

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman Kenny Wilk at 9:00 A.M. on March 17, 2005 in Room 519-S of the Capitol.

All members were present.

Committee staff present:

Chris Courtwright, Legislative Research Department
Martha Dorsey, Legislative Research Department
Gordon Self, Revisor of Statutes
Richard Cram, Department of Revenue
Rose Marie Glatt, Committee Secretary

Conferees appearing before the committee:

Melissa Wangeman, Legal Counsel, Secretary of State
Secretary Wagnon, Department of Revenue
Larry Baer, League of Kansas Municipalities
T.C. Anderson, Kansas Society of CPA's

Others attending:

See attached list.

SB 37- Franchise fee law modifications relating to fee name, extensions and information required.

Mr. Courtwright distributed copies of the interim report from the 2004 Special Committee on Assessment and Taxation (Attachment 1). He stated that the bill as amended, would make a number of changes to provisions relating to the franchise fee collected by the Secretary of State, effective January 1, 2006. The bill would rename the annual \$40 fee from "franchise fee" to "report fee"; would eliminate extensions of time for entities to file their annual reports with the Secretary of State; and would repeal requirements that annual reports need to reflect the financial condition of the entities.

Melissa Wangeman, Legal Counsel, Secretary of State, appeared to answer questions regarding **SB 37**, a bill proposed by the Secretary of State (Attachment 2). She stated the bill appears to contain several new provisions, however, the bill was a reconciliation bill intended to reconcile **SB 29** and **SB 147**, two bills passed in 2004. The balance of the bill contained cleanup provisions recommended by the Secretary of State during the interim committee.

Key points of the bill follow:

- Elimination of Extensions - Because calculating the entity's net worth is no longer necessary, the need for an extension is unnecessary.
- Financial Condition Reported on Annual Reports - **SB 37** deletes an obsolete provisions saying that an entity files an annual report "showing its financial condition."
- Change name from Franchise Fee to Annual Report Fee. **SB 37** also replaces references to the franchise fee with the term "annual report fee."
- Elimination of Balance Sheets. **SB 37** also eliminates balance sheets from the annual reports filed by business trusts and cooperatives.

The Senate Committee adopted several technical amendments, and eliminated the reporting of authorized shares of stock and the stocks' par value, because the committee believed this language revealed too much private financial information.

Secretary Wagnon, Department of Revenue, requested that **SB 37** be amended in order to address a franchise tax interpretation issue that had arisen since enactment of 2004 House Substitute for **SB 147** (Attachment 3). She explained the time frame for franchise tax returns, payments and formulas used for franchise tax

CONTINUATION SHEET

MINUTES OF THE House Taxation Committee at 9:00 A.M. on March 17, 2005 in Room 519-S of the Capitol.

calculation purposes. The terms “preceding taxable year”, “preceding” and “next preceding” had generate many questions both within the Department and from tax practitioners, and to clarify the intent of the statute the Department recommended the deletion of those terms.

T.C. Anderson, Kansas Society of CPA’s, rose in support of **SB 37**. He stated that their practitioners had been confronted with two major items in the switch to the franchise tax, (a) change from authorized shares to issued shares and (b) the term “preceding year”. He stated that both of those problems have been addressed in the bill (No written testimony).

The Vice Chairman closed the hearing on SB 37.

SB 209 - Transportation Development District Act, district sales tax

Mr. Self explained the bill would eliminate protest petition provisions that currently authorize property owners to force an election on the proposed imposition of a transportation development district sales tax; and would clarify that the public hearing on the advisability of creating the district also would be expanded to include the intention of the district to levy the tax. There were additional amendments regarding language pertaining to the cost of the projects.

Larry Baer, League of Kansas Municipalities, appeared in support of **SB 209** (Attachment 4). The original intent of the bill was to provide clean up and clarification of two sections of the Transportation Development District Act. (TDD) and the bill removed the reference to a protest petition.

The League, however, wished to express its concern about the Senate’s change from “estimated cost” to “maximum cost”. They understand the rationale of the change, but believe that there can be unintended consequences. No matter how carefully estimates are prepared, unforeseen events can occur that result in cost overruns. They asked the Committee give consideration to their stated concerns.

