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Revenue Committee
March 04, 2009

[LB9 LB57 LB65 LB233]

The Committee on Revenue met at 1:30 p.m. on Wednesday, March 4, 2009, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB57, LB65, LB9, and LB233. Senators present: Abbie Cornett, Chairperson; Merton "Cap" Dierks, Vice Chairperson; Greg Adams; Mike Friend; Galen Hadley; LeRoy Louden; Dennis Utter; and Tom White. Senators absent: None. []

SENATOR CORNETT: Good afternoon, and welcome to the Revenue Committee. My name is Senator Abbie Cornett and I'm from Bellevue; to my left will be Senator Cap Dierks, the Vice Chair of the committee from Ewing; Senator Greg Adams from York will be joining us; and to his left is Senator Hadley from Kearney; our research analyst is Bill Lock; and committee clerk is Erma James. To my far right is Senator Utter from Hastings; and Senator Louden from Ellsworth; Senator White from Omaha will be joining us, as I do believe Senator Friend from Omaha will be also. On my left is legal counsel Shannon Anderson. The pages today are Rebecca Armstrong and Elsie Cook. Before we begin today's hearing, I'd ask everyone to please turn their cell phones to off or vibrate while in the hearing room. The sign-in sheets are back by both back doors and testifiers need to complete those sheets before testifying and turn them into committee clerk when they come up. Please print clearly. If you are testifying on more than one bill, you have to submit a separate form for each bill. When you come up to testify, like I said, hand those sheets to Erma. There are also clipboards at the back of the room to sign if you do not wish to testify but would like to indicate your support or opposition to a bill. These sheets will be included in the official record. We will follow the agenda posted on the door today. The introducer or representative will present the bill, followed by proponents, opponents, and neutral. Only the introducer of a bill will be allowed closing remarks. As you begin your testimony, please state and spell your name for the record. If you have any handouts, please bring ten copies of those handouts for the committee and the pages will distribute those. If you do not have ten copies, please give the handouts to the pages and they will make copies for the committee. With that we will begin the hearings today. Senator Dubas, you are recognized to open on LB65. []

SENATOR DUBAS: Thank you, Senator Cornett, members of the committee. Good afternoon. My name is Senator Annette Dubas, that's A-n-n-e-t-t-e D-u-b-a-s and I represent the 34th Legislative District. LB65 was brought to me by a constituent, Mr. Paul Grosshans. The Grosshans family has owned and operated an implement dealership in Central City, Nebraska, for generations. Mr. Grosshans just passed away in recent weeks, but he had a passion for his industry and the farmers and the ranchers that he served. When we visited about this issue last summer, he stated that even though his personal business was not necessarily impacted by customers travelling to other states for their repairs, he did recognize the competitive disadvantage his colleagues, who operate near the borders, experience. Nebraska is one of only eight

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states in the nation that do not exempt farm equipment parts from a sales tax. Every state that borders Nebraska has some type of exemption on parts. According to a report commissioned by Ernie Goss, economist with Creighton University, between 1998 and 2005, the state's 20 most agriculturally-dependent counties lost 17.1 percent of their agriculture parts supply firms, while the state's 20 least agriculturally-dependent counties experienced a 12 percent loss in their agricultural parts supply firms. In that same period of time, 50 of Nebraska's 334 agricultural parts suppliers closed their doors, and let me tell you, that has a real economic ripple effect across our state. In addition, and most compelling of the figures, between 1998 and 2005, all of the farm parts suppliers in Brown, Dixon, Furnas, and Johnson Counties closed. Two of the counties border states that exempt sales...that have an exemption of their sales tax. This resulted in a loss of almost \$900,000 just in annual payroll from the four counties. And there will be testimony today to represent more recent and personal data on this issue. We know that sales tax reduces the sale of farm equipment also. Currently, merchant wholesalers of farm equipment have substantially less sales tax per million dollars of agricultural production than farm equipment dealers in surrounding states. This is a statewide policy. We do not operate as an economic island. Other states' economic policies impact business in our state. When I'm not in Lincoln performing my senator duties, I am our farm's gopher. I am fortunate that we have multiple dealers within a 50-mile radius of our farm, but when I make a trip for parts I make it count. I pick up groceries, probably grab something to take back to the guys to eat, and run whatever other errands that I might need to do as I'm out and about. So in other words, I'm spending money in other businesses around that town. So when the farm gopher travels to neighboring states to buy their repairs, it's a given they're leaving their dollars at more than just implement dealers. We provide many incentives to attract businesses to our state. Agriculture is the number one industry of our state and we can't afford to lose those businesses that serve our farmers and ranchers. And even though this issue doesn't have a direct impact on those of us who live in the middle of the state, I do agree with Mr. Grosshans concern. When any segment of the ag service economy suffers, that ripple effect impacts all of us. So with that I would try to answer any questions you may have, but I know there are going to be people following me that will probably have better answers for you. [LB65]

SENATOR CORNETT: Thank you, Senator Dubas. And you waive closing, correct? [LB65]

SENATOR DUBAS: Yes. [LB65]

SENATOR CORNETT: Just so everyone in the hearing room knows, because we have two bills that are very similar to one another we're going to have Senator Dubas open on her bill and then Senator Loudon open on his bill, and then any of the testifiers can get up and state that they support one or the other or both bills. And Senator Dubas has waived closing. [LB65]

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SENATOR LOUDEN: Okay, thank you Senator Cornett and members of the Revenue Committee. I'm LeRoy Louden and that's spelled L-o-u-d-e-n and I represent District 49. Today I bring before you LB57, a bill that exempts the sales and repairs of parts for agricultural machinery and equipment used in commercial agriculture from sales and use tax. With the current economic climate in our state, this bill is necessary to bring revenue back to our state that we are losing to other states that currently exempt these types of purchases. This bill is not the first time that a senator has tried to pass this type of legislation. In 2007, Senator Lavon Heidemann of Elm Creek introduced LB159 which also exempted repair and replacement parts for agricultural equipment, and as you know, Senator Annette Dubas has just introduced a similar bill, LB65. This bill is important because our state is losing revenue to states that currently exempt these types of purchases. Currently, Colorado, Iowa, Kansas, Missouri, and South Dakota all have some types of exemption for agricultural equipment. These exemptions most affect Nebraska border counties because people are willing to go across the state border to purchase items for less money. Nebraska border counties also have lower levels of sales of farm equipment dealers by the millions of dollars in agriculture production than equipment dealers in border counties in surrounding states. Studies also show that employment in these border counties is significantly less, up to 25 percent less, than in more central areas of the state where people do not necessarily travel to other states to purchase this type of farm equipment. As to the fiscal note, I've spoken with implement dealers across the state regarding the revenue that they currently bring in, and about 30 percent of their sales tax revenue is for non-agricultural items. These items include the lawn mowers, the compact tractors, and the parts for these items, and many implement dealers sell ATVs, barbecues, toys, and many items that are all turned in as a sales tax collected. That's when you look at the \$10 million fiscal note, I question whether that is the correct amount or not. The next item of fiscal note would be the \$7 million or so that's a tax deductible expense for income tax purposes. One thing on ag repair's like that--those are all expenses that are tax deductible so whether you have a sales tax on them or whether you deduct them as an expense, if there's not a sales tax on them it would be that much more of a revenue source, or it could be income tax paid on that amount. Another thing to think about as sales tax is what is refunded through the Form 7s on agriculture repairs, and there's many people that don't realize that they can do that. As I look through some of the stuff we got from the Department of Revenue, they tell me that between 2001 and 2008...and here's the way they do it: the years 2001 and then on 2007 and 2008, in 2000 and 2001 there was \$70,000 refunded, and in 2007-08 there was \$131,000 refunded. And again, when they talk about something like nearly a \$29 million sales that goes through their Code 423800, I question how there would only be maybe \$131 of taxable refunds applied for. And for those of you that aren't familiar with it, what these taxable refunds are is if I take a tractor or some implement into a dealership, which I think I'm looking at right now when I call the ranch from time to time, and say it cost me about \$10,000 to repair that tractor. The labor is tax free, of course, but the parts aren't. So if there's

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\$7,000 worth of parts on there I pay sales tax on those parts. Now about a year later or whenever I decide to take this all up with my accountant they say, well, you should probably depreciate that instead of taking it as a deductible expense so I consequently can put that on my depreciation scale. With that I would pay property tax to my local county. In the meantime, that sales tax I paid, I file a Form 7 and I get that sales tax back. So there's a lot of things that are sold for ag repairs that aren't necessarily sales tax in the final say-so. And as time goes on, I think you're going to find more of this. As senator, I get a lot of calls from farmers, especially in the Scottsbluff area, that their accountants are making them do a lot of this putting this on their depreciable income schedule instead of taking it as a deductible expense. Ordinarily, we usually took it as a deductible expense, but as time goes on, as the cost gets higher priced, why, we may have to do that. And I think there are some federal guidelines in there that if that expense is a certain amount on some machinery, you have to take it as a depreciable expense instead of as a deduction all at once. So with that that's another issue. And the next issue I'd like to mention is, and I think Senator Dubas had mentioned something about it, is just plainly taking care of business. In rural towns all across Nebraska, and especially near borders, your implement dealers are one of the main anchors for a town. If you go into any of these small towns around, you'll see your implement dealer, you'll see your local co-op or ag supplier is the main job source in town. After that it'd probably be a school system--if they happen to be lucky enough to have a school system in their town, and it works on down the line. But the implement dealer is a very major anchor in these towns. These are the people that hire, they hire local people. And usually these jobs are pretty secure in there because they're local people and there's local business coming in all the time, so I don't know what the exact note...the fiscal note is probably not an exact science. What I would like to see is....if we lose these businesses the outcome could be far worse than what the fiscal note probably is showing up that we have here, as some of the incentives we give for different businesses to come into Nebraska, I think we...it is the case, as I've said before, we just plainly have to take care of the business we have. And your implement dealers and your co-ops are probably the two major anchors in most of the towns that you go up and down. Some of them are important to have a car dealership as you go into like the Chadron area. They're fortunate to have a couple...well, they got three car dealerships and that's a big deal in there, and a couple of implement dealers. As you come into Alliance or some of those towns like that we have two implement dealers and one car dealership. If you took those out, the town would probably be gone in an instant. So this is the thing that we have to take care of business, as I said, and I would urge that we really consider this bill and work towards trying to see what we can do for rural Nebraska. And again, I ask the consideration of LB57. I thank you. Any questions? I'll try to answer. [LB57]

SENATOR CORNETT: Senator Louden, you will be closing for both you and Senator Dubas, correct? [LB65 LB57]

SENATOR LOUDEN: Yeah, I'll close for her. [LB65 LB57]

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SENATOR CORNETT: Okay. Seeing no questions, we'll open the hearing up for proponents. [LB65 LB57]

LARRY A. STAUFFER: (Exhibit 1) Good afternoon. My name's Larry Stauffer, and that's spelled S-t-a-u-f-f-e-r. I'm a Case IH dealer in Humboldt, Nebraska, which is in the southeast corner of the state. My business employs 15 people; we have 12 full time and three part time. I've got an annual payroll that's approaching half a million dollars. I'm here today for support of LB57 and LB65 to remove the sale of agricultural repair parts from the sales tax rolls. I reside in a bordering county to Kansas where the dealerships in Kansas outnumber the Nebraska dealers two-to-one. They have seven, currently, in the two counties adjacent to us and we have three. Used to be we had nine and they had 12. Our rate of decline is about 66 percent; theirs is only 42. It looks to me like we're losing a race here that I don't want to lose. You also have a handout in front of you. It's a study that was done by Ernie Goss, Creighton, and as you can see, I've circled the corner down there and it shows the counties and what businesses or dealerships have been lost in the prior years. You can see where Johnson County has lost four dealerships; Nemaha County's lost two. That leaves four in the corner counties, and if you look down below there, in that lower sheet, those counties down there--there's 13 dealerships in those two counties alone. These dealerships are drawing business out of Nebraska. On my way up here today, I stopped and seen some customers and we settled up on a sprayer that they'd purchased from me and I told them I was coming up here to testify on the sales tax issue and they kind of laughed a little bit and said, yeah, that sprayer we just got from you, we ordered a bunch of parts out of Kansas for it: they sent them up here tax free and freight free, and all I had to do was make a phone call. And it's like's being said--there's a lot of other stuff that's being bought as these people go into Kansas: lawn mowers, chain saws, and those are all items that are taxable, even in our state, so we're losing out on that stuff. Not only losing out on that, when these people go down there, they're buying tractors and combines and you're looking at quarter-million dollar pieces of equipment and that's pretty big money. Other than the school system in Humboldt, Lewis Implement Company and myself--we're the largest employers in Humboldt. Take us out of the equation and our town's going to really suffer. And as you can see from up above there, the percentages, we need all the help we can get. And the only thing I want, I want a level playing field. And if I can get a level playing field then the rest is up to me and I think I can do it. But I need your help. And that's what I'm here today to ask for, so I would appreciate it. Do you have any questions? [LB65 LB57]

