

Approved: 4-10-99
Date

MINUTES OF THE SENATE ASSESSMENT AND TAXATION.

The meeting was called to order by Chairperson Senator Audrey Langworthy at 11:30 a.m. on April 1, 1999, in Room 519-S of the Capitol.

All members were present except:

Committee staff present: Chris Courtwright, Legislative Research Department
April Holman, Legislative Research Department
Don Hayward, Revisor of Statutes Office
Shirley Higgins, Committee Secretary

Conferees appearing before the committee: Ned Webb, Department of Commerce & Housing
Shirley Sicilian, Department of Revenue
Bob Krehbiel, Kansas Independent Oil & Gas Association

Others attending: See attached list.

Continued hearing on: **HB 2530—Income taxation; relating to certain credits.**

Ned Webb, Community Development Division of the Kansas Department of Commerce and Housing, commented on statistics presented by conferees at the March 31 meeting. He informed the Committee that the Division intends to conduct a study this summer to address administrative issues as well as possible legislative or rule changes that will establish procedures which have been implemented to better utilize the tax credits under the Community Service Tax Credit Program. (Attachment 1)

Mr. Webb went on to present testimony he had planned to present at the March 31 meeting concerning the impact the bill would have on the administrative capabilities of his Division. He noted that when the initial Community Service Tax Credit Program was enacted, the administration of the applications and credits was absorbed by the Division with no increase in staff. He said, the bill, as amended, would lead Kansas towards the development of a program similar to that administered by the State of Missouri, which currently has seven full time employees with most of the employees allocated towards the certification of the non-cash contribution items. Mr. Webb feels the expansion of the non-cash contributions in Kansas will greatly expand the volume and variety of documentation needed. Currently, the Department does not have the ability or capacity to establish the value of non-cash contributions. He also anticipates a substantial increase in technical assistance to recipients who would not know how to properly document property or non-cash gifts. The Department's fiscal note on the bill indicates that it would require at least two new full time employees to handle the documentation necessary to administer the provisions in **HB 2530**. In conclusion, Mr. Webb noted that the inclusion of goods and services may shift some contributions from cash, which is the true need of the nonprofit, to goods and services, which may not be as beneficial. (Attachment 2)

Senator Langworthy asked Mr. Webb if there is some technical way to facilitate the use of the \$1.4 million currently not being used. Mr. Webb said the Division is considering two options. One option would be to come back to the Legislature and request the ability to carry over unused credits. Another possible option would be to over-allocate, based on a conservative number. Mr. Webb believes that, at best, one could expect only a 90 percent achievement in this program.

Senator Langworthy further commented that one of the problems some legislators have heard about is that there are people who want to participate in the program, and the credits allocated to them have been used up, and yet, there are other credits that are not being used. Mr. Webb said that, over the last couple of years, the Division has called those who are lagging behind and those who are reaching their maximum to determine if a reallocation is necessary. At this point, the ability to transfer credits and offer more credits to those in need of them has increased the percentage of credits used significantly. Senator Langworthy responded that it is important that a method is found to ensure that the credits are used to the maximum as was intended when the law was enacted.

CONTINUATION SHEET

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE, Room 519-S Statehouse, at 11:30 a.m. on April 1, 1999.

Shirley Sicilian, Department of Revenue, testified for informational purposes. She explained that the Department has changed the fiscal note for the "**SB 18**" amendment, regarding an income tax credit for oil and gas leases, from \$8.3 million to \$4.1 million. In addition, the Department requests the deletion of language on page 5, lines 26 through 30, which allows operators to file on behalf of partners of sub-s shareholders. A copy of the proposed amendment is included with her written testimony. (Attachment 3) Senator Lee pointed out that the original provisions of **SB 18** concerned oil leases, but the House amended it to include a provision for gas leases.

Bob Krehbiel, Kansas Independent Oil and Gas Association, testified in support of **HB 2530** and in support of the amendments proposed by the Department of Revenue. (Attachment 4) Mr. Krehbiel reviewed the process by which the provisions of **SB 18**, as amended, became a part of **HB 2530**. He emphasized that the oil and gas provisions, also contained in other bills still remaining in the Senate, received substantial support in the House. Senator Langworthy noted that one of the reasons that all the bills to which Mr. Krehbiel referred remain in the Senate is that the House passed a highway plan that used up all the available monies that could have been used for any of the issues he discussed. Mr. Krehbiel responded that he understands the impact of the transportation plan on the proposals for the oil and gas industry. However, with the revised fiscal note presented by Ms. Sicilain, he believes the provisions of **SB 18** can realistically be included in the Senate transportation plan. In conclusion, he reiterated the urgent need to address the oil and gas industry crisis in Kansas. He contended that **HB 2530** will save more wells from being plugged or oil and gas being wasted than any other bill.

Senator Langworthy called attention to written testimony in support of **HB 2530** submitted on March 31 by the Greater Kansas City Chamber of Commerce (Attachment 5), the Kansas Chamber of Commerce and Industry (Attachment 6), and the YMCAs of Kansas (Attachment 7).

The meeting was adjourned at 12:15 p.m.

No meetings are scheduled for the remainder of the 1999 legislative session.

SENATE ASSESSMENT AND TAXATION COMMITTEE
GUEST LIST

DATE: April 1, 1999

| NAME | REPRESENTING |
|--------------------|---------------------------------|
| NED WEBB | KDOC & # |
| Stirling Siciliano | KDOR |
| Mark Bunk | KDOR |
| Don Schnack | KIOGA |
| Natalie Bright | KCCI |
| Ash Frederick | Boeing |
| Dawn Hollens | Western Resources |
| BRUCE GRAHAM | KEPC |
| Manu Harwan | Div. of the Budget |
| TOM BRUNO | EKOGA |
| Slobodan Milosevic | MURDERER |
| Dick Brewster | BP - Amoco |
| Ken Peterson | KS Petroleum Council |
| Don Safest | City of Olatte |
| Shane Gagnelin | Sen Stephens staff |
| Phil Eberkuehl | Ks Ind Oil & Gas Assoc |
| Mitchell | Am & War, Phil |
| Chris McKen | League of Kansas Municipalities |
| | |

Supplemental Testimony to HB 2530
Presented to the Senate Assessment and Taxation Committee
By Ned Webb, Director, Community Development Division
Kansas Department of Commerce and Housing
April 1, 1999

My name is Ned Webb. I am Director of the Community Development Division at the Kansas Department of Commerce & Housing (KDOC&H). Before I begin my prepared remarks, I want to clarify some comments and figures I heard at yesterday's hearing.

