

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION.

The meeting was called to order by Chairperson Audrey Langworthy at 11:00 a.m. on March 19, 1997, in Room 519--S of the Capitol.

Members present: Senator Langworthy, Senator Corbin, Senator Lee, Senator Bond, Senator Donovan, Senator Goodwin, Senator Hardenburger, Senator Karr, Senator Praeger, Senator Steffes and Senator Steineger.

Committee staff present: Tom Severn, Legislative Research Department  
Chris Courtwright, Legislative Research Department  
Don Hayward, Revisor of Statutes  
Shirley Higgins, Secretary to the Committee

Conferees appearing before the committee: John LaFaver, Secretary, Department of Revenue  
Jonathan Small, Kansas Taxpayer Coalition and Koch Industries  
Rich Chalker, Hallmark Cards  
Bryan Neuendorf, Grant Thornton LLP  
Roland Smith, Wichita Independent Business Association  
Art Brown, Mid-America Lumbermens Association  
Rod Broberg, Kansas County Appraisers Association  
Bob Corkins, Kansas Chamber of Commerce and Industry

Others attending: See attached list

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

John LaFaver, Secretary of Revenue, testified in support of **HB 2105** as originally introduced. He believed this act is an important historic piece of legislation both in correcting unfair procedures and requirements placed on taxpayers and in terms of the process that created the legislation. He commented that the proposal reflects a consensus of business and tax experts on the key fairness issues of the day. Secretary LaFaver outlined the key provisions in the bill, noting that the most important proposed change is the elimination of the duplicative formal appeal process at the Department of Revenue. (Attachment 1)

Jonathan Small, representing Koch Industries, Inc., and Kansas Tax Coalition, followed with testimony in support of **HB 2105**. He called attention to a list of companies and organizations participating in the Kansas Tax Coalition. (Attachment 2) Mr. Small believed the bill would promote a much healthier partnership between collector and taxpayer and would be a significant enhancement to Kansas' business climate. He noted that the Coalition does not endorse all of the House amendments but urged the committee to recommend the bill favorably without further amendments.

Rich Chalker, Hallmark Cards, testified in support of **HB 2105**. He maintained that it would streamline the tax system and improve the interaction between taxpayers and their government by providing fair, timely and understandable information. Mr. Chalker highlighted four key provisions of the bill: (1) Taxpayers will receive interest on sales and property tax overpayments. (2) Taxpayers will benefit from a speedier resolution of disputes involving sales, use and income taxes. (3) Taxpayers will be aware of and have access to the Department of Revenue's rulings, announcements and other interpretative positions. (4) Two provisions will simplify the administration and collection of the Kansas sales tax (the good faith provision and a provision allowing purchasers to bypass vendors in the recovery of sales tax erroneously paid). (Attachment 3)

Bryan Neuendorf, Grant Thornton LLP, gave testimony in support of **HB 2105**. He commented that the bill should improve the current Kansas tax system and help remove the perception that Kansas is a place for new business to avoid. Mr. Neuendorf focused on three provisions of the bill that directly impact the small to middle-market companies: (1) authorization for taxpayers under certain circumstances to pursue refunds directly from the Department, (2) elimination of the current formal hearing process and replacement of it with an informal conference with the Secretary, and (3) publication of the Department of Revenue rulings, notices and policy directives. He concluded that the taxpayer fairness act should strengthen the relationship between taxpayers and their government. (Attachment 4)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION, Room 519-S  
Statehouse, at 11:00 a.m. on March 19, 1997.

Roland Smith, Wichita Independent Business Association (WIBA), appeared in support of **HB 2105**. He first explained that WIBA is an association of 800 privately owned businesses in the Wichita area. Mr. Smith discussed two issues which he supports: (1) New Section 19 as amended in the bill by the House concerning a "good faith" effort with regard to retailers and (2) private letter rulings by the Department of Revenue as an improvement in the Department's procedures. With regard to his support of New Section 19, Senator Langworthy noted that the fiscal note on it is \$13 million. She asked Mr. Smith if he believed it was worth that much. Mr. Smith challenged the fiscal note as he felt that, if administered properly, the fiscal note would be minimal. (Written testimony submitted March 21, Attachment 9)

