

Approved: March 11, 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 10, 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 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: Chris Courtwright, Research Dept.
Albert O. Arnold, Jr., A.F. & A.M.
Mary Hafenstine, Woman's Club, Topeka
Harold Riehm, KSAE
John Malone, Council 2332, Knights of Columbus

Others attending: See attached list

Senator Langworthy called committee's attention to the minutes for March 9, 1993

HB 2035--Classification of property for taxation purposes

Chris Courtwright, Research Department, briefed the committee on **HB 2035**. (Attachment 1, 2, 3, and 4) He said that in the state's first classification amendment in 1989, "all other urban and rural real property not otherwise specifically subclassified" (as residential real property, agricultural land or vacant lots) was assessed at 30 percent. Fraternal benefit societies were among the first not-for-profit organizations to seek some form of relief. The new assessment level starting in tax year 1993 is 12 percent on "real property which is owned and operated by a not-for-profit organization not subject to federal income taxation pursuant to section 501 of the federal internal revenue code, and which is specifically included in this subclass by law." The provision requires a Legislative enactment to define which organizations are entitled to receive the 12 percent assessment level.

Senator Langworthy called the committee's attention to two letters which have been passed out from Parsons Country Club and Dodge City Country Club. (Attachment 5 and 6)

Albert O. Arnold, Jr., A.F. & A.M., spoke as a proponent for **HB 2035**. He listed the current charitable programs his organization provides. (Attachment 7) He said the current classification rate has resulted in the loss of some 30 lodges and more are in difficult circumstances. He asked the committee's support in passing **HB 2035**.

Mary Hafenstine, President, Woman's Club, Topeka, asked the committee to include the Woman's Club of Topeka in **HB 2035** to reduce the tax assessment from 30 percent to 12 percent. She gave some background information about the Woman's Club and said the organization cannot survive with an assessment of 30 percent of the assessed value. She mentioned the civic and charitable contributions by the Woman's Club and asked for the committee's support. (Attachment 8)

Harold Riehm, KSAE, said he represented more than 90 professional and trade associations and philanthropic and advocacy organizations. (Attachment 9) He asked that KSAE be included in 501(c) (5) and (6). He said the non-profit corporations are being penalized if they are taxed at 30 percent and the for-profit organizations

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION, Room 519-S
Statehouse, at 11:08 a.m. on March 10, 1993.

are taxed at 25 percent; that does not seem to be fair.

John Malone, Knights of Columbus, read from a prepared statement. (Attachment 10) He said under the reassessment it places an extreme burden on all of their Councils. He said some of their Councils were required to close their Homes Associations and he requested that 501(c)(2) be included under **HB 2035** to provide relief.

Senator Tiaht made a motion to approve the minutes for March 9, 1993. The motion was seconded by Senator Hardenburger. The motion carried.

The meeting adjourned at 11:55 a.m.

The next meeting is scheduled for March 11, 1993.

GUEST LIST
SENATE ASSESSMENT AND TAXATION COMMITTEE

DATE: March 10, 1993

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
MARY HAFENSTINE	100 SE 9 th #306 Topeka	Woman's Club of Topeka
Worthy E. Pulliam	4115 Euclid Dr. Topeka	Woman's Club of Topeka
Jack Pulliam	" " " "	" " "
BEV BRADLEY	TOPEKA	KS Assoc of Counties
Mike Foust	126 W. 11th, Goodland, Ks.	Attorney
JOHN MALONE	5215 HUNTER LANE SHAWNEE KS	Knights of Columbus
DEBBY FURBANKS	517 Main Goodland, Ks	Sugar Hills Golf Club
Jack Furbanks	3301 Van Buren Topeka Ks	Masonic Bodin
Robert O. de Anna	Topeka	Mason of Kansas
Walter Lietzen	1921 S 29 th St Ks 66106	- 0 -
James H. Baidin	900 S W 31 Topeka	ole 2000
Koger Trautge	Topeka	Ks Gov Consulting
Mike Beam	Topeka	Ks. Link Ann.
SHARON E. LIEHM	TOPEKA	KSAE
Jeane Palmer	Topeka	KSAE
Mark Tallman	Topeka	KASB
Jordan T. Janett	Topeka	Comm Prop Assoc

MEMORANDUM

Kansas Legislative Research Department

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January 11, 1993

To: House Committee on Taxation
From: Chris W. Courtwright, Principal Analyst
Re: Property Tax Status of Real Property of Not-for-Profit Groups
Under New Classification Amendment

History

Following the implementation of the state's first classification amendment in 1989, "all other urban and rural real property not otherwise specifically subclassified" (as residential real property, agricultural land, or vacant lots) was assessed at 30 percent. Real property owned and operated by not-for-profit organizations was among the property assessed as "all other" at 30 percent.

Fraternal benefit societies were among the first not-for-profit organizations to seek some form of relief from the Legislature, either in the form of statutory exemptions or through a reduced assessment level in a new classification amendment.

Many of the proposed classification amendments considered by the Legislature in 1990, 1991, and 1992 provided for such a reduced assessment level, including H.C.R. 5007, which was adopted by the voters at the November election and now replaces the original classification amendment as Article 11, Section 1 of the *Kansas Constitution*.

Current Not-for-Profit Provision

The new assessment level starting in tax year 1993 is 12 percent on "real property which is owned and operated by a not-for-profit organization not subject to federal income taxation pursuant to section 501 of the federal internal revenue code, AND WHICH IS SPECIFICALLY INCLUDED IN THIS SUBCLASS BY LAW." (emphasis added)

The provision is not self-executing and requires a Legislative enactment to specifically define which organizations are entitled to receive the 12 percent assessment level. Unless specifically included in this new subclass, the real property owned and operated by such groups would continue to be assessed as "all other" at 30 percent.

Senate Assessment + Taxation

March 10, 1993

Attachment 1-1

Section 501 (c)

The list of organizations which are federally tax exempt under Section 501 of the Internal Revenue Code is found in subsection (c). The current code lists 25 different types of organizations which are exempt from federal income taxation. (See attached list)

Many of the fraternal benefit societies who sought relief under the new classification amendment are chartered under Section 501 (c) (8) or 501 (c) (10). Certain women's leagues chartered under Section 501 (c) (4) also have appeared before the tax committees in recent years.

Impact On 1993 Property Tax Calendar

If the Legislature chooses to implement the reduced assessment level provision for certain organizations and desires the change to begin with tax year 1993 valuations, some timing issues could come into play. For example, K.S.A. 79-1460 (as amended by 1992 H. Sub. S.B. 8 effective on January 1, 1993) provides that valuation notices for real property be sent to taxpayers not later than March 1.

Exempt Property

Besides providing the assessment levels for all taxable property, the same section of the *Kansas Constitution* provides an exemption for all property used exclusively for state, county, municipal, literary, educational, scientific, religious, benevolent, and charitable purposes (as well as exemptions for farm machinery and equipment, livestock, certain inventories, and household goods and personal effects not used for the production of income). K.S.A. 79-201 Second also provides a statutory exemption for all property "actually and regularly used exclusively for literary, educational, scientific, religious, benevolent, or charitable purposes." Additional language in that statute clarifies that the exemption "shall not be deemed inapplicable" for property which has nonexempt uses which are minimal in scope or insubstantial in nature, or when an agency or organization charges a "reasonable" fee for admission to cultural or educational activities.

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[Sec. 501(a)]

(a) **EXEMPTION FROM TAXATION.**—An organization described in subsection (c) or (d) or section 401 (a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

Amendments

P. L. 91-172, § 101 (X)(3):

Amended Code Sec. 501(a) by substituting "section 502 or 503" for "section 502, 503, or 504." Effective for taxable years beginning after December 31, 1969.

[Sec. 501(b)]

(b) **TAX ON UNRELATED BUSINESS INCOME AND CERTAIN OTHER ACTIVITIES.**—An organization exempt from taxation under subsection (a) shall be subject to tax to the extent provided in parts II, III, and VI of this subchapter, but (notwithstanding parts II, III and VI of this subchapter) shall be considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes.

Amendments

P. L. 93-625, § 10(c):

Amended Code Sec. 501(b) by substituting "Parts II, III, and VI" for "Parts II and III." Effective for taxable years beginning after December 31, 1974.

P. L. 91-172, § 101(X)(4):

Amended Code Sec. 501(b), effective January 1, 1970. Prior to amendment, Code Sec. 501(b) read as follows:

"(b) **Tax on Unrelated Business Income.**—An organization exempt from taxation under subsection (a) shall be subject to tax to the extent provided in part II of this subchapter (relating to tax on unrelated income), but, notwithstanding part II, shall be considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes."