SENATOR CORNETT: Seeing none, thank you. [LB65 LB57]

LARRY STAUFFER: Thank you. [LB65 LB57]

SENATOR CORNETT: Next proponent. [LB65 LB57]

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RICHARD BENNETT: Good afternoon. Name is Richard Bennett, B-e-n-n-e-t-t. I'm the John Deere dealer in four locations in Nebraska and one location in Kansas. I didn't bring any handouts today. I think you have Goss's report which states a lot of what our issues are. I'm going to give you a couple of examples between our Beatrice location and our Marysville, Kansas, location as far as what happens with the sales tax issue there. In Beatrice, which is our largest store we have in our group of five, we sell approximately twice the amount of new equipment than we do in Marysville, and that's a fairly large amount of money that I'm talking about here. When it comes to the parts issues or parts sales, Marysville will sell 50 percent more parts than the store in Beatrice. Each morning I get a printout--who bought what where, what they bought, how much they spent, and I go through that and I look at the Marysville list and average is one-third of the customers on that list bought parts in Marysville are from Beatrice or are Nebraska residents. If they're buying a \$10 part, they come to Beatrice. If they're buying a \$1,000 part, they go to Marysville. And they're not only down there just buying parts, everybody knows they're spending money on other things. In the last four years, I've had to move two technicians out of my Beatrice location into the Marysville location to take care of the increase in labor sales down there, and 90 percent of that is because of the parts issue, the tax issue that the guys are saving by taking their work and their parts business to Kansas. It's...I talked to our customers about it. I've got no leg to stand on when I talk to them about it. They say, hey, I can go down there and I can save \$500 if I'm buying \$10,000 worth of parts or I get a \$10,000 repair bill, and in today's game a \$10,000 repair bill is an everyday occurrence. And it is definitely taking money out of the state of Nebraska, and I have...the five dealerships we own, one of them is in a town of 300. I guarantee you if that dealership would go away, it employs about 25 people, there's one-tenth of the people in that town. I really think it's an issue that...I hope you take a hard look at this because it affects...if we'd have corrected this ten years ago, with the amount of money that we would have probably brought in on income tax and other means that way, we'd be ahead of the game; we wouldn't be having this conversation. But any questions that I can answer anybody, I would sure like to. [LB65 LB57]

SENATOR CORNETT: Seeing none, thank you. Next proponent. [LB65 LB57]

STAN STUTHEIT: (Exhibit 2) Good afternoon, Senators. My name is Stan Stutheit, S-t-u-t-h-e-i-t. I own the John Deere dealership in Syracuse and Auburn and basically I'm here to tell you, as far as the sales tax issue and no sales tax on parts, that's just the beginning of the story, really. The customers build a relationship with those dealers across the borders. Pretty soon they're doing all their business over there--they're doing their labor, they're buying their video equipment. I've got handouts here--just have a few examples. I'm not going to read through this but there's a couple of items I want to talk about. Basically, my two dealerships, we employ about 45 employees. We recently lost one of our top technicians. We lost him to the dealer in Iowa. That dealer in Iowa can

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afford to take my employee away from me. He was earning good money. But basically they've got a relationship. They're bringing parts across the state line constantly and now they've got the relationship that they can afford to take this technician away from me and he's doing nothing but service work in Nebraska. Now yes, his salary's still coming to Nebraska, but this technician, they put him in a mobile service truck; they advertise him for nothing but for Nebraska, southeast Nebraska. He can easily turn out and charge out 45 hours per week at 50 weeks, that's 2,250 hours. They charge \$90 an hour with a service truck; that's \$202,000 of revenue and labor that's getting billed across the state line. As a rule of thumb in the ag business, for every dollar of service you sell, you sell a dollar and a half worth of parts. So take that labor times a dollar and a half of parts and there's \$303,000 of parts they're selling at the same time he's pulling those wrenches. That's \$500,000 of revenue that's going across the state line and we don't have a chance at. Plus now, they've gained that relationship that I told you about before, so now they can buy their \$200,000 combine or \$100,000, \$150,000 tractor--they'll start doing that also. They also have a salesman that lives right in Auburn. He brings a pickup load home of parts every night. You say, well, that's illegal. Well, the customer goes to Iowa, let's say--that's who I compete with, they purchase parts. It's totally legal for that dealer not to charge them parts because they don't have sales tax on parts. So the customer's supposed to come back to Nebraska and turn in his use tax. Well, you know that's really not probably going to happen. There's no way we can really track that. You can go over there and find out what Nebraska customers are buying from, say, the Iowa dealers, but you can't prove that he didn't buy it in-house or if it wasn't delivered. They're not going to put it on that ticket they delivered it to Nebraska, so you can't do a thing about it. Now you can come to me and say who's doing this? Well, I know who's doing it, but I'd be cutting my own throat to tell you what farmers are buying those parts because that word gets around and then those customers won't come to me at all. So it's really hard, you know. I've heard thoughts about wanting to enforce this. Well, we've been asking for enforcement for 20 years and it hasn't happened and I don't know that it can happen. We got another case where there's a John Deere dealer in Plattsmouth that recently was, two years ago, was purchased by the dealer group in Iowa. I know for a fact, because I looked at purchasing that dealership, it wasn't doing all that well. They kind of walked away from it. The dealer group in Iowa purchased that dealership; they're thriving. They wanted a presence in Nebraska. They're gaining those Nebraska customers. They are now, purchased ground and in the works to build a new dealership location across the river from Plattsmouth; they're closing the Plattsmouth store and moving it. But they've already got the Nebraska customers. Well, I think there's going to be new bridge being built so it will be easy for them to travel across. I also found out they're going to build a 57,000 square foot facility. I built a new one about four years ago at 39,000 and I thought it was big. Well, this is...and most dealers are around 20,000, maybe. This is going to be 50,000 square foot. Well, I can bet they're not just planning on all this being Iowa customers. They're hedging on getting Nebraska customers. Another scenario of where the dealer in Iowa is advertising a Tru-Vee disk blade--it's a part for a John Deere

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planter--they're advertising it in my paper, in my local paper, my radio, for \$21.99. This disk blade from John Deere normally sells for \$30.50. Basically, John Deere has a sale catalog for \$25.89 and yet this dealer's selling it for \$21.99. Well, I guess my point is you've heard of what the loss leader is, to get people in your door. Well, they can get those people, those customers in their door, and on a 16-row planter there's 32 of these disks, that's \$828. And that's just one piece of that planter they're buying. They're going to buy all their other parts there also. That customer realizes he's not paying sales tax. What do you suppose he's going to do when he wants to buy his major parts for his combine? He's going to go back to Iowa; he's not paying sales tax. And if they don't already know it, they're going to figure it out real fast. That's why my dealer is, you know, they're thriving on this. You want to grow your business. As a businessman, you figure out ways to grow it. Well, they're figuring it out; they're taking it away from Nebraska. And they're pushing it hard. So you can say I'm complaining about my dealer, that he's doing a better job of marketing, well, he's got something to work off of. So I also have a salesman that works for me in Syracuse. He used to sell out of a dealership in Kansas. He, too, can tell me that when he worked in Kansas he used to bring home a pickup load home of parts all the time. He also told me that in the wintertime that combine shop was full of Nebraska combines. They were so busy working on Nebraska combines, not Kansas combines. And again, it's the sales tax issue. This doesn't just pertain to only the dealers on the borders. It does pertain to all of the state of Nebraska. I recently received a Shoup magazine, which is an aftermarket company. They're out of Illinois, and they try to sell parts to all dealers. And they attend Husker Harvest Days and they try to get customers' names--I get one myself. They do not charge sales tax to anybody but Illinois customers. So there again we're losing out. And that's in Grand Island in the heart of Nebraska, so the dealers within the state are also missing out. So what I'm saying to you, and the time is now--I know money's always an issue--but the time is now; we need to stop this. We're just losing more and more business than just the sales tax. We're losing labor sales, we're losing all the equipment repair sales, and so I just ask that you would please take a look at it. We need to do something about it because we're losing a lot of revenue for the state of Nebraska. Any questions? [LB65 LB57]

SENATOR CORNETT: Seeing none, thank you. [LB65 LB57]

STAN STUTHEIT: Thank you. [LB65 LB57]

SENATOR CORNETT: Next proponent. Can I see a show of hands how many proponents we have left? [LB65 LB57]

ANDREW GOODMAN: (Exhibit 3) My name is Andrew Goodman, G-o-o-d-m-a-n. I'm president and CEO of the Iowa-Nebraska Equipment Dealers Association. I want to thank Senator Cornett and the committee for giving me the opportunity to speak today with you. I represent 450 dealers in both states. Out of the 450, there are 147 that are

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Nebraska dealers that employ 3,227 people and almost \$1.5 billion in business in Nebraska. I've passed around a handout and I could sit here and rattle off a lot of statistics. I've thoroughly examined the Goss report, the data that's in there, and when you read through that report and you study it and you think about the fiscal note, but look at the dynamic effect that this has; the actual gain to the state would be over a million dollars--about \$1.2 million at a minimum. Stan Stutheit, the previous speaker, made a very good point. This is not just about the people that walk across the border to buy parts, but the mail order industry has Nebraska as a target state. Because of the tax advantages, they know that they can take business away from local businesses. I know that personally because I was in the tractor parts mail order business in Nebraska over 20 years ago and sold out to a company outside of the state that had an advantage over my location being in Nebraska. So I was the last mail order house on tractor parts in the state of Nebraska. What's important here...this issue is not necessarily about the statistics. And as I said, I could bore you all day with that. What this is really about is economic development and the survival of small-town Nebraska. The attrition rate of dealerships in small-town Nebraska has been at twice the rate of surrounding states for the last 25-30 years; we've lost twice as many. And what we're really saying is that this is an investment. This is an investment in economic development, in supporting businesses, industries, in communities that are already established in Nebraska. This is an investment that will bring returns to the state and will help communities thrive, will help agriculture thrive. And it's the right decision to make, to move forward with these bills. I want to thank you for opportunity to speak. I would be pleased to take any questions you might have. [LB65 LB57]

SENATOR CORNETT: Senator Hadley. [LB65 LB57]

SENATOR HADLEY: Senator Cornett. Thank you for being here; I appreciate it. What is the tax philosophy behind exempting, you know, other than just other states do it? What would be a reasonable...you know, if I had to sit down and explain to somebody who lives in Kearney, Nebraska, why we're going to exempt this--what would be the philosophical tax reason behind it to exempt it? [LB65 LB57]

ANDREW GOODMAN: It's a very good question, Senator, and the philosophy behind it is that this is actually about agricultural production. And anything that is in manufacturing or production...which really this is--the parts are involved to operate machinery to produce crops. And just in manufacturing, when you buy parts for machinery you have a sales tax exemption, for the most part, in most industries, and that's really what this issue is about. [LB65 LB57]

SENATOR CORNETT: Senator Adams, I think you had a question? [LB65 LB57]

SENATOR ADAMS: No. [LB65 LB57]

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SENATOR CORNETT: Senator Friend. [LB65 LB57]

SENATOR FRIEND: Thank you, Madam Chair. Sir, if I were to go into a dealer anywhere in Nebraska and purchase a...and I went to purchase just a...any agricultural machine, I mean, say a combine. In the state of Nebraska, am I going to get taxed on the purchase of that combine? [LB65 LB57]

ANDREW GOODMAN: You won't get taxed on the purchase of the combine, but where you will be taxed is on the parts. [LB65 LB57]

SENATOR FRIEND: Yeah, and do you know...you had mentioned the state of Iowa is also where you do...are we akin to a lot of other states around us in exempting farm equipment from purchase taxation? I mean, Iowa doesn't...I mean, if I buy a combine in Iowa I'm not going to get taxed on the purchase. [LB65 LB57]

ANDREW GOODMAN: Correct, it is exempt in... [LB65 LB57]

