Approved: 3-26-96

## MINUTES OF THE HOUSE COMMITTEE ON TAXATION..

The meeting was called to order by Chairperson Phill Kline at 9:11 a.m. on March 19, 1996 in Room 519-S of the Capitol.

All members were present except: Rep. Lawrence

Rep. Graeber

Committee staff present: Chris Courtwright, Legislative Research Department

Tom Severn, Legislative Research Department

Don Hayward, Revisor of Statutes Shirley Sicilian, Department of Revenue Ann McMorris, Committee Secretary

Conferees appearing before the committee:

Alan Winkler, Wabaunsee County Commissioner

Rep. Tom Sawyer

Karen France, Kansas Assn. of Realtors

Chris McKenzie, League of Kansas Municipalities Bob Corkins, Kansas Chamber of Commerce & Industry Gene Nold, Director of Taxation, Koch Industries, Wichita

Others attending: See attached list

Chair opened hearing on:

## SB 425 - Wabaunsee County sales tax authorized to finance solid waste transfer station

Proponent:

Alan Winkler, Wabaunsee County Commissioner (Attachment 1)

Chair closed hearing on SB 425.

Chair opened hearing on:

## HB 2926 - Continuation of local property tax lid

Proponents:

Rep. Tom Sawyer

Karen France, Kansas Assn. of Realtors (Attachment 2)

Opponents:

Chris McKenzie, League of Kansas Municipalities (Attachment 3)

Written testimony from Nancy Hempen, Ks. Assn of Counties (Attachment 4)

Closed hearing on HB 2926.

# CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON TAXATION, ROOM 519-S Statehouse, at 9:00 a.m. on March 19, 1996.

Chair opened hearing on:

# SB 394 - Business income defined for UDITPA purposes Re Proposal No. 6

Proponents:

Bob Corkins, Kansas Chamber of Commerce & Industry (<u>Attachment 5</u>) Gene Nold, Director of Taxation, Koch Industries, Wichita (<u>Attachment 6</u>)

Chair closed hearing on SB 394.

The next meeting is scheduled on call of Chairperson.

Adjournment 9:44 a.m.

Attachments - 6

# TAXATION COMMITTEE GUEST LIST

DATE: **MARCH 19, 1996** 

NAME	REPRESENTING
Jerrel Carnegii	
Ellen Carnagie	
Santowa	D. C. P.O. A.
KEN CALLICOTT	Depos
EP. ALEXALIDER	11
BILL Fuiks	
Valentin Romero	DCPOA
Richard C. Miller.	DCPUA
Bob Zimmerman	Dc POA
Ernest Bruntes	DC POA
Etta Winkler.	Wallanese Country
Elan Whenbler	Wabaunsee County
JASON PITSENBERGER	KGC
DONALD SNODGRASS	KANSAS FOOD DEALERS ASSN
Frances Kastney	Ks food Dealers Assa
Nangy Hampen	to Assn. of Counties
Masha Lee Smith	KMHA
Charty a. Caldwell	Topelar Charber of Commerce
Wave Holthous	Wester Cessoure

# TAXATION COMMITTEE GUEST LIST

DATE: MARCH 19, 1996

NAME	REPRESENTING					
Tom Brond	Allen JASC.					
Mark Tallman	480					
MARK BURGHARI	WESTERN ASSN.					
holpha Badger	Douglas County Property Owners assoc, Pouglas County,					
Cette Lee Melsker	Toupayer Property Assec					
Dois Pratt	DC POA					
Doubly & Righ	Tog 20					
Bob Corkins	KCCI					
GEORGE DOONE	KTN					
GERARD DOONNE	KM					
Gene Nold.	Koch Industries					
JEH ROSSELL	SPRINT					
Debra Peterson	Sprint					
Welle Muetur	Sedgwich Country					
Harriet Lange	Ks Assu Broadcorters					
Birefairel	BOFING					
TERRY FREDERICK	SPRINT					
DAUE SCHWENEIS	WESTERN RESOURCES					
Mike Stadler	Western Resources					

