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Revenue Committee
February 07, 2007

[LB159 LB423 LB442]

The Committee on Revenue met at 2:30 p.m. on Wednesday, February 7, 2007, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB159, LB423, and LB442. Senators present: Ray Janssen, Chairperson; Merton "Cap" Dierks, Vice Chairperson; Carroll Burling; Chris Langemeier; Don Preister; Ron Raikes; and Tom White. Senator absent: Abbie Cornett. []

SENATOR JANSSEN: Okay. Good afternoon, ladies and gentlemen. Welcome to the Revenue Committee. For the record, my name is Ray Janssen representing District 15. Members of the committee that are with us here today are Senator Preister way to my far left. Senator Burling on his right. Erma James, our clerk, is way to my right. Senator Ron Raikes is next to counsel who is George Kilpatrick, and Senator Langemeier just arrived. And we're here today to hear three bills. I think you all know the rules. I see a few new faces here, though. Our page is Marcus. If you're coming up to testify make sure that your cell phones are off and pagers while you're in the room. It's very annoying to have one of those buggers go off. So sign-in sheets for the testifiers are by each door and you'll need to complete those if you're wishing to testify. Or if you don't want to testify and you have an opinion on that bill you can also leave a copy with Erma. When you come up hand your testifier sheet to the clerk on my extreme right. We'll follow the agenda that's posted on the door. We will take the introducer first followed by the proponents and then the opponents. If you have copies or handouts, please bring at least 10 copies for the committee and the staff. If you have only the original the page will make copies for you. With that, we'll begin. Senator Heidemann is here to tell us all about LB159. Welcome, Senator Heidemann. [LB159]

SENATOR HEIDEMANN: (Exhibits 1 and 2) I've got two letters of support--one from the Nebraska Farm Bureau and one from the Nebraska Pork Producers. Good afternoon, Chairman Janssen and members of the Revenue Committee. I am Lavon Heidemann, spelled H-e-i-d-e-m-a-n-n of Legislative District 1, and I'm here today to introduce LB159. LB159 would eliminate sales and use tax on repair and replacement parts for agricultural machinery or equipment. This sales tax on parts and repair parts in Nebraska is currently causing a domino effect in this state that is hurting us. All of our surrounding states except Wyoming, which has other incentives to buy there, do not charge sales tax on agricultural machinery or equipment parts. Farmers near the borders have started traveling out of state for their parts so that they don't have to pay sales tax on them. Furthermore, we have been told that there are out of state dealers that have people running parts in this state. These factors are causing Nebraska dealerships to suffer a loss of business. For quite a few dealers located near the border, this has caused them to close or be at a point where they're going to have to close soon. Therefore farmers in these areas must travel some distance to get their parts and if they are going to need to go a number of miles, they might as well go out of state to get these items where they'll be cheaper because sales tax is not charged. For me, the

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closest dealer that I purchase farm machinery parts is about 20 miles away. Personally, I know their business is struggling because of this issue. If they close, the next closest Nebraska dealer is approximately 40 miles away. What's stopping me from traveling to Iowa, Missouri, or Kansas where their dealerships are closer and that they don't charge sales tax on my parts? What's stopping me from going there? Implementing this bill would not be difficult. It would actually be easier to administer this exemption on parts and repair parts than the refund program that is now in place for depreciable parts and repair parts for agricultural machinery. Like other states, farmers would fill out a certificate of exemption. We have been told they could fill out a blanket certificate and have it on file with their dealer so they would not have to fill out a certificate with each purchase. As you consider all the tax cuts proposals before you, I strongly urge you to include this proposal that is brought to the floor. Thank you for your time. I will try to answer any questions that you might have. [LB159]

SENATOR JANSSEN: Questions? Senator Langemeier. [LB159]

SENATOR LANGEMEIER: Thank you, Chairman Janssen. Thank you, Senator Heidemann. One question and I don't know how important it is, but we hear this is limited to the use in commercial agriculture. Is commercial agriculture defined somewhere in statute? I'm curious. I mean, I can see where you're going with it, but I'm curious if that is actually defined somewhere. [LB159]

SENATOR HEIDEMANN: That I don't know. I would have to presume it is, but I don't know. I would have to get back to you on that. [LB159]

SENATOR LANGEMEIER: Okay. I'm just curious. Thank you. [LB159]

SENATOR JANSSEN: Senator Raikes. [LB159]

SENATOR RAIKES: You mentioned other incentive for purchase in Wyoming. [LB159]

SENATOR HEIDEMANN: I think they just treat the farmers just probably a little bit different as far as their tax structure, personal property tax and things like that, but not exactly when you go in and purchase maybe. [LB159]

SENATOR RAIKES: So you do think there is sales tax charged in Wyoming? [LB159]

SENATOR HEIDEMANN: I think in Wyoming I believe they do have a sales tax. It is quite a bit lower than what Nebraska is though, I think, if I remember what I've been told. [LB159]

SENATOR RAIKES: Okay, thank you. [LB159]

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SENATOR JANSSEN: Any other questions? Senator Heidemann, do you have any records or idea on how many machinery dealerships has ceased to exist in Nebraska in the last 15-20 years? [LB159]

SENATOR HEIDEMANN: I do not. There might be some people that are following me up that might be able to tell you that. I have just from my personal observation, from where I live and from what I've been told, like along Iowa a number of dealerships have closed in those areas. You go across over into Iowa and they seem to be thriving. You go down to where I live along the Kansas border. We have just a few left down there, what I would consider. You go right across on what would be Highway 36, I believe, and there seems to be a dealership in every town. I contribute that to somewhat this issue right here. [LB159]

SENATOR JANSSEN: Could it be also the farms are getting so much bigger now? There are less farmers. You know, it used to be you could make a living on 160 acres. Well, that's impossible to do now. And everyone had a John Deere A tractor or an M or something like that. And so what I'm getting at, probably the two together because there aren't as many customers anymore and that's the reason that some of them are closing. [LB159]

SENATOR HEIDEMANN: I would agree with you on that. Times are changing. Less farmers, actually less tractors what we're using. I mean, we've got bigger trucks, bigger equipment. We go over more acres. But I can't explain the fact then that we have less dealers in Nebraska than they do right across the border. And the only thing that I can contribute that factor to then is this right here. [LB159]

SENATOR JANSSEN: How are they in the other states? In the, say, in the middle of that state, are there more or less dealers, say, in central Kansas rather than along the borders? [LB159]

SENATOR HEIDEMANN: I never thought about that until you just brought that up. I mean, I would call it the casino effect then. That every time a state doesn't have gambling does that mean there's all kinds of casinos right on the border? The question might be yes. [LB159]

SENATOR JANSSEN: Yeah. Okay, any other questions? Senator Langemeier. [LB159]

SENATOR LANGEMEIER: Thank you, Senator Janssen. I was advised by committee counsel that there isn't a definition for commercial agriculture; however, we do use it in a number of things as greenbelting and so I don't know that we need the definition. But anyway, for your information. [LB159]

SENATOR HEIDEMANN: Okay, thank you. [LB159]

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SENATOR LANGEMEIER: Thanks. [LB159]

SENATOR JANSSEN: I see no other questions. Thank you, Senator. Are you going to stick around and close? [LB159]

SENATOR HEIDEMANN: I might try to see how long this takes. [LB159]

SENATOR JANSSEN: Okay, all right. Fine. We'll take proponents first. Those in favor of the legislation. [LB159]

BILL SCHROER: Good afternoon, Senators and everyone else. My name is Bill Schroer, spelled S-c-h-r-o-e-r, and I work in the town of Fairfield, Nebraska. I'm a farm equipment dealer with four of our five locations. I have partners in this. Four of these five locations border counties with Kansas. One store, which is Fairfield, is 33 miles from the Kansas border; one is 12 miles which is Hebron, Nebraska; one is 22 miles which is Beatrice, Nebraska; and one is just two miles which is Superior, Nebraska. Now these four dealerships average just over 17 miles each. Now our service area that we do business in we usually do like 30-35 mile radius. So roughly half of our business is into the Kansas side. Our parts department, our service department, our bookkeeping then must ascertain which state this customer resides in when we're doing business because of this and then also did we deliver the part? See, there's a difference whether they pick it up at our store or we deliver it to them. And, you know, games are played. Not by us, but I mean by the individuals, you know? And so that's a problem. And I thought I was correct in saying that all the five states that border Nebraska have no sales tax, but I mean some of this changes and I'm not really aware of that. On the farm equipment, like we sell on service, LB159 is asking to relieve our Nebraska customers from the sales tax on repair parts just like our many customers from Kansas enjoy. This is a nightmare for our people, plus a huge disparity, I believe, between our customers from the two states that we do nearly equal business in. These four stores of ours have just gone through a sales tax audit and I can assure you it was not fun, nor is it fair to our Nebraska customers who are vying to feed this bread basket of ours from an unlevel playing field. I believe that LB159 is a just bill that will put Nebraska farmers on par with their neighbors. That's my written. I would like to kind of throw in something here. I know you folks are going to be thinking about the loss of revenue. I want you to think a little bit about the gain in revenue from the business that we are losing. And I heard a question brought up about the amount of dealerships that are changing that attrition, you know, naturally does every state somewhat, but our executive director of our Iowa-Nebraska Association is in here and he's got the numbers of the dealerships and there's a big disparity between what has happened in Iowa and Nebraska. Anyhow, another thing is this comes to my mind, people tend to buy their parts and service where they buy their new car, new truck, new tractor whatever. So you establish a relationship, you know, and if you've got that established across the border, you know, it's probably