SENATOR FRIEND: South Dakota, Kansas, everybody--they're all in the same boat? [LB65 LB57]

ANDREW GOODMAN: Iowa, Missouri, Kansas, Colorado, and Wyoming all have exemption on what we call whole goods, the piece of machinery. South Dakota has a reduced tax on farm equipment--it is less than the normal tax rate but it's not completely exempt. [LB65 LB57]

SENATOR FRIEND: Right, and of course their sales tax is a heck of a lot different than most of the surrounding states, I mean, they're depending upon their sales tax to supplement... [LB65 LB57]

ANDREW GOODMAN: They are very much so, but South Dakota's an interesting example because they've now exempted parts, so it's, you know, for those people that are in the northern part of Nebraska... [LB65 LB57]

SENATOR FRIEND: They're giving away their tax base then because they don't have an income tax, correct? [LB65 LB57]

ANDREW GOODMAN: Right. I believe that's correct; I'm not a tax expert on South Dakota, so. [LB65 LB57]

SENATOR FRIEND: I guess...I don't know that I have a problem with a bill like this. The problem that I have is, you know, we all work at companies throughout the state--people work at companies throughout the state that have to purchase things in order to do a business and they're ending up having to pay a tax on the things that they purchased, I

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mean, a commodity, a product. I mean, so...you know, I guess I'm just wondering, you know, week after week we have these bills that people want all these exemptions and again, I'm no different, but where do you draw the line? I mean, if you don't draw the line here, where do you draw it? Because eventually you're going to get to...you're going to say well, why don't we just give everybody everything...and maybe I'm exaggerating but trust me, after we sit in here long enough, it gets to the point where you're kind of wondering where you do draw the line. [LB65 LB57]

ANDREW GOODMAN: And I can understand that, but I think this is a distinctive situation in the fact that we can show through a study that this will be a gain; that in the long run this won't be a loss, this will be a gain. And we're really talking about economic survival that the facts are that our attrition rate of these dealerships in small towns is twice the rate of surrounding states. We're losing them every day and dealers have testified today to the losses that are involved and the risks that they're dealing with every day. [LB65 LB57]

SENATOR FRIEND: Thanks. [LB65 LB57]

SENATOR CORNETT: Senator White. [LB65 LB57]

SENATOR WHITE: Is it really distinct? My district is in Omaha. When the cigarette taxes in Iowa were lower than here, people went over there to buy cigarettes, and now that theirs are higher they're buying them back in Nebraska. Are the arguments you're making equally true for any service or any good if you're within a border? You're asking for a special exemption for one industry, but the argument you're making applies to all industry. It's called border bleed in the tax world. [LB65 LB57]

ANDREW GOODMAN: First of all, it's more than border bleed. The entire state suffers because...with the mail order houses especially, there's just a lot of volume that goes out of state. [LB65 LB57]

SENATOR WHITE: We're facing that on CD sales, we're facing that on catalog sales, we're facing that on the Internet. That's a problem across all industries. [LB65 LB57]

ANDREW GOODMAN: But in terms of basically the Internet and CD sales, you don't have 42 states that have the exemptions, I don't believe. Now, I'm not an expert in that area, but we have a situation here where we're one of only eight states and all the surrounding states have this exemption. And you see the communities that have lost dealerships and you see the ones that are going to lose them in the next few years and the devastation that that's going to cause in those communities. [LB65 LB57]

SENATOR WHITE: Is it your testimony that \$10 million across the state is the difference between us losing all those dealerships and keeping them all? I mean, because that's

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what it is: \$10 million a year at the fiscal note which, actually, the senators disagree with--they think it's much less than that. The difference across the state, across all those dealerships, is somewhere between \$5 million and \$10 million so we're not going to lose more dealerships if we get rid of this. Is that what you're saying? [LB65 LB57]

ANDREW GOODMAN: What I'm saying is that we believe that with this exemption that there will actually be income to the state and not a loss. [LB65 LB57]

SENATOR WHITE: No, not the loss of income, loss of dealerships. What I'm saying is, is this really going to save all those dealerships? Are all these dealerships leaving just because of this? Is that your testimony? [LB65 LB57]

ANDREW GOODMAN: It will not save all the dealerships, no. That is not correct. But it will put us on a closer parity in two areas. One, it will bring the loss of dealerships more in line with what it is in surrounding states, and also the rate of sales per dealership is lower in Nebraska than it is in surrounding states and it should bring that closer to par with the surrounding states; create greater equality in that regard and a greater chance of survival. [LB65 LB57]

SENATOR CORNETT: Senator Adams. [LB65 LB57]

SENATOR ADAMS: You've described this as a border bleed situation, but let me ask you this question then. How deep into Nebraska beyond our borders does this bleed reach? [LB65 LB57]

ANDREW GOODMAN: Well, the bleed actually, with the mail order houses, when you look at...and Mr. Stutheit showed the catalog of Shoup and there are other mail order catalogs that come into that state, and those are targeted to every farmer in the state. And so if you're looking at high-volume dollar things that farmers buy every year, for example, tillage tools and cutter bar parts and things like that it's a significant amount of revenue. Now I don't have the specific details of that in front of me, but there is some of that information that's available. [LB65 LB57]

SENATOR ADAMS: So aside from the catalog sales, though...I'm a farmer in Nebraska. How far in before I'm no longer willing to travel out? Do we know? [LB65 LB57]

ANDREW GOODMAN: Well, we do have some idea of that, you know, there's about a 60- or 80-mile range into the state where there is significant traffic out of the state. Many of these overhauls--and it's where we get into these major overhauls that can be \$15,000-\$20,000 where the farmer can save \$800 or \$1,000 in taxes for them to drive an hour or two. [LB65 LB57]

SENATOR ADAMS: Obviously, there's a marginal point here where... [LB65 LB57]

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ANDREW GOODMAN: Absolutely. [LB65 LB57]

SENATOR ADAMS: ...the fuel cost doesn't make it worth your while, but the big ticket items... [LB65 LB57]

ANDREW GOODMAN: Right, right, and then you get into the situation well, if it's a combine, the cost of hauling the combine out of state a long distance to go to a dealer. But that's also an issue that's going to affect us more greatly in the long run as well. The fewer dealers we have, the longer distances that we have to haul the equipment, the greater expense involved. The lower inventories that we'd have in the state of parts availability to be able to service that equipment--all those factors play into it. [LB65 LB57]

SENATOR CORNETT: Senator White. [LB65 LB57]

SENATOR WHITE: Do any of the bordering states in Nebraska tax the labor for the repairs, which we don't tax? [LB65 LB57]

ANDREW GOODMAN: I believe that...I think the only one that I know of is Iowa. I believe Iowa taxes labor. [LB65 LB57]

SENATOR WHITE: Iowa taxes labor but not parts. [LB65 LB57]

ANDREW GOODMAN: Yeah. [LB65 LB57]

SENATOR WHITE: We tax parts but not labor, and yet we're losing a lot of people to Iowa. [LB65 LB57]

ANDREW GOODMAN: That's correct. [LB65 LB57]

SENATOR WHITE: Okay. [LB65 LB57]

SENATOR CORNETT: Senator Dierks. [LB65 LB57]

SENATOR DIERKS: Hi, Andy, how was your day? [LB65 LB57]

ANDREW GOODMAN: Good. [LB65 LB57]

SENATOR DIERKS: Good to see you again. I just wanted to tell you something that might interest you a little bit on this same line of thinking. A number of years ago I got an exemption to sales tax on veterinary supplies that were being used on animals that are used for food. We didn't tax anything in the food chain, but we were taxing the

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(inaudible) Poron that we put on cattle and a big jug of that Poron at that time could cost, probably, about \$75 or \$100. And they were all going to Kansas to buy it. So we put a stop to it, so it does work. We got a problem here, though, with the fiscal note, I think, but the thing I was thinking about is just figuring out my ranch expenses, finished it last night, and I think Senator Louden could relate to this. I believe that I'm going to trade off all my tractors and buy a team of mares, or maybe two teams. Thank you. [LB65 LB57]

SENATOR CORNETT: Senator Louden. [LB65 LB57]

SENATOR LOUDEN: Yes. Well, thank you for your testimony today. There's one thing that I would ask you. When Senator Friend asked, you know, if you go and buy your combine downtown here or someplace would you pay a sales tax on it? I think this is correct--you wouldn't pay a sales tax on it, but you have to file that and you would pay a property tax on it in lieu of a sales tax and you have to depreciate that combine over a period of seven years, so when you figure it up you pay about the same amount of taxes on it where there was a sales tax or a property tax. [LB65 LB57]

ANDREW GOODMAN: That's correct, Senator, and I'm sorry. I missed that point and I think Nebraska's the only state, I don't think any of the surrounding states have the property tax and that. [LB65 LB57]

SENATOR LOUDEN: Well, when you talk about combines that's the reason in western Nebraska you don't see any custom combiners any more because they all go down into Kansas and store their combines in the wintertime or go south someplace, because they can not only get the parts for them but there isn't any property tax on them when they go down into Kansas. [LB65 LB57]

ANDREW GOODMAN: Right, the custom combiners don't buy their combines in Nebraska. [LB65 LB57]

SENATOR LOUDEN: Right. [LB65 LB57]

ANDREW GOODMAN: We know that for a fact. [LB65 LB57]

SENATOR LOUDEN: Yeah. And then as I have constituents always talk about their property tax and their sales tax and I always tell them the same way as Senator Dierks talks about his repairs: if I go to the local ag supply dealer and I want to buy a bunch of feed bunks, 250 bucks apiece, and I decide to buy 8 or 10 of them I can deduct them as a deductible expense and pay sales tax on them or I can take them and depreciate them and put them on my property tax. They prefer that I depreciate them and so I always tell my constituents now, do you want your money to go to the state for sales tax or do you want it go to the county for property tax, but you're going to pay it one way or

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the other. There's no free lunch on buying equipment in Nebraska. You're going to pay the tax someplace. [LB65 LB57]

ANDREW GOODMAN: That's correct, that's correct, on whole goods. [LB65 LB57]

SENATOR LOUDEN: Yeah, thanks. [LB65 LB57]

ANDREW GOODMAN: Yes, you will pay the tax. [LB65 LB57]

SENATOR CORNETT: Senator Hadley. [LB65 LB57]

SENATOR HADLEY: Thank you, again. One of the things that concerns me a little as we also compare the adjacent states is we only look at part of the picture. And you know, we mention South Dakota a lot. For example, they charge a sales tax on real estate commissions. So if you sell a million dollar farm in South Dakota and somebody charges you \$70,000 to sell it, they charge 7 percent sales tax to sell it, so I think when you look at these things it would behoove us to have a list or something like that...because everybody comes in and says Kansas does it this way or Iowa does it this way...so we'd know what are we doing differently at times. What are they taxing in Iowa or South Dakota that we're not taxing so that we don't end up giving away our tax base and not making it up because they're taxing something that we're not looking at? Because I would agree with some of the other senators just every day we hear anywhere from \$10 million to \$20 million of wanting to give up our revenue base for the state. And it's tough when we're looking at a zero...to be honest, we're looking at either cutting Health and Human Services, Education, or something, I mean, just to be very honest. [LB65 LB57]

ANDREW GOODMAN: These are very difficult times and we certainly understand that and we know that everyone in this room understands that and the difficult decisions that you have to make, Senators. [LB65 LB57]

SENATOR HADLEY: That's why they pay us the big bucks. (Laugh) [LB65 LB57]

ANDREW GOODMAN: That's right [LB65 LB57]

SENATOR CORNETT: Seeing no further questions, thank you for your testimony. [LB65 LB57]

ANDREW GOODMAN: Thank you. [LB65 LB57]

SENATOR CORNETT: Next proponent. [LB65 LB57]

RON SEDLACEK: Thank you, Chairman Cornett and members of the Revenue

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Committee. For the record, my name is Ron Sedlacek, R-o-n S-e-d-l-a-c-e-k, representing the Nebraska Chamber of Commerce today. I will be brief. The night of the...actually, the 15 points that could be made here, I think every one of those has been addressed. I'm not going to be repetitive. We've discussed the particular issues. We'd be happy to continue to do that discussion but again, I will not take the committee's time repeating these arguments. [LB65 LB57]

SENATOR CORNETT: See, Ron, we're okay with me too. (Laughter) [LB65 LB57]

RON SEDLACEK: Me too. [LB65 LB57]

SENATOR CORNETT: Questions from the committee? Seeing none. [LB65 LB57]

