase, our Governing Body has instructed staff to facilitate the development of telecommunications services for our citizens while minimizing the total number of required towers. One of the ways staff is attempting to comply with this guidance is to take a look at existing towers within the City and determine if those facilities can accommodate more wireless telecommunications providers. Currently, there

are towers of all sizes both on private property and municipal property. At this point, staff feels that we have little control over towers located on private property. We can encourage co-location at those private sites, but ultimately, the decision to share tower space is between the providers and the owner of the property. On the other hand, the City of Lenexa has in place several towers providing wireless service to police, fire, public works and parks departments. In attempting to comply with the goal of maximum services to our citizens, while minimizing the proliferation of new towers, staff has determined that in certain instances, where existing City owned towers are already built on municipal property, we can encourage wireless telecommunications providers to co-locate on our tower, instead of building one of their own. The basic concept is fairly simple, since none of our existing towers are built to a sufficient capacity to handle additional antennas, the first wireless provider to the table is required to build a new tower. The new tower would be built by the wireless provider at or near the old City tower sufficient to house up to four additional providers. All costs associated with the construction of the new tower including site development are paid by the provider. Upon completion of the project, the provider gives the tower and developed site to the City of Lenexa. The City would then lease space on the tower back to the provider thus becoming a landlord. We feel that once the site is developed, other wireless telecommunications providers will then want to lease space on the new City owned tower, instead of building another tower to serve that same coverage area. This type of arrangement complies with our goal to facilitate the deployment of services, while reducing the overall number of towers. We have every reason to believe that this type of arrangement will also work in phase two or the capacity phase whereby instead of tower space, providers will be looking for rooftops of municipal buildings. Unfortunately, given this type of joint municipal and private enterprise, K.S.A. 79-201(a) as drafted and interpreted by our County Appraiser, would subject the entire municipal

parcel to property taxes. We feel that adding communication towers and relay sites to 79-201(a) as "deemed to be used exclusively for the purposes of " would eliminate the current tax liability issue.

Second, with the recent changes in the cable TV and telecommunications industries as well as the deregulation of electricity and natural gas, we feel the traditional fees generated under the "franchise" authority are subject to deterioration. Although House Bill 2006 does not directly deal with franchise fees, we feel that it does provide the City of Lenexa with revenue opportunities. In the example I outlined previously, where the City leases tower space to private companies, as part of the lease, a fair market rental value will be assessed. It is our hope that rental fees generated from the City owned towers will help offset the reduction of our franchise fee base caused by deregulation. This is not to say that the City of Lenexa is getting into the tower leasing business. In fact, it is quite the contrary, we hope only to utilize existing municipal resources to achieve the goals of prompt wireless telecommunications services, minimum towers and franchise fee replacement revenue.

Lastly, we feel that partnering with wireless providers offers an excellent opportunity to upgraded the City's own wireless network used to support the various City departments. By entering into this landlord\tenant relationship, the City is able to take advantage of a new tower site and all the amenities it has to offer, with minimal costs the taxpayers of Lenexa. It is an absolute certainty that the City must have a wireless network for its own internal uses. By allowing wireless providers to build new tower sites on municipal property, the City can take full advantage of the upgraded facilities and maximize our own wireless needs with little or no costs to the City.

In conclusion, House Bill 2006 is good legislation, which provides flexibility and addresses the realities and needs of local government with respect to telecommunications. The City of Lenexa would like to assist in

any manner possible to help pass this important bill. On behalf of the City of Lenexa, I strongly urge the Committee's support of House Bill 2006. At this time I would be pleased to answer any questions you may have.



**League of
Kansas
Municipalities**

**Legal Department
300 S.W. 8th
Topeka, Kansas 66603
Phone: (913) 354-9565/ Fax: (913) 354-4186**

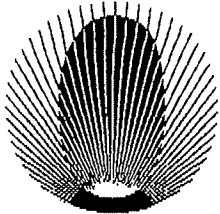
To: House Taxation Committee
From: Beccy Swanwick, Assistant General Counsel
Date: February 10, 1997
Subject: Support of House Bill 2006

Thank you for the opportunity to appear today on behalf of the League and to present testimony in support of House Bill 2006. The 1996 Telecommunications Act, which is designed to remove regulatory barriers and encourage competition among communications companies, has already increased the need for wireless telecommunications towers such as those addressed in this bill. As the need for these structures continues to increase, it becomes increasingly important that cities maintain the ability to lease a portion of their existing structures for the establishment of these communication sites without jeopardizing the tax exempt status of the entire property.

We believe that the language contained in this bill adds a necessary clarification to situations which will become more prevalent as the telecommunications industry continues to grow. For these reasons, the League supports HB 2006 which adds clarity to the taxation laws in these situations and addresses the need for access to telecommunications services.

