



Date: February 4, 2013

To: House Taxation Committee
Rep. Richard Carlson, Chairman

From: Doug Wareham, Senior Vice President-Government Relations

Re: Support for House Bill 2061

Mr. Chairman and members of the committee, I am Doug Wareham appearing on behalf of the Kansas Bankers Association (KBA). Our organization's membership includes 99% (286 of 289) of the commercially chartered banks in Kansas that provide financial services to Kansans in more than 400 cities and towns across Kansas.

We appreciate the opportunity to appear before this committee in support of H.B. 2061, which corrects an unintended consequence of last year's tax reform package (House Bill 2117), which was signed into law by Governor Brownback on May 22, 2012. For the record, our organization supported the tax relief provisions contained in H.B. 2117, but upon closer scrutiny last summer, we found that Kansas banks organized as S corporations did not fare as well as other flow-through (Sub S) businesses.

As you are all well aware, the tax reform package adopted last year eliminated state income taxes on non-wage business income for small businesses organized as Sub S Corporations, LLC's or Sole Proprietorships. In spite of the fact that roughly 2 out of 3 banks in Kansas are organized as S corporations, this policy change did NOT benefit our industry. Kansas banks, including those organized as S corporations, are subject to the Privilege Tax; a special income-based tax that is collected from all Kansas banks. The Privilege Tax is collected from banks organized as S corporations before income is passed through to shareholders. Therefore, banks and more specifically bank holding company shareholders did NOT benefit from last year's elimination of income taxes on S corporations.

While the exclusion of S corporation banks from the tax relief contained in last year's tax reform package was not initially viewed as a negative (we would have accepted the status quo for Kansas banks and their shareholders), we learned last summer that House Bill 2117 also contained provisions that eliminated the ability of S corporation bank holding company shareholders to deduct their share of the holding company's tax loss on their individual Kansas income tax returns. **The loss of this deduction, according to an estimate from the Kansas Department of Revenue, amounted to a \$2.5 million tax increase for S corporation bank holding company shareholders in Kansas.**

Last summer a number of CPA firms began notifying their banking clients of the increased tax burden they would face in the wake of H.B. 2117. One of those firms shared this statement with their banking clients:

“It seems as though S-Corp banks are getting hit from both sides, the bank still has to pay tax on income in the form of the privilege taxes, yet the shareholders are no longer able to take advantage of holding company deductions.”

The language contained in our proposed amendment is specifically designed to allow loss deductions for S corporation bank holding company shareholders, as they were allowed prior to the adoption of House Bill 2117 last year. We hope this committee will recognize the unique nature of the privilege tax paid by S corporation banks. Income taxes for S corporation banks did not go away, and the loss of this deduction amounted to an inadvertent tax increase for their shareholders.

Once again, thank you for the opportunity to appear before this committee and we would respectfully request that H.B. 2061 be adopted. For the record, we would also welcome being included in the clean-up bill (H.B. 2059-Governor’s Technical Clean-Up Bill), as we believe the provisions in H.B. 2061 are a clean-up of last year’s tax reform bill.

HOUSE BILL No. 2061

By Committee on Taxation

1-23

1 AN ACT concerning income taxation; relating to Kansas adjusted gross
2 income; addition modifications; losses by certain subchapter S
3 corporations; amending K.S.A. 2012 Supp. 79-32,117 and repealing the
4 existing section.
5

6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2012 Supp. 79-32,117 is hereby amended to read as
8 follows: 79-32,117. (a) The Kansas adjusted gross income of an individual
9 means such individual's federal adjusted gross income for the taxable year,
10 with the modifications specified in this section.

11 (b) There shall be added to federal adjusted gross income:

12 (i) Interest income less any related expenses directly incurred in the
13 purchase of state or political subdivision obligations, to the extent that the
14 same is not included in federal adjusted gross income, on obligations of
15 any state or political subdivision thereof, but to the extent that interest
16 income on obligations of this state or a political subdivision thereof issued
17 prior to January 1, 1988, is specifically exempt from income tax under the
18 laws of this state authorizing the issuance of such obligations, it shall be
19 excluded from computation of Kansas adjusted gross income whether or
20 not included in federal adjusted gross income. Interest income on
21 obligations of this state or a political subdivision thereof issued after
22 December 31, 1987, shall be excluded from computation of Kansas
23 adjusted gross income whether or not included in federal adjusted gross
24 income.