[Sec. 501(c)]

(c) **LIST OF EXEMPT ORGANIZATIONS.**—The following organizations are referred to in subsection (a):

(1) Any corporation organized under Act of Congress which is an instrumentality of the United States but only if such corporation—

(A) is exempt from Federal income taxes—

(i) under such Act as amended and supplemented before July 18, 1984, or

(ii) under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act, or

(B) is described in subsection (l).

(2) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt under this section.

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

(4) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

(5) Labor, agricultural, or horticultural organizations.

(6) Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Sec. 501(a)

(7) Clubs organized for pleasure, recreation, and other nonprofitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder.

(8) Fraternal beneficiary societies, orders, or associations—

(A) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and

(B) providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents.

(9) Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or designated beneficiaries, if no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual.

(10) Domestic fraternal societies, orders, or associations, operating under the lodge system—

(A) the net earnings of which are devoted exclusively to religious, charitable, scientific, literary, educational, and fraternal purposes, and

(B) which do not provide for the payment of life, sick, accident, or other benefits.

(11) Teachers' retirement fund associations of a purely local character, if—

(A) no part of their net earnings inures (other than through payment of retirement benefits) to the benefit of any private shareholder or individual, and

(B) the income consists solely of amounts received from public taxation, amounts received from assessments on the teaching salaries of members, and income in respect of investments.

(12)(A) Benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; but only if 85 percent or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses.

(B) In the case of a mutual or cooperative telephone company subparagraph (A) shall be applied without taking into account any income received or accrued—

(i) from a nonmember telephone company, for the performance of communication services which involve members of the mutual or cooperative telephone company,

(ii) from qualified pole rentals,

(iii) from the sale of display listings in a directory furnished to the members of the mutual or cooperative telephone company, or

(iv) from the prepayment of a loan under section 306A, 306B, or 311 of the Rural Electrification Act of 1936 (as in effect on January 1, 1987).

(C) In the case of a mutual or cooperative electric company, subparagraph (A) shall be applied without taking into account any income received or accrued—

(i) from qualified pole rentals, or

(ii) from the prepayment of a loan under section 306A, 306B, or 311 of the Rural Electrification Act of 1936 (as in effect on January 1, 1987).

(D) For purposes of this paragraph, the term "qualified pole rental" means any rental of a pole (or other structure used to support wires) if such pole (or other structure)—

(i) is used by the telephone or electric company to support one or more wires which are used by such company in providing telephone or electric services to its members, and

(ii) is used pursuant to the rental to support one or more wires (in addition to the wires described in clause (i)) for use in connection with the transmission by wire of electricity or of telephone or other communications.

For purposes of the preceding sentence, the term "rental" includes any sale of the right to use the pole (or other structure).

(13) Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for the purpose of the disposal of bodies by burial or cremation which is not permitted by its charter to engage in any business not necessarily incident to that purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(14)(A) Credit unions without capital stock organized and operated for mutual purposes and without profit.

(B) Corporations or associations without capital stock organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for, and insurance of, shares or deposits in—

- (i) domestic building and loan associations,
- (ii) cooperative banks without capital stock organized and operated for mutual purposes and without profit,
- (iii) mutual savings banks not having capital stock represented by shares, or
- (iv) mutual savings banks described in section 591(b).

(C) Corporations or associations organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for associations or banks described in clause (i), (ii), or (iii) of subparagraph (B); but only if 85 percent or more of the income is attributable to providing such reserve funds and to investments. This subparagraph shall not apply to any corporation or association entitled to exemption under subparagraph (B).

(15)(A) Insurance companies or associations other than life (including interinsurers and reciprocal underwriters) if the net written premiums (or, if greater, direct written premiums) for the taxable year do not exceed \$350,000.

(B) For purposes of subparagraph (A), in determining whether any company or association is described in subparagraph (A), such company or association shall be treated as receiving during the taxable year amounts described in subparagraph (A) which are received during such year by all other companies or associations which are members of the same controlled group as the insurance company or association for which the determination is being made.

(C) For purposes of subparagraph (B), the term "controlled group" has the meaning given such term by section 831(b)(2)(B)(ii).

(16) Corporations organized by an association subject to part IV of this subchapter or members thereof, for the purpose of financing the ordinary crop operations of such members or other producers, and operated in conjunction with such association. Exemption shall not be denied any such corporation because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 percent per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the corporation, on dissolution or otherwise, beyond the fixed dividends) is owned by such association, or members thereof; nor shall exemption be denied any such corporation because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose.

(17)(A) A trust or trusts forming part of a plan providing for the payment of supplemental unemployment compensation benefits, if—

(i) under the plan, it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the plan, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of supplemental unemployment compensation benefits,

(ii) such benefits are payable to employees under a classification which is set forth in the plan and which is found by the Secretary not to be discriminatory in favor of employees who are highly compensated employees (within the meaning of section 414(q)), and

(iii) such benefits do not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)). A plan shall not be considered discriminatory within the meaning of this clause merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan.

(B) In determining whether a plan meets the requirements of subparagraph (A), any benefits provided under any other plan shall not be taken into consideration, except that a plan shall not be considered discriminatory—

(i) merely because the benefits under the plan which are first determined in a nondiscriminatory manner within the meaning of subparagraph (A) are then reduced by

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any sick, accident, or unemployment compensation benefits received under State or Federal law (or reduced by a portion of such benefits if determined in a nondiscriminatory manner), or

(ii) merely because the plan provides only for employees who are not eligible to receive sick, accident, or unemployment compensation benefits under State or Federal law the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such laws if such employees were eligible for such benefits, or

(iii) merely because the plan provides only for employees who are not eligible under another plan (which meets the requirements of subparagraph (A)) of supplemental unemployment compensation benefits provided wholly by the employer the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such other plan if such employees were eligible under such other plan, but only if the employees eligible under both plans would make a classification which would be nondiscriminatory within the meaning of subparagraph (A).

(C) A plan shall be considered to meet the requirements of subparagraph (A) during the whole of any year of the plan if on one day in each quarter it satisfies such requirements.

(D) The term "supplemental unemployment compensation benefits" means only—

(i) benefits which are paid to an employee because of his involuntary separation from the employment of the employer (whether or not such separation is temporary) resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions, and

(ii) sick and accident benefits subordinate to the benefits described in clause (i).

(E) Exemption shall not be denied under subsection (a) to any organization entitled to such exemption as an association described in paragraph (9) of this subsection merely because such organization provides for the payment of supplemental unemployment benefits (as defined in subparagraph (D)(i)).

(18) A trust or trusts created before June 25, 1959, forming part of a plan providing for the payment of benefits under a pension plan funded only by contributions of employees, if—

(A) under the plan, it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the plan, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of benefits under the plan,

(B) such benefits are payable to employees under a classification which is set forth in the plan and which is found by the Secretary not to be discriminatory in favor of employees who are highly compensated employees (within the meaning of section 414(q)),

(C) such benefits do not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)). A plan shall not be considered discriminatory within the meaning of this subparagraph merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan, and

(D) in the case of a plan under which an employee may designate certain contributions as deductible—

(i) such contributions do not exceed the amount with respect to which a deduction is allowable under section 219(b)(3),

(ii) requirements similar to the requirements of section 401(k)(3)(A)(ii) are met with respect to such elective contributions,

(iii) such contributions are treated as elective deferrals for purposes of section 402(g) (other than paragraph (4) thereof), and

(iv) the requirements of section 401(a)(30) are met.

For purposes of subparagraph (D)(ii), rules similar to the rules of section 401(k)(8) shall apply. For purposes of section 4979, any excess contribution under clause (ii) shall be treated as an excess contribution under a cash or deferred arrangement.

(19) A post or organization of past or present members of the Armed Forces of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization—

[The next page is 5323-3.]

Income Tax—Exempt Organizations

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(A) organized in the United States or any of its possessions,

(B) at least 75 percent of the members of which are past or present members of the Armed Forces of the United States and substantially all of the other members of which are individuals who are cadets or are spouses, widows, or widowers of past or present members of the Armed Forces of the United States or of cadets, and

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(20) An organization or trust created or organized in the United States, the exclusive function of which is to form part of a qualified group legal services plan or plans, within the meaning of section 120. An organization or trust which receives contributions because of section 120(c)(5)(C) shall not be prevented from qualifying as an organization described in this paragraph merely because it provides legal services or indemnification against the cost of legal services unassociated with a qualified group legal services plan.