Thank you for allowing us to testify before the Committee this morning.

House Taxation
2-10-97
Attachment 4-1



City of Olathe

MEMORANDUM

TO: Members of the House Taxation Committee

FROM: Donald R. Seifert, Management Services Director *DRS*

SUBJECT: HB 2006; Property Tax Treatment of Cellular Communication Towers

DATE: February 7, 1997

On behalf of the city of Olathe, thank you for the opportunity to submit comments in support of **HB 2006**. This bill would allow municipalities and other tax exempt organizations to lease public property such as roads, water towers, park land, or buildings to a cellular communications provider without jeopardizing the underlying tax exempt status of the real estate.

One of the most difficult issues now facing local government, both in Kansas and nationwide, is the increasing number of requests for locating wireless telecommunications towers and antennas, particularly for the next generation of cellular and digital personal communication services (PCS). Cities are being approached by a host of operators seeking sites to establish these wireless networks. In general, local governing bodies wish to encourage the new technology, but do not relish land use battles with citizen opposition and do not wish their communities to visually look like a porcupine.

HB 2006 was recommended by the interim tax committee in response to these issues and a recent Kansas Supreme Court decision determining that such telecommunications property is to be appraised locally. By clarifying that such equipment is to be appraised as personal property and taxed directly to the owner, this bill removes a serious disincentive to making public and tax exempt property available for lease to telecommunication providers.

As cities face the tower siting issue, our goals are to encourage the location of towers in non-residential areas, encourage the co-location of equipment, encourage the camouflaging of antennas, and to encourage the location of equipment on existing structures, including public or institutional property, when feasible. Tax exempt property, often already having an institutional character, has a role to play in meeting the demand for this technology, and therefore part of the solution to this problem.

Thank you very much for the opportunity to support this bill. The city urges the committee to report this bill favorably.

rc

House Taxation
2-10-97
Attachment 5-1

Memorandum

To: House Taxation Committee
From: Chris W. Courtwright, Principal Analyst
Re: HB 2105

The Kansas Tax Equity and Fairness Act of 1997 (KTEFA)

Interest Rate Equalization

Interest for tax overpayments of sales, property, and income taxes would be payable at the same rate established for delinquent or unpaid taxes pursuant to KSA 79-2968 -- the federal underpayment rate plus one percent. The new interest rate would be effective for all taxable periods commencing after December 31, 1997, except that interest also would be paid on all sales tax overpayments from all taxable periods subject to assessment as of January 1, 1998. Current law provides for 6 percent interest on income tax overpayments, though that rate already had been statutorily set to change to a federally determined rate on January 1, 1998. Interest on sales and property tax overpayments is not allowed under current law. The interest rate for delinquent property taxes also would be changed from 12 percent to the rate prescribed by KSA 79-2968. (Sections 1-3, 25, 26, 27, 28, 29)

House Taxation
2-10-97
Attachment 6-1

Administrative Ruling Publication

The Secretary of Revenue would be required on and after January 1, 1998, to make available in a medium "accessible to all taxpayers" all administrative rulings affecting the duties and responsibilities of taxpayers, including revenue notices, revenue rulings, information guides, policy directives, private letter rulings, and PVD directives. (Private letter rulings would be provided in such a manner that the requesting taxpayer's identity would be concealed.) The Secretary also would be required to publish a description in the *Kansas Register* within 30 days of each administrative ruling. (New Section 4)

Informal Reconsideration Conference

Under current law, income and excise tax appeals require formal evidentiary hearings in front of the Director of Taxation pursuant to KSA 1996 Supp. 79-3226 -- hearings which must be conducted in accordance with KAPA. KTEFA would amend the statute to eliminate the formal-hearing requirement and replace it with an "informal" conference which could be conducted by the Secretary or his designee and would review and reconsider all facts and issues that underlie the proposed liability or denial of refund. The informal reconsideration conferences would not be considered adjudicative proceedings under KAPA, would not have the rules of evidence apply, and would not require legal representation. Taxpayers could designate attorneys, certified public accountants, or any other person to represent them or provide information at the conferences. No record would be made of the conferences unless requested by and at the expense of one of the parties. The Secretary or his designee conducting the conference could confer at any time with

any staff member with respect to a case under reconsideration. A final determination would be required within 270 days, which would constitute final agency action subject to administrative review by SBOTA. If a final determination were not to be rendered within 270 days, the taxpayer then could appeal directly to SBOTA. (Sections 5-14, especially Section 10)

Private Delivery Services

The Secretary would be required to allow the use of private delivery services for income or excise tax remittances, and the determination of "timely filing" regarding such services would be made in the same manner and to the same extent as provided for in federal law. (Section 15)

