

Approved: March 9, 1993
Date

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION.

The meeting was called to order by Chairperson Audrey Langworthy at 11:08 a.m. on March 8, 1993 in Room 519-S of the Capitol.

Members present: Senator Langworthy, Senator Tiahrt, Senator Bond, Senator Corbin, Senator Hardenburger, Senator Lee, Senator Reynolds, Senator Sallee, Senator Wisdom

Committee staff present: Tom Severn, Legislative Research Department
Chris Courtwright, Legislative Research Department
Bill Edds, Revisor of Statutes
Don Hayward, Revisor of Statutes
Elizabeth Carlson, Committee Secretary

Conferees appearing before the committee: Mark Burghart, Department of Revenue
Bob Corkins, KCCI
Ron Smith, Kansas Bar Association
Bill Bryson, Dir. of Conservation, KCC
Don Schnacke, KIOGA
Craig Grant, KNEA

Others attending: See attached list

Senator Langworthy called on Senator Hardenburger, who introduced her two grand nieces who are paging today. Laura and Emily Kennedy are from Stilwell, Oklahoma and helped in the committee meeting today. She also introduced her sister-in-law, Donna Kennedy from Manhattan, and her niece, Sue Kennedy, mother of Laura and Emily.

HB 2090--Collection of delinquent taxes by Department of Revenue

Mark Burghart, Department of Revenue, appeared to support and explain the need for **HB 2090**. This bill was requested by the Department. The bill would authorize the Department to contract with a debt collection agency to collect delinquent taxes on in-state accounts. This provision was suggested by Post Audit. At the present time, there are approximately 135,000 delinquent accounts. A law was passed similar to this which would permit the Department to contract with debt collection vendors to collect out-of-state delinquent taxes. He said the experience with the collection of out-of-state delinquent taxes has been favorable. Any contract would be subject to the bid procedure. The vendor usually has a 17.3 percent collection fee. This fee is passed on to the tax payer so it is not a cost to the Department. In his testimony (Attachment 1) he said any contract would be subject to several guidelines and ethics acts. He said the most trouble is with locating the tax payer.

Bob Corkins, KCCI, stated they have some reservations about the procedures although they think it is a commendable step toward privatization. (Attachment 2) The KCCI is concerned about what compensation method would be used and if it would be on a contingency basis. Two more questions were concerning why collect only on small accounts, if the collection vendor can collect on small account, why can't they collect on large accounts; and how many employees may the Department of Revenue cut through this privatization of services.

In answer to some of the questions posed by the Committee, Mr. Burghart answered the vendors are paid for services rendered--only if they have collected the account. The collection agency is sent the accounts and they have to report back to the Department. The collector does not get paid if they have not collected the taxes. There was also a question about a change in KSA 75-5148 which covers the out-of-state collections and Mr. Burghart said it would also have to be changed. He felt there would be no cuts in employees.

Ron Smith, Kansas Bar Association, said they are in support of **HB 2090**. (Attachment 3) He said they

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION, Room 519-S
Statehouse, at 11:08 a.m. on March 8, 1993.

would like to propose another alternative which would give the Department of Revenue another tool to collect delinquent taxes. He said the Federal law allows the Secretary of the Treasury to settle tax disputes with the taxpayer with an offer of compromise on the amount owed. Similar rules could be written if the law allowed the Secretary of Revenue this discretion. He suggest **HB 2090** be amended with a version of 1989 HB 2054 which is printed on the back of his testimony.

The committee requested the Department of Revenue to present a balloon to amend the statutes and to visit with the Secretary of the Department of Revenue if there is a need for the flexibility proposed and come back with the changes.

HB 2093--Disclosure of tax information

Mark Burghart, Department of Revenue, said this is a bill also requested by the Department of Revenue. (Attachment 4) This bill would authorize the disclosure of certain information derived from returns and reports filed with the Director of Taxation to other state agencies. Two of the agencies who would use this information would be the Department of Wildlife and Parks and the Department of Human Resources. Originally the bill would have allowed the disclosure of oil and gas production statistics derived from severance tax reports. This provision was deleted by the House Committee on Taxation.

