Approved: February 25, 2008
Date

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairman Barbara Allen at 10:40 A.M. on February 19, 2008 in Room 519-S of the Capitol.

All members were present except:
Anthony Hensley- excused

Committee staff present:
Gordon Self, Office of Revisor of Statutes
Chris Courtwright, Kansas Legislative Research Department
Scott Wells, Office of Revisor of Statutes
Ryan Hoffman, Kansas Legislative Research Department
Judy Swanson, Committee Assistant

Conferees appearing before the committee:
Mark Burghart, Kansas Chamber
Mark Meads, Ash Grove Cement
Richard Cram, Kansas Department of Revenue
Terry Forsyth, Kansas-NEA
April Holman, Kansas Action for Children (Written only)
Alan Cobb, Americans for Prosperity
Marlee Carpenter, Kansas Chamber
Derek Sontag, NFIB
Tony Scott, Kansas Society of CPAs

Others attending:
See attached list.

Hearing on **SB 578–Job expansion and investment credit act; authorizing tax credit claims by members of a unitary group**–was opened.

Chris Courtwright, Kansas Legislative Research Department (KLRD), gave an overview of **SB 578.** The bill would allow credits earned under the High Performance Incentive Program (HPIP) to be shared among members of a unitary group of companies filing a combined report for Kansas corporate income tax purposes.

Mark Burghart, Kansas Chamber of Commerce and Industry, testified in support of **SB 578.** (Attachment 1) A unitary business is one in which multiple related companies contribute to and depend upon one another, thus constituting one homogenous business enterprise for tax purposes.

Mark Meads, Tax Director for Ash Grove Cement Company, testified the bill will provide clarifying guidance as to the allocation of credits by unitary members filing a combined report. (Attachment 2)

Richard Cram, Kansas Department of Revenue, (KDOR) said KDOR has no position on the bill, but presented a suggested amendment. (Attachment 3) In response to Senator Donovan, Mr. Cram said there are some entities that would be impacted if the "look back" provision was removed because they are currently in the appeals process. The look-back is for appealed claims only, so as to keep the fiscal note in control.

The hearing was closed.

Hearing on **SB 636–Bonus depreciation deduction disallowed for income tax purposes for tax year 2008**--was opened.

Chris Courtwright, KLRD, reviewed **SB 636.** (Attachment 4) Federal legislation was passed to provide recovery rebate credits to individuals of $600. Relative to businesses, the new law provides a bonus depreciation deduction for tax year 2008 for 50 percent of qualified asset costs; and an increase in the applicability of the Section 179 expensing allowance for certain small businesses.

MINUTES OF THE Senate Assessment and Taxation Committee at 10:40 A.M. on February 19, 2008 in Room 519-S of the Capitol.

Because Kansas generally begins computation of income tax liability using federal tax law as a starting point, the new depreciation and expensing provisions allowed under the new federal law automatically will flow through and also affect state income tax receipts. KDOR has indicated its initial analysis suggests the new federal bonus depreciation and expensing provisions would be expected to reduce SGF receipts by $80 million to $100 million. In response to Senator Donovan, Revisor Gordon Self said the business depreciation piece of the bill does not affect Section 179.

Secretary of Revenue Joan Wagnon testified KDOR supports **SB 636.** (Attachment 5) KDOR would usually not support decoupling, but it is supporting it this year since the fiscal impact of the Federal Stimulus Package is so high to the state. She presented a suggested amendment which would accomplish the intended effect of the bill, but still allow the full depreciation spread over the useful life of the asset.

Terry Forsyth, representing Kansas National Education Association (KNEA) and Kansas Association of School Boards (KASB) testified in support of **SB 636.** (Attachment 6) The decoupling is specific to one piece of the tax system and is limited to one year only, therefore protecting the Kansas budget while still allowing the positive impact of the rest of the federal economic stimulus package to work. In response to Senator Schmidt, Mr. Forsyth said KNEA is interested in all pieces of the state budget, not just school finance.

Written testimony supporting **SB 636** was received from April Holman, Kansas Action for Children. (Attachment 7)

Alan Cobb, Americans for Prosperity, testified in opposition to **SB 636.** (Attachment 8) He said there are several different ways to calculate the fiscal impact of the stimulus bill on Kansas, and he did not feel allowances had been made for positive fiscal impact benefits.

Marlee Carpenter, Kansas Chamber, opposed **SB 636** and said the Kansas Chamber believes there will actually be a positive fiscal impact to the state if the bill is not enacted. (Attachment 9) If the bill is enacted, Kansas businesses will have an additional burden of keeping an additional set of depreciation books which will add time, expense and complexity for businesses. The Kansas Chamber believes enacting **SB 636** would send a negative message to Kansas businesses as they are encouraged by the federal government to make investments, but not by the state.

Tony Scott, Kansas Society of Certified Public Accountants, testified Kansas CPAs believe the underlying premise of the 2008 "bonus depreciation" provision of the federal stimulus package is to spur capital investment, and that creates sales growth, enhances profitability, etc. (Attachment 10) Decoupling would require yet another method of calculating depreciation and create a burden to Kansas taxpayers and businesses.

Written testimony opposing **SB 636** was received from Derrick Sontag, National Federation of Independent Businesses (NFIB). (Attachment 11)

During Committee discussion, Secretary Wagnon said the enactment of **SB 636** would have no effect on local budgets. Senator Donovan noted there would be a positive effect for local governments which have sales tax because the stimulus package will stimulate spending. In response to Senator Schmidt, Mr. Courtwright said the general rule to qualify for the bonus depreciation is the investment must be made in tax year 2008. Richard Cram, KDOR, said he would bring information back to the Committee on how this bill would affect businesses that do not use the calendar year for tax purposes. He said there is some language in the bill that would accommodate a different fiscal year.

Senator Schmidt moved to approve the Minutes of the February 13 and February 14 Committee meetings. Senator Jordan seconded the motion, and the motion carried.

Being no further business the meeting adjourned at 11:38 a.m. The next Committee meeting will be February 20.

SENATE
ASSESSMENT & TAXATION COMMITTEE

GUEST LIST

DATE: 02-19-08

NAME	REPRESENTING
Tim Sullinger	KCSTHA
Tony A. Scott	KSCPA
Dina Fisk	Verizon
Katy Dunn	Ash Grove
Meric Meads	Ash Grove
Mark A. Burghart	Ash Grove
Marlee Carpenter	KS Chamber
Natalie Haag	Security Benefit

MEMORANDUM

TO: Senator Barbara Allen, Chairperson
Senate Committee on Assessment and Taxation

FROM: Mark A. Burghart
Kansas Chamber of Commerce and Industry

DATE: February 19, 2008

RE: Senate Bill No. 578 - HPIP Credits in a Corporate Unitary Group

Thank you for the opportunity to appear in support of Senate Bill No. 578. The bill would amend K.S.A. 79-32,141 to clarify that credits earned under the High Performance Incentive Program ("HPIP") may be shared among members of a unitary group of companies filing a combined report for Kansas corporate income tax purposes. Kansas currently employs the unitary business principle when it taxes multistate corporations. A unitary business is one in which multiple related companies contribute to and depend upon one another, thus constituting one homogenous business enterprise for tax purposes. Under this principle, the income and expenses of all companies included in the unitary group are aggregated or combined and then apportioned to the various states in which the unitary business conducts its business operations. A standard three-factor formula of equally-weighted factors, including property, payroll and sales, is used to make the apportionment. This particular approach to taxing multistate companies is long-standing and has been sanctioned by the Kansas Supreme Court on several occasions.