Art Brown, Mid-America Lumbermens Association, appeared as a proponent of **HB 2105**. He expressed his hope that implementation of the bill would be a win-win situation for the Department and the taxpayer. He stated that his membership totally embraces Section 10 of the bill which deals with the formal hearing process and the subsequent time reduction. He focused the remainder of his testimony on New Section 19 dealing with "good faith" relating to the handling of re-sale exemption certificates. Mr. Brown felt that implementation of New Section 19 would insulate retailers from any punitive action from the Department in the future. He urged the committee to adopt the provisions of New Section 19 and other House amendments and to pass the entire bill out for consideration in the full Senate. (Attachment 5)

Rod Broberg, Kansas County Appraisers Association, testified in opposition to sections 21 and 23 of **HB 2105**. The sections relate to the late filing penalties for tangible personal property. Mr. Broberg noted that a basic tenant of our system for personal property taxation is that the property owner bears the responsibility to render the list of property to the county appraiser. Currently, certain statutory penalty provisions insure that taxpayers are properly motivated to render full and complete lists of their property in a timely manner. Mr. Broberg contended that the provisions of Sections 21 and 23 would eliminate any meaningful penalties for those who may choose to ignore the statutory filing requirements. Mr. Broberg acknowledged that the bill was intended to provide a more user friendly environment; however, he did not believe it was too great a burden on property owners to ask them to accurately and timely file required lists of property. (Attachment 6)

Bob Corkins, Kansas Chamber of Commerce and Industry, expressed his members' support of **HB 2105**. He briefly noted important reforms contained in the bill. Mr. Corkins concentrated his observations on the equalization, neutrality and universality of interest charges and the streamlined Department appeals process. (Attachment 7) Mr. Corkins did not endorse the House amendments nor would he endorse any significant changes that would jeopardize passage of the bill.

Mr. Corkins called the committee's attention to written testimony submitted by Janie Curtis of Dodge City. Ms. Curtis supports the bill, focusing on the need for the provisions authorizing the payment of interest on property tax refunds. (Attachment 8)

There being no further time to hear testimony of remaining conferees scheduled, the hearing on **HB 2105** was continued until Thursday, March 20.

The meeting was adjourned at 11:58 a.m.

The next meeting is scheduled for March 20, 1997.

SENATE ASSESSMENT & TAXATION COMMITTEE  
GUEST LIST

DATE: March 19, 1997

NAME	REPRESENTING
Matt Jewell	AP
Shirley Sicilian	KDOR Revenue
JOHN LAFAVER	KDOR
Bob Corkins	KCCI
MARIL DECK	KDOT
Rod Broberg	Ks County Appraisers Assoc.
Janna Johnson	KDOR
JEFF RUSSELL	SPRINT
Bill Harris	City of Topeka, Kansas
Ashley Sherard	Overland Park Chamber
Karen France	Ks. Assoc. of REALTORS
Betsy Swanwick	League of KS Municipalities
Randy Allen	Ks. Association of Counties
Judy Moler	KAC
Willee Martin	Sedgewick County
Lewis R. (Bob) ROGERS, #	" "
DARREN C. MUCI	" "
Melinda A. Walker	City of Wichita
Patricia J. Parker	Sedgewick County

SENATE ASSESSMENT & TAXATION COMMITTEE  
GUEST LIST

DATE: March 19, 1997

NAME	REPRESENTING
Jamie Schwartz	Sprint
Richard Critchfield	Health Midwest
DAVE SCHNEWELS	WESTERN RESOURCES
HAL HUDSON	NFIB/KS
JASON PITSEMBERGER	BRAD SMOOT
Ed Spiess	PETERSON Public Affairs
DONALD SNODGRASS	Ks FOOD DEALERS ASSOC
Brandon Hall	M J H
Bice Jancee	BOEING
Gene Mold	Koch Ind.
ALAN COBB	Koch Ind.
Hans Lang	Ks Assn Broadcasters
MARK BURGHART	WESTERN ASSOCIATION
Lucky DeFries	Collman DeFries + Northern P.A.
KEN PETERSON	KS Petroleum Council
Jackie Clark	Hallmark CARDS, INC.
Rich McKee	KLA
Vernon Clement	Hallmark Cards, Inc.
Leland Smith	WIBA





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Office of the Secretary

MEMORANDUM

**TO:** Members, Senate Committee on Assessment and Taxation

**FROM:** John D. LaFaver  
Secretary of Revenue *John D. LaFaver*

**DATE:** March 18, 1997

**SUBJECT:** Governor's Tax Equity and Fairness Act

I am pleased to present Governor Graves' Tax Equity and Fairness Act of 1997. The Act is an important and, truly, historic piece of legislation -- both in terms of correcting unfair procedures and requirements historically placed on taxpayers and in terms of the process that created this legislation.

