

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on March 3, 2011, in Room 346-S of the Capitol.

All members were present.

Committee staff present:

Jill Wolters, Office of the Revisor of Statutes
Matt Sterling, Office of the Revisor of Statutes
Tamera Lawrence, Office of the Revisor of Statutes
Lauren Douglass, Kansas Legislative Research Department
Robert Allison-Gallimore, Kansas Legislative Research Department
Sue VonFeldt, Committee Assistant

Conferees appearing before the Committee:

Paul Post, Attorney, Topeka, Kansas
Jill Michaux, Attorney, Neis & Michaux, P.A.
John Hodge, Attorney, Lawrence, Kansas
Alice Adams, District Court Clerk, Eighth Judicial District

Others attending:

See attached list.

The Hearing on **SB 12 - Allowing debtors to exempt the right to receive earned income tax credits from bankruptcy proceedings** was opened

Matt Sterling, Staff Assistant Revisor, presented an overview of the bill. ([Attachment 1](#))

Paul Post, Attorney, Topeka, Kansas, spoke before the committee as a proponent, and said that exempting the earned income credit would allow low income families, "the working poor", to keep this source of funds for the benefit of their children. He stated he has been a lawyer for thirty-six years and a significant percentage of his private practice involves representing persons and families filing for bankruptcy, and provided the committee with information of how the earned income tax credit currently works when bankruptcy is involved. ([Attachment 2](#))

Jill Michaux, Attorney, Neis & Michaux, P.A., Topeka, addressed the committee in strong support of the bill. She told the committee she has represented Kansas individuals and small business proprietors in bankruptcy since 1982 and that she was the attorney in the 10th Circuit case called *Montgomery*, (*In Re Montgomery*, 224 F.3d 1193, 1194 (10th Cir. 2000)), in which the Montgomery's attempt to exempt EIC in their bankruptcy was rejected. The circuit court said a specific exemption for EIC is required and that the general exemption for social welfare in K.S.A. 39-717 is not sufficient. She provided additional information regarding the policy of other states. ([Attachment 3](#))

John Hodge, Attorney, Lawrence, Kansas, appeared before the committee in support of the bill. He told of his years of experience in handling bankruptcy cases and that bankruptcy should not be filed when unnecessary, and that the bankruptcy law now requires people to get credit counseling from non-profit credit counseling before they can file bankruptcy. He said the purpose of exemptions in bankruptcy is to allow people to have a fresh start and not have everything taken from them. Often, people filing bankruptcy have no other choice in dealing with their debts and stated over sixty percent are caused by medical expenses. Most people who are entitled to earned income credits don't have a lot of assets and therefore, the earned income credit is very important to them and their children. He reminded the committee that the people who are entitled to the earned income are working people, many with low income jobs and barely making a living. ([Attachment 4](#))

Senator Vratil, Eleventh District, provided written testimony in support of the bill. ([Attachment 5](#))

Marilyn Harp, Executive Director, Kansas Legal Services, provided written testimony in support of the bill. ([Attachment 6](#))

There were no opponents.

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on March 3, 2011 in Room 346-S.

The Hearing on **SB 12** was closed.

The Hearing on **SB 62 - Assessment of court costs under the Kansas standard asset seizure and forfeiture act** was opened.

Jill Wolters, Staff Revisor, provided an overview of the bill for the committee. (Attachment 7)

Alice Adams, District Court Clerk, Eighth Judicial District, addressed the committee in support of this bill. She stated the Asset Seizure and Forfeiture Act provides in K.S.A. 2009 Supp. 60-4177 that the proceeds of any sale shall be distributed in a prescribed order of priority, and includes “sale and court costs” as an item that may be paid in the second order or priority. She also explained while this provision appears to allow the assessment of the docket fee when forfeited assets are actually sold, there appears to be no express authority for the court to assess the docket fee when the object of forfeiture proceeding is cash and no sale occurs. She further provided the committee with information of how much money could be recouped in docket fees. Therefore, the KADCCA is in strong support to amend K.S.A. 2009 Sup 60-4107 and K.S.A. 60-4109 to provide that court costs, which in most cases would include only the docket fee, may be assessed by the court in asset forfeiture cases. (Attachment 8)

There were no opponents.

The Hearing on **SB 62** was closed.

The next meeting is scheduled for March 7, 2011.

The meeting was adjourned at 4:15 p.m.

