[LB89 LB119 LB120]

The Committee on Revenue met at 1:30 p.m. on Thursday, January 22, 2009, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB119, LB120, and LB89. Senators present: Abbie Cornett, Chairperson; Merton "Cap" Dierks, Vice Chairperson; Greg Adams; Mike Friend; LeRoy Louden; Dennis Utter; and Tom White. Senators absent: Galen Hadley. []

SENATOR CORNETT: Good afternoon, and welcome to the Revenue Committee. I am Senator Abbie Cornett from Bellevue; to my left, normally, would be sitting Senator Cap Dierks, he will be joining us in a little bit; to his left is Senator Greg Adams from York; and Senator Hadley will be absent today. We have the research assistant, Bill Lock; and committee clerk is Erma. To my far right is Senator Utter from Hastings; Senator Louden from Ellsworth; Senator White will be in and out this afternoon; and then Senator Mike Friend from Omaha; and my legal counsel, Shannon Anderson. Before we begin the hearing, I would appreciate it if you would turn all of your cell phones off, or turn them to vibrate. The sign-in sheets for testifiers are on the tables by both doors. A sheet needs to be completed by everyone wishing to testify. If you are testifying on more than one bill, you need to submit a form for each bill you are testifying on. Please print, and complete the form prior to coming up to testify. When you come up to testify, please hand the form to the committee clerk, Erma. There are also clipboards in the back of the room to sign in 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 representatives will present the bill, followed by the opponents...proponents, opponents, and then neutral testimony. Only the introducer will have the opportunity for closing remarks. As you begin your testimony, please state your name and spell it for the record. If you don't spell your name, I will stop you and have you do that for the records keeping. If you have handouts, please bring ten copies of those handouts. If you do not have ten copies, hand them to the pages and the pages can make copies. Today our pages are Rebecca Armstrong and Elsie Cook. And with that, we'll begin our hearing. And our first bill, Senator Wightman. []

SENATOR WIGHTMAN: Chairwoman Cornett, do you go by Chairwoman? [LB119]

SENATOR CORNETT: Whatever you prefer. [LB119]

SENATOR WIGHTMAN: Whatever I want to use? Members of the Revenue Committee, I am John Wightman, J-o-h-n W-i-g-h-t-m-a-n. I represent the 36th Legislative District and I'm here, first, to introduce LB119; I will also be the introducer of the second bill, LB120. LB119 is a bill that this committee has heard in a different form as LB205...or LB502, I believe, two years ago. And at that...excuse me, that's not a correct statement. I had a bill that would have done about the same thing, and I think that was LB502. The committee took up a bill at that time, which was almost identical, of Senator Mick Mines at that time; both of which would have reduced the inheritance tax rate and, actually, increased the exemption on inheritance taxes on Class I relatives. And just a refresher, Class I relatives are legal descendants; ancestors, if you have living ancestors; brothers and sisters; so it would include children and grandchildren. That was a 1 percent rate. We took that up at that time, but we also would have increased the exemptions and...I don't think we reduced the tax, I think we left the tax the same, but...and today we're here dealing only...because we did pass a bill that, in 2007, that increased the exemptions on Class I relatives, which are the ones I just defined, from $10,000 to $40,000. The bills, I think, were $50,000 and $100,000, but that was part of the compromise. But what you did, at the same time, is increase the exemption rate on Class II relatives, which are nephews, nieces, cousins, uncles, and aunts, from 6 percent for the first $60,000; 9 percent for anything over $60,000; and it was a $2,000 exemption, to a straight rate of 13 percent. Again, that was a compromise on the part of the committee, and the lobbyist for NACO, I think, agreed to that, which tremendously increased the rate. This would also increase...you also increased the rate on Class III relatives, or Class III beneficiaries, who are not relatives. In effect it was for a larger estate, almost doubling the tax on Class II relatives, on nephews and nieces. There will be people here, at least one or more, who will speak with regard to this rate change. We're asking to have that reduced to 10 percent, which still would be higher than it was prior to the effective date of the legislative bill passed two years ago. At that time, it was 6 percent and 9 percent, so even the 10 percent will be higher than the high rate that was in effect prior to the change of law by the 2007 Legislature. It works a great hardship out in our area in that somebody, and this frequently happens, to where somebody has no children, or they may even have children but wish to pass part of their estate to maybe a nephew or a niece who is out there farming the farm. And all of a sudden, these kids come in and, we've gotten rid of the federal estate tax in most instances, if the estate is not over, this year, $3.5 million under the federal estate tax law. We've gotten rid of the state death tax and now here they are faced with this county inheritance tax that has been increased half to...from double to one and one-half times, depending on the size of the estate. And it's not based on the size of the estate; you should realize that this is based on the size of an individual inheritance. Unlike the state estate tax, unlike the federal estate tax, which were based upon the total estate no matter who it passed to; this one taxes at the beneficiary level. And so when we're talking a $25,000 or $15,000 exemption, it's $15,000 at the current time, that applies to each beneficiary, but you immediately go into the 13 percent rates. And we had a situation just a year ago where they were fortunately still under the old law, which was six and nine, because they had died prior to January 1, 2008, but the tax is pretty tremendous. You receive $200,000, and outside of the $15,000 exemption, you're looking at a $26,000 tax on that $200,000. If you receive a quarter section of land, you may be looking at a $300,000 quarter and you're going to have a $40,000 tax on it, give or take a few dollars. So it is a major tax and it just seems to me...to address a little bit of what happened when we first came in and brought this bill in 2007, we gave you documentation that the consumer price index, which had last been changed...not the consumer price index, the rate, or the exemption amount, had last been changed in the year 1901 or 1902. In that same period of time, $10,000...and there wasn't even a consumer price index in 1902, I think it first came into effect in 1913, had gone up 24 times. So we increased it by 40 percent but we're talking about a 2,400 rate...2,400 percent rate of inflation in that same period of time. So it wasn't much of a trade-off to get the $40,000 exemption after 106 years when inflation had grown by 24 times, compared to our 40 percent increase that we got in the exemption. So we're asking the Legislature to leave the exemption amount where it is; cut the rate of tax on Class II relatives back to only 10 percent, which is more than it was prior to your action in 2007; and cut the rate on Class III beneficiaries as well; and that's basically what we're doing. One of the things I would like to point out, is Nebraska is one of only eight states in the entire United States that even impose a county inheritance tax. And I think maybe Pennsylvania and one other state are the only states that would have as high a rate of inheritance tax as we do now. I know you're going to hear testimony from a number of county commissioners that are going to tell you that this is going to create a hardship on county commissioners across the state of Nebraska. As a practical matter, I know most of the counties do not budget this money; they do use it as a special use fund of some kind. But I do not see how you can justify doubling the rate, almost, certainly substantially increasing the rate from what it was two years ago. And...I'm just asking you to grant some relief on this, and I think 10 percent is a reasonable amount to set that figure at. I realize that there is going to be some loss of revenue, but I think that's revenue that in most counties can't be budgeted because it's such a hit and miss proposition. If you have somebody with quite a bit of wealth that died during a year you may have some revenues from this, but there aren't all that many that go to nephews, nieces, aunts, and uncles anyway. So with that I want to reserve the right to close, but certainly hope that you will strongly consider reducing the tax rate on Class II and Class III relatives. Thank you. [LB119]

SENATOR CORNETT: Thank you, Senator Wightman. [LB119]

SENATOR WIGHTMAN: Oh, I'll answer any questions you have. [LB119]

SENATOR CORNETT: Excuse me. Do you have any questions? Senator Utter. [LB119]

SENATOR UTTER: Senator, the exemption changed to... [LB119]

SENATOR WIGHTMAN: It changed from $2,000 to $15,000 on Class II. [LB119]

SENATOR UTTER: ...to $15,000. Okay. [LB119]

SENATOR WIGHTMAN: It's less, it was $500. I'll have to look and see on our bills what we were...I don't know if I have it in front of me right now, what the rate is on Class III.

But I know that some will address it more from the standpoint of what the effect of the Class III beneficiaries are. As I say, they're unrelated persons, but we're asking that the rate be decreased for both. [LB119]

SENATOR UTTER: Madame Chairman, I have one more question, if I may. [LB119]

SENATOR CORNETT: That's fine. [LB119]

SENATOR UTTER: What happened to the rate...will you review for me again the rate...what happened to the Class III rate... [LB119]

SENATOR WIGHTMAN: The Class III...the Class II rate. [LB119]

SENATOR UTTER: ...the Class III rate. Was it changed in the 2007... [LB119]

SENATOR WIGHTMAN: The Class III rate was changed as well. I'm looking to see that change; I thought I had it here in front of me, but I may not. [LB119]

SENATOR CORNETT: Thirteen. [LB119]

SENATOR WIGHTMAN: I may be able to find that in a minute; I should have been...had that figure here but I don't see it. [LB119]

SENATOR CORNETT: So he's asking for Class III. I was going to...we don't even have the Class III changes. [LB119]

SENATOR WIGHTMAN: It will have changed from 13-10 on Class II...I don't know that we have anything on Class III. [LB119]

SENATOR CORNETT: There's nothing on the bill. [LB119]

SENATOR WIGHTMAN: I think our bill would only cover Class II relatives. I think somebody... [LB119]

SENATOR UTTER: In 2007, though, did the bill cover... [LB119]

SENATOR WIGHTMAN: Right. [LB119]

SENATOR UTTER: ...was there a change in the... [LB119]

SENATOR WIGHTMAN: Right. That changed. It was 6 percent for the first $60,000; 9 percent for that part of the estate that the beneficiary received in excess of $60,000. [LB119]

SENATOR UTTER: That's the Class II. [LB119]

SENATOR WIGHTMAN: That's Class II. [LB119]

SENATOR UTTER: What happened to the Class III's in 2007? [LB119]

SENATOR WIGHTMAN: It went up from $500 to $10,000, and 18 percent straight through. Now that was one that started at 9 and got as high as 21, I believe, in large estates. Now, I can't give you the breakdown of those figures, but... [LB119]

SENATOR UTTER: And it's a flat rate now? [LB119]

SENATOR WIGHTMAN: It's a flat rate, and so is... [LB119]

SENATOR UTTER: At 18? [LB119]

SENATOR WIGHTMAN: ...both of them are flat rates now. 13 percent for Class II; 18 percent for Class III. [LB119]

SENATOR UTTER: Thank you very much. [LB119]

SENATOR WIGHTMAN: Any other questions? Thank you. [LB119]

SENATOR CORNETT: Seeing none, thank you, Senator Wightman. Are there any other proponents? [LB119]

PETE McCLYMONT: Good afternoon, Madame 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 here representing the membership of the Nebraska Cattlemen. First off, we, as an association, recognize the importance of the inheritance tax because especially from our rural counties, it's a key component in what they need in maintaining roads, bridges, and so forth...so. Whereas a large county can somewhat plan for a loss revenue, it's more difficult for a rural county. Having said that, that was, in our opinion as an association, excessive two years ago in LB502 in jumping from 6 to 13. So we believe it's prudent and not excessive to go from 13 to 10. So we would be in support of this bill. On a personal note, I am not a father. My nieces and nephews are the recipients of my will, and so this affects them and I want them to get as much of what I hope to give them, in a long time from now obviously, but nonetheless, we think that this doesn't put too much of a hardship on the counties, and yet it still keeps more money in the families that these wills benefit. I'll be happy to answer any questions. [LB119]

SENATOR CORNETT: Seeing none, thank you. [LB119]

PETE McCLYMONT: Thanks [LB119]

ROBERT J. HALLSTROM: Chairman Cornett, members of the committee, my name is Robert J. Hallstrom. I appear before you today as registered lobbyist for the National Federation of Independent Business. We represent between 4,000 and 5,000 small business owners across the state of Nebraska. It may come as no surprise, but those small business owners have consistently supported repeal or reduction in the rates of both the federal estate tax, the state death tax, and the county inheritance tax. So we are supportive of the provisions of LB119. We were supportive of the legislation a couple of years ago; we're part of that activity. Our primary interest was with regard to the Class I beneficiaries for the transfer of direct ownership to family members, but we think overall the rate increases in the lower categories were, perhaps, higher than they needed to be, and going from 13 to 10 percent is something that we would support. Be happy to address any questions. [LB119]

SENATOR CORNETT: Thank you, Mr. Hallstrom. [LB119]

ROBERT J. HALLSTROM: Thank you. [LB119]

SENATOR CORNETT: Seeing none, thank you. [LB119]

SUSAN SPAHN: Good afternoon. My name is Susan Spahn; Susan, S-u-s-a-n S-p-a-h-n. I'm an attorney in Omaha with the Fitzgerald, Schorr, Barmettler & Brennan law firm and have practiced exclusively in the areas of estate planning, tax, and probate for the past 20 years of my practice. When we look at the Nebraska inheritance tax we're mindful, too, of the need to collect revenue for the county and the state. This one going up to 13 percent for nieces and nephews seems rather punitive for them to pay such a great tax. When you look at the family farmer, the bachelor farmer who has no children and leaves his estate to his nephew, to pay over $100,000 on inheritance tax, typically, they need to take out a loan. And sometimes the farm doesn't bring in enough to service that debt and to pay off all the other farm debt that comes up with the farming. And it requires the farm to go into a state of crisis just to maintain the same farm from generation to generation. And I think that's something that Nebraska has always supported: the generational passing down of the family business, be it a farm or an enterprise. The other thing that as an estate planner I've been sitting here thinking about this bill, I can think of a lot of ways for clients to avoid paying inheritance tax simply by putting their land in a corporation or a partnership and then moving outside the state of Nebraska. You know, there are ways that the tax gets so high...there are creative ways that attorneys can get around these taxes, and that's where attorneys are going to start going if the rates get so high that it makes it worth their client's efforts to try to completely avoid this tax rather than say, well, you know, it's really not that bad, you're doing your part, you know, do you really want to go through all these steps to avoid paying this tax? [LB119]

SENATOR CORNETT: Thank you very much. [LB119]

SUSAN SPAHN: Um-hum. [LB119]

SENATOR CORNETT: Do I hear any questions from the committee? Senator Friend. [LB119]

SENATOR FRIEND: Ms. Spahn, that was a really interesting point. I mean, does this change...would this change...actually, in your opinion, alleviate that type of behavior? I mean, I think attorneys and C.P.A.s could probably do that right now... [LB119]

SUSAN SPAHN: Sure they can. [LB119]

SENATOR FRIEND: ...and probably would. Will this change alleviate any of that thought process? I mean, it seems like you're almost a proponent of blowing the whole thing away. [LB119]

SUSAN SPAHN: Well, when we had the Nebraska estate tax was so high, in my memos to my clients it would be put your land in a corporation and there's some lovely condos and townhomes over in Council Bluffs. I mean, I had to tell my clients that that's an option available to them because Iowa does not have an inheritance tax for children anymore. If they...and now since the federal estate tax looks like it's going to go away for states under $3.5 million, you know, which is what we hope happens this next year, we are going to look at other ways to save our clients money in death taxes. With the inheritance tax of 1 percent to children, it's one of the ones...it's not that bad, you know, it's not worth the attorney's fees it would take to avoid paying that tax. But when you look at the tax for nieces and nephews, 13 percent, you know, that adds up high and that's worth the money they're going to pay attorneys like me to try to figure out a way around it. So in...that's just what's out there. 13 to 10, that's going to look wonderful. You know, we'll take every bit we can get, because I'd rather keep the dollars here than go somewhere else. [LB119]

SENATOR FRIEND: Okay. [LB119]

SUSAN SPAHN: Okay? [LB119]

SENATOR FRIEND: Thanks. [LB119]

