

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairman Les Donovan at 10:34 a.m. on February 10, 2010, in Room 152-S 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  
Chris Courtwright, Kansas Legislative Research Department  
Brandon Riffel, Kansas Legislative Research Department  
Mary Jane Brueck, Committee Assistant

Conferees appearing before the Committee:

Phil Perry, Home Builders Association of Greater Kansas City  
Mike Brown, President KCHBA and NAHB Board Member  
Mike Taylor, Unified Government of Wyandotte County of Kansas City Kansas  
Erik Sartorius, City of Overland Park  
Robert Vancrum, representing Greater Kansas City and Shawnee Chambers of Commerce  
George Schluter, Home Builders Association of Greater Kansas City  
Tom Woods, T.E. Woods Construction  
Cindy Cash, Kansas City Kansas Chamber  
Jennifer Bruning, Vice President of Government Affairs of Overland Park Chamber of Commerce  
Luke Bell, Vice President Governmental Affairs, Kansas Realtors  
Randall Allen, Executive Director Kansas Association of Counties  
Mark Beck, Department of Revenue  
Secretary Joan Wagnon, Secretary of Revenue, representing Kansas Advisory Council of

Intergovernmental Relations (KACIR)

John Arnold, President, John E. Arnold Company  
Sen Tim Owens, 8<sup>th</sup> District, Johnson County  
Jennie Chinn, Kansas Historical Society  
Christy Davis, Davis Preservation  
John Holecek, Executive Director, McPherson Opera House  
Kevin Carr, KTEC – Kansas Technical Enterprise Corporation  
Angela Kreps, President of Kansas Bioscience Organization  
Emily Hurst, Director of Development, Interfaith Housing Services, Inc.  
Lorna Moore, IDA Program Director, Interfaith Housing Services, Inc.  
Dale Nimz, Executive Director, Kansas Preservation Alliance, Inc.  
Casey Woods, Executive Director of the Emporia Main Street Association  
John Belford, owner of Belford Electric in Wichita, and partner in Waterman Properties  
Brenda Spencer, owner/operator of a preservation consulting business for the last 16 years  
Garrison Hassenflu, Garrison Development Company  
Sara Nelson, Hutchinson, Kansas, private citizen, beneficiary of Interfaith Housing Services, Inc.  
Michael Marsh, C.P.A.  
Julia Manglitz, American Institute of Architects, representing AIA Kansas  
Rep. Sydney Carlin, 66<sup>th</sup> District, Manhattan

Others attending:

See attached list.

Chairman Donovan opened the hearing on **SB 477 - Property tax exemption for certain newly constructed buildings and structures on residential property.** Phil Perry, Staff Vice President of Government Affairs, Home Builders Association of Greater Kansas City said this proposed legislation creates an equitable system for the Kansas taxpayers, for the home building industry, and for the taxing entities across the state. He suggested houses newly built and unoccupied should be taxed as inventory rather than personal property. (Attachment 1) Mike Brown, President KCHBA and NAHB Board Member, told the committee this bill is needed to reduce the tax responsibility on the home builder, by taxing the new house he has built as inventory rather than personal property. (Attachment 2) Mike

## CONTINUATION SHEET

Minutes of the Senate Assessment and Taxation Committee at 10:34 a.m. on February 10, 2010, in Room 152-S of the Capitol.

Taylor, Unified Government of Wyandotte County of Kansas City Kansas told the committee Wyandotte County wants to stimulate new home construction in its community and they believe this bill will do that. (Attachment 3) Erik Sartorius, City of Overland Park told the committee they also support this legislation. (Attachment 4) Robert Vancrum, representing Greater Kansas City and Shawnee Chambers of Commerce said they support this bill and have supported similar legislation in the past. (Attachment 5) Chairman Donovan told the committee there is written testimony in favor of this bill from George Schluter, Home Builders Association of Greater Kansas City (Attachment 6); Tom Woods, T.E. Woods Construction (Attachment 7); Cindy Cash, Kansas City Kansas Chamber (Attachment 8); and Jennifer Bruning, Vice President of Government Affairs of Overland Park Chamber of Commerce (Attachment 9)

Chairman Donovan recognized Luke Bell, Vice President Governmental Affairs, Kansas Realtors who explained the concerns his association has with **SB 477** : it could result in huge increases in the property tax burden on new home buyers; the provisions of this bill are unconstitutional because personal property cannot be classified as inventory. (Attachment 10) Randall Allen, Executive Director Kansas Association of Counties, gave three reasons the association is in opposition to this bill: 1. The bill presumes the vacant house places no demand on local governmental services, such as fire and police. 2. The bill creates an unequal basis for assessing property. And 3. Two of the conditions listed 1 (b) of the bill could cause the county appraiser to spend time and expense in gathering documentation. Mr Allen said the Association of Counties believe this bill would create unwise public policy, creating inequities and more problems than it would solve. (Attachment 11) Mark Beck, Director of the Division of Property Valuation, Department of Revenue presented testimony showing this bill is identical to 2008 Sub for HB2543, and is very similar to 2007 HB 2543. Both were found to be unconstitutional. (Attachment 12) Chairman Donovan closed the hearing on **SB 477**.

The hearing on **SB 472 - Prohibiting transferability of income tax credits and repealing certain income tax credits**. Was opened by the Chairman. He recognized Secretary Joan Wagon, Secretary of Revenue, representing Kansas Advisory Council of Intergovernmental Relations (KACIR). She explained this bill focuses on tax credits. This bill focuses on two things: 1. tax credits that are unused, and the bill seeks to repeal those, and 2. the transferability of tax credits. She asked for an amendment of the bill, and explained where to find those amended parts of the bill. (Attachment 13) The Chairman called on John Arnold, President, John E. Arnold Company, explained he feels this bill is one step in enhancing the sense of the taxation and tax credit policies of the state and he therefor supports it. (Attachment 14) Sen Tim Owens, 8<sup>th</sup> District, Johnson County submitted written testimony in favor of this bill. (Attachment 15)

Jennie Chinn, Kansas Historical Society explained she is in opposition to this bill because it would eliminate community and non-profits and local governments (including universities and school districts) from the program. (Attachment 16) Christy Davis, Davis Preservation, opposes this bill because transferability is essential to the success of the Kansas state rehabilitation tax credit. (Attachment 17) John Holecek, Executive Director, McPherson Opera House also spoke in opposition to this bill. (Attachment 18) Kevin Carr, KTEC – Kansas Technical Enterprise Corporation, is opposed to this bill because it would eliminate the ability for Angel Tax Credits to be sold or transferred. (Attachment 19) Angela Kreps, President of Kansas Bioscience Organization also opposes this bill because it makes it more difficult to raise capital. (Attachment 20) Next to speak was Emily Hurst, Director of Development, Interfaith Housing Services, Inc. thanked Secretary Wagon for removing them from this bill. (Attachment 21) Chairman Donovan recognized Dale Nimz, Executive Director, Kansas Preservation Alliance, Inc. spoke about two points. Without transferability Kansas will be at a competitive disadvantage in competing with neighboring states like Missouri and Oklahoma. Secondly the Kansas Preservation Alliance has a project under way and although looking for funds from a variety of sources the sale of credits would help provide the margin between a successful completion and a project that stalls without enough investment to complete the project. (Attachment 22) Casey Woods, Executive Director of the Emporia Main Street Association, told the committee that the tax credits being discussed are an exonomix development tool, a job creation tool, a small business tool, and one of the most effective large scale incentive plans that advocate for the cores of our Kansas communities. (Attachment 23) John Belford, owner of Belford Electric in Wichita, and partner in Waterman Properties testified in favor of the tax credits, and in opposition of this bill. He explained when forced to move, due to building of a new arena in Wichita. He chose an old building that had been sitting vacant in

## CONTINUATION SHEET

Minutes of the Senate Assessment and Taxation Committee at 10:34 a.m. on February 10, 2010, in Room 152-S of the Capitol.

downtown Wichita since 1978. He used tax credits to help in his renovation, and now the city has a restored building that is increasing its local tax revenue. (Attachment 24) Brenda Spencer, owner/operator of a preservation consulting business for the last 16 years spoke in opposition to this bill, saying it is needed to continue to attract investment in our state's historic resources. (Attachment 25)

Chairman Donovan told the committee there are many written testimonies for them to review. He apologized to those who did not submit their testimony until this morning, but assured them it would be distributed to the committee. The following is written testimony in opposition to SB 472 :  
Garrison Hassenflu, Garrison Development Company (Attachment 26), Lorna Moore, IDA Program Director, Interfaith Housing Services, Inc. (Attachment 27), Sara Nelson, Hutchinson, Kansas, private citizen and beneficiary of Interfaith Housing Services, Inc. (Attachment 28), Michael Marsh, C.P.A. (Attachment 29), Julia Manglitz, American Institute of Architects, representing AIA Kansas (Attachment 30), and Rep. Sydney Carlin, 66<sup>th</sup> District, Manhattan (Attachment 31) Chairman Donovan closed the hearing on SB 472..

The next meeting will be February 11, 2010.


The meeting adjourned at 11:41 a.m.

# SENATE

## Assessment & Taxation Committee

### GUEST LIST

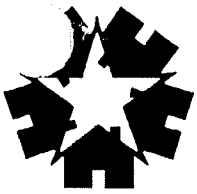
DATE: FEB 10, 2010

NAME	REPRESENTING
Bob Van crum	Greater KC Chamber
Jenni Chinn	Ks Historical So
Patrick Gilmer	Kansas Historical Society
	Sen. Terrie Huntington
Christy Davis	Davis Preservation
JOHN & NIKKI BELFORD	WATERMAN PROPERTIES
Rob Dawson	Federico Consulting
MIKE BROWN	KCHBA
PHIL PERRY	MOA
JULIA MANELITZ	AIA KANSAS
Fredy Gron	Am Inst of Architects
Nancy Longley	Tom Hensley Public Affairs
Shirley Spencer	Spencer Preservation
John Sobel	McPherson Opera House
Kathleen Smith	KDOR
Rick Kready	Pioneer Group
John Arnold	KAR
Randall Allen	Kansas Association of Counties
John Peterson	Drury S.W.

SENATE  
Assessment & Taxation Committee  
GUEST LIST

DATE: 2/10/2010

NAME	REPRESENTING
Luke Bell	KS ASSOC. OF REALTORS
Michelle Buhler	Capital Strategies



**HOME BUILDERS ASSOCIATION  
OF GREATER KANSAS CITY**



600 EAST 103<sup>RD</sup> STREET • KANSAS CITY, MISSOURI 64131-4300 • (816) 942-8800 • FAX (816) 942-8367 • www.kchba.org

**Testimony on SB 477  
By Phil Perry, Staff VP Government Affairs  
Senate Committee on Assessment & Taxation  
February 10, 2010**

Chairman Donovan and members of the committee, thank you for the opportunity to speak to you today concerning SB 477. We believe that the proposed legislation creates an equitable system for the taxpayers of this state, for the home building industry, and for the taxing entities across the state of Kansas.

Property taxes are critical to the continued fiscal success of various levels of government. The current law allows many new-home owners to enjoy a “tax holiday” by avoiding paying their fare share of property taxes for more than a year after buying a new home. And it discourages investment in residential construction with a property tax that is in effect an “inventory tax” that no other comparable industry in Kansas pays on its products in inventory.

Simply put, SB 477 would begin the assessment of property taxes on a newly constructed home on the first day of the month following the closing date for a new homeowner. It would also eliminate the inventory tax on model homes and speculative homes built in Kansas, and it would remove the confusing current system used that assesses property taxes based upon an arbitrary and complicated percentage of a home’s completion.

This bill creates an equitable system for the taxpayers of the state of Kansas by creating a level playing field. When Mrs. Smith buys an existing house in your town, she continues to pay the full amount of property taxes that were in effect prior to the purchase. But when Mr. Jones buys a new home next door, current law allows him to have a “tax holiday” for at least 13 months and possibly 23 months. We don’t believe this fair is to all of the taxpayers who pay for the services they use on a daily basis: schools, libraries, water, sewers, and all the rest, while new home buyers pay only a percentage of their taxes.

Let me further explain how the system works. Attached you will find a listing of various scenarios that exist in the marketplace today. These scenarios are based on a \$200,000 home (lot valued at \$40,000, improvements valued at \$160,000). Using the second example, a builder pulls a permit and starts construction on a new home in September 2009, then the appraiser’s office will view the property and construction in November/December 2009 and list the improvements at 20% completed, which will be the value the property is appraised at on January 1, 2010. If the builder completes the improvements in June, 2010 and sells the house, the new homeowner will receive a property tax bill the following December, 2010 that covers the property and 20% of the estimated cost of the improvements. On January 1, 2011, the house will be placed on the tax rolls at 100% with a tax bill received the following December, 2011. This how the systems works presently. Under SB 477, if the exact same scenario takes place, on July 1, 2010 the house would be placed on the tax roles at 100%. This tax would be collected in December, 2010. Under the current system in December, 2010 property taxes paid would be

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Attachment # 1

\$966.11 and under the proposed system they would be \$1,610.19, a 67% increase in revenue. Based upon experiences in other states, including Missouri, this simple change would be a win for government bodies and public services that receive revenue from property taxes.

The home building industry plays a major role in the Kansas economy, accounting for 13% of the Kansas Gross Domestic Product, yet in spite of all of this, they are the only industry in the state of Kansas that has an inventory tax. The home building industry is an important tool in economic development for communities across the state. The current downturn in housing is having a significant impact on our economy and our communities through lost jobs and lower economic productivity.

At a time like this, it is urgent that we look at policies and approaches that can stimulate the housing economy. The current property tax system poses a disincentive to home builders. Since model homes and speculative construction are subject to inventory taxes, builders are encouraged to limit new-home construction. That poses a dual risk. Right now, it means fewer homes will be built and jobs will be eliminated. Down the road as the housing market begins to recover, it will also unfortunately mean fewer homes will be available for sale. That could delay the housing market recovery in our state.

Yet perhaps the most distressing impact of the current system is its chilling effect on housing affordability. Earlier this year, the National Association of Home Builders published reports on government fees and their impact on housing affordability. The report found that an \$819 fee paid by a home builder added \$1,000 to the ultimate cost of the home. The association then studied what impact that increase had on housing affordability in 354 metropolitan areas across the nation. The impact on households in Kansas is stunning. In metropolitan Kansas City, a total of 1,747 households were priced out of the market for a new home for every \$1,000 increase in new home prices. That was the 12th largest impact in the nation. A total of 703 households were priced out for every \$1,000 increase in Wichita, the 47th highest total out of 354 markets. Topeka saw 181 households priced out, along with 77 in Lawrence.

Ultimately we have to ask ourselves, does it make sense to limit our economic growth, put us at a competitive disadvantage with our neighbors to the east in Missouri, who have had a similar law since 1991, reduce our property tax revenues and perpetuate a system that is outdated and ineffective? Does it make sense that Kansas new home buyers don't pay their fair share of property taxes? Does it make sense that we are discouraging new home production at a time when we need a stimulus in the residential home building market? We urge you to support this proposed legislation to make the property tax system for new homes in our state make more sense for Kansans, to help create new jobs, and to truly help stimulate our economy.

You also have in front of you written testimony from Tom Woods, T.E. Woods Construction, who builds in both Kansas and Missouri; George Schluter, Interim Managing Director of the Home Builders Association of Greater Kansas City; Jennifer Bruning, Overland Park Chamber, and Cindy Cash, Kansas City Kansas Chamber of Commerce. Additionally you will hear from Mike Brown, Brown Midwest Construction; Mike Taylor of the Unified Government, Wyandotte County/KCK; Erik Sartorius of the City of Overland Park; and Robert Vancrum, representing the Greater KC and Shawnee Chambers of Commerce.

I thank you for this opportunity to speak before you today and I would be pleased to answer any questions you may have.

Property Tax Scenarios for a \$200,000 home /\$40,000 lot, Statewide average mill rate of 116.68  
 Under SB 477, Land value is 100% for full year, improvements are a prorated value of 100%,  
 based upon date of occupancy

1) % completion of Jan 1 valuation	0 % (No const/lot only)
Lot valuation	\$40,000
Improvements Valuation	\$0
Total Valuation	\$40,000
Assessed Valuation (11.5%)	\$4,600
Current property tax billing	\$536.73
Effective date for occupancy	1-Sep
Proposed property tax billing (SB 477)	\$1,245.21
2) % completion on Jan 1 valuation	20%
Lot valuation	\$40,000
Improvements Valuation	\$32,000
Total Valuation	\$72,000
Assessed Valuation	\$8,280
Current property tax billing	\$966.11
Effective date for occupancy	1-Jul
Proposed property tax billing (SB 477)	\$1,610.19
3) % completion on Jan 1 valuation	40%
Lot valuation	\$40,000
Improvements Valuation	\$64,000
Total Valuation	\$104,000
Assessed Valuation	\$11,960
Current property tax billing	\$1,395.46
Effective date for occupancy	1-May
Proposed property tax billing (SB 477)	\$1,975.16
4) % completion on Jan 1 valuation	60%
Lot valuation	\$40,000
Improvements Valuation	\$96,000
Total Valuation	\$136,000
Assessed Valuation	\$15,640
Current property tax billing	\$1,824.88
Effective date for occupancy	1-Mar
Proposed property tax billing (SB 477)	\$2,146.91
5) % completion on Jan 1 valuation	100%
Lot valuation	\$40,000
Improvements Valuation	\$160,000
Total Valuation	\$200,000
Assessed Valuation	\$23,000
Current property tax billing	\$2,683.64
Effective date for occupancy	1-Mar
Proposed property tax billing (SB 477)	\$2,146.91
6) % completion on Jan 1 valuation	100%
Lot valuation	\$40,000
Improvements Valuation	\$160,000
Total Valuation	\$200,000
Assessed Valuation	\$23,000
Current property tax billing	\$2,683.64
Effective date for occupancy	Model Home
Proposed property tax billing (SB 477)	\$536.74



# HOME BUILDERS ASSOCIATION OF GREATER KANSAS CITY

600 EAST 103RD STREET □ KANSAS CITY, MISSOURI 64131-4300 □ (816) 942-8800 □ FAX (816) 942-8367 □ www.kchba.org

## **Testimony on SB 477**

**By Mike Brown, President, KCHBA and NAHB Board Member**

**Senate Committee on Assessment & Taxation**

**February 10, 2010**

Chairman Donovan and members of the committee, I appreciate the opportunity to speak to this Committee today concerning SB 477. The proposed legislation creates a fair, equitable and level playing field for all taxpayers, the home building industry and for the affected taxing entities across the state of Kansas.

The current system is flawed and local taxing entities suffer as a result. I as a homebuilder calculate an amount of estimated property taxes that are paid for a property which is vacant and utilizing the bare minimum of the service for which the taxes are levied. The prorated value, which the appraisers office makes an educated guess at, is then assessed and I pay the taxes on the homes (my inventory) and vacant lots. These homes and lots are categorized under GAAP Accounting rules as "inventory" for my company however I do not enjoy the same classifications as an auto dealer or a rancher who's "inventory" is not taxed.