(21) A trust or trusts established in writing, created or organized in the United States, and contributed to by any person (except an insurance company) if—

(A) the purpose of such trust or trusts is exclusively—

(i) to satisfy, in whole or in part, the liability of such person for, or with respect to, claims for compensation for disability or death due to pneumoconiosis under Black Lung Acts;

(ii) to pay premiums for insurance exclusively covering liability; and

(iii) to pay administrative and other incidental expenses of such trust (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the trust and the processing of claims against such person under Black Lung Acts; and

(B) no part of the assets of the trust may be used for, or diverted to, any purpose other than—

(i) the purposes described in subparagraph (A), or

(ii) investment (but only to the extent that the trustee determines that a portion of the assets is not currently needed for the purposes described in subparagraph (A)) in—

(I) public debt securities of the United States,

(II) obligations of a State or local government which are not in default as to principal or interest, or

(III) time or demand deposits in a bank (as defined in section 581) or an insured credit union (within the meaning of section 101(6) of the Federal Credit Union Act, 12 U.S.C. 1752(6)) located in the United States, or

(iii) payment into the Black Lung Disability Trust Fund established under section 9501, or into the general fund of the United States Treasury (other than in satisfaction of any tax or other civil or criminal liability of the person who established or contributed to the trust).

For purposes of this paragraph the term "Black Lung Acts" means part C of title IV of the Federal Mine Safety and Health Act of 1977, and any State law providing compensation for disability or death due to pneumoconiosis.

(22) A trust created or organized in the United States and established in writing by the plan sponsors of multiemployer plans if—

(A) the purpose of such trust is exclusively—

(i) to pay any amount described in section 4223(c) or (h) of the Employee Retirement Income Security Act of 1974, and

(ii) to pay reasonable and necessary administrative expenses in connection with the establishment and operation of the trust and the processing of claims against the trust,

(B) no part of the assets of the trust may be used for, or diverted to, any purpose other than—

(i) the purposes described in subparagraph (A), or

(ii) the investment in securities, obligations, or time or demand deposits described in clause (ii) of paragraph (21)(B),

(C) such trust meets the requirements of paragraphs (2), (3), and (4) of section 4223(b), 4223(h), or, if applicable, section 4223(c) of the Employee Retirement Income Security Act of 1974, and

(D) the trust instrument provides that, on dissolution of the trust, assets of the trust may not be paid other than to plans which have participated in the plan or, in the case of a trust established under section 4223(h) of such Act, to plans with respect to which employers have participated in the fund.

(23) Any association organized before 1880 more than 75 percent of the members of which are present or past members of the Armed Forces and a principal purpose of which is to provide insurance and other benefits to veterans or their dependents.

(24) A trust described in section 4049 of the Employee Retirement Income Security Act of 1974 (as in effect on the date of the enactment of the Single-Employer Pension Plan Amendments Act of 1986).

(25)(A) Any corporation or trust which—

- (i) has no more than 35 shareholders or beneficiaries,
- (ii) has only 1 class of stock or beneficial interest, and
- (iii) is organized for the exclusive purposes of—

(I) acquiring real property and holding title to, and collecting income from, such property, and

(II) remitting the entire amount of income from such property (less expenses) to 1 or more organizations described in subparagraph (C) which are shareholders of such corporation or beneficiaries of such trust.

For purposes of clause (iii), the term "real property" shall not include any interest as a tenant in common (or similar interest) and shall not include any indirect interest.

(B) A corporation or trust shall be described in subparagraph (A) without regard to whether the corporation or trust is organized by 1 or more organizations described in subparagraph (C).

(C) An organization is described in this subparagraph if such organization is—

- (i) a qualified pension, profit sharing, or stock bonus plan that meets the requirements of section 401(a),
- (ii) a governmental plan (within the meaning of section 414(d)),
- (iii) the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing, or
- (iv) any organization described in paragraph (3).

(D) A corporation or trust shall in no event be treated as described in subparagraph (A) unless such corporation or trust permits its shareholders or beneficiaries—

- (i) to dismiss the corporation's or trust's investment adviser, following reasonable notice, upon a vote of the shareholders or beneficiaries holding a majority of interest in the corporation or trust, and
- (ii) to terminate their interest in the corporation or trust by either, or both, of the following alternatives, as determined by the corporation or trust:

(I) by selling or exchanging their stock in the corporation or interest in the trust (subject to any Federal or State securities law) to any organization described in subparagraph (C) so long as the sale or exchange does not increase the number of shareholders or beneficiaries in such corporation or trust above 35, or

(II) by having their stock or interest redeemed by the corporation or trust after the shareholder or beneficiary has provided 90 days notice to such corporation or trust.

(E)(i) For purposes of this title—

(I) a corporation which is a qualified subsidiary shall not be treated as a separate corporation, and

(II) all assets, liabilities, and items of income, deduction, and credit of a qualified subsidiary shall be treated as assets, liabilities, and such items (as the case may be) of the corporation or trust described in subparagraph (A).

Sec. 501(c)

(ii) For purposes of this subparagraph, the term "qualified subsidiary" means any corporation if, at all times during the period such corporation was in existence, 100 percent of the stock of such corporation is held by the corporation or trust described in subparagraph (A).

(iii) For purposes of this subtitle, if any corporation which was a qualified subsidiary ceases to meet the requirements of clause (ii), such corporation shall be treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before such cessation from the corporation or trust described in subparagraph (A) in exchange for its the stock.

(F) For purposes of subparagraph (A), the term "real property" includes any personal property which is leased under, or in connection with, a lease of real property, but only if the rent attributable to such personal property (determined under the rules of section 856(d)(1)) for the taxable year does not exceed 15 percent of the total rent for the taxable year attributable to both the real and personal property leased under, or in connection with, such lease.

Amendments

P.L. 100-647, § 1011(c)(7)(D):

Act Sec. 1011(c)(7)(D) amended Code Sec. 501(c)(18)(D) by striking out "and" at the end of clause (ii), by striking out the period at the end of clause (iii) and inserting in lieu thereof ", and", and by inserting after clause (iii) new clause (iv) to read as above.

For the effective date of the above amendment, see Act Sec. 1011(c)(7)(E), below.

Act Sec. 1011(c)(7)(E) provides:

(E)(i) Except as provided in clause (ii), the amendments made by this paragraph shall apply to plan years beginning after December 31, 1987.

(ii) In the case of a plan described in section 1105(c)(2) of the Reform Act, the amendments made by this paragraph shall not apply to contributions made pursuant to an agreement described in such section for plan years beginning before the earlier of—

(I) the later of January 1, 1988, or the date on which the last of such agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

(II) January 1, 1989.

P.L. 100-647, § 1016(a)(1)(A):

Act Sec. 1016(a)(1)(A) amended Code Sec. 501(c)(25)(A) by adding at the end thereof a new sentence to read as above.

The above amendment applies with respect to property acquired by the organization after June 10, 1987, except that such amendment shall not apply to any property acquired after June 10, 1987, pursuant to a binding written contract in effect on June 10, 1987, and at all times thereafter before such acquisition.

P.L. 100-647, § 1016(a)(2):

Act Sec. 1016(a)(2) amended Code Sec. 501(c)(25) by striking out so much of subparagraph (D) as precedes clause (i) and inserting in lieu thereof new material preceding clause (i) to read as above. Prior to amendment, the material preceding clause (i) read as follows:

(D) A corporation or trust described in this paragraph must permit its shareholders or beneficiaries—

P.L. 100-647, § 1016(a)(3)(A):

Act Sec. 1016(a)(3)(A) amended Code Sec. 501(c)(25) by adding at the end thereof new subparagraph (E) to read as above.

P.L. 100-647, § 1016(a)(3)(B):

Act Sec. 1016(a)(3)(B) amended Code Sec. 501(c)(25)(C) by inserting "or" at the end of clause (iii), by striking out "or" at the end of clause (iv) and inserting in lieu thereof a period, and by striking out clause (v). Prior to amendment, Code Sec. 501(c)(25)(C)(v) read as follows:

(V) any organization described in this paragraph.

P.L. 100-647, § 1016(a)(4):

Act Sec. 1016(a)(4) amended Code Sec. 501(c)(25) by adding at the end thereof a new subparagraph (F) to read as above.

P.L. 100-647, § 1018(u)(14):

Act Sec. 1018(u)(14) amended Code Sec. 501(c)(23) by striking out "any association" and inserting in lieu thereof "Any association".

P.L. 100-647, § 1018(u)(15):

Act Sec. 1018(u)(15) amended Code Sec. 501(c)(1) by striking out "any corporation organized" and inserting in lieu thereof "Any corporation organized".

The above amendments are effective as if included in the provision of the Tax Reform Act of 1986 (P.L. 99-514) to which they relate.

P.L. 100-647, § 2003(a)(1):

Act Sec. 2003(a)(1) amended Code Sec. 501(c)(12)(B) by striking out "or" at the end of clause (ii), by striking out the period at the end of clause (iii), and inserting in lieu thereof "or", and by adding at the end thereof new clause (iv) to read as above.

