

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairman Barbara Allen at 10:40 A.M. on March 20, 2006 in Room 519-S of the Capitol.

All members were present except:
Derek Schmidt- excused

Committee staff present:
Chris Courtwright, Kansas Legislative Research
Martha Dorsey, Kansas Legislative Research
Gordon Self, Revisor of Statutes Office
Judy Swanson, Secretary

Conferees appearing before the committee:
Hal Hudson, NFIB
Marlee Carpenter, Kansas Chamber
Duane Simpson, Kansas Grain & Feed
Mike Murray, Sprint
Karl Peterjohn, Kansas Taxpayers Network
David White, AT&T, Written Only
Allie Devine, Kansas Livestock Association, Written Only
Kansas Cooperative Council, Written Only

Others attending:
See attached list.

Senator Bruce moved to report **HB 2573, income taxation, deduction for amounts contributed to qualified tuition programs**, favorably for passage. Senator Pine seconded the motion, and the motion passed.

Hearing was opened on **HB 2548, three-year phase out of the franchise tax**.

Hal Hudson, NFIB, testified in favor of **HB 2548**. (Attachment 1) He said NFIB has been an advocate of reducing the franchise tax or fee since it was doubled in 2002 session.

Marlee Carpenter, Kansas Chamber, testified the Chamber feels this bill is another way to incrementally improve the Kansas business climate. (Attachment 2)

Duane Simpson, Kansas Grain & Feed Association, testified this bill is KG&F's highest priority. (Attachment 3)

Mike Murray, Sprint, said Sprint pays in excess of \$400,000 per year in franchise tax. (Attachment 4) Sprint supports **HB 2548**.

Karl Peterjohn, Kansas Taxpayers Network, testified in favor of **HB 2548**. (Attachment 5)

Written testimony in favor of **HB 2548** was received from:
David White, AT&T, (Attachment 6)
Allie Devine, Kansas Livestock Association (Attachment 7)
Kansas Cooperative Council (Attachment 8)

Hearing on **HB 2548** was closed.

Discussion was held on the fiscal note for **HB 2640, no sales taxation of manufacturer rebates to purchasers and lessees of new motor vehicles**. Richard Cram, KDOR, said KDOR is comfortable with the original fiscal note, but would be willing to adjust it from \$10.9 million to \$9.9 million.

CONTINUATION SHEET

MINUTES OF THE Senate Assessment and Taxation Committee at 10:40 A.M. on March 20, 2006 in Room 519-S of the Capitol.

KDOR Secretary Joan Wagnon requested an opportunity to give the Committee information on **Sub HB 2023, sales tax authority of cities under retailers' sales tax law**. Chairman Allen said Secretary Wagnon could brief the Committee at tomorrow's meeting.

Senator Bruce moved to approve the Minutes of the March 15 and March 16 Committee meetings. Senator Lee seconded the motion, and the motion passed.

Being no further business, the meeting adjourned at 11:10 a.m.

SENATE
ASSESSMENT & TAXATION COMMITTEE

GUEST LIST

DATE: March 20, 2006

NAME	REPRESENTING
Brandy Wilson	Secretary of State
Duane Simpson	KGFA - KARK
SCOTT GATES	STATE TREASURER
Duane Goodwin	City of Wichita
LARRY R BAKER	LKM
Ben Cleaves	DOB
Mike Murray	Sprint
Allison	KLA
Karl Peterjohn	KS Taxpayers Network
Jenni Rose	KACCT
Judy Mohr	KAC
Dan Murray	Federico Consulting
Bud Burke	Spencer Mgmt Group
TERRY FORSYTH	KNEA
Jim Moag	Spirit AeroSystems
Bernie Koch	Wichita Metro Chamber of Commerce
Hansel Lange	Ks. Assn of Broadcasters
John Peterson	American Century

LEGISLATIVE



TESTIMONY

KANSAS

Statement by
Hal Hudson, Kansas State Director
National Federation of Independent Business
Before the
Senate Assessment and Taxation Committee
Monday, March 20, 2006

Madam Chair and Members of the Committee:

Thank you for this opportunity to support enactment of House Bill 2548.

As you may know, NFIB/Kansas has advocated reducing the franchise tax or fee, whichever name you choose to call it, since it was doubled in the 2002 session. Our position is supported by member response to our ballot survey before the 2005 session. *We asked: **Should legislation be enacted to phase out the Kansas franchise tax completely over five years?*** And the response, as you might guess, was a resounding YES. H.B. 2548 would phase out this tax over three years. That's even better.

The franchise tax (or fee) is an annual payment every limited liability entity (corporation – "C" or "S"), limited liability partnerships, etc. must pay. It is a tax on the privilege of doing business in Kansas. Most of our members are proprietorships, subchapter "S" corporations, or limited liability corporations. Of these, only proprietorships escape payment of the franchise tax.