The proposed amendment to K.S.A. 79-32,141 clarifies the manner in which the investment tax credits are allowed to be claimed by companies in a unitary group. Under current Kansas Department of Revenue policy, only the company generating the credit within the unitary group is entitled to claim the credit. Any unused credit may be carried forward for up to 10 years by that single company. This interpretation has resulted in the carryforward of significant unused credits which will never be utilized by the companies making these investments. The corporate business community believes the Department's approach may not be entirely consistent with the unitary business principle which is based on the premise that all of the property, payroll and sales of all of the companies included in the combined group contribute to the overall income of the business enterprise. The proposed amendment would merely state that any credits generated through investment by any company within the unitary group could be claimed by any other company in the unitary group which files a Kansas corporate income tax return. This is the same approach that is followed by the State of Nebraska and is believed to be entirely consistent with

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the unitary business principle. If all corporate assets contribute to the generation of income of the unitary business enterprise, then the resulting credits resulting from the investment by the companies in the unitary group also should be available to the companies included in the unitary enterprise that do business in Kansas.

The bill has limited retroactivity. It would only apply to taxpayers who filed original returns in which HPIP credits were shared, taxpayers who have appeals on file supporting such filing methodology and all taxpayers on and after January 1, 2008. Even if this legislation were to pass, there would still remain significant amounts of carryforward credits that will never be able to be utilized by the companies involved. Companies in a loss carryforward posture would not benefit from this legislation. Very few companies satisfy the narrow statutory criteria for the HPIP tax credit. That number of HPIP taxpayers is further limited to companies filing combined reports as a unitary group. We believe the fiscal note that was prepared may not necessarily reflect the fact that many of the credits will still remain as carryforwards and will expire before they will be able to be claimed within the 10-year carryforward period.

There will be a number of corporate tax credit bills considered during this legislative session. It is our understanding that the Secretary of Revenue, while supportive of this concept, believes that the proposal must be considered as part of a more comprehensive corporate income tax package and should not be considered in isolation. We pledge to work with the Department to arrive at a fair package that represents the interests of the corporate community, but also recognizes the fiscal constraints under which the 2008 Legislature must operate.

Thank you for your continuing efforts to make Kansas an attractive place for businesses to locate and expand. I would be happy to provide any additional information or respond to any questions that any committee member may have.

MAB:jdk/cmr

- Good morning my name is Mark Meads and I am the Tax Director for Ash Grove Cement Company.

- I am here this morning in support of the credit allocation bill introduced by the Chamber.

- Ash Grove is a company that has made significant investment in the State of Kansas with our most modern facility located in Chanute, Kansas

- We believe this Bill is important as it will provide clarifying guidance as to the allocation of credits by unitary members filing a combined report.

- **Thank you for your time and consideration.**

KDOR Balloon

Session of 2008

SENATE BILL No. 578

By Committee on Commerce

2-7

AN ACT concerning income taxation; clarifying treatment of certain credits by corporations in a unitary group; amending K.S.A. 79-32,141 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 79-32,141 is hereby amended to read as follows: 79-32,141. *(a)* The director may allocate gross income, deductions, credits, or allowances between two or more organizations, trades or businesses (whether or not incorporated, or organized in the United States or affiliated) owned or controlled directly or indirectly by the same interests, if the director determines such allocation is necessary to prevent evasion of taxes or to clearly reflect income of the organizations, trades or businesses.

(b) Credits claimed under subsection (e) of K.S.A. 79-32,160a, and amendments thereto, by a taxpayer that is a member of a unitary group filing a combined report shall be allowed to be claimed by other members of the group included in such combined report, to the extent the credits exceed the tax imposed by the Kansas income tax act on the Kansas taxable income of such taxpayer first claiming the credit. The provisions of this subsection shall be applicable to:

(1) Any taxpayer that is a member of a unitary group that has filed or will file an original return for tax years commencing prior to January 1, 2008, claiming a credit under subsection (e) of K.S.A. 79-32,160a, and amendments thereto, which credit exceeded the tax imposed by the Kansas income tax act on the Kansas taxable income of the taxpayer in the unitary group first claiming the credit;

(2) any taxpayer that is a member of a unitary group that has perfected an appeal in order to sustain such filing position set forth in paragraph (1); and

requested an informal conference or

(3) any taxpayer that is a member of a unitary group for tax years commencing on and after January 1, 2008.

Sec. 2. K.S.A. 79-32,141 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

(c) Any refund claimed pursuant to subsection (b) of this section shall be subject to the statute of limitations in K.S.A. 79-3230(c), and amendments therto.

Assessment & Taxation
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SB 636 memo from Chris Courtwright 2-14-08

C:\Data\fy08\cedstimsbarbara.wpd

DRAFT
MEMORANDUM
February 14, 2008

To: Senator Barbara Allen
From: Chris W. Courtwright, Principal Economist
Re: Federal Stimulus Package Impact

The purpose of this memo is to briefly respond to your request to summarize some of the available information about the new federal tax law and its impact on Kansas.

President Bush, as you know, has signed into law H. R. 5140. That legislation will provide recovery rebate credits to individuals of $600 ($1,200 for joint returns) phased out above certain income levels. Additional checks will be available of $300 per dependent child. Certain low-income individuals and those receiving Social Security or veterans benefits also will be eligible for $300. Relative to businesses, the new law provides a bonus depreciation deduction for tax year 2008 of 50 percent of qualified asset costs; and an increase in the applicability of the Section 179 expensing allowance for certain small businesses.

These issues were discussed at length on Wednesday in the Senate Assessment and Taxation Committee. I have attached the information provided by the Department of Revenue and will attempt to summarize some of the analysis and discussion.

Tax Relief for Individuals

Information provided with respect to the tax relief provided to individuals has indicated that Kansas 1.2 million households will receive an average of $917. You may recall that the last time the federal government decided to offer tax relief by sending checks, a lot of individuals did not necessarily immediately stimulate our state revenue coffers by spending the money on goods and services subject to the sales tax but instead used it to pay down debt. (The Senate Committee spent a good deal of time discussing this issue.) Certainly to the extent that this new $917 per household is spent on credit card debt or over-due mortgage payments, we would not see an impact on sales tax receipts. No one during the discussion was able to provide any specific percentage to use, but if as an example you wanted to assume that 50 percent of the amount going to each household would be spent on taxable items, that would translate into increased state sales tax receipts of about $29.2 million ($25.6 million to the SGF and $3.6 million to the SHF).