25 (ii) Taxes on or measured by income or fees or payments in lieu of
26 income taxes imposed by this state or any other taxing jurisdiction to the
27 extent deductible in determining federal adjusted gross income and not
28 credited against federal income tax. This paragraph shall not apply to taxes
29 imposed under the provisions of K.S.A. 79-1107 or 79-1108, and
30 amendments thereto, for privilege tax year 1995, and all such years
31 thereafter.

32 (iii) The federal net operating loss deduction.

33 (iv) Federal income tax refunds received by the taxpayer if the
34 deduction of the taxes being refunded resulted in a tax benefit for Kansas
35 income tax purposes during a prior taxable year. Such refunds shall be

Proposed Amendment to HB2061
House Committee on Taxation
February 4, 2013
Prepared by Adam Siebers
Office of Revisor of Statutes

1 of accounting used by the taxpayer. For purposes hereof, a tax benefit shall
2 be deemed to have resulted if the amount of the tax had been deducted in
3 determining income subject to a Kansas income tax for a prior year
4 regardless of the rate of taxation applied in such prior year to the Kansas
5 taxable income, but only that portion of the refund shall be included as
6 bears the same proportion to the total refund received as the federal taxes
7 deducted in the year to which such refund is attributable bears to the total
8 federal income taxes paid for such year. For purposes of the foregoing
9 sentence, federal taxes shall be considered to have been deducted only to
10 the extent such deduction does not reduce Kansas taxable income below
11 zero.

12 (v) The amount of any depreciation deduction or business expense
13 deduction claimed on the taxpayer's federal income tax return for any
14 capital expenditure in making any building or facility accessible to the
15 handicapped, for which expenditure the taxpayer claimed the credit
16 allowed by K.S.A. 79-32,177, and amendments thereto.

17 (vi) Any amount of designated employee contributions picked up by
18 an employer pursuant to K.S.A. 12-5005, 20-2603, 74-4919 and 74-4965,
19 and amendments thereto.

20 (vii) The amount of any charitable contribution made to the extent the
21 same is claimed as the basis for the credit allowed pursuant to K.S.A. 79-
22 32,196, and amendments thereto.

23 (viii) The amount of any costs incurred for improvements to a swine
24 facility, claimed for deduction in determining federal adjusted gross
25 income, to the extent the same is claimed as the basis for any credit
26 allowed pursuant to K.S.A. 2012 Supp. 79-32,204, and amendments
27 thereto.

28 (ix) The amount of any ad valorem taxes and assessments paid and
29 the amount of any costs incurred for habitat management or construction
30 and maintenance of improvements on real property, claimed for deduction
31 in determining federal adjusted gross income, to the extent the same is
32 claimed as the basis for any credit allowed pursuant to K.S.A. 79-32,203,
33 and amendments thereto.

34 (x) Amounts received as nonqualified withdrawals, as defined by
35 K.S.A. 2012 Supp. 75-643, and amendments thereto, if, at the time of
36 contribution to a family postsecondary education savings account, such
37 amounts were subtracted from the federal adjusted gross income pursuant
38 to paragraph (xv) of subsection (c) of K.S.A. 79-32,117, and amendments
39 thereto, or if such amounts are not already included in the federal adjusted
40 gross income.

41 (xi) The amount of any contribution made to the same extent the
42 same is claimed as the basis for the credit allowed pursuant to K.S.A. 2012

(xii) For taxable years commencing after December 31, 2004, amounts received as withdrawals not in accordance with the provisions of K.S.A. 2012 Supp. 74-50,204, and amendments thereto, if, at the time of contribution to an individual development account, such amounts were subtracted from the federal adjusted gross income pursuant to paragraph (xiii) of subsection (c), or if such amounts are not already included in the federal adjusted gross income.

(xiii) The amount of any expenditures claimed for deduction in determining federal adjusted gross income, to the extent the same is claimed as the basis for any credit allowed pursuant to K.S.A. 2012 Supp. 79-32,217 through 79-32,220 or 79-32,222, and amendments thereto.

(xiv) The amount of any amortization deduction claimed in determining federal adjusted gross income to the extent the same is claimed for deduction pursuant to K.S.A. 2012 Supp. 79-32,221, and amendments thereto.