At the end of February this year, 74 percent of the 1998 credits had been allocated. We are still receiving last minute documentation as donors and nonprofits try to beat the April 15 tax deadline. I believe we will end the 1998 program year utilizing between 75 and 80 percent of the credits available. One of the conferees yesterday thought that the 1998 usage was \$1.2 million. The \$1.2 million is our anticipated unused amount. The conferee from Hallmark Cards was correct yesterday when she observed that it does take time for the nonprofits and the State to maximize usage of the tax credit program. Our first year, 1995, we actually used only 55 percent of the tax credits available, but that usage percentage has increased each year since.

To improve usage we have looked more carefully at the applications for signs of successful fundraising by the nonprofit. This is evidenced by the nonprofit's plan for raising funds and sometimes by the board of directors of the organization who individually and collectively may have extensive fundraising experience. We have extended the usage period for a nonprofit to collect credit eligible funds from July 1 through December 31 of the following year giving the nonprofits the full 18 months to utilize their credits. In 1997 we began to reallocate unused credits from nonprofit entities who were not using the credits to the nonprofit entities who needed more tax credits. We typically begin that reallocation process in September of the tax year giving the nonprofit a full four months to utilize the extra credits.

This summer we plan to address some of the issues that Mary Faye LaFaver left in a briefing document to me, as well as possible legislative or rule changes that will establish some of the procedures we have implemented to better utilize the tax credits under this program.

Senate Assessment & Taxation
4-1-99
Attachment 1

Testimony on HB 2530
Presented to the Senate Assessment and Taxation Committee
By Ned Webb, Director, Community Development Division
Kansas Department of Commerce and Housing
March 31, 1999

My name is Ned Webb. I am Director of the Community Development Division at the Kansas Department of Commerce & Housing (KDOC&H). I replaced Mary Faye LaFaver, who was involved in the Community Service Tax Credit Program from its inception in 1994. I was made aware, through transition papers left to me by Mary Faye, that the Community Development Division was understaffed to administer the current cash only tax credit program. Our administrative concerns deal with staff capacity to confirm that the project for which the tax credits were issued was actually implemented or completed. This summer we will develop an audit document to be used by an independent auditor in performing the required project audit which is a more recent administrative concern.

When the initial Community Service Tax Credit Program was enacted, the administration of the applications and credits was absorbed by our division with no increase in staff. Today, Terry Marlin, of my staff, administers the allocation of credits for cash contributions made to qualified nonprofits. Our current program allocates \$5 million in tax credits that typically go to about 30 recipients each year. Each cash contribution is documented by a copy of a canceled check made payable to the nonprofit. We certify each tax credit based on this simple documentation. A certificate is then issued to the nonprofit who in turn issues the tax credit certificate to their contributor. We are currently reviewing about 96 applications per year. One-half of Terry Marlin's time is devoted to the Community Service Tax Credit Program, processing the over 800 tax credits issued, in reviewing the annual competitive applications, and providing technical assistance to donors and organizations. Our clerical staff mailed out over 1,000 application documents for the FY2000 competition due on May 7. This year we anticipate over 120 tax credit applications.

The provisions of HB 2530, as amended, would lead Kansas towards the development of a program similar to that administered by the State of Missouri. Like the State of Missouri program, provisions of this bill allow eligible contributions to include personal property, materials, supplies, equipment, transportation, securities, technical assistance, labor, and professional services. We recently visited with the State of Missouri concerning the administration of their tax credit program since the provisions of this bill so closely resembled Missouri's long standing program. The State of Missouri currently has seven full-time employees dedicated to a \$22 million tax credit program with most of the employees allocated towards the certification of the non-cash contribution items. The expansion of the non-cash contributions will greatly expand the volume and variety of documentation needed. As an example, if a corporation were to donate a 386 computer, we should establish that the value placed on the equipment is correct. We have neither the ability nor the capacity to establish these values, and would

Senate Assessment & Taxation
4-1-99
Attachment 2

probably have to seek outside expertise or develop it from within. Certifying the appropriate value on services would pose much the same documentation challenge. We would also anticipate a substantial increase in technical assistance to recipients who would not know how to properly document property or non-cash gifts. These are examples of the type of issues that appear to be growing the Missouri staff. We were told that Missouri hopes to add two more people to their program staff of seven.

The House amendment allows for credits to be sold once by the business who first receives them. This reduces tracking concerns but would still cause credits to be tracked for a 10-year period. The increases of credits from \$5 to \$10 million would, by itself, potentially double the amount of time required to administer and document contributions. We estimate that this bill would expand a number of items that we account for from over 800 cash contributions per year to as many as 4000 mixed contributions each year.

Our fiscal note for this bill indicated that it would require up to two new full-time employees to handle the documentation necessary to administer the tax credit program envisioned by this bill. Judging from the number of employees Missouri has dedicated to their tax credit, it is possible our estimate is too conservative.

The House amendment to this bill would make the expanded tax credits available to contributors after December 31 1998, which will effect the current FY1999 program. We have only a half-time person assigned to the Community Service Tax Credit program and the FY1999 program allocation could become quickly bogged down if the implementation date were to be retroactive. The FY2000 awards will be made this June and they will have from July 1, 1999, to December 31, 2000, to complete their fundraising. We will need time to hire, train new staff, and to develop standards for documenting non-cash contributions.

Finally, I would note a concern that has been voiced to us about the possible impact this bill would have on the intended beneficiaries, the nonprofits. I understand the original intent of this program was to provide a source of cash for cash-starved nonprofit community organizations by providing incentives to businesses for such contributions. The inclusion of goods and services may shift some of that giving from cash, which is the true need of the nonprofit, to goods and services, which may not be as beneficial.

