

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairman Les Donovan at 10:30 a.m. on March 19, 2009, in Room 535-N of the Capitol.

All members were present.

Committee staff present:

Gordon Self, Office of the Revisor of Statutes
 Scott Wells, Office of the Revisor of Statutes
 Corey Carnahan, Kansas Legislative Research Department
 Chris Courtwright, Kansas Legislative Research Department
 Mary Jane Brueck, Committee Assistant

Conferees appearing before the Committee:

Bill Moore, President/CEO of Westar Energy & current board member and past Chairman of the Board for Goodwill Industries Easter Seals of Kansas
 Emily Compton, President of Goodwill Industries Easter Seals of Kansas
 Commissioner Dudley Feuerborn, Anderson County Board of Commissioners
 Commissioner Bob Boaldin, Morton County Board of Commissioners
 Mark Low, Meade County Appraiser
 Commissioner Tony Fowler, Montgomery County Board of Commissioners
 Gordon Stull, County Counselor, Pratt Co. Kansas
 Ron DeGarmo, Morton County Commissioner & President, Kansas Legislative Policy Group
 Bill Waters, Attorney, Division of Property Valuation – Kansas Dept. Of Revenue
 Joan Wagon, Sec. Department of Revenue
 Ron Gaches, representing Southern Star Central Gas Pipeline & El Paso Energy
 Laurence E. Garrett, attorney for Colorado Interstate Gas Co. (“CIG”)

Others attending:

See attached list.

Chairman Donovan opened the meeting announcing we would start the meeting with the hearing on **HB 2299 - Sales tax exemption for Goodwill Industries Easter Seals Society of Kansas, Inc. and Goodwill Industries of Kansas, Inc.** Bill Moore, President/CEO of Westar Energy & current board member and past Chairman of the Board for Goodwill Industries Easter Seals of Kansas, spoke in favor of this bill. He explained this bill is to restore the tax exemption statue of Goodwill Industries Easter Seals Society of Kansas, Inc. and Goodwill Industries of Kansas, Inc. (Attachment 1) Emily Compton, President of Goodwill Industries Easter Seals of Kansas presented written testimony. (Attachment 2)

Chairman Donovan asked what the committee wishes were for this bill. Sen Steineger moved the bill be passed. Sen. Lynn seconded the motion. A minor mistake was pointed out in the bill; it needs to be corrected. The motion was withdrawn. Sen. Apple made a motion to add County Fairs and Senior Citizens’ Centers to this bill. Sen. Brownlee seconded the motion. The motion carried. Sen. D. Schmidt moved SB 100 - Sales tax exemption for fees for guided and non-guided hunts and fishing expeditions and sale of game birds for hunting be amended into this bill also. Sen. Lynn seconded the motion. The motion passed. Then Sen. D. Schmidt moved the bill be passed as amended. Sen Lynn seconded the motion, and the motion carried.

HB 2324 - Sales tax exemption requirements for certain retail businesses under Kansas enterprise zone act was discussed. Secretary Wagon, Department of Revenue said she and her department support this bill. Sen. Holland moved the bill be passed. Sen. Lynn seconded the motion. The motion carried.

Chairman Donovan opened the hearing on **SB 312 - Public utility defined for property tax purposes related to natural gas inventories.** Bill Waters, Attorney, Division of Property Valuation – Kansas Department of Revenue, spoke in favor of this bill. (Attachment 3) Commissioner Dudley Feuerborn, Morton County Board of Commissioners (Attachment 4), Commissioner Bob Boaldin, Morton County Board of Commissioners (Attachment 5), Mark Low, Meade County Appraiser (Attachment 6), Commissioner Tony Fowler, Montgomery County Board of Commissioners (Attachment 7), Gordon Stull, County Counselor, Pratt County Kansas (Attachment 8), and Joan Wagon, Secretary, Department of Revenue (Attachment 9)

CONTINUATION SHEET

Minutes of the Senate Assessment and Taxation Committee at 10:30 a.m. on March 19, 2009, in Room 535-N of the Capitol.

all expressed their reasons they would like to see this bill passed. Ron DeGarmo, Morton County Commissioner and President of Kansas Legislative Policy Group sent written testimony in favor of **SB 312**. ((Attachment 10)).

Ron Gaches, representing Southern Star Central Gas Pipeline & El Paso Energy presented testimony in opposition to **SB 321**. (Attachment 11). Laurence E. Garrett, for Colorado Interstate Gas Co. ("CIG") was also opposed to this bill. (Attachment 12) Chairman Donovan closed the hearing.

Chairman Donovan said the bill on rebates, **HB 2172 - Permanent exclusion from sales taxation of certain cash rebates on sales or leases of new motor vehicles** has been passed back to our committee. Discussion was held. Sen. D. Schmidt moved the committee pass this bill. Sen. Holland seconded the motion. The motion carried.

SB 242 - Computation of amount of personal property tax on motor vehicles was amended in the House. Sen. D. Schmidt moved we pass the bill as amended. Sen. Lynn seconded the motion, and the motion carried.

Chairman Donovan asked the committee what they wanted to do with **SB 312 - Public utility defined for property tax purposes related to natural gas inventories**. Sen. D. Schmidt moved the bill be passed. Sen. Apple seconded the motion. The motion failed with 3 yeas and 4 nos.

No future meetings are scheduled..

The meeting was adjourned at 11:50 a.m.

SENATE

Assessment & Taxation Committee

GUEST LIST

DATE: 3/19/09

NAME	REPRESENTING
Mikelle Butler	Capital Strategies
Lachlan	PZ
T. R. Cochran	El Paso Southern Star
Emily Ceph	Doanville Ind Foster Seals
Bill Moore	" " " "
Lawrence G. Smith	Colorado Interstate Gas Co.
Yonah B. Smith	Pratt County
John Beverins	Pratt - Summit
MARK LOW	Meade Co
Mark Desetti	KNETA
ERIK SARTORIUS	City of OVERLAND PARK
J. P. SMALL	KOCH INDUSTRIES
Bob Boaldin	MORTON CO. COMMISSIONER
KEITH PANGURN	KEARNEY & ASSOC.
Brend Koops	Hein Law Firm

**Testimony of favor of HB 2299, Sales Tax Exemption for Goodwill Industries Easter Seals of
Kansas Inc. and Goodwill Industries of Kansas, Inc.
March 19, 2009**

**Presented by Bill Moore, President/CEO of Westar Energy
Current board member and past Chairman of the Board for Goodwill Industries Easter Seals**

Senator Les Donovan and Committee Members:

I have been on the board for Goodwill Easter Seals for the past five years including two years as board chairman. I have had the honor to see first hand the outstanding work this agency does to help people with vocational challenges in Kansas.

Goodwill Industries Easter Seals self-funds most of its programs for the disadvantaged and people with disabilities through earned revenue. Last year *our agency supplemented the state's social service dollars by nearly \$185,000. Those dollars helped continue funding and expanding services for people with disabilities when the state's reimbursement rates fell short.*

- Goodwill Industries Easter Seals programs:
 - Help at-risk youth complete their GEDs, finance higher level training including college and technical schools, and find jobs.
 - Help people with severe disabilities find resources in the community and find, train for and keep jobs.
 - Teach illiterate adults to read and write.
 - Loan medical equipment (no cost) including wheelchairs, crutches, and other necessary devices.
 - Provide Vocational Day Services that train & employ 60 adults with severe disabilities.
 - Provide Targeted Case Management for approximately 90 individuals.

I'd like to share one of my most special experiences with the agency. Goodwill Easter Seals, for more than 20 years, has manufactured all the insulation blankets for Hawker Beechcraft jets. Two years ago, Hawker Beechcraft presented their Small Business Supplier of the Year award to Goodwill. I had the honor of presenting the award to the employees with disabilities who work on the Hawker project. They were so proud to receive this award recognizing the high quality of their workmanship and on-time deliver. This was a group of people with disabilities whom most companies wouldn't hire but found hope and a future at Goodwill.

This agency is more than worthy of having its sales tax exemption restored. Please help Goodwill by voting favorably to pass HB 2299.

Thank you for your consideration.

Senate Assessment & Taxation
3-19-2009
Attachment 1



Goodwill Industries Easter Seals of Kansas, Inc.

3636 N. Oliver • P.O. Box 8169 • Wichita, KS 67208 • Phone: 316-744-9291 • Fax: 316-744-1428
www.goodwillkansas.easterseals.com

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Wichita Community Foundation

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Capitol Federal Savings

Tod Wawzysko
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Emily Compton

Members

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Foulston Siefkin, L.L.P.

Joan Barrett
KWCH Channel 12

Don Barry
Wachovia Securities

Brad Clothier
Preferred Health Systems

Tom Dondlinger
Dondlinger & Sons
Construction, Inc.