# TAXATION COMMITTEE GUEST LIST

DATE: March 19, 1996

NAME	REPRESENTING				
PAUL STYRRS	KEN/ACTOTKS				
ArleyLeach					
ANNEHE LEACH					
Jet Baeren	mis In Campamera				
Taking Alurly	KEC/KLA				
ALAN STEPPAT	PETE MCGILL + ASSOC.				
JAMES F. PICHIE	D.C.P.O.				
KICHARD RODEWALD	TAXPAYERS & DGPOA				
Stan Sease	Taxpayers				
Dave Pearlow	USD 260 INFORMED CITIZENS				
RICHARD A. (DICK) HOPPER	USD 260 INFORMED CITIZENS				
DON CASHATT	Dg. county Property Nuvers ASSA				
Joyce Goins					
Dich I Dane	The oleman &.				
Avino Spiess	to theor of Counties				
Tertolerson	KS Petroleum Connal				
KAREN FRANCE	KS. ASSOC. DF REALTORS				

#### TESTIMONY FOR SENATE BILL 425

By: Alan Winkler Wabaunsee County Commissioner

Wabaunsee County is part of a well known region in Kansas called the "Flint Hills." The northern boundary of the county is marked by the meandering Kaw River and the east line adjoins Shawnee County. The county is predominantly rural with a population of about 6600 people. Of course, farming and ranching are the main industries in the area.

On April 8, 1994 Wabaunsee County's landfill was closed because of the Federal Government's Subtitle D regulations and guidelines. Since this time, household solid waste from the 7 incorporated cities and some rural areas have been direct hauled to facilities outside the county by contract haulers.

The Wabaunsee County solid waste plan which is currently being developed, calls for a multi-purpose site of 20 acres which would provide a construction-demolition landfill, an area for white goods and tires, and dumpsters for rural household waste. This plan also provides for the future construction of a transfer station which will be financed by sales tax. The transfer station would provide the capacity to handle all household waste generated within the county.

Since Wabaunsee County is predominantly agriculture with little industry, property tax has a noticeable impact on its citizens. Wabaunsee County's valuation is 36,190,000 which equates to an income of \$36,190 for each mill levied. county tax rate is just over 36 mills and the school districts range from 40 to 70 mills. By adding levies from towns, townships, watersheds, fire and ambulance districts, most residents pay a tax rate of well over 100 mills. For this reason, Wabaunsee County Commissioners prefer to finance a transfer station with sales tax rather than additional property tax. At the present time, Wabaunsee County has no bonded indebtedness. However, because of a deteriorating county infrastructure, the commissioners are considering GO bonds for the replacement of up to 8 bridges scattered through out the county at a cost of almost one million dollars.

Wabaunsee County currently has a 1% sales tax which generated a total of \$243,508 for the cities and county in 1994. A 1/4% increase would provide an additional \$61,000 in annual revenue and would be sufficient to finance a solid waste facility for less than 10 years with minimal impact. An engineer study estimates that a transfer station located at a multi-purpose site would cost \$320,000.

House Taxation 3-19-96 Attachment 1-1 Citizens of Wabaunsee County seem to be evenly divided on the issue of supporting a transfer station. Some farmers and ranchers are opposed to financing this facility because by law they can dispose their solid waste on their own land and feel it is not necessary. Others are opposed because they perceive a transfer station will subsidize the contract haulers at the expense of the taxpayers. Some want to continue direct hauling all solid waste outside the county to avoid any investment or operating expenses involved with an intra county solid waste facility.

Proponents of the solid waste facility point to the recent population growth of the county over the past 3 years. This is the first increase since 1900 and no doubt will continue because of the county's central location between Topeka and the Manhattan-Junction City areas. Also, it is hoped that economic development will soon take place making adequate solid waste disposal a necessity.

A multi-purpose disposal site which includes a transfer station will insure a waste facility capable of meeting the needs of all Wabaunsee County citizens now and in the future. One study shows that over a 20 year period, it will be more economical to have a transfer station rather than direct hauling household waste to the county facilities which surround us.

