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STATEMENT OF BRAD SMOOT  
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Regarding 2013 House Bill 2285  
HOUSE TAXATION COMMITTEE  
February 21, 2013

Mr. Chairman and Members:

Thank you for the opportunity to confer with the Committee today regarding HB 2285, a bill that has significant legal and fiscal impact across the state. Unfortunately, we must respectfully oppose the passage of HB 2285, as it is currently written. It is unfortunate because we actually agree with the proponents on several of their stated objectives. We agree with the Kansas Chamber of Commerce's official position statement on this bill ("codify the intent of the 2006 Legislature, which overwhelmingly passed legislation exempting business machinery and equipment from personal property taxes"). We agree that the bill should codify the Property Valuation Division Guidelines and Directives (see Attachment A). And, we agree that the bill should be prospective so as not to interfere with pending tax appeals.

Unlike what many of you have been told, this isn't a policy debate about the exemption of new machinery and equipment acquired after the '06 exemption statute. We do not quarrel with that policy decision. What we oppose is HB 2285, which does not codify current law; does not adopt the PVD Guidelines and Directives; and dramatically changes Kansas' property tax law to the benefit of several large industrial taxpayers but to the detriment of tens of thousands of other taxpayers, including other businesses, farmers and homeowners. HB 2285 is an expansion of the '06 exemption well beyond the intent and justification of that law.

Here's the brief history of this issue: In 1986, the voters of Kansas approved the Classification Amendment (Article 11, Section 1). Prior to that time, it didn't matter so much (for tax purposes anyway) whether an item was considered real or personal property, although an extensive body of case law had developed to make the distinction as to which improvements were considered realty and which were considered personal whether affixed to the ground or not. In 2006, the Legislature removed commercial or industrial machinery and equipment or CIME from the tax rolls altogether if such property was installed after 2006. Now, whether a given item was considered realty or CIME made a huge difference. One class is taxable and other tax-free.

In the '90's, Farmland Industries built a nitrogen fertilizer plant (NFP) adjacent to its existing oil refinery in Montgomery County and was given a generous 10-year tax abatement (long before the '06 exemption of M&E). During that period of paying no property taxes on the improvements, Farmland went bankrupt. Eventually, Coffeyville Resources acquired both the refinery and the NFP and they are operated under different limited liability companies. A picture of the two plants is attached (see Exhibits 1-8). On the left of Exhibit #1 is the refinery which has been in Montgomery County for decades. Historically, refineries across the State have been classified as predominantly real property. Farmland even argued in the bankruptcy case that a particular piece of equipment located at the refinery was an improvement to real estate and, therefore, a fixture; not machinery

and equipment or personal property. The NFP is on the right side of the railroad tracks. The next seven (7) pictures are of some of the NFP structures attached to the real estate in a similar fashion as the refinery. The “items,” as the proponents would call them, are attached to 28 million pounds of concrete and steel. The County’s Appraiser concluded that the NFP was an improvement or fixture to real estate under the three-prong test of Kansas’ common law and should be taxed as such. CVR insists that all of the improvements are M&E, even though little if any of the property would be exempt under the ’06 tax exemption since it was installed years before. CVR took its case to the Court of Tax Appeals, as all of us have the right to do regarding our property tax disputes. After years of discovery and trial, CVR lost. That case is now on appeal to the Kansas Court of Appeals; has been fully briefed and awaits scheduling of oral arguments.

Last Session, the proponents put many lawmakers in a panic under the guise of restoring the ’06 tax exemption on M&E (after the COTA decision) and requested introduction of SB 317 and HB 2501 and several other versions of the same concept – to make what was once real estate into personal property for tax purposes by redefining what is M&E. These bills would have applied to all commercial improvements to real estate; not just those acquired after the ’06 exemption. Fortunately, for Kansas, the Legislature did not take the bait and instead asked for a Legislative Post Audit of the situation.

This year, the proponents have a different tact. HB 2285 attempts to redefine CIME and distinguish it from “fixtures and improvements” by a different method than current law. It does this in one sentence found on page 2, lines 12-15 as follows: “Commercial and industrial machinery and equipment items shall not become a fixture or improvement for property tax purposes if the item may be disassembled, detached or removed from the real property without causing significant damage to the item.” It’s only the damage to the “item” that matters under this test. That is not, and has never been, the common law test in Kansas for what is a “fixture” to real estate. The current test, reflected in the PVD Guidelines and Directives, involves the three-prong test of attachment, adaptation and intent to make permanent. (Again, see Attachment A.) That test, in place when the Classification Amendment was enacted by the Kansas’ voters and when the ’06 exemption law was passed, is replaced by HB 2285 with a test far more favorable to their business interests – if you can disassemble, detach or remove it, it must be personal property. Under HB 2285, refineries, fertilizer plants, grain elevators, helium plants and numerous others could pay reduced taxes or no taxes at all.

HB 2285 is so much more than it has been made out to be. As introduced, it is not a clarification of current law or a codification of PVD Guides. HB 2285 would change Kansas’ property tax law in very dramatic and costly ways. It is not about the ’06 tax exemption for new M&E but about all improvements and fixtures to commercial property. And, it will erode the tax base of many counties and damage the base for virtually all counties, cities and other taxing subdivisions. As previously noted, it is unfortunate that we must oppose HB 2285. Thank you for your time and interest in our point of view.