There being no other conferees the Vice Chairman closed the hearing on **SB 209**.

SB 256 - Income tax exemption for amounts received for recruitment and student loan repayments by members of military.

The Chairman opened the hearing on **SB 256**.

Representative Owens made the motion to move out SB 256 favorably for passage. Representative Goico seconded the motion. The motion carried.

HB 2406 - Providing for public improvement districts.

Mr. Courtwright stated the bill authorizes the establishment of public improvement districts where three or more counties may come together and form a public improvement districts and have the authority to levy a sales and/or property tax.

The Chairman opened the hearing on **HB 2406**.

Representative O’Malley made the motion to adopt an amendment to **HB 2406** to remove the 1 mill cap. Representative Menghini seconded the motion. The motion carried.

Representative Owens made a motion to adopt a technical amendment to Section 2, line27, that would insert the word “taxable” before real and tangible personal property. Representative Menghini seconded the amendment. The motion carried.

Representative Owens made the motion that the House Taxation Committee move **HB 2406**, as amended, favorably for passage. Representative Treaster seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE House Taxation Committee at 9:00 A.M. on March 17, 2005 in Room 519-S of the Capitol.

SB 138 - Income tax credit for business firms employing certain teachers when school is not in session.

The Chairman opened the floor for discussion on **SB 138**.

The Department of Revenue offered a balloon for consideration (Attachment 5). Secretary Wagnon stated language had been added that in the event in which a teacher entering into a partnership voluntarily leaves the employment of the school district, during the term of the agreement or within one year after the agreement, the business firm shall repay, to the state, credits claimed under the section.

Language regarding the issue of commensurate employment was added by stating that under the partnership agreement that such agreement shall contain a description of the duties of the position the teacher will be performing, sufficient to establish that such position satisfies the criteria set forth in section (f).

The Chairman requested that the following three points be added to **SB 138**; (1) a Congressional distribution clause, ensuring the credits are spread out over the four districts, (2) a three year sunset clause, (3) an annual evaluation and report to be submitted to the Legislative Education Planning Committee (LAPC) for review, at which time the issue would return to the Legislature, in its entirety, for a total evaluation.

The Chairman requested that the Department of Revenue prepare a revised balloon with the additional language and return for further discussion.

The Chairman closed the hearing on **SB 138**.

The meeting was adjourned at 10:30 a.m. The next meeting is March 18, 2005.

HOUSE TAXATION COMMITTEE GUEST LIST

DATE: March 17, 2005

NAME	REPRESENTING
LARRY R BAER	LKW
Martha Jean Smith	KMHA
Mike Shaverdi	PMCA of KS
George Peterson	Ks Taxpayers Network
Julia Clark	Palomares
Mike Murray	Sprint
Jim Boig	Sec. of State
Dani Davey	Intern - Dillmore
Mike Reacht	Gashes - Braden
KEN DANIEL	KS SMALL BIZ. COM
Janelle Nuessen	Hein Law Firm
Stephanie Mickelsen	SOS
Alexis Wagoner	SOS
Paul Wagner	ADOR
Steve Stolt	"
S. Q. Johnson	KSOPRA
Richard Acorn	KDOR
Erik Sartorius	City of Overland Park
BRAD HARRELSON	KFB

HOUSE TAXATION COMMITTEE GUEST LIST

DATE: March 17, 2005

NAME	REPRESENTING
Michelle Peterson	Kansas Governmental Consulting
Hal Hudson	NFIB/KS - Topeka
John Peterson	Ks Governmental Consultant

Special Committee on Assessment and Taxation

FRANCHISE TAX ADMINISTRATION

CONCLUSIONS AND RECOMMENDATIONS

The Committee finds that a variety of trailer legislation should be considered by the 2005 Legislature to assure a smooth transition to the new franchise tax and fee system; and to assure that revenues will be produced at the levels estimated.

Proposed Legislation: The Committee recommends the introduction of three bills on this topic.