Bill Hanna
Community Volunteer

Joe Johnson
Schaefer Johnson Cox
Frey Architecture

Dennis W. Kerschen
The Law Company, Inc.

Shawn Lancelot
Bank of America

Gail Lehman
Hawker Beechcraft Corporation

Debra McArthur
Wesley Medical Center

Mark Nichols
Koch Industries, Inc.

Bill Moore
Westar Energy

John O'Carroll
Cargill Value Added Meats

Sue Ronshagen
Cessna Aircraft Company

Eric Sexton
Wichita State University

Richard Stafford
The Boeing Company

Dave Unruh
Sedgwick County

Testimony in favor of HB 2299

Sales Tax Exemption on Tangible property for Goodwill Industries Easter Seals of Kansas Inc and Goodwill Industries of Kansas, Inc.

March 19, 2009

Presented by: **Emily Compton, President/CEO for Goodwill Industries Easter Seals of Kansas Inc.**

Senator Les Donovan and Committee Members:

Thank you for allowing me to speak in favor of HB 2299.

Goodwill Industries Easter Seals of Kansas, Inc. and its subsidiary corporation, Goodwill Industries of Kansas, Inc. have been exempt from paying sales tax on tangible property for many years. Attached you will find exemption certificates going back to 1992.

Our last tax-exempt Entity Exemption Certificate, Number KS6KVU0B4T, was issued in 2004 or 2005 and was suppose to be valid until November 1, 2009. In March of 2008, one of our attorneys needed to confirm the number on the certificate and was told it was invalid. We called and wrote the Department of Revenue and their response was that the certificate was issued in error.

Although the certificate does not expire until November 1, 2009, when we confirmed that it was not valid, we immediately ceased using it. To restore our status, we must receive approval from the legislature.

It is difficult for us to determine how much this is costing our agency. We are estimating that since March 2008, we have been paying about \$5,000 to \$6,000/month in sales tax on purchases made by the agency. These dollars alone could help fund another 100 at-risk youths to work on their GEDs and help many others improve their vocational skills.

Last year the Goodwill stores generated \$496,438 in sales tax revenue for the state. We are not asking to be relieved from collecting sales tax from our customers. ***We are asking for you to restore our sales tax exempt status from purchases made by the agency in the furtherance of our mission.***

Goodwill Industries Easter Seals self-funds most of its programs for the disadvantaged and people with disabilities through earned revenue from our retail stores. ***Our agency supplemented the state's social service dollars by \$183,775 last year by continuing to fund services for people with disabilities***



Licensed by the Kansas Department
of Social & Rehabilitation Services

A 501(c) (3) not for profit corporation

Senate Assessment & Taxation
3-19-2009
Attachment 2

reimbursement rates fell short. In 2009, we are on track to supplement the State social service budget by \$220,000.

Please help our agency continue to help people with disabilities and disadvantages by voting favorably on HB 2299. Thank you.

Respectfully submitted,

A handwritten signature in cursive script that reads "Emily Compton".

Emily Compton
President/CEO



Department of Revenue
Division of Taxation

CONTACT: (913) 296-2461

STATE OF KANSAS
EXEMPTION FROM KANSAS SALES AND USE TAX

ISSUED TO:

GOODWILL INDUSTRIES
MASTER SEAL SOCIETY OF KANSAS, INC.
P.O. BOX 8169
TOPEKA, KS 67208-0169

KANSAS TAX I.D.
NUMBER: 00030-11

EFFECTIVE DATE: March 12, 1992

EXPIRATION DATE: March 11, 1997

YOUR APPLICATION FOR SALES/USE TAX EXEMPT STATUS PURSUANT TO K.S.A. 1991 SUPP. 79/3606(H) HAS BEEN APPROVED. THIS LETTER IS ISSUED AS YOUR VALIDATION.

YOU MUST SUPPLY A COPY OF THIS EXEMPTION LETTER TO EACH RETAILER OR VENDOR FROM WHOM YOU PURCHASE TANGIBLE PERSONAL PROPERTY OR SERVICES FOR USE EXCLUSIVELY BY YOUR ORGANIZATION.

PURCHASES MUST BE PAID FOR BY CHECK OR DRAFT DRAWN ON FUNDS OF THE ABOVE INDICATED ORGANIZATION. THIS EXEMPTION CANNOT BE USED ON PURCHASES BY AGENTS OR INDIVIDUALS FOR THEIR OWN PERSONAL USE OR BENEFIT.

IT IS NOT PERMISSIBLE FOR AN AGENT OR CONTRACTOR OF AN EXEMPT ORGANIZATION TO CLAIM OF BENEFIT FROM THE ORGANIZATION'S EXEMPT STATUS. CONTRACTORS WHO PURCHASE CONSTRUCTION MATERIALS TO FULFILL THEIR CONTRACTS WITH AN EXEMPT ORGANIZATION ARE SUBJECT TO THE SALES TAX ON ALL SUCH SALES.

THIS DETERMINATION OF EXEMPTION DOES NOT APPLY TO PURCHASES OF TANGIBLE PERSONAL PROPERTY CUSTOMARILY USED FOR HUMAN HABITATION PURPOSES.

FURTHERMORE, GOODWILL INDUSTRIES IS NOT RELIEVED FROM ITS RESPONSIBILITY FOR COLLECTING AND REMITTING KANSAS SALES TAX ON THE TOTAL SELLING PRICE OF TANGIBLE PERSONAL PROPERTY OR TAXABLE SERVICES THAT IT SELLS AT RETAIL IN KANSAS.

THIS EXEMPTION IS NOT PERMANENT, IS SUBJECT TO REVIEW BY THE DEPARTMENT OF REVENUE, AND MUST BE RENEWED UPON THE EXPIRATION DATE GIVEN ABOVE. IF DURING AUDIT, OR FOR OTHER REASON, THIS ORGANIZATION CEASES TO QUALIFY AS AN EXEMPT ORGANIZATION AS DEFINED BY THE LAWS OF KANSAS REGARDING ALL OR SOME PORTION OF ITS ACTIVITIES, THIS EXEMPTION IS NOT APPLICABLE AND PURCHASES MADE BY THE ORGANIZATION WILL BE SUBJECT TO THE SALES AND USE TAX.

THIS EXEMPTION IS NOT ASSIGNABLE OR TRANSFERABLE. IT IS FOR SALES/USE TAX ONLY AND IS NOT AN EXEMPTION FROM AD VALOREM TAX.

Division of Taxation
Kansas Department of Revenue
15 SW Harrison St.
Topeka, KS 66625



(913) 296-3044
FAX (913) 296-2073
TTY (913) 296-6461

Division of Taxation

STATE OF KANSAS
EXEMPTION FROM KANSAS SALES AND USE TAX

ISSUED TO:

GOODWILL INDUSTRIES EASTER
SEAL SOCIETY OF KANSAS, INC.
PO BOX 8169
WICHITA, KS 67208-0169

KANSAS TAX I.D.
NUMBER: 00050-jj

EFFECTIVE DATE: March 12, 1997

EXPIRATION DATE: March 11, 2002

YOUR APPLICATION FOR SALES/USE TAX EXEMPT STATUS PURSUANT TO K.S.A. 79-3606(jj), AS CITED IN CHAPTER 280 OF THE 1992 SESSION LAWS OF KANSAS, HAS BEEN APPROVED. THIS LETTER IS ISSUED AS YOUR VALIDATION.

YOU MUST SUPPLY A COPY OF THIS EXEMPTION LETTER TO EACH RETAILER OR VENDOR FROM WHOM YOU PURCHASE TANGIBLE PERSONAL PROPERTY OR SERVICES FOR USE EXCLUSIVELY BY YOUR ORGANIZATION.

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Division of Taxation
Kansas Department of Revenue
915 SW Harrison St.
Topeka, KS 66625



(785) 296-2473
FAX (785) 296-8989
TTY (785) 296-6461

Division of Taxation

STATE OF KANSAS
EXEMPTION FROM KANSAS SALES AND USE TAX

ISSUED TO:
GOODWILL INDUSTRIES EASTER
SEAL SOCIETY OF KANSAS, INC
PO BOX 8169
WICHITA KS 67208

KANSAS TAX I.D.
NUMBER: 00016-jj

EFFECTIVE DATE: **MARCH 1, 2002**
EXPIRATION DATE: **FEBRUARY 28, 2007**

YOUR APPLICATION FOR SALES/USE TAX EXEMPT STATUS PURSUANT TO K.S.A. 79-3606(jj), AS CITED IN CHAPTER 280 OF THE 1992 SESSION LAWS OF KANSAS, HAS BEEN APPROVED. THIS LETTER IS ISSUED AS YOUR VALIDATION.