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going to be hard to overcome. But that's what I have today and thank you for allowing me this time. [LB159]

SENATOR JANSSEN: Questions? Carroll. [LB159]

SENATOR BURLING: Thank you, Senator Janssen. Bill, thank you. You're close to Kansas. [LB159]

BILL SCHROER: Right. [LB159]

SENATOR BURLING: So when a Kansas farmer comes to buy parts from you, which seldom happens I would assume, but if he does buy parts from you you don't charge him the sales tax? [LB159]

BILL SCHROER: The law as I believe it is read that if we deliver the part or whole goods, whatever, to Kansas we do not have to collect it. [LB159]

SENATOR BURLING: But if he walks out with the part... [LB159]

BILL SCHROER: If he walks into our store and purchase it then we have to charge him Nebraska sales tax. Now in one of our locations which is two miles away we have a drop box and a filling station a half a mile away. You would be surprised how many parts are asked to be dropped off there. You know, on big stuff, 5.5 percent which we deal with, we have no city sales tax but that adds up. Same way with repairs. If your combine needs a \$10,000 overhaul, you know, it's pretty darn apt it may not make it to our store in Nebraska because, you know, you'd be talking about \$800 or so difference. [LB159]

SENATOR BURLING: So you say if a Kansas farmer carries the parts out of your store you charge them the sales tax. [LB159]

BILL SCHROER: We have to. [LB159]

SENATOR BURLING: You remit that to Nebraska or Kansas? [LB159]

BILL SCHROER: Nebraska. They don't have any. [LB159]

SENATOR BURLING: Okay. Thank you. [LB159]

SENATOR JANSSEN: Any other questions? Chris. [LB159]

SENATOR LANGEMEIER: Thank you, Chairman Janssen. In reading the bill, here it--thank you for your testimony by the way, you're doing a great job... [LB159]

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BILL SCHROER: Thank you. [LB159]

SENATOR LANGEMEIER: ...it states in here the sales and use tax shall not be imposed on gross receipts from and it gives a little list, and it says rental of repair of parts. How do you rent out parts? [LB159]

BILL SCHROER: We don't. [LB159]

SENATOR LANGEMEIER: And then do you lease parts? [LB159]

BILL SCHROER: No. They may go on a machine that is being rented or leased, you know? [LB159]

SENATOR LANGEMEIER: I could understand leasing a tractor or disc or cultivator or a planter, but leasing parts...okay, thank you. [LB159]

BILL SCHROER: And just one other thing. The question you had brought up about commercial ag, I've got what does and what doesn't apply deal on my door of my office and it does say commercial agriculture there. Where it comes from, I don't know. But it's defined as, you know, as someone that's in commercial agriculture that's, you know, selling their product. So again, thanks. [LB159]

SENATOR LANGEMEIER: Thank you. [LB159]

SENATOR JANSSEN: I have one more question. Now when you sell your customer that part and the sales tax is included, would that be a deductible expense for him? [LB159]

BILL SCHROER: Well, I wouldn't think so. In the same light as the other amount of the dollar... [LB159]

SENATOR JANSSEN: Well, I think repair and replacement, I think, are deductible expenses on Nebraska and federal. So you are using that. That was the same argument I always made on the sales tax on construction labor on rental property and so on. That that was a deductible expense. Either that or depreciable expense. [LB159]

BILL SCHROER: Yeah. You know, the other thing is when you have them sign the Form 13 on the whole goods side, you know, then first thing you hear out of their mouth is well now it's going to get the personal property, you know? It's a quagmire. [LB159]

SENATOR JANSSEN: Okay. I don't see any other questions. Thank you, Bill. [LB159]

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BILL SCHROER: Thank you. [LB159]

SENATOR JANSSEN: Next proponent, please. [LB159]

JOEY M. PETERS: (Exhibit 3) Senators, my name is Joey M. Peters and I'm here to represent two ag dealerships in south central Nebraska. My last name is spelled P-e-t-e-r-s. One of which is just six miles north of the Kansas border. As you can imagine, being this close to the border we're in a position to lose a lot of potential business to Kansas and we do it simply due to the sales tax. We see this loss of revenue in parts, sales, and service as Nebraska farmers can buy parts through Kansas dealers or take equipment to Kansas dealers for service or repair and avoid sales tax on the parts. This disparity is also seen in competing sales events. For example, a filter sale at 15 percent off in Nebraska versus a 15 percent sale in Kansas is equal to a 20.5 percent sale for Nebraska farmers in Kansas drawing them across the border. I realize that this should not happen due to the customer use tax and the border sales compact, but it does. Kansas dealers simply make the tickets out to cash customer, thereby bypass all tax issues. This sales tax is making crooks out of otherwise honest people. Passage of bill LB159 would allow us to compete more evenly with Kansas dealers. It would provide incentive for Nebraska farmers to buy parts locally and do their business at a local level. When they go to town for parts they fuel up at a local gas station, eat at the local diner, pick up other supplies or groceries which stimulates the local economy and allows the state to gain revenue from these other areas. It is through this cascade effect increased income for Nebraska ag dealers, increased income for other Nebraska retailers which will generate increased income taxes for the state to help offset the loss of the sales tax. Thank you for your time. [LB159]

SENATOR JANSSEN: Any questions? Joe, where did you say you have your company? [LB159]

JOEY M. PETERS: Red Cloud and Hastings, Nebraska. [LB159]

SENATOR JANSSEN: Red Cloud? [LB159]

JOEY M. PETERS: Yes. [LB159]

SENATOR JANSSEN: Okay. Thank you. [LB159]

JOEY M. PETERS: Thank you. [LB159]

DENNIS SWANSON: (Exhibit 4) Good afternoon, Senators. My name is Dennis Swanson, S-w-a-n-s-o-n, from Sandhill Equipment, Bassett, Nebraska. I have one extra copy here. And so we moved to the north and we border with South Dakota which just passed last summer their sales tax exemption. So these guys have been fighting it for a

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long time and we just got it "bamblasted" on us and it's a big problem. We have less and less dealers and a smaller customer base in our state. So the remaining dealers that are still left on both sides of our state borders are trying to pick up those customers' parts needs. Some basic knowledge for you Senators is that most franchise companies print a suggested retail parts price and for most dealers this is the price used, except for parts specials, promotions, etcetera. So if you were a customer looking for parts and you knew there was at least a 5.5 percent Nebraska and maybe a 1 and 1.5 percent city tax advantage by crossing the border where would you go to buy your parts? We're trying to cover a larger geographical area to maintain a good customer base. Our parts sales need to grow to offset the loss in customers. We already were competing with South Dakota, but as we push out over more miles we need to compete against other states with no sales tax on parts. Only creates more losses in our parts sales, which in turn, is lost revenue to the dealership that creates jobs in our rural communities and that pays taxes to the state of Nebraska. I have several stories or experience to share, but for the sake of time and repetition I would tell you the one that hurts the most. Also remember we couldn't possibly know all that we lose because not all of our customers located along the borders are going to tell. They have a good thing going, they all like to beat the tax system any way they can, and they have a guaranteed discount waiting for them if they just cross the border. Last summer, a customer from Nebraska called us for a \$1,500 part that we stock, for a swather. His dealer in South Dakota did not have this in stock and he needed it. He called and found out the price, which was the same as his South Dakota dealer, and we added our sales tax on. He went ballistic over the sales tax because the dealer in South Dakota wasn't going to make him pay the sales tax. The next phone call our parts man received was from the South Dakota dealer wanting to pick up the part for cost and he would sell it. We stock the parts for profit so we didn't want to do that. The customer called us back and was very upset. The sales tax had become the obstacle for him. We made some price concession and with reluctance he came and picked up the part. But during the phone calls hard feelings were created. I know if he needs a part in the future and he is not up against time, you know where he will purchase his parts. We are at a disadvantage with border states and we need to rectify the problem. We had the part and the inventory to help increase our sales, but lost the battle for a future chance. As fewer and fewer farmers and ranchers operate in Nebraska's rural communities and small businesses see their customer base dwindle, the result is fewer customers, fewer tax payers, fewer jobs and less opportunities for people to remain in our rural areas of the country. We, the state of Nebraska, spend millions of dollars for new start up businesses every year. Let's level the playing field on sales tax on parts so we match up with our adjoining states. And in doing so, we will be insuring some older established businesses the chance to be competitive and survive. In summarizing, less dealers and customers create the need for a larger geographical area. We need to be competitive with border states. Our dealers across the border are using the Nebraska sales tax on parts as an advantage and a drawing card. They are after our customers. So if you were buying parts and lived close to the border or even had a big dollar parts order, where would you go to buy your parts? Thank you for your

