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Revenue Committee
January 23, 2008

[LB722 LB896 LB898 LB914 LB915 LB916]

The Committee on Revenue met at 1:30 p.m. on Wednesday, January 23, 2008, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB722, LB914, LB916, LB915, LB898, and LB896. Senators present: Ray Janssen, Chairperson; Merton "Cap" Dierks, Vice Chairperson; Carroll Burling; Abbie Cornett; Chris Langemeier; Don Preister; Ron Raikes; and Tom White. Senators absent: None. []

SENATOR JANSSEN: Good afternoon, Ladies and Gentlemen. Welcome to the Revenue Committee. For the record, my name is Ray Janssen, Chairman of the Revenue Committee. And those with us today, I think most everyone is here, but we have: To my far left, Senator Don Preister from Omaha; and to his immediate right is Senator Carroll Burling from Kenesaw; Senator Cornett will be with us shortly; and to my left is Senator Cap Dierks from Ewing, he is Vice Chair of the committee; and to my right, far right there is Senator Ron Raikes from Lincoln; Senator Chris Langemeier from Schuyler, just joining us; and for the record, my name is Ray Janssen; and committee counsel on my right is George Kilpatrick; Erma James is the clerk for the committee. With that...well, let's see, I don't think Abbie is here yet, okay. A few things I'd like to tell you before we start: Please turn off your cell phones and the pagers while you're in the hearing room, they're very disruptive. And the sign-in sheets are back, for the testifiers, are back by the door, and you need to complete them; they have to be completed by everyone if you're wishing to testify. If you're testifying on more than one bill, you need to submit a form for each bill. Please print and complete the form prior to coming up to testify. And when you come up to testify, don't put them on the table; hand them to Erma, the clerk, on my far right. Okay, I believe that...we'll follow the agenda as on the door. The introducer or the representative will present the bill, followed by proponents and opponents and then those in a neutral position. Only the introducer will have the opportunity for any closing remarks. As you begin your testimony, please state your name and spell it for the record. If you have handouts, bring ten copies for the committee and the staff. If you only have an original, we'll make the copies for you so everyone gets one. Again, give those handouts to the pages and they will circulate them to the committee. Senator Engel is here with us; we'll begin the hearing with LB722. Senator Engel. []

SENATOR ENGEL: Thank you, Senator Janssen and members of the committee. I am Senator Pat Engel, that's spelled E-n-g-e-l, and I represent the 17th District in northeast Nebraska. I'm here today to introduce LB722, and it changes the method used to impose an excise tax on tobacco products, which are defined in the bill as products primarily intended for chewing. If this sounds familiar to you, you may recall that last year I introduced LB106, which as amended by the committee amendments was very similar to LB722. The...LB722 divides tobacco products, which are all currently taxed at 20 percent of the wholesale price, into two groups: Smoking tobacco, which includes

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 23, 2008

tobacco products intended primarily for smoking such as cigars, cheroots, stogies, cavendish, and so forth, except cigarettes; and tobacco products, which are tobacco items primarily intended for chewing, that's your snuff, flour, plug, twist tobacco, fine cuts, etcetera. There's quite a list of them here. The smoking tobacco would continue to be taxed at 20 percent of the wholesale price, whereas tobacco products would be taxed at a rate of \$0.65 per ounce, and that's as it was amended from this committee last year. Fractional parts of an ounce would be taxed proportionally at the same rate. Cigarettes are still taxed by the pack, and this bill does not change the way that cigarettes are taxed because such tax is governed by a different section of statute, 77-2601 and 77-2602. And although I do not endorse the use of tobacco products, I do support a fair tax system; to me, this is an equity issue and will let the free market prevail. Cigarettes are taxed by the pack, yet chewing tobacco is taxed on an ad valorem basis, and this method gives an unfair tax advantage to the less expensive brands of chewing tobacco, which are growing at a faster pace than name brand products. Now, the industry has realized this tax loophole, and has taken advantage of it by developing the lower-end quality product. Therefore, although this less quality product is less expensive, is artificially cheaper due to the way we tax the product. For example, some cans of snuff are sold for \$0.49, meaning that excise tax is just a couple of cents per...it's a couple of pennies, really. Compare this to a name brand can of snuff selling for more than \$4 with an excise tax of approximately \$0.60. Generic brand product sells for less than the amount of excise tax on a name brand product. Is that fair? However, the harm caused by a unit of tobacco is essentially unrelated to its price as all tiers of chewing tobacco contain virtually the same amount of nicotine. And much of the effect of this ad valorem tax is merely to encourage more consumption of this inexpensive brand. An added advantage of the proposed tax change contained in LB722 would be that the \$0.49 cans of snuff may not be as tempting to our youth if the tax pushes the price to over \$1. While all states collect excise taxes on products such as gasoline, beer, wine, spirits and cigarettes, these taxes are imposed on a unit of volume basis: A gallon of gas; a liter of wine; a barrel of beer; or a pack of cigarettes. Chewing tobacco, however, is one of the few products that are subject to an ad valorem excise tax, or a tax based on price. Excise taxes, unlike sales taxes, are intended to tax consumption. Eleven states have a weight-based tax for chewing tobacco, of which six states have just switched from the ad valorem tax in the last eighteen months. I believe you have a list of those in your literature there. And last year, the Governor vetoed LB106 after it was passed by the Legislature, due to an amendment that was added on the floor to increase the tax rate on tobacco products from \$0.65 to \$1.05 per ounce. The Governor stated in his veto message that he could have supported the bill if the tax rate was at the \$0.65 level, as he felt that it provided for the equitable treatment of tobacco products. However, he could not support the \$1.05 tax rate per ounce and viewed it as an unnecessary tax increase. I have distributed a copy of the Governor veto letter to you for your review; I think you've all got that in front of you there. (Exhibit 1) So, I urge you to consider the merits of taxing tobacco products by weight, a method that would be easy to administer as the weight is already listed on the cans, and much

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 23, 2008

fairer as it taxes based on consumption and not on an arbitrary price. With that, if you have any questions, I'd be glad to answer them. [LB722]

SENATOR JANSSEN: Any questions? [LB722]

SENATOR ENGEL: Yep, thank you very much and I'll... [LB722]

SENATOR JANSSEN: I don't believe so, are you going to stick around and close, Senator? [LB722]

SENATOR ENGEL: I will, and there will be other testifiers after me, and I certainly appreciate your advancement of the bill. Thank you. [LB722]

SENATOR JANSSEN: All right. Okay. We will take proponents first. [LB722]

WALT RADCLIFFE: Senator Janssen, members of the committee, my name is Walter Radcliffe. I'm appearing before you as a registered lobbyist on behalf of UST Public Affairs, which is a subsidiary of United States Smokeless Tobacco Company. My name is spelled R-a-d-c-l-i-f-f-e, and I appear in support of LB722. But just very briefly, because the same committee having heard the bill last year, I just wanted...I'm really here to introduce Bob Shepherd, who did testify last year and is very, very conversant about the tax structure, both from an ad valorem and from a weigh-based standpoint. And we did not ask or seek anyone else to come and testify in the interest of brevity with the committee. I mean...but, I simply wanted to say, that is not that we are taking anything for granted, but recognizing that time is short. I think that Mr. Shepherd will be able to address all of the salient points as it relates to taxation. Senator Engel has given you a perfect outline of everything that happened in his outline, the remarks. I see no reason to be repetitive, but if you have any specific questions about this, I'd be happy to answer them. But otherwise, I'll turn it over to Bob. [LB722]

SENATOR JANSSEN: Any questions? I don't see any. Thank you, Walter, for your testimony. [LB722]

WALT RADCLIFFE: Thank you. [LB722]

SENATOR JANSSEN: I might add that Senator White has joined us, Senator White is from Omaha. [LB722]

ROBERT SHEPHERD: (Exhibits 2, 3) I have some handouts for the committee members. Mr. Chairman, members of the committee, my name is Robert Shepherd, S-h-e-p-h-e-r-d. I am here representing U.S. Smokeless Tobacco, the company that is probably more better known as the company that manufactures Skoal and Copenhagen; however, they also manufacture brands at all levels of the distribution

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 23, 2008

chain, including what we call Tier 2 and the brand of Red Seal and Tier 3 and the brand name called Husky. My background and the reason that I'm here addressing you today includes 25 years of government service in the state of New York: I was a police officer for 7 years; an assistant district attorney in the Bronx for 7 years; and for 11 years, I worked at the New York State Tax Department. I was deputy commissioner for enforcement, and dealing with tobacco and tobacco regulations and issues were a very large part of my responsibility. In the ten years since I've left government, I have worked in the tobacco industry almost exclusively, representing manufacturers, distributors, and retailers. I am also the executive director of the Northeast Association of Wholesale Distributors, those are distributors up in the New England states. I'm here today to support LB722, which as Senator Engel represented, was identical to LB106 as it was in committee last year and as you approved it last year. And I'm urging you to approve it again this year. Excise taxes are normally a unit of measure, and one of the slides that you have before you indicates that with cigarettes, beer, wine, most of the other excise taxes, except for that on moist smokeless tobacco, that is a percentage of the wholesale price. The Nebraska Legislature put that law into effect in 1987, and when you did it in 1987, you did the right thing. Back then, all of the companies that manufactured this product sold it at the same wholesale price, and at the end of the day, everybody walked home paying the same amount of excise tax the same way they do with cigarettes, beer, wine, and gasoline. In 2002, you adjusted the rate to the current 20 percent, and back then, although there was a problem, I couldn't walk in before you and demonstrate to you conclusively that there was a problem. So, back then I would have to say that you did the right thing leaving it at an ad valorem rate. But today, the system is broken; it was broken last year. You addressed it correctly last year; the Governor vetoed it for valid reasons, but we're back again this year because the system is still broken. Basically, with cigarettes, as you all know, you have three rough tiers: A premium product; a mid-priced product; and a low-end product. And the tax on them, very similar to all of the other things, the tax is the same, \$0.64 per pack. No matter what the quality is and no matter what the wholesale or retail price is, it's \$0.64 a pack. That's different when you come to moist smokeless tobacco because it's a percentage of the wholesale price. When the tax was put on and years ago everybody sold it at the same price, everybody paid the same excise tax and the system worked the way it was supposed to and it was a beautiful thing. In 1994, one of the companies came out with what we now call Tier 2, but it had a lower wholesale price. And because it had a lower wholesale price, it had a lower excise tax associated with it. When the industry realized that loophole and that they could make their products artificially cheaper...and when I say "they," I'm including my client in it as well, because we have a Tier 2 product...but when the industry discovered that, they came out with what we now call Tier 3 of a much lower-end product. And a year ago when I was before you, I told you that there were seven different price points from the high end to the low end. Well, a lot has happened in the last year; this product is actually growing in market sharing and in category growth. And now, today, there are a total of 15 different price points from the high end to the low end. That means that the revenue department has to take a look at