Bill Bryson, Director of Conservation, KCC, said the KCC would be supportive of the original bill and recommends the original measure be restored. (Attachment 5) This would avoid duplication between the agencies. He said in 1986 a bill was passed which stated the appropriate agency to collect oil and gas production reports was the Department of Revenue for both the Department of Health and Environment and the Kansas Corporation Commission. Therefore, the provision in the original bill should be restored.

Don Schnacke, KIOGA, said he agreed with the testimony of Bill Bryson. He said Kansas is no longer furnishing statistics on oil and gas as stricken on page 2, line 5. He requested the Department of Revenue be allowed to keep these statistics flowing so the national organizations could have this information.

HB 2505--State school district finance fund, sources

Chris Courtwright, Research Department, reported that **HB 2505** amends a provision of the School District Finance and Quality Performance Act as it pertains to certain revenues earmarked for transfer from the State General Fund to the State School District Finance Fund in January, March, and June of each fiscal year. The amendment eliminates the requirement of law that the enhanced sales and income taxes imposed by the 1992 school finance legislation be treated as a demand transfer from the State General Fund to the State School District Finance Fund for school district general state aid. The amendment becomes effective on publication in the KANSAS REGISTER so it would apply to the current fiscal year as well as subsequent years. The law is amazingly complicated and it gets more complicated as the years go by. Elimination of earmarking would make unnecessary the need to maintain elaborate accounting procedures in order to track the enhanced revenues.

Craig Grant, KNEA, spoke as a neutral conferee, stating they had some concerns about **HB 2505**. He said they do want the system to work. Their concern is the reinstatement of the exemptions for sales tax on new construction with no provision for replacement and an attempt to lower the \$3600 base budget for schools to a \$3530 level. (Attachment 6) However, they do not want to derail the bill.

The hearings were closed.

Senator Sallee moved the approval of the minutes for February 22, 23, 24, 25, 26, and March 4, 1993. The motion was seconded by Senator Bond. The motion carried.

The meeting adjourned at 12:00 noon.

The next meeting is scheduled for March 9, 1993.

DATE: March 8, 1993

[illegible]

STATE OF KANSAS

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Department of Revenue
Legal Services Bureau

MEMORANDUM

To: The Honorable Audrey Langworthy, Chairperson
Senate Committee on Assessment and Taxation

From: Mark A. Burghart, General Counsel
Kansas Department of Revenue

Date: March 8, 1993

RE: 1993 House Bill No. 2090

Thank you for the opportunity to appear in support of H.B. 2090. The bill would authorize the Department of Revenue to contract with a debt collection agency to collect delinquent taxes on in-state accounts. The Department has had statutory authority to use collection agencies for out-of-state accounts since 1983. The use of a collection agency has previously been recommended by the Division of Legislative Post Audit.

The bill would allow the Department to fully utilize all available collection techniques to recover tax dollars which are due and owing the State of Kansas. Due to budget constraints, personnel limitations and the large number of delinquent accounts (approximately 135,000), some accounts are not being pursued in a timely fashion. The longer an account remains dormant, the more likely it is that a collection will not be made. The ability to use in-state collection agencies is one way of addressing this problem. The Department's experience with collection agencies on out-of-state accounts has generally been favorable and the Department is confident that the same results would be obtained on in-state accounts. A collection agency would be used only after the Department has exhausted all of its options and has failed to make a collection. Such an agency would be used primarily for low dollar accounts and accounts where the business has been inactive for a long period of time.

Senate Assessment + Taxation
March 8, 1993
att. 1-1

REASONS FOR SUPPORTING PROPOSAL:

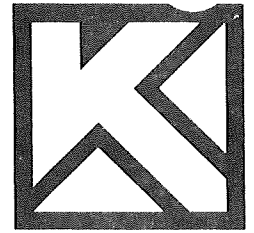
1. Fairness - 97% of Kansas taxpayers pay their tax liability in a timely fashion. It is not fair that the other 3% should avoid the payment of these taxes.
2. Revenue Stability - by allowing the Department to use all available collections alternatives, taxes which are legally due and owing are collected. This avoids tax increases to fund essential state services. Approximately \$120,000,000 in state taxes remain delinquent that are not involved in a bankruptcy proceeding. In addition, the Department has over \$71,000,000 in pending claims in bankruptcy court.