SENATOR CORNETT: Thank you. Are there any further proponents? We will now take testimony for opponents. [LB119]

DENNIS KIMBROUGH: Chairman Cornett, Revenue Committee members, I'm Dennis Kimbrough, K-i-m-b-r-o-u-g-h. I'm here today as a Fillmore County supervisor and also I serve as president of NACO this year. My comments...at first, I'm going to come from the Fillmore County, because I continually hear that the counties use this as extra funds and that it really isn't that important. I'm here to dispute that because it is very important. The figures I have for the last three years will kind of tell what's happening in the inheritance tax area for us. In 2006-07, we collected approximately $312,000.; in 2007-08, $350,000. And for some reason, we don't know why, 2008-09 we dropped to $198,000. Our expenditures...we've had to drastically change what we've done. In 2006-07, we spent $455,000 out of inheritance. That meant we spent all of our $312,000, plus. We've had to drop our inheritance tax level that we maintain. Last year, at $350,000, we decided we had to reduce this and back out; because of the uncertainty, we dropped to $222,000. And that left us about $120,000, I believe, somewhere in that area. We have depleted our emergency bridge fund, which means if we have a bridge collapse, we close the road. We're trying to rebuild that. We're putting about...that $100,000, $110,000 back in that, trying to get ourselves in a position where, if we lose a half-million dollar bridge or more, we can at least replace it. This year we're really trying to come down. With $198,000 in revenue, we dropped our transfer to $84,000. And I think what these figures illustrate is that we don't use this as an extra fund or a big cash reserve fund, we're trying to survive on it. Now, I will tell you when we dropped our level of transfer to $84,000 into our general budget, we had to up our tax call approximately by $130,000 from last year to cover the difference. So we are, unfortunately, one of the top counties in the increase this year. We went up 15.34 percent on our tax call which is out of hand, as far as I'm concerned. That will not happen again. We had two things that happened to us. We had a 20...I believe, a 24 percent increase in valuation, which is huge. Agricultural land went up 18 percent, we had an ethanol plant that dropped in $60 million; so we had huge valuation increases. A lot of things go along with that that you know: we lost our state aid to school because of that, so that came back as tax call. So we've seen a tremendous increase, and it's going to take us a while to get that back, hopefully, in line. We hope our values don't go down drastically or we're really in a bad position. We normally carry about $600,000 in our inheritance tax fund; it's a level we've tried to stay at. And that basically, if you look at it, between that and our bridge fund is all of the safety net our county has; that's it. There are really no other funds. When we have a shortfall anywhere, and I will tell you that in the last three years we have dropped our gravel allotment, that we use on our roads, by 33 percent. We just simply put less gravel on. We have eliminated one of our patrols and one of our operators. So I think that counties are in a position where they're very conservative. I know of very few counties that if I looked at businesses, I would say you're in the ultra-conservative area. They're very concerned about expenditures. And when you get hit with taxes like we did this year, it really comes home to you. Fortunately, we weren't number one in the state, but we were number three. That's close enough, too close. So that's Fillmore County. I realize that across the state that there are...is a great variation. Some counties do not depend hardly at all on their inheritance tax. Some, who are against the levy lid, it is vital. Because if they lose one dollar, where do they go? Property tax? They can't; they're up against the lid. They have nowhere to go. So we'll start looking at gravel for the roads, patrols, people, personnel, benefits; you start making cuts. None of that, you know...and some of our smaller counties are about cut out. They're wondering where they're going to go down the road here. So it is very vital for them. And I'm sure, for the larger or those counties who don't use it for their general expenditures, you know, if they lose $500,000 inheritance tax, where are they going to fund those special projects or whatever they've used that money for? It's going to go over to property tax. So in my view, generally across the state, it is...it would be a property tax increase bill. I see no other way for it to go. And I know we can say, well, there's a little leeway here, there's a little leeway there, but in general I feel that that would be the end result of it. I'm sure we'd all like to get rid of taxes. The one thing that keeps jumping into my mind is, inheritance tax is generally paid by approximately 2 percent of the population. If we transfer that tax to every property owner in our district that's going to be a huge change, and I have a problem doing that. I have been in a situation with inheritance, I will tell you this: if I was a niece or a nephew and for...if I inherited $100,000 it's approximately $11,000 in taxes. I would be pretty happy; I'd still net out about $89,000, and for something I never had I really wouldn't mind that. The other thing is I have yet, and I know districts or areas will dispute this, but I have yet to have anyone who has paid inheritance tax come to me and just rant and rave and say this is ridiculous. Most people say very little or have been very happy to inherit what they have and have gladly paid it. The other thing is you all know it stays in the counties, and people who are very conscious of their heritage and so forth really have been great about supporting their towns and their counties. So I would encourage you to not advance this. And you know we have, like Senator Wightman mentioned, there was bills in the past two years, we are not really even...we're just a full year through the last change and we don't know yet how that has affected our revenue. We tried, I think, hopefully, by increasing this Class II, to be revenue neutral when the bill changed so it would not hurt counties; we don't know whether it will or won't. And I really believe we need some time to have some experience behind this, so. Thank you. [LB119]

SENATOR CORNETT: Thank you. [LB119]

DENNIS KIMBROUGH: Any questions? [LB119]

SENATOR CORNETT: Senator...questions from Senator, Senator Utter. [LB119]

SENATOR UTTER: Thank you, Senator Cornett. The figures that you gave, the three-years figures that you gave with regard to inheritance taxes, is that total inheritance taxes, or is that...have you backed that out to just include the Class...the Class II inheritance? [LB119]

DENNIS KIMBROUGH: That's my county's total inheritance tax. [LB119]

SENATOR UTTER: That's your...so can you give me some sense as to what the Class II would be? [LB119]

DENNIS KIMBROUGH: You know, without that division, I cannot. I don't know, and it really...and we all know you don't know what estates are going to be filed that year. And our revenue is down; we can't say why for sure. We don't know whether that's less estates; or whether the value of them was lower, or what; or the exemption for the first class has entered into that; we're not just sure what, but we notice it is drastically changed. [LB119]

SENATOR UTTER: Thank you. [LB119]

SENATOR CORNETT: Senator Friend. [LB119]

SENATOR FRIEND: Thank you, Senator Cornett. Mr. Kimbrough, we haven't really gotten a tremendous amount of time to sit and talk about some of this and I don't want this to sound crass, I mean, I think it might sound a little esoteric, but...or philosophical, but there are, you know, the 50 states right now...we're looking around and we're looking at states that are having a lot more difficulty than other states. I mean, California, New York...California's bankrupt. Some would even argue...they'd laugh; they'd say well, wait a minute, we just have too many states. California needs to secede or they need to merge with somebody else. We have 93 counties: how many of them do you think are struggling really mightily by now, in the type of economy that we're in? [LB119]

DENNIS KIMBROUGH: You know, Senator, I would have to ask someone like Larry Dix, who handles the figures, but I'm guessing we probably have six or seven counties, at least, that are up against the levy lid right now. [LB119]

SENATOR FRIEND: Yeah. And I don't mean this to sound trite, and again, or crass...do you think we have too many counties in this state? [LB119]

DENNIS KIMBROUGH: You know, that's hard to say. I'm in a supervisor county where we still have 48 elected township members, and we've tried to make that change, and that hasn't even went. [LB119]

SENATOR FRIEND: You know, Mr. Kimbrough, the reason that I bring up that point is that people used to crucify Ron Raikes for trying to approach things from an educational standpoint and saying we need to start squeezing, we need to start being, as far as he was concerned, fairly creative. I've been here for six years, and that's not very long, and I haven't heard a whole lot of creativity out of counties. So that's my opinion. [LB119]

DENNIS KIMBROUGH: Well, I will tell you this, there is quite an amount of consolidation and joining of services with other counties. It has been discussed for several years about combining our county offices, say, a three or four county area; those discussions go on. We have entered into, in our emergency management area...where in the southeast district I am, and with many counties doing it as one instead of each individual. So I think there is a trend to consolidation but as you know, it's very slow and sometimes painful. [LB119]

SENATOR FRIEND: Sure. No, that's good information and I'd like to see a little more data on that. [LB119]

DENNIS KIMBROUGH: Okay. [LB119]

SENATOR FRIEND: I have seen some data, but I'd like...I look forward to talking to you about it, and also Larry. [LB119]

DENNIS KIMBROUGH: Okay. [LB119]

SENATOR FRIEND: So thank you. [LB119]

SENATOR CORNETT: Seeing no further questions, thank you. [LB119]

DENNIS KIMBROUGH: Thank you. [LB119]

SENATOR CORNETT: Next opponent. [LB119]

JERRY McCALLUM: Good afternoon. I'm Jerry McCallum, spelled M-c-C-a-l-l-u-m. I am the chairman of the board of the Madison County...Madison County, and I am past president of NACO. I am also on the Governor's advisory board for HHS. I come to you today to testify in opposition of LB119 for several reasons. But the main reason is inheritance tax has been a part of government since, I believe Senator Wightman said, for 102 years. It has been a part of us for so long that it would be very, very hard for the counties in Nebraska to succeed and move forward without that tax. It's a tax that's not hurting anyone during their lifetime, as far as making money. It's not as hazardous as property tax; it's not as hazardous as income tax; it's only paid when the person has come to the end of their life and their estate is being settled. The proposal today on LB119, I don't know the figures, but I think the percentage on the settlement of estates would be very small when it goes to the nieces and nephews. I think the largest part of the estates in Nebraska are settled in the first class. That would be my guess. It would be hard to tell, exactly, what that percentage would be. It's a tax that has been around us for so long that I don't know what the economic impact would be if that tax was lifted; or if it keeps being whittled away at, it would eventually be gone. I am just a firm believer in that. Let me come at you in a little different angle than my...president of NACO, Mr. Kimbrough, did. Let me tell you a little bit about what Madison County did with this, and we're in Senator Dierks's area, he knows about what we did. The medical center decided to share with Northeast Community College on a nursing school; I'm sure you read the newspapers. Senator Flood called me up some two years ago and said, Jerry, we have a chance at this thing, what can we do? I said, I think we can make it happen, Mike, I really do. I says, I know one way we can make it happen. He says, how? And I says, with inheritance tax. So we got an opinion from the Attorney General: it is firmly and legal for counties to donate to tax-supported institutions. I personally went around to 15 counties in northeast Nebraska, looked at their budgets with them, looked at the historical input on their inheritance tax, and we came up with $1.8 million for 15 counties. That is raw money going into brick and mortar; no interest paid, no bond issues, it's paid. It's going to happen in a 10-year period. They all couldn't...all of us couldn't do it in one solid...come up with that kind of money, so we did it in a 10-year payment. When Senator Mines first introduced the bill some years ago, four or five years ago, to completely get rid of inheritance tax, he talked to me a little bit about if that money was handled in a proper way, managed in a proper way, he said it's the greatest thing you can ever have. But he said, I don't think it is. And I think at that time, county commissioners were woke up and started to manage money a little better than they do now, than they did then. We have probably impacted on northeast Nebraska an economical factor that will go on and on and on; young people can get educated. Education...even Governor Heineman is a great, great supporter of education. We're going to educate local people up there; we're going locate foreign people who come in. We hope and pray that they will stay home with us; they'll build homes, raise their families, and whatever it takes to spend their lives in northeast Nebraska. We have coalitioned up there: Dr. Path from the college searched nationwide, and he has never seen it happen before where counties have come together and did what we did up there. I thought I'd be recalled when it was all said and done, but I wasn't, finally. We got no, no, absolutely opposition whatsoever. It took a lot of courage for county commissioners to do that. We got no opposition. We got letters; I wish I would have cut some of the letters to the editor we got out to the Norfolk Daily News. What a great way to leave: put money back into the community that has been here to stay, it doesn't go anywhere else, and not being wasted. That is a prime example of what you can do with inheritance tax. If that is taken away from us you are going to stop our ability to grow. We have no other way, because the lid is a factor that stops all our growth when it comes to outside money and develop things. I don't think...I called my county treasurer just before I came in here and I asked her, how many complaints do you have over people paying inheritance tax? She said, Jerry, I don't know when the last complaint I had. She said, I had a guy in here from California last week, paid $107,000, walked out and said, is that all I owe? I think that we are messing with something that would be a very, very, very harsh impact on counties in the state of Nebraska, if inheritance tax keeps drilling away and we keep shaving at it until the point we don't have anything. I would appreciate your consideration in considering your vote in this committee, and I would like to see you vote no. We do not need any changes in the inheritance tax law right at this moment, unless we figure out some other way to...it seems to be a reverse factor too. The people that are inheriting property, you know that it's going to raise their property tax. It's going to revert right back on them. They pay inheritance tax once. Property tax, if it goes up one mill as a result of the percentage lost in that county, will never go away. It will be on that property forever. I appreciate you listening to me; it's a good afternoon. People don't realize what we sacrifice sitting in these when it's a nice day out, do we? And Senator Dierks, nice seeing you again. [LB119]

SENATOR DIERKS: Thank you, Jerry. [LB119]

JERRY McCALLUM: Thank you very much. Any questions? [LB119]

SENATOR CORNETT: Seeing none, no, thank you. Next testifier in opposition. [LB119]

PAMELA LANCASTER: (Exhibit 1) Good afternoon. I'm Pamela Lancaster, P-a-m-e-l-a, Lancaster, L-a-n-c-a-s-t-er. I am presently the chair of the Hall County Board of Supervisors, and this year I am NACO, Nebraska Association of County Officials, vice president. Thank you for the opportunity to address this committee regarding LB119. My remarks, I believe, do pertain to all county government but since I'm most familiar with Hall County, the specific information would come, of course, from our budget. County government, by state law, requires that we live under two lids. One is the property tax lid that everyone seems to understand quite well, and the other is a revenue lid. As a result, for the last several years we in Hall County have used $800,000 from our inheritance each and every year, almost. It fluctuates from year to year for us and I don't have those numbers, but it's pretty much what we receive. We may get a couple of hundred thousand extra here and there. And to make that...we do that just to balance our budget. To make the point a little more clear, last year the new money Hall County had available for expenditures did not cover the increase in our health care. In order to pay our union contracted salary increases; other employee salary increases; or any increase in office expenses; we committed the $800,000 from the inheritance fund. We added the new money that was available through increased valuation, and then proceeded to rob Peter to pay Paul to come up with a balanced budget. As a side note, I would tell you our public safety portion of our budget, the part that we have very little control over and that keeps our community safe: the sheriff's office, the corrections, the county attorney, the public defender, absorbs over 52 percent of our available resources. Besides maintaining status quo, there are times when we need to participate in special projects in Hall County. So our share of the recent interstate exit, our new exit; Wood River/Warm Slough Division Project that protects hundreds of acres of land from flood waters; or any small building repairs that we might have are examples of other projects we might use this money for. There's no place for counties, as has been said before, there's no place for counties to go for these dollars other than property tax. By using the inheritance tax, we manage a dollar-for-dollar property tax relief. Counties are very frugal. In fact, I think they're the most frugal arm of government. We do not build extravagant office space; you can always come see us. But if we're to continue to serve the people, we need to have adequate income to do so. In Hall County, our buildings and our roads are not getting adequate funding because of the budget restraints now. We used the inheritance tax to supplement this, but it still becomes very difficult. We have less gravel on our roads as well. If state government is to continue to chip away at the inheritance fund, we need another avenue to meet our rising costs. Lift our lid and let property tax take on the rising costs. I would remind you, however, that Nebraska is already one of the highest property tax states in the country. We can't have it both ways. If you chip away at the inheritance tax and don't replace it with another revenue, our county government, obviously, will have fewer dollars available. Counties won't have any choice but do the right...raise property taxes when we can or provide fewer services. Our rural areas, particularly, will be less safe. Our services will be provided on an intermittent level. I have included for your information a list of the services that county government provides; it's attached, and I have copies for each of you of my remarks. It's just a synopsis of the services that we provide in each of our offices. In closing, I would ask that you consider the cost to county government by reducing the inheritance tax. If we are simply to maintain county services, property tax will need to be increased if inheritance tax is reduced. This is particularly problematic if you believe residents now leave our state because of this issue. It is not the inheritance tax--I want to be sure to be clear--it's not the inheritance tax that we're so concerned about, but rather the lack of some other funding to offset it. I believe a county government is truly government by the people. We are frugal, and I think we're an incredible value for the services we provide, and if you peruse the list of services I think you will agree. Thank you for your time and your consideration. [LB119]

