

MINUTES OF THE HOUSE TAXATION COMMITTEE.

The meeting was called to order by Chairperson John Edmonds at 9:00 a.m. on February 21, 2003 in Room 519-S of the Capitol.

All members were present except:

Representative Huff
Representative Kirk
Representative Owens
Representative Sawyer
Representative Sharp

Committee staff present:

Chris Courtwright, Legislative Research Department
April Holman, Legislative Research Department
Gordon Self, Office of the Revisor
Carol Doel, Committee Secretary

Conferees appearing before the committee:

Mark Ciardullo, Department of Revenue

Other attending:

See attached list

First order of business was adoption of the minutes of February 4th, 6th, 7th, 11th, 12th, 13th, and 14th. Representative Larkin made a motion to adopt the above sets of minutes. Representative Goering seconded the motion. Vote was taken. Minutes were adopted.

Chairman Edmonds called to the attention of the committee written testimony from the Wichita Festivals in reference to **HB 2252** which was heard on February 20th (Attachment 1), written testimony submitted by Leslie Kaufman and written by Ken Graves, farmer/stockman in Labette County regarding **HB 2096** and **HB 2110**, which were previously heard (Attachment 2), as well as written testimony from Al DeSena, President/CEO of Exploration Place. This testimony was also in reference to **HB 2252** (Attachment 3).

Chairman Edmonds introduced Mark Ciardullo, Tax Specialist, State of Kansas who spoke on the subject of Kansas retailers' sales tax exemption for "Consumed in Production". Mr. Ciardullo gave an overview of *Kansas Stat. Ann. 79-3602 and Kansas Stat. Ann. 79-3606* with information presented regarding property consumed in production and the definition thereof as well as informing the committee on the exemptions and problem areas with this statute. (Attachment 4)

Chairman Edmonds opened the floor for any bill introductions. Representative Larkin asked for the introduction of a bill drafted stating that country clubs don't qualify for certain sales tax exemptions.

With no objections, the Chairman accepted this proposal for introduction.

Representative Gieco requested the introduction of a bill that would exempt kindergarten through grade 12 from tax on school related activities.

Hearing no objections, the Chairman accepted this proposal for introduction.

With no further business before the committee, Chairman Edmonds adjourned the meeting at 10:30 a.m.



Testimony To The
House Committee on Taxation
On Behalf Of
Wichita Festivals, Inc.
February 20, 2003

Representatives Present: Devin Hansen, Sunflower Travel, Wichita Festivals, Board Chair
Janet Wright, President/CEO Wichita Festivals, Inc.

Sales Tax Exemption at Issue: "KSA sec. 79-3603(rr): Exempt sales - (rr) all sales of tangible personal property which will admit the purchaser thereof to any annual event sponsored by a nonprofit organization which is exempt from federal income taxation pursuant to section 501 © (3) of the federal internal revenue code of 1986." Exemption in question is the Wichita River Festival button purchased to admit attendees to the annual Wichita River Festival.

The Wichita River Festival - an Economic Development Tool

The Wichita River Festival, celebrating its 32nd year in 2003, is a critical economic development tool in our community. Held each May, beginning the Friday before Mothers' Day and extending nine days in 2003, the Festival annually attracts more than 350,000 visitors to its' events and activities and figures prominently in tourism plans adopted by the City of Wichita.

It is the cornerstone of spring tourism activity and was noted as one of the three most prominent tourism attractions in Wichita, along with the Sedgwick County Zoo and Exploration Place, both of which receive public funding. The Festival creates an economic impact measuring more than \$22 million annually. The organization, Wichita Festivals, and the event have received numerous national awards and the Wichita River Festival has been recognized as one of the top 100 Festival destinations in the United States by travel and leisure organizations.

The economic impact of the Wichita River Festival on the economy of south central Kansas can't be understated. The Festival has become the largest special event in the state along with the Kansas State Fair. Research indicates attendance steadily increases each year, from 320,000 in 1998 to 351,539 in 2001. As noted in the information following, the Festival brings people from throughout the region and across the United States, and it is operated by a non-profit organization, Wichita Festivals, not supported by public funding.

Demographics and Economic Impact of the Wichita River Festival

The following research results, compiled at the conclusion of the 2001 Wichita River Festival by The Research Center, Wichita, KS, and commissioned by Wichita Festivals, clearly



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demonstrate the importance, in terms of numbers and the economic impact, the Wichita River Festival has on Wichita and the surrounding region.