YOU MUST SUPPLY A COPY OF THIS EXEMPTION LETTER TO EACH RETAILER OR VENDOR FROM WHOM YOU PURCHASE TANGIBLE PERSONAL PROPERTY OR SERVICES FOR USE EXCLUSIVELY BY YOUR ORGANIZATION.

PURCHASES MUST BE PAID FOR BY CHECK, CREDIT CARD OR DRAFT DRAWN ON FUNDS OF THE ABOVE INDICATED ORGANIZATION. THIS EXEMPTION CANNOT BE USED ON PURCHASES BY AGENTS OR INDIVIDUALS FOR THEIR OWN PERSONAL USE OR BENEFIT.

IT IS NOT PERMISSIBLE FOR AN AGENT OR CONTRACTOR OF AN EXEMPT ORGANIZATION TO CLAIM OR BENEFIT FROM THE ORGANIZATION'S EXEMPT STATUS. CONTRACTORS WHO PURCHASE CONSTRUCTION MATERIALS TO FULFILL THEIR CONTRACTS WITH AN EXEMPT ORGANIZATION ARE SUBJECT TO THE SALES TAX ON ALL SUCH SALES.

THIS DETERMINATION OF EXEMPTION DOES NOT APPLY TO PURCHASES OF TANGIBLE PERSONAL PROPERTY CUSTOMARILY USED FOR HUMAN HABITATION PURPOSES.

FURTHERMORE, The GOODWILL INDUSTRIES EASTER SEAL SOCIETY OF KANSAS, INC, IS NOT RELIEVED FROM ITS RESPONSIBILITY FOR COLLECTING AND REMITTING KANSAS SALES TAX ON THE TOTAL SELLING PRICE OF TANGIBLE PERSONAL PROPERTY OR TAXABLE SERVICES THAT IT SELLS AT RETAIL IN KANSAS.

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KANSAS DEPARTMENT OF REVENUE
DIVISION OF TAXATION

TAX-EXEMPT ENTITY EXEMPTION CERTIFICATE

The Kansas Department of Revenue certifies that the entity to which it has issued this numbered certificate is exempt from paying Kansas sales and/or compensating use tax pursuant to:

K.S.A. 79-3606(jj), which exempts all sales of tangible personal property or services, including the renting and leasing of tangible personal property, purchased directly on behalf of a community-based mental retardation facility or mental health center organized pursuant to K.S.A. 19-4001, et seq., and amendments thereto, and licensed in accordance with the provisions of K.S.A. 75-3307b and amendments thereto. EXCEPTION: This exemption shall not apply to tangible personal property customarily used for human habitation purposes.

By furnishing this certificate, the undersigned tax-exempt entity certifies that its direct purchase of: _____

Description of property or service purchased

Seller's Name: _____

Address: _____
Street, RR or PO Box City State Zip

is exempt from the state and local sales or compensating use tax. The undersigned tax-exempt entity further understands and agrees that if the tangible personal property and/or service are used other than as stated, or for any other purpose that is not exempt from the tax, the undersigned tax-exempt entity becomes liable for the state and local sales or use tax. The unlawful or unauthorized use of this certificate is expressly prohibited, punishable by fine and/or imprisonment.

TAX-EXEMPT ENTITY INFORMATION

Name: Goodwill Industries Easter Seal Society of Kan

Address
P.O. Box 8169
Wichita KS 6720-8169



Kansas Exemption Number:
KS6KVU0B4T

Expiration Date: November 1, 2009

Authorized Signature: _____ Officer, Office Manager or Administrator Driver's License #: _____ *

* Required by K.S.A. 79-3651(f)

Printed Name: _____ Date: _____

USE OF THIS EXEMPTION CERTIFICATE

What purchases are exempt: : The direct purchase, rental or lease of tangible personal property not customarily used for human habitation (beds, desks, lamps, towels and linens, etc.) and the direct purchase taxable repair services are exempt.

The materials furnished by or through a contractor, or the materials and/or labor of a subcontractor for real property projects are taxable.

Project Exemption Certificate (PEC) applicability: This entity is NOT authorized to obtain a Project Exemption Certificate (PEC) in order that the materials purchased or furnished by a contractor or the materials and labor of a subcontractor on a real property project may be purchased without tax.

INFORMATION FOR RETAILERS

- You must keep a copy of this completed certificate with your other sales tax records for a period of at least three years from the date this certificate was signed and presented to you.
- A completed certificate may be used by the organization as a blanket exemption for future purchases from you of the same type for the same exempt purpose.
- All purchases must be a direct purchase – billed directly to the entity, and/or paid for with entity funds (check or credit card).
- Sales to employees or agents of the exempt entity using their personal funds are taxable, even when the employee/agent is reimbursed the expense by the exempt entity.
- The items purchased must be used exclusively by the exempt entity for the stated exempt purpose(s).



K A N S A S

JOAN WAGNON, SECRETARY

DEPARTMENT OF REVENUE

KATHLEEN SEBELIUS, GOVERNOR

Goodwill Industries Easter Seal Society of Kansas

**P.O. Box 8169
Wichita KS 6720-8169**

On-Line Business Center

PIN 2231476

DO NOT DISCARD-KEEP IN A SAFE PLACE

Contact: Diane Drake Exec Director

RE: Issuance of Numbered Exemption Certificate

Enclosed is the new numbered sales and use tax exemption certificate issued to your organization by the Kansas Department of Revenue in accordance with the provisions of Section 21 of 2004 House Bill 2375. This new uniquely-numbered certificate is being issued to streamline the tax exemption process for your organization and to assist Kansas retailers in identifying the nonprofit entities exempt from paying Kansas sales or use tax. You may begin using this certificate immediately. Kansas retailers have been instructed to not accept any other type of exemption certificates after January 1, 2005 from the entities affected by the legislation.

You must provide a completed copy of this new numbered certificate in order to make an exempt purchase of tangible personal property and/or taxable services in accordance with the exemption granted by Kansas law cited on your certificate. You should reproduce as many copies of your new numbered exemption certificate as you will need for your suppliers and vendors. This is the only certificate your organization will receive. If you have multiple purchasing departments you should provide each department with a copy of the certificate.

HOW TO USE THIS NEW CERTIFICATE. To make an exempt purchase of goods and services for your organization, present a completed copy of your Tax-Exempt Entity Exemption certificate to the vendor or supplier at the time of purchase. Unless specified on the certificate, only *direct* purchases are exempt; purchases of materials by a contractor working for you and indirect purchases on your behalf are NOT exempt. An authorized signature (including the Driver's License number of that individual) is required.

BLANKET EXEMPTION USAGE. Blanket exemption certificate usage continues to be allowed. The completed certificate may be used as a blanket exemption certificate to cover future purchases of the same type and from the same vendor. If you currently have a blanket exemption certificate on file with a vendor, you will just need to provide a completed copy of your new numbered exemption certificate to that vendor.

REPORTING CHANGES, REPRINTING LOST CERTIFICATES, REQUESTING CERTIFICATES. The department has developed an Internet application as part of its On-Line Business Center for your convenience in reporting name and address changes, to inform the department the organization has been disbanded, to print copies of your existing certificate, or to apply for a new certificate. When an exempt organization has a name change or has a new federal EIN issued, you must apply for a new Tax-Exempt Entity Exemption certificate from the department.

On-Line Business Center: Access to the Tax-Exempt Entity Exemption Certificate application is available through the On-Line Business Center at the department's website, www.ksrevenue.org. On the home page, under "Your Business" is a link to the On-Line Business Center. Click on the link to access your account. If you have not used the On-Line Business Center before, you will need to register and create an account. Once the account is created, click on "Certificates." To access an issued certificate, click on "Add an Existing Exemption Certificate to this account." The program will ask for your certificate number and the unique PIN provided at the top of this letter. The certificate number will be displayed and by clicking on the certificate you will be able to perform the functions mentioned. You can also apply for additional certificates if your organization has multiple divisions for which you want a separate exemption certificate issued.

If you have any questions concerning this letter or the numbered exemption certificate, please contact our Taxpayer Assistance Center at (785) 368-8222.



KOCH COMPANIES PUBLIC SECTOR, LLC
Legal, Government, Public Affairs

MARK A. NICHOLS
Regional Manager
State Government Affairs

March 17, 2009

Honorable Les Donovan, Chairman and
Assessment and Taxation Committee Members
300 SW 10th Avenue Room 535 - N
Topeka, KS 66612

Dear Senator Donovan and Committee Members,

I am writing to request your support for HB 2299 which amends KSA 79-3606 to include Goodwill Industries Easter Seals of Kansas, Inc as a sales tax exempt non-profit.

As a Board member of Goodwill Industries Easter Seals, I see firsthand the outstanding work they provide to the Wichita community and throughout Western Kansas. Their programs and services have made a positive difference in the lives of thousands of Kansans with disabilities and other barriers to employment.