Employee Performance Evaluations

Departmental employee evaluations could not be based on a production quota system based on total assessments issued, total amount or percentage of taxes collected from settlements, or other means, before final judgment. This provision broadens an existing clause in the 1989 Taxpayer Bill of Rights (TBOR). (Section 16)

Federal Waiver Restriction

The use of federal waivers for state income tax assessment purposes would be restricted so that only those issues considered by the IRS may be assessed by the Department under the

federal waivers. This provision would be retroactive for any appeal from a notice of assessment pending on the effective date of the bill. (Section 17)

Direct Sales Tax Refunds

Consumers or purchasers would be authorized to pursue sales tax refunds directly from the Department in cases where: (1) they originally had paid the tax directly to the Department; (2) the retailer refused or was unavailable to refund the tax; (3) the retailer did not act upon the refund request in a timely manner; or (4) the Department has audited the consumer or purchaser as a business and it has been determined that a vendor collected tax which was not due and owing, the consumer or purchaser is registered to collect and remit tax, and the consumer or purchaser provides an affidavit to assure he will not request a duplicate refund through the vendor. In cases where the Director of Taxation found that a retailer had not acted upon a refund request in a timely manner, he also could extend the statute of limitations for the refund claim beyond three years. (Section 18)

Presumption of Good Faith

New Section 19, which was amended by the subcommittee, provides that a vendor would be presumed to have accepted an exemption certificate in good faith. Such presumption could not be legally overcome if the vendor: (1) has maintained an appropriate exemption certificate or affidavit; (2) has ascertained the identity of the person or entity presenting the exemption

certificate or affidavit ; and (3) has not been shown by a preponderance of evidence to have accepted such certificate or affidavit with the intent to allow an unlawful evasion of the tax law. The Director of Taxation would be required to prescribe the form for exemption certificates. Vendors considering honoring a resale exemption claim could require purchasers to provide copies of their sales tax registration certificates along with the resale certificates. Purchasers seeking to lawfully present resale exemption certificates would have to be engaged in the business of selling property or services of the same kind being purchased, hold a registration certificate, and either have the intent of reselling the property in the regular course of business or be unable to determine whether the property would be resold or used for some other purpose. Persons issuing resale or other exemption certificates to unlawfully avoid payment of tax would be guilty of a misdemeanor and subject to increased penalties levied by the Director. Exemption certificates for nonprofit entities would be required to contain the name and address of the entity, cite the statutory subsection of KSA 79-3606 under which the exemption is being claimed, and be signed by an officer of the entity. Any person refusing to pay a retailer tax that is lawfully due would be guilty of a misdemeanor and subject to penalties prescribed in KSA 1996 Supp. 79-3615 (g). The subcommittee agreed to eliminate separate exemption certificate language that would have applied to the sale of farm machinery and equipment. (New Section 19 as amended by subcommittee and Section 20)

Reduction of Certain Property Tax Penalties

A number of assessed valuation penalties which are assessed when personal property tax renditions are filed late would be reduced. For oil and gas, motor carriers, and other types of

personal property, statutory assessed valuation penalties would be amended to conform to a new policy -- a 10 percent penalty for most late filing; and a 50 percent penalty only when the failure to file has occurred with intentional disregard or fraudulent intent. The 50 percent penalty for escaped personalty currently provided in KSA 1996 Supp. 79-1427a would be eliminated, and new language would be inserted to provide that the interest rate provided by KSA 79-2968 would apply on taxes levied against such property. (Sections 21-24)

Property Taxpayers' "Right to Know"

New language would be added to KSA 1996 Supp. 79-2001 to require that, beginning in tax year 1998, property tax statements provide additional information by taxing unit on the amount of tax and on mill levy changes and, for taxing jurisdictions whose levies comprise more than 5 percent of the total levy, information on the percentage change in the amount of revenue from the prior year. (Section 30)

Estimated Tax Underpayment Penalty

The income tax estimated tax provisions would be amended to provide that no penalty would be imposed for underpayment if: (1) no return was required to be filed for the prior year; or (2) the liability for the prior year was less than \$200 for an individual or \$500 for a corporation. (Section 31)

Sales Tax Audit Reform Act

A bill known in 1996 as the sales tax audit reform act, HB 2998, would be embodied in New Section 32 as recommended by the subcommittee. Taxpayers being investigated would have the right, at any time after completion of the audit, to review documents and any other papers of the Director or his agents or employees compiled as a result of the audit. An "exit" interview could be requested by a taxpayer after completion of the audit, either in person or on the telephone. Taxpayers could require that the investigations occur outside of normal business hours. Audits occurring during normal business hours would be prohibited from using more than 25 percent of the taxpayer's administrative personnel resources corresponding with the duration of the audit, unless agreed to by the taxpayer. (New Section 32)



Kansas Association of Broadcasters

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Testimony before the House Taxation Committee

RE: HB 2047

By Harriet Lange, President/Executive Director

Kansas Association of Broadcasters

February 10, 1997

Thank you Mr. Chairman and Members of the Committee. I am Harriet Lange, president and executive director of the Kansas Association of Broadcasters. The KAB serves a membership of radio and television stations in Kansas and we appreciate the opportunity to appear before you in support of HB 2047.