The substance of the Act is considerable:

1. The costly, time-consuming and duplicative formal appeal process at the Department is abolished. The new procedure serves to assure an accelerated, final determination by the Department. Along with administrative actions already taken, this legislation assures rapid action by the Department on disputed matters, and an appeal to a truly impartial body when the taxpayer does not agree.

2. Interest would be paid by the State to the taxpayers at exactly the same rates and circumstances as we expect the taxpayers to pay the state. It is hardly fair to expect taxpayers to pay more interest than the State pays them under the same situations.

3. We want to be sure that all taxpayers are informed of Department rulings. Accordingly, the bill requires the Department to publish rulings including summaries of private letter rulings. Our long-term plan is to provide access to policy rulings over the Internet. *(voluntary compliance)*

*Senate Assessment & Taxation  
3-19-97  
Attachment 1*

4. As you may know, we rely heavily on federal income tax audits. Accordingly, the law opens the State statute of limitations (SOL) when a federal adjustment is made. This procedure assures that federal adjustments can flow through to the State return. This bill assures that the SOL is opened only to allow the federal changes to flow through, and not permit a wholly unrelated State audit outside the State SOL.

5. We present a clear, objective, good faith standard that merchants can rely upon when making tax exempt sales. We believe the "bright line" test included in this bill will assure merchants that their good faith review of claimed exemptions will absolve them of tax liability on these purchases.

6. The bill allows direct refunds of sales tax to purchasers under certain circumstances, and as a result, all firms may offset underpayments of sales tax with overpayments.

7. A few years ago penalty provisions were relaxed under certain circumstances. That relief was not made available for past tax years. We believe the provision makes sense for all years, and correct the existing law accordingly.

8. The bill assures no KDOR employee is evaluated based on how much he/she generates in terms of audit assessments or settlements. The new Department of Revenue believes we all win when the law is fairly administered and, if that means the state owes a taxpayer reimbursement for payments beyond what was owed, that's fine.

I spoke at the outset of the process that created this bill. Truly there is no single author. It came from ideas of many businesses and their representatives, and one of the Department's most capable customer-focused leaders, Shirley Sicilian. Shirley worked many hours with business leaders to create this important proposal. My role was simply to encourage and applaud their important work.

In past years, efforts at true tax reform often bogged down when business and tax officials did not carefully consider each others' views. Too often what resulted was people talking at each other -- not communicating with each other. This proposal reflects a consensus of business and tax experts on the key fairness issues of the day. I congratulate them on their work and hope you will join me in recognizing their accomplishment.

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Topeka, Kansas 66612-2220  
Voice - 913/234-3686  
Fax - 913/234-3687  
Email - jpsmall@kspress.com

March 19, 1997

MEMORANDUM

TO: Senate Committee on Assessment and 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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Madam Chair 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 taxpayers - 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 since the end of the 1996 Legislative Session. 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 four months. 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 further amendments as it is considered by this body.

We believe this 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.

Senate Assessment + Taxation  
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Attachment 2



## KANSAS TAX COALITION

Allen Gibbs & Houlick  
Arco  
Arthur Anderson & Company  
Boeing  
Burlington Northern Santa Fe  
Cargill  
Coleman  
Colgate  
Commercial Properties Association of Kansas  
ConAgra, Inc.  
COST - Committee On State Taxation  
Deloitte Touche  
Dillons  
Ernst & Young  
Farmland Industries, Inc.  
General Motors  
Grant Thornton  
Greater Kansas City Chamber of Commerce  
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.  
McGraw Fertilizer, Inc.  
Mid America Lumbermens Association  
National Federation of Independent Business  
Overland Park Chamber of Commerce  
Phillips Petroleum Company  
Proctor & Gamble  
Raytheon Aircraft  
Rent-A-Center  
Sprint  
Tax Executives Institute  
Texaco, Inc.  
Western Resources  
Western Retail Implement & Hardware  
Wichita Independent Business Association  
Wichita Area Chamber of Commerce  
Yellow Corporation

Good morning, Sen. Langworthy 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.

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Attachment 3

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.

4  
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.

Senator Langworthy and Tax Committee members, good morning. My name is Bryan Neuendorf. For over thirteen years I have specialized in the area of state and local taxation. My background includes both state government and industry, so I've been on both sides of the fence, as a revenue auditor for the Department of Revenue and in various tax positions for private industry. I am currently in private practice and the State and Local Practice Leader for Grant Thornton's Central Region. Grant Thornton is a national accounting firm focused 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 Taxpayers' Fairness and Equity 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 and help remove the perception that Kansas is a place for new business to avoid.