SENATOR CORNETT: Thank you. [LB119]

PAMELA LANCASTER: If there are questions, I'd be glad to try to answer them. [LB119]

SENATOR CORNETT: Questions from the committee? Senator Louden. [LB119]

SENATOR LOUDEN: I'm sorry I got here a little bit late. What county are you from? [LB119]

PAMELA LANCASTER: I'm from Hall. [LB119]

SENATOR LOUDEN: Hall? That's Grand Island? [LB119]

PAMELA LANCASTER: Exactly. [LB119]

SENATOR LOUDEN: Okay. [LB119]

PAMELA LANCASTER: We're the largest of the small and the smallest of the large... [LB119]

SENATOR LOUDEN: I see. [LB119]

PAMELA LANCASTER: ...so we fit in a unique... [LB119]

SENATOR LOUDEN: And it doesn't have on our list here what Hall County may get, but how much money do you get from the inheritance tax in the Hall County? [LB119]

PAMELA LANCASTER: Well, it varies year to year, and it varies pretty substantially. But depending on, you know, obviously what estates are settled, and how much those estates have been already managed through...I think it was mentioned earlier that there are all kinds of avenues to manage your inheritance these days. And so it depends on how well that's been managed, but usually somewhere between $800,000 and $1.2 million. [LB119]

SENATOR LOUDEN: Okay. Now, of course, you never know how much...I mean, it's kind of like the lottery. I wouldn't say it's not a matter of the draw, it's the matter of the drop. (Laughter) [LB119]

PAMELA LANCASTER: Well, it is, and I will say that in the last few years we've used $800,000 a year for about the last four or five years...I'm not sure if it's four or five, but we have been very, very tight-fisted with these dollars and so we have been able to...we have a million dollars that we've set aside for an emergency situation or to give us time to figure out what else to do if these dollars keep dwindling. The $800,000 is scary to us, to have to use that amount each year and not be able to, you know, put just a little bit more away. As I also mentioned in my comments, we do use this for special projects but not like someone is talking about, something that isn't necessary. We used it for our...the counties share, rather than raising property taxes... [LB119]

SENATOR LOUDEN: Well, yeah, I understand... [LB119]

PAMELA LANCASTER: Okay. [LB119]

SENATOR LOUDEN: ...it's your rainy day fund; that's what most of them are because you don't know how much you're going to get. But how much difference would that make if this bill was passed? I mean, this wouldn't take all of your $800,000. [LB119]

PAMELA LANCASTER: No, it would not. And I don't know, because we haven't had the first result of the inheritance tax new legislation. We haven't had that in effect long enough to know what that did to us last year. [LB119]

SENATOR LOUDEN: Yeah. What's your mill levy for Hall County? [LB119]

PAMELA LANCASTER: I can't tell you exactly, I'm sorry, without my budget. [LB119]

SENATOR LOUDEN: Okay, do you know what the... [LB119]

PAMELA LANCASTER: Because we had a bond issue and it gets kind of confusing. [LB119]

SENATOR LOUDEN: Okay. And, you can tell me close? Is it 30 cents? 28? [LB119]

PAMELA LANCASTER: Mary, can you help me out here? Do you know where we are? [LB119]

_________: (Inaudible) [LB119]

PAMELA LANCASTER: I would defer to...can I do that? [LB119]

SENATOR CORNETT: No, you can't. [LB119]

PAMELA LANCASTER: I'm sorry. I apologize. [LB119]

SENATOR CORNETT: I was actually looking at some figures, but if you're going to ask someone they need to come up and testify to that. [LB119]

PAMELA LANCASTER: Okay. I'm...okay, sorry. Do you have those figures? [LB119]

SENATOR CORNETT: I was...that's what I was doing, I was looking...I don't have those figures, but I was comparing it to Sarpy County which talked about how much they had. [LB119]

SENATOR LOUDEN: Well, I can look it up... [LB119]

SENATOR CORNETT: Yeah. [LB119]

SENATOR LOUDEN: ...because that packet we got the other day had it in there. [LB119]

SENATOR CORNETT: Had it in there, I know. [LB119]

SENATOR LOUDEN: Yeah. [LB119]

SENATOR CORNETT: We just don't have it in the book. [LB119]

SENATOR LOUDEN: Anyway, I guess my point is, I was wondering what your mill levy was and how much of a...and what is your valuation of it, you know, how many billion dollar valuation is Hall County? And how much, when you say you have to raise property tax, how much little bit would you have to raise to get this difference that you would lose between what the bill would take out now and what you had before? [LB119]

PAMELA LANCASTER: Well, and I think the concern also is the fact that the inheritance tax keeps getting chipped away at and the fact that the overall tax, producing what it does for us, us using the $800,000. If it's to go away then, little by little over X number of years, that will be...you know, now we use it as property tax relief. It won't be there and then we will not have enough room to continue the services as well as the increased costs. Just projected numbers as we do our budget each year, we ask, of course, someone to come in and assist us with this--an accountant--and as we project these, you know, we try hard not to raise property taxes for all kinds of reasons, including the fact that we're in kind of an economic...well, not kind of, now we are in a serious economic situation in this country. But we've been cautious and pretty tight-fisted, I think, with our dollars for years. So... [LB119]

SENATOR LOUDEN: Well, I'm sure you have. Most counties do a very good job with their tax money because they're pretty close to the voters when you get down to the county level. Thank you for your testimony. [LB119]

PAMELA LANCASTER: Well, thank you for that remark about counties. [LB119]

SENATOR CORNETT: Senator Dierks. [LB119]

SENATOR DIERKS: Ms. Lancaster, would it be fair to say, then, that if you have a certain amount of dollars taken away from your county from the change in this statute that that would probably be made up in an increase in property taxes? Would that be a fair statement? [LB119]

PAMELA LANCASTER: It is a fair statement. It will be. I mean, I don't think there's any doubt about it. It's that or cut services. So you just take a look at that and decide what you're going to do. We are not at the lid but we are close, and we just don't want to put any more burden on our people at this time. So that's...our valuation has not kept...well, another example, if you don't mind, we recently had our first bond issue passed for our new corrections facility. We based that on a...I believe it was a...well, we based it on a certain valuation increase each year in order to pay off our bond holders. That has not...since the time that we passed the bond issue, our increase in valuation has not met that level. So we're already in the hole; we're already having to use revenues that...we were counting on more revenue than we have just to pay off our bond holders, so. All of that goes in...like I said, we...generally the way we build our budget we just take the revenue for new money that's available to us, we add the $800,000, and then we decide what we can do. And that's as simple as that. Not necessarily simple, but that's the way it's managed. [LB119]

SENATOR DIERKS: Thank you. Are there any other questions for Ms. Lancaster? I think that does it. Thanks so much. [LB119]

PAMELA LANCASTER: Thank you very much. [LB119]

SENATOR DIERKS: Anybody else in opposition? [LB119]

LARRY DIX: (Exhibit 2) Senator Dierks and members of the committee, for the record, my name is Larry Dix. I'm executive director of the Nebraska Association of County Officials. I'll hand you this, this is a letter sent to us by Richardson County Board, if I could enter that into the record. And then I'd like to start by making a few comments and try to answer some of the questions, at least, that I heard earlier. Senator Utter, you'd...I want to make sure we were clear on the Class III. I think you'd asked what had happened prior to LB...prior to 2007, the bill that passed on inheritance tax. Class III's had a stairstepped approach to them, so between zero and 5,000 it was 6 percent; in between 5,000 and 10,000 it was 9 percent; between 10,000 and 20,000 it was 12 percent; between 20,000 and 50,000 it was 15 percent; anything over 50,000 was 18 percent. That was pre-2007 passage of the bill. And I think, as Senator Wightman had mentioned, currently it's a $10,000 exemption and 18 percent over that. So hopefully that helps that out a little bit. One of the things I think...we can't lose sight on sort of the big picture, and I think we've had county officials certainly talk about the use of the inheritance tax and that it is used very conservatively. It's used on some very specific projects. One of the things that we're sort of struggling with this bill right now is it's very difficult to get data to specifically say where that...how that impacts. Let me tell you why. When...prior to 2007, we had met with Senator Mines. The year before that yet, he'd introduced a bill talking about inheritance tax, was kind enough to give us a heads up he was going to introduce something about that. We put three staff members on the road for about a month going through eight counties, I think, and those are the eight counties...I think that's eight or nine counties, and that process isn't an easy process. It isn't like you walk into the courthouse and say, tell me how much inheritance tax you have. You have to go through the clerks of the district court. You have to pull each one of those cases, and then you have to categorize Class I's, II's, III's, and so on and so forth. So we did that, and we did that for eight counties. And that's why you'll see on the fiscal note eight counties represented today. Certainly, I don't want anyone to think that the bill that Senator Wightman is introducing only impacts these eight counties. These are a sampling across the state of Nebraska. We believe they...to be somewhat of a representative sample. They're geographically across the county; they are population, valuation, pretty well shows the...what is indicative across the state of Nebraska. So the only thing that we really could do with this bill was say, let's take the 2005 data and reduce what we had for those cases in those eight counties by 3 percent. And that's what you see in the far column which is what we've called lost revenue. Earlier, someone had said well, I think Senator Louden had said, well, what does that do to your tax rate? And if you'll allow me to make an assumption: Buffalo County and Madison County are very close. Norfolk, Kearney...close in valuation, close in population. Buffalo County would lose $82,000. One cent in Madison County is shy of $200,000, so that would raise the property tax four-tenths of a cent. Plain and simple. [LB119]

SENATOR LOUDEN: Four-tenths, you say? [LB119]

LARRY DIX: Yeah. [LB119]

SENATOR LOUDEN: Okay. [LB119]

LARRY DIX: Yeah. [LB119]

SENATOR LOUDEN: Okay. And then they've got about $2 million valuation...$2 billion valuation; is that what you're telling me? [LB119]

LARRY DIX: And I'm just, you know, making that assumption. But I would tell you, that if counties are out there saying we're going to raise four-tenths of a cent, people are going to come out of the woodwork. Four-tenths of a cent on a local, county levy is significant. It's not insignificant, it is significant. So that gives you sort of an idea of what would happen, and we can run those numbers specifically. Those are rough, but I think that gives you sort of an idea of really what would happen. I appreciated the young lady here that said, if this amount is...stays at 13 percent, our attorneys would start looking at planning our estates in a different fashion, to move the money outside the state of Nebraska. I've got to tell you, if that amount was 2 percent, the attorneys, if they're doing their job probably would look to move it outside the state; it saves their people money. It is something that's been happening for years. Over the last...since about 2000, I think it would be safe to say that the value of land, and the value of estates in the state of Nebraska have increased. I think we could agree to that. The amount of inheritance tax collected in the counties, all 93 counties, from 2000 has remained flatlined. Absolutely flat. So you ask, why does that happen? Well, folks are doing a much better job preparing their estates. Now, let me take you back just a little bit to the debate on Senator Mines's bill and, as you know, as that moved through the process Senator Wightman took that as his priority. It moved through; everybody worked together. Senator White isn't here, but Senator White was instrumental in sort of negotiating. Senator Mines, Senator Wightman, and myself, I remember it very well; we stood in the Rotunda, and these were the amounts that we agreed upon. We all agreed this is what it was, knowing that nobody could guarantee it was revenue neutral, but saying, let's set them at this rate and let's see what happens two, three, four, five years down the road when we can get data again. We agreed to that, as did the senators, and so that was the agreement that was in place at the time because everyone thought that this would probably be revenue neutral. I think only time will tell if it's revenue neutral, but we haven't had that time. We haven't even had...we can't even put together...the bill only took effect last year. We didn't even have all the estates from last year filed. So that becomes a little bit problematic in that sense: one, that we can't get reliable data yet simply because there hasn't been enough time that's gone by; number two, I think we were under the thought that it would be three or four years before we would reexamine this. Senator Friend, you had brought up: I haven't seen anything from the counties brought forward, innovative ideas. I think, probably next week, we're going to have an innovative idea in front of this committee about revenue for counties, and it was brought forth...it was a county idea. I would tell you just last year...and when you talked about the 93 counties, I don't think the counties are your problem on the consolidation. In the '90s, the counties worked with the Legislature to put together rules, regulations, and statutes of how consolidation could happen. But the question of 93 counties is a constitutional question, and it has to be taken, in my opinion, it has to be taken to the vote of the people. And you've got to get a majority of the vote of the people in the two counties to agree that I want to dissolve my counties. But since that time there's been a tremendous amount of sharing. And let me give you just a couple of examples, there are many, many more. Close to here: York County, Seward County, just last year both of them had an emergency manager. They said we don't need two emergency managers, we only need one; signed an interlocal agreement, they now have one. Veteran's Service Officer in Hall County because of the Veteran's Service Officer for Hall, Howard, Merrick, and Nance counties: four years ago that wasn't the case, there were four Veteran's Service Officers. So counties are looking in innovative ways to come up with that, with that design and to save money and to save those funds day after day. So to say that...we think we are looking at ways; we're looking at everything we can to hold that levy down. The other thing that's a little bit different from counties, and I think some people will wonder, well, we concentrate on this mill levy so much. Well, in counties, the 50 cent mill levy, or the highest we can go, that is set in the constitution, where other taxing entities...the Legislature can come forth and change how far they can levy and move that. Ours is set constitutionally, so when we hit it we can't come back to the Legislature and say help us out. As counties, we would have to take it to the vote of everybody in the state of Nebraska. So we're held to a little higher standard as far as that's concerned. But that's where we're at on this bill. We certainly would appreciate, and we certainly do appreciate, listening to what we have to say about it. We do believe we've been...we believe we've been fair, honest, open in the initial negotiations that happened two years ago. When we bring those figures forward four years from now, and if they show a tremendous increase, and if I'm executive director of the organization at that point in time, I would say yes, we should look at it. But until that time, and we have reliable data, I struggle with that a little bit. Be happy to answer any questions anyone would have. [LB119]

SENATOR DIERKS: Questions for Larry? [LB119]

SENATOR ADAMS: Larry...and you brought up that compromise we came up with, or you folks came up with and we all had an opportunity to vote on a couple of years ago, and if I remember right, the...conceptually, it was...we were at the same crossroads we are right now. On the one hand there's the issue of how much inheritance tax is a reasonable one, and there was also the issue of loss of revenue to counties. And the bargain that we struck was that the Class I was ratcheted back, but we were at this point on the Class II's, thinking to protect immediate family, logically, more than extended. Would you also...and maybe it's just I'm not thinking right...wasn't there, as part of that legislation, some kind of additional enforcement mechanism or something that was intended to enhance the enforcement of the collection process? And what was that, and how has that worked? [LB119]