But I should also add one very important caveat we would have with respect to any assumption about the extent to which additional sales tax receipts should be considered new money relative to the November Consensus estimates. Those estimates did not contemplate that the economy was sliding into a recession (which is generally the reason Congress chose to enact the stimulus package in the first place on such short notice). In any event, while expenditures of this money will in fact boost sales tax receipts, the fact of the matter is that the Consensus group had not yet reconvened and revised SGF estimates for sales and other taxes relative to the darkening economic outlook that has been developing over the last several months. When the group does reconvene in April, it will consider the impact of the new stimulus package <u>as well as</u> the overall economic outlook and how that has changed.

The Department also verified their earlier comments that the federal rebate checks will not be subject to federal (or state) income tax because of the way the new law is structured.

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Tax Relief for Businesses

Because Kansas generally begins computation of our income tax liability using federal tax law as a starting point, the new depreciation and expensing provisions allowed under the new federal law automatically will flow through and also affect state income tax receipts (absent any action by Kansas to decouple).

The Kansas Department of Revenue has indicated that their initial analysis suggested that the new federal bonus depreciation and expensing provisions would be expected to reduce SGF receipts by $80 million to $100 million. The Center for Budget and Policy Priorities estimated the loss to be $87 million, and Secretary Wagnon and Richard Cram indicated that they have decided to use that particular estimate.

The Department has indicated that it does not have a solid number with respect to the extent to which sales tax receipts might increase as a result of new purchases by businesses that would not have otherwise been made but for the new federal tax incentives. They did point out that manufacturing machinery and equipment is already exempt from sales tax, as are a number of other ancillary purchases exempted pursuant to the integrated plant provisions adopted several years ago.

KANSAS
DEPARTMENT OF REVENUE

Kathleen Sebelius, Governor
Joan Wagnon, Secretary

www.ksrevenue.org

Testimony to the Senate Committee on Assessment and Taxation

Richard Cram

February 19, 2008

Support for Senate Bill 636

Senator Barbara Allen, Chair, and Members of the Committee:

The Department supports Senate Bill 636, which would "decouple" Kansas from the negative fiscal impact that will otherwise be experienced from the bonus depreciation provisions contained in the Economic Stimulus Act of 2008, approved by Congress and signed by the President last week. This legislation provides an addition one-time first-year depreciation deduction of 50% of the asset cost.

Because the calculation of Kansas taxable income begins with federal adjusted gross income for individuals and federal taxable income for corporations, the depreciation deductions allowed under the federal income tax laws are already taken into account in determining the business's Kansas taxable income. See attached Form 1120, Line 20, which provides an "above the line" deduction for depreciation. Without enactment of Senate Bill 636, Kansas can be expected to absorb an estimated initial negative fiscal impact of $84 million, spread over fiscal years 2008 and 2009.

Senate Bill 636 would have a positive fiscal impact to offset the negative fiscal impact of the bonus depreciation provisions in the Economic Stimulus Act of 2008. The Department's fiscal note is attached. Senate Bill 636 would have a positive impact of $25.2 million in fiscal year 2008 and positive impact of $51.6 million in fiscal year 2009. Thereafter in out years, Senate Bill 636 would have a negative fiscal impact, as it will cause depreciation deductions that otherwise would be taken in tax year 2008 to be spread over the useful lives of the assets.

The Department suggests the adoption of the attached balloon amendment to accomplish the intended effect of Senate Bill 636, which is to "decouple" from the bonus depreciation provisions, but still allow the full depreciation spread over the useful life of the asset. K.S.A. 79-32,117 and 79-32,138 need to include subtraction modifications for portion of the bonus depreciation disallowed in tax year 2008, which would have been allowed in future years under the normal MACRS rules.

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Form **1120**

Department of the Treasury
Internal Revenue Service

U.S. Corporation Income Tax Return

For calendar year 2007 or tax year beginning ...., 2007, ending ...., 20 ....

▶ See separate instructions.

OMB No. 1545-0123

2007

A Check if:			B Employer identification number
1a Consolidated return (attach Form 851) ☐	Use IRS label. Otherwise, print or type.	Name	
b Life/nonlife consolidated return ☐		Number, street, and room or suite no. If a P.O. box, see instructions.	C Date incorporated
2 Personal holding co. (attach Sch. PH) ☐		City or town, state, and ZIP code	D Total assets (see instructions) $
3 Personal service corp. (see instructions) ☐			
4 Schedule M-3 attached ☐	E Check if: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Name change (4) ☐ Address change		

Income

1a	Gross receipts or sales ______ b Less returns and allowances ______ c Bal ▶	1c	
2	Cost of goods sold (Schedule A, line 8)	2	
3	Gross profit. Subtract line 2 from line 1c	3	
4	Dividends (Schedule C, line 19)	4	
5	Interest	5	
6	Gross rents	6	
7	Gross royalties	7	
8	Capital gain net income (attach Schedule D (Form 1120))	8	
9	Net gain or (loss) from Form 4797, Part II, line 17 (attach Form 4797)	9	
10	Other income (see instructions—attach schedule)	10	
11	**Total income.** Add lines 3 through 10 ▶	11	

Deductions (See instructions for limitations on deductions.)

12	Compensation of officers (Schedule E, line 4)	12	
13	Salaries and wages (less employment credits)	13	
14	Repairs and maintenance	14	
15	Bad debts	15	
16	Rents	16	
17	Taxes and licenses	17	
18	Interest	18	
19	Charitable contributions	19	
20	Depreciation from Form 4562 not claimed on Schedule A or elsewhere on return (attach Form 4562)	20	
21	Depletion	21	
22	Advertising	22	
23	Pension, profit-sharing, etc., plans	23	
24	Employee benefit programs	24	
25	Domestic production activities deduction (attach Form 8903)	25	
26	Other deductions (attach schedule)	26	
27	**Total deductions.** Add lines 12 through 26 ▶	27	
28	Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11	28	
29	**Less:** a Net operating loss deduction (see instructions) 29a		
	b Special deductions (Schedule C, line 20) 29b	29c	