OTHER INFORMATION:

1. Any contract with a collection agency would be subject to the bid procedure specified in K.S.A. 75-3739. The Department recently obtained a new vendor for its out-of-state collections. Four vendors provided sealed bids. The vendor selected has a 17.3% collection fee. This fee is passed on to the delinquent taxpayer pursuant to K.S.A. 75-5148.
2. The collection percentage on referrals of out-of-state accounts has ranged from 13% to 18%. The low collection percentage is good because it shows that the Department is referring only the worst accounts to the collection agency - those which the Department has been unable to collect after exhausting all its efforts.
3. Any contract with a collection agency would require that the agency be subject to:
 - (A) Federal Trade Commission's "Guides Against Debt Collection Deception"
 - (B) The Federal Communications Act
 - (C) The Code of Ethics and Code of Operations of the American Collectors Association, Inc.
 - (D) Fair Debt Collection Practices Act
 - calls must be made between 8 am and 9 pm
 - the collection agency shall not use threats, intimidation or harassment.

I would be happy to respond to any questions you might have.

LEGISLATIVE TESTIMONY



Kansas Chamber of Commerce and Industry

500 Bank IV Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321

A consolidation of the
Kansas State Chamber
of Commerce,
Associated Industries
of Kansas,
Kansas Retail Council
March 8, 1993

HB 2090

KANSAS CHAMBER OF COMMERCE AND INDUSTRY
Testimony Before the
Senate Committee on Assessment and Taxation
by
Bob Corkins
Director of Taxation

Madam Chair and members of the Committee:

My name is Bob Corkins, director of taxation for the Kansas Chamber of Commerce and Industry, and I appreciate the chance to express our thoughts on HB 2090. KCCI supports this proposal, which we view as a very commendable step toward greater privatization of government services, with one major reservation: the bill is silent about the means of compensation for those private collection agencies which may be employed.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

*Senate Assessment & Taxation
March 8, 1993
Attachment 2-1*

Normally, compensation would not be a significant issue. The whole point of privatization is to reduce government overhead costs and we presume the Department of Revenue would use whatever compensation method best achieves that objective. However, tax collection services are unlike other government services which are good candidates for privatization.

Other states' courts have concluded that contingent fee arrangements with private tax collectors violate public policy. Contingent fee arrangements inject a bias which motivates collectors to pursue those taxpayers who represent the largest potential for collection. The result is an uneven enforcement of the law.

The attached newsletter I've provided describes two such court cases regarding the contracting out of tax auditing. Perhaps *auditing* may be validly distinguished from *collection* (wherein the extent of liability has already been established) or perhaps it may not. In previous testimony in the House, the Department of Revenue stated that their intent would be to turn over to a private firm only those accounts which the Department chooses, and that they would choose to contract only for the collection of low-dollar accounts. KCCI believes problems might nevertheless arise.

If contingent fee compensation is selected -- and the bill does not specify which compensation method may be used -- then bias will not have been eliminated. Assuming the Department's intent is carried out, a private firm may still exercise its discretion among those accounts which it is assigned. Their exercise of discretion may just be less conspicuous because they can opt to pursue some accounts more aggressively than others.

This problem could be avoided by specifying in this bill the method by which private collection agencies are to be paid. An amendment could dictate that they be compensated on a "reasonable cost plus fee" basis instead of a contingency.

I raise two final questions for you to consider. First, if a private firm can more economically collect on small accounts, why couldn't it provide an even greater advantage by collecting larger accounts? Second, by how many employees may the Department of Revenue cut its payroll through the privatization of their collection service? Perhaps their entire staff of tax collectors could be eliminated.

Again, thank you for your time and consideration.