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time and please help Nebraska dealers have a fair chance on passing LB159. Any questions? [LB159]

SENATOR JANSSEN: Questions? I don't see any, thank you, Dennis. [LB159]

DENNIS SWANSON: Oh, I got away good there. [LB159]

SENATOR JANSSEN: Yeah. (Laughter) Next proponent. [LB159]

LARRY STAUFFER: Senators, my name is Larry Stauffer, and that's S-t-a-u-f-f-e-r. I am a co-owner of Humboldt Implement Company along with Tim Bowen. We are a Case IH dealer in Humboldt, Nebraska. We're 11 miles from Kansas. We're approximately 30 from Missouri and 45 from Iowa. We reside in Richardson County and serve the counties of Richardson, Pawnee, Johnson, and Nemaha. In 1980, there were nine dealers in the two counties of Richardson and Pawnee County. Two were in Pawnee, there was three in Humboldt, and there was four in Falls City. Two counties that border us in Kansas--Brown and Nemaha--they had a total of 11. As of today, the two counties in Kansas still have eight dealerships. They dropped three over the last 25 years. The two counties in Nebraska has lost six. That's a 66 percent drop. It doesn't take much of a thought process to figure out that our customers are going across the line to buy repair parts. You know, on the average bill of \$2,000 they're saving \$100 for maybe driving 10-20 miles. I don't know who wouldn't do that. And not to mention the fact that the most important step in doing business today is to get that customer into your business. And these people are going down there and when they get in their front door they're not just buying parts. They're buying expensive implements. They're buying gas to get there. They're stopping at the convenience stores to get food. I mean, it's a problem. I've even had some of my customers tell me that when they're approached from a Kansas salesman the first thing they say is hey guess what, we don't have any sales tax for you guys. And the other thing they tell them is we're not even going to fill out that little personal property tax form that goes to your county. And so it puts a stereotype in their mind of hey, we don't have to pay any taxes down here. The sad thing here is that the customers are going to Kansas to do business and 90 percent of those customers who are in Kansas close to us won't cross the line because of the sales tax issue. They're going down there. Senators, I desperately want to convey to you that there's a lot more here at stake than just a sales tax. We are losing dealerships at a much faster rate than on the Kansas side which is all about jobs. Bottom line, this is an issue of money leaving the state. All I'm asking for here is a level playing field and I hope you'll please take a good hard look at LB159 and vote yes for this bill. I think it's the right thing to do. Thank you. Have any questions? [LB159]

SENATOR JANSSEN: Questions? Ron. [LB159]

SENATOR RAIKES: I'm curious and I don't want you to reveal anything that's not

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appropriate, but like on parts how much do you have to work with? Do you have 5 percent? Do you have 10 percent? Do you have 20? Do you have 30? And the question I'm getting at is to what extent can you combat a 5 or 5.5 percent sales tax with your margin? [LB159]

LARRY STAUFFER: You're really competing with the neighboring dealer across the line who's making the same amount of money. I mean, on that particular part. And if you're going to do business with him you're going to have to eat that extra percent, you know, that it takes to keep him. Because if you don't he's going to go down there. And just like I said, for \$100, you know, to drive 10 or 20 miles, who wouldn't do it? [LB159]

SENATOR RAIKES: But if it's really important to keep the customer, I know you'll have filter specials and that sort of thing occasionally, is it worth it or can you afford I guess is my question...can you afford to compete price-wise to overcome the sales tax? [LB159]

LARRY STAUFFER: The only answer I have to that question is there's six dealerships in our two counties that aren't there anymore to answer that question. They're not there anymore to sell parts. You know, and we're continually losing these dealers and it's getting tougher and tougher to do business along the line. [LB159]

SENATOR RAIKES: Okay, thank you. [LB159]

SENATOR JANSSEN: Any other questions? Seeing none, thank you, Larry, for being here. [LB159]

LARRY STAUFFER: Thank you, Senators. [LB159]

SENATOR JANSSEN: Next proponent. [LB159]

JOHN K. HANSEN: (Exhibit 5) Chairman Janssen, members of the committee, for the record, my name is John K. Hansen, H-a-n-s-e-n. I'm president of the Nebraska Farmers Union. Just to throw you off I actually even have written testimony today. It's one of those write it on the barn wall days. Nebraska Farmers Union is in strong support of LB159 despite the fact that it violates one of our general tax policy objectives which is to broaden the tax base, especially in the case of sales. And so when we look at this particular instance we are in support of LB159 for two real, I think, reasonable reasons that cause the exception to be appropriate. And that is that, first of all, and we've been before this committee many years talking about the problems of enforcement. If, in fact, a tax cannot be fairly and consistently collected and enforcement does not seem to be the case and remedy is not possible, then the tax itself is problematic. And in the case of sales tax on parts and agricultural equipment, we know it's not being enforced. Our members tell us it's not being enforced. Our members tell us that they're going to other states buying parts and then not paying sales tax. So what we've heard from the dealers

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we think is the case. So we think enforcement is a problem. And the second reason that we would argue for our general exception to our general policy of trying to broaden the tax base is that in this case we think that the disparity and the competitive disadvantage is strong enough that it is in fact distorting the fundamental primary economic activity to which the tax is attached. And we think that it is putting dealers at a competitive disadvantage and we think that our dealers are being put out of business and that that is not good for the ag sector. It's not good for the state. It's not good for rural communities. As we fight to maintain viable, rural economic communities and main streets, every time you lose one of these kinds of businesses, they are anchors that anchor the entire community. And so it is a big blow to a rural community to lose an equipment dealer. That is a tough blow, because when those folks come to town to buy parts they also obviously buy a lot of other things and are in town and available for other kinds of activities which help support the community. So for those reasons, Mr. Chairman, we are in strong support of LB159. We thank Senator Heidemann for bringing the bill before the committee and would hope that you would think favorably upon its support and passage. With that, would be glad to answer any questions if I could answer them. [LB159]

SENATOR JANSSEN: Questions? Chris. [LB159]

SENATOR LANGEMEIER: Senator Janssen. Thank you, Mr. Hansen. Kind of a side bar on this. Do you have any idea how we compare to Kansas on the attrition rate of loss of farmers? Are we losing them faster than Kansas or a similar pace? [LB159]

JOHN K. HANSEN: Well, the last time that we have looked we're going pretty much up and down in the pool about with everybody else. We're probably a little better shape in some respects and in the case of our livestock sector we have a lot more owner-operators of feedlots and those kinds of things than they do in, say, Kansas or Texas which we compete for for the top spot for total cattle on feed. So we're a little bit more economically healthy as a whole. We have pretty much the same problems everybody else has. [LB159]

SENATOR LANGEMEIER: Okay, thank you. [LB159]

SENATOR JANSSEN: Ron. [LB159]

SENATOR RAIKES: John, in terms of your tenants of tax policy it is probably true that if you broaden the sales tax base you can have a lower rate and if you have a lower rate then the problems caused by somebody on the other side of the border doing something which is not very wise tax policy become less. Would you agree? [LB159]

JOHN K. HANSEN: Yes, I would and we have supported efforts in the past to actually broaden the sales tax base. We have not had, as you may know, a lot of success in

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that. [LB159]

SENATOR RAIKES: Similar to mine. [LB159]

JOHN K. HANSEN: Yeah. I feel your pain, Senator. [LB159]

SENATOR RAIKES: Thank you. [LB159]