LARRY DIX: I believe there was, and also, in all fairness, I believe Senator Wightman is the one that mentioned that. And I don't want anybody to walk away and think that Senator Wightman and I are at loggerheads, we work together on many issues. But Senator Wightman did bring that idea forward, and I think he has a couple other ideas on inheritance tax bills that also deal with that enforcement side of it. And I know we had that discussion; I know at that point in time we talked about the Class I's. We moved the threshold, the $10,000 base exemption, up to $40,000 and so that reduced some revenue, if you will. And we left the 1 percent where it was. Even at that point in time, you know...and some people will say well, gosh, 1 percent isn't much and at that point in time, we said well, maybe the 1 percent should be 1.5 percent, and maybe the 2 percent should be 10 percent. And maybe that's the compromise here, too. I don't know that, but that would be something for the Legislature to discuss. But you are right: there was some discussion about it. I think I'll let Senator Wightman address it on his closing; I think that was adopted in with that bill but I can't guarantee it as I sit here. [LB119]

SENATOR DIERKS: Thank you. Other questions? Senator Utter. [LB119]

SENATOR UTTER: Thank you, Senator Dierks. The figures seem to me to be a little hard to come by as to the exact impact of the change in the Class II relatives. And the testimony today seems to be...we seem to be talking about the total estate tax revenues that the counties would get as opposed to what the changes are going to be with regard to just the Class II heirs. Is there any way you can give us any more definitive figures as to exactly what the Class II...the change from 13 percent to 10 percent on just Class II heirs would be? [LB119]

LARRY DIX: Senator Utter, I should have you sitting here in my seat because this is something I wanted to bring out and I didn't. If I take the eight counties that we have here today, and we agree that these are the counties that we used in the initial evaluation, those counties...if I take that current amount and try to extrapolate as to where they would be in the 30 million to the whole state, and to what they would lose with the reduction from 13 percent to 10 percent; in my estimation, on those cases, if you'd expand it to the whole state, there would be a $6.97 million loss. [LB119]

SENATOR UTTER: Statewide. [LB119]

LARRY DIX: Statewide. [LB119]

SENATOR UTTER: So are you...we're dealing with some older figures here in these eight counties, as I understand your testimony. These are like, 2005 figures? [LB119]

LARRY DIX: This was data that we ran around to the counties in...yeah. [LB119]

SENATOR UTTER: So the comparison here on these eight counties...we're comparing the rates that were in effect in 2005 and then kind of extrapolating the change from 10 to 13 percent on the Class II when...or did we apply the new rates with the new 2007 rates? [LB119]

LARRY DIX: Absolutely, the...when you see the column that says "current", that information is based on the new rates. [LB119]

SENATOR UTTER: On the 2007 rates. [LB119]

LARRY DIX: Yes, yes. [LB119]

SENATOR UTTER: And the proposed just takes out the change from 13 percent to 10 percent on the Class II heirs. [LB119]

LARRY DIX: That is right. That is right. [LB119]

SENATOR DIERKS: Other questions? Thank you. You got them answered, Larry. [LB119]

LARRY DIX: Thank you. [LB119]

SENATOR DIERKS: Thank you. Any further opposition to LB119? [LB119]

DENNIS MEYER: Okay, good afternoon, Senator Dierks, members of the Revenue Committee. My name is Dennis Meyer, M-e-y-e-r, and I am the Budget and Fiscal Director for Lancaster County. I think from the county side you guys have heard plenty of discussion today. I just kind of want to make mine kind of short and sweet. We just want to go on record as opposing this bill, and the reason behind that is the possibility of a reduction in revenue. Lancaster County, at this point in time, we dump all of our inheritance tax money right straight into our general fund, so it's really used as property tax relief. So any reduction there, from the Lancaster County side, is all worked out when we sit down to figure out how much are we going to actually levy for our general fund. So from there I'd answer any questions you might have. [LB119]

SENATOR DIERKS: Questions for Dennis? Senator Louden. [LB119]

SENATOR LOUDEN: Yes. How much money do you get from inheritance tax a year, in Lancaster County? [LB119]

DENNIS MEYER: That's a great question, and I think about this every year when I sit down and get into the budgeting process. Inheritance tax is one of those types of revenues that it's extremely tough to budget for. We budget, this last year it was probably about $2.5 million. So if all of a sudden we lost that $2.5 million, which we wouldn't just because of this change, that $2.5 million is probably just about a cent and a half. [LB119]

SENATOR LOUDEN: Okay. And that was with both Classes in your inheritance. You have no idea how much is nephews and nieces, and how much of it is... [LB119]

DENNIS MEYER: I do not know, you know, down to that level. I do not know that. But again, from Lancaster, any reduction in revenue in that general fund will, for the most part, because our property tax is about 50 percent of our revenue, that's about where we would have to go into that for any type of reduction. [LB119]

SENATOR LOUDEN: And you say it would drop...it would raise your mill levy how much? [LB119]

DENNIS MEYER: Well, our whole inheritance tax in our general fund is about a cent and a half. [LB119]

SENATOR LOUDEN: Okay, $2.5 million. And then what do you got to... [LB119]

DENNIS MEYER: But when we also, Senator, get into...I know we can get into it's a very small amount, but when we start talking property taxes, property taxpayers right now don't care a whole lot about whether it's a small amount. You know, we've got organizations breathing down us every day so whether it's four-tenths of a cent or it's a cent and a half, that property tax will be an issue no matter what. [LB119]

SENATOR LOUDEN: What is your mill levy for Lancaster County? [LB119]

DENNIS MEYER: Right now it's 26.83 cents. [LB119]

SENATOR LOUDEN: 26.83? I know, because I pay some property tax in Lancaster County. Do you want to trade rates with Sheridan County? [LB119]

DENNIS MEYER: You know, in a previous life I worked for the State Auditor's office, and I dealt with some of the Sheridan County stuff, so I do know what your levy probably is up there. So no, I do not want to trade you. (Laugh) [LB119]

SENATOR LOUDEN: Okay. The other question then, when you say a cent and a half or so, then what do you have, a $25 billion valuation for Lancaster County? [LB119]

DENNIS MEYER: We are about 19... [LB119]

SENATOR LOUDEN: Okay. [LB119]

DENNIS MEYER: ...is where we're at. [LB119]

SENATOR LOUDEN: And that's where you get your...if it's that much, it would be a cent and a half. [LB119]

DENNIS MEYER: Right. But in Lancaster County we also, you know, because within that 50 cents we do have the ability to allocate out 15 cents to all the fire districts and ag societies and all that. And we do have some districts in Lancaster County that we do allocate the whole 15 cents out to. So when you look at the whole...the big picture, you take the 26.83 plus the 15 cents in some of those districts, and it gets us a lot closer to that 50 cent limit. [LB119]

SENATOR LOUDEN: Well, yeah, but if we're...where we are they don't even... [LB119]

DENNIS MEYER: You don't even allocate out to the rural fire districts. [LB119]

SENATOR LOUDEN: Yeah, there's no 15 cents left, so... [LB119]

DENNIS MEYER: Right, I do understand that; I do understand that also. [LB119]

SENATOR LOUDEN: Okay, thank you for your testimony. [LB119]

DENNIS MEYER: You bet. [LB119]

SENATOR DIERKS: This is opposition. [LB119]

SENATOR CORNETT: Any further questions from the committee? [LB119]

DENNIS MEYER: Okay. [LB119]

SENATOR CORNETT: Seeing none, thank you. [LB119]

DENNIS MEYER: Thanks. [LB119]

SENATOR CORNETT: Any further testifiers in opposition? Seeing none; any testifiers in a neutral capacity? Senator Wightman, you are recognized to close. [LB119]

SENATOR WIGHTMAN: Thank you, Madame Chairman. I want to talk a little bit about the point that Senator Adams raised, which is one of enforceability. That's always been an issue. I practice a lot in this area by the way, probate, and we do a lot of inheritance taxes. I agree with Larry Dix that it is very difficult to get a reading on what the effect is, and the reason is the budget will show how much came in, maybe, from inheritance tax but to find out how much came in from Class II, Class III, or Class I relatives...and he mentioned the clerk of the district court. It's, in fact, the clerk of the county court, but you either have to go to the clerk of the county court or go to every inheritance tax order that is filed with the county treasurer; you have to go one of those two places. You have to go through all of them. You would have to make a calculation of how...that it was Class I, Class II, or Class III beneficiaries, how much came in, and of course the size of the estate is going to make a tremendous difference. Because many times, in quite a number of cases, the $10,000 exemption, or $15,000 exemption in this case, and there where a poor relative might take up the entire estate. So percentages don't work out real easily when you've got all of those factors involved. But the enforceability...let me tell you that there are thousands of people that die annually that would owe an inheritance tax that are not paying inheritance taxes. If you don't own real estate, there's almost no enforceability in place. The reason you have to determine the inheritance tax if you own real estate at the time of your death, the beneficiaries are going to have to have the value established because that becomes a lien against the real estate, and you later can't transfer that real estate without a determination of the tax. But today, and particularly as people live longer, they die in a care home or they die in assisted living, they may not own real estate. Probably, now out in our area of the state...I'm sure in Senator Adams' area of the state, Senator Dierks, most of you I guess sitting on this committee...they would own real estate because real estate is a bigger part of the way of life, probably, out in central Nebraska and in western Nebraska than it is in Omaha and Lincoln. A lot of people would move into an assisted living or a care home; they would have sold their real estate, they don't own real estate. And I would guess that might apply in 90 percent of the deaths in the two metropolitan areas, but probably it's 20 percent of the people, maybe, or 30 percent of the people out in outstate Nebraska. So there's a big difference there. And there is no enforceability except for what we gave them two years ago. You're absolutely right, Senator Adams, what we put in, and probably isn't enough, we put in the bill, the bill that was passed that year, a 5 percent per month penalty, which had never been there before, if they didn't file a proceeding. And that's part of LB120 which I'm going to address in a few minutes; will address maybe some alleviation from that bill. But you ended up at least having something that was at least threatening to people who would maybe not pay that inheritance tax. Now I don't think there's been any effort on the part of the counties, I'm unaware of any in our county and I would guess across the state of Nebraska, to use that. And I'll agree that it would be difficult to use because, again out in central Nebraska when people go to a care home they usually go to a care home maybe in a larger county, a larger city, maybe located 30, 40, 50 miles away and so they aren't even in the county that they've lived in most of their lives. That would be less true in York, would be very true out in Senator Louden's district, probably very true in Senator Dierks's district, that they don't end up in assisted living or a nursing home in the county that they lived in most of their lives. And that's true in Dawson County; a lot of them move out. So that depends a little bit on the county. Not only does it do that, but it switches the county for the inheritance tax. Once they sell the home, they're no longer a resident of the place they lived, maybe, for 70 years. They're a resident, because they have no residence left in the county in which they had lived most of their life, and so they're a resident of the county where they're in the nursing home or an institution of some kind. But more likely a nursing home. So enforceability is a big problem. I really think maybe what we need to look at for enforceability is the possibility of having any financial institution having to make a report to the...wherever it might be, the Tax Commissioner's office, the Department of Revenue, or to a county official one. That's probably what it would take as far as enforceability. But just let me give you an example. If somebody died, and this is not uncommon anymore, they own almost no property anymore, but they might have a $500,000 401K. That's subject to inheritance tax. The tax on that, if it passed to nephews and nieces, could be as high as $120,000, but if somebody doesn't report that or if we don't have an enforcement mechanism in place, that will go untaxed. There will be no county tax on that. There is, and they'd be subject to this 5 percent a month penalty for the first five months, that is all that penalty is in effect. But they're not paying the tax. So the people that own real estate are paying a disproportionately high share of this inheritance tax across the state of Nebraska, because the enforcement mechanism really only applies to them where there's a lien against the real estate. So that is a big issue. It is true that it would be very difficult to really become informed on how much this costs statewide. It would be very difficult, because you would have to go out to the county and if they determine 400 inheritance taxes in the past year, you would have to go through each one of those 400 in that county and have to make a calculation, by yourself, as to what the effects of this change would be. And so I don't know if Mr. Dix's figures are correct or not, they may well be, but it would be a Herculean task to go out and do that in all 93 counties. Now I use 300 or 400 because that might be what Dawson County's is; there are a lot of inheritance tax determinations that are zero, by the way. So that is sort of a problem, but enforceability is a big issue. And so the people who are honest are paying far more inheritance tax to get to these dollars than they would have to pay if there was a mechanism for enforceability. If we're going to have it, it seems to me it ought to be uniformly applied, and there ought to be some sort of method, some sort of mechanism in place to enforce law, which there isn't right now. I'm not saying there isn't, but I really think it would change...take a change in statutes to provide for that enforceability. But having said that I still contend that it is too high. I know that one of the prior testifiers said that they hadn't heard any complaints. Let me assure you as attorneys we hear complaints. And that might be a small part of the reason that I ran for the State Legislature, so that I could address those issues. But I do think they're entitled to be addressed, and it is an issue. Thank you. [LB119]

SENATOR CORNETT: Thank you, Senator Wightman. Questions from the committee? Senator Friend. [LB119]

SENATOR FRIEND: Thank you, Senator Cornett. Senator Wightman, it might not make much of a difference now, but I mean...through...we've all been out in the lobby and we've all...in the heat of battle, especially late in a 90-day session, deals are made, bills are changed. I mean, it happens all the time. I mean, Mr. Dix more or less implied that a deal, and I don't want to put words in his mouth, but he assumed this issue was as least over for a while. I mean, now we have two bills, LB119 and LB120, dealing with inheritance tax provisions. I mean, I'm not looking for a fight here, but I'm trying to figure out...you say the tax is too high. I mean, Mr. Dix understood during negotiations with you and Tom White and everybody else last year, and you still feel, you know, like no matter what happens it was going to be too high, right? Or did you change your mind over the summer and say, you know, I don't care what happened during that negotiation, I'm going to attack this issue again. [LB119]

SENATOR WIGHTMAN: First of all, I think that the...my understanding of what was being done at that time was that this would be immediate legislation. I was not involved. I know they said that it was revenue neutral; I always questioned that. I said I would accept that bill as my priority bill at the present time, but certainly it was no commitment on my part that I would not raise this issue. I'm sure that I told them that I thought that 13 percent was too high, that it was more than revenue neutral--I don't know whether it is or isn't--but there was no commitment on my part that I would not raise this issue in the next session of the Legislature. [LB119]

SENATOR FRIEND: Yeah, well, and Senator, look. I think that that's pertinent. We deal with this stuff all the time, and a lot of folks in the audience, a lot of people outside might not think that's relevant. But the problem is when you get 800 bills in a 90-day session, it does become pertinent. And we can move away from issues like that and start talking about whether the particular piece of legislation drives for tax equity, or if it drives for...you know, if there's another tax that we're trying to cut, when the tax rate is dysfunctional to begin with, it ain't going to matter. So the point is I'm not looking for a he said-he said type of situation to get you guys mad at each other, what I'm trying to figure out is Larry seemed to believe that this was kind of over for a while, so they could analyze the situation and now...and I guess I just wanted your point of view and I think I got it. [LB119]

SENATOR WIGHTMAN: And my point of view is that, that was not my understanding that this was any long term change. I'm not sure I...but what I said that we may very well bring something in the next term to cut that 13 percent rate. I was not a very big part of that conversation, it was Mick Mines that... [LB119]

SENATOR FRIEND: Yeah, and there's a lot of moving parts in those conversations, so. Anyway, thank you. Thank you, Senator. [LB119]

SENATOR CORNETT: Any further questions from the committee? Seeing none, this closes the hearing on LB119. Senator Wightman, you are recognized to open on LB120. [LB119]