RON SEDLACEK: Thank you. [LB65 LB57]

SENATOR CORNETT: Thanks. [LB65 LB57]

RON SEDLACEK: And these are on both of the bills. [LB65 LB57]

SENATOR CORNETT: Good, thank you. Next proponent. [LB65 LB57]

JOHN HANSEN: Chairman Cornett, members of the committee, for the record, my name is John Hansen, J-o-h-n H-a-n-s-e-n and I appear before you today as our president and also the lobbyist for Nebraska Farmers Union in favor of both LB65 and LB57. And from our standpoint, this is an issue that's been a very long standing issue within our organization. And as I've heard some of the questions earlier in the testimony about how far will folks drive, well, that depends on how hard pressed they are and how big the bill is for repairs. And I...you know, we have dramatically expanded the rate at which folks will drive and so one of the things that we've done, with low commodity prices over a prolonged period of time and very low margins where folks have substituted increased volume in their farming operations--at times lower margins in order to be able to make things work; we keep iron longer, we wear it out more, we spend more and more money on parts. We have turned farmers into merciless shoppers in order to survive because if it's not coming in on the one side it can't be going out on the other. And so, in my case, I used to go to Minnesota. My farm is a good ways from Minnesota--about 34 miles south and west of Norfolk--but I used to travel routinely to South Dakota and Iowa and Minnesota if I had large purchases to make. It was not uncommon in my neighborhood. I know folks who live way south of me and they either went to Iowa or Kansas. And so the problem with becoming a parts shopper is that you develop that relationship with those implement dealers, and then when you're going buy and you're going to do other things, you already know them, you're already coming in there. And so the net impact has been as you try to drive across the state of Nebraska we continue to, disproportionate to other states,

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fundamentally lose our equipment dealers. And that's just the fact. And we are losing more equipment dealers than other states and this is a part of the problem. And as you look at it from a tax policy standpoint, one of the things that you see consistent in almost all the studies that have been done, going back to the Syracuse study, is that tax policy should not distort fundamental business activity. Does this distort business activity? It absolutely does. It distorts the activity in Nebraska which then sets off this chain reaction of those hubs and those communities become fewer and fewer and farther between and the next thing you know the equipment dealer isn't there and one after another hubs in the community disappear. But an equipment dealership in a small town is a big deal. And if you have it, that's a very important business in your town, and if you don't have it, it is the start of a downward trend that just continues to accelerate. So from our standpoint, there is a public policy and an economic reason to support these bills and consider them. I know how tough the times are. I know that things are not easy, but I appreciate the fact that we at least have the opportunity to once again discuss these bills, and we thank Senator Louden and Dubas for bringing them forward and I would be glad to answer any questions if I was able to do so. [LB65 LB57]

SENATOR CORNETT: Senator Hadley. [LB65 LB57]

SENATOR HADLEY: Thank you, Mr. Hansen. I guess I don't want to paint the picture...legally, a farmer who goes and buys repair parts across the state line legally is supposed to pay a use tax on them, is that correct? [LB65 LB57]

JOHN HANSEN: There are others who could legally answer that question a lot better than me. I know that when farmers go across state lines to buy parts they don't pay sales tax on it. That's what I do know. I wouldn't want people to think I was actually a lawyer. (Laugh) [LB65 LB57]

SENATOR HADLEY: Well, and I guess I don't want to think of the farmers as a group, you know, willfully evading, consistently evading the law by doing this. You know, it may make sense from an economic standpoint for them... [LB65 LB57]

JOHN HANSEN: Sure. [LB65 LB57]

SENATOR HADLEY: ...but it's like saying to any group of citizens if the law is the law, you know, it's supposed to be... [LB65 LB57]

JOHN HANSEN: Right, right. [LB65 LB57]

SENATOR CORNETT: Seeing no further questions. Thank you. [LB65 LB57]

JOHN HANSEN: Thank you very much. [LB65 LB57]

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SENATOR CORNETT: Next proponent. [LB65 LB57]

BRIAN STARCK: Senator Cornett and members of the Revenue Committee, my name is Brian Starck, spelled B-r-i-a-n S-t-a-r-c-k. I am a farmer from Jefferson County and a member of the Jefferson County Farm Bureau, and I am here on behalf of, in support of LB57 and LB65. Nebraska Farm Bureau policy supports the repeal of the sales tax on repair parts for ag machinery and we'd certainly like to thank Senators Louden and Dubas for introducing the bills. I am the farmer in Nebraska that drives down into Kansas. Mr. Bennett, I'm a customer of his, and my dad and me also do business down at his location in Marysville. Over the last year, we sent our combine and tractor to Marysville for the simple fact of spending \$13,000, the tax savings on that alone was significant. When I was a kid growing up in high school, Fairbury had three implement dealers. Today we have none so we have to drive that 30 miles or 40 miles so the extra 10 miles to Marysville and the savings is the difference. No doubt this means lost sales and business for dealers in Nebraska and fewer jobs and less income for Nebraska. I would certainly like to do business in Nebraska, but in the farming business I have to watch every penny I can and I can't afford the extra costs. Not all farmers have the luxury of being able to cross into the border to avoid this tax. They must pay it and face higher costs than myself or other farmers in surrounding states, or they can buy their parts online to avoid this tax. Finally, if a repair is depreciated, farmers pay the sales tax on that part and request a refund, as we mentioned before, with the depreciable repairs then subject to property tax. Not only does requesting the refund create more paperwork, but many times farmers do not realize that they're even entitled to a refund. Or for one reason or another just simply do not want to submit a refund request. Repealing this sales tax would remove these complications. For these reasons, Nebraska Farm Bureau supports LB57 and LB65. And I would be happy to answer any questions at this time. [LB65 LB57]

SENATOR CORNETT: Senator Dierks. [LB65 LB57]

SENATOR DIERKS: Thank you, Senator Cornett. So how far is your farm from the Marysville plant? [LB65 LB57]

BRIAN STARCK: I am ten miles from the Kansas border and about 45 miles to the Marysville location and about 30 to the Beatrice location. [LB65 LB57]

SENATOR DIERKS: So when you're in Kansas getting your service, do you stop at the grocery store and buy groceries there too? [LB65 LB57]

BRIAN STARCK: Actually, in our situation usually not, because we are only four miles from Fairbury and try to shop locally when we can, on the small tickets. So I'm not one of them that does the other stuff, but there are many that do. Yes, I do know that happens too. [LB65 LB57]

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SENATOR DIERKS: Thank you. [LB65 LB57]

SENATOR CORNETT: Seeing no further questions, thank you. [LB65 LB57]

BRIAN STARCK: Thank you. [LB65 LB57]

SENATOR CORNETT: Next proponent. [LB65 LB57]

PETE McClymont: Madam Chair, members of the committee, my name is Pete McClymont, P-e-t-e M-c-C-l-y-m-o-n-t. I'm the registered lobbyist for Nebraska Cattlemen. The only new testimony I would offer up in support of LB65 and LB57 is, in doing my homework for these two bills, my cousins do own four John Deere dealerships--two in Nebraska: Minden, Holdrege--30 miles from the state line; and Smith Center and Phillipsburg. And my cousin shared with me that proportionately, their sales are much higher in Kansas of parts than they are in their Nebraska stores. With that I'd be happy to answer any questions. [LB65 LB57]

SENATOR CORNETT: Seeing none, thanks. [LB65 LB57]

PETE McClymont: Thanks. [LB65 LB57]

SENATOR CORNETT: Next proponent. [LB65 LB57]

SCOTT MERRITT: (Exhibit 4) Ms. Chairman, members of the committee, on behalf of the Nebraska Corn Growers Association my name is Scott Merritt, M-e-r-r-i-t-t. We're here today in support of LB57 and LB65. We did have some written testimony and it's a little different twist on it about used versus new, but it's still an issue among our members. I'll just...I think everything else has been pretty well covered. I would like to address Senator Adams' question about how far you will go. I have a board member that lives in the Hastings area--farms with his three brothers and has three hired men. And when they make purchasing decisions on parts they have got it down to whether they go to Kansas or Nebraska, and I found it interesting that they even adjust that when gasoline and fuel got to be \$4 this summer, about what the value was, and they also have an adjustment when they're planting and harvesting--taking in the employees or themselves time. So I mean, it's something that they're very aware of and they make that decision on any purchase price over a certain time and factor in their cost of going across the state line. So with that if there's any questions I'll be happy to answer them. [LB65 LB57]

SENATOR CORNETT: Seeing none, thank you. Are there any further proponents? Opponents? Anyone in a neutral capacity? Senator Loudon, you are recognized to close on both bills. [LB65 LB57]

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SENATOR LOUDEN: Thank you, Senator Cornett. And of course, thank the committee for their attention and thank all those who have testified in favor of us. I think what you have to think about is, like I said before, you've got to take care of business. First of all, when we talk about the taxes there isn't any free taxes in Nebraska as far as buying the machinery. You'll either pay it as property taxes or you'll pay it as sales taxes. What we're talking about is the repair work that goes with it, or the taxes on the repairs. The economy of Nebraska is pretty well geared to agriculture, so when you talk about incentives that we've given to other industries in Nebraska, it's probably a small token to what we do when we come to how we treat the farming and ranching industry or the agriculture industry as far as taxes is concerned. The reason that's come about is we have the sales tax or property tax on the equipment, as some of you probably can remember. But that was a settlement on whether or not you was going to have taxes on fertilizer. And once upon a time they were going to take part of the taxes off fertilizer and the settlement ended up then you had to have a sales tax or a property tax on machinery and that was offset to...I suppose back then they were looking a fiscal note, but that's the way it's set up now is with the amount of the taxes so you either depreciate it or you pay the sales tax. The labor in other states such as Iowa, usually when you're talking about the sales tax on parts these are people that drive over there and do the work themselves. The labor is probably something that's done locally and if you have a tractor...something breaks down out in the field or breaks down in the place and you hire a person or have a technician come out to work on a tractor. Which nowadays with these tractors, the electronics that are available, they're nearly impossible for the average cowboy, anyway, to work on them because I've run across that already. And so this is where your labor...they can probably get by taxing labor over in Iowa and it'd probably make it work. What we have to worry about is what these implement dealers do for small towns. As I said before, these are what anchor the small towns. These are the main businesses in there. I imagine one of the smallest dealerships you can probably think of probably hire at least ten people; there has to be ten people in there. And for a dealership to have 25 people working for them is not at all uncommon. So these are small businessmen, or medium-size businessmen all across the state of Nebraska and the question is is are we going to help them, protect them, and keep this as a viable business in Nebraska or are we going to try and choke them down a little bit more? We do have problems with it. As we say, the eight states...we're one of only eight states that have this tax on these parts and the rest of it, across the United States, it's tax free. They talk about South Dakota; I don't know. If you wanted to tax the sale of real estate I wouldn't have a problem with that, I imagine. I haven't had to buy any lately or sell, either one, so you can tax it for all you're worth; I can handle that (laugh). Ted Turner and some of them that are paying for it, maybe they can help do the taxes. I hadn't ever thought of that part on there, but I know there is a tax on the revenue stamps you have to buy when you sell property, but it usually isn't that significant. But there again, I would ask that...have consideration of this. This is a business that's in Nebraska, an industry that's in Nebraska, and I think it has been

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brought up many times before and I think it's time that we have to decide whether that \$10 million that Senator White has mentioned is worth it or whether we're going to go ahead and take the benefit and call it a tax incentive to keep those people in Nebraska and keep them operating in Nebraska. And that's what it's all about now is are we going to keep them in Nebraska and keep them operating? With that I thank you for your attention. [LB65 LB57]

SENATOR DIERKS: Thank you, Senator Louden. Senator Friend, please. [LB65 LB57]

SENATOR FRIEND: Thank you, Mr. Chair. Senator Louden, if I bought a new or used pickup, would it depend on how I use it as to whether there's going to be a sales tax attached to it? [LB65 LB57]

SENATOR LOUDEN: Yes and no. Okay, if you're going to drive the thing on the highway you're going to pay taxes just like whether you live in town or live in the country or where you are. [LB65 LB57]

SENATOR FRIEND: Right. [LB65 LB57]

SENATOR LOUDEN: Actually, if you buy that pickup and want to use it on a ranch and won't drive it on a highway, you can take it home with you but you have to put it on your property tax schedule and you have to pay property tax on it, but you don't have to pay license fees on it or insurance. But you can't get it off of your ranch or your place. [LB65 LB57]