JOHN K. HANSEN: And, you know, we're not in agreement with the general policy of what our surrounding states have done, but the fact that they have done it puts us in a tough situation relative to, I think, a dealer is a tough go these days. And I think it's a tough business. And so it doesn't take very much marginal competitiveness to push them over the edge and so when we look at the number of dealerships along our borders, it's obviously having an impact. And this issue gets raised at our meetings and I have guys who come up to me all the time and say well, yeah, you know I go to whatever state it is, and I go over there and I have to buy my parts over there, because they don't have a sales tax. And so what are you going to do about that? And so I know it goes on. There's no question about it. [LB159]

SENATOR JANSSEN: John, how many farmers have we lost in the last 20 years? [LB159]

JOHN K. HANSEN: Off the top of my head, I couldn't tell you, but I suspect I've got the numbers in my briefcase. And it all kind of gets to be also how do you measure those numbers, but we've certainly lost producers. There's no question about it and the average size of a farm is just gone from 856 acres to about 950 in the most recent calculation. So that's an indication that we are losing farmers. [LB159]

SENATOR JANSSEN: Well you know, I like to look back also. You look back 50 years, which to me isn't that long ago, but to some people it is. A farmer that was farming could make a living on 160 acres of land. You know, you add a few cows, a few hogs, and chickens. And at that time there was a equipment dealer in most every town in the agricultural area. Of course, you see things change, you know. Everything changes and quite possibly this is for the better or the worse, however you'd like to look at it, but the mode of transportation 50 years ago you didn't think about driving 150 miles for a part. You know, you went and bought that part at the local implement dealer. And times have changed. You know, 150 miles doesn't mean too much anymore to people who travel. And I can understand your situation and most of you gentlemen have been up here testifying. I understand that. But we live in a changing world and the demands on the state have become greater and greater. And that does take tax dollars to do that. So I hope you understand our situation also. [LB159]

JOHN K. HANSEN: I do and I appreciate that and we'd point out that we were not in

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support of the Governor's income tax breaks for just those reasons, Mr. Chairman.
(Laughter) [LB159]

SENATOR JANSSEN: Any other questions? Thank you, John, for being here. Any other proponents? [LB159]

ANDREW GOODMAN: (Exhibit 6, 7, and 8) Senator Janssen, members of the committee, my name is Andrew Goodman, G-o-o-d-m-a-n. I'm executive vice president of the Iowa-Nebraska Equipment Dealers Association. In addition to my testimony, I'm also handing out letters from two dealers that were not able to be with us today. Benkleman, Alma, Fairbury, Falls City, Auburn, Tecumseh, Nebraska City, Union, Blair, Tekamah, Oakland, Hooper, Lyons, Bancroft, Walthill, Valentine, Chadron. These are some of the cities along Nebraska borders that have lost farm equipment dealers in recent years. In 1993, there were 325 farm equipment dealer locations in Iowa and 209 in Nebraska. Today there are 300 in Iowa and 150 in Nebraska. Iowa has experienced an 8 percent decline in dealership locations while Nebraska has experienced a 28 percent decline in dealer locations in the same period. Farm equipment dealerships average over 21 employees, \$768,000 in payroll, and over \$9.2 million in annual business. They are vital to serving Nebraska farmers and to the survival of many Nebraska communities. This afternoon you heard eloquent testimony from dealers that are suffering as a result of existing sales tax policy. Their very survival may be at risk with the current policy. You have the opportunity to help save these important businesses and to help bring revenue and jobs back into the state. We urge you to move forward with LB159 as a bill that is vital to supporting farmers and the very existence of small Nebraska communities. There were a couple of questions that came up during the testimony. The issue of can you afford to compete price-wise? What kind of margin do you work with in this situation? Margins on prices vary. There isn't a set margin on all prices. So if we take, for example, say if it were baler twine. Baler twine has a 10 percent gross margin. The dealer's operating expenses run in the 9-10 percent range. So if the dealer has to cut that below a 10 percent margin because of the sales tax that he takes 5.5 percent off and sells it at 4.5 percent, he's lost money. He can't cover his operating expenses. So there has to be some margin and there has to be some fairness in that regard. The question of are we losing farmers. Let's take a look at are we losing equipment in the state. And if you'll look back on the USDA surveys, the facts show that the amount of farm equipment in the state really hasn't declined. The number of units has remained about the same over the last 20 years. The numbers in terms of farmers, yes, there are more larger farmers. There are also more acreages and of course there is always the question of well, how do you classify the acreages. But the number of units that are out there and the need to service them has remained relatively the same. And while you might say larger farms are using larger tractors and fewer tractors are needed, but then again if you look they're also using more grain carts and they're using smaller tractors for utility uses and a variety of different equipment on farms. So it's still a substantial need. Now no one would argue that the number of

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dealers is declining overall, but the fact is that they number of dealers in Nebraska is declining at a substantially higher rate than it is in surrounding states. And it comes back to this issue of sales tax. I would be pleased to take any questions. [LB159]

SENATOR JANSSEN: Any questions? Andrew, what are some of the other reasons that we're losing farm ownership or farmers in the state? That can't be the only thing. What would you say was one of the...if you say the sales tax on parts is one what would be some others? [LB159]

ANDREW GOODMAN: The issues why we're losing dealers in the state? [LB159]

SENATOR JANSSEN: No. Farmers. [LB159]

ANDREW GOODMAN: Farmers in the state? Well, there is consolidation of farms. There are larger farms and so those numbers are going down. Now it's not as fast as some other states are and there are states where the number of farmers are increasing. [LB159]

SENATOR JANSSEN: Could you name me some of those states? [LB159]

ANDREW GOODMAN: Oklahoma. [LB159]

SENATOR JANSSEN: Okay. [LB159]

ANDREW GOODMAN: There are a couple of states in the south where there are some numbers that are increasing in terms of number of farmers. [LB159]

SENATOR JANSSEN: But you say Oklahoma is one that is increasing. [LB159]

ANDREW GOODMAN: Yeah. Oklahoma was one that comes to mind and when I saw the figure on it it kind of startled me, because I saw similar decline between Kansas and Nebraska, and then an increase in Oklahoma for some reason in the data. [LB159]

SENATOR JANSSEN: Well, you say there's a decline in Kansas, but they have no sales tax on their repairs. [LB159]

ANDREW GOODMAN: Right. [LB159]

SENATOR JANSSEN: Yeah. [LB159]

ANDREW GOODMAN: And I don't think that the number of farmers is necessarily, that there's a correlation there between the sales tax issue. [LB159]

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SENATOR JANSSEN: Okay. Any other questions? Thank you for your information. Next proponent, please. Any other proponents? Any opponents? Anyone in a neutral capacity? Seeing none, Senator Heidemann, would you like to close? [LB159]

SENATOR HEIDEMANN: Supporters of LB159 and I, to help these equipment dealers, are not asking for incentive money, tax rebates, TIF money, or income tax breaks with this bill. We're asking for a chance. We're asking a chance for a level playing field to keep businesses and jobs in Nebraska. I would agree with members of this committee, especially Senator Raikes, and we've had this discussion about keeping our sales tax base broad. I agree with you. I really do. But when you've got an action that other states have taken that are hurting businesses here in Nebraska to the extent that they are right now, we really have to look at this. And I really believe that. I believe, and this is my opinion, if this committee is to cut taxes you need to start right here. I believe in my opinion, if you guys roll out a tax package, I think that this bill needs to be your foundation. Something Senator Janssen had said about loss of revenue, we do this there will be a loss of revenue and it looks to be about \$10 million. My question would be, and this is what I'm going to leave you with, how much sales tax are you going to collect on these dealerships that are going to close anyway. Any questions? [LB159]

SENATOR JANSSEN: See none, thank you. That ends the hearing on LB159. Senator Burling has the next bill. Senator Burling. [LB159]

SENATOR RAIKES: Welcome, Senator Burling. Tell us about LB423. [LB159]

SENATOR BURLING: (Exhibit 9) Okay. Thank you, Senator Raikes and members of the committee. My name is Carroll Burling, that's B-u-r-l-i-n-g. I represent District 33 in the Legislature and I'm here today to introduce to you LB423. The intent behind LB423 is to restore the sales tax and use tax withholding formula for retailers as it existed prior to October 1, 2002. Now prior to that date retailers were allowed to withhold 2.5 percent of the first \$3,000 in sales collected each month, and then .5 percent of all sales tax collected in excess of \$3,000. At present, dealers can only withhold 2.5 percent of the first \$3,000 and no more, because we changed that in October 1, 2002. So this amounts to a maximum withholding of \$75 a month no matter how much tax you collect and how much you have to remit. Now we discovered a mistake and so there's being an amendment handed out that I'm going to suggest. We discovered that LB423 calls for a full 1 percent to be withheld on the excess of \$3,000 and the intent was only .5 percent. So I'm asking the committee to consider that amendment. And so as you consider that amendment and look at the fiscal note, if we can use the amendment to put it back to the intent of one-half of 1 percent then the fiscal note that you see in front of you would be just cut in half. One of the people that will be following me is Jim Otto and he represents the Nebraska Retail Federation. He'll be able to answer more questions than I, but I'll try to answer any questions that you might have. [LB423]

