LINEHAN: Welcome to the Revenue Committee public hearing. My name is Lou Ann Linehan. I'm from Elkhorn, Nebraska, and represent the 39th Legislative District. I serve as Chair of this committee. The committee will take up the bill as posted. Our hearing today is your part of the public legislative process. This is your opportunity to express your position on proposed legislation before you today. If you are unable to attend the public hearing and would like your position stated for the record, you must submit your writ-- your testimony by 5:00 p.m. the day prior to the hearing. Letters received after the cutoff cannot be read into the record. Better-- to better facilitate today's proceeding, I ask you that you abide by following procedures. Please turn off cell phones and other electronic devices. Move to the cha-- well, probably not moving to the front because there's a little change up here. The order of the testimony is introducer, proponents, opponents, neutral, and closing remarks. If you will be testifying, please complete the green form and hand it to the committee clerk when you come up to testify. If you have written materials that you would like to distribute to the committee, please hand them to the page to distribute. We need 11 copies for all committee members and staff. If you need, if you need additional copies, please ask the page to make copies for you now. When you begin to testify, please state and spell your name for the record. Please be concise. How many are going to testify today? One, two, three, four, five, six, seven, eight-- OK, let me count again. Everybody, keep your hands up. One, two, three, four, five, six, seven-- we're going to have to go to three minutes instead of four, so we'll use the lights that way. It's just because we, we have the budget bill on the floor at 1:30 and I don't think-- if we can wrap up by then, I would be very grateful. Please, please speak directly into the microphones so our transcribers are able to hear your testimony clearly. I'd like to introduce committee staff. To my right is legal counsel Mary Jane Egr Edson. To my immediate left is research analyst Kay Bergquist. And somewhere over there on my right, not my left because we're changing things up here, is committee clerk Grant Latimer. Now I'd like the senators to each introduce themselves.

KOLTERMAN: Senator Mark Kolterman, Seward, 24th District: Seward, York, and Polk Counties.

FRIESEN: Curt Friesen, District 34: Hamilton, Merrick, Nance, and part of Hall County.

LINDSTROM: Brett Lindstrom, District 18, northwest Omaha.

CRAWFORD: Good afternoon. Senator Sue Crawford, District 45, which is Bellevue in eastern Sarpy County.

LINEHAN: Do we have pages? We don't have pages, right? No pages, so forget all that I said about pages. I guess you'll just have to-- we'll figure something out. Does anybody need copies made? OK, good. So you are all professionals. Please remember that senators may come and go, though I doubt that's really the deal today. I'd also like to remind our committee members to speak directly into the microphones. Also for our audience, the microphones here in the room are not for amplification, but for recording purposes only. OK. Senator Briese, welcome. Would you like to introduce?