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 23, 2008

15 different wholesale prices and 15 different ideas of when they bought it, at what price, was it before or after a price cut. I could line them up all by price, but I think you get the idea. There's 15 different price points. Now, I have to tell you that not all of these are available for sale today in Nebraska; some of them are being test marketed in other areas of the country. But ask yourself, does Philip Morris put their brand name Marlboro, their premium name, on a product, or R.J. Reynolds of Camel, so that they can skip marketing in a couple states? I don't think so. This has all come out within the last year, these extra price points. And that shows you again how volatile this market is and where it's going. Although these are premium products, they came in at the Tier 2 price; they came in very specifically at the Tier 2 price because they can do that. It's a way that they can game the system. You can't do it with cigarettes, but they can do it here. The bottom line is, to the state of Nebraska is, at the top end, you're paying \$0.62 a can at the top end; at the low end, \$0.14. That's \$0.48 difference in excise tax. You don't give a smoker of cheap cigarettes an excise tax break because he chooses, he's more price conscious, and chooses a lower end; you make him pay the same excise tax. This product is always going to be cheaper at retail than this product. It's premium, it's...the cost of the product, the cost of advertising, there will always be a significant price difference to the consumer. So, you're not putting the price-conscious consumer out of business; what you're doing is you're telling him the excise tax, just with all our other excise taxes, need to be the same. In the handout that I gave you, you'll see all of the 15 different price points; in there are the wholesale prices for each, the tax associated with each. One of the other charts will show you the market shares: Those are the graph lines that are...one line on the top is going down, that's premium product; the other two lines, one of them is pretty much flat; and the red line is going up. Those are market shares, and that's something that companies fight about all the time. It's no different than Coke and Pepsi, Ford and GM, Miller and Budweiser; those are things that companies always are concerned with, and basically companies fight that out every day. The difference is that state revenues are tied to those numbers. As that red line goes up, your tax collections are going down. As that green line starts to dip, so does your tax collections. So, you've gotten yourself in the middle of an industry fight. You didn't do it on purpose, you didn't intend it that way, but you're in it. So, what LB722 does, it gets you out of it. It also makes state revenues more predictable and more stable. The Revenue Department and all the estimators can tell you exactly how many packs are going to be sold in a year, and are very good at predicting how much money that's going to bring in. They can also predict with reasonable certainty how many round cans are going to be sold during the year; what they can't tell you is, does the guy buy the high-end stuff one week and the low-end stuff the next week? They can't tell you what the numbers are going to be as far as revenue collections. That's another reason you need to get out of it. On the committee's web site, you've got some tax policy analysis, and you've got a whole series of things that, what makes a good tax? LB722 hits every one of those items, and I'd urge you to take a look at that. One of the big arguments against LB722 is called the automatic escalator; well, as prices go up, don't our tax collections go up? If that was the case, I'd have to say yes. And one of the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 23, 2008

things that you'll look at, right after that graph of the market shares, you'll see another graph where the line goes up until 2004, and then it starts going down. That is the average weighted tax per can, and that's the thing that tells you that the automatic escalator was working great in Nebraska up until 2004, but in 2004, that's the trigger year across the country, that's when it stopped. That's when your weighted average tax per can is going down because of the downtrading to the lower-end product. That demonstrates...and I couldn't do that in 2002 because the line was still climbing...but in 2004 is where it turned. This is something that you need to consider and you need to address. That's exactly what LB722 does. If any of the members of the committee have specific questions, I'll be happy to answer them, either now or later if the issue comes up. But other than that, and other than urging you to support LB722 the same way you did last year on LB106, I have no further comments. [LB722]

SENATOR JANSSEN: Any questions? Seeing none, thank you for being with us today. [LB722]

ROBERT SHEPHERD: Thank you. [LB722]

SENATOR JANSSEN: Next proponent? Are there any more proponents? Seeing none, we will take opponents. Are there any opponents? [LB722]

ROBERT MAPLES: (Exhibit 4) I brought cans too, so. Good afternoon, Mr. Chairman, members of the committee. My name is Bob Maples, M-a-p-l-e-s. It's a pleasure to be here again this year. I had a conversation with a couple of you, I was hoping maybe we could do this in July next time, but. In any event, I'd like to see Lincoln in July. But I appear on behalf of Swisher International; again, a manufacturer of price value smokeless tobacco products. Swisher continues to oppose LB722 and the proposed conversion from the current ad valorem tax to weight-based tax because of its anti-competitive, anti-consumer effects; the dramatic tax increases on smokeless tobacco products; its special interest intent and effect; and its unnecessary benefit and reward of one dominant interest in the moist snuff tobacco category. By way of introduction, I'm currently a senior advisor in government relations at the law firm of Dickstein Shapiro LLP and a retained consultant to Swisher International. I too have been associated with the tobacco industry for many years, over two decades. I worked for the Smokeless Tobacco Council, which was an industry trade association, for ten years, from 1993 to 2003; I was its president from 1998 to 2003. And from 1993 to 1996, I worked closely with UST, as it was known then, which was a member of the STC at the time. I really do appreciate this hearing; sunlight is truly the best disinfectant. In general, the industry proponents of this legislation prefers to avoid sunlight, to operate in the dark. At last year's hearing on LB106, the committee discussed two nearby states that converted from ad valorem to weigh-based, and this was on moist snuff tobacco; we talked a little bit about North Dakota and Iowa. I have really no new news out of North Dakota, I just will note that at the federal level today there was again

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 23, 2008

an attempt made to override the President's veto of the State Children's Health Insurance Program. If SCHIP ever passes at the federal level, and there are those committed to doing so, North Dakota's, and other weight-based states', revenue shortfalls will only increase as a result of their decision to convert from a progressive ad valorem tax, one that captures all factors including federal excise tax increases that raise manufacturers' prices and generates additional tax revenues, to a flat, weight-based tax that does not. Iowa converted to a weight-based tax last year and was discussed by the committee; we draw the committee's attention to recent information from Iowa. At a recent Federation of Tax Administrators Tobacco Tax Annual Meeting, Mr. Dale Thede, program manager at the Iowa Department of Revenue, presented the Iowa experience on weight-based tobacco tax. There was a very on-point discussion of Iowa's challenges and issues that will face Nebraska if you choose to convert to a weight-based tax. On page 15 of the presentation, which is attached to my testimony, entitled, "Major Issues since change," Mr. Thede, and again he's just with the Department of Revenue, identified the major issues since change as encountered by their department in the conversion. And he wrote, "More schedules with return; multiple calculations on return; invoices with multiple items making calculation of the tax more difficult; more chances for error; more time consuming for taxpayer and...the department; difficult to measure actual effect of increase; cross border issues, less consumption." Given that the committee has chosen the path of sunlight, we shine the light of opposition on three areas where we think that this legislation is bad public and tax policy. This legislation harms adult taxpaying in-state consumers. From premium pricing architecture and lack of price gap management to litigation from the state's competitors, customers, and consumers, the dominant industry company supporting this bill has a checkered past as it relates to providing adult consumer choice, cost savings, and competition. These bad business practices have attempted to squeeze competition and adult consumers and monopolize the marketplace. Dynamics are changing, primarily as a result of judicial actions. We wish to maintain the current evolving dynamic and implore the legislative branch not to undo that that has been gained to achieve a true state competitive market. LB722 redefines tobacco products, as Senator Engel said, and applies a weight-based tax to other smokeless tobacco products as well: Chewing tobacco, plug, and twist tobacco categories. The state tax on chewing tobacco, which is sold mainly in a 3-ounce pouch, and I didn't have a chance to pick up chewing tobacco, will skyrocket between 300 and 500 percent. The state tax on chewing tobacco will rise from an average of about \$0.51 a unit to \$1.95 in state tax alone...\$0.65 times 3. This dramatic tax increase also affects dry snuff, plug, and twist tobaccos equally. As has been mentioned in the veto message from last year, we hope that the committee will keep in mind Governor Heineman's comment that consideration should be given as to how such dramatic increases in the tax affects the ultimate consumer, because it is the ultimate consumer that pays the tax. The language of LB722 will only add to the Iowa experience in terms of complexity and dramatic tax increases affecting adult consumers. As Mr. Shepherd said, there are multiple tax points on MST now, it's growing. LB722 would only make the complexity of a weight-based tax

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 23, 2008

conversion worse. I just took a few...you know, if you look at it, here's a 1.2-ounce container, currently about \$0.25 tax, under weight-based, \$0.78. Here, a .82-ounce container, ad valorem at \$0.25, weight-based \$0.53. And this is a .53 unit, current ad valorem \$0.60, it will go to weight-based, go to \$0.34. So, actually as you see...well, that's a Cope, that's the new Cope product. In any event...and this is a can that I just brought, it was purchased in Canada. Manufacturers, if they are faced with a weight-based tax...I guess you have a choice as to whether you make a product that weighs more or less, I guess it depends on how much tax you really want to pay, or you want the consumers to pay. So, as we've seen in Canada, with dramatic tax increases manufacturers have evolved to smaller, lighter units that consumers can purchase. This legislation artificially impedes the marketplace. The current ad valorem tax method works, it works for all: The state, taxpaying constituents, and competition. Ad valorem addresses...it sweeps in all the changes, price, value or volume, in the other tobacco product market product marketplace in real time without any legislative action. Ad valorem is progressive; it benefits consumers' choice, variety, and value, and is a proper tax for this economy. The conversion for the committee is a tax on price value adult consumers shifts taxes paid within the smokeless tobacco category among competitors, caps the tax on premium moist snuff products, and impedes robust competition and consumer choice. Bless you. This legislation furthers one dominant company's business plans. The endgame of the industry proponent, in reality, is a three-pronged strategy to expand market dominance: (1) Eliminate the progressive nature of the current ad valorem tax; (2) stabilize their dominant premium-based moist snuff market share; and (3) cap and shrink the state tax price gap component in the future. The dominant industry proponent, in their own corporate documents, cite ad valorem taxes as a risk factor to their corporate business plans. Many in the investment community and the public health community are beginning to view the industry's proponent's market motivations as more of a bad corporate episode of the once-popular TV reality show Fear Factor. The risk they fear is no longer being a monopoly. In conclusion, as I said last year, the ad valorem method is agnostic; it chooses neither winners nor losers. Manufacturers make independent business decisions based on all economic factors and decide to enter and compete in the marketplace based on those factors. Mr. Chairman, members of the committee, thank you for this opportunity and this sunlight in this otherwise cold day. We continue to oppose this legislation and urge your rejection, and look forward to answer any questions you may have. [LB722]

SENATOR JANSSEN: Any questions? Seeing none, Mr. Maples, thanks for your testimony. [LB722]

ROBERT MAPLES: Thank you, Senator. Thank you. [LB722]

SENATOR JANSSEN: Are there any other opponents? Any other opponents? Anyone in a neutral capacity? Oh, we've got an opponent back there, all right. Don't be bashful. Here, take this. [LB722]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 23, 2008

JIM MOYLAN: (Exhibit 5) Thank you. Mr. Chairman and members of the committee, I'm Jim Moylan, M-o-y-l-a-n, Omaha, Nebraska, registered lobbyist for Reynolds American, formerly R.J. Reynolds Tobacco Company. What is being handed out to you is just a couple pages regarding weight-based tobaccos and what a bad deal it is for Nebraska. That's what this bill does; it changes one little segment of the tobacco industry from ad valorem, which has been the history of the taxation of all these products forever, and moves it over to a weight-based system and changes, you know, the tax structure. Now, basically, that takes the lower-end tobacco products and raises the taxes on them considerably. The ad valorem tax has been the most efficient system over the years, and the weight-based will add complexity for the wholesalers and for the administrators because you're going to have to separate this one little element of the tobacco products out, handle it by weight and not by the traditional ad valorem system. And I think you did see the, and heard from Mr. Maples, the Iowa's history on their experience with the weight-based over there and what it has done regarding the department there. You will notice on the next page what indexing for inflation does. Now, the weight-based will not do that; that means you're going to have to come back periodically and raise that tax. Now you notice here, from 1995 there's been a continual increase in the tax because it's based on price of the product, right with inflation. 2002 there was an increase in 15 percent to 20 percent of the value, and you notice that spike there. But each year since then, it's gone from \$0.50 up to almost, you know, \$0.80 (sic) on the chart here. So, you won't have that advantage and successive legislators won't have that advantage; they'll have to come back and start raising the figure that does it. I think this really goes to people of modest means in this country. There's a lot of them cannot afford the high-priced tobaccos. Consequently, they are going to purchase the lower-priced. This is going to raise the price of those to where it's going to be probably impossible for them occasionally to even be able to afford the product. And it's beside the point whether they should even be using it or not, you know. They've been using it, and they'll probably continue to. So, we think you ought to, you know, continue the ad valorem system. Next, it's a competitive issue. Why is UST in here asking you to change the system from an ad valorem to a weight-based? So they can lower the price of their product. So they can compete better. They are asking you to do it for them. Why don't they do like every other company and just reduce their price, instead of coming to you and asking you to change the tax system? You know, just reduce their price to compete. Every other company in this country has to compete by regulating their prices, but UST thinks they can go ahead and use our government to do it. And I think that's pretty evident by U.S. Tobacco's form 10-K for the fiscal year ending December of 2005, where as they stated, "The excise taxes on smokeless tobacco products could affect consumer preferences and have an adverse affect on the sale of the Company's product." So, we think you ought to remain with the ad valorem system and we would hope you'd see fit to not advance the bill and possibly kill it. If there's any questions, I'd be happy to try to answer them. [LB722]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 23, 2008