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SENATOR JANSSEN: Any questions? Senator Langemeier. [LB423]

SENATOR LANGEMEIER: Thank you, Chairman Janssen. To talk about the fiscal note, you're saying that with your amendment, so I have this clear, this fiscal note would double or cut it in half? [LB423]

SENATOR BURLING: Cut it in half. [LB423]

SENATOR LANGEMEIER: Cut it in half. Okay, thank you. [LB423]

SENATOR BURLING: Thank you. [LB423]

SENATOR LANGEMEIER: Just wanted that for the record. [LB423]

SENATOR JANSSEN: Any other questions? Seeing none, thanks, Carroll. [LB423]

SENATOR BURLING: Thank you. [LB423]

SENATOR JANSSEN: Any proponents? [LB423]

JIM OTTO: (Exhibit 10) Senator Janssen, members of the committee, my name is Jim Otto, O-t-t-o. I'm a registered lobbyist of the Nebraska Retail Federation and I'm also a registered lobbyist for the Nebraska Restaurant Association. I'm here today to testify in favor of LB423 on behalf of both associations. First of all, want to express our sincere thanks and appreciation to Senator Burling for introducing the bill. We believe that LB423 is the right thing to do. The state of Nebraska mandates that retailers, restaurants, anyone that sells retail product collect and remit sales tax to the state, but it limits their reimbursement to a maximum of \$75 a month for those costs that they incur in order to provide the service. And we believe this results in little more than a hidden and discriminatory tax. The Nebraska Retail Federation and the Nebraska Restaurant Association urge the Legislature to correct this inequity. Prior to 2002, this was not the case. LB423 restores what a previous Legislature took away in tight budget times back in 2002. There is a joint cost of collections study which I would be glad to share with you. I didn't bring it, but if you'd like to see it it's like 44 pages long. This was done in 2006. It is a national study. It was jointly commissioned by government and business. So it's supposed to be a non-biased study. We believe it is. According to that study, the average cost is about 3.09 percent to collect sales tax and remit them to states. That varies from 13.4 percent for small business to 2.17 percent for large businesses which the study determined. One of the things that a lot of people just don't realize on a hundred dollar sale...well first of all, it is estimated that at least 60 percent of sales anymore, whether it be retail or restaurant, are done on credit card. The fee that is charged to the retailer or the restaurant is about 2 percent. That's most retailers restaurants probably pay more than that, but that's a good probable figure to use. The

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point that I'm trying to make is on a hundred dollar sale that's done on a credit card, there's \$7 in tax. That \$7 in tax is what the retailer remits. The retailer actually only collects \$6.86 after they pay the discount fee to the credit card company. So in fact, most retailers and most restaurants actually remit more tax than they receive net. Nebraska retailers and restaurants receive minimal reimbursement. As I said, it's \$75 and that \$75 is determined by the 2.5 percent of the first \$3,000 in tax as Senator Burling said. Now the impression would be that we're really only talking about big retailers. It is true that the 2.5 percent applies to small retailers, but just so you recognize the difference the break point for when it would affect you is \$42,858 under a 7 percent sales tax. In other words, if you had monthly sales subject to sales tax of \$42,858 or more the \$75 cap is affecting you. And in the 5.5 percent area of the state, the monthly sales subject to sales tax would be \$54,545. Now I can't tell you that's not a tiny retailer, but that's not a huge retailer when you think of the salaries and paying for the product, etcetera. So it would affect a lot of retailers and restaurants across the state. Another point I would like to make is that the state of Nebraska actually charges local entities like the city of Lincoln, like the city of Omaha, a fee to collect the city portion of the sales tax. I think that--I hesitate to quote these numbers--but I think it's 3 percent. Now I'm not sure exactly how that 3 percent gets paid. If that all stays with the state or if it's disbursed some way, but I believe that the city of Lincoln actually receives only 97 percent of the 1.5 percent of sales tax that's actually collected. And maybe you can ask some of the other testifiers if that's absolutely true. But I think that's true. We believe it's a matter of fairness and equity. All retailers across Nebraska, large and small, should be fully reimbursed and this does not fully reimburse them. Doesn't even come close to fully reimbursing them, but at least it takes it back. It's a step in the right direction. It takes it back to where we were prior to 2002. And in closing, I know there will be people in opposition to this, but I believe that each person who speaks in opposition understandably would speak in opposition because of the loss in revenue to their individual entities and I completely understand that. I would simply make the request that you ask those people do you really think it's fair, because it really isn't fair the way we have it set up today. I don't think they would personally agree that the system is fair the way we are doing it. With that, I'll be happy to answer any questions. [LB423]

SENATOR JANSSEN: Ron. [LB423]

SENATOR RAIKES: Jim, so remind me how this works. I collect sales tax in, say, for the month ending of January 2007. I have to remit that by February 25? [LB423]

JIM OTTO: I think that's true. I'm not positive. [LB423]

SENATOR RAIKES: So in effect, I get the use of the money I've collected for sales tax for 30 days? [LB423]

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JIM OTTO: I don't know at 4 or 5 percent what that comes to, but... [LB423]

SENATOR RAIKES: But I do get that. [LB423]

JIM OTTO: Yeah, you do. [LB423]

SENATOR RAIKES: Okay. The other thing is most of these people you're talking about collect withholding for the state and they don't get paid anything for that. [LB423]

JIM OTTO: That's true. The only thing I would submit, Senator, is every employer does that, not just retailers. So even though it's unfair, it's unfair to everybody equally. [LB423]

SENATOR RAIKES: (Laughter) Okay, we've established a new principle here. Thank you. [LB423]

SENATOR JANSSEN: Other questions? Seeing none, thank you. [LB423]

JIM OTTO: I would like to, if I could, add one other thing. [LB423]

SENATOR JANSSEN: Sure. Sure. [LB423]

JIM OTTO: Just a point that we pay approximately 5 percent to those who sell Nebraska lottery tickets, but we don't pay hardly anything to those who collect our taxes. Thank you. [LB423]

SENATOR JANSSEN: Don't bring that up. (Laughter) They'll be after the retailers for that, too. [LB423]

JIM OTTO: Thank you. [LB423]

SENATOR JANSSEN: Next proponent. [LB423]

KATHY SIEFKEN: Senator Janssen and members of the committee, my name is Kathy Siefken. Kathy with a K, S-i-e-f-k-e-n, here representing the Nebraska Grocery Industry Association and we are here in support of this bill. Without repeating the things that Jim said, we would agree with all of the points that he made. One of the points that I would like to make though is, you know, we're required to pay our employees minimum wage and I think the state should be able to step up and at least pay us what we have to pay back into the state. We're losing money on collecting sales tax in the state of Nebraska. If we didn't pay minimum wage, we'd be in a lot of trouble. And so I guess I'm saying that I think the state should at least be able to pay us what we, in turn, have to turn around and reimburse the state for. And I also wanted to clarify that out of our

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membership, we've got dues categories where if your gross income is at a certain point. And the \$54,000 that Jim was talking about, that threshold, I would guess we've got less than 10 members statewide that are under that. And so this bill would affect a lot of small businesses across the state. Eighty percent of our members are the small mom and pops that are out in rural Nebraska and we'd say 20 percent or so are the large retailers that are in the metropolitan or larger cities. So if you have any questions I'd be happy to try to answer them. [LB423]

SENATOR JANSSEN: Kathy, what is the percentage in a grocery store that is taxable and not taxable? [LB423]

KATHY SIEFKEN: Food is not taxed... [LB423]

SENATOR JANSSEN: That's right. [LB423]

KATHY SIEFKEN: ...but everything that is ready-to-eat and then anything that's not food is taxed. I don't know the breakdown of how much, but at one time almost everything we sold was not taxable, but it's becoming more and more so as time goes on. [LB423]

SENATOR JANSSEN: At one time everything was taxable in the grocery store when it first came into effect. [LB423]

KATHY SIEFKEN: Oh yeah. But the product mix, I guess, is what I was talking about. At one point, mostly grocery stores sold food, not ready-to-eat, and things have changed. And I don't know the percentage. I can find out though. [LB423]

SENATOR JANSSEN: It sure would be nice back in the old days though. [LB423]