BACKGROUND

Legislation enacted in 2004 made numerous structural changes in the franchise tax, effective for tax year 2004 and thereafter. The rate of the tax was reduced from 0.2 percent of shareholder equity or net worth to 0.125 percent. The maximum liability "cap" of \$5,000 also was increased to \$20,000; and a new exemption was provided for entities with equity or net worth of \$100,000 or less. Administration of the franchise tax based on shareholder equity or net worth was relocated from the Office of the Secretary of State to the Department of Revenue. Corporations and associations, limited liability companies, limited partnerships, and business trusts are now required to file annual returns with the Director of Taxation and remit the franchise tax liability before April 15 of each year.

The Secretary of State's Office maintains a separate annual franchise fee of \$40 for for-profit and not-for-profit entities. All franchise taxes and fees continue to be deposited in the State General Fund.

As a result of all of these new franchise tax provisions, the Legislative Coordinating Council in July approved a charge for the Special Committee to monitor implementation of the new law approved by the 2004 Legislature; receive information from the Department of Revenue and Secretary of State on the administration of the new system; and recommend the

introduction of any trailer legislation deemed appropriate.

COMMITTEE ACTIVITIES

At the September meeting, the Department of Revenue reported that the agency had held a number of coordination meetings over the summer with the Secretary of State's Office regarding implementation of the new law. Officials with the Department said that it was developing a new franchise tax form (K-150), which entities subject to the tax will use to file beginning in tax year 2004. The officials also will receive regular updates from the Secretary of State regarding the database of registered entities. The officials suggested at least one piece of necessary trailer legislation, noting that when the new law was written, a previous requirement that corporate charters be forfeited if taxes are not paid within 90 days of the due date (generally, April 15) did not go along with that portion of the liability associated with the tax collected by the Department of Revenue. The forfeiture provision still exists in that portion of the law relative to the collection of the annual \$40 fee by the Secretary of State. A conferee representing Sprint said that reinserting the forfeiture language with respect to the portion of the tax collected by the Department would be acceptable, so long as language requiring that an entity be notified prior to the potential forfeiture also is retained.

The Secretary of State also collects a \$10 administrative fee and a \$5 technology fee on all annual reports of for-profit entities pursuant to statutory authority contained in KSA 75-438 and 75-444.

The Deputy Assistant Secretary of State presented several additional suggested amendments, including elimination of obsolete language noting that the annual reports are to be indicative of an entity's financial condition; elimination of a provision authorizing the Secretary of State to grant filing extensions; changing the name of the franchise fee to "annual report fee" or "filing fee" so as to avoid confusion with the franchise tax (now collected by the Department); and the restoration of the "zero rule" component to the franchise tax formula so as to prevent holding companies from having less liability than had been assumed when the law was rewritten in 2004.

At the November meeting, the Committee reviewed its policy options and made final decisions.

CONCLUSIONS AND RECOMMENDATIONS

The Committee finds that a variety of trailer legislation should be considered by the 2005 Legislature to assure a smooth transition to the new franchise tax and fee system; and to assure that revenues will be produced at the levels estimated.

The Committee therefore recommends three pieces of legislation: the restoration of corporate charter forfeiture provisions relative to delinquencies in that portion of the tax collected by the Department of Revenue; restoration of the "zero rule" to the franchise tax formula so as to avoid less collection of revenue from holding companies than had been assumed by the 2004 Legislature; and elimination of language indicating that reports filed with the Secretary of State should reflect the financial condition of entities, elimination of language authorizing the Secretary of State to grant extensions, and a change in the name of the franchise fee to "annual report fee" so as to help avoid confusion with the franchise tax collected by the Department.

RON THORNBURGH
Secretary of State



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120 S. W. 10th Avenue
Topeka, KS 66612-1594
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TESTIMONY OF THE SECRETARY OF STATE
TO THE HOUSE COMMITTEE ON TAXATION
ON SB 37

MARCH 17, 2005

Mr. Chairman and Members of the Committee:

The Secretary of State appreciates the opportunity to appear today to brief the committee and answer questions relating to SB 37, a bill requested by our office.

