

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairperson David Corbin at 10:45 a.m. on March 6, 2003, in Room 519-S of the Capitol.

All members were present except: Senators Oleen, Pugh, and Taddiken

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

Conferees appearing before the committee: Melissa A. Wangemann, Deputy Assistant Secretary of State
Marlee Carpenter, Kansas Chamber of Commerce & Industry

Others attending: See attached list.

SB 29—Corporation code amendments

Senator Corbin noted that **SB 29** passed out of the Senate Judiciary Committee but was referred to the Senate Assessment and Taxation Committee after objections regarding the sections of the bill relating to franchise taxes paid by corporations were raised on the Senate floor.

Melissa Wangemann, Deputy Assistant Secretary of State, testified in support of **SB 29**, noting that it was introduced following a two-year study of the Kansas corporate code by a team of lawyers, and several revisions to the Kansas corporate code were reviewed by the Senate Judiciary Committee. She briefed the Committee on the sections of the bill relating to the franchise tax formula and the calculation of parent/subsidiaries net worth. As to the franchise tax formula, she noted that a 2002 amendment raised the rate for calculating the tax from \$1 to \$2 for each \$1,000 of net worth with the intent of doubling the general fund revenue received. However, that projection has not been realized during the first and second quarters of Fiscal Year 2003. She pointed out that the first two quarters may not reflect the new formula because most annual reports and franchise taxes are due in the third quarter, and many filers have been slow to learn of the increase. As to the calculation of net worth, she explained that, because the franchise tax is based on net worth, parent entities which own net worth in subsidiaries are taxed twice. In an effort to remedy this inequity, the Secretary of State amended the bill by adding a provision allowing a parent corporation to subtract any net worth reported by a subsidiary entity before computing its franchise tax. Ms. Wangemann noted that, although the amendment would have a fiscal impact on the State General Fund, the Secretary of State has no way to estimate the impact. In conclusion, she emphasized that the Secretary of State and the Kansas Bar Association are concerned that the noncontroversial and substantive law changes in **SB 29** will be lost because of continued debate on the franchise tax issue. For this reason, she requested that franchise tax issues be removed from the bill. (Attachment 1) For the Committee's information, Ms. Wangemann called attention to a handout concerning the type and number of entities that file annual reports with the Secretary of State and the amount of franchise tax paid. (Attachment 2)

Marlee Carpenter, Kansas Chamber of Commerce and Industry, testified in support of **SB 29**, noting that, primarily, it conforms the Kansas corporate code with the Delaware corporate code. She discussed concerns regarding the franchise fee provisions of the bill, reminding the Committee that the franchise fee was increased 100 percent without a hearing in the last hours of the 2002 Legislative Session. The Chamber supports the reduction of the franchise fee from \$2 to \$1 for every \$1,000 of net worth as amended into **SB 38** and suggests that **SB 29** be amended to reflect that change. She pointed out that reducing the fee would provide some relief to businesses most impacted by last year's increase. In addition, she noted that the Chamber believes that the cap should not be increased. In conclusion, Ms. Carpenter called attention to a copy of a suggested amendment to the franchise fee statute attached to her written testimony. She explained that the franchise fee is based on a company's net worth. For multi-state companies, there are three factors to apportion the net worth to Kansas—property, payroll, and sales. If a company does not have one of the

CONTINUATION SHEET

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE at 10:45 a.m. on March 6, 2003, in Room 519-S of the Capitol.

factors, the statute requires that it use 100 percent for that factor, thus causing the company's net worth apportioned to Kansas to be overstated. The Chamber believes it would be more appropriate to ignore the non-factor, which is consistent with the manner in which a non-factor is handled for income tax apportionment purposes. (Attachment 3)

Senator Corbin began a discussion of the fiscal impact related to Ms. Carpenter's suggestions. With regard to the fiscal note on **SB 29**, Chris Courtwright, Kansas Legislative Research Department, reported that, in conversations with the Secretary of State, the Division of the Budget, and the Department of Revenue, the Department of Revenue estimated that the bill would have a negative fiscal note of approximately \$6 million related to the parent/subsidiary language. If the amendment in **SB 38** was placed in **SB 29**, the Budget Division estimates an additional cost of \$10 million to \$11 million. He had no information on the apportionment amendment offered by Ms. Carpenter. Ms. Wangemann commented that the suggested amendment would decrease revenue, and she agreed to research the subject further and report back to the Committee. Senator Corbin commented that, although this is a policy issue, the fiscal note is an important factor. With this, the hearing on **SB 29** was closed.

