

## MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION.

The meeting was called to order by Chairperson Audrey Langworthy at 11:10 a.m. on March 9, 1993 in Room 519-S of the Capitol.

Members present: Senator Langworthy, Senator Tiahrt, Senator Martin, Senator Bond, Senator Corbin, Senator Feleciano Jr., Senator Hardenburger, 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: John T. Hermes, Landscaping, Inc.  
Jim Herynk, Kansas Greenhouse Growers  
Guy Dresser, Allen Press, Lawrence  
David Margolies, Ph.D, Prof., K-State,  
Secretary-Treasurer of Kansas Entomological Society

Others attending: See attached list

Senator Langworthy opened the meeting by calling the committee's attention to the minutes for March 8, 1993.

### **SB 99--Sales tax exemption for nursery machinery and equipment**

John T. Hermes, Hermes Landscaping, Inc., Johnson County, appeared as a proponent for **SB 99**. He read from a prepared statement. (Attachment 1) He said he thought it is unfair to the nursery industry not to exempt them from sales tax. He said certain exemptions for farm machinery, equipment and parts are granted to the farming industry. The Department of Revenue, by Rule and Regulation, has denied the nursery industry the exemption although in many of the Kansas statutes, horticulture and nurseries are defined as farming. There was discussion from the committee concerning the kind of equipment which he used in his landscaping business and also the cost of the equipment. He was asked if he was talking about sales tax or property tax, and he said, both, we are not exempt from either tax. He was asked if he had to pay sales tax on all repairs and he replied that they do pay sales tax. He was also asked about the number of organizations he was representing in his association and he said about 40 he thought.

Jim Herynk, Herynk's Greenhouse and Nursery, Topeka, read from a prepared statement. (Attachment 2) Mr. Herynk asked that the greenhouses be included in the exemption from sales tax and to support **SB 99**. He said if the purpose of tax exemptions is to stimulate state wide economic development and foster growth, then the entire horticultural and floricultural industry would be a prime candidate for sales tax exemptions. The committee discussed the fiscal note for **SB 99** which they said was not a true picture. A member of the committee said the bill just speaks to nurseries and should it be expanded to include horticulture?

They were asked if they knew what other states do in regard to sales tax and are the nurseries subject to sales tax? Mr. Hermes said he knew of no other state which paid sales tax. Mr. Herynk also read a note from Cameron Reese, Kansas Association of Nurserymen, who is a proponent for the bill. (Attachment 3)

The committee had questions for representatives of the Department of Revenue, Steve Stotts and Mark Ciardullo, regarding the fiscal note and also the definition of agriculture and farming. The committee asked them to relook at the fiscal note and to work with these people in figuring a more realistic fiscal note.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION, Room 519-S  
Statehouse, at 11:10 a.m. on March 9, 1993.

The hearing was closed on **SB 99**.

**SB 385--Sales tax exemption for subscriptions to 501(c)(3) organization periodicals**

Guy Dresser, Allen Press, Lawrence, spoke in support of **SB 385**. (Attachment 4) He said their business sells to many other states and they do not have to charge tax on the periodicals which they print. The out-of-state businesses are exempt but they have to charge sales tax to their clients in Kansas. This is due to a recent ruling by the Department of Revenue. He said this makes a bookkeeping nightmare. He also addressed the concept of fairness and compassion for many small and scientific periodicals. He said these organizations for which these periodicals are printed are established to benefit the public but not to make a profit.

David C. Margolies, Ph.D., Secretary-Treasure of the Kansas Entomological Society, spoke as a proponent for **SB 385**. (Attachment 5) He said his organization is composed of 500 members of a nonprofit scientific organization who would benefit from such a change. He said the society focuses on insects and the Allen Press publishes a journal for their membership. The sales tax has added about \$3,000 per year to the costs. He said any increase in the cost of the membership and publication would result in a loss of members and subscriptions. He asked the committee to approve **SB 385**.

The committee asked Steve Stotts if there is a fiscal note on this bill and he said not at this time.

The hearing was closed on **SB 385**.