KATHY SIEFKEN: Yeah, well, I don't know if I want to go there. [LB423]

SENATOR JANSSEN: I wouldn't mind it. Any other questions? Thanks, Kathy. [LB423]

KATHY SIEFKEN: Thank you. [LB423]

SENATOR JANSSEN: Next proponent. [LB423]

BETH BAZYN FERRELL: Good afternoon, Senator Janssen, members of the committee. For the record, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm assistant legal counsel for the Nebraska Association of County Officials. County officials collect sales taxes on motor vehicles. That's the capacity that we are appearing in here today. When the collection fee was reduced in 2002, counties were estimated to lose about \$2.5 million in those collection fees. I don't have data that verifies what the loss has been up to date, but I know that you should have received some e-mails from

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treasurers letting you know what the impact was on their individual counties. If you'd like we could just take an example of Valley County. You should have received an e-mail from the Valley County treasurer setting out what the impact would be in Valley County. I would ask you to note in the e-mail it says that Valley County has a population of 45,000 people. It does, in fact, have a population of about 4,500 people. That does make a bit of a difference. Under the Valley County treasurer's estimation, sales tax collections on motor vehicles have increased approximately \$63,000 since 2002 and she estimates that the county has lost approximately \$4,000 in collection fees since 2002. We do recognize that there is an impact to the Highway Trust and that counties do collect money through that. We would just ask that as you look at the overall package you take into consideration the diligence of county treasurers in collecting the motor vehicle sales tax. [LB423]

SENATOR JANSSEN: Okay. Any questions? Chris. [LB423]

SENATOR LANGEMEIER: Thank you, Chairman Janssen. We've heard in the previous testimony that a lot of this loss is in credit cards. Do many counties take credit cards for sales tax? [LB423]

BETH BAZYN FERRELL: Well, counties are not allowed to collect an amount less than the actual tax. So when you take into account the fees on credit cards that would drop them down below the actual amount of the tax. We do have some programs where counties do take credit cards through a third party vendor, and then there is a fee that's charged directly to the person using the card. That's generally for property taxes. I don't know that it's available for motor vehicles. [LB423]

SENATOR LANGEMEIER: Okay. And should we be nervous that Valley County is \$45,000 to \$4,500 off in the treasurer's office? Just kidding (laughter). Thank you. [LB423]

SENATOR JANSSEN: Any other questions? Seeing none, thank you. Next proponent. Any other proponents? Any opponents? [LB423]

DON HERZ: Senator Janssen, members of the Revenue Committee, my name is Don Herz. The last name is spelled H-e-r-z. I'm the finance director for the city of Lincoln and I'm here to speak in opposition to LB423. This bill if passed by the Legislature would have a negative impact on sales tax collections in Lincoln and other cities that receive a significant portion of their revenues from sales tax. I do have some numbers here and they were based upon the 1 percent collection fee. These numbers would be approximately half if the change is made. The amount of the impact to Lincoln would be a decrease of approximately \$500,000-\$600,000 of annual sales tax revenue under the 1 percent scenario. If it's a half it would be half of that. Since Lincoln relies more on sales tax revenue than property taxes for the city services, this bill will put more

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pressure on property taxes to pay for municipal government. The ratio between sales tax and property tax in Lincoln is about 2:1. So a 1 percent reduction in sales tax, without cutting services, equates to approximately 2 percent increase in property taxes. Changes in the sales tax base over the past several years, and that's not counting many of the bills before you this year, have narrowed our sales tax base and resulted in sales tax revenues to stagnate in Lincoln and not keep up with the rate of inflation. While job growth and personal income in Lincoln has had steady growth, our sales tax collections have not kept up with this growth. It is my opinion that the existing technology and that with existing technology the cost the retailer to recover their cost is currently being met with the existing fee structure to pay an approximately \$10 million or if it's .5 percent \$5 million per year to state and local government in the form of collection fee is not a cost recovery amount, but an additional revenue source for the retailers. And I think Jim did characterize it correctly. This would not affect any retailer that has annual sales of approximately \$500,000 or less. I agree the \$42,000 per month, there would not be any effect there. The only other thing that I'm aware of, the state does keep approximately 3 percent. I'm not quite sure where all of that goes. I believe it used to go to the Municipal Equalization Fund and I don't know if that has been changed. Others may be able to give you some more information on that. Otherwise I'd be willing to answer any questions that you may have. [LB423]

SENATOR JANSSEN: Any questions? Chris. [LB423]

SENATOR LANGEMEIER: Senator Janssen, thank you. And thank you for your testimony. [LB423]

DON HERZ: Sure. [LB423]

SENATOR LANGEMEIER: You gave us some good numbers there. Can you tell me, last year how much...first of all, Lincoln's is 1 or 1.5 percent? [LB423]

DON HERZ: One and a half percent. [LB423]

SENATOR LANGEMEIER: It's 1.5 percent. Do you know, by chance, what your total sales tax revenue off that 1.5 percent was last year? [LB423]

DON HERZ: Approximately \$56 million. [LB423]

SENATOR LANGEMEIER: Okay. Thank you. [LB423]

DON HERZ: You bet. [LB423]

SENATOR JANSSEN: Any other questions? Seeing none, thank you. Any other opponents? [LB423]

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GARY KRUMLAND: Senator Janssen, members of the committee, my name is Gary Krumland, spelled K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities appearing in opposition to LB423. And as Don mentioned, our opposition is just the amount of money that will be lost by cities and villages for their sales tax if this would pass. As many members of this committee are well aware that over the last few years during the state's fiscal crisis general state aid program, which was the money that replaced the personal property tax funds, was reduced from \$17.9 million to \$11.3 million. The Municipal Infrastructure Act was suspended. That's \$3 million. And the Municipal Equalization Fund rollover was put into the general fund so cities also have been hit by the fiscal crisis and that hasn't been restored. Just as an aside, the state collection fee of 3 percent that the state collects on city sales tax does go into the Municipal Equalization Fund and for a few short years the city's gotten all that back, but now with the changes a few years ago the rollover goes back to the General Fund some of that money still goes back to the state. I'm recalculating my figures very quickly here. The original estimate for the original bill was \$3.3 million. That would equal to like a 29 percent cut in the state aid program, that would still be about a 14 percent cut. So it will have an effect on cities and for that reason we do have concern about this. [LB423]

SENATOR JANSSEN: Okay. Any questions? Thanks, Gary. Next opponent. [LB423]

JACK CHELOHA: Good afternoon, Mr. Chairman, members of the Revenue Committee. My name is Jack Cheloha, last name is spelled C-h-e-l-o-h-a. I'm the registered lobbyist for the city of Omaha testifying in opposition to LB423. Our reasons to oppose are basically the same as the other two opponents. Just to be more specific in terms of Omaha, based on the original 1 percent I think we estimated our loss at about \$1.2 million a year, but I understand you have an amendment, Senator. So if we take it in half it would drop to about \$600,000 which is still significant. Because as I've testified before on other bills, I mean, our real growth just from '05 to '06 in terms of our sales tax--which Omaha generates about \$120 million a year, Senator--you know, we only had a real increase net of about \$300,000. And so if we take another \$600,000 hit, I mean, where do you go for the next dollar? With all of our, you know, contracts in place on collective bargaining, etcetera. What I'm trying to tell you is cities are hurting and every little bit counts this year. And so that's why you're seeing me more often and likewise my counterpart from Lincoln and the league. And for those reasons, although it may, you know, they're talking about fairness for the retailers and we don't fault them for that, but if we're going to do fairness then you heard what the league said on some of these other funds. We'd like to have a little fairness, too, back for cities. So that's why I'm here to oppose this. [LB423]

SENATOR JANSSEN: Any questions? Don't see any, thank you. [LB423]

JACK CHELOHA: Thank you. [LB423]

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SENATOR JANSSEN: Any other opponents? Opponents? Anyone in a neutral capacity? Don't see any, Senator Burling to close. [LB423]

SENATOR BURLING: Thank you, Senator Janssen. Very quickly I'll just say I'd like to apologize to the testifiers for the mix up on the 1 percent and the .5 percent, but they've been very understanding and I appreciate that. We'll get that taken care of. Other than that, I just want to say that if that formula was right prior to '02, it's right now. And so thank you. Any questions? [LB423]

SENATOR JANSSEN: Don't see any. You're home free. [LB423]

SENATOR BURLING: Thank you. [LB423]

SENATOR JANSSEN: That ends the hearing on LB423. And I believe the honorable senator from Columbus is here, Senator Stuthman, to tell us all about how to redefine animal life for sales tax purposes. Welcome to the Revenue Committee, Senator Stuthman. [LB442]