This tax was doubled on 2002 as the legislature sought to balance the state budget. The 2004 session reduced the franchise tax rate from \$2.00 per \$1,000 of net worth to \$1.25; granted an exemption for entities with a net worth of \$100,000 or less, but raised the cap from \$5,000 to \$20,000 on the tax the largest entities must pay. In addition, a \$40 franchise "fee" was implemented, and is payable by all the above to the Secretary of State. HB 2548 proposes to phase out the "tax" completely over three (3) years. Only the \$40 annual fee, and a \$15 service fee the Secretary of State charges "for profit" entities would remain.

Those who favor this proposal say the franchise tax is an unfair tax imposed on the privilege of doing business in Kansas, and discriminates against those who organize their business as a limited liability entity. (The tax is not owed by proprietorship businesses.) Further, the tax successful businesses must pay, incrementally increases as they grow and increase their assets. It is, in fact, double taxation on physical assets, including both real and personal property.

We believe the \$40 "fee" is adequate to support the record keeping of the Secretary of State's office. A representative from the Secretary of State's office has confirmed that the \$40 fee is adequate to support the record keeping function in that office.

We encourage you to approve HB 2548, to stop discriminatory double taxation on Kansas businesses.

Thank you for your consideration of the concerns of Kansas small business.

Legislative Testimony

HB 2548

March 20, 2006

Testimony before the Kansas Senate Assessment and Taxation Committee
By Marlee Carpenter, Vice President of Government Affairs

Chairman Allen and members of the committee;

I am Marlee Carpenter with the Kansas Chamber and our over 10,000 small, medium and large businesses support HB 2548, the phase out of the franchise tax.

The franchise tax has undergone many changes in the last few years. This tax has been used to help balance the state's budget in tough times and has ballooned from its \$1.00 per thousand dollars of net worth with a cap of \$5,000 to \$1.25 per thousand dollars of net worth with a cap of \$20,000. This is now a significant tax and an additional cost of doing business in the state that was not in place a few years ago.

The franchise tax is a tax on net worth, or said another way, a company's success. A company must pay this tax in Kansas for the privilege of doing business in the state. The tax has no bearing on whether the company made money, had any new investments or created any jobs but a tax on growing a business and the assets obtained to be successful.

In addition, there is no offset for companies' subsidiaries. Each subsidiary must pay the full franchise tax. Companies that choose to organize with several subsidiaries are penalized under Kansas law and the penalty has increased significantly over the last few years.

The Kansas Chamber supports HB 2548 as another way to incrementally improve the Kansas business climate. We encourage the legislature to phase out this tax and send a pro-business message to the companies that grow and create jobs in the state. Thank you for your time and I'll be happy to answer any questions.

The Kansas Chamber, with headquarters in Topeka, is the statewide business advocacy group moving Kansas towards becoming the best state in America to do business. The Kansas Chamber and its affiliate organization, The Kansas Chamber Federation, have more than 10,000 member businesses, including local and regional chambers of commerce and trade organizations. The Chamber represents small, medium and large employers all across Kansas.

Assessment & Taxation
Date 3-20-06
Attachment # 2



**THE KANSAS
CHAMBER**

The Force for Business

835 SW Topeka Blvd.

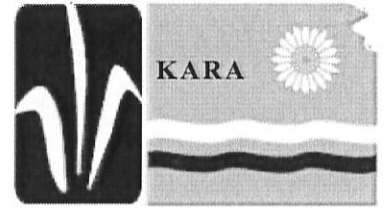
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STATEMENT OF THE
KANSAS GRAIN & FEED ASSOCIATION
AND THE
KANSAS AGRIBUSINESS RETAILERS ASSOCIATION
SUBMITTED TO THE
SENATE ASSESSMENT AND TAXATION COMMITTEE
IN SUPPORT OF HOUSE BILL 2548
SEN. BARBARA ALLEN, CHAIR
March 20, 2006

KGFA & KARA MEMBERS ADVOCATE PUBLIC POLICIES THAT ADVANCE A SOUND ECONOMIC CLIMATE FOR AGRIBUSINESS TO GROW AND PROSPER SO THEY MAY CONTINUE THEIR INTEGRAL ROLE IN PROVIDING KANSANS AND THE WORLD THE SAFEST, MOST ABUNDANT FOOD SUPPLY.