The bill appears to contain several new provisions; however, it is important to note that this bill is a reconciliation bill intended to reconcile two bills passed last year. The first bill was SB 29, proposed by the Kansas Bar Association to update the corporate code, which included amendments to annual reports. The second is House Substitute for SB 147, which was passed late in the session amending franchise taxes, which are contained in the same statutory sections as annual reports.

My testimony does not address any of the provisions that are merely reconciled. The balance of the bill contains cleanup provisions recommended by the Secretary of State during the interim committee's study of the franchise tax and franchise fee last fall. The Secretary of State requested the following amendments, which are contained in SB 37:

1. Elimination of Extensions. Current law allows a business entity to file an extension to extend the period of time to file the annual report and pay the franchise fee. Generally, business entities file extensions so they will have more time to prepare their financial statements and balance sheets for both income taxes and the franchise tax. The new franchise fee paid to the Secretary of State is a flat fee of \$40—it is no longer based on net worth. Because calculating the entity's net worth is no longer necessary, the need for an extension becomes unnecessary. Eliminating extensions frees up staff time for other customer services, and more importantly, the franchise fee is deposited to the state general fund at an earlier date. SB 37 would eliminate extensions from the law.

Sections 3, 18, 20, 24, and 28 were further amended by the Senate Committee to adjust reconciliation provisions of the bill, and to keep confidential the copies of extensions currently on file with the Secretary of State.

2. Financial Condition Reported on Annual Reports. The current law contains several provisions saying that an entity files an annual report "showing its financial condition." Because

Hs Taxation Committee
March 17, 2005
Attachment 2

the annual report no longer lists any financial information, this obsolete provision is deleted from the law in SB 37.

3. Change Name from Franchise Fee to Annual Report Fee. SB 37 also replaces references to the franchise fee with the term “annual report fee.” We believe a different name will prevent confusion between the “franchise tax” paid to the Department of Revenue, and the “franchise fee” paid when the annual report is submitted to the Secretary of State.

4. Elimination of Balance Sheets. SB 37 also eliminates balance sheets from the annual reports filed by business trusts and cooperatives. Balance sheets were removed from annual reports for other business entities in 1997. SB 37 removes balance sheets from these entities’ reports to create uniformity and consistency among all business entity annual reports.

The Senate Committee adopted additional amendments, which were mostly technical in nature. The senate amendments corrected several references to “franchise tax” to refer instead to the new fee. The senate adjusted the reporting requirements for addresses of officers, directors and partners in order to make them consistent with the requirements contained in the new corporate code. The senate’s only substantive amendment eliminated the reporting of authorized shares of stock and the stocks’ par value—the committee believed this language revealed too much private financial information. Lastly, the committee added a delayed effective date of January 1, 2006, to avoid any changes in the middle of the tax year.

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

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



K A N S A S

JOAN WAGNON, SECRETARY

DEPARTMENT OF REVENUE
OFFICE OF THE SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

March 17, 2005

Testimony to the House Taxation Committee
Richard Cram, Director of Policy & Research

Senate Bill 37 Proposed Amendment

Representative Wilk, Chair, and Members of the Committee:

The Department of Revenue requests an amendment to Senate Bill 37, in order to address a franchise tax interpretation issue that has arisen since enactment of 2004 House Substitute for Senate Bill 147, which moved the administration of the franchise tax from the Secretary of State to the Department, beginning with tax year 2004 franchise tax returns.

Under the current franchise tax law, effective in tax year 2004, foreign and domestic for-profit corporations, certain associations, limited liability companies, limited liability partnerships, limited partnerships, and business trusts doing business in Kansas with net equity in the State of \$100,000 or more are subject to franchise tax at the rate of .125% of net equity in Kansas, up to a maximum liability of \$20,000 per entity. K.S.A. 2004 Supp. 79-5401(a) provides that the net equity calculation is determined based on values "at the end of the preceding taxable year." The franchise tax return and payment are due by the 15th day of the 4th month following the close of the tax year.