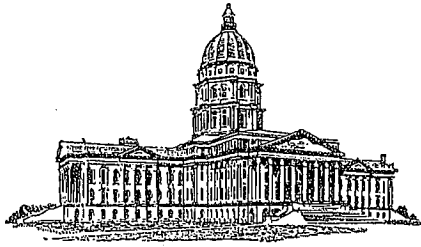
DATE: 3-3-11

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MARY ANN TORRENCE, ATTORNEY
REVISOR OF STATUTES

JAMES A. WILSON III, ATTORNEY
FIRST ASSISTANT REVISOR

GORDON L. SELF, ATTORNEY
FIRST ASSISTANT REVISOR



OFFICE OF REVISOR OF STATUTES
KANSAS LEGISLATURE

MEMORANDUM

Legal Consultation—
Legislative Committees and Legislators
Legislative Bill Drafting
Legislative Committee Staff
Secretary—
Legislative Coordinating Council
Kansas Commission on
Interstate Cooperation
Kansas Statutes Annotated
Editing and Publication
Legislative Information System

To: Chairman Kinzer and members of the House Judiciary Committee
From: Matt Sterling, Assistant Revisor of Statutes
Date: March 3, 2011
Subject: Senate Bill 12

2010 SB 363, passed by Senate Judiciary committee and passed as amended by this committee, died on General Orders at the end of the session. SB 12 as it was introduced, matches the version of the bill passed by this committee.

The bill would allow exemption of earned income tax credit from bankruptcy. The Senate Judiciary committee and the Committee of the whole amended the bill to provide that the exemption could not exceed the maximum credit allowed to the debtor under section 32 of the federal internal revenue code of 1986 for the current tax year. The bill would not limit the right of attachment or offset with respect to child support or spousal maintenance.

House Judiciary
Date 3-03-11
Attachment # 1

SUMMARY OF TESTIMONY IN SUPPORT OF KANSAS SENATE BILL 12

House Judiciary Committee: March 3, 2011

My name is Paul Post. I have been a lawyer for over 36 years, and in private practice in Topeka since 1978. A significant percentage of my private practice involves representing persons and families filing for bankruptcy. I generally represent debtors rather than creditors. My bankruptcy practice for debtors is about evenly divided between filing Chapter 7 bankruptcies and Chapter 13 repayment plans.

As part of the bankruptcy process, debtors are required to list all of their assets, which includes income tax refunds which they expect to receive. The refunds also include the earned income credit. If a tax refund is received after the case is filed, the debtor is usually required to turn the tax refund over to the bankruptcy trustee, for distribution by the trustee to unsecured creditors. It is also possible for me to accept an income tax assignment to pay all or a portion of my attorney fees in connection with the case.

The amount of the income tax refund and earned income credit required to be turned over to the trustee varies depending on when the case is filed. If a bankruptcy is filed early in the year, but after the previous year's tax refund or earned income credit is received, then the trustee will only require turnover of that portion of the refund or EIC that was "earned" prior to the time that the case was filed. In other words, if a case is filed on April 1, which is one fourth of the way through the year, then one fourth of the tax refund or EIC must be turned over. As the year progresses, more or the refund or EIC must be turned over. If a bankruptcy is filed after the new year begins, but before the tax return is filed and the refund received, then all of the tax refund and EIC from the previous year is subject to turnover to the trustee.

A trustee has discretion to decline to accept a refund or the EIC. If the refund is small, then

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a trustee may allow the debtor to keep the refund, since there would not realistically be any money available to unsecured creditors arising out of the refund. In my experience, if the refund is less than \$1,000.00, then the trustee may decline to administer the refund for the benefit of creditors. However, this is not always true, especially if there are other potential non-exempt assets which the debtor owns that may be required to be turned over.

Court decisions in the 1990's determined that the earned income credit was subject to turnover to the trustee. This credit is available to the "working poor" who have minor children dependent upon the working parent for support. A person cannot receive the earned income credit if he or she does not work or if there are no minor children at home. Oftentimes, depending upon the number of children in the family and the amount of income received, the EIC can be substantial, oftentimes amount to several thousand dollars. A working parent can receive the EIC even if no taxes were withheld on account of employment, which oftentimes happens with a parent who has a low wage and several children in the home. Since the EIC is available only to working parents, it is specifically intended to encourage persons with minor children to work outside the home – it is a work-incentive program that is part of our federal welfare system, and when combined with the Temporary Aid to Needy Families program (TANF), is intended to assist those families in meeting their basic needs after the TANF payments expire. President Ronald Reagan who called the Earned Income Tax Credit "the best anti-poverty, the best pro-family, the best job creation measure to come out of Congress."