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 small to middle-market taxpayers.

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Attachment 4



First, it is my experience that as many taxpayers overpay their sales/use taxes as underpay their sales/use taxes. This is primarily due to these businesses having limited resources and focusing these resources on more important business concerns. 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 under certain circumstances to pursue refunds directly from the Department. In addition, it allows for an offset of vendors sales/use tax overpayments against any tax underpayments identified while under examination by the Department. Example.

The second 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 have both an informal and formal conference with the Department. The informal conference is with the Audit Bureau and provides for a forum for taxpayers to resolve audit disputes without retaining legal counsel. However, if the disputes are not resolved, taxpayers may have a formal hearing with the secretary or their designee whereby the taxpayer should be represented by legal counsel. This provision allows for the elimination of one level of administration and provides for a structured informal hearing process whereby taxpayers do not have to be represented by legal counsel until the formal hearing with the Board of Tax Appeals.



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. At this time, I would be happy to answer any questions that the tax committee may have.



## MID-AMERICA LUMBERMENS ASSOCIATION

### TESTIMONY FOR THE SENATE ASSESSMENT AND TAXATION COMMITTEE

HOUSE BILL # 2105

MARCH 19, 1997

*Madame Chair, members of the Senate Assessment and Taxation Committee. My name is Art Brown. I represent the retail lumber and building material dealers in the State of Kansas through the Mid-America Lumbermens Association. I am here today as a proponent of House Bill # 2105.*

*Let me start by stating the obvious. This is a huge bill in scope and in content. It is obvious a great deal of hard work was put forth by the Governors office, a group of tax payers and the Kansas Dept. of Revenue. They should be applauded for the effort you see before you today. I think it only proper to point out that such a voluminous bill is bound to need some "fine tuning" as I have never in my years at the State House seen such a large bill ever go cover to cover without language changes. The House, we feel was right to form a sub-committee to digest the work that went into this bill. Issues such as Workers Compensation, Rails to Trails and numerous other issues have gone through this process. It is done because of the impact and seriousness of the subject matter. We are hopeful that you concur that what few changes were made by that sub-committee merit your serious consideration as this bill is worked in this Committee.*

*We see the intent of this bill to create a better working environment between taxpayers and the K.D.O.R. and the streamlining of certain policies to make the dept. more "user friendly." By the department getting away from the attitude of the beatings will continue until morale improves, the department and the taxpayer will be in a win-win situation, which is what we hope implementation of this bill accomplishes.*



*Senate Assessment & Taxation*



I do not have the expertise, or the time to go over all 41 sections of the bill. I doubt if any conferee does. Suffice it to say that section 10 of the bill, which deals with the formal hearing process and the subsequent time reduction mentioned in the bill is easily one of the major provisions our membership totally embraces. Having personally worked with one of our members through a grueling 2 year appeal, this provision is "a must" as we see it in the final product of the bill.

The focus of my testimony will be on Section 19 of the bill which deals with the "good faith" provision. Here we are, for the 3rd year in a row, trying to establish exactly what is meant by "good faith" as it realates to the handling of re-sale exemption certificates. I can emphatically tell you that our membership wants 2 things in regards to this issue: fairness and simplicity. \* You see attached to my testimony a re-sale exemption certificate. Follow this example if you will, so that I can show you why we approve of the current language in regard to this bill: I come into you with this certificate. You validate the identity of the person presenting the certificate to be who they say they are: and as a vendor, you ascertain the accuracy of the exemption certificate. Painless, simple and effective. What about vendors who might try to evade the tax, or committ a criminal act by evading tax law? There is a penalty provision in the bill, that we feel you can make as strong as you want in order to handle that situation. I also feel the evidentiary standard in this bill could be subject to a great deal of debate as to how in can and will be enforced and understood by K.D.O.R. I am not an attorney, so I can contribute nothing to that debate, but I feel other conferees will have some thoughts along this line.

I would like to elevate the debate beyond a magazine article, or the current Secretary of Revenue. If changes are being made to make this department more user friendly. So be it. We applaud it. — We absolutely feel that language you create with this bill should stand the test to time for any Revenue director. We feel — implementing this language will certainly stand such a test of time. —

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Committee

I must tell the Committee that I was somewhat distressed to hear a representative of the K.D.O.R. tell the House fiscal oversight Committee, that implementation of the "good faith" standard would not effect any changes in the rules and regs the dept. would use to administer this statute. If this is the case, implementation of a weaker statute than what is now in the bill would do little to change the way a sales tax audit could be conducted. If it is the intent of this Legislature, and this bill to indeed make the K.D.O.R. more "user friendly" than certainly make sure that the "nuts and bolts" are also addressed by user friendly language in the rules and regs. which is certainly the day to day implementation of whatever language in statute is passed out of this committee. Again, we feel that implementation of the current language in the bill in regard to "good faith" will necessitate such a change in rules & regs.

