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**Testimony of Larry Weians on behalf of Sprint Corporation
In Support of Kansas HB 2388
Kansas House Taxation Committee - March 18, 2019**

Good afternoon Chairman Johnson and members of the Committee.

My name is Larry Weians and I lead the tax function at Sprint Corporation. I am pleased to submit written and oral testimony to the Committee outlining our support of House Bill 2388 (“HB 2388”).

The proposed changes in HB 2388 are necessary to ensure that Kansas taxpayers are not disadvantaged by certain tax provisions that were included in the federal Tax Cuts and Jobs Act of 2017 (“TCJA”). Without HB 2388, certain taxpayers, particularly those in capital intensive businesses, risk losing Kansas tax deductions that they are entitled to and would have enjoyed prior to the enactment of the TCJA.

HB 2388 makes three important changes for corporate taxpayers for tax years beginning after December 31, 2017:

- Lengthens the Kansas loss carryover period from 10 years to 20 years.
- Allows a Kansas loss carryover to offset 100% of a Kansas taxpayer’s taxable income (Kansas law currently limits the offset to 80%, based on changes in the TCJA).
- Allows a Kansas taxpayer the option to elect out of their federal bonus depreciation deduction and instead take depreciation over the tax life of the asset.

Why do Kansas corporate taxpayers need these changes now?

Included in the TCJA was a key change to how property can be depreciated for federal tax purposes. Depreciation is the means by which taxpayers deduct the cost of fixed assets. Essentially, depreciation allows a taxpayer to deduct a portion of a fixed asset’s cost each year until the total cost has been deducted. The TCJA, in a provision that was designed to stimulate investment and increase business activity, allows taxpayers to now deduct 100% of the cost of an asset in the year of acquisition. In addition, the TCJA creates incentives for taxpayers to pursue this immediate expensing for all fixed asset purchases, even if they don’t currently need additional tax deductions. This immediate expensing of fixed asset purchases is sometimes referred to as “bonus depreciation.”

These “bonus depreciation” deductions are causing some taxpayers – especially those in capital intensive businesses – to go from having positive taxable income to having tax losses as a result of the additional deductions. The TCJA, recognizing that taxpayers are now more likely to be in a loss position, compensates for this by allowing federal losses to now be carried forward indefinitely, updating the prior federal rule which had previously allowed such losses to be carried forward for 20 years. If such an extension of the loss carryforward period had not been enacted, taxpayers would have been at risk of losing their federal tax deductions due to expiring loss carryforwards.

Currently, if a Kansas taxpayer claims bonus depreciation deductions for federal tax purposes, they are required to claim them for Kansas tax purposes as well. As with the federal rules, this will cause some Kansas taxpayers to go from having positive Kansas taxable income to now having Kansas losses. Currently, the loss carryforward period in Kansas is only 10 years.

Because of the changes described above, Kansas taxpayers are now at increased risk of having their Kansas tax deductions forever lost. Kansas taxpayers in capital intensive businesses are now less likely to have positive Kansas taxable income through possibly 2026, when the bonus depreciation rules completely phase out. For a Kansas taxpayer with a tax loss in 2018, they currently have until 2028 to use that loss with the existing 10-year carryforward period. However, if that taxpayer continues to create Kansas tax losses through 2026 due to the bonus depreciation rules, the taxpayer effectively has only two years (2027 and 2028) to use its Kansas loss carryforward before it permanently expires.

How does HB 2388 help?

HB 2388 lengthens the Kansas loss carryforward period from 10 years to 20 years to prevent Kansas loss carryforwards from expiring unused due to the new bonus depreciation rules. While the new federal rules allow an indefinite carryforward period (i.e., no expiration), a 20-year carryforward period in Kansas seems more fiscally responsible and should be sufficient to prevent Kansas from being viewed as a jurisdiction that is “unfriendly” to investment.

In addition, because the existing Kansas statute refers to the federal statute in determining how much of a loss carryforward can be used in any given year, HB 2388 restores pre-TCJA Kansas law where a loss carryforward should be allowed to offset 100% of available Kansas taxable income.

Lastly, in order to assist Kansas taxpayers that might have existing (pre-2018) loss carryforwards that are now at risk of expiring over the next few years due to the bonus depreciation rules, HB 2388 proposes that Kansas taxpayers be allowed to “elect out” of bonus depreciation for Kansas tax purposes, even if they claim bonus depreciation for federal tax purposes. This change would enable a Kansas taxpayer to return themselves to an income position in Kansas in order to utilize an expiring Kansas loss carryforward if so desired.

The cumulative effect HB 2388 would be to ensure, in a fiscally responsible manner, that Kansas taxpayers are not unintentionally harmed by the TCJA, and that Kansas continues to be viewed as a jurisdiction that is friendly to business investment. Thank you for your consideration of my testimony, and I respectfully ask for your support of HB 2388. I would be happy to address any questions you may have at the appropriate time.