The court rulings which allowed bankruptcy trustees to require turnover of the earned income credit are at cross-purposes with the national welfare assistance programs. The effect of these decisions is to remove the money from families who need the funds essentially to survive, and allow the money to be distributed to creditors. The question becomes whether it is fair result to redirect

money away from low incomes families who need the funds for essential survival, and pay it to creditors. This question can be answered by looking how unsecured creditors receive money from the bankruptcy estate. The trustee is allowed to base a fee on 25% of the first \$5,000.00 of recovered assets in a Chapter 7 case, with a 10% fee charged for sums received thereafter on amounts up to \$50,000.00. A \$5,000.00 earned income credit refund would result in a fee of \$1,250.00 to the trustee. A Chapter 7 trustee may also charge additional expenses against the recovered asset. Most trustee's charge separately, and usually at an hourly rate, for actual legal work that benefits the estate, and this is on top of the trustee fee previously discussed. The attorney fee charges usually add an additional \$500.00 to \$1,000.00 to the total bankruptcy estate expenses, which are deducted from the recovered asset. Again, using the hypothetical \$5,000.00 earned income credit, fees could easily exceed \$2,000.00, leaving the balance for unsecured creditors, who share *pro rata* in the net recovered assets based upon the amount of each claim compared to the entire recovery.

It is not uncommon for unsecured creditors to receive small distributions amounting to only a few dollars. To better illustrate how income tax refunds and the EIC are spent, I have attached a copy of the Chapter 7 trustee's Final Report in a case. In this case, the trustee received income tax refunds totaling \$2,274.40. From this, the trustee charged administrative fees and charges totaling \$795.89, which was more than one-third of the total recovery. This left \$1,478.51 available to unsecured creditors. A number of creditors did not even bother to file claims as shown by the "N/A" entry in the next to last column on the right, second page. The highest amount paid to any one creditor was \$312.71 on a claim of \$2,408.30, while the lowest amount was \$16.26. Had more creditors filed claim, the amounts would have been even less, since they would have been dividing the same "pie."

Oftentimes, the original creditor has sold its claim to a collection agency or a company that

buys claims in bankruptcy for cents on the dollar. Thus, the small amount of money paid to creditors in Chapter 7 may end up in the coffer of a speculator who has purchased another company's bankruptcy claim. This comes at the expenses of working parents who would otherwise use the earned income tax exemption to purchase needed goods and services in the local economy. Exempting the earned income credit would allow those low income families to keep this source of funds for the benefit of their children.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS

In re: [REDACTED] REAL
[REDACTED] AN

§ Case No. 00-1117
§
§
§

Debtor(s) [REDACTED] NG

CHAPTER 7 TRUSTEE'S FINAL ACCOUNT AND DISTRIBUTION
REPORT CERTIFICATION THAT THE ESTATE HAS BEEN FULLY ADMINISTERED
AND APPLICATION TO BE DISCHARGED (TDR)

DARCY D WILLIAMSON, chapter 7 trustee, submits this Final Account,
Certification that the Estate has been Fully Administered and Application to be Discharged.

1) All funds on hand have been distributed in accordance with the Trustee's Final Report and, if applicable, any order of the Court modifying the Final Report. The case is fully administered and all assets and funds which have come under the trustee's control in this case have been properly accounted for as provided by law. The trustee hereby requests to be discharged from further duties as a trustee.

2) A summary of assets abandoned, assets exempt, total distributions to claimants, claims discharged without payment, and expenses of administration is provided below:

Assets Abandoned: <u>\$30,465.26</u>	Assets Exempt: <u>\$11,458.26</u>
Total Distribution to Claimants: <u>\$1,478.51</u>	Claims Discharged Without Payment: <u>\$32,620.46</u>
Total Expenses of Administration: <u>\$795.89</u>	

3) Total gross receipts of \$ 3,590.19 (see **Exhibit 1**), minus funds paid to the debtor and third parties of \$ 1,315.79 (see **Exhibit 2**), yielded net receipts of \$2,274.40 from the liquidation of the property of the estate, which was distributed as follows:

EXHIBIT 6 -PRIORITY UNSECURED CLAIMS

CLAIMANT	UNIFORM TRAN. CODE	CLAIMS SCHEDULED (from Form 6E)	CLAIMS ASSERTED (from Proofs of Claim)	CLAIMS ALLOWED	CLAIMS PAID
N/A					
TOTAL PRIORITY UNSECURED CLAIMS		0.00	0.00	0.00	0.00