Senator Corbin called the Committee's attention to the minutes of the February 25 and 26 meetings and the minutes of the meeting at the rail on February 26.

Senator Donovan moved to approve the minutes of the February 25 and 26, 2003, meetings and the meeting at the rail on February 26, seconded by Senator Haley. The motion carried.

The meeting was adjourned at 11:15 a.m.

The next meeting is scheduled for March 12, 2003.

SENATE ASSESSMENT AND TAXATION COMMITTEE
GUEST LIST

DATE: March 6, 2003

NAME	REPRESENTING
Meliss Wangemann	Sec of State
Fariba Pouranyan	Sec. of State
Jesse Borison	Sec. of State
Richard Crain	KDOR
Ann Dukes	DOB
Trista Curzydlo	KS Beer Assn.
Whitney Dauran	KS Bar Assn.
Jacqui Clark	Hallmark Cards Inc
Ashley Sherard	Lenexa Chamber
Spencer Lott	Sen. Buhler's Page
Brian Hatesohl	"
Brian Thomas	Sen. Buhler
Jason McEandless	"
Bill Brady	Ks Gov't Consulting
Marlee Carpenter	KCCI
Christy A Caldwell	Topeka Chamber of Comm.
Tom Bruno	GBBA
Deann Williams	KmCA
Ron Seiber	Hein Law Firm

SENATE ASSESSMENT AND TAXATION COMMITTEE
GUEST LIST

DATE: March 6, 2003

NAME	REPRESENTING
Dustin Bueck	Bottenberg & assoc.
Stuart Little	Overland Park Chamber
Dag Wareham	KGFA / KARA
George Petersen	MTN

RON THORNBURGH
Secretary of State



Memorial Hall, 1st Floor
120 S.W. 10th Avenue
Topeka, KS 66612-1594
(785) 296-4564

TESTIMONY OF THE SECRETARY OF STATE
TO THE SENATE TAXATION COMMITTEE
ON SB 29

MARCH 6, 2003

Mr. Chairman and Members of the Committee:

The Secretary of State appreciates the opportunity to appear today on SB 29. This bill was introduced by the Kansas Bar Association following a two-year study of the Kansas corporate code by a team of lawyers. The bill includes several revisions to the Kansas corporate code recommended by the study committee. The Secretary of State appears today only to brief the committee and to answer questions on the sections of the bill relating to franchise taxes paid by corporations.

Franchise Tax Formula. Corporations file an annual report with the Secretary of State in order to update information on our records. A "franchise tax" is paid at the time of filing the annual report, which is calculated based on net worth. From 1972 to 2002 the rate for calculating the tax was \$1 for each \$1,000 of net worth. The Kansas legislature raised the rate during the 2002 session to \$2 for each \$1,000 in net worth.

It is my understanding that the 2002 amendment was intended to double the general fund revenue received from the franchise tax from approximately \$18 million annually to \$36 million. According to the Division of Budget, this projection has not been realized during Fiscal Year 2003. The Division of Budget has reduced its estimate to a \$10.3 million increase for FY 2003.

The Secretary of State is able to provide comparison data for the first and second quarters of FY 2002 and FY 2003, which is given below. There has been an overall increase of \$2,335,451 in franchise taxes received, based on these two quarters only. It is important to note that most annual reports and franchise taxes are due April 15, which falls in the third quarter, therefore this data does not reflect our highest point of filing. Also, many filers have been slow to learn of the tax increase, and therefore the first two quarters may not reflect the new formula.

