

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman Kenny Wilk at 9:00 A.M. on March 9, 2006 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
Rose Marie Glatt, Committee Secretary

Conferees appearing before the committee:

Senator Laura Kelly
Sandra Dixon, V.P., Resource Family Services for Kansas Children's Service League
Mike Farmer, Exec. Director, Kansas Catholic Conference
Gary J. Daniels, Secretary, Social and Rehabilitation Services (written only)
Mike Beam, Kansas Livestock Association, presented testimony of Allie Devine
David Hetrick, Lewis, Hooper & Dick Accounting Firm

Others attending:

See attached list

The Chairman recognized Representative Goico for a bill introduction.

Representative Goico made the motion that a bill be introduced regarding a tax credit for businesses that hire reservists and National guards who are returning from active Iraqi deployment. Representative O'Malley seconded the motion. The motion carried.

SB 465 - Increasing income tax credit for adoption of Kansas children

The Chairman opened the public hearing on **SB 465**.

Senator Laura Kelly explained that currently Kansas law provides a tax credit in the amount of 25% (\$2500) of the federal income tax credit to individuals adopting any child. Since 1996 individuals have been eligible for an additional tax credit of \$1500 if the adopted child was in the custody of SRS at the time of the adoption or the child has special needs.

SB 465 would leave all current credits in place and provide an additional 25% credit if the adopted child is a Kansas resident or an additional 50% tax credit if the child is a Kansan with special needs (Attachment 1).

Sandra Dixon, V.P., Resource Family Services for Kansas Children's Service League, said that children for whom they seek adoptive families have entered the state's child welfare system due to abuse or neglect that occurred in their birth family homes. Their parental rights were terminated or relinquished, and no one has stepped forward, willing or able, to provide a permanent home. They are orphans. She provided demographics of over 500 children and gave the definition of a "special need" child (Attachment 2). Attached is a flyer, profiling eight children who need adoptive parents or foster families. She urged passage of the bill that would encourage and aid more families to consider adopting Kansas children.

Mike Farmer, Exec. Director, Kansas Catholic Conference, said that the ability to place children with special needs is more difficult and comes with greater expense and **SB 465** is a means toward helping adoptive parents allay some of the financial challenges associated with adoption. He quoted Pope John Paul II who insists "*We are all really responsible for all.*" He urged passage of the bill (Attachment 3).

Gary J. Daniels, Secretary, Social and Rehabilitation Services, provided written testimony in support of **SB 465**. He stated the decision to adopt is not driven by financial considerations but rather a desire to help a child in need or a desire to raise a family. Adoption tax credits honor the

CONTINUATION SHEET

MINUTES OF THE House Taxation Committee at 9:00 A.M. on March 9, 2006 in Room 519-S of the Capitol.

choice to bring a child into a family through adoption and recognizes and honors the benefits for everyone when a Kansas child is adopted (Attachment 4).

Discussion followed regarding definitions, adoption costs, possible discrimination of other children that live outside of Kansas.

The Chairman closed the hearing on **SB 465**.

SB 444 - Net operating loss carry back or carry forward for income tax purposes.

Chris Courtwright briefed the Committee on the bill.

The Chairman opened the public hearing on **SB 444**.

Mike Beam presented testimony of Allie Devine, VP and General Counsel, Kansas Livestock Association, stated that they had asked for the introduction of **SB 444**. They concurred with Mr. Hetrick comments (Attachment 5).

David Hetrick, Lewis, Hooper & Dick Accounting Firm, explained the process that occurred when an individual recognized a net operating loss within an income tax system. He provided the background on Kansas Statute Ann. 79-32,143 regarding net operating losses (Attachment 6).

He said the law should allow a taxpayer to carry forward the overpayment resulting from the carry back of a net operating farm loss and to apply that overpayment against the income tax liabilities in the succeeding years in a manner that would offset the income tax liability for that year and provide a refund of no more than \$1,500.

He encouraged the Committee to approve **SB 444**. They stated that the added language provides a mechanism which places farmers with large losses in a position similar to non-farm taxpayers.

There being no other conferees, the Chairman closed the hearing on **SB 444**.

HB 2023 - Classes of cities for sales tax purposes; uniformity

The Chairman directed attention back to **HB 2023** and advised the Committee that they would resume the discussion from yesterday's meeting. He said that they were currently on **Sub for HB 2023** and yielded the floor to Representative Siegfroid.

Representative Siegfroid said that statements made at yesterday's meeting were different than those he understood regarding the agreement and the direction they were headed. He spoke about a November 2005 meeting, in Lenexa, Kansas, which, in his opinion, resulted in an agreement that all parties would honor. It had just come to his attention that one of the major parties of that group has now stated they are not party to that agreement.