P.L. 100-647, § 2003(a)(2):

Act Sec. 2003(a)(2) amended Code Sec. 501(c)(12)(C) to read as above. Prior to amendment, Code Sec. 501(c)(12)(C) read as follows:

(C) In the case of a mutual or cooperative electric company, subparagraph (A) shall be applied without taking into account any income received or accrued from qualified pole rentals.

The above amendments apply to tax years ending after the date of the enactment of the Omnibus Budget Reconciliation Act of 1986.

Act Sec. 6203 provides:

Subparagraph (A) of section 501(c)(12) of the 1986 Code shall be applied without taking into account any income attributable to the cancellation of any loan originally made or guaranteed by the United States (or any agency or instrumentality thereof) if such cancellation occurs after 1986 and before 1990.

P.L. 100-203, § 10711(a)(2):

Act Sec. 10711(a)(2) amended Code Sec. 501(c)(3) by striking out "on behalf of any candidate" and inserting in lieu thereof "on behalf of (or in opposition to) any candidate".

The above amendment applies with respect to activities after the date of enactment of this Act.

P.L. 99-514, § 1024(b):

Act Sec. 1024(b) amended Code Sec. 501(c)(15) to read as above. Prior to amendment, Code Sec. 501(c)(15) read as follows:

(15) Mutual insurance companies or associations other than life or marine (including interinsurers and reciprocal

MEMORANDUM

Kansas Legislative Research Department

300 S.W. 10th Avenue
Room 545-N - Statehouse
Topeka, Kansas 66612-1504
Telephone (913) 296-3181 FAX (913) 296-3824

January 12, 1993

To: House Committee on Taxation
From: Chris W. Courtwright, Principal Analyst
Re: Valuation Attributable to Certain Not-for-Profit Properties

The attached data from the final 1992 abstract represent the valuation by county from the following land use codes:

(Real Property Only)

Land Use Code 680	"Charitable Institutions"
Land Use Code 681	"Civic Clubs"
Land Use Code 682	"Union Halls"
Land Use Code 683	"Fraternal"

Of course, there is no way to match up the land use codes in the Kansas CAMA system with the numbered subsections of the Internal Revenue Code Section 501(c) under which various not-for-profit groups or organizations may be chartered.

93-4356/CC

*Senate Assessment &
Taxation
March 10, 1993
2-1*

<u>County</u>	<u>1992 Appr Val Land Use Codes 680 thru 683</u>	<u>92 Assessed (at 30 percent) 680 thru 683</u>	<u>1992 TOTAL ASSESSED VALUATION</u>	<u>Pct of 92 Tax Base 680 thru 683</u>	<u>92 Assessed (at 12 percent) 680 thru 683</u>	<u>Char Assessed Valuation</u>
Allen	\$67,040	\$20,112	\$53,773,265	0.037%	\$8,045	(\$12,067)
Anderson	45,990	13,797	37,708,720	0.037%	5,519	(8,278)
Atchison	157,230	47,169	59,915,029	0.079%	18,868	(28,301)
Barber	51,010	15,303	54,035,797	0.028%	6,121	(9,182)
Barton	294,820	88,446	144,619,724	0.061%	35,378	(53,068)
Bourbon	250,610	75,183	51,673,457	0.145%	30,073	(45,110)
Brown	312,050	93,615	50,055,096	0.187%	37,446	(56,169)
Butler	791,790	237,537	218,076,574	0.109%	95,015	(142,522)
Chase	0	0	21,950,370	0.000%	0	0
Chautauqua	48,490	14,547	21,607,356	0.067%	5,819	(8,728)
Cherokee	139,230	41,769	75,534,501	0.055%	16,708	(25,061)
Cheyenne	51,280	15,384	27,493,225	0.056%	6,154	(9,230)
Clark	6,660	1,998	28,887,707	0.007%	799	(1,199)
Clay	236,970	71,091	40,353,571	0.176%	28,436	(42,655)
Cloud	158,260	47,478	43,777,597	0.108%	18,991	(28,487)
Coffey	45,610	13,683	537,388,537	0.003%	5,473	(8,210)
Comanche	5,030	1,509	25,171,509	0.006%	604	(905)
Cowley	212,080	63,624	144,272,896	0.044%	25,450	(38,174)
Crawford	291,190	87,357	105,483,521	0.083%	34,943	(52,414)
Decatur	57,060	17,118	26,546,444	0.064%	6,847	(10,271)
Dickinson	332,710	99,813	80,784,312	0.124%	39,925	(59,888)
Doniphan	61,710	18,513	34,947,213	0.053%	7,405	(11,108)
Douglas	1,566,533	469,960	374,876,043	0.125%	187,984	(281,976)
Edwards	12,910	3,873	34,957,770	0.011%	1,549	(2,324)
Elk	9,840	2,952	17,543,316	0.017%	1,181	(1,771)
Ellis	197,180	59,154	142,095,703	0.042%	23,662	(35,492)
Ellsworth	0	0	56,068,859	0.000%	0	0
Finney	689,800	206,940	284,044,243	0.073%	82,776	(124,164)
Ford	727,750	218,325	150,269,654	0.145%	87,330	(130,995)
Franklin	48,130	14,439	83,871,500	0.017%	5,776	(8,663)
Geary	200,890	60,267	87,853,285	0.069%	24,107	(36,160)
Gove	46,450	13,935	32,282,146	0.043%	5,574	(8,361)
Graham	81,420	24,426	36,945,819	0.066%	9,770	(14,656)
Grant	16,800	5,040	250,273,314	0.002%	2,016	(3,024)
Gray	19,510	5,853	44,203,640	0.013%	2,341	(3,512)
Greeley	10,920	3,276	27,544,957	0.012%	1,310	(1,966)
Greenwood	7,900	2,370	43,174,535	0.005%	948	(1,422)
Hamilton	65,410	19,623	41,382,562	0.047%	7,849	(11,774)
Harper	26,210	7,863	49,090,182	0.016%	3,145	(4,718)
Harvey	286,180	85,854	126,029,397	0.068%	34,342	(51,512)
Haskell	0	0	114,477,189	0.000%	0	0
Hodgeman	11,080	3,324	25,255,419	0.013%	1,330	(1,994)
Jackson	26,170	7,851	41,255,009	0.019%	3,140	(4,711)
Jefferson	80,290	24,087	63,432,710	0.038%	9,635	(14,452)
Jewell	3,310	993	26,371,682	0.004%	397	(596)
Johnson	3,996,350	1,198,905	2,718,930,065	0.044%	479,562	(719,343)
Kearny	98,570	29,571	178,172,609	0.017%	11,828	(17,743)
Kingman	52,640	15,792	68,850,777	0.023%	6,317	(9,475)
Kiowa	37,930	11,379	49,678,128	0.023%	4,552	(6,827)
Labette	213,980	64,194	71,554,040	0.090%	25,678	(38,516)
Lane	3,070	921	25,991,268	0.004%	368	(553)
Leavenworth	722,500	216,750	201,996,455	0.107%	86,700	(130,050)
Lincoln	34,450	10,335	23,718,380	0.044%	4,134	(6,201)
Linn	75,870	22,761	132,099,219	0.017%	9,104	(13,657)
Logan	0	0	26,646,060	0.000%	0	0
Lyon	219,220	65,766	127,525,613	0.052%	26,306	(39,460)