Tax and Payments

30	**Taxable income.** Subtract line 29c from line 28 (see instructions)	30	
31	**Total tax** (Schedule J, line 10)	31	
32a	2006 overpayment credited to 2007 32a		
b	2007 estimated tax payments 32b		
c	2007 refund applied for on Form 4466 32c ( ) d Bal ▶ 32d		
e	Tax deposited with Form 7004 32e		
f	Credits: (1) Form 2439 ______ (2) Form 4136 ______ 32f	32g	
33	Estimated tax penalty (see instructions). Check if Form 2220 is attached ▶ ☐	33	
34	**Amount owed.** If line 32g is smaller than the total of lines 31 and 33, enter amount owed	34	
35	**Overpayment.** If line 32g is larger than the total of lines 31 and 33, enter amount overpaid	35	
36	Enter amount from line 35 you want: **Credited to 2008 estimated tax** ▶ ______ **Refunded** ▶	36	

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of officer ______ Date ______ Title ______

May the IRS discuss this return with the preparer shown below (see instructions)? ☐ Yes ☐ No

Paid Preparer's Use Only

Preparer's signature	Date	Check if self-employed ☐	Preparer's SSN or PTIN
Firm's name (or yours if self-employed), address, and ZIP code		EIN	
		Phone no. ( )	

5-2)

2008 Senate Bill 636a Fiscal Note

Introduced as a Senate Bill

Brief of Bill

Senate Bill 636, as introduced, would modify K.S.A. 79-32,117 and K.S.A. 79-32,138 to provide a federal adjusted gross income addback modification for taxable year 2008, for the amount of any bonus depreciation deduction claimed pursuant to Subsection (k) of section 168 of the Internal Revenue Code. This bill would allow the State of Kansas to decouple from the federal business depreciation rules for taxable year 2008 only. The "bonus depreciation" provision of the federal law allows a business to claim an immediate tax deduction of up to 50% of the cost of new equipment purchases, rather than following the modified accelerated cost recovery system (MACRS) approach in the federal rules for depreciating the full cost gradually over the applicable multi-year useful life of the equipment. The MACRS approach would apply to the other 50% of the cost.

The bill shall be effective after publication of the Kansas statute book.

Fiscal Impact

SB 636 would provide a federal adjusted gross income addback modification for the amount of any depreciation deduction claimed pursuant to Subsection (k) of section 168 of the Internal Revenue Code. The "bonus depreciation" provision of the federal law allows a business to claim an immediate tax deduction of up to 50% of the cost of new equipment purchases and to depreciate the remaining 50% using the normal MACRS recovery periods and methods allowed under federal tax laws. However, if this bonus depreciation is disallowed on the K-120 by the addback modification, there needs to be a corresponding subtraction modification to KSA 79-32,117 and KSA 79-32,138 for tax years after 2008 for the portion of the addback modification in tax year 2008 that would have been depreciated under the normal MACRS rules without the bonus depreciation provision of the Economic Stimulus Package of 2008. Otherwise, the taxpayer will not be allowed to depreciate the full cost of the asset for Kansas tax purposes.

It is assumed that the intent of the bill is to allow full depreciation over time but simply decouple from the federal bonus depreciation provisions, in order to offset the otherwise negative revenue impact for tax year 2008. The decoupling would take the approach of simply retaining prior law depreciation rules, or requiring the "add-back" of the bonus depreciation for the first year and the "subtract" the extra depreciation in the later tax years under the normal MACRS rules.

Under this assumption, the bill would increase state general fund by a $84 million for tax year 2008. The bill, however, would decrease the state general fund in the following taxable years, as shown in the following table. This will continue until the total negative fiscal impact offsets $84 million positive impact. Assuming 30% of tax year 2008 impact would fall in FY 2008 and the remaining 70% of the impact will fall in FY 2009, we also show the fiscal year impacts in the table. The fiscal impacts of deducting depreciation is a matter of timing and will not raise nor reduce state revenue over the life of the investment asset. The one tax-year bonus or accelerated depreciation will have short term impact and may be difficult to predict with precision, due to administrative considerations in accounting for depreciation basis.

Fiscal Impact for SB 636:

Fiscal Year	Fiscal Year Impact (million)		Tax Year	Tax Year Impact (million)
2008	$25.20		2008	$84.00
2009	$51.60		2009	($24.00)
2010	($21.94)		2010	($17.14)
2011	($15.67)		2011	($12.24)
2012	($11.19)		2012	($8.75)
2013	($8.75)		2013	($8.74)
2014	($8.74)		2014	($8.75)
2015	($7.44)		2015	($4.37)
2016	($3.06)		2016	$0.00

Administrative Impact

If the bill is passed, the instructions for income, corporate income and privilege tax would need to be revised to instruct about the add-back modification. The cost for these changes can be absorbed.

Administrative Problems and Comments

IRC Section 168(k) allows for the deduction of 50% bonus depreciation for assets placed in services after December 31, 2007 and before December 31, 2008. If this bonus depreciation is disallowed on the K-120 by the addback modification, **there needs to be a subtraction modification or the taxpayer will not be allowed to depreciate the full cost of the asset for Kansas tax purposes.** KSA 79-32,117(c)(xx) and KSA 79-32,138(c)(vi) should be added: "For all taxable years commencing after December 31, 2008, the amount of depreciation which would have been deducted on the federal return if not for the taxpayer's reliance on IRC Section 168(k)."

Taxpayer/Customer Impact

Though this is a possible solution to the state tax revenue loss in the next few years, decoupling creates compliance issues in future years. Not conforming to the bonus depreciation provisions will require taxpayers to maintain different federal and state depreciation schedules for as long as they are depreciating the asset or property.

Legal Impact

None.

KDOR Balloon

loans incurred by or obligated to such taxpayer and received by such taxpayer as a result of such taxpayer's service in the armed forces of the United States, including service in the Kansas army and air national guard.

(xviii) For all taxable years beginning after December 31, 2004, amounts received by taxpayers who are eligible members of the Kansas army and air national guard as a reimbursement pursuant to K.S.A. 48-281, and amendments thereto, and amounts received for death benefits pursuant to K.S.A. 48-282, and amendments thereto, or pursuant to section 1 or section 2 of chapter 207 of the 2005 session laws of Kansas, and amendments thereto, to the extent that such death benefits are included in federal adjusted gross income of the taxpayer.

(xix) For the taxable year beginning after December 31, 2006, amounts received as benefits under the federal social security act which are included in federal adjusted gross income of a taxpayer with federal adjusted gross income of $50,000 or less, whether such taxpayer's filing status is single, head of household, married filing separate or married filing jointly; and for all taxable years beginning after December 31, 2007, amounts received as benefits under the federal social security act which are included in federal adjusted gross income of a taxpayer with federal adjusted gross income of $75,000 or less, whether such taxpayer's filing status is single, head of household, married filing separate or married filing jointly.

(xx) For taxable years commencing after December 31, 2008, the amount of depreciation which would have been deducted for federal income tax purposes without regard to section 168(k) of the federal income tax code.

(d) There shall be added to or subtracted from federal adjusted gross income the taxpayer's share, as beneficiary of an estate or trust, of the Kansas fiduciary adjustment determined under K.S.A. 79-32,135, and amendments thereto.

