Approved: ______________________________
Date

MINUTES OF THE HOUSE TAXATION COMMITTEE.

The meeting was called to order by Chairperson Wagle at 9:00 a.m. on March 14, 2000, in Room 519-S of the Capitol.

All members were present except: Representative Howell - excused

Committee staff present: Chris Courtwright, Legislative Research Department
April Holman, Legislative Research Department
Don Hayward, Revisor of Statutes
Shirley Sicilian, Department of Revenue
Ann Deitcher, Committee Secretary
Edith Beaty, Taxation Secretary

Conferees appearing before the committee: Mikel Miller of Kansas, Inc.
Shirley Sicilian, Department of Revenue
Tony Folsom of Board of Tax Appeal
Marlee Bertholf of Ks Chamber of Comm. and Industry
Don Seifert of the City of Olathe
Larry Kleeman of League of Kansas Municipalities

SB 69 - Disclosure of taxpayer information by Department of Revenue to Kansas, Inc.

The Chair recognized Mikel Miller of Kansas, Inc., who spoke to the Committee as a proponent of **SB 69**. (Attachments 1 and 2).

The hearing on **SB 69** was concluded.

SB 410 - Taxation statutory compliance benefits and incentives.

Shirley Sicilian of the Department of Revenue explained **SB 410** to the Committee. (Attachment 3).

The hearing on **SB 410** was concluded.

SB 411 - Property tax appeals procedures.

Appearing before the Committee as a proponent for **SB 411** was Tony Folsom of the Tax Appeal Board. (Attachment 4).

Next to speak in support of **SB 411** was Marlee Bertholf of the Kansas Chamber of Commerce and Industry. (Attachment 5).

Ms. Bertholf was asked if she would object to **SB 410** and **SB 411** being combined into one bill. She said she would not.

The hearing on **SB 411** was concluded.

HB 3007 - Relating to reporting requirements of Revenue Department concerning excise taxes.

Don Seifert of the City of Olathe appeared as a proponent for **HB 3007**. (Attachment 6).

Larry Kleeman of the League of Kansas Municipalities spoke to the Committee in support of **HB 3007.** (Attachment 7).

The hearing on **HB 3007** was concluded.

HCR 5071 - Concurrent resolution memorializing the United States Congress to repeal the telephone excise tax.

It was moved by Representative Long and seconded by Representative Sharp that **HCR 5071** be passed favorably out of Committee. The motion carried on a voice vote.

SCR 1629 - Constitutional amendment classifying water craft and air craft for property tax purposes.

Representative Edmonds requested that **SCR 1629** be deferred until a later date. The Chair told the Committee they would be hearing it on March 21.

It was moved by Representative Sharp and seconded by Representative Campbell to pass **HB 3007** favorably out of Committee.

Representative Edmonds moved that a substitute motion me made regarding **HB 3007**. The motion was seconded by Representative Tomlinson. The motion was then withdrawn.

The motion to pass **HB 3007** favorably carried on a voice vote.

The meeting was adjourned at 10:50 a.m. The next meeting is scheduled for Wednesday, March 15, 2000.

Kansas, Inc. Testimony
in support of
S.B. 69

March 14, 2000

Presented to House Taxation Committee
by Mikel Miller

In 1994, the Kansas Legislature passed H.B. 2556 (K.S.A. 74-8017) which assigned to Kansas, Inc. the responsibility to prepare an annual report evaluating the cost effectiveness of 1) state economic development income tax credits and 2) state and local sales tax exemptions granted under the Kansas Enterprise Zone Act.

With this mandate, Kansas, Inc. determined (and the Legislature agreed) that an evaluation such as this would require identifying taxpayers who claimed income tax credits and contacting or surveying those identified. To that end, the original version of H.B. 2556 gave Kansas, Inc. access to corporate tax returns to identify filers. The bill passed both tax committees, but the Senate Committee of the Whole did not support Kansas, Inc.'s access to corporate tax returns.

The Economic Development Questionnaire System

H.B. 2556 was amended on the Senate floor to provide what was envisioned to be an effective method to identify firms claiming state income tax credits without revealing information from the corporate tax return. The amendment required **all corporations subject to state income tax** to file a completed questionnaire along with their corporate income tax returns stating whether the corporation had claimed any of the economic development tax credits listed. A copy of the questionnaire is attached to this testimony.

The Secretary of Revenue, with the cooperation of Kansas, Inc., developed a questionnaire which became part of the Corporate Tax Booklet beginning in 1994. Upon receipt of the tax filing, the Department of Revenue harvests the completed questionnaires from the corporate tax return and provides them to Kansas, Inc. It was Kansas, Inc.'s intention to use the information from the questionnaires to contact those firms regarding the impact of incentives on their company's decision-making process.

Effectiveness of Questionnaire System: Despite the best efforts of all involved, results from the questionnaire system have been very disappointing and cannot be used as intended because the too few filers are identified to allow for reliable survey results. Kansas, Inc. is, therefore, unable to confidently produce analysis of the effectiveness of the economic development tax credits as required by K.S.A. 74-8017.

The table compares the number of completed questionnaires received by Kansas, Inc. as of September 30, 1999 with the actual number of corporate claims filed for tax credits during that same period. As reported, less than one in six is being captured through the questionnaire process.

House Taxation
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Results of Questionnaire Collection Process (1994 to 9/30/99)			
Tax Credit	**Claimants Identified through Questionnaire Process***	**Actual Corp. Claims Reported by Revenue***	**Percent of Actual Claims**
Venture & Seed Capital	0	4	0%
Research and Development	29	306	9%
HPIP	18	30	60%
Job Creation or Investment Tax Credit	353	2532	14%
Totals	**400**	**2872**	**14%**

* 1999 Questionnaire requested taxpayers include "new claims" for credits only while the actual corporate claims processes by Revenue includes claims for carry-overs of credits.

Other Limitations of the Questionnaire System:

The questionnaire attempts only to capture corporate taxpayers and does nothing to identify individual taxpayers who claim a tax credit on their personal returns (i.e. sole proprietor, partners in a company, or a pass-through from a corporation.) According to the Department of Revenue, nearly 40% of filers are individual taxpayers.

The questionnaire is an expensive proposition for both the corporate taxpayer and the Department of Revenue which must harvest the questionnaires from the thousands of corporate returns processed. Many Kansas corporations, whether they are claiming credits or not, incur additional accounting fees associated with completing and filing the questionnaire. Ninety-five out of 100 questionnaires received by our office are completed by taxpayers that have not claimed a credit.

Proposed Solution:

Senate Bill 69 would amend K.S.A. 74-8017 to:

1) repeal the portion of the law requiring the questionnaire; and

2) add a requirement that the Department of Revenue provide Kansas, Inc. with the name, address and telephone number (if available) of any taxpayer claiming an economic development credit.

Inaccessibility to Applications for Sales Tax Exemption.

As I mentioned earlier, Kansas, Inc. is required to prepare an annual report evaluating the cost effectiveness of state sales tax exemptions granted under the Enterprise Zone Act income tax credits.

In years past, this annual report presented an in-depth analysis of business investment reported in connection with sales tax exemption by region, county-size, and economic sector. This analysis provided unique insights into investment and growth trends in Kansas by region, and industrial sector, and county size. In addition, past reports presented a rigorous estimate of how much state sales tax revenue is forgone in connection with sales tax exemption.

The data necessary to provide this extensive analysis was collected from applications for sales tax exemption certificates approved by the Department of Revenue. However, due to a review of the statutory language contained in K.S.A. 74-8017, a decision was made by the Department to discontinue providing Kansas, Inc. with the applications for sales tax exemption.

Proposed Solution

Senate Bill 69 would amend current law to allow the Department of Revenue to provide Kansas, Inc. the necessary documents to resume the historical analysis by

1) clarifying the language requiring the Department of Revenue to provide Kansas, Inc. with copies of approved Applications for Project Exemption Certificates as has been the practice since FY 1993.

Penalty for Violation of Confidentiality

Senate Bill 69 would further amend K.S.A. 75-5133 to authorize the Department of Revenue to provide this information to Kansas, Inc. and to impose strict confidentiality requirements and penalties on Kansas, Inc. to insure that taxpayer confidentiality is protected.

Conclusion

Kansas, Inc.'s ability to evaluate the effectiveness of economic development tax credits and sales tax exemption (as statutorily required) is unfortunately, severely limited by inaccessibility to claimant identities. This year the legislature was asked to remove the sunset provision on the Research & Development Tax Credit. Kansas, Inc. received several calls requesting information on the effectiveness of the program, but unfortunately, because the identities of taxpayers claiming this credit is not available, no measure of effectiveness exists.

Utilization of economic development tax credits continues to grow, with claims reaching $26.7 million in the most recent calendar year. If the Legislature wishes to accurately measure the effectiveness of these tax dollars, claimant identities must be made available. S.B. 69 would allow Kansas, Inc. to perform a true evaluation of the effectiveness of these economic development credits and also ensure that the confidentiality of claimants is protected.

Kansas, Inc. respectfully urges your passage of S.B. 69. I will now stand for questions.

State of Kansas Economic Development Incentive Questionnaire

All Kansas corporate income taxpayers and/or their tax preparers are **required, pursuant to K.S.A. 74-8017, to complete the following questionnaire** regarding claims for income tax credits and sales tax exemptions. The information requested by the questionnaire is required to evaluate the utilization and effectiveness of these economic developments and business tax credits and incentives provided by the state of Kansas.

The questionnaires will be collected by the Kansas Department of Revenue and submitted to Kansas, Inc, the economic development policy and planning agency created by the Kansas Legislature in 1986. Kansas, Inc, will conduct surveys of Kansas companies using the data provided on this form, to evaluate state tax incentives. It reports its findings annually to the Kansas Legislature.

If you have any questions regarding the questionnaire, call Kansas, Inc, at (785) 296-1460. If you have questions regarding the tax credits and their definitions call the Department of Revenue at (785) 368-8222.

Note: The name and employer identification number of the corporate taxpayer will remain confidential. Results of this questionnaire will be reported to the legislature only in aggregate.

1 ______________________________
Company Name

2 ______________________ 3 ______________
Federal Employer Identification Number — SIC Code

4 ______________________________
Mailing Address (P.O. box or street)

5 ______________________________
City — State — ZIP Code

6 ______________________________
Name of Company Officer Filing this Questionnaire

Job Expansion and Investment Credit Act, K.S.A. 79-32, 153, K.S.A. 79-32, 160a

7 Will your tax year 1999 Kansas corporate income tax return include a 'new' claim for this credit? .... ☐ Yes ☐ No
If yes, please provide the following information and answer the questions on line 8.

8 If this credit had not been available, which is most likely? Your company would have
☐ proceeded with the expansion/hiring as you did, ☐ proceeded on a smaller scale, ☐ postponed or canceled the project.

Research and Development Credit, K.S.A. 79-32, 182

9 Will your tax year 1999 Kansas corporate income tax return include a 'new' claim for this credit? .... ☐ Yes ☐ No
If yes, please answer the questions on line 10.

10 If this credit had not been available, which is the most likely? ☐ conducted the R and D as you did,
☐ proceeded with the R and D on a smaller scale, ☐ postponed or not conducted the R and D at all.

Kansas Venture Capital and Seed Capital Credits, K.S.A. 74-8205, 74-8206, 74-8304, 74-8304a, 74-8401

11 Will your tax year 1999 corporate income tax return include a claim for these credits? .... ☐ Yes ☐ No

12 Please indicate the credit(s) your company is claiming. ☐ Credit for investment in stock of Kansas Venture Capital, Inc.
☐ Credit for investment in a Kansas venture capital company ☐ Credit for investment in certified local seed capital pools

Workforce Training and Facility Investment Credit (High Performance Firms Incentive Program HPIP), K.S.A. 74-50, 132, 79-32, 160a(e)

13 Will your tax year 1999 Kansas corporate income tax return include a claim for these credits? .... ☐ Yes ☐ No
If yes, please provide the information and answer the questions on lines 14 and 15.

14 Please indicate the credit(s) your company is claiming. ☐ Credit for investment in training and education of employees
☐ Credit for investment in facilities and/or equipment

15 If this credit had not been available, which is the most likely? Your company would have
☐ proceeded with the investment/training as you did, ☐ proceeded on a smaller scale, ☐ postponed or not proceeded at all.

