Approved: March 6, 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 25, 2008 in Room 519-S of the Capitol.

All members were present except:
Derek Schmidt- 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:
Senator Chris Steineger
Karl Peterjohn, Kansas Taxpayers Network (Written only)
Dan Morgan, The Builders' Association (Written only)
Alan Cobb, Americans for Prosperity (Written only)
Whitney Damron, City of Topeka

Others attending:
See attached list.

Hearing on **SB 625–Sales tax exemption for materials and services purchased by contractor for the state capitol restoration project** was opened. Chris Courtwright, Kansas Legislative Research Department (KLRD) gave a brief overview of the bill.

Senator Chris Steineger explained why he requested introduction of **SB 625.** (Attachment 1) If the bill is enacted, the State of Kansas will save approximately $8.6 million in spending over the next three years. In addition, SGF revenues will decrease approximately $6.1 million, for a net gain to the state of approximately $2.5 million. The state would not be paying $2.5 million to local governments in sales tax. Senator Steineger said it would be good to consider exempting future state restoration projects, such as the Kansas Board of Regents projects. Topeka local government (City, Shawnee County, Washburn University) is the big loser if **SB 625** is enacted.

Written testimony in support of **SB 625** was received from:
Karl Peterjohn, Kansas Taxpayers Network (Attachment 2)
Dan Morgan, The Builders' Association (Attachment 3)
Alan Cobb, Americans for Prosperity (Attachment 4)

Whitney Damron, City of Topeka, opposed **SB 625.** (Attachment 5) The bill is a 180 degree change in state policy regarding the payment of local sales taxes on state building projects and is targeted only at the City of Topeka. It will have a significant impact upon the residents of the City and the County. Topeka is appreciative of the fact the state capitol is located in the City, but there are costs to providing services. Mr. Damron said the bill would be an unfair change in state policy designed to negatively impact only the City of Topeka, Washburn University and Shawnee County. Comprehensive hearings on this tax policy issue should be held that take into account all state projects, not simply one project in Topeka. Mr. Damron will provide the number of state employees living in Topeka or Shawnee County as requested by Senator Lee.

The hearing was closed.

A briefing on **SB 648–corporate income taxation changes relating to apportionment of net income, business income and surtax on corporations–was** held.

James Bartle, General Counsel, Kansas Department of Revenue (KDOR), explained a proposal to broaden the definition of "business income". A Special Committee on Assessment and Taxation issued a recommendation to change the definition of business income to include both the functional and transactional tests. (Attachment 6) The reason for this recommendation was to make it possible to reduce the corporate income tax rate or provide some other form of tax relief. Codification of the functional test will bring Kansas into conformity with other states and prevent the under-inclusion and over-inclusion of income in computing the tax liabilities of corporations with operations in several states.

Mike Boekhaus, KDOR, gave examples of income taxes collected by Missouri and Kansas assuming business and non-business definitions are the same among states, as well as when they differ among states. (Attachment 7) When the definition of non-business income is different among states, the tax consequence for companies differs greatly.

Shirley Sicilian, General Counsel for the Multistate Tax Commission, said Kansas is the only state that uses only a "transactional test". (Attachment 8) She explained how the expansion of the definition of "business income" would be beneficial to the state. She discussed the clarification that return of principal from investment of working capital is not included in the sales factor. This issue arises when a taxpayer is engaged in selling goods or services that generate large sums of excess cash on a short-term basis. The problem with a rule that includes the return of principal in the sales factor is that it distorts the apportionment of a taxpayer's income. The magnitude of potential distortion can be huge, as shown by a recent California case involving Microsoft Corporation.

Joan Wagnon, Secretary of KDOR, said when this issue arose, it was her goal to modernize Kansas corporate income tax. She said Kansas is way out of step with other states in the area of how business income is treated. In the past ten years, Kansas has lost more than 10,000 C corporations because of favorable tax treatment at the federal level. Secretary Wagnon said **SB 648** would be revenue neutral. If enacted **SB 648** would include changing the qualification rule for HPIP to allow the entire unitary group to claim HPIP credit rather than only the company which actually earned the income. She said there is agreement between the business community and KDOR on the language in **SB 648.**

Secretary Wagnon gave an update to analysis of Kansas corporate income tax dated October 14, 2004, to reflect tax year 2005 sample data. (Attachment 9) The recent revenue trend is very encouraging, but for tax year 2005 there is some disparity between the various industry sectors in the proportion of tax liability that is reduced or eliminated by tax credits through participating in business incentive tax credit programs. The manufacturing sector generated the largest portion of taxable income and corporate income tax receipts. The retail sector generated the next largest share. Out of the top 20 B&J credit claimants in tax year 2005, seven were in manufacturing and 13 in retail and other. Secretary Wagnon concluded manufacturers continue to utilize the business tax credit programs heavily, and for tax year 2005, the manufacturing sector also generated the largest share of taxable income and corporate income tax receipts.

During discussion, Secretary Wagnon said most companies would be affected by **SB 648.** In response to Senator Donovan, she said corporate income tax is on a downslope this year, but personal income is higher.

Senator Apple made a motion to approve the minutes of February 19, 20 and 21 Committee meetings. Senator Jordan seconded the motion, and the motion passed.

Senator Apple said he is working on an amendment re the proposed sales tax exemption for county fairs. County fairs organized under the 4-H and county extension statutes are currently sales tax exempt. He would like to see a fiscal note for sales tax exemption on ticket sales only for all county fairs. Richard Cram will work on a revised fiscal note for that exemption. Senator Apple said he thought a change to place all county fairs under the extension statute would be problematic.

Senator Donovan agreed to get language to Revisor Gordon Self concerning the sales tax exemption for the Guadalupe Clinic Wine Festival.

Being no further business, the meeting adjourned at 11:40 a.m. The next meeting will be February 26.

SENATE
ASSESSMENT & TAXATION COMMITTEE

GUEST LIST

DATE: 02-25-08

NAME	REPRESENTING
Brendan Yorkey	Budget
Jim Mang	Spirit Aero Systems
DAN MORGAN	Builders' Assn.
Matt Manda	—
Eric Stafford	AGC of KS
Shanna Stafford	KS Grain & Feed Assn.
Christy Caldwell	Topeka Chamber of Comm
Whitney Damron	City of Topeka
J. Kent Eckles	O.P. Chamber of Commerce
Ashley Sherard	Lenexa Chamber
Bud Burke	Cessna Aircraft Co.
Marlee Carpenter	KS Chamber
LARRY R BAER	LKM
Dustin Moyer	Pinegar, Smith
JEFF CONWAY	DEPT. OF COMMERCE
Austin Hayden	Hein Law Firm
Mike Reecht	ABBA
Karl Peterjohn	KS Taxpayers Network

STATE OF KANSAS

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51 S. 64TH ST.
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TOPEKA

SENATE CHAMBER

POSITIVE FISCAL NOTE   SAVE MONEY

Capitol Restoration Project

Eliminate Sales Tax

Support SB 625 / HB 2895

When the Capitol restoration was begun years ago, a sales tax exemption was not issued. Thus, we've paid city & county sales tax for 8 years !

- We've paid sales tax on construction labor because this is a "remodeling project".
- We've paid sales tax on all materials.
- We've paid sales tax on all new furniture.
- Total sales tax cost thus far is $5.1 million.

Estimated additional cost if we do nothing: $ 8.5 million !

SAVE MONEY   POSITIVE FISCAL NOTE

Assessment & Taxation
Date 2-25-08
Attachment # 1

From: Alan Conroy
To: Chris Steineger
Date: 2/11/2008 7:45 AM
Subject: Information
Attachments: Capitol Building Project - Tax Summary.pdf; Capitol Furniture - Additional Items.pdf

Senator:

You had requested that I summarize the information that you had requested and that I have received a response to regarding the Statehouse renovation and restoration project.

Sales Tax and Remodel Tax

The estimated total sales tax and remodeling tax for the entire Statehouse renovation and restoration project is estimated by JE Dunn to be $13.734 million. The attached documents prepared by JE Dunn provide additional detailed information on the estimated sales tax of $8.501 million and remodel tax of $5.233 million.