<u>County</u>	<u>1992 Appr Val Land Use Codes 680 thru 683</u>	<u>92 Assessed (at 30 percent) 680 thru 683</u>	<u>1992 TOTAL ASSESSED VALUATION</u>	<u>Pct of 92 Tax Base 680 thru 683</u>	<u>92 Assessed (at 12 percent) 680 thru 683</u>	<u>Char. Assessed Valuation</u>
Marion	0	0	58,604,671	0.000%	0	0
Marshall	170,620	51,186	53,623,009	0.095%	20,474	(30,712)
McPherson	251,920	75,576	158,557,311	0.048%	30,230	(45,346)
Meade	10,280	3,084	58,280,884	0.005%	1,234	(1,850)
Miami	171,350	51,405	99,328,794	0.052%	20,562	(30,843)
Mitchell	0	0	33,689,574	0.000%	0	0
Montgomery	174,330	52,299	140,677,289	0.037%	20,920	(31,379)
Morris	29,300	8,790	34,038,218	0.026%	3,516	(5,274)
Morton	0	0	107,065,955	0.000%	0	0
Nemaha	317,320	95,196	50,531,757	0.188%	38,078	(57,118)
Neosho	137,450	41,235	55,451,798	0.074%	16,494	(24,741)
Ness	43,950	13,185	48,239,285	0.027%	5,274	(7,911)
Norton	62,270	18,681	27,429,605	0.068%	7,472	(11,209)
Osage	129,230	38,769	58,691,011	0.066%	15,508	(23,261)
Osborne	8,440	2,532	25,905,264	0.010%	1,013	(1,519)
Ottawa	6,460	1,938	32,958,568	0.006%	775	(1,163)
Pawnee	64,140	19,242	47,657,957	0.040%	7,697	(11,545)
Phillips	40,970	12,291	39,321,038	0.031%	4,916	(7,375)
Pottawatomie	69,880	20,964	272,543,324	0.008%	8,386	(12,578)
Pratt	154,380	46,314	69,251,841	0.067%	18,526	(27,788)
Rawlins	108,880	32,664	30,301,712	0.108%	13,066	(19,598)
Reno	828,540	248,562	288,457,151	0.086%	99,425	(149,137)
Republic	39,527	11,858	34,262,621	0.035%	4,743	(7,115)
Rice	62,200	18,660	70,591,496	0.026%	7,464	(11,196)
Riley	173,610	52,083	170,909,170	0.030%	20,833	(31,250)
Rooks	52,660	15,798	48,884,787	0.032%	6,319	(9,479)
Rush	13,140	3,942	32,297,962	0.012%	1,577	(2,365)
Russell	113,140	33,942	61,381,838	0.055%	13,577	(20,365)
Saline	766,510	229,953	225,165,760	0.102%	91,981	(137,972)
Scott	35,600	10,680	42,872,800	0.025%	4,272	(6,408)
Sedgwick	5,318,730	1,595,619	2,017,959,768	0.079%	638,248	(957,371)
Seward	429,200	128,760	164,089,484	0.078%	51,504	(77,256)
Shawnee	3,221,730	966,519	791,728,327	0.122%	386,608	(579,911)
Sheridan	85,960	25,788	28,745,809	0.090%	10,315	(15,473)
Sherman	281,390	84,417	43,672,805	0.193%	33,767	(50,650)
Smith	0	0	28,119,431	0.000%	0	0
Stafford	232,390	69,717	57,082,269	0.122%	27,887	(41,830)
Stanton	25,220	7,566	63,694,111	0.012%	3,026	(4,540)
Stevens	112,040	33,612	269,373,980	0.012%	13,445	(20,167)
Sumner	246,820	74,046	109,942,668	0.067%	29,618	(44,428)
Thomas	94,970	28,491	59,709,631	0.048%	11,396	(17,095)
Trego	120,720	36,216	30,416,148	0.119%	14,486	(21,730)
Wabaunsee	58,290	17,487	33,840,565	0.052%	6,995	(10,492)
Wallace	3,560	1,068	21,550,391	0.005%	427	(641)
Washington	10,110	3,033	41,719,288	0.007%	1,213	(1,820)
Wichita	7,640	2,292	25,399,450	0.009%	917	(1,375)
Wilson	42,150	12,645	41,168,390	0.031%	5,058	(7,587)
Woodson	111,560	33,468	23,542,412	0.142%	13,387	(20,081)
Wyandotte	2,665,480	799,644	609,535,759	0.131%	319,858	(479,786)
STATE TOTAL	30,310,140	9,093,042	14,600,781,105	0.062%	3,637,217	(5,455,825)

<u>County</u>	<u>1992 Appr Val Land Use Codes 680 thru 683</u>	<u>92 Assessed (at 30 percent) 680 thru 683</u>	<u>1992 TOTAL ASSESSED VALUATION</u>	<u>Pct of 92 Tax Base 680 thru 683</u>	<u>92 Assessed (at 12 percent) 680 thru 683</u>	<u>Char Assessed Valuation</u>
Sherman	\$281,390	\$84,417	\$43,672,805	0.193%	\$33,767	(\$50,650)
Nemaha	317,320	95,196	50,531,757	0.188%	38,078	(57,118)
Brown	312,050	93,615	50,055,096	0.187%	37,446	(56,169)
Clay	236,970	71,091	40,353,571	0.176%	28,436	(42,655)
Bourbon	250,610	75,183	51,673,457	0.145%	30,073	(45,110)
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Saline	766,510	229,953	225,165,760	0.102%	91,981	(137,972)
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Labette	213,980	64,194	71,554,040	0.090%	25,678	(38,516)
Sheridan	85,960	25,788	28,745,809	0.090%	10,315	(15,473)
Reno	828,540	248,562	288,457,151	0.086%	99,425	(149,137)
Crawford	291,190	87,357	105,483,521	0.083%	34,943	(52,414)
Sedgwick	5,318,730	1,595,619	2,017,959,768	0.079%	638,248	(957,371)
Atchison	157,230	47,169	59,915,029	0.079%	18,868	(28,301)
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Norton	62,270	18,681	27,429,605	0.068%	7,472	(11,209)
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Graham	81,420	24,426	36,945,819	0.066%	9,770	(14,656)
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Miami	171,350	51,405	99,328,794	0.052%	20,562	(30,843)
Wabaunsee	58,290	17,487	33,840,565	0.052%	6,995	(10,492)
Lyon	219,220	65,766	127,525,613	0.052%	26,306	(39,460)
Thomas	94,970	28,491	59,709,631	0.048%	11,396	(17,095)
McPherson	251,920	75,576	158,557,311	0.048%	30,230	(45,346)
Hamilton	65,410	19,623	41,382,562	0.047%	7,849	(11,774)
Cowley	212,080	63,624	144,272,896	0.044%	25,450	(38,174)
Johnson	3,996,350	1,198,905	2,718,930,065	0.044%	479,562	(719,343)
Lincoln	34,450	10,335	23,718,380	0.044%	4,134	(6,201)
Gove	46,450	13,935	32,282,146	0.043%	5,574	(8,361)
Ellis	197,180	59,154	142,095,703	0.042%	23,662	(35,492)
Pawnee	64,140	19,242	47,657,957	0.040%	7,697	(11,545)
Jefferson	80,290	24,087	63,432,710	0.038%	9,635	(14,452)
Allen	67,040	20,112	53,773,265	0.037%	8,045	(12,067)

<u>County</u>	<u>1992 Appr Val Land Use Codes 680 thru 683</u>	<u>92 Assessed (at 30 percent) 680 thru 683</u>	<u>1992 TOTAL ASSESSED VALUATION</u>	<u>Pct of 92 Tax Base 680 thru 683</u>	<u>92 Assessed (at 12 percent) 680 thru 683</u>	<u>Chan Assessed Valuation</u>
Montgomery	174,330	52,299	140,677,289	0.037%	20,920	(31,379)
Anderson	45,990	13,797	37,708,720	0.037%	5,519	(8,278)
Republic	39,527	11,858	34,262,621	0.035%	4,743	(7,115)
Rooks	52,660	15,798	48,884,787	0.032%	6,319	(9,479)
Phillips	40,970	12,291	39,321,038	0.031%	4,916	(7,375)
Wilson	42,150	12,645	41,168,390	0.031%	5,058	(7,587)
Riley	173,610	52,083	170,909,170	0.030%	20,833	(31,250)
Barber	51,010	15,303	54,035,797	0.028%	6,121	(9,182)
Ness	43,950	13,185	48,239,285	0.027%	5,274	(7,911)
Rice	62,200	18,660	70,591,496	0.026%	7,464	(11,196)
Morris	29,300	8,790	34,038,218	0.026%	3,516	(5,274)
Scott	35,600	10,680	42,872,800	0.025%	4,272	(6,408)
Kingman	52,640	15,792	68,850,777	0.023%	6,317	(9,475)
Kiowa	37,930	11,379	49,678,128	0.023%	4,552	(6,827)
Jackson	26,170	7,851	41,255,009	0.019%	3,140	(4,711)
Linn	75,870	22,761	132,099,219	0.017%	9,104	(13,657)
Franklin	48,130	14,439	83,871,500	0.017%	5,776	(8,663)
Elk	9,840	2,952	17,543,316	0.017%	1,181	(1,771)
Kearny	98,570	29,571	178,172,609	0.017%	11,828	(17,743)
Harper	26,210	7,863	49,090,182	0.016%	3,145	(4,718)
Gray	19,510	5,853	44,203,640	0.013%	2,341	(3,512)
Hodgeman	11,080	3,324	25,255,419	0.013%	1,330	(1,994)
Stevens	112,040	33,612	269,373,980	0.012%	13,445	(20,167)
Rush	13,140	3,942	32,297,962	0.012%	1,577	(2,365)
Greeley	10,920	3,276	27,544,957	0.012%	1,310	(1,966)
Stanton	25,220	7,566	63,694,111	0.012%	3,026	(4,540)
Edwards	12,910	3,873	34,957,770	0.011%	1,549	(2,324)
Osborne	8,440	2,532	25,905,264	0.010%	1,013	(1,519)
Wichita	7,640	2,292	25,399,450	0.009%	917	(1,375)
Pottawatomie	69,880	20,964	272,543,324	0.008%	8,386	(12,578)
Washington	10,110	3,033	41,719,288	0.007%	1,213	(1,820)
Clark	6,660	1,998	28,887,707	0.007%	799	(1,199)
Comanche	5,030	1,509	25,171,509	0.006%	604	(905)
Ottawa	6,460	1,938	32,958,568	0.006%	775	(1,163)
Greenwood	7,900	2,370	43,174,535	0.005%	948	(1,422)
Meade	10,280	3,084	58,280,884	0.005%	1,234	(1,850)
Wallace	3,560	1,068	21,550,391	0.005%	427	(641)
Jewell	3,310	993	26,371,682	0.004%	397	(596)
Lane	3,070	921	25,991,268	0.004%	368	(553)
Coffey	45,610	13,683	537,388,537	0.003%	5,473	(8,210)
Grant	16,800	5,040	250,273,314	0.002%	2,016	(3,024)
Logan	0	0	26,646,060	0.000%	0	0
Marion	0	0	58,604,671	0.000%	0	0
Smith	0	0	28,119,431	0.000%	0	0
Haskell	0	0	114,477,189	0.000%	0	0
Chase	0	0	21,950,370	0.000%	0	0
Ellsworth	0	0	56,068,859	0.000%	0	0
Mitchell	0	0	33,689,574	0.000%	0	0
Morton	0	0	107,065,955	0.000%	0	0
STATE TOTAL	30,310,140	9,093,042	14,600,781,105	0.062%	3,637,217	(5,455,825)