The bill addresses an inequity that currently exists in our sales tax law. Newspapers, which are broadcasters' primary competitors for advertising revenue, may take advantage of the sales tax exemption on machinery, equipment and utilities granted to manufacturers. Radio and television stations may not. This exemption for newspapers affords them a competitive advantage over broadcasters, whose ONLY source of revenue is advertising.

Kansas broadcasters, like their competitors in the newspaper publishing business, have a fine tradition of providing information, entertainment and public service to their listeners and viewers. We're asking only for a level playing field with our competitors.

HB 2047 would extend to broadcasters the same exemption newspapers enjoy. It would exempt from sales and use tax, the purchase of equipment and electricity, necessary for producing live programming and putting a broadcast signal on the air.

Other states that have recently enacted similar legislation include Massachusetts and New

Jersey. And in the last few years, your colleagues in the Oklahoma Legislature have seen the wisdom of this action. They codified an Oklahoma Supreme Court decision which granted radio and television broadcasters this sales tax exemption. The Court determined that radio, television and print media were the same trade or profession. Since the sales tax exemption favored the print media without a demonstrated compelling need, the sales tax exemption for print was found unconstitutional as a violation of the First and Fourteenth Amendments. Rather than remove the exemption for newspapers, the Oklahoma Legislature extended it to broadcasters.

Had the exemption for Kansas broadcasters been in place the last couple years, we estimate it would have had a fiscal impact to the state of \$500,000 to \$600,000 per year. This is based on a 1995 survey we conducted to determine stations' projected capital expenditures and their expenditures for electricity.

Because of the onslaught of digital technology, radio and television stations are being forced to make larger and larger capital outlays for equipment just to stay competitive and to bring the best in technology to their listeners and viewers. The proposed exemption in HB 2047 would mean a great deal to Kansas radio and television stations as they make these investments to better serve their local communities and your constituents.

I'm pleased that you'll have the opportunity to hear now, from broadcasters, about the impact HB 2047 would have on their stations and the communities they serve.

Thank you for your consideration. I'd be happy to respond to questions.

TESTIMONY BEFORE THE KANSAS HOUSE TAXATION COMMITTEE
RE: HB 2047

BY Robert B. Hilton Co-Owner of Knza Inc
KNZA HIAWATHA, KMZA SENECA, KAIR AM & FM ATCHISON

February 10, 1997

GOOD MORNING! I AM ROBERT HILTON. I WAS HERE LAST YEAR AND PRESENTED TESTIMONY ON THIS SAME TOPIC LAST YEAR. THAT IS NO PROBLEM, I AM GLAD TO BE HERE... ALL GOOD THINGS TAKE TIME.

MY TESTIMONY OF LAST YEAR IS ATTACHED AND IS ALL STILL VALID. THE ONLY DIFFERENCE IS THAT MY PARTNER AND I ARE NOW THE PROUD OWNERS OF TWO ADDITIONAL RADIO STATIONS. THEY ARE KAIR AM AND FM WHICH ARE LOCATED IN ATCHISON KS. THEY WERE EXISTING STATIONS LOCATED 40 MILES AWAY. OPPORTUNITY KNOCKED ON OUR DOOR AND WE ANSWERED.

WE NOW HAVE DOUBLE THE REASON TO URGE THE PASSAGE OF THIS SALES TAX EXEMPTION. BECAUSE THE ELECTRIC BILL FOR KAIR FM IS ABOUT THE SAME AS THE AMOUNT GIVEN IN EXHIBIT ONE FOR MY HIAWATHA STATION.

I WAS GLAD TO HEAR ABOUT THE CONSIDERATION THE KANSAS LEGISLATURE IS GIVING TO THE EQUALIZING THE INCOME TAX RATES FOR SINGLE AND MARRIED PEOPLE. WHEN THE SUPREME COURT CASE WAS BEING HEARD ON THIS TOPIC I WONDERED WHY THERE WOULD BE DIFFERENT RATES FOR MARRIED'S AND SINGLES. IT IS MY OPINION THAT THERE SHOULD NOT BE DIFFERENT RATES. BECAUSE PEOPLE SHOULD BE TREATED EQUALLY.