Of the estimated sales tax of $8.501 million, $3.2 million has already been paid with an estimated $5.3 million yet to be paid on the project. Of the estimated remodel tax of $5.232 million, $1.880 has been paid and $3.352 million is yet to be paid on the project.

The information from the Department of Revenue indicates that the Statehouse renovation and restoration project is not exempt from sales or remodeling taxes. Based on their information, a specific statutory exemption would need to be passed to provide for the exemption.

The Department is still working on trying to get the total amount that will be paid through the Statehouse renovation and restoration bonds for the sales tax and remodel tax cost of $13.734 million. As soon as that information is available, I will forward it to you.

Statehouse Furniture

According to Barry Greis, Statehouse Architect, the total estimated cost for furniture and related items is $4,950,000. Of that total, the furniture for the South and North Wings have not been ordered or purchased yet. The furniture for the South and North Wings have an estimated value of $2,600,000. Of the total estimated furniture cost $2,300,000 has actually be expended. There is some of the furniture that is on state contract. I am guessing that means those purchases would be tax exempt. Mr. Greis indicated that sales tax would be included in the purchases "where appropriate." I have asked him for a clarification or a rough estimate of what furniture would be subject to sales tax and what furniture would be exempt.

Legislator's Office Desks

In checking with Barry Greis, Statehouse Architect, the cost of an office desk (not a chamber desk) for a Senator or Representative is $1,684.40. The desks are 36 x 72 inches with a return of 24 x 50 inches. This price does not include delivery and installation. The successful low bidder was able to utilize the federal General Services Administration contract price and pass it on to the State because of their volume of work.

Additional Furniture Purchases

I have attached a copy of the items that were available for purchase by occupants of the East Wing or the West Wing. The first page with the picture of the items (if you can tell what the picture displays) lists the item and the current price. The price on the next page lists the same item and the price of it when the East Wing was opened. For example, the item on page 1 is a sofa table at a price of $619.00. The price on the second page indicates that the price of the sofa table when the East Wing opened was $575.00. Starting with the items on Page 7 you see one price that has 55 percent off the price list and another that has 60 percent off the price list. The 55 percent off the price list applies to single or small quantity orders while the 60 percent off the price list indicates a larger volume discount (the same discount given to the federal General Services Agency).

I hope this responds to your request. If you have any further questions, please let me know. Alan

1-2J

KANSAS TAXPAYERS NETWORK web:www.kansastaxpayers.com

1. P.O. Box 20050 316-684-0082

Wichita, KS 67208 Fax 316-684-7527

February 25, 2008

Testimony Supporting S.B. 625

By Karl Peterjohn, Executive Director

S.B. 625 would stop local units in Shawnee County from imposing sales taxes upon the extremely expensive capitol remodeling project. The capitol remodel is already operating with a number of costly overruns from the initial projections made many years ago. This legislation would create a new sales tax exemption that would prevent the state from paying local sales taxes on only this construction project by providing an exemption to their remodeling contractor.

The state created the local sales tax authority that the local units possess. Sadly, because of the huge size and costly overruns from this statehouse remodel, the savings to the state from this sales tax exemption within S.B. 625 would be substantial.

This legislation raises a larger point. Should the state provide sales tax revenue through their operations to local units by allowing this tax to be imposed on their contractors for state construction?

Current state policy has been to prevent payments under section (b) of KSA 79-3606 in current law and this is an attempt to extend this exemption so that the statehouse remodeling contractor's purchases here are also made exempt. This bill may need to clarify if this legislation would be retroactive on previous sales tax payments to local units or not. The current sales tax law in other sections and subsections of this statute contains numerous exemptions from the sales tax for other governmental bodies within this state.

Does it make sense to have one level of government imposing a tax on another level of government? In most cases this should be answered in the negative.

Should a sales tax exemption be extended to non government private entities making the purchase for the state? S.B. 625 adds this exemption in this expensive and high profile case. KTN believes that this issue should be examined for all similar projects to see if a broader statewide policy needs to be established for similar state purchases.

If the state is providing an exemption from their own sales tax than this exemption establishes a reason why it should be extended to cover all Kansas sales taxes. A uniform and consistent policy should be goals for this committee.

Senate Bill 625 is scheduled for hearing by the Senate Ways and Means Committee on February 25th. The Builders' Association and the Kansas City Chapter, Associated General Contractors urge your support of this measure and respectfully ask that this bill be recommended favorably by the committee.

SB 625 would provide a sales tax exemption for "all sales of tangible personal property and services purchased by a contractor for the capital improvement project to construct, equip, furnish, renovate, reconstruct and repair the state capitol, which would be exempt from taxation if purchased directly by the state of Kansas". We submit that it is in the state's best interest to maximize the amount of construction that can be performed for limited resources on the state capitol. The elimination of this sales tax on statehouse projects will increase the amount of actual construction services that can be purchased within budget for such projects.

We also recommend the elimination of the sales tax on "labor services" (i.e., labor, profit and overhead) provided by contractors in connection with commercial remodeling construction. Kansas is one of only and handful of states that impose sales tax on commercial remodeling construction labor services. None of our neighboring states impose such a tax. We urge your support for SB 625 and your future general support for repeal of state and local sales tax on commercial remodeling construction labor services. Thank you very much.

Sincerely,

Dan Morgan

Director of Governmental Affairs

The Builders' Association

Kansas City Chapter, Associated General Contractors of America

632 West 39th Street

Kansas City, MO 64111

816-531-4741

Assessment & Taxation
Date 2-25-08
Attachment # 3

AMERICANS FOR PROSPERITY
KANSAS

February 25, 2008

On behalf of the more than 13,000 Kansas members of Americans for Prosperity, we support SB 625.

We support it not only because it could save the State millions of dollars over the remaining years of the Capitol restoration project, but because the notion of one government paying taxes to another seems inherently odd; much as governments lobbying each other is odd.

The State already restricts form property taxation government buildings. Extending this principle to other taxation only makes sense.

Thank you.

Al. Cobb

Alan Cobb
AFP Kansas State Director

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Assessment & Taxation
Date 2-25-08
Attachment # 4

WHITNEY B. DAMRON, P.A.

TESTIMONY

TO: **The Honorable Barbara Allen, Chair**
And Members of the Senate Committee on Assessment and Taxation

FROM: **Whitney Damron**
On behalf of the City of Topeka

RE: **SB 625 - An Act concerning sales taxation; relating to exemptions; capitol restoration.**

DATE: **February 25, 2008**

Good morning Madam Chair Allen and Members of the Senate Committee on Assessment and Taxation. I am Whitney Damron and I appear before you today on behalf of the City of Topeka in opposition to SB 625 that would eliminate the requirement for the payment of state and local sales taxes on the state's capitol restoration project.

SB 625 is a 180 degree change in state policy regarding the payment of local sales taxes on state building projects that is being targeted only against the City of Topeka, Washburn University and Shawnee County for a specific project. We believe this arbitrary change in tax policy is unwarranted and inappropriate and one that will have a significant impact upon the residents of the City and the County.

Historically, the State has apparently believed the payment of local sales taxes to cities and counties for state building projects is appropriate. I can only speculate as to the rationale, but would note that state buildings are not assessed a property tax. The City of Topeka is home to a number of state buildings from which there are neither property taxes assessed or collected nor payments made in lieu of taxes (PILOT). Collection of local sales taxes on these kinds of projects helps local units of government provide the kinds of services needed in its community, which is also of benefit to the State and the employees who work in those state buildings.

The City of Topeka is appreciative of the fact that the state capitol is located in our City, including all of the quality jobs that go along with it. However, there are costs to providing services to our citizens, as well as those who work here, but reside outside of the City or County and the visitors to the capitol city. Those services include police and fire, road maintenance, sewer and water and everything else expected and demanded from our local units of government.