In a normal real estate market, this adds approximately a \$52,000.00 burden to the cost of a home I build in Olathe. In this economy it is much worse. I have 4 homes in one Olathe community which I cannot sell due to current economic conditions. While we budgeted appropriately for the real estate taxes in 2006, we are now dramatically over budget on this cost, so much so that all profit in the home was eaten up in no small part by real estate taxes long ago.

As an example of the conditions as they exist, on the four homes mentioned above I budgeted \$2,000.00 for taxes however I have paid \$6,200, \$7,750, \$10,350 and \$15,100. Again, no one has or does live in these homes yet you can clearly see the amount of taxes paid for service not rendered. This scenario is playing out across Olathe, Johnson County and the entire State of Kansas.

And builders as are not alone in this problem. As banks and lenders repossesses construction loans (technically called Acquisition, Development and Construction Financing) banks are also paying these taxes and calculating these expenses into their "cost" in the property which affects their ability to properly capitalize the loans in the Non-Performing asset portfolio.

In this economy it is urgent that we enact policies that will stimulate the housing economy and this change would be a good first step to helping Kansans get back to work.

I thank you for this opportunity to speak before you today and I would be pleased to answer any questions you may have.

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2-10-10

Attachment # 2



# Tesimony

Unified Government Public Relations  
701 N. 7<sup>th</sup> Street, Room 620  
Kansas City, Kansas 66101

Mike Taylor, Public Relations Director  
913.573.5565 mtaylor@wycokck.org

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## Senate Bill 477 Property Taxation on New Residential Construction

Delivered February 10, 2010  
Senate Assessment and Taxation Committee

The Unified Government of Wyandotte County/Kansas City supports Senate Bill 477. The measure will eliminate the inventory tax on newly constructed residential property by placing the property on the tax rolls at full value when the home is sold and the new owners move in. Homebuilding is currently the only industry in Kansas which pays an inventory tax.

The Unified Government views this bill as benefit for our community. After years of seeing almost no new homes built in Wyandotte County, the past five years have seen our community consistently rank as the fifth most active area in the entire Kansas City metro region for new home construction. That trend continues even now, despite the serious downturn in the construction of new homes.

Wyandotte County wants to encourage and stimulate new home construction in our community. We believe this bill will do just that. With thousands of new employees coming to work over the next few years as part of the Cerner Corporation expansion, the General Motors plant success and the construction of the Hollywood Casino at Kansas Speedway, we need more housing because we want a good share of those new workers to live in Wyandotte County.

Senate Bill 477 will also help with the on-going budget crisis affecting the Unified Government. It will generate property tax revenues by eliminating the tax holiday new homebuyers receive for at least a year after moving in. The current system creates an unfair advantage for buyers of new homes over buyers of existing homes.

The Unified Government is confident Senate Bill 477 will benefit area homebuilders, will provide an economic spark for the construction of new homes in Wyandotte County and be a positive for our communities economy.

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2-10-10

Attachment # 3

# OVERLAND PARK

K A N S A S

ABOVE AND BEYOND. BY DESIGN.

8500 Santa Fe Drive  
Overland Park, Kansas 66212  
913-895-6000 | www.opkansas.org

Testimony before the Senate Assessment & Taxation Committee  
Regarding Senate Bill 477  
By Erik Sartorius

February 10, 2010

The City of Overland Park appreciates the opportunity to offer testimony in support of Senate Bill 477. The legislation would aid homebuilders in this time of slow economic activity, while at the same time aiding local governments in providing services when the economy is strong and rapidly expanding.

In the metropolitan Kansas City area, there are myriad communities in which homebuilders can site their projects. In this very competitive market, every tool available is utilized. SB 477 would provide the Kansas side of the region a useful tool and help level the playing field with the Missouri portion of our region.

This legislation would delay bringing unsold, completed residential dwellings onto the tax rolls. Instead, such a property would not be placed on the tax rolls until two years after construction was completed if it went unsold and unoccupied.

However, new residential construction that is sold would come onto the tax rolls at full-market value the month following the sale. This would ensure that new residents, whether purchasing an existing home or a new home, would pay property taxes for the services they receive. Under the current tax system, individuals purchasing newly-constructed homes can enjoy more than a year of municipal services without paying property taxes.

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Attachment # 4

The residential home building industry has developed into an important component of the Kansas economy. The challenges this industry is facing, from the slow economy, issues surrounding mortgages and a growing number of foreclosures, leave growing cities concerned.

The City of Overland Park believes Senate Bill 477 will bring a competitive level playing field to the Kansas City metropolitan region. Again, the City of Overland Park appreciates the opportunity to support this legislation, and encourages the committee to recommend SB 477 favorably for passage.



**THE CHAMBER**  
Greater Kansas City Chamber of Commerce

Testimony in Support of SB 477

before Senate Taxation Committee  
by Robert J. Vancrum, Kansas Government Affairs Consultant  
for the Greater Kansas City Chamber of Commerce

February 10, 2010

Chairman Donovan and Other Honorable Senators:

The Greater Kansas City Chamber of Commerce stands in support of this piece of legislation. Homebuilders are generally small, closely held businesses. Such businesses comprise a high percentage of our membership. More importantly for all of you in these times, small businesses usually create most of the jobs across the state of Kansas in any given year. Homebuilders also are an important part of the local economy in Northeast Kansas and certainly have been VERY adversely impacted by the recent world-wide recession causing both the drop in demand for their product and the severe restrictions on the availability of credit.

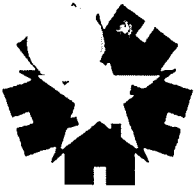
As the Homebuilders Association has pointed out, few other private businesses are taxed on their unsold inventories. Furthermore, our peculiar means of assessment means that new home buyers actually enjoy a long tax free period in many cases. That makes little sense.

The Home Builders also correctly point out that Missouri adopted the tax treatment embodied in this bill nearly two decades ago. I'm sure there are many factors influencing these decisions, but I am know from personal knowledge as one that has practiced real estate law in the area that many builders that used to be active in Northeast Kansas are now exclusively building across the state line in Missouri. Our peculiar method of distributing the tax burden on new construction certainly has not helped.

I'd be happy to answer any questions you may have about this bill or our support for it at any time.

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2-10-10

Attachment # 5



**HOME BUILDERS ASSOCIATION  
OF GREATER KANSAS CITY**



600 EAST 103<sup>RD</sup> STREET • KANSAS CITY, MISSOURI 64131-4300 • (816) 942-8800 • FAX (816) 942-8367 • www.kchba.org

**Senate Bill 477  
Written Testimony by George Schluter  
Interim Managing Director  
February 10, 2010**

Mr. Chairman and committee members thank you for the opportunity to provide written testimony to you today. Our association and our industry believes Senate Bill 477 is a critical step toward stimulating the state's housing market at a critical time and leveling the playing field for home builders and new-home buyers in Kansas.

Property taxes are critical to the continued fiscal success of various levels of government. This proposal can increase property tax collections at a time that is very important to all levels of government. The current law allows many new-home owners to avoid paying their fair share of property taxes for more than a year after buying a new home. And it discourages investment in residential construction with a property tax that is in effect an inventory tax that no other comparable industry in Kansas pays on its products in inventory.

Simply put, SB 477 would begin the assessment of property taxes on a newly constructed home on the first day of the month following the closing date for a new homeowner. It would also eliminate the inventory tax on model homes and speculative homes built in Kansas, and it would remove the confusing current system used that assesses property taxes based upon an arbitrary and complicated percentage of a home's completion.

Based upon experiences in other states, including Missouri, this simple change would be a win for government bodies and public services that receive revenue from property taxes. I think many Kansans would be surprised to learn that new-home owners are exempt from their fair share of property taxes for up to a year and don't receive a full property tax bill for more than a year after they buy a new home.

Consideration of this bill comes at a critical time for the home-building industry. No doubt you are aware of the importance of new-home construction to the Kansas economy. Housing contributes nearly \$6 billion to the Kansas economy, accounting for 13 percent of the state's gross domestic product. More than 35,000 Kansas jobs are supported by the home-building industry, generating more than \$2 billion in household earnings.

The current market correction taking place in the home-building industry is having a significant impact. New-home permits in Kansas are on pace for its worst performance in more than a decade. Housing starts are off 75 percent statewide in Kansas from its peak. That represents a decline of nearly 8,000 homes. We are already experiencing the pinch of what this correction means to our communities and our economy through lost jobs and lower economic productivity. We expect this trend to continue..

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2-10-10

Attachment # 6

At a time like this, it is urgent that we look at policies and approaches that can stimulate the housing economy. The current property tax system poses a disincentive to home builders. Since model homes and speculative construction are subject to inventory taxes, builders are encouraged to limit new-home construction. That poses a dual risk. Right now, it means fewer homes will be built and jobs will be eliminated. Down the road as the housing market begins to recover, it will also unfortunately mean fewer homes will be available for sale. That could delay the housing market recovery in our state.

Yet perhaps the most distressing impact of the current system is its chilling effect on housing affordability. Earlier this year, the National Association of Home Builders published reports on government fees and their impact on housing affordability. The report found that an \$819 fee paid by a home builder added \$1,000 to the ultimate cost of the home. The association then studied what impact that increase had on housing affordability in 354 metropolitan areas across the nation. The impact on households in Kansas is stunning.

In metropolitan Kansas City, a total of 1,747 households were priced out of the market for a new home for every \$1,000 increase in new home prices. That was the 12th largest impact in the nation. A total of 703 households were priced out for every \$1,000 increase in Wichita, the 47th highest total out of 354 markets. Topeka saw 181 households priced out, along with 77 in Lawrence.

In our state and our region, household incomes have not been keeping pace with rapidly increasing home prices. Since 2000, the median household income in Kansas has remained relatively steady. At the same time, housing prices have soared nearly 40 percent. Working families in Kansas are very sensitive to housing price increases. Our new-home buyers already pay their fair share for new development. The toll inventory taxes add to the cost of a new home are simply another burden for the state's working families who want to take advantage of new-home ownership. It is critical that we make housing more affordable in anyway we can. This bill is a step in that direction.

Ultimately we have to ask ourselves, does it make sense to limit our economic growth, reduce our property tax revenues and perpetuate a system that is outdated and ineffective? Does it make sense that some new-home owners don't pay their fair share of property taxes for as much as a full year after they move in? Does it make sense that Kansas new-home buyers pay hundreds and in many cases thousands of dollars in inventory taxes on new homes? Does it make sense that we are discouraging new-home production at a time when we need a stimulus in the residential market?

I thank you for the opportunity to address you today and I urge you to support Senate Bill 477 to make the property tax system for new-homes in our state make more sense for Kansans. Thank you.

**Testimony on SB 477**  
**by Tom Woods, President**  
**T.E. Woods Construction**  
**Senate Committee on Assessment & Taxation**  
**February 10, 2010**

Mr. Chair and committee members, good morning. As a home builder and developer working in both Kansas and Missouri, I have a unique perspective to offer on Senate Bill 477. I build homes in Missouri using an occupancy-based assessment system similar to the one outlined in this bill while also working under the current Kansas assessment system. Our experience is that there is a significant difference in the value we can provide our consumers in these two states based primarily on our permit fees and taxes.

For example, we build the same model homes in both Wyandotte County and in Independence, Mo. The land and infrastructure costs in both municipalities are relatively the same. The prices we pay our subcontractors and suppliers are also the same. Yet the homes we building Wyandotte County are between \$5,000 and \$7,000 higher in price than the same home in Independence.

One of the most significant carrying costs we have in Wyandotte County are property taxes. When we pay property taxes on model homes, homes in our inventory and even homes under construction in Kansas, we have a cost we don't have on the Missouri side. It certainly puts our homes in Kansas at a competitive disadvantage. At a time when affordability is a critical issue for our consumers, it's a hard sell to convince someone to spend \$5,000 to \$7,000 more for the exact same home in a different part of our metropolitan area.

Our company chose to invest in Wyandotte County because we think there is potential for strong growth. The key is potential. The recovery in the housing industry and the development of new housing choices in Kansas depends on taking steps to encourage and support growth. The potential Wyandotte County and the rest of Kansas has depends on making the right decisions to keep these communities and neighborhoods sustainable and competitive.

Our experience with an occupancy-based assessment has been very positive. It creates a streamlined process that doesn't leave anything to the imagination. I'm not left wondering every December whether I should stop work on a home to keep the property taxes lower or wondering what my property tax bill will be when the percentage completion of my home is determined on an arbitrary scale. Cost certainty is a critical issue for home builders, particularly at a time when there is so little certainty among our consumers. It's difficult to plan when you are unsure what your costs will be, and it's difficult to convince consumers of the value of living in Kansas when it can be cheaper to live somewhere else.

Our company and our buyers want to pay their fair share. We want good schools, police and fire protection, parks and recreation and other community services. These are qualities that help us sell new homes. If we can generate more revenue for these services while keeping new-home prices low and making property tax payments more fair and streamlined, it's a win for home builders and home buyers.





**KCK Chamber**  
Partnering for Success

THE KANSAS CITY KANSAS AREA  
CHAMBER OF COMMERCE

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DATE: February 8, 2010

TO: Senator Les Donovan, Chairman and Members of the  
Senate Assessment & Taxation Committee

FROM: Cindy Cash, President  
Kansas City Kansas Area Chamber of Commerce

RE: Support of SB 477

Dear Chairman Donovan and Members of the Senate Assessment & Taxation Committee,

The Kansas City Kansas Area Chamber supports SB 477 which is being heard in your committee on February 10<sup>th</sup>.

We believe this bill would assist home builders in times like these when the housing market is down and any additional costs such as the cost of taxes on unsold homes would further hurt an industry which is already suffering.

We further believe this bill would make sure that when a home or building is purchased or leased, the occupant would pay their fair share of the taxes that pay for schools, public service and infrastructure.

We respectfully ask you to pass this bill out of committee and further ask all of you to support it on the Senate floor. Thank you for your consideration.

Sn. Assmnt & Tax  
2-10-10

Attachment # 8



## Written Testimony in Support of Senate Bill 477

Submitted by Jennifer Bruning  
On behalf of the Overland Park Chamber of Commerce

Senate Assessment and Taxation Committee  
Wednesday, February 10<sup>th</sup>, 2010

Chairman Donovan and Committee Members:

My name is Jennifer Bruning, and I am Vice President of Government Affairs with the Overland Park Chamber of Commerce. I am writing today on behalf of our board of directors and our nearly 1,000 member companies. I appreciate the opportunity to share written testimony in support of Senate Bill 477, concerning property taxation for new residential construction.

One of the Overland Park Chamber's standing priorities is to support public policy which bases assessment and taxation of newly constructed homes on occupancy rather than completion. We feel that Senate Bill 477 effectively creates a level playing field between Kansas taxpayers, the homebuilding industry, and taxing entities across the state.

Current law requires that a homebuyer purchasing an existing home be assessed right away for the full amount of property taxes that were in effect prior to the purchase. However, homebuyers purchasing a newly constructed home can have property tax payments delayed for up to a year or more after purchase, while still being able to utilize municipal services even though they have not yet contributed payment to the cost of those amenities. This bill would fix this inequitable scenario by requiring newly constructed residential property that is sold to be brought on to the tax rolls at full-market value following the month following the sale.

The homebuilding industry plays a very large role in the Kansas economy. This bill will help ensure that this important industry remains competitive with our neighboring states and also help raise desperately needed tax revenues. The Overland Park Chamber encourages the committee to favorably recommend SB 477 for passage.

Sn. Assmnt & Tax  
2-10-10

Attachment # 9

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To: Senate Assessment and Taxation Committee

Date: February 10, 2010

Subject: **SB 477** -- Enacting a New Property Tax Exemption and Modifying the Assessment of Property Taxes on Newly Constructed Residential Structures

Chairman Donovan and members of the Senate Assessment and Taxation Committee, thank you for the opportunity to appear in front of you today on behalf of the Kansas Association of REALTORS® in opposition to the provisions of **SB 477**. Through the comments expressed herein, it is our hope to provide additional legal and public policy context to the discussion on this issue.

KAR has faithfully represented the interests of the nearly 9,000 real estate professionals and over 700,000 homeowners in Kansas for the last 90 years. In conjunction with other organizations involved in the housing industry, the association seeks to increase housing opportunities in this state by increasing the availability of affordable and adequate housing for Kansas families.

**SB 477** would create a new property tax exemption for any newly constructed residential structures of four units or less constructed by a home builder on real property. Under Section 1(a) of the legislation, these improvements to real property shall be deemed the "inventory" of the home builder and shall be exempt from all property and ad valorem taxes until the property has been conveyed, leased or otherwise occupied for residential or office purposes or until the first day of January of the second year following the completion of construction on the property.

Over the past several years, the credit crisis and the struggling economy have made it increasingly difficult for home builders and real estate developers in Kansas to obtain the necessary financing to provide new affordable housing opportunities for Kansas families. The availability of affordable development financing is extremely important to the overall stability of our state's economy and the housing market.

Since more than one out of every five Kansas businesses are in the construction and housing industries, we definitely understand that the Kansas economy cannot recover (much less thrive again) until the construction and housing industries recover. However, we have several major concerns about the proposed changes in **SB 477** and would urge the members of the Senate Assessment and Taxation Committee to carefully study this legislation.

**SB 477 Could Result in Huge Increases in the Property Tax Burden on New Homebuyers, Which Could Price Many Kansas Families Out of the Market for New Homes in Kansas**

Unfortunately, we believe that the provisions of **SB 477** could result in huge increases in the property tax burden on Kansas families that choose to buy new homes in Kansas, which could price certain Kansas families out of the market for new homes. Given the current challenges in the housing market, we are obviously concerned since several studies have suggested that a \$1,000 increase in the price of new homes could price as many as 3,300 Kansas families out of the housing market.

Sn. Assmnt & Tax  
2-10-10

Attachment # 10

In our opinion, the only way to illustrate the potential increase in the property tax burden on Kansas families purchasing new homes under **SB 477** would be to calculate the property tax burden of a hypothetical homebuyer purchasing a new home under the current law versus the proposed system in **SB 477**. Under the scenario discussed below, the buyer of a new home would pay approximately \$1,380 in additional property taxes under the provisions of **SB 477** compared to the current law.

For the purposes of this example, assume that a home builder purchases a vacant, subdivided lot for \$50,000 for the construction of a new single-family home on February 1, 2009. For the 2009 tax year, assume that the value of the property was assessed at \$50,000 by the county appraiser (the fair market value of the land only) on January 1, 2009.

Assuming construction financing is procured and the proper permits are approved in a timely fashion, the home builder begins construction on the property on April 1, 2009 and the home is completed on July 1, 2009. On July 1, 2009, a buyer completes the purchase of the property for \$250,000 and occupies it as his or her principal residence on that date.

Under the current law, the buyer's property tax burden will be based on the current assessed value of the unimproved property at \$50,000 (value of the vacant land). For the purposes of this illustration, we will assume that the mill levy rate is 120 mills and that the taxable value is 11.5% of the value of the property (the current law in Kansas). Under the current system, the buyer would pay \$345 in property taxes for the last six months of the year.