EXHIBIT 7 -GENERAL UNSECURED CLAIMS

CLAIMANT	UNIFORM TRAN. CODE	CLAIMS SCHEDULED (from Form 6F)	CLAIMS ASSERTED (from Proofs of Claim)	CLAIMS ALLOWED	CLAIMS PAID
Allen County Hopsital	7100-000	163.00	1,882.83	1,882.83	309.27
ASSET ACCEPTANCE LLC -7565	7100-000	N/A	150.77	150.77	24.76
ASSET ACCEPTANCE LLC -2769	7100-000	N/A	481.72	481.72	79.12
Cox Communications	7100-000	230.64	98.97	98.97	16.26
PYOD LLC its successors as assignee of Citibank -2356	7100-000	2,408.30	1,903.81	1,903.81	312.71
PYOD LLC its successors as assignee of Citibank -9020	7100-000	N/A	1,019.01	1,019.01	167.38
Neosho Medical Center	7100-000	1,097.17	1,626.67	1,626.67	267.19
ALLTEL VATIV RECOVERY SOLUTIONS LLC -4498	7100-000	1,837.00	1,222.25	1,222.25	200.76
ALLTEL VATIV RECOVERY SOLUTIONS LLC -4977	7100-000	0.00	615.28	615.28	101.06
Neosho Memorial Medical Center	7100-000	0.00	N/A	N/A	0.00
Mid America Account Control B Lubber's Chevrolet	7100-000	10,302.09	N/A	N/A	0.00
Hillcrest Medical Center Senex Services	7100-000	0.00	N/A	N/A	0.00
HCFS Revenue Senex	7100-000	0.00	N/A	N/A	0.00
Hillcrest Medical	7100-000	882.00	N/A	N/A	0.00
HCFS Revenue k/n/a First Credit Serv	7100-000	882.00	N/A	N/A	0.00
Kenneth Williams DDS	7100-000	264.00	N/A	N/A	0.00
Girard National Bank	7100-000	859.00	N/A	N/A	0.00
The Family Physicians PA	7100-000	105.48	N/A	N/A	0.00

UST Form 101-7-TDR (9/1/2009)

Testimony in favor of 2011 Senate Bill 12
Before the Kansas House Judiciary Committee
March 3, 2011
by Jill A. Michaux, Neis & Michaux, P.A., Topeka

Thank you members of the Judiciary Committee. I come before you in support of Senate Bill 12 to create a Kansas state law exemption for EIC for use in bankruptcy.

I have represented Kansas individuals and small business proprietors in bankruptcy since 1982. I was the attorney in the 10th Circuit case called Montgomery. (In Re Montgomery, 224 F.3d 1193, 1194 (10th Cir. 2000).

Montgomerys' attempt to exempt EIC in their bankruptcy was rejected. The circuit court said an specific exemption for EIC is required. The general exemption for social welfare in K.S.A. 39-717 is not sufficient.

38-717(c) None of the money paid, payable, or to be paid, or any tangible assistance received under this act shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

Many states have specific EIC exemptions or an exemption for any property up to a certain limit that can be used for EIC. The status of other state laws is listed on page 38-41 of "When Welfare Becomes Work Support: Exempting Earned Income Tax Credit Payments in Consumer Bankruptcy", American Bankruptcy Law Journal, Summer, 2004. A summary is attached to this testimony.

Last year's fiscal note for substantially similar SB 363 indicated: **The Department of Revenue indicates the bill would have no fiscal effect on state revenues.**

I urge you to adopt Senate Bill 12. Thank you.

Earned Income Tax Credit

Earned Income Tax Credit (EITC or EIC) is a **refundable tax credit** designed to encourage low-income workers and offset the burden of U.S. payroll taxes. Both the United States and the State of Kansas have the EITC.

EIC recipients must have a minimum amount of earned income and at least one qualifying child sharing their residence. The credit phases out for earned income over \$43,352. Maximum credit is \$4050 to \$5666 depending on income and number of children.

There is a much more modest EIC for persons and couples without children with earned income of \$5980 to \$13,460. The maximum EIC is \$457.

Enacted in 1975, the EIC has been expanded many times, including the more widely-publicized Reagan EIC expansion of 1986. Today, the EITC is one of the largest anti-poverty tools in the United States, and enjoys broad bipartisan support.