Senator Bond moved approval of the minutes for March 8, 1993. The motion was seconded by Senator Sallee. The motion carried.

Senator Reynolds introduced her two pages, Megan and Jenny, from Sublette, who helped with the meeting today.

The meeting was adjourned at 11:55 a.m.

The next meeting is scheduled for March 10, 1993.

**GUEST LIST**  
**SENATE ASSESSMENT AND TAXATION COMMITTEE**

**DATE:** March 9, 1993

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
<del>James Nerynk</del>	7331 SW 61 <sup>ST</sup>	Nerynk's Greenhouse / KGBIT
CAMERON REES	5805 SW 22nd terr. #1	SKINNER GARDEN STORE / KAN
Marty Vanier	Manhattan, KS	CKFO
Guy Dresser	1325 Raintree, Lawrence	Allen Press
David Margolies	1636 Leavenworth, Manhattan	Kansas Entomological Society
Star Stotts	Topeka	Revenue
Tom Tumell	Topeka	KS GRAIN & FEED ASSN
Harold Pitts	Topeka	ANRP-CETF
Alan Stepput	P Topeka	Pete McGill & Assoc
Jim Allen	"	KFLC
Mary Camacho	Topeka	Senator Frahm
Ann Pommeyer	Lawrence	Senator Sallee
Richard Bell	Topeka	AP
John Johnson	12421 Santa Fe	Hermes Nursing
Roger Bell	5th & Cherry, Overland	Willis Dunning
KEITH R LANDIS	TOPEKA	CHRISTIAN SCIENCE COMM 624 PUBLICATIONS FOR KS
Roger Franko	"	KS GOV CONSULT
Tom Whitaker	"	KS MOTOR COLLICUS ASSN

TESTIMONY FOR HEARING ON SENATE BILL 99

MARCH 9, 1993

TOPEKA, KANSAS

11:00 A.M.

My name is John T. Hermes. I am with Hermes Nursery in Johnson County, Kansas. We have been in business in Johnson County since 1965.

I am here today to testify on behalf of the nursery industry in order to help correct some unfair practices that result in discrimination against our industry and which are proposed to be corrected in Senate Bill Number 99. Certain exemptions for farm machinery, equipment, and parts are granted to the farming industry under KSA 79-3606. Under another regulation (92-19-39) the exemption is denied to our industry. It, 92-19-39, states in part, "nor does farming or ranching include such commercial operations as a floral shop, turf farm, or nursery, to the extent such floral shop, turf farm, or nursery primarily cultivates products intended to be of an ornamental or decorative nature". While this regulation is not specifically on point in denying the exemption to the nursery, the department

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of revenue in fact does deny the exemption to our industry by policy. I believe to treat the nursery industry in this manner is inconsistent with the recognition of nurseries as farming operations in the vast part of the United States. In many of the Kansas Statutes, horticulture and nurseries are defined as farming. For the narrow purpose of unfairly denying the nursery industry the exemption the department has resorted to this regulation number 92-19-39 to insert a definition of nurseries which excludes them from benefiting in this sales and use tax exemption. This isolated definition is totally inconsistent with the rest of the Kansas statutes.

Example: KSA 79-1545 in part, " (5) "Farming purposes" means:

- (A) Cultivating the soil or raising or harvesting any agricultural aquacultural or horticultural commodity including the raising, shearing, feeding, caring for, training, and management of animals on a farm or aquatic plants and animals in an aquaculture operation;
- (B) handling, drying, packing, grading, or storing on a farm or aquaculture operation any agricultural, aquacultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm or aquaculture operation regularly produces more than  $\frac{1}{2}$  of the commodity so treated; and
- (C) the planting, cultivating, caring for or cutting of trees,

or the preparation, other than milling, of trees for market."