He described a second situation regarding whether or not excise taxes contributed to uniformity. Previously, he understood that they did contribute to uniformity and they proceeded on that assumption. Now he has been told that excise taxes do not contribute in anyway to the uniformity issue which totally changes the complexion of the problem that they face.

He said that as they proceed with **Sub for HB 2023**, he understands that there will be amendments offered for the Committee's consideration. In any event, he plans to offer a second bill, that will allow the Committee to make a policy decision directly on excise taxes. Hopefully both bills will go to the floor and allow the body's wisdom to prevail.

He explained his second bill deals with the excise tax, and puts into law a list of the present cities that have excise tax. It adds that future cities wanting excise taxes, must go through the election process; thus giving the cities a right that they did not previously have under 12-194. An important component is that in the event the existing cities, which are grandfathered in, want to increase their

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rates, they have to have an election to do so.

The Chairman explained the difference in the two bills and opened the floor for discussion.

Representative Owens stressed that they need to make sure that they are not in noncompliance with the streamlined sales tax agreement. The excise taxes complicate the issue and should not be included with the streamlined sales tax question. It is a policy question that needs to be addressed when they look at excise taxes, impact fees and any other thing that relates to how cities are able to fund their specific needs for infrastructure and city growth.

To that end, he offered several options for the Committee's consideration; 1) Adopt Representative Siegfried's recommendation for a second bill; 2) Delete paragraph #4, and move forward with the bill; 3) Retain or change the rate for any development excise tax in existence, as of January 1, 2006, which would allow the cities the ability to continue with their program.

Representative Owens made the motion to strike section 3, page 14 of HB 2023. Representative Carlin seconded the motion.

A copy of the 12-194 statute was distributed (Attachment 7).

Discussion followed regarding pros and cons of various options.

Representative Owens said that the direction of the discussion confirms the need for additional dialogue concerning excise taxes, however it should not cloud the issue of bringing the streamlined sales tax act into compliance. He closed his motion. The motion carried.

The Committee now have an amended Substitute bill for HB 2023, which they will continue discussion at tomorrow's meeting.

The meeting was adjourned at 10:30 A.M. The next meeting will be by March 10, upon adjournment of the House.

LAURA KELLY
SENATOR, 18TH DISTRICT
WABAUNSEE AND SHAWNEE COUNTIES



TOPEKA

SENATE CHAMBER

Committee on Taxation
SB 465 Proponent
March 9, 2006

COMMITTEE ASSIGNMENTS
RANKING MINORITY: COMMERCE
MEMBER: WAYS AND MEANS
JOINT COMMITTEE ON ECONOMIC DEVELOPMENT
JOINT COMMITTEE ON HEALTH POLICY OVERSIGHT
JOINT COMMITTEE ON PENSIONS, BENEFITS AND INVESTMENTS
JOINT COMMITTEE ON CHILDREN'S ISSUES

Mr. Chair and members of the committee:

SB 465 increases the state tax credit allowed for individuals who adopt Kansas kids.

Current law provides a tax credit in the amount of 25% (\$2500) of the federal income tax credit (\$10K) to individuals adopting any child. In addition, since 1996 individuals have been eligible for an additional tax credit of \$1500 if the adopted child was in the custody of SRS at the time of the adoption or the child has special needs.

This bill would leave all current credits in place and provide an additional 25% credit if the adopted child is a Kansas resident or an additional 50% tax credit if the child is a Kansan with special needs.

The Department of Revenue estimates the cost to the state general fund to be \$360,000 in FY 2007. The Department of Social and Rehabilitation Services estimates an annual savings of \$9672 SGF per adopted child currently in SRS custody.

During the interim Special Committee on Children's issues, it became clear that we as a state need to do all we can to promote adoption of our children who have no permanent home, for whatever reason. I know that tax credits alone will not solve the problem but if they stimulate any increase in the number of Kansas kids adopted, then we will have done the kids a favor, the families a favor, and the state a favor.

Thank you.

A handwritten signature in black ink, appearing to read "Laura Kelly". The signature is fluid and cursive, with a large loop at the end.

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House Taxation
3-9-06
Attachment 1



Kansas Children's Service League

Giving Kids Our Best. For Over 100 Years.

Testimony – SB 465

House Taxation Committee

March 9, 2006

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Locations

Cimarron	Liberal
Deerfield	Manhattan
Garden City	Pittsburg
Hays	Pratt
Hugoton	Salina
Hutchinson	Satanta
Johnson	Scott City
Junction City	Stafford
Kansas City Metro	Topeka
Kingman	Ulysses
Leoti	Wichita

Chairman Wilk and Committee Members, my name is Sandra Dixon, V.P. of Resource Family Services for Kansas Children's Service League. I am grateful for the opportunity to provide testimony in support of Senate Bill 465, increasing the state adoption tax credit for families who adopt special needs children.