SENATOR JANSSEN: Senator Langemeier has a question. [LB722]

SENATOR LANGEMEIER: Chairman Janssen, thank you. And thanks for your testimony and I should have probably asked this to the previous presenter. I was not here last year when this was brought before the committee. On some of the information that is provided here on how Iowa handles their things, it talks about, the last bullet on there talks about cross-border issues. Can you tell me, does Missouri, does Kansas...how do they handle? [LB722]

JIM MOYLAN: Missouri and Kansas? [LB722]

SENATOR LANGEMEIER: Are they similar to Nebraska, or are they similar to the proposal of this bill? Do you know, by chance? [LB722]

JIM MOYLAN: Well, I think they're ad valorem. Iowa is not, but I think Missouri and Kansas are ad valorem as far as I know. [LB722]

SENATOR LANGEMEIER: Okay. So maybe we could help Iowa with the border bleed if we made this change, they wouldn't bleed over into Nebraska. [LB722]

JIM MOYLAN: Would help Iowa? I don't know that it would help Iowa much. You know, I've not gotten into the cross-border stuff on, you know, this type of product. [LB722]

SENATOR LANGEMEIER: Right. [LB722]

JIM MOYLAN: Give me liquor and container taxes and I'll tell you a lot about it, but... [LB722]

SENATOR LANGEMEIER: Okay. Thank you. [LB722]

JIM MOYLAN: Yeah. [LB722]

SENATOR JANSSEN: Any other questions? I don't see any, Jim. Thank you for being here. [LB722]

JIM MOYLAN: Thank you. [LB722]

SENATOR JANSSEN: Next opponent? [LB722]

TED STESSMAN: Committee members, I'm Ted Stessman, I'm from Omaha, Nebraska. I work for Farner-Bocken and we're a wholesaler of tobacco products. We represent UST, we represent Conwood, Swisher, those type of companies. Senator Langemeier, in regard to your tax question, I can answer that. [LB722]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 23, 2008

SENATOR JANSSEN: Excuse me, Ted. Would you spell your last name? [LB722]

TED STESSMAN: S-t-e-s-s-m-a-n. [LB722]

SENATOR JANSSEN: All right. I just missed one "s." All right. [LB722]

TED STESSMAN: We do business in 16 states, and you mentioned, I believe, Missouri and Kansas? [LB722]

SENATOR LANGEMEIER: Um-hum. [LB722]

TED STESSMAN: They are based on the way we do it here in the state of Nebraska; in fact, in the 16 states we do business in, there's 3 states that base their tax on weight ounce basis. So, now there's different rates of tax in those states, and I think you would see that there would be border bleeding because this is a tax increase. It would be \$0.18 a can tax increase on Copenhagen and Skoal, which are our best sellers; and Grizzly is one of our best sellers, there would be a \$0.55 a can tax increase in the state of Nebraska. So, the ultimate consumer would, you know, would be paying the price of that. You know, in addition, manufacturers typically raise their prices once a year, and when they raise their price, the wholesaler raises their price and the state gets, you know, gets a price increase in regard to tax as well. And that seems to have been working here. We're just opposed to the additional tax on the consumer, the \$0.18, the \$0.55, and the one thing, if this does pass, you know, I would ask you to look at maybe excluding the scrap and the plug, which would be a Red Man or Levi Garrett-type product, which are bigger in weight. I mean, the tax burden on that, although I don't have a figure for you, you know, that would be quite an increase and, you know, an unfair burden on the consumer. That's all I have. [LB722]

SENATOR JANSSEN: Any questions? I don't see any. Thank you, Ted, for being with us. Any other opponents? Seeing none. Anyone in a neutral capacity? I don't see any of those. Senator Engel to close. [LB722]

SENATOR ENGEL: Thank you, Senator Janssen and members of the committee. I enjoyed all the testimony, not only my own but others'. But I'd just like to add a few little notes here in closing. Iowa did have a problem last year because they enacted it with the emergency clause; they were not prepared for the transition. And UST does furnish a computer model for them to use and so it has worked in these other states, and like I say, there's several other states that have put it into effect. And around us...of course Iowa last year and North Dakota switched in 2001; and we've got Alabama, Arizona, Connecticut, Iowa, Kentucky, Montana, New Jersey, Rhode Island and Vermont; and there are several others coming up in their legislatures to change this to this type of taxing. And so it's, to me, it's a fairness thing. Like he talked about, well, it's going to cut

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Revenue Committee
January 23, 2008

out the...it's going to give them an unfair advantage. Well, there's still that price differential. The price differential is still there, it's just a matter of you're starting off on a fair basis, an equity basis as far as how much per ounce that you're charging. And we did change it from last year; last year, anything less than an ounce, we're taxing at an ounce. We did change that to make it more equitable because it's going to be proportionate to...if it's half an ounce, they're going to be charged half of the tax, so...so it's proportionate that way. So, it does get...to me it does, it just let the market prevail and if one company can sell it for \$5 a box, well, so be it. But at least they're starting off on an equal basis and then they fluctuate their prices accordingly up or down. In as far as the plug tobacco and so forth, my father used to chew that. I tried it twice and I'm still alive (laughter). Like Ramie used to say, damn near killed me, you know. But the thing is...but snuff takes up a majority of smokeless tobacco; these other products, like the chewing tobacco, the Red Man and the plug and so forth, is pretty minimal amount of what's chewed now, so. Another thing, I understand as far as this half-ounce can that's purchased in Canada, I was informed that that's not available in the United States. So, I don't know for sure, but I take that as gospel for the person that just told me that. But that's neither here or there. I think this is an equity issue, I think it's something we should pass, and I'm not working for any tobacco company. I can't, like I say, I've never (inaudible) any tobacco products, and I've never been man enough to chew snuff or any other products. So, that's not the point. It's not a personal thing, either, so. With that, I request that you advance this bill and we can get it on the floor again this year like we did last year. Thank you very much. [LB722]

SENATOR JANSSEN: Okay. Thank you. Any questions of Pat? Thank you, Senator, and that ends the hearing on LB722. And committee counsel, Mr. Kilpatrick, will open on the next three bills, LB914, LB916, LB915. We'll take LB914 first. [LB722]

GEORGE KILPATRICK: Thank you, Chairman Janssen. My name is George Kilpatrick, introducing LB914 for the committee. We have before us today three of the bills that were introduced by the committee that were requested from the Department of Revenue. This is the first; it's sort of a bill that kind of makes one change over a lot of different sections and it crosses over sales and income tax and motor fuels tax. It generally tries to unify the appeal deadlines and tries to unify the incentive funds, that's this particular bill. The next one is LB916, which is a sales tax bill; and then LB915, which is generally an income tax bill. What I will do is simply open in that fashion, and suggest the Department of Revenue will come up and tell you a bit about what issues or problems they might be trying to resolve or clarify with regard to this legislation. And with that, I guess I'll end my closing. Are there any questions? [LB914]

SENATOR JANSSEN: Any questions of George? None; thanks, George. Okay, Mr. Ewald. [LB914]

DOUG EWALD: (Exhibit 6) Senator Janssen, members of the Revenue Committee, it's

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Transcriber's Office

Revenue Committee
January 23, 2008

nice to be back in the seat again, I think (laughs). Before I begin testimony on LB914, I would just like to reiterate the Department of Revenue's willingness to work with you at any time on any issue. If you need information out of the department from anyone, myself, my staff, anybody, we're always available to help clarify or give you statistical information, anything along those lines that allows us to create a better tax policy for the state of Nebraska. We are here and ready to help and work with you. And this is just not while we're in session, obviously. This is year round. I know that recently the Department of Revenue worked very efficiently with Senator Preister's office and Senator Dierks's office with respect to issuing a revenue ruling on the C-BED issues that were passed last year. So, I appreciate the opportunity to work with you. We issued that last week, and I think it was a good result; it clearly stated the intent of the Legislature, so. Thank you. With respect to that, let's get to LB914. There are about a half a dozen changes with respect to LB914...oh, I'm sorry...here. I have a handout. In this handout, you'll see several sections, and I have actually highlighted the key points in the different paragraphs, and that's basically what I'm going to touch on here. I'm not going to get into a lot of the detail on certain ones. If it's not important, we'll hit the highlights and hopefully this might be able to be some talking points when different things hit the floor of the Legislature to better understand some things, anyway, so. The first item here is a change to clarify the liability of members of a limited liability company with respect to unpaid taxes of the LLC, and this does it in the same manner as corporate officers today. Today, what we're seeing out there is if a...this change makes it clear that the members are liable when the members are managing the LLC, whether or not they actually reserve the management to the members. Sometimes they'll appoint a manager to act with respect to the LLC, sometimes they won't; and if they don't, they say, well, we don't have any liability here because I didn't appoint someone. This basically allows us to say, no, you are a member of the LLC, whether or not you appoint someone or not, you are ultimately liable for unpaid taxes. And additionally, too, that would get some people that are appointed as managers and things fall on their shoulders, they say, wait a minute, I don't own anything in this company. But they can be held liable today, which there's a little bit of inequity with that, so this clarifies that. The second item there is a consistency issue with respect to the period for which a taxpayer can respond to a notice of deficiency issued by the Department of Revenue, depending on the tax program. Sales and use taxes, motor fuels, withholding taxes, those are all allowed 30 days to protest a notice of deficiency. Income tax today is 90 days, so what this does, we decided to marry all of them up, if you will, under a 60-day provision so that taxpayers know that, okay, any time you get a notice of deficiency from the Department of Revenue, it doesn't matter what type of tax it's for, we know it's going...we have 60 days to protest if we desire to protest. So, that's hopefully a little uniformity issue here that we can work on. The next item there is something new; this allows the commissioner to waive interest on delinquent taxes. Today, I do not have the ability to waive interest with respect to delinquent taxes. If the interest follows the tax, and depending on how long it's been outstanding for, I have no ability whatsoever to enter into a...reduce the interest associated with it. So, this here...I don't expect to use it