SENATOR FRIEND: Right. If I...now, on the contrary, I know a person--who doesn't live in my district--I know a person that's actually got an excavating business in Omaha. He's got a Cat, he's got a Bobcat, and he hardly ever buys new. He tries to repair all of the stuff on his own. He's got two trucks, he's got a lowboy, he's got all kinds of things that he's trying to maintain, and my guess is he doesn't get a tax break on any of them. Would that be fair to assume? [LB65 LB57]

SENATOR LOUDEN: You are right. Because the tax has always been just done on agricultural equipment. It's never been done on commercial excavating equipment or construction equipment. Yeah, I've run across that with...I have a constituent in Hay Springs that they had to put 8,000 bucks in a new transmission in a Cat then he had to turn around and depreciate the thing all back out again and he had to pay the sales tax; he didn't get to take... [LB65 LB57]

SENATOR FRIEND: And the interesting part about that is if he tries to go across the river, if his Cat breaks down...I've helped him with it; I almost broke my neck once, I mean, this guy's...I don't know how he does it, but the point is... [LB65 LB57]

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SENATOR LOUDEN: You went across the river and helped him buy parts? [LB65 LB57]

SENATOR FRIEND: Well, we were going to go across the river and buy parts but why? Because they're taxing the parts across the river on that too; it's not agricultural. [LB65 LB57]

SENATOR LOUDEN: They are over in Iowa? [LB65 LB57]

SENATOR FRIEND: Well, he doesn't go across the river to buy his parts, and the parts are expensive for a Cat. [LB65 LB57]

SENATOR LOUDEN: Oh yeah. I don't know Iowa treats construction equipment and that sort of thing. [LB65 LB57]

SENATOR FRIEND: The point to the whole...the point to the questioning, Senator Louden, and you've heard me do this before...our sales tax system's broken. And I understand, and maybe this is one of the parts that's broken, but we can continue to go down...I mean, when you're done it'll just be something...unless we try to figure out a way to codify the system in a proper way I would agree, I think we'd both agree with that--I don't think the problems are ever going to go away. I mean, because he's going to be the one...that guy I know is going to be the one screaming for that exemption after we get done doing it for ag, probably. [LB65 LB57]

SENATOR LOUDEN: Probably so, your construction people...of course your construction people usually pass that on through to whoever they're doing the construction work for where farmers are selling a commodity and you don't get to push it on through. If you want something dug, why the price just went up a little bit. Whereas with your commodities, why, it's... [LB65 LB57]

SENATOR FRIEND: They're not doing a whole lot of digging right now anyway. But anyway, that's all I have. [LB65 LB57]

SENATOR DIERKS: Thank you. Any other questions for Senator Louden? I just might refresh your memory a little bit, LeRoy. I talked a little bit ago about buying two mares, and in my memory I can still see the only tractor we had on the ranch was an F-20 Farmall. And it had rubber tires and it had a mower bar attached to it and then it had another trail bar that they tied a cement block on the trail bar to hold it down. But I remember when that F-20 got stuck in one of our wet meadows out there, south of Ewing, and the only thing we had to pull him out was a team of Belgian mares. And they did it; it was the most amazing thing. I can still see those mares tugging at that harness strap and I mean...it's just that...so really, maybe we're not too far off with that. I want to tell you another story. (Laughter) I saw a sign the other day that said if you want to buy good, clean oats, we've got to pay a fair price. But if you don't mind buying some oats

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that have already been through the mare, that's a little bit different deal. (Laughter)
[LB65 LB57]

SENATOR LOUDEN: (Laugh) When you talk about getting them stuck, I was in...been in the same picture when I was a youngster. The difference was back when what we did we had an F-14 that got stuck and it was in alkali mud--you couldn't pull very much with horses. You took a tie and put across there and chained it to the tires and then you drove it forwards up over that and hope that the front end didn't come up before the tractor went over the ties. [LB65 LB57]

SENATOR DIERKS: Thank you very much, Senator Louden. [LB65 LB57]

SENATOR LOUDEN: Thank you. [LB65 LB57]

SENATOR DIERKS: That ends the hearing on LB57 and LB65. Now we'll hear from Senator Wightman on LB9. Thanks for your attendance today, folks. [LB65 LB57]

SENATOR WIGHTMAN: Good afternoon, Senator Dierks, members of the Revenue Committee. I'm John Wightman, spelled J-o-h-n W-i-g-h-t-m-a-n. I represent District 36 and I'm here today on a legislative bill that will be asking for an exemption along with others but I think we'll point out that ours is different. LB9 amends two sections of the current law as follows. One, it amends 77-2704.13 (1) to exempt biofuels that are used for irrigation and farming purposes from sales taxes. LB9 also amends subsection 2. Under the current law, 77-2704.13 (2) states an applicable part that sales taxes are not imposed on energy sources or listed fuels when more than 50 percent of the amount purchased is used directly in processing, manufacturing, or refining in the generation of electricity or by any hospital. Then it goes on to list the fuels, and it says: listed energy sources include electricity, coal, gas, fuel oil, diesel fuel, tractor fuel, propane, gasoline, coke, nuclear fuel, and butane. The list does not include such renewable energy sources as solid biofuels such as sawdust or wood chips or corn when used as fuel. LB9 expressly includes such biofuels or other newly developed renewable energy sources and encourages the development of new and alternative energy sources if used as required under the law for processing, manufacturing, refining, generation of electricity, or if used by a hospital. This amendment of subsection 2 is important because of the alfalfa dehydration industry that does business in District 36 and does business at several other locations throughout the state, and I think there's some of that, probably, in Senator Utter's district as well. Dehydrated alfalfa diversifies the crops and the income sources of agriculture throughout the state of Nebraska. It is a crop that is marketed to a great extent out of state, brings dollars into the state's economy. I might add that at one time Dawson County was known as the alfalfa capitol of the world, at least that's my recollection. I was in high school, I think, and that's been a few years ago but. At any rate, it was at that time, I think, and I think there were signs out that said it was the alfalfa capitol of the world, but alfalfa is dehydrated in other areas. I might

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explain the process. It used to be that all of that was brought into a plant and then through the use of natural gas, primarily, all of the moisture was taken out of it and it was dehydrated into cubes. And some of that is still done, but to a great extent it is sun-cured now so that it doesn't take as much of the fuel as it did take. As a matter of fact, it became impossible to do it when the price of natural gas went up. So more recently, a number of alfalfa dehydrators have switched from the use of expensive natural gas to fuel the dehydrating process by the use of sawdust and other waste wood. By using sawdust and wood waste, they are consuming a waste product that would otherwise be dumped in landfills. And of course when the bill was drawn, I think nobody ever foresaw that we might use these other alternative sources so it designated the types of fuel that would qualify for the exemption. But because of the economy and because of the fact that we need to make more use of biofuels, this was one of the sources that was developed. By using sawdust and wood waste, consuming a waste product that would otherwise be dumped in landfills, as a matter of fact, just the cost of handling this in landfills probably exceeds the cost that we're looking at or the loss of revenue that we would be looking at here. So I think there's a lot of reasons that maybe suggest this is quite a step away from some of the exemptions you're being asked to consider, or have been asked to consider over the last several weeks. A reading of current law would appear to impose a sales tax on renewable biofuels even though the fossil fuels would be exempt from a sales tax. There will be other testifiers from the alfalfa dehydrating industry that will provide more information on the need for this legislation. We have done some recent research just in the last day and find that Kansas and Colorado, among bordering states, exempt the biofuels that we'd be talking about here. Also find that Wisconsin, Ohio, Washington, Tennessee...and these are most of the states that would do alfalfa dehydration. There aren't a lot of states that do it. As a matter of fact, I think some of the testifiers will tell you that the primary states are Kansas and Ohio, almost the only states that ship these alfalfa products. And they've reached the point where they're not used as much in the cattle industry as they are for horses. Perhaps rabbits and some other not as intensely fed animals as we would have in the cattle industry. In some way we suggest that Nebraska should adopt a tax policy that treats the use of renewable energy sources on an equal basis with nonrenewable fossil fuels. In fact, what 77-2704.13 set out to do was to exempt all of these fuels that were used in the production of agricultural products, but at the time that was adopted, nobody was using wood chips or wood products as a means of fueling this process. And there may be some questions about how ecological friendly the wood process...and I did visit with that and that could be an issue, but it's my understanding it's a very clean fuel--it's burned inside a cylinder so it probably is equally clean with the fossil fuels. So...and we further would submit that this change is consistent with Nebraska sales tax policy that strives only to impose sales taxes on the finished product, not input such as the fuel necessary to create a finished product. Because it does seem a little strange that all the fuels that would go into this in the way of fossil fuels are exempt, but because this is a new fuel that's being used for this it would be taxable and we are paying sales tax on it at the present time. So I would be happy to answer any questions

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that you may have. There will be later speakers who can address, probably, more specifics than I could address with regard to how much this is used and...but we do have a fiscal note of \$38,000. You'll have an opportunity to vote on a bill that you passed out of committee last week that would save some \$600,000 or \$800,000 a year on revenue as far as the cost of providing the assessor's office duties. So I think I was in here when we discussed that and you passed it out. So there are a few bills that you've had that have provided some positive revenue, so...or will. [LB9]

SENATOR DIERKS: Thank you, Senator Wightman. Senator Hadley has a question. [LB9]

SENATOR HADLEY: Senator Dierks. Senator Wightman, thank you for bringing this bill. One of the hardest things I always find is trying to be consistent, and we just heard a bill where we will dealing with implement parts and such as that. And forgetting the fiscal notes on either one of them, it seems to me that if I support this bill as a logical step in producing a finished product in the ag business, to exempt it, then I should use the same philosophy when I'm talking about repair parts. Am I on the right track there or I am completely off base? [LB9]

SENATOR WIGHTMAN: Well, possibly, Senator Hadley, you could make that analogy. But on the other hand, we are talking about a section of statute that exempts virtually every fuel that you could consider in manufacturing this product, and only because wood chips are a newly developed source is it not already included. If we would have used general language--in the Legislature, not us--would have used general language in exempting those fuels that go into making a manufactured product, this would already have been exempt. But it's a newcomer on the block. And so I do think there is a difference there. [LB9]

SENATOR DIERKS: Senator Utter. [LB9]

SENATOR UTTER: Thank you, Senator Dierks. Senator Wightman, the general assumption was, when they started in to this process that wood chips would be treated like any other. So actually the state has probably not been paid a lot of money on the use of wood chips to date. [LB9]

SENATOR WIGHTMAN: My understanding is that the users that will testify today that they have, in fact, been paying the sales tax on the wood chips. [LB9]

SENATOR UTTER: They have. [LB9]

SENATOR WIGHTMAN: Yes. [LB9]

SENATOR UTTER: So this does represent a true fiscal...the fiscal note's probably pretty

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close to accurate, what we see here then. [LB9]

SENATOR WIGHTMAN: Senator Utter, I can't tell you that all of them have, but the group I talked to have been paying and it's a relatively... [LB9]

SENATOR UTTER: I thought it was a relatively new discovery. [LB9]

SENATOR WIGHTMAN: And I can't tell you exactly how long it's been used. [LB9]

SENATOR DIERKS: Another question, Senator White. [LB9]

SENATOR WHITE: Senator, thank you. Biofuels isn't really defined and I have a question. Methane, used either from waste product in landfill or from manure, would that be a biofuel? [LB9]

SENATOR WIGHTMAN: I would assume it would be a biofuel. [LB9]

SENATOR WHITE: As a by-product of a biofuel, or... [LB9]

SENATOR WIGHTMAN: Well, probably. Methane frequently is done from feedlots and... [LB9]

SENATOR WHITE: Right. [LB9]

SENATOR WIGHTMAN: ...and cow manure... [LB9]

SENATOR WHITE: Yeah. [LB9]

SENATOR WIGHTMAN: ...and it certainly is part of a biological process that...so I would think that would be biofuels as well. [LB9]

SENATOR WHITE: And one of the ones they're working on now is oil from algae. Would that be a biofuel? [LB9]

SENATOR WIGHTMAN: Well, I would think it might very well be. If the oil would actually come from the algae itself? [LB9]

SENATOR WHITE: Yes, the university's got some strains of algae that are 75 percent oil now and they hook them up with ethanol plants and grow them in ponds. [LB9]

SENATOR WIGHTMAN: I would think, since it comes from algae which is a plant, I think, rather than an animal, but a plant, that it would be a biofuel the same as a wood product. [LB9]