Office of Policy & Research
Shirley K. Sicilian, Director
915 SW Harrison St.
Topeka, KS 66625



(785) 296-3081
FAX (785) 296-7928
Hearing Impaired TTY (785) 296-6461
Internet Address: www.ink.org/public/kdor

Office of Policy & Research

TESTIMONY

To: Chairperson Langworthy
Senate Assessment and Taxation Committee

From: Shirley Sicilian

Re: House bill 2530

Date: April 1, 1999

Chairperson Langworthy and members of the Committee, thank you for the opportunity to testify on House Bill 2530. There are just two items to which I would like to quickly draw your attention:

1. We have revised the fiscal note for the "Senate bill 18" amendment which provides a refundable income tax credit for 100% of the property tax paid on working interest property for oil leases producing 15 barrels a day or less and gas leases producing 90 MCF a day or less. Previously we had estimated an impact for gas of \$4 million in fiscal year '99 and \$4 million in fiscal year '00; For oil, we estimated a fiscal impact of \$8.3 million in fiscal year '99 and \$8.3 million in fiscal year '00. We are changing our *fiscal year 2000* impact estimate for *oil*. That impact will be \$4.1 million, as opposed to \$8.3 million. This change is based on our sampling of over 100 Barton and Ellis County renditions which taxpayers began filing with the County Appraiser starting March 15. The department will not officially receive this information, even preliminarily, until July. However, we feel that the value drop reported on the sampled County renditions was dramatic and consistent enough to warrant a change in our estimate at this time.
2. We request deletion of the language that allows operators to file on behalf of partners or sub-shareholders. The language is on page 5 of the bill, it begins on line 26 and continues through line 30. The administrative cost is very high for this provision (\$385,000) and we have worked out an alternative processing arrangement with the industry to meet their needs.

Senate Assessment & Taxation
4-1-99
Attachment 3

HOUSE BILL No. 2530

By Committee on Appropriations

2-23

12 AN ACT concerning ~~taxation; concerning the Kansas community services~~
13 ~~program [income taxation; relating to certain credits therefrom];~~
14 amending K.S.A. 79-32,197 and K.S.A. 1998 Supp. 79-32,195 and 79-
15 32,196 and repealing the existing sections.

16
17 *Be it enacted by the Legislature of the State of Kansas:*

18 Section 1. K.S.A. 1998 Supp. 79-32,195 is hereby amended to read
19 as follows: 79-32,195. As used in this act, the following words and phrases
20 shall have the meanings ascribed to them herein: (a) "Business firm"
21 means any business entity authorized to do business in the state of Kansas
22 which is subject to the state income tax imposed by the provisions of the
23 Kansas income tax act, any national banking association, state bank, trust
24 company or savings and loan association paying an annual tax on its net
25 income pursuant to article 11 of chapter 79 of the Kansas Statutes An-
26 notated, or any insurance company paying the premium tax and privilege
27 fees imposed pursuant to K.S.A. 40-252, and amendments thereto;

28 (b) "community services" means:

29 (1) The conduct of activities which meet a demonstrated community
30 need and which are designed to achieve improved educational and social
31 services for Kansas children and their families, and which are coordinated
32 with communities *including, but not limited to, social and human services*
33 *organizations that address the causes of poverty through programs and*
34 *services that assist low income persons in the areas of employment, food,*
35 *housing, emergency assistance and health care;*

36 (2) crime prevention; and

37 (3) health care services.

38 (c) "crime prevention" means any nongovernmental activity which
aids in the prevention of crime ~~in an impoverished area.~~

(d) "community service organization" means any organization per-
41 forming community services in Kansas and which:

42 (1) Has obtained a ruling from the internal revenue service of the
43 United States department of the treasury that such organization is exempt

3-2

1 from income taxation under the provisions of section 501(c)(3) of the
2 federal internal revenue code; or

3 (2) is incorporated in the state of Kansas or another state as a non-
4 stock, nonprofit corporation; or

5 (3) has been designated as a community development corporation by
6 the United States government under the provisions of title VII of the
7 economic opportunity act of 1964; or

8 (4) is chartered by the United States congress.

9 (e) **“Contributions” shall mean and include the donation of**
10 **cash, services or property other than used clothing. Stocks and**
11 **bonds contributed shall be valued at the stock market price on the**
12 **date of transfer. Services contributed shall be valued at the stan-**
13 **dard billing rate for not-for-profit clients. Personal property items**
14 **contributed shall be valued at the lesser of its fair market value or**
15 **cost to the donor and may be inclusive of costs incurred in making**
16 **the contribution, but shall not include sales tax. Contributions of**
17 **real estate are allowable for credit only when title thereto is in fee**
18 **simple absolute and is clear of any encumbrances. The amount of**
19 **credit allowable shall be based upon the lesser of two current in-**
20 **dependent appraisals conducted by state licensed appraisers.**

21 (e) (f) **“health care services” shall include, but not be limited to, the**
22 **following: Services provided by local health departments, city, county or**
23 **district hospitals, city or county nursing homes, or other residential insti-**
24 **tutions, preventive health care services offered by a community service**
25 **organization including immunizations, prenatal care, the postponement**
26 **of entry into nursing homes by home health care services, and community**
27 **based services for persons with a disability, mental health services, indi-**
28 **gent health care, physician or health care worker recruitment, health ed-**
29 **ucation, emergency medical services, services provided by rural health**
30 **clinics, integration of health care services, home health services and serv-**
31 **ices provided by rural health networks.**

32 (f) (g) **“rural community” means any city having a population of fewer**
33 **than 15,000 located in a county that is not part of a standard metropolitan**
34 **statistical area as defined by the United States department of commerce**
35 **or its successor agency. However, any such city located in a county de-**
36 **finied as a standard metropolitan statistical area shall be deemed a rural**
37 **community if a substantial number of persons in such county derive their**
38 **income from agriculture and, in any county where there is only one city**
39 **within the county which has a population of more than 15,000 and which**
40 **classifies as a standard metropolitan statistical area, all other cities in that**
41 **county having a population of less than 15,000 shall be deemed a rural**
42 **community.**