Please support their request for a sales tax exemption.

Thank you.

Sincerely,

Mark Nichols
Regional Manager
State Government Affairs

316.828.5274 Tel
316.828.6997 Fax

4111 E. 37th Street North
Wichita, Kansas 67220
mark.nichols@kochps.com

www.kochind.com



2-8



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VICE CHAIRMAN
- ▶ Gayle Malone
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TREASURER
- ▶ Donald L. Cordes
IMMEDIATE
PAST CHAIRMAN

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- ▶ Brian A. Black
- ▶ Linda K. Constable
- ▶ W.W. (Bill) Hanna
- ▶ Tony Madrigal
- ▶ Arneatha Martin
- ▶ Ron V. Paulseen
- ▶ Pam Siddall

PRESIDENT & CEO

- ▶ Rob Allison

**WICHITA COMMUNITY
FOUNDATION**

- ▶ Phone: (316) 264-4880
- ▶ Fax: (316) 264-7592
- ▶ 200 W. Douglas, Suite 250
Wichita, KS 67202
- ▶ www.wichitacf.org

March 17, 2009

Honorable Les Donovan, Chairman and
Assessment and Taxation Committee Members
300 SW 10th Avenue Room 535 - N
Topeka, KS 66612

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community and throughout Western Kansas. Their programs and
services have made a positive difference in the lives of thousands of
Kansans with disabilities and other barriers to employment.

Please support their request for a sales tax exemption.

Thank you.

Sincerely,

Rob Allison
President and CEO



Preferred Health Systems

March 17, 2009

Honorable Les Donovan, Chairman and
Assessment and Taxation Committee Members
300 SW 10th Avenue Room 535 - N
Topeka, KS 66612

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Please support their request for a sales tax exemption.

Thank you.

Sincerely,

Brad Clothier
Chief Operating Officer/Senior Vice President



March 17, 2009

Honorable Les Donovan, Chairman and
Assessment and Taxation Committee Members
300 SW 10th Avenue Room 535 - N
Topeka, KS 66612

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As a Board member of Goodwill Industries Easter Seals, I see firsthand the outstanding work they provide to the Wichita community and throughout Western Kansas. Their programs and services have made a positive difference in the lives of thousands of Kansans with disabilities and other barriers to employment.

Please support their request for a sales tax exemption.

Thank you.

Sincerely,

A handwritten signature in black ink that reads "George Fahnestock". The signature is written in a cursive, flowing style.

George Fahnestock
Chief Executive Officer

Testimony on Taxation of Stored Natural Gas
to
Senate Committee on Assessment and Taxation
by Bill Waters
Attorney
Division of Property Valuation-Kansas Department of Revenue

SENATE BILL 312

Chairman Donovan, members of the committee, I appear today in support of SB 312. This legislation is designed to implement what is clearly the intent of Kansas voters that stored natural gas held for resale in underground formations in this state should be subject to property taxation. Perhaps a brief history of this issue would be helpful in explaining how we arrived at this point and why the legislation is necessary. (See attachment 1.)

SB 312 corrects what the Court deemed to be a flaw in the legislation passed in 2004. The Court held that the *storage companies* "controlled" the natural gas and, for that reason, the companies that owned and sold the natural gas did not meet all three parts of the statutory requirements – "own," "control" and "hold for resale

SB 312 has been carefully drafted to avoid any kind of discrimination. It taxes only natural gas *held for resale*. Any industry, whether it is a Kansas industry or a non-Kansas industry, is not taxed on any natural gas they store for their own use in a manufacturing process. Also, SB 312, in and of itself, creates no distinction between Kansas municipalities and non-Kansas municipalities. The property of Kansas municipalities is exempt under art. 11, § 1 of the Kansas Constitution. Many years ago, our Supreme Court addressed the taxation of non-Kansas municipalities in *The State v. Holcomb*, 85 Kan. 178 (1911) and held that our state's constitutional provision exempting municipalities from property taxation applies only to Kansas municipalities.

SB 312 does not impose any new taxes on pipelines or underground storage companies. All the while the pipelines and storage companies owned the natural gas; they paid the taxes without challenge. This began in 1992 when the voters passed the constitutional amendment and continued for 10 years until the FERC changed the rules on us. This bill merely ensures that the new owners of the stored natural gas pay the taxes that were once paid by the pipelines and storage companies.

You are, of course, aware that a resolution was also introduced to amend the constitution to again tax stored natural gas held for resale. Whether the constitution is amended or SB 312 is approved, the result will be challenged. The initial thought behind amending the constitution was to attempt to eliminate the argument that the definition of a public utility is somehow locked in time. However, our re-reading of *In re Tax Exemption Application of Central Illinois Public Service Co.*, 276 Kan. 612 (2003), shows that the Kansas Supreme Court specifically stated that the legislature has the authority to define what constitutes public utility property, as long as the definition conforms to the commonly understood meaning of the term. 276 Kan. at 619. We believe that SB 312 is carefully drafted to define a public utility as the term is commonly understood.

I will be happy to attempt to answer any questions the committee may have.

ATTACHMENT 1

HISTORY (STORED NATURAL GAS TAXATION IN KANSAS)

- Merchants' and manufacturers' inventories became exempt from property taxation in Kansas on January 1, 1989.
- The Kansas Supreme Court in *Colorado Interstate Gas Co. v. Board of Morton County Comm'rs*, 247 Kan. 654 (1990) ("*Morton County*"), held that natural gas held for resale by a public utility was merchants' and manufactures' inventory and, therefore, exempt from property taxation.
- In 1992, the legislature, in response to the *Morton County* case, submitted a constitutional amendment to the voters to exclude public utilities from the inventory exemption.
- The voters approved the constitutional amendment in November, 1992, and commencing in 1993, stored natural gas held for resale in underground formations in this state was again taxed.
- Throughout the rest of the 1990s, the taxation of stored natural gas held for resale in underground formations in this state was not challenged because it was owned by the pipelines and storage companies, who were public utilities pursuant to K.S.A. 79-5a01.
- K.S.A. 79-5a01 then and now defines businesses transporting or distributing to, from, through or in this state natural gas in pipes or pipelines, or engaging primarily in the business of storing natural gas in underground formations as public utilities.
- Because public utility inventories are not exempt from property taxation, the stored natural gas held for resale was taxable as long as the pipelines and storage companies owned it.
- In the late 1990s, the Federal Energy Regulatory Commission (FERC) implemented FERC Order 636, which prohibited the pipeline and storage companies from owning and marketing natural gas.

- Upon the implementation of FERC Order 636, title to the stored natural gas was transferred from the pipelines and storage companies to various marketing companies, municipalities and out-of-state utilities.
- The marketing companies, municipalities and out-of-state utilities did not meet the statutory definition of a public utility; therefore, once title was passed to them, the state lost its authority to tax their stored natural gas.
- In 2002, several counties attempted to tax the stored natural gas now owned by these marketing companies, municipalities and out-of-state utilities.
- Several of these marketing companies, municipalities and out-of-state utilities appealed the counties decision to tax the stored natural gas.
- The Kansas Supreme Court in *In re Tax Exemption Application of Central Illinois Public Service Co.*, 276 Kan. 612 (2003), held that the marketing companies, municipalities and out-of-state utilities did not meet the statutory definition of a public utility; therefore, their stored natural gas was held to be exempt inventory.
- In 2004, the legislature, in response to the *Illinois Central* case, amended K.S.A. 79-5a01 to provide that companies owning, controlling and holding for resale natural gas in underground formations in this state are public utilities and, therefore, subject to taxation on their inventories.
- Again, several taxpayers appealed and again the Kansas Supreme Court, in *In re Appeal of Director of Property Valuation*, 284 Kan. 592 (2007), held that the stored natural gas was exempt inventory. The Court's decision turned on the words used in the 2004 amendment to K.S.A. 79-5a01. It held that the *storage companies* "controlled" the natural gas and, for that reason, the companies that owned and sold the natural gas did not meet all three parts of the statutory requirements - "own," "control" and "hold for resale."



ANDERSON COUNTY COMMISSION

100 E. 4th Ave.
Garnett, KS 66032

Dudley Feuerborn, Chairman
Eugene Highberger, Member
Dean Register, Member

**Testimony of
Commissioner Dudley Feuerborn
Anderson County Board of Commissioners**

SB 312

Before the Senate Committee on Assessment and Taxation

March 19, 2009

Chairman Donovan and Members of the Committee:

My name is Dudley Feuerborn, I am a County Commissioner for Anderson County. I am here in my capacity as county commissioner and as a representative of the **County Natural Gas Coalition**. I have enclosed a list of the affected counties and members of the Coalition with my testimony.