919 South Kansas Avenue ■ Topeka, Kansas 66612-1210

(785) 354-1354 (O) ■ (785) 354-8092 (F) ■ (785) 224-6666 (M)

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Currently the City of Topeka levies a 1.0 percent local sales tax; the county levies a 0.5 percent local sales tax; and, Washburn University levies a 0.65 percent local sales tax (Total: 2.15 percent). A recent news article indicated that the City and County had received about $5 million in local sales and remodeling taxes and could expect to see an additional $8 million. We have not seen a fiscal note, so we are not clear where those numbers come from. However, I would note that in order to get to a total of $13 million in local sales taxes as projected in the article, the statehouse renovation project would have to total in excess of $600 million ($600,000,000 x .0215 = $12,900,000). This seems highly unrealistic even with the cost overruns associated with this project. Perhaps those suggesting this change in state policy are ignoring the fact that the 5.3 percent in state sales tax does come back to the State.

In conclusion, we would respectfully request you not to adopt SB 625 as an unfair change in state policy designed to negatively impact only the City of Topeka, Washburn University and Shawnee County. If this is good public policy, then we believe comprehensive hearings on this tax policy issue should be held that take into account all state projects, not simply one in our City that has drawn a lot of attention due to its higher-than-expected costs.

On behalf of the City of Topeka, we thank you for your consideration of our comments today.

WBD

KANSAS
DEPARTMENT OF REVENUE

Kathleen Sebelius, Governor
Joan Wagnon, Secretary

www.ksrevenue.org

Testimony to the Senate Assessment and Taxation Committee
James Bartle, General Counsel, Kansas Department of Revenue
February 25, 2008

Department of Revenue's Testimony in Support of Senate Bill 648

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

During the 2007 legislative session, the House Taxation Committee considered a proposal to broaden the definition of "business income" contained in K.S.A. 79-3271(a). This proposal was subsequently referred for interim study to the Special Committee on Assessment and Taxation, which issued the following recommendation:

> The Committee finds that changing the definition of business income to include both the functional and transactional tests would encourage additional corporations to locate in Kansas.
>
> The Committee notes that the Secretary of Revenue appears to have reached an agreement with various interested parties on specific language regarding this provision.
>
> *　　　*　　　*
>
> The Committee therefore recommends the introduction of legislation that would clarify the definition of business income to add the functional test;

The reasons for amending the definition of "business income" may be summarized as follows:

- Broadening the tax base will make it possible to reduce the corporate income tax rate or provide some other form of tax relief
- Codification of the functional test will bring Kansas into conformity with other states that impose a corporate income tax, the vast majority of which utilize both the functional and transactional tests
- Codification of the functional test will prevent the underinclusion and overinclusion of income in computing the tax liabilities of corporations with operations in several states

Assessment & Taxation
Date 2-25-08
Attachment # 4

- Codification of the functional test will eliminate the unfavorable tax treatment that exists under current law for corporations that have their commercial domicile in Kansas and/or have capital assets located in Kansas

As indicated above, the Department of Revenue has worked with representatives of the business community to draft language required to make the necessary amendments to K.S.A. 79-3271(a). The agreed-upon language is contained in Section 1 of Senate Bill 648. This bill incorporates the functional test, makes income apportionable to the full extent permitted under the Constitution of the United States, and will be effective for tax years beginning on and after January 1, 2009. The election to treat all income as business income will remain in effect in the same manner as under current law.

We believe Senate Bill 648 is consistent with the recommendations of the Interim Committee and appreciate your support for this bill.

TAX TREATMENT OF BUSINESS AND NONBUSINESS INCOME EXAMPLES

FACT SITUATION #1: Corporation has assets in both Kansas and Missouri.

1. Corporation sells a manufacturing facility **located in Missouri** and realizes a capital gain
2. The sale is an extraordinary event, not in the regular course of the corporation's trade or business

UNDER CURRENT LAW

- √ Missouri applies the functional test to treat the gain as business income and taxes an apportioned share of the gain
- √ Without the functional test, Kansas treats the gain as nonbusiness income and imposes no tax, since the facility is located in Missouri
- √ **Result:** Kansas does not tax the gain; Missouri taxes an apportioned share of the gain; corporation pays tax on less that 100% of the gain and the remainder escapes taxation as "nowhere income"
- √ Unlikely that corporation would **elect** to treat the gain as business income.

IF KANSAS ADOPTS THE FUNCTIONAL TEST

- √ Both Kansas and Missouri treat the gain as business income and each state taxes an apportioned share of the gain
- √ **Result:** Corporation pays tax on 100% of the gain
- √ **Election** would not benefit taxpayer

FACT SITUATION #2: Corporation has assets in both Kansas and Missouri.

1. Corporation sells a manufacturing facility **located in Kansas** and realizes a taxable gain
2. The sale is an extraordinary event, not in the regular course of the corporation's trade or business

UNDER CURRENT LAW

- √ Missouri applies the functional test to treat the gain as business income and taxes an apportioned share of the gain
- √ Without the functional test, Kansas treats the gain as nonbusiness income and taxes 100% of the gain, since the facility is located in Kansas
- √ **Result:** Kansas taxes all of the gain; Missouri taxes an apportioned share of the gain; corporation pays tax on more than 100% of the gain
- √ **Corporation may elect to treat all income as business income:** Election would benefit taxpayer but lasts for 10 years. Both Kansas and Missouri treat the gain as business income and each state taxes an apportioned share of the gain. **Result**: Corporation pays tax on 100% of the gain

IF KANSAS ADOPTS THE FUNCTIONAL TEST

- √ Both Kansas and Missouri treat the gain as business income and each state taxes an apportioned share of the gain
- √ **Result**: Corporation pays tax on 100% of the gain
- √ **Election** would not benefit taxpayer

HOW THE ELECTION WORKS UNDER CURRENT LAW

Corporation elects to treat the gain as business income. The election is in effect for the year of the election and the following nine taxable years

1. In year 5 subsequent to the business income election having been made in year 1, the corporation sells a manufacturing facility **located in Missouri** and realizes a capital gain
2. The sale is an extraordinary event, not in the regular course of the corporation's trade or business
3. Missouri applies the functional test to treat the gain as business income and taxes an apportioned share of the gain
4. Without the functional test, Kansas would treat the gain as nonbusiness income and impose no tax
5. With the business income election in effect, however, the gain on the sale of the Missouri facility is treated as business income
6. Both Kansas and Missouri treat the gain as business income and each state taxes an apportioned share of the gain
7. **Result**: Corporation pays tax on 100% of the gain

Mike Boekhaus

Assessment & Taxation
Date 2-25-08
Attachment # 7

Business/Nonbusiness Income

- KS uses the transactional test to determine if business income is subject to apportionment.

- The transactional test excludes extraordinary transactions not occurring in the regular course of the taxpayer's business.

- The transactional test excludes large non-Kansas transactions, such as the sale of business plant and equipment or subsidiary stock, from the Kansas tax base.

- All other states imposing an income tax have broader definitions of business income that would include those transactions in their income tax bases.

7-2

Business vs. Nonbusiness Income

Business Income

- Business income is subject to apportionment.
- The income is taxed based on the percentage of the taxpayer's business within the state divided by its business activity everywhere.

Tax Calculation:

Gain from transaction

X apportionment percentage

<u>X tax rate</u>

State tax

Nonbusiness Income

- Nonbusiness income is subject to allocation.
- The income is allocated to the location of the property if it is real or personal tangible property.
- The income is allocated to the taxpayer's domicile if it is from intangible property.

Tax Calculation:

Gain from transaction

<u>X tax rate</u>

State tax

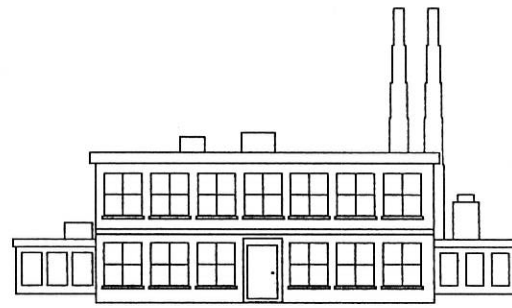
1-3

Sale of Business Assets

Business Income Gain
Same Definitions

Missouri-based company sells plant for $100 million gain. The Company conducts 10% of its business in both MO and KS.