Kansas is one of at least 20 states with their own EIC. Kansas residents claiming an EIC on their Federal return, may claim an EIC on their Kansas income tax return. Nonresidents cannot claim the Kansas EIC. **The Kansas EIC is 17% of the federal EIC.**

<http://www.ksrevenue.org/faqs-taxii.htm>

The EIC has significant impact on the lives and the communities of the nation's lowest paid workers. The EIC encourages more work during the phase in period to qualify for a larger EIC. It lifts the lowest paid working people above the federal poverty line. Dollars are spent in local communities on commodities and services.

Economists suggest that every increased dollar received by low and moderate-income families has a multiplier effect of between 1.5 to 2 times the original amount, in terms of its impact on the local economy and how much money is spent in and around the communities where these families live.

Source: http://en.wikipedia.org/wiki/Earned_Income_Tax_Credit

I. Exemption of the Federal Earned Income Tax Credit in states that do not allow people who file for bankruptcy to choose the federal exemptions under § 522(b) and (d) (“Opt-out states”).

1. Alabama “Public assistance to needy persons” is exempt. Case law says EITC is covered by this exemption.
2. Arizona Statutory chapter on state welfare assistance programs is not subject to operation of any bankruptcy law. Case law says EITC is not exempt under state law.
3. California Aid under state Welfare and Institutions Code is exempt. EITC is either not exempt or whether it is exempt is unclear.
4. Colorado Express exemption for EITC. Colo. Rev. Stat. § 13-54-102(1)(o) (West 2009).
5. Delaware Statutory chapter on public assistance says assistance under it is not subject to operation of bankruptcy law. EITC is either not exempt under this provision or whether it is exempt is unclear. Separate exemption provided for property with aggregate fair market value of not more than \$5,000 (excluding retirement plans).
6. Florida Express exemption for EITC (by reference to § 32 of the Internal Revenue Code). Fla. Stat. § 225.25(3) (West 2009).
7. Georgia Exemption provided for a local public assistance benefit. EITC is not exempt under this provision.
8. Idaho Exempts benefits under “federal, state, or local public assistance legislation.” Case law says this covers EITC.
9. Illinois Exempts public assistance benefit, which case law says covers EITC.
10. Indiana No exemption available that even arguably covers EITC.
11. Iowa Exempts “public assistance benefit,” which case law says covers EITC. Iowa Code § 627.6(8)(a) used to cover a “local public assistance benefit” but was amended to say “any public assistance benefit.”

12. Kansas The Social Welfare chapter of Kan. Stat. Ann. (K.S.A. 2008 Supp. 39-717(c)) says benefits under that act are not subject to legal process, or to the operation of any bankruptcy law; K.S.A. 60-2313(a)(2) exempts public assistance benefits covered by K.S.A. 39-717.
13. Kentucky Non-commingled public assistance is not assignable and is exempt from levy or execution, which case law says sometimes makes EITC exempt. Kentucky also has a \$1,000 wildcard exemption for people who file for bankruptcy.
14. Louisiana Express exemption for EITC, except for seizure by the state department of revenue or arrears in child support payments. La. Rev. Stat. Ann. § 12:3881 (2009) (Added in 2004.)
15. Maine Exempts a local public assistance benefit. EITC is not exempt under this provision.
16. Maryland Assistance under specified subtitle of state statutes is not subject to bankruptcy law. EITC is either not exempt or whether it is exempt is unclear. Md. Code Ann., Cts. & Jud. Proc. § 11-504(b)(5) provides exemption for up to \$6,000 worth of cash or other property.
17. Mississippi Exempts public benefits for disabled, blind, and the elderly. EITC is either not exempt or whether it is exempt is unclear.
18. Missouri Exempts local public assistance benefit. Case law says EITC not covered because it is not a "local" benefit. Head of household may claim exemption for up to \$1,250 plus \$350 per minor child or disabled dependent. EITC that qualifies as a married couple's entireties property would be exempt from creditors with claims against only one spouse.
19. Montana Assistance under chapter about administration of public assistance is not subject to any bankruptcy law. EITC is either not exempt or whether it is exempt is unclear.
20. Nebraska Exempts county and state assistance. State supreme court said EITC is a "means-tested public assistance benefit"

excluded from child support income calculations. EITC is either not exempt or whether it is exempt is unclear.