In contrast, the new system proposed in **SB 477** would require an automatic and immediate reassessment of the property upon the sale or transfer of the property to the buyer. On July 1, 2009, the county appraiser would reassess the property for property tax purposes and would most likely assign a value of \$250,000 to the property (the value of the land plus improvements).

As a result, the buyer's property tax burden would be based on the total assessed value of the property (including the value of the land plus any improvements) and would most likely be \$250,000 for the remainder of the year. Under the new system, assuming the same mill levy rate and taxable value percentage under current Kansas statutes, the buyer would pay \$1,725 in property taxes for the remainder of the year.

Accordingly, the buyer of a new home under this scenario would pay an additional \$1,380 in property taxes during the first partial year of ownership under **SB 477** compared to the property tax burden imposed by current law. For every \$1,000 increase in the cost of new homes in Kansas, several studies have concluded that up to 3,320 Kansas families could no longer afford to purchase a new home. Under the example discussed above, the \$1,380 increase in the cost a new home because of the change in the property tax burden could price nearly 4,582 Kansas families out of the market for a new home in Kansas.

Provisions of **SB 477** are Unconstitutional Since Personal Property Cannot Be Classified as "Inventory" and the Legislation Creates an Unconstitutional Classification Based Upon Property Ownership

According to two different written opinions issued by two different Kansas Attorney Generals (Opinion #2007-38 from Attorney General Paul Morrison and Opinion #2008-12 from Attorney General Stephen Six), the provisions of **SB 477** are unconstitutional. In general, we concur with these opinions and would argue that the provisions of **SB 477** are unconstitutional since personal property cannot be classified as "inventory" and the legislation creates an unconstitutional classification based upon property ownership.

Under **K.S.A. 79-201m(a)(3)**, “inventory” means “those items of tangible personal property that: (1) are primarily held for sale in the ordinary course of business (finished goods); (2) are in process of production for such sale (work in process); or (3) are to be consumed either directly or indirectly in the production of finished goods (raw materials and supplies).” At this time, I have been unable to locate any relevant court decisions in Kansas or any other jurisdictions that have upheld the classification of real property as “inventory” for taxation purposes.

As a result, I believe it is impermissible for the Kansas Legislature to classify an improvement to real property (which becomes an inseparable part of the real property as a “fixture” when affixed to the real property) as “inventory” for taxation purposes. As normally used in other statutes, the term “inventory” means tangible “personal property” that is held for sale in the ordinary course of business or consumed in the production of finished tangible goods.

Furthermore, the language in lines 18 and 19 of Section 1(a) of **SB 477** would create a new property tax exemption for the “builder” of any newly constructed structure or building on real property for residential purposes who intends to sell or otherwise transfer the property. However, the property tax exemption created pursuant to this section would not be available to a private individual who was in the process of building a newly constructed residential structure on real property if that individual did not intend to sell or otherwise transfer the property as a commercial home builder.

The right to equal treatment in matters of taxation is protected under both the Equal Protection Clause of the 14<sup>th</sup> Amendment to the United States Constitution and the uniform and equal rate of assessment and taxation provision found in Article 11, Section 1 of the Kansas Constitution. Generally, property of the same classification should be taxed at the same rate and should not be taxed differently depending on the type of individual who owns the property.

Accordingly, Kansas Attorney General Paul Morrison issued a written opinion (#2007-38) in November 2007 that concluded that the tax system proposed in **SB 477** was unconstitutional since it provided for a different and unequal rate of taxation based upon whether a property was owned by a private resident or a commercial home builder. According to the opinion, this distinction violates the requirement in the Kansas State Constitution that all property must be taxed at uniform and equal rates.

Moreover, Kansas Attorney General Stephen Six issued a subsequent written opinion (#2008-12) in April 2008 that found the same constitutional problems with the current language in **SB 477**. According to the opinion, the proposed language in **SB 477** violates Article 1, Section 11 of the Kansas Constitution in that the legislation creates an impermissible distinction between the property tax burden of a private individual and a commercial home builder.

For all the foregoing reasons, we would urge the members of the Senate Assessment and Taxation Committee to oppose the provisions of **SB 477**. Once again, thank you for the opportunity to provide comments on **SB 477** and I would be happy to respond to any questions from the committee members at the appropriate time.



**TESTIMONY**

concerning Senate Bill 477

**re. Property Tax Exemption for Newly Constructed Residential Property**

Senate Assessment and Taxation Committee

Presented by Randall Allen, Executive Director

February 10, 2010

Chairman Donovan and members of the committee, I appreciate the opportunity to present testimony on behalf of our Association *in opposition to* SB 477, concerning property taxes on newly-constructed residential property not yet sold by a builder to a buyer.

We oppose the bill for at least three reasons. First, SB 477 presumes that a yet-to-be occupied structure places no demand on local governmental services, including fire or police protection. In fact, in the event of a fire or a break-in reported to an emergency 9-1-1 center, local emergency services are dispatched whether the structure is occupied or unoccupied. A fire is a fire, and a break-in is a break-in, whether someone is living in a structure or not. What is the equity, therefore, in requiring the owner of an occupied residential property to pay for essential public services when the owner of an unoccupied home does not? This seems inherently unfair, and if this inequity were codified in law, the tax burden to pay for essential public services would merely shift to other taxpayers.

We also oppose the bill because it creates an unequal basis for assessing property. One group of property owners would pay their taxes based on a "January 1 snapshot" of their valuation, while another group of property owners would pay their property taxes on the basis of the vacancy status of their property. I am not a constitutional attorney, but I question whether this conforms to the "uniform and equal rate of assessment and taxation" test in Article XI of the Kansas Constitution. Even if it does, is it fair to all property owners?

Finally, in section 1 (b) of the bill, there is listed a series of conditions of which two must be met for a county appraiser to consider a property "occupied" for purposes of property taxation. Except for the second condition pertaining to filing a deed with the county register of deeds transferring ownership from one party to another, the other forms of documentation are not likely to be in the immediate custody or reach of a county appraiser. Rather, they are more likely to be in the custody of utility companies or a city (occupancy permits). As such, the county appraiser could potentially expend considerable time and expense tracking down documentation of who lives where, and when they lived or did not live there. At a time when the public wants less, not more, government, is this really what we want in a property tax system?

For all of these reasons, we urge the committee to not move this bill forward. We believe SB 477 to be unwise public policy which would create inequities and create more problems than would be solved. Thank you, Mr. Chairman and members of the committee, for the opportunity to address SB 477.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to Randall Allen or Melissa Wangemann by calling (785) 272-2585.

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Sn. Assmnt & Tax

2-10-10

Attachment # 16

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MEMORANDUM

TO: Honorable Les Donovan  
Chairman Senate Assessment and Taxation Committee

FROM: Mark S. Beck, Director *MAB*  
Division of Property Valuation

DATE: February 10, 2010

RE: SB 477 – Exemption of Newly Constructed Residential Property

SB 477 provides that any newly constructed building or other structure on real property intended for residential uses which is (1) single-family or (2) is multi-family of four units or less and (3) is to be sold by the builder thereof shall be deemed the inventory of such builder and shall be exempt from all property or ad valorem taxes until the property is conveyed, leased or otherwise occupied for residential or office purposes.

SB 477 is identical to 2008 Substitute for HB 2543 and is virtually the same as 2007 HB 2543 that the attorney general opined were unconstitutional.

During the 2007 legislative session, House Bill 2543 was introduced. Highly summarized, the bill provided that residential property under construction would be valued as vacant land on the first day of January and the improvements would not be valued until occupied or on the first day of January of the second year following the year in which the construction was completed. It was not approved by the 2007 legislative session, but referred to an interim tax committee for study. The chairperson of the interim tax committee, Senator Barbara Allen, requested an attorney general opinion on the bill's constitutionality.

The attorney general, in AGO 2007-38, opined that HB 2543 was unconstitutional as violative of the uniform and equal provisions of article 11, section 1 of the Kansas Constitution. The attorney general analyzed the bill as a property tax exemption. The attorney general noted that the "uniform and equal basis of valuation" of article 11, section 1 of the Kansas Constitution is "fair market value" and that under the bill, improvements owned by a home builder would be valued at something other than "fair market value" while improvements owned by an occupant of the home would be valued at "fair market value." The attorney general found such a distinction based on ownership to be a violation of the uniform and equal provisions of article 11, section 1 of the Kansas Constitution. The attorney general stated it is an unconstitutional classification based on the status of the owner.

During the 2008 legislative session, Substitute for HB 2543 was introduced in response to the attorney general's finding that 2007 HB 2543 created an unconstitutional classification based on the status of the owner. Senator Allen requested an attorney general opinion on Substitute for HB 2543's constitutionality. The attorney general in AGO 2008-12 opined that 2008 Substitute for HB 2543 creates a preferential tax exemption for new home construction intended to be sold by a commercial home builder. The constitutional mandate of uniformity and equality in valuation and rate of taxation is violated as the proposed bill does not accord the same exemption to home builders who do not intend to sell the new home construction.

SB 477 is identical to 2008 Substitute for HB 2543 and is virtually the same as 2007 HB 2543 that the attorney general opined were unconstitutional. The only substantive change from 2007 HB 2543 is the insertion that unoccupied homes of home builders "shall be deemed the inventory of such builder and shall be exempt from all property or ad valorem taxes." In Kansas, inventory has typically been considered to be items of tangible personal property and not real property. See K.S.A. 79-201m. See also, Attorney General Opinions 89-148, 2007-38 and 2008-12. As noted above, the attorney general analyzed 2007 HB 2543 as an exemption. All the constitutional defects noted by the attorney general in 2007 HB 2543 and 2008 Substitute for HB 2543 remain in 2010 SB 477.





STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

PAUL J. MORRISON  
ATTORNEY GENERAL

November 30, 2007

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ATTORNEY GENERAL OPINION NO. 2007- 38

The Honorable Barbara P. Allen  
State Senator, 8<sup>th</sup> District  
9851 Ash Drive  
Overland Park, Kansas 66207

Re: Taxation--Property Exempt From Taxation--Newly Constructed Residential Property Which Has Never Been Occupied

Synopsis: A statute that provides for different rates of taxation, based upon a distinction between whether the real property is owned by a private resident versus a commercial home builder, violates the uniform and equal provisions in the Kansas Constitution, Article 11, Section 1. 2007 House Bill No. 2543, as currently written, makes such a distinction and is therefore unconstitutional. Cited herein: Kansas Constitution, Art. 11, §§ 1, 12; 2007 H.B. 2543.

\* \* \*

Dear Senator Allen:

You ask for our opinion on 2007 House Bill No. 2543 (HB 2543) and whether we believe its terms are constitutional. Specifically, you ask us to consider whether it fails the four part test articulated by the Kansas Supreme Court in *State ex rel. Tomasic v. City of Kansas City*<sup>1</sup> or whether the provisions of the bill violate the uniform and equal provisions in the Kansas Constitution, Article 11, § 1.

HB 2543 essentially provides that new residential property built and owned by a home builder would be valued as vacant land on January 1 of each year, irrespective of any improvements (a new residence) that may be present on the land as of that date. Additionally, the bill would require a prorated tax to be assessed on the property to the purchaser and new homeowner based upon the market value of the property for the month first following purchase and occupancy. It thus appears that the bill creates an exemption from taxation for improvements to the property (a new residence) that would otherwise occur, dating from January 1 to the first day of the month after occupancy, for a period not

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<sup>1</sup>237 Kan. 572, 579 (1985).

to exceed twenty-four months should the new residence not be occupied for an extended time frame.

The right to equal treatment in matters of taxation is protected under both the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and the uniform and equal rate of assessment and taxation provision found in Article 11, § 1 of the Kansas Constitution.<sup>2</sup> However, while the Kansas Constitution provides that certain property shall be exempt from taxation, it does not declare that other exemptions may not be made if like property is still taxed at a uniform and equal rate. Thus, although the constitutionally enumerated exemptions must be given, more exemptions can be adopted by the legislature as long as the constitutional requirement of equal treatment of the same types of property is followed.<sup>3</sup>

The *Tomasic* case creates a four-prong test used in determining if a tax exemption is constitutional: (1) Whether the exemption furthers the public welfare; (2) whether the exemption provides for substantial peculiar benefit; (3) whether the exemption provides for large accumulations of tax-exempt property; and (4) whether the exemption is an improper or preferential classification of property.<sup>4</sup>

Courts give great deference to legislative decisions concerning the first three prongs of the test stated in the *Tomasic* case.<sup>5</sup> Thus, we will not address these three issues, leaving them for the legislature to determine. However, the fourth prong of this test establishes a legal standard and requires examination of whether the proposed tax exemption complies with the "uniform and equal valuation" rule set forth in the Kansas Constitution, Art. 11, § 1.

As stated in *State ex rel. Stephan v. Martin*<sup>6</sup> the Kansas Constitution provides for a "uniform and equal basis of valuation" and requires that all taxable property be valued and taxed at its "fair market value." K.S.A. 79-503a defines "fair market value" and together with K.S.A. 79-1455 requires that all taxable property be appraised at its fair market value as of January 1.<sup>7</sup>

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<sup>2</sup>*In re the Matter of Application of Central Illinois Public Services*, 276 Kan. 612, Syl. 3 (2003).

<sup>3</sup>*In re Lietz Construction for Exemption from Ad Valorem Taxation in Wabaunsee County, Kansas*, 273 Kan. 890 (2002).

<sup>4</sup>*Supra* at 579.

<sup>5</sup>*Lario Enterprises, Inc. v. Board of Tax Appeals*, 22 Kan.App.2d 856, 860 *rev. denied* 261 Kan. 1083 (1996) ("[t]he Legislature is the judge of what exemptions are in the public interest and will be conducive to public welfare.")

<sup>6</sup>227 Kan. 456 (1980).

<sup>7</sup>See K.S.A. 2006 Supp. 79-1439.

Under HB 2543, a new home would be valued and taxed at something other than its fair market value as of the January 1 date. Instead of using "fair market value," the rate of taxation would depend upon its status as new residential property that is still owned by the home builder. Thus, a distinction is to be made between the property's builder and/or its eventual occupant. Improvements to the land that are otherwise identical would be valued differently as of January 1, depending upon whether the property is owned by the home builder or a purchaser.

In *Stephen v. Parrish*,<sup>8</sup> the Kansas Supreme Court reviewed the constitutionality of K.S.A. 79-1427c. This statute created a difference in the tax rates charged to property owners who listed their property and those who did not. Those individuals who had not listed their property would have been granted a tax amnesty under this statute. The Court found that this statutory attempt to treat owners of the same types of property differently, based solely upon the status or conduct of the owners, violated Art. 11, § 1 of the Kansas Constitution.<sup>9</sup>

Generally, a taxation distinction based upon who owns property has not been allowed by Kansas courts.<sup>10</sup> Property of the same type is required to be valued using the same method and not be based upon who owns the property.<sup>11</sup> However, different types of uses of real property may lawfully be taxed at different rates if the Kansas Constitution so provides.<sup>12</sup>

One might argue that the distinctions in HB 2543 are not based upon ownership but rather upon differences in use; a vacancy implying non-use. However, the distinctions created in HB 2543 also clearly establish a different tax rate to be based upon the type of individual owning the exact same property, a home builder versus a home buyer.

Article 11, § 1 of the Kansas Constitution creates seven specific types of real property that are to be taxed at different rates.<sup>13</sup> The seven separate types of real property listed therein distinguish between vacant lots and real property used for residential purposes. Unlike the agricultural use distinction made in Article 11, § 12, the Kansas Constitution does not

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<sup>8</sup>257 Kan. 294, 302-322 (1995).

<sup>9</sup>See also Attorney General Opinion No. 94-79.

<sup>10</sup>See *Hixon v. Lario Enterprises*, 257 Kan. 377, Syl. ¶ 3 (1995); and *Topeka Cemetery Association v. Schnellbacher*, 218 Kan. 39, 42-43 (1975).

<sup>11</sup>*Kroeger v. Board of Woodson County Commissioners*, 31 Kan.App.2d, 618 *aff'd* 277 Kan. 486 (2004). Each parcel in a given tract must be valued using the same method of valuation and the method of valuation should be tied to factors associated with each parcel of property, not the status of the owner of the property.

<sup>12</sup>See *Board of Douglas County Commissioners v. Cashatt*, 23 Kan.App.2d 532 (1997) (in Kansas, agricultural property is the only classification of property that is given a property tax value based on the "use value." Kan. Const., Art. 11, § 12).

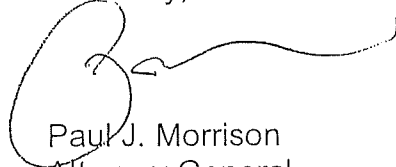
<sup>13</sup>It also recognizes six types of tangible personal property.

Senator Barbara P. Allen  
Page 4

create a special category or tax rate for residential properties that are occupied versus unoccupied.

"Constitutional and statutory provisions exempting property from taxation are to be strictly construed against the one claiming exemption, and all doubts are to be resolved against the exemption."<sup>14</sup> It is difficult for us to understand how the nature of the owner – a builder versus a purchaser – is not the critical component of the proposed new law. Thus, unless the language in the bill is changed so that the property itself is somehow classified as an entirely different type of constitutionally distinguished property,<sup>15</sup> it is our opinion that the bill as currently drafted creates an unconstitutional classification based primarily upon the status of the owner.

Sincerely,



Paul J. Morrison  
Attorney General



Theresa Marcel Bush  
Assistant Attorney General

PJM:MF:TMB:jm

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<sup>14</sup>*League of Kansas Municipalities v. Board of County Commissioners of Shawnee County*, 24 Kan.App.2d 294 (1997).

<sup>15</sup>For example, inventory; K.S.A. 79-201m currently defines "inventory" as "tangible personal property" and thus statutory amendment would be required in order to reclassify an unoccupied residence as "inventory" of a home builder. Such a change would also impact how long the different rate of taxation would be in effect, because current tax laws (including the Kansas Constitution) provide for different tax rates for all "inventory" not just that which has remained unoccupied for two years or less. See *Kansas Enterprises Inc. v. Frantz*, 269 Kan. 436 (2000) (in order to qualify for the merchants' inventory exemption under K.S.A. 79-201m, a taxpayer must establish that it is a "merchant" and that its personal property qualifies as "inventory" under the provisions of that statute).



STATE OF KANSAS  
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April 25, 2008

ATTORNEY GENERAL OPINION NO. 2008- 12

The Honorable Barbara P. Allen  
State Senator, 8<sup>th</sup> District  
9851 Ash Drive  
Overland Park, Kansas 66207

Re: Taxation--Property Exempt From Taxation--Newly Constructed Residential Property Which Has Never Been Occupied; 2008 Substitute for House Bill No. 2543

Synopsis: 2008 Substitute for House Bill No. 2543 creates a preferential tax exemption for new home construction intended to be sold by a commercial home builder. The constitutional mandate of uniformity and equality in valuation and rate of taxation is violated as the proposed bill does not accord the same exemption to home builders who do not intend to sell the new home construction. Cited herein: K.S.A. 79-102; 79-201m; Kan. Const., Art. 11, § 1.