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

February 8, 1993

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296ATTORNEY GENERAL OPINION NO. 93- 17

The Honorable Susan Wagle
State Representative, Ninety-Ninth District
State Capitol, Room 426-S
Topeka, Kansas 66612

Re: Constitution of the State of Kansas -- Finance and
Taxation -- System of Taxation; Classification;
Extent of Classification for 501 Organizations

Synopsis: The 1992 amendment to article 11, section 1 of the
Kansas constitution allowing use of a lower
assessment rate for real property owned and
operated by not-for-profit organizations that are
not subject to federal income taxes pursuant to
section 501 of the internal revenue code is not
self-executing. The legislature must define by
appropriate legislation the types of 501
organizations eligible for the lower rate. Cited
herein: Kan. Const., art. 2, § 1, art. 6, § 2,
art. 11, §§ 1, 12; L. 1992, ch. 342, § 2.

* * *

Dear Representative Wagle:

You request our opinion regarding the authority of the
legislature to enact 1993 House Bill No. 2035. That bill
attempts to delineate the 501 organizations eligible for the
12% assessment rate authorized in article 11, section 1 of the
Kansas constitution, and you question whether the legislature
can, by statute, limit the organizations entitled to this
reduced rate.

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To answer this question we must determine whether the constitutional provision is self-executing. The legislature cannot restrict or defeat a self-executing provision of the constitution through legislative enactments. See State, ex rel., Miller v. Board of Education, 212 Kan. 482, 488 (1973); Colorado Interstate Gas Co. v. Board of Morton County Comm'rs, 247 Kan. 654, 659 (1990), quoting 16 Am.Jur.2d, Constitutional Law § 141. On the other hand, constitutional provisions that are not self-executing remain inoperative unless and until implemented by appropriate legislation. Id.

Whether a constitutional provision is or is not self-executing is ultimately a question of intent. Discovering intent requires a consideration of the language used, the objects to be accomplished by the provision, and the circumstances surrounding passage of the provision. State, ex rel., Miller, 212 Kan. at 487; Wyandotte County v. Kansas Avenue Properties, 246 Kan. 161, 166 (1990); 16 Am.Jur.2d at § 143. The language used in this case is as follows:

"Class 1 shall consist of real property. Real property shall be further classified into even subclasses. Such property shall be defined by law for the purpose of subclassification and assessed uniformly as to subclass at the following percentages of value:

. . . .

(4) Real property which is owned and operated by a not-for-profit organization not subject to federal income taxation pursuant to section 501 of the federal internal revenue code, and which is included in this subclass by law.....12%" Kan. Const., art. 11, § 1(a).

The phrase "and which is included in this subclass by law" indicates that legislation is required to determine which 501 organizations are to be included in subclass (4). Similar language in other constitutional provisions has been found to make those provisions not entirely self-executing. State, ex rel. v. Board of Education, 212 Kan. at 486-487 [article 6, § 2(a)]; Attorney General Opinion No. 85-135 (article 11, § 12); 16 Am.Jur.2d at § 144 ("a provision that a thing shall be done in such a way 'as shall be provided by law,' or 'as provided by law,' or 'in the manner to be prescribed by law,' or a

Representative Susan Wagle
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provision that the legislature 'shall provide by law,' . . . is not self-executing.")

In construing constitutional provisions, every word must be given due force and appropriate meaning. State ex rel. Donaldson v. Hines, 163 Kan. 300 (1947); Colorado Interstate Gas Co. v. Board of Morton County Comm'rs, 247 Kan. 654, 660 (1990); Board of Wyandotte County Comm'rs v. Kansas Ave. Properites, 246 Kan. at 166. "[E]ffect should be given to every part and every word of a constitution and [] no portion of the fundamental law should be treated as superfluous, unless there is some clear reason to the contrary." 16 Am.Jur.2d, at § 101. Thus, some meaning must be attributed to the phrase "and which is included in this subclass by law." If not the meaning set forth above, then what? Could it mean that the legislature may include any real property in this subclass even though it is not owned and operated by a 501 organization? We think not. Not only would such a construction fly in the face of the framer's intent, as evidenced by the circumstances surrounding passage of the provision discussed below, it would appear to lead to an impermissible result. Another rule of constitutional construction is that each provision must be read in light of other provisions and effect be given to each if at all possible. State v. Smith, 155 Kan. 588 (1942). If the phrase in question does not require legislative action to specify the 501 organizations eligible for the 12% rate, then this provision would constitute a delegation of legislative authority to the federal government, allowing the federal government to alter section 501 (thereby altering the entities eligible for the 12% rate) without an accompanying acquiescence by the state either by statute or constitutional amendment. The language specifying particular sections of 501 that were being adopted as of a date certain was deleted from this provision when the phrase "and which is included in this subclass by law" was added. 1991 HCR 5007, as amended by the House Committee on Taxation. See Journal of the House 458. Such a delegation of legislative authority would contravene article 2, section 1 of the constitution leaving all legislative authority with the legislature except that which is lawfully delegated to state governmental entities.

The intent of a provision can also be derived from a consideration of the purposes sought to be accomplished by it and the circumstances surrounding its adoption. Beginning in 1990, the first session after reappraisal and classification took effect, certain fraternal orders began seeking relief from the increased taxes they were experiencing. Since the

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Page 4

constitution requires a uniform and equal basis of valuation and rate of taxation except as otherwise specified therein, in order to grant relief the legislature either had to recommend a constitutional amendment or grant a total exemption to these fraternal orders. It chose the former alternative. It was determined that these organizations were generally classified as 501(c)(8) or 501(c)(10) under the internal revenue code. Thus, as introduced by the house committee on taxation, 1991 HCR 5007 stated in part as follows:

"Class 1 shall consist of real property. Real property shall be further classified into eight subclasses. Such property shall be defined by law for the purpose of subclassification and assessed uniformly as to subclass at the following percentages of value:

.

"(5) Real property which is owned and operated by a taxpayer which is organized for not-for-profit purposes and is not subject to federal income taxation pursuant to section 501(c)(8) or section 501(c)(10) of the federal internal revenue code as in effect on January 1, 1991.....15%." 1992 Journal of the House 2657.

The house committee then received testimony from the Topeka Women's Club, a civic organization, that it too was desperate for tax relief but that it did not meet the requirements of 501(c)(8) or 501(c)(10). The Women's Club is a 501(c)(4) organization. Minutes, House Committee on Taxation, February 6, 1992, attachment 1, and Minutes, House Committee on Taxation, February 12, 1992, attachment 12. Subsequently, the house committee amended HCR 5007 to what is now the current version of the provision of article 11, section 1 in question. 1991 Journal of the House 458. There was no recorded discussion of automatically granting all 501 organizations the 12% rate. An explanation of the amendment accompanied each version of the resolution, stating:

"House Taxation Committee amendments included . . . changing the eligibility for the proposed assessment level for certain not-for-profits from only those

Representative Susan Wagle
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organized under 501(c)(8) and 501(c)(10) to only those defined by statute which are organized under any provision of 501(c) and reducing the proposed assessment level from 15 to 12 percent. . . ."