Enterprise Zone Act Sales Tax Exemption, K.S.A. 74-50, 115

16 Did your company receive or use an enterprise zone exemption certificate during the state's fiscal year 1999 (7/98 - 6/99)?
☐ Yes ☐ No If yes, please provide the information and answer the questions on line 17.

17 If sales tax exemption had not been available, which is the most likely? Your company would have
☐ proceeded with the investment as you did, ☐ proceeded on a smaller scale, ☐ postponed or canceled project.

Manufacturing Machinery and Equipment Sales Tax Exemption, K.S.A. 79-3606(kk)

18 Did your company purchase any manufacturing machinery and equipment during the state's fiscal year 1999 (7/98 - 6/99)?
☐ Yes ☐ No If yes, please provide the information and answer the questions on line 19.

19 If sales tax exemption had not been available, which is the most likely?
☐ proceeded with the investment as you did, ☐ proceeded on a smaller scale, ☐ postponed or canceled the investment.

Kansas, Inc.

Charles R. Ranson, President

Sales Tax Exemption and Economic Development Income Tax Credits Report

as required by K.S.A. 74-8017

prepared by

Mikel Miller
Director of Research

January 2000

House Taxation

Date: 3/14/00

Attachment # 2.1

KANSAS, INC.

Created by the 1986 Legislature, Kansas, Inc. is an independent, objective, and nonpartisan organization that seeks to build consensus and act collectively to achieve state economic development goals.

Kansas, Inc. is governed by a 17-member, predominately private sector, Board of Directors that is co-chaired by the Governor and a senior private sector executive. Private members are appointed by the Governor and confirmed by the Kansas Senate.

It is a quasi-public instrumentality of state government that operates as a partnership between government and the private sector as the means to achieve a Kansas economy that is internationally competitive. The activities and products of Kansas, Inc. strive to meet the highest standards of objectivity, independence, and credibility. It is a nonpartisan entity that serves the public interest through cooperative efforts and consensus building among the leadership of the executive and legislative branches of state government, the business community, and the general public.

By conducting strategic analysis of and planning for the economic development of the State of Kansas, evaluating state economic development policies and programs, and overseeing the formulation and implementation of economic development policy for the State, Kansas, Inc. strives to enable all Kansans to achieve a higher quality of life and standard of living by fostering economic vitality statewide, and by competing in the global economy.

Since 1987, Kansas, Inc. research reports have covered such diverse topics as: aviation, global market penetration, value-added agriculture, business taxation, seed and venture capital formation, interstate banking, oil and gas, business financing, workforce training, rural development, and education. Through analysis and open dialogue, Kansas, Inc. identifies policy options and builds the consensus essential for concerted action on vital economic issues.

The executive and legislative branches of state government and the private sector in Kansas all share the responsibility for Kansas, Inc.'s agenda. This joint commitment is illustrated by our financing: the operating expenses of Kansas, Inc. are funded by state government and the research and educational program is financed by the business community.

KANSAS, INC.

January 14, 2000

K. S. A. 74-8017 requires Kansas, Inc. to prepare an annual report evaluating the cost effectiveness of state and local tax exemptions granted under the Kansas Enterprise Zone Act and various other state economic development income tax credits. Our submission of this report to the standing committees of the House and Senate responsible for tax and economic development policy satisfies that obligation.

Our analysis of the effectiveness of state and local sales tax exemption is the product of a statewide survey of businesses having recently received exemption status for a project in the state. An impressive survey response rate of 51% and the quality of the survey instrument used gives me confidence in reporting that analysis of business responses strongly suggests that the continued presence of this exemption is an important inducement to Kansas-based businesses and those considering making Kansas their home.

Kansas, Inc.'s ability to similarly evaluate the effectiveness of economic development tax credits is, unfortunately, severely limited by inaccessibility to claimants' identities through the Kansas Department of Revenue. The current questionnaire system, established by K.S.A. 74-8017 as a means to identify claimants, fails to capture sufficient information and represents an indefensibly costly burden on the corporate taxpayers of Kansas. Pages 13-15 explain the system's deficiencies in greater detail.

Utilization of economic development tax credits continues to grow, with claims reaching $26.7 million in the most recent calendar year. If the state wishes to evaluate accurately the effectiveness of these tax credit dollars, Kansas, Inc. recommends enactment of the provisions set forth in S.B. 69, currently filed for consideration by this Legislature. S.B. 69 would amend K.S.A. 74-8017 to repeal language requiring continued use of the ineffective questionnaire. In its place, the Department of Revenue would be directed to provide Kansas, Inc. with the name, address, and telephone number if available, of any taxpayer claiming an economic development tax credit. Access to this information would enable a true evaluation of the effectiveness of these economic development tools. Kansas, Inc. asks for your support of S.B. 69.

Sincerely,

Charles R. Ranson
President

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INTRODUCTION

Legislative Mandate. In 1994, the Kansas Legislature passed H.B. 2556 (K.S.A. 74-8017) which gave Kansas, Inc. the responsibility to prepare an annual report to evaluate the cost effectiveness of state **sales tax exemptions** granted under the Kansas Enterprise Zone Act and various **state economic development income tax credits**. The bill required that the results of this annual analysis be submitted to the standing committees on Taxation and Economic Development of the House, and Assessment & Taxation and Commerce of the Senate.

2-5

SECTION 1: SALES TAX EXEMPTION ANALYSIS

Prior Reports. In years past, this annual report presented an in-depth analysis of business investment reported in connection with sales tax exemption by region, county-size, and economic sector. This analysis provided unique insights into investment and growth trends in Kansas by region, and industrial sector, and county size.

In addition, past reports presented a rigorous estimate of how much state sales tax revenue is forgone in connection with sales tax exemption.

Inaccessibility to Data. The data necessary to provide the extensive analysis discussed above is collected from applications for sales tax exemption certificates processed the previous fiscal year by the Department of Revenue. Due to a review of the statutory language contained in K.S.A. 74-8017, a decision was made by the Department to discontinue providing Kansas, Inc. with the applications for sales tax exemption certificates. In doing so, the Department conferred with Kansas, Inc. to discuss possible amendments to K.S.A. 74-8017 which they believed would again allow them to supply the applications for sales tax exemption certificates. The Department also offered to provide Kansas, Inc. with an aggregation of data from the applications for Kansas, Inc.'s subsequent analysis. Kansas, Inc. staff declined this offer believing the proposed alternative would not allow for the in-depth and comprehensive analysis required.

Proposed Solution - S.B. 69. S.B. 69 was introduced in Senate Commerce during the 1999 Legislative Session. The bill passed the Senate and awaits hearing in House Taxation. The bill would amend K.S.A. 74-8017 to allow the Department of Revenue to provide Kansas, Inc. the necessary documents to resume the historical analysis.

Kansas, Inc. respectfully requests your support for S.B. 69 during the 2000 Legislative Session.

Analysis Provided. In the meantime, this year's report will present the results of a survey conducted by Kansas, Inc. of Kansas firms whose request for sales tax exemption was processed in FY 1998 (the last year information was provided). The findings provide insight into the behavior altering effects of incentives and in particular sales tax exemption.

2-36

1999 SURVEY OF SALES TAX EXEMPTION RECIPIENTS

Background

In April 1999, Kansas, Inc. conducted a survey of companies that were issued sales tax exemption certificates during fiscal year 1998. A total of 284 surveys were mailed and 145 completed surveys were returned for a response rate of 51%. A copy of the survey is attached as Appendix A.

Respondent Characteristics

Company Size. The majority of respondents (65%) were small companies employing 100 or fewer workers. Firms employing between 100 and 500 made up 21% of respondents and firms employing over 500 made up 14% of respondents. Figure 1 graphically illustrates the makeup of those that responded to the survey.

Respondents by Sector. The large majority (70%) of respondents were manufacturers. The second largest group of firms were retailers (14%), with the other sectors each representing less than 6% of the survey population. (Figure 2 and Table 1)

Respondents by Region. The largest percentage of firms (29%) responding to the survey were from the South Central region of the state. The second largest group was from the Northeast region (23%). (Figure 3 and Table 1)

The largest group of respondents were manufacturers from the South Central region of the state (22%). The second largest group were manufacturers from the Northeast region (16%), followed by manufacturers from the North Central region (12%). The remaining respondents were spread among the regions without large concentrations being present. (Table 1)

Respondents by County Size. Three categories are used to describe county size: metropolitan, mid-sized and rural. Metropolitan counties are those nine counties in the state's metropolitan statistical areas (MSAs) as defined by the U.S. Census. Mid-sized counties are non-metropolitan counties with populations over 10,000. Rural counties are those with populations of less than 10,000.

The percentage of firms responding to our survey was about equally divided between firms located in metropolitan counties, mid-sized counties, and rural counties. (Figure 4)

Respondent Population Characteristics

Figure 1

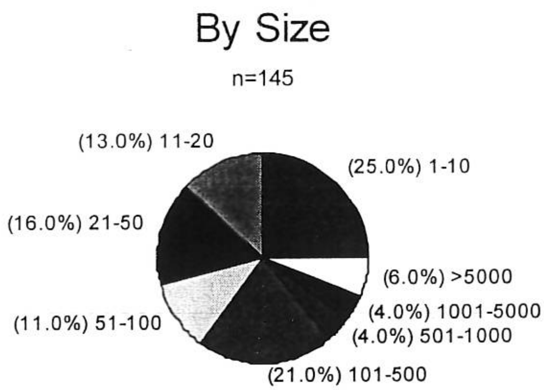
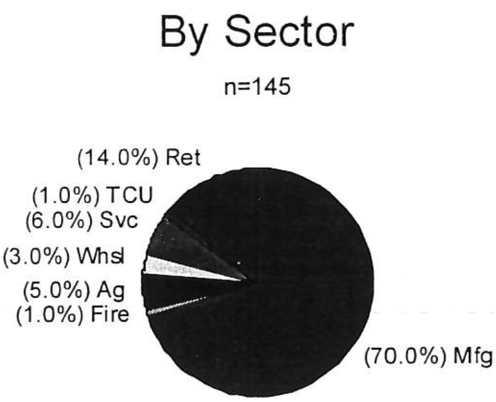


Figure 2



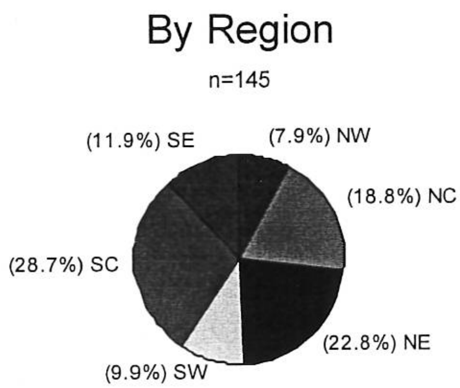


Figure 3

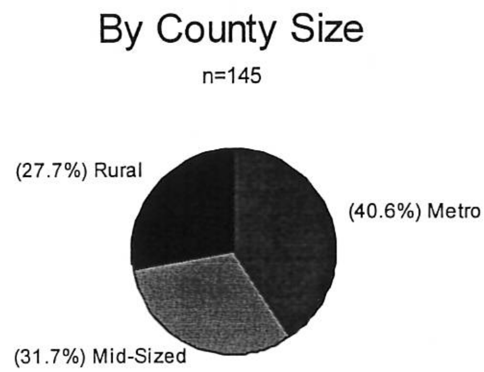


Figure 4

Table 1
Respondent Population Distribution by Region and Sector n=145

		NC	NE	NW	SC	SE	SW
		19%	23%	8%	29%	12%	10%
AG	**5%**	3		2			2
FIRE	**1%**	1				1	
Manufacturing	**70%**	17	23	7	32	14	7
Retail	**14%**	5	3	3	4	1	4
Service	**6%**		3		5	1	
TCU	**1%**		1				1
Wholesale	**3%**	1	3		1		

2-8

Type of Project

The majority of respondents (76% or 109 firms) were existing Kansas firms undergoing an expansion of their present facility. Another 19% (28 firms) were start-up firms and 5% (7 firms) were out-of-state firms that were either expanding into Kansas or relocating to Kansas. (Table 2)

Table 2
Which best describes the project for which the sales tax exemption was granted? n-144

Type of Project	Percent	Firms	Percent	Firms
Start-Up	19%	28		
Existing Kansas Firms	76%	109		
Expansion of an existing Kansas firm			96%	105
Relocation within Kansas			4%	4
New to Kansas Firms	5%	7		
Expansion into KS by an out of state firm			71%	5
Relocation to KS from an out of state location			29%	2
	100%	144		

Survey Analysis - Did Incentives Make a Difference for this Population?