Kansas Children's Service League has been finding forever families for the state's most vulnerable children for over 110 years. In the late 1990's, the League focused its recruitment and support efforts on families who would care for special needs children, as we entered the state's privatization effort as the largest sub-contractor for adoption services. We were awarded the statewide adoption contract in 2000, and again in July of last year. As the child welfare system has most recently evolved, we have been given the monumental task of finding families for some of the most difficult to place children. I encourage you to look at the faces of some of these children, located on the attachment to this testimony, for it is these children who will positively benefit from the action you take on this bill.

The children for whom we seek adoptive families have entered the state's child welfare system due to abuse or neglect that occurred in their birth family homes. Their parents' rights were terminated or relinquished, and no one has stepped forward as willing or able to provide a permanent home. To reiterate, no relatives, foster parents, or other adult who know these children have said "we want to be their parents." They are orphans.

Kansas Children's Service League is currently recruiting families for over 500 special needs children. Specifically, these children are:

- older – 67% of them are over the age of 12 years, 35% are age 15 or older;
- children of color – 47% are not Caucasian; and/or
- sibling groups – 10% of our children are seeking an adoptive home with 2 or more siblings.

The children we are trying to place more frequently have ongoing, extraordinary needs in the areas of mental health services, educational support, medical and dental care, and behavior management. The cost of these needs is only partially met by available adoption subsidy payments and Medicaid benefits. Choosing to parent these children is a life long emotional and financial commitment.

Kansas Children's Service League is the Kansas Chapter of Prevent Child Abuse America, a member of the Child Welfare League of America and the United Way. Accredited by the Council on Accreditation.

House Taxation
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Attachment 2



The League surveyed 1650 families who had adopted over 2,200 special needs children since July 1, 2000. Almost all of these families stated they chose adoption because they love children. They told us that prior to adopting, their two greatest concerns were their ability to continue a child's special services, and the potential costs of caring for a child. Adoption subsidy and a child's medical card were identified as the most helpful resources. Finally, when asked how likely they would be to adopt specific demographics of children, most families indicated a preference to adopt younger children with very few special needs.

The survey distributed in the summer of 2005 also identified a demographic most likely to adopt. Adoptive families range in age from 25-54, live in smaller communities, and have a median income of \$50,000. They, like most of us, are challenged every month to cover the normal costs of food, shelter and education, pay their bills, and put something away for a rainy day. Making the very personal decision to adopt probably did not include a full understanding of the potential financial impact.

The adoptive family survey validated what our experience tells us. Families with moderate incomes decide to adopt because they want to care for a child, but concerns about their ability to care for children emotionally and financially makes them cautious about adopting the children who most need them. If we, as a system, are going to give special needs children the home they deserve, we must provide families with the adequate financial and service supports to give them the confidence that they can be successful adoptive parents.

Kansas Children Service League is committed to supporting these families and their children through the lifelong adoption journey. Senate Bill 465 tells these families that the State of Kansas believes that all children deserve a permanent home, understands the great commitment they are making, and is taking positive steps to make the financial burden a little easier.

In closing, I encourage you, once again, to look at the children's pictures attached to this testimony. Each represents a different and unique story, but all of them want the same future....a family to love them and a place to call their own home. Thank you for your attention this morning, and most importantly, consideration of Senate Bill 465.

Testimony provided by: Sandra Dixon LMSW
V.P. Resource Family Services
Kansas Children's Service League
sdixon@kcsl.org

Open Your Home to a Waiting Child.



Brittani— 10 years old, creative and plays the piano

Brittani is a beautiful girl with a mischievous grin. She is a creative artist who loves to draw and do crafts. She also enjoys playing the piano, riding her bike, and swimming. Brittani needs a patient family who will give her a lot of individualized attention. Funny and smart, Brittani is a caring girl who wants to be part of a forever family. Brittani's case number is 100967.



Keneene— 10 years old, loves football and is intelligent

Keneene is a boy who is ready for a forever family and wants to be adopted. He is an intelligent and curious young man, with a great sense of humor. During quiet times he likes to play indoor games and read. When he gets outdoors, Keneene loves soccer, riding his bike, playing football and baseball. Keneene's is a lovable guy who will simply melt your heart with his great smile. Keneene's case number is 100769.



Kenny — 14 years old, friendly and creative

Kenny is a young teenager who loves to see how things work. He has a nice singing voice and natural drawing abilities. Kenny likes playing video games and playing on the computer. He also likes animals and wouldn't mind having a pet of his own. Kenny is a guy who's had a very rough beginning, but he's a survivor! Kenny wants stability, love and mutual respect from his future forever family. Kenny's case number is 100756.