Thank you for the opportunity to appear before the committee to provide testimony in support of Senate Bill 312. I want to share with the committee the effects of the loss of revenue as a result of the Supreme Court's 2003 decision in Central Illinois Public Service Company v. Meade County.

On December 2, 2004, Missouri Gas Energy, in Anderson County, filed an application for tax exemption for the allocated natural gas inventory with the Director of the Property Valuation Division pursuant to K.S.A. 79-213. The exemption caused Anderson County to lose \$486,884.93 or almost 8% of the projected budget for 2005. More important was the hit experienced by our local school districts. Unified School District #365 in Garnett suffered a budget loss of \$215,860 while Unified School District #479 in Colony had a budget shortfall of \$61,434.78. In all, the taxing subdivisions in Anderson County lost tax revenue totaling over \$1 million, a significant amount of money for a county with a population of just over 8,000 people and only 4,231 tax payers. As a result, we had to increase our mill levy 12 mills to make up for some of the lost revenue. **In all, storage counties have lost a total of nearly \$9 million per year since the Court's decision.**

The Anderson County Commission supports the passage of SB 312. We believe the change is necessary to close the unintended loophole in the state's valuation of stored natural gas so that all companies that store natural gas in underground formations in Kansas share equally the responsibilities of funding county services.

Thank you for this opportunity. I will be glad to stand for questions at the appropriate time.

Senate Assessment & Taxation
3-19-2009
Attachment 4

Kansas Counties with Stored Natural Gas *

Allen

Anderson

Chautauqua

Elk

Jefferson

Kingman

Kiowa

Leavenworth

Meade

McPherson

Montgomery

Morton

Pratt

Reno

Rice

Wilson

Woodson

* Natural gas held for resale by out-of-state entities.

MORTON COUNTY COMMISSIONERS

1ST DISTRICT
RON DEGARMO
Rolla, Kansas 67954
(620) 593-4455

2ND DISTRICT
BOB BOALDIN
Elkhart, Kansas 67950
(620) 697-2286

3RD DISTRICT
TERESA HARDER
Elkhart, Kansas 67950
(620) 697-2099

**Testimony of
Commissioner Bob Boaldin
Morton County Board of County Commissioner**

Senate Bill 312

Senate Committee on Assessment and Taxation

March 19, 2009

Chairman Donovan and members of the Committee:

Thank you for allowing me to present testimony in support of Senate Bill 312. I am Bob Boaldin, from Elkhart, Kansas. I have served as a member of the Morton County Board of Commissioners for over 20 years.

Morton County is located in the southwest corner of Kansas. Like many small rural Kansas communities, the population of our county is declining and we are challenged to address the basic needs of our citizens through a declining tax base. The majority of our counties' tax base is derived from farming, agricultural related business and the oil and natural gas industry.

For many decades, Morton County and other members of the **County Natural Gas Coalition** were permitted, by law, to assess and collect ad valorem property tax on natural gas held in storage by both resident and non-resident companies. Through a combination of a change in federal regulations and the Kansas courts, a loophole was created that exempted out-of-state utilities from taxation on their stored natural gas.

Our estimates show that Morton County has lost about \$500,000 a year in tax revenue as the valuation of stored natural gas in our county dropped more than \$6 million between 2004 and 2007 as most of our stored natural gas was taken off the tax rolls. \$500,000 a year is real money for a county with 3,500 residents.

Morton County Board of County Commissioners supports the broadening of our tax base whenever possible. We support passage of SB 312 in order to reinstate the unintentional exemption of a unique type of property.

Thank you for your attention to this matter.

Senate Assessment & Taxation
3-19-2009
Attachment 5



Meade County Appraiser

**Meade County Courthouse • P.O. Box 278 • Meade, KS 67864
620/873-8710 • Fax: 620/873-8713**

**Testimony of
Mark Low
Meade County Appraiser**

Senate Bill 312

Before the Senate Committee on Assessment and Taxation

March 19, 2009

Chairman Donovan and Members of the Committee:

My Name is Mark Low, County Appraiser for Meade County. Thank you for the opportunity to appear before the committee to provide testimony in support of Senate Bill 312. I wanted to provide a brief history of our efforts to close this loophole.

In 2004, the assessed value of stored natural gas in Meade County was estimated at \$23 million. After the Kansas Supreme Court's decision in Central Illinois Public Service Company v. Meade County, the assessed value dropped significantly, dropping by nearly \$20 million. I, along with the Property Valuation Division of the Kansas Department of Revenue, and attorneys for Meade County, sought to amend K.S.A. 79-5a01 as it defines public utility to include all companies located in-state or out-of-state, that own, control, and hold natural gas.

House Bill 2897 passed the House 101-23. The bill was not heard in the Senate but was added to a House Substitute for Senate Bill 147 during a conference committee on a range of tax issues. House Substitute for Senate Bill 147 was later approved by the Senate 40-0 and in the House 109-11. Ultimately, as provided earlier, the change to K.S.A. 79-5a01 did not meet the approval of the court. Meade County and other members of the County Natural Gas Coalition are before you now with different language we believe will meet the court's approval. It is our intention to include all companies that store natural gas for resale regardless of domicile or regulation by the Kansas Corporation Commission.

We estimate that the Meade District Hospital, Unified School District No. 226, and Meade County together lost \$2 million in tax revenue a year, every year, since 2005. \$2 million is significant in a county with a population of less than 5,000 people and a county budget of only \$6 million. In addition, broadening the tax base will alleviate some of the burden on Meade County businesses and residents. Currently, 45% of the county tax base is made up of in-state public utilities. As the law now stands, the tax burden on our in-state utilities is higher because of the loophole that exempts those out-of-state entities that store the same natural gas in Kansas. Passage of SB 312 will end the inequality that exists for these resident utilities and return millions to the Meade County tax rolls.

Thank you for your time, I will be glad to stand for questions.

Senate Assessment & Taxation
3-19-2009
Attachment 6

COUNTY COMMISSIONERS

Montgomery County
217 East Myrtle
Independence, Kansas 67301

Phone (620) 330-1111 Fax (620) 330-1202

Tony Fowler
District No. 1

Larry McManus
District No. 2

Fred Brown
District No. 3

**Testimony of
Commissioner Tony Fowler
Montgomery County Board of County Commissioners**

Senate Bill 312

Before the Senate Committee on Assessment and Taxation

March 19, 2009

Chairman Donovan and Members of the Committee:

My name is Tony Fowler, I am a County Commissioner for Montgomery County. Thank you for the opportunity to appear before the committee to provide testimony in support of SB 312.

Montgomery County was not hit as hard as some of the other counties by the loss of revenue as a result of the Kansas Supreme Court ruling that natural gas held by out-of-state entities was not considered a public utility for ad valorem property tax purposes. Montgomery County was fortunate enough to experience an expansion of the Coffeyville Resources oil refinery and nitrogen fertilizer plant. The expansion and reappraisal of the plant increased property valuation in Montgomery County by \$807 million, offsetting lost revenue that resulted from the Supreme Court's decision on natural gas.

However, it is estimated that Montgomery County lost more than \$250,000 a year in tax revenue, revenue that would have broadened our tax base. In 2004, Montgomery County collected \$281,354 in ad valorem property taxes on a stored natural gas assessed value of \$2.1 million. In 2007, that number had dropped to \$18,415, on an assessed valuation of only \$146,021, a substantial loss.

That is a lost revenue source to Montgomery County schools, its cemeteries, and its hospitals and an increased tax burden for Montgomery County citizens and businesses, like Coffeyville Resources, that employ hundreds of Kansans. *Why should Kansas companies have to step-in for out-of-state utilities taking advantage of the state's storage capacity?*

Passage of Senate Bill 312 will broaden our tax base and reduce the tax burden on Montgomery County businesses and citizens. I urge the passage of SB 312 and will stand for any questions.

Senate Assessment & Taxation
3-19-2009
Attachment 1

STULL LAW OFFICE, P.A.

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**Testimony of
Gordon B. Stull
County Counselor, Pratt County, Kansas**

Senate Bill 312

House Committee on Assessment and Taxation

March 19, 2009

Mr. Chairman and Members of the Committee:

I am Gordon B. Stull, an attorney from Pratt, Kansas, and I have served as the Pratt County Counselor for twenty-five years. I appreciate the opportunity to provide this testimony to you today. I am here representing Pratt County in its capacity as a member of the County Natural Gas Coalition.

Pratt County supports the County Natural Gas Coalition position with respect to this proposed legislation. My comments will not deal directly with the legislation but, instead, will focus on some of the unintended consequences to counties that host underground storage fields. Because my comments could be construed as being anti-oil and gas, or anti-storage field, I want to say at the outset that Pratt County is a strong supporter of the oil and gas industry, including underground gas storage fields. Pratt County's economy has been boosted for many years by oil and gas production and pipeline transmission lines which crisscross our county providing jobs, ancillary businesses, and payment of bonus rentals and royalties to many landowners. Pratt County would do nothing to discourage use of its native oil and gas resources for economic development, if done in a responsible and reasonable way.