I URGE YOU TO PASS HB 2047 BECAUSE IT ALLOWS KANSAS BROADCAST STATIONS TO BE TREATED THE SAME AS KANSAS NEWSPAPERS.

IT IS ONLY FAIR.

House Taxation
2-10-97
Attachment 8-1

TESTIMONY BEFORE THE KANSAS HOUSE TAXATION COMMITTEE

RE: HB 2473

BY Robert B. Hilton Co-Owner KNZA Inc
KNZA Hiawatha. KS and KMZA Seneca. KS

FEBRUARY 8. 1996

GOOD MORNING I AM ROBERT HILTON CO-OWNER OF TWO RADIO STATION IN NORTHEAST KANSAS. THEY ARE KNZA. IN HIAWATHA WHICH HAS BEEN ON THE AIR SINCE AUGUST OF 1977. MY PARTNER AND I HAVE OWNED KNZA SINCE 1983. IN 1992 WE BUILT KMZA IN SENECA. I AM OF COURSE HERE IN SUPPORT OF HB 2473.

I WANT TO TAKE A FEW MOMENTS TO TELL YOU ABOUT HOW MY STATIONS SERVE RURAL KANSAS. BEFORE KNZA CAME ON THE AIR IN 1977 THE ONLY OTHER NON-METRO KANSAS RADIO STATIONS SERVING EXTREME NORTHEAST KANSAS WERE KARE IN ATCHISON AND KNDY IN MARYSVILLE. KNZA WAS THE ONLY CHANGE UNTIL KMZA IN SENECA CAME ON THE AIR.

FOR THOSE OF YOU NOT FROM A SMALL TOWN IN KANSAS YOU MIGHT NOT BE AWARE OF THE "LOCAL" PROGRAMMING STATIONS LIKE KNZA AND KMZA DO FOR THEIR HOME TOWNS. IN THE LARGER CITIES THERE ARE LOTS OF STATIONS EACH SERVING THEIR NICHE OF THE MARKET VIA DIFFERENT MUSIC FORMATS AND PROGRAMMING. AND EACH STATION SERVES A PORTION OF THE LARGE POPULATION AREAS. THE PEOPLE HAVE A CHOICE OF MEDIA OUTLETS TO ACQUIRE INFORMATION...ENTERTAINMENT...ETC. IN A SMALL TOWN RADIO MARKET PEOPLE CAN AND DO LISTEN TO THE BIG CITY STATIONS MAINLY FOR

THE MUSIC FORMATS. BUT FOR INFORMATION THAT CONCERNS THEIR EVERYDAY LIVES THEY TUNE INTO THE LOCAL RADIO STATION. BECAUSE THAT IS WHAT WE CAN DO. SERVE OUR LOCAL RESIDENTS.

SOME PEOPLE MIGHT THINK SOME OF OUR PROGRAMS ARE HOKEY. OR SILLY. BUT YOU KNOW WHAT. OUR PROGRAMMING IS INFORMATION THAT NO ONE ELSE IS PROVIDING MY LISTENING AREA....IN DETAIL EVERYDAY, 24 HOURS A DAY. 365 DAYS A YEAR.

HERE IS A SAMPLE OF SOME OF OUR REGULAR DAILY PROGRAMMING:

WE DO "OBITS" AS A PART OF THE NEWS THREE TIMES A DAY.

WE DO DAILY ADMISSIONS AND DISMISSALS FOR 12 AREA HOSPITALS.

WE BROADCAST 25 OR SO SCHOOL LUNCH MENUS FOR AREA SCHOOLS.

WE DO A DAILY BIRTHDAY AND ANNIVERSARY LIST.

WE DO FIVE 10 PLUS MINUTE "LOCAL" NEWSCASTS EACH WEEKDAY. IN

ADDITION TO OUR HOUR ABC NETWORK NEWSCASTS.

WE BROADCAST 15 FARM PROGRAMS A DAY.

SOME OF OUR SPECIALTY PROGRAMMING INCLUDES:

DURING THE ENTIRE SESSION OF THE LEGISLATURE WE AIR WEEKLY PROGRAMS WITH EACH OF THE LEGISLATORS IN OUR COVERAGE AREA. THAT IS 2 SENATORS AND 4 MEMBERS OF THE HOUSE. EACH REPORT IS ABOUT 5 MINUTES LONG. THREE REPORTS ARE BROADCAST JUST BEFORE NOON AND 3 MORE AT 5:20 PM EACH SATURDAY. AND THEN JUST TO BE SURE OUR LISTENERS HAVE PLENTY OF OPPORTUNITY TO HEAR WHAT IS GOING ON DOWN HERE FROM THEIR LEGISLATORS WE REBROADCAST ALL OF THEM AT 8:30 ON SUNDAY MORNING.