43 **Sec. 2. K.S.A. 1998 Supp. 70-32,196 is hereby amended to read as**

3-3

H-3

1 follows: 70-32,106. For taxable years commencing after December 31,
2 1997, any business firm which contributes to a community service organ-
3 ization or governmental entity which engages in the activities of providing
4 community services, shall be allowed a credit, as provided in K.S.A. 70-
5 32,107, and amendments thereto, against the tax imposed by the Kansas
6 income tax act, the tax on net income of national banking associations,
7 state banks, trust companies or savings and loan associations imposed
8 under article 11 of chapter 70 of the Kansas Statutes Annotated, or the
9 premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and
10 amendments thereto, if the proposal of the provider of community serv-
11 ices is approved pursuant to K.S.A. 70-32,108, and amendments thereto.
12 Any business firm which makes such a contribution after the effective
13 date of this act and prior to July 1, 1998, shall be allowed a credit in
14 accordance with this act, as if the contribution had been made in calendar
15 year 1997, for the firm's tax liability for taxable years commencing after
16 December 31, 1996. Notwithstanding any other provisions of this section,
17 no business firm shall claim more than one credit for the same contri-
18 bution. *Notwithstanding any provision of law to the contrary, any tax-*
19 *payer may sell, assign, exchange, convey or otherwise transfer tax credits*
20 *allowed in this section. Such taxpayer, hereinafter the assignor for the*
21 *purpose of this subsection, may sell, assign, exchange or otherwise transfer*
22 *earned tax credit. The taxpayer acquiring earned credits, hereinafter the*
23 *assignee for the purpose of this subsection, may use the acquired credits*
24 *to offset up to 100% of the tax liabilities otherwise imposed against the*
25 *business firm's income tax liability under the Kansas income tax act. Un-*
26 *used credits claimed by the assignee may be carried forward for up to*
27 *five years, provided all such credits shall be claimed within 10 years fol-*
28 *lowing the tax years in which the contribution was made. The assignor*
29 *shall enter into a written agreement with the assignee establishing the*
30 *terms and conditions of the agreement and shall perfect such transfer by*
31 *notifying the director of community development of the department of*
32 *commerce and housing in writing within 30 calendar days following the*
33 *effective date of the transfer and shall provide any information as may be*
34 *required by director of community development of the department of com-*
35 *merce and housing to administer and carry out the provisions of this*
36 *section. Notwithstanding any other provision of law to the contrary, the*
37 *amount received by the assignor of such tax credit shall be taxable as*
38 *income of the assignor, and the excess of the par value of such credit over*
39 *the amount paid by the assignee for such credit shall be taxable as income*
40 *of the assignee. As used in this section "contribution" means cash or non-*
41 *cash assets including, but not limited to, real and personal property, ma-*
42 *terials, supplies, equipment, transportation, securities, technical assis-*
43 *tance, labor services and professional services.*

1 New Sec. 2. Any business firm or business entity not subject
2 to Kansas income, privilege or premiums tax, hereinafter desig-
3 nated the assignor, may sell, assign, convey or otherwise transfer
4 tax credits allowed and earned pursuant to K.S.A. 79-32,196, and
5 amendments thereto. Such credits shall be deemed to be allowed
6 and earned by any such business entity which is only disqualified
7 therefrom by reason of not being subject to such Kansas taxes. The
8 business firm acquiring earned credits, hereinafter designated the
9 assignee, may use the amount of the acquired credits to offset up
10 to 100% of its income, privilege or premiums tax liability for the
11 taxable year in which such acquisition was made. Only the full
12 credit amount for any one contribution may be transferred and
13 such credit may be transferred one time. Unused credit amounts
14 claimed by the assignee may be carried forward for up to five
15 years, except that all such amounts shall be claimed within 10 years
16 following the tax year in which the contribution was made. The
17 assignor shall enter into a written agreement with the assignee
18 establishing the terms and conditions of the agreement and shall
19 perfect such transfer by notifying the director of community de-
20 velopment of the department of commerce and housing in writing
21 within 30 calendar days following the effective date of the transfer
22 and shall provide any information as may be required by the di-
23 rector of community development of the department of commerce
24 and housing to administer and carry out the provisions of this sec-
25 tion. The amount received by the assignor of such tax credit shall
26 be taxable as income of the assignor, and the excess of the value
27 of such credit over the amount paid by the assignee for such credit
28 shall be taxable as income of the assignee.

29 Sec. 3. K.S.A. 79-32,197 is hereby amended to read as follows: 79-
30 32,197. The amount of credit allowed pursuant to K.S.A. 79-32,196, and
31 amendments thereto, shall not exceed 50% of the total amount contrib-
32 uted during the taxable year by the business firm to a community service
33 organization or governmental entity for programs approved pursuant to
34 K.S.A. 79-32,198, and amendments thereto. The amount of credit allowed
35 pursuant to K.S.A. 79-32,196, and amendments thereto, shall not exceed
36 70% of the total amount contributed during the taxable year by the busi-
37 ness firm in a rural community to a community service organization or
38 governmental entity located therein for programs approved pursuant to
39 K.S.A. 79-32,198, and amendments thereto. ~~Any tax credit not used for~~
40 ~~the taxable year the contribution was made may be carried over to any~~
41 ~~succeeding taxable year until the total amount of the credit is used. If the~~
42 ~~amount of the credit allowed by K.S.A. 1998 Supp. 79-32,196, and amend-~~
43 ~~ments thereto, exceeds the taxpayer's income tax liability imposed under~~

305

1 *the Kansas income tax act, such excess amount shall be refunded to the*
 2 *taxpayer. In no event shall the total amount of credits allowed under this*
 3 *section exceed ~~\$5,000,000~~ \$10,000,000 for any one fiscal year.*

4 [New Sec. 4. For all taxable years commencing after Decem-
 5 ber 31, 1997, there shall be allowed as a credit against the tax
 6 liability of a taxpayer imposed under the Kansas income tax act,
 7 an amount equal to the total amount of property tax levied for
 8 property tax year 1998, and all such years thereafter, actually and
 9 timely paid by the taxpayer which is attributable to the working
 10 interest of an oil lease the average daily production per well from
 11 which is 15 barrels or less, or a natural gas lease the average daily
 12 production per well from which is 90 mcf or less. No credit shall
 13 be allowed for property tax paid upon machinery and equipment
 14 attributable to the working interest for which a credit is claimed
 15 pursuant to K.S.A. 1998 Supp. 79-32,206, and amendments
 16 thereto. If the amount of such tax credit exceeds the taxpayer's
 17 income tax liability for the taxable year, the amount thereof which
 18 exceeds such tax liability shall be refunded to the taxpayer. If the
 19 taxpayer is a corporation having an election in effect under sub-
 20 chapter S of the federal internal revenue code, a partnership or a
 21 limited liability company, the credit provided by this section shall
 22 be claimed by the shareholders of such corporation, the partners
 23 of such partnership or the members of such limited liability com-
 24 pany in the same manner as such shareholders, partners and mem-
 25 bers account for their proportionate shares of the income or loss
 26 of the corporation, partnership or limited liability company unless
 27 an election is made and filed with the Kansas department of rev-
 28 enue by any such corporation, partnership or company to have
 29 such credit to be claimed otherwise by a shareholder, partner or
 30 member thereof.]