Kisha— 15 years old, a gifted writer who loves dancing

Nakisha (Kisha) is a down-home kind of girl who loves singing and dancing to country music. She enjoys playing with animals, riding her bike, and is a gifted writer. She knows exactly what she is looking for in her new adoptive family - a mom and a dad, a sister near her own age, and to live in a town big enough to have a Wal-Mart, but not too big. Kisha also wants them to go on vacations together, and hopes they love animals too. Kisha's case number is 1446.

2-3

2-3



Ciara & Aaron — 7 & 6 years old, happy and healthy sibling group. Want to be adopted together

Ciara and Aaron are an adorable sibling duo! These children are healthy and happy, and need a loving forever family to watch them grow. Ciara is smart, full of energy and is an all-around good kid! Her younger brother Aaron is affectionate and lovable. Together they will surely steal your heart away! These two kids are hoping to find a forever family they can call their own. The children's case numbers are 101061 and 101062.



Lisa— 14 years old, loves shopping and music

Lisa is a personable and energetic teen who is a fast thinker and very independent. She needs a family who has the love and patience to help her stay focused so she can achieve her many dreams. You will find this friendly girl to be a loving and positive addition to the family. Lisa enjoys listening to music, shopping, playing games and dress-up. She loves to ride her bike outside. "I want a real mom and dad," says Lisa. Lisa's case number is 100105.



Thomas— 9 years old, enjoys outdoor activities

Thomas is a handsome boy with a sweet smile and freckles. He is fun and friendly, and enjoys helping around the house and tending farm animals and pets. Thomas likes to play outside riding his bike, going horseback riding, playing football, and playing with big Tonka trucks. He also enjoys attending art class because he likes to draw and color. Thomas likes school. His new family should be able to provide him with a lot of unconditional love and attention. Thomas' case number is 100986.



Kansas Children's Service League

Giving Kids Our Best. For Over 100 Years.

For more information on the children profiled or becoming a Foster or Adoptive Parent, please call Kansas Children's Service League at

1-877-530-5275 or visit www.kcsl.org

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2-4



6301 ANTIOCH • MERRIAM, KANSAS 66202 • PHONE/FAX 913-722-6633 • WWW.KSCATHCONF.ORG

Testimony in Support of S.B. 465

Chairman Wilk and members of the committee:

Thank you for the opportunity to give testimony in support of S.B. 465, which would allow a measure of tax relief for families who adopt children in certain special needs categories. My name is Mike Farmer and I am the Executive director of the Kansas Catholic Conference, the public policy office of the Catholic Church in Kansas.

From U.S. Department of Health and Human Services statistics compiled by the National Adoption Information Clearinghouse, we learn that more than 110,000 children with special needs are waiting for permanent homes in the United States. National Catholic Charities estimates that since 1987, the number of children in foster care has doubled, and currently, the average time a child who has been freed for adoption remains in foster care is nearly five years. Last year, Catholic Charities across the nation helped find homes for 4,229 children, including 1,984 children from foster care, 1,529 special needs children, and 797 inter-country adoptions. Clearly there is a need for recruitment of more families to adopt.

Whatever the circumstances, the ability to place these children in loving homes is more difficult and comes with greater expense. Parents who adopt children with special needs can be successful only if they have emotional, physical, mental and financial resources.

Federal and State programs offer some financial assistance to adoptive parents for special care and services that the child needs, but in no way are these costs reimbursed dollar for dollar.

More encouragement and incentives are needed to urge more families to open up their hearts and homes to adoption of all children and especially to children with special needs. All children need and deserve permanence, stability, and love.

We are one human family. We are our brothers' and sisters' keepers, wherever they may be. Pope John Paul II insists in his statement, *On Social Concern (Sollicitudo Rei Socialis)*, "We are all really responsible for all."

MOST REVEREND RONALD M. GILMORE, S.T.L., D.D.
DIOCESE OF DODGE CITY

MOST REVEREND JOSEPH F. NAUMANN, D.D.
Chairman of Board
ARCHDIOCESE OF KANSAS CITY IN KANSAS

MOST REVEREND PAUL S. COAKLEY, S.T.L., D.D.
DIOCESE OF SALINA

MOST REVEREND MICHAEL O. JACKELS, S.T.D.
DIOCESE OF WICHITA

MICHAEL P. FARMER
Executive Director

MOST REVEREND JAMES
ARCHBISHOP EMERITUS - ARC 3-9-06

MOST REVEREND EUGENE J. GERBER, S.T.L., D.D.
BISHOP EMERITUS - DIOCESE OF WICHITA

MOST REVEREND GEORGE K. FITZSIMONS, D.D.
BISHOP EMERITUS - DIOCESE OF SALINA

MOST REVEREND MARI
RETIRE

House Taxation
Attachment 3

S.B. 465 is a means towards helping adoptive parents allay some of the financial challenges associated with adoption. The Kansas Catholic Conference cannot speak to the specifics of what impact these tax credits will have on the state, but we certainly agree with the bill's intent.