Festival Attendance

- 351,539 people attended at least one event during the 10-day Festival
- 75% of those attending were from Wichita, 25% from outside Wichita (87,800)
- Two in every five households (40%) in south central Kansas attended.
- One in every two Wichita households and one in every four non-Wichita households attended some part of the Festival.
- 60 communities, 11 states and three foreign countries were represented in those attending the Festival
- Wichitans attended an average of 2.9 days of the Festival; non-Wichitans, 2.4 days of events

Festival Economic Impact

- Overall economic impact - \$22.6 million
- Sponsors, spectators, participants, volunteers and tourists spent approximately \$9.5 million during the Festival, creating an economic impact of more than twice that on the Wichita economy.
- Out-of-town participants spent \$3.3 million during the Festival, delivering an economic benefit of an estimated \$16.3 million to the City.
- Approximately \$0.55 of every dollar spent during the Festival was for food and beverage purchases for a total of \$3.7 million; \$.019 of every dollar, or \$1.3 million was spent on other retail shopping.

Festival Demographics

- 51% of the households attending had children under 18 years of age
- 51% of attendees were between the ages of 35 and 54; 26% were 18-34 years of age; 10% were seniors, 65 years and older
- 62% of attendees were married.
- 84% of attendees were white, 8% African American, and 4% Hispanic.
- 65% of the households attending had an annual income of \$25,000-\$74,999.

The estimated cost of the 2001 Wichita River Festival, upon which this research was based, was \$2.3 million. Approximately 90 committees and more than 4,000 volunteers annually assist in the organization and implementation of the event. Funding and other support for the Festival comes from 200+ businesses and organizations in Wichita and the region. Their funding covers the direct costs of creating and promoting each Festival event. Corporate sponsors include: Koch Industries, Coleman, Boeing, Cessna Aircraft, Preferred Health Systems, Bank of America, Wichita Clinic, Wichita Eagle, Fahnstock Heating & Air Conditioning, Wichita Marriott, Davis Moore Auto Group, Cingular, Coca Cola, and Budweiser, to name a few.

Wichita River Festival Button

The sales tax exemption we had been granted, applied only to purchase of the \$3 Wichita River Festival button. The button is not required for admission to Festival events, but is

strongly encouraged. It is the only charge for Festival activities outside those where a registration is required. The button is seen as a representation of support for the Festival and our community. In 2002, 127,200 buttons were sold. Revenue from button sales is the primary source of income for Wichita Festivals, generating approximately \$380,000 in 2002, 61% of our annual administrative operating budget.

More than 600 businesses and organizations support the Festival each year by purchasing buttons for their customers, employees, etc., demonstrating the importance of the Festival to our community's vitality and quality of life.

Requiring Wichita Festivals to pay sales tax on each button sold would mean 1) reducing the total revenue generated for Wichita Festivals, leading to reductions in staff size and, potentially, the quality of the Festival; or, 2) increasing the price of the button to accommodate the sales tax, leading to fewer buttons sold, potentially fewer people attending the Festival and a reduction in the tourism dollars generated. This would be most detrimental to those households already hit the hardest by our recent economic downturn.

The total amount to be realized from taxing the sale of buttons at the Wichita River Festival and other similar events and the cost to monitor enforcement and collection of the tax, would seem to outweigh the value and benefits to be realized.

Organizational and Event History

To help you understand the significance of the Wichita River Festival to our community, let us give you some background information.

In 1970, in honor of Wichita's 100th birthday, Wichita city leaders organized a year long Centennial Celebration. Using the Arkansas River as a focal point, organizers dedicated the last day of the celebration the Wichitennial Water Festival. There were many lasting results from the Centennial Celebration. Among them: permanent cultural attractions, city beautification, increased use of the river as the city's natural resource and improved pride in the city. Realizing the popularity of the year long event, city leaders responsible for the Centennial decided to establish an annual celebration to maintain the progress they had begun.

By the fall of 1971, Centennial organizers decided to form a non-profit organization, Wichita Festivals, Inc., to be responsible for organizing a Festival each year. It took a year to develop the framework for the organization and event, with the first Wichitennial River Festival taking place in May 1972.

Like its predecessor, the event lasted one day, with antique bathtub races, maypole winding, bike and canoe races, a carnival, art show, antique auto parade, crew races, a square dance, an Indian Pow-Wow and a Moonlight River Parade. In 1973, additional events were added to the schedule including two of the most popular – the Symphony Twilight Pops concert, with live cannons punctuating Tchaikovsky's 1812 Overture, and a fireworks extravaganza set to music. By 1974, the Wichitennial River Festival had proved such a success it was expanded to 10 days. This year also marked the appearance of the Festival

ambassador, Admiral Windwagon Smith. In 1979, the name was changed to the Wichita River Festival, with events were spread throughout the community.