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Transcriber's Office

Revenue Committee
January 23, 2008

often, I expect to use it rather sparingly. But sometimes we run into situations where the issue, it might not always be the fault of the taxpayer with respect to why we're a little delinquent in something or responding to somebody along those lines, that it might be in the interest to, instead of charging the taxpayer full interest, we're able to otherwise reduce the interest amount to...agree to an agreeable settlement. The next item there relates to cash funds for each of our incentive acts. Over the years, when all the different incentive acts...we had LB775, LB829, LB620, there I can go on and on, I think, LB312...every time an incentive act was put in place here, there was a corresponding cash fund that was put in place. And that's where the application fee went; when somebody applied for benefits under tax incentives...it was \$500 under LB775, it was something higher under some of the other ones...but every time we had an incentive bill, a cash fund was created. Now, what the cash fund actually did was, as Department of Revenue employees worked on incentive issues, they were to charge their time to the appropriate cash fund for a particular accounting distribution. So, what I am proposing here is that, rather than having to track five or six different funds across the agency, we're working on tax incentives, and we might be working on one taxpayer for a LB775 issue to a LB829 or LB312 issue, to roll all these funds together into a tax incentive fund, if you will. So, any time somebody is working on an issue, they don't need to worry about what fund to charge it to; they know they're going to charge it to the Tax Incentive Fund. So, it's just a matter...it just allows us a little easier record keeping with respect to monitoring four or five different cash funds, let's just track it through one cash fund. The next item here is a change related to the length of time to protest for the Nebraska Advantage Act. Like I said earlier, we put everything at 60 days; this also applies to the Nebraska Advantage Act. So, it's just not for sales and use, motor fuel, income tax; our incentives have a particular period of time that if they disagree with us, that they need to protest by...this puts this at 60 days as well. Along with that, it allows the terminations and protests will be handled in the same manner as with other determinations by the department. And by that I mean, in the past somebody could protest something and they protest it to the department, they don't get to the answer they're looking for, they'll turn around and protest it to the commissioner. Well, we're one and the same, basically, from that standpoint. So, this basically mirrors what's currently in statute in the other provisions under "Notices of Deficiency." And the last item here is, there is a requirement for a county treasurer report to the Tax Commissioner the fines and monies collected for schools; that actually would be eliminated. Current law requires their reports to be made to both the State Treasurer and the Tax Commissioner. Well, we don't do anything with the report, so this change basically strikes the Tax Commissioner from that reporting requirement but continues the reporting to the State Treasurer. With that, that's the extent of my testimony on LB914. I'll be happy to answer any questions you have. [LB914]

SENATOR JANSSEN: Any questions? Ron. [LB914]

SENATOR RAIKES: Doug, on the last one there, I would remind you that I think there

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Transcriber's Office

Revenue Committee
January 23, 2008

was \$90 million or something like that that went from Lands and Funds to the Treasurer's Office and they lost track of it for a while. Maybe you should hang onto those reports. [LB914]

DOUG EWALD: Okay. (Laughs) [LB914]

SENATOR RAIKES: I'm interested in the ability to waive interest. In some respects, it would seem like it would protect the commissioner from charges of favoritism or whatever to have in statute that you can do it under these circumstances and not otherwise, as compared to, well, it's the right day of the week or I know your dad or whatever it is. [LB914]

DOUG EWALD: (Laughs) I understand, and that's...and actually, if you look back on it, I mean, today it's like of a crutch, you know. You can fall back and say, well, I can't waive interest. But at the same time, if we really want to settle certain things, and like I said, I anticipate using this quite sparingly, and an example of this might be something where under...there's a provision at the federal level called FIN 48 where you had to disclose all your uncertain tax positions. And I've been talking to companies and telling them, come forward, I said. They would have had to book a liability for all their unpaid taxes and interest and penalties for going back as far as they might be open or that it, you know, for federal purposes or state purposes. I said, well, come forward. If I don't go out and audit them or we don't, if they miss the audit cycle, they could possible skirt by on this. I'm kind of opening the door, I guess, if you will, to those businesses, say, come forward. I maybe, we could come to some sort of arrangement to get some money in for the department or for the state, and maybe give you an opportunity to have some sort of financial benefit when you actually unbook your reserve, anyway, so. There's a number of things. We don't know...I've seen a couple that, I've actually been approached by a few CPAs on that issue. And like I said, I would use this quite sparingly; it would have to be some very unique circumstances where we probably would be able to point to the Department of Revenue was delinquent or something there with respect to things that move along quite expeditiously as one would expect. [LB914]

SENATOR RAIKES: Would it be wise to have some co-conspirators in this... [LB914]

DOUG EWALD: Sure. [LB914]

SENATOR RAIKES: ...to have a panel or a committee or something that makes this call, or... [LB914]

DOUG EWALD: Or maybe, I guess you could... [LB914]

SENATOR RAIKES: ...if it's above a certain amount, or something like that? [LB914]

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Transcriber's Office

Revenue Committee
January 23, 2008

DOUG EWALD: That's...I mean, I would be receptive to something, you know, if you want to put in there something about, above a certain amount, or these specific instances are those where you have the ability to waive interest, and limit it to these, from that standpoint as well. [LB914]

SENATOR RAIKES: Okay. Thanks. [LB914]

DOUG EWALD: Yeah. [LB914]

SENATOR JANSSEN: Any other questions? Don. [LB914]

SENATOR PREISTER: Thank you, Senator Janssen. Mr. Ewald, I would agree with your earlier comments that you are willing to work with people and on the C-BED legislation, trying to come up with some clarity for what we passed last year. You and your office staff are the model of how agencies should operate in my view, in working with the policy makers. So, I commend you and your staff on that. The issue that I had the question on is the same one that Senator Raikes raised, and I would welcome any language that you may propose again on this. I would like to see that tighter, rather than it being a very subjective, whether it's the day or the person, rather than a blank authority to waive. You may use it sparingly, but we're creating statutes for somebody who, I don't know when, but somebody is going to take over your position some day. They may choose to do it differently. There may be very different standards, but we have established policy saying it's okay, but we have no guidelines when it's okay, when it's not okay. It's just a little loose. I'd like to leave some flexibility for those individual cases, but this is a little more open that I'm comfortable in supporting. [LB914]

DOUG EWALD: Very good, we can...we'll put something together on that. [LB914]

SENATOR PREISTER: Thank you. [LB914]

SENATOR JANSSEN: Tom. [LB914]

SENATOR WHITE: Thank you, Mr. Ewald. Thank you, Senator Janssen. I had a series of questions, Mr. Ewald, on the LLC change in liability for members. This isn't strictly to the change, but it does raise a concern. If I want to invest in a corporation, I can be a passive investor, not have anything to do with management, be free from any personal exposure for taxes the corporation failed to pay. Is that correct? [LB914]

DOUG EWALD: That's correct. [LB914]

SENATOR WHITE: But in the LLCs, that option is not available at all. Do you think that's a consistent and desirable characteristic, because LLCs are being heavily touted in the legal community... [LB914]

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Transcriber's Office

Revenue Committee
January 23, 2008

DOUG EWALD: Yes, they are. [LB914]

SENATOR WHITE: ...as being a less expensive, more cost-effective, more flexible method of organizing your business, and that's a profound difference if all you want to be is a passive investor supplying capitol. You can be walking into millions of dollars of personal liability and you may not even have... [LB914]

DOUG EWALD: Not even have a clue, yeah. [LB914]

SENATOR WHITE: ...an idea that it's going on. So that's a question I ask you for public policy comment on, either now or perhaps you talk to your people... [LB914]

DOUG EWALD: Sure. [LB914]

SENATOR WHITE: ...and think about it, and maybe let us know later. [LB914]

DOUG EWALD: Yeah, well let's...I'll get back to you on that, and we can kind of cite the specific situations where we see the issue come up, so. [LB914]

SENATOR WHITE: And I can see if you're an active manager in the LLC to treat you on the exact same basis as you would an active manager in a corporation, but that is...you have control, you should be personally responsible for failure to pay taxes by the corporation. But what's the rationale for denying that passive protection to just investors, that's what I'm particularly interested in. [LB914]

DOUG EWALD: Okay, all right, very good. [LB914]

SENATOR WHITE: The other questions I had with regard to interest versus penalties, you can waive penalties now; you can't independently waive interest. But the dog here is the tax itself. [LB914]

DOUG EWALD: Correct. [LB914]

SENATOR WHITE: A lot of times, it's not clear whether somebody really owes a tax or not. I mean, there's a dispute that may be good faith or not, or it may be unresolved by the courts. Can you compromise those now, where you'd say, look we think we'd win this but we're not sure, therefore rather than go for the whole \$100,000, we'll take \$50,000 under the underlying taxes. Do you do that now? [LB914]

DOUG EWALD: We have the ability to enter into settlement stipulations today if we have an issue that, okay, we're not real confident in with respect to that and there are some hazards of litigation but we want to, you know, maybe preserve the issue or agree

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 23, 2008

with the taxpayer, okay, we'll settle with you on this, but this is the way you need to do it on a go-forward basis. Something along those lines. [LB914]

SENATOR WHITE: Absolutely. [LB914]

DOUG EWALD: We could enter into settlement stipulations there. In that case, if we reduce the tax, obviously the interest is reduced with it because the tax is reduced. [LB914]

SENATOR WHITE: That's really the dog in the fight, I just... [LB914]

DOUG EWALD: Um-hum. Yeah. [LB914]

SENATOR WHITE: ...asked that question so the members of the committee understand it's not really just the interest, that's really the tail, because that's going to follow by compromise and it's a good thing. Believe me, as a guy who goes to court, it's a good thing that Mr. Ewald have the ability to compromise taxes in uncertain cases. But that hits the dog, and if you're concerned about it, you better look at the ability to settle the taxes as well as the interest as a comprehensive issue. Then I had a question...no, that actually covers the two questions. I appreciate your courtesy. [LB914]

DOUG EWALD: All right. Thank you. [LB914]

SENATOR JANSSEN: Any other questions? I don't see any. [LB914]

DOUG EWALD: All right. Thank you. I'll be back. [LB914]

SENATOR JANSSEN: Okay. We'll the take proponents on LB914. How many proponents do we have? Go ahead. [LB914]

BILL PETERS: Mr. Chairman, members of the committee, my name is Bill Peters. I'm appearing here on behalf of myself in my capacity as a tax practitioner. I'm...been motivated by the questions on the waiver of interest. I agree that this is a significant change, but it's not unheard of. You, speaking as the Legislature, has from time to time said, okay, we're going to waive interest on everybody, for whatever reason. That's your tax amnesty programs. So, it's not an entirely new concept, but it is new as far as the administration, and that's been there since before I was even the administrator. And it's an easy cop-out. Sorry, can't waive interest. Now, there are several situations...what happens as a practical matter to referring to the settlements? I can assure you, taxpayers are incensed at interest on a tax they really don't think they probably owe. When it comes time for my perspective as a settlement, the taxpayer is interested in the bottom dollar, in the dollar. The department has to be interested in all the accounting mechanisms. So I say, okay, you guys can either go to court with me or we'll pay

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 23, 2008

\$80,000. You figure out how you want to distribute it; we, quite honestly, don't care. So, what they have to do is they go through and they make it all balance and look good to an audit. We have this much tax, this much interest, and the rest is penalty and we didn't waive all the penalty. I don't know if that's really a good use of time. I think there's other times there's really some good equity situations where it would be fair to the taxpayers to waive the interest. I'm thinking about this standard that we have, you know, if you don't put down a "0" in the right box on the sales tax return, you're liable for five years. If you're smart enough to put down a "0" there, you only have a liability for three. You know, so some taxpayers, they file their return, they reported everything that they should have, but they overlooked some use tax and forgot to put a "0" down. So, zip, you get the tax and you get the penalty and you get five years of interest. And sometimes, there's some real good equity considerations. There's the other thing that irritates some taxpayers, and that is that they're audited, the audit team leaves and you're not sure how bad they're going to get you; six months later, you get the deficiency. And so you get interest for that full six months. And those are places where the tax administrators, the commissioner in our case, should, I think, have some flexibility. And I'm not sure, I'm just thinking of these as I was sitting there listening to the testimony. I would suggest as a possible alternative, that...you asked, you know, that perhaps the Department of Revenue might be able to share a report with you on some experience with the committee as an oversight to determine where there are places where the Tax Commissioner believes that equity should have some waiver and then I would perhaps give you guidelines for the future. But certainly I think the Tax Commissioner would be an advantage to have some flexibility to get cases settled. Oh, there's the other one, the big corporation that just from...I've had several of these from out of state, who had a unit in Nebraska. To them it was real small, to us it was real big, and they just forgot some tax, fell through the crack. So, you come in and, you know, what do you do? Well, you go through and you explain what the, you know, you should pay the tax and pay the penalty and this is the interest and you will owe the interest. The statutes going to be running in three or four years; you could hold your breath. And being able to deal with the interest issue and the penalty issue might at least get us the taxes. I think there's a lot of good, equitable reasons here and I would support the commissioner's ability to waive interest with as few restrictions as you'd see fit to put on it. Thank you. [LB914]