Finally, a consideration more important than the pros or cons of this issue is the ability of Wabaunsee County citizens to have their say by voting in a referendum, whether or not to finance a transfer station by increasing their sales tax 1/4%. Hopefully, the legislature will allow this to happen.





75 years

HOUSE TAXATION COMMITTEE

FROM:

KAREN FRANCE, DIRECTOR OF GOVERNMENTAL AFFAIRS

DATE:

MARCH 19, 1996

**SUBJECT:** 

HB 2926 EXTENSION OF LOCAL PROPERTY TAX LID

Thank you for the opportunity to testify. On behalf of the Kansas Association of REALTORS® I appear today to support HB 2926.

We believe that tax lids are part of the checks and balances which are necessary in government. Tax lids provide the budgetary parameters in which local governments can operate from year to year.

Some people may tell you today that tax lids are an unnecessary interference in the local government process. In the name of "local control", these advocates will tell you that the local officials can better control the budget process, without the interference of state officials. We must ask, what does the phrase "local control" mean? Does it mean we give free rein to the local officials, without any safeguards built into the system? Or does it mean we give control to the local constituents so they can become included in the decision making process in the form of protest petition? We think it should mean the latter.

Thus, a tax lid which draws the parameters around the basic budgetary requirements of the local governments, but gives them the leeway to put any "emergencies" to a vote of the people is a reasonable way to help provide checks and balances on local government.

Ultimately, we believe that a better answer to the issue of controlling growth in government spending is a constitutional spending lid which was heard discussed here last week. Such an amendment could eventually eliminate the need for local tax lids. It restricts spending by local units of government without the utilization of any exemptions. It is a straightforward method of limiting spending which would be in place from year to year, without having the property tax lid discussions which have become an annual event. Additionally, it could open the possibility of giving other revenue options to local units of government, such as local option, voter approved earnings taxes or increased sales tax authority.

Until such an amendment is in place, the need for a tax lid remains and we will continue to support legislation extending these lids.

Thank you again for the opportunity to testify. I will be happy to answer any questions.



PUBLISHERS OF KANSAS GOVERNMENT JOURNAL 300 S.W. 8TH TOPEKA, KS 66603-3896 (913) 354-9565 FAX (913) 354-4186

TO:

**House Taxation Committee** 

FROM:

Chris McKenzie, Executive Director

DATE:

March 19, 1996

RE:

HB 2926--Extension of Aggregate Tax Lid

Thank you for the opportunity to appear today and express the League's opposition to HB 2926. The League has had a long-standing objection to the concept of property tax lids which is expressed in the following excerpt from the League's <u>Statement of Municipal Policy</u>, 1995 - 1996:

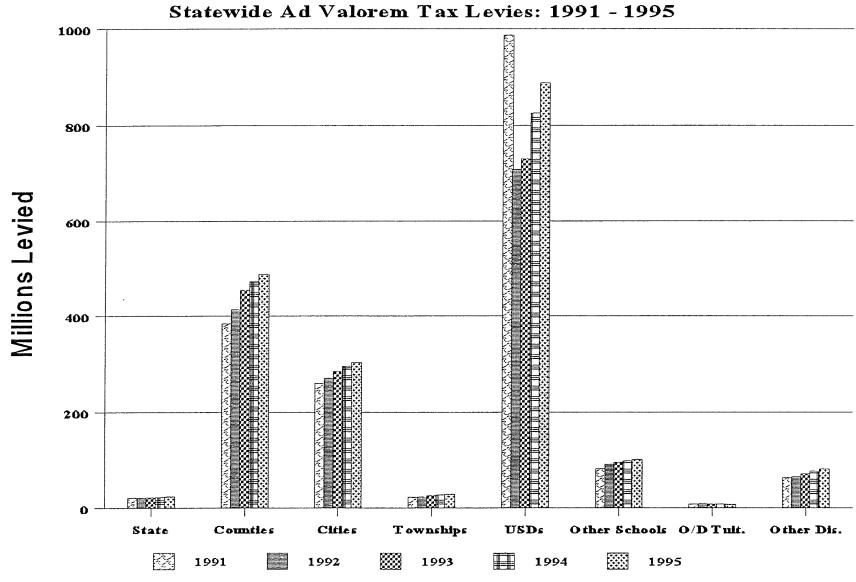
F-7. Property Tax Limits. (a) We continue to oppose any property tax lid law. We believe such state-imposed controls to be in conflict with the clear intent of constitutional home rule, which provides for the determination of local affairs by locally elected governing bodies, directly responsible to the citizens of the affected communities. If enacted, any property tax lid should contain all current exemptions plus additional exemptions to cover the increased levies necessary to finance expanded public safety services, unfunded federal and state mandates, and matching funding for federal law enforcement and crime prevention grants. Any lid law also should not affect the validity of any existing charter ordinances of the tax lid. (b) Appointive bodies, such as library boards, recreation commissions and other entities not directly accountable to the voters, should not be empowered to exempt themselves from the tax lid law unless approved by the elected governing body which levies the tax. (c) We oppose over-all property tax limits, whether imposed by statute or by constitution. Such an over-all limit based on value fails to recognize varying local needs and property wealth and the composite nature of the tax levy rates of over-lapping local units.