21. Nevada Statutory chapter about public welfare says assistance under it is not subject to the operation of any bankruptcy law. Case law says EITC is not exempt under this provision.
22. New York Exempts a local public assistance benefit. EITC is either not exempt or whether it is exempt is unclear. A debtor who claims no homestead exemption can claim up to \$2,500 in cash or yet-to-be-received tax refund (including federal refund).
23. North Carolina Allows wildcard exemption up to \$3,500 under certain circumstances that could be used to exempt EITC.
24. North Dakota Exempts aid to families with dependent children under statutory chapter; allows wildcard exemption of \$7,500 (in addition to other specific exemptions) to resident who claims no homestead exemption; allows head of family a wildcard exemption of \$5,000 (in addition to other specific exemptions); allows a single person a wildcard exemption of \$2,500.
25. Ohio Express exemption for EITC. Ohio Rev. Code Ann. § 2329.66 (2009).
26. Oklahoma Provides undue hardship exemption for part of earnings from personal services necessary for maintenance of family or other dependents. Case law says this covers EITC. Other exemptions held not to cover EITC.
27. Oregon Express exemption for EITC. Or. Rev. Stat. Ann. § 18.345(1)(n) (West 2009).
28. South Carolina Exempts a local public assistance benefit. EITC is either not exempt or whether it is exempt is unclear.
29. South Dakota Statutory chapter about temporary assistance for needy families exempts assistance provided under it. EITC is either not exempt or whether it is exempt is unclear. Provides

- wildcard exemption for personal property, but might be needed for vehicles, furnishings, and other personal property, as well as EITC.
30. Tennessee Exempts a local public assistance benefit. EITC is either not exempt or whether it is exempt is unclear. Statutory chapter on programs and services for children says assistance under it is not subject to any bankruptcy law. Tennessee has a wildcard exemption for up to \$4,000 that can be used to exempt EITC. Tenn. Code Ann. § 26-2-103 (West 2009).
 31. Utah Statutory chapter on workforce services says public assistance provided under it is not subject to any bankruptcy law.
 32. Virginia Provides wildcard exemption that might protect large EITC payment, depending on value of homestead exemption debtor claims.
 33. West Virginia Exempts a local public assistance benefit. EITC is either not exempt or whether it is exempt is unclear.
 34. Wyoming Statutory chapter exempts public assistance and social services provided under it. Case law says EITC is not exempt under that chapter.

II. Exemption of the Federal Earned Income Tax Credit in states that allow people who file for bankruptcy to choose under § 522(b) either the exemptions provided in § 522(d) ("the federal exemptions") or the exemptions provided by state law (and other federal law).

A debtor who chooses the federal exemptions, as allowed by these 16 states, can claim a wildcard exemption for property worth up to \$1,075, plus up to \$10,125 of unused part of the exemption amount allowed for a residence. § 522(d)(1) & (5). (These dollar amounts may be adjusted on April 1, 2010).

There have apparently been almost no reported decisions in these states about exempting the EITC under § 522(d) or under state exemption laws.

States that have not opted out of the federal exemptions

1. Alaska
2. Arkansas
3. Connecticut
4. Hawaii
5. Massachusetts
6. Michigan
7. Minnesota
Case law says a debtor who chose the federal exemptions could not exempt the EITC under § 522(d)(10) as a "local public assistance benefit," but a debtor who chose the state exemptions could exempt the EITC under a Minnesota statute as "relief based on need."
8. New Hampshire
9. New Jersey
10. New Mexico
11. Pennsylvania
12. Rhode Island
13. Texas
14. Vermont
15. Washington
16. Wisconsin

Testimony in favor of 2011 Senate Bill 12
Before the Kansas House Judiciary Committee
March 3, 2011
by John R. Hooge, Lawrence, K.s

My name is John Hooge. I am a four-generation native Kansan. I attended Ottawa University, Kansas Univ. Law School and Indiana Univ. School of Law-Indianapolis. After graduating from IU in 1977 I returned to Lawrence where I have been an attorney for over 30 years.

I have always handled bankruptcy cases. Debtor bankruptcy has been practically the only thing I have handled for a # of years and I have filed thousands of bankruptcies.

Bankruptcy should not be filed when unnecessary. The bankruptcy law now requires people to get credit counseling from non-profit credit counseling agencies before they can file bankruptcy. To see if they have another viable option. But, often, the people filing bankruptcy have no other reasonable choice in dealing with their debts. And if they file bankruptcy and are entitled to an earned income credit, it is taken from them.

The purpose of exemptions in bankruptcy is to allow people to have a fresh start and not have everything taken from them. Most people who are entitled to earned income credits don't have a lot of assets. And the earned income credit is very important to them and their children.

A person only gets an earned income credit (EIC) if he or she is a wageearner with minor children--and if the wages are under a certain amount. It is almost always a working mother.