The "But For" Test. Whenever an analysis of business incentives is undertaken, the researcher must determine, as best he or she can, whether the desired outcome (new business creation, retention, expansion, or successful recruitment) would have taken place with or without the incentive. This question is sometimes called the "but for" test.

Culling out the Mobile Firms. To answer the "but for" question, we must first determine whether the company's owners or managers had seriously considered conducting the project in another state. To do this, the survey asked all existing Kansas firms and start-ups whether they had seriously considered conducting their project in another state. Of the 138 start-up and existing Kansas firms surveyed, 15% (20 firms) said they had seriously considered undertaking their project in a different state. We call these firms **"mobile firms."**

> 15% of existing Kansas firms and start-ups said they had seriously considered undertaking their project in a different state. We call these firms **"mobile firms."**

By the remaining firms' (85%) own admission, the decision to remain in Kansas had been primarily "pre-determined" by other factors and was not influenced by incentives. It is, however, important to note that incentives may well

> For 85% of existing Kansas firms, the decision to remain in Kansas is primarily "pre-determined" by other factors and is not influenced by incentives.

2-9

have had an influence on these **"location-bound" firms'** decision to expand their businesses or the extent of their investment. This concept is discussed on page 11 of this analysis.

Effect of incentives on Mobile Firms. We asked the firms that had seriously considered moving to tell us the three most important reasons for their ultimate decision to remain in Kansas to undertake their project.

Sixty-five percent (65% or 13) of the 20 mobile firms, said that state and/or local incentives played an important role in their decision to remain in Kansas (Table 3). Five of the 13 firms (38%) were very large firms, indicating that incentives in general may be more important to the decision-making process of larger companies that would have the ability to command substantial incentives packages in other states.

Q. Do state and local incentives effect existing Kansas firms' decisions to remain in Kansas?

A. 65% of mobile firms, said that state and/or local incentives played an important role in their decision to remain in Kansas.

Table 3
Of Mobile Firms (Existing Kansas Firms and Start-ups that *Seriously Considered Moving*) n=20

What were the three most important reasons for your firm's ultimate decision to remain in or move to Kansas?	
State and/or local tax incentives	**65% (13)**
Proximity to markets	**50% (10)**
Well-trained skilled labor force	**35% (7)**
Owner's place of residence	**35% (7)**
Cost of labor less expensive	25% (5)
Quality of life in Kansas (i.e. education, housing, cost of living)	25% (5)
Transportation infrastructure	20% (4)
State and/or local financial incentives (i.e. grants, HPIP program, training dollars, etc.)	15% (3)
Competitive tax structure	10% (2)
Aggressive recruitment/retention efforts	5% (1)
Availability of educational/training facilities	5% (1)
Other	0% (0)

2-10

Significance of Sales Tax Exemption Specifically.
To find out how significant sales tax exemption was among the incentives that had an important role in retaining those 13 mobile firms, we asked them to what extent this particular incentive affected that decision. Fifty-four percent (7 firms) of firms greatly influenced by incentives said sales tax exemption contributed significantly to their decision to remain in Kansas and 38% (5 firms) said it contributed somewhat. This indicates that when incentives are important to a firm's decision, sales tax exemption is among the most significant for a majority of firms. Broadening the analysis, we can therefore say that sales tax exemption had a significant impact on the decision to remain in Kansas for 35% of all mobile firms. (Table 4)

Q. Does sales tax exemption effect mobile firms' decisions to remain in Kansas?

A. When incentives are important to a firm's decision, sales tax exemption is among the most significant.

A. Sales tax exemption had a significant impact on the decision to remain in Kansas for 35% of all mobile firms.

Table 4
To what extent was sales tax exemption for this project a factor in your company's decision to go ahead with this project in Kansas?

	Of those that said incentives were an important reason they remained in KS n=13	Percent of all 20 mobile firms
it contributed significantly	54% (7)	35%
it contributed somewhat	38% (5)	25%
it contributed only slightly	8% (1)	5%
it did not contribute	0% (0)	0%

Answering the "but for" question
To test the validity of the reported significance of the sales tax exemption, and find out what the effect of its absence would have been, we asked the 20 mobile firms (and subsets of those 20) what their actions would likely have been if sales tax exemption had not been available. The results are reported in Table 5.

2-81

Of the 20 mobile firms, 3 firms said they would have canceled their projects. Of the subset that said state and/or local incentives played a major role in their decision not to leave Kansas, 2 said they would have canceled their project had sales tax exemption not been available. Of the even smaller subset that said state and/or local incentives played a significant role in their decision to remain in Kansas and that of the incentives available, sales tax exemption contributed significantly to their decision to remain in Kansas, 2 firms said they would have canceled the project had sales tax exemption not been available.

> **Q. What would be the effect on mobile firms' decision to stay in Kansas if sales tax exemption was not available?**
>
> A. Based on this series of responses, we can conclude that if sales tax exemption was not available to mobile Kansas firms expanding their operations, approximately 10% could be expected to leave the state to conduct their project.

One of the 2 firms that repeatedly said they would have canceled their project had sales tax exemption not been available was a very large firm which employs between 1000 and 5000.

Based on this series of responses, we can conclude that if sales tax exemption was not available to mobile Kansas firms expanding their operations, approximately 10% could be expected to leave the state to conduct their project.

Table 5

Of Mobile Firms

If sales tax exemption had not been available for your company, what would have been the effect on this project? We would have....

	1st Level Test A. Those that considered moving n=20	**2nd Level Test** B. Subset of A. that said state and/or local incentives played a major role n=13	**3rd Level Test (Most valid)** Subset of B. that said ST exemption contributed significantly n=7
proceeded with the project as planned	25% (5)	23% (3)	14% (1)
proceeded on a smaller scale	60% (12)	61% (8)	57% (4)
canceled the project	15% (3)	15% (2)	29%(2)

2-12

Effect of Incentives on Out-of-State Firms

Of the 145 respondents, seven (7) were either expansions into Kansas by an out-of-state firm or relocations to Kansas from an out-of-state location. These firms were asked to identify the three most important reasons for their firm's decision to move to or expand into Kansas. Seventy-one percent (71%) told us that state and/or local tax incentives played an important role in their decision making process. More specifically, those five (5) firms were asked to what extent sales tax exemption influenced their decision. Eighty percent (80%) said sales tax exemption contributed significantly to their ultimate decision. Broadening the analysis, we can say that 57% of the new-to-Kansas firms reported that sales tax exemption contributed significantly to their ultimate decision to locate in Kansas.

> **Q. Do state and local Incentives effect out-of-state firms' decisions to locate in or expand into Kansas?**
>
> A. 71 % of new to Kansas firms said incentives played an important role in their decision to move to Kansas.
>
> A. 57% of the new-to-Kansas firms said that sales tax exemption (specifically) contributed significantly to their ultimate decision to locate in Kansas.

To further test the validity of responses, the four (4) firms that told us sales tax exemption had contributed significantly to their decision were asked what their actions would likely have been if sales tax exemption had not been available. The results are reported in Table 6.

Three (3) of the four (4) firms said they most likely would have canceled the project. These three (3) firms that said they would have canceled their move to Kansas were all manufacturers, two employ 100 to 500 Kansans now and 1 employs 500 to 1000 Kansans now. Two are located in mid-sized counties and one of the smaller two is located in a metropolitan county.

> **Q. What would be the effect on out of state firms' decision to move to Kansas if ST exemption was not available?**
>
> A. If sales tax exemption was not available to firms considering locating in Kansas, 40 to 45% could be expected to locate in a state other than Kansas.

Based on this series of responses, it is safe to conclude that if sales tax exemption was not available to firms considering locating in Kansas, 40 to 45% could be expected to locate in a state other than Kansas.

As one would expect, incentives in general, and sales tax exemption more specifically, are a far more important factor in the decision making process of a firm considering moving to Kansas than they are to an existing Kansas firm's decision to remain in Kansas.

Table 6

Of Out of State Firms that Moved to or Expanded into Kansas n=7

If sales tax exemption had not been available for your company, what would have been the effect on this project? We would have....

	Subset of those that said incentives contributed significantly (n=5)	Subset of n=5 that said ST exemption contributed significantly (n =4)
proceeded with the project as planned	0% (0)	0% (0)
proceeded on a smaller scale	40% (2)	25% (1)
canceled the project	60% (3)	75% (3)

Other Factors considered in decision making process.

While the survey was only conducted on firms that received sales tax exemption, the results can be considered reliable for the majority of Kansas firms considering an expansion or those considering a move to Kansas from another state.[1] Analysis of the two relevant classifications of firms (20 mobile firms and the 7 firms that moved to or expanded into Kansas) provides insight into the strengths and weaknesses of the Kansas' business climate.

Sixty-eight percent (68%) of existing Kansas firms and 71% of new-to-Kansas firms cited state and/or local incentives as an important factor in their decision-making process. No other variable was named more often.

The second most often named variable was proximity to markets with 50% of existing Kansas firms and 57% of new-to-Kansas firms reporting the Kansas location as an key factor in their location decision.

Kansas' well-trained skilled labor force ranked third among the factors named by both classifications of firms. Thirty-five percent (35%) of the existing Kansas firms and 43% of new-to-Kansas firms consider Kansas' workforce among the three most important reasons they chose to remain in or move to Kansas.

For new-to-Kansas companies state and/or local financial incentives also played a big role in their decision with 43% citing this as one of the three most important factors that contributed to their decision to move or expand into Kansas. The majority of these

[1] Generally speaking, nearly all firms (with the exception of retail and personal services) are eligible for sales tax exemption on projects provided a minimum number of net new jobs are created (depending on the industry).

firms specified state training dollars as the financial incentive that influenced them. The transportation infrastructure was also cited by 43% of the new-to-Kansas firms.

Surprisingly, low cost of labor was not named among the three most important factors by new-to-Kansas firms. Nor was quality of life named. Not surprisingly based on recent Kansas, Inc. research into the competitiveness of the Kansas tax structure, none of the firms cited competitive tax structure as an important reason they chose to move to or expand into Kansas.

Effect of Sales Tax Exemption on Location-Bound Firms

Of the 145 firms that responded, 118 were start-up or existing Kansas firms that had not seriously considered undertaking their project in another state. In other words, these 118 firms were not influenced by sales tax exemption or any other incentive they may have received[2] except to say that the incentive reduced the overall cost of their project.

To gauge the significance of the cost reducing effect of sales tax exemption on the projects undertaken by these firms, firms were asked to describe the likely outcome had sales tax exemption not been available. Forty-three percent (43%) said they would have proceeded with the project as planned, while 56% said they would have proceeded on a smaller scale. Only two (1.7%) firms said they would have canceled their projects. Both were very small firms in rural counties. (Table 7)

Q. What impact does sales tax exemption have on location-bound Kansas firms?

A. 56% of firms said the cost reducing effect provided by sales tax exemption has an impact on the overall size of the investment made with regard to their project.

Based on these responses, we can say that for the majority of firms, the cost reducing effect provided by sales tax exemption has an impact on the size of the investment made with regard to their project. Further analysis showed the cost savings impacted firms of different sizes and in different industries about equally.

---

[2] Other state incentives might include but are not limited to **1) Job Creation Tax Credit** (allows $1,500 to $2,500 credit for each new employee), **2) Investment Tax Credit** (allows 1% credit for investment in a qualified business facility), **3) High Performance Firms Incentives Program (HPIP)** (allows a 10% tax credit for on qualified investment and for training expenditures above 2% of payroll). Local incentives vary widely between locations but could include property tax exemption, cash, real estate, infrastructure development, etc..