SENATOR WIGHTMAN: Madam Chairman Cornett, members of the committee, I'm still John Wightman, spelled J-o-h-n W-i-g-h-t-m-a-n; still representing, I hope, the 36th Legislative District. And what we're going to address is exactly the provision that Senator Adams was visiting about with Larry Dix just a few minutes ago. And that is we provided in there, under 76-2010 of the Nebraska Statutes, it's...now I don't remember the bill number. We stated that for failure to file an appropriate proceeding for the determination of the inheritance tax within 12 months of the date of death of the decedent, there shall be added to the amount owing in the way of inheritance tax a penalty of 5 percent per month up to a maximum of 25 percent of the unpaid inheritance taxes due. If any of you are familiar with the Internal Revenue Service code, that's basically what the law is with regard to failure to file on federal income taxes. And this was all put up as part of that compromise, and this was all put up entirely voluntarily by me because I thought the enforcement was a major problem at that time. And it's come to my attention now, and the bar association has been involved in this and feels strongly that the penalty is not being applied, and it's not being applied as an enforcement measure. But attorneys who, for some reason or other, are a few days late in getting this tax return filed, are now probably paying the 5 percent out of their own pocket, quite frankly. As a matter of fact, we had one come up in which we were late getting the information, the people lived in Arizona, and we were four days late getting it filed. And as most attorneys do in situations like this, they pay the penalty out of their own pocket, what we did in that case. So first of all, I suggest it's not being used as an enforcement measure. It should be being used, and maybe we need something stronger. There are several elements of this bill, but one of them is to provide some alleviation from that penalty provision which, as I say, the people who are trying to avoid it aren't paying the tax and probably never going to an attorney anyway, but the attorneys are ending up paying it out of their own pocket. And I know attorneys don't get a lot of sympathy in a lot of groups so...but we're here asking for a little sympathy but also for our clients as well. So what LB120 would do would clarify, number one, an appropriate proceeding. And when I filed this, I thought it would be clear that if you filed an estate proceeding but you haven't done the inheritance tax, that that is notice at the county that the inheritance tax is due and that would be an appropriate proceeding even though the inheritance tax itself has not been determined yet or even petitioned...filed for. But you've laid yourself in front of a court and all the taxing officials, and you've given notice that there's an estate there, and you've filed an inventory, that that should be an appropriate proceeding that probably should only be subject to the penalty. But the bar association, and I agree with them, think that needs to be clarified that by filing that proceeding, and it's broader than that, but that would be one of the things that would be considered an appropriate proceeding. If you filed a petition for probate, you're in before the court at that point, and you're going to have to determine that inheritance tax and probably...you pay a 14 percent interest penalty on this anyway. So to have the 5 percent per month penalty in addition to that where you've already come in; you've said, we've got an estate here and there is going to have to be an inheritance tax filed, it probably...there ought to be some method of abatement of that. And that would be one of the items covered. So we're asking that that be considered a...one of the items of abatement: for good cause shown, the court would be allowed to abate the penalty separately. So either one of these would avoid the penalty: filing a petition, and also there's a section that you can come in and file for a determination of tentative tax when you don't know the figures. And sometimes after a year you still do not know all of the figures because you may have some contingent claims or something such as that. And so we're asking that all of those be considered a good cause shown, or by law considered an appropriate proceeding, so that you do avoid that penalty. You're still paying the 14 percent interest. The main purpose of the 5 percent per month penalty was to try to put pressure on people, thinking that down the road they might owe a tremendous penalty in addition to the tax. Well, if you've already come in and filed a proceeding of some kind, that's no longer...within the 12-month period...that's no longer a problem. There might be other reasons that a court would think that the penalty should be abated, so that's part of the bill. In addition, we have a provision in there because there has been a question, and it's been applied differently in different counties, by different county judges, and at the request of other county attorneys, so that the expenses relating to taking possession or control of estate assets; and the management, protection, and preservation of the estate during the period of probate; or if it's sold, the expenses of sale; but not expenses in the day-to-day operation, would be considered deductions for purposes of determining the inheritance taxes. And so that's the second part of this statute. The one deals with the penalty, the other one clarifies what the expenses that would be deductible in determination of the inheritance tax. So those are the two issues involved in this...LB120. And I know there will be other speakers on this issue; at least one, maybe more. Any questions? [LB120]

SENATOR CORNETT: Senator Adams. [LB120]

SENATOR ADAMS: Just as a matter of clarification, Senator Wightman, so what you're saying in this second section is that if you are handling an estate during that period of probate, assuming that the court had been notified of the action, the property had not been immediately transferred or sold, and there are some ongoing operating costs of this property, or whatever those may be, those would be deducted, then, from the final inheritance tax calculation. [LB120]

SENATOR WIGHTMAN: Right, they could be. They would be, under this. I assume there are still going to be questions of interpretation even under this, perhaps. But also, that the sale expenses would be deducted; I think they usually, probably have been, but I think there have been some counties that have denied them that expense item in then selling the real estate. For example, real estate commissions, which could be a very big item. I've got to give you an example, the one that may not be covered here, and probably if I had been initially involved in the drafting of this bill and thought as much as I thought through just in the last few minutes, I probably would have also included, and that is, we've always had a problem on accrued real estate taxes. And if any of you have dealt in real estate, you may know that taxes are considered to be a lien on December 31, but if you sell that house, you would prorate those real estate taxes. And I don't think the bill addresses this, but it perhaps should have. And I'm not asking you to change it, but it's the type of thing that still might come up. For example, if you owned that house, because real estate taxes are always assessed in arrears, your 2008 taxes are due on December 31, 2008. If you die before December 31, 2008, you would have to pay those taxes just under the proration method that all real estate transactions are closed under. So let's say you had $3,000 of real estate taxes on a house or on a farm, either one; you sold it and the closing date was December 1. On a farm, you would pay all of those real estate taxes because you had the 2008 crop. On a house, you would pay eleven-twelfth of those taxes because somebody else still had the right to live in the house for the last month of that year. So you wouldn't pay all of them; they do prorate real estate taxes. It's an example of one that could, perhaps, be an issue but I don't think it's addressed by this section. But you've not been entitled, I guess what I should go on to say, is you've not been entitled to take that, I don't think, under any rules, federal...estate tax didn't allow you to take that deduction even though if you would have sold the house you would have had that many less dollars when you closed the sale. [LB120]

SENATOR CORNETT: Senator Louden. [LB120]

SENATOR LOUDEN: Thank you, Senator Cornett. Senator Wightman, on this same section here as I read it through, expenses related to the...you know, running the estate, but not expenses related to the day-to-day operation and continuation of business interests which have not accrued as a result of the death of the defendant. What kind of business things wouldn't have accrued if the guy's dead? I guess if...say it's a farmer that has got a crop in the field that dies, or if it's a rancher with a bunch of cattle, and somebody has to operate that thing until the crops are in and that sort of thing. Is that what that's talking about, those expenses? [LB120]

SENATOR WIGHTMAN: I think your question was, which one wouldn't have accrued on the date of death? That farm may be operated for a year, following the date of death, before its sale or before the estate is closed. Those are going to be offset by income items that also weren't recognized. So they wouldn't have been accrued on the date of death. But on the other hand, if you had a bill or you had entered into a contract, maybe, to do some well repair or whatever it might be, that had accrued on the date of death. Maybe you had a bill that was unpaid. You probably would have been allowed to take that, but I think there has been a difference in some county courts as to whether that was going to be allowable. [LB120]

SENATOR LOUDEN: Okay, let me get this straight then. Say it was a farmer died with a field of corn there, and he died in August, so somebody's going to have to go ahead and take that crop on through until it's harvested and that sort of thing. And in the meantime, his irrigation well fizzles out and there's got to be somebody coming in there, say in the middle of September, and patch it up a little bit or something like that. Or the combine he owns needs some repair work done on it. Those expenses wouldn't be part of the expenses against the estate? [LB120]

SENATOR WIGHTMAN: I think if a combine needs repairs, it probably is; it would have accrued on the date of death. On the other hand, if you've got harvesting expenses you don't have to value that crop, what the harvested value is, you value it as a standing crop out in the field, and so you're going to have additional income as that crop is harvested, and it's going to be higher than what you valued it at in the estate. [LB120]

SENATOR LOUDEN: Okay, then that expenses would come out of that additional income? [LB120]

SENATOR WIGHTMAN: The harvesting would probably not. [LB120]

SENATOR LOUDEN: Okay. [LB120]

SENATOR WIGHTMAN: But the necessity of repair probably was accrued on the date of death. I thought...maybe it's indicative of the kind of questions that may still arrive under this. But the repairs that needed to be done that accrued on the date of death and probably again, it might depend upon how you valued the combine: whether you valued it as a combine that needed repaired, or... [LB120]

SENATOR LOUDEN: Well, I've seen some of these estates where they would operate these ranches, I don't know about farms, but I've seen them operate ranches for two or three years before they finally settled up the estate. I mean, they started the process but it was a period of time before it was settled. And I wondered how those expenses are taken care of. Are they...any income is added to the estate, but any expenses are deducted from. [LB120]

SENATOR WIGHTMAN: No, the income is not added to the estate. You value the assets as of the date of death. This income that it produces for the next three years is not part of the assets of the estate, and that's why the ongoing expenses would not be, because it really is how you acquired the income. And it would be subject to income taxes, but not subject to the inheritance taxes. [LB120]

SENATOR LOUDEN: Okay, thank you. [LB120]

SENATOR CORNETT: Any further questions from the committee? Seeing none, thank you, Senator Wightman. [LB120]

SENATOR WIGHTMAN: Thank you. [LB120]

SENATOR CORNETT: We'll open the hearing for proponents. [LB120]

SUSAN SPAHN: Hello again, I'm Susan Spahn, S-p-a-h-n. And this time I am testifying on behalf of the Nebraska State Bar Association. I am a member of the legislative committee and also the House of Delegates; I'm serving my second term on the House. And I was asked to come today to speak about the reasons and the concepts behind LB120, and why we think they are simply clarification and hopefully to get some consistency between the counties so attorneys practicing...well, actually everybody--if you're in one county the other county is doing things substantially the same way. On the one issue that is brought up in LB120 is to clarify what prevents the penalty from accruing. We had...when the attorneys got back and we were so excited to see the $10,000 exemption go up to $40,000, it took us a while before we saw the penalty. It's kind of like you get the carrot, and you don't see the pill that's underneath there. And the 5 percent penalty did concern us, because the one thing about the inheritance tax and its determination is sometimes things happen beyond our control. I actually had a county attorney lose my inheritance tax worksheet. Because I have to have my client sign the worksheet and then I have to send that to every county attorney where there is tax being assessed in that county. He swore he sent it back to me, and then I had to regenerate a complete new worksheet. And then, oops, he found it. That set me back a month because I waited, you know, a reasonable amount of time for him to respond. By the time we finally tracked it down, there was a month that I lost where I could have triggered this 5 percent penalty. The inheritance tax is one of the few taxes that you actually do have to go through a court procedure to have your tax appropriately paid. The clarification here and the reasons for the changes, is so that when you...if you file any type of petition that puts the court and the county on notice that there is inheritance tax going to be determined and paid here, that there is no reason, then, to assess the 5 percent penalty. Because they have come forward to admit that there is tax going to be paid. And that was the purpose, initially, for the penalty to be assessed is to penalize those people that were trying to get around paying this tax. Also, the 14 percent interest rate is already punitive. The income tax interest rates that they charge for nonpayment of tax are much lower than 14 percent. The only other tax that I'm aware of that carries the 14 percent penalty for nonpayment is the real estate tax. But once again, you don't have any penalty associated for payment of real estate taxes late; you just pay 14 percent interest. The penalty is kind of included in the tax. So we believe that the changes here, on behalf of the NSBA and the people out there in the trenches dealing with the inheritance tax issues, is simply clarifying the situation where there is going to be a penalty assessed. And making the people that are honest and are intending to pay the tax simply pay the 14 percent tax if they might be a little late in getting that tax paid, and not the additional penalty of the 5 percent. In regards to the other change, that is, clarifying or expanding the definition of the types of expenses that could be taken as deductions on the inheritance tax, that initially was brought up in response to a Nebraska Supreme Court opinion that came down last year, and I can't remember the name of it. But in that case, the decedent's will--it was a farmer or rancher--in his will, he provided for his farm operation to continue for 10 years following his death. And that's pretty unique; where I've never written a will like that in my life, and I wouldn't want to do that. But it...in it, it involved whether or not those continuing expenses were claims that required claims to be filed in the probate proceeding, or were they administration expenses for which claims were not required. You know, people providing fertilizer in the third year, they...the court held...they had to file claims, because within four months of the accruing of that debt, in order to be a valid probate expense. So that case made us take a second look at, we need to clarify what types of expenses are administration expenses. And there is a bill pending in front of Judiciary Committee on that issue. This is kind of related in the clarified...if they are kind of looking at what are administration expenses, we wanted some consistency here as to what could be deductible. And I'll give you a couple of examples to show the difference between protecting and preserving, and then ongoing expenses that can be incurred in the estate administration process. If mom dies and she lived in her own home, and she was a smoker; never updated her home for 40 years. She dies. The kids, the estate personal representative has a problem: do the kids want to just sell the house as it is? Or do they want to put some money into it to try to get the best price they can for that house that goes on the market? Most of the times, they're going to want to do some painting, do some improving, and then the house is going to sell for a greater price because of those post-death improvements that they've made. They're going to get a higher price than even probably the assessed value, hopefully; today, I don't know. But they'll try to make some post-death improvements to gain a higher value. Now if it sells within a year of death, we are going to include or take that sales price as the date of death value. So therefore, if expenses were incurred to get it up to that...the value that it could bring that dollar in, then in makes sense that we should also be able to take those expenses off on the sales price to determine net value of the property. After mom dies, the house is sitting there vacant. Insurance rates go up for vacant property; you have to let your insurance carrier know that there is no one living in the house. You have insurance costs to protect and preserve the house; you have utilities to pay so that the pipes don't freeze. There are expenses that occur in that post-death time period when we don't know what is going to happen to the house. The house is still an estate asset that the personal representative is responsible for. Those expenses are estate expenses that need to be paid to protect and preserve that estate property, until it can be deeded out to whomever is entitled to receive it, or sold with the proceeds distributed out to the beneficiaries. If there's a farming operation and the farming operation continues for two or three years following the death, it doesn't make sense to take the fertilizer that you paid in that second year as a deduction of the date of death values of that farm. Because the purpose of inheritance tax is to tax the net value as of the date of death. If you have expenses that you're incurring that are generating income, then those aren't proper to be deducted against the inheritance tax. Because we're trying to just determine net value, and let administration expenses come off of the net value, to tax what ultimately should go into the beneficiaries...what they ultimately receive in their hand. Does that make sense? I hope... [LB120]

_________: A little bit. [LB120]

SUSAN SPAHN: Okay. It is kind of a fine line, and sometimes there is a little bit of gray area, but then that's something that when you sit down with the county attorney to review the inheritance tax worksheet, you can talk that out with them and get a feeling for what they want and what they will agree to. For example, most county attorneys will agree that utilities for one year on a house is reasonable estate expense. And so you just kind of build a relationship and you get to know what your county attorneys will allow. And this is kind of trying to clarify that the ongoing expenses that are just generating income, those aren't really needed to protect and preserve the assets. They don't diminish the value of the estate assets, and that's what we're trying to prove...tax is the date of death value, the net value. [LB120]

SENATOR CORNETT: Any questions from the committee? Seeing none, thank you. [LB120]

SUSAN SPAHN: Okay, thanks. [LB120]

SENATOR CORNETT: Next proponent? Are there any opponents? Is there anyone here to testify in a neutral capacity? Just to clarify, you are here in a neutral capacity? [LB120]

JON EDWARDS: In a neutral capacity. [LB120]