We ask that the House Taxation Committee recommend SB465 favorable for passage.

Thank you,

A handwritten signature in cursive script that reads "Mike".

Michael P. Farmer
Executive Director

Kansas Department of

Social and Rehabilitation Services

Gary J. Daniels, Secretary

House Taxation Committee

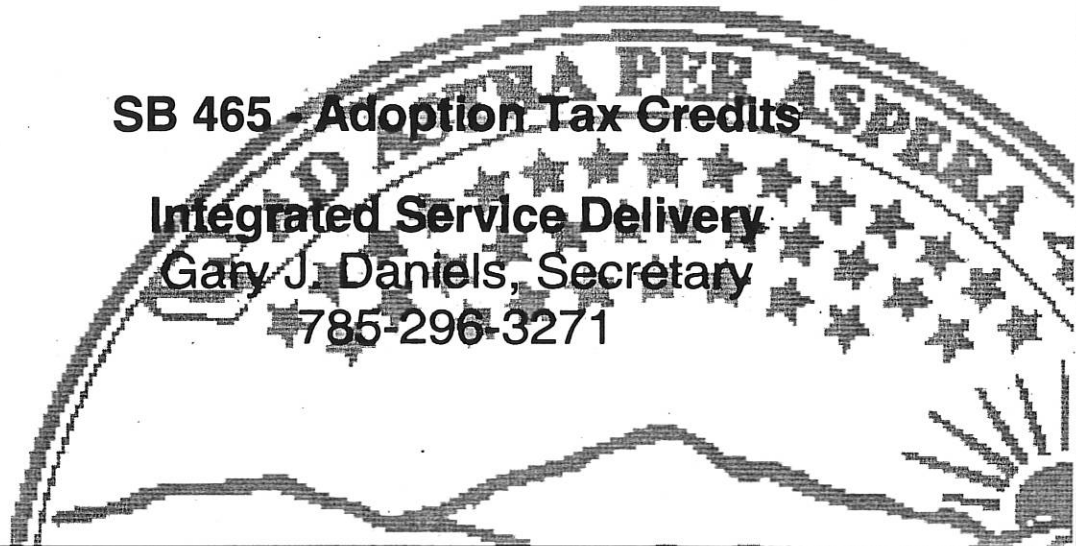
March 9, 2006

SB 465 - Adoption Tax Credits

Integrated Service Delivery

Gary J. Daniels, Secretary

785-296-3271



For additional information contact:

Public and Governmental Services Division
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Attachment 4

**Kansas Department of Social and Rehabilitation Services
Gary J. Daniels, Secretary**

House Taxation Committee
March 9, 2006

SB 465- Adoption Tax Credits

Chairman Wilk and members of the committee, thank you for the opportunity to support SB 465 regarding Adoption Tax Credits.

Currently adoptive parents receive a federal tax credit (\$10,630 max.) and may claim 25 percent of that credit for state tax relief. SB 465 will retain this current benefit but, when the adopted child is a Kansas resident the state tax relief is 50 percent of the federal tax credit. If the child is a Kansas resident between the ages of 8 to 17 and with special needs, the adoptive parent may claim 75 percent of the federal tax credit. The child must be a Kansas resident prior to adoption.

SB 465 acknowledges the challenges inherent in adopting older children, sibling groups, children with disabilities or other special needs. Many children adopted from the custody of the Secretary of SRS will qualify for the most expansive tax credit contained in this bill and, knowing these children and families, we support providing them all available benefits. In SFY 2005, 623 children were adopted from foster care; 492 of these children were defined as having special needs and 267 children were between the ages of 8-17.

The net savings to the foster care program for each child adopted is estimated to be \$866 per child, per month. It is unknown how many adoptions, if any, would result from this increased tax benefit.

The decision to adopt is not driven by financial considerations but rather a desire to help a child in need or a desire to raise a family. Adoptive parents, like all parents, must consider their ability to meet the financial obligations of parenthood. Adoption tax credits honor the choice to bring a child into a family through adoption. SB 465 recognizes and honors the benefits for all of us when a Kansas child is adopted.

While we don't know if the tax credit will increase the number of adoptions or reduce the length of time children available for adoption wait for families, supporting and honoring adoptive parents who choose children in need of permanent homes is the right thing to do.

Thank you for the opportunity to support passage of SB 465 through this written testimony.