JUDICIAL REPORT

Amy Eisenstadt
Tax Counsel

Judicial Report No. 163
January 13, 1993

NORTH CAROLINA COURT OF APPEALS OUTLAWES "BOUNTY HUNTERS"

The North Carolina Court of Appeals held that a contingent fee contract between a county tax assessor and a private auditing firm was void as against public policy in Appeal of Philip Morris U.S.A. from the decision of the Cabarrus County Board of Equalization, N.C. Ct. App., No. 9110PTC762 (1/5/93). This case involved a contract between the Cabarrus County tax assessor and Tax Management Associates ("TMA"), under which TMA would receive payment of 15% of property taxes assessed, including penalties. Although there was no evidence of abuse in this case, the Court held that a contingent fee arrangement which gave the auditing firm a financial stake in the auditing process "gives the appearance of bias and potential abuse and violates public policy."

State law does authorize county boards to hire outside firms to assist county assessors. However, there is no express authorization for the use of contingent fee compensation. The Court rejected the County's argument that the absence of a specific bar indicated that the legislature intended to allow contingent fee audit contracts. Rather, contingent fee contracts must be closely scrutinized by the courts where there is any question as to their reasonableness.

The contract between the County and TMA contained provisions that "lead to the inescapable conclusion that it would be in TMA's best interest to audit the businesses which own the most property and which would provide the largest discovery." Therefore, there is substantial potential for bias, overreaching and abuse, making fair and impartial administration of taxation "difficult at best". The Court also looked to the decision of the Georgia Supreme Court in Sears, Roebuck and Co. v. Parsons (1991), which held a similar contract void as against public policy. However, the Court stated that the provisions of the North Carolina contract are even "more egregious to the notion of fair and impartial taxation than in Sears" because TMA was given discretion to choose the taxpayers it audited, while in Sears the county made that decision.

COMMITTEE ON STATE TAXATION

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***Legislative Information
for the Kansas Legislature***

TO: Members, Senate Tax Committee
FROM: Ron Smith, KBA General Counsel
SUBJ: HB 2090

KBA Position

The Board of Governors supports legislation granting taxpayers authority to offer the state a compromise of their tax liability, in conformity to federal administrative tax provisions.

Background

HB 2090 is all about how best to obtain overdue tax revenue for state government. KBA has no position on the original bill.

Mark indicated in his House testimony there are 135,000 delinquent accounts representing \$120,000,000 that is overdue.

We would like to offer an additional means of collecting a portion of that amount.

Federal law allows the Secretary of the Treasury to settle tax disputes with taxpayers with an "offer to compromise" the amount owed. The Secretary or someone within the IRS is designated to make decisions whether to accept the compromise.

The Secretary is not required to accept the offer. The Secretary can,

and sometimes does, decline the offer.

Compromises in the IRS are usually found when there is a question of whether the sum can be collected in full, or when there is a question whether the taxpayer owes the amount in question.

Similar rules could be adopted here, if the statutes first allow the Secretary of Revenue to promulgate an "offer of compromise" system by rule and regulation.

We suggest that you amend HB 2090 with a version of 1989 HB 2054, which KBA introduced for this purpose, and which is reproduced on page two. Thank you.

This legislative analysis is provided in a format easily inserted into bill books. We hope you find this convenient.

*Senate Assessment & Taxation
March 8, 1991
attachment 3-1*

Section ____ (a) The secretary of revenue may compromise any civil liability, including tax, interest or additions thereon or penalties imposed by the state of Kansas under chapter 79 of the Kansas Statutes Annotated and administered by the department of revenue. Whenever a compromise is made by the secretary, there shall be placed on file in the office of the secretary the opinion of the general counsel for such department, or such counsel's delegate, with relation thereto, with a statement of: (1) the amount of tax assessed; (2) the amount of interest, additional amount, addition to the tax or assessable penalty imposed by law on the person against whom the tax is assessed; and (3) the amount actually paid with the terms of the compromise. Notwithstanding the foregoing provisions, no such opinion shall be required with respect to the compromise of tax in which the unpaid amount of tax assessed, including interest, additionally amount, addition to the tax or assessable penalty is less than \$2,500 in the aggregate. Any such compromise of tax by the secretary may be made only upon one or both of the following grounds: doubt as to liability or doubt as to collectibility.