As I have shared with you previously, cities have done an outstanding job of controlling the growth in property taxes levied to support city government (see attached chart). Increases in city property tax levies have matched the state's own property tax levy on a percentage basis, yet the legislature persists in its belief that elected city governing bodies are incapable of monitoring their reliance on the property tax as well as their state colleagues. Nothing could be further than the truth, but the perceived need in the state legislature for renewing the aggregate property tax lid persists.

As leaders at all levels of government are beginning to rethink intergovernmental roles and relationships, we would respectfully suggest that the state legislature should seriously consider ending its two decade history of controlling aggregate city property tax levies and individual fund levies. State property tax limits not only undermine the principle of home rule, but they really interfere with direct accountability to the voters by municipal officials.

Thank you for this opportunity to address this issue. Please let me know if you have any questions. Thank you.

House Taxation 3-19-96 Attachment 3-1



Source: League of Kansas Municipalities, based on data from Div. of Accounts & Reports, January, 1993 and 1996. Out-District tuition figures for 1991 extrapolated based on 1992 allocation between county and out-district tuition amounts.

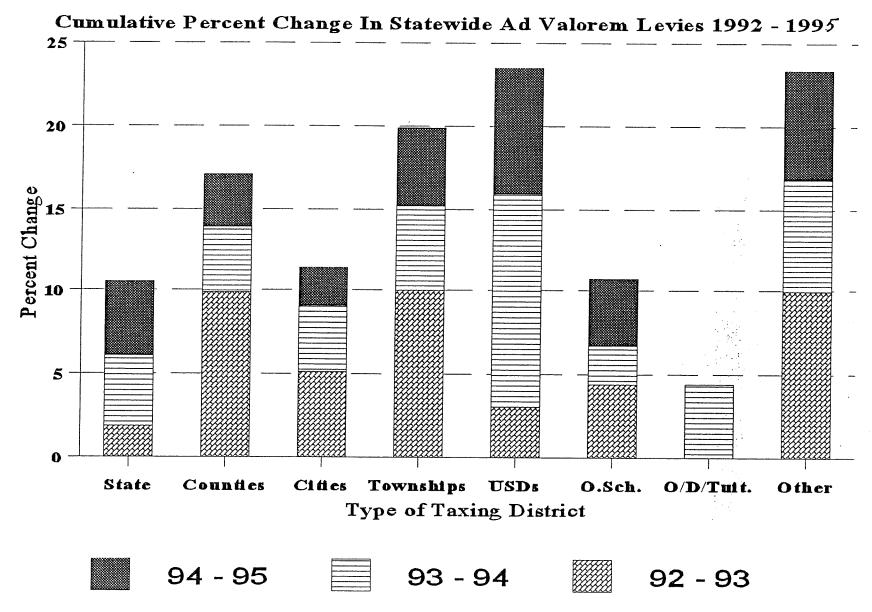
# Statewide Ad Valorem Levies By Type of Taxing District for 1991 to 1995 (Amounts are expected in millions)