\* \* \*

Dear Senator Allen:

You request our opinion whether 2008 Substitute for House Bill No. 2543 (2008 HB 2543) is constitutional. You explain that in Attorney General Opinion No. 2007-38, Attorney General Paul J. Morrison concluded that a prior version of this bill, 2007 HB 2543, was unconstitutional because it violated the "uniform and equal basis" provision of Article 11, Section 1(a) of the Kansas Constitution.<sup>1</sup> In response, the House Taxation Committee asked that a substitute bill be created to address the constitutional deficiencies noted in General Morrison's opinion.<sup>2</sup> You now inquire whether this substitute bill is constitutional.

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<sup>1</sup>"The legislature shall provide for a uniform and equal basis of valuation and rate of taxation of all property subject to taxation." Kan.Const., Art. 11, § 1.

<sup>2</sup>*Minutes*, House Taxation Committee, March 19, 2008.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and the uniform and equal basis provision in Article 11, § 1 of the Kansas Constitution prohibit favoritism among property owners in relation to property taxes.<sup>3</sup>

The Kansas Supreme Court has repeatedly held that in situations where public property is not at issue, the validity of tax exemptions depends solely upon the exclusive use made of the property. Ownership or the status of the taxpayer is irrelevant.<sup>4</sup> The reason for this rule is that a classification of private property for tax purposes, which is based solely upon ownership or status of the taxpayer, unlawfully discriminates against one citizen in favor of another and is therefore a denial of equal protection of the law.<sup>5</sup>

In Attorney General Opinion No. 2007-38, General Morrison determined that 2007 HB 2543 essentially created a tax exemption for improvements to real property (*i.e.* a new home). Once the home was occupied by the new home owner,<sup>6</sup> the property would then be taxed based on the market value of the property. The Attorney General concluded that this distinction in tax treatment was not based upon the property use (*i.e.* new home construction) but, rather, was based upon the status of the property owner— a commercial home builder versus a home buyer. Accordingly, the bill as drafted, violated Article 11, Section 1.<sup>7</sup> In reaching this conclusion, the four-prong test set forth in *State ex rel. Tomasic v. City of Kansas City*<sup>8</sup> was applied. Those four prongs are: (1) Whether the exemption furthers the public welfare; (2) whether the exemption provides for substantial peculiar benefit; (3) whether the exemption provides for large accumulations of tax-exempt property; and (4) whether the exemption is an improper or preferential classification of property.

As stated in the previous opinion, courts give great deference to legislative decisions concerning the first three prongs of the *Tomasic* test.<sup>9</sup> Thus, we will not address the first three prongs here. However, the fourth prong of the test establishes a legal standard and requires us to determine whether the proposed tax exemption in 2008 HB 2543 complies with the “uniform and equal” rule set forth in the Kansas Constitution, Art. 11, § 1. Accordingly, our discussion centers on whether the new bill creates an unconstitutional or preferential classification based upon ownership.

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<sup>3</sup>*Topeka Cemetery Ass'n v. Schnellbacher*, 218 Kan. 39, 42 (1975). The equal protection clause of the federal constitution and the state constitution requirement of “uniform and equal basis of valuation and rate of taxation” are substantially similar; what violates one will violate the other. 218 Kan. at 43.

<sup>4</sup>*Id.*

<sup>5</sup>*Id.*

<sup>6</sup>[O]r two years after construction if the house remained unoccupied. 2007 H.B. 2543, § 1(a).

<sup>7</sup>Attorney General Opinion No. 2007-38.

<sup>8</sup>237 Kan. 572, 579 (1985).

<sup>9</sup>Attorney General Opinion No. 2007-38 citing *Lario Enterprises, Inc. v. Board of Tax Appeals*, 22 Kan.App.2d 856, 860 *rev. denied* 261 Kan. 1083 (1996).

The language of 2008 HB 2543 is very similar to that of the 2007 bill. The material change appears to be the reclassification of new home construction as "inventory" of the builder when the property is intended to be sold for residential use. 2008 HB 2543 provides, in part:

"[F]or all taxable years commencing after December 31, 2008, any newly constructed building or other structure on real property intended for residential uses which is a single family or multi-family unit of four units or less *and to be sold by the builder thereof shall be deemed the inventory of such builder* and shall be exempt from all property or ad valorem taxes levied under the laws of this state until conveyed, leased or otherwise occupied for residential or office purposes."

While we could find no appellate court decisions in Kansas or any other jurisdiction addressing the propriety of classifying real property as "inventory" for taxation purposes,<sup>10</sup> our reading of 2008 HB 2543 is that - even assuming that the legislature can create an exemption for "inventory" consisting of real property - this proposed legislation still makes an impermissible distinction based primarily upon the status of the property owner.

By creating an exemption for a newly constructed home that the home builder intends to sell, but not according the same exemption to a newly constructed home that will not be sold, it is our opinion that this proposed bill creates an impermissible classification based on the status of the property owner.

In a similar case, *Topeka Cemetery Ass'n. v. Schnellbacher*,<sup>11</sup> the Kansas Supreme Court found unconstitutional a statute creating a tax exemption for cemetery plots owned by corporations because it did not accord the same exemption for individuals who owned cemetery plots:

"[T]he statutory classification contained in K.S.A. 79-201 is discriminatory and unconstitutional as a violation of Article 11, Section 1, of the Kansas Constitution. All lots and tracts of land contained within the boundaries of a cemetery platted by a cemetery corporation are dedicated exclusively for burial purposes and cannot be used for any other purpose. Since all lands in the cemetery are dedicated exclusively for burial purposes, we find no

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<sup>10</sup>"Inventory" for taxation purposes is generally limited to personal property - not real property. Real property includes not only the land itself, but all buildings, fixtures, improvements. K.S.A. 79-102. "Inventory" as used in the statutory exemption for merchants and manufacturers' inventory is defined as "tangible personal property." K.S.A. 79-201m(a)(3). See Attorney General Opinion No. 89-148 (newly constructed homes are not "inventory" for purposes of the constitutional exemption for merchants and manufacturers' inventory). While footnote 15 in Attorney General Opinion No. 2007-38 appears to suggest that unsold homes could be classified as a commercial home builder's "inventory," this concept was not the subject of the opinion and has never been considered by this office.

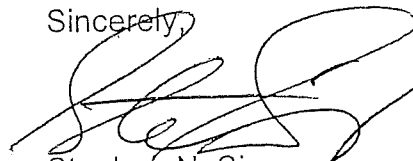
<sup>11</sup>218 Kan. 39 (1975).

owned by the corporation, except ownership, which is not a permissible basis for classification."<sup>12</sup> [Citations omitted.]

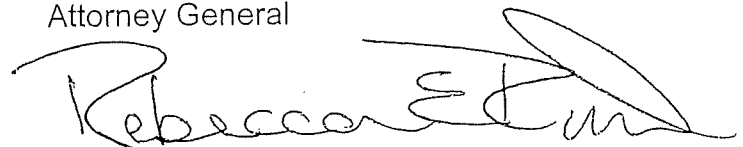
Another case involving a tax exemption creating an impermissible classification based upon a characteristic of the taxpayer is *State ex rel. Stephan v. Parrish*.<sup>13</sup> In *Parrish*, the Kansas Supreme Court examined a personal property tax statute that discharged property tax obligations for certain individuals who had failed to pay their personal property taxes. This exemption, which applied only to property owners who had failed, for whatever reason, to list property for taxation or who had under-reported their property was determined to be unconstitutional because the property owner who made an effort to list and report taxable property was excluded from the benefits of the exemption.

Based upon the rationale of the above-referenced cases, we conclude that 2008 HB 2543 creates a tax exemption based upon a characteristic or status of the taxpayer. Under this bill, the property use is for newly constructed homes. However, the exemption is not based upon such use. Rather, it is based upon whether the home builder/property owner intends to sell the home. As such, it is an impermissible classification and, thus, violates Article 11, Section 1 of the Kansas Constitution.

Sincerely,



Stephen N. Six  
Attorney General



Rebecca E. Rand  
Assistant Attorney General

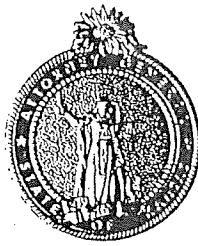
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<sup>12</sup>*Id.* at 44-45 (1975).

<sup>13</sup>257 Kan. 294 (1995).





STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

December 18, 1989

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 89- 148

The Honorable Debara K. Schauf  
State Representative, Eighty-First District  
P.O. Box 68  
Mulvane, Kansas 67110

Re: Taxation--Property Exempt from Taxation--Property  
Exempt from Taxation; Merchants' and Manufacturers'  
Inventory

Synopsis: Because the Kansas Constitution does not define the term "merchants' and manufacturers' inventory" for purposes of the property tax exemption in article 11, section 1, it is appropriate to rely on common understanding of the terms at the time the constitutional provision was adopted, and the statutory definitions contained in K.S.A. 1988 Supp. 79-201m. The scope of these definitions does not include real estate, such as houses constructed on-site for later sale. Therefore, such property is not eligible for the merchants' and manufacturers' inventory exemption from property tax under article 11, section 1. Cited herein: K.S.A. 79-102; K.S.A. 1988 Supp. 79-201m, as amended by L. 1989, ch. 289, § 1; Kan. Const., Art. 11, § 1.

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\*

\*

Dear Representative Schauf:

You request our opinion concerning whether the construction of housing constitutes "manufacturing" under article 11, section 1 of the Kansas Constitution. Specifically, you ask whether

houses constructed on-site for sale by a builder may qualify for exemption from property tax as "manufacturers' inventory" until sold or occupied.

Article 11, section 1 of the Kansas Constitution provides that "merchants' and manufacturers' inventories . . . shall be exempt from property taxation." However, article 11, section 1 does not define the term "merchants' and manufacturers' inventories." K.S.A. 1988 Supp. 79-201m, which was adopted two years after the constitutional provision, contains almost identical language exempting merchants' and manufacturers' inventories from property tax. The statute contains the following definitions:

"(a) 'merchant' means . . . every person . . . who shall own or hold . . . any tangible personal property . . . for resale in the ordinary course of business without modification or change in form or substance. . . ."

"(b) 'manufacturer' means . . . every person . . . who is engaged in the business of transforming, refining or combining materials and labor to convert tangible personal property from one form . . . to another. . . ."

"(c) 'inventory' means . . . those items of tangible personal property that: (1) are primarily held for sale in the ordinary course of business (finished goods); (2) are in process of production for such sale (work in process); or (3) are to be consumed either directly or indirectly in the production of finished goods (raw materials and supplies). . . ."  
(Emphasis added).

The statutory definitions limit both merchants' and manufacturers' inventories to "tangible personal property." As used in the tax statutes, personal property includes "every tangible thing which is the subject of ownership, not forming part or parcel of real property . . ." K.S.A. 79-102. Real property includes "not only the land itself, but all buildings . . . appertaining thereto." *Id.* Houses constructed on-site by a builder clearly do not satisfy the statutory definition of personal property. Therefore, they cannot be

considered merchants' or manufacturers' inventory for purposes of the statutory exemption under K.S.A. 1988 Supp. 79-201m.

It remains to determine whether such houses can be considered merchants' or manufacturers' inventory for purposes of the constitutional exemption. In construing a constitutional provision, consideration should be given to what appears to have been the intendment and understanding of the people at the time of its adoption. State ex rel. Frizzell v. Highwood Services, Inc., 205 Kan. 821, 825, 826 (1970). Its language should be interpreted to mean what the words imply to men of common understanding." Id. at 825.

K.S.A. 1988 Supp. 79-201m was enacted two years after the current version of article 11, section 1. While it is arguable that the definitions contained in the statute do not coincide with the intendment and understanding of the people at the time the constitutional provision was adopted, we find nothing in recorded legislative history to support such a conclusion. The fact that statutory definitions were adopted soon after the passage of the constitutional amendment suggests the legislature intended to clarify the scope of the constitutional exemption, rather than to alter it.

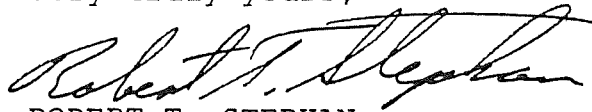
Furthermore, the statutory definitions are consistent with definitions of "merchant" and "manufacturer" commonly used at the time of the constitutional amendment. The American Heritage Dictionary 821, 796 (New College Edition 1976) defines "merchant" as a person whose occupation is the wholesale purchase and retail sale of goods; "manufacturer" as a person or enterprise that manufactures, especially the owner or operator of a factory; and "manufacture" as the making or processing of raw material into a finished product, especially by means of a large-scale industrial operation. These definitions, like the statutory definitions, would not appear to include builders or sellers of site-constructed houses such as you describe. This conclusion is further supported by case law in other jurisdictions, which has generally held that, for purposes of tax exemptions, the term "manufacturing" does not include the construction of buildings. Annot. 17 A.L.R.3d 7, 116 (1968).

We conclude that site-constructed houses are not "merchants' and manufacturers' inventories" as that term was commonly understood at the time article 11, section 1 was amended, and

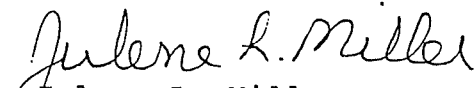
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therefore, do not qualify for exemption from property taxes  
under the Kansas Constitution.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Julene L. Miller  
Deputy Attorney General

RTS:JLM:jm



Kansas Advisory Council on Intergovernmental Relations

Joan Wagnon, Chairperson

Mark Parkinson, Governor

TO: Senator Les Donovan and Members of the Senate Committee on Assessment and Taxation

FROM: Joan Wagnon, Chairperson

DATE: February 10, 2010

SUBJECT: Testimony in Support of Senate Bill 472

Senate Bill 472 strikes the language providing for transferability of the following tax credits: angel investor credit, K.S.A. 2009 Supp. 74-8133(c) (see Section 8); the historic preservation credit, K.S.A. 2009 Supp. 79-32,211(c); the deferred maintenance credit, K.S.A. 2009 Supp. 79-32,161(e) (see Section 12); and community service contribution credit, K.S.A. 2009 Supp. 79-32,197a (see Sections 9 and 10). In addition, the bill repeals the following credits:

Statutory Reference	Description	Beg Date	End Date
<b>These credits have no sunset date:</b>			
K.S.A. 65-7101	Assistive Technology Contribution credit	2003	none
K.S.A. 79-32,207 *Confidential	Plugging an abandoned oil or gas well credit	1998	none
K.S.A. 79-32,204	Swine facility improvement credit	1998	none
K.S.A. 79-32,200, K.S.A. 39-7,132	Temporary assistance to families contribution credit	1994	none
K.S.A. 74-50,208 *Confidential	Individual Development Acct credit	2005	none
K.S.A. 79-32,242 *Confidential	Law Enf Training Center credit	2006	none

Please be advised that we have recently obtained more current information on the usage of the Individual Development Account credit indicating that the program is working well, and we request that repeal of this credit be deleted from the bill.

The other credits listed above for repeal are either no longer being used, or their use is minimal, as shown on the attached spreadsheet showing credit usage history for the past 5 years. They should be repealed for two reasons: the space on the tax form is limited, and with the move to electronic filing, the vendors do not want to program for a credit that is not used.

As shown on the attached chart, the usage of the historic preservation tax credit has expanded rapidly in recent years. This chart also shows the large volume of tax credit transfers that occur for the historic preservation tax credit. The transferability feature of this credit makes it very

difficult to track, so it is difficult to know how many of the credits issued will be claimed in a given tax year. Because historic preservation credits can be transferred multiple times, they are most often sold as part of the financing package for a commercial redevelopment project. As a result, only about 85 cents on the dollar is generated for the actual funding of the project. The other 15 cents is taken as profit by those providing financing for the project. This makes the credit an inefficient use of state resources (the revenue foregone from the tax credits).

As to the other tax credits that are transferable, the angel investor credit has been transferred, and the community services contribution and deferred maintenance credits are rarely transferred. Eliminating the transferability feature therefore should not harm the usage of the credits and will make tracking them much easier.

Credits to be Repealed

13-3

Temporary Assistance to Families with Dependent Children  
K.S.A. 79-32,200 and K.S.A. 39-7,132

Individual Development Account Credit  
K.S.A. 74-50,208

Swine Facility Improvement Credit  
K.S.A. 79-32,204

Credit for Plugging an Abandoned Oil or Gas Well  
K.S.A. 79-32,207

Law Enforcement Training Center Credit  
K.S.A. 79-32,242

Assistive Technology Contribution Credit  
K.S.A. 65-7107

TY 2007		TY 2006		TY 2005		TY 2004		TY 2003	
# of Filers	Amount of Credit Allowed	# of Filers	Amount of Credit Allowed	# of Filers	Amount of Credit Allowed	# of Filers	Amount of Credit Allowed	# of Filers	Amount of Credit Allowed
0	\$0	0	\$0	0	\$0	0	\$0	0	\$0
5	\$7,475	Confidential	Confidential	6	\$2,593	NA	NA	NA	NA
0	\$0	0	\$0	0	\$0	0	\$0	0	\$0
Confidential	Confidential	10	\$17,002	6	\$53,053	7	\$23,461	Confidential	Confidential
Confidential	Confidential	0	\$0	NA	NA	NA	NA	NA	NA
0	\$0	0	\$0	0	\$0	0	\$0	0	\$0

Confidential-Information is confidential as there are less than 5 filers.

### Historic Preservation Tax Credit

13-4

Placed in Service Date Calendar Year	Number of Projects Receiving Credits	Amount of Credits Issued	Number of Times the Credits Have Been Transferred	Number of Projects Within Which Credits Have Been Transferred	Amount of Credits Transferred	Tax Year	Number of Filers Claiming Credit	Amount of Credit Allowed
2001	6	\$731,256	1	1	\$11,316	2001	11	\$120,698
2002	36	\$2,258,184	20	9	\$4,283,736	2002	53	\$1,643,606
2003	59	\$6,137,362	91	23	\$14,776,815	2003	109	\$4,545,134
2004	66	\$4,842,469	45	22	\$8,425,670	2004	167	\$5,007,173
2005	86	\$10,866,390	79	36	\$18,872,407	2005	183	\$6,158,078
2006	112	\$5,070,604	51	37	\$6,488,874	2006	217	\$4,415,214
2007	95	\$8,585,968	119	42	\$17,866,267	2007	263	\$7,924,045
2008	72	\$15,346,354	106	33	\$34,957,423	2008	244	\$9,698,435
	532	\$53,838,587	512	203	\$105,682,508		1,247	\$39,512,383



### Angel Investor Tax Credit

13-5

Investments Made in Calendar Year	Number of Kansas Qualified Businesses	Amount of Credits Issued Based on Investments in Kansas Qualified Businesses	Number of Investments in Kansas Qualified Businesses	Number of Credits that Have Been Transferred	Amount of Credits Transferred	Tax Year	Number of Filers Claiming Credit	Amount of Credit Allowed
2005	12	\$1,932,500	98	2	\$50,000	2005	90	\$1,032,124
2006	17	\$1,833,832	121	2	\$50,000	2006	123	\$1,145,537
2007	16	\$3,002,701	129	7	\$220,505	2007	163	\$2,030,795
2008	28	\$6,531,082	246	37	\$951,131	2008	239	\$4,263,795
	73	\$13,300,115	594	48	\$1,271,636		615	\$8,472,251

**KANSAS**  
DEPARTMENT OF REVENUE

Mark Parkinson, Governor  
Joan Wagnon, Secretary

www.ksrevenue.org

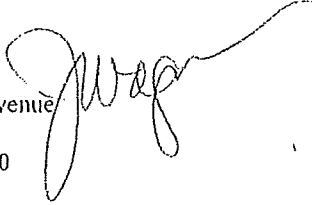
TO: Governor Mark Parkinson  
State Capitol, 2nd Floor  
Topeka, KS 66612-1590

Senate President Stephen Morris  
State Capitol, Room 333-E  
Topeka, KS 66612-1590

Senate Minority Leader Anthony Hensley  
State Capitol, Room 345-S  
Topeka, KS 66612-1590

House Speaker Michael O'Neal  
State Capitol, Room 370-W  
Topeka, KS 66612-1590

House Minority Leader Paul Davis  
State Capitol, Room 359-W  
Topeka, KS 66612-1590

FROM: Joan Wagnon  
Secretary of Revenue 

DATE: February 3, 2010

RE: Annual Report – Higher Education Deferred Maintenance Tax Credit

As Secretary of the Kansas Department of Revenue, I am required by Kansas law [K.S.A. 79-32,261(f)] to submit an annual report to the Legislature providing tax credit information specific to each community college, technical college or postsecondary educational institution.