I would like to address the fiscal note that the K.D.O.R. has said would be a loss in revenue to the State by implementation of the current language of "good faith." It has always been of the greatest interest to me that when an agency wants to support a provision impacting their agency they cannot determine a fiscal note. When it is a policy they do not like and negatively impacts their agency, it seems to have a fiscal note. In our attorneys opinion regarding the current language in HB 2105, he told me "he wished me luck, because any Revenue dept. will pull out all the stops to keep language like this from becoming law, but our membership should love it." Obviously, the fiscal note is one of such all out attempts to defeat this language. I am totally confident with the cumulative experience of this Committee, that they can see through this fiscal note ruse and focus on the language in the bill, which we do indeed totally embrace.

I would close with the following thoughts: When it comes to the check we send in to the State paying our taxes, our attitude is that this is not a check we gladly write, but it is a check we willingly write. We as business people totally realize the need

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Committee

for the FAIR collection of taxes and that taxes are paid in a timely and accurate manner. In this area, we feel we can agree with the Revenue Dept. If this language on good faith seems unusually strong, it is only because PAST actions of the department have forced such implementation of this language. In a sense, PAST actions have reaped what they have sown. Again, if the current Secretary is making strides to make the Dept. more user friendly, and it appears he certainly is, than we all will be winners. All we are saying, is that with the implementation of this language, you have insulated retailers from any punitive action in the future from any Dept. director. THE PEANUT here is that the onus for tax collection in the cases of resale exemption certificates is on the Dept., not on the retailer. We don't need or want to be the "police force" for the Dept. We don't have the time or need to know as much about tax policy as the personnel who work at the K.D.O.R. know. We ask this Committee to adopt the provisions of Section 19 of the bill, and pass the entire bill out of this Committee for consideration in the full Senate. What we don't want, is for this matter not to be effectively dealt with, and as a result have more negative magazine articles in the future about the tax and business climate relationship in Kansas.

I thank the Committee for the time to visit with you about this bill, and the "good faith" provision in particular, and stand for any questions or comments you may have about my testimony.

RESALE EXEMPTION CERTIFICATE

Glenn Crowther Const

(Name of Purchaser)

Wichita Kansas

(Address of Purchaser)

I HEREBY CERTIFY: That I hold valid retail registration No. 11120276 issued pursuant to the Kansas Sales and Compensating Tax Law; that I am engaged in the business of selling

Construction & Repair

That the tangible personal property described herein which I shall purchase from:

The Lumberyard Inc. Hillsboro, Kansas 67063

will be resold by me in the form of tangible personal property; provided, however, that in the event any of such property is used for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, it is understood that I am required by the Kansas Sales and Compensating Tax Law to report and pay tax, measured by the purchase price of such property. Description of property to be purchased:

Lumber, Paint, Hardware & Related Items

Date: Jan 19 92

Glenn Crowther

(Signature of Purchaser or Authorized Agent)

TO: Senate Assessment and Taxation Committee  
FROM: Rod Broberg, Kansas County Appraisers Association  
RE: Sections 21 and 23 of HB 2105  
DATE: March 19, 1997

Madam Chair and members of the Committee, thank you for the opportunity to address the committee in opposition to sections 21 and 23 of HB 2105.

Under the current system of personal property taxation, the County Appraiser is given the responsibility of valuing all taxable, tangible personal property. Additionally, under the Reappraisal Maintenance Specifications County Appraisers are required to audit "some" renditions for accuracy of reporting by the taxpayer. While various methods of auditing are employed, it remains a basic tenant of our system that the property owner bears the responsibility to render the list of property to the County Appraiser.

In order to ensure that taxpayers are properly motivated to render full and complete lists of their property in a timely manner, certain penalty provisions have been provided for in the statutes, in much the same manner as with federal and state income tax filing requirements. The current provisions of sections 21 and 23 on this bill would, for all practical purposes, eliminate any meaningful penalties for those who may choose to ignore the statutory filing requirements.