Gain	100,000,000
App. Pct.	10%
Rate	6.25%
Tax	625,000



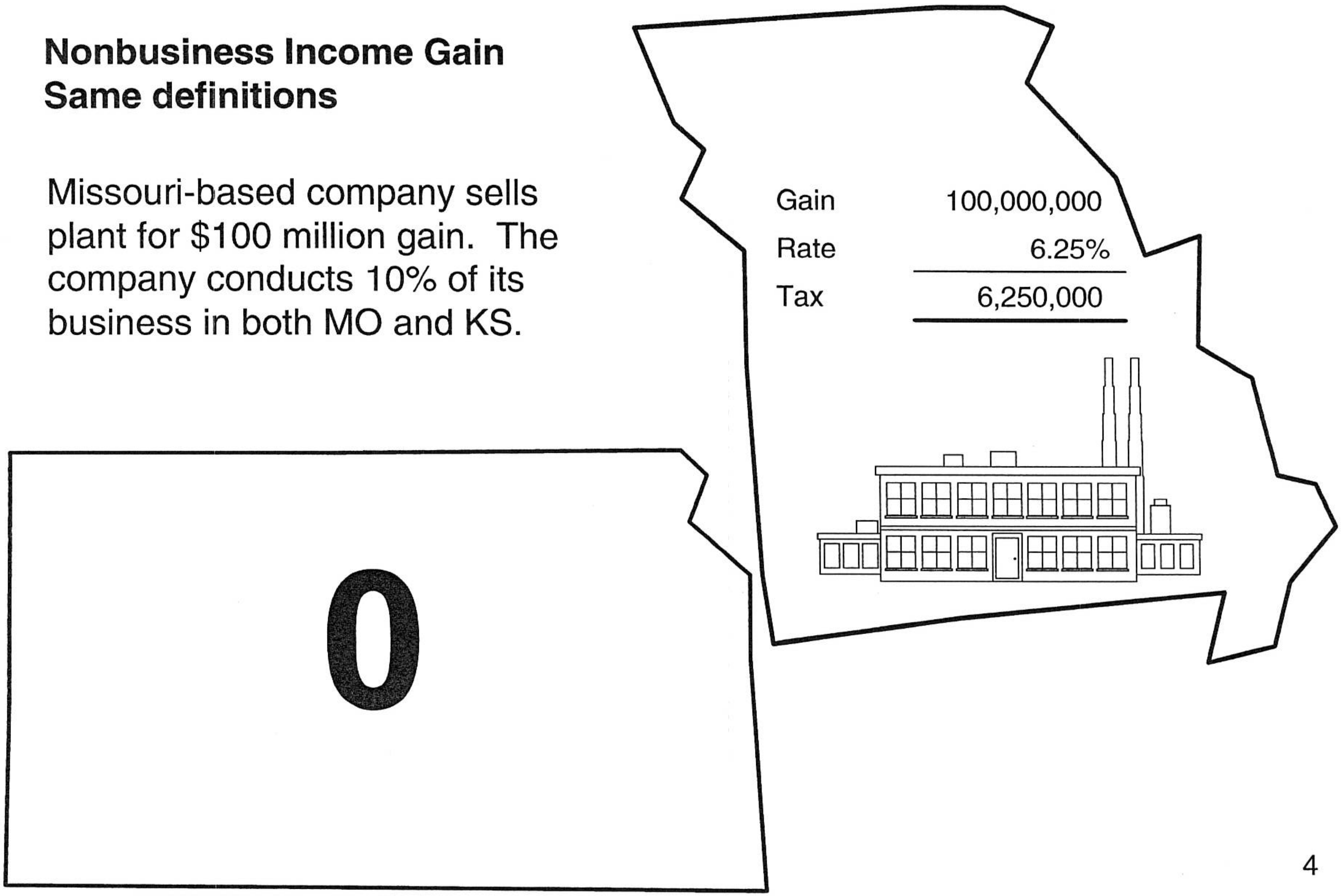
Gain	100,000,000
App. Pct.	10%
Rate	7.35%
Tax	735,000

7-4

Sale of Business Assets

Nonbusiness Income Gain
Same definitions

Missouri-based company sells plant for $100 million gain. The company conducts 10% of its business in both MO and KS.



Gain	100,000,000
Rate	6.25%
Tax	6,250,000

7-5

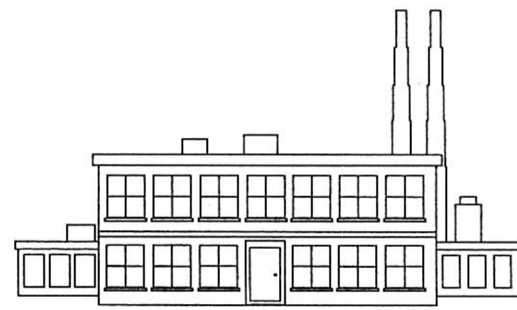
Sale of Business Assets

Business Income Gain
Different Definitions

Missouri-based company sells plant for $100 million gain. The Company conducts 10% of its business in both MO and KS.

Business Income

Gain	100,000,000
App. Pct.	10%
Rate	6.25%
Tax	625,000



Nonbusiness Income

0

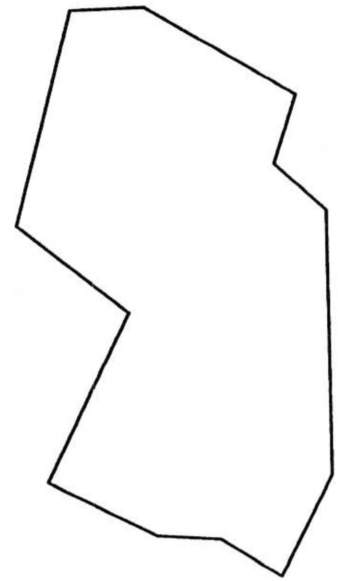
State tax savings:
$735,000

7-6

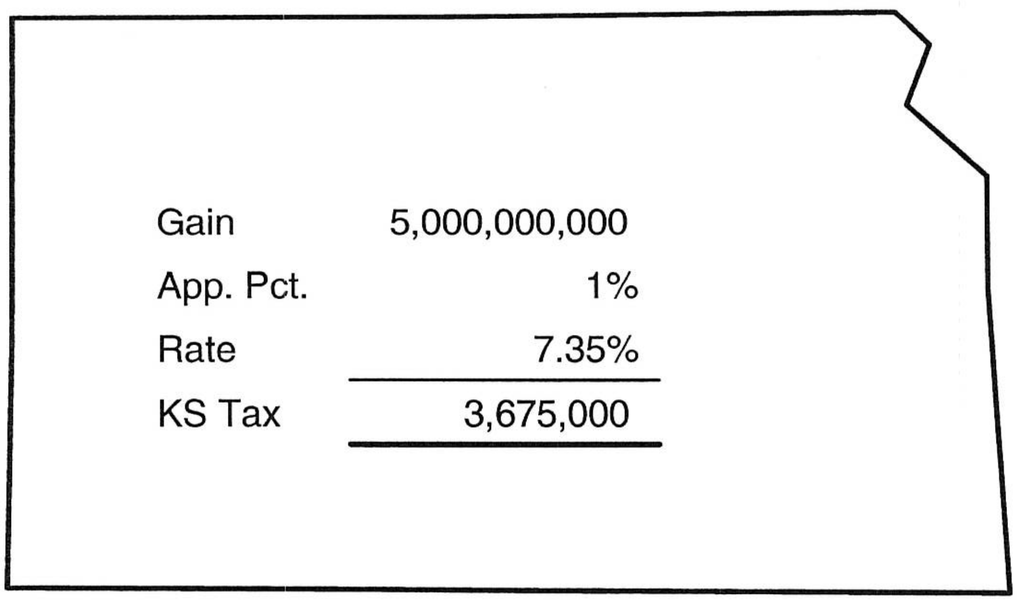
Sale of Subsidiary Stock

Business Income Gain
Same Definitions

New Jersey-based company sells subsidiary stock for a $5 billion gain. The company conducts 1% of its business in KS and 5% in NJ.