K.S.A. 79-32,261 passed by the 2007 Kansas Legislature, allows any taxpayer that contributes to a community college located in Kansas for capital improvements, to a technical college for deferred maintenance or the purchase of technology or equipment or to a postsecondary educational institution located in Kansas for deferred maintenance, shall be allowed a credit against the tax imposed by the Kansas income tax act, the premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto, or the privilege tax as measured by net income of financial institutions imposed pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated.

The tax credit allowed by this section is applicable for the tax year 2008 for any contributions made on and after July 1, 2008, and for the tax years 2009, 2010, 2011 and 2012 for any contributions made during the entire tax year. The amount of the credit allowed shall not exceed 60% of the total amount contributed during the taxable year by the taxpayer to a community college or a technical college located in Kansas for such purposes. The amount of the credit allowed shall not exceed 50% of the total amount contributed during the taxable year by the taxpayer to a postsecondary educational institution for such purposes.

The total tax credits allowed for taxpayers who contribute to any one such community college or technical college cannot exceed the following amounts: For the tax year 2008, an amount not to exceed \$78,125; for the tax year 2009, an amount not to exceed \$156,250; and for the tax years 2010, 2011 and 2012, an amount not to exceed \$208,233.33.

The total tax credits allowed for taxpayers who contribute to postsecondary educational institutions cannot exceed the following amounts: For the tax year 2008, an amount not to exceed \$5,625,000; for the tax year 2009, an amount not to exceed \$11,250,000; and for the tax years 2010, 2011 and 2012, an amount not to exceed \$15,000,000. The allocation of such tax credits for each individual state educational institution has been determined by the state board of regents in consultation with the secretary of revenue and the university foundation or endowment association of each postsecondary educational institution, and is as follows:

OFFICE OF THE SECRETARY  
DOCKING STATE OFFICE BUILDING, 915 SW HARRISON ST., TOPEKA, KS 66612-1588  
Voice 785-296-3041 Fax 785-368-8392 <http://www.ksrevenue.org/>

Total Designated Universities				
Tax Credits Issued				
Calendar Year 2008				
Allocation \$5,625,000				
Designated University	2008 Total Number of Contributors	2008 Total Contributions	2008 Total Credit Amount Approved	Allocation Remaining
Emporia State University	0	\$0	\$0	\$324,481
Fort Hays State University	15	\$689,270	\$344,635	\$26,585
Kansas State University, Pittsburg State University, and Wichita State University	6	\$102,000	\$51,000	\$2,498,170
University of Kansas	11	\$55,550	\$27,775	\$1,512,791
University of Kansas-Medical Center	5	\$15,400	\$7,700	\$580,771
Washburn University	0	\$0	\$0	\$251,092
<b>Total</b>	<b>37</b>	<b>\$862,220</b>	<b>\$431,110</b>	<b>\$5,193,890</b>
Institutions have been grouped together as less than 5 filers in any one institution is considered confidential.				

Total Technical Colleges				
Tax Credits Issued				
Calendar Year 2008				
Allocation \$78,125 per Technical College (\$78,125 X 5 technical colleges = \$390,625)				
Technical College	2008 Total Number of Contributors	2008 Total Contributions	2008 Total Credit Amount Approved	Allocation Remaining
Flint Hills Technical College	0	\$0	\$0	\$78,125
Manhattan Area Technical College	8	\$48,500	\$29,100	\$49,025
North Central Kansas Technical College	21	\$88,000	\$52,800	\$25,325
Northwest Kansas Technical College and Wichita Area Technical College	10	\$155,308	\$93,185	\$63,065
<b>Total</b>	<b>39</b>	<b>\$291,808</b>	<b>\$175,085</b>	<b>\$215,540</b>
Institutions have been grouped together as less than 5 filers in any one institution is considered confidential.				

Total Community Colleges				
Tax Credits Issued				
Calendar Year 2009				
Allocation \$156,250 per Community College (\$156,250 X 19 community colleges = \$2,968,750)				
Community College	2009 Total Number of Contributors	2009 Total Contributions	2009 Total Credit Amount Approved	Allocation Remaining
Allen County Community College	0	\$0	\$0	\$156,250
Barton County Community College, Cloud County Community College, Coffeyville Community College and Colby Community College	11	\$32,000	\$19,200	\$605,800
Butler County Community College	14	\$201,550	\$120,930	\$35,320
Cowley County Community College	5	\$12,000	\$7,200	\$149,050
Dodge City Community College	15	\$31,650	\$18,990	\$137,260
Fort Scott Community College	40	\$115,335	\$69,201	\$87,049
Garden City Community College	10	\$46,000	\$27,600	\$128,650
Highland Community College and Hutchinson Community College	11	\$317,217	\$190,330	\$122,170
Independence Community College	0	\$0	\$0	\$156,250
Johnson Community College	5	\$150,655	\$90,393	\$65,857
Kansas City Kansas Community College	0	\$0	\$0	\$156,250
Labette Community College	6	\$260,417	\$156,250	\$0
Neosho County Community College	28	\$152,650	\$91,590	\$64,660
Pratt Community College and Seward County Community College	8	\$191,292	\$114,775	\$197,725
<b>Total</b>	<b>153</b>	<b>\$1,510,766</b>	<b>\$906,459</b>	<b>\$2,062,291</b>

Institutions have been grouped together as less than 5 filers in any one institution is considered confidential.

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To: Senator Les Donovan and Members of the Senate Committee on Assessment and Taxation

From: John E. Arnold, Member of KACIR

Date: February 10, 2010

Subject: Testimony in Support of Senate Bill 472

While I'm a public member of the KACIR, I'm not speaking so much for the KACIR, Chairperson Wagnon will do that. I'm speaking as a retired city manager, having served eight states and ten public organizations. In each I was involved in intergovernmental relations activities and through annual evaluations given support for those activities. I believe we in government organizations get much more done by working cooperatively together than by seeking a competitive self-interest. That belief is why I'm pleased to be part of KACIR.

KACIR has studied a number of tax equity issues the past couple of years. We are supporting a number of bills and a Concurrent Resolution dealing with the tax equality subject, while continuing to protect and encourage economic development.

Senate Bill 472 clears up by repealing the mostly-obsolete transferability issues in tax credits. As such it is one step in the process of streamlining and clarifying the tax policies of the state and those that apply to many other units of government.

KACIR worked to develop a Policy Evaluation Guide to help the legislators make sense and a coherent whole of the disparate taxing and credit incentive approaches of the state. Each of you was provided a copy of that document, I understand.

Senate Bill 472 is one step in enhancing the sense of the taxation and tax credit policies of the state and I support approving the bill.

John E. Arnold, President

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Attachment # 14

# State of Kansas

## Senate Chamber

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### COMMITTEE ASSIGNMENTS

CHAIRMAN: JUDICIARY  
MEMBER: FEDERAL AND STATE AFFAIRS  
EDUCATION  
CONFIRMATIONS OVERSIGHT  
JOINT COMMITTEE ON KANSAS SECURITY  
JOINT COMMITTEE ON CORRECTIONS  
AND JUVENILE JUSTICE OVERSIGHT

To: Senator (Chairman) Les Donovan and Members of the Senate Committee on  
Assessment and Taxation

From: Senator Thomas C. (Tim) Owens

Date: February 10, 2010

Subject: Testimony in Support of Senate Bill 472

Thank you Mr. Chairman and Committee members, for the opportunity to appear in support of Senate Bill 472. Other Proponents of this bill will speak to the specifics of the tax credits being addressed in this bill. I am here to lend my support for the need to address the diminishment of the tax base by a number of tax policies that have historically been implemented but no longer are either used or viable to the health of our tax system and structure. There are a number of tax credits that have outlived their usefulness or have never actually been implemented in sufficient amounts to be worth the administrative cost of implementation.

The effort demonstrated by the proponents of SB 472 again emphasizes the need for consolidation of resources while shrinking the number of tax credits and exemptions which collectively amount to a huge impact on the efficiency of the use of state resources. We continuously use the reference to the need for transparency in government. Senate Bill 472 demonstrates a way to enhance transparency by elimination of the difficulties in tracking of some of the credits and elimination of transferability which exacerbates the problem.

The Kansas Advisory Committee on Intergovernmental Relations has for the last several years taken on the task of evaluating where government in Kansas could be made more efficient and where the tax base could be expanded to allow for lower taxes without the diminishment of services to the Kansans who need them and cannot afford them. Senate Bill 472 is another tool in the revenue toolbox that can be used to help in that effort and I urge you to support it and pass it favorably to the Senate Floor.

Thank you again Mr. Chairman and committee for allowing me to address you today.

With all due respect,  
Senator Thomas C. (Tim) Owens

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**Testimony to  
The Senate Assessment and Taxation Committee  
Senate Bill 472  
February 10, 2010**

Thank you for the opportunity to appear before you today to discuss Senate Bill 472. As the agency that administers the Historic Preservation Tax Credit Program, we are here to discuss the program in terms of possible elimination of the transferability of the credits. Although we will administer the Historic Preservation Tax Credit Program as per your directions, we appreciate the opportunity to bring to your attention some of the consequences of Senate Bill 472.

**Consequences for Non-Profits and Local Governments**

By eliminating the transferability of the preservation tax credits, **Senate Bill 472 would eliminate community non-profits and local governments (including universities and school districts) from the program.** Due to the fact that these groups do not have state tax liabilities, they must have the opportunity to leverage funding by transferring tax credits to make use of the program.

During the 2006 session, the Legislature showed interest in specifically helping non-profits (501c3) by increasing the tax credit for these groups to 30%. If Senate Bill 472 were to pass section 11, lines 32 (after the semi-colon) through 37 would need to be removed from the bill because it would no longer be valid.

One of the most consistent requests we receive from individual Legislators is to provide help for their local non-profits or local governments with historic buildings. Every community in Kansas has a wealth of historic structures. The Historic Preservation Tax Credit Program has been our most successful tool in allowing us to provide both technical assistance and financial help to these groups. For this reason we would regret elimination of the transferability of the tax credits without creation of some other method for filling this need. It has been suggested that a grant program might accomplish the same thing. Although we are open to any program that provides money to rehabilitate the historic heritage of our state, the concept of a tax credit offers a different type of

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incentive. Grants generally do not function as well as an economic stimulus. As small non-profits learn to run more like a business, they need to have access to the same economic incentives as for-profit organizations.

### Tax Credits for Non-Profits and Local Governments

Based on the sampling below an average of 56% Historic Preservation Tax Credit Program participants are non-profits or local governments. Although they are the largest number of program users they reflect a smaller percentage of actual tax credits awarded. Most projects undertaken by non-profits and local governments are smaller than their commercial counterparts. Without the transferability feature of the program these community organizations would most likely not be able to complete their rehabilitation projects.

Calendar Year	Percentage of Annual Projects that Involved Non-Profits or Local Governments	Total Project Costs for Non-Profits or Local Governments	Total Tax Credits Awarded to Non-Profits or Local Governments
2006	58%	\$4,198,833	\$374,708
2007	29%	\$2,019,042	\$524,485
2008	87%	\$7,684,779	\$1,984,563
2009	50%	\$5,371,117	\$1,440,941

### Open Non-Profit and Local Government Tax Credit Projects

If Senate Bill 472 were to pass, open projects, or those that have been started under the current state statute, would not be eligible to receive the tax credits they are anticipating. We would request that if the transferability of the Historic Preservation Tax Credits were eliminated, these projects be given consideration of their “in progress” status.

Project Name	Total Project Cost	City	County
St. Joseph’s Church and Parochial School	\$231,491	Damar	Rooks
Trinity Evangelical Lutheran Church	\$18,000	Abilene	Dickinson
Atchison Santa Fe Freight Depot	\$12,000	Atchison	Atchison
St. Luke African Methodist Episcopal Church	\$300,400	Lawrence	Douglas
Union Pacific Depot	\$60,000	Leavenworth	Leavenworth
Deerfield Texaco Station	\$53,507	Deerfield	Kearny
Price Villa/St. Cecilia Hall	\$3,500,000	Atchison	Atchison
First Presbyterian Church	\$150,000	Leavenworth	Leavenworth
Atchison County Courthouse	\$15,866	Atchison	Atchison

Lanesfield School Historic Site	\$116,000	Edgerton	Johnson
Edgerton Grange Hall	\$125,000	Ellsworth	Ellsworth
Fairmount Congregational Church	\$82,994	Wichita	Sedgwick
Halstead Heritage Museum and Depot	\$20,900	Halstead	Harvey
Greenwood Hotel	\$2,300,000	Eureka	Greenwood
St. Mark the Evangelist Catholic Church	\$300,900	Colwich	Sedgwick
St. Michael Convent and Catholic School	\$50,000	Collyer	Trego
Reno County Courthouse	\$175,000	Hutchinson	Reno
Schaeffler House	\$107,000	Hillsboro	Marion
Anthony Theatre	\$250,000	Anthony	Harper
Topeka High School	\$195,000	Topeka	Shawnee
Strong City Opera House	\$95,000	Strong City	Chase
Atchison County Memorial Hall	\$105,500	Atchison	Atchison
First Congregational Church	\$68,661	Manhattan	Riley
Butler County Courthouse	\$470,000	El Dorado	Butler
Sedan Opera House	\$98,000	Sedan	Chautauqua
First Presbyterian Church	\$80,000	Fort Scott	Bourbon
Sedgwick County Historic Courthouse and Munger Building	\$200,000	Wichita	Sedgwick
St. Michael Convent and Catholic School	\$25,000	Collyer	Trego
Edward Carroll House	\$11,200	Leavenworth	Leavenworth
Marion Township Hall	\$41,600	Baileyville	Nemaha
Nazareth Convent and Academy	\$91,000	Concordia	Cloud
Scottish Rite Temple	\$550,000	Wichita	Sedgwick
Buford Theater and Commercial Building	\$2,500,000	Arkansas City	Cowley
Westminster Presbyterian Church	\$643,152	Topeka	Shawnee
Lawrence Carnegie Library	\$1,200,000	Lawrence	Douglas
Philip Houston House	\$20,000	Rexford	Thomas
Bradford Hotel	\$1,300,000	Sedan	Chautauqua
St. Fidelis Church	\$357,000	Victoria	Ellis
McPherson Power Plant	\$4,000,000	McPherson	McPherson
Highland Christian Church	\$8,200	Highland	Doniphan
Old Wichita City Hall	\$10,000	Wichita	Sedgwick
Douglas County Courthouse	\$126,238	Lawrence	Douglas

Jayhawk Theatre of Kansas	\$6,566,000	Topeka	Shawnee
Church of the Assumption, Mater Dei Parish	\$80,000	Topeka	Shawnee
Ecumenical Christian Ministries Building	\$516,500	Lawrence	Douglas
Spooner Hall	\$500,000	Lawrence	Douglas
Colonial Fox Theatre	\$126,500	Pittsburgh	Crawford
Alfred M. Landon Home	\$45,450	Independence	Montgomery
Ellsworth Elementary School	\$468,484	Ellsworth	Ellsworth
Pioneer Bluffs Granary and Chicken Shed	\$40,000	Matfield Green	Chase
Vinland Fair Exhibition Building	\$13,020	Baldwin	Douglas

Due to the cap that was placed on the Historic Preservation Tax Credit Program in FY 2010 and FY 2011, total projects that are over \$250,000 will receive their credits over a three-year period. There are several non-profit or local government projects that have been completed but have not received all their tax credits owed. These include the following:

Project Name	Location	Total Project Costs	Tax Credits Issued	Tax Credits Remaining
Thomas County Courthouse	Colby	\$285,538	\$23,794	\$47,589
Sacred Heart Cathedral School	Dodge City	\$649,104	\$64,910	\$129,820
Wyandotte County Courthouse	Kansas City	\$258,200	Project completed but currently under review to determine eligible tax credits.	

### Other Consequences

For-profit corporations and businesses also rely on the transferability of the Historic Preservation Tax Credit, as many of them use the tax credits as a way to leverage funding for their projects. Data is not available to confirm which projects would not be able to proceed without the leverage of transferable tax credits. Individual case studies suggest that elimination of the transferability would be a serious problem for several projects.

## Conclusion

Thank you for the opportunity to address these issues as they relate to Senate Bill 472. We are fully aware of the budget challenges the state faces. However, we need guidance from the Legislature in regard to administering the Historic Preservation Tax Credits, as follows:

- If the transferability of the tax credits is eliminated, what do we do with all of those community projects in progress and are depending on the tax credits?
- What do we do about the projects that have been completed but, due to the cap which remains in Senate Bill 472, are receiving their tax credits spread out over a three year period?
- If the current cap remains on the program our current guidelines state that we will issue up to \$6.25 million in credits. This was a formula agreed upon with the Department of Revenue based on the rate at which tax credits are claimed, not issued. In other words, \$6.25 million issued is projected to result in \$3.7 million claimed in a given year. The wording of the language on the cap, which is included in Senate Bill 472, is ambiguous. It states, "In no event shall the total amount of credits allowed under this section exceed \$3.75 million." Should we limit the number of credits issued to \$3.75 million or do the current guidelines reflect what you intended with the cap?

Unfortunately changes to this program while projects are already in progress create difficult administrative challenges. We are willing to work with you to achieve your goals for the program. However, we request that any solutions allow participants in this program to make decisions based on the consistency of the rules and regulations, and we can administer this program effectively within our allocated resources.

Please feel free to contact us for any additional information you may need.