(xv) The amount of any expenditures claimed for deduction in determining federal adjusted gross income, to the extent the same is claimed as the basis for any credit allowed pursuant to K.S.A. 2012 Supp. 79-32,223 through 79-32,226, 79-32,228 through 79-32,231, 79-32,233 through 79-32,236, 79-32,238 through 79-32,241, 79-32,245 through 79-32,248 or 79-32,251 through 79-32,254, and amendments thereto.

(xvi) The amount of any amortization deduction claimed in determining federal adjusted gross income to the extent the same is claimed for deduction pursuant to K.S.A. 2012 Supp. 79-32,227, 79-32,232, 79-32,237, 79-32,249, 79-32,250 or 79-32,255, and amendments thereto.

(xvii) The amount of any amortization deduction claimed in determining federal adjusted gross income to the extent the same is claimed for deduction pursuant to K.S.A. 2012 Supp. 79-32,256, and amendments thereto.

(xviii) For taxable years commencing after December 31, 2006, the amount of any ad valorem or property taxes and assessments paid to a state other than Kansas or local government located in a state other than Kansas by a taxpayer who resides in a state other than Kansas, when the law of such state does not allow a resident of Kansas who earns income in such other state to claim a deduction for ad valorem or property taxes or assessments paid to a political subdivision of the state of Kansas in determining taxable income for income tax purposes in such other state, to the extent that such taxes and assessments are claimed as an itemized deduction for federal income tax purposes.

(xix) For all taxable years beginning after December 31, 2012, the amount of any: (1) Loss from business as determined under the federal

1 taxpayer's form 1040 federal individual income tax return; (2) loss from
 2 rental real estate, royalties, partnerships, S corporations ~~that are not wholly~~
 3 ~~owned subsidiaries subject to the Kansas privilege tax~~, estates, trusts,
 4 residual interest in real estate mortgage investment conduits and net farm
 5 rental as determined under the federal internal revenue code and reported
 6 from schedule E and on line 17 of the taxpayer's form 1040 federal
 7 individual income tax return; and (3) farm loss as determined under the
 8 federal internal revenue code and reported from schedule F and on line 18
 9 of the taxpayer's form 1040 federal income tax return; all to the extent
 10 deducted or subtracted in determining the taxpayer's federal adjusted gross
 11 income. For purposes of this subsection, references to the federal form
 12 1040 and federal schedule C, schedule E, and schedule F, shall be to such
 13 form and schedules as they existed for tax year 2011, and as revised
 14 thereafter by the internal revenue service.

15 (xx) For all taxable years beginning after December 31, 2012, the
 16 amount of any deduction for self-employment taxes under section 164(f)
 17 of the federal internal revenue code as in effect on January 1, 2012, and
 18 amendments thereto, in determining the federal adjusted gross income of
 19 an individual taxpayer.

20 (xxi) For all taxable years beginning after December 31, 2012, the
 21 amount of any deduction for pension, profit sharing, and annuity plans of
 22 self-employed individuals under section 62(a)(6) of the federal internal
 23 revenue code as in effect on January 1, 2012, and amendments thereto, in
 24 determining the federal adjusted gross income of an individual taxpayer.

25 (xxii) For all taxable years beginning after December 31, 2012, the
 26 amount of any deduction for health insurance under section 162(l) of the
 27 federal internal revenue code as in effect on January 1, 2012, and
 28 amendments thereto, in determining the federal adjusted gross income of
 29 an individual taxpayer.

30 (xxiii) For all taxable years beginning after December 31, 2012, the
 31 amount of any deduction for domestic production activities under section
 32 199 of the federal internal revenue code as in effect on January 1, 2012,
 33 and amendments thereto, in determining the federal adjusted gross income
 34 of an individual taxpayer.

35 (c) There shall be subtracted from federal adjusted gross income:

36 (i) Interest or dividend income on obligations or securities of any
 37 authority, commission or instrumentality of the United States and its
 38 possessions less any related expenses directly incurred in the purchase of
 39 such obligations or securities, to the extent included in federal adjusted
 40 gross income but exempt from state income taxes under the laws of the
 41 United States.

42 (ii) Any amounts received which are included in federal adjusted

except those with