Most nurseries and greenhouses in Kansas, in fact, know they are widely recognized as farming operations and are availing themselves of the tax exemption. It is upon audit that the department of revenue collects these taxes plus penalties and interest. In discussions with the department of revenue, they have argued that they are justified in denying these exemptions to this industry because landscape, horticulture, etc. are not food crops. That same argument could be applied in part or in total to such crops as the following:

- Corn used for ethanol production for fuel
- Soybeans used extensively for plastics and coatings
- Christmas trees now specifically granted the exemption and clearly not a food crop

Grower cash receipts for nursery, greenhouse, and turf grass agriculture totalled \$8.4 billion in 1991, thus making it rank sixth among all commodity groups. It is nearly 11% of all farm crop cash receipts. Farm cash receipts for nursery and greenhouse crops in 1991 exceeded receipts for all food/grain crops by \$1.6 billion. Nursery and greenhouse receipts were

also 67% higher than the combined value of all sugar and tobacco crops. I would like to point out the following:

1. The U.S. Department of Agriculture regularly includes nurseries in its census reports, does extensive research on nursery crops, and regulates its trade as it does other crops.
2. The Environmental Protection Administration recognizes nurseries in its regulation of soil pollutants.
3. The Internal Revenue Service recognizes nurseries as farming operations by its allowance of certain accounting methods generally available to farmers.
4. USDA Economic Research Service recognizes nurseries as farming operations.

Among crop categories, only soy beans with a cash value of \$12.4 billion and corn valued at \$10.1 billion outranked nursery and greenhouse crops. Three livestock categories: cattle, dairy, and hogs also produce more farm income. Nursery/greenhouse crops now rank sixth among all farm commodities.

The Kansas Department of Agriculture includes nurseries in its

regulation and inspection processes. The committee of Kansas Farm Organizations have unanimously recommended support of Senate Bill Number 99 and we urge your favorable consideration on its outcome. Thank you.



TESTIMONY FOR HEARING ON SENATE BILL NO. 99

MARCH 9, 1993

TOPEKA, KANSAS

11:00

I'm Jim Herynk. For 21 years my wife and I have owned and operated Herynk's Greenhouse and Nursery here in Topeka. I am the immediate past president of the Kansas Greenhouse Growers Association; an association that currently has 166 members. I also represent the greenhouse growers as a member of the Committee of Kansas Farm Organizations.

I urge you to support SENATE BILL NO. 99. But I am also here to ask you to consider expanding the proposed tax exemptions for the nursery growers to include all of Kansas agriculture, and more specifically, the greenhouse growing industry.

Kansas agriculture is changing. The farmers of yester year would hardly recognize the Kansas agri-business industry of today. With today's technology agriculture has expanded its product base and has turned the formerly traditional products into products that meet the needs of the 21st century.

Expanding our product base means producing alternate crops...crops for which there is a need... and more importantly, crops for which there is a market. By themselves, alternate

crops will never dominate the agricultural scene, but as a whole they have a significant, positive impact and benefit to the economy of Kansas. If we are to remain competitive, we must be ready for change, expansion, challenges and competition.

When the Free Trade Agreement with Mexico is finalized the Kansas greenhouse industry will face competitive challenges. Much of the increased production from Mexico will be targeted for markets throughout the central United States. Any freight disadvantage Mexico may have will be minimized by the differences in our production costs; specifically, those of labor, tools, farm machinery, and utilities. The temperate climate of Mexico will forgo the need for natural gas, other heating fuels, and electricity; all of which are a major factor in our production costs. Only as long as it is cost effective, can we produce Kansas grown products and continue to employ thousands of Kansans.

If the purpose of tax exemptions is to stimulate state wide economic development and foster growth, then the Kansas Greenhouse growers, indeed, the entire horticultural and floricultural industry, is a prime candidate for sales tax exemptions.

Consider the impact of the greenhouse grower and greenhouse grown crops on the Kansas economy...

A survey of Kansas greenhouse growers taken in November of 1991 shows some impressive facts. At that time there was almost 3 million sq ft in production, producing an estimated annual sales of \$160,000,000, with an estimated payroll of nearly \$27,000,000. Greenhouse growers are efficient farm operations, keeping a keen eye on production costs and market trends.

Per Capita consumption of cut flowers in the U.S. has increased 29.2% from 1986 to 1989.