If the business entity is doing business or has assets in multiple states, then the three-factor formula set forth at K.S.A. 2004 Supp. 79-5401(f) is used to determine net equity in Kansas for franchise tax calculation purposes. Under that formula, the three factors are: (1) average value of the entity's real and tangible personal property owned or rented in Kansas, divided by the average value of the entity's real and tangible personal property owned or rented everywhere; (2) compensation paid in Kansas divided by compensation paid everywhere; and (3) sales made in Kansas divided by sales made everywhere. These three factors are calculated, then averaged, and that average percentage is applied against the entity's total net equity. The resulting portion of total net equity is the "net equity in Kansas" that is subject to the franchise tax at the rate of .125% (up to \$20,000 maximum). K.S.A. 2004 Supp. 79-5401(f) provides that for purposes of the three-factor formula, the average values of these assets are determined during the "next preceding tax period."

For example, if a Missouri corporation doing business in Kansas has 5% of its real and tangible personal property in Kansas, 10% of its payroll in Kansas, and 15% of its sales in Kansas, under the three-factor formula, the apportionment factor would be 10%. If the Missouri

corporation has total net equity of \$1 million, then 10% of that amount is \$100,000, which is the net equity in Kansas. Franchise tax due would be .125% times \$100,000, or \$12,500.

The use of the terms “preceding taxable year” in 79-5401(a) and “next preceding tax period” in 79-5401(f) has generated many questions both within the Department and from tax practitioners. Are those terms referring to the same tax year or period, or different tax years or periods? If those terms refer to different tax years or periods, this adds needless uncertainty and confusion to the franchise tax calculation. Asset values and the net equity determination should be based on one and the same time period.

The Department recommends that the words “preceding” and “next preceding” be deleted from K.S.A. 2004 Supp. 79-5401(a) and (f), wherever those words appear, as shown in the attachment. This change would clarify that for purposes of calculating franchise tax liability in 79-5401(a) and net equity in Kansas under the three-factor formula in 79-5401(f), asset values will be determined in the tax year or tax period for which the franchise tax is due. Taxpayers and practitioners will spared a great deal of confusion.

79-5401. (a)(1) For any foreign or domestic for profit corporation, or professional corporation or association, duly registered and authorized to do business in Kansas by the secretary of state and which has taxable equity attributable to Kansas of \$100,000 or more, such entity shall pay an annual franchise tax to the secretary of revenue at the rate of .125% of such entity's taxable equity attributable to Kansas, except that such annual franchise tax for any such entity shall not exceed \$20,000.

(2) For any foreign or domestic limited liability company, foreign or domestic limited partnership or foreign or domestic limited liability partnership duly registered and authorized to do business in Kansas by the secretary of state and which has net capital accounts located *in* or used in this state at the end of the ~~preceding~~ taxable year as required to be reported on the federal partnership return of income of \$100,000 or more, such entity shall pay an annual franchise tax to the secretary of revenue at the rate of .125% of the net capital accounts located in or used in this state at the end of the ~~preceding~~ taxable year as required to be reported on the federal partnership return of income, or for a one-member LLC taxed as a sole proprietorship which has net book value of the LLC as calculated on an income tax basis located in or used in this state at the end of the ~~preceding~~ taxable year of \$100,000 or more, .125% of net book value of the LLC as calculated on an income tax basis located in or used in this state at the end of the preceding taxable year, except that such annual franchise tax for any such entity shall not exceed \$20,000.

(3) For any business trust duly registered and authorized to do business in Kansas by the secretary of state *and* which has corpus as shown on its balance sheet at the end of the ~~preceding~~ taxable year as required to be reported to the secretary of revenue of \$100,000 or more, such entity shall pay an annual franchise tax to the secretary of revenue at the rate of .125% of the corpus as shown on its balance sheet at the end of the ~~preceding~~ taxable year as required to be reported to the secretary of revenue or in the case of a foreign business trust which has a corpus which is located in or which it uses or intends to use in this state as shown on its balance sheet at the end of the ~~preceding~~ taxable year as required to be reported to the secretary of revenue of \$100,000 or more, .125% of that portion of the corpus which is located in or which it uses or intends to use in this state as shown on its balance sheet at the end of the ~~preceding~~ taxable year as required to be reported to the secretary of revenue, except that the annual franchise tax for any such entity shall not exceed \$20,000. Such balance sheet shall be as of the end of the tax period, certified by the trustee, fairly and truly reflecting the trust assets and liabilities and specifically setting out its corpus, and, in the case of a foreign business trust, fairly and truly reflecting an allocation of its moneys and other assets as between those located, used or to be used, in this state and those located, used or to be used elsewhere.