Wichita Festivals has concentrated on improving the Festival each year, adding events as they become popular. Early organizers decided to approach local companies and organizations to sponsor events, rather than rely on government funding. The result is a Festival completely underwritten by local and regional corporations and organizations. Approximately 250 companies support the Festival each year through cash and in-kind contributions.

In 1999, the Wichita River Festival was selected to become part of the Library of Congress' Local Legacies Project to mark the Library of Congress' 200th anniversary. Chosen by Representative Todd Tiahrt, the Festival represented the 4th District of Kansas in the Library Of Congress's bicentennial celebration and was one of 600 projects selected by members of Congress to be represented in the Local Legacies Project.

Summary

Wichita citizens and visitors have embraced the Festival for over thirty years, making it a world-class event. The popular Wichita River Festival button, although not required for admission to Festival events, is worn by Festival-goers as a symbol of their support for this community-wide event.

The trickle down effect of the economic impact created by the Festival can't be ignored. It generates dollars spent in restaurants, hotels, retail stores and other tourist venues. It showcases the talent, beauty and warmth of our community to people from throughout the region. Requiring us to pay sales tax on each button purchased for the Festival will put at risk our organizations financial future and that of the Festival. Rather than taxing what now helps support our economy, help us sustain and enhance the Festival's growth by maintaining the exemption currently in place.

Thank you for your careful consideration of our request. We urge you to support the Wichita River Festival and other similar events that bring much needed tourism dollars into our economy by maintaining the exemption currently in place. Thank you for your time.

From: Graves [kgraves@ckt.net]
Sent: Friday, February 07, 2003 6:08 PM
To: jack@house.state.ks.us; umbarger@senate.state.ks.us; Palmer, Lee; edmonds@house.state.ks.us
Subject: HB2096 and HB2110

Dear Sir:

My name is Ken Graves. I am a farmer and stockman in Labette county in southeast Kansas, and I would like a minute of your time to comment about HB2096 and HB2110.

I know you are aware of the current depressed state of the agricultural economy so I won't waste time detailing the specifics of that point. The important point to be considered at this time is the effect that tax changes proposed in the above mentioned house bills would have on an already stressed segment of the Kansas economy. Some of the effects that I can foresee are as follows:

- As far as me personally, I couldn't pay these taxes and stay in business. As you well know, those of us in production agricultural have very little or no control over the end price of the commodities that we produce. There fore it is virtually impossible for us to "pass on" increased expenses. They must be absorbed. Considering the razor thin, or nonexistent, margins that we are currently operating with, I fear that a tax burden of this magnitude would be fatal to me and many of my neighbors.
- Also to be considered is the impact these taxes would have on Kansas businesses. Being in a border county, I can personally attest to some of the direct effects, the most obvious being the use of businesses in other states and internet vendors to supply as many of my inputs as possible. I am a firm believer in the old saying that "if you buy at home and you sell at home, you will always have a home", but if circumstances are such that trading at "home" will instead jeopardize my survival, then I and others like me will do whatever we must to try and stay in business. The result is that Kansas agricultural support businesses will also suffer. The effect would be particularly devastating to the Kansas feedlot industry. But the passage of these bills would benefit some businesses though. I'm sure the feedlots in Oklahoma and Texas would be elated by their passage.

I don't mean to be an alarmist, but you, our representatives in the Kansas legislature, must remember that agriculture, not aircraft or technology, is the backbone of the Kansas economy. When agriculture prospers the Kansas economy prospers and these proposed bills are repressive to agriculture. As you search for solutions to the State's budget problems, seek out alternatives that will stimulate rather than repress agriculture and I'm sure that in time we will once again find our State budget with ample funds to meet the needs of all Kansans. Thank you for listening.

Sincerely,
Ken Graves
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Bartlett, Ks 67332
(620) 226 3326
kgraves@ckt.net

2/10/2003

House Taxation
Attachment 2
Date 2-21-03

February 19, 2003

To: Kansas House of Representatives Taxation Committee
From: Al DeSena, Ph.D., President/CEO
Subject: Testimony Regarding House Bill 2252

On behalf of the Board of Trustees and staff of Exploration Place, Inc., a not-for-profit corporation in Wichita, I am writing concerning House Bill 2252 and its potential long-term negative impact on the operations of our organization. As we understand the provisions, this Bill would eliminate the historically important sales tax exemptions on properties and services purchased by 501 (c) 3 institutions such as ours, which provide unique educational exhibits and programs for the general public and school children.