SENATOR STUTHMAN: Thank you, Senator Janssen. Good afternoon. And members of the Revenue Committee. I am here this afternoon to introduce LB442 and this would amend Subsection 1 in Section 77-2704.46 to include pheasants, quail and partridge to the items listed that are considered for food. I am here introducing this bill for an individual that had a concern of the interpretation of the law as to what constitutes animals, poultry, or birds for food. This person who is an ag producer, to tell you the truth, he was a student of my son's in an ag class. And as a project of my son's in the ag class, teaching him business, entrepreneurship, starting them in a business, he chose to raise some pheasants and to sell them as a food product to game hunts. These animals were raised on his farm for the original purpose of these birds being sold for food consumption. He raises pheasants for this purpose. Just like a turkey that is tax exempt, pheasants can be raised domestically or hunted in the wild. With the end result being that they're eventually consumed for food by the end user. We also did a little bit research and we looked in some of the fliers of Cabela's, advertising some of their products in their wild game part of it. They do sell pheasants and quail periodically throughout the year, mainly in the fall or in the holiday season. We did visit with them and asked the people in Cabela's, you know, do they charge sales tax on their pheasants. No, they do not because they are sold as a food. They're sold for food. So they do not charge sales tax on those pheasants. What this individual does is he sells these individual pheasants to a game hunt and the game hunt, you know, sells chances to hunt these pheasants. And the hunt portion of it is part of the entertainment part of it, but they are sold as an item that they are guaranteed so many birds when they go on these hunts. When these hunts are complete, the person gets and takes his bird home. No, he doesn't take the bird that he shoots home, but he does take the bird home that

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has already been frozen and processed and he gets to take that bird home. The birds that are shot then by that individual are cleaned and processed by the company of the game hunt. What I'm trying to do is to clarify, you know, in the statute as what constitutes a food animal. And originally in the bill it states like a turkey is exempt, a hoofed animal is exempt such as what Senator Raikes sells his beef to a plant. He does not charge sales tax on his animals. Anyway I don't think he does, because they are a hoofed animal. What I'm asking is that I would like to see the explanation, you know, clarified as to what realistically constitutes a product, an animal that is sold for food. And we all know that anything sold for food is tax exempt. I think those are about all of the opening statements that I have and I'd be willing to answer any questions. I do have some information. I have put three species additional into this subsection--the pheasant, the quail, which those two I know are consumed as food, and the partridge is also consumed as food. I do have a definition of a partridge. I have this and I can put copies out there. I also have a picture of a partridge. [LB442]

SENATOR WHITE: Is it in a pear tree? [LB442]

SENATOR STUTHMAN: Yes. I don't have the pear tree in there because the ice broke it down. (Laughter) So with that, those are my opening comments. [LB442]

SENATOR JANSSEN: Okay, any questions? Senator White. [LB442]

SENATOR WHITE: Senator Stuthman, there is one issue that's very important to me. Now if Senator Janssen and I are on a hunt, believe me that pheasant will be food, okay... [LB442]

SENATOR STUTHMAN: Yes. [LB442]

SENATOR WHITE: ...if he's shooting, but if I'm shooting believe me he will be in the woods laughing. It will never be food, but should we give a break even if you have Senator Janssen who will not miss and me who will not hit it no matter what? I mean, is it food in both cases? [LB442]

SENATOR STUTHMAN: Yes. The end product of that animal, you know, is utilized for food. It's either food for Senator Janssen or food for wolf dogs in your case. (Laughter) [LB442]

SENATOR WHITE: Hybrid wolf dogs. (Laughter) All right then. No, that would actually be Senator Langemeier's case. I've been studiously quiet on that issue. [LB442]

SENATOR STUTHMAN: Thank you. [LB442]

SENATOR JANSSEN: Okay. Senator Langemeier. [LB442]

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SENATOR LANGEMEIER: Senator Janssen, thank you. Now that you brought me into this. We had a bill earlier in this session that kind of dealt with a different facet, but yet in microenterprise we were talking about the microenterprise ability to make loans to people that raise these pheasants, and we added in that definition thanks to Senator Preister's good thinking, all game animals that were recognized by Game and Parks. Would you feel that would be appropriate to put in here as well if we have someone raising some other type of...it may fall under the hoof portion of yours, but would that not maybe be something we'd want to put in here, if we had other game farms? [LB442]

SENATOR STUTHMAN: Senator Langemeier, I think that is very true. I realistically think that is true that that could also be added into this, because in the last 10 or 15 years there are people that do raise some of these different types of animals. It isn't like when I was growing up as a kid, a pheasant was just a wild one and you got if there was a pheasant. Now there are people that are having it for a sport, selling the sport, having a weekend of sport, hoping people come from out of states to come up to some Sandhill resort to hunt the pheasants. But I will totally agree. I think it should be kind of consistent to what you may have attempted to adopt in that other legislation. [LB442]

SENATOR LANGEMEIER: Okay, thank you. [LB442]

SENATOR JANSSEN: Ron. [LB442]

SENATOR RAIKES: Senator, actually the case is that the animals I raise, unlike the ones you raise, are so desirable that people buy them for pets. (Laughter) So I do, in fact, charge sales tax. [LB442]

SENATOR STUTHMAN: The sales tax you charge is probably to the fact of the petting part of it, not the animal part of it then. I mean, the leisure of petting the animals. [LB442]

SENATOR RAIKES: What are you suggesting here? (Laughter) [LB442]

SENATOR WHITE: He wants to see your client list. [LB442]

SENATOR RAIKES: But it perhaps does raise the serious question, what about, pets now are taxable, I think? So how do you distinguish use as a pet versus use as a food animal? [LB442]

SENATOR STUTHMAN: And I would have to get some more information on that, but a pet, is that normally used for food consumption? (Laughter) [LB442]

SENATOR RAIKES: Well, I could have a pet pheasant or a rabbit. Rabbits are

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sometimes pets. [LB442]

SENATOR WHITE: Do you eat them then? [LB442]

SENATOR STUTHMAN: Do you feel that you would ever have the... [LB442]

SENATOR RAIKES: No, we're talking about rabbit that's being sold and we don't know whether the customer's going to use it for a pet or to shoot it or both. [LB442]

SENATOR STUTHMAN: But the end result of it is for food, hopefully. (Laughter) [LB442]

SENATOR JANSSEN: Any other questions? Seeing none, thank you, Senator Stuthman. [LB442]

SENATOR STUTHMAN: Thank you. [LB442]

SENATOR JANSSEN: Proponents, please. Those in favor of the bill. [LB442]

NATALIE PEETZ: (Exhibit 11) I'm not sure anymore. (Laughter) Mr. Chairman, members of the committee, for the record, my name is Natalie Peetz, P-e-e-t-z. I'm a registered lobbyist for the Nebraska Game Bird and Hunting Association. I'm here today testifying in support of LB442 and I'd really like to thank Senator Stuthman for bringing the issue to the committee. The Nebraska Game Bird and Hunting Association has been around for almost 18 years. It is my understanding that there are over 225 hunting preserves in Nebraska and over 300 game bird producers in the state. And I just pulled real quickly so you get a idea of the size of this industry in terms of where it's located, some of the members, Gretna, Bartlett, Broken Bow, DeWitt, Albion, Schuyler, Eustis, Stuart, Primrose, Wellfleet, Orchard, Niobrara, Arapahoe, Tekamah, Atkinson, Bartlett, McCook, it's everywhere and it's a wonderful industry. There are many mom and pop type operations all across the state. Many started out as Nebraska farm families who got into the industry, quite frankly, to save the family farm. Many cases, not only did it save the farm, but it's turned into a thriving industry for those farmers. They actually cater to people not just in the United States, but all over the world. It represents in my opinion value-added agriculture at its best. It positively impacts agriculture, the environment. It provides many acres for the habitat. I didn't even think until earlier, water. If you talk about the water discussions in this state. It's taken a lot of pressure off of the state funded grounds that are out there. It's my understanding in talking to the industry that there's been a great deal of confusion about what is and isn't taxable. The Department of Revenue in the past has taken the position that game birds are not animal life ordinarily used as food. It's also my understanding that they're taking another look at this. It's the industry's position that the sale of the game birds to the hunting lodges as well as agricultural inputs to grow the game birds are exempt from the