(e) The amount of modifications required to be made under this section by a partner which relates to items of income, gain, loss, deduction or credit of a partnership shall be determined under K.S.A. 79-32,131, and amendments thereto, to the extent that such items affect federal adjusted gross income of the partner.

Sec. 2. K.S.A. 2004 Supp. 79-32,138 is hereby amended to read as follows: 79-32,138. (a) Kansas taxable income of a corporation taxable under this act shall be the corporation's federal taxable income for the taxable year with the modifications specified in this section.

(b) There shall be added to federal taxable income: (i) The same modifications as are set forth in subsection (b) of K.S.A. 79-32,117, and amendments thereto, with respect to resident individuals.

(ii) The amount of all depreciation deductions claimed for any property upon which the deduction allowed by K.S.A. 2007 Supp. 79-32,221, 79-32,227, 79-32,232, 79-32,237, 79-32,249, 79-32,250, 79-32,255 or 79-32,256, and amendments thereto, is claimed.

(iii) The amount of any charitable contribution deduction claimed for

KDoR Balloon

any contribution or gift to or for the use of any racially segregated educational institution.

(iv) For taxable year 2008, the amount of any depreciation deduction claimed pursuant to the provisions of section 168(k) of the federal internal revenue code.

(c) There shall be subtracted from federal taxable income: (i) The same modifications as are set forth in subsection (c) of K.S.A. 79-32,117, and amendments thereto, with respect to resident individuals.

(ii) The federal income tax liability for any taxable year commencing prior to December 31, 1971, for which a Kansas return was filed after reduction for all credits thereon, except credits for payments on estimates of federal income tax, credits for gasoline and lubricating oil tax, and for foreign tax credits if, on the Kansas income tax return for such prior year, the federal income tax deduction was computed on the basis of the federal income tax paid in such prior year, rather than as accrued. Notwithstanding the foregoing, the deduction for federal income tax liability for any year shall not exceed that portion of the total federal income tax liability for such year which bears the same ratio to the total federal income tax liability for such year as the Kansas taxable income, as computed before any deductions for federal income taxes and after application of subsections (d) and (e) of this section as existing for such year, bears to the federal taxable income for the same year.

(iii) An amount for the amortization deduction allowed pursuant to K.S.A. 2007 Supp. 79-32,221, 79-32,227, 79-32,232, 79-32,237, 79-32,249, 79-32,250, 79-32,255 or 79-32,256, and amendments thereto.

(iv) For all taxable years commencing after December 31, 1987, the amount included in federal taxable income pursuant to the provisions of section 78 of the internal revenue code.

(v) For all taxable years commencing after December 31, 1987, 80% of dividends from corporations incorporated outside of the United States or the District of Columbia which are included in federal taxable income.

(d) If any corporation derives all of its income from sources within Kansas in any taxable year commencing after December 31, 1979, its Kansas taxable income shall be the sum resulting after application of subsections (a) through (c) hereof. Otherwise, such corporation's Kansas taxable income in any such taxable year, after excluding any refunds of federal income tax and before the deduction of federal income taxes provided by subsection (c)(ii) shall be allocated as provided in K.S.A. 79-3271 to K.S.A. 79-3293, inclusive, and amendments thereto, plus any refund of federal income tax as determined under paragraph (iv) of subsection (b) of K.S.A. 79-32,117, and amendments thereto, and minus the deduction for federal income taxes as provided by subsection (c)(ii) shall be such corporation's Kansas taxable income.

(vi) For taxable years commencing after December 31, 2008, the amount of depreciation which would have been deducted for federal income tax purposes without regard to section 168(k) of the federal income tax code.

Making public schools great for every child

KANSAS NATIONAL EDUCATION ASSOCIATION / 715 SW 10TH AVENUE / TOPEKA, KANSAS 66612-1686

Terry Forsyth, Testimony
Senate Assessment and Taxation Committee
February 19, 2008

Senate Bill 636

Also representing the Kansas Association of School Boards

Madame Chair, members of the committee, thank you for the opportunity to come before you to share our thoughts on **Senate Bill 636**.

The effects of the federal economic stimulus package on the state of Kansas came as a bit of a shock to us. We did not anticipate the possibility of Kansas losing so much revenue due to this federal action.

We know that this Legislature is dealing with effects of a slowing economy and the pressures to continue to deliver services to your constituents. The people of Kansas have come to expect quality schools, good roads, a top-notch public safety system, and care for our most vulnerable citizens. You have managed to balance all of those through good times and bad. And in bad times you have sometimes come to see that past practices can impact present situations.

It is one thing to have to react to economic forces – slowdowns and recessions – but to have your revenue stream dramatically cut through the action of the federal government is something you should hope would not happen.

With the Kansas tax system coupled to the federal tax system, these things are bound to arise. This does not mean that the two systems should be permanently decoupled. But you should be allowed to protect the state of Kansas.

Senate Bill 636 is a narrowly drawn bill intended to protect Kansas. The decoupling is specific to one piece of the tax system and is limited to one year only. By doing this, you protect the Kansas budget while still allowing the positive impact of the rest of the federal economic stimulus package to work.

The loss of $87 million would, as you know, make your job ever so much more challenging. The needs of our state are great and the expectations of Kansans are high.

We urge this committee to consider **SB 636** favorably for passage.

Assessment & Taxation
Date 2-19-08
Attachment # 6

Telephone: (785) 232-8271 FAX: (785) 232-6012 Web Page: www.knea.org

FISCAL FOCUS

Budget and Tax Policy in Perspective

April Holman
Legislative Testimony
Senate Bill 636
Senate Committee on Assessment and Taxation
February 6, 2008

Good morning Madam Chair and members of the Committee. On behalf of Kansas Action for Children (KAC), I would like to thank you for this opportunity to testify in favor of SB 636.

KAC is a not-for-profit child advocacy organization that has been in existence since 1979. KAC works to promote policies that improve child well-being in the areas of health, education and family economic success. Several years ago KAC developed Fiscal Focus as part of this work to promote family economic success. The purpose of Fiscal Focus is to improve the economic security of Kansas children and their families, and ensure a balanced and fair tax system and budget process that promotes both the well-being of children and families and provides a stable system of state revenues.

SB 636 would decouple Kansas income tax law as it relates to income tax treatment of bonus depreciation from the federal tax code for tax year 2008. In a recent report entitled, "New Federal Law Could Worsen State Budget Problems: States Can Protect Revenues by "Decoupling", the Center on Budget and Policy Priorities estimates that Kansas will lose $85 million in individual and corporation income tax revenues in the FY 08 and FY 09 fiscal years as a result of the bonus depreciation provisions in the recent federal economic stimulus package.

KAC supports SB 636 for two main reasons: it would restore the ability of Kansas lawmakers to determine how best to spend $85 million in state tax dollars and it would avoid a loss of $85 million to state agency budgets.