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3

						Percent of	Percent of Increase			
	<u>1991</u>	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1995 Total</u>	<u>91-92</u>	<u>92-93</u>	<u>93-94</u>	<u>94-95</u>
State	21.95	21.90	22.31	23.24	24.29	1.26%	-0.21%	1.87%	4.21%	4.47%
County	384.3*	413.55	454.29	472.66	487.93	25.34%	7.61%	9.85%	4.04%	3.23%
City	260.61	271.42	285.32	296.60	303.52	15.76%	4.15%	5.12%	3.95%	2.33%
Township	23.44	24.05	26.45	27.83	29.14	1.51%	2.61%	9.98%	5.22%	4.71%
USD	987.24	709.68	731.33	825.80	888.15	46.12%	-27.01%	3.05%	12.92%	7.55%
Other Schools	82.97	92.35	96.42	98.66	102.61	5.33%	9.2%	4.41%	2.32%	4.00%
Out District Tuition	8.53*	9.18	8.14	8.50	7.79	0.40%	7.62%	-11.33%	4.42%	-8.35%
Other Districts	<u>63.6</u>	<u>65.60</u>	<u>72.12</u>	<u>77.08</u>	<u>82.14</u>	4.27%	3.12%	9.94%	6.88%	6.56%
Totals	\$1,832.64 ======	\$1,607.73 ======	1,696.38 ======	1,830.38 ======	1,925.57 ======	100.00%				
Percent of Increase		-12.3%	5.5%	7.9%	5.2%					
CPI Increase		3.0%	3.0%	2.6%	3.0% Est					

The levy data was taken from the Department of Revenue's publication "Statistical Report of Property Assessment and Taxation" with adjustments by Kansas Legislative Research Department.

 1991 data were reported for county only. Allocation between county and out-district tuition was done by League of Kansas Municipalities based on 1992 proration.



Source: League of Kansas Municipalities, based on data supplied by Division of Accounts and Reports, January, 1996



# "Service to County Government"

March 19, 1996

TO: Rep. Phill Kline, Chair

House Taxation Committee

and

Members of the Committee

FROM: Nancy Hempen President

Kansas Association of Counties

RE: HB 2926

On behalf of the Kansas Association of Counties, please accept these comments as opposition to HB 2926. The association opposes any lid that takes away local control or the ability to generate revenue to finance high service level demands. We do understand and respect that some individual county officials may take a different postion on the tax lid, however, our associations legislative platform (which was voted on by the general membership in November) clearly opposes a tax lid.

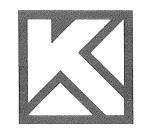
While many counties have experienced growth in their communities, mechanisms for funding programs and providing services to citizens is extremely limited. It is a local problem and local officials understand the services needed in their communities. Although property tax relief continues to be an important issue with all government officials, they are expected to meet those needs. If resources are controlled with a restrictive tax lid, local officials cannot satisfy community demands.

Law enforcement, prosecution, detention and emergency services are all under the tax lid but continue to be plagued with high utilization and cost increases. Costs related to compliance with Subtitle D county landfill requirements, economic development, county emergency preparedness agencies and local public health services are additional categories currently under the lid.

If local units of government must live under a tax lid, it should be no more restrictive than the tax lid currently in place. In addition to the current lid exemptions, we ask the committee to give careful consideration to including the above mentioned categories as exemptions.

Thank you for your consideration.

# LEGISLATIVE TESTIMONY



Kansas Chamber of Commerce and Industry

835 SW Topeka Blvd. Topeka, Kansas 66612-1671 (913) 357-6321 FAX (913) 357-4732 SB 394

March 19, 1996

#### KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Committee on Taxation

by
Bob Corkins
Director of Taxation

Honorable Chair and members of the Committee:

My name is Bob Corkins, director of taxation for the Kansas Chamber of Commerce and Industry. I appreciate the opportunity to express KCCI's support for the corporate income tax proposal set forth in SB 394.

