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Fredrick J. Nicely
Senior Tax Counsel
(202) 484-5213
fnicely@cost.org

{Sent Via E-Mail} January 31, 2012

Honorable Les Donovan
Chairman, Senate Assessment and Taxation Committee
Kansas Senate
Room: 123-E, Seat 31
300 SW 10th Street
Topeka, KS 66612

Re: S.B. 317 - Proposed "Trade Fixture" Clarification

Dear Chairman Donovan:

I am writing on behalf of the Council On State Taxation (COST) to express COST's support for S.B. 317 and its companion legislation pending in the House, H.B. 2501. The Kansas Legislature needs to enact this legislation to clarify that "trade fixtures" are personal property in Kansas.

About COST

COST is a nonprofit trade association based in Washington, DC. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce and today has an independent membership of nearly 600 major corporations engaged in interstate and international business. COST's objective is to preserve and promote the equitable and nondiscriminatory state and local taxation of multijurisdictional business entities. COST members have substantial amounts of property throughout the United States, including Kansas.

"Trade Fixture" Clarification

This legislation addresses a recent case that held certain trade fixtures were real property rather than personal property.¹ It restores the intent of the Kansas Legislature when it enacted K.S.A. 79-223 to exempt commercial and industrial machinery and equipment acquired after June 30, 2006. It is also illogical to value this type of property in the same manner as real property. Unlike real property that normally appreciates over time, trade fixtures are similar to other types of personal property that are valued by taking depreciation and obsolescence into account on a yearly basis. Lastly, trade fixtures primarily serve

¹ In the Matter of the Equalization Appeal of Coffeyville Resources Nitrogen Fertilizers (Dkt No. 2008-7226-EQ, Kan. Ct. of Tax App., 1/13/2012).

Sn. Assmnt & Tax
2-1-12

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the specific business conducted on the premises. There is typically no intent to have such fixtures permanently attached to the land and/or improvements to the land.

Legislation's Prospective Application versus Clarification

As written, this legislation applies prospectively for taxable years commencing after December 31, 2011. Because this legislation is a reaction to a questionable court decision holding that certain trade fixtures were real property in Kansas, it is appropriate for this legislation to "clarify" the Kansas Legislature's original intent rather than prospectively classifying trade fixtures as personal property for taxable years after December 31, 2011. Such a change allows the Kansas Legislature to provide the benefits it sought to give businesses when it enacted K.S.A. 79-223. COST strongly encourages this change to H.B. 2501 and S.B. 317.

While COST hopes this legislation is modified to indicate it is a clarification, COST supports passage of H.B. 2501 and/or S.B. 317. Please let us know if you have any questions.

Sincerely,



Fred Nicely

cc: Doug Lindholm, President and Executive Director of COST
COST Board of Directors
Kent Eckles, V.P. Gov't Affairs, Kansas Chamber of Commerce