SENATOR CORNETT: Okay. [LB120]

JON EDWARDS: Senators, good afternoon. My name is Jon Edwards, J-o-n E-d-w-a-r-d-s. I am here today on behalf of the Nebraska Association of County

Officials, and we are here today in a neutral capacity on LB120. And certainly we would like to thank Senator Wightman for the work he has done in the last couple of years in trying to clarify some of the issues, and dealing with the technicalities of determining inheritance tax and collection, and those types of things, so. We just wanted to be on record in a neutral capacity on this bill, so. [LB120]

SENATOR CORNETT: Thank you very much. Any questions from the committee? Seeing none, thank you. Senator Wightman, you are recognized to close. [LB120]

SENATOR WIGHTMAN: I'll waive closing. [LB120]

SENATOR CORNETT: Thank you. That closes the hearing on LB120. [LB120]

SENATOR DIERKS: Welcome to the committee, Senator Cornett. [LB89]

SENATOR CORNETT: Thank you, Senator Dierks. [LB89]

SENATOR DIERKS: You're welcome to go ahead when you're ready. [LB89]

SENATOR CORNETT: Good afternoon, members of the Revenue Committee. My name is Abbie Cornett, and I represent the 45th Legislative District, and I'm here to introduce LB89. LB89 is a bill addressing excise tax on tobacco products, not including cigarettes. The main product we are talking about is moist, smokeless tobacco. This bill is about tax equity. It would place the tax on these products equally based on weight, and not wholesale price as currently done. This will eliminate some marketing practices by companies that resulted in less tax being collected. This provides a more stable and predictable revenue stream to the state. This method of taxing on a unit basis is similar to what we currently do on beer, cigarettes, and fuel. Again, this is changing the excise tax, not the sales tax. There will still be cheap and expensive products. There are experts following me that can explain the taxing issue in more detail. To let the committee know, I will be offering an amendment to this bill. We discovered that the creation...this bill created two categories of smoking tobacco and tobacco products, has resulted in a disproportionate increase in tax on certain tobacco products. Because of the focus of this legislation, it's always been about snuff products; the amendment will retain the current law defining tobacco products and distinguish only then snuff for the specific tax treatment based on weight. Thank you for your time and consideration on LB89. [LB89]

SENATOR DIERKS: Thank you, are there questions for Senator Cornett? I think not. Thank you, Senator. Proponents of LB89, please. [LB89]

WALTER RADCLIFFE: Senator Dierks, and members of the committee, my name is Walter Radcliffe, R-a-d-c-l-i-f-f-e. I'm appearing before you today as a registered lobbyist on behalf of UST Public Affairs, Inc.--UST is U.S. Tobacco--in support of LB89. This is the classic case of the third time, I hope, will be the charm. And Senator Cornett has very succinctly and accurately stated the intent of LB89 which is to, in essence, move...not in essence, in fact, move to a weight-based tax on moist snuff, as opposed to the current ad valorem tax. Bob Shepherd, who has testified before this committee before, will follow me. He really is an expert in the area of taxation and this issue and will explain that to you. But what I wanted to address is a little bit of the history of this bill, which I frankly think most of you are aware of, or have tried to make most of you aware of it. Two years ago, LB106 was introduced, and on the floor...it was introduced by Senator Engel...and on the floor, Senator Chambers allowed the bill to advance only if an amendment was agreed to which would have placed a significant tax increase in effect. We agreed to that; the bill was passed, and Governor Heineman vetoed it. In his veto letter to the Legislature, the Governor stated that: as advanced by the Revenue Committee, LB106 would have provided for the equitable treatment of tobacco products; I could have supported the bill in that form. So the bill that you have before you is that bill as it advanced from committee. Last year we ran out of time and didn't get to a bill. The amendment that Senator Cornett offers is one which we would certainly have no objection to. It simply makes the bill apply to moist snuff, period. It doesn't apply to anything else, any loose-leaf products or anything. I have one other thing that I do want to say. Kathy...I'm not testifying on her behalf, but Kathy Siefken had to leave, she's with the Grocers Association, and she wanted me to relate that...I don't expect this to reflect her testimony but I just wanted to reflect our conversation...that she said with the amendment that Senator Cornett's offering, the grocers would have no objection to the bill. And in fact, the record will reflect they originally supported LB106 as it was introduced two years ago. I think the history is important because most all of you, with the exception of Senator Utter and Senator Hadley, who's not here, went through that. And I know there's some parts of it that you'll remember and some parts that you won't. So that's why I did want to explain that. And Senator Cornett, excuse me, Senator Dierks, I'd be happy to answer any questions that you might have. [LB89]

SENATOR CORNETT: Any questions from the committee? Seeing none, thank you, Mr. Radcliffe. [LB89]

WALTER RADCLIFFE: Thank you, Senator. [LB89]

SENATOR CORNETT: Next proponent. [LB89]

ROBERT SHEPHERD: (Exhibit 3) Madam Chair and members of the committee, my name is Robert Shepherd, R-o-b-e-r-t S-h-e-p-h-e-r-d. I am here testifying in support of LB89. I'm testifying on behalf of UST Public Affairs, the government relations arm of U.S. Smokeless Tobacco. Very briefly, let me introduce my background; I know some of you have heard me testify before, others have not. I spent most of my working life working for New York state government. I was a police officer for seven years; I was a prosecutor in New York City for seven years; and for 11 years I was the deputy commissioner at the New York state tax department. Tobacco taxes, regulation, licensing, smuggling, and the effects of taxation were a very large part of my responsibilities. I left government about 11 years ago, and have been practicing almost exclusively in the excise tax area, and particularly in the tobacco area, working for and advising manufacturers, distributors, and retailers. For a time, I was the executive director of the Wholesale Association in the New England states; not today, but for a while. So I'm very familiar with the area. First of all, let me take up a point that Senator Cornett introduced, that this is only talking about the excise tax. Just the excise tax. It does not include the sales tax at all. A lot of times this issue gets very, very confused with sales tax philosophy versus excise tax, so I wanted to bring that up right up front. Although we're not talking about cigarettes, we'd like to change the method of taxation to be similar to cigarettes, so I'm going to start out with explaining it with cigarettes. With cigarettes, you have a premium brand, a mid-price brand, and a low-grade brand--or a cheaper brand. The quality on all these is different; the selling price is all different. But the one thing that they have in common is the excise tax; in Nebraska it is presently 64 cents a pack. There's 20 cigarettes in each pack; 64 cents for each one, no matter whether it's premium, mid-grade, or low-grade product. What LB89 does is it takes moist, smokeless tobacco, and that means basically these round cans, and it taxes them very similar to the way cigarettes are taxed, by a unit or a weight of measure. Nebraska first taxed OTP, or everything other than cigarettes, in 1988. And when you put the tax on it, you did it at a rate of 15 percent of the wholesale price. Now the reason that you did it, and it was absolutely the right thing to do in 1988, the reason you did it is because the OTP category is very, very large. It includes these round cans of moist, smokeless tobacco and it's probably, in Nebraska, about 65 percent of the market other than cigarettes, is these round cans. It includes that, it includes cigars, it includes the pouches of loose-leaf chew like Beech Nut and Mail Pouch; it includes everything. The one thing that they have in common was a wholesale price. And no matter who makes any particular product, the selling price was pretty much the same. So at the end of the day, everybody paid the same amount of tax. All the round cans paid the same amount of tax; all the pouches of chewing tobacco paid roughly the same amount of tax; and that's why just about all of the states put the tax on it at an ad valorem basis. That system worked very well in 1988. It also worked very well in 2002 when you changed the rate from 15 percent to 20 percent. The system was still working, and the ad valorem system was still working very well then. What happened was, in 1994, this brand was introduced onto the market and it was sold at a lower wholesale price. Because the wholesale price was lower, the excise tax associated with it was lower, and it made it even less expensive than it would have been otherwise. When industry realized that dynamic between the excise tax and the wholesale selling price, when that existed, what they did was they then introduced, about five years later in 2000, what we now call a Tier 3 product. So this ends up being analogous to cigarettes where you have a very low-expensive product, Tier 3 which we call it; Tier 2, or mid-grade; or Tier 1, which is a premium product. The striking difference is, because cigarettes are taxed by the pack and they're taxed equally, these right now are taxed very differently. This is a wholesale selling price of $3.11, and the state of Nebraska gets 62 cents in excise tax for this can. This can weighs exactly the same as 1.2 ounces of cigarettes and has a wholesale price of $1.35, and the state gets 27 cents. This one, which is also 1.2 ounces of snuff, has a wholesale price of 98 cents and brings in 20 cents in excise tax. This was not the case in 1988. It was not the case in 2002. But it is the case now. You've got... and I only have three examples to show you: there are, in fact, 15 different price points from the high-end to the low-end. That means 15 different price points that your Department of Revenue has to go after if they want to do an audit on these. Audits on cigarettes become very easy because the tax is flat; it's by the pack. Audits of OTP products are very, very difficult because you have to track a lot of different prices and make sure that they were all properly reported. This is a growing part of the market. Although cigarettes are declining nationally, at around 2 to 3 percent a year, the moist, smokeless tobacco market is growing across the country and in the state of Nebraska. We anticipate that it grows probably about 4 percent a year; across the country it's about 8 percent a year. So what happens is, you're selling more cans every year. And because you're selling more cans every year, your finite dollar collections go up every year. When dollar collections go up every year, nobody realizes it's a problem. But it is a problem, because people have been downtrading towards cheaper products. In today's economy, especially, people are looking for cheaper products. They're looking to conserve. And when they downtrade to lower-priced tobacco, your tax base becomes eroded. What's happened is then, in the last five years...well, right now, I think 43 percent of your sales in Nebraska are Tier 2 and Tier 3; they're paying less than the top amount. Only 57 percent are now paying the top amount. Sooner or later, you're going to join a number of states which have crossed over and they're actually selling more cans but bringing in less dollars. In fact, the actual cents per can, the weighted average cents per can in Nebraska has been dropping since 2004. Up to 2004, the ad valorem system was basically working. There were little bumps here and there, but up until that point, that was sort of the place...the straw that broke the camel's back across the country. And that's the point at which states started bringing in less tax per can. You've been in that situation since 2004; now is the time to correct it. You don't want to get into any more problems than you already have. It's not a case of...one of the things that you'll hear is, well, the ad valorem system is working because as prices go up, your tax revenues go up. That's the way the system is designed to work, but it doesn't work that way anymore. In fact, half of the companies have actually cut their prices. When they cut their prices on snuff at the wholesale level, they also cut the price of the tax that's associated with it. If there's a price cut in cigarettes, you don't feel any glitch on that at all because the tax remains the same. But the tax does change on this. In fact, one of the brands cut their price by a dollar a can. When they did that, they cut the tax by 20 cents for that can. Now, you may hear that, well, prices are going back up. A few prices are going up in the low-end category. And when they go up and you get three cents, how does that make up for the 17 cents that you're still in the hole because they took 20 cents away two years ago? That's the problem with the ad valorem system. That's the problem that needs to be corrected; that's the problem that LB89 does. I urge you to vote favorably, as this committee has before, in passing LB89. I will be more than happy to answer any questions. [LB89]

SENATOR CORNETT: Just so I'm clear on this: one of the companies cut their prices by a dollar a can... [LB89]

ROBERT SHEPHERD: Correct. [LB89]

SENATOR CORNETT: ...to reduce the price of tax they would pay. [LB89]

ROBERT SHEPHERD: By 20 percent of that dollar. [LB89]

SENATOR CORNETT: By 20 percent of that dollar; so in the end, they were actually making more money by lowering their prices. [LB89]

ROBERT SHEPHERD: Well, they lowered their... [LB89]

SENATOR CORNETT: They paid...had to pay less tax. [LB89]

ROBERT SHEPHERD: They lowered their wholesale price; there was less tax associated with that brand. Now, they also lowered the selling price to the consumer... [LB89]

SENATOR CORNETT: Um-hum. [LB89]

ROBERT SHEPHERD: ...so they passed some of that along. But the state ended up getting 20 cents less on that brand. Now I would also point out that the premium brands, this particular brand and the premium brand that my company makes, has not raised the price in...for the company I represent, three years; in the case of this product, two years. It used to be that prices rose almost automatically; you could almost set your watch by the automatic price increases. But that just doesn't happen anymore in today's market dynamic. [LB89]

SENATOR CORNETT: Thank you. Any questions from the committee? Senator Utter. [LB89]

SENATOR UTTER: Thank you, Senator Cornett. Now, I'm not very knowledgeable about smokeless tobaccos, actually, since I got sick...that seemed like another century ago. But I...and I don't know, are some of the...are there chewing products that aren't considered moist? [LB89]

ROBERT SHEPHERD: Well, when we talk about moist, smokeless tobacco, that's basically these round cans. If I was to open this up, it would look like very finely ground, dark brown tobacco, and it's wet. [LB89]

SENATOR UTTER: I think I got sick on Beech Nut: is that still made? (Laughter) [LB89]

ROBERT SHEPHERD: Oh yes, oh yes, it is. [LB89]

SENATOR UTTER: And is that considered a moist tobacco? [LB89]

ROBERT SHEPHERD: No, that's considered a chewing tobacco. And that's what the amendment is going to take out of the bill. The bill that's in front of you right now includes that: that's called chewing tobacco. What it looks like, to be very, very, I guess, candid about it, it looks like a sandwich bag, and inside it looks like there are moist, dark brown lettuce leaves. But it's tobacco. [LB89]

SENATOR UTTER: What's the taxing picture on that? [LB89]

ROBERT SHEPHERD: The tax, right now, is 20 percent of the wholesale price. And after the amendment that the senator is going to offer, that would remain 20 percent of the wholesale price. The companies that make that product sell them pretty close to one another on the wholesale market, so that's not a problem. That's not what has been going on with this category. So with the amendment, that won't change. And that's not affecting revenues very drastically. [LB89]

SENATOR UTTER: And I know this is probably not germane, but the cigar-cigarette comparison, can you just briefly tell me, if this is... [LB89]

ROBERT SHEPHERD: You mean the little cigars? [LB89]

SENATOR UTTER: I don't care. [LB89]

ROBERT SHEPHERD: Okay, well there's big cigars and little cigars. Big cigars are the stogies that you're more familiar with; little cigars resemble a cigarette, they look like a cigarette, but they are not cigarettes because they don't meet the legal definition. Those little cigars and the big cigars are still taxed, would still be taxed, at 20 percent of the wholesale price just like they are today. [LB89]

SENATOR UTTER: Thank you. [LB89]

SENATOR CORNETT: Senator Dierks. [LB89]

SENATOR DIERKS: Why are the distributors sending me all these letters in opposition to the bill; is there something in there that's going to take money away from them?