Exploration Place serves well over 200,000 visitors each year and supports these activities with a combination of earned revenue and contributed donations. Contributed donations make it possible to provide these services to visitors at a price much below the actual cost. This is especially true for over 40,000 school children who visit us each year for a nominal fee, and for their teachers whom we don't charge.

This year alone the Board and staff are raising \$700,000 for operations, a goal that is increasingly difficult to sustain given the condition of the economy. Over the past months several hundred thousand dollars of expense for personnel and programs has been eliminated in order to balance our budget. Thus, our ability to continue to provide important educational benefits to our members and visitors continues to become more and more of a challenge.

Exploration Place pays certain sales taxes that can be passed on to the consumer – sales tax on admissions fees for example. However, the provisions of this bill, we feel, would require us to assume a tax burden that would apply additional direct pressures on our operating expenses without our ability to distribute those costs to others.

For these reasons we urge you to remove the provision for the elimination of the sales tax exemption on property and services purchased by Exploration Place and similar institutions around the State.

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K A N S A S

JOAN WAGNON, ACTING SECRETARY

DEPARTMENT OF REVENUE
POLICY AND RESEARCH

KATHLEEN SEBELIUS, GOVERNOR

Testimony to the House Taxation Committee
Representative John Edmonds, Chair
Regarding the Kansas retailers' sale tax exemption for "Consumed in Production"

February 21, 2003

Presented for the Kansas Department of Revenue, Office of Policy and Research, by Mark Ciardullo, Tax Specialist.

I. Overview:

Property consumed in production: Tangible personal property is exempt if consumed in the production, manufacture, processing, mining, drilling, refining, or compounding of tangible personal property, the treating of by-products or wastes derived from such production process, the providing of services, or the irrigation of crops for ultimate sale at retail within or outside Kansas. [*Kan. Stat. Ann. § 79-3606(n)*.] Property which is consumed means tangible personal property which is essential or necessary to, and which is used in the actual process of and consumed, depleted or dissipated within one year in, the activities listed above. Among the property deemed consumed are (1) electricity, gas and water; and (2) starting July 1, 1999, petroleum products, lubricants, chemicals, solvents, reagents and catalysts. [*Kan. Stat. Ann. § 79-3602(m)* .] [*Kan. Stat. Ann. § 79-3602(m)* ; *Kan. Admin. Regs. § 92-19-53*.] Before July 1, 1999, the law provided that the exemption applied only to property that was immediately consumed or dissipated.

II. Applicable statutes:

K.S.A 79-3606(n) states that the following is exempt from Kansas retailers' sales tax:

“[a]ll sales of tangible personal property which is consumed in the production, manufacture, processing, mining, drilling, refining or compounding of tangible personal property, the treating of by-products or wastes derived from any such production process, the providing of services or the irrigation of crops for ultimate sale at retail within or without the state of Kansas; and any purchaser of such property may obtain from the director of taxation and furnish to the supplier an exemption certificate number for tangible personal property for consumption in such production, manufacture, processing, mining, drilling, refining, compounding, treating, irrigation and in providing such services;

K.S.A 79-3602(m) defines the term "Property which is consumed":

"Property which is consumed" means tangible personal property which is essential or necessary to and which is used in the actual process of and consumed, depleted or dissipated within one year in (1) the production, manufacture, processing, mining, drilling, refining or compounding of tangible personal property, (2) the providing of services, (3) the irrigation of crops, for sale in the regular course of business, or (4) the storage or processing of grain by a public grain warehouse or other grain storage facility, and which is not reusable for such purpose. The following is a listing of tangible personal property, included by way of illustration but not of limitation, which qualifies as property which is consumed:

(A) Insecticides, herbicides, germicides, pesticides, fungicides, fumigants, antibiotics, biologicals, pharmaceuticals, vitamins and chemicals for use in commercial or agricultural production, processing or storage of fruit, vegetables, feeds, seeds, grains, animals or animal products whether fed, injected, applied, combined with or otherwise used;

(B) electricity, gas and water; and

(C) petroleum products, lubricants, chemicals, solvents, reagents and catalysts."