SENATOR JANSSEN: Any questions? Ron. [LB914]

SENATOR RAIKES: Bill, there is the concern, don't you agree, that the commissioner has to be able to present him or herself as someone that is being fair and equitable to all commerce, that because you're a big corporation, you've got this deal, because you're not, you didn't. And don't you see as an intersection, here, on that? [LB914]

BILL PETERS: Well, yes, I think there is, but I don't think it's focused on interest. If you've got a commissioner that's going to give away your state's revenues, he's going to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 23, 2008

give away the tax and you're never going to see it. Now, quite honestly... [LB914]

SENATOR RAIKES: So, fine, that really doesn't change the issue, though. [LB914]

BILL PETERS: Well, no. [LB914]

SENATOR RAIKES: So, suppose we do include the ability to forgive the tax as well as the interest, or part of the tax, or the penalty, or whatever. As you say, money is fungible, you've, you know, you've got \$80,000 allocated however you want. [LB914]

BILL PETERS: Yeah. But I think the other thing is that most...as a practical matter, it either going to be a small business or a very large business that gets caught in the crack. That's at least the kind of clients that I have (laughs), them that afford me and them that can't, and the ones that can't afford me are the ones I have to work for because they're not getting a fair shake. But I would concede it's clearly, it's certainly an issue that I think you should be concerned about. [LB914]

SENATOR JANSSEN: Any other questions? I don't see any, Bill. [LB914]

BILL PETERS: Thank you. [LB914]

SENATOR JANSSEN: Thank you. Next proponent? Any other proponents? Any opponents? Anyone in a neutral capacity? Seeing none, that ends the hearing on LB914. George, do you want to...LB916. [LB914]

GEORGE KILPATRICK: Thank you, Chairman Janssen. My name is George Kilpatrick, testifying in support of...the introduction of LB916 for the Revenue Committee. This is the sales tax bill that I mentioned earlier; it's probably also the reason that most of the folks behind me are still here. We'll hear about that later, but this defines some terms, does some stuff that's consistent and compliant with streamline. It provides for enforcement of sales tax through the responsible office or employee, something we touched on a little bit with the last bill, and allows the Tax Commissioner to waive a deadline for resolving disputes, which is currently 180 days if, for whatever reason, the two parties want to do a little bit more investigation or arguing or whatever. With that, I'll end the opening and allow the Tax Commissioner to again describe to you some of those details, unless there are questions. [LB916]

SENATOR JANSSEN: Any questions of George? You're off the hook, George. Mr. Ewald? [LB916]

DOUG EWALD: (Exhibits 7, 8) Chairman Janssen, members of the Revenue Committee, my name is Doug Ewald, E-w-a-l-d, and I am the Tax Commissioner. I am here today as a proponent of the changes relating to sales tax provisions of LB916.

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Transcriber's Office

Revenue Committee
January 23, 2008

Once again, you're being passed around some of my testimony there, but there's...as George alluded to, there's a number of, I think there's about five provisions in here I'm going to touch base on. The first one is to clarify the exemption for medical products. Today, the current statute that we have does not conform to the Streamlined Sales Tax Agreement. The statute, as written, requires that the Medical Assistance Act provide coverage for, excuse me, for a specific prescription drug in order for it to be exempt. This change clarifies that all prescription drugs would be exempt with a prescription whether or not covered under the Medical Assistance Act. And over the years, we've had a few drugs that have been part of the act. They have gone to over-the-counter or some other things that might not be on the list, but this basically says, any time you have a prescription, you're given a prescription or script from your physician, that particular item will be exempt. The second item here is with respect to persons whose sales tax permit has been revoked for either failure to file returns and/or pay the tax and therefore has to pay a fee or post a security bond, if you will, in order to get a permit reinstated or to get a new permit for a different business. What we'll see is that we have some people out there that will go permit-hopping, if you will. We will basically take their permit because they have either failed to file or failure to remit the taxes, but they will go out and have their brother or sister or mother, whoever, file an application for a sales tax permit to operate basically the same business. So, what this does is it, this change requires more information on an application of a sales tax permit so we can more easily identify this type of application, and the grounds upon which a sales tax permit may be suspended or revoked or changed so that if additional information is not provided or is not correct, we can begin the process to revoke a person's license. So, that's that particular issue. The third issue relates to sales tax refund claims. Those claims today have to be approved or denied within 180 days after the claim is filed. The time period can limit the ability to make a complete determination or to fully explore the issues related to these claims. And we get into situations where somebody files a refund claim and we have to ask for follow-up information, different types of data, those type of things, and by the time we get around to looking at the refund claim and get it to them, depending on what they're in the middle of, sometimes it can push this 180-day issue. So, this change is being proposed to allow the taxpayer and the commissioner to extend the 180-day period when it's in the best interest of both parties, so that we don't just come to 180 days, well, we've got to make a decision, we're either going to approve or deny in its entirety. It allows us some flexibility with respect to resolving the issue and basically coming up with the correct answer. The fourth item here relates to the installation of equipment to receive satellite programming. Currently, the installation of equipment to receive satellite programming is taxed in the same manner as the installation of equipment to receive cable or community antenna television service. Today, both are taxable as installation labor under Section 77-2716, and this is consistent with our current audit practice. This change that I'm talking about or asking you to consider adds equipment to receive satellite programming to the definition of gross receipts under Section 77-2701, thereby creating a consistency among statutes. Without this change, satellite providers can and will argue that they are annexing to real

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 23, 2008

estate and therefore not subject to tax. But it's currently taxable today under installation labor, they're installing tangible personal property, and just because the gross receipts section law today does not list satellite transmission equipment, there's viewed that there might be a question there whether it's not taxable. That's not necessarily the case; we care to put this under the gross receipts section to add clarity. The last item I'll talk about here is digital goods, and this is not an easy concept in certain things, let me put it that way, so. In 2002, the Nebraska Supreme Court clarified the treatment of digitally delivered products when the original product is subject to sales tax. In ABI v. Egr, the court held that the sale of a digital equivalent item should have the same tax treatment as the original item. In this case, the court was dealing with the treatment of mailing lists, which would be taxable if transferred by paper. The court held that the mailing lists transferred by electronic media were also taxable as digital equivalents of tangible personal property. This case stands for the proposition that the state shall tax digitally transferred items if the original item is subject to tax, such as music, books, movies, or similar items. LB916 grants legislative confirmation to the Supreme Court holding, meaning that if we currently subject an item to tax, such as a book purchased by me from a bookstore, we will tax the same book purchased by me through an electronic download. Conversely, we will not tax a digitally equivalent item if, in its original form, it is not subject to sales tax. The Department of Revenue has been involved with the Streamlined Sales Tax Agreement since 1999, its inception. This agreement is an alliance between 42 states and numerous businesses to develop uniform and simplified sales tax systems by developing definitions and related statutory assistance to assist in harmonizing sales tax implementation among states. After the ruling by the Nebraska Supreme Court in ABI, the department anticipated definitions of the very terms we have proposed in LB916. The department is not subjecting digitally delivered goods to sales tax in compliance with Streamlined; however, based on ABI, we will be in compliance with the agreement as we implement the holding of ABI. One of the things we've come across here in looking at the original bill here is that, and you have an amendment here, the definition for delivered electronically digital audio works, digital audio visual, digital books, and digital codes that appear in LB916 on page 15 are the definitions specifically from the Streamlined Sales Tax Agreement. The term "digital codes" is contained in this amendment that you've received here today. I'm requesting this term be amended into LB916 because it was not in the original one and it is one of the definitions that has been developed and agreed to under the streamlined agreement. With respect to that, that concludes my testimony and I'd be more than happy to attempt to answer any questions you might have. [LB916]

SENATOR JANSSEN: Any questions? I don't see any. [LB916]

DOUG EWALD: Thank you. [LB916]

SENATOR JANSSEN: Ron, do you have any? Okay. Any proponents? Proponents for LB916? I don't see any. Any opponents? Okay. [LB916]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 23, 2008

LARRY L. CHAMBERS: Chairman Janssen and members of the Revenue Committee, my name is Larry Chambers, spelled C-h-a-m-b-e-r-s, and I am the DBS, or satellite operations manager, for Diode Communications of Diller, Nebraska. Diller is located 20 miles southwest of Beatrice and our company provides DIRECTV satellite service to nearly 6,000 subscribers in southeast Nebraska and a small area of northeast Kansas. I am appearing before you today in opposition to LB916; specifically, our concern is with the language on page 10, section (c), which references gross revenue received from the provision, installation, construction, servicing, or removal of property used in conjunction with the furnishing, installing, or connecting of any satellite services. Diode Communications is a member of the National Rural Telecommunications Cooperative, has been providing satellite television equipment, satellite television programming packages, and doing service work on related DIRECTV equipment as an agent for DIRECTV for nearly 14 years. We currently employ seven full-time and three part-time employees in the satellite TV department of our company. We are concerned that the language contained in this section of LB916 may negatively impact our customers and ultimately the employment opportunities in our small town. There is currently an outstanding sales and use tax audit in regards to our company that we have waited over a year for the audit results. This is the first we have heard in regards to sales and use tax directly related to this audit was when this bill came up, which we found out about this morning. To give you a little background, our small business finds, installs, and activates new subscribers for DIRECTV and does service work for all our DIRECTV subscribers, currently around 6,000. Some of the equipment and service work is billed to the subscriber and in order to stay competitive, some of the installation equipment and service is provided free to the subscriber by DIRECTV. In that instance, DIRECTV reimburses Diode the cost of the equipment utilized and pays us for the work performed. The subscriber pays sales tax only on the charges that are billed directly to them. Part of the satellite equipment included is leased to the subscriber and must be returned to DIRECTV when service is terminated. Under current sales tax law in the state of Nebraska, the equipment is not subject to sales tax because the sales tax is collected on the monthly lease fees that are charged for the equipment. The new wording in the law, in our interpretation, would collect sales tax from Diode and all other similar small businesses in Nebraska, of which we believe there are hundreds. However, we have no mechanism to collect the sales tax from DIRECTV. DIRECTV pays a national rate for all work done and does not adjust its rates state by state. Every bill that has...every bill has a fiscal note to estimate the cost to the state for revenue raised. Fiscal note for LB916 is zero. In other words, no other revenue or cost to the state. How can this be the case when our audit alone involves over \$35,000 that's directly related to this, multiply that times the number of small businesses impacted. This new wording would require...as it uses the term "gross revenue," this new wording would require one of two actions by Diode and all other small businesses. Number 1, pay sales tax on all our current gross revenue stream that we receive for DIRECTV, of which we already pay income tax, by the way, or estimate the payment that we will