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

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 46% of KCCI's members having less than 25 employees, and 77% having less than 100 employees. KCCI receives no government funding.

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

From earlier hearings on this subject during the legislative interim session, some of you will recall that the issue involves the taxation of certain corporate transactions. More specifically, it regards the extent to which Kansas may tax any proceeds from the sale of assets by multi-state corporations.

House Taxation 3-19-96 Attachment 5-1 The scope of the issue is therefore very unpredictable. You might compare it to any random homeowner's decision to sell his house. One person may sell his residence every couple of years while another may own the same home for decades. Like the transactions affected by the *Chief Industries* decision and SB 394, the potential reasons for selling one's home are countless and the likelihood of sale at any given future time is immensely speculative. Please keep that in mind during any discussion of the bill's revenue impact. Our contention that there will be zero effect on state revenue remains unchanged.

The Kansas Supreme Court in its *Chief* decision reaffirmed a rule of law that had been disregarded in this state for 26 years. You have heard, or will hear, many references to the "functional test" versus the "transactional test" for determining the category of taxability of *Chief*-like transactions (i.e. for determining whether proceeds are "business" or "non-business" income). You may disregard any assertion that the functional test, or anything like it, remains an enforceable concept in this state. The functional test was struck down by the *Western Natural Gas* decision in 1968, was nevertheless employed by administrative regulation for the next 26 years, and was explicitly struck down again by *Chief*.

Our objective with SB 394 is to correct a negative side effect of *Chief* without disturbing its core holding. Proponents of the bill, meeting as a coalition, agreed last April to rest their pursuit of the legislation only upon Revenue Secretary LaFaver's commitment to solve the problem administratively. Following a good deal of negotiation and research this summer, our coalition reached the inescapable conclusion that an administrative solution is not possible.

Please consider the following direct quotes from the *Chief Industries* decision:

There is a fatal flaw inherent in all three of these arguments (the functional test is a wise and logical additional test under K.S.A. 79-3271[a], the regulation of K.A.R. 92-12-73 has the force of law, and a broadly defined transactional test exists in Kansas). The holding of Western Natural Gas has not been modified nor has the statute it construed been subsequently amended by the legislature although over 25 years have passed since the date of the decision...

...Administrative regulations may be promulgated to implement statutes and the exercise of delegated authority, and duly adopted administrative regulations have the force of law. Administrative regulations do not supplant statutory law nor do they preempt judicial statutory construction. *Peoples Natural Gas v. Kansas Corporation Commission*, 7 Kan. App. 2d 519, 528, 644 P.2d 999, *rev. denied* 231 Kan. 801 (1982). Neither BOTA nor the Department can change the test this court established in *Western Natural Gas* by reliance on a regulation. The legislature can modify this court's statutory construction, but it has not done so.

The law of the land in Kansas, as restated explicitly in *Chief*, should therefore be unambiguous to everyone. The sudden enforcement of it, however, will exposed Kansas-based multi-state corporations to a tax increase -- in fact, to multiple taxation of the same income. That is the problem which SB 394 will correct. Beyond this correction (the prevention of a tax increase), SB 394 will have no effect on any status quo tax liability. Remember, the status quo is *Chief* not the law as it was misapplied for 26 years.

The Interim Committee on Assessment and Taxation heard substantial testimony which described the inadequacy of proposed administrative "solutions" or the outright ability of KDOR to pursue this course. That committee heard arguments which bolster the constitutionality of SB 394 and clarify relevant fiscal data supplied to the Legislature. They also heard an assessment about how well SB 394 satisfies Secretary LaFaver's criteria (outlined in August to the committee) for a good state tax policy. Furthermore, conferees described many economic development reasons for seeking this SB 394 proposal -- and as the representative of KCCI, I would like to add a few comments of that nature myself.

The members of our coalition met frequently to plan this legislative effort. Kansas-based and foreign-based firms alike have been solidly joined in support of a solution which all feel would be in the best interests of the state. That is not a trivial accomplishment. The same dispute which arose in other states has caused what is usually described as a "blood bath" when foreign and domestic firms failed to unify.