(b) Offers in compromise shall be submitted on forms prescribed by the secretary. The submission of an offer in compromise shall not automatically operate to stay the collection of any tax liability, but enforcement of collection may be deferred if the interests of the state of Kansas shall not be jeopardized thereby.

(c) The secretary of revenue shall adopt rules and regulations to provide for the administration of this section.

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Department of Revenue
Legal Services Bureau

MEMORANDUM

To: The Honorable Audrey Langworthy, Chairperson
Senate Committee on Assessment and Taxation

From: Mark A. Burghart, General Counsel
Kansas Department of Revenue

Date: March 8, 1993

Re: 1993 House Bill No. 2093

Thank you for the opportunity to appear in support of H.B. 2093. The bill would authorize the disclosure of certain information derived from returns and reports filed with the Director of Taxation to other state agencies. Generally, information contained on income tax returns and excise tax returns is strictly confidential and unauthorized disclosure constitutes a class B misdemeanor and results in immediate dismissal from employment. As amended by the House, the bill would authorize the following:

1. The disclosure of a taxpayer's name, last known address and residency status to the Department of Wildlife and Parks to be used solely in its license fraud investigations.
2. A reciprocal exchange agreement with the secretary of human resources for the purpose of identifying taxpayers who have failed to file a return or pay the tax under any of the provisions administered by the Department of Revenue and the Department of Human Resources.

As originally introduced, the bill also would have allowed the disclosure of oil and gas production statistics derived from severance tax reports. This information is currently available from the Conservation Division of the Kansas Corporation Commission (KCC). The Department is prohibited from disclosing the information because of our confidentiality provision. (K.S.A. 75-5133) The amendment would merely allow the Department to provide the same information that is available from the KCC. This particular provision was deleted by the House Committee on Taxation.

I would be happy to respond to any questions you might have.

*Senate Assessment + Taxation
March 8, 1993
Attachment 4-1*

TESTIMONY BY THE KANSAS CORPORATION COMMISSION
BEFORE THE SENATE ASSESSMENT AND TAXATION COMMITTEE
ON HOUSE BILL 2093

As Amended by House Committee
March 8, 1993

My name is William R. Bryson. I am Director of the Oil and Gas Conservation Division of the Kansas Corporation Commission. I am appearing on behalf of the Commission to express some concerns over the amendments to House Bill 2093 which were made by the House Committee on Taxation.

The Kansas Corporation Commission did not testify on House Bill 2093 when hearings were held in the House Taxation Committee because we believed the proposed amendment to K.S.A. 75-5133(c) relating to the disclosure of oil and gas production statistics was merely a legal clarification by the Department of Revenue as to what type of data provided by payers of oil and gas severance tax should be held confidential. Had the Commission testified, it would have substantiated and supported the intent of the original version of HB 2093 to make oil and gas production statistics available to the public while reserving confidentiality for tax information.

In 1986, the Legislature passed House Bill 3069 which reflected agreement among the Department of Revenue (DOR), the Kansas Corporation Commission (KCC) and the Department of Health and Environment (KDHE) that fee assessments imposed by KCC and KDHE for oil and gas regulation and the severance tax collected by DOR would be more efficiently collected by one agency. The appropriate agency was Department of Revenue. This move to eliminate fee collection by the agencies also eliminated the need to report oil and gas statistics to three agencies. Thus, since July 1986, DOR has been the receiver of oil and gas production reports and taxes or assessments for both KCC and the Department of Revenue. It should be noted that after July 1, 1986, KDHE, due to the passage of HB 3078, no longer had statutory authority to collect fees or assessments on oil and gas as the regulatory program was transferred to the Commission. I have attached a copy of the

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March 8, 1993

Attachment 5-1

Testimony on HB 2093

March 8, 1993

Page 2

Supplemental Note on House Bill 3069 which explains the reason for the 1986 Legislation.