TOTAL AMOUNT OF FRANCHISE TAXES PAID
QUARTERLY COMPARISON

Quarter 1 - FY 2002	3,346,378
Quarter 2 - FY 2002	2,925,205
Quarter 1 - FY 2003	4,074,241
Quarter 2 - FY 2003	4,532,793

Senate Assessment & Taxation
3-6-03
Attachment 1

INCREASE IN FRANCHISE TAX RECEIVED BY QUARTER

Quarter 1 – FY 2002	Quarter 1 – FY 2003	\$727,863 increase
Quarter 2 – FY 2002	Quarter 2 – FY 2003	\$1,607,588 increase
Total Increase from Qtrs 1 and 2, FY 2002 to FY 2003		\$2,335,451

Calculation of Parent/Subsidiaries Net Worth

Because the franchise tax is based on net worth, parent entities that own net worth in subsidiaries are taxed twice. The Secretary of State receives complaints about this double taxation, and in an effort to remedy this inequity, we added a provision to the KBA bill that would allow a parent corporation to subtract any net worth reported by a subsidiary entity before computing its franchise tax, thereby eliminating the double taxation. A subsidiary entity is defined as ownership of over 50%, based on recommendations from the Department of Revenue.

This amendment will have a fiscal impact on state general funds; however, the effect cannot be determined. The Secretary of State does not track corporations by parent and subsidiary relationships, nor does the Department of Revenue. Without knowing how many corporations will use this provision we cannot estimate the overall fiscal impact.

The Secretary of State and the Kansas Bar Association are concerned that the noncontroversial and substantive law changes in SB 29 will be lost because of continued debate on the franchise tax issue. If the committee wishes to study the issue of franchise taxes further, we would request that the committee bifurcate the franchise tax issues from the remainder of the bill, allowing the corporate issues contained in SB 29 to continue through the legislative process.

I appreciate the opportunity to appear today and would be happy to answer questions.

Melissa A. Wangemann, Legal Counsel
Deputy Assistant Secretary of State

**TYPE AND NUMBER OF ENTITIES THAT FILE ANNUAL REPORTS
WITH THE SECRETARY OF STATE**

BUSINESS TRUSTS	4
FOREIGN BUSINESS TRUSTS	39
COOPERATIVE MARKETING ASSOCIATIONS	248
COOPERATIVE SOCIETIES	8
ELECTRIC COOPERATIVES	26
FOREIGN COOPERATIVES	10
DOMESTIC FOR PROFIT CORPORATIONS	45,024
FOREIGN FOR PROFIT CORPORATIONS	12,805
DOMESTIC NONPROFIT CORPORATIONS	13,942
FOREIGN NONPROFIT CORPORATIONS	531
PROFESSIONAL CORPORATIONS	2,673
DOMESTIC LIMITED LIABILITY COMPANIES	19,023
FOREIGN LIMITED LIABILITY COMPANIES	2,574
DOMESTIC LIMITED PARTNERSHIPS	2,118
FOREIGN LIMITED PARTNERSHIPS	704
DOMESTIC LIMITED LIABILITY PARTNERSHIPS	273
FOREIGN LIMITED LIABILITY PARTNERSHIPS	55
TOTAL	100,057

March 5, 2003

*Senate Assessment + Taxation
3-6-03
Attachment 2*

SB 29: These figures reflect only domestic and foreign corporations and professional corporations

Payment Ranges	FY 02: \$1 for every \$1000		FY 03 thru 2/27/03 \$2 for every \$1000	
	Number of filings	Franchise tax paid	Number of filings	Franchise tax paid
\$20	30,295	\$ 605,900.00	2,253	\$ 45,060.00
\$20.01-\$250	15,626	\$ 1,479,351.55	16,141	\$ 1,029,152.31
\$250.01-\$500	3,957	\$ 1,411,042.92	1,865	\$ 668,156.99
\$500.01-\$750	1,883	\$ 1,155,650.17	972	\$ 600,456.30
\$750.01-\$1000	1,015	\$ 877,890.80	593	\$ 511,537.82
\$1000.01-\$1250	672	\$ 750,501.69	412	\$ 459,386.60
\$1250.01-\$1500	455	\$ 621,466.27	287	\$ 391,706.90
\$1500.01-1750	319	\$ 515,760.11	199	\$ 322,381.12
\$1750.01-\$2000	235	\$ 439,565.00	157	\$ 292,693.77
\$2000.01-\$2250	213	\$ 452,167.75	130	\$ 274,390.46
\$2250.01-\$2500	2,432	\$ 6,070,495.48	471	\$ 1,165,844.64
\$2500.01-\$2750	N/A	N/A	67	\$ 175,746.71
\$2750.01-\$3000	N/A	N/A	49	\$ 141,212.13
\$3000.01-\$3250	N/A	N/A	38	\$ 118,325.65
\$3250.01-\$3500	N/A	N/A	30	\$ 100,816.85
\$3500.01-\$3750	N/A	N/A	31	\$ 112,930.45
\$3750.01-\$4000	N/A	N/A	27	\$ 104,400.35
\$4000.01-\$4250	N/A	N/A	20	\$ 82,515.60
\$4250.01-\$4500	N/A	N/A	20	\$ 87,421.43
\$4500.01-\$4750	N/A	N/A	22	\$ 101,903.50
\$4750.01-\$5000	N/A	N/A	590	\$ 2,951,879.17
Total	57,102	\$ 14,379,791.74	24,374	\$ 9,737,918.75