Supplemental Note on House Concurrent Resolution No. 5007, as amended by House Committee, House Committee of the Whole; Senate Committee on Assessment and Taxation, and Senate on Final Action.

The explanatory statement accompanying the amendment on the ballot stated in part:

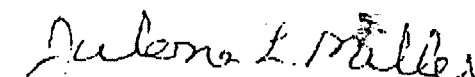
"Three new subclasses of real property should be established, namely: (1) real property owned and operated by certain not-for-profit organizations the assessment rate for which would be decreased from 30% to 12%," L. 1992, ch. 342, § 2.

Based on the foregoing, it appears the purpose of the resolution was to allow the legislature to statutorily authorize a reduced assessment rate to certain, but not necessarily all, not-for-profit 501 organizations. The circumstances surrounding adoption of the measure support this conclusion. Never were the voters officially told that a vote for the amendment would automatically entitle all 501 organizations to a 12% assessment rate, and the language of the provision cannot be construed in this way.

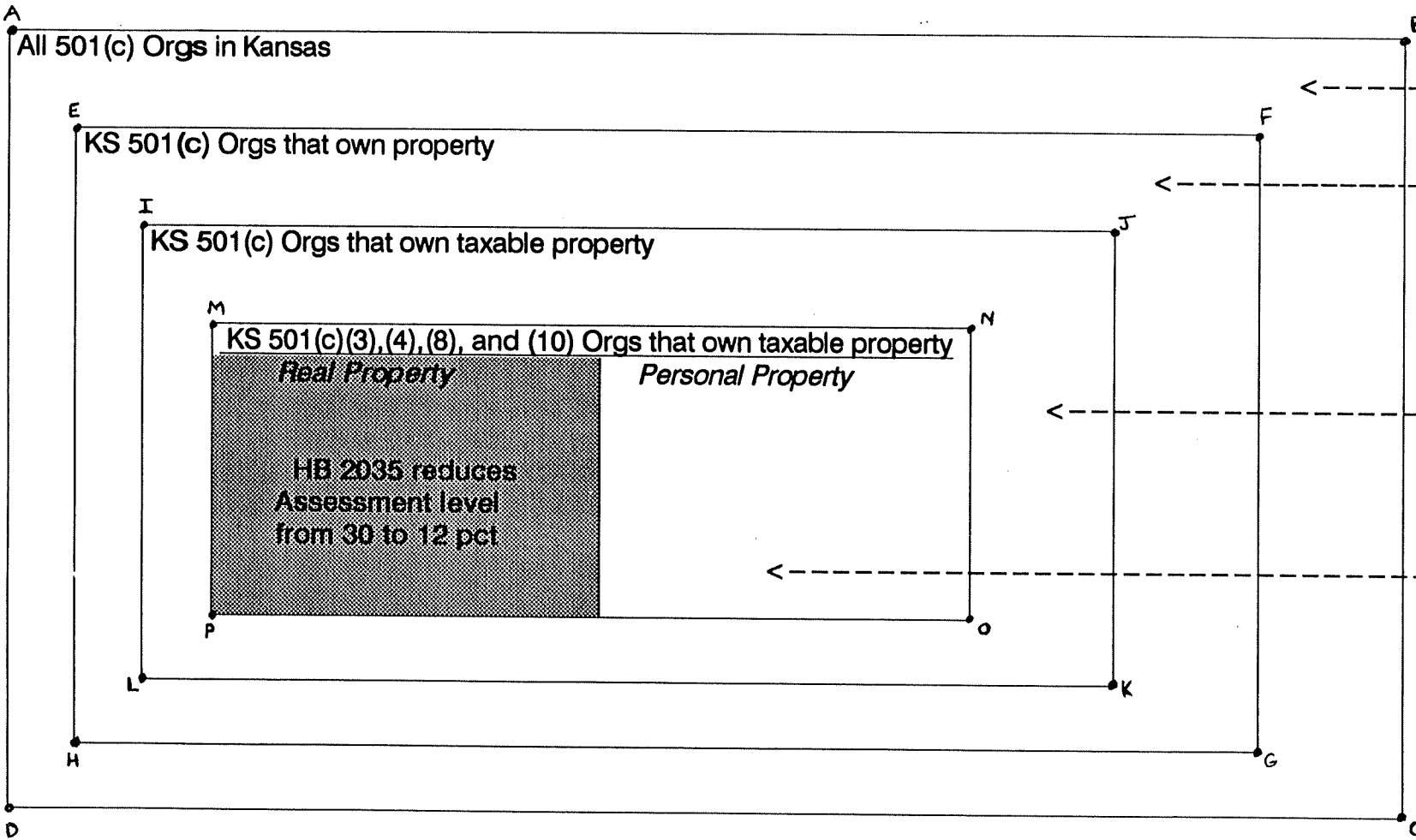
In conclusion, the 1992 amendment to article 11, section 1 of the Kansas constitution allowing use of a lower assessment rate for real property owned and operated by not-for-profit organizations that are not subject to federal income taxes pursuant to section 501 of the internal revenue code is not self-executing. The legislature must define by legislation the types of 501 organizations eligible for the lower rate. We note that this opinion does not address the issue of equal protection, as that question was not asked.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Julene L. Miller
Deputy Attorney General

RTS:JLM:jm



Many KS 501(c) Orgs lease and do not own their own property

Many KS 501(c) Orgs that own are exempt because property is used exclusively for exempt purposes or has non-exempt uses which are "minimal in scope or insubstantial in nature"

The taxable property of many KS 501(c) Orgs like chambers of commerce ((c)(6s)) and country clubs ((c)(7s)) would not be affected by the bill as passed by House COW

The bill only affects the taxable real property owned by 3's, 4's, 8's, and 10's and NOT the personal property, which would continue to be assessed at 30 pct

Reassessment + Taxation
March 10, 1993
Attachment 4-1

PARSONS COUNTRY CLUB**West Main Street, P.O. Box 301, Parsons, Kansas 67357**

March 9, 1993

Ms. Audry Langworthy
State Senator
Chairperson, Senate Tax & Assessment Committee
State Capitol
Topeka, Kansas

Dear Senator Langworthy:

We are writing to express deep concern about the exclusion of country clubs from the reduced property valuations.

Our Club has a nine-hole golf course, swimming pool and club house with 175 regular members. Our daily struggle, considering Labette County has one of the highest unemployment rates in the state, is to continue to provide quality service at a price that is affordable.

We do not believe some 501(c) groups, such as our local VFW and Elks, should receive such a break at the expense of excluding another 501(c) club such as ours. We fail to understand the rationale for this distinction.

Due to the shortness of notice, no board member could rearrange their schedule to attend in person your hearings. However, we do ask you give our letter the same weight.

Sincerely yours,

PARSONS COUNTRY CLUB


TOMMEY M. McLARTY, President
For the Board

TMM/bn

Senate Assessment + Taxation
March 10, 1993

Attachment 5-1

**THE DODGE CITY COUNTRY CLUB**

Telephone 316-225-5231 P.O. Box 070 Dodge City, Kansas 67801

March 9, 1993

Senator
Kansas State Senate
Capitol Building
Topeka, Kansas

Dear Senator,

I am asking for your support on behalf of the Dodge City Country Club, and other small towns and rural areas.

As you well know, the reappraisal and reclassification of golf courses in the State of Kansas has had a devastating effect on Country Clubs.

Undoubtedly, there is a strong misconception that Country Clubs are money rich. I feel as though that very idea is the stronghold our legislators have had in their being able to, thus far, put this issue on hold.

Since the onslaught of reappraisal, Dodge City Country Club has been faced with an insurmountable amount of taxes, causing an adverse effect on our ability to function. We have had to restructure and extend our already budgeted debts in order to free up monies, and still we barely survive.

Country Clubs are non-profit organizations. We base our dues structure to maintain our monthly operational costs. We generate funds from daily business.

The idea that we can continue to pass along these excessive costs to our membership through assessments of increases is absurd. The business people in our community face their own challenges with reappraisal.

Golf courses have been overvalued because appraisers have put a "speculative" value on the courses. They have been incorrectly classified as commercial property when, in fact, they are virtually always directly related and a part of residential development. In addition, it is important to keep in mind that golf courses require few, if any, government services and place no burden on the public school system. They are environmentally important and offer green space that would have to be acquired by the community at a cost to taxpayers.

On behalf of our membership, I respectfully ask that you review this issue and direct your efforts toward the correction of the problems created by reappraisal and reclassification.