BRIESE: Yes. Thank you, Chairman Linehan, and good afternoon, Chairman and members of the Revenue Committee. My name is Tom Briese, T-o-m B-r-i-e-s-e, and I represent the 41st District here in the Unicameral and I'm here today to present AM3093 to LB1074. In Nebraska, we use federal adjusted gross incomes, a starting point for income tax calculations. On top of that, we are a rolling conformity state. This means that the state adopts federal tax changes as they occur. So what's the issue? On March 27, 2020, President Trump signed into law the CARES Act, which among other things, amended several provisions of the federal tax code affecting individuals and businesses for the 2020 tax year. These provisions and our automatic adoption of them would have a substantial impact on our state's tax receipts. Specifically, the provisions, the provisions targeted by AM3093 would cost Nebraska roughly $240 million in revenue the next three years. So what does AM3093 do? It would eliminate this automatic conformity and would decouple Nebraska tax code from Sections 2204, 2205, 2206, 2301, 2303, 2304, and 2306 of the CARES Act for the 2020 tax year. It would preserve approximately $242 million in revenue for the state over the next three years, specifically approximately $116 million in 2021, $67 million the next year, and $59 million the following year. You have some information before you describing these various provisions and I'm certain we'll hear considerable testimony relative to them, but I will quickly summarize them. I first note that Section 2301, as it stands, would not reduce revenue to our state. I would most likely suggest we eliminate this provision from our decoupling efforts, but that's something we can talk about. Section 2204 allows individuals who do not itemize to take up to a $300 above-the-line deduction for charitable contributions. According to department estimates, this could reduce revenues by roughly $6 million in 2021. Section 2205 allows individuals who itemize to take a deduction up to 100 percent of their contribution base, up from the current 60 percent. Its net impact over three years is an estimated $3.5 million in revenue. Currently, an employer's payments on an employee's student loans are includable in the employee's taxable income. Section 2206 expands the definition of educational assistance, which is excluded from income to include payments on student loans, the principal only. This has a cost to the state of $600,000. Under current federal code, pursuant to the tax job-- Tax Cuts and Jobs Act of 2017, net operating losses cannot be carried back, but can be carried forward indefinitely and only to the extent of 80 percent of a taxpayer's taxable income. Section 2303 still allows unlimited carry forward, but provides for a five-year carryback for tax years '18, '19 and '20. Note that in Nebraska, this would apply only to noncorporate taxpayers. It also removes the 80 percent limitation for '18, '19 and '20, which would apply to both corporate and individual taxpayers. These provisions would have a projected reduction in revenues over three years of $26 million. Current law, pursuant to the Tax Cuts and Jobs Act, limits the deduction for interest expense to 30 percent of adjusted taxable income plus business income. Section 2306 increases this limit to 50 percent for all nonpartnership taxpayers for '19 and '20. For partnerships, the 50 percent only applies to year '20. This provision would take $17 million from our three-year revenue picture. And finally, prior to the CARES Act, federal tax code would limit the amount of nonbusiness income that could be offset by excess business losses. This limitation was $250,000 for individuals, $500,000 for married couples, couples, excuse me. Section 2304 removes this limitation. This would appear to reduce state revenues by over $82 million the first year, $54 million the second year, and $50 million the third for a three-year total about-- over $187 million. I brought this amendment to ensure that we have the ability to fund property tax relief and reform. We cannot sit by and let changes made in Washington impair our ability to deliver on the marquee issue facing our state: property tax reform. Now some will point to the perceived benefits of allowing these federal changes to impact our state code. However, I'd like to point out that the small swath of Nebraskans impacted by this will already be receiving federal income tax deductions worth an estimated $1 billion. I would submit that the dollars we're targeting can be more beneficial to economic growth when dedicated to property tax relief than if they're simply added to the roughly $1 billion in federal income tax relief. I would submit this bill could be important, if not critical, to our ability to deliver meaningful and substantial property tax relief. In fact, I would note that Appropriations Chair Stinner indicated last week on the floor that it was his opinion that we may have to choose between allowing these deductions to remain in place or property tax relief. And I would submit that we must keep our focus on property tax relief and act accordingly. I would submit at the outset that this is not a tax increase. This is simply preserving our existing tax structure. I would ask for your support and I'd be happy to answer any questions. And there'll be numerous folks following me, some-- definitely some experts in the field who will be able to answer probably more than I will, but I'd be happy to try on those. Thank you.

LINEHAN: Thank you, Sen-- thank you, Senator Briese. Are there questions from the committee? You'll be here to close?

BRIESE: Yes.

LINEHAN: Oh, I'm sorry. Senator Crawford.

CRAWFORD: Thank you, Chairwoman, and thank you, Senator Briese, for bringing this amendment. I really appreciate your attention to fiscal responsibility here. I wondered if you would speak to your openness to consider keeping some of the provisions in, such as the education loan payment and charitable donation components?

BRIESE: Great, great, great question. Drafted like it is to bring in almost everything that I felt was reasonable, but I would be open to suggestions or I would defer to the committee's judgment on some of these items. I think these are-- several of these might be matters for discussion by the committee.

CRAWFORD: Thank you. I appreciate that.

BRIESE: Sure.

LINEHAN: Thank you, Senator Crawford. Other questions from the committee? You'll be here to close?

BRIESE: Yes, I will.

LINEHAN: Thank you very much.

BRIESE: You bet. Thank you.

LINEHAN: So first, we'll hear from proponents. Good afternoon.

ADAM THIMMESCH: Good afternoon, Chairwoman and members of the committee. My name is Adam Thimmesch, A-d-a-m T-h-i-m-m-e-s-c-h. I'm an associate professor of law at the University of Nebraska College of Law. I should say at the outset that my views are my views and do not necessarily represent the views of the university or of the college of law. I'm here testifying in favor today, which is a little bit out of the norm for me. But based upon the research that I've done over the course of years on state and local taxation, over a year researching state tax conformity in general and then the last several months looking specifically at state tax systems in times of fiscal distress, my recommendation overall is to decouple. That allows states to take control of their own tax bases, implement their own priorities. That leaves, in your hands, deciding how to structure the tax code, rather than assuming that the tax cuts imposed in Washington somehow reflect the best policy for Nebraska. I make this conclusion for three major points. I know time is short. I'll try to be as short as I can, which is difficult for me. The first is just nationwide, Nebraska is in no different position than other states. It's widely accepted in the literature and thinking about the allocation of power in the United States and the fiscal capacities of states and the federal government. The federal government is situated to provide stimulus funding in times of fiscal distress. It has a-- essentially an open checkbook and as you know, Nebraska does not. States are subject to balance budget requirements, which means that tax cuts that absolutely help group A, and there is no debate about that, has to come from somewhere, right? The state can't kick the can down the road. It can't borrow like at the federal government and this is precisely why Congress acted as swiftly and as meaningfully as it did in the CARES Act. It's provided over $6 billion of direct federal grants just to Nebraska already and it's provided the federal tax cuts that were previously mentioned. So with states lacking the capacity, right, that's, that's-- point number one is that the state really can't chase stimulus funding in this [SIC] times if the $6 billion-plus of federal money hasn't been enough, asking Nebraska to also pitch in on top of what is presumed another federal stimulus bill being introduced. So that's point number one. Point number two, very briefly, is that this is not, I don't think, what anyone on Appropriations would have suggested; a $250 million fund to these particular individuals. The federal tax cuts at issue, again, help the people who get them, but they're not targeted at the Nebraska companies who need relief the most. Many of them are retroactive. They apply to people who lost money in the past and are not directed-- it's not what I believe this committee would have proposed, right, this committee coming in as a stimulus measure. And then the final thing is just you do have the ability to pick and choose. What decoupling does is it just puts the power back in your hands and you can come back in January or whenever with a better sense of the fiscal status, what Congress has done, and if you want, implement these things, same things retroactively, right? So what decoupling does and the reason that we recommend decoupling-- I'll just finish here in a second-- is it does allow you to stop, take a breath, and take control of your own fiscal capacity and your own tax systems and then move forward as you see fit.