(b)(1) Every corporation or association, business trust, limited liability company, limited partnership or limited liability partnership subject to taxation under this act, regardless of whether such entity has a franchise tax liability, shall make a return, stating specifically such information as may be required by the forms, rules and regulations of the secretary of revenue, which return shall include a balance sheet listing all assets and liabilities as of the end of the tax year, as reported in the federal income tax return on form 1120 or, if no such federal return is required to be filed, such balance sheet information as otherwise required by the secretary, and such further information showing the allocation or apportionment calculations in computing the amount of the franchise tax. The return of a corporation or association shall be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer so authorized to act. The fact that an individual's name is signed on a return shall be *prima facie* evidence that such individual is authorized to sign such return on behalf of such

corporation. In cases where receivers, trustees in bankruptcy or assignees are operating the property or business of corporations, such receivers, trustees, or assignees shall make returns for such corporations in the same manner and form as corporations are required to make returns. Any tax due on the basis of such returns shall be collected in the same manner as if collected from the corporation for which the return is made. The returns of a limited liability partnership shall be signed by a partner of the limited liability partnership. The returns of a limited liability company shall be signed by a member of the limited liability company.

(2) All returns shall be filed in the office of the director of taxation on or before the 15th day of the fourth month following the close of the taxable year, except as provided in subsection (b)(3).

(3) The director of taxation may grant a reasonable extension of time for filing returns in accordance with rules and regulations of the secretary of revenue. Whenever any such extension of time to file is requested by a taxpayer and granted by the director, no penalty authorized by K.S.A. 79-3228, and amendments thereto, shall be imposed if 90% of the liability is paid on or before the original due date.

(c)(1) All taxes imposed under the provisions of the Kansas franchise tax act shall be paid on the 15th day of the fourth month following the close of the taxable year. When the tax as shown to be due on a return is less than \$5, such tax shall be canceled and no payment need be remitted by the taxpayer.

(2) The director of taxation may extend the time for payment of the tax, or any installment thereof, for a reasonable period of time not to exceed six months from the date fixed for payment thereof. Such extension may exceed six months in the case of a taxpayer who is abroad. Interest shall be charged at the rate prescribed by K.S.A. 79-2968, and amendments thereto, for the period of such extension.

(d) The provisions of K.S.A. 79-3226, 79-3228, 79-3228a, 79-3229, 79-3230, 79-3233, 79-3233a, 79-3233b, 79-3233g, 79-3233h, 79-3233i, 79-3234, 79-3235 and 79-3236, and amendments thereto, shall apply to the administration and enforcement of this section.

(e) All taxes paid pursuant to the provisions of this act shall be rounded off to the nearest \$1, and unless other disposition is specifically provided by law, the taxes collected under the provisions of this act and all overpayments which may not be refunded under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund. The secretary of revenue shall not refund any overpayment of franchise taxes which is equal to \$5 or less, shall not credit any domestic corporation or foreign corporation, association, business trust, limited liability company, limited partnership or limited liability partnership with any amount which may not be refunded under this section, and shall not require reimbursement for any underpayment of franchise taxes which is less than \$5. Franchise tax refunds shall be paid to the claimant from the income tax refund fund upon warrants of the director of accounts and reports pursuant to vouchers approved by the director of taxation, but no warrant issued hereunder shall be drawn in an amount less than \$5. No interest shall be allowed on any payment made to a claimant pursuant to this act.