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**Testimony  
Hearing, SB 472  
Senate Taxation Committee  
Wednesday, February 10, 2010  
Christy Davis, Davis Preservation**

Mr. Chairman and Members of the Committee:

I am Christy Davis, owner of Davis Preservation in Topeka. I am testifying in opposition to Senate Bill 472. Transferability is essential to the success of the Kansas state rehabilitation tax credit. In Kansas, where property values tend to be low, it is difficult to get the financing needed to invest in our state's historic properties.

A project cannot even begin until an owner can secure the construction financing. If a property in one of the state's historic downtowns is valued at \$10,000, it is difficult to secure a construction loan for \$100,000, let alone \$1,000,000. The way property owners obtain the "gap financing" they need to make these projects work is by securing commitments from tax-credit buyers before approaching banks for their construction loans. Property owners can take a commitment letter to a bank and use it as collateral on a construction loan.

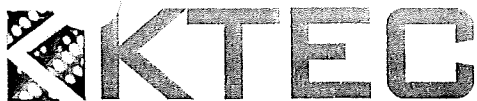
Many of the property owners I work with do not have the tax liability to take advantage of the credits themselves. Without the ability to transfer the credits to an entity that does, these projects cannot happen.

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**TESTIMONY OF JOHN HOLECEK, EXECUTIVE DIRECTOR OF THE MCPHERSON OPERA HOUSE, ON THE IMPORTANCE OF TRANSFERABILITY OF HISTORIC REHABILITATION TAX CREDITS.**

- The McPherson Opera House celebrated its Grand Reopening on 28 January 2010 24 years after the McPherson Opera House Preservation Company (now the McPherson Opera House Company) was created to rehabilitate the building.
- This project absolutely required transferable historic tax credits for its completion as the McPherson Opera House Company is a 501(c)(3) organization.
- For many years the project made only minimal progress, but in 2005, two substantial donations allowed the Opera House Company to begin and complete the west commercial portion of the building, which generated \$1,490,066 in State tax credits.
- The tax credits were sold (transferred) to local businesses and individuals for \$.95 on the dollar. Had the tax credits been nontransferable, the project would have ended here, as there were no funds to begin the major phase of the project, the rehabilitation of the auditorium and the creation of an arts center.
- The income from the tax credits, plus various donations, allowed the Opera House Company to proceed with Phase B1, which generated \$700,748 in State Tax credits. Again the credits were sold locally for \$.95 on the dollar with the exception of \$100,000 that was sold to Commerce Bank for \$.885 on the dollar.
- Phase 3B2, the final phase, was completed mid-January 2010. The total costs are still being finalized but should be around \$3,000,000. The State tax credits generated will be used to pay down a construction loan. Again, had the tax credits not been transferable, the project would never have been completed.
- During the four years of construction, numerous workers in all trades were employed, generating significant amounts of taxable income.
- Kansas State University Emeritus Professor of Architecture Bernd Foerster said, "The McPherson Opera House is the single most important project in the community. I consider it McPherson's greatest success story. The effort has been enormous, and the fact that there has been such dedication to make this project succeed speaks well for McPherson's citizens."
- The McPherson Opera House has already increased the vitality of downtown McPherson and will continue to do so in ever greater degree. Most historic structures eligible for tax credits are located in downtown areas, having a positive economic impact on city centers.
- Rehabilitation of historic buildings is the greenest of all building methods for a number of reasons: infrastructure supporting the buildings already exists, no demolition debris, and a significant amount of capital is already embedded in the building. Also, historic structures are generally of greater architectural merit than current construction.



KANSAS TECHNOLOGY  
ENTERPRISE CORPORATION

**Written Testimony in Opposition to Senate Bill 472**

**Submitted by Kevin Carr, Interim CEO of KTEC**

**Senate Assessment and Taxation Committee  
Wednesday, February 10, 2010**

Chairman Donovan and Committee Members:

I am Kevin Carr, Interim CEO of KTEC, and am testifying today on behalf of the 74 companies who have benefited from the Angel Tax Credit program since 2005. I would like to share with you the following results:

**From 2005 through 2009**

- Raised **\$168MM** in capital for small companies since 2005
- **\$9.3 of capital for every \$1 of tax credit issued**
- **578 jobs** added or saved (1,445 jobs with a 2.5 multiplier effect)
- **\$175MM** in revenue over the last 4 years

**What is at risk?**

Section 8(e) of SB 472 would eliminate the ability for Angel Tax Credits to be sold or transferred. Currently the statute allows for a transfer to be made only once and only in its entirety. KTEC works closely with the Department of Revenue to ensure only eligible credits are transferred or sold. The statute does not allow any individual with Kansas tax liability in the past three years, nor expected in the current year, to transfer or sell their tax credit. Buyers of tax credits must be accredited investors, as defined by the SEC.

Over the past three years, **\$8MM** of capital has been raised from out-of-state investors for Kansas companies. This influx of capital into the state will be lost if this bill passes. Section 8(e) of SB 472 would not have any impact Kansas State revenues.

We believe that the attraction of out-of-state capital into the state to help Kansas companies to get off the ground is beneficial, and would ask you to consider allowing the one-time transfer to stay the way it currently is in statute. Thank you for your consideration.

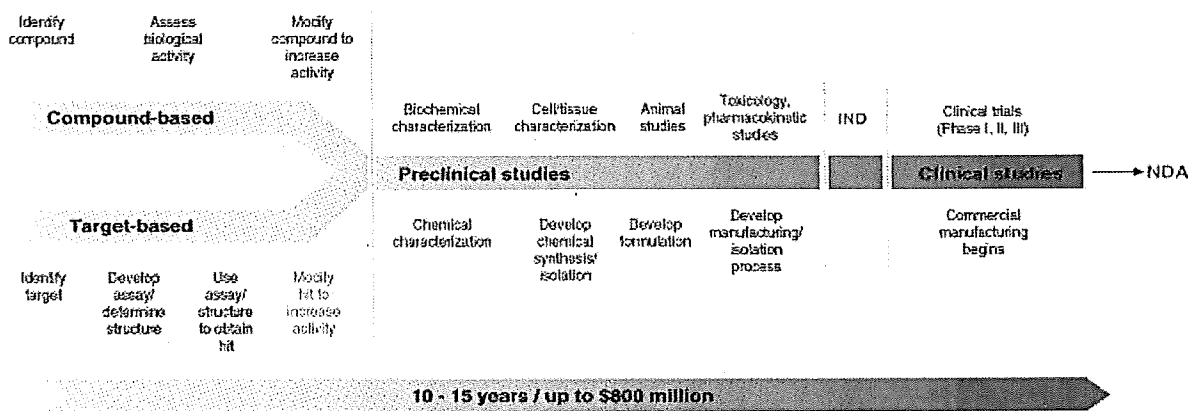
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Mr Chairman and Members of the Committee,

As currently written, Kansas Bio is opposed SB 472. This bill eliminates the ability to transfer angel investor tax credits which is the life blood of many upstart companies. Without transferability, out-of-state investors will be less likely to invest in Kansas companies making it more difficult to raise capital. However, we have agreed to work with the Secretary of Revenue and KTEC to find common ground on addressing their concerns without jeopardizing the benefit to Kansas companies. Please find below examples of the how the angel investor tax credit has been an indispensable tool for the growth of the bioscience industry in Kansas.

Emerging bioscience companies spend up to \$800M developing a new drug over 10 -15 years. (See the information below by a leading provider of healthcare information, LWW.)



**Figure 48-2 Timeline for the Steps of Drug Discovery and Development.** The drug discovery process can proceed through either a compound-based or target-based approach; most modern approaches use elements of both. Concurrent with drug discovery, drug development involves chemical and biological characterization as well as synthetic optimization and manufacturing. These processes overlap considerably, and the results of iterative processes are used to improve the lead; this process is called lead optimization. Clinical trials and regulatory approval (Chapter 51) are also required before a drug may be marketed. The entire process from compound identification to drug approval can take 10–15 years and cost up to \$800 million. IND, investigational new drug application. NDA, new drug application.

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Prior to reaching the IND phase, companies raise money through Angel Investors primarily. Kansas has built strong angel investor networks throughout the state. The main stimulation is a result of the tax incentives available. The incentives benefit the investor by mitigating their risk and encouraging syndication with other angel investors. By reducing or eliminating the angel investor tax credit, fewer investors will invest in our biotech start-up companies. These companies may be forced to leave the state and seek funding elsewhere. One of the greatest beneficiaries of the tax credits are the communities with high-paying jobs in these companies.

Commercialization opportunities will accompany NBAF, and we will see even more start-up companies develop in Kansas. We must not lose focus. We must continue to invest in developing a strong investor ecosystem now. These transformations take years. We cannot lose ground by taking our eye off the ball.





**Background: Kansas is one of four states recognized by the Biotechnology Industry Organization for leadership in developing ROI stimulators within the bioscience industry.**

The one thing that drives state governments as well as investors to invest in bioscience industry development is the potential for Return on Investment (ROI). ROI is a quantitative performance measurement used to evaluate the efficiency of an investment or to compare the efficiency of a number of different investments. ROI has been of particular interest to elected officials as they review budget priorities in the face of shrinking state budgets.

For venture capitalists/angel investors ROI comes in the form of recouping their investments, hopefully at a healthy premium. For states it is a bit more intangible. ROI for states could mean creation of high skill, high wage jobs; an opportunity to retain the best and brightest students from state universities; or, even the induced economic impact of numerous construction and service jobs associated with a vibrant bioscience industry cluster.

In 2007 and 2008 several states analyzed the economic impact of funding for the biosciences industries. The results provide lawmakers and other stakeholder's timely and comprehensive numbers that measured the performance of state investments in the industry. Here are four examples of state and region efforts to measure the quantitative value of the biosciences industry.

**Hawaii: High Technology Business Investment Credit**

The purpose of the High Technology Business Investment Credit is to increase investment in Hawaii's emerging science & tech companies. In order to create high-paying jobs the State supports the early stage growth of Hawaii's emerging innovation economy with targeted investor tax credits. These tax incentives have been put in place to correct the previous lack of early state investment in Hawaii. This has helped to establish Hawaii as a tech-friendly place to do business. During the period 2002 to 2006, results with 287 Qualified High Technology Businesses (QHTB's), benefiting from this incentive were:

- Investments received totaled \$821.6 million
- Spending by these companies in Hawaii totaled \$1.043 billion
- Salaries paid totaled \$505.8 million
- The 157 QHTB's that filed in 2006 created, since their inception, 5,383 jobs
- The 157 QHTB's that filed in 2006 had an average salary of \$67,020
- The Tax Credit claimed by Hawaii residents totaled \$195.6 million

The direct benefit to the state totals nearly \$2 billion, with a cost to the state of less than 10% of that amount. In other words, this is a return on investment for the state of approximately 10 times or 1000%

- Link to the legislation: <http://bio.org/local/industryDev/HawaiiHighTechnologyBusinessInvestmentTaxCredit.pdf>
- For more information: [http://hawaii.gov/tax/pubs/2007hitec\\_rpt07a.pdf](http://hawaii.gov/tax/pubs/2007hitec_rpt07a.pdf)

OHIO Third Frontier Ohio's Third Frontier program has become an important part of Ohio's efforts to build a strong, technology-based economy. Its continuing purpose is to provide financial support to projects that contribute to technology-based economic development in Ohio including the biosciences. The Third Frontier Project was initiated in February 2002. This project is the state's largest-ever commitment to expanding Ohio's high-tech research capabilities and promoting innovation and company formation and the return on investment over the past five years has been substantial. The cumulative effect of the program has provided new investment

ge outside state government' attention, expansion, and attraction of companies, and well-paying jobs. In January 2008 the state jobs initiative spurred growth in the following areas:

- State Funds Awarded \$638 million/Co-Investment and Leverage \$2.4 billion
- Jobs Created/Retained 5,641/ Direct and Indirect Jobs Created 14,101
- Companies Created/Attracted 383
- Average Salary \$67,277
- Link to the legislation: [http://www.legislature.state.oh.us/BillText124/124\\_HB\\_675\\_ENR.html](http://www.legislature.state.oh.us/BillText124/124_HB_675_ENR.html)
- For more information: <http://www.thirdfrontier.com>

### **Kansas Economic Growth Act**

The Kansas Economic Growth Act of 2004 demonstrated the state's deep commitment to continued bioscience growth. The act created the Kansas Bioscience Authority and appropriated \$581 million to invest in the expansion of the state's bioscience clusters, research capacity, startups, and business expansion. The 2008 Kansas Bioscience Index 2008 reported the following economic return on state investments:

- Kansas had 981 private biosciences companies in 2004 and 1,075 in 2006, a 9.6% increase in two years
- Employment rose from 14,889 in 2004 to 16,135 in 2006
- Bioscience venture capital investment amounted to \$101.4 million
- Academic R&D spending in bioscience accounted for 62% of total academic R&D spending in the state
- Link to the legislation: <http://www.kslegislature.org/bills/2004/2647.pdf>
- For more information: <http://kansasbioauthority.org/news/Kansas-Bioscience-Index.pdf>

### **San Jose, CA -Incubator Programs**

In 2004, San Jose's incubator program created the San Jose BioCenter (SJBC) was created. The SJBC provides high tech office and wet lab space for fourteen small bioscience companies. According to a preliminary report, the bioscience sector in San Jose experienced a year- to-year growth rate of approximately 28 percent from 2002 to 2008-a rate that outpaces the Bay Area and the U.S. by a healthy margin.

A recent PriceWaterhouseCoopers' MoneyTree survey found that of 40 investments in the first quarter of 2008 in biosciences, \$436.5 million was raised from the San Jose region. These are more investments and dollars raised than any other region in the nation. According to BayBio, a nonprofit trade association serving the life sciences industry in Northern California, Santa Clara County has the largest concentration of bioscience companies of all counties in the Bay Area, \$5.9 billion or 50 percent of the life sciences gross product of the entire metropolitan Bay Area, \$12 billion, is generated there.

**Presentation Regarding Senate Bill 472**

January 10, 2010

Emily Hurst, Director of Development  
Interfaith Housing Services, Inc.  
PO Box 1987  
Hutchinson, KS 67504-1987  
620-662-8370  
emilyh@ihs-housing.org  
www.ihs-housing.org

The IDA program is currently budgeted for \$500,000 of 50% Tax Credits per year

This program is on the repeal list because it was reported that the credits were not used in 2007. This was evidently a reporting error or a miscommunication between state departments. Please find supporting documentation in this packet, signed by the Department of Commerce showing that credits were indeed sold and used during 2007. Furthermore, the program has been expanding steadily ever since Interfaith Housing Services took over the implementation and operation of the program in 2007. In fact Joshua Burton, former IDA Program Director at the Department of Commerce, openly stated that IHS has the most effective and far reaching IDA program in the State of Kansas

In 2005 when the program was first funded another nonprofit organization applied for and received the tax credits for July 2005 through December 2006. By the end of 2006 they had not sold any tax credits and were unable to launch the program. Therefore, because of our past experience with Tax Credits and our passion for this program, IHS applied for the IDA Tax Credits, receiving \$100,000 for July 2007 through December 2008. By December 2007 we had raised over \$71,000, enough money that in the spring of 2008 we started offering the program in Reno, Kingman and Harper Counties. Since then we have successfully raised over \$395,000 and we are working to expand the program statewide.

IHS successfully applied to the Federal Department of Health and Human Services' and received a matching grant from the Asset for Independence (AFI) program. This is a renewable Federal grant that matches Dollar for Dollar tax credit donations for the IDA program up to \$500,000. If we lose the IDA Tax Credits, we will most assuredly also lose the Federal AFI matching funds as well.

The IDA's are a savings incentive program for working, low-income households. Through the IDA program, participants are able to save for continuing their education, purchasing a home, repairing or renovating a home, starting or capitalizing a small business. As the applicant saves toward their goal, the IDA program matches their savings at a 2:1 ratio. In our program the participant must attend a minimum of 8 hours of financial literacy and then participate in ongoing one-on-one budget and program counseling until their objectives are accomplished. For example if a client's needs \$9,000 to purchase a home, the client save \$3,000 and the IDA program adds an additional \$6,000 at closing. The same formula is used for advancing education, starting a small business, or repairing a home. The program is designed to provide extensive support counseling to the client through the entire process. A homeowner must participate in homeownership counseling and homeownership budget counseling, a client starting a business works with a small business incubator or mentor and develops a viable

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business plan, and a student will work with a guidance councilor and/or a carrier councilor, at a college or trade

Individual Development Accounts were designed as an economic policy tool and have proven successful in 46 states across the nation.

Corporation for Economic Development<sup>1</sup> (CFED) provides supportive research estimating every government dollar invested will yield a return of approximately \$5 to the economy in the form of new businesses, additional earnings, new and rehabilitated homes, reduced welfare expenditures, and human capital associated with greater educational attainment.

Assets for Independence (AFI), which is currently matching our tax credit contributions, completed an impact study in early 2008<sup>2</sup>. This analysis reports the IDA program's impact on key components of net worth and on the employment status and income of participants. The results of this three year study showed that the monthly earnings of the IDA accountholders increased every year after opening an IDA, while at the same time the study reported a steady reduction in the number of IDA accountholders dependent on government subsidy.

We are seeing similar trends in our Kansas IDA program as those mentioned in the AFI nationwide report. Of our IDA graduates, 100% have continued saving and set new goals even after they completed the program. This is a clear indication of the impact provided by our financial education and life-skill workshops.

In a short amount of time our IDA program has proven its success and ability for growth. IHS started the IDA program in June of 2008 with 10 clients just in Reno County; now we have 28 clients in 3 counties. IHS will have 45 new IDA clients in the next two months over four counties with 85 clients ready to begin saving and an expansion projection to 11 Kansas counties by the end of the year.

Kansas' investment in the IDA Program enabled IHS to ensure Kansas receives its fare share of federal funding earmarked for this economic development tool. The IDA tax credit has generated a public-private partnership. Kansas' net cost of this partnership is only about 25% which is before the revenue generated from IDA accountholders which will drastically reduce Kansas' cost. Indiana provides 1.35 million dollars for the Indiana IDA Program, reporting approximately \$482,871 per year generated in new state and local tax revenues from IDA participants.<sup>3</sup>

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<sup>1</sup> [http://cfed.org/programs/idas/ida\\_faq\\_article/](http://cfed.org/programs/idas/ida_faq_article/)

<sup>2</sup> Assets for Independence Act Evaluation Impact Study: Final Report  
[http://www.acf.hhs.gov/programs/ocs/afi/AFI\\_Final\\_Impact\\_Report.pdf](http://www.acf.hhs.gov/programs/ocs/afi/AFI_Final_Impact_Report.pdf)

<sup>3</sup> IDAs: An Investment That Pays Off February 2005, A publication of the Indiana Association for Community Economic Development

In 2008 a report, *Getting Ahead in Kansas*<sup>4</sup>, was written by Karen M. Edwards. This report was generated through organized meetings with Kansas Action for Children (KAC) and Kansas Partners in Asset Development (KPAD) with stakeholders in 5 major Kansas cities. One of the five priorities that came from these discussions was to improve support for IDAs. The report states several large philanthropies have made considerable investments in researching whether or not low-to moderate income families would build wealth if give comparable opportunities to wealthier families and the answer was a resounding **YES**. Their research showed families in the lower income tiers can and will save for the future, build assets and make economic progress that can improve their lives in significant ways. However, these families save only if they also have connections to the financial mainstream and are offered meaningful opportunities to save and invest, opportunities that reflect their needs, goals, and circumstances, such as IDAs. Recommendations for better supporting IDAs in Kansas read "Increasing the percentage of the tax credits appropriated for contributions to IDAs from 50 percent to 75 percent." A portion of the report is in your packet the full report is here.