31 New Sec. 4. [5.] The provisions of [sections 1 through 3 of] this
 32 act shall be applicable to all taxable years commencing after De-
 33 cember 31, 1998.

34 Sec. 4. ~~5.~~ [6.] K.S.A. 79-32,197 and K.S.A. 1998 Supp. 79-32,195 and
 35 ~~70-32,106~~ are hereby repealed.

36 Sec. ~~5. 6.~~ [7.] This act shall take effect and be in force from and after
 37 its publication in the statute book [Kansas register].

Delete

TESTIMONY OF ROBERT E. KREHBIEL, EXECUTIVE VICE-PRESIDENT
KANSAS INDEPENDENT OIL AND GAS ASSOCIATION
IN SUPPORT OF HB 2530
March 23, 1999

Madam Chair and Members of the Committee:

Thank you for the opportunity to appear in support of HB 2530. I am appearing on behalf of the Kansas Independent Oil and Gas Association, a 62 year old association which speaks for the independent Kansas oil and gas producer members and the many affiliated service companies.

We are here to support HB 2530, and specifically the House amendments to the Bill. The House amendments include a property tax credit for marginal oil and gas wells which passed the House 124-0. This same amendment was a part of HB 2543 which previously passed the House 122-0. This Committee held hearings on a similar bill, SB 18, earlier in this session and this was also a part of last summers interim committee study. We will not repeat that testimony.

I do, however, in support of the House amendment to HB 2530, want to briefly discuss a developing issue which continues to seriously threaten Kansas producers. Attached to my testimony is a letter dated December 2, 1998, from the Federal Energy Regulatory Commission, addressed to Robert E. Krehbiel directing me to send \$2,232.96 to Northern Natural Gas Company and send a copy of the check (as proof of payment) to the Commission. The letter alleges that I had collected a price in excess of the maximum lawful price between October 4, 1983 and June 28, 1988, due to the reimbursement of (Kansas) ad valorem taxes. In the alternative, the letter goes on to say, you may file a letter with the Commission explaining why you do not owe this refund obligation. I chose the latter and will now be faced with litigation that will extend far into the next decade with interest running.

The letter which I received represents my ten per cent interest in one gas well drilled

with ten of my friends in 1981 in Edwards County, Kansas. Small Kansas producers all across Kansas are receiving similar letters but most are for much larger \$ liabilities. John O. Farmer, III, a typical small Kansas producer, for example, has received demands for refunds totaling in excess of \$190,000.00. Mr. Farmer has allowed me to attach a copy of a recent update of his alleged obligation to Williams Companies in the amount of \$142,622.78. (See attached letter dated March 5, 1999). Mr. Farmer is facing similar obligations to Northern Natural Gas Company and others. Total refunds for Kansas ad valorem taxes being sought from all Kansas producers total in excess of \$325 million.

Why is this happening? This is happening for one reason. In 1983 Kansas passed a severance tax in addition to the existing ad valorem tax on oil and gas. Prior to 1983 Kansas counties collected approximately 4.5% of gross production as an ad valorem tax from Kansas producers. Prior to passing the severance tax the Federal Energy Regulatory Commission allowed interstate pipelines who purchased this production to refund this tax to producers. In 1983, however, the Kansas Legislature passed the severance tax “in addition to” and not “in lieu of” the ad valorem tax. Thereafter the County and State Governments began collecting approximately 10% of gross production as ad valorem and severance taxes.

Because of the “add on” various interstate pipelines challenged the 1974 FPC Order 699-D which allowed Kansas producers to recover the ad valorem tax as a cost of production. This challenge was commenced by Northern Natural Gas Company on October 4, 1983, following, and because of, passage of the Kansas severance tax. Ten years later, on December 1, 1993, the Federal Energy Regulatory Commission reversed Order 699-D, after 19 years of standing, and ordered refunds of the ad valorem tax with interest back to June 28, 1988. Further Court action initiated by Colorado Interstate Gas Company resulted in the Courts extending the refund requirement back to October 4, 1983, with interest. Now Kansas producers face refunds in excess of \$325 million.

In 1983 the Kansas Legislature could have passed a severance tax “in lieu of” the ad

valorem tax, collected the same amount of revenue as both taxes collected and this problem would not exist. Or, in 1983, the Kansas Legislature could have passed the severance tax and reworded the Kansas ad valorem tax to conform to the Colorado or Wyoming property tax language, collected the same amount of revenue, and this problem would not exist. Or, the Kansas Legislature could have requested an opinion from the FERC to determine whether both a severance tax and a property tax could be added to the maximum lawful price and recovered by Kansas producers. Instead, the Kansas Legislature relied on FPC Order 699-D and the advice of Legislative Research which suggested that Kansas producers would be allowed to pass on both a property tax and a severance tax. To date, the Kansas severance tax has cost the Kansas producer over \$1.29 billion in direct tax and now, because, the severance tax was not appropriately drafted, it is costing Kansas producers another \$325 million in property tax as well.

And still, today, Kansas maintains both a severance tax and a property tax. Today both of these taxes have to be eaten by Kansas producers. Neither tax can be passed through to either inter-state or intra-state pipelines. Kansas oil and gas producers, like Kansas farmers, cannot simply add the cost of a tax on to the price of their product. These costs are absorbed by the producer.

Today, producers receive an average of \$1.25 per MCF for gas at the well head while residential consumers pay the pipelines an average of \$6.47 per MCF for gas at the burner tip. Is there any wonder why the rig count in Kansas has dropped from 224 rigs operating in 1982 to 4 rigs operating today, that employment in this industry has dropped from 17,700 in 1982 to 5,900 today? Kansas tax policy relating to the oil and gas industry has been a blue print for disaster, totally out of touch with reality, and needs serious attention.

HB 2530 will not relieve the \$325 million liability which passage of the severance tax in 1983 cost our industry in property taxes. But the House amendment added to HB 2530 is one small step towards restoring reasonable tax policy in Kansas. It is the most important part of HB

2543 which remains in this Committee and it is the only part of the Senate Transportation Plan that was assumed by the Committee of Six to pass in some form.