Gain	5,000,000,000
App. Pct.	5%
Rate	9.00%
NJ Tax	22,500,000



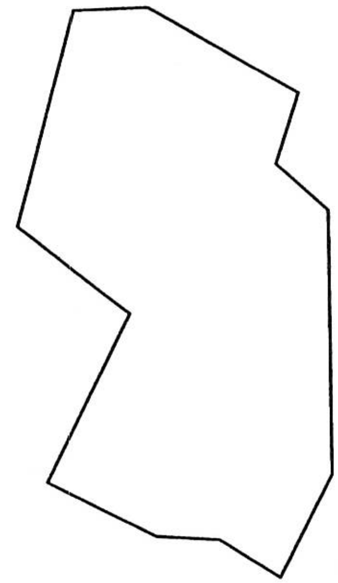
Gain	5,000,000,000
App. Pct.	1%
Rate	7.35%
KS Tax	3,675,000

7-7

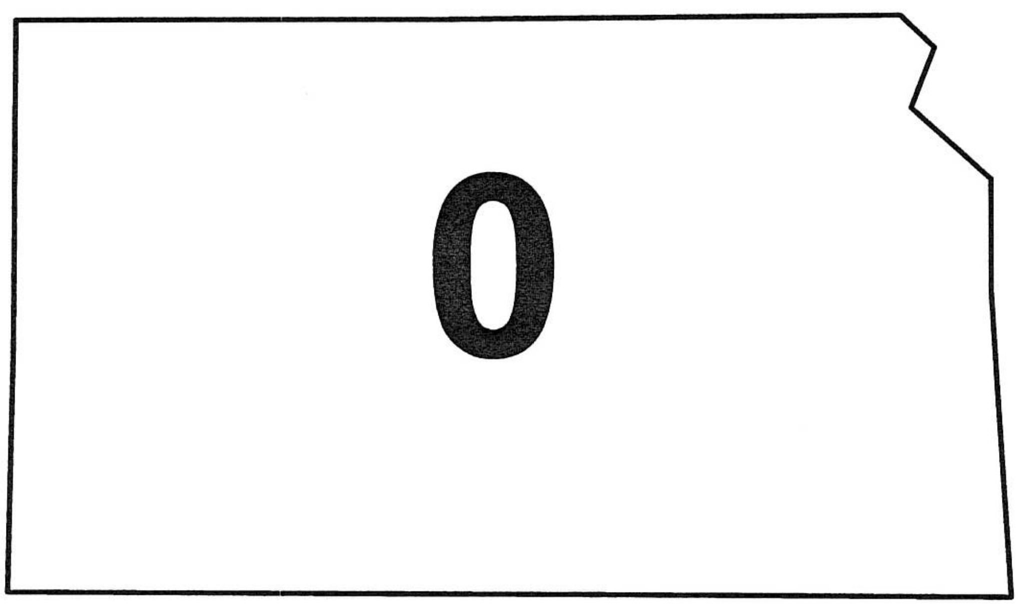
Sale of Subsidiary Stock

Nonbusiness Income Gain
Same Definitions

New Jersey-based company sells subsidiary stock for a $5 billion gain. The company conducts 1% of its business in KS and 5% in NJ.



Gain	5,000,000,000
Rate	9.00%
Tax	450,000,000

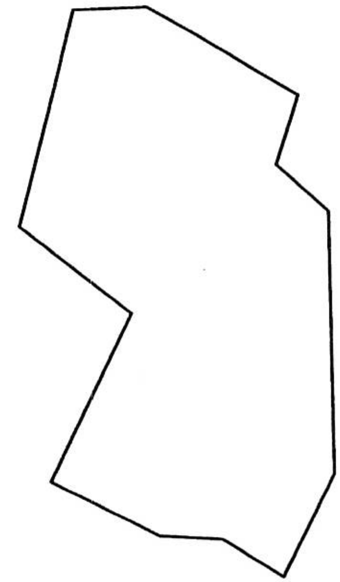


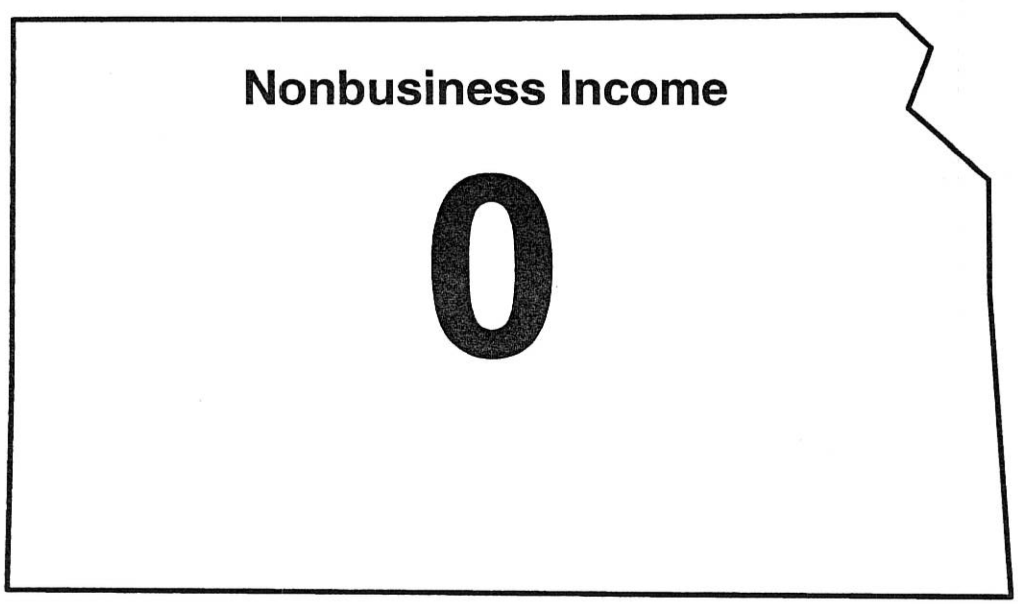
7-8

Sale of Subsidiary Stock

Business Income Gain
Different Definitions

New Jersey-based company sells subsidiary stock for a $5 billion gain. The company conducts 1% of its business in KS and 5% in NJ.





Business Income

Gain	5,000,000,000
App. Pct.	5%
Rate	9.00%
NJ Tax	22,500,000

State tax savings:
$3,675,000

Churning occurs when a taxpayer attempts to inflate the denominator of the sales factor by including large volume repetitive transactions such as overnight investments.

EXAMPLE

A California-based company with $500 million in federal taxable income has annual Kansas sales of $50 million and sales everywhere of $5 billion. The company invests its cash reserves in overnight investments. Its cash reserves at the end of each day are $5 million. The company takes the position that these overnight investment should be included in gross receipts, adding over $1.8 billion of additional sales (365 * $5 million) for a total of $6.8 billion in everywhere sales.

Non-churning tax calculation

Kansas Sales	50,000,000
Sales Everywhere	5,000,000,000
Percentage	1.0000%
Income	500,000,000
Tax Rate	7.35%
Kansas Tax	367,500

Churning tax calculation

Kansas Sales	50,000,000
Sales Everywhere	6,825,000,000
Percentage	0.7326%
Income	500,000,000
Tax Rate	7.35%
Kansas Tax	269,231

Kansas state tax savings: $98,269

MULTISTATE TAX COMMISSION

Working Together Since 1967 to Preserve Federalism and Tax Fairness

To: **Senator Barbara Allen, Chair**
Members of the Senate Committee on Assessment and Taxation

From: **Shirley Sicilian, General Counsel, Multistate Tax Commission**

Date: **February 25, 2008**

Subject: **Senate Bill 648**

Senator Allen and members of the Senate Committee on Assessment and Taxation, thank you very much for the opportunity to testify today on Senate Bill 648. My name is Shirley Sicilian. From 1996 to 2003 I was policy director and then general counsel at the Kansas Department of Revenue. I'm now general counsel for the Multistate Tax Commission. The Commission is a government instrumentality, created under the Multistate Tax Compact. Kansas was the first state to adopt the Compact, back in 1967. (*See* K.S.A. 79-4301) Today, forty-seven states and the District of Columbia are members of the Commission in various capacities. Secretary of Revenue Wagnon chaired our organization for a year until last July.