28-Feb-03

2-3

SB 38: These figures reflect only domestic and foreign limited liability companies, limited partnerships and limited liability partnerships

Payment Ranges	FY 02: \$1 for every \$1000		FY 03 thru 2/27/03: \$2 for every \$1000	
	Number of filings	Franchise tax paid	Number of filings	Franchise tax paid
\$20	10,288	\$ 205,760.00	432	\$ 8,640.00
\$20.01-\$250	13,584	\$ 1,294,438.67	3,631	\$ 205,417.42
\$250.01-\$500	3,523	\$ 370,205.72	315	\$ 112,911.97
\$500.01-\$750	507	\$ 312,206.11	168	\$ 103,738.83
\$750.01-\$1000	307	\$ 266,404.41	100	\$ 87,776.80
\$1000.01-\$1250	208	\$ 234,815.31	58	\$ 64,438.41
\$1250.01-\$1500	137	\$ 187,849.84	60	\$ 82,481.18
\$1500.01-1750	100	\$ 161,247.88	33	\$ 53,549.82
\$1750.01-\$2000	80	\$ 149,273.31	32	\$ 59,333.49
\$2000.01-\$2250	47	\$ 99,199.76	26	\$ 55,142.00
\$2250.01-\$2500	537	\$ 1,335,047.47	70	\$ 172,703.00
\$2500.01-\$2750	N/A	N/A	14	\$ 36,468.00
\$2750.01-\$3000	N/A	N/A	13	\$ 37,204.00
\$3000.01-\$3250	N/A	N/A	11	\$ 34,053.85
\$3250.01-\$3500	N/A	N/A	5	\$ 16,909.53
\$3500.01-\$3750	N/A	N/A	9	\$ 32,942.00
\$3750.01-\$4000	N/A	N/A	8	\$ 30,810.70
\$4000.01-\$4250	N/A	N/A	6	\$ 24,717.79
\$4250.01-\$4500	N/A	N/A	1	\$ 4,274.00
\$4500.01-\$4750	N/A	N/A	3	\$ 13,736.00
\$4750.01-\$5000	N/A	N/A	94	\$ 469,585.06
Total	29,318	\$ 4,616,448.48	5,089	\$ 1,706,833.85

28-Feb-03

LEGISLATIVE TESTIMONY



The Unified Voice of Business

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

SB 29

March 6, 2003

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony before the Senate Assessment and Taxation Committee
By Marlee Carpenter, Director of Taxation and Small Business

Mr. Chairman and members of the Committee:

My name is Marlee Carpenter with the Kansas Chamber of Commerce and Industry. We are here today to testify in favor of SB 29. Primarily, this bill conforms the Kansas Corporate Code with the Delaware Corporate Code. We support these changes. The Kansas Chamber also supports the subsidiary language embodied in SB 29. This language is pro-business and is a positive change for companies that operate in Kansas.

The issue that most concerns the Kansas Chamber in relation to this bill is the franchise fee. This is the fee Kansas businesses pay for the privilege of being certified to be in business in our state. For years the franchise fee was left untouched. However, in the last hours of the 2002 Session the franchise fee was increased 100% without a hearing or being passed by either the House or the Senate. We support the reduction of the franchise fee that was amended into SB 38, rolling back the rate from \$2 to \$1 for every \$1,000 of net worth. We believe that SB 29 should be amended to reflect these changes.