HB 2530 targets the most vulnerable of Kansas wells, marginal wells which will be plugged due to high costs and low production, but wells which can continue to produce for many, many years to come generating wealth and jobs. But Kansas tax policy with respect to the oil and gas industry must change and it must change quickly.

Our industry urges this Committee to pass this bill and get it to the Governor as soon as possible. Thank you very much.

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D C 20426

OFFICE OF PIPELINE REGULATION

In Reply Refer To:
PR14

Robert E. Krehbiel
Box 7
Pretty Prairie, KS 67570

DEC 2 1998

Ladies and Gentlemen:

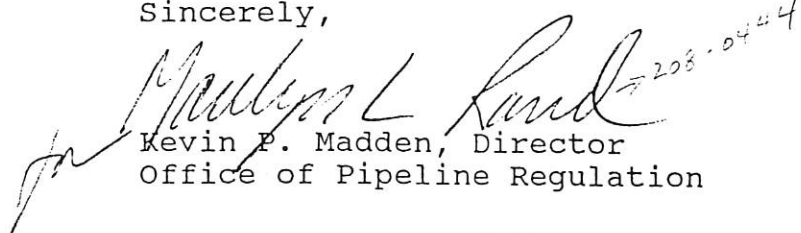
Among other things, the Commission's September 10, 1997 order in Public Service Company of Colorado in Docket No. RP97-369-000, et al., required Kansas producers who collected a price in excess of the maximum lawful price between October 4, 1983 and June 28, 1988, due to the reimbursement of ad valorem taxes, to make refunds by March 9, 1998.

Triplett, Woolf & Garrison, LLC, 2959 North Rock Road, Suite 300, Wichita, KS 67226, the law firm representing Aurora, Inc., former operator of the Shannon Estate No. 1 well, has reported that you held a 10.0 percent working interest in that well during the above-referenced period, which indicates that you have a \$2,232.96 refund obligation to Northern Natural Gas Company for sales from this well. Therefore, within 30 days from the date of this letter, you should make refunds to the pipeline, with additional interest to date of payment, and send a copy of your check to the Commission.

In the alternative, you may file: (1) a letter with the Commission explaining why you do not owe refunds or (2) a petition pursuant to Section 502(c) of the Natural Gas Policy Act of 1978, for relief from this refund obligation. The petition should include documentation showing that payment of the refund attributable to your working interest will cause a special hardship, inequity or an unfair distribution of burdens.

Thank you for your prompt attention to this matter.

Sincerely,


Kevin P. Madden, Director
Office of Pipeline Regulation

cc: Mary Kay Miller, Vice President
Rates and Certificates
Northern Natural Gas Company
P.O. Box 3330
Omaha, NE 68103-0330

252-208-0700

GARY W. BOYLE
Senior Attorney
Gas Pipelines - Central
918/573-2359
918/573-4190 office fax
gboyle@jpl.twc.com



One Williams Center, Suite 4100
Tulsa, Oklahoma 74172

March 5, 1999

Ron Gfellar
John O. Farmer, Inc.
P. O. Box 352
Russell, KS 67665

RE: Kansas ad valorem Tax Refunds

Dear Mr. Gfellar:

Williams Gas Pipelines Central, Inc. (Williams) has previously contacted you concerning John O. Farmer, Inc.'s obligation to refund certain Kansas ad valorem tax reimbursements John O. Farmer, Inc. received from Williams. As you know, the courts and FERC have ruled that tax reimbursements John O. Farmer received which exceeded the NGPA maximum lawful price must be refunded to Williams with interest. In accordance with FERC's orders our prior letters have informed John O. Farmer, Inc. of the amount of their obligation.

Williams' records reflect that John O. Farmer, Inc.'s current refund obligation (accounting for payments received through February 15, 1999) is \$142,622.78 including interest through March 31, 1999.

Williams is required to file a report of its refund collection activities in April 1999 and Williams is in the process of compiling the information required to make that report. In its report, Williams intends to inform FERC of the balance due from each producer and the extent to which each producer has complied with the following FERC requirements:

1. Each producer is required to pay the portion of its refund obligation that is not subject to valid factual disputes.¹ Any amounts subject to valid factual disputes must be deposited in an escrow account or the producer may post a bond in an amount

¹ Northern Natural Gas Co., 82 FERC ¶ 61,059 at 61,223 (1998). See Williams Gas Pipelines Central, Inc., 83 FERC ¶ 61,351 at 62,402, rel'g denied, 85 FERC ¶ 61,213 (1998) (holding that producers are not required to refund taxes attributable to and actually received by other working interest owners).

H-6

sufficient to cover principal and interest.² Producers who post a bond or establish an escrow account are required to provide the pipeline with complete information concerning the bond or escrow account including copies of all relevant documentation.³

2. FERC has denied various challenges to refund obligations and has determined that disputes based on these issues are not the sort of dispute that will authorize a producer to put a portion of its refund obligation in an escrow account or post a bond.⁴ Those defenses are briefly described as follows:

- a. Producers must refund all of the 1983 ad valorem tax reimbursement that exceeded the maximum lawful price and may not reduce the 1983 refund in an effort to account for production prior to the effective date of the refund procedure.⁵
- b. Producers are entitled to seek relief from the obligation to refund tax collections related to royalty interests but only if the refund cannot be collected from the royalty owner.⁶ FERC has denied requests to generically waive all refund obligations attributable to royalty interests.⁷ FERC has granted several producers an extension of time to demonstrate uncollectibility, but FERC has not yet granted relief from this obligation.
- c. Producers and pipelines may not impact the obligation to make

² Id.; Northern Natural Gas Co., 82 FERC ¶ 61,196 at 61,776 (1998).

³ Colorado Interstate Gas Co., 85 FERC ¶ 61,333 at 62,304 (1998).

⁴ Id. at 62,403-04.

⁵ Id. at 62,403; Public Service Co. of Colorado, 80 FERC ¶ 61,264 at 61,952-53 and n. 25 (1997).

⁶ Williams Gas Pipelines Central, Inc., 83 FERC ¶ 61,351 at 62,402 (1998), rel'g denied, 85 FERC ¶ 61,213 (1998) (citing Wylee Petroleum Corp., 33 FERC ¶ 61,014 (1985)).

⁷ Id.