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SENATOR WHITE: Thank you. [LB9]

SENATOR DIERKS: Other questions for Senator Wightman? I think that does it, Senator Wightman. [LB9]

SENATOR WIGHTMAN: Thank you. [LB9]

SENATOR DIERKS: First proponent, please, for LB9. [LB9]

DAVID RHEA: Hello, my name's David Rhea, R-h-e-a. I'm from Arlington, Nebraska. My family's been in the dehy industry since the '60s. The industry's been in Nebraska since the '50s, peak in the '60 plants, throughout the '70s and '80s, and currently there are eight plants operating in the state of Nebraska. The dehy industry in Nebraska takes alfalfa and dries it down and processes it into an alfalfa pellet which is shipped, primarily out of state, for horses and rabbits. I'd say 95 percent of our product is shipped out of state so we're taking a product from the state of Nebraska, shipping it out of state, and bringing money back into the state. You know, our industry creates jobs for Nebraskans by direct employment and by buying inputs from Nebraska companies and farmers. In early 2000s, last few years, our industry has started to make a change to sawdust as an alternative to natural gas, primarily because the price of natural gas has tripled in price at one point and basically got cost prohibitive to continue operating. So we started looking in to different sources and we got into burning sawdust in our furnaces. Some plants now have the capability of running either natural gas or sawdust as a fuel source and they can switch back and forth. So some days they're being taxed for their heat to dry the alfalfa and some days they're not. During the first few years when we installed our sawdust furnace, we have sourced our sawdust out of state, but given this time we've found sources in the Omaha area, like cabinet makers and places like that that were basically hauling all their wood chips and sawdust into the landfills. So another aspect of it is that we're taking a product that's being...the cost that the state has having to incur by putting all this product into a landfill we're actually taking and getting something of value out of it. Any questions? [LB9]

SENATOR DIERKS: Questions? Senator Louden. [LB9]

SENATOR LOUDEN: Yes. You say you're from Arnold? [LB9]

DAVID RHEA: Arlington. [LB9]

SENATOR LOUDEN: Yeah, okay. Okay, I've got a bill in committees over here for biofuels for state agencies and that's for burning wood chips and they burned them up at Chadron State College for 19 years. [LB9]

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DAVID RHEA: Um-hum. [LB9]

SENATOR LOUDEN: Do you use wood chips or do you just use sawdust? [LB9]

DAVID RHEA: It's mostly sawdust. Wood chips...we can use wood chips but it's an extra incurred cost because a lot of times when you have wood chips they're too wet and they're too big in size so it's an extra cost for us to get them down to the right size that we can use. [LB9]

SENATOR LOUDEN: How do you blow your air through that sawdust so that you get a complete burn on them? [LB9]

DAVID RHEA: There's a combustion chamber that...there's basically a fan that blows the sawdust into a combustion chamber. [LB9]

SENATOR LOUDEN: Okay, you blow...okay, you got a gun-type injection system with your sawdust then, I see, okay. [LB9]

DAVID RHEA: Yeah, it's a fan induction. [LB9]

SENATOR LOUDEN: Okay, it's a little bit different because with the wood chips they dump the wood chips in and they blow air through them. [LB9]

DAVID RHEA: No, no, it's a little different. [LB9]

SENATOR LOUDEN: What river or anything are you close to in your area? Do you got any source for wood where we're trying to clean up some of these rivers and streams with vegetation management, is there anything in your area that will work for that? [LB9]

DAVID RHEA: No, because the wood you get from there has too much moisture content in it and won't work in these cylinders--it won't combust in these cylinders because there's too much moisture. [LB9]

SENATOR LOUDEN: Okay, yeah, because see...Chadron State College wants about 18 percent moisture in their wood. They'll get more heat out of it. [LB9]

DAVID RHEA: We're closer to 7, 8. [LB9]

SENATOR LOUDEN: And what does it cost you? Do you pay for this fuel that you're getting? Do you have to pay somebody for it, or... [LB9]

DAVID RHEA: Yeah, trucking is the biggest expense, and we pay a small fee for the sawdust. When we started out we were just...they were giving it to us so we didn't have

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to... [LB9]

SENATOR LOUDEN: You don't pay sales tax on the trucking, do you? [LB9]

DAVID RHEA: I can't...I don't know...I think so. [LB9]

SENATOR LOUDEN: I didn't think you had to pay sales tax on trucking, I just wanted...about how much a ton does it cost you for your sawdust? [LB9]

DAVID RHEA: 50 dollars, undelivered; \$60 a ton with the trucking. [LB9]

SENATOR LOUDEN: Okay, and you pay sales tax on the \$50 then, or you pay sales tax on the sawdust? [LB9]

DAVID RHEA: Actually, I don't think we pay sales tax at all because we were under the impression that it was the same as natural gas. [LB9]

SENATOR LOUDEN: Okay, thank you. [LB9]

SENATOR DIERKS: Other questions? I guess not, thank you very much. Next proponent, please. [LB9]

JONATHAN MONTGOMERY: Mr. Vice Chairman, members of the committee, my name's Jonathan Montgomery, M-o-n-t-g-o-m-e-r-y. I'm from Cozad. My family owns Cozad Alfalfa, alfalfa dehydrating business. My father and his partner began in 1963. The topic...I'm here to represent the Nebraska Alfalfa Dehydrators Association and, as outlined, the topic we are here to speak with you today concerns the aspect of sales tax on the fuel we use for heat in manufacturing dehydrated alfalfa pellets. For many years, all the dehydrators in Nebraska used natural gas as the heat source for dehydrating alfalfa. Beginning about the year 2000, Nebraska plants began switching to waste wood fuel, such as sawdust, from other manufacturing concerns. Cozad Alfalfa installed their solid fuel burner in 2005. Dehydrators did not pay sales tax on the natural gas consumed in dehydrating alfalfa and we believe that the applicable state statute should be modified to specifically exempt biofuels or wood fuels such as we are using. Certain alfalfa dehydrators became faced with this issue of the tax and members of our association, including myself, met with Mr. Doug Ewald, the commissioner of the Revenue Department, last fall. Mr. Ewald did not express reservations concerning this change and indeed, his comments indicated to me that items of this nature are not all that uncommon. And it was at this meeting that I learned, that the association learned that a legislative bill is necessary to modify this state statute. And the state statute change that we are requesting does not make exempt a purchase that was previously subject to sales tax, it's my belief that this is merely a clarification to specifically exempt the fuel that all the Nebraska alfalfa dehydrators are using in their manufacturing

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process. So on behalf of the Nebraska Alfalfa Dehydrators Association, thank you for your consideration. [LB9]

SENATOR DIERKS: Thank you very much. Senator Hadley. [LB9]

SENATOR HADLEY: Cap, thank you. What's the next fuel you're going to use? I ask that only from the standpoint that when we get into a law where we start listing fuels, would it be better to somehow write the paragraph so your next change doesn't cause you to come in and say we're using XYZ now, we need to... [LB9]

JONATHAN MONTGOMERY: Yes, it may very well be, Senator, that it could be worded that fuels used in the manufacturing process or something like that. I couldn't say exactly what fuel we might use in the future. [LB9]

SENATOR HADLEY: Okay. [LB9]

SENATOR DIERKS: Other questions? Okay, guess that does it. Oh, Senator Louden, please. [LB9]

SENATOR LOUDEN: Sorry. Do you use wood chips or do you use sawdust or ground-up wood? [LB9]

JONATHAN MONTGOMERY: Sawdust, sir. It's a dry product. [LB9]

SENATOR LOUDEN: Okay. I knew there was some dehydrators some place that do use wood chips on what we get from the state forester and I was just curious to see what type of system they use. And how much do you pay for yours? [LB9]

JONATHAN MONTGOMERY: It's about 50 dollars and change per ton, on a delivery basis. [LB9]

SENATOR LOUDEN: And you have the same type of system that blows the sawdust in there? Then you have to have it pretty well ground up then? [LB9]

JONATHAN MONTGOMERY: It is quite fine, yeah. [LB9]

SENATOR LOUDEN: Does the EPA have a system...of course they do on your dehydrators so that you have clear air standards and everything, so does it work the same way on your smoke stack? [LB9]

JONATHAN MONTGOMERY: Yes. We're all permitted with the DEQ and indeed, because that alfalfa is part to defray the capital investment in making the switch in '05, we got a grant from the state DEQ as part of the waste reduction...what would I say?

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Process or methods. So they're aware of it. The burners burn quite hot and it's a complete combustion. [LB9]

SENATOR LOUDEN: Yeah. Have you been paying sales tax on your fuel? [LB9]

JONATHAN MONTGOMERY: Cozad Alfalfa has not paid sales tax from the vendors that we purchase the waste wood from. [LB9]

SENATOR LOUDEN: Okay, did...how did this come forwards then? Were you told by the Department of Revenue that you have to pay sales tax, or... [LB9]

JONATHAN MONTGOMERY: The way I understand that it came about was a vendor that was getting into grinding pallets was selling the ground-up pallets to a dehydrator and they included sales tax. I think they also use this as mulch, like for gardens or landscaping, which is taxable. And they included the sales tax to the dehydrator and they said no, we're not subject to that and they went well, I think you are. And then conversations...ultimately, we met with Mr. Ewald and the Revenue Department. And it was there, again, I would say, that we learned that it's not so simple as he can make an in-house adjustment to it, it must be more formal than that. [LB9]

SENATOR LOUDEN: Okay, thank you. [LB9]

SENATOR DIERKS: Further questions? Thanks very much. Further proponents to LB9? [LB9]

JAY REMPE: Senator Dierks, members of the Revenue Committee, my name is Jay Rempe, it's J-a-y R-e-m-p-e. I'm here on behalf of both Nebraska Farm Bureau Federation today and the Nebraska Soybean Association today in support of LB9. And this issue was first brought to our attention within Nebraska Farm Bureau by our members in Dawson County that raised the issue last fall in some of our meetings. And as our members talked about it, they thought it made sense to try to adjust or change the existing statute to reflect the changing times, is basically what this bill represents. So I called Senator Wightman's office because I thought it made sense, and like always, he was one step ahead of me and already had the bill drafted, so. But we appear before you today--I think the bill is consistent with existing tax policy in the way it treats energy usage. Again, I think it just reflects a change in the tax policy to reflect the emerging technologies and I think it removes a discrimination in our tax policy against renewable energies right now and I think we want to do everything we can to encourage the use of renewable energies at this point, so. With that I'll be happy to answer any questions you might have. [LB9]

SENATOR DIERKS: Questions for Jay? Think you got off scot free today. Next proponent, please. [LB9]

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SCOTT MERRITT: (Exhibit 5) Good afternoon, I'm Scott Merritt with the Nebraska Corn Growers Association; M-e-r-r-i-t-t. We would like to express our support for LB9. We believe that it helps move our renewable fuels forward and treats them more balanced against other existing fuels. Just one comment: last year, six irrigation engines were run on different blends of ethanol, everywhere from 98 percent down to 70 percent in different blends. This was a study done by University of Nebraska and a private company and help funded by corn producers. After...now they are analyzing the engines at the university to see what the great mixture is going to be. Actually, one of the mixtures was 12 percent water, some ethanol, and some diesel fuel. So we think that this has some promise and I think we should do everything we can to support a more fair and consistent tax on renewable fuels. I hope that someday I can come in front of you and have to try to hold the sales tax off of massive, millions of gallons of ethanol being used in irrigation motors in this state. But I think in the infancy of this, we would just like to see LB9 moved and give consideration to renewable fuels. If there's any questions? [LB9]

SENATOR DIERKS: Thanks, Scott. Questions for Mr. Merritt? I guess not. Thanks for coming. Further proponents? Anyone else in support of LB9? Is there anyone in opposition to LB9? Anyone neutral on LB9? Would you like to close, Senator Wightman? [LB9]

SENATOR WIGHTMAN: Thank you, I won't take much of your time. I think that the indication was that most of this is trucking--most of the cost of this product is trucking in the first place, so you will be collecting fuel tax, I'm assuming, on that as it is trucked. Senator Utter was probably correct and I was incorrect--I think it was you that suggested that maybe we weren't collecting a lot of revenues on this in the past so it may be that, actually, taking the revenue out of the stream is not going to amount to much. I'm assuming that what they are looking at is what the usage of the product is and in compiling the fiscal note I don't know that for sure. So it may be that it will cost almost nothing from what we've been receiving, because apparently most parties were going forward on the basis that this was already exempt, so. So with that I thank you for your attention. I will try to answer any questions that you might have. [LB9]