K.A.R. 92-19-53 is the controlling regulation, which the department needs to update because of the 1998 statutory change from "immediately consumed" to "consumed within one year":

Consumed in production. (a) In order for purchases of tangible personal property to qualify for exemption under K.S.A. 1986 Supp. 79-3606(n) as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1 and amendments, the following requirements must be met:

(1) The tangible personal property must be essential or necessary to the process;

(2) the tangible personal property must be used in the actual process;

(3) the tangible personal property must be immediately consumed or dissipated in the process;

(4) the tangible personal property must be used in the production, manufacture, processing, mining, drilling, refining or compounding of tangible personal property, the providing of services or the irrigation of crops for ultimate sale at retail in the regular course of business; and

(5) the tangible personal property cannot be reusable for such purposes. The identity of the buyer, seller or item purchased is immaterial. Whether the purchase qualifies for exemption is determined by how the item is used in the production or processing activity. An item may be taxable for one use and exempt for another use, even though purchased by the same consumer. Each transaction shall be separately measured against the statutes and regulations to determine the taxability of the transaction.

(b) For the purposes of determining whether tangible personal property is consumed in the providing of services, the term "service" refers only to taxable services enumerated under the sales tax act. Each person providing a nontaxable service shall pay sales tax on all articles of tangible personal property and all services purchased by the person to provide the nontaxable service, and may not claim an exemption from sales tax.

(c) "Used in the actual process" means the use of the tangible personal property used shall:

- (1) Be integral and essential to the production or processing activity;
- (2) occur at the location where the production or processing activity is carried on; and
- (3) occur during the production activity.

The fact that a particular item of tangible personal property may be considered important to a production process does not, of itself, mean that the tangible personal property is used in the actual process. The following uses of tangible personal property do not qualify for exemption from sales tax as consumed in production: shipping, testing, repairing, servicing, maintaining, cleaning the equipment and the physical plant, and storing. Tangible personal property used in the administration of the business and wholesale, commercial or retail facilities or buildings do not qualify for exemption from sales tax as consumed in production.

(d) "Immediately consumed or dissipated" means that tangible personal property shall be consumed or destroyed both economically and physically in a time reasonably requisite in the production or processing activity. The fact that tangible personal property may be used for only one production or processing activity and then discarded, or that tangible personal property is rendered obsolete or worthless in a short time is not the determining factor. Purchases of tangible personal property used in a repetitive function to produce articles of tangible personal property designed to be sold to consumers and not immediately consumed or dissipated are subject to sales tax. Tangible personal property that is specifically produced to perform a specific job for a specific consumer and has no other value other than as scrap, may qualify for exemption from sales tax as consumed in production, if the purchased property meets the other requirements under the exemption. Tangible personal property which breaks, depreciates, wears out or becomes obsolete, albeit in a short time span, does not qualify for exemption from sales tax as consumed in production.

(e) Natural gas, electricity, heat and water consumed by machinery and equipment actually used to produce, manufacture, process, mine, drill, refine or compound tangible personal property, provide taxable services or irrigate crops for resale in the regular course of business, qualify for exemption as consumed in production.

(f) All purchases of tangible personal property by contractors, subcontractors, or repairmen for incorporation into any structure or for use in altering, servicing, repairing or maintaining personal property or personal property that has been affixed to real property are subject to sales tax unless specifically exempted by K.S.A. 1986 Supp. 79-3606(d), (e) as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1.

Contractors, subcontractors, repairmen, and consumers shall not purchase materials exempt from sales tax as consumed in the production of services whether or not the project is original construction. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3602, K.S.A. 1986 Supp. 79-3603 as amended by L. 1987, Ch. 182, Sec 108, K.S.A. 1986 Supp. 79-3606 as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1; effective May 1, 1988.)"

III. Examples of application of the law:

a) *Grain elevators:* Prior to the statutory change in 1998, the Kansas Supreme Court had held that electricity used by grain elevators in blending, cleaning, drying, and aerating grain was exempt from sales tax as being consumed in processing. The Kansas Supreme Court held that these activities improve the grain and maintain its marketability. The court also held that

electricity used by the elevators in turning and fumigating was not exempt. *In the Matter of the Appeal of Collingwood Grain, Inc.*, 891 P2d 411 (1995). It was impossible to apply these distinctions to establish the percentages of grain elevator electricity purchases that were taxable and exempt. The 1998 statutory change remedied this administrative quagmire by exempting all the electricity that a grain elevator purchases for use in their processing, storage, and grain handling operations