Table 7

Of Location-Bound Kansas Firms
n=118 missing=1

If sales tax exemption had not been available for your company, what would have been the effect on this project? We would most likely have....

proceeded with the project as planned	43% (50)
proceeded on a smaller scale	56% (65)
canceled the project	1.7% (2)

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SECTION 2: ECONOMIC DEVELOPMENT INCOME TAX CREDITS

The second section of this report concentrates on economic development income tax credits resulting from the operation of:

- Job Creation and Investment Tax Credits (K.S.A. 79-32,153 and 79-32,160a);
- tax credits for investment in Kansas Venture Capital, Inc.(K.S.A. 74-8304A and 74-8305);
- tax credits for investment in a Certified Venture and Seed Capital Funds (74-8401);
- Research and Development Tax Credits (K.S.A. 79-32,182); and
- Workforce Training and Investment Tax Credits for High Performance Firms (K.S.A. 74-50,132).

Source of Data Used. The information provided on usage of economic development income tax credits is gleaned from an annual report compiled by the Department of Revenue. This report provides an accounting of the number of firms and individuals claiming each credit and the total amount of credits claimed. Due to confidentiality provisions now existing in statute, the limited information available through in the Department's report is the only source of information available on the usage of economic development income tax credits.

Inaccessibility to additional data limits Kansas, Inc.'s ability to provide the mandated evaluation of the cost effectiveness of the various economic development tax credits as prescribed by K.S.A. 74-8017. The following paragraphs outline the result of the data collection system now in place for gathering data on taxpayers using economic development tax credits and its failure to produce the desired results.

Failed Alternative Data Collection System

Background. As described in the introduction to this report, the 1994 Legislature passed H.B. 2556 (K.S.A. 74-8017) and charged Kansas, Inc. with evaluating the cost effectiveness of the various income tax credits available to Kansas businesses. Kansas, Inc. determined, and the Kansas Legislature agreed, that an evaluation such as this would require identifying taxpayers who claimed income tax credits and contacting or surveying those identified. To that end, the original version of H.B. 2556 gave Kansas, Inc. access to corporate tax records to identify filers. The bill passed both tax committees, but the Senate Committee of the Whole did not support Kansas, Inc.'s access to the necessary corporate tax records.

In response, H.B. 2556 was amended on the Senate floor to provide what was envisioned to be an effective alternative method to identify corporations claiming state income tax credits without revealing information from the corporate tax records. The amendment required all corporations subject to state income tax to file a questionnaire along with their corporate income tax returns stating whether the corporation had claimed any of the economic development tax credits listed. The Department of

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Revenue was then required to harvest the completed questionnaires from the corporate tax return and provide them to Kansas, Inc. Kansas, Inc. would use the information from the questionnaires to contact those firms regarding the effect of incentives on their company.

As directed, the Secretary of Revenue, with the cooperation of Kansas, Inc., developed a questionnaire which became a part of the Corporate Tax Booklet beginning in 1994. Kansas, Inc. has revised the questionnaire annually to improve its utility.

Effectiveness of Questionnaire System. From the time the first completed questionnaires began to be received at Kansas, Inc., the adequacy of the questionnaire method of collecting information became suspect. Table 8 compares the number of completed questionnaires received by Kansas, Inc. as of September 30, 1999 with the actual number of corporate claims filed for tax credits during that same period. As reported in Table 8, less than 20% are being captured through the questionnaire process now in place.

Table 8
Results of Questionnaire Collection Process

	Questionnaires Received* (1994 to 9/30/99)	Actual Corp. Claims Reported by Revenue** (1994 to 9/30/99)	Percent of Actual Claims (1994 to 9/30/99)
Venture & Seed Capital	0	4	0%
Research and Development	29*	306	9%
HPIP	18	30	60%
Job Creation or Investment Tax Credit	353*	2532	14%
Totals	400	2872	14%

*1999 Questionnaire requested taxpayers include "new claims" for credits only while the actual corporate claims reported by Revenue includes claims for carry-overs of credits.

Source: Kansas Department of Revenue Credit Summary Report as of September 30, 1999

Other Limitations/Considerations

1) The questionnaire only captures corporate taxpayers and does nothing to identify individual taxpayers who claim a tax credit on their personal returns (i.e. sole proprietor, partnerships, LLC's, or a pass-through from a corporation.) According to the Department of Revenue, nearly 40% of filers are individual taxpayers.

2) The questionnaire is an expensive proposition for both the corporate taxpayer and the Department of Revenue which must harvest the questionnaires from the

thousands of corporate returns processed. Many of the Kansas corporations, whether they are claiming credits or not, incur additional accounting fees associated with completing and filing the questionnaire. Nine out of ten questionnaires received by this office are completed by taxpayers that have not claimed a credit.

3) Despite the best efforts of the Department of Revenue, results from the questionnaire system are disappointing and cannot be used as intended because too few filers are identified in each category of tax credits to allow for reliable survey results. Kansas, Inc. is therefore unable to produce with confidence analysis of the effectiveness of the economic development tax credits as required by the statute.

Proposed Solution - S.B. 69

After numerous discussions between Kansas, Inc. and the Corporate Tax Section of the Department of Revenue, Kansas, Inc. requested introduction of a bill to amend K.S.A. 74-8017 during the 1999 Legislative Session. S.B. 69 passed the Senate and awaits hearing in House Taxation.[3] The bill would amend K.S.A. 74-8017 by repealing that portion of the law requiring the questionnaire. In its place, S.B. 69 would add language requiring the Department of Revenue to provide Kansas, Inc. with the name, address and telephone number (if available) of any taxpayer claiming an economic development credit. This information would be used to conduct an annual survey of taxpayers claiming credits to help determine the effectiveness of the economic development tax credits.

Again, Kansas, Inc. requests your support for S.B. 69 during the upcoming legislative session.

[3]A similar bill was introduced in 1998 but died in Senate Commerce without being heard due to heavy schedule.

ECONOMIC DEVELOPMENT INCOME TAX CREDITS

This section describes a number of tax credits designed to encourage economic development in the state and presents the most recent fiscal impact calculations. Numerical tabulations were gleaned from the recent report of the Research and Revenue Analysis Office, Kansas Department of Revenue.

Historical Fiscal Impact 1986 to 9/30/99. Figures 5 & 6 illustrate the fiscal impact and composition of economic development tax credits actually claimed since 1986. Figure 5 shows the significant increase beginning in 1993 in total economic development credits claimed. Much of the increase can be traced to changes made to the original Enterprise Zone Act made by the 1992 Legislature. Those changes eliminated the original Enterprise Zone program, which limited eligibility for incentives to only designated county-wide zones, and established the current program which extends Enterprise Zone eligibility statewide. Appendix B to this report contains a full history of the Kansas Enterprise Zone Act along with an outline of incentives provided.

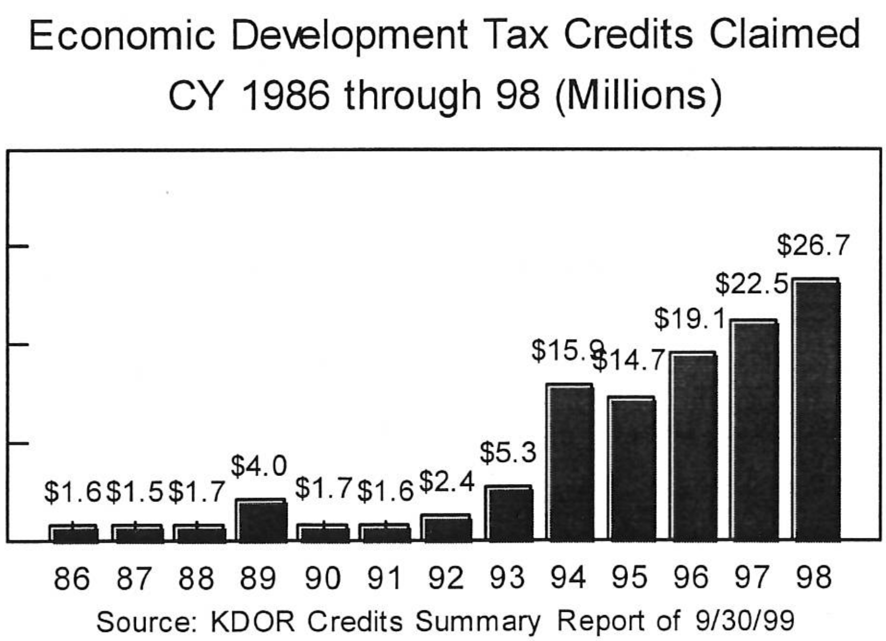

Figure 5

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As Figure 6 illustrates, the vast majority of credits (81%) granted between 1986 and September of 1999 were Job Creation and Investment Tax Credits authorized under the Kansas Enterprise Zone Act and K.S.A. 79-32,153 et seq.. The second largest amount was for Research and Development Tax Credits.

Composition of Fiscal Impact

1986 through 9/30/99

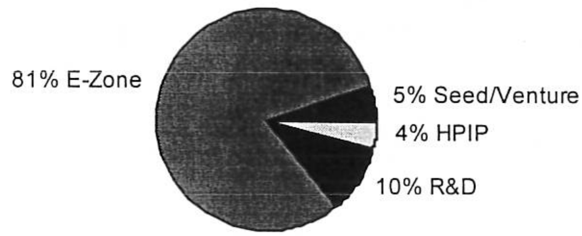

Figure 6

Fiscal Impact during Calendar Year 1998. According to the Department of Revenue, taxpayers claimed economic development income or privilege tax credits totaling $26.7 million during Calendar Year 1998. Figure 7 reflects data compiled by the Department of Revenue and provides a comparison of the fiscal impacts of each economic development tax credit. The figures represented include credits and carry-overs actually claimed during Calendar Year 1998. Eighty-four percent (84%) of the total economic development credits claimed during Calendar Year 1998 were Job Creation and Investment Credits available through the Kansas Enterprise Zone and K.S.A.79-32,153 et seq.. Claims for High Performance Firms Incentives Program credits doubled between 1997 and 1998 and are expected to continue to grow.

Composition of Fiscal Impact

CY 1998

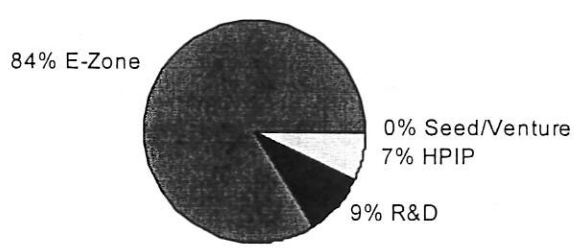

Figure 7

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Historical Fiscal Impact for Individual Credits

Kansas Enterprise Zone Act - K.S.A. 79-32,153 and 79-32.160a *et seq.*
The basic *Job Creation Tax Credit* is $1,500 per net new job. If a county has been designated as a nonmetropolitan business region, the credit is $2,500 per net new job. The *Investment Tax Credit* is $1000 per $100,000 of qualified investment. This credit is the same for manufacturing or non-manufacturing businesses throughout the state, regardless of location. The 1996 Legislature revised the *Kansas Enterprise Zone Act* to provide eligibility for insurance companies and financial institutions by allowing the credits to be used against the privilege tax on net income. Both the Job Creation and the Investment Tax Credits are claimed by submitting a Schedule K-34 with the business' Kansas income tax filing. Both credits may be used to offset up to 100% of the business' annual tax liability. Unused credits may be carried forward indefinitely. Table 9 reports Job Creation and Investment Tax Credits claimed between 1994 and 9/30/99.

Table 9
Job Creation and Investment Tax Credit (E-Zone)
Current with Carry-over, Post 1994 Revamping*

	Total Filers	Total Claimed
1994	54	$ 799,216
1995	133	2,431,843
1996	206	6,531,454
1997	239	10,909,568
1998	252	15,511,908
As of 9/20/99	100**	2,995,277**
Total	**984**	**39,179,266**

Source: KDOR Credit Summary Report of September 30, 1999
*See "Recent History of Sales Tax Exemption as it Applies to the Kansas Enterprise Zone Act" in the Appendix.
**Privilege tax filers and individual filers for 1999 were suppressed by KDOR and are not included in this figure or in the total figure.