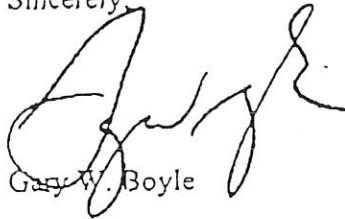
refunds through private agreements.⁸ FERC has rejected claims that pipelines waived refund obligations through settlement and other contractual arrangements.

- d. FERC has denied all generic requests for relief from the obligation to pay interest.⁹
- e. It is no defense to the refund obligation if the gas wells involved are not currently producing in economic quantities.¹⁰

Williams will include in its report information on each producer's compliance with FERC's Orders and the refund amount, together with interest, that is unpaid as of the reporting date.

Please contact us if you need further information.

Sincerely,



Gary W. Boyle

⁸ Williams Natural Gas Co., 67 FERC ¶ 61,153 at 61,450, reh'g denied, 68 FERC ¶ 61,013 (1994); Anadarko Petroleum Corp. v PanEnergy Pipe Line Co., et al., 85 FERC ¶ 61,090 at 61,331-32 (1998).

⁹ Public Service Co. of Colorado, 80 FERC ¶ 61,264 at 61,952 (1997).

¹⁰ Mull Drilling Co., 85 FERC ¶ 61,127 at 61,472 (1998).

H-9

SEVERANCE AND PROPERTY TAXES ON OIL AND GAS

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 |
|------|-----------------------------|--------------------------------|---------------------------------|-----------------------|-------------------------|------------------------------|--------------------------------|---------------------|--------------------------|-----------------------------|---------------------|---------------------|-------------------------|-----------------------------|--------------------------------|----------------------|
| YEAR | WELLHEAD PRICE OF CRUDE OIL | (Add 000) CRUDE OIL PRODUCTION | (Add 000) CRUDE OIL TOTAL VALUE | WELLHEAD PRICE OF GAS | (Add 000) MCF GAS PROD. | (Add 000) WELLHEAD VALUE GAS | (Add 000) WELLHEAD VALUE O & G | OIL & GAS VALUATION | OIL & GAS AD VALOREM TAX | LINE #10 DIVIDED BY LINE #9 | SEVERANCE TAX - OIL | SEVERANCE TAX - GAS | SEVERANCE TAX OIL & GAS | LINE #14 DIVIDED BY LINE #8 | TOTAL SEVERANCE & PROPERTY TAX | TAX % OF TOTAL PROD. |
| 1983 | 28.44 | 71,594 | 2,036,133 | 1.59 | 437,803 | 696,108 | 2,732,241 | 1,909,592,286 | 125,092,608 | 6.55% | None | None | None | None | 125,092,608 | 4.57% |
| 1984 | 27.99 | 75,729 | 2,119,655 | 1.30 | 466,228 | 606,096 | 2,725,751 | 1,789,397,127 | 123,591,041 | 6.90% | 70,768 | 42,926 | 113,694 | 4.17% | 237,285,041 | 8.71% |
| 1985 | 25.33 | 75,407 | 1,910,059 | 1.20 | 513,030 | 615,636 | 2,525,695 | 1,760,400,865 | 131,453,506 | 7.46% | 66,490 | 41,912 | 108,402 | 6.74% | 239,855,506 | 9.50% |
| 1986 | 14.02 | 67,034 | 939,817 | 1.15 | 448,334 | 515,584 | 1,455,401 | 1,330,454,733 | 100,817,602 | 7.57% | 56,457 | 41,713 | 98,170 | 6.74% | 198,987,602 | 13.67% |
| 1987 | 17.37 | 59,884 | 1,040,185 | 1.15 | 394,906 | 454,142 | 1,494,327 | 1,187,992,419 | 90,516,911 | 7.60% | 28,273 | 32,018 | 60,291 | 4.03% | 150,807,911 | 10.09% |
| 1988 | 14.56 | 58,824 | 856,477 | 1.34 | 470,577 | 630,546 | 1,487,023 | 1,132,541,580 | 90,452,269 | 7.95% | 34,336 | 43,319 | 77,655 | 5.22% | 168,107,269 | 11.30% |
| 1989 | 18.18 | 55,484 | 1,008,699 | 1.43 | 587,099 | 839,552 | 1,848,251 | 1,192,529,546 | 84,593,778 | 7.09% | 24,031 | 51,971 | 76,002 | 4.10% | 160,595,778 | 8.69% |
| 1990 | 23.21 | 55,427 | 1,286,461 | 1.54 | 558,257 | 859,716 | 2,146,177 | 1,366,817,196 | 113,376,534 | 5.28% | 25,454 | 57,737 | 83,190 | 3.87% | 196,566,534 | 9.16% |
| 1991 | 19.84 | 56,929 | 1,129,479 | 1.37 | 604,826 | 828,612 | 1,958,083 | 1,404,560,619 | 113,332,411 | 5.78% | 36,819 | 59,242 | 96,061 | 4.90% | 209,393,411 | 10.69% |
| 1992 | 18.50 | 53,613 | 991,841 | 1.63 | 644,117 | 1,049,911 | 2,041,752 | 1,265,213,198 | 101,129,364 | 7.99% | 29,491 | 55,477 | 84,969 | 8.16% | 186,098,364 | 9.11% |
| 1993 | 16.01 | 49,625 | 794,496 | 1.78 | 667,507 | 1,187,472 | 1,981,968 | 1,390,427,980 | 116,798,179 | 8.40% | 24,538 | 74,142 | 98,680 | 4.97% | 215,478,179 | 10.87% |
| 1994 | 14.69 | 46,733 | 686,508 | 1.59 | 712,522 | 1,133,156 | 1,819,664 | 1,431,603,339 | 116,955,681 | 8.16% | 19,621 | 81,634 | 101,255 | 5.56% | 218,210,681 | 11.99% |
| 1995 | 16.19 | 43,767 | 708,588 | 1.37 | 721,733 | 992,115 | 1,700,703 | 1,361,698,369 | 113,346,680 | 8.30% | 17,102 | 60,034 | 77,136 | 4.50% | 190,482,680 | 11.20% |
| 1996 | 20.47 | 41,789 | 855,421 | 1.37 | 516,389 | 707,454 | 1,562,875 | 1,232,886,177 | 106,425,782 | 8.60% | 16,704 | 51,662 | 68,366 | 4.30% | 174,791,782 | 11.18% |
| 1997 | 18.63 | 39,836 | 742,144 | 2.18 | 678,654 | 1,479,466 | 2,221,610 | 1,622,768,515 | 122,413,743 | 7.50% | 19,670 | 61,742 | 81,412 | 3.60% | 203,825,743 | 9.17% |
| 1998 | 11.21 | 29,082 | 342,000 | 2.03 | 630,000 | 1,271,000 | 1,613,000 | 1,454,821,785 | 103,552,020 | 7.11% | 15,556 | 51,690 | 67,246 | 4.17% | 170,798,020 | 10.58% |
| 1999 | 9.44 | | | 1.55 | | | | | | | | | | | | |