b) Well operations. Taxation of purchases of drilling mud, chemicals, and other materials that are used in drilling and servicing wells. (a) While Kansas law treats drilling contractors and well service providers as contractors, the law specifically exempts property consumed in drilling. *K.S.A. 2001 Supp. 79-3606(n)*. This exemption of consumables is unique to drilling contractors and well service providers. The consumed in production exemption does not extend to other contractors who service real property. This unique exemption means that, while drilling contractors and well service providers are required to pay tax on purchases of casing, plugs, cements, well heads, and other materials and equipment that make up a well structure or are used in providing their service, they may claim exemption on their purchases of drilling mud, chemicals, lubricants, electricity, diesel fuels, and similar items that are consumed in the process of drilling and servicing wells.

Items that a drilling contractor may buy exempt include lubricants, coolants, and the energy sources used to power drilling equipment and well servicing equipment. The energy source may be electricity, diesel fuel, gasoline, or gas used to power drilling equipment. Items consumed in drilling include acids, chemicals, drilling mud, reagents, and solvents that are placed in the well bore. Exemption may be claimed on these items whether their intended use is in a new well or in an existing well. Also exempt are water, lubricants, and petroleum products that are placed into the equipment that is used in drilling. In order to purchase these items without tax, the buyer should complete a Form ST-28C, Consumed in Production Exemption Certificate, and provide it to their supplier. Propping agents shall be considered to be a consumable and not as something that makes up the permanent well structure. Propping agents or proppants are granular material, such as sand grains or aluminum pellets, that are carried in suspension by the fracturing fluid that serves to keep the cracks open after a fracture treatment. *Revenue Ruling 19-2002-2*.

c) Application by Industry:

1. Agricultural -- Exempts fuels to power production equipment, irrigation equipment, lubricants.
2. Mining --- Exempts fuels to power production equipment, lubricants, explosives
3. Oil and gas extraction --- Exempts fuels to power drilling equipment, production equipment, extraction equipment, lubricants, drilling mud,
4. Construction Generally, the exemption is not applicable to contractors. However, entities that engage in the producing asphalt, concrete etc. for use on a construction project have been successful in claiming this exemption.
5. Manufacturing --- Exempts chemicals, utilities and fuels to power production equipment, catalysts, lubricants, drills, grinding wheels etc. that are consumed within one year.

6. Transportation --- Railroads claim exemption on utilities to power their warning lights, switching gear, etc.

7. Communications --- Exemption being claimed for electricity used by cable television companies, telephone companies, specific exemption for over-the-air broadcasters.

8. Pipelines --- Exemption being claimed for moving product in interstate commerce, exemptions being litigated for processing-like activities that occur as part of the transportation of product

9. Utility services --- Exemption claimed for electricity consumed to pressurize water in distribution pipes, for fuels to power generation equipment, lubricants

10. General merchandise stores --- None

11. Copy businesses --- Exemption claimed for electricity used to power copy machines, sorting machines, and similar equipment.

12. Eating and drinking places --- Exemption claimed for cooking and ice-making, but not refrigeration, dishwashing, general heating and air conditioning

13. Repair shops --- Exemption claimed for utilities used to repair tangible personal property, but not general heating and air conditioning

14. Hotels and motels --- Exemption claimed for utilities consumed in guestrooms, but not in the rest of the hotel unless there is a restaurant, bar, or pinball machines.

15. Motion picture exhibitors --- Exemption for utilities to project film and sound, for popcorn cooking, for icemakers.

16. Amusement and recreation services --- Exemption provided for utilities used to power amusement equipment, for lubricants used on such amusement equipment

IV. Problem areas.

1. Country clubs have claimed exemption and refunds for their use of general maintenance items, utilities, fertilizer for golf course, water for turf, sand for golf sand traps, etc. The Department's position is that country clubs consume these items in maintaining their real property facilities. The impositions found at K.S.A. 79-3603(e) (admission charges), K.S.A. 79-3603(m) (charges to participate in sports), and K.S.A. 79-3603(n) (club dues) do not mean that the consumed in production exemption applies to items used to maintain the country club's physical plant, including its building and real property. Rather, membership dues, admission charges, and green fees provide members with the use and enjoyment of the club's facility or allow them to participation in sports at the facility. Members do not make these payments to consume something that has become real property.

2. Telecommunications services providers and television cable service providers have claimed an exemption of their electrical purchases as being consumed in the production of a taxable service. The Department is litigating these claims.

3. Eating establishments that are supplied a utility from one meter must estimate exempt vs. taxable uses.