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 23, 2008

receive from DIRECTV as a result of our services and collect that sales tax only from the subscriber, hundreds of transactions per month. Here's an example: We, and this does include service work in the wording as we read it, we go out to add an additional receiver for a subscriber. The subscriber pays DIRECTV an up-front lease of \$69 on that new receiver; the receiver itself is leased and must be returned. That...we collect the \$69 and the tax, which is forwarded to DIRECTV by putting it on the programmer's bill, and then DIRECTV pays the tax to the state of Nebraska. DIRECTV also pays Diode for our installation for our truck role, our gas, our service man's time, etcetera. They pay us to do this. As we read this wording, this would require Diode to pay sales tax on the reimbursement that we receive for DIRECTV for doing the work. We believe that such provisions would place an onerous burden on Diode and all other small businesses in Nebraska providing satellite TV services, and also negatively impact our subscribers. The payments that we actually receive from DIRECTV, which auditors would include in our gross revenue, include: reimbursement for equipment charges, some of which we have already paid use tax on; reimbursement for leased equipment, on which there is no tax; and payment for our services provided. Determining what sales tax would be due would be an accounting nightmare. In addition, I would like to note that Diller Telephone, the parent company of Diode Communications, is also a member of the National Telecommunications Association, and has asked us to express their concerns about this legislation. It is difficult to quickly ascertain the number of other companies that are similarly affected, but the NTA opposes this legislation to the extent that it impacts those members. Thank you for your time, and I will be glad to address any questions you might have. [LB916]

SENATOR JANSSEN: Any questions? Ron. [LB916]

SENATOR RAIKES: So, what's going on here is the parent company...or, not the parent company but the provider, DIRECTV, did you say? [LB916]

LARRY L. CHAMBERS: Yes, in our case. [LB916]

SENATOR RAIKES: They're providing services to a customer which they're not charging the customer for... [LB916]

LARRY L. CHAMBERS: Correct. [LB916]

SENATOR RAIKES: ...and so that's the issue. [LB916]

LARRY L. CHAMBERS: Yes, sir. [LB916]

SENATOR RAIKES: And what the law says, that any services of a taxable or any provision of taxable services to a customer, you have to pay sales tax. What you're saying is, part of them go the customer, or part of the bill goes to the customer, but part

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 23, 2008

of it doesn't. [LB916]

LARRY L. CHAMBERS: What I'm saying is is that, in the ultimate transaction to the consumer, the consumer only pays tax on what he is actually billed for. Since the consumer is not billed for the remainder of the services, the remaining amount of that transaction is zero, if it's provided to the customer for free. [LB916]

SENATOR RAIKES: Well, it's not really zero because...well, it's free to the customer, so to speak, but there is a payment, it's not free to the DIRECTV or, I keep forgetting which, is that the name of the dish... [LB916]

LARRY L. CHAMBERS: Well, DIRECTV is the... [LB916]

SENATOR RAIKES: DIRECTV. DIRECTV actually makes a payment for a service that is taxable. Now, they pay it to you, not to the customer. [LB916]

LARRY L. CHAMBERS: Right. So, in actuality, the wording here should require, if from that perspective that DIRECTV pay the sales tax, not Diode. And the way this law is written, the way this wording is in here, all of the burden will fall on Diode, not on DIRECTV, and there is no way for me to pass that cost back to DIRECTV. [LB916]

SENATOR RAIKES: Although I would gather an acceptable result for you would not be a letter from DIRECTV that, oh, we were going to pay you \$100 for each one of these, but now we're only going to pay you \$93 because we got to pay the rest of it to the state of Nebraska. You wouldn't like that answer. [LB916]

LARRY L. CHAMBERS: Absolutely not. [LB916]

SENATOR RAIKES: I see. [LB916]

LARRY L. CHAMBERS: But if you, you know, part of what has been discussed in regard...we just found out about this thing this morning...but part of what has been discussed is the leveling the field of the wording between satellite TV and cable TV. Well, you have two different entities, and it doesn't matter whether it's DIRECTV or Dish Network or whatever it is, when you tax the cable company, you're taxing their revenue, which is the programming, which you collect sales tax on on the satellite side, you're taxing the cable company for anything that they charge the customer for installation. If they do not charge the customer for installation; they also are not paying any sales tax, okay. This is their own employees, okay, that we're talking about here, not a subcontractor like Diode is, okay. So, in our case, what that payment from DIRECTV pays for is our trucks, our servicemen's time, their payroll, our gasoline, and so on. So, if you... [LB916]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 23, 2008

SENATOR RAIKES: So, if you're saying, if you were a subdivision of DIRECTV, this wouldn't be an issue. [LB916]

LARRY L. CHAMBERS: If all of us were DIRECTV employees, as opposed to a separate business, okay, a subcontractor, then this could be applied the same way it is applied to cable because the ultimate responsible party would pay the tax. In this particular case, the ultimate responsible party will not pay the tax, the subcontractor will pay the tax and DIRECTV will pay nothing. [LB916]

SENATOR RAIKES: Okay. Thank you. [LB916]

SENATOR JANSSEN: Well, doesn't the consumer, the last person to receive your services, isn't he paying that tax? [LB916]

LARRY L. CHAMBERS: No, he is only paying the tax on the portion of it that he's actually billed for. For example... [LB916]

SENATOR JANSSEN: Now, this is a one-time shot, right? Or is this an on-going... [LB916]

LARRY L. CHAMBERS: Every time there's a service call to the subscriber's house, every time equipment is replaced, when he's originally installed as a new subscriber. [LB916]

SENATOR JANSSEN: Now, when you originally install that, does that consumer buy that piece of equipment from you? [LB916]

LARRY L. CHAMBERS: No. [LB916]

SENATOR JANSSEN: Or does he lease it? [LB916]

LARRY L. CHAMBERS: He leases the... [LB916]

SENATOR JANSSEN: Does he pay a monthly charge on it? [LB916]

LARRY L. CHAMBERS: Yes. [LB916]

SENATOR JANSSEN: Is there tax on that monthly charge? [LB916]

LARRY L. CHAMBERS: Yes. [LB916]

SENATOR JANSSEN: The consumer is paying a tax. [LB916]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 23, 2008

LARRY L. CHAMBERS: Yes, he is. [LB916]

SENATOR JANSSEN: Yeah. [LB916]

LARRY L. CHAMBERS: But not on the installation. [LB916]

SENATOR JANSSEN: Don't you pass that on? [LB916]

LARRY L. CHAMBERS: No, that tax goes directly on his programming bill, which DIRECTV issues, the tax on the programming, which DIRECTV issues the bill, and that customer pays that tax to DIRECTV and DIRECTV pays that tax to the state of Nebraska. The thing they're talking about here is, when they use the term "gross revenue," they're talking about all of the other revenue streams that have nothing to do with programming or what was actually billed to the customer. Because our gross revenue, which includes reimbursement for equipment that we already paid use tax on, it includes reimbursement for all of our employees, the trucks, the gasoline... [LB916]

SENATOR JANSSEN: Um-hum, um-hum. [LB916]

LARRY L. CHAMBERS: ...and all the things that we use to do this installation for DIRECTV, that is not a sales tax issue, yet the way this paragraph is worded, an auditor will take this and say, it's all part of gross revenue, it's all subject to sales tax. It is a double taxation issue and it's an unfair taxation issue since we're not the one that should be paying the tax if there is a tax due. And if there is a tax due, DIRECTV should be billed for it, not us. The issue here is, you know, unfair and duplicate taxation. [LB916]

SENATOR JANSSEN: Okay. Thank you. Any other questions? All right, thank you. [LB916]

LARRY L. CHAMBERS: Thank you. [LB916]

SENATOR JANSSEN: Any other opponents? Okay, I'd like to have Ewald come back up...okay, do we have any neutral? Anyone in a neutral capacity? [LB916]

SENATOR RAIKES: Tell Doug he's in neutral. [LB916]

SENATOR JANSSEN: Hey, Doug, you're in neutral. Will you come up? (Laughter) Oh, excuse me, after. [LB916]

KORBY GILBERTSON: If you want to have him first, that's fine. [LB916]

SENATOR JANSSEN: All right. [LB916]

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Transcriber's Office

Revenue Committee
January 23, 2008

KORBY GILBERTSON: Chairman Janssen, members of the committee, for the record my name is Korby Gilbertson, it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Motion Picture Association of America. I've had some communications with your legal counsel regarding some concerns about the bill, not in total, but just in definitions that might need to be added to the legislation to further clarify it. The Streamlined Sales Tax governing board adopted definitions of electronically delivered products and included definitions of end users in those definitions. In LB916, there isn't a clear definition that this is intended just for the end user, and so we want to make sure that there are certain transactions or delivery of digital goods that are not picked up by this inadvertently. Mr. Kilpatrick did give me a copy of a proposed amendment to the bill and I will be sharing that with our client, and I think that hopefully it will take care of any concerns that they have. Thank you very much for you time. [LB916]

SENATOR JANSSEN: Any questions? Okay, thank you. Thank you, Korby. Anyone else in the neutral capacity? Mr. Ewald, would you come up, please? We have some questions to ask of you. [LB916]

DOUG EWALD: Yes, Senator, what can I do for you? (Laughs) [LB916]

SENATOR JANSSEN: I need to clarify this sales tax issue. [LB916]

DOUG EWALD: Um-hum. With respect to the satellite? [LB916]

SENATOR JANSSEN: Yes. [LB916]

DOUG EWALD: Okay. [LB916]

SENATOR JANSSEN: Isn't the ultimate payer of that sales tax the consumer? Doesn't it boil down to the consumer on what is being charged for the services, I don't care which step it's coming through, bottom line, comes from the consumer? [LB916]

DOUG EWALD: Well, I think what you have here is you have two transactions, and Nebraska is a gross receipt state. So you have one transaction which is where DIRECTV is providing the equipment to the outfitter, the gentleman who spoke here, their company, so based on that, they're providing that equipment or they are buying the equipment from DIRECTV or whoever, so that's one separate transaction by itself. So, I think what I heard here is the gentleman...they don't want to take 7 percent off their margin of the \$100 they're getting from that standpoint; that's one transaction, that's the equipment they're being provided that they're saying is covering their costs, their trucks and that type of stuff. [LB916]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 23, 2008

SENATOR JANSSEN: Um-hum. [LB916]

DOUG EWALD: The second transaction is your monthly cost, whatever they charge you for DIRECTV, including if there's any rental of equipment or anything along those lines, that is the second transaction where the consumer would be paying a sales tax on that particular component. [LB916]

SENATOR JANSSEN: So you're telling me, in this transaction, sales tax is being charged twice? [LB916]

DOUG EWALD: I'm telling you that there are two distinct transactions and under the statutes of the state of Nebraska, it's a gross receipt state, that's the way it is. [LB916]

SENATOR JANSSEN: Okay, but the...which would be the greater, the first transaction or the second transaction? [LB916]

DOUG EWALD: I guess it depends on what...I mean, the second transaction is an ongoing, monthly transaction. [LB916]

SENATOR JANSSEN: Yeah. [LB916]

DOUG EWALD: The first transaction is... [LB916]

SENATOR JANSSEN: Is a one-time. [LB916]

DOUG EWALD: ...is a one-time. You know, I don't know what their costs are. I mean, I know the cable companies will provide you, I mean, they come out, do the whole installation or whatever for cable, and they will rent you the box. There's no charge from the cable company, or at least it's not separately denominated on an invoice unless they come out and have to do something that's, I think, outside your property, along those lines. But what the cable company will do is they'll come out, do that, they say, well, we'll provide you the box, you've got to lease it from us from, you know, \$4 or \$5 a month, whatever it is, and they don't have a "installation charge" per se for that. So, from that standpoint, they're not charging you to install something like a dish on the outside. I mean, this is something that's completely, a little bit different, anyway. So, I view it as kind of two separate and distinct transactions with respect to the satellite companies. So that is one of the reasons why there is a differentiation there, I believe. [LB916]