IHS and many other national and state level organizations, across the nation were shocked and surprised to find that the IDA tax credit would be recommended for repeal in Kansas considering the benefits it provides to the state both financially and economically. Many states have completed IDA impact studies and have kept state IDA funding because of the results, some have also increased funding or created new funding especially with the downturn in their state economy because of the economic benefits of IDAs.

This is just a sample of the research completed on the economic impacts of IDAs.. I will leave this with your secretary if you wish to view them. Also in your packets I have provided graphs showing the investment to date by all parties for the IDA program.

Respectfully submitted,



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<sup>4</sup> *Getting Ahead in Kansas An Asset-Building Policy Roadmap for Establishing Real Opportunities for Kansas Families to Achieve Financial Prosperity* <http://www.kac.org/ftp/File/Publications/assetdevroadmap.pdf>



NOTE: This form should accompany all submittals of tax credits. It is not necessary to send a cover letter with the tax credit applications. Rev. 2008

**INDIVIDUAL DEVELOPMENT ACCOUNT - TAX CREDIT TRANSMITTAL FORM**

Project # 2008 - F02 Date: 8/28/08 RECEIVED  
 Organization: Topeka South Housing Services AUG 29 2008  
 Contact Person: Lorena Moore Phone # (620) 462-8370 COMMUNITY DEVELOPMENT

Note: Please attach required documentation to each separate original Tax Credit Application for Contributions form, not the Tax Credit Transmittal Form.

- A) How many tax credit applications are attached? 18
- B) The total amount of contributions in this group: \$ 38,100
- C) Tax Credit Allocation: 50%
- D) The total amount of credits requested in this group (B x C): \$ 19,050
- E) BALANCE of credits remaining after the approval of the attached credits: \$ 45,425

<p><b>PROJECT INFORMATION CHANGES</b>          Please report any changes in personnel, phone #, or addresses</p> <p>Contact Person: <u>Lorena Moore</u></p> <p>Phone # <u>(620) 462-8370</u></p> <p>Address: <u>P.O. Box 1987, Hutchinson, 67504</u></p> <p>Notes: _____</p> <p>_____</p> <p>_____</p>	<p align="center"><b>For State Use Only</b></p> <p>Log # <u>08-041</u> to          Log # <u>08-058</u></p> <p>Remaining Credit Balance:          \$ <u>45,425.00</u></p> <p><input checked="" type="checkbox"/> Status <input type="checkbox"/> Donation(s)</p> <p>Approved by: <u>JB</u></p>
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Please Mail All Forms & Documentation to: Kansas Department of Commerce - Community Development  
 Individual Development Account Program  
 1000 SW Jackson Street, Suite 100, Topeka, Kansas 66612-1354

NOTE: This form should accompany all  
submittals of tax credits. It is not  
necessary to send a cover letter with the  
tax credit applications. Rev. 2008

**INDIVIDUAL DEVELOPMENT ACCOUNT - TAX CREDIT TRANSMITTAL FORM**

Project # 2008-102 Date: 1/5/08  
Organization: Interfaith Housing Services  
Contact Person: Lorna Moore Phone # (620) 662-8730

Note: Please attach required documentation to each separate original Tax Credit Application for Contributions form, not the Tax Credit Transmittal Form.

- A) How many tax credit applications are attached? 28
- B) The total amount of contributions in this group: \$ 67,100.00
- C) Tax Credit Allocation: 50%
- D) The total amount of credits requested in this group (B x C): \$ 33,550.00
- E) BALANCE of credits remaining after the approval of the attached credits: \$ 4,250.00

<p><b>PROJECT INFORMATION CHANGES</b> Please report any changes in personnel, phone #, or addresses</p> <p>Contact Person: <u>Lorna Moore</u></p> <p>Phone # <u>(620) 662-8730</u></p> <p>Address: <u>PO Box 1987 Hutchinson, KS 67504</u></p> <p>Notes: _____</p> <p>_____</p> <p>_____</p>	<p><b>For State Use Only</b></p> <p>Log # <u>08-068</u> to</p> <p>Log # <u>08-095</u></p> <p>Remaining Credit Balance:</p> <p>\$ <u>4,250.00</u></p> <p><input checked="" type="checkbox"/> Status <input checked="" type="checkbox"/> Donation(s)</p> <p>Approved by: <u>JB</u></p>
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Please Mail All Forms & Documentation to: Kansas Department of Commerce - Community Development  
Individual Development Account Program  
1000 SW Jackson Street, Suite 100, Topeka, Kansas 66612-1354

RECEIVED  
JAN 13 2009  
COMMUNITY DEVELOPMENT

RECEIVED  
AUG 24 2007  
COMMUNITY DEVELOPMENT

**IDA PROGRAM  
TAX CREDIT TRANSMITTAL FORM**

NOTE: This form should accompany all submittals of tax credits. It is not necessary to send a cover letter with the tax credit applications.

Project #: 2008-102 Date: \_\_\_\_\_

Organization: INTERFAITH HOUSING SERVICES, INC.

Contact Person: John W. Scott Phone: 620-662-8370

A) How many tax credit applications are attached? 12  
(Please attach required documentation to original tax credit application)

Amount of contributions in this group? \$ 17,500.00

C) Tax Credit Allocation % (50%): ~~8,750~~ 50%

D) The total amount of credits requested in this group (B x C): \$ 8,750

E) BALANCE of credits remaining after the approval of the attached credits:

\$ 91,250.00

PROJECT INFORMATION CHANGES (Please report any changes in personnel, phone number, or addresses)	For State Use Only
Contact Person _____ Phone # _____ Address _____  Reminder: <i>Quarterly reports are due each calendar quarter, even if you have had no activity.</i>	Log #'s: <u>08-001</u> <u>to</u> <u>08-012</u> Balance Change \$ <u>91,250</u> <input checked="" type="checkbox"/> Status <input checked="" type="checkbox"/> Donation Approved by <u>[Signature]</u>  Rev. 2001



NO This form should accompany  
 submittals of tax credits. It is not  
 necessary to send a cover letter with the  
 tax credit applications. Rev. 2008

**INDIVIDUAL DEVELOPMENT ACCOUNT - TAX CREDIT TRANSMITTAL FORM**

Project # 2008 - 102

Date: 11/07/08

Organization: Interfaith Housing Services

Contact Person: Lorna Moore

Phone # (620) 662-8370

*Note: Please attach required documentation to each separate original Tax Credit Application for Contributions form, not the Tax Credit Transmittal Form.*

A) How many tax credit applications are attached?

2

B) The total amount of contributions in this group:

\$ 14750.00

C) Tax Credit Allocation:

50%

D) The total amount of credits requested in this group (B x C):

\$ 7375.00

E) BALANCE of credits remaining after the approval of the attached credits:

\$ 38050.00

**PROJECT INFORMATION CHANGES**

*Please report any changes in personnel, phone #, or addresses*

Contact Person: \_\_\_\_\_

Phone # (\_\_\_\_) \_\_\_\_\_

Address: \_\_\_\_\_

Notes: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**For State Use Only**

Log # \_\_\_\_\_ - \_\_\_\_\_ to

Log # \_\_\_\_\_ - \_\_\_\_\_

Remaining Credit Balance:

\$ \_\_\_\_\_

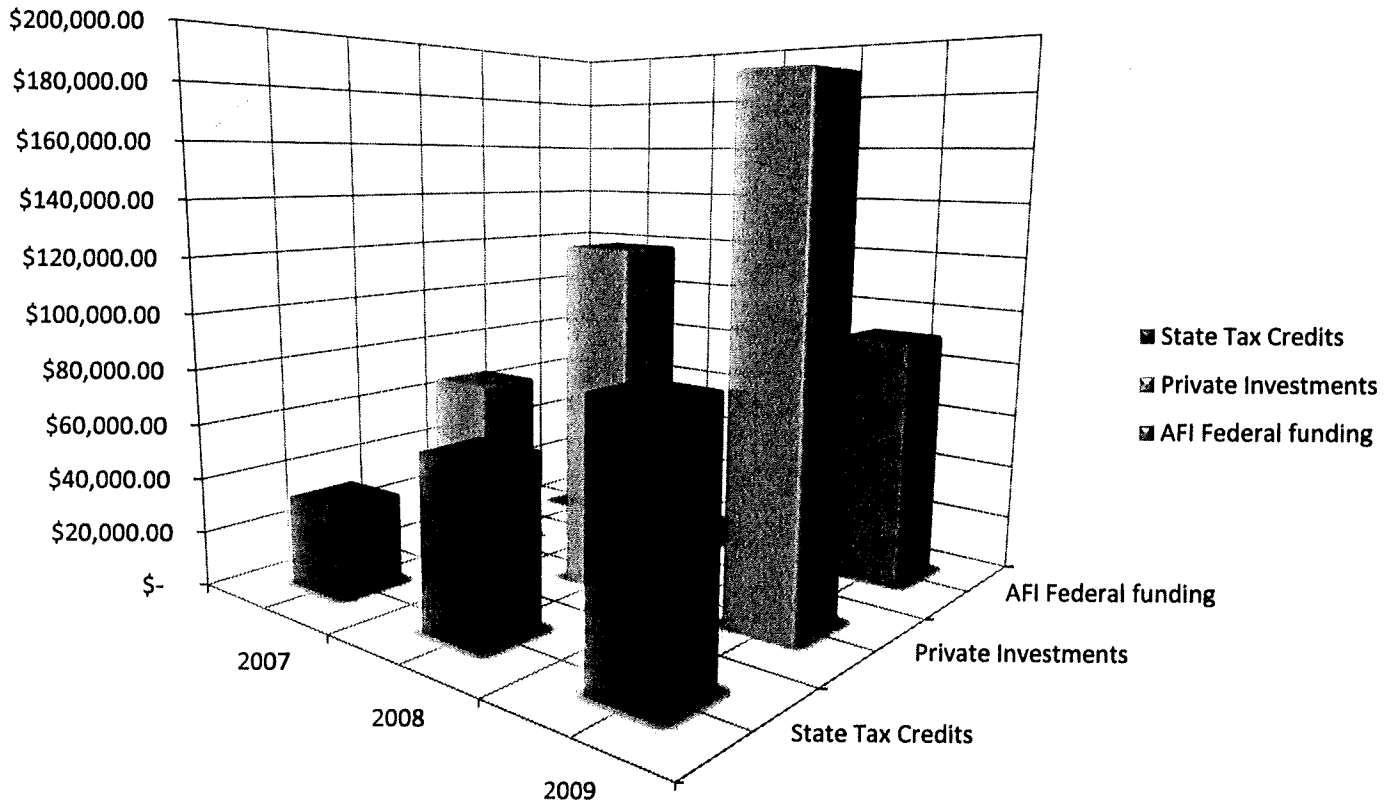
Status  Donation(s)

Approved by: \_\_\_\_\_

Please Mail All Forms & Documentation to: Kansas Department of Commerce – Community Development  
 Individual Development Account Program

1000 SW Jackson Street, Suite 100, Topeka, Kansas 66612-1354

# Overall IDA Investment with IHS



To: Senate Assessment and Taxation Committee,  
The Honorable Les Donovan, Chairperson  
Room 123-E, State Capital Building, 300 SW 10<sup>th</sup> Avenue, Topeka, KS 66612

From: Dale Nimz, Executive Director  
Kansas Preservation Alliance, Inc.  
12120 State Line Road, #128, Leawood, KS 66209

Date: February 9, 2010

Re: Senate Bill 472, AN ACT concerning income taxation; relating to certain credits; prohibiting future transferability thereof.

On behalf of the Kansas Preservation Alliance, the state-wide private not-for-profit organization advocating for historic preservation throughout the state, we oppose the deletion of paragraph 4,c, Section 11 K.S.A.2009 Supp.79-32,211. This is a change that will disrupt plans and preservation projects throughout the state.

Transfer of a portion of the state tax credits granted for qualified expenditures incurred in the preservation of qualified historic structures is very important for the re-development of historic buildings in Kansas. Transferability creates a free market for the credits which is more efficient in allocating investment than an administrative allocation. Transferability allows a private not-for-profit organization like the Alliance to use the credits to underwrite preservation of the former First National Bank building in Smith Center. KPA has invested more than \$150,000 in that project so far, but the sale of credits will help provide the margin between a successful completed project that benefits the whole community and a project that stalls without enough investment to complete the rehabilitation.

Transferability also is crucial in competing with neighboring states like Missouri and Oklahoma. If the market for preservation tax credits is lost, then investors will carry out projects in those states instead of Kansas. Our state will lose investment \$\$, jobs, increased tax revenue from successful projects, and the value and utility of well-maintained historic buildings.

National economic policy studies reviewed by the National Trust for Historic Preservation have documented that there must be a workable mechanism to place investment tax credits in the hands of investors who can use them. Transferability of the Kansas state preservation tax credit has done this and it should continue to work. States with a transferable preservation tax credit have an economic advantage in attracting capital and Kansans need that more than ever.

For the past seven years, the Kansas State Rehabilitation Tax Credit Program has been an unappreciated success. We urge you to oppose the deletion of paragraph 4c, Section 11 mentioned in SB 472 so the rehabilitation tax credit program can help our state.

Dale Nimz, Executive Director, Kansas Preservation Alliance, Inc.  
[www.kpalliance.org](http://www.kpalliance.org)  
785.979.8398

Sn Assmnt & Tax  
2-10-10

Attachment # 22

**Testimony**  
**SB 472**  
**February 10, 2010**  
**Casey Woods**

Mr. Chairman and Members of the Committee:

My name is Casey Woods and I am the Executive Director of the Emporia Main Street association. My chosen occupation places me on the front lines with Kansas small businesses; entrepreneurs and civic minded individuals striving to create jobs, strengthen local tax bases and produce communities that we can all be proud of. I'll let the historic preservationists talk about the importance of preserving history. I'm here to tell you that the tax credits being discussed today are an economic development tool, a job creation tool, a small business tool and one of the most effective large scale incentive plans that advocate for the cores of our Kansas communities.

In Emporia , we have witnessed the power of tax credits brought to bear upon a historic theatre, converting a building in shambles with a collapsed roof and a host of unimaginable problems into a premier multiuse facility that houses two thriving store front businesses and a growing Granada Theatre staff. We witnessed how this one historic project leveraged millions of dollars in new development with the creation of the Granada Plaza and Lofts on a vacant lot close to the theatre and a new one point six million dollar arts center adjacent to the Granada Theatre. New for profit entities, and the improvements to existing buildings that surround historic preservation projects inevitably improve the local property tax base and create new business clusters that aid in sales tax collection.

If you use Emporia 's Granada Theatre as a basis for the magnification effect employed by empowering historic preservation in commercial districts via historic tax credits, the impacts are astounding. \$700,000 in state tax credits have leveraged over \$7,000,000 in immediate area development (within one block) in just two years. Beyond construction jobs, new businesses, housing and static jobs have been produced. Eight business entities and twenty nine jobs have located in a new Emporia Arts and Entertainment District because transferable State Historic Tax Credits were available to the Granada Theatre.

A major component in the effectiveness of State Historic Tax Credits is their ability to transfer from one entity to another. One of the first questions asked by donors of a large scale project is whether tax credits are available. Tax credits allow developers to leverage more funds to complete projects, and the transferability of tax credits allow project managers to leverage more funds in donations or private capital. Historic Projects often cannot succeed without wide ranging community support, and transferability of credits creates a support incentive.

While TIF's and TDD's may work well in some areas, the historic tax credits generally help rebuild the cores of our communities, leveraging financing to turn sometimes neglected buildings into viable enterprises that utilize pre-existing public infrastructure and do not encroach upon agricultural land. The labor intensive activities generated by historic preservation projects employ local craftsman, artisans, plumbers, electricians, contractors and a host of other laborers. The mix

of skilled and unskilled labor required for a historic preservation project resonates throughout the community, and wages spent locally magnify the effect of tax credits earned.

I understand the difficult situation our state is in. I appreciate the fact that hard choices must be made to preserve basic functions. Kansas is full of rich history that is reflected in our architecture, but we are also a state of entrepreneurs and small businesses that leverage funding through tax credits to utilize our architectural resources to create jobs and revitalize our economy. We all know that our entrepreneurs will lead us out of this current economic crisis. Please don't take away the tools our entrepreneurs need to expedite that process.

Casey Woods  
Emporia Main Street  
"First Winner of the Great American Main Street Award in Kansas"  
12 East 5th  
Emporia, KS 66801  
Phone- 620-340-6430  
Fax- 620-340-6434  
e-mail- [main.street@emporia-kansas.gov](mailto:main.street@emporia-kansas.gov)  
web- [www.emporiainmainstreet.com](http://www.emporiainmainstreet.com)

**Testimony in Opposition to SB 472  
Senate Taxation Committee  
Wednesday, February 10, 2010  
John Belford, Waterman Properties**

Mr. Chairman and Members of the Committee:

I am John Belford, owner of Belford Electric in Wichita and partner in Waterman Properties. I am speaking in opposition to Senate Bill 472, which would eliminate the transferability of the state rehabilitation tax credits. In 2006, when Sedgwick County announced plans to demolish buildings for the Sedgwick County arena project, I was forced to find a new building for my business. There was no time to plan and construct a new building. Rehabilitating a historic building proved to be the best way to cut down construction time and create the best building for the money.

Like many historic buildings throughout the state, the Keep Klean Building had been vacant for decades – since a steam laundry had closed in 1978. When we started, the property was worth less than \$100,000, with most of its value based on the property's location near recent redevelopment in Wichita's Old Town. With the help of the federal and state rehab tax credits, we invested \$700,000 into revitalizing a building that otherwise would have been demolished. The project not only created construction jobs, but also greatly increased the property's tax valuation, thereby generating new local tax revenue.

With the project on the Keep Klean Building complete, I began plans for a rehabilitation of a nearby historic building, the Bond Bakery. The Bond Bakery was a mainstay in Wichita at a time when industries took advantage of Wichita's proximity to agricultural products like wheat and broomcorn. Like the Keep Klean Building, the Bond Bakery has been underutilized or mostly vacant for decades. Unfortunately, plans for a \$1,000,000 rehab of this building have been thwarted by recent changes to the tax credit program. The property's appraised value is less than \$300,000. But the proposed project has the potential to generate jobs, increase property taxes, and create sustainable space in the city's core.

Financing a \$1,000,000 project on a \$300,000 property requires gap financing. Unless we are able to transfer the state tax credits, we will not be able to leverage the financing possible to make this project a reality.