Since 1894

To: House Taxation Committee
Representative Kenny Wilk, Chair

From: Allie Devine, Vice President and General Counsel

*presented by
Mike Beam*

Date: March 9, 2006

Re: Support SB 444

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 6,000 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf and stocker production, cattle feeding, grazing land management and diversified farming operations.

The Kansas Livestock Association asked for the introduction of SB 444 regarding net operating loss carry back and carry forward for income tax purposes. We concur with the comments of David Hetrick of Lewis, Hopper & Dick and ask for favorable passage of SB 444. Thank you.

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Attachment 5

Testimony

**To: House Taxation Committee
Representative Kenny Wilk, Chairperson**

**From: David L. Hetrick, CPA
Lewis, Hooper & Dick, LLC**

Date: March 9, 2006

Re: Senate Bill 444

Dear Representative Wilk and Committee Members,

We appreciate the opportunity to provide our views in support of Senate Bill 444, and to provide some insight into what we believe are the problems of interpretation in the existing law.

Net Operating Losses

In order to administer an income tax system, taxable income and the income tax are determined on an annual basis. Generally the items of income and loss of one year do not affect the tax in another year. In the interest of fairness the government has enacted certain exceptions to this general principal.

For example, assume a business has a \$100,000 profit in 2002, a (\$100,000) loss in 2003 and a \$100,000 profit again in 2004. Over the three year period it has income totaling \$100,000. Assuming a 7% income tax, if each year truly stood on its own the business would pay income tax of \$7,000 in 2002, \$0 in 2003 and \$7,000 in 2004 for a total of \$14,000 over three years on income of only \$100,000 over this period.

To counteract this problem the net operating loss provisions were enacted to allow a business with a net loss in one year, to carry that loss forward to future years or back to previous years to offset income in those years.

Internal Revenue Code § 172 generally allows a business to carry the loss back to the prior two years, and any loss that was not used in those years to carry forward to the next twenty years or until used up. If there is not enough income in this 22 year period the loss expires unused.

IRC §172 (b)(3) allows the taxpayer to elect to forego the carry back of the loss, and carry the entire loss forward to future years.

Background on Kan. Stat. Ann. § 79-32,143 regarding Net Operating Losses

Since 1987, Kansas has generally not allowed taxpayers to carry a net operating loss to prior years, but Kansas does allow a carry forward of the loss for ten years.

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Kan. Stat. Ann. § 79-32,143(a) generally provides that "For net operating losses incurred in taxable years beginning after December 31, 1987, a net operating loss deduction shall be allowed in the same manner that it is allowed under the federal internal revenue code except that such net operating loss may only be carried forward to each of the 10 taxable years following the taxable year of the net operating loss."

In 1998, Congress added language to IRC § 172(b)(1)(F)(ii) (now re-designated as § 172(b)(1)(G)) which provides that "In the case of a taxpayer which has a farming loss (as defined in subsection (i)) for a taxable year, such farming loss shall be a net operating loss carryback to each of the 5 taxable years preceding the taxable year of such loss."

In adopting this change to § 172(b)(1) the House committee explained that "The NOL carryback and carryforward rules allow taxpayers to smooth out swings in business income (and Federal income taxes thereon) that result from business cycle fluctuations and unexpected financial losses. Farmers are particularly vulnerable to such fluctuations and losses. The Committee believes that farmers who suffer losses from their farming business should have an extended period in which to use such losses to offset taxable income in prior years."

The Report of the Special Committee on Assessment and Taxation to the 2000 Kansas Legislature concluded that "the Committee notes the importance of the income tax in timing of marketing efforts and strategies for sale of farm products as well as the benefits of smoothing volatility in farm income for state revenue planning purposes. This issue is especially important to Kansas farmers at the current time due to low commodity prices. Therefore, the Committee recommends introduction of a bill to provide income loss carryback of five years on farm income to mirror the federal law."

The Kansas Legislature responded to the new Internal Revenue Code provision in 2000 by adding the following sentence to § 79-32,143(a) to provide some needed tax relief to Kansas farmers. "For net operating farm losses, as defined by subsection (i) of section 172 of the federal internal revenue code, incurred in taxable years beginning after December 31, 1999, a net operating loss deduction shall be allowed in the same manner that it is allowed under the federal internal revenue code except that such net operating loss may be carried forward to each of the 10 taxable years following the taxable year of the net operating loss."

However, due to concerns about the possible effect of these carrybacks on the Treasury the legislature added § 79-32,143(f) which provides that "No refund of income tax which results from a net operating loss carry back shall be allowed in an amount exceeding \$1,500 in any year. Any excess amount may be carried back or forward to any other year or years as provided by this section."