SENATOR JANSSEN: Okay. Any other...Ron. [LB916]

SENATOR RAIKES: So, do I misunderstand...this is almost a business organization issue? If the TV company hires me as an hourly employee to go out and do this, then

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 23, 2008

there's no question about sales tax, in other words if I'm a part of that company...
[LB916]

DOUG EWALD: Correct. [LB916]

SENATOR RAIKES: ...if I'm an independent contractor and I'm paid a sort of a lump sum and so on my books it shows that money along with whatever other money I might get for providing a taxable service, then somehow they all get merged together and I have to pay tax on all of it? [LB916]

DOUG EWALD: Well, I guess the question is, are you buying...you're the middle guy here basically, are you buying that box from them to put on the house or whatever, that's a separate and distinct transaction. I guess what I would offer here is maybe we can go back and put a little letter together to kind of outline the transactions and how the tax treatment would be under the statutes of the state of Nebraska today. We'll give you guys maybe something to touch and feel here from that standpoint. [LB916]

SENATOR JANSSEN: Um-hum. That would help. Tom. [LB916]

SENATOR WHITE: Mr. Ewald, I was approached and introduced a bill relating to the legal profession, which I understand that your office is now charging people who hire an attorney a sales tax on the depositions that they buy, a deposition is a written statement. And the bar association came to me, and there's a bill in there, and that is very similar here. I mean, basically if an attorney takes a deposition or defends a deposition, I ask the questions and then I purchase a copy of the information. Attorneys, in my experience at least, never write it up; they just then give it to their clients and that becomes a chargeable cost at the same amount. But what I'm told is even more distressing is that your office is subpoenaing attorneys' records, going through their billings to try to track down their clients, and in that situation it's absolutely clear the attorney is not selling anything. [LB916]

DOUG EWALD: That's correct. I'm... [LB916]

SENATOR WHITE: I mean, the court reporter, if anything's being sold, it's by the court reporter, and if anything is owed, it's by the client. But I'm told that at this point, the department is subpoenaing attorney records and going through them, which of course steps on a lot of very tender toes. And as you address this, because I'm coming out at you unfairly from the blue, but it's close enough on point, please look at that and explain that as well, because we can expect a major amount of heartache over that. [LB916]

DOUG EWALD: Yes, and I'm not aware of that if it's happening. I will definitely follow up and find out if we're doing something with that in our audit division. [LB916]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 23, 2008

SENATOR WHITE: You might contact Mr. Mueller. [LB916]

DOUG EWALD: Okay. [LB916]

SENATOR WHITE: ...of Ruth, Mueller & Robak, he represents the bar association... [LB916]

DOUG EWALD: Okay. [LB916]

SENATOR WHITE: ...who approached me yesterday with this. [LB916]

DOUG EWALD: All right. All right. [LB916]

SENATOR WHITE: Thank you for your courtesy. [LB916]

DOUG EWALD: All right. Thank you. We'll follow up. [LB916]

SENATOR JANSSEN: Anyone have anything else, then, for Mr. Ewald? [LB916]

DOUG EWALD: All right, we'll get some information to you on that. Thank you. [LB916]

SENATOR JANSSEN: Okay, all right. Okay. Okay, that should take care of LB916, right? Okay, we got LB915. That will end the hearing on LB916 and George will introduce LB915. [LB916]

GEORGE KILPATRICK: Thank you, Chairman Janssen, my name is George Kilpatrick, introducing LB915 on perhaps...on behalf, I'm sorry, of the committee. This is the income tax portion. It's kind of funny, every once in a while people complain that school aid formulas are extremely complex, or that income tax is hard to fathom and get through. Sometimes I think people forget how difficult sales tax is, and sales tax issues like the last one are difficult issues to sort through. You know, this has one that's a bit complex as well, and one of the issues in this has to do with how you treat what's called a donor trust, if that donor trust happens to be a member of a pass-through entity, kind of what we were talking about before with LLCs. As business relationships have gotten more complex over the years, sometimes even the LLC or the joint venture or the sub S itself will have a member or a partner that is also an entity that's a pass-through entity, and how you end up withholding and treating those things. And one of the issues in this particular bill has to do with the substitution of a donor, or a grantor, I should say, for a trust in an instance where it's an out-of-state member of an otherwise pass-through entity. Now, if that doesn't make your head spin, I don't know what does. But fortunately...again the Tax Commissioner will tell us a little bit about that and a couple of the other issues that are in this bill. There are about three, I think. Are there any questions? [LB915]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 23, 2008

SENATOR JANSSEN: Any questions? Seeing none, you're off the hook. Thank you. Proponents? [LB915]

DOUG EWALD: (Exhibits 9, 10) Chairman Janssen, members of the Revenue Committee, my name is Doug Ewald, I'm the Tax Commissioner. I'm here as a proponent today of LB915, and as George Kilpatrick alluded to here, there's about three or four items in this bill with respect to the income tax provisions that I care to touch on here today. As George spent most of his time, the first one is the donor or grantor trust issue. Today, when we have flow-through entities, S-corps, partnerships, when they have a nonresident individual as a member of the group, so somebody that lives in, you know, lives in Iowa or another state and they have Nebraska-based income that's attributable to that nonresident, the flow-through entity can withhold income tax for that nonresident. And they withhold at the maximum individual rate, which is, I think is a 6.84 percent, something along those lines. When there's...and what happens here is, if they withhold for the individuals, the individual has an option of filing or not filing, or in any case if they withhold, they don't have to file, and basically we keep the income tax that's been remitted on their behalf; granted it's at the top rate, so we come out pretty well in that situation. When there's no withholding, individuals have to file a tax return in the state of Nebraska. And this does not follow through or apply currently to the grantor or donor trusts, so what this change would do would allow those comparable withholding of income arrangements available to grantor trusts. So, basically that's...in a nutshell, it allows them the same flexibility that the other flow-through entities, S-corps, partnerships have today with that particular issue, so. Without getting into a ton of detail, I'll say this, grantor trusts are not my area of expertise. [LB915]

SENATOR WHITE: Can I ask a question? It might make it a little easier. [LB915]

SENATOR JANSSEN: Sure. Go right ahead. [LB915]

SENATOR WHITE: So, Grandpa dies, right, and leaves it in a grantor trust. My brother lives in Iowa; I live here, okay. The grantor trust can withhold the money that would go off the farm, it would go to my brother at the highest rate, and then my brother wouldn't have to file an income tax return if he so chose. [LB915]

DOUG EWALD: That's correct. [LB915]

SENATOR WHITE: Right now, he has to file it no matter what. [LB915]

DOUG EWALD: That's exactly right. [LB915]

SENATOR WHITE: Okay. And this helps the state, you're okay with this? [LB915]

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Transcriber's Office

Revenue Committee
January 23, 2008

DOUG EWALD: It helps the state as well as helping the grantor trust, because they're not, all of a sudden, having to file and do a bunch of other things. So it's kind of a, I'll say administrative ease, but we still get to the same answer, if not a better answer, for the state. [LB915]

SENATOR WHITE: As a resident, I, of course, have to, because I'm getting income that I earned in Nebraska, but I would still have to file my own personal tax income. [LB915]

DOUG EWALD: That's correct. They would not be required to withhold for you because you're going to...it's presumed that you're going to file. [LB915]

SENATOR WHITE: Okay. Well, I got it, it makes sense. [LB915]

DOUG EWALD: Okay. [LB915]

SENATOR WHITE: Thank you. [LB915]

DOUG EWALD: You bet. You're welcome. The second item here is the level for which estimated income tax payments are required for individuals. Today, if you owe \$300 or more, you need to make estimated tax payments on a quarterly basis. Somebody is retired, they have some supplemental income, they owe a liability to the state; if it's at least \$300, they have to file estimated taxes. Well, honestly I think that's a little onerous, I guess, if you will. So, what I'm proposing here is to take that \$300 level to \$500; that makes it half of the federal level. And basically...I've heard from a number of people in this last year saying, well, we'd really like to not have to do that. And I say, well, I understand why, but maybe we can do something. This hasn't been changed for a number of years, that \$300 level, and the federal has changed, so it makes it a little more comparable and maybe reduces the amount of taxpayers that are required to file these estimated tax payments, so. [LB915]

SENATOR WHITE: It would save you money, too? [LB915]

DOUG EWALD: There would be some process...exactly. They don't have to...there would be some processing savings. Most of these people are not the ones that are filing electronically anyway, so it cuts down on some overhead, some administrative costs, so. [LB915]

SENATOR JANSSEN: Okay. [LB915]

DOUG EWALD: The third item here is a change to increase compliance with a requirement that taxpayers file a copy of their IRS extension...when they extend their statute of limitations, file a copy of that with the state of Nebraska within 90 days after the agreement is executed. This requirement has been in statute for a number of years,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 23, 2008

but it has been poorly complied with. And the change that we're requesting here is that we would limit any interest paid on refunds if that extension is not provided to the Department of Revenue within that 90-day period. So, we have situations where somebody will come in three years later, know they have a refund, and we'll have to pay them, you know, three years worth of interest. Well, we never received notice that they extended their filing obligation. So, in order to maybe spur compliance or improve compliance associated with this statute, we would like to be able to limit the amount of interest to the period of, based on the time they filed those amended returns or their actual original return, from that standpoint. So, instead of having to go back three years, maybe we'll only have to, you know, pay them a month or two or whatever of interest because they weren't due diligent with respect to what their reporting obligations were to the state of Nebraska. [LB915]

SENATOR JANSSEN: Tom. [LB915]

SENATOR WHITE: Now, if they do give you the notice promptly, would you agree to pay interest the whole period of time. [LB915]

DOUG EWALD: Absolutely, yes. [LB915]

SENATOR WHITE: Okay. And that's not unusual in the law. [LB915]

DOUG EWALD: No. [LB915]

SENATOR WHITE: For example, if you asked for pre-judgement interest, you'd have to file notifications. It's a fairly common... [LB915]

DOUG EWALD: Um-hum. [LB915]

SENATOR WHITE: ...accepted provision... [LB915]

DOUG EWALD: Yes. I... [LB915]

SENATOR WHITE: ...not in just the tax area. [LB915]

DOUG EWALD: I believe that's correct. [LB915]

SENATOR WHITE: Okay. [LB915]

DOUG EWALD: The last item here is that...there are several statutes under which the county attorney may receive income tax information, and the income tax confidentiality provisions within the Revenue Act refers to one of these sections, but there's also two others. So, what we'd like to do with this change is to put a reference to the other two

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 23, 2008

sections into the Revenue Act so that all of them are referenced in one place. So, it's fairly straightforward, you can see; they'll be able to see all three provisions in the Revenue Act under which they may receive certain income tax information. The last item I have here is an amendment to LB915. And last year, we made some changes to the research and development credit; we changed it from a percentage of expenses to a percentage of the federal credit. However, the second paragraph regarding the proration of the allowable federal credit to Nebraska for companies that are doing business both inside and outside the state needs a little change so that we have a workable alternative for the proration. And a company that is doing business in more than one state would be allowed to choose the credit based on the percentage of their total R&D expenses in this state, or a basis of their average property and payroll factors. After the changes that were made last year, the first alternative of using actual expenses was incomplete; this kind of completes that, and that's what this amendment does. Now, I will state that the federal R&D credit was not renewed at the end of 2007. Now, in the 25 years of the actual federal R&D credit, this has happened 13 times. Now, what that...but they've all gone back every single time and put it back into law and made it retroactive to the beginning of the year. So, based on that, I really support this change and have a pretty confident feeling that Congress will do something to fix the R&D credit and make it retroactive back to the beginning of the year. With that, that concludes my testimony on LB915, and I'd be more than happy to answer any questions. [LB915]