The problem we're addressing is not just a tangible case of tax liabilities, it also emphate the specter of Kansas' national reputation in administering taxes. Economic development success frequently turns on subjective perceptions of this kind. Currently, Kansas' image in this regard leaves much to be desired. However, enactment of SB 394 would be an enormous first step in asserting a less adversarial Kansas posture to companies that do business nationwide.

Of course, this issue's most direct threat to economic development is the penalty which will be applied to Kansas domiciled firms or those corporations which may consider such a residence in the future. That penalty (or strong disincentive for prospective firms) will not take effect, however, if SB 394 is enacted. We must establish both the reality and the perception that Kansas is a good place to set up corporate headquarters.

Thank you, again, for the time to make these remarks. KCCI and the *Chief* Coalition urge your favorable action on this bill.

## **MEMORANDUM**

TO:

Phil Kline, Chairperson

Members of the House Taxation Committee

RE:

1996 Senate Bill 394

DATE:

March 19, 1996

Senate Bill 394 eliminates an unfair income tax burden imposed only on those corporations which have chosen to make the state of Kansas their commercial domicile. The Specific problem which is addressed by this bill arose during the summer of 1994 after the Kansas Supreme Court rendered its decision in the case <a href="Chief Industries">Chief Industries</a>, Inc. The Court's ruling results in double taxation for certain income earned by Kansas companies.

Senate Bill 394, as amended by the Senate Committee, represents a compromise between the Department of Revenue and a coalition of corporate income taxpayers that are located both in and outside of the state of Kansas. The language in the bill also was studied by the 1995 Special Committee on Assessment and Taxation which endorsed the concept embodied in the bill.

The subject matter addressed by the bill is extremely complex and the language has resulted from nearly a year of intense work by Department of Revenue officials, legislators, taxpayers and some of the most noted state tax experts in the country. This effort was put forth in order to make certain that any solution to the <u>Chief Industries</u>, <u>Inc.</u> case would meet constitutional muster.

The bill essentially allows a corporation the opportunity to make an election to treat certain income as apportionable business income for Kansas corporate income tax purposes. Once this election is made, it is irrevocable for a period of ten years. Language also has been inserted in the bill which allows for the election to be made by newly-incorporated taxpayers and nonresident taxpayers who for the first time are doing business in the state of Kansas.

The bill would eliminate the possibility of double taxation of income earned by our Kansas domiciled corporations. Through the use of the election methodology, this may be accomplished without an increase in taxes for any nonresident corporation who may be doing business in the state.

The proposal was designed to hold harmless the State Treasury to the greatest extent possible and return Kansas companies to the status quo which existed prior to the <u>Chief Industries</u>, <u>Inc.</u> case.

Passage of this bill will provide the stability in our tax system which is so important to companies making business location decisions. This stability will enhance our competitive position with other states.

I urge your support for Senate Bill 394, as amended. The bill would put Kansas corporations on a level playing field with taxpayers from outside the state who happen to do business in Kansas. It is essential that as a matter of state tax policy, we not penalize our Kansas corporations for having made the decision to locate in Kansas and to invest in Kansas jobs.

2

6-2

## COMPANIES AND ORGANIZATIONS IN THE COALITION

Amoco

Arco

Arthur Andersen

Atchinson, Topeka and Santa Fe Railroad

Boeing

Cargill

Coastal Corp.

Coleman

Colgate

ConAgra, Inc.

COST

**Dillons** 

Farmland Industries, Inc.

Fourth Financial Corp.

Hallmark Cards, Inc.

Hills Pet Nutrition

Kaneb

Kansas Chamber of Commerce and Industry

Kansas Petroleum Association

**KIOGA** 

Koch Industries, Inc.

Marathon Oil

Mobil Oil

National Pizza Company

Phillips Petroleum

Proctor & Gamble

Raytheon Company (Beechcraft)

Rent-A-Center, Inc.

Santa Fe Pacific

Seaboard

Southwestern Bell

**Sprint** 

Texaco

Western Resources (KPL, KGE, Gas Service)

Yellow Corporation