Interpretation of the limitation of overpayments under K.S.A. § 79-32,143(f)

The addition in 2000 of the provision in K.S.A. § 79-32,143 allowing a carry back of a net operating loss from farming was intended to assist farmers who are more vulnerable to large swings in income than other taxpayers. The way that the provision is being

interpreted may actually prolong the time before a farmer receives a Kansas tax refund on account of the Net Operating Loss.

Before the law was changed in 2000, a farmer who elected to carry his federal net operating loss back to receive an immediate refund would carry his Kansas net operating loss forward to the following year, like other Kansas taxpayers. Since 2000 a Kansas farmer is required to carry his Kansas farm loss back if he elects to carry his federal loss back, even though his refund is limited to \$1,500 per year.

We can illustrate the problem with our experience in representing a Kansas farm corporation. For the 2001 tax year, the taxpayer reported a loss on its Kansas income tax return of \$764,353. Taxpayer attached Form K-139F to carry this loss back to the 1996 tax year under the provisions of § 79-32,143 resulting in an overpayment of \$56,180. Taxpayer claimed the \$1,500 refund on Form K-120 for 2001, resulting in an overpayment of \$54,680 (\$56,180 less \$1,500 refund).

For the 2002 tax year, the taxpayer reported income on its Kansas income tax return of \$747,656. The income tax on this income amounted to \$53,277 before credits. Taxpayer claimed the \$54,680 overpayment remaining from the carry back of its 2001 loss as a credit on its 2002 return. \$53,277 of this credit was used to offset the income tax and the remaining \$1,403 was claimed as a refund since it did not exceed the \$1,500 limitation on refunds imposed by K.S.A. § 79-32,143(f).

The Department of Revenue sent a notice denying all but \$1,500 of the claimed credit and required the taxpayer to pay \$51,777 of tax (\$53,277 tax less \$1,500 credit) plus penalties and interest. We referred this matter to the problems resolution officer and ultimately to an appeals hearing officer and were informed that this is the official interpretation of the Department of Revenue.

The Department of Revenue interprets K.S.A. § 79-32,143(f) as requiring the payment of the \$56,180 overpayment resulting from the carryback of the net operating loss from farming at the rate of \$1,500 per year. This interpretation means that the taxpayer has to pay over \$50,000 of tax at the same time that the State is holding over \$50,000 of the taxpayer's money. The Taxpayer will have to wait 38 years to receive refunds totaling the entire amount of the overpayment. We do not believe that this is a reasonable interpretation of K.S.A. § 79-32,143.

The addition in 2000 of the provision in K.S.A. § 79-32,143 allowing a carry back of a net operating loss from farming was intended to assist farmers who are more vulnerable to large swings in income than other taxpayers. If this provision had not been enacted the Taxpayer would have carried its 2001 loss of \$764,353 forward and completely offset the taxable income of \$747,656 for the 2002 tax year. The taxpayer would offset all of the 2002 income and would have a net operating loss carryover of \$16,697 available to reduce any income in future years.

The taxpayer applied its unused overpayment from the net operating loss carryback to its tax liability in the later year. We believe this follows the intent of K.S.A. § 79-32,143(f). We believe that the Secretary's interpretation of the provision ignores the last sentence of

§ 79-32,143(f) which provides that "Any excess amount may be carried back or forward to any other year or years as provided by this section."

The Department of Revenue treats the application of overpayment to tax liabilities as a refund and limits the amount to \$1,500. This is not consistent with other provisions of the Kansas Statutes. For example K.S.A. 79-32,105 provides that "no refund shall be made for a sum less than \$5, but such amount may be claimed by the taxpayer as a credit against the taxpayer's tax liability in the taxpayer's next succeeding taxable year." Clearly there is a difference between a refund and a credit against future taxes.

We believe that K.S.A. §79-32,143 should allow a taxpayer to carry forward the overpayment resulting from the carryback of a net operating farm loss and to apply that overpayment against the income tax liabilities in the succeeding years in a manner that would offset the income tax liability for that year and provide a refund of no more than \$1,500.

This would put farmers in the same position as other taxpayers by allowing the overpayment resulting in the loss in an earlier year to offset tax in later years. We believe that this is consistent with the intent of the legislature when enacting the statute to provide relief to Kansas farmers. The Secretary's interpretation places many farmers in a worse position than if the net operating farm loss rules had not been enacted, and in a worse position than non-farm taxpayers.

We encourage the Committee to approve SB 444. We believe that the added language provides a mechanism which places farmers with large losses in a position similar to non-farm taxpayers. The Treasury will not pay more than \$1,500 each year in excess of what would have been paid if the farm net operating losses were never enacted.

We appreciate the opportunity to provide our input in this process.

Sincerely,

David L. Hetrick, C.P.A.
Lewis, Hooper & Dick, LLC

Source or prior law:
12-177.

Revisor's Note:

Section was amended three times in 1986 session, see also 12-192a and 12-192b.