In our society today, tax has become a four letter word. In many circles it is socially acceptable to cheat on your taxes. People who would not dream of stealing or cheating their neighbor, think nothing of failing to report the purchase of a new boat or telling the appraiser that their basement is not finished when it really is. Unfortunately, there is a real need to ensure accurate and timely filing of personal property renditions with late filing consequences.

As you consider the fundamental changes that these sections would effect, let me offer a scenario that may be a real possibility with the passage of these two sections. In Saline County, where I serve as County Appraiser, we have approximately 2,200 businesses who file personal property renditions. We have in place, an audit program under which we hope to audit 200 renditions per year. At this rate we will need 11 years to audit all businesses in Saline County. Over the past three years this audit program has yielded approximately \$1,000 of additional tax revenue from each rendition audited. This indicates a sizable under-reporting of this property currently. Under the proposed new sections, a businessman will realize that if he simply files a rendition and forgets to add any new acquisitions the worst case scenario is that the County Appraiser will not be audit for another five or six years. At the point that he is

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audited, under current law, he will only be assessed for the current tax year and two prior years plus a 10% penalty. The result is that he completely avoids the tax for two or three years and pays 30% more on the years he is made to make up. It becomes only good business to use this system to lower ones costs. With respect to the language that provides for a 50% penalty, I believe that it would be virtually impossible to prove "intentional disregard" or "fraudulent intent" when a taxpayer is testifying under oath that he simply forgot to add items to his list.

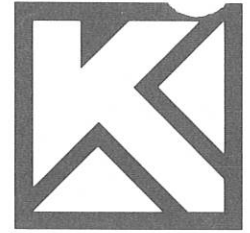
While this businessman is lowering his costs, what cost is incurred by all of the rest of the taxpayers. First of all, the fact that this businessman is reducing his tax liability doesn't mean that the costs of providing government services is decreasing. His actions only shift the tax burden to those who will continue to file properly, as well as onto other classes of property. Additionally, in order to try to maintain some uniformity in the appraisal system, counties will be forced to increase auditing and other efforts, thereby increasing costs.

I recognize that this whole package of legislation is intended to provide a more user friendly environment in which citizens can interact with their government. I applaud these efforts and pledge my support and cooperation. However as changes are contemplated, we must not loose sight of the fact that citizens and taxpayers must bear some responsibility to ensure the smooth and efficient operation of government. To ask property owners to accurately and timely file required lists of property is not too great a burden for them to bear.

Thank you for your consideration.

# LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry



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HB 2105

March 19, 1997

## KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

Senate Committee on Assessment and Taxation

by

Bob Corkins  
Director of Taxation

Madam 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.

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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



gment and the taxpayer, should be subject to the same interest rate whether applicable to 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.

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

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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.



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ROLANDE E. SMITH, *Executive Director*

March 20, 1997

**STATEMENT TO:** Kansas Senate Assessment and Taxation Committee  
**FROM:** Roland E. Smith, Executive Director for the Wichita Independent Business Association  
**SUBJECT:** Context of the verbal testimony in support of HB2105 "The Kansas Tax Equity and Fairness Act of 1997" given before the committee on March 19, 1997.

Madam Chairperson and members of the committee, I am Roland Smith, Executive Director of the Wichita Independent Business Association. WIBA is an association of over 800 privately owned businesses in the Wichita trade area.

WIBA is in support of HB 2105. This bill addresses many issues, however I will direct my remarks to two that were amended into the original version by the House. (1.) The revised definition of "Good Faith Effort" as it relates to the sales tax collected by a retailer or seller. The revised wording, we believe, makes the presumption that the retailer or seller is innocent until proven guilty if he or she does what is spelled out in the new wording and it is up to the revenue department to prove otherwise with a preponderance of evidence. (2.) The revenue department must make available all administrative rulings, directives, information guides and private letter rulings concealing the identity of the taxpayer. We believe this will help the department of revenue with consistency in their operations and inform business what is expected of them.

There were other amendments added by the house regarding sales tax audit procedures that WIBA supports. We are not speaking to or supporting at this time amendments made by the House action other than those relating to the sales tax issues.

The chairperson stated that the fiscal note on the sales tax "Good Faith" definition amendment was a cost to the state of 13 million dollars. I doubt the creditability of that figure as many others involved in the issue do. However, if it were true, it would mean the department of revenue was collecting 13 million dollars more than they should be if true fairness was the issue.

I appreciate the opportunity to comment on this legislation on behalf of WIBA. This legislation is far reaching and we believe it will help many small businesses in several problem areas. Thank You!

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