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Nebraska sales and use tax. Game birds are commonly sold as food in grocery stores. You can buy it online. You can order it in restaurants all over the world. And for any of those of you who are hunters, you know that game birds are ordinarily consumed and you don't even want to bring that up with them. It's a point of contention when you do. The market for game bird is really well established. I did not bring with me, but they provided me a notebook about this thick of where you can purchase game birds whether it be online or in restaurants. LB442 specifically includes pheasant, quail, and partridge--and I'm not going to go toward the partridge definition--as animal life which ordinarily constitutes food for human consumption. From an economic impact argument, the game bird industry really helps rural and urban Nebraska. It helps Nebraska farming and ranching communities. It's great for the tourism industry. It helps bring many, many new people into our state who spend a lot of money here. I was recently in Senator Dierks' home district. It's actually my home district. I spent quite a bit of time there. And had a rural renaissance meeting at a hunting lodge near Niobrara, Nebraska. If you ever have a chance to get up in that country, it's beautiful. I was actually just taken back when I looked at their bulletin board and noticed all of the business cards from New York, Washington, Japan. I mean, you name it. It was just amazing to me. I think this is an important clarification for the industry. They're very concerned about it. Many are not here because they're not sure whether they're doing it right or not. We need to clarify it. I think we also, from a competitive viewpoint we need to clarify this issue whether it's South Dakota, Iowa, Kansas, wherever. They exempt this tax. With that, I'd urge you to support it and I'd be happy to answer any questions you may have. [LB442]

SENATOR JANSSEN: Natalie, I have one. On some of these game farms, where you can could go in and shoot the game birds that are put out, is there tax on those or is there a tax at that game farm? [LB442]

NATALIE PEETZ: It's my understanding, and I'm assuming the Department of Revenue will be up here testifying in a neutral capacity, but that there is a tax. It's an admissions fee. So there is a tax collected on that. Right now, and it's very confusing to the industry, I think there's a tax on the birds that are sold to those preserves and it's in question on whether it's taxed in terms of the inputs into those birds. [LB442]

SENATOR JANSSEN: Well, what I'm getting at is say you went to a pheasant farm where they go out and plant the birds and it costs you a certain amount of dollars. There probably is a tax on that, but then if you get one bird or if you get six birds, I wonder if there is a tax on that bird at that time per bird? [LB442]

NATALIE PEETZ: Per bird. I can't answer that question. I do know that in terms of the way... [LB442]

SENATOR JANSSEN: Or how would you set the value of that bird? You know, the value of that bird that has been hatched there and grown there would probably be quite

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significant? [LB442]

NATALIE PEETZ: No, I agree. Some of the brochures I looked through, a lot of them will sell the package. So in the package... [LB442]

SENATOR JANSSEN: You pay the sales tax on the package. [LB442]

NATALIE PEETZ: ...you're guaranteed six birds, lodging, food. It varies all across the map, but I know in many cases they will guarantee you a certain number of birds in the package. [LB442]

SENATOR JANSSEN: Okay. Senator White. [LB442]

SENATOR WHITE: Following up Senator Janssen, I have a concern, Ms. Peetz. If, for example, a game farm said come, you'll get 20 birds over three days. We guarantee it and the price is \$50 a bird and everything else is included. What's taxable and what is not? [LB442]

NATALIE PEETZ: It's confusing. Right now the fee for the hunt is what they're collecting tax on and they're fine with that. What's confusing is what else is and isn't taxable. [LB442]

SENATOR WHITE: But if they charge by just you will get 20 birds and that's your only charge, is everything then tax-free? Because really we're only charging for the birds. Everything else is thrown in. And then how do we break out what is and isn't. And that's a real concern, because obviously the lodging should be, they consume beverages there, those kinds of things should be taxable, though the value of the birds should not. But if we make birds exempt then they just charge by birds. [LB442]

NATALIE PEETZ: There's still the admissions fee that they are paying. [LB442]

SENATOR WHITE: But if they don't charge an admissions fee...I could tell you you come here and you just pay us \$100 a bird. [LB442]

NATALIE PEETZ: Um-hum. [LB442]

SENATOR JANSSEN: Any other questions? Senator Langemeier, do you have a question? All right. I think he thought of one. [LB442]

SENATOR LANGEMEIER: Well, that was going to be my question and it's a little related is how would they guarantee you that Senator White could get these birds with his hunting ability he explained earlier? [LB442]

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NATALIE PEETZ: It could be the longest three days of his life. [LB442]

SENATOR WHITE: I would make Senator Janssen hunt behind me. (Laughter) [LB442]

SENATOR JANSSEN: Okay. Thank you, Natalie, for being here. [LB442]

NATALIE PEETZ: Thank you. [LB442]

SENATOR JANSSEN: Next proponent. Any other proponents? Any opponents? Anyone in a neutral capacity? [LB442]

DOUG EWALD: My hand has been forced. Chairman Janssen, Senators, members of the Revenue Committee, my name is Doug Ewald. I'm the State Tax Commissioner here testifying in a neutral capacity with respect to LB442. There's a couple issues here, I think, and I think we've kind of danced around them a little bit here that, number one would be, somebody raising pheasants or game birds that would be ultimately sold to a hunting preserve. In that situation what the person raising the bird should do, we should get basically a sale for resale certificate and not have a sales tax charge. Kind of like a wholesaler, I guess, if you will. Now the hunts that go on out there across the state, that situation is where we view that as an admission similar to going to the movies, playing golf. It's for an opportunity to, in this case, shoot pheasants or whatever that might be, hunt buffalo. You know, so anything along those lines I guess. So it's the admission fee that we would be viewing or looking at collecting the sales tax on. Senator White, you alluded to the possibility of the hotel lodging tax. If somebody has a bed and breakfast they're running out there or something like that to stay, and it's so much a night. That would be another tax that would be due and payable to the state as well. So I guess at this time I will conclude my testimony and open up to any questioning. [LB442]

SENATOR JANSSEN: Any questions? Tom. [LB442]

SENATOR WHITE: If we pass this exemption and they now set their prices solely on a charge per bird and say, you know, you're just paying for the bird, even though they're including all these other services, how would the department handle that? [LB442]

DOUG EWALD: That's a good question. Does it promote a movement from one place to another place? That creates another issue that I haven't really thought about honestly. But it does create a situation that, okay, are you selling the hunt or are you selling the birds? What are you selling? Obviously you can buy pheasants at many different places whether it be through a Cabela's catalog or in the grocery store or at a restaurant. So I don't know. We would have to obviously look at that at that point in time. I mean, I think the thing here we're looking at is, I'd probably argue it as still an admission. [LB442]

SENATOR JANSSEN: Doug, if you buy that pheasant in a grocery store there's no tax

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on it. [LB442]

DOUG EWALD: That would be correct. [LB442]

SENATOR JANSSEN: Because it's food. [LB442]

DOUG EWALD: Now if you buy it prepared in a restaurant obviously... [LB442]

SENATOR JANSSEN: Then it's taxed. [LB442]

DOUG EWALD: Yeah, exactly. You're right, Senator. [LB442]

SENATOR JANSSEN: Okay. I had another question, but I can't recall exactly what it was now. So all right. Any other questions? All right. Seeing none, thank you. [LB442]

DOUG EWALD: Thank you. [LB442]

SENATOR JANSSEN: Anyone else in a neutral capacity? Seeing none, Senator Stuthman to close. [LB442]

SENATOR STUTHMAN: Thank you, Senator Janssen and members of the committee. I think you've heard the testimony and the situation we have of not having a clear definition. And I'll truly agree with the Department of Revenue as to, you know, how are they going to determine what the value of that pheasant is in that hunt of guaranteeing the pheasants. I think, you know, there's a good possibility that that would have to be on some type of a schedule figured, because that portion of that hunt includes the pheasant of maybe \$10 or \$20, but the hunt might have cost, you know, \$400. You know, I've heard of some real expensive hunts really where people are guaranteed. It's in the hundreds of dollars that people spend to go to these places just to get out of the office and go for a weekend to hunt. But I think that would have to be the determination of the Revenue Department as to what is the entertainment part of it that is to be taxed and what is the food part of it that individual is going to take back home. But this is what I am trying to clarify is, you know, the person raising that animal and selling it there. You know, the intrepidation is that that person raising him should probably be charging sales tax and send it in. Then the person that has the hunt maybe is charging sales tax. It's not clear in my opinion, and I would like to have this clarified in there and realistically it is no different than a turkey or a chicken or anything like that. It is an animal for food. [LB442]

SENATOR JANSSEN: Okay. Any questions? Thank you, Arnie. [LB442]

SENATOR STUTHMAN: Thank you. [LB442]

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SENATOR JANSSEN: That ends the hearings for the day. Thank you for being here.
[LB442]

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Disposition of Bills:

LB159 - Held in committee.
LB423 - Indefinitely postponed.
LB442 - Indefinitely postponed.

Chairperson

Committee Clerk