The Kansas Chamber believes that reducing this fee would provide some relief to businesses most impacted by last year's increase. The Kansas Chamber also believes that the cap should not be increased. The business community believes that increasing the cap would be a tax increase on Kansas business—a second year in a row. Again, the franchise fee reduction would help small business, the businesses that need help the most in these tough economic times.

*Senate Assessment & Taxation
3-6-03
Attachment 3*

ally, we would request a second amendment to the franchise fee statute. Currently, the franchise fee is based on a company's net worth. For multi-state companies, the statute provides ways to apportion net worth to Kansas. There are three factors to apportion the net worth, property, payroll and sales. If a company doesn't have a factor, the statute requires that they use 100% for that factor. For example, if a company has property and sales but no payroll, the current statute requires the company to use a 100% payroll factor in the apportionment calculation. This causes the company's net worth apportioned to Kansas to be overstated. The Kansas Chamber believes it would be more appropriate to ignore the non-factor when determining the net worth apportioned to Kansas. This proposed methodology is consistent with the manner in which a non-factor is handled for income tax apportionment purposes. We believe that a change in this language would more fairly represent the net worth of a multi-state company for franchise fee purposes. I have attached suggested language to my testimony.

KCCI appreciates the budget challenge facing Kansas lawmakers. However, it is equally clear these are difficult days for business in Kansas and we respectfully request that our concerns be considered by this committee.

Thank you for the opportunity to comment on SB 29. I would be happy to answer any questions.

About the Kansas Chamber of Commerce and Industry

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas and to the protection and support of the private competitive enterprise system.

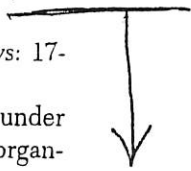
KCCI is comprised of more than 2,000 businesses, which includes 200 local and regional chambers of commerce and trade organizations that represent more than 161,000 business men and women. The organization represents both large and small employers in Kansas, with 48% of KCCI's members having less than 25 employees and 78% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

3-3

rising in this state, during the time the corporation was authorized to transact business in this state, may thereafter be made by service upon the secretary of state in the manner prescribed by K.S.A. 60-304, and amendments thereto.

Sec. 81. K.S.A. 17-7501 is hereby amended to read as follows: 17-7501. As used in this act:



(a) "Domestic corporation" means any corporation organized under the laws of this state, irrespective of whether such corporation is organized for profit.

(b) "Foreign corporation" means any corporation organized under the laws of any jurisdiction other than this state.

(c) "Articles of incorporation" means the original articles of incorporation filed to create a corporation, but such term also includes the charter, articles of association and any other instrument by whatever name known under which a corporation has been or may be lawfully formed.

(d) "Shareholder's equity" means the sum of: (1) Paid-in capital stock, except that paid-in capital stock shall not include any capital stock issued by a corporation and reacquired by such corporation through gift, purchase or otherwise and available for resale or retirement; (2) capital paid in, in excess of par; and (3) retained earnings, except that any moneys which have been allocated and are payable to the members of any corporation which is organized as a cooperative association or society shall not be included as part of the retained earnings of such corporation for the purpose of this act; *minus the amount of equity owned in any subsidiary entity reported on the subsidiary entity's annual report.*

(e) "Shareholder's equity attributable to Kansas" means the shareholder's equity of a corporation multiplied by a percentage which is the average of the following three percentages: (1) The average value of the corporation's real and tangible personal property owned or rented and used in this state during the next preceding tax period divided by the average total value of the corporation's real and tangible personal property owned or rented and used during the next preceding tax period; (2) the total amount of compensation paid by the corporation in this state during the next preceding tax period divided by the total amount of compensation paid everywhere by the corporation during the next preceding tax period; and (3) the total sales of the corporation in this state during the next preceding tax period divided by the total sales of the corporation everywhere during the next preceding tax period. If a corporation has no property or activity mentioned in one of the above factors, the appropriate percentage for that factor is 100%.

the factor with no property or activity shall be ignored and the average of the percentages shall be calculated by averaging the remaining factors. If there are no factors with property or activity, the average factor shall be zero.

(f) "Tax period" means a corporation's taxable year under the Kansas income tax act.

(g) "Subsidiary entity" means an entity in which a corporation holds