(f) As used in this section: (1) "Act" means the Kansas franchise tax act;

(2) "net book value as calculated on an income tax basis located in or used in this state" means the net book value of a limited liability company multiplied by a percentage which is the average of the following three percentages: (A) The average value of the limited liability

company'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 limited liability company's real and tangible personal property owned or rented and used during the ~~next preceding~~-tax period; (B) the total amount of compensation paid by the limited liability company in this state during the ~~next preceding~~-tax period divided by the total amount of compensation paid everywhere by the limited liability company during the ~~next preceding~~-tax period; and (C) the total sales of the limited liability company in this state during the ~~next preceding~~-tax period divided by the total sales of the limited liability company everywhere during the ~~next preceding~~-tax period. If a limited liability company has no real and tangible property owned or rented and used, compensation paid or sales made for the preceding tax period, then the average percentage shall be determined by using only those percentages for property, compensation and sales which reflect property or activity;

(3) "net capital accounts located in or used in this state" means the net capital accounts of a limited partnership or limited liability partnership as stated on the federal income tax return multiplied by a percentage which is the average of the following three percentages: (A) The average value of such entity'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 such entity's real and tangible personal property owned or rented and used during the ~~next preceding~~-tax period; (B) the total amount of compensation paid by such entity in this state during the ~~next preceding~~-tax period divided by the total amount of compensation paid everywhere by such entity during the ~~next preceding~~-tax period; and (C) the total sales of such entity in this state during the ~~next preceding~~-tax period divided by the total sales of such entity everywhere during the ~~next preceding~~-tax period. If such entity has no real and tangible personal property owned or rented and used, compensation paid or sales made for the ~~preceding~~-tax period, then the average percentage shall be determined by using only those percentages for property, compensation and sales which reflect property or activity;

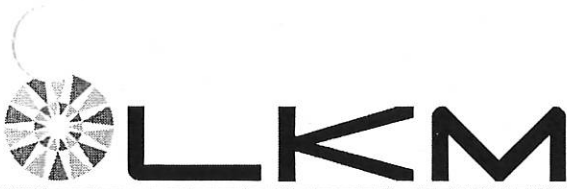
(4) "shareholder's equity" means the sum of: (1) Paid-in capital stock, except that paid-in capital stock shall not include any capital stock issued by a corporation and reacquired by such corporation through gift, purchase or otherwise and available for resale or retirement; (2) capital paid in, in excess of par; and (3) retained earnings, all as stated on such corporation's federal income tax return;

(5) "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: (A) 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; (B) 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 (C) 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 real and tangible personal property owned or rented and used, compensation paid or sales made for the ~~preceding~~-tax period, then the average percentage shall be determined by using only those percentages for property, compensation and sales which reflect property or activity; and

(6) "taxable equity attributable to Kansas" means shareholder's equity attributable to Kansas.

(g) The provisions of this section shall apply to all tax years commencing after December 31, 2003.

(h) The provisions of this section shall be known and may be cited as the Kansas franchise tax act.



League of Kansas Municipalities

Date: March 17, 2005
To: House Committee on Taxation
From: Larry R. Baer
Assistant General Counsel
Re: SB 209 – Testimony in Support

Thank you for allowing me to appear before you today on behalf of the League of Kansas Municipalities and its member cities. The League appears in support of SB 209.

The original intent of SB 209 was to provide clean up and clarification of two sections of the Transportation Development District Act (TDD). To this regard, it does remove the reference to a protest petition, the period of delay that is occasioned by the protest period and the need for the calling of an election if a valid protest petition is filed. There is no need for a protest provision because the formation of a TDD requires the petition of 100% of the landowners within the proposed district. In other words, all parties involved have requested and consented to the formation of the TDD and there is no one left to protest. The net result is that the adoption of the ordinance to create the district, authorize the project, etc. is delayed for no reason while the 30 day protest period runs.