A COUPLE OF WEEKS AGO WE DID 12 BASKETBALL TOURNAMENT GAMES ON
THREE DAYS.....AND THAT IS 12 ON EACH STATION.

EVERY MARCH FOR THE PAST 7 OR 8 YEARS WE TURNED OVER THE RADIO
STATION FOR 4 HOURS A NIGHT FOR 3 NIGHTS TO THE BROWN COUNTY FAIR
BOARD TO CONDUCT AND OVER THE AIR AUCTION OF DONATED MERCHANDISE.
THEY USE OUR FACILITIES AND TAKE BIDS VIA THE TELEPHONE. THEY HAVE
RAISED AT LEAST 10,000 DOLLARS PER YEAR TO IMPROVE THE FAIR
GROUNDS AND PAY SOME OF THE FAIR'S EXPENSES.

SEVERE WEATHER COVERAGE IS ANOTHER OF OUR PRIME PROGRAMMING
FEATURES AS IT IS WITH ALL LOCAL STATIONS.

HIAWATHA IS 100 MILES FROM K.C., 75 MILES FROM TOPEKA AND 45 MILES
FROM ST. JOSEPH. THERE IS A LOT OF DIFFERENCE IN THE WEATHER JUST
THESE FEW MILES AWAY. PLUS THE TOPEKA, KC. ST JOSEPH STATIONS ARE
CONCERNED ABOUT WARNING THEIR IMMEDIATE AREA ABOUT BAD WEATHER.
ALL BROADCASTERS ARE ALL OUT THERE TRACKING THAT TORNADO. AND WE
ALL QUESTION WHY WE ARE DRIVING TOWARD THE TORNADO LOOKING FOR IT
INSTEAD OF TAKING COVER IN THE BASEMENT.WHICH IS WHAT WE ARE
TELLING PEOPLE TO DO. IN THIS CASE WE HOPE PEOPLE ARE DOING WHAT WE
SAY AND NOT WHAT WE ARE DOING. WE DO IT TO HELP INFORM OUR
LISTENERS SO THEY CAN PROTECT THEMSELVES.

ALL OF OUR PROGRAMMING IS DONE BECAUSE OUR LISTENERS DESERVE A
LOCAL BROADCAST MEDIUM TO SERVE THEM WELL.

THAT IS A SAMPLE OF WHAT WE DO EVERYDAY AND WHAT MOST EVERY OTHER
KANSAS BROADCAST FACILITY DOES. WE SERVE THE LISTENERS.

BROADCASTERS ARE ABLE TO DO THIS ONLY IF WE ARE GOOD BUSINESS PEOPLE. AND THAT IS WHAT RADIO AND TV STATIONS ARE... WE ARE BUSINESSES! THE ONLY WAY WE CAN PAY THE PEOPLE TO PROVIDE THIS LOCAL PROGRAMMING IS BY SELLING ADVERTISING. AND CONTROLLING EXPENSES.

IF A STATION IS GENERATING MORE MONEY THAN THEY ARE PAYING IN EXPENSES AND CAN AFFORD TO PAY GOOD AND TALENTED PEOPLE TO WORK AT THE STATION THEY ARE WORKING IN AND FOR THEIR COMMUNITY AND SERVING THE LISTENING PUBLIC.

I HAVE THREE EXHIBITS THAT ARE ATTACHED.

EXHIBIT #1 IS THE PAST 12 MONTHS OF ELECTRIC BILLS FOR KNZA'S TOWER SITE. I PAID KPL ALMOST \$7,900 OF WHICH \$439.64 WAS SALES TAX. THE BOTTOM PARAGRAPH TELLS OF MY STUDIO ELECTRIC BILL WHICH IS NOT UNDER CONSIDERATION FOR THIS BILL.

EXHIBIT #2 IS THE PAST 12 MONTHS OF ELECTRIC BILLS FOR KMZA'S TOWER SITE. WE PAID THE CITY OF SENECA OVER \$3,100 OF WHICH \$168.81 WAS SALES TAX. THE BOTTOM PARAGRAPH REPORTS BY STUDIO ELECTRIC BILL WHICH IS NOT UNDER CONSIDERATION FOR THIS BILL.

THE TOTAL SALES TAXES I PAID THIS PAST YEAR FOR BROADCASTING MY SIGNAL ON BOTH STATIONS WAS \$608.45.