The current recession has made the EIC even more important to these people. The working poor have felt this recession more than any others. They pay a higher percentage of their income for rent, medical costs, food costs, necessities. Jobs are hard to find. Many employers no longer provide medical insurance or even if it is provided, employees can't afford it. Income has been reduced. Overtime is often a thing of the past. People now sometimes can't get 40 hours of work in a week or have to take mandatory job furloughs without pay.

Every person filing bankruptcy must file a monthly budget showing their income and how it is spent. It is eye-opening to see how a single mother with children making \$10 an hour or even less and maybe getting minimal child support has to choose how to spend her income. Often the choice is doing without necessities. Not buying medicine, not getting dental work, not fixing the car. Their annually received EIC helps them immeasurably.

How clients spend their EIC can be important in their bankruptcy case. I ask my clients how they spend their EIC. It is almost always for necessities.

Last year, I was asked when testifying before this committee how someone would actually spend their EIC. I discussed the 22 year old young woman I was then representing. Caitlin received an EIC of \$2,795. She spent that by purchasing a bed and dresser for her 2 year old son and a laptop computer. She paid rent, purchased gasoline and food and the rest was all spent on car repair.

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Attachment # 4

She paid for an oil change, replaced a bad tire and purchased a spare tire she did not have, had new brakes and front axles installed and repaired her air conditioner.

This is very typical of how I see people spending their earned income credits. Hardly ever is this money wasted. This is part of their annual budget. They depend upon this annual amount to make up for what they don't have the rest of the year. They spend this money locally--in our state, in their community, benefiting this state and its businesses. And granting this exemption costs our state government nothing.

As Paul Post will testify, the creditors in a bankruptcy often get as their share only small amounts from an EIC taken from a Debtor. This has minimal benefit for them. But, the impact on the person or family with children and limited income can be devastating.

To watch a person be told by the bankruptcy judge that the judge has no choice but to take that money from them because of the law, who did not understand they would lose it--who needs that money for their family--can be heart wrenching. Such should not happen. The lack of this exemption defeats the very purposes of the earned income tax credit--to encourage employment and keep people out of poverty.

Respectfully submitted,

John Hooge

JOHN VRATIL
SENATOR, ELEVENTH DISTRICT
JOHNSON COUNTY
LEGISLATIVE HOTLINE
1-800-432-3924

State of Kansas



Vice President Kansas Senate

COMMITTEE ASSIGNMENTS
VICE CHAIR: EDUCATION
WAYS AND MEANS
MEMBER: JUDICIARY
ORGANIZATION, CALENDAR
AND RULES
INTERSTATE COOPERATION
KANSAS CRIMINAL
CODE RECODIFICATION
COMMISSION

Testimony Presented to
House Judiciary Committee
By Senator John Vratil
March 3, 2011
Concerning Senate Bill 12 as Amended
By the Senate

Good morning! Thank you for the opportunity to testify before the House Judiciary Committee in support of Senate Bill 12 as amended by the Senate. The language in SB 12 protects the earned income tax credit by exempting it from a bankruptcy proceeding.

The earned income tax credit (EITC) is a critical tool for low income Kansans as they struggle to maintain and improve their lives. Under current law, the debtor can be forced to forfeit the EITC. Such forfeiture is counterproductive and further inhibits the debtor's ability to recover, making it more likely that the debtor will come to require state services.

Senate Bill 12 clarifies that the exemption does not limit rights of offset, attachment or other process for payment of child support or spousal maintenance. It limits the maximum credit exemption allowed to the debtor to a maximum of one tax year.

I ask that you support Senate Bill 12.

House Judiciary
Date 3-03-11
Attachment # 5

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Testimony in support of
Senate Bill 12
Before House Judiciary Committee
March 3, 2011

I am Marilyn Harp, Executive Director of Kansas Legal Services, a statewide program providing legal services to low and moderate income persons. Senate Bill 12 deserves your support.

In 2010, we provided advice and legal representation to over 20,000 low income Kansans. In that regard, we have contact daily with low income Kansans who qualify for and may receive Federal Earned Income Tax credits (EITC). This program was designed to replace the Federal support for low income families, which was delivered through direct monthly payments in the Aid to Families with Dependent Children (AFDC) program. Unlike the AFDC program, which was administered in Kansas by the Kansas Department of Social and Rehabilitation Services, the EITC program is administered through the Federal Income Tax program. Families file a federal income tax return. If they qualify for EITC, they receive a payment larger than the amount of their earnings withheld for Federal Income tax payments. Eligible families (parent and one minor child) have annual incomes of \$35,063. Those with the least amount of earnings would receive a credit of \$3,043. This is applied to taxes due from the worker and can be received as a "refund".