Per Capita consumption of greenhouse potted flowering plants in the U.S. increased 30.8% from 1986 to 1989.

Per Capita consumption of bedding plants in the U.S. increased 51.9% from 1986 to 1989.

Most states consider greenhouse growers to be a contributing part of a state's total agricultural picture, having a significant effect on that state's economy. Furthermore, most governing agencies recognize greenhouse growers to be a part of agriculture. As a way of determining the effect of the horticulture and floriculture industry on the economy of Kansas, Kansas Agriculture Statistics, in conjunction with affiliates of KSHS, Kansas State Board of

Agriculture, and Kansas State University, is conducting the first Kansas Horticulture Industry Survey. There is no doubt among any of us in the greenhouse crop production industry that the figures will show an increasing growth trend. It is with good reason that the following agencies consider the greenhouse growers to be agriculture.

\* The KANSAS STATE BOARD OF AGRICULTURE and KSHS are developing a "Grown in Kansas" logo/marketing program to promote Kansas grown, non food products. 186 growers have signed up to participate in this program.

\* The COMMITTEE OF KANSAS FARM ORGANIZATIONS acts as an umbrella under which the Kansas Greenhouse Growers Association falls.

\* The USDA requires that greenhouse growers participate in a yearly greenhouse crop production census survey.

\* KANSAS STATE UNIVERSITY'S courses of study for both Ornamental Horticulture and Floriculture are part of the Agriculture Department.

\* The IRS recognizes greenhouse growing operations as farm operations for the purposes of accounting procedures and the treatment of family members as employees, thereby preserving the concept of the "family farm."

\* The KANSAS DEPARTMENT OF AGRICULTURE is the governing agency that regulates and inspects greenhouse operations and wheat farmers alike.

\* The KANSAS AGRICULTURE DAY includeds the greenhouse growers as part of their celebrations.

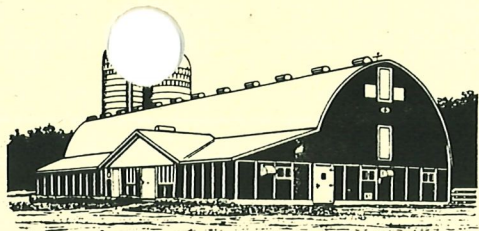
So...what is agriculture? Is it tradition? or is it discovering a need, growing, cultivating, and harvesting a product to meet that need, and then getting that crop to market?

Consider the ambiguity of the current laws as they relate to sales tax exemptions. Under the present laws, tax exemptions are allowed for production costs of aquacultural crops such as water lillies and cat tails. But the production costs of my Easter Lilly crop is not tax exempt. Under the proposed ammendment, production costs of nursery materials will be exempt from sales tax, and I agree that this is as it should be, but the production costs for the geranium or tomato transplant I grow, using an identical process, will not be tax exempt.

Shouldn't we look at the whole farming process and its contribution to the economy of Kansas rather than individual crops or products and their use. Shouldn't we be asking if a particular crop generates income for the state of Kansas and benefits mankind?

urge you to consider the effect of the greenhouse growers and of greenhouse grown crops on the economy of the state of Kansas. Compare it to that of the nursery growers. Consider the similarities in their farming process and the contribution each make to the economy of Kansas. I urge you to consider giving the same tax exempt status to the greenhouse grown crops that you are currently considering in this ammendment for the nursery grown crops.

Thank You



# Committee of Kansas Farm Organizations

**Marty Vanier, DVM**

**Legislative Agent  
1728 Thomas Circle  
Manhattan, Ks 66502  
913/539-9506**

**Committee of Kansas  
Farm Organization Members**

Associated Milk Producers, Inc.