Decoupling from federal bonus depreciation would restore the ability of Kansas lawmakers to determine how best to spend $85 million in state tax dollars.

This amount represents a significant tax expenditure in Kansas. However, Kansas lawmakers did not have the opportunity to debate the merits of this economic stimulus measure. In fact, experts note that bonus depreciation is not a particularly effective means of stimulating the economy. According to Moody's Economy.com, every dollar spent on bonus depreciation results in economic growth of 27 cents. In contrast, the same source found that every dollar spent mitigating state budget shortfalls results in economic growth of $1.36. By decoupling from the federal tax code as it relates to bonus depreciation, Kansas lawmakers would regain the ability to determine how best to spend $85 million state dollars.

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Decoupling from federal bonus depreciation would avoid a loss of $85 million to state agency budgets.

However, the best reason to decouple from the federal tax code as it relates to bonus depreciation is that FY 2008 and FY 2009 are tight budget years for Kansas already. The loss of $85 million dollars will have a significant negative impact on the state budget. KAC is very concerned about the negative impact on funding for Kansas public infrastructure in general and in particular about the negative impact of potential reductions in spending for children and families.

We urge the committee's support of SB 636 to decouple from the federal tax code as it relates to bonus depreciation.

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AMERICANS FOR PROSPERITY
K A N S A S

February 19, 2008

We oppose SB 636. The alarm bells are based on very thin and incomplete math.

There are several different ways to calculate the fiscal impact of the Federal Stimulus package on Kansas, not just from the anti-tax cutting group Center on Budget and Policy Priorities. This group simply has a bias against tax cuts.

There is no obvious method CBPP uses to calculate the Kansas impact. It appears they simply calculated Kansas' purported impact by looking at state and Federal corporate income tax collections. First, income may or may not correspond with investment. Secondly, this method leaves a huge gap, as many corporations nationwide are "S" corporations who are taxed at the individual level.

The CBPP analysis made no allowance for Kansas' particular business mix and what investments Kansas businesses are likely to make.

The impact on Kansas might be as low as $37 million.

And of course the CBPP report made no attempt to calculate the positive fiscal benefits of taxpayers receiving checks. It did not account for the additional Federal assistance to unemployment benefits.

Nor did it account for the positive impact of lowering the cost of doing business via lower investment costs.

<u>Obviously, the idea of this stimulus is to encourage people to spend the money.</u>

- 1.2 million Kansans receiving $1,100 each is $1.3 billion.
- If 70% of that money is spent on retail items, the sales tax will be $65 million. (7%)
- As the businesses receive the money, ($900 million) and we assume they make 8% profit before tax (and that seems rather low), there are profits of $72,000,000 and pay roughly 5% in income tax, or $3,500,000.
- If that's just one time thru the economic cycle, don't we see $68,500,000 in revenue to the State of Kansas?
- If they buy cars, won't the property tax and registrations add to this?
- Third time thru the cycle, doesn't it seem that the $87,000,000 is easily recovered and more revenue is realized?

The Federal stimulus package approved by Congress and the President will accelerate write-off for business investments. Kansas, being linked or coupled to the Federal Tax Code, will participate in this accelerated write-off schedule.

Economists agree that the economy is slowing, and maybe in or close to a recession. Businesses being able to receive greater tax deductions for capital investments could not come at a more opportune time.

Lowering the cost of capital will help spur the Kansas economy. Entrepreneurs will be more likely to invest in capital equipment, which will create jobs, income and a more desirable destination for capital investment, a key component in high paying jobs.

What message does it send to businesses of all sizes that Kansas just raised their cost of capital for 2008, while other states have not?

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Assessment & Taxation
Date 2-19-08
Attachment # 8

Legislative Testimony

achieve more

SB 636

February 19, 2008

Testimony before the Kansas Senate Tax Committee
By Marlee Carpenter, Vice President of Government Affairs

Chairman Allen and members of the committee;

The Kansas Chamber of Commerce opposes SB 636 and it's affect on the overall business economy in Kansas. The Economic Stimulus Act of 2008 passed by Congress and signed by the President of the United States will encourage growth and investment in the Kansas economy. Enacting SB 636 will send a negative message to Kansas businesses as they are encouraged to make investments by the federal level, but not the state.

The provisions set forth in the federal stimulus package are intended spurs investments in facilities, equipment and is predicted to create an estimated 500,000 new jobs in 2008. This stimulus package will also provide for accelerated expensing and depreciation which will drive businesses to invest in the Kansas economy. Companies that are considering investment in the next few years will be encouraged by these tax advantages to make the investment decisions today.

The Kansas Chamber believes that there will actually be a positive fiscal impact to the state if this bill is not enacted. Investments will be made, items will be purchases and money will change hands—in many cases creating additional tax benefits to the state. In addition to the benefits that will arise out of these business transactions, an approximate billion dollars of rebate checks will be sent to Kansas residents. This money will also be used to bolster the Kansas economy, adding to the sales tax base and property tax base.

The Kansas Chamber's 2007 CEO and Business Owners Poll is a scientific survey of 300 businesses from all parts of the state. The Chamber annually conducts this survey to gauge the mood of Kansas businesses. This year's poll ranks lower business taxes as the most important issue to the profitability of a business. This is significant because for the first time in four years lower taxes has eclipsed health care costs. In addition, sixty-seven percent of business owners believe that they pay too much in taxes. These two indicators are significant because despite the progress we have made in the last couple of years in the area of business taxes, more needs to be done to improve the business climate in the state.

THE KANSAS CHAMBER

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Assessment & Taxation
Date 2-19-08
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Finally, the poll found that 54% of those surveyed thought that the Kansas economy was on the right track in 2007. The Chamber believes that to stay on track in this time of national economic downturn, measures set forth in the federal stimulus package must reach Kansas businesses.

If SB 636 is enacted, Kansas businesses will have an additional burden of keeping an additional set of depreciation books. This will add time, expense and complexity for businesses in Kansas. This would be especially burdensome for small companies that do not have the staff and technology to keep up with the different state requirements.

The Chamber believes that if the accelerated expensing and depreciation is good for the federal government then Kansas business should be allowed to take advantage of it as well. Again, we oppose SB 636 and believe that it sends the wrong message to Kansas businesses as they make daily investment decision in the state.