I have been involved with the oil and gas industry for many years. Oil and gas plays a significant portion of my law practice and I have been an investor in and operator of oil and gas wells and, at one time, was the President of a drilling company that operated four drilling rigs and five completion units. I was an owner and President of another company that owned and operated a drilling rig. Currently, I represent numerous oil and gas producing and operating companies. My comments should not be considered a reflection on the industry as a whole, but on a situation which has had, and continues to have, negative and bothersome impacts to Pratt County. Under the right circumstances, the same things could happen to other counties that have storage fields.

Senate Assessment & Taxation

3-19-2009

Attachment 8

My comments are directed principally in response to the assertions of Ron Gaches, representing Southern Star Central Gas Pipeline, and Lawrence E. Garrett, representing Colorado Interstate Gas Company. The testimony of Mr. Gaches would suggest to you that underground gas storage fields are benign operations which impose "remarkably few demands on local units of government and its neighbors". Mr. Garrett would lead you to believe that transporting natural gas into the State of Kansas for storage underground in our counties is just like someone hauling freight across the state and, therefore, there is no nexus between the owners of the gas and the State of Kansas. I believe what they were describing is a situation which may be desired and even intended but, in actuality, may not be attained in a given set of circumstances. Pratt County has three storage fields, two of which have been operated successfully without any material negative impact. The third, the Cunningham Storage Field, operated by Northern Natural Gas Company, has been and is a different matter. Let me describe for you Pratt County's experience with Northern Natural Gas and the Cunningham Storage Field.

The Cunningham Storage Field was certified in 1978 and being one of the largest in Kansas encompasses approximately 26,240 acres covering portions of Pratt and Kingman Counties. The storage facility has 81 wells, including 52 injection/withdrawal wells, 28 observation wells, and a water disposal well, together with many miles of interconnecting pipelines and compression facilities. When originally developed, the storage field was supposed to be comprised of the Viola and Kinderhook formations. After several years of operation, it became apparent to Northern that their field was leaking vertically and they had invaded the Simpson formation under a significant portion of the property covered by the storage field. *This posed two issues.* The *first* was that they had invaded space of Pratt County property owners that did not belong to Northern. *Second*, Northern had placed storage gas under pressure in a formation which had not been prepared for those purposes, in accordance with the standard procedures used by storage companies to maximize the possibilities for containment. As a result of Northern's actions, litigation by landowners was started to secure compensation from Northern for their property loss. After this litigation was resolved, Northern certificated the storage field to additionally cover the Simpson formation. The field then covered not only the Viola and Kinderhook formations, but also the Simpson and Arbuckle formations. This was completed in the mid 1990's.

Northern continued to operate the Cunningham Storage Field but, in the late 1990's, apparently began to suspect that they were still leaking. They began to question adjoining oil and gas operators about their wells and suggested that the gas being produced from them belonged to Northern. Northern began to question one operator which had two wells within one mile of the boundaries of the Cunningham Storage Field and also began to question an operator that had a well **more than four miles away**. Northern began to strongly assert ownership of the gas being produced from those wells relying upon the 1993 legislation which permitted storage field owners to reclaim migrating storage gas. However, Northern offered little, if any, satisfactory proof to the operators that, indeed, it was Northern's gas. This ultimately led to litigation against the operator closest to the storage field which was tried in U.S. Federal District Court. The owners of the well were found by a Federal Court jury to not be producing Northern's gas. On appeal to the Tenth Circuit Court of Appeals, this finding was upheld. In addition, Northern also sued the operator of the well four miles north of the storage field. The suit was thrown out by the Federal District Court and was upheld on appeal to the Tenth Circuit Court.

An interesting side note to all of this is that while Northern was pursuing litigation against these operators, Northern was also making filings with the Kansas Corporation Commission to the effect that Northern was containing its storage gas within the boundaries of its storage field so the storage field could get re-certified.

Unwilling to accept rulings of the Federal District Court, Northern, on March 16, 2007, filed an application with the Federal Energy Regulatory Commission ("FERC") seeking to extend the northern boundaries of the Storage Field by an additional 4,800 acres, asking for certification for the Viola and Simpson formations. Within its application, Northern asserted that the 4,800 acres were the minimum acreage necessary to effectively implement a containment plan for migrated gas. In October 2008, FERC issued its ruling allowing Northern to increase its certificated area by only 1,760 acres, increasing the size of the storage to approximately 28,000 acres. This extension incorporated the area on which the two closest wells were located. FERC made a finding that Northern's evidence **did not** support expanding the boundaries of the storage field further north and closer to the well four miles away that Northern claimed was producing its gas.

Undeterred, Northern has filed an application for reconsideration by FERC of the findings denying the additional extension. In addition, Northern has filed litigation against the operator of the well involved in the previous litigation and against other operators, claiming all of those operators of approximately 20 wells are producing Northern's migrated storage gas. Some of those wells are **almost eight miles from the north boundary of Northern's Cunningham Storage Field**, affecting many thousands more acres and numerous property owners.

If you take Northern's claims as true, Northern's operation of the Cunningham Storage Field has created storage gas leaks over thousands of acres of Pratt County land. Northern claims it has trespassed into and under the property of numerous owners and, in the process, made use of their property without payment or the owner's knowledge or permission. The operators which have been sued by Northern contest these claims. It will probably take many years to resolve the disputes. Many local owners and oil companies will have to spend large sums of money defending against these claims to protect their property rights.

It does not matter if the Cunningham Storage Field is leaking because of the result of poor engineering, operational practices, or negligent or reckless conduct. Intent doesn't matter. The effect has been the same on many residents and other businesses within Pratt County, Kansas. The County is powerless to intervene or do anything about this as operation of the Storage Fields is controlled by the Kansas Corporation Commission and FERC. The County cares about this because if Northern has leaked over thousands of acres, it has contaminated any native gas under those properties with storage gas.

Pertinent to Senate Bill 312, as a result of the taking of the two wells closest to the storage field, Pratt County may have to refund \$93,000.00, in paid ad valorem taxes on the valued wells. In addition, going forward the County estimates it will lose approximately \$90,000.00 per year of ad valorem tax which had been attributable to the working interest and royalty portion of those wells. If Northern has, in fact, ruined 20 some wells more than 4 to 8 miles north of its storage field, the Pratt County Appraiser has estimated the ad valorem tax loss to the County will be somewhere between \$500,000.00 and \$1,000,000.00 per year. This does not take into consideration additional wells which, perhaps, would have or could have been drilled but for Northern's actions. In addition, Pratt County royalty owners and oil and gas operators

will lose millions of dollars in revenue, much of which would have or could have been expended in Pratt County. The value of the owner's land will forever be diminished.

One further effect of operational problems with Northern's Cunningham Storage Field is that they have essentially created a "dead zone" within and around the storage area and any area where Northern is claiming gas has migrated. Oil companies will not drill in or around the Storage Field for fear of being sucked into litigation with Northern if they would happen to obtain a successful gas well. A company that recently leased approximately 10 square miles north and west of the Storage Field for purposes of seismic exploration has declined to conduct any seismic or other exploration activity on leases that are in the vicinity of the Northern Storage Field because of this very problem. Therefore, Pratt County and its property owners have lost significant potential economic opportunity because of the location of a Storage Field within the county.

The problems with the Cunningham Storage Field may be considered an aberration but it starkly represents the negative impact a storage field can have on a county that hosts it. *Pratt County hopes that it does not get into a situation like Hutchinson, several years ago, when a leaking storage field caused a major disaster in that town, including the loss of life.* Even though Northern Natural has claimed and litigated in many venues, it has never once contacted the Pratt County Commission to discuss with the Commission these leaking problems. Nor have they offered assistance to the County to prepare for emergencies which may or could arise when storage gas reaches an area that no longer confines it. The area Northern is now claiming has leaked storage gas has two small cities within just a couple of miles.

For those who would suggest that storage gas creates no nexus with the hosting governmental entity, they should visit with the oil operators and property owners in and around the Cunningham Storage Field.

Thank you. I will be happy to try to answer any questions.