Kansas Agri-Women Association

Kansas Association of Nurserymen

Kansas Association of Soil  
Conservation Districts

Kansas Association of Wheat Growers

Kansas Cooperative Council

Kansas Corn Growers Association

Kansas Electric Cooperative

Kansas Ethanol Association

Kansas Farm Bureau

Kansas Fertilizer and  
Chemical Association

Kansas Grain and Feed  
Dealers Association

Kansas Grain Sorghum Producers

Kansas Livestock Association

Kansas Meat Processors  
Association

Kansas Pork Producers Council

Kansas Rural Water  
Districts Association

Kansas Seed Industry Association

Kansas Soybean Association

Kansas State Grange

Kansas Veterinary Medical Association

Kansas Water Resources Association

Kansas Water Well Association

Mid America Dairymen, Inc.

Western Retail Implement  
& Hardware Association

The Committee of Kansas Farm Organizations is a coalition of 26 agribusiness organizations that spans the full spectrum of Kansas agriculture, including crop, livestock and horticultural production, input suppliers, allied industries and professions.

On February 16, 1993, CKFO voted to support SB 99.

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Attachment 3*

Remarks addressing Senate Bill No. 385, March 9, 1993, before the Kansas State Senate Assessment and Taxation Committee

Guy Dresser, Vice President  
Allen Press, Inc.  
1041 New Hampshire Street  
Lawrence, Kansas 66044  
(913)843-1234  
(913)843-1274 FAX

Thank you for the opportunity to speak to your committee as a proponent of Senate Bill No. 385, which will amend the law governing Kansas sales tax "to exempt all sales of subscriptions to newspapers or periodicals of a nonprofit organization which is exempt from Federal income taxation pursuant to Section 501(c)(3) of the Federal Internal Revenue code of 1986."

First let me mention why my company, Allen Press, has an interest in this bill. We are a small, family owned, printing firm in Lawrence. Our primary business is the production of scientific and other scholarly periodicals for nonprofit scientific associations and societies. We print and distribute publications for approximately 150 different organizations, two of which are Kansas societies, the Kansas Entomological Society, and the Kansas Academy of Science, and the remainder of which are based mainly on the East Coast. In addition we have a few customers in Europe and Australia. As presently written, Kansas law requires our customers, the societies, to charge sales tax on sales of subscriptions and memberships to libraries and individuals who reside in Kansas, in the same way that companies making catalog sales in Kansas are technically liable for tax. As a practical matter, I do not believe the state revenue office pursues these organizations for taxes, because of the Quill v. North Dakota court decision, which held that the companies were not liable for collecting the sales tax unless they had an affiliate or facility in the state. However, since Allen Press is a Kansas company, and we print and distribute the periodicals, the state has argued that Allen Press should pay some or all of the tax. We disagree with this, since our transaction is with a out-of-state entity, and out-of-state sales are tax exempt under the current law. However, both we and our society clients want to be in compliance, therefore we have an interest in establishing an exemption for periodical sales by 501(c)(3) nonprofit organizations. As interpreted by the state revenue office, the Kansas law puts Allen Press at a competitive disadvantage against the six or seven other firms who specialize in our area of printing, none of whom have facilities in Kansas. This is our "selfish" motive for advocating the exemption, but we believe there are several other compelling reasons for you to consider as well.

Section QQ of the present law exempts "all sales of tangible personal property and services purchased by a nonprofit museum or historical society . . . including a nonprofit organization which is organized for the purpose of stimulating public interest in the exploration of space . . . ." This very narrow exemption appears to apply only to items purchased (not items sold) by very specific kinds of 501(c)(3) organizations. Since this applies to purchases, it is somewhat off the subject of the current deliberation, but it does seem unfair that historical societies and space exploration societies

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*Attachment 4-1*



should be exempt from tax on the items they purchase, when all other kinds of nonprofit societies are not.

Through a colleague at a subscription agency, I learned that California, a state noted for the strictness of its sales tax laws, has exempted the kinds of organizations we are considering exempting in Kansas. In their revenue and taxation code Section 6362.8, effective November 1, 1991, California has exempted "any newspaper or periodical published or purchased by an organization that qualifies for tax exempt status under Section 501(c)(3) of the Internal Revenue code."