The League, however, does wish to express its concern about the Senate's change from "estimated cost" to "maximum cost". We understand the rationale of the change, but feel that there can be unintended consequences. Cities strive to accurately estimate the costs of all types of projects. But no matter how carefully estimates are prepared, unforeseen events can occur that result in cost overruns. LKM is concerned that in an attempt to avoid an overrun the maximum cost will be inflated. This can then result in the project being "fluffed up" to live up to the stated maximum cost, or it results in no project or "project reluctance" because of what is perceived as too great of cost. Other possible consequences are that some necessities are omitted to avoid exceeding the stated maximum cost or a project fails because adequate financing cannot be provided.

The League does support SB 209. However, we do ask that you give consideration to our stated concerns at such time as the bill is worked.

Thank you for your attention to this matter.

Hs Taxation Committee
March 17, 2005
Attachment 4

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 2005

SENATE BILL No. 138

By Committee on Commerce

1-28

12 AN ACT concerning taxation; providing for a tax credit against the in-
13 come tax liability of certain business firms.

14
15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. (a) For taxable years commencing after December 31,
17 2004, any business firm which has entered into a partnership agreement
18 pursuant to subsection ~~(d)~~ shall be allowed a credit against the income
19 tax imposed by the Kansas income tax act as follows:

20 (1) An amount equal to 25% of the amount paid during the taxable
21 year by such business firm to teachers as salary pursuant to the partner-
22 ship agreement; or

23 (2) an amount equal to 30% of the amount paid during the taxable
24 year by such business firm to teachers as salary pursuant to the partner-
25 ship agreement if the teacher is teaching in a school district located in a
26 rural community, underserved area, or underperforming urban area.

27 (b) **[In no event shall the total amount of credits allowed under
28 this section exceed \$500,000 for any one fiscal year.**

29 (c) The credit allowed by this section shall not exceed the amount
30 of tax imposed under the Kansas income tax act reduced by the sum of
31 any other credits allowable pursuant to law. Such credit shall be deducted
32 from the taxpayer's income tax liability for the taxable year in which the
33 expenditures are made by the taxpayer. The taxpayer shall not be allowed
34 to carry over any amount of such credit exceeding the taxpayer's income
35 tax liability.

36 ~~(e)~~ ~~(d)~~ As used in this section:

37 (1) "Business firm" means any business entity authorized to do busi-
38 ness in the state of Kansas which is subject to the state income tax im-
39 posed by the provisions of the Kansas income tax act and any individual
40 subject to the state income tax imposed by the provisions of the Kansas
41 income tax act.

42 (2) "Underserved area" shall have the meaning ascribed thereto by
43 K.S.A. 74-32,101, and amendments thereto.

(d) Prior to a business firm claiming this tax credit, the secretary of revenue shall require each business firm to submit for approval the following information on forms as prescribed by the secretary: (1) each partnership agreement; (2) the salary amount paid to each teacher during the taxable year by such business firm pursuant to such partnership agreement and for which the tax credit is sought; and (3) such further information as the secretary may require to administer this provision.

Hs Taxation Committee
March 17, 2005
Attachment 5

1 (3) "Teacher" means a person who holds a certificate to teach in
2 Kansas with an endorsement in the areas of mathematics, science, physics,
3 chemistry or biology and has entered into a partnership agreement.

4 (4) "Partnership agreement" means an agreement entered into pur-
5 suant to subsection ~~(d)~~.

6 (5) "Rural community" shall have the meaning ascribed thereto by
7 K.S.A. 79-32,195, and amendments thereto.

8 (6) "Underperforming urban area" means an area of the state in
9 which low academic performance by pupils in school districts in such area
10 as determined and specified by the state board of education.

11 ~~(d)~~ [(f)] The board of education of any school district, teacher and
12 business firm may enter a partnership agreement under which such busi-
13 ness firm agrees to employ such teacher *in a position that requires*
14 *mathematics or science skills commensurate with the classes that*
15 *the teacher regularly teaches* during the ~~months~~ times in which school
16 is not regularly in session.

17 Sec. 2. This act shall take effect and be in force from and after its
18 publication in the statute book.

Such agreement shall contain a description of the duties of the position the teacher will be performing, sufficient to establish that such position satisfies the criteria set forth in subsection (f).