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Job Creation and Investment Tax Credit Act of 1976 - K.S.A. 79-32,153 *et seq.* The *Job Creation and Investment Tax Credit Act of 1976* provides incentives to those businesses that may not qualify for the Enterprise Zone incentives, such as retail businesses, or non-manufacturing businesses that do not create at least 5 net new jobs. Eligibility for these credits requires the creation of at least two net new jobs. This Act provides a job creation credit of $100 per net new employee per year for a period of 10 years and an investment tax credit of $100 per $100,000 of qualified investment. Credits may be used to offset up to 50% of the business' Kansas income tax liability. Unused credits <u>may not</u> be carried forward. Table 10 reports Job Creation and Investment Tax Credits awarded between 1977 and 9/30/99.

Table 10
Job Creation and Investment Tax Credit (Non E-Zone)
Current (No Carry-over Allowed)

	Total Filers	Total Claimed
1977	11	32,182
1978	38	111,304
1979	74	288,289
1980	160	619,134
1981	214	1,218,860
1982	208	711,487
1983	191	1,215,628
1984	195	758,912
1985	237	1,028,489
1986	220	1,618,901
1987	237	1,459,585
1988	228	1,073,801
1989	266	679,312
1990	262	878,137
1991	232	822,445
1992	775	1,575,909
1993	897	3,033,541
1994	968	11,350,693
1995	1,029	10,690,617
1996	1,137	10,748,033
1997	550	9,416,906
1998	525	6,842,601
As of 9/30/99	82	1,266,047
Total	**8,736**	**67,440,813**

Source: KDOR Credit Summary Report of September 30, 1999

Research and Development Tax Credit - K.S.A. 79-32,182 et seq. Created in 1986, this tax credit is designed to increase research and development activity by Kansas businesses. The income tax credit is equal to 6.5% of a company's investment in research and development above the average expenditure of the previous three-year period. Only 25% of the allowable annual credit may be claimed in any one year. Any remaining credit may be carried forward in 25% increments until exhausted. Table 11 reports Research and Development Tax Credits awarded since the programs inception and 9/30/99.

Table 11
Research and Development Tax Credit
Current and Carry-over

	Total Filers	Total Claimed
1988	12	$ 133,890
1989	24	407,807
1990	39	249,737
1991	50	449,221
1992	63	764,043
1993	76	1,757,598
1994	85	3,171,884
1995	90	720,139
1996	83	875,454
1997	55*	*1,340,675
1998	57	2,382,291
As of 9/20/99	15	61,539
	649	**$12,314,278**

Source: KDOR Credit Summary Report of September 30, 1999
*Individual filers for 1999 were suppressed by KDOR and are not included in this figure or in the total figure.

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Kansas Venture Capital, Inc. - K.S.A. 74-8304A, 74-8305 et seq. and Certified Venture and Seed Capital Credit - K.S.A. 74-8401. These credits are designed to encourage cash investment in venture capital and seed capital pools in Kansas. To that end, a credit equal to 25% of the taxpayer's cash investment in stock issued by Kansas Venture Capital, Inc., a certified Kansas venture capital company, or a certified local seed pool may be deducted from a taxpayer's income or privilege tax liability. The entire amount of the credit may be claimed in one year, or if the amount of the credit claimed exceeds the taxpayer's liability in any year, the amount may be carried forward until the credit is exhausted. Table 12 reports tax credits awarded since the inception of the program and 9/30/99.

Table 12

Certified Venture Capital Investment Credit (KVCI)
Current and Carry-over

	Total Filers	**Total Claimed**
1986	7	$ 6,846
1987	12	26,523
1988	168	452,510
1989	170	2,936,313
1990	74	533,483
1991	54	341,465
1992	12	42,299
1993	7	527,857
1994	4	417,600
1995	11	689,499
1996	6	406,774
1997	0*	0*
1998	0*	0*
As of 9/30/99	0*	0*
Total	**525**	**$6,381,169**

Certified Seed Capital Investment Tax Credit
Current and Carry-over

	Total Filers	**Total Claimed**
1989	2	$ 7,527
1990	2	10,179
1991	0	0
1992	1	4,689
1993	1	8,621
1994	0	0
1995	0	0
1996	0	0
1997	0*	0*
1998	0*	0*
As of 9/30/99	0*	0*
Total	**6**	**$31,016**

Source: KDOR Credit Summary Report of September 30, 1998
*KDOR Credit Summary Report of September 30, 1999

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High Performance Firms Incentives Program (HPIP) Credit - K.S.A. 74-50,132. This incentives program was enacted in 1993 to retain Kansas' existing high-performance businesses, encourage investment in worker training and education, and spur the attraction of new, high quality firms to the state. The first firm was certified in late 1994. The incentives offered under the program are limited to manufacturers, export oriented service sector firms, and corporate headquarters and back-office operations of national or multi-national corporations. To qualify, a firm must pay above average wages for their industry in the county in which it is located, and either invest an amount equal to 2% of its total payroll on employee training or participate in either the Kansas Industrial Training (KIT) Program, the Kansas Industrial Retraining (KIR) Program, or the State of Kansas Investment in Lifelong Learning (SKILL) Program. Firms wishing to use this credit must be certified by the Kansas Department of Commerce & Housing (KDOC&H.)

Income Tax credits available through this program are:

- 10% Investment Tax Credit against corporate income tax on any investment exceeding $50,000. The credit may be taken over a 10-year period subject to annual requalification by KDOC&H.
- Workforce Training Tax Credit on training expenditures above an amount equal to 2% of total payroll. The credit is limited to $50,000 with no carry-over provision provided.

Table 13 reports tax credits awarded since the inception of the program and 9/30/99.

Table 13
High Performance Firms Incentives Program (HPIP)
Investment Tax Credit and Workforce Training Tax Credit
Current with Carry-over for Investment Credit Only

	Total Filers	Total Claimed
1994	3*	$166,549*
1995	10*	189,585*
1996	22	492,049
1997	22	808,207
1998	26	1,924,750
As of 9/30/99	5	1,414,524
Total	**88**	**$4,995,664**

Source: KDOR Credit Summary Report of September 30, 1999
*KDOR Credit Summary Report of September 30, 1998

HPIP Evaluation Results

Kansas, Inc. performed a statutorily required evaluation of the HPIP program in FY 1998. The report was published in May of 1998 and found the HPIP program to be effectively meeting its statutory goals. A number of recommendations were made by Kansas, Inc. which included the continuation of the program and amending the HPIP

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statute to allow the warehousing, wholesale trade and distribution sectors to qualify for HPIP certification. The

1999 Legislature agreed with the recommendation and included these sectors for eligibility.

As part of that evaluation, Kansas, Inc. contracted with Central Research & Consulting of Topeka (CRC) to conduct a confidential survey of 64 firms having taken advantage of HPIP incentives. In all, 59 of the 64 firms certified for HPIP incentives between FY 1994 and FY 1997 were successfully contacted and surveyed for a response rate of 92%.

The majority of projects reported on were in the manufacturing sector (78%). Sixty-eight percent (68%) of the projects were for headquarters or back office operations of a national or international firm. Most of the projects or firms earned both Investment Tax Credits and Workforce Training Tax Credits and 78% of respondents' projects involved the purchase of machinery and equipment. The great majority of projects (93%) were relocations or expansions of existing Kansas firms or facilities.

Survey Goals. Specifically, the goal of the survey was to answer the following questions.

1) Did the HPIP program influence certified firms' decision to:
    a) make the capital investment?
    b) locate the project in Kansas?
2) Did the HPIP program influence certified firms to:
    a) raise wages?
    b) increase investment in worker training?
    c) increase sales outside the state?
    d) engage a consultant to improve operations?

Major Findings.

- Overall, HPIP incentives had a greater impact on recruitment efforts than on the retention of existing Kansas firms.

- 41% of existing Kansas firms said the HPIP program had a "significant impact" on their decision to invest in new machinery and equipment or facility.

- 47% of existing Kansas firms that had seriously considered leaving the state to undertake their projects, said the HPIP incentives "contributed significantly" to their ultimate decision to remain and invest in Kansas.

- 41% of existing Kansas firms that had seriously considered leaving the state to undertake their projects, said that had it not been for the HPIP incentives, they would have taken the project to another state.

- HPIP incentives had less impact on existing Kansas firms that had not seriously considered moving from the state. In a confidential survey, 38% of those firms said they would have proceeded with the project as planned with or without the HPIP incentives. Fifty-three percent (53%) said they would have proceeded on a smaller scale.

- 40% of out-of-state firms said that HPIP incentives "contributed significantly" to their firm's decision to locate their facility in Kansas.

- 40% of out-of-state firms said that had it not been for the HPIP program, they would have located in another state.

- 23% of HPIP firms said they had increased worker training to meet HPIP requirements. There is no way of knowing how many firms are currently in the process of increasing investment in worker training to meet HPIP requirements.

- None of the HPIP firms said they had increased wages to meet HPIP requirements. However, there is no way of knowing how many firms are currently in the process of increasing wages to meet HPIP requirements.

- 13% of service sector firms said they had increased sales outside the state to meet HPIP requirements. There is no way of knowing how many firms are currently in the process of increasing sales outside the state to meet HPIP requirements.

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Appendix A

Background Information and Instructions

Records indicate that during FY 1998 (7/1/97 to 6/30/98), FIELD(2) was granted Sales Tax Exemption Certificate(s) FIELD(1). The certificate(s) was granted in connection with a project(s) FIELD(3) which involved FIELD(7).

Remember... your answers will be kept in the strictest of confidence and will only be reported in the aggregate to protect the identity of your company and responses! If you have any questions at all, please call Mikel Miller at 785 296 1460.

Your name and title/position with the company:____________________________________
Phone where you can be reached: ________________________

Q1. Which best describes the project for which the sales tax exemption certificate was used? (Check only one)

a. _____ start-up of a new business **(please go on to Q2)**
b. _____ expansion of an existing Kansas firm **(please go on to Q2)**
c. _____ relocation to another city from an existing Kansas location **(please go on to Q2)**
d. _____ expansion into Kansas by an out-of-state firm **(please skip to Q3)**
e. _____ relocation to Kansas from an out-of-state location **(please skip to Q3)**

Q2. Did your company seriously consider undertaking this project in another state?
____Yes **(please complete the remaining questions)**
____ No **(please skip to Q5)**

Q3. What were the three(3) most important reasons for your firm's ultimate decision to undertake the project in Kansas?

a. _____ aggressive recruitment efforts
b. _____ state and/or local tax incentives
c. _____ state and/or local financial incentives (i.e. grants, HPIP program, training dollars, etc.)
(Please specify: _____________________________________)
d. _____ well-trained skilled labor force
e. _____ cost of labor less expensive
f. _____ proximity to markets
g. _____ transportation infrastructure
h. _____ availability of educational/training facilities
i. _____ competitive tax structure
j. _____ quality of life in Kansas (i.e. education, housing, cost of living)
k. _____ owner's place of residence

l. _____ Other____

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FIELD(1)

Q4. **To what extent was sales tax exemption for this project a factor in your company's decision to go ahead with this project in Kansas?**

a. _____ it contributed significantly
b. _____ it contributed somewhat
c. _____ it contributed only slightly
d. _____ it did not contribute

Q5. **If sales tax exemption had not been available for your company, what would have been the effect on this project?**

More than likely, our company would have:

a. _____ proceeded with the project as planned
b. _____ proceeded on a smaller scale
c. _____ canceled the project

Q6. **How many full-time employees does your company employ?**

Total ____________ In Kansas ___________

Q7. **Has your company claimed or used any of the following incentives over the last two years?**

_____ **Job Creation Tax Credit** (allows $1,500 to $2,500 credit for each new employee)
_____ **Investment Tax Credit** (allows 1% credit for investment in a qualified business facility)
_____ **Research and Development Tax Credit** (allows a credit of 6.5% of firm's investment in R&D above the previous year's investment)
_____ **High Performance Firms Incentives Program (HPIP)** (allows a 10% tax credit for on qualified investment and for training expenditures above 2% of payroll)

Thank you so much for your time!

Please return your completed survey in the postage paid envelope provided.

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Appendix B

Recent History of Sales Tax Exemption as it Applies to the Kansas Enterprise Zone Act

1982: The Kansas Legislature established the Kansas Enterprise Zone Act, providing a city the ability to designate a portion of its area as an enterprise zone. Businesses which located within the zone would receive a sales tax refund on property and services associated with the construction, expansion, or rehabilitation of a business facility. In addition, job creation and investment tax credits were provided if a project created at least two net new jobs.