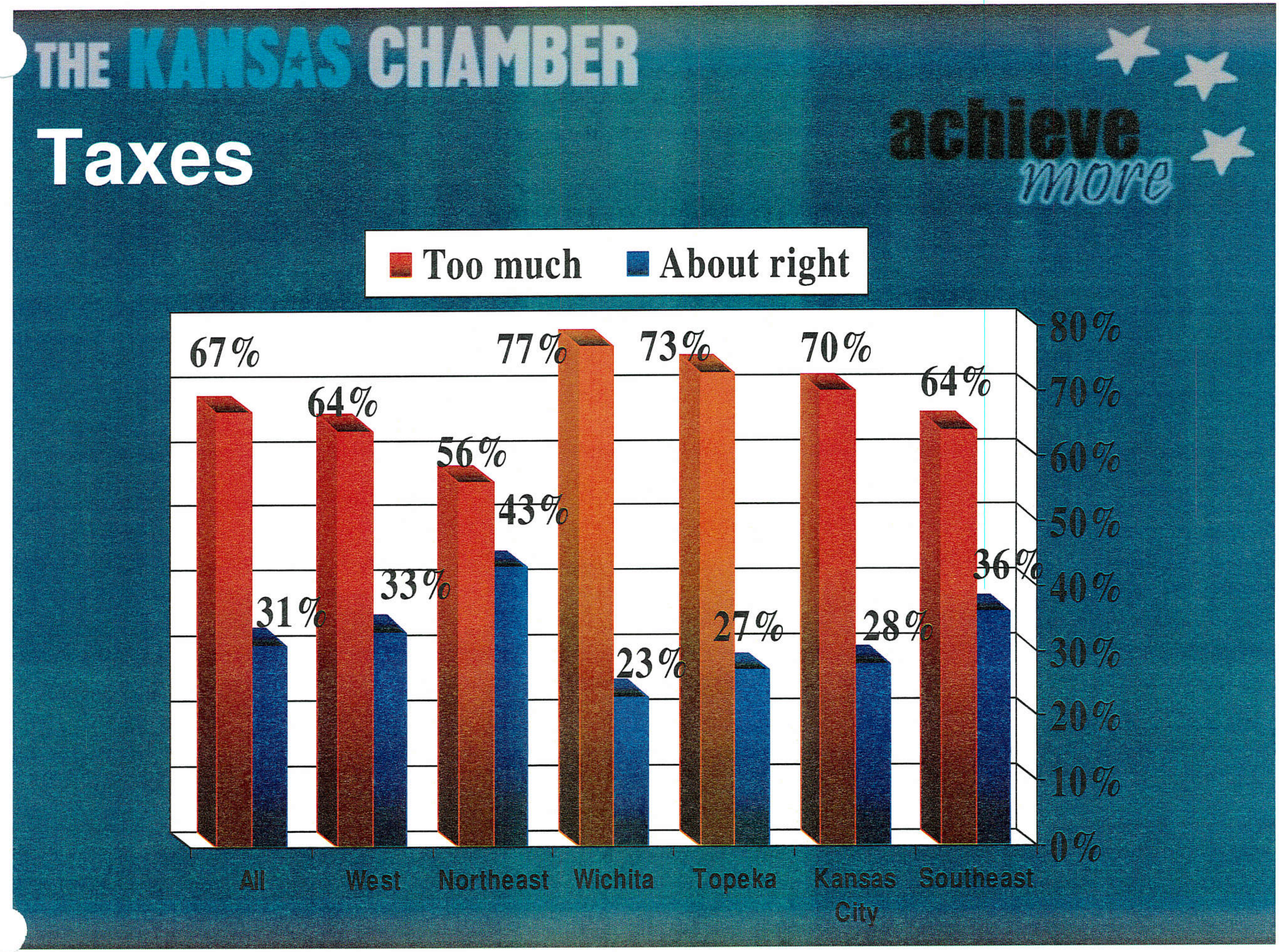
Thank you for your time and I will be happy to answer any questions.

Kansas Chamber, with headquarters in Topeka, is the leading statewide pro-business advocacy group moving Kansas towards becoming the best state in America to live and work. The Chamber represents small, medium and large employers all across Kansas.

9-3

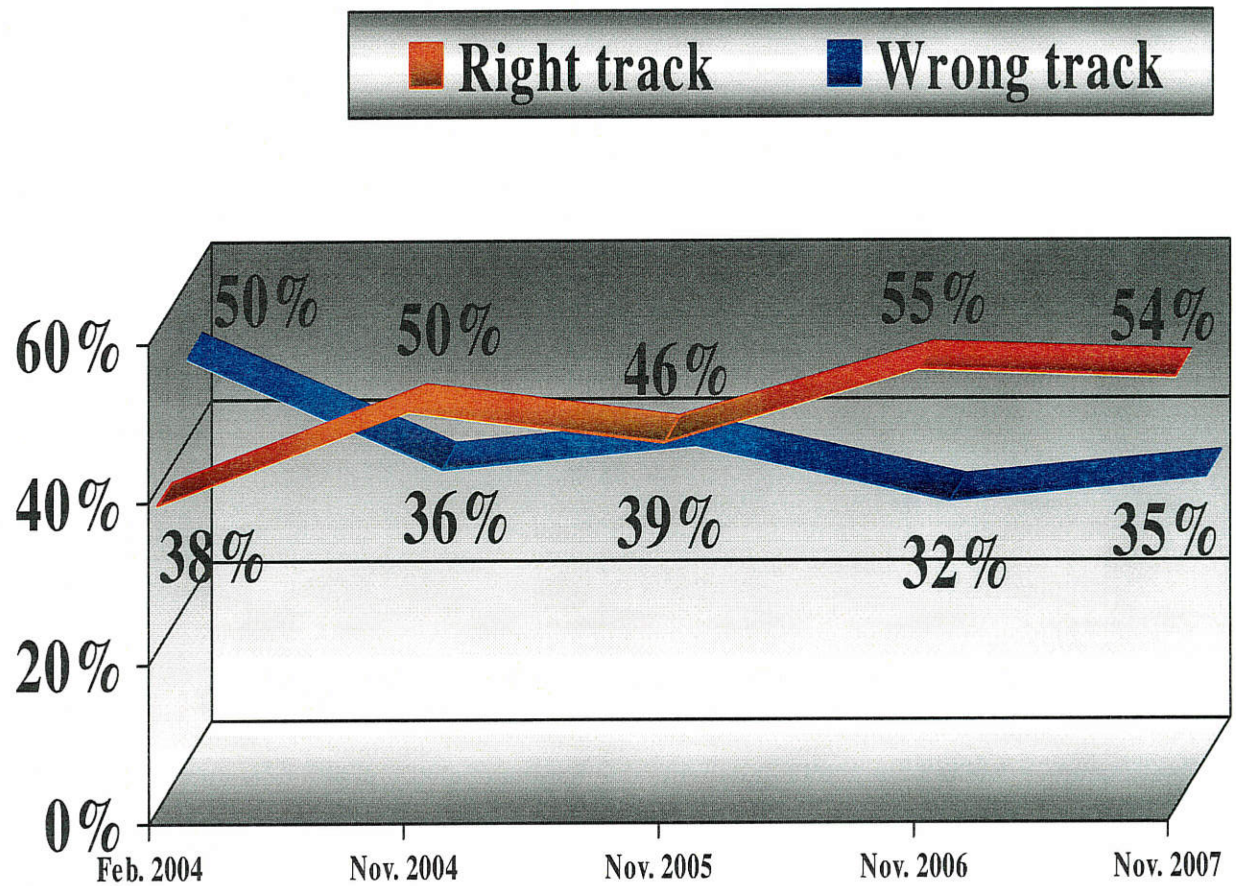
Ranking of Most Important Issues

MENTIONED:	Nov. 07	Nov.06	Nov.05	Nov. 04
Lower taxes on business	46%	46%	39%	38%
Managing health care costs	41%	47%	46%	42%
Economic incentives	21%	20%	20%	15%
Stop friv. lawsuits/Tort reform	18%	22%	21%	21%
Decrease regulation/mandates	18%	18%	14%	13%
Workers' Compensation	14%	13%	14%	11%
Limit growth of state gov.	12%	7%	10%	8%
Unemployment Compensation	4%	4%	9%	5%