SENATOR JANSSEN: Ron, do you have a question? [LB915]

SENATOR RAIKES: I do, Doug. It's kind of an unrelated question, but you've got in here about the minimum at which you have to file the quarterly estimates, and you require those quarterly estimates for various businesses, C-corps, S-corps, whatever. [LB915]

DOUG EWALD: Correct. [LB915]

SENATOR RAIKES: Well, S-corps, no, because they're pass-through, but. [LB915]

DOUG EWALD: No, but...unless they have a nonresident. (Laughs) [LB915]

SENATOR RAIKES: Oh. [LB915]

DOUG EWALD: Sorry, (inaudible). [LB915]

SENATOR RAIKES: A grantor trust, maybe? Okay. All right, so there are certain...C-corps, for example, that are required to file electronically. [LB915]

DOUG EWALD: That's correct. [LB915]

SENATOR RAIKES: And what is the cutoff for that? [LB915]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 23, 2008

DOUG EWALD: I believe today we've taken that threshold down where...it was \$30,000 in total; today we're working it down to \$21,000 level... [LB915]

SENATOR RAIKES: Okay. [LB915]

DOUG EWALD: ...to try to get more and more compliance with that. And what we're finding is, once we bring the people on, you know, we get them up to speed and work with them, so. [LB915]

SENATOR RAIKES: Do you, for the ones that...I think you see this one coming. For the ones that are required to file electronically, do you still send them the little mail-in thingies where you got the little coupon? [LB915]

DOUG EWALD: The coupon booklet? I don't...I hope that we don't, but I will check (laughs). It kind of defeats the purpose, obviously, of what we're trying to do here, obviously. [LB915]

SENATOR RAIKES: I sent you the check because I couldn't remember my password, and here comes my \$100 fine, which you forgave, by the way. [LB915]

DOUG EWALD: (Laughs) All right, I understand where this is going. [LB915]

SENATOR JANSSEN: Any other questions? [LB915]

DOUG EWALD: Okay, you can call and we'll give you that password, probably. [LB915]

SENATOR RAIKES: Oh, okay. [LB915]

DOUG EWALD: Or we'll reset it for you. [LB915]

SENATOR RAIKES: I did get it to work, yeah. [LB915]

SENATOR JANSSEN: Seeing no more questions, thank you. [LB915]

DOUG EWALD: All right. Thank you. [LB915]

SENATOR JANSSEN: Do we have any proponents? Any proponents? Any who wants to speak to this? All right. Any opponents? Any neutral? That ends the hearing on LB915. And I'll turn the chair over to Senator Dierks. I have the next bill. Senator Dierks, members of the Revenue Committee, for the record, my name is Ray Janssen. I'm representing the 15th Legislative District. And I hope I have the right bill...here is LB898. [LB915 LB898]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 23, 2008

SENATOR DIERKS: LB898 is what I have. [LB898]

SENATOR JANSSEN: Okay, all right. That's what I have up here. This bill is to modify the provisions of the Unfair Cigarette Sales Act. It was drafted and introduced at the request of the Tax Commissioner. The revision changes the definition of the cost of cigarettes from the lowest of two current methods of determining cost of a single definition of cost. The new definition of cost is replacement cost "without subtracting any discounts." An additional change on page 5...the first one was on 3 and 4 of the bill...and the next one is on page 5 of the bill, simply an existing provision which establishes the cost of doing business as a "four and three-quarter percent of the basic cost...to the wholesaler." This percentage is to be used in enforcement of the act provisions in the absence of filing proof of a higher or lower cost to the wholesaler. Any questions? [LB898]

SENATOR DIERKS: Questions for Senator Janssen? No questions, Ramie. [LB898]

SENATOR JANSSEN: All right. I'm sure there will be someone to follow me. [LB898]

SENATOR DIERKS: Are there proponents? Go ahead, Doug. [LB898]

DOUG EWALD: (Exhibit 11) Senator Dierks, members of the Revenue Committee, my name is Doug Ewald, I'm the Tax Commissioner. I'm here today as a proponent to the changes of the Unfair Cigarette Sales Tax Act. As you heard Senator Janssen in his opening, the intent of this particular piece of legislation is that all wholesalers and retailers have a single minimum price for the same brand of cigarette. We have discussed these changes with the Nebraska Association of Tobacco and Candy Distributors, and they have given their approval, and I believe they will testify on this bill as well. As Senator Janssen mentioned, the first change is the elimination of the use of discounts in the computation of the minimum selling price. Eliminating discounts from the computation of the minimum selling price creates a level playing field where the minimum selling price is known by all retailers. The second change is to make the minimum selling price effective at the same time for all wholesalers and retailers. The change we are suggesting here requires the minimum price to change at the time of the manufacturer's price change. The third change is to eliminate the cost of transportation as a separate item and to include that amount in the markup for the wholesaler. In summary, these changes simplify the calculation of the minimum selling price, provide one minimum price for all retailers regardless of the discounts, and make changes to the minimum price effective for everybody at the same time. With that, that concludes my testimony. I'd be more than happy to answer any questions. [LB898]

SENATOR DIERKS: Thank you, Doug. Questions? Senator Raikes. [LB898]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 23, 2008

SENATOR RAIKES: I should know this, but...the minimum price, is this actually a minimum selling price or is this a price on which you base a tax? [LB898]

DOUG EWALD: It's a minimum selling price. [LB898]

SENATOR RAIKES: Okay. So, it also applies to a tax calculation, or not? [LB898]

DOUG EWALD: Yeah. I mean, that's the minimum and it would apply to a tax calculation as well, for like sales tax. [LB898]

SENATOR RAIKES: So, it's not lawful to sell cigarettes for less than this amount of money. [LB898]

DOUG EWALD: That's correct. [LB898]

SENATOR RAIKES: Okay. [LB898]

DOUG EWALD: And I know that we have a number of...I know that, like, an example of this...I believe that the state of Kansas did away with this particular act several years ago, and the number of wholesalers in the state of Kansas, I think, is down to basically one because you'll get some big companies that will come in and, well, there's no minimums. And they'll undercut and do some loss leaders, I guess, if you will, to get people to come in the door. [LB898]

SENATOR DIERKS: Other questions? There's not. Thanks, Doug. [LB898]

DOUG EWALD: Thank you. [LB898]

SENATOR DIERKS: Other proponents? [LB898]

DAN JOHNSON: Mr. Chairman and members of the committee, I am Dan Johnson, D-a-n J-o-h-n-s-o-n, and I'm here on behalf of the Nebraska Association of Tobacco and Candy Distributors. We support LB898. Our group has had two meetings with the Department of Revenue and this bill has come out of these meetings. This bill creates or maintains a level playing field for distributors in the community, it simplifies the administration of the act, and eliminates confusion with variations in price. The passage of the legislation reaffirms the act already in place, the Unfair Cigarette Sales Tax Act. The small distributor is treated the same as a large distributor, and this increases the price about \$0.06 a pack. The cost...excuse me, it just depends on what the cost of the product that it...of the cost of the product. So, it's based on a percentage. Currently, all their discounts from the manufacturers were based on early payment or payment in ten days and that sort of thing; currently, the best terms you can get is you pay when you get them and you pay three to five days in advance. And all of the terms that used to be

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 23, 2008

called payment terms have some kind of strings attached to them, market share, that kind of thing; so now, they're no longer payment terms, and they're now just discounts for performance. And that's all I have to say. [LB898]

SENATOR DIERKS: Thank you, Dan. Questions? Senator Raikes. [LB898]

SENATOR RAIKES: So if we had this for potatoes and T-shirts, we wouldn't have Wal-Mart? [LB898]

DAN JOHNSON: (Laughs) Well, this is for, obviously, for retailers and wholesalers, but yeah, Wal-Mart, if...in the states that the Unfair Sales Tax doesn't exist, or Sales Act, excuse me, doesn't exist, it's made it real easy for huge retailers to come in, take all the business from the wholesalers. There's a great number of customers, we cover 18 states, the gamut; many of those states no longer have a wholesaler...because we're delivering to them because we're still in business. But there are...Costco would be a big company down in Kansas City; they go and buy them and they can buy them less than we can buy them from the manufacturer. It's a loss leader to get them in to buy office supplies, that kind of stuff, so. And it protects the wholesaler and the retailer's margin and puts us all on the level playing field. We all buy at the same price. [LB898]

SENATOR RAIKES: So if it's good for cigarettes, why isn't it good for potatoes? [LB898]

DAN JOHNSON: Well, the difference in this is a great number of the price of the product is taxed. We buy the tax stamp from you, from the state, we come buy them every month or every two weeks, and pay those in advance. We apply the stamps individually, we take on all the AR responsibility and basically...that is basically the impetus of the act in the first place. [LB898]

SENATOR RAIKES: So, you're in effect arguing with that, that a minimum price sort of guarantees you a bit of a profit which covers, which you're entitled to because you collect all this money for the state? [LB898]

DAN JOHNSON: It's a tremendous amount of the cost of cigarettes, not just the state but the federal tax as well. [LB898]

SENATOR RAIKES: Okay. Thank you. [LB898]

DAN JOHNSON: Um-hum. [LB898]

SENATOR DIERKS: Other questions? I think you've done well, then. Thank you. [LB898]

DAN JOHNSON: (Exhibit 12) All right, thank you very much. And one of our members,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 23, 2008

Tom Henning from CashWa, one of my competitors, is sorry that he couldn't be here, but he had a handout that he'd like me to pass out, and I'll pass it out to you. Thank you. [LB898]

SENATOR DIERKS: Thank you. Other proponents? Anyone else in favor of the bill? Are there opponents? Anyone in opposition? Is there neutral testimony? Anyone neutral? Senator Janssen, would you like to close? Senator Janssen waives closing, so that ends the hearing on LB898. And our session is over for the day, isn't it? [LB898]

SENATOR JANSSEN: No, one more. [LB896]

SENATOR CORNETT: No, LB896. Senator Janssen's bill. [LB896]

SENATOR DIERKS: Oh, that's...oh, okay. Oh, you've got another one, Ramie. [LB896]

SENATOR JANSSEN: Yeah, I have one more. [LB896]

SENATOR CORNETT: Update references to the Internal Revenue Code. [LB896]

SENATOR DIERKS: Oh. [LB896]

SENATOR JANSSEN: Don't get any ideas about taxes on potatoes, either. (Laughs) Okay, all right. Thank you, Senator Dierks, members of the committee. Ray Janssen representing the 15th Legislative District here to introduce LB896. This is the annual bill that is needed to update the statutory references to the Internal Revenue Code that are outside the income tax statutes. The bill would amend Section 49-801.01 to state that references to the Internal Revenue Code mean the code as it exists on the effective date of LB896 instead of February 15 of 2008. [LB896]

SENATOR DIERKS: Thank you. Questions for Senator Janssen? No questions. Are there proponents of LB896? Any proponents? Are there opponents? Anyone neutral? Well, that closes the hearing on LB896. And do you want to close? Thank you, everybody. I think that's it for the day. [LB896]

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Revenue Committee
January 23, 2008

Disposition of Bills:

LB722 - Advanced to General File.
LB896 - Advanced to General File.
LB898 - Advanced to General File.
LB914 - Advanced to General File, as amended.
LB915 - Advanced to General File, as amended.
LB916 - Advanced to General File, as amended.

Chairperson

Committee Clerk