LINEHAN: Thank you very much, Mr. Thimmesch. Are there questions? Senator McCollister.

McCOLLISTER: Yeah. Thank you, Madam Chair. How many states now that deal with this particular problem have decoupled?

ADAM THIMMESCH: So there are a handful who have. It's complicated a little bit by the fact that a lot of states have shut down their legislative sessions, a number before the CARES Act was even enacted. So New York has decoupled. Colorado has passed a bill decoupling. There are also-- roughly half the states that impose income taxes do so on what's called a static basis. They don't automatically incorporate changes like Nebraska. Two of those states, Georgia and North Carolina, have updated those dates and specifically decoupled from these changes. I'm not aware of any static state that has said we are going to adopt these particular changes. So of rolling states, a couple have decoupled. Others aren't in session, you have to look at the legislative calendars and complications like that. So that's the general breakdown. And, you know, time will tell, especially as state legislatures reconvene.

McCOLLISTER: Thank you.

LINEHAN: Thank you, Senator McCollister. Senator Crawford.

CRAWFORD: Thank you, Chairwomen Linehan, and thank you, Mr. Thimmesch, for being here. I appreciate-- Dr. Thimmesch-- for being here. I appreciate it. As I understand it, the most expensive component applies to how we treat loss-- business losses and how they apply to-- they can be applied to nonbusiness income. And so as I understand it, the-- there was previously a cap of $500,000 of business losses that could be applied to $500,000 of nonbusiness income. And that-- this CARES Act removes that cap. So my first question is, is that correct?

And the second, is there any cap then on this ability to claim business losses against nonbusiness incomes if we don't decouple?

ADAM THIMMESCH: Yes. So there's-- the, the excess business loss provision, I believe, on the Department of Revenue estimates was roughly $190 million or so of this. And I should say, I'm not an economist. I, I can't attest for the numbers or whatnot. That provision specifically was originally implemented in the Tax Cuts and Jobs Act and it did limit what are called excess business losses or excess farm losses. And for a couple-- a married couple filing jointly, it effectively said what you said, which was you've got your business activities and you can use up to $500,000-- you use your losses, if you have them, against all of that business income, right? It's in a bucket and you can use all of those losses to offset the income from those businesses. What this provision in the Tax Cuts Jobs Act [SIC] said is you can also take that five-- up to $500,000 against your ordinary income, but we're going to cap it at that. You can't go above the $500,000 against your other wage income or things of that nature; $250,000 dollars for a single individual. The CARES Act retroactively removes that limitation. So if you were subject to that limitation in 2018 or 2019, you would go back and retroactively get a check from the federal government-- and if we don't decouple from the Nebraska Department of Revenue-- to allow you to take those losses without that limitation.

CRAWFORD: Thank you.

LINEHAN: Thank you, Senator Crawford. Senator McCollister and then--

McCOLLISTER: Yeah. Thank you, Madam Chair. Is this a situation you need to use it or lose it or are, are those provisions delayed in some way that they would receive the benefit at a later time?

ADAM THIMMESCH: Yeah, so, so these excess business loss provisions, just like the net operating loss provisions, are allowed to be carried forward. So this is largely a timing issue. So if Nebraska were to decouple, it's not as if those losses would go away and get washed out and never taken. They are able to be carried forward as net operating losses under the, under the rules in the tax code.

LINEHAN: Thank you, Senator McCollister. Senator Groene.

GROENE: Thank you. We're talking about LLCs and S corps, right, not tax law corporations?

ADAM THIMMESCH: Could be, absolutely, yep.

GROENE: Tell me if I'm wrong. You own an S corp.