[LB89]

ROBERT SHEPHERD: It's possible that they haven't been explained...that nobody's explained everything that there is to go with that. Fourteen states, plus the federal government, tax this product by weight. Two of those states always did it that way, in Alabama and Arizona. The other 12 have just switched over, including your neighbor Iowa which did it about two years ago, and North Dakota, which is pretty close to you, which did it a few months ago...or a few years ago, before that. Those distributors switched over, had no problems whatsoever; the system is working very, very well. Some of those distributors are only based in that state, and some sell into states that are ad valorem as well as weight-based. Distributors have not had a problem with it across the country. I really don't understand why distributors in Nebraska would be handicapped and not...except that they probably haven't been told exactly how it works and how it works for them. One of the things that distributors...because I used to represent them...have difficulties with is the promotional packs and special deals. If everything is just one price and the price doesn't change, that makes your tax reporting a little bit easier. But if half of your month was at one price and the other half of a month was at another price, you have to make sure that you account for that. The other difficulty that you run into are these two-for-one promotional packs. And I know that two-for-ones and buy-one-get-one-frees are illegal in Nebraska, but the way they can get around it is...this particular deal, buy one get one free, is illegal in Nebraska--you can't give away a free product. So what they call it is a value pack, or two cans for a special low price. Want to guess what the special low price is? It's that same as one pack. It's just the way of getting around it. Well, a distributor has to now count out this particular thing; he can't just go down his invoice and go: Silver Creek, Silver Creek, Silver Creek. Was it a special two-can pack of Silver Creek? Was it a single can of Silver Creek? He has to take all of those off on the side and that makes it complicated, under the current system. Under the new system, under a weight-based system, it's very easy: how many cans were there? I don't care if they're two-for-ones or singles or anything else; it makes it...it actually makes it easier. It makes it very easy for the Revenue Department to do audits as well. [LB89]

SENATOR DIERKS: Thank you. [LB89]

SENATOR CORNETT: Senator Friend. [LB89]

SENATOR FRIEND: Thank you, Madame Chair. Mr. Shepherd...did I get that right? [LB89]

ROBERT SHEPHERD: Yes. [LB89]

SENATOR FRIEND: If I were to walk in and buy a premium...you had the Kodiak up there...or I were to buy a Copenhagen or something of that nature; and then let's say under Nebraska law, the way we have the tax structure set up now, and I was paying six bucks for a can: the excise tax on that is 65 cents. What would be the wholesale price? [LB89]

ROBERT SHEPHERD: The wholesale price on this can is $3.11. [LB89]

SENATOR FRIEND: I know you said that. Okay, $3.11. Okay, so let's say this law goes into effect, and in my reading, it would make everything...it would make the excise tax 65 cents per ounce on every one of the cans sitting on that table in front of you. [LB89]

ROBERT SHEPHERD: Yes. [LB89]

SENATOR FRIEND: Now, does Lone Wolf or Longhorn or whatever... [LB89]

ROBERT SHEPHERD: Timber Wolf and Longhorn. [LB89]

SENATOR FRIEND: ...do they still have a competitive advantage? [LB89]

ROBERT SHEPHERD: Absolutely. Absolutely. [LB89]

SENATOR FRIEND: Money..."pricewise"? [LB89]

ROBERT SHEPHERD: Absolutely. [LB89]

SENATOR FRIEND: I'm still going to pay... [LB89]

ROBERT SHEPHERD: It's still going to cost twice as much to buy this one. This is going to pay...instead of paying 27 cents, it's going to pay the same as everybody. This will still cost $5.00 under the new law; this will end up costing about $3.00. [LB89]

SENATOR FRIEND: And right now I could probably get a can of Lone Wolf or whatever... [LB89]

ROBERT SHEPHERD: Right now this is $2.41... [LB89]

SENATOR FRIEND: Timber Wolf. [LB89]

ROBERT SHEPHERD: ...out near the airport, this sells...I'm sorry; Longhorn sells for $2.41, this sells for $2.56, this sells for $5.00 in Lincoln today, or yesterday. [LB89]

SENATOR FRIEND: Okay, and... [LB89]

ROBERT SHEPHERD: And when this...if this bill goes through, this will be $5.00, this will be $3.00, this will probably be about $3.50. So there's still a competitive advantage. [LB89]

SENATOR FRIEND: Now do you expect a reaction...I guess the reaction will be that Longhorn will say, all right, fine. In the end they'll say, we'll just lower our wholesale price again because we...quantity is going to be more important to us now; we just need to sell more. I mean, would that be the marketing guess? [LB89]

ROBERT SHEPHERD: Well, they can do that if they choose, but they don't need to because they'll still maintain a competitive advantage, being $2.00, or almost half the price of the premium brand. [LB89]

SENATOR FRIEND: Yeah, and I guess my point is... [LB89]

ROBERT SHEPHERD: But they can cut it, they can raise it, they could do whatever they want with it. [LB89]

SENATOR FRIEND: You get a crew of workers, you know, roofers in and they buy Longhorn and they work all day long, and five weeks from now they go to try to buy Longhorn again and guess what? Tom White, and Mike Friend, and Abbie Cornett, and Greg Adams, and the rest of the Legislature are a bunch of jerks. Look, I don't care, maybe we are, (Laughter) but the bottom line is they see this...they're going to see this a certain way. I mean, the Legislature did it to them, so. I'm assuming you wouldn't be upset if we dropped the excise tax to a (inaudible)... [LB89]

ROBERT SHEPHERD: You're free to do whatever you want, Senator (laugh). [LB89]

SENATOR FRIEND: Okay. [LB89]

ROBERT SHEPHERD: What companies also do in order to get people, you know, to be a loyal customer is to offer the promotions; you know, two cans for a low price or two cans for a dollar off. They'll do that type of thing to help out just the consumer that you're talking about. But the lower priced brands in the 14 states that have changed over, or the 12 that have changed over, these brands still remain very robust; they still continue to gain market share; they're not put out of business. People stood by them. The category still grows at a rate of sometimes even higher than they were under the old system. So it doesn't have an impact on the market. It does have an impact on revenues. [LB89]

SENATOR FRIEND: Okay, thanks. [LB89]

SENATOR CORNETT: Senator Louden. [LB89]

SENATOR LOUDEN: Thank you, Senator Cornett. Thank you, Senator Friend, for the self-evaluation of the committee. (Laughter) [LB89]

SENATOR CORNETT: And your...comments on your colleagues. (Laugh) [LB89]

SENATOR LOUDEN: What...do all three of those cans have the same amount inside of them? [LB89]

ROBERT SHEPHERD: Yes, Senator, they're all 1.2 ounces. [LB89]

SENATOR LOUDEN: I see. Well then, how come one of them sells for three bucks and the other one sells for five, or whatever you said it is? [LB89]

ROBERT SHEPHERD: Basically, quality. The same way cigarettes all have 20 cigarettes in them but this one sells for more than this one, and both of those sell for more than this one; it's quality. On a tobacco plant, which probably stands about five and a half feet tall, the leaves up at the top are the most potent, the most flavorful, the softest...the quality leaves. They go into premium product. It's also a matter of aging and processing. Premium cigarettes, as well as premium snuff, probably takes about four to five years from the time it's harvested to the time it's ready for the consumer. The mid-grade product is from the middle of the tobacco plant: it doesn't get as much sun, doesn't get as much water, it's not processed or aged as long; the quality is different. The lower-grade product is usually the lower-grade leaves: they get a little more fertilizer, a little less sun and water, and they're not processed as long. So it's a quality difference. I'm not a consumer of the product, but those that are can tell a very strong taste difference from premium to mid-grade to low-grade. [LB89]

SENATOR LOUDEN: Is the nicotine content in all of them all the same, or is there a difference in nicotine content of the product? [LB89]

ROBERT SHEPHERD: Again, I'm not a consumer. I don't know what the result is. I know that nicotine is a natural ingredient to tobacco; it just grows in it, and whatever is there is there. And you know, we don't...nobody processes it that way. They age it, but it's not processed. [LB89]

SENATOR LOUDEN: Now how much of that is promotion, when you have a different increase in price? I mean, is it like whether there's different kinds of beer and it's all beer; a lot of it's all how it's advertised and promoted. Is...how many of those three you got in front of you, are they owned by different corporations or are they owned by the same companies? [LB89]

ROBERT SHEPHERD: These two that I'm using as an example are owned by the same company, Swedish Match, which is the world's largest manufacturer of moist smokeless...they sell in about 130 different countries. In the United States, they're about number three market share. This particular brand is made by Conwood. Conwood is owned by R.J. Reynolds. In the United States, it's probably about the number two selling company of all. They have product in premium, mid-grade, and low-grade product. The company that I represent, U.S. Smokeless Tobacco, is best known as Skoal and Copenhagen, although we have products in the Tier 2--Red Seal, and Tier 3--Husky brands. But we're best known for premium products, Skoal and Copenhagen. And U.S. Smokeless Tobacco is the largest market share. The fourth company which I believe you'll be hearing from is called Swisher. Swisher is the world's largest cigar company, but they have product...I don't believe they have any premium product; their product is Tier 2 and Tier 3. And they have the smallest share of the four; they have the smallest market share in the United States right now. [LB89]

SENATOR LOUDEN: Is...none of those is Skoal or Copenhagen, are they, those cans there? [LB89]

ROBERT SHEPHERD: No. I have some in my bag if you'd like to see some. [LB89]

SENATOR LOUDEN: No, that's okay. I don't need any right now. [LB89]

ROBERT SHEPHERD: I use this as an example of premium because this is the most expensive one on the market. Skoal and Copenhagen have a wholesale price of $3.01, and that hasn't changed for the last three years. I use this one because this is the most expensive one, and that's why I use that particular one as an example of the premium product. [LB89]

SENATOR LOUDEN: Okay, then it's all in the quality...quality of the product is what they...and you would like to see a tax on the...the same amount of tax no matter what the quality of the product is? [LB89]

ROBERT SHEPHERD: Just like with cigarettes; just like with beer; just like with wine. Just like with the other excise taxes. [LB89]

SENATOR LOUDEN: Okay, thank you. [LB89]

SENATOR CORNETT: Any other questions from the committee? Seeing none, thank you for your testimony. [LB89]

ROBERT SHEPHERD: Thank you. [LB89]

SENATOR CORNETT: Are there any other proponents? [LB89]

SENATOR FRIEND: Can you leave the props? (Laughter) [LB89]

ROBERT SHEPHERD: (Laugh) They're pretty old; you might not want them. [LB89]

SENATOR CORNETT: We'll move to opponents of the bill. [LB89]

BOB MAPLES: (Exhibit 4) Thank you. Chairperson Cornett, members of the committee, my name is Bob Maples; Bob is B-o-b, Maples, M-a-p-l-e-s. I appear today on behalf of Swisher International, Inc., a manufacturer of price value smokeless tobacco products. Swisher is opposed to the proposed conversion from the current MST ad valorem tax to a weight-based tax proposed in LB89 due to its anticompetitive effects, anticonsumer effects, its special interest intent and effect, and its unnecessary benefit and reward of one dominant interest in the moist snuff tobacco category. By way of introduction, I am currently a senior advisor in government relations for a law firm, Dickstein Shapiro LLP, and a retained consultant to Swisher International. I've been associated with the tobacco industry for more than two decades. I worked for the Smokeless Tobacco Council, an industry trade association, for ten years: from 1993-2003. I was its president from 1998-2003, and from 1993-1996, I worked closely with UST, as it was known then, which was a member of the STC. I also, at one time, employed Walt Radcliffe and I used to work for the company that now owns USST, which was Philip Morris Companies at the time. This is my third appearance before the committee, and I appreciate the return opportunity and the better weather that we've had this week. But, Chairperson Cornett, members, I do thank you for the hearing. Our opposition rises from really three areas. This legislation harms adult, taxpaying, in-state consumers. The burden of state tobacco excise taxes falls on taxpaying, low-income, in-state, adult consumers--your constituents. Manufacturers pay excise taxes in specific circumstances, but as generally recognized, excise taxes are the most regressive taxes and befall those least able to pay. This consumer tobacco tax burden is in the process of increasing as Congress proceeds to expand the State Children's Health Insurance Program, known as SCHIP. The increased federal tobacco taxes to fund SCHIP will affect state revenue collections and doubly affect states that have converted from ad valorem to a weight-based tax. The current Nebraska ad valorem tax will capture the value of any federal action and generate additional tax revenues to the state, automatically, without any legislative action, as the first slide shows. This is basically a tax that keeps up with all factors in the market place. It's very progressive, it increases; I've never seen it decrease. According to The Tax Burden on Tobacco, Nebraska Other Tobacco Products revenue collections increased dramatically last year: over $500,000 without any legislative action. A flat, weight-based tax system does not provide automatic increases in revenues...in revenue collections, without legislative action. North Dakota converted to a weight-based tax in 2001, and according to a recent analysis by the state Tax Commissioner, the weight-based tax resulted in a tax revenue loss of $610,000 in 2007 alone, versus revenues that would have been generated in North Dakota under a 28 percent ad valorem tax. A copy of the state Tax Commissioners letter is provided in the handouts at or about number four. I appreciate the fact that you looked carefully at LB89 and that the chair is going to make an amendment. I think that's an improvement to the bill. I hope you continue to look at the bill carefully and weigh all of the implications. As past fiscal notes on this have indicated, and I quote: in the long term, weight-based methods of taxation would certainly result in a revenue loss as it is not automatically adjusted for inflation or any increase in wholesale price. I did note that...I saw the fiscal note last night, and for the first time I saw some revenue estimates. I'm a little...always surprised by those, how they came to the numbers, especially when you get into a weight-based tax. And I'm glad the Chair has got the amendment, because some of the categories of smokeless don't have weights on the product. The weight may be on a box that goes to a wholesaler. And we're talking about plug tobaccos that look like little brownies in cellophane, or twist tobaccos which look like bow-tied doughnuts in cellophane. Those products don't list weight by manufacturer, so it's good that you're taking that out of the amendment. But this is a very difficult economy, and raising smokeless tobacco products taxes in this manner will have a large burden on the in-state taxpayers. This legislation artificially impedes the marketplace and is industry's proponents business profiteering. The biggest difference in the products, and I'm speaking as a consumer (laugh) to Senator Louden, is price. Most of the products, whether it's Tier 1, 2, or 3, have a very good quality. Many are from the very same dark-fired or air-fired tobaccos that are grown in Kentucky and Tennessee, and they're very, very similar. The difference is the price the manufacturer chooses to charge to the consumer and where they want their product to be positioned in the marketplace at the end of the markups and the process. The current ad valorem tax works; it works well...the state, the taxpaying constituents' competition. Ad valorem addresses and sweeps in all the changes, be it price, value, or volume, that was discussed, in the other tobacco product marketplace in real time without any legislative action. Ad valorem is a progressive tax; benefits consumer choice, value, and variety; captures manufacturer price increases; and generates new additional revenues automatically; and is the proper tax for this economy. The dominant manufacturer in the category, soon to be doubly dominant by its parent company Philip Morris or Altria, as it's known now; is utilizing the current negative economic environment in advancing self-serving public policy proposals aimed at bolstering corporate profitability. These factors are tantamount to business profiteering. This legislation furthers one dominant company's business plans by tax policy. The end game of the industry proponent is really a three-prong strategy to expand market dominance: First, eliminate the progressive nature of the ad valorem tax; two, stabilize their dominant premium-based industry market share, and you cap and limit future state tax revenues. As more and more states have wakened to this tax policy, they increasingly reject weight-based legislation. This year we plan ad valorem restoration bills, or conversion bills, back to ad valorem in every state that switched to weight-based. So we're going to continue this throughout the time that we are engaged. The current ad valorem tax method is agnostic; it chooses neither winners or losers. Manufacturers make independent business decisions based on all the economic factors and decide to enter and compete in the market place based on those factors.