In appealing to you to recommend passage of this law, I would like to address three concepts: fairness, practicality, and compassion. First it seems to me to be unfair to charge sales tax on purchases by or sales of an organization that has been set up for the public good and exempted from federal income tax as a nonprofit 501(c)(3) scientific or scholarly association. The activities of these organizations benefit the public in many ways, whether they be medical, scientific, or in other academic disciplines. They are intentionally designed not to make a profit, and therefore to charge sales tax on their activities seems to pose an undue burden on them.

The second issue is that of practicality. It is impractical both for the state revenue office and for ourselves or the societies, to ask us to undertake the bookkeeping necessary to capture sales tax on those subscribers who happen to reside in Kansas. The revenue that might be raised by charging this sales tax is quite small. These organizations typically have fewer than 100 members or subscribers in Kansas. The tax on 100 subscriptions might amount to only \$150 or so, per organization. The bookkeeping required to sort out the subscription revenue from subscribers in Kansas would probably cost us, or the society, more than the tax. This was one of the reasons for the ruling in the Quill v. North Dakota case.

Finally, I would like to try to appeal to your compassion. Many of these small scientific and scholarly organizations are having a hard time staying afloat in today's economic environment. University libraries have been a primary source of revenue for the societies, but many universities are now cutting back on subscriptions to periodicals. Again, these associations were established to benefit the public at large, not to make a profit. They operate on tight budgets, and therefore I appeal to you not add to their burdens by charging sales tax on their sales of periodicals.

On behalf of Allen Press and our customers, thank you for your consideration of Senate Bill No. 385.

THE KANSAS ENTOMOLOGICAL SOCIETY  
(Central States Entomological Society)

Department of Entomology, Kansas State University  
Manhattan, Kansas 66506

Testimony of David C. Margolies, Ph.D., Secretary-Treasurer of the Kansas Entomological Society, presented on 8 March 1993 to the Senate Taxation and Assessment Committee regarding S.B. 385 which amends the Kansas retailers' sales tax act.

I am representing the Kansas Entomological Society to support the change in the Kansas sales tax proposed in S.B. 385. The change would exempt the sales of subscriptions to periodicals of a nonprofit 501(c)(3) organization. We are 500 member nonprofit scientific organization who would benefit from such a change.

The purpose of the Kansas Entomological Society is to promote the interests of entomology in the broadest sense. The Society is the focus for entomological science in the central states region. Because of our history, we are particularly interested in, but not limited to, the study of insects that are found in and affect Kansas. Our Constitution states "The Society shall be operated not for profit and solely [sic] for scientific and educational purposes." Our elected and appointed officers are professional scientists who serve the Society voluntarily and without payment.

Our major service to our science and our members is publication of the Journal of the Kansas Entomological Society. The Journal is considered one of the best entomological journals in the US and is well respected internationally. Our current membership dues, which include a subscription to the Journal, are \$25 (\$10 for students), and institutional subscriptions are \$78-90 depending on the country. These low rates keep the journal affordable and, therefore, available. Editorial charges to authors, which cover our printing costs, are \$45 per page, which is competitive with other American entomological journals.

Our request for changing the sales tax law stems from both practical and policy considerations. As a practical consideration, memberships, subscriptions, and editorial charges must cover production costs. For the last several years our costs have slightly exceeded revenues, but we have used some reserves to keep our dues, subscriptions, and charges steady. However, state sales tax adds about \$3,000 per year to these costs. Payment of state sales tax in addition to rising publication costs may force us to increase dues, subscriptions, and charges. Such increases, while not onerous, will likely result in a drop in membership, loss of library subscriptions, and fewer submissions.

The policy consideration, which is more significant, is the inconsistency of the current law [K.S.A. 79-3606 (ss)]. It is unclear why this law exempts from sales tax "a nonprofit museum or historical society" and "a nonprofit organization which is organized for the purpose of stimulating public interest in the exploration of space ... which is exempt from federal income taxation pursuant to section 501(c)(3)" but requires payment from other 501(c)(3) organizations which are organized for educational purposes, such as the Kansas Entomological Society.

For these reasons I ask, on behalf of the Kansas Entomological Society, that this Committee approve S.B. 385 and send that recommendation to the full Senate.

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*Attachment 5*