The Kansas Corporation Commission, therefore, suggests that returning the measure to the original form of HB 2093 as introduced in the House would be in keeping with the original legislative intent in 1986. This would allow the major oil and gas data collection service to received their information on oil and gas production statistics.

The KCC does get some oil and gas production statistics from operators and pipelines but since 1986 the bulk of the industry reports goes directly to DOR as it is supposed to. The KCC currently relies on DOR's oil and gas data compilations and does not strive to duplicate the effort through parallel requirements to industry. The Supplemental Note on House Bill 2093 indicates an availability of the data from KCC that is not there unless DOR or the information services provide it. The KCC would have to put on a couple of additional paraprofessionals or clerical staff to accommodate the compilation of statistical information should the Commission have to assume responsibility for the level of work currently done by DOR.

I have discussed the Commission's concerns with Representative Roe, Chair of the House Taxation Committee and Representative McKinney, who authored the amendment to HB 2093. Both indicated they were unaware of the past efforts in 1986 to eliminate duplication from the oil and gas reporting system.

Your consideration of our concerns will be deeply appreciated.

SESSION OF 1986

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 3069

As Amended by Senate Committee
on Assessment and Taxation

Brief of Bill*

H.B. 3069, as amended, would consolidate reporting and payment procedures and requirements governing the severance tax on oil and gas administered by the Department of Revenue, environmental fees prescribed by the Kansas Department of Health and Environment (KDHE) and oil and gas conservation fees assessed by the Kansas Corporation Commission (KCC). A single report and payment would be submitted to the Department of Revenue, with subsequent distribution of the moneys among the respective agencies.

The bill would require reporting of oil and gas production data by the last day of the month following the end of the month when severance occurred. Payment of fees and taxes would be due the 20th day of the second month after the month of severance. Under current law, three different filings are due on three different dates.

Finally, the bill would deny a severance tax exemption in cases when a lease operator does not hold a valid operator license from the KCC.

* Bill briefs are prepared by the Legislative Research Department and do not express legislative intent.

Background

The bill was developed by the Department of Revenue, KDHE, and the KCC in the interest of simplifying filing procedures for both the oil and gas industry and the state agencies responsible for its regulation.

On final action, the House amended the bill to specify limitations on fees related to oil and gas production and also made technical changes in the bill. The Senate Committee on Assessment and Taxation amended the bill to delete all the House amendments.



KANSAS NATIONAL EDUCATION ASSOCIATION / 715 W. 10TH STREET / TOPEKA, KANSAS 66612-1686

Craig Grant Testimony Before
Senate Assessment & Taxation
Monday, March 8, 1993

Thank you, Madame Chairman. I am Craig Grant and I represent Kansas NEA. I appreciate this opportunity to speak to the committee about HB 2505.

I signed the list to share concerns. We are aware that there will be little practical effects of taking away the earmarking of certain taxes for school finance, especially since a much larger share will need to be appropriated through the Ways & Means process.

However, Kansas NEA has concerns. Just as the groups who worked hard for tax earmarking for highways are concerned when a bill is introduced to take away the demand transfers, we have a wrinkle of worry about whether there is some motivation hiding under the surface.

Last year the legislature made a commitment to the Kansas people to lower reliance on property taxes and to more equalize opportunities for all Kansas children. You passed a series of taxes to help accomplish that effort. Now we see some possible disturbing events in the last few weeks. A couple of concerns would include:

1. The reinstatement of the exemptions for sales tax on new construction with no apparent replacement for the revenue; and
2. An attempt to lower the \$3600 base budget for our schools to a \$3530 level.

The dismantling of our revenue stream and the possible lowering of a base amount which is already too low causes us concerns.

Much talk about funding in the "out" years was given on the floor of both Houses last year. If the recent events which we have noted are for the purpose of starving our new finance plan into certain destruction, then we have problems. To the extent that HB 2505 fits into that scenario, we then do have concerns.

Our philosophical statement today is only meant to bring awareness to our concerns, not to derail this bill which, on the surface, will probably have no real impact on what actually happens. We do want the system to have a chance to work.

Thank you for listening to our concerns.

*Senate Assess + Taxation
March 8, 1993
attachment 6*