THE KANSAS CHAMBER
Taxes
achieve more
Too much
About right
67%
31%
64%
33%
56%
43%
77%
23%
73%
27%
70%
28%
64%
36%
80%
70%
60%
50%
40%
30%
20%
10%
0%
All
West
Northeast
Wichita
Topeka
Kansas City
Southeast

9-5

Right / Wrong Track
KS Economy – Over time



Kansas Society of Certified Public Accountants
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TESTIMONY

Tony A. Scott, JD, CPA
Executive Director

To: The Honorable Barbara Allen, Chair
Members, Senate Committee on Assessment and Taxation

From: Tony A. Scott, Executive Director, Kansas Society of Certified Public Accountants

Date: February 19, 2008

Re: Opposition of SB 636

Ladies and Gentlemen of the Committee:

Approximately 2,600 members strong, the Kansas Society of Certified Public Accountants is the statewide professional association of CPAs *dedicated to implementing strategies that enhance the well-being of our members, the accounting profession and the general public*. My name is Tony A. Scott and I am Executive Director of the KSCPA. **Today I am testifying in opposition of SB 636.**

Kansas CPAs believe the underlying premise of the 2008 "bonus depreciation" provision of the federal stimulus package is to spur capital investment. We also believe capital investment creates sales growth, enhances corresponding profitability, and encourages job growth necessary to meet increasing customer demands.

The short-term fiscal impact of the economic stimulus package has been presented and discussed. Over time, however, the fiscal impact of the 2008 bonus depreciation is basically revenue neutral. In other words, whether or not an asset is depreciated at a "bonus" level for one year that asset will be depreciated only at its depreciable basis over its IRS-determined useful life and no more.

Decoupling Kansas statutes from the internal revenue code would also require yet another method of calculating depreciation. Currently there are four separate and distinct methods of accounting for depreciation: 1) book, 2) Modified Accelerated Cost Recovery System ("MACRS"), 3) alternative minimum tax ("AMT"), and; 4) adjust current earnings ("ACE"). To create a fifth method of depreciation specific to Kansas would add an undue administrative burden to Kansas taxpayers and businesses.

Rather than create additional burdens on business by treating provisions of the federal stimulus package as a taxable windfall, we believe Kansas should subscribe to the stated premise that 2008 "bonus depreciation" will spur capital investment and thus enjoy the benefits that go with such investments. **Based upon the foregoing we respectfully request members of the Committee vote to oppose SB 636.**

It is my honor and privilege to appear before you today. I will be pleased to stand for questions.

Respectfully Submitted,

Tony A. Scott

TAS/mmi

Assessment & Taxation
Date 2-19-08
Attachment # 10

NFIB

The Voice of Small Business®

Legislative Testimony
Derrick Sontag, NFIB State Director
Senate Bill 636
February 19, 2008

Madam Chair and members of the committee:

Thank you for the opportunity to appear before you in opposition of SB 636.

The more than 4,500 members of the National Federation of Independent Business/Kansas strongly feel that enactment of SB 636 would send the wrong message to small businesses, a message that Kansas doesn't encourage capital investments in this state.

NFIB was a strong advocate of H.R. 5140, The Recovery Rebates and Economic Stimulus for the American People Act of 2008. Several small business owners appeared before Congress to testify in favor of the legislation. In doing so they shared plans of expanding facilities, making capital investments for new equipment, and hiring new workers. The conferees referenced two provisions of the bill that they feel are of great importance to small businesses:

1. The bill increases the dollar amount for small business expensing limits from $125,000 to $250,000. This will allow small business owners to immediately write off business purchases and will help small business owners expand their businesses and hire new employees.
2. Another key provision is the 50 percent bonus depreciation deduction. This proposal provides an additional one-year depreciation deduction value to 50 percent of the value of the property. Bonus depreciation is an incentive for businesses to invest in their business now, providing an immediate deduction for half the cost of the investment.

Last month, NFIB conducted a survey and found that 58 percent of small businesses reported capital outlays over the past six months, but only 25 percent plan to make capital expenditures in the next three to six months, a decline of five percentage points. One of the most common explanations of the decline in planned, capital expenditures was "fear of a recession". NFIB believes that enactment of the stimulus package will provide an incentive for businesses that previously were reluctant to schedule investments in 2008. The legislation serves as an attempt to boost confidence in the economy by injecting strong tax incentives for businesses.

On average, nearly 10,000 Kansas businesses are started in a given year and more than 5,000 expand. These businesses are small and typically encounter cash flow problems the first few years in existence and sometimes beyond. NFIB polling indicates that one in five small businesses encounter "consistent" cash flow problems, while one in two businesses encounter problems but not frequently enough to be considered consistent. When determining how to address a cash flow problem, approximately 71% of small businesses will "adjust scheduled purchases/investments".

National Federation of Independent Business – KANSAS
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.ementation of expensing/depreciation provisions, help small businesses avoid making the determina... to suspend investment decisions due to cash flow concerns. Thus increasing the amount of capital investments made in Kansas, which would be of direct benefit to the Kansas economy. This tax structure would result in a win-win situation for those involved. Small businesses will be better prepared to carry out expansion projects which often times results in an increase in jobs, while the state will benefit from the long-term realization of increased tax revenues due to the rise in the number of capital expenditures made in Kansas.

Passage of SB 636 would prevent the state of Kansas from experiencing the benefits of the stimulus package. If one agrees that the stimulus package will lead to an increase in capital investments, then why would the state turn its head to the benefits that would be incurred at the state level? Further, SB 636 sends a message to small businesses that doesn't coincide with the work the legislature has done the past few years in moving towards a more business-friendly tax environment. The exemption of property taxes on machinery and equipment and the phase-out of the state's franchise tax were pro-business measures that encourage investment in the state. The bill before you delivers the exact opposite message.

Thank you for your time and consideration on this important matter.

Derrick Sontag
State Director
National Federation of Independent Business/Kansas