SENATOR DIERKS: Any questions for Senator Wightman? I guess not, thanks for coming, Senator Wightman. That will close the hearing on LB9 and we now are going to have a presentation by Senator Adams on LB233. [LB9]

SENATOR ADAMS: Thank you, Senator Dierks, members of the committee. Like so many of the bills that we have heard here in this committee, the question always comes up: what's it going to cost? How much of the tax base are we giving away? And if we grant this exemption, does that open the door to us granting a lot of exemptions? Let me try to characterize this a bit differently for you. Granted, there's a fiscal note. But

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what you're looking at in this case is an asking of this committee to resolve a conflict. To resolve an ongoing conflict between the Department of Revenue interpretation of statute and the way in which cooperatives and grain elevators have been interpreting statute about a simple thing. Law requires that elevators, typically owned by co-ops, suppress dust. And in statute, the equipment used for the suppression of that dust is sales tax exempt. That's not the issue. The issue is the mineral oil that is applied to the grain to suppress the dust, and whether or not it's supposed to also be tax exempt. I believe it is. I believe it was the intent when the statutes were originally created to include mineral oil. The cooperatives, the grain elevators believe the same, but the Department of Revenue interprets the statute differently. What this very simple bill would do is to clarify that the mineral oil that is used to suppress the dust is part of the essential components to suppressing that dust. To me, it is really that simple, and as you can see, there are some folks here from the co-op industry that can better describe the ongoing conflict than I can. So I would try to answer a question or two, but I'm sure they can do a much better job. [LB233]

SENATOR DIERKS: Thanks, Senator Adams. Questions? Senator Louden. [LB233]

SENATOR LOUDEN: Yeah. Well, yes, Senator Adams. I said I...is this something, a problem we have with an agency running rampant with their interpretations and now we're going to try and slap them aside the head (laughter) or is this...why did this come up to start with, you know? Because for a while they weren't doing it. [LB233]

SENATOR ADAMS: Well, I think your characterization is generally correct. I don't know if I'd use all the same terms that you did. It is because of a conflict: the Department of Revenue is interpreting the statute differently, and they're taking a more narrow view of the word essential and have not included the mineral oil itself as an essential component. [LB233]

SENATOR LOUDEN: And we've got to introduce legislation? We can't just slap them aside the head, huh? (Laughter) [LB233]

SENATOR ADAMS: I'm going to let these folks beside you talk about the slapping that has occurred or not occurred, whichever the case may be. [LB233]

SENATOR LOUDEN: Okay, thank you. [LB233]

SENATOR DIERKS: Any other questions for Senator Adams? I guess not. Thanks, Senator Adams. First proponent, please. Whenever you're ready. [LB233]

TOM JEFFERS: (Exhibit 6) All right. Senator Dierks, members of the Revenue Committee, thank you very much for this opportunity today. My name is Tom Jeffers, and I'm here on behalf of the Nebraska Cooperative Council, which most of you or all of

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you probably know it consists of farmer-rancher owned agricultural cooperatives from, basically, all corners of the state of Nebraska. Before I get into my testimony, I do want to respond to Senator Loudon's comment about the slapping across the head. I think I heard most of western Nebraska cheering when you said that. And into...first, I want to thank Senator Adams for introducing this bill, but to continue with one of the points he was making about--and he correctly stated what the position of the cooperatives is, and what he believes the Legislature's intent was. What's confusing here is the Department of Revenue at one point, for a long period of time, agreed with us. And that's primarily why I'm here. I want to give you just a little bit of background about what's gone on with this mineral oil. As some of you know, there's a policy out there that--as Senator Adams stated--exempts the equipment that applies the mineral oil. For many years, the mineral oil has been purchased tax free. And the Department of Revenue's been around for a long time, they've done a lot of audits in the ag industry, and to my knowledge they've never imposed a tax on this issue. In fact, I can tell you that based upon communications with the legal staff of the Department of Revenue and ongoing litigation I have, it's been represented to me that in January of this year, several memorandums were found dating back to the early '90s where an analysis was specifically done on mineral oil and the conclusion was it was an essential component part and therefore the exemption applied. In 2005, a client of mine was audited. It was another Nebraska cooperative. In that audit...this is actually interesting, because the cooperative inadvertently had paid a use tax on a few of their mineral oil purchases, and what the Department of Revenue did in that case is they provided documentation, audit schedule, showing that it was inadvertently paid; indicating that the department was going to give that cooperative a credit for that inadvertently paid sales tax. And also, in parentheses, making the notation that it's exempt under Regulation 1-23, which is a component part exemption. So for many years there's just no question. Revenue has not been collected on these sales, and the Department of Revenue did, in fact, agree with the proponents of this bill. And now here in recent years, I suspect it's one or two people, or a small group of people over at the Department of Revenue had...they made the determination that they were going to look at this exemption, this component part exemption, and reinterpret it, and they've magically changed the law and took the determination, or made the determination that mineral oil was now taxable in Nebraska. And in fact, I have a client that is filing a protest, an expensive protest, before the Department of Revenue. It's...I say expensive, it's somewhat unique in that we're required to put on expert testimony to give opinions about what is an essential component part. It's a very vague test. You know, depending on your own subjective analysis, I mean, that's going to determine whether or not you believe a component part is essential. And for the last two years the Department of Revenue believes that mineral oil is not an essential component part, and for the dozens of years prior to that it was essential. I suppose there was different personnel over there--I really don't know what the reason is--but I can tell you, without a doubt, there's been a very distinct change in position in recent years, and for that reason the Nebraska Cooperative Council supports LB233. If any of you have any questions about mineral oil, I'd be happy to answer them.

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I guess one more point I would make, just for those of you that maybe don't understand the options out there. There are alternatives to mineral oil, but mineral oil has become the hands down preferred method for doing this. One alternative is forced air in filters--you use electricity when you're doing that so it's not very energy efficient. An oil, obviously then, is the more energy efficient alternative. The grain dust is only controlled for so long as the electricity's turned on; there are maintenance costs; and there's noise pollution. Water--at one point you had experts in the field testing water, but I'm told by agricultural clients of mine that that's not even an option, it's contrary to law. And then there's vegetable oil. Vegetable oil is unlike mineral oil in that it's inert, it's biological, it can degrade the grain, and it doesn't last. Mineral oil is a petroleum product that's absorbed into the grain and it lasts forever. Not only does the first elevator that apply it get the benefit of it, but as they sell it to big entities or small entities down the road that have to store it again, the mineral oil is in the grain; the dust isn't there; the air quality is preserved. And, obviously, the risks associated with grain dust are minimized. That concludes my testimony. I could go on for a long time but I will spare you unless you have questions for me. I'd be happy to answer them. [LB233]

SENATOR DIERKS: Thanks, Tom. Senator Hadley has a question. [LB233]

SENATOR HADLEY: Thank you, Senator Dierks. Mr. Jeffers, a letter from Tax Commissioner Ewald said they have been doing this since the year 2000, so that's nine years that they've been doing this and there was only a single audit in which mineral oil was incorrectly exempted, so. You know, you say it's a fairly new procedure, but he's saying that they've been taxing...their policy has been to tax it since 2000. [LB233]

TOM JEFFERS: Well, I would tell you I've been analyzing this issue for years. I've...my law firm represents probably 95 percent of the farmer-owned cooperatives in Nebraska. This is the first time I've ever heard of reference back to the year 2000. I've talked with many cooperative managers, supervisors, employees...the only instance in which I know of a cooperative paying tax on mineral oil is the one that I told you that they inadvertently paid it and got a refund, and there was one other cooperative that, in the last several years, a small part of a deficiency notice included tax on mineral oil, and in an effort to avoid a costly protest, they made a settlement offer or settlement compromise with the Department of Revenue--which was a global settlement--and so the mineral oil was part of that. I have never heard of any other cooperative paying sales tax on mineral oil, in Nebraska and frankly, in any other state. And there is going to be some testimony today. There may be one state out of the 50 that imposes a tax on this, and we're not even sure about that, so. [LB233]

SENATOR HADLEY: A second question: for whatever reason, at lunch today I sat next to Commissioner Ewald and we got to talking about this and he made an interesting comment. He says, no one's talked to me about that. Has anyone from your office or the cooperative talked to the commissioner about this problem? Because he specifically

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said no one has sat down with me to talk about this problem. [LB233]

TOM JEFFERS: I have not personally sat down with him. I have, however, written him letters. [LB233]

SENATOR HADLEY: Okay. [LB233]

TOM JEFFERS: I've met with individuals who have represented that they've met with him. [LB233]

SENATOR HADLEY: Okay, okay. I'm not defending it, I'm just repeating... [LB233]

TOM JEFFERS: I understand. [LB233]

SENATOR HADLEY: ...because I was interested in this legislation so I happened to have a chance to sit next to him to ask him that question. [LB233]

TOM JEFFERS: I think there have been many efforts to communicate with the department and other members of our government on this issue. I would be surprised if the commissioner would tell you this is a surprise to him right now, because I think that it was over two years ago I sent him a letter asking him to give me some explanation about how this works. By the way, that gives me an opportunity to discuss that correspondence. You know, one of the problems we're dealing with here, as I said, is this law is very vague as to what is an essential component part. When I did write to the commissioner over two years ago there was a response, and the response was that it's not an essential component part. And there was some other language in the letter that had to do with other exemptions I was asking about, but as to the component part exemption, it was simply stated that because the grain would not be defective if sold without the mineral oil, therefore it was not essential. I would ask all of you to think about all the various products out there that are manufactured and ask, you know, what really is essential? Are labels and paint and, you know, is something going to be effective because it doesn't have packaging? I guess that's in the eye of the beholder. The other point I want to make on that correspondence is just recently my client, Mr. Bob Anderson with the Nebraska Cooperative Council, received a letter from the Commissioner. And, again, two years later we have another letter addressing the same legal issue. And for the first time ever, and I've been involved in litigation on this...and I would hope that a lawyer representing clients in an area over time would be able to review statutes, case law, and regulations, and get some reasonable understanding of what the law is, but for the first time ever, last week, I was told that there's a three-part test for determining what an essential component is. I've never seen it before, I frankly don't even understand it. And I would be shocked if there's any other agricultural producer out there, or elevator that has ever seen that three-part test, other than my clients whom I've shared this with in the last week. [LB233]

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SENATOR HADLEY: I just want to make one last comment, and I'm certainly...don't...I wanted to reiterate what Commissioner Ewald said, that they are neutral. I mean, he made that clear to me that it would be...that the Legislature could certainly set the policy and they would be more than happy to, if we changed the laws, that they weren't...you know, he was not lobbying me on behalf of considering it not an essential part. So I just wanted to make that clear. [LB233]

SENATOR ADAMS: Senator White. [LB233]

SENATOR WHITE: Yes, sir, and thank you, Mr. Jeffers, for your testimony. In your memorandum, you indicate that to be exempt as a component part, the product must be an essential component which must physically or chemically enter into and remain part of the finished product. Is that the three-part test or is there some other aspect? [LB233]

TOM JEFFERS: No, that is actually part of, not only the statute, but the regulation on component parts. There is a three-part test in that statute and regulation and it requires that it has to be something that's processed by the manufacturer--that's the third...I'm going backwards here--has to be an essential component, has to physically enter into and remain a part of. That is a three-part test that anybody looking at the law understand it. [LB233]

SENATOR WHITE: What is the three-part test, Mister...the Department of Revenue indicates? [LB233]

TOM JEFFERS: Well, the three-part test...I can't even repeat them for you because they're so lengthy they took up half of a paragraph, but it dealt with mineral oil being essential to the purchaser and whether or not you can measure the exact amount of the mineral oil, and whether or not the purchaser can change the amount of oil that's put in there. It was very confusing, to say the least, and for me, frustrating, having seen it for the first time after years of litigation. [LB233]

SENATOR WHITE: Well, I can tell you I've done litigation over pollution, noise pollution particularly, but also dust pollution coming out of elevators. And, I mean, certainly mineral oil penetrates the grain. [LB233]

TOM JEFFERS: Absolutely. [LB233]

SENATOR WHITE: And it stays there. And as far as being essential, the major defect of uncontrolled dust is explosives, so how do you dispute... [LB233]

TOM JEFFERS: In addition to the air pollution, yes. [LB233]

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SENATOR WHITE: ...that it's essential and that it's part of the grain? [LB233]