Since 1975, the Earned Income has become the largest income transfer from the Federal government to low income Americans. In 2008, 24.8 million Americans received \$50.7 billion through the EITC program. The state of Kansas provides a credit figured at 18% of the Federal EITC for Kansas low income workers, although it is proposed that this amount will decrease in the future.

One concern about the EITC program is that about 20% of the eligible participants do not file a Federal income tax return, and, therefore, don't qualify for the payment through this program. The requirement of paying a tax preparer to complete a return in order to participate has been an obstacle for low income workers. As one response to this, legal services programs nationwide have worked together to create and distribute a easy to use program designed to maximize the EITC benefit available. There is no charge for accessing this program, called I CAN e-file. A link to this program can be found on the Kansas Legal Services website, www.kansaslegalservices.org.

House Judiciary
Date 3-03-11
Attachment # 6

Kansas Legal Services advises and represents clients who are contemplating filing for bankruptcy. Because of an unpaid debt, perhaps a child's hospital bill, they have been sued and their wages have been garnished. They are regularly losing 25% of their very limited income to garnishment. The only solution that will end the garnishment is filing for bankruptcy. However, under the law today, they face the loss of perhaps \$3,000 in a EITC enhanced income tax return.

The purpose of the EITC is not to transfer Federal income support to the creditors of low income persons. Yet, without the law change, this is exactly what happens. Federal income support directed toward low income persons goes to their creditors. When a low income person files for bankruptcy, the income tax return due them at that point (or a pro rata portion of their annual return, based on when they file) becomes the property of the bankruptcy trustee. This money is distributed to the creditors by the trustee, in partial payment of the creditor's debts.

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MEMORANDUM

To: Chairman Kinzer and members of the House Judiciary Committee
From: Jill Ann Wolters, Senior Assistant Revisor
Date: March 3, 2011
Subject: SB 62, Assessment of court costs under the Kansas standard asset seizure and forfeiture act

Under current law pursuant to the Kansas standard asset seizure and forfeiture act, filing fees are not required when seizing agencies or plaintiff's attorney, as applicable, file notice of seizure for forfeiture, notice of pending forfeiture or a forfeiture lien. In these instances, the amendment allows the court to assess court costs, and if court costs are assessed, requires the docket fee and any additional court costs accrued be included in the court costs.

House Judiciary
Date 3-03-11
Attachment # 7

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HOUSE JUDICIARY COMMITTEE
Representative Lance Kinzer, Chair

TESTIMONY
Senate Bill 62

Assessment of Court Costs in Asset Forfeiture Cases
By: Alice Adams, Eighth Judicial District Court Clerk
March 3, 2011

Mr. Chairman and Committee Members:

Thank you for the opportunity to appear before you today on behalf of the Kansas Association of District Court Clerks and Administrators in support of Senate Bill 62.

The Asset Seizure and Forfeiture Act provides in K.S. A. 2009 Supp. 60-4177 that the proceeds of any sale shall be distributed in a prescribed order of priority, and includes "sale and court costs" as an item that may be paid in the second order or priority. While this provision appears to allow the assessment of the docket fee when forfeited assets are actually sold, there appears to be no express authority for the court to assess the docket fee when the object of the forfeiture proceeding is cash and no sale occurs.

During the last calendar year, many of these cases, generally criminal drug cases, have been pursued in Montgomery and Geary County. A total of 42 civil forfeiture cases were filed in Montgomery County, requesting \$12,780 in cash and \$69,203 in property. In Montgomery County alone, lost revenue to the State in docket fees totaled \$7,287. In Geary County, 50 cases were filed, requesting \$90,965 in cash and \$141,018 in property. Lost revenue to the state totals \$8,675. Statewide, at this time, it is anticipated that approximately 400 cases would be affected. At a docket fee of \$173 per case, approximately \$70,000 could be recouped in docket fees. As you may be aware, pursuant to K.S.A. 20-367, docket fees fund many entities and programs. Most of the docket fee flows into the state general fund.

KADCCA would like to amend K.S.A. 2009 Supp. 60-4107 and K.S. A. 60-4109 to provide that court costs, which in most cases would include only the docket fee, may be assessed by the court in asset forfeiture cases. The Senate passed the bill on a vote of 38 – 0. There was no testimony in opposition to the bill.

Thank you for your time.

House Judiciary
Date 3-03-11
Attachment # P

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