Section was amended twice in 1998 session, see also 12-192c.

Research and Practice Aids:

Taxation ¶ 1344.

C.J.S. Licenses § 56.

Law Review and Bar Journal References:

"Survey of Kansas Law: Taxation," Sandra Craig McKenzie and Virginia Ratzlaff, 33 K.L.R. 71, 77 (1984).

Attorney General's Opinions:

Procedure for adoption of city and county retailers' sales taxes. 82-29.

Countywide retailers' sales tax; use of tax revenue. 82-147.

Apportionment of revenue from countywide retailers' sales tax. 83-47.

Pledge of revenue received from countywide retailers' sales taxes. 83-57.

Apportionment of revenue from countywide retailers' sales tax. 85-88.

Countywide retailers' sales tax; apportionment formula; county levy for use of state university. 1998-37.

12-192a.

History: L. 1978, ch. 56, § 6; L. 1980, ch. 61, § 1; L. 1981, ch. 66, § 1; L. 1981, ch. 67, § 1; L. 1982, ch. 65, § 1; L. 1983, ch. 60, § 1; L. 1986, ch. 68, § 1; Repealed, L. 1987, ch. 63, § 6; April 2.

12-192b.

History: L. 1978, ch. 56, § 6; L. 1980, ch. 61, § 1; L. 1981, ch. 66, § 1; L. 1981, ch. 67, § 1; L. 1982, ch. 65, § 1; L. 1983, ch. 60, § 1; L. 1986, ch. 66, § 1; Repealed, L. 1987, ch. 63, § 6; April 2.

12-192c.

History: L. 1978, ch. 56, § 6; L. 1980, ch. 61, § 1; L. 1981, ch. 66, § 1; L. 1981, ch. 67, § 1; L. 1982, ch. 65, § 1; L. 1983, ch. 60, § 1; L. 1986, ch. 67, § 1; L. 1987, ch. 63, § 3; L. 1988, ch. 72, § 2; L. 1991, ch. 82, § 3; L. 1992, ch. 279, § 4; L. 1992, ch. 251, § 3; L. 1993, ch. 175, § 1; L. 1994, ch. 354, § 4; L. 1995, ch. 12, § 4; L. 1995, ch. 163, § 1; L. 1998, ch. 199, § 19; Repealed, L. 2001, ch. 211, § 18; July 1.

12-193.

History: L. 1978, ch. 56, § 7; Repealed, L. 1990, ch. 67, § 6; July 1.

Source or prior law:

12-179.

CASE ANNOTATIONS

1. Mentioned in upholding imposition of city sales tax under 12-137. *Clark v. City of Overland Park*, 226 K. 609, 618, 602 P.2d 1292.

12-194. Same; other city and county excise taxes prohibited; prohibition construed.

No city or county shall levy or impose an excise tax or a tax in the nature of an excise, other than a retailers' sales tax and a compensating use tax, upon the sale or transfer of personal or real property, or the use thereof, or the rendering of a service, but the provisions of this section shall not be construed as prohibiting any city from (a) contracting with a utility for a fixed charge based upon a percentage of gross receipts derived from the service permitted by grant, right, privilege or franchise to such utility; (b) imposing an occupation tax or license fee for the privilege of engaging in any business, trade, occupation or profession, or rendering or furnishing any service, but the determination of any such license fee shall not be based upon any amount the licensee has received from the sale or transfer of personal or real property, or for the rendering or furnishing of a service, or on the income of the licensee; or (c) levying any occupation tax or license fee imposed by such city prior to the effective date of this act. No license fee described in subsection (b) of this section shall be imposed upon any utility contracting with and subject to a charge, described in subsection (a) of this section, by such city.

History: L. 1978, ch. 56, § 8; L. 1982, ch. 66, § 2; July 1.

Source or prior law:
12-180.

Research and Practice Aids:

Taxation ¶ 1208.

C.J.S. Licenses §§ 7 to 10.

Law Review and Bar Journal References:

"Home Rule in a Nutshell," Sandra Craig McKenzie, 48 K.L.R. 1005 (2000).

Attorney General's Opinions:

Procedure for adoption of city and county retailers' sales taxes. 82-29.

County and city retailers' sales taxes; other city and county excise taxes prohibited. 85-86.

Municipal airport authorities; flowage fees are not a tax. 89-57.

CASE ANNOTATIONS

1. "Fuel flowage fee" imposed on aviation fuel transported onto city-county airport held to be a tax prohibited by 79-3424. *Executive Aircraft Consulting, Inc. v. City of Newton*, 252 K. 421, 422, 426, 431, 845 P.2d 57 (1993).

2. Section part of nonuniform enactment; charter ordinance and ordinance imposing tax on platting of real property valid