1986: Counties were given the authority to establish county enterprise zones.

1988: Sales tax on machinery and equipment used in manufacturing was made exempt. Prior to this, manufacturers had to be located in a designated enterprise zone to receive this exemption. Kansas had been the only state in the region with this tax.

1992: The Legislature enacted a new Kansas Enterprise Zone Act, which reconfigured the original program established pursuant to K.S.A. 12-17,107 et seq. Enterprise zones established in the earlier program were eliminated and enterprises zone incentives were extended statewide with enhanced levels of benefits in certain rural areas. In contrast to the earlier program, the revamped enterprise zone laws linked eligibility for sales tax exemption, investment tax credits, and job creation tax credits to the type of business and their ability to meet certain job creation qualifications.

1994: The Enterprise Zone Act was amended again to add a definition of "corporate headquarters" and to clarify the existing definitions of "non-manufacturing business" and retail business." This amendment was proposed by Kansas, Inc. to correct misinterpretations of the law which had resulted in the denial of enterprise zone benefits to many companies. The amendment also permitted owners of leased property to receive sales tax exemptions when constructing, reconstructing, remodeling, or enlarging a facility which will be leased for a period of five years or more to a business which would be eligible for the exemption if it had constructed, reconstructed, remodeled, or enlarged the facility itself.

1995: The Legislature repealed the 2.5% sales tax imposed in 1992 on labor used in original construction. This law became effective April 15, 1995.

1996: The Legislature amended the law to allow businesses to offset 100 percent of their Kansas income tax liability with E-Zone tax credits. It also included a definition for ancillary support facilities (back office operations), and headquarters which looks at the function the facility plays rather than the type of business the facility belongs to. The bill also amended the Act to allow insurance companies and financial institutions, which pay privilege tax, to be eligible for job expansion and investment tax credits.

Summary of Kansas Enterprise Zone Incentives

Eligibility for the various incentives and the value of the incentive depend on 1) the type of business, 2) the location of the business within the state, and 3) the number of net new jobs created. The *Kansas Enterprise Zone Act* defines the six counties of Douglas, Johnson, Leavenworth, Sedgwick, Shawnee, and Wyandotte as metropolitan counties. As such, they are ineligible to apply for the enhanced job credits available to designated non-metropolitan counties.

Jobs Criteria/Definitions

Manufacturing
A manufacturing business is defined as any commercial enterprise identified under Standard Industrial Classification (SIC) codes, major groups 20-39 and must create a minimum of two (2) net new jobs.

Non-Manufacturing
A non-manufacturing business means any commercial enterprise other than a manufacturing or retail business that creates a minimum of five (5) net new jobs or the business headquarters of an enterprise or the ancillary support facility of an enterprise if the facility creates at least 20 new full-time positions.

Retail
A retail business is defined as any business providing goods or services taxable under the Kansas Retailers' Sales Tax Act; any professional service provider set forth in K.S.A. 17-2707, and amendments thereto; any bank, S&L, or other lending institution; any commercial enterprise whose primary business activity includes the sale of insurance; any commercial enterprise deriving its revenues directly from noncommercial customers in exchange for personal services such as, but not limited to barber shops, photographic studios, and funeral services. Retail businesses must create a minimum of two (2) net new jobs.

Basic Incentives

Manufacturing
Sales Tax Exemption
Job Creation Tax Credit - $1,500 per net new job.
Investment Tax Credit - $1,000 per $100,000 of qualified business facility investment.

Non-Manufacturing
Sales Tax Exemption
Job Creation Tax Credit - $1,500 per net new job.
Investment Tax Credit - $1,000 per $100,000 of qualified business facility investment.

Retail
Sales Tax Exemption - Available for businesses in communities of less than 2,500 population
Job Creation Tax Credit - $100/year for 10 years for each net new job created (K.S.A. 1995 Supp. 79-32,153.
Investment Tax Credit - $100/year for 10 years for each $100,000 in qualified business investment (K.S.A. 1995 Supp. 79-32,153.

Desig. Non-metro Regions

Manufacturing
Sales Tax Exemption
Job Creation Tax Credit - $2,500 per net new job.
Investment Tax Credit - $1,000 per $100,000 of qualified business facility investment.

Non-Manufacturing
Sales Tax Exemption
Job Creation Tax Credit - $2,500 per net new job.
Investment Tax Credit - $1,000 per $100,000 of qualified business facility investment.

Retail
Sales Tax Exemption - Available for businesses in communities of less than 2,500 population
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KANSAS, INC. *BOARD OF DIRECTORS*

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Karla Pierce, Secretary

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Office of Policy & Research

TESTIMONY

To:	Madame Chairman Wagle, House Taxation Committee
From:	Shirley K. Sicilian
Re:	**SB 410 – Taxpayer Benefits and Incentives**
Date:	March 14, 2000

Madame Chairman and members of the Committee, thank you very much for the opportunity to testify today regarding senate bill 410. Senate bill 410 is a department of revenue bill. It contains five provisions that we believe promote fairness, efficiency and clarity in the tax laws. The fiscal note for the bill is a one-time $275,000. This impact is from the provision in section 7, which would raise the filing threshold for estimated tax. My testimony provides a summary of each of the five provisions.

1. Reduce Interest for Participants in a "Managed Sales Tax Audit Program" (§1 - §5). The department traditionally employs sufficient sales tax audit staff to review up to 2% or 3% of all Kansas sales tax filers' annually. This means that for any given tax year, approximately 10% of sales tax payers will be audited within the 3 year statute of limitations. Clearly, our current system relies heavily on voluntary compliance, which the department fosters through a myriad of educational seminars and publications. The department also leverages both its education and its audit efforts to provide a third, middle approach to compliance. Under this middle approach, the department enters "managed-audit" agreements with certain eligible taxpayers that might not otherwise be audited for quite some time. Under the managed-audit agreement, a taxpayer commits to performing a self-audit against an audit plan developed by the director. The audit plan includes detailed educational materials and specifies: (1) the period to be audited, (2) the general scope of the audit, (3) records to be examined and the types of sampling techniques to be used, (4) specific procedures for determining liability, (5) deadline for completion of the audit, and (6) deadline for payment of the tax, penalty and interest assessed. Participation in our program has been limited. SB 410 would allow us to encourage participation by referencing the program in statute and allowing a 50% interest rate reduction on assessments identified by the eligible taxpayer and verified by the director. Because these are taxpayers that may not be audited otherwise, the fiscal note for this proposal is positive.

Note – original §6 stricken. This section would have provided an electronic filing "coupon" for individual income taxpayers for two years. However, shortly after our proposal was introduced, President Clinton announced a similar proposal ($10 credit) at the federal level. Given the potential for states to experience a "coat-tail" effect from the federal proposal, together with the

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fact that our electronic filing is up 22% so far this year, this section may no longer be necessary and was stricken by the senate tax committee.

2. **Allow an "Innocent Spouse" finding at the state level (§6).** The IRS Restructuring and Reform Act of 1998 requires the IRS to relieve an "innocent spouse" from income tax liability. This federal relief automatically flows through to the state level. But where there is no outstanding federal liability, only state liability, there can be no federal "innocent spouse" finding. And, the state does not have any provision to grant this relief on its own. This means that an "innocent spouse" who has not paid off the federal liability will be relieved from state liability. But if the federal liability was paid, there can be no relief at the state level. This bill would explicitly recognize the flow through of the federal finding, and would allow the state to make its own "innocent spouse" finding where there is no outstanding federal liability. We believe these changes would promote fairness and strengthen Kansas' conformity with the federal law. The fiscal note for this proposal is minimal.

3. **Raise the threshold for filing estimated individual income tax returns (§7).** There is a two-prong test for determining whether an individual must file estimated individual income tax returns. One of those two prongs is whether the individual can reasonably expect to owe $200 above withholding and credits. The $200 threshold has been in place since at least 1989. This bill would move that threshold to $350. Increasing the estimated filing threshold from $200 to $350 will have a "cash flow" impact that will reduce fiscal year 2001 state general fund revenues by **$275,000**. There would be some administrative cost savings since increasing the threshold should reduce the number of border-line cases where estimated tax penalty is imposed, and subsequently waived on appeal.

4. **Clarify certain provisions of the withholding tax law (§8 - §17).** The current Kansas withholding statutes do not address non-wage payments, such as gambling winnings, taxable payments of Indian casino profits, or periodic pension payments. The state currently follows federal treatment, which subjects these payments to withholding requirements. The main purpose of these amendments is to codify Kansas' adherence to the federal treatment of non-wage payments. A second purpose of these amendments is to codify certain provisions currently found in our regulations. New Sections 12 and 13 are restatements of existing regulations that we feel are more appropriately in statute. New Section 12 restates K.A.R. 92-11-15 captioned "Employer's liability for withheld taxes." The language is modified only to include "payors." New §13 restates K.A.R. 92-11-16 captioned "Employer's failure to withhold." Again, the language is modified only to include "payors."

New Section 14 deals with the rate of withholding. Subsections (a) and (b) are intended to restate the provisions deleted from 79-3297a. 79-3297a also has provisions regarding codification of withholding tables in regulations. The department does issue a publication containing the withholding tables at least annually. Two years ago, the tables needed to be published twice in one year. The frequency of income tax changes, and the time lag inherent in publication by regulation, makes publishing new withholding tables in regulation impractical.

Because these changes simply codify existing practice and rules, they have no fiscal impact. There are a small number of technical clean-up amendments we have identified. These are listed on the fiscal note and I will provide a mark-up to the revisor.

5. **Allow tax penalties to be phased in at 1% a month, up to 24% (§18 - §21).** Under current statute, if a taxpayer fails to file or pay by the due date, a 10% penalty must be assessed

in addition to interest, even when the payment is only a day or two late. It isn't until six months later that the penalty rises to 25%. The secretary may waive penalty for "reasonable causes," and in the majority of cases, taxpayers do request a waiver. Most taxpayers that have a good filing record and for some reason are late paying their taxes generally are allowed a waiver of the penalty amount. This putting on and taking off of penalty works in theory but can be administratively expensive and time consuming in practice - a poor use of government resources. The system also has the potential to create inequities between those who simply pay the penalty without question and those who know to ask for waiver. Under the proposed bill, penalties would be phased-in at the rate of 1% a month, up to a maximum of 24%. The lower starting rate and the more gradual phase-in will provide a penalty that is reasonable under most circumstances and can be uniformly applied. Furthermore, the phase in of penalties should provide taxpayer's an incentive to file and pay the tax sooner rather than later, and thus may speed-up receipt of payment. KDOR's old income tax processing systems would not have been able to calculate interest as required by this bill. However, our new system is able to. The fiscal note for this provision is minimal.

Proposed amendment to eliminate contractor registration fees

Since the time we introduced this bill, an operational issue came to our attention that we respectfully request be relieved through legislation. K.S.A. 79-1009 currently requires non-resident contractors to register and pay a fee of $10 for every Kansas contract with a price greater than $10,000. The fee produces very little revenue relative to the operational cost of building its collection into our new system. In fiscal year 1998, only $180.00 was remitted. We propose continuing the registration requirement, but eliminating the required fee:

> To the end that the state of Kansas and the political subdivisions thereof may receive all taxes due in every instance, including contributions due under the employment security law, contractors, who are nonresidents of this state, desiring to engage in, prosecute, follow or carry on the business of contracting as defined in this act shall register with the secretary of revenue or the secretary's designee for each contract where the total contract price or compensation to be received amounts to more than $10,000, except that a foreign corporation authorized to do business in this state shall not be required to register under the provisions of this act. ~~The secretary or the secretary's designee shall charge a fee for such registration in the amount of $10 for each such contract. All such fees received by the secretary or the secretary's designee shall be deposited on Monday of each week with the state treasurer. The state treasurer shall thereupon credit the amount of such fees to the state general fund.~~

PRESENTATION TO
HOUSE TAXATION COMMITTEE
March 14, 2000
BY
TONY R. FOLSOM
EXECUTIVE DIRECTOR/GENERAL COUNSEL
KANSAS BOARD OF TAX APPEALS

Madam Chair and Members of the Committee:

I welcome the opportunity to appear before you today to provide testimony relating to SB 411.