The Department asked if I would testify today and provide some national context for two of the proposed amendments you are considering in Senate Bill 648: (1) an expansion of the definition of "business income," and (2) a clarification that the sales factor does not include returns of principal from short-term investments. Both proposed amendments address issues that have been, or are being, faced in many states in addition to Kansas; and both would address these issues consistently with other states.

1. Expansion of the Definition of "Business Income"

A taxpayer doing business in several states must determine how much of its total income is taxable in each of those states. Kansas and approximately 38 other states have adopted the Uniform Division of Income for Tax Purposes Act (UDITPA), in whole or in significant part, for making that determination. Approximately 25 of these states follow the UDITPA rule that characterizes income as either business income or non-business income. Business income is apportioned among the several states in which the taxpayer does business. For these states, non-business income is allocated to a single state, usually the taxpayer's commercial domicile. UDITPA defines Non-business income simply as all income other than business income. While business income is defined as:

> (1) Income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes (2) income from tangible and intangible property if the

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acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.
(numbers added)

Kansas courts have interpreted this UDITPA definition as providing a single "transactional" test for business income.[1] But today the clear majority view is that an item of income will be considered business income if either of two tests is met: a transactional test, (1), and a functional test,(2).[2] In those states where the court found only a transactional test, the legislature often followed up with a statutory amendment to add a functional test.[3]

Inconsistent definitions of "business income" among the states create a potential for over or under taxation. For example, consider a multistate business that is subject to tax in two states, where State A uses only the transactional test and State B uses both the transactional and functional test. Assume a particular item of taxpayer's income does not meet the transactional test, but it meets the functional test in State B. If the taxpayer's commercial domicile is in State A, with the transactional test only, it will pay tax on the income in both states. If the taxpayer's commercial domicile is in State B, with both tests, it will pay tax on only a portion of its income, the portion attributed to State B.[4]

The proposed amendment would bring Kansas back into uniformity with the other UDITPA states by adding the functional test as a second method for identifying business income. A number of other states that had not incorporated the functional test have also added it recently. These include Mississippi (2001), Oregon (2004), and Kentucky (2006).[5]

In addition, the proposed amendment would allow for apportionment of income "to the extent permitted by the U.S. Constitution." In *Allied Signal,* the U.S. Supreme Court noted that "the principle that a State may not tax value earned outside its borders rests on the fundamental requirement of both the Due Process and Commerce Clauses that there be 'some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax.'"[6]. The *Allied Signal* Court recognized the UDITPA definition of business income is "compatible" with these constitutional principles.[7] There has been a

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1 *In re Tax Appeal of Chief Industries, Inc.*, 255 Kan. 640 (1994).

2 CCH Commentary, Multi-Corp-Income, *Distinction Between Business and Non-Business Income* (2007). See also, e.g., *Hoechst Celanese Corp. v. Franchise Tax Board,* 25 Cal.4th 508 (2001); *Laurel Pipeline Co. v. Commonwealth,* 615 A.2d 841 (Pa. 1994); *Texaco-Cities Service Pipeline Co. v. McGaw*, 182 Ill. 2d 269 (1998); *Polaroid Corp. v. Offerman*, 349 NC 290 (1998); *Willamette Industries, Inc. v. Oregon Department of Revenue*, 331 Or 311 (2000); *Kemppel v. Zaino*, 91 Oh St.3rd 420 (2001).

3 See, e.g., Tenn. Code Ann. §67-4-2004, Ala. H.B. 7 (Dec. 28, 2001).

4 Kansas allows taxpayers to elect to characterize ALL income as business income, which should help taxpayers domiciled in the state to avoid over taxation, but which would not address under taxation of entities domiciled outside the state. K.S.A. 79-3271(a).

5 Mississippi, A.B. 1695, 2001; Oregon, OAR 150-314.610(1)-(A)(2); Kentucky, 103 KAR 16:060E.

6 Quoting from, *Miller Bros. Co. v. Maryland,* 347 U.S. 340, 344-345 (1954)

7 *Allied Signal v. Dir. Div. of Taxation,* 504 U.S. 765 (1992).

definite trend over the last few years for states to move in the direction of broadening the definition of business income "to the extent permitted by the U.S. Constitution: Minnesota (1999), Alabama, Pennsylvania (2001); New Jersey, North Carolina (2002); Illinois (2004); and Georgia (2005)[8].

2. Clarification that Returns of Principal from Investment of Working Capital is Not Included in the Sales Factor.

Once the amount of business income subject to apportionment is determined, the next step is to determine the share of that income that is attributable to a particular state. As you know, Kansas uses the UDITPA formula, which is an equal weighted three factor formula based on the ratios of property, payroll and sales in the state to property, payroll and sales everywhere. The proposed amendment would clarify an issue that has come up in many states with respect to the sales factor: specifically, whether repeated returns of principal from short term investments should be included in the sales factor as "gross receipts."

This issue arises when a taxpayer is engaged in selling goods or services that generate large sums of excess cash on a short-term basis. Rather than let these sums lay idle, even for a brief period, taxpayers often form a treasury division to efficiently employ the cash in various types of short-term, often over-night, investments. Some taxpayers have argued that the UDITPA sales factor should include, in addition to the income generated from these short-term investments, the repeated returns of the re-invested principal.

The problem with a rule that includes the return of principal in the sales factor is that it distorts the apportionment of a taxpayer's income. Gross receipts from the taxpayer's sales of tangible property would become increasingly overwhelmed in the sales factor as the average maturity period taxpayer chooses for its treasury function investments shortens. As the length of the taxpayer's average maturity period drops, the more the principal is "turned over," and the more gross receipts attributable to the location of the treasury function would climb. As gross receipts attributable to the treasury function climb, unvarying receipts attributable to the states from sales of taxpayers primary product would become increasingly underrepresented in the sales factor ratio and the percentage of total business income apportioned to those states would shrink.

Noted tax authority, Professor Hellerstein, explains that this result causes a distortion because there is no correlation between the amount of receipts and the corresponding amount of income from the investments:

> For example, the purchase at a discount of a thirty-day $1 million certificate of deposit at the beginning of each month and its sale or redemption at the end of the month would yield $12 million of receipts during the course of a year, whereas the purchase at a discount and subsequent sale or redemption of a one-year $1 million certificate of deposit would yield only $1 million of receipts. Yet the intangible interest income earned from these investments is likely to be quite similar and clearly will not vary by a factor of twelve.

(Hellerstein & Hellerstein, *State Taxation* (3d ed. 2001) Part IV ¶9.18[4][c].)

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[8] Minn. §290.17; Alabama, H.B. 7, 2001; Pennsylvania, H.B. 334, 2001; New Jersey, A.B. 2501, 2002; North Carolina, S.B. 1115, 2002; Illinois S.B. 2207, 2004; Georgia, H.B. 488, 2005.

The magnitude of potential distortion can be huge, as shown by the facts of a recent California case involving Microsoft, Corp. In that case, Microsoft invested on average approximately $480 million of working capital in marketable securities. Over 60 percent of these investments were held for seven days or less, and over 30 percent were held for just one day. Including these repeated returns of principal in the sales factor would have inflated the sales factor denominator by $5.7 billion. The consequence would have been a major reduction of the sales factor in California from 15.34% to 3.06%.