Very truly yours,

Liz Burton
Manager
Dodge City Country Club

Senate Assessment + Taxation
March 10, 1993
Attachment 6-1

*The Most Worshipful Grand Lodge
of Ancient Free & Accepted Masons of Kansas*



Grand Lodge Office
320 SW 8th st.
Topeka, KS 66603

TO: THE SENATORS OF THE 1993 KANSAS LEGISLATURE

FROM: Richard D. Overton, Grand Master of the Grand Lodge of Ancient Free and Accepted Masons of Kansas.

We are appealing to you for your support in favor of House Bill Number 2035.

Our Internal Revenue Service Ruling states in part and we quote: "this section applies to organizations, operating under the lodge system and devoting their net earnings to charitable, fraternal and other specified purposes, but which do not provide life, sickness, or accident benefits to their members."

In fulfillment of those requirements, some of our current programs include:

- * \$1,250.00 to oncology research (UK med Center)
- * Student loan program for all qualified students
- * Speech Disorder Clinic - Overland Park
- * Masonic Home (Wichita)
- * Annual Public School Essay Contest
- * Alcohol and Drug Abuse Program
- * As Shriners we are involved with the Crippled Children and Burns Hospitals.

Please be further advised that we will supply you with copies of the Laws of Kansas Masonry. There seems to be so much misinformation about the fraternity we would like for you to read our regulations and laws for yourselves. We do also maintain a library which is open to the public or you can find out the same things from any well stocked public library.

The current classification rate has resulted in the loss of some thirty lodges and more are in difficult circumstances. So we again ask for your support in passing House Bill Number 2035 so we may continue these and hopefully still other programs to the benefit of all our citizens.

If you have additional questions, please contact our Representative Al Arnold at (913) 234-5518 or (913) 286-1239.

We sincerely thank you for your support.

Sincerely,

Richard D. Overton
Grand Master

Attested:
Albert O. Al Arnold
Representative

Senate Assessment & Taxation

March 10, 1993

attachment 7-1

Members of the Taxation Committee:

On behalf of the Woman's Club of Topeka, I am here as its President to request your support to include the Woman's Club of Topeka, a 501(c)(4) organization in the Bill to reduce the tax assessment from 30% to 12%.

In support of our request, and as background information, since the date of its organization in April, 1897, the Woman's Club of Topeka's real estate and personal property have been used exclusively for literary, educational, religious, benevolent, and charitable purposes. The Club will celebrate its 100th year in 1997.

In 1934, the State Taxation Commission announced in its decision "that the Woman's Club of Topeka is, and shall forever be exempt from property taxation so long as it does not violate its purposes." We continue to adhere to the purposes set forth in the Charter. Also, in 1934, the Board of Tax Appeals executed an order finding the real estate of the Woman's Club of Topeka was exempt from ad valorem taxation because it was used exclusively for educational, benevolent, and charitable purposes.

In 1982, the Club moved to its new building at 5221 SW West Drive, Topeka, Kansas, and, through inadvertence, exemption for the new building and real property was not sought. Realizing the need for a continuation of the exemption to allow its financial existence to continue, the Club filed a Request for Exemption on August 20, 1991, under K.S.A. 79-201 Second and Article 11, Sec. 1(b)(2) of the Kansas Constitution.

The Board of Tax Appeals denied petitioner's Application for Exemption from ad valorem taxation without ever providing the Club with the opportunity for an evidentiary hearing, despite a request on January 29, 1992, and denied the petitioner's timely Request for Rehearing on February 19, 1992. It is now on appeal to the Supreme Court of Kansas, which appeal is still pending.

In 1988, the real estate taxes were \$12,164.08, and in 1992, the real estate taxes were \$17,022.22. The organization cannot survive with assessments of 30% of the assessed value.

Through the years, the Woman's Club of Topeka has made significant contributions toward scholarships for nurses at Stormont-Vail Hospital, scholarships at Washburn University, and a special Music scholarship at Washburn. Each year our members contribute through the Woman's Club to community services, such as The Salvation Army, (money, clothing and food), Topeka Rescue Mission, Kansas Neurological Institute, Let's Help, Hospice, Kansas Children's Service League, Project Topeka for food drives, Retarded Citizens Association of Topeka, Community Eye Care, KTWU Channel 11, Kansas State Historical Society, as well as to other Kansas charities. The Club donated funds to help purchase the Lincoln Statute on the State Capitol grounds, and provided the

*Senate Assessment & Taxation
March 10, 1993
Attachment 8-1*

seats for the State Capitol grounds. It also helped refurbish Holbrook Hall, at Washburn College in Topeka.

We respectfully request that as a 401(c)(4) organization, it be included in the proposed Bill. Thank you for giving us the opportunity to be heard on this important tax issue.

Respectfully,

Mary Hafenstine
Mary Hafenstine, President
The Woman's Club of Topeka



MARCH 10, 1993

HOUSE BILL 2035

To: Chairperson Langworthy and Members, Senate Assessment & Taxation Committee

From: Kansas Society of Association Executives, Harold Riehm, Chairman, Government Affairs Committee

Thank you for this opportunity to appear on H.B. 2035. KSAE respectfully requests that professional and trade associations be included in the category of those non-profit organizations qualifying for the 12 percent assessment rate, pursuant to provisions of the recently passed Kansas constitutional amendment.

KSAE is itself an Association. It is a not-for-profit society of professional members who represent trade and professional, philanthropic and advocacy organizations. Its purposes are to develop and increase high standards of service and conduct for association executives, and to increase public understanding of associations. More than 90 associations are members of KSAE.

The Bill before you provides that those organizations classified under the IRS Code as 501 (c)3, (c)4, (c)8, and (10) will be entitled to receive the 12 percent assessment level. Our request is that such status also be provided for those organizations classified as 501 (c)5 and (c)6.

We are very much aware that whenever associations appear before you, it is often to present our views on pending legislation, or to suggest proposals to you that are requested by those we represent. Thus we are labeled "special interests", with all the connotations that often includes. Yet, we think it important that we represent the many thousands of Kansas citizens who are members of our respective organizations. They are, in effect, our constituents.

In support of our request, we make the following observations:

- (1) The associations we represent are, indeed, non-profit and exist primarily in service to more than 720,000 Kansans employed in industries or professions represented by Kansas associations. Included are large and small associations.
- (2) In addition to providing services to members, associations set and enforce product standards and standards of conduct. In 1990, associations provided training and education for approximately 95,000 persons in Kansas. A recent KU survey found that 76 percent of firms surveyed indicated Kansas Associations were their number one source for technical and vocational training.
- (3) Lobbying is a visible activity of associations, but does not constitute the major expenditure. Associations reported \$1.02 million spent on lobbying in 1990, compared to \$2.23 million in philanthropic and charitable contributions and \$2.34 million in education for their members. KSAE members' associations contribute over 270,000 staff hours to community service projects each year.

*Senate Assessment & Taxation
March 10, 1993*

KANSAS SOCIETY OF ASSOCIATION EXECUTIVES

attachment 9-1

- (4) It is our understanding that if the associations we represent are not included as qualifying for the 12 percent assessment rates, then we will be on the assessment books at 30 percent! Thus all the for-profit entities that are classified as commercial, will qualify for the 25 percent rate, while non-profit associations are at the 30 percent rate. While fairness is often an ill defined term, we think this raises that issue.

WE RESPECTFULLY REQUEST YOUR CONSIDERATION OF THIS REQUEST. PRESENT TODAY ARE OTHER KSAE MEMBERS. EITHER I OR ANY OF THEM WILL BE PLEASED TO RESPOND TO ANY QUESTIONS YOU MAY HAVE.



Knights of Columbus

SHAWNEE COUNCIL, No. 2332
Shawnee, Kansas

Senator Audrey Langworthy - Chair
Senate Committee on Assessment & Taxation

Ladies & Gentlemen:

I wish to thank the Chair and Committee for allowing me to appear today and address the Committee on the assessment concerns with HB 2035.

The Bill currently, as passed by the House, allows exemptions for organizations under 501 (c)(3), (4), (8) and (10). Knights of Columbus Councils fall under 501 (c)(8), Fraternal Beneficiary and Domestic Fraternal Societies and Associations.

However, many of the 216 councils representing in excess of 30,000 members have their assets placed in a Homes Association, which is covered under 501 (c)(2) Title Holding Corporations.

This is true of virtually all of the Councils with Council Homes, but also some of the Councils without Homes.

We feel that the omission of 501 (c)(2) would exclude a large portion of the Knights of Columbus; one of the organizations intended to receive relief under the original Bill.

We respectfully request the inclusion of 501 (c)(2) in the present Bill to provide this relief.

Respectfully submitted,
March 10, 1993

John R. Malone
Knights of Columbus

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