TOM JEFFERS: Well, once you put it in the grain--I've yet to find an expert that has figured a way to get it out of the grain without grinding up the grain or processing it further. [LB233]

SENATOR WHITE: And you can't water the grain because you either violate contracts or laws, or you also cause fires inside from the heating of wet grain... [LB233]

TOM JEFFERS: That's true. [LB233]

SENATOR WHITE: ...in the silos. I'm puzzled by that ruling by the Department of Revenue, to be honest with you. [LB233]

TOM JEFFERS: Your comments, I think, are enlightening because if you, again, remember what I said earlier--the Department of Revenue treated this as an essential component for many years. I don't think that that's an unreasonable interpretation and their own precedent tells us that. [LB233]

SENATOR WHITE: Well, I mean, the alternatives of using electrical fans or more...which aren't that effective: you have to run the legs up, usually, which breaks the grain which causes more dust which causes problems. I don't know what you'd do if you don't use mineral oil, really, if you're going to store grain for any period of time. [LB233]

TOM JEFFERS: As I said, we had to have some expert testimony get involved in our litigation, and that's given me the opportunity to kind of look in on this area. There really is no comparable alternative. This is a supreme product. Not everybody uses it. I think there should be a policy to encourage everybody to use it, however. One other point I would make on that encouragement is that the state has encouraged people to install the equipment, and while that encouragement was ongoing, the state, at the same time, was not taxing mineral oil. Now that you have many people that have installed the equipment, with a snap of a finger now the mineral oil is taxable again according to the Department of Revenue. There has been no change in a regulation, statute, or any of the case law. [LB233]

SENATOR WHITE: Thank you, Mr. Jeffers. [LB233]

SENATOR DIERKS: Other questions? [LB233]

SENATOR HADLEY: Just one other quick question. [LB233]

TOM JEFFERS: Sure. [LB233]

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SENATOR HADLEY: If I'm hearing this right, one of the problems can be that if it's not in statute and it's just basically in policy for the Revenue Department, this could change again, I mean, literally at will. Is that...I mean... [LB233]

TOM JEFFERS: Well... [LB233]

SENATOR HADLEY: ...probably not quite that much but they could say now, this is no longer...it is an integral part and four years from now a change in policy again could say it is, so you're saying it is important that we put this... [LB233]

TOM JEFFERS: That's exactly right. LB233 provides a direct exemption. I think with that language adopted there would be no question. I do think that the component part exemption is a very difficult exemption to analyze. You know, if you apply the same analysis across different industries, things start to look...inclusions, I think, start to look a little absurd. So that's why I would encourage the passage of LB233, and at least for this particular sector there'd be clarity. [LB233]

SENATOR DIERKS: Other questions? [LB233]

SENATOR HADLEY: I need to ask just one other question, and maybe you can't answer that. Are the grain elevators now paying sales tax on mineral oil? [LB233]

TOM JEFFERS: I can tell you, unequivocally, no. [LB233]

SENATOR HADLEY: Okay. [LB233]

TOM JEFFERS: They are not paying sales tax. Part of the problem you have is there is a lot of talk amongst people in this industry, and many of the people that have been out there for years have been told it's not taxable. And there's an attitude out there that unless somebody can show me a law or the Commissioner comes down and tells me it's taxable, why would I...you know. [LB233]

SENATOR HADLEY: I guess I was just wondering on the fiscal note whether this is...because we've had this before, on this committee, where this is a fiscal note of actual loss in revenue to the state, or is this a fiscal note that if we were to insist that we go out and collect, this is what we would be collecting? [LB233]

TOM JEFFERS: To me, that fiscal note is worth probably about as much as a fiscal note where you would propose taxing my words. I mean, you can do a fiscal note on any area of taxation you'd want to propose and you can generate as many dollars as you want. The question is, is this going to cost the state money? Looking back historically, no. [LB233]

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SENATOR HADLEY: Okay. [LB233]

TOM JEFFERS: And since you've asked the question, I will tell you that I don't agree with that fiscal note. Jay Larson, who is here to testify today, is a supplier of mineral oil in Nebraska. He'll be able to answer some of these questions you've asked as well, but conservatively speaking, he distributes, sells about 70 percent of the mineral oil in Nebraska and based on his fiscal year 2008, the sales tax that would have been generated on those sales was about \$85,000. I had lunch with Jay today and he told me that the price of mineral oil has decreased by a third. I don't know where \$303,000...I really don't know what the foundation is for that, but I would say it's shaky at best. [LB233]

SENATOR HADLEY: Okay, thank you, sir. [LB233]

SENATOR DIERKS: Other questions? Tom? Guess not. Thank you very much. [LB233]

TOM JEFFERS: Thank you very much for your time today. [LB233]

SENATOR DIERKS: Other proponents for LB233? Go right ahead, sir. [LB233]

JAY LARSON: (Exhibit 7) Yes. I am Jay Larson, the one that Tom referred to, J-a-y L-a-r-s-o-n. I am general manager, president of NIK Marketing Cooperative. We're based out of Kearney, Nebraska. Just a short background, because Tom covered quite a bit of what it is. NIK is a cooperative owned by 26 farmer cooperatives throughout the Midwest. We were formed to provide services for them. Approximately 17 years ago, we started supplying mineral oil for the members to meet clean air requirements across the state. Due to the efficiency and the effectiveness of supplying mineral oil, we expanded that to nonmembers; we expanded it geographically. So that is why I am here. We appreciate Senator Adams introducing this bill, thank you. As Tom said, in calendar year 2008, NIK distributed 338,243 gallons of mineral oil in the state of Nebraska. The value of the mineral oil we distributed during 2008 amounted to \$1,555,000. This is as what is reported on Nebraska Schedule 3, Form 10. This...if sales or use tax would have been applied to all of this, it would have been a total of \$85,575 in use taxes in calendar year 2008. As Tom said we estimate, conservatively, we supply 70 percent of the oil in the state; it could be as high as 85 or 90 percent in the state. Just a couple of examples of those that use oil in the state are the cooperative in Hastings, Nebraska, which is our largest in-state user in the state--a very good customer of ours. They use just over 64,000 gallon. If they had paid the taxes, it would have amounted to \$15,550. I've labeled a couple other references there also that you can read later on. Beyond our current membership, as I stated, we also sell to nonmembers and to other geographies. We now, still, in 2008 we marketed to 15 states throughout the corn belt and throughout the southern plains. I've only been at NIK for about six years, but in the 17 years we've been doing this, we have not had to deal with a sales and use tax on mineral oil in any

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of the 17 states. To the best of my knowledge, the only state that has any sort of a sales tax on it is the state of Washington. But not any of the other states, and it has never been an area of discussion. As Tom said, we strongly support the use of mineral oil. It has long-term benefits when applied to grain; it is a food-grade substance, which is superior to others. As Tom said, it is inert and therefore cannot cause rancidity, which we do see and we have definitely seen in vegetable oil applied to grain. Throughout the heat of the summer we've run into that. As Tom said, when it's applied to oil, it becomes a permanent part of the grain. And it's there...and studies have shown it's there 12 months after. So consequently, it is a benefit not only to the first purchaser, but to the downstream grain as it goes through. As stated by Mr. Jeffers, LB233 was introduced because the Department of Revenue has changed their interpretation on this. And we need it clarified as we go forward. Beyond that I'd welcome any questions you may have, and thank you for your time. [LB233]

SENATOR DIERKS: Thank you, Jay. Questions for Mr. Larson? Guess not, thank you very much. Next proponent, please. Next person for the bill? Go right ahead, sir. [LB233]

PETER C. McHARGUE: (Exhibit 8) Good afternoon. My name's Peter McHargue, and I'm the chief financial officer for the Farmers Cooperative in Dorchester, Nebraska, and I'm here to testify in support of LB233. [LB233]

SENATOR DIERKS: Could you spell your last name for us, please? [LB233]

PETER C. McHARGUE: Last name is M-c-H-a-r-g-u-e. [LB233]

SENATOR DIERKS: Thank you. [LB233]

PETER C. McHARGUE: Okay. For me, working out at the cooperative--and I'm the one that has to deal with this--what happens is the situation is causing too much uncertainty concerning the taxability or not of the mineral oil that's used for dust suppression. For years, mineral oil wasn't taxable. Two years ago, we had, there in Dorchester, a sales and use tax audit and at that time the Department of Revenue decided it was taxable. Since, by definition of the statutes and regulations it's not, we dutifully protested that. That's two years ago. So far, we haven't received an answer of, you know...we can't go to court; we can't do anything; they won't drop it, and it might be another two years before we find out what's going to happen, okay? And that kind of puts me between that proverbial rock and a hard spot, you know? If I pay it--if I pay the use tax then I'm kind of doing a disservice to my company and to my patrons, because that kind of puts us at a competitive disadvantage if I do pay it. And if I don't pay it then gosh, then I'm subject to penalties and the scrutiny of the Department of Revenue. And for someone that has sat through a lot of these audits and stuff, it's not a pleasant experience to do, so. What I guess I would ask for is if you pass this bill, at least then

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we could clear up the uncertainty. I mean, is it taxable or is it not? It didn't used to be, now quote, quote (sic) it is. And so I wish it would...you know, you'd just pass the thing so that we could clear that point up. Secondly, it kind of scares me that the Department of Revenue can make their own rules about what's taxable and what's not. And when they start making those rules, then I think you kind of go down a slippery slope where, you know, it might apply to things other than mineral oil. And basically I guess that would be the only part I have to say unless you guys got some questions about, you know, since I work out at the co-op, if anything in particular there. [LB233]

SENATOR DIERKS: Questions for Mr. McHargue? I think we're questioned out. [LB233]

PETER McHARGUE: Thank you. [LB233]

SENATOR DIERKS: Next proponent, please. Go right ahead, Scott. [LB233]

SCOTT MERRITT: (Exhibit 9) Scott Merritt with the Nebraska Corn Growers, M-e-r-r-i-t-t. We're here in support of this bill today. We have kind of reviewed it and looked at it and we found some inconsistency. Many of my members sit on co-op boards and have expressed some concern about where we're headed with this. We just think that this is, in simple terms, a clean-up or clarification bill and we'd like to see the committee advance it. If there's any questions, I'll be happy to... [LB233]

SENATOR DIERKS: Questions for Scott? Guess not. [LB233]

SCOTT MERRITT: Thank you. [LB233]

SENATOR DIERKS: Thank you, Scott. Further proponents? [LB233]

PETE McCLYMONT: Senator Dierks, members of the Revenue Committee, my name is Pete McClymont, P-e-t-e M-c-C-l-y-m-o-n-t. I'm here as a registered lobbyist for the Nebraska Cattlemen. Our board voted seven weeks ago at our legislative committee meeting to support this bill on the reasons that were stated previously, and also, too, from an environmental standpoint. EPA is scrutinizing dust to a greater degree, especially agricultural dust, and so I would ask this committee to advance this bill so we can go back to the previous basis of how the Department of Revenue was administering this so that we reward people that are doing the right thing in trying to reduce dust. With that I would be happy to answer any questions, Senator. [LB233]

SENATOR DIERKS: Thanks, Pete. Questions for Pete? [LB233]

PETE McCLYMONT: Thank you. [LB233]

SENATOR DIERKS: Nope. Thank you very much. Anyone else as a proponent, please?

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Any other proponents? Any opponents? Anyone neutral? Would you like to close, Senator Adams? [LB233]

SENATOR ADAMS: Just for a moment, if I might. I think the issue is fairly clear to you. Quite possibly, the fiscal note issue has been resolved. The tax, frankly, isn't being paid anyway. This is a matter of clarification, and I would think that not only the cooperative folks want this cleared up but I would think the Department of Revenue would also want it cleared up. And that's the essence of this, thank you. [LB233]

SENATOR DIERKS: Questions for Senator Adams? Senator. [LB233]

SENATOR HADLEY: And maybe it's not a fair question to you, Senator Adams, but if we pass this does it...is it retroactive? Or what clears up the problems that Dorchester is having, and I guess maybe legal counsel... [LB233]

SENATOR ADAMS: You know, the legal counsel could better answer that. [LB233]

SENATOR HADLEY: Okay, okay. [LB233]

SENATOR DIERKS: Thank you. Okay, folks, that closes the hearing on LB233. Thank you for your attendance today. Come again. [LB233]

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Disposition of Bills:

LB9 - Placed on General File with amendments.
LB57 - Held in committee.
LB65 - Held in committee.
LB233 - Placed on General File.

Chairperson

Committee Clerk