Sn Assmnt & Tax  
2-10-10

Attachment # 24

**Testimony in Opposition to SB 472**  
**Brenda Spencer, Wamego**  
**Senate Taxation Committee**  
**February 10, 2010**

Mr. Chairman and Members of the Committee – My name is Brenda Spencer. I would like to thank you for the opportunity to visit with the committee today. I have owned and operated my own preservation consulting business in Kansas for the past 16 years. I am passionate about preservation in Kansas because Kansas has an incredible resource in its historic buildings. I appear before you today in opposition to SB 472 because I know first-hand that historic preservation is economic development in cities and towns across our state, and because I fear that by eliminating the transferability of the Rehabilitation Tax Credit, you will inadvertently halt the majority of outside investment in our historic buildings.

I was working in downtown Manhattan when the Federal Tax Reform Act of 1986 virtually halted historic preservation activity as an investment tool. The Kansas Rehabilitation Tax Credit, passed in 2001, provided an unprecedented incentive to draw investors back to historic preservation in Kansas. This has saved numerous buildings across the state and has resulted in millions of dollars of investment and thousands of jobs that benefit Kansas by increasing local property taxes, generating income taxes and sales taxes from both the construction project and then by the businesses occupying these buildings.

Since 2002, I have had the opportunity to be a part of 43 historic tax credit projects in Kansas totaling \$36.3 million dollars. Ten of those projects involved developers – those projects totaled \$27.4 million. The balance - \$8.9M represented 33 projects, an average of \$270,000 per project. Over 75% of the tax credit projects I have been involved with since the establishment of the Kansas program were completed for non-for-profit organizations or community foundations and individual business or property owners. I am not aware of a single one of my project sponsors that used the tax credit solely to offset their personal tax liability – that would require that people are making money on these projects. In my experience, the tax credit proceeds rarely line developers or owners' pockets; it literally provides that extra infusion of cash that makes the project a go. The benefit of these credits is the ability to leverage equity in the project. Jay and Barbara Nelson purchased Strecker Art Gallery and the Historic Smith Building in downtown Manhattan. The Nelsons invested nearly \$200,000 in this downtown building and utilized both federal and state rehabilitation tax credits. They sold enough of their credits for cash to pay off their construction loan on the project. They told me this week unequivocally, they would not have been able to afford the project without the tax credits. Property owners, as well as developers, rely on the ability to capitalize the credits to make their projects cash flow.

Building owners already pay state income taxes on the federal tax credits. As taxable income, the change to refundable state credits would diminish the value of the credits, more than the transfer fees/discounting they now incur. We appreciate your committee's work to remedy the unintended consequences of last year's cap on the Rehab Tax Credit. I urge you to oppose SB 472 and maintain the Kansas Rehabilitation Tax Credit as a transferable credit in order to maximize the state's return on this investment and continue to attract investment in our state's historic resources. Thank you.

Sn Assmnt & Tax  
2-10-10  
Attachment # 25

**Testimony**  
**Hearing, SB 472**  
**Senate Taxation Committee**  
**Wednesday, February 10, 2010**  
**Garrison Hassenflu, Garrison Development Co.**

Mr. Chairman and Members of the Committee:

I am writing to urge the Senate Assessment and Taxation Committee to not recommend SB 472 for approval. That bill makes the state historic tax credits non-transferable. As one of the state's largest developers of historic structures that has invested over \$65M in the state and created over 700 jobs through use of the historic tax credit (HTC), I can tell you that would kill 90% of the investment created through the program. The larger types of commercial developments that need that credit to work would not have sufficient funds to get the project going. The buyers of the larger credit amount for the larger projects need to be able to re-sell the credits to 2<sup>nd</sup> or 3<sup>rd</sup> parties. For example, banks are by far the largest buyers of these credits and sell them secondarily to correspondent banks. Too many times those banks are so small they cannot take down the entire credit, since they do not have a large enough tax liability. So, the larger, lead bank would put together a consortium of small banks to invest in such a large project. Then, the credits would have to be transferable from the lead bank to the correspondent banks.

Further, the disallowance of transferability would put us at an economic disadvantage to Missouri and Oklahoma that have fully transferable credits. As a matter of fact, Oklahoma started out with a non-transferable credit, and did absolutely no transactions with that structure until they made them transferable. They certainly learned their lesson.

I am out of state on Wednesday and unable to personally testify, but I hope the points outlined in this correspondence are seriously considered. The credits must remain transferable to realize any economic gain.

Some Key Points to Consider:

1. Large deals need commitments to buy the credits in advance of project completion to close out the finance gap.
2. When companies pre-commit to buying tax credits, they do not know exactly when the credits will be available, and for which tax year.
3. As such, they need the ability to perform their normal financial intermediary role should several projects get completed in the same tax year.
4. The state will be redeeming credits at 100% on the dollar either way. It costs the State 100% of the dollar for the credits.
5. Under the current system, the larger job generating projects net around 80% on the dollar of credits **after tax**, depending upon size of the deal (there are legal tax strategies that allow for lower tax rates etc). So, that is even far better than a state that has 100% redeemable credits, as in those situations, 35% of the state dollar goes right to the federal government, and the deal may net 60% after state and federal taxes are adjusted.
6. So, going back to the fact that the state is out 100% on the dollar for each credit dollar, subjecting the credits to tighter restrictions actually wastes state funds, as the project may net closer to 50% after tax or less when folks do not have the ability to further transfer.
7. What a given state may want to do with credits of this type is to structure them to find the highest after tax return -- it costs the state 100% on the dollar as these are ultimately redeemed, so you want the project to get the highest net after tax percentage of that as you can get. Kansas currently has the right system.

Sn Assmnt & Tax  
2-10-10

Attachment # 26



**Presentation Regarding Senate Bill 472**

January 10, 2010

Lorna Moore, IDA Program Director  
Interfaith Housing Services, Inc.  
PO Box 1987  
Hutchinson, KS 67504-1987  
620-662-8370  
lornam@ihs-housing.org  
www.ihs-housing.org

I am the IDA Program Director at Interfaith Housing Services. I appreciate the opportunity to testify before you this morning but I not am speaking for myself today. I come on behalf of Aimee Knox, an IDA Program graduate and now a first time homeowner.

Aimee is a single mother with two small children whose mother heard about the IDA Program on a local radio station and suggested that Aimee attend our very first Informational Meeting.

At the time, she was working nights as a CNA at a local nursing home in Hutchinson and driving 20 miles back and forth to Arlington where she lived. Aimee desperately wanted to buy a house and move to Hutchinson but while supporting two children on only a CNA's salary she knew that saving enough money for down payment and closing costs on a home was impossible....until, that is, she heard about the Individual Development Accounts.

Aimee opened her account in June 2008 and began saving everything she could. She deposited her stimulus package check into her IDA and took on two part time jobs while she continued working full-time every night at the nursing home, even picking up overtime when it was available.

By November, Aimee had scraped together \$1500.00 and began looking at houses in Hutchinson. She soon found one she could afford that would meet their needs and made an offer. On December 23, 2008, Aimee and her children moved into their new home, their own home. And with boxes stacked all around them, they immediately put up their Christmas tree because Santa Claus was coming and Santa would find their new house.

Sn Assmnt & Tax  
2-10-10  
Attachment # 21

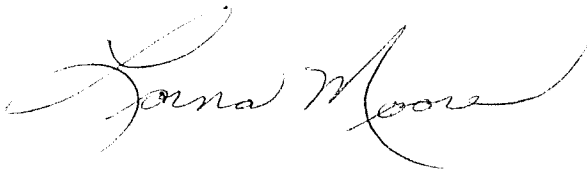
As I said, Aimee found a house she could afford and a house she could afford meant a house that needed some repairs. Since moving in, Aimee has continued saving and been able to paint, put new flooring in her kitchen and this fall she put on two new storm doors. She wanted to get those on before winter to help lower her heating bills and take advantage of the Energy Tax Credit she learned about in the First Time Homebuyer classes that we provided.

A mother and her young children have a home of their own. That alone is a nice story but Aimee's story goes beyond the purchase of her asset. Aimee gained so much confidence from learning to manage her own finances and save for the purchase of her first home that she began setting other goals for herself. I am sorry you do not get to hear directly from Aimee today because she is now enrolled in nursing school and had a practicum at Promise Regional Medical Center this morning.

The young girl who came to IHS earning minimum wage is now a homeowner and will soon become a registered nurse. Here are Aimee's own words, "because of the IDA program I now have the ability to set goals and reach them. I no longer have to depend on social services and rely on others to make sure my children have what they need. I am able to provide a better future for my family."

There are others just like Aimee and Sara who have purchased their assets; there are some who completed financial education and every month they save and dream of the day when they will reach their goal; then there are the many waiting to enroll, and hoping for their chance to finally find financial stability and a brighter future. This program is important to all of these households. The Individual Development Account Program is also important to our state and its economic growth; therefore, we hope it is important to you and respectfully ask you to please give careful consideration to our proposal.

Respectfully presented by,

A handwritten signature in cursive script that reads "Sara Moore". The signature is written in black ink and is positioned below the text "Respectfully presented by,".

## Presentation Regarding Senate Bill 472

January 10, 2010

Sara Nelson  
1539 Eastland Dr  
Hutchinson, KS 67501  
620.931.7370

My name is Sara Nelson and I am the owner of Sara Smiles, a small business bringing big new photography options to southcentral Kansas.

I grew tired of being constantly laid-off by manufacturing companies and wanted something more in life than working for \$2.13 an hour, 20 to 30 hours per week as a waitress. I wanted to provide a more stable future for my three children.

I have always enjoyed photography and have a keen eye for what makes a good picture, but I had no idea of how to start a business and at \$2.13 an hour, I never could have saved the nearly \$4,500 I needed to cover the cost of the equipment to get started.

Interfaith Housing Services and the IDA Program gave me the opportunity to do something I had only dreamed about. Financial Education classes opened my eyes to where my money was being wasted and taught me the skills I needed to make a budget and live on that budget. The matched savings proved just the incentive I needed to save my tips and deposit them into my Individual Development Account.

The small business mentor and coach that IHS connected me with was tremendously helpful as I began writing a business plan and preparing a budget. They helped me research and find the best prices on the equipment I needed. Mr. Scott even went with me to a local computer store to make sure they gave me what I needed at the very best price. This is not your typical program where they sign you up, tell you to save money and then leave you on your own to do it. They are there with you every step of the way, answering questions, giving advice and constantly providing support and encouragement.

Sara Smiles only started booking photography sessions and events in December and while it is not bringing in enough income to fully support my children and myself, I have several dates already booked for the spring and I am finding that less and less I have to ask my grandmother to help me out with routine expenses.

Sn Assmnt & Tax  
2-10-10  
Attachment # 28

I know what this program has done for me which is why I have recommended it to so many others, especially single mothers, who are struggling to stay caught up and who cannot even imagine getting ahead. Please don't take this program away. Please help them, too.

Respectfully presented,

Sara Nelson

WRITTEN TESTIMONY

TO THE SENATE ASSESSMENT AND TAXATION COMMITTEE

BY MICHAEL L. MARSH, C.P.A.

PRESENTED ON FEBRUARY 10, 2010

*Opposition to S.B. 472, which proposes to amend K.S.A. 2009 Supp. 79-32,211*

Thank you, Representative Donovan and committee members, for allowing me the opportunity to present written testimony regarding S.B. 472. I am submitting this written testimony to urge the Senate Assessment and Taxation Committee to not recommend S.B. 472 for approval.

As K.S.A. 2009 Supp. 79-32,211 is currently written, it allows a credit in the amount equal to 25% or 30% of the qualified expenditures incurred in the rehabilitation and preservation of qualified historic structure by a qualified taxpayer or organization exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code and which is not income producing. It also allows for the transferability of the credit by a qualified taxpayer or organization exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code.

The historic tax credit gives investors a reduction in their state tax liability in exchange for financing the development of qualified historic structures. Currently projects receive \$0.85 to \$0.95 per tax credit dollar for the credits, depending on the size of the development. Whereas, if the credits were only redeemable by the owner of the historic property, about 30 to 40 percent of the state credits would go to paying for federal and state income taxes, meaning only 60 to 70 percent of the state credit would go to the development cost of history structures.

Also a conundrum lies in the fact by virtue of their tax exempt status, not-for-profit organizations, cannot utilize the credits provided by the program. Consequently the credit must remain transferable in order not-for-profit organizations to receive an economic benefits and financing for rehabilitation of their qualified historic structure.

Sn Assmnt & Tax  
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Attachment # 29

K.S.A. 2009 Supp. 79-32,211 as currently written allows the owners of historic structures to receive the maximum economic benefit possible from the credit. Therefore, in order to assist owners and not-for-profit organizations in the development of their historic structures, I urge you to not pass S.B. 472.



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February 10, 2010

TO: Assessment and Tax Committee  
FROM: Julia Manglitz, AIA, Representing AIA Kansas  
RE: Opposition to SB 472

Good Morning, Chair Donovan and Members of the Committee. I am Julia Manglitz representing the American Institute of Architects in Kansas. I am a licensed architect and serve as the Chair of the AIA Kansas Committee for Historic Resources.

AIA Kansas is a statewide association of architects and intern architects. Most of our 700 members work in over 120 private practice architectural firms designing a variety of project types for both public and private clients. Our members are designing projects for the future, aiming to meet the "triple bottom line": healthy economy, healthy people and healthy environment.

AIA Kansas opposes SB 472 because of the provision that eliminates the transferability of the State Historic Preservation Tax Credits. These credits are used by homeowners, small businesses, non-profits and national corporations to help fund construction on historic properties in the state. The State Historic Tax Credits have helped make possible over \$235 million dollars in non- single family residential construction since 2001. The non-residential construction is precisely the type of construction that will not happen without the incentive the transferable State Historic Tax Credit provides. During the hearing on SB 378 this committee heard testimony about projects that were being halted because of the cut to the program last year. Removing the transferability of the State Historic Tax Credit will kill these construction projects. Construction activity is one of our key economic indicators. The success the State Historic Tax Credit Program has had in generating substantial economic impact is directly tied to the transferability of the credits.

The construction industry jobs created by historic preservation projects are skilled jobs that typically command higher wages. They are place specific jobs that cannot be outsourced. Renovation projects spend a higher percentage of the project dollars on labor than new construction projects. Historic renovations increase the value of properties that are already on the tax rolls in areas typically served by existing public infrastructure and services. And all of this creates other revenue streams for the State whether it takes the form of income, sales, property or other taxes.

The historic preservation projects the State Historic Preservation Tax Credit helps make possible are green. The U.S. Green Building Council has certified one under their LEED 2.0 program – in Salina. Pioneer President's Place provides low income housing for seniors and the transferable State Historic Tax Credit was a key part of the financing for this project. At the end of World War II we created incentives for development to keep our economic machine running as the manufacturing for the war became less necessary. And it worked, we created growth and it has served us well, for a number of decades. But we can see it has also created sprawl and sprawl is not sustainable development. As cities grow into one another there is no where else to grow. It is not good for our natural resources. It strains our public services and

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infrastructure. Sustainable development is re-development. The State Historic Preservation Tax Credit is a powerful tool that we have to create incentives that sustain economic growth, sustain our natural environment, and keep a significant portion of our economic machine running.

There is a perception that others are making a profit on the State of Kansas. Profit is not a dirty word in a free market such as ours, it is the goal. Profit is what keeps businesses open and creates jobs. The State Historic Preservation Tax Credit is a tool the state has to stimulate the economy. Until the recent cap state tax credits were selling for 80-90 cents on the dollar. That is because the credits are transferable and desirable. Every dollar of state historic preservation tax credit leverages 3-5 private dollars in investment. A 10-20% "loss" that results in a 300-500% return on investment is a better bet than any investment Wall Street has to offer.

Many large redevelopment projects are historic preservation projects. And many of the largest in Kansas simply would not happen without the State Historic Preservation Tax Credit. It is not infrequent to find out-of-state investors associated with these projects. This is money that could be spent elsewhere. That money is buying tax credits and it is buying goods and services and creating jobs, in Kansas. The money buying those credits is helping to fund community and non-profit projects that benefit Kansas communities and Kansans. That money could be spent elsewhere and it's not, precisely because our State Historic Tax Credits are transferable. In the trying economic times we face, we should not toss aside a key competitive edge we have to attract investment in Kansas.

AIA Kansas urges you to oppose SB 472. I'll answer questions at the appropriate time.



STATE OF KANSAS

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HOUSE OF  
REPRESENTATIVES

**Committee Assignments:**  
**Ranking Minority Member:**  
Agriculture and Natural Resources Budget  
**Member:**  
Appropriations  
Aging and Long-Term Care  
Joint Committee on Arts and Cultural Resources

February 9, 2010

Senator Les Donovan  
Members of the Senate Assessment and Taxation Committee

Thank you for the opportunity to provide testimony today regarding Tax Credits for Individual Development Accounts (IDA).

Five years ago today, I expressed my support of House Bill 2222 because I believed it encouraged individuals in poverty to save money for worthy projects ---- and to have those savings matched by a trust fund. The idea of IDAs help people pull themselves up by the bootstraps and it has been a very successful program in other states.

When I requested this legislation in 2004, I learned that Rep. Ed O'Malley , Olathe, was also working on a similar bill. We combined our efforts and were eventually successful in passing this involved and intricate legislation. After it was passed, I followed up during the interims by setting up regional meetings and speaking at conferences to promote the use of this tool through social service organizations and KSU Extension agents throughout the state. We had plenty of qualified people who wanted to save for the specified purposes, but the marketing of the tax credits proved to be a weak link.

As the IDA was a new program for the state of Kansas, there was little state guidance for organizations seeking to implement the IDA's within their service area; furthermore, as they began creating their programs, little funding was available for marketing and selling the tax credits necessary for the initial and long-term success of the program.

However, in 2007, Interfaith Housing Services began their IDA program and has proven to be the missing link between the Department of Commerce, local organizations, and the clients this bill was designed to serve. IHS continues making headway for individuals who desire saving what they can, developing their assets and in turn assists them toward realizing the American dream of self-sufficiency. Having employed a full-time fundraiser to sell the tax credits, IHS continues designing and implementing the IDA program.

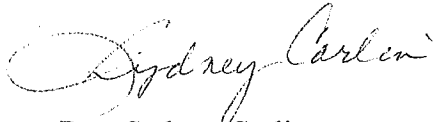
Recognizing IHS as the most effective program in the State, the Department of Commerce approached them to consider becoming the statewide administrator of the program. This simply means that under the direction of the KDOC, IHS would act as a clearinghouse and route all allocated tax credits to local agencies utilizing a consistent program statewide, managed and

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administered to create an entire network of effective programs. IHS presently acts informally to this end as they continue designing the processes and procedures for implementing this plan.

I am confident that due to the consistent marketing efforts that are now in place this program will mature and offer the potential for personal and financial growth of individuals who want to establish their own business, purchase a home, receive special skills training or a post secondary education.

I propose funding continue and approval be granted for IHS to continue as intended. The real benefits of the program need to have true opportunities for success before prematurely ending the potential of providing countless individuals the opportunity for self-sufficiency. It is my recommendation to you, my fellow representatives, that funding continue for tax credits for the Individual Development Account (IDA) program.

A handwritten signature in cursive script that reads "Sydney Carlin".

Rep. Sydney Carlin  
District 66