SB 411 basically contains five amendments. The first is to K.S.A. 1999 Supp. 74-2433(d) dealing with the Regular Division of the Board of Tax Appeals. The other three amendments are to K.S.A. 1999 Supp. 74-2433f dealing with the Small Claims Division.

1. PUBLICATION OF BOARD ORDERS (p. 2 lines 18-20)

Currently, K.S.A. 1999 Supp. 74-2433(d) provides that orders of the Regular Division of the Board that are deemed of sufficient importance to be published are to be delivered to the Director of Printing to be published. When this language was placed into law in 1998, Board staff met with personnel of the Division of Printing to determine how to "print and publish" the Board orders deemed to be of sufficient importance. Due to the fact that Board orders are subject to reconsideration under the Kansas Administrative Procedures Act, are subject to judicial review, and there could be several orders for each case, it was determined that some form of a loose-leaf publication would be best. A loose-leaf publication is what we currently have in place. It serves the purpose of providing notification to the public of recent important decisions by the Board.

The concern is cost and time required to publish the orders. Basically, all the Division of Printing does is make copies of the Board orders we send to them. The copies are returned to the Board for Board staff to place in notebooks and distribute to the appropriate locations. It would be more cost effective and would take less time for orders to be published if the Board was allowed to copy the orders for placement in the notebooks. As such, it is proposed that K.S.A. 1999 Supp. 74-2433(d) be amended to indicate that it is the Board of Tax Appeals that publishes the orders and not the Director of Printing.

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2. SINGLE-FAMILY RESIDENTIAL APPEALS (p. 3 lines 3-12, 21-22, 28-29, 30-34)

Currently, K.S.A. 1999 Supp. 74-2433f(b) provides that taxpayers may elect to appeal to the Small Claims Division or to the Regular Division of the Board of Tax Appeals the valuation or assessment of single-family residential property. The proposed legislation would amend K.S.A. 1999 Supp. 74-2433f to add a new subsection (b) that would require owners of single-family residential properties to appeal to the Small Claims Division as a prerequisite to appealing to the Regular Division of the Board.

3. TAX GRIEVANCES (p. 3 line 24)

Tax grievances typically involve a legal analysis for which most of the Small Claims hearing officers are not trained to handle. Further, tax grievances filed under K.S.A. 1999 Supp. 79-1702 are no longer filed with the county appraiser's office, but are filed directly with the Board of Tax Appeals. As such, the counties are not always prepared to fully address all of the issues being raised by the taxpayer at the Small Claims hearing.

In addition, the Regular Division of the Board has always addressed tax grievances without holding a hearing, except in cases where one of the parties requests a hearing or there is insufficient information to render a decision without a hearing. Under this process, tax grievances are filed with the county appraiser who then makes comments concerning the issues raised by the applicant. As such, when the Board receives the application from the county appraiser, there is information from both sides included in the application.

In the Small Claims Division, a hearing has to be scheduled for all tax grievances. An exception is where it is clear that Small Claims does not have jurisdiction. In such a case, a decision is sometimes rendered without a hearing.

The proposed amendment to K.S.A. 1999 Supp. 74-2433f(b) would remove the authority for Small Claims to hear tax grievance applications.

4. CLARIFICATION OF WHO MAY APPEAR ON BEHALF OF TAXPAYERS AND COUNTIES (p. 4 lines 13-18)

The proposed legislation would add language to K.S.A. 1999 Supp. 74-2433f(e) indicating that tax representatives and tax agents could appear at Small Claims hearings on behalf of taxpayers. Also, language is added indicating that a county or unified government may be represented by the county appraiser, designee of the county appraiser, the county attorney or counselor, or other representative.

5. WAIVER OF SIXTY-DAY PERIOD TO CONDUCT SMALL CLAIMS HEARINGS (p. 4 lines 20-21)

Pursuant to K.S.A. 1999 Supp. 74-2433f(f), Small Claims hearings are to be held within sixty-days of the date the appeal is filed with the Small Claims Division. There are instances where taxpayers for various reasons are not available to attend hearings during this sixty-day period. These taxpayers request that we hold their hearings past the sixty-day period. However, there is no provision in the law for going past sixty days.

In such cases, we tell the taxpayers that their options are to attend the hearing as scheduled, waive their appearance at the hearing, have someone appear for them, or transfer the appeal to the Regular Division of the Board. Since the Regular Division conducts hearings on residential and small commercial properties in various locations throughout the state, the taxpayers will still have hearings in locations close to the county where the property is located. The primary difference is that the hearings will be conducted by a Board Member and not by a Small Claims hearing officer.

There have been instances where a county appraiser requested that a Small Claims hearing be continued. If there was time within the sixty-day period to allow for continuance and the taxpayer agreed to the continuance, we continued the hearing. If there was not sufficient time, we told the county that the hearing had to be held and they would have to appear or waive their appearance at the hearing.

The proposed legislation would amend K.S.A. 1999 Supp. 74-2433f(g) to indicate that the requirement that Small Claims hearings be conducted within sixty-days after the appeal is filed with the Small Claims Division could be waived by the taxpayer.

LEGISLATIVE TESTIMONY

the Kansas Chamber of Commerce and Industry

The Unified Voice of Business

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SB 411

March 14, 2000

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Taxation Committee

by

Marlee Bertholf

Director of Taxation & Small Business

Madam Chair and members of the Committee:

My name is Marlee Bertholf and I am the Director of Taxation and Small Business for the Kansas Chamber of Commerce and Industry (KCCI). KCCI is pleased to be a part of the Kansas Corporate Coalition that has worked to develop these amendments. Thank you for the opportunity to express our support of SB 411. These changes, proposed by the Board of Tax Appeals (BOTA), will address administrative concerns within the Board. We are very supportive of these changes and believe that these changes will benefit taxpayers.

In addition to the taxpayer friendly amendments addressed in SB 411, the Corporate Coalition has identified three additional procedural matters that will benefit Kansas taxpayers.

The first proposed change would be to amend K.S.A. 79-2974 to require the publicatio. written final determinations made by the Secretary of Revenue or the Secretary's designee after the document has been modified to conceal the identity of the specific taxpayer. As part of the 1997 Taxpayer Fairness Act, all administrative rulings of the Department which include, Private Letter Rulings and Directives, were to be made available in a medium readily accessible to taxpayers. Presently, this information is available on the Department's Internet site. We believe that final determinations made by the Secretary of Revenue or their designee should also be made public as well.

The second proposed change extend the 60 day period for appealing Notices of Assessment or Denials of Refund Claims an additional 60 days, by written agreement of the parties. Today, taxpayers have 60 days to file an appeal after receiving a Notice of Assessment or Denial of a Refund Claim from the Department. This 60 day period cannot be extended. When the Department audits a business, they may take months to go through materials and receipts. When they issue an assessment, the business only has 60 days to go through the same material it took the Department months to go through. The business may file an appeal just to preserve their right to appeal. If the business could extend the time an additional 60 days, they would have more time to examine their records and to file a valid appeal, if one is warranted. Additionally, the Department may send the Notice to the general address of the corporation. By the time the Notice reaches the tax department, the 60 day time period may be greatly reduced.

The final proposal would not allow penalties to be collected from a taxpayer in the event that the tax liability and interest are abated on appeal. This is an issue that has been brought to the forefront in a recent Kansas Court of Appeals Case. In that case, all tax liability and interest were abated, but penalties were assessed because that issue had not been addressed on appeal. We believe that if all tax liability has been abated, it should follow that penalties should not be collected.

Again, on behalf of the members of KCCI and the Corporate Coalition, I would like to thank you for the opportunity to appear before you today. We feel these amendments are taxpayer friendly and urge you to support of SB 411 and our amendments. I will be happy to answer any questions.

An Act relating to taxation; amending K.S.A. 79-2974, 79-3226, 79-3228, 79-3610 and 79-3615 and repealing the existing sections.

Section 1. K.S.A. 79-2974 is hereby amended to read as follows: 79-2974.

~~On and after January 1, 1998, the secretary of revenue~~ The shall make available in a medium readily accessible to taxpayers all administrative rulings of the department of revenue which affect the duties and responsibilities of taxpayers pursuant to any law administered by the department of revenue. Private letter rulings and written final determinations of the secretary or secretary's designee. shall be provided in such a manner as to conceal the identity of the specific taxpayer for whom the private letter ruling was issued. The secretary shall cause to be published in the Kansas register a description of each such administrative ruling within 30 days of such ruling together with specific instructions as to how the complete text of the administrative ruling may be obtained. As used in this section, administrative rulings shall include revenue notices, revenue rulings, information guides, policy directives, private letter rulings, written final determinations of the secretary or secretary's designee and directives of the division of property valuation or its director.

Section 2. K.S.A. 79-3226 is hereby amended to read as follows: 79-3226.

(a) As soon as practicable after the return is filed, the director of taxation shall examine it and shall determine the correct amount of the tax. If the tax found due shall be greater than the amount theretofore paid, or if a claim for a refund is denied, notice shall be mailed to the taxpayer. Within 60 days after the mailing of such notice the taxpayer may request an informal conference with the secretary of revenue or the secretary's designee relating to the tax liability or denial of refund by filing a written request with the secretary of revenue or the secretary's designee which sets forth the objections to the proposed liability or proposed denial of refund. The secretary or secretary's designee may extend the time for filing the written request hereunder for up to an additional 60 days if the parties agree in writing to such extension. The purpose of such conference shall be to review and reconsider all facts and issues that underlie the proposed liability or proposed denial of refund. The secretary of revenue or the secretary's designee shall hold an informal conference with the taxpayer and shall issue a written final determination thereon. The informal conference shall not constitute an adjudicative proceeding under the Kansas administrative procedure act. Informal conferences held pursuant to this section may be conducted by the secretary of revenue or the secretary's designee. The rules of evidence shall not apply to an informal conference and no record shall be made, except at the request and expense of the secretary of revenue or the secretary's designee or taxpayer. The taxpayer may bring to the informal conference an attorney, certified public accountant and any other person to represent the taxpayer or to provide information. Because the purpose of the department staff is to aid the secretary or secretary's designee in the proper discharge of the secretary's or secretary's designee's duties, the secretary or secretary's designee may confer at any time with any staff member with respect to the case under reconsideration. The secretary of revenue or the secretary's designee shall issue a written final determination within 270 days of the date of the request for informal conference unless the parties agree in writing to extend the time for issuing such final determination. A final determination constitutes final agency action subject to administrative review by the state board of tax appeals. In the event that a written final determination is not rendered within 270 days, the taxpayer may appeal to the state board of tax appeals.

(b) A final determination finding additional tax shall be accompanied by a notice and demand for payment. Notice under this section shall be sent by first-class mail in the case of individual taxpayers and by registered or certified mail in the case of all other taxpayers. The tax shall be paid within 20 days thereafter, together with interest at the rate per month prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, on the additional tax from the date the tax was due unless an appeal is taken in the manner provided by K.S.A. 74-2438 and amendments thereto, but no additional tax shall be assessed for less than $5. Interest at such rate shall continue to accrue on any additional tax liability during the course of any appeal.

Section 3. K.S.A. 79-3228 is hereby amended to read as follows: 79-3228.

(a) If any taxpayer, without intent to evade the tax imposed by this act, shall fail to file a return or pay the tax, if one is due, at the time required by or under the provisions of this act, but shall voluntarily file a correct return of income or pay the tax due within six months thereafter, there shall be added to the tax an additional amount equal to 10% of the unpaid balance of tax due plus interest at the rate prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date the tax was due until paid.

(b) If any taxpayer fails voluntarily to file a return or pay the tax, if one is due, within six months after the time required by or under the provisions of this act, there shall be added to the tax an additional amount equal to 25% of the unpaid balance of tax due plus interest at the rate prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date the tax was due until paid. Notwithstanding the foregoing, in the event an assessment is issued following a field audit for any period for which a return was filed by the taxpayer and all of the tax was paid pursuant to such return, a penalty shall be imposed for the period included in the assessment in the amount of 10% of the unpaid balance of tax due shown in the notice of assessment. If after review of a return for any period included in the assessment, the secretary or secretary's designee determines that the underpayment of tax was due to the failure of the taxpayer to make a reasonable attempt to comply with the provisions of this act, such penalty shall be imposed for the period included in the assessment in the amount of 25% of the unpaid balance of tax due.