This magnitude of distortion, and the possible incentive it creates for further distortion through further shortening the term of investment, has prompted jurisdiction after jurisdiction to exclude the return of principal from the sales factor by court decision[9] or legislation. Today, 39 jurisdictions exclude returns of principal from the sales factor.

Given this high level of uniformity, if Kansas were to allow returns of principal in the sales factor, the result would be less than full apportionment for some Kansas taxpayers and duplicative apportionment for others. This is because improperly including returns of principal in the sales factor would cause a larger share of a Kansas taxpayer's total multistate business income to be apportioned to its treasury function state. If Kansas were to adopt a formula shifting income to a treasury function state, while the treasury function state has not adopted such a formula (and no states have), there would be less than full apportionment. By the same token, any multistate taxpayer whose treasury function is located in Kansas would be subject to duplicate taxation. And, as mentioned, the amount of double taxation or less than full apportionment could be significant.

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[9] See *Appeals of Pacific Telephone & Telegraph Company,* Cal. St. Bd. of Equal. (May 4, 1978) 78 SBE 028; *American Telephone & Telegraph Co.* v. *State Tax Appeal Board* (Mont. 1990) 787 P.2d 754; *American Telephone & Telegraph Co.* v. *Director, Division of Taxation* (Tax Ct. 1982) 4 N.J. Tax 638, aff'd and modified (N.J. Super. App. Div. 1984) 476 A.2d 800, cert. denied (1984) 97 N.J. 627; *Sherwin-Williams* v. *Indiana Dept. of State Revenue* (Ind. Tax 1996) 673 N.E.2d 849; *Walgreen Ariz. Drug Co. v. Ariz. Dept. of Revenue* (Ariz. Ct. App. 2004) 97 P.3d 896; *Microsoft Corporation v. Franchise Tax Board*, Ca. Sup. Ct. No. S133343 (2006);

KANSAS
DEPARTMENT OF REVENUE

Kathleen Sebelius, Governor
Joan Wagnon, Secretary

www.ksrevenue.org

January 2, 2008

Update to Analysis of Kansas Corporate Income Tax Dated October 14, 2004 To Reflect Tax Year 2005 Sample Data

The Analysis dated October 14, 2004 focused on the Kansas corporate income tax during tax years 2000, 2001 and 2002 and the impact of the 4 largest business income tax credit incentive programs on corporate income tax receipts, in an effort to determine how the corporate income tax burden falls within various industry sectors. This Analysis has been annually updated to reflect sample corporate income tax data from the new tax year. Attached are updates to Tables 2 and 3 of the Analysis, to reflect tax year 2005 sample data. The discussion of the Top 20 claimants of the Business and Job Development (B&J) income tax credit is updated for tax year 2005 data. Data on the Top 20 claimants of the High Performance Incentive Program (HPIP) tax credits for tax year 2005 is also discussed.

Recent History of Corporate Income Tax Receipts

Annual Kansas corporate income tax receipts (by fiscal year) since 1995 are shown below:

Fiscal Year	Amount Collected	Percent Change
1995	$229,421,376	
1996	$218,586,552	-4.7%
1997	$263,573,332	20.6%
1998	$281,651,300	6.9%
1999	$227,369,923	-19.3%
2000	$250,122,826	10.0%
2001	$211,906,919	-15.3%
2002	$93,958,484	-55.7%
2003	$105,222,316	12.0%
2004	$141,173,000	34.2%
2005	$226,071,634	60.1%
2006	$350,200,874	55.0%
2007	$442,448,739	26.3%

Although the bottom appeared to fall out of corporate income tax receipts in FY 2002, the recent revenue trend is very encouraging. Fiscal Year 2007 receipts set a new record, surpassing FY 2006 receipts, which had also been a record. Corporate income tax revenues are expected to decrease in FY 2008, as reflected in the November 2007 Consensus Revenue Estimate of $415 million for FY 2008. Thus far in FY 2008, corporate income tax receipts of $191.2 million through the end of December 2007 are

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running -8.3% below the current Consensus Revenue Estimate and -9.1% below actual corporate income tax receipts for this same time period last fiscal year.

Corporate Income Tax Burden

In updating the Analysis dated October 14, 2004, tax returns from a sample of the largest 418 corporate income taxpayers for tax year 2005 were reviewed in order to determine how much impact the business tax credit programs (Business & Job Development, High Performance Incentive Program, Research & Development, Business Machinery & Equipment) have on the corporate income tax burden. These corporations accounted for approximately 75% of the corporate income tax base for tax year 2005. The North American Industry Classification System (NAICS) code, Kansas taxable income, Kansas corporate income tax liability before credits, credits claimed, and the net tax receipts after credits for tax year 2005 for each of these corporations were captured in the database.

The update to Table 2 (attached) summarizes the results by NAICS code categories (using the first 2 digits of the NAICS code) for tax year 2005. The number of corporations included in each NAICS code category is shown in parenthesis in the first column.

Consistent with the Table 2 in the prior Analysis, the Update to Table 2 for tax year 2005 shows some disparity between the various industry sectors in the proportion of tax liability that is reduced or eliminated by tax credits through participation in business incentive tax credit programs. However, as the strong growth in corporate income tax receipts has continued in recent years, that disparity appears to be narrowing and the tax payment percentage rate generally appears to be increasing across the board. The "payment percentage" column shown on the Update to Table 2 reflects the percent of tax liability (measured before credits are taken) actually paid after credits were applied to reduce tax liability. Manufacturers experienced a moderately low tax payment percentage rate, 72.8% for tax year 2005, although significantly higher than the 45.6% tax payment percentage rate for tax years 2000 through 2002 and 59.9% for tax year 2004. The manufacturing sector generated the largest portion of taxable income as well as corporate income tax receipts, compared to any other sector in the sample of 418 corporations for tax year 2005. The retail sector generated the next largest share of taxable income and tax receipts for tax year 2005, experiencing a tax payment percentage of 80.43%, somewhat higher than the manufacturing sector tax payment percentage, but lower than in prior tax years. The wholesale trade sector had a higher tax payment percentage than the retail sector in tax year 2005, 90.21%.

The Analysis dated October 14, 2004 (see Charts 2 and 3 of that document) indicated that manufacturers represented the largest portion of Kansas tax liability before credits (and Kansas taxable income) in the sample during tax years 2000 through 2002. The 2005 tax year sample data is consistent with that. As Update to Table 2 for tax year 2005 indicates, the manufacturing sector's total corporate income tax liability taken from the sample before credits was $61.6 million and tax payments after credits (see "net receipts" column) were $44.9 million, while the next largest sector, the retail sector, had total corporate income tax liability before credits of $42.1 million and tax payments after credits of $33.9 million.

B&J Credit Data

Within the sample of 418 corporations, the group of top 20 corporations that claimed the most B&J credits during tax year 2005 were identified. Corporations in this group were divided into 2 broad categories by NAICS code: manufacturing/transportation/warehousing and retail/wholesale/other. The effective tax rate for each corporation was computed, as well as the average effective tax rate for each of the two categories. The results are shown below.

Top 20 B & J Credit Claimants Tax Year 2005

Tax Year 2005	
7 in Manufacturing/Transportation/Warehousing	13 in Retail/Wholesale/Other
Total Taxable Income: $152.6 million	Total Taxable Income: $310.8 million
Total Net Tax: $9.8 million	Total Net Tax: $17.7 million
Ave. Effective Tax Rate: 6.4%	Ave. Effective Tax Rate: 5.7%
Range: -.36% to 6.99%	Range: -2.04% to 6.15%

The tax year 2005 results show a higher effective tax rate for the manufacturing/transportation/warehousing category among the 20 largest B&J tax credit claimants (6.4%) than the retail/wholesale/other category (5.7%) within that same group. The range of effective tax rates for each corporation is narrower for the manufacturing/transportation/warehousing category (-.36% to 6.99%) than the retail/wholesale/other category (-2.04% to 6.15%).