HOWEVER, MY COST OF ELECTRICITY IS A LOT LOWER THAN MANY OTHER KANSAS RADIO STATIONS. MY ELECTRIC BILL AND SALES TAXES ARE LOWER BECAUSE I GET MY POWER FROM KPL WHICH HAS ONE OF THE LOWEST COST

8.5

PER UNIT IN THE STATE. (LESS THAN 5 CENTS PER KWH) IF I HAD THE SAME MONTHLY USAGE AT MY STUDIO SITE WHICH IS SERVED BY MY LOCAL RURAL ELECTRIC COOPERATIVE MY ELECTRIC BILL AND MY SALES TAXES WOULD BE DOUBLED. (10 CENTS PER KWH)

I AM ONLY A 50,000 WATT FM STATION AND A 6,000 WATT STATION. A LOT OF WESTERN KANSAS STATIONS ARE 100,000 WATT STATIONS AND USE MORE ELECTRICITY AND ARE PAYING CLOSE TO 10 CENTS A KWH. I HAVE TALKED WITH THOSE STATIONS AND THEIR BILLS ARE \$1400 TO \$2000 + PER MONTH FOR JUST ONE STATION.

WHEN I LOOK AT THE 600 DOLLARS I WOULD NOT PAY IN SALES TAXES IF THE BILL IS PASSED AND THINK ABOUT WHAT WOULD I DO WITH IT. FOR ME IT IS AN EASY ANSWER... AS A BUSINESS OWNER I WOULD PROBABLY JUST DO SOMETHING SILLY... LIKE PLOW IT BACK INTO THE BUSINESS FOR SOMETHING LIKE PAYING AN EMPLOYEE A \$50 A MONTH RAISE (\$600 A YEAR). THEY IN TURN WOULD PROBABLY JUST GO SPEND IT ON SOMETHING THAT HAS KANSAS SALES TAX ON IT.

OF COURSE I CAN NOT SPEAK FOR OTHER STATIONS BUT THIS IS TRULY WHAT KNZA WOULD DO. SO ANYTHING THAT CAN KEEP MY EXPENSE DOWN, SO I CAN HAVE MORE PROFIT, I THEN CAN AFFORD TO GIVE PAY RAISES AND KEEP GOOD PEOPLE WORKING AND PROVIDING GOOD PROGRAMMING.

EXHIBIT #3 IS WHAT I PAID FOR THE PURCHASE OF EQUIPMENT THAT I DID PAY SALES TAX ON THAT WOULD BE EXEMPT IF THIS BILL PASSES.

AS IT SAYS I DON'T PLAN TO HAVE THESE MAJOR EXPENSES AGAIN BUT IT WAS SOME SERIOUS MONEY. AND WOULD HAVE BEEN LESS MONEY I WOULD HAVE BORROWED. IF YOU HAVE ANY QUESTIONS I WILL ANSWER THEM.

EXHIBIT # 1

KNZA HIAWATHA TOWER SITE ELECTRIC BILLS

	TOTAL	SALES TAX	COUNTY SALES TAX
JAN 96	664.08	30.73	6.27
DEC 95	557.25	25.78	5.26
NOV 95	701.18	32.44	6.62
OCT 95	619.15	28.65	5.85
SEP 95	721.60	33.39	6.81
AUG 95	726.00	33.59	6.86
JUL 95	754.77	34.92	7.13
JUN 95	649.51	30.05	6.13
MAY 95	573.10	26.52	5.41
APR 95	629.52	29.13	5.94
MAR 95	604.20	27.96	5.71
FEB 95	690.97	31.97	6.52
	<u>7,891.33</u>	<u>\$365.13</u>	<u>\$74.51</u>

TOTAL 12 MONTH SALES TAX \$439.64

KNZA STUDIO ELECTRIC BILLS FOR SAME PERIOD AS ABOVE:
TOTAL AMOUNT PAID WAS \$5,314.64 INCLUDING SALES TAX. (\$260)
THE PROPOSED BILL WOULD NOT CHANGE TAXES PAID ON MY STUDIO LOCATION
ELECTRIC USAGE.

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EXHIBIT # 2

KMZA SENECA TOWER SITE ELECTRIC BILLS

JAN 96	179.09	9.98
DEC 95	221.22	12.33
NOV 95	217.50	12.12
OCT 95	245.10	13.44
SEP 95	378.72	19.82
AUG 95	396.26	20.80
JUL 95	339.74	18.70
JUN 95	325.77	17.93
MAY 95	264.67	14.52
APR 95	214.92	11.75
MAR 95	147.44	7.99
FEB 95	173.27	9.43
TOTAL	\$3,103.70	\$168.81

12 MONTH AVERAGE 14.07

KMZA STUDIO ELECTRIC BILLS FOR SAME PERIOD AS ABOVE:
TOTAL AMOUNT PAID WAS \$778.79 INCLUDING SALES TAX. (\$38)
THE PROPOSED BILL WOULD NOT CHANGE THE TAXES PAID ON MY STUDIO
LOCATION ELECTRIC USAGE.