(c) If any taxpayer who has failed to file a return or has filed an incorrect or insufficient return, and after notice from the director refuses or neglects within 20 days to file a proper return, the director shall determine the income of such taxpayer according to the best available information and assess the tax together with a penalty of 50% of the unpaid balance of tax due plus interest at the rate prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date the tax was originally due to the date of payment.

(d) Any person, who with fraudulent intent, fails to pay any tax or to make, render or sign any return, or to supply any information, within the time required by or under the provisions of this act, shall be assessed a penalty equal to the amount of the unpaid balance of tax due plus interest at the rate prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date the tax was originally due to the date of payment. Such person shall also be guilty of a misdemeanor and shall, upon conviction, be fined not more than $1,000 or be imprisoned in the county jail not less than 30 days nor more than one year, or both such fine and imprisonment.

(e) Any person who willfully signs a fraudulent return shall be guilty of a felony, and upon conviction thereof shall be punished by imprisonment for a term not exceeding five years. The term "person" as used in this section includes any agent of the taxpayer, and officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee or member is under a duty to perform the act in respect of which the violation occurs.

(f) (1) Whenever the secretary or the secretary's designee determines that the failure of the taxpayer to comply with the provisions of subsections (a), (b) and (c) of this section was due to reasonable causes, the secretary or the secretary's designee may waive or reduce any of the penalties and may reduce the interest rate to the underpayment rate prescribed and determined for the applicable period under section 6621 of the federal internal revenue code as in effect on January 1, 1994, upon making a record of the reasons therefor.

(2) No penalty shall be assessed hereunder with respect to any underpayment of income tax liability reported on any amended return filed by any taxpayer who at the time of filing pays such underpayment and whose return is not being examined at the time of filing.

(3) No penalty assessed under this act shall be collected by the department if the taxpayer has had the unpaid balance of tax abated on appeal.

(g) In case of a nonresident or any officer or employee of a corporation, the failure to do any act required by or under the provisions of this act shall be deemed an act committed in part at the office of the director.

(h) In the case of a nonresident individual, partnership or corporation, the failure to do any act required by or under the provision of this act shall prohibit such nonresident from being awarded any contract for construction, reconstruction or maintenance or for the sale of materials and supplies to the state of Kansas or any political subdivision thereof until such time as such nonresident has fully complied with this act.

Section 4. K.S.A. 79-3610 is hereby amended to read as follows: 79-3610.

The director of taxation shall examine all returns filed under the provisions of this act, and shall issue final determinations of tax liability hereunder in the manner prescribed by K.S.A. 79-3226, and amendments thereto, relating to income taxes. Any determination may be made on the basis of a generally recognized valid and reliable sampling technique, whether or not the person being audited has complete records of transactions and whether or not such person consents. In any such case, the director shall notify the taxpayer in writing of the sampling technique to be utilized, including the design and population of such sample. If the taxpayer demonstrates that any such technique used was not in accordance with generally recognized sampling techniques, the audit shall be dismissed with respect to that portion of the audit based upon such technique, and a new audit shall be performed. Within 60 days after the mailing of notice of the director's determination any taxpayer may request an informal conference with the secretary of revenue or the secretary's designee relating to such taxpayer's tax liability, including the issue of whether the use of a generally recognized sampling technique achieved a result that was reflective of the taxpayer's actual tax liability, and an informal conference thereon shall be conducted and the secretary of revenue or the secretary's designee shall make a final determination and give the taxpayer notice thereof. In case any person required by the provisions of this act to make a return fails or refuses to do so, the secretary of revenue or the secretary's designee, after notice to such person, shall make a final determination of the amount of such tax according to the best judgment and information of the secretary of revenue or the secretary's designee.

The secretary or secretary's designee may extend the time for filing the written request hereunder for up to an additional 60 days if the parties agree in writing to such extension.

Whenever the director of taxation has reason to believe that a person liable for tax under any provisions of the Kansas retailers' sales tax act is about to depart from the state or to remove such person's property therefrom, or to conceal oneself or such person's property therein, or to do any other act tending to prejudice, jeopardize or render wholly or partly ineffectual the collection of such sales tax unless proceedings be brought without delay, the director shall immediately make an assessment for all sales taxes due from such taxpayer, noting such finding on the assessment. The assessment shall be made on the basis of emergency proceedings in accordance with the provisions of K.S.A. 77-536 and amendments thereto. Thereupon a warrant shall forthwith be issued for the collection of the tax as provided in K.S.A. 79-3235, and amendments thereto. The taxpayer may within 15 days from the date of filing of such warrant request an informal conference with the secretary or the secretary's designee on the correctness of the jeopardy assessment.

Section 5. K.S.A. 79-3615 is hereby amended to read as follows: 79-3615.

(a) If any taxpayer shall fail to pay the tax required under this act at the time required by or under the provisions of this act, there shall be added to the unpaid balance of the tax, interest at the rate per month prescribed by subsection (a) of K.S.A. 79-2968 and amendments thereto from the date the tax was due until paid.

(b) If any taxpayer due to negligence or intentional disregard fails to file a return or pay the tax due at the time required by or under the provisions of this act, there shall be added to the tax a penalty in an amount equal to 10% of the unpaid balance of tax due.

(c) If any person fails to make a return, or to pay any tax, within six months from the date the return or tax was due, except in the case of an extension of time granted by the secretary of revenue or the secretary's designee, there shall be added to the tax due a penalty equal to 25% of the unpaid balance of such tax due. Notwithstanding the foregoing, in the event an assessment is issued following a field audit for any period for which a return was filed by the taxpayer and all of the tax was paid pursuant to such return, a penalty shall be imposed for the period included in the assessment in the amount of 10% of the unpaid balance of tax due shown in the notice of assessment. If after review of a return for any period included in the assessment, the secretary or secretary's designee determines that the underpayment of tax was due to the failure of the taxpayer to make a reasonable attempt to comply with the provisions of this act, such penalty shall be imposed for the period included in the assessment in the amount of 25% of the unpaid balance of tax due.

(d) If any taxpayer, with fraudulent intent, fails to pay any tax or make, render or sign any return, or to supply any information, within the time required by or under the provisions of this act, there shall be added to the tax a penalty in an amount equal to 50% of the unpaid balance of tax due.

(e) Penalty or interest applied under the provisions of subsections (a) and (d) shall be in addition to the penalty added under any other provisions of this section, but the provisions of subsections (b) and (c) shall be mutually exclusive of each other.

(f) Whenever the secretary or the secretary's designee determines that the failure of the taxpayer to comply with the provisions of subsections (b) and (c) of this section was due to reasonable causes, the secretary or the secretary's designee may waive or reduce any of the penalties and may reduce the interest rate to the underpayment rate prescribed and determined for the applicable period under section 6621 of the federal internal revenue code as in effect on January 1, 1994, upon making a record of the reasons therefor.

(g) In addition to all other penalties provided by this section, any person who willfully fails to make a return or to pay any tax imposed under the Kansas retailers' sales tax act, or who makes a false or fraudulent return, or fails to keep any books or records prescribed by this act, or who willfully violates any regulations of the secretary of revenue, for the enforcement and administration of this act, or who aids and abets another in attempting to evade the payment of any tax imposed by this act, or who violates any other provision of this act, shall, upon conviction thereof, be fined not less than $500, nor more than $10,000, or be imprisoned in the county jail not less than one month, nor more than six months, or be both so fined and imprisoned, in the discretion of the court.

(h) No penalty assessed under this act shall be collected by the department if the taxpayer has had the unpaid balance of the tax abated on appeal.

Section 6. K.S.A. 79-2974, 79-3226, 79-3228, 79-3610 and 79-3615 are hereby repealed.

Section 7. This act shall take effect and be in force from and after its publication in the statute book.

City of Olathe

MEMORANDUM

TO: Members of the House Taxation Committee

FROM: Donald R. Seifert, Management Services Director DRS

SUBJECT: **HB 3007**; KDOR Local Sales Tax Reports

DATE: March 14, 2000

On behalf of the city of Olathe, thank you for the opportunity to appear today in support of HB 3007. This bill was requested by the city of Olathe to help improve monitoring of local sales tax revenues. The bill amends current law dealing with sales and guest tax reports provided upon request by the Kansas Department of Revenue (KDOR) to units of local government about these two revenue sources. Such reports were first authorized by the 1991 legislature with strict confidentiality provisions. The bill is the result of joint discussion between the city and the department on making these reports a more accurate and productive financial analysis tool at the local level.

Local sales taxes have become an increasingly important revenue source to finance local government operations, and Olathe is no exception. In this budget year, general sales tax revenues are estimated at $24.7 million, or 57% of estimated general fund revenues. The local sales tax is by far the largest of the city's general fund revenue sources. Starting next month, an additional 1/8% local sales tax dedicated to park and recreation improvements approved by Olathe voters will begin for a five year period.

Local sales taxes are collected by KDOR along with the state sales tax, and remitted monthly to local jurisdictions. On a regular basis many cities request and receive local sales tax reports from the department. City staff use these reports to monitor local trends in the retail sector, forecast budgets, monitor tax increment financing (TIF) district and tax abatement project performance, and review sales tax disbursements from the state. For Olathe, the reports will also be critical to insure that park sales tax revenue supports implementation of the park improvement plan approved by the voters.

Currently, the value of local sales tax reports is limited because they provide insufficient information for the city to adequately verify sales tax revenues. For example, retailers with multiple business locations file consolidated sales tax returns. Interpreting consolidated reports can be especially confusing in urban areas, and has led to occasions where sales tax payments were mistakenly credited to the wrong city. The reports themselves can be confusing to us because the state database may contain unfamiliar

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legal corporate names and non-local mailing addresses not easily matched with known retailers and their local addresses. In addition, confidentiality requirements make it difficult for KDOR to always communicate effectively or quickly with local units of government to resolve potential sales tax discrepancies. It is therefore difficult to evaluate the results of local monitoring efforts. We believe KDOR would like to be more helpful in answering local sales tax questions, but is prevented under current law from doing so. There is a sense among some local governments that they do not always receive the correct share of this vital revenue source.

To address these limitations, the city greatly appreciates the cooperation of KDOR staff in drafting HB 3007. The bill will allow the department to identify on the report each business location maintained by a particular retailer. The bill also authorizes inclusion of the sales tax liability, in addition to the remitted amount under current law. This will help resolve questions about tax amounts that may simply be explained by the filing date and processing time of the return. Section 4 of the bill also amends current confidentiality requirements to allow the department to discuss potential sales tax report discrepancies with authorized local government staff more effectively. We believe the bill will help the department provide better service to its local government customers.

I would like to thank the committee again for introduction of this bill and for your favorable support.

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League of Kansas Municipalities

To: House Committee on Taxation

From: Larry Kleeman, Assistant Legal Counsel

Date: March 14, 2000

Re: League Support of HB 3007

Thank you for the opportunity to appear today on behalf of the League's 530 member cities in support of HB 3007.

The League supports the City of Olathe's efforts to enhance the information cities receive about their sales and transient guest taxes. Currently the Kansas Department of Revenue (KDOR) collects these taxes in over 240 different taxing subdivisions – approximately 75 counties and 168 cities. Cities in Kansas today receive local sales tax revenues roughly equivalent to their property tax collections. Clearly, this is a critical source of funding for local budgets -- just as it is for the state budget. No matter how much revenue they produce, though, it is always important to have information that is both useful and accurate. The bill before you now would help to ensure just that.

HB 3007 would be mutually beneficial to both KDOR and local governments. The local entities would serve as a kind of double check upon information KDOR obtains about local retailers. Errors (such as a retailer being taxed in the wrong jurisdiction) could be more easily identified by local officials (as compared to state officials in Topeka) and efficiently corrected by KDOR. Inclusion of retailers' addresses in tax collection reports would remove confusion that can result as to the actual source of tax revenues. (Sometimes, the names of umbrella corporations are unrelated to the sign on the storefront.) In addition, strategic planning of cities and counties would be vastly improved -- local economic models would be more precise, budget forecasts would be more accurate, etc.

Because it appears to be a win-win situation for local governments as well as the state, the League urges favorable support of HB 3007.

Thanks for you consideration and I'd be happy to answer any questions.

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Date: 3/14/00
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