Testimony to the Senate Assessment and Taxation

Joan Wagnon

March 19, 2009

- SB 312 fixes a flaw in the statute amended in 2004 to tax natural gas held for resale in underground formations in this state.
- The voters and the legislature have consistently supported the taxation of natural gas stored for resale.
- The taxation of natural gas held for resale was not challenged for the 10 year period from 1993 to 2002 when title to the natural gas was in the pipelines.
- The Federal Energy Regulatory Commission (FERC) by 2002 had prohibited the pipelines from selling natural gas; thus resulting in its ownership being transferred to companies that do not meet the present statutory definition of a public utility.
- Unless fixed, Kansas tax policy regarding the taxation of stored natural gas is subject to whatever regulatory changes may come out of the Federal Energy Regulatory Commission (FERC).
- Unless fixed, the stored natural gas of Kansas based public utilities will continue to be taxed while the stored natural gas of out-of-state public utilities will not be taxed.
- This resolution does not increase the taxes of any storage company or natural gas pipeline.
- This legislation treats in-state and out-of-state companies the same, rather than favoring the out-of-state companies and making the in-state companies pay the tax alone.



KANSAS LEGISLATIVE POLICY GROUP

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www.klpg.org

**Testimony of
Commissioner Ron DeGarmo
Morton County Commissioner
President, Kansas Legislative Policy Group**

**Written Remarks on
Senate Bill 312**

Senate Committee on Assessment and Taxation

March 19, 2009

Chairman Donovan and Members of the Committee:

The Kansas Legislative Policy Group (KLPNG) is pleased to provide written testimony in support of Senate Bill 312. KLPNG is a bipartisan, non-profit organization of elected commissioners from 30 western Kansas counties. We appreciate the opportunity to submit remarks on this issue, which is of great importance to our member counties.

SB 312 will correct an unintentional loophole created by a combination of changes in federal regulation and decisions by Kansas courts that exempted from ad valorem taxation natural gas held in storage by out-of-state entities. Closing this loophole will provide the 17 affected counties increased annual tax revenue of almost \$9 million. The Kansas Legislative Policy Group supports every opportunity to broaden our tax base. Broadening the base reduces the tax burden on everyone and enables our counties to provide necessary public services to their citizens.

We encourage the Committee to favorably consider Senate Bill 312.

Thank you for your consideration and the opportunity to present these written remarks.

Senate Assessment & Taxation
3-19-2009
Attachment 10



GACHES, BRADEN & ASSOCIATES

Government Relations & Association Management

825 S. Kansas Avenue, Suite 500 ♦ Topeka, Kansas 66612 ♦ Phone: (785) 233-4512 ♦ Fax: (785) 233-2206

**Testimony of Southern Star Central Gas Pipeline and El Paso
In Opposition to SB 312 – Increasing Taxes on Interstate Gas Inventories
Submitted to Senate Assessment & Taxation Committee
Presented by Ron Gaches
Thursday, March 19, 2009**

Thank you Mr. Chairman and members of the committee for this opportunity to speak about the proposed property tax on interstate natural gas inventories. My name is Ron Gaches and I represent Southern Star Central Gas Pipeline and El Paso Energy.

Southern Star and El Paso are among the small number of interstate pipeline companies that operate natural gas underground storage facilities in the state of Kansas. The others include Northern Natural Gas and Panhandle Eastern.

These storage fields are typically in what we call porosity fields – underground geological formations that previously produced natural gas.

The companies that store interstate natural gas are regulated by the federal government. Also, in Kansas, the Oil and Gas Conservation Division of the Kansas Corporation Commission has promulgated rules and regs to establish guidance on the safe operation of these facilities.

Interstate storage operations are typically part of the operations of an interstate pipeline company. Gas purchasers buy gas throughout the year and store it for later use. Many large purchasers of gas (typically large industrial users, utilities, municipalities and even gas producers) will purchase natural gas during the warm months for their use during the cold winter months. They use the gas to heat homes, or commercial and industrial facilities, or to generate electricity in natural gas turbines. Other natural gas is used to make a variety of products for use in agriculture and industry.

There are nearly 20 underground storage fields operating in Kansas and most of them store gas owned by out-of-state companies.

Senate Bill 312 is the latest installment in a dispute over the taxation of natural gas that began in 1986. That's the year Kansas adopted the constitutional amendment that explicitly exempted merchants and manufacturers inventories from application of the property tax.

Senate Assessment & Taxation
3-19-09
Attachment 11

The core question this bill tries to address is whether or not natural gas owned by out-of-state entities and stored temporarily in Kansas is exempt from property tax because it is an inventory, or subject to tax because it is public utility property.

Let's be very clear from the beginning about who owns storage gas. It is not owned by the storage companies or interstate pipeline companies.

Some of the gas is owned by Kansas utilities and other Kansas companies. The gas owned by Kansas investor-owned utilities is treated as public utility property and is valued and taxed as part of the utility. The gas owned by other Kansas municipal utilities and coops, Kansas businesses (large industries, gas producers and other firms) is exempt from property tax under current law.

The rest of the gas is owned by a variety of out-of-state purchasers and users of gas. Some are public utilities in other states; some are municipalities from other states; some are major industries in other states; some are out-of-state energy companies; and some are gas producers who have their gas in storage waiting for a buyer.

The interstate natural gas storage companies contend all out-of-state storage gas should be regarded as an inventory and exempt from property tax. The counties testifying before you today contend all gas should be subject to property taxes.

This debate has been ongoing for more than two decades with occasional decisions by the courts and the legislature that highlight the nature of the controversy.

In 1992 the legislature approved a constitutional amendment that attempted to exclude public utility property from the inventory exemption.

In 2003 the Kansas Supreme Court ruled that interstate pipeline customers were not public utilities and therefore the gas they own was not subject to the property tax.

In 2004 the legislature statutory language attempted to redefine public utility property in a way to capture interstate storage gas for property taxes.

In 2007 the Kansas Supreme Court again ruled that the interstate gas owners were not subject to the property tax.

Obviously, a pattern has emerged. The legislature has ceded to the efforts of the counties where storage is located and tried to find a way to define public utility property to capture interstate natural gas in storage; while the Kansas Supreme Court has consistently found that those efforts fall short and the gas is not subject to the tax.

In a few minutes Larry Garrett of El Paso/Colorado Interstate Gas will provide an overview of the legal arguments that the gas storage industry is convinced will prevail in the next court consideration of this issue, if this proposed language is passed into law. But first I'd like to comment on the public policy objectives of the proposed bill.

We believe Kansas tax policy should encourage storage of gas in Kansas facilities. It promotes the value of the entire natural gas production, processing, pipeline and storage industries in Kansas.

What is the possible public policy purpose of imposing the property tax on interstate gas?

Does the underground storage of gas impose a burden on local units of government? No. In fact, underground storage facilities impose almost no demand at all on local government services.

Does the transport of the gas through Kansas impose a burden on local units of government? No. In fact, the storage industry is invisible to most Kansans and imposes remarkably few demands on local units of government and its neighbors.

Are storage companies and interstate pipelines escaping their property tax liabilities? Absolutely not!

In fact they pay significant property taxes. The storage facilities themselves and the gas they have in the ground required to properly operate the storage field are considered public utilities and assessed at 33% of their fair market value, the highest tax burden on any class of property in the state.

Consider the property tax contribution of one storage operator to Meade County – one of the counties asking for interstate storage gas to be taxed.

Last year, Panhandle's Borchers Field storage facility (one of the larger storage facilities in Kansas) paid \$2.2 million in property taxes to Meade County. That's \$2.2 million in property taxes on the value of the storage facility and the "working gas." Working gas is the gas owned by the storage company and necessary to maintain for the efficient operation of the field. The tax on working gas is not in dispute.

In addition, Panhandle paid \$1.25 million in property taxes on their pipeline and transportation facilities in Meade County. That's a total \$3.45 million in property taxes in one year.

Panhandle is not disputing the validity or legality of these property taxes. It is the additional tax the counties want to levy on the gas owned by out of state firms that is stored in the Borchers Field that is in dispute.

Similarly, Southern Star paid more than \$8.5 million in property taxes in 67 Kansas counties last year. The largest amounts, including more than \$900,000 in Anderson County and nearly \$770,000 in Montgomery County, were in the counties where they have storage facilities.

Isn't that enough? I don't think the argument can seriously be made that storage companies and interstate pipelines aren't paying their fair share of Kansas property taxes.

The taxation of stored gas is attractive simply because it is a way for a small number of counties to raise revenue from out of state taxpayers.

If we re-impose the property tax do you think we will have any out of state gas owners that would knowingly allow their gas to be stored in Kansas? Of course not.

If the legislature is going to redefine "public utility" so that natural gas is no longer eligible for the merchants and manufacturers property tax exemption, why stop there? Why not redefine public utility to recapture the tax on wheat, or corn, or milo?

What do you suppose would happen to the Kansas grain elevator business if the legislature redefined "public utility" to insure that grain owned by out of state firms but held in Kansas elevators were subject to the property tax?

Suppose we redefine "public utility" so that it captures the inventories carried by the railroads and motor carriers and held temporarily at the new intermodal transportation facility being constructed south of Olathe.