*1999 YTD weighted ave price of crude is \$9.44
 March 25, 1999 posted price of crude is \$12.50

March 1, 1999 spot price for natural gas delivered into a main transmission line is \$1.55 per MCF. Gathering fees to reach the main transmission line reduce the price of natural gas at the wellhead to approximately \$1.25 to \$1.30



THE CHAMBER

Greater Kansas City Chamber of Commerce

Written Testimony on HB 2530

Submitted by Jenny Unruh, Senior Manager, Government Relations & Policy Development
Before the Senate Assessment and Taxation Committee

March 31, 1999

I am submitting written testimony on behalf of the Greater Kansas City Chamber of Commerce in support of HB 2530, relating to the Kansas community services program. Regretfully, I am unable to attend the hearing today.

The Chamber understands that the demand for tax credits available under the community services program exceeds the current \$5 million cap on the total amount of credits allowed under the program. In 1999, 96 agencies applied for approval to utilize the tax credits and 30 agencies were granted approval to utilize \$5 million worth of tax credits. By increasing the pool of available tax credits to \$10 million, more agencies will be able to use the tax credit program to solicit needed private-sector financial support for their important missions. Based on the number of agencies that applied in 1999, there is clearly a number of agencies that would eagerly line up to apply for an additional \$5 million in tax credits.

More businesses will be able to use the community service program tax credits if they are transferable and refundable. HB 2530 makes this important change. Those businesses that would not receive any benefit from an income or privilege tax credit, or whose income tax liability is less than the amount of the credit, would still benefit from the tax credit program if this change were made. It is a good idea to broaden the number of businesses who can benefit from the program.

Expanding the definition of "contribution" to include non-cash as well as cash assets opens the door for innovative private and non-profit sector partnerships. A business may not have cash to give, but may be able to provide computers or technical support services that are vital to an agency's mission. HB 2530 would extend the tax program to reward companies who make non-cash donations that can be every bit as valuable as cash to an agency.

Increased educational and social services for Kansas children and families is vital to community development. Communities' economic and social well being go hand in hand. The Chamber stands behind the tax incentives in community services program and strongly urges the Senate Assessment & Taxation Committee to expand the program by recommending HB 2530 favorably for passage.

Thank you in advance for your consideration of The Chamber's position on HB 2530. If you have any questions, please call me at The Chamber, 816/374-5412.

Greater Kansas City Chamber of Commerce | 2600 Commerce Tower • 911 Main Street • Kansas City, Missouri 64105-2019
816/221-2424 • FAX 816/221-7440 • www.kcchamber.com

Senate Assessment & Taxation
4-1-99
Attachment 5

LEGISLATIVE TESTIMONY



The Unified Voice of Business

835 SW Topeka Blvd. • Topeka, KS 66612-1671 • 785-357-6321 • Fax: 785-357-4732 • E-mail: kcci@kansaschamber.org • www.kansaschamber.org

HB 2530

March 31, 1999

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Written Testimony Before the

Senate Committee on Assessment and Taxation

by

Natalie Bright

Director of Taxation and Small Business Development

Chair Langworthy and honorable committee members:

My name is Natalie Bright and I am the Director of Taxation and Small Business Development for the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to appear before you today in support of HB 2530.

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.

If passed, this bill would expand the tax credit available to businesses under the existing Community Service Program. This bill would greatly enhance the existing program by allowing tax credits to be given to businesses that contribute noncash assets such as property, transportation, labor services and professional services. Kansas businesses are currently limited to cash

*Senate Assessment & Taxation
4-1-99
Attachment 6*

cont... ons only. The current "cash only" limitation on the program often keeps smaller businesses whose cash flow is limited, from participating in the program. In addition, the tax credits under the existing program are neither transferable nor refundable which often serves as a disincentive for some business to participate in the program. If passed, HB 2530 would authorize the tax credits issued under the program to be assignable, transferable and refundable. Changes such as these would give the business a great amount of flexibility in utilizing the credit and strengthen the goodwill of the donor towards the program.

By expanding the scope of the qualified donations and allowing businesses greater flexibility in utilizing the program, the business community's ability to contribute to the social welfare of the community as a whole is greatly enhanced. Not only will the expansions provide business an opportunity to help better Kansas communities, but will also encourage increased participation by a wider range of businesses.

The members of KCCI strongly encourage you to continue fostering the partnership between businesses and their communities by favorably passing HB 2530.

Kathy
Damron

(785) 235-2525
(785) 354-8092 FAX

1100 Mercantile Bank Tower
800 SW Jackson Street

Topeka, Kansas 66612-2205

**YMCAs of Kansas
Testimony Supporting
HB 2530
For
Senate Assessment and Taxation Committee**

**Honorable Audrey Langworthy
Chairman**

Senator Langworthy and Members of the Committee:

It is a pleasure to share with you the strong support for HB 2530 on behalf of the YMCAs of Kansas. Serving Kansans in 10 individual communities, the YMCAs of Kansas are among non-profit organizations potentially benefiting from this legislation.

HB 2530, if enacted, would enhance the Kansas Community Services Program. Designed to bring private resources to organizations that take on serious challenges in our communities, this program has been of tremendous benefit. As such, it makes good sense to expand its scope and applicability.

By broadening the definition of qualified donations, and allowing the tax credits to be more flexibly applied, the state will have greatly advanced the benefits to participating businesses, and in turn, greatly enhanced the ability of non-profit agencies to meet the growing challenges throughout Kansas.

I applaud the House in advancing this legislation and urge you to act favorably upon consideration of HB 2530.

Thank you for your attention to this matter and for your service to our state.

*Senate Assessment & Taxation
4-1-99
Attachment 7*