Thank you Chairman Allen and members of the Senate Assessment and Taxation Committee; I am Duane Simpson, Vice President of Government Affairs the Kansas Grain and Feed Association (KGFA) and the Kansas Agribusiness Retailers Association (KARA). The KGFA is a voluntary state association with a membership encompassing the entire spectrum of the grain receiving, storage, processing and shipping industry in the state of Kansas. KGFA's membership includes over 950 Kansas business locations and represents 99% of the commercially licensed grain storage in the state. KARA's membership includes over 700 agribusiness firms that are primarily retail facilities that supply fertilizers, crop protection chemicals, seed, petroleum products and agronomic expertise to Kansas farmers. KARA's membership base also includes ag-chemical and equipment manufacturing firms, distribution firms and various other businesses associated with the retail crop production industry. On behalf of these organizations, I am testifying in support of House Bill 2548.

As you know tax revenues have exceeded expectations recently reversing a long trend when the Legislature had to find ways to increase revenue. One of the unfortunate decisions of the Legislature was to increase the franchise fee, creating a tax and then to increase the tax. As it now stands, a Kansas business can pay up to \$20,000 per year in taxes for the "privilege" of doing business in our state. This tax hits any business worth more than \$100,000, including virtually all of agribusiness.

While KGFA and KARA support repealing the estate tax and providing property tax relief for new business machinery and equipment purchases; our members believe repealing the franchise tax will have a more significant effect on their bottom line.

On behalf of the members of KGFA and KARA, I urge you to make repealing the franchise tax your highest priority.

Sprint



Together with NEXTEL

Sprint Nextel

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Mark Beshears

Vice President

State & Local Tax

Before the Senate Assessment and Taxation Committee

Monday, March 20, 2006

HB 2548

Mark Beshears, Vice President, State and Local Tax, Sprint Nextel

Madam Chair and Members of the Committee:

I am Mark Beshears, Vice President of State and Local Taxes for Sprint Nextel and I am here today to support HB 2548 which phases out the Kansas Franchise Tax after 2008.

✓ Prior to the franchise tax cap being raised in 2004, Sprint paid approximately \$20,000 per year in franchise tax and now our franchise taxes exceed \$400,000 per year.

✗ As a result, if we create new legal entities that might create a franchise tax we now incorporate them in Delaware where the maximum franchise tax is \$100 per legal entity.

The changes enacted a couple of years ago also transferred the compliance and audit function from the Secretary of State to the Department of Revenue. The phase-out of the franchise tax will reduce the compliance costs, audit costs, and administrative costs for the Department of Revenue saving money for both the State and the tax payers.

It is our hope that the Committee will act favorably on HB 2548, and I'd be happy to stand for questions at the appropriate time.

Assessment & Taxation
Date 3-20-06
Attachment # 4

KANSAS TAXPAYERS NETWORK

www.kansastaxpayers.com

PO Box 20050

Wichita, KS 67208

316-684-0082

March 20, 2006

Testimony Supporting HB 2548

By Karl Peterjohn, Exec. Dir.

Kansas taxes both business profits through the corporate income tax or for many small businesses through the personal income tax. In addition Kansas also taxes business wealth through the business franchise tax. The combined impact of this tax structure is to place businesses in this state at a competitive disadvantage with most of the other 49 states as well as our immediate neighbors.

In an increasingly globalized economy with declining transportation and communication costs, the impact of a negative tax structure is a growing problem in Kansas. HB 2548 would begin a three-year phase out of the business franchise tax and address this portion of this problem.

The business franchise tax was dramatically increased, roughly doubled, in 2002 as part of the large statewide tax hike enacted that year. In addition, this tax has been modified more recently with some firms paying a smaller amount while others are now paying more.

This is more uncertainty that translates into risk and provides another reason for businesses outside this state to look for more hospitable fiscal climates if they are considering relocation, expansion, or moving into this part of the United States.

Last year Oklahoma took about \$150 million and lowered some of their taxes that were viewed as the largest problem in that state's fiscal measurements. In contrast, all \$323 million of additional tax revenue coming into Kansas was spent (and this figure excludes the increased revenue from higher property tax appraisals was also spent too). So besides having a lower business and residential property taxes, Oklahomans are now paying a lower rate on their personal income taxes than Kansas for the first time in many years.

Kansas has a tax problem due to the high burden government places on its citizens here. HB 2548 begins the process of addressing this problem on the business portion of this problem and should be quickly passed by this legislature and signed into law.

Assessment & Taxation
Date 3-20-06
Attachment # 5



David D. White, C.P.A., J.D.
Assistant Vice President – Tax Policy
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**Written Testimony on behalf of AT&T Inc.
Before the Senate Assessment and Taxation Committee
March 20, 2006**

My name is David White. I am the Assistant Vice President for Tax Policy for AT&T. On behalf of AT&T, I appreciate the opportunity to provide written testimony in support of HB 2548.