Consider the impact on our manufacturing centers in Kansas City and Wichita if we reimposed the property tax on General Motors or Cessna. What would happen to those businesses if we re-imposed the property tax on the products they produce and held in temporary storage?

The answer to all of these questions is simple. Imposing the property tax on these inventories would drive business out of Kansas.

Counties that are home to gas storage fields are simply trying to impose taxation without representation. The gas can't vote. The owners of out-of-state gas are all out-of-state and can't vote.

From the counties' perspective, this is the perfect tax. They can impose a tax on a group of taxpayers who can't vote to throw them out.

That's called taxation without representation. We're all pretty familiar with the concept.

It didn't prove popular with American taxpayers in 1776, and it isn't popular today.

We believe the counties have it wrong. You shouldn't be considering a bill to increase taxes on interstate storage gas. Instead you should be considering an amendment that makes it clear ALL storage gas is exempt from property tax.

Kansas utility consumers ... your constituents ... need and deserve a break. The state has slipped into recession. Kansas employers are hemorrhaging jobs faster than anyone can remember, and energy prices are as volatile as they've ever been.

The local property taxes on natural gas owned by Kansas investor-owned utilities are passed on 100% to Kansas utility consumers.

The gas is already subject to the state severance tax when it is produced and the consumers' energy bills are already subject to a variety of local and state taxes and fees. The property tax on natural gas is a third tax on the same molecule of gas.

The dirty little secret about taxes on natural gas owned by Kansas utilities is that they are entirely hidden taxes. The Kansas consumer pays the taxes but never sees the tax bill. It's all just rolled into their utility bill. And, most of the consumers that pay the tax bill live in communities outside of where the storage facilities are located, so they don't even receive the benefit of the hidden tax revenue generated on their utility bills.

It has become standard tax policy in Kansas that we tax a product at the point of retail sale or consumer use, and not impose taxes on the inputs required to produce the product or service. Except with natural gas where we impose a triple tax on Kansas consumers.

Instead of asking your constituents if they think Kansas should impose a tax on interstate storage gas, ask them if they support elimination of the hidden natural gas taxes buried in their utility bills.

Ask them if they believe they deserve relief from the triple taxation of natural gas. I'm guessing that if your constituents understood what was going on they would probably tell you they have had enough of hidden taxes.

This is a dispute that has gone on for more than twenty years. Kansas counties have known for years the fragile legal status of this revenue source; as a result of the 2007 court decision the tax has been refunded for several prior years and not collected the last two years. The Kansas Supreme Court has consistently decided in favor of the taxpayer.

Continuing the effort to impose this tax will only result in more legal expenses for the state and counties and more frustration for a storage industry that has been proud to call Kansas home, but is questioning the state's commitment to its success.

We ask this committee to consider all of the implications of the policy represented by SB 312 and reject it. You wouldn't do this to Kansas agribusiness, interstate motor carriers or railroads, or Kansas auto or aviation manufacturers. You shouldn't do it to our natural gas storage industry.

Thank you for your consideration and I'll respond to any questions.

Testimony of Colorado Interstate Gas Company
In Opposition to SB 312 - Increasing Taxes on Interstate Gas Inventories
Submitted to Senate Assessment & Taxation Committee
Presented by Laurence E. Garrett
Thursday, March 19, 2009

Thank you, Chairman Donovan and members of the committee, for the opportunity to address the proposed property tax on interstate gas inventories. My name is Laurence E. Garrett and I am an attorney for Colorado Interstate Gas Company ("CIG"), located in Colorado Springs, Colorado.

The purpose of my testimony is to oppose SB 312 on the grounds that it exceeds permissible state authority under the United States Constitution. The proposed legislation contains two constitutional infirmities. First, it does not satisfy the "minimum contacts" requirement under the Due Process Clause of the United States Constitution. Second, it does not pass muster under the Commerce Clause of the United States Constitution because it fails the "substantial nexus" test that the courts have adopted in Commerce Clause jurisprudence.

SB 312 clearly fails to satisfy the "minimum contacts" requirement under the Due Process Clause of the United States Constitution. Under that test, no state can reach beyond its borders to tax a non-resident where doing so offends "traditional notions of fair play and substantial justice," a principle which has long been established by *International Shoe Co. v. Washington*, 326 U.S. 310 (1945) and its progeny. Although physical presence is not necessarily required, an out-of-state taxpayer must purposefully direct its efforts toward state residents and must purposefully avail itself of the benefits and protections of the economic market in the state in order for state taxation to pass Due Process muster. See, *Quill Corp. v. North Dakota*, 504 U.S. 298, 307-308 (1992).

The minimum contacts requirement assures that a company "[has] fair warning that [its] activity may subject [it] to the jurisdiction of a foreign sovereign." *Id.*, quoting *Shaffer v. Heitner*, 433 U.S. 186, 218 (1985). As noted by the Fourth Circuit Court of Appeals, in exploring the due process limits on the legislative power of a state, the Supreme Court has employed language similar to that used in personal jurisdiction matters, explaining that "there must be at least some minimal contact between a State and the regulated subject before it can, consistently with the requirements of due process, exercise legislative jurisdiction." *Adventure Communications, Inc. v. Kentucky Registry of Election Finance*, 191 F.3d 429, 436 (4th Cir. 1999). The Supreme Court has also held that third party actions cannot provide the necessary nexus, stating "The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum state." *Hanson v. Denckla*, 357 U.S. 235 (1958).

The proposed legislation would unlawfully tax out-of-state taxpayers who have never purposefully directed their activities toward residents of the state of Kansas and have never purposefully availed themselves of any benefits or protections of the

economic market in the state of Kansas. There is simply not sufficient “minimum contact” between the state of Kansas and the out-of-state taxpayers to satisfy the requirements of the Due Process Clause. Additionally, the mere fact that CIG – a third party – has temporary custody of the taxpayers’ property at CIG’s in-state storage facilities cannot serve to support Kansas taxation on the out-of-state taxpayers since they have absolutely no control (actual or constructive) over the ingress and egress of natural gas to and from the Kansas storage facilities operated by CIG. The Due Process Clause forbids imputation of such independent, third-party actions to the purported out-of-state object of state legislation for purposes of establishing constitutionally sufficient minimum contacts.

Furthermore, SB 312 does not pass muster under the Commerce Clause of the United States Constitution because the activity which is proposed to be taxed lacks any “substantial nexus” to Kansas. The United States Supreme Court has adopted and consistently applied a four-part test for determining whether a state tax on an interstate business is valid under the Commerce Clause. A tax passes muster against a Commerce Clause challenge so long as the “tax [1] is applied to an activity with a substantial nexus with the taxing state, [2] is fairly apportioned, [3] does not discriminate against interstate commerce, and [4] is fairly related to the services provided by the state.” *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977).

The first part of the test requires a substantial nexus between the taxpayer and the state to ensure that interstate commerce is not unduly burdened. It poses an even higher hurdle than the minimum contacts necessary to satisfy the Due Process Clause test: “[A] corporation may have the ‘minimum contact’ with a taxing state as required by the Due Process Clause, and yet lack the ‘substantial nexus’ with that state as required by the Commerce Clause.” *Quill Corp. v. North Dakota*, 504 U.S. 298, 313 (1992). This principle was affirmed by the Supreme Court of Kansas in *In re Appeal of InterCard, Inc.*, 270 Kan. 346, 14 P.3d 1111, 1115 (2000). There, the Kansas Supreme Court held that “[i]t is well settled that under the Commerce Clause a state may not subject a business to tax unless the business has a substantial nexus within the state.”

The definition of what constitutes a “substantial nexus” has been the subject of a long line of United States Supreme Court and state court decisions. Although the specific boundaries of the “substantial nexus” requirement have not been defined with great specificity, there is a “bright line” test which was established by the United States Supreme Court in *National Bellas Hess, Inc. v. Department of revenue of Ill.*, 386 U.S. 753 (1967) and which was reaffirmed in the *Quill Corp.* case. In those cases, the Supreme Court held that taxpayers “whose only connection with customers in the [taxing] state is by common carrier” do not maintain a substantial nexus with a state that permits the state to impose taxes. CIG, a federally regulated, open-access transporter of natural gas in interstate commerce is the functional equivalent of a common carrier. It can no more serve as the proxy or vehicle for taxation by Kansas on an out-of-state taxpayer than could the common carrier as issue in *National Bellas Hess* serve as the proxy or vehicle for taxation by Illinois on an out-of-state taxpayer. Therefore, the proposed constitutional amendment violates the Due Process Clause by attempting to

sweep within the taxing jurisdiction of the state of Kansas virtually any entity without regard to whether the entity has a substantial nexus with Kansas.

Thank you for allowing me to present this testimony. I respectfully urge you to reject SB 312 on the grounds that it violates the United States Constitution. I would be happy to answer questions.