TOTAL SALES TAX PAID BY KNZA Inc. IN LAST 12 MONTHS \$608.45

8-8

EXHIBIT # 3

PURCHASE OF NEW TRANSMISSION EQUIPMENT

IN 1992 KMZA SENECA WAS BUILT AND WE SPENT APPROXIMATELY \$80,000 ON TRANSMISSION EQUIPMENT. THAT IS ABOUT \$4,000 IN SALES TAXES. THAT AMOUNT WOULD HAVE BEEN EXEMPT UNDER THIS PROPOSED BILL.

KMZA HAS 3 FULL TIME AND ONE PART TIME EMPLOYEES BASED IN SENECA.

IN 1994 KNZA HIAWATHA BUILT A NEW MORE POWERFUL TRANSMISSION FACILITY THAT INCREASED OUR POWER FROM 3,000 WATTS TO 50,000 WATTS. WE BOUGHT A 600 FOOT TOWER, A NEW BIGGER TRANSMITTER, AN 11 BAY ANTENNA, CABLES, A BUILDING AND ASSOCIATED EQUIPMENT THAT COST APPROXIMATELY \$200,000. THAT IS \$9,800 IN SALES TAX. THAT AMOUNT OF TAX WOULD HAVE BEEN EXEMPT UNDER THIS BILL.

KNZA EMPLOYEES 15 FULL TIME AND TWO PART TIME.

THESE ARE "ONE TIME" MAJOR CAPITAL EXPENDITURES THAT WILL NOT BE DONE AGAIN, EXCEPT TO REPLACE INDIVIDUAL PIECES OF EQUIPMENT AS THEY WEAR OUT. MOST MAJOR PIECES OF BROADCAST EQUIPMENT HAVE LONG LIVES. (20 PLUS YEARS)

MY FINAL COMMENT IS THAT ALL THESE FACTS COULD BE A MUTE POINT. I THINK WE HAVE HEARD HOW THE KANSAS BROADCASTING INDUSTRY IS NOT BEING TREATED THE SAME AS OTHERS MEDIA AND MANUFACTURERS.

I WILL BE THE FIRST TO ADMIT THAT I AM NAIVE ON THE WAY OUR POLITICAL SYSTEM WORKS BUT I THINK THAT THIS WHOLE QUESTION IS JUST A MATTER OF FAIRNESS. AND I ACKNOWLEDGE THAT YOU HAVE MANY OTHER THINGS TO CONSIDER ON ANY SALES TAX QUESTION.

BUT I STILL THINK THAT IN AMERICAN AND IN KANSAS WE BELIEVE IN THE TRADITION THAT SIMILAR SITUATIONS SHOULD BE TREATED EQUALLY.

AND IN THIS CASE I FEEL THAT KANSAS BROADCASTERS ARE NOT BEING TREATED EQUALLY. YOU HAVE THE CHANCE TO "RIGHT THE WRONG" BY PASSING HB 2473

THANK YOU.

8-10



Testimony before the House Taxation Committee

RE: HB 2047

By Gary McNair, Station Manager

KSNT-TV, Topeka (NBC)

February 10, 1997

Thanks for the opportunity to speak with you concerning HB 2047. The lack of complexity involved with this piece of legislation has allowed Harriet Lange to invite me to speak on behalf of my company and the television stations in Kansas. Trust me, it would be very painful for all of us if I were to sit here and discuss the pros and cons of a complex issue.

I am the station manager for the local NBC affiliate owned by Lee Enterprises of Davenport, Iowa. Our company also owns the NBC affiliates in Wichita, Great Bend, Garden City and Oberlin. In total, we have five full power television transmitters operating in Kansas. For the sake of today's discussion, I might also point out our company also owns 19 daily newspapers. Although we do not have any newspapers in Kansas, most are located throughout the Midwest.

I see this piece of legislation as an equity issue. I would hope the original intent of the exemption extended to our newspaper friends was not to disadvantage broadcasters. I would also hope the inequity caused by the exemption was only an oversight. We are essentially in the same business of providing news, information and entertainment to the people of Kansas. The major difference comes in how we derive our revenue. While we both receive income for advertising, only the broadcasters provide its product to the citizens of Kansas at no charge. If only one industry were to receive a break, I believe it should be the one providing its product and services for free. But we are here today only to ask for equity.

The television industry is facing the largest change we've had to endure in our half century of existence. The transformation we must make to the digital era is both costly and daunting. The question of survival is real, especially in rural America. Any relief would be cause for celebration in hopes that our industry can continue to provide (at no cost) entertainment, news, weather and emergency information to our valued viewers.

Again, thanks for this opportunity and thanks for your consideration. I welcome your questions and comments.

House Taxation
2-10-97
Attachment 9-1