Chairperson, members of the committee, thank you for this opportunity to voice opposition. I look forward to answering your questions. [LB89]

SENATOR CORNETT: I have a couple of questions for you. [LB89]

BOB MAPLES: Okay. [LB89]

SENATOR CORNETT: In the letter from North Dakota... [LB89]

BOB MAPLES: Yes. [LB89]

SENATOR CORNETT: ...how much in that decrease in revenue is from less consumption? Because I noticed that you put on your slide that, for Iowa, one of the reasons was less consumption. [LB89]

BOB MAPLES: Yes. [LB89]

SENATOR CORNETT: I'm sorry, I can't see that less consumption is a bad thing. [LB89]

BOB MAPLES: Right. [LB89]

SENATOR CORNETT: I'd be willing to take less revenues for that. [LB89]

BOB MAPLES: Right. [LB89]

SENATOR CORNETT: Is that correct? That with all of the campaigns against smoking and smokeless tobaccos that we are, as society stops using tobacco products to the same extent we were, going to see a decrease in revenues based on cigarette and moist tobacco sales? [LB89]

BOB MAPLES: I believe...let me divide the question. Cigarettes, I do believe that's going to be the case. And the SCHIP bill currently pending in Congress would increase the federal tax to a dollar on cigarettes. I think that's going to have a dramatic effect, and I think there are people estimating it's going to reduce consumption. I think any time you increase taxes, you're going to have a shock to the market place. The laborers that you're talking about going in, looking, and going hey, what happened to my product? Well, it's gone up 33 percent or whatever. That has an impact. And I think what happened in North Dakota was, as the prices, the taxes were increased, what we saw over time was that consumers were adapting to that. And so they were either...they change, what do we call it, we call it tax evasion, tax avoidance or just different methods. They either went to an adjacent state...I mean, for example, when I look at the numbers on Nebraska they normally--now that I've done this three times--I've got the numbers on the revenue collections from 2004, 2005, 2006, now 2007. Every year I was seeing, you know, an increase in revenue around $100,000 to $200,000; it was over a year. And that's about right. Now why, all of a sudden, in this historical compilation that's put together by two economists in D.C.; why, all of a sudden, Nebraska saw a $521,000 increase? I don't know. What's changed? You haven't changed your tax, nothing's really...the feds haven't increased their tax. I've read some articles, just anecdotal, I saw them on the clips on Iowa retailers saying they were losing business to Nebraska retailers because Iowa did have a tax increase--they went to a weight-based tax and people were coming over to a more...I guess, a better tax environment to purchase their products. I don't know. That's something I hope you'll look at and I hope your staff will look at, because I would like to know that as well; the complete answer. [LB89]

SENATOR CORNETT: Just a couple more questions. With all of the ad campaigns against smoking and tobacco use, particularly young people associate lung cancer and health risks with cigarettes. What is the fastest growing market share in the industry? Would it be smokeless tobacco? [LB89]

BOB MAPLES: It would be...in tobacco it would probably be in the little cigars, just as a percentage of the role of category growth. I mean, that's not...just...you have a tremendous amount of volume in that sector. An index would be moist snuff. It's definitely moist snuff, but... [LB89]

SENATOR CORNETT: With indexing it would be moist snuff though, correct? [LB89]

BOB MAPLES: Index, it would be second. Little cigars would probably be a little bit of a faster growing national category than moist snuff. [LB89]

SENATOR CORNETT: And they are taxed... [LB89]

BOB MAPLES: They are all taxed at 20 percent. [LB89]

SENATOR CORNETT: Why should moist tobacco be treated differently than cigarettes? [LB89]

BOB MAPLES: You have to care about the consumer, I think. First, we have a different demographic profile. You have people with...usually these are people with lower incomes. It's not as diverse a category as cigarettes. For example, you don't see a lot of women using moist snuff versus cigarettes; there's no female brands, like a Virginia Slims, in the moist snuff category. There's none of that type of activity. So you've got a different consumer, different demographic, you've got a different...UST used to have an expression, they said: smokeless tobacco is distinctly different. And that's because everything really...the companies are trying now, they're trying to say, well, let's convert smokers to smokeless tobacco as a growth strategy. Well, anyone that has ever smoked--you know why you smoked, and you did it when you did it, and a lot of it was habit, you know, when you have that cup of coffee in the afternoon. It's a much different practice than a snuff consumer. So I think they're trying to convert these, but they're not. So I guess the best answer to your question is, it's a very...in the tobacco products category it's a very different demographic than you have with cigarettes. [LB89]

SENATOR CORNETT: The health risk, though, even though they are different, are comparable; am I not correct? [LB89]

BOB MAPLES: I'm not an expert on health risk. And I've never seen any evidence, really, or studies that have gone into the social costs of smokeless tobacco versus cigarettes. I've seen quite a bit... [LB89]

SENATOR CORNETT: How about to the individual consumer? [LB89]

BOB MAPLES: To the individual consumer? I haven't seen that, but... [LB89]

SENATOR CORNETT: Thank you. Questions from the committee? Senator Utter. [LB89]

SENATOR UTTER: Something that maybe I should have asked earlier...what is the tax rate on all the states that surround Nebraska? [LB89]

BOB MAPLES: You would have to give me a minute to give you that. I do have it. All ad valorem, except for Iowa. I hope I have it, and if I don't, Senator, I'll follow up with the committee. I have a map somewhere. [LB89]

SENATOR CORNETT: I was going to say you're more than welcome to provide that to my staff and... [LB89]

BOB MAPLES: I'll be glad to do that. [LB89]

SENATOR CORNETT: ...disseminate it to the committee. [LB89]

BOB MAPLES: We'll do that. We'll do that, thank you. Thank you, I'm sorry. [LB89]

SENATOR CORNETT: Any further questions? Seeing none, thank you. [LB89]

BOB MAPLES: Thank you. [LB89]

SENATOR CORNETT: Next opponent. [LB89]

JIM MOYLAN: (Exhibit 5) Madame Chair, members of the committee, I'm Jim Moylan, an attorney in Omaha; M-o-y-l-a-n, representing R.J. Reynolds Tobacco Company, here in opposition to LB89. I do have a handout for you here; we'll look through periodically. And I do want to make one change in it. It was prepared partially two years ago when this bill was in; partially last year. And down under the fourth dot there, the first sentence, "The change to a weight-based system would not increase the tax on USST's two biggest brands, Copenhagen and Skoal." But when we look at the charts, which I'll get to later, it will be a tax increase of approximately 26 percent on their two products. Ladies and gentleman, we're here today with an issue. The first issue is, should the Legislature be legislating for an out-of-state company, who pays no taxes in Nebraska, and apparently can't compete, so they're asking you to help them with competition rather than lowering the price of their product? Like everybody else in our capitalistic society does, if you can't compete, you lower the price of your product so you can compete. They're asking you to take care of the competition for them. Now it's going to cause more work for wholesalers, and one of the senators did show me a letter from the Wholesalers Association a couple of days ago; that they were opposed to it. Now I don't know, they might be changing their mind or else just one of them is, because I don't know what Mr. Brown's going to do here for sure. But that's going to change the system in which they have to account; keep track of two separate types of products, an ad valorem and the snuff type, the weight-based. It's just going to cost them a little bit more and we don't think that it's necessary to do that. Thirdly, the administration, Tax Commissioner, who administers this is going to have to change their system too. Although they say it would be probably minimal, it's still going to take time and consideration, and especially on auditing also, to handle two separate types of systems for smoking tobaccos. Now I realize the amendment just dropped this back to moist snuff, you know, but I don't think that's going to make a lot of difference in it. Now the tax increases in the bill...if you take the handout I gave you and go to page 3, the third page, and we go to the bottom...you will notice that Kodiak is one of Reynolds' products. Second is Skoal and Copenhagen. We see their manufacturing price and it's 65 cents an ounce. It's going to increase their tax by 30 percent. Now let's go down the line, and let's get down to the Longhorn. Manufacturer's price is 98 cents; right now they're paying 20 cents under the ad valorem system, whereas the Skoal and Copenhagen are paying 60 cents. When we go to the weight-based, they're all going to be paying 78 cents. Now we go back to the Skoal. That is a...be an 18 cent increase in their tax; whereas you go down to Longhorn, it's going to be a 58 cent increase. And bear in mind you're going to add a sales tax onto all of that; the increased tax, you know, in each one of them. So we've got to...I think we have to consider what the taxation system is going to...you know, are to them. Last, we have to get down to who's most interested in this? The consumer. We're forgetting about the blue-collar people; the low-income people; the people on Social Security; retirees who are on less income; naturally buy the lesser brands. This is going to whoop the price of that, for them, just so one company--not a Nebraska company--can sell more product and not have to compete out there any longer. They are asking the Legislature to come in and handle a competition problem. And I don't know that that's what Nebraska really should do. So I think on behalf of the administration and the wholesalers, you know, that are going to have to do the extra work; the consumers, who are very important to the state of Nebraska...now these are all taxpayers in the state of Nebraska, that we should indefinitely postpone this legislative bill. The issue is, are you going to legislate for an out-of-state company who doesn't pay taxes in Nebraska so they can better compete in Nebraska, or are we going to legislate on behalf of the people in Nebraska: the wholesalers, the consumers, and everybody else? That's the big issue. And I think the legislative process should be to maintain the ad valorem system, to be friends of everybody that's in the state of Nebraska that pays taxes, and that we indefinitely postpone this legislative bill. If there's any questions I'd be happy to answer them. [LB89]

SENATOR CORNETT: Mr. Moylan, why do you feel that smokeless tobacco should be treated differently than cigarette products? We treat beer and wine the same and they're not even made from the same product. [LB89]

JIM MOYLAN: Well, I guess it's a time-honored system, you know. If they want to throw all the rest of those back in there instead of taking them out, then you probably have a reasonable classification of product. But to bring the amendment in here at the last minute and take all the rest of those chewing products out and leave them under ad valorem, and just change the moist snuff, you know, same problem. Cigarettes: time-honored system. I think, probably, it was instituted because it was simpler. I imagine you could do that by the ounce too. [LB89]

SENATOR CORNETT: If it's simpler for cigarettes, why wouldn't it be simpler for snuff? [LB89]

JIM MOYLAN: If it... [LB89]

SENATOR CORNETT: Or moist products? [LB89]

JIM MOYLAN: If what? [LB89]

SENATOR CORNETT: If it's a simpler tax system for cigarettes, why wouldn't it be a simpler system for wet tobacco products? [LB89]

JIM MOYLAN: Well, you've got to have two different systems for the same stuff that you chew, and I don't think it's...probably we need to do it. And for one company we don't need to do it; from out-of-state, who's coming in here. They're not interested in our tax system; they're interested in their bottom line. That's the only reason they're here, so I don't see any reason that we ought to change the system just for one company; out-of-state, pays no taxes in the state. And then upset all of our consumers, all of the wholesalers that have to administer this, you know, and the administration, so. [LB89]

SENATOR CORNETT: Thank you. Senator Friend. [LB89]

SENATOR FRIEND: Thank you, Madame Chair. Mr. Moylan, how many of these companies that you have on this list on page 3 are from Nebraska? [LB89]

JIM MOYLAN: None of them. [LB89]

SENATOR FRIEND: Oh. [LB89]

JIM MOYLAN: I mean, none of them are manufacturers... [LB89]

SENATOR FRIEND: Right. [LB89]

JIM MOYLAN: ...in Nebraska. [LB89]

SENATOR FRIEND: Well, I mean, don't you think it's a bit...I don't think Mr. Shepherd was up here...do you see the point, I guess, and I'm not looking for you to change your testimony, mind you, do you see the point that they're saying look, we've got a product that's relatively similar and we're being gouged because our wholesale price is actually different? Now, I understand your point: drop your wholesale price. But would you...I'm not asking you, again, to change your testimony, but isn't it cheaper for Longhorn to manufacture than it is for somebody to manufacture a can of Copenhagen? [LB89]

JIM MOYLAN: Well, not being in the manufacturing business and having chewed them both over my life at different times, I don't... [LB89]

SENATOR FRIEND: Yeah, I know, but that's pretty important. You know, I understand exactly what you're saying, but I don't think anybody came up before in a proponent fashion and said, we want a competitive advantage. What they're saying is, they want equity in the tax system. What I have a problem with...I share some of your concerns; I have a problem with somebody saying, I was buying Longhorn at 45 cents a can cheaper three weeks ago than I am now. But I'm having a little trouble with your testimony from the standpoint of figuring out...none of these folks are manufacturing in Nebraska, and I also think there can be an argument made, maybe I'm wrong, that the wholesale price is higher because their manufacturing...it's costing, you know, Copenhagen and Skoal are USST, more money to manufacture than it would for Longhorn. Longhorn is making a business decision to manufacture at a cheaper rate. I mean, would that be almost a fair statement? [LB89]

JIM MOYLAN: You know, I wouldn't think it is. You take a little can of that Longhorn; I think they both manufacture...they probably use most of the same products and I wouldn't think it would be any different. [LB89]

SENATOR FRIEND: Well, and he made that point earlier... [LB89]

JIM MOYLAN: Um-hum. [LB89]

SENATOR FRIEND: ...so we can have these discussions later, but thank you. [LB89]

SENATOR CORNETT: Seeing no further questions, thank you, Mr. Moylan. Any further opponents? Anyone in the neutral capacity? [LB89]

MONTE BROWN: Yes. Madame Chair, committee members, my name is Monte Brown, B-r-o-w-n. I own Columbo Distribution in Omaha, Nebraska. We are a Nebraska based company that has been in business over 106 years. We have 55 employees, and we service the eastern half of Nebraska and western Iowa. Prior to the amendment to the bill, we were against the bill. Since the amendment, we are taking a neutral stance. And I am representing the Nebraska Candy and Tobacco Wholesalers Association. There are some points I would like to make; I know you've had a long day and I'll keep it brief. We agree one of the issues we feel as wholesalers, trying to manage over 220 products on a different weight is almost impossible. It's not impossible, but the software, the personnel, and the reporting issues to our state takes a lot more money. And we as wholesalers and you as a revenue committee have never asked for more money for doing that. But just talking with Cliff Thomas, he works with your Revenue Department, we are in contact with him weekly; and just trying to stay ahead of these tax issues is an overwhelming task. And our fear was, as you first read it, that the ability to audit these items is just an insurmountable task, and the cost of doing that would not be worth it. We would require more software, require more personnel. And as wholesalers, we are your tax collectors. We are the guys collecting your tax whether it's tobacco, cigarettes, snuff, loose-leaf...we are the front line. We purchase that tax from you before we put it on our product; we warehouse it, and then we sell it and collect it. So we understand the system and we understand what's coming. And our fear right now is with the SCHIP proposal that has come out of the House. It's with approval that all experts are saying is going to get passed by the Senate and take effect April 1 of this year, that the tax increases is a tremendous burden--anywhere from 250 to 2000 percent tax increase. And our fear was that if this proposal went through at 65 cents, by the time it got to the floor it could be 95 cents, or a dollar, or even higher. And that would be just an additional tax increase. Currently, we are neutral on this if it stays as is. I would just ask you as a committee to try to hold the line where it's at. We have some big issues out in the street. And being on the front line, we have jobbers coming in--they call them trunk jockeys--and they're selling cigarettes out of their trunks, no tax; internet sales. All these issues are affecting our state in a big way and our revenues, daily...this is something we're fighting on the street daily, and as these tax increases come, we see it more and more. And so with this SCHIP program, when you tag on another $6.10 a carton, we just see more black market; more issues on the street. And that's our fear as wholesalers: safety for our personnel, our drivers, our warehouse, and our security.

Cartons of cigarettes and tobacco turns into gold bars pretty quick. And so the biggest concern we have is the SCHIP program coming your way; to be aware of that and to hold the line on the taxes. [LB89]

SENATOR CORNETT: Seeing no questions, thank you very much. [LB89]

MONTE BROWN: You're welcome. [LB89]

SENATOR CORNETT: Thank you for testifying. [LB89]

MONTE BROWN: You bet. [LB89]

SENATOR CORNETT: Any further testifiers in the neutral capacity? Seeing none, that closes the hearing on LB89 and hearings for the day. Thank you. [LB89]

Disposition of Bills:

LB89 - Placed on General File with amendments.
LB119 - Indefinitely postponed.
LB120 - Placed on General File.

Chairperson Committee Clerk