AT&T and its affiliates have been doing business in Kansas for over a century. Kansas is important to AT&T as demonstrated by the investment of over \$3 billion in the Kansas communications infrastructure. AT&T has also shown its commitment to Kansas by employing over 2,000 hardworking Kansas citizens – who keep AT&T's premier communications network up and running --24 hours a day, 365 days a year.

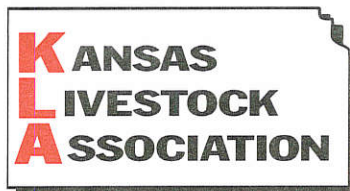
As the result of AT&T's commitment to Kansas, AT&T finds itself among the State's largest corporate citizens and one of the State's largest taxpayers. In addition to the State's franchise tax, the company, and in many cases the services provided, are subject to a myriad of taxes and fees – including corporate income tax, property tax, the public utility assessment, State and local sales taxes, universal service fees, 911 fees, municipal right-of-way fees – and others.

In many cases, even taxes which are levied on general businesses are levied unfairly on the telecom industry. For example, unlike most other manufacturers in Kansas, telecom equipment purchases are subject to State and local sales taxes as telecom equipment does not qualify for the sales/use tax "manufacturing" exemption. As another example, telecom personal property is assessed utilizing an income approach – while general business personal property is assessed utilizing a cost / depreciation table approach. The income approach often results in the value of telecom personal property increasing while general business personal property depreciates.

Therefore, House Bill 2548, as introduced, would help reduce AT&T's excessive tax burden in Kansas by phasing out the franchise tax over a period of years. This has the effect of reducing the cost of doing business in the State and we believe it rewards businesses for their commitment to Kansas.

On behalf of AT&T, I want to thank you for your support of HB 2548 as AT&T looks forward to working with the Committee to eliminate the State's franchise tax. .

Assessment & Taxation
Date 3-20-06
Attachment # 6



Since 1894

TESTIMONY

To: The Senate Committee on Assessment and Taxation
From: Allie Devine, Vice President and General Counsel
Date: March 20, 2006
Subj: **House Bill 2548** -A bill to phase out the Kansas franchise tax.

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 supports HB 2548.

The franchise tax is essentially a tax on the privileges of doing business in Kansas. It is paid by foreign and domestic corporations, associations, limited liability corporations, and limited liability partnerships.

In 2004 the Legislature changed the franchise tax by raising the cap on the tax from \$5,000 to \$20,000 and lowering the rate from 0.2 percent of shareholder equity or net worth to 0.125 percent. The legislature also provided for an exemption for entities with equity or net worth of \$100,000 or less.

We recently contacted tax practitioners and sought their input on the franchise tax. One practitioner indicated that many of his customers have created corporations or limited liability corporations or partnerships for liability protection. This is a technique that has been recommended and utilized for years in business planning.

Our feedback also concluded the 2004 reduced rates helped some smaller operations, but penalized those mid-sized to larger entities. A \$20,000.00 tax or fee may not be a significant expenditure for a large, publicly traded company. The tax, however, is a significant cost for family owned agricultural businesses.

In addition, the increased franchise tax was especially notable to those who have formed subsidiaries or related companies in recent years.

Assessment & Taxation
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Many agricultural entities that did not pay the tax, or paid a maximum of \$5,000.00, have recently been paying additional franchise taxes. We've received numerous calls from members inquiring and complaining about these changes. During our 2005 convention and business meeting, our members voted to seek the repeal or reduction of the franchise tax.

We ask your support for HB 2548.

Thank you.



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Senate Committee on Assessment and Taxation

March 20, 2006

HB 2548 - Phase-out of the franchise tax.

Chairman Allen and members of the Senate Assessment and Taxation Committee, thank you for the opportunity to share our support for HB 2548. As you know, this measure phases-out the franchise tax. I am Leslie Kaufman and I serve the Kansas Cooperative Council as Executive Director.

The Kansas Cooperative Council represents all forms of cooperative businesses across the state -- agricultural, utility, credit and consumer cooperatives. Cooperative entities are member-owned and member-controlled. Many of our Council's members, especially those on the agricultural side, are also participants in joint ventures, which are generally organized as limited liability companies (LLCs).

The franchise tax is an issue for these limited liability companies. Our member cooperatives and their joint-venture LLCs often operate on tight margins. They are subject to weather influences and a host of other market factors largely beyond their control. We continue to have rural areas of the state plagued by poor weather conditions. Measures intended to relieve regulatory and financial burdens on our member businesses are appreciated. This relief can translate into increased financial stability or greater business investment for these companies. Thus, we support the phase-down and eventual repeal of the franchise tax.

Passage of HB 2548 will help alleviate the overall state tax burden on business and help make our companies stronger. We encourage this committee to act favorably on this measure. Thank you.

Assessment & Taxation
Date 3-20-06
Attachment # 8