The Update to Table 3 for tax years 2000 through 2005 (attached) compares the manufacturing firms and retail firms within the group of corporations included in the "top 20" in B & J credit claimants during each of tax years 2000 through 2005 (a sample size of 164 corporations). The amount of tax liability (measured before credits are taken), credits and net receipts (tax paid after credits were taken) for all five tax years for manufacturing and retail firms in the group are listed. Of the 164 corporations in the group, 44 were manufacturing corporations and 40 were retail trade corporations. The "total" row at the bottom sums the information not only for these 44 manufacturers and 40 retailers, but also the rest of the 164 corporations in the group.

The Update to Table 3 for tax years 2000 through 2005 shows that manufacturing firms that are large B & J credit claimants continue to succeed in offsetting significant tax liability with tax credits, owing only 33.61% of the amount of their tax liability measured before credits were applied, while retailers that are large B & J credit claimants offset a much smaller portion of their tax liability, owing 82.04% of the amount their tax liability measured before credits. The average payment percentage for all 164 corporations in this group of largest B&J credit claimants is 65.01%.

HPIP Data

Within the sample of 418 corporations, the 20 corporations claiming the largest HPIP credits during tax year 2005 were identified. Corporations in this group were divided into 2 broad categories by NAICS code: manufacturing and other. The effective tax rate for each corporation was computed, as well as the average effective tax rate for each of the two categories. The results are shown below.

Top 20 HPIP Credit Claimants Tax Year 2005

Tax Year 2005
7 in Manufacturing
Total Taxable Income: $134.4 million
Total Net Tax: $2.832 million
Ave. Effective Tax Rate: 2.1%
Range: -.62% to 6.65%

13 in Other
Total Taxable Income: $208.4 million
Total Net Tax: $9.121 million
Ave. Effective Tax Rate: 4.4%
Range: -6.7% to 6.99%

The tax year 2005 data indicates that manufacturers benefited significantly from the HPIP program, with 7 of the "top 20" HPIP claimants being manufacturers, paying a low average effective tax rate of 2.1%. Some participants had negative effective tax rates, eliminating their corporate income tax liability entirely with credit offsets and refunds. The 13 non-manufacturer HPIP claimants in the "top 20" group also succeeded in offsetting significant tax liability with tax credits, maintaining a low effective tax rate of 4.4% (although not as low as for manufacturers), with some of these participants eliminating their tax liability entirely and getting refunds. This data shows that large-scale participants in HPIP are able to offset most, if not all, of their corporate income tax liability with tax credits.

Updated Conclusions

Many of the conclusions in the Analysis dated October 14, 2004 remain valid for the tax year 2005 corporate income tax data sample: manufacturers continue to utilize the business tax credit incentive programs heavily and have claimed the largest share of the HPIP credits. Retailers claimed the largest share of B & J credits. Because tax credits are used to lower tax burden, the effective tax rates continue to vary within industry groups of all types, although that disparity continued to narrow in tax year 2005, a year for strong corporate income tax receipts. During years when the economy and tax receipts are strong (such as 2005), tax credits are a smaller proportion of taxable income. Therefore, corporations generally will have a higher tax payment percentage. This was certainly true for manufacturers, who were able to offset a lower percentage of their tax liability with credits than in prior years. The tax year 2005 data indicates that the average tax payment percentage for manufacturers increased from 59.9% for tax year 2004 to 72.87% for tax year 2005, while the average tax payment percentage for all corporations in the sample increased from 78.44% for tax year 2004 to 83.36% for tax year 2005. Also, among the top 20 B&J credit claimants for tax year 2005, the manufacturing/transportation/warehousing category average effective tax rate (6.4%) exceeded the average effective tax rate for the retail/wholesale/other category (5.7%).

For tax year 2005, the manufacturing sector also generated largest share of the taxable income and corporate income tax receipts, compared to the taxable income and income tax receipts generated by other sectors of the economy. See Update to Table 2 for tax year 2005. The tax year 2005 data contrasts with the tax year 2004 and 2003 data (see the annual updates for those tax years), which showed the retail sector as the most dominant portion of the corporate income tax base, generating the largest amount of Kansas taxable income and contributing the largest portion of the corporate income tax receipts. In tax years 2000, 2001 and 2002, the manufacturing sector generated the largest amount of Kansas taxable income (but not corporate income tax receipts).

Update to Table 2: Tax and Credits Statistics by Industry from a sample of 418 Corporations for Tax year 2005.

Industry	Total Tax Liability	Total NR Credits	B&J	R&D	HPIP	BM&E Credit	Total Ref. Credits	Net Receipts	Payment Percentage
Agriculture, Forestry, Fishing and Hunting (5)	$740,046	$29,500	$29,500	$0	$0	$122,350	$91,217	$496,979	67.16%
Mining (9)	$19,582,887	$9,312	$0	$0	$3,812	$214,497	$0	$19,359,078	98.86%
Utilities (7)	$22,321,584	$0	$0	$0	$0	$134,046	$4,514	$22,183,024	99.38%
Construction (9)	$596,395	$338,495	$0	$0	$338,495	$25,976	$0	$231,924	38.89%
Manufacturing (79)	$61,636,721	$10,359,083	$744,533	$780,983	$6,199,912	$6,331,866	$30,000	$44,915,772	72.87%
Wholesale Trade (85)	$28,282,928	$1,179,035	$131,200	$215,797	$311,703	$1,559,949	$30,000	$25,513,944	90.21%
Retail Trade (66)	$42,112,193	$6,613,757	$2,681,593	$10,695	$863,827	$1,618,056	$10,421	$33,869,958	80.43%
Transportation and Warehousing (13)	$21,757,491	$466,326	$278,239	$0	$188,087	$1,259,689	$98,141	$19,933,335	91.62%
Information (24)	$16,255,657	$263,228	$215,755	$39,181	$0	$3,186,491	$2,710,068	$10,095,870	62.11%
Finance and Insurance (35)	$12,298,177	$2,155,145	$652,761	$0	$1,225,380	$120,449	$25,000	$9,997,583	81.29%
Real Estate and Rental and Leasing (8)	$2,026,899	$0	$0	$0	$0	$18,039	$0	$2,008,860	99.11%
Professional, Scientific, and Technical (18)	$4,519,710	$1,908,258	$63,348	$2,117,844	$4,570,668	$19,690	$0	$2,591,762	57.34%
Mangmt of Companies and Enterprises (20)	$15,429,257	$617,423	$521,623	$0	$95,800	$409,681	$36,243	$14,365,910	93.11%
Admin/Support and Waste Mangmt (11)	$1,112,134	$88,659	$33,565	$0	$43,594	$38,947	$8,500	$976,028	87.76%
Health Care and Social Assistance (11)	$1,401,747	$0	$0	$0	$0	$6,783	$1,400	$1,393,564	99.42%
Accommodation and Food Services (9)	$3,698,057	$264,541	$104,100	$0	$0	$91,559	$0	$3,341,957	90.37%
Other Industries (9)	$6,766,551	$783,819	$201,819	$0	$0	$60,506	$0	$5,922,226	87.52%
Total All Industries (418)	$260,538,435	$25,076,581	$5,658,036	$3,164,500	$13,841,278	$15,218,574	$3,045,504	$217,197,775	83.36%

Other industries includes: Educational Services, Arts, Entertainment and Recreation, and other service and industry sectors not specified by the current codes

9-6

Update to Table 3. Summary information for the corporations that claimed most B&J Credits from TY 2000 to 2005

Sector (# of sample)	Total Tax Liability	Total NR Credits	B&J	R&D	HPIP	BM&E	Total Ref. Credits	Net Receipts	Payment Percentage
Manufacturing (44)	$55,181,763	$31,953,249	$17,016,769	$6,140,317	$9,303,549	$4,381,914	$298,675	$18,547,925	33.61%
retail Trade (40)	$81,245,308	$13,044,114	$13,324,752	$0	$2,599,171	$1,545,922	$0	$66,655,272	82.04%
Total (164)	$211,050,407	$59,795,286	$41,923,496	$6,717,313	$13,693,360	$9,257,056	$4,185,773	$137,204,483	65.01%