ADAM THIMMESCH: Um-hum.

GROENE: Your goal because the company doesn't make any money, you're the CEO, you pay yourself the profits and your wages, does that work? So now that's your private income.

ADAM THIMMESCH: Um-hum.

GROENE: So now they'll be able to take losses from the corporation against that private income they paid themselves as an employee of their S corp?

ADAM THIMMESCH: So it gets a little complicated in, in that realm. And the S corp and wage payments are a bit of a complicated issue in the tax realm. The basic idea, you're absolutely right. This excess business loss provision is an individual income tax provision because it applies to business activities engaged in-- through S corporations or LLCs. And what you effectively do is you do-- you take that business income business loss and then you're allowed. So a more typical example might be one couple where one family member is invested in these types of businesses and the other is out earning a wage income in another area. And it would be taking that excess business loss from the business bucket and using it against that other wage income.

GROENE: But isn't the goal when you have an LLC is not to pay any taxes, right, they're trying to shift it to pri-- because corporate taxes are higher than individual, are they not or--

ADAM THIMMESCH: So it's a little bit complicated by the Tax Cuts and Jobs Act again and the business organizations. Typically, the LLC is not going to be subject to an entity-level income tax. It will be paid out to the individual. Now whether people structure that as wage payments or other forms of compensation can differ between S corp and LLC for employment tax purposes. But the fundamental nature of it is that the LLC, that unit is not going to play the income tax--

GROENE: But if it has excess losses, with this, they can-- the person can take it off their private--

ADAM THIMMESCH: Yeah, yeah. So with this excess loss rules, the losses that are developed in these business buckets would come over to that individual-- owner's individual, personal tax return.

GROENE: And I believe you testified, which I was for, to make sure-- we are very, very, very friendly to LLCs and S corps, aren't we, one of the best in the nation? I think you were here testifying when somebody tried to tax them.

ADAM THIMMESCH: We, we do have a unique provision in the country where we allow an exclusion for out-of-state income and don't tax that like nearly every other state.

GROENE: So we treat these entities pretty well already in our tax code?

ADAM THIMMESCH: That, that provision-- I, I haven't done a study of the entire Nebraska LLC or S corporation tax code to compare it, but that is certainly a favorable provision in our law that most-- almost no other state has.

GROENE: So if we didn't-- if we decoupled, this would not be an incentive for people to leave the state-- take their business because they, they are very well situated now under our tax laws, is that correct?

ADAM THIMMESCH: Is that a conclusion you could make?

GROENE: Thank you.

ADAM THIMMESCH: I don't know that I'm able to make that.

GROENE: Thank you.

LINEHAN: Thank you, Senator Groene. Senator Friesen.

FRIESEN: Thank you, Chairman Linehan. So the biggest dollar amounts here are the, you know, the excess business losses.

ADAM THIMMESCH: Um-hum.

FRIESEN: And so could you describe a typical customer or a taxpayer, I guess? And, and would it be a high-income individual, obviously, would get the most benefit or is this spread across all businesses in the state or could you describe what the average taxpayer would look like under this?

ADAM THIMMESCH: Yeah, it's a little difficult, given the, the nature of this provision, to say that it's going to impact one industry over another. What we do know is that the Tax Cuts and Jobs Act, the excess business loss provision, allows individuals to take up to a half of a million dollars of excess business losses against their ordinary income. So to be affected, you have to be a taxpayer who has over five-- married, filing jointly, over half of a million dollars of other income. So that, that seems to be within most definitions of high income as far as wage income would be. Beyond that, it's difficult to target particular industries or particular taxpayers. People can generate tax losses in a variety of ways. And this applies to tax losses, not necessarily economic losses, so somebody in the industry could have made a huge capital investment that, under the Tax Cuts and Jobs Act, is reflected as a tax loss. Even if they borrowed the money and made the purchase and don't have that economic loss, they just have transferred their cash into equipment or something like that. So it's difficult, because of the variety of ways that the tax code reflects losses, to suggest that particular industries-- and I'm not aware of any study in Nebraska. There might be, but I'm not aware of a study that has said that one industry would benefit over another. What is clear is that you benefit if you had losses in 2018 or if you had losses in 2019 and then if you have it this year. But most of these provisions apply regardless of what happened this year and without regard to whether you've got PPP or EIP payments or federal stimulus of that nature.

FRIESEN: OK, thank you.

ADAM THIMMESCH: Yes.

LINEHAN: Thank you, Senator Friesen. Senator Crawford.

CRAWFORD: Thank you, Chairwoman Linehan. Thank you, Dr. Thimmesch. You have partially answered this question before, but I just-- I think that opponents of decoupling--

ADAM THIMMESCH: Um-hum.

CRAWFORD: --have made the argument that this is critical for small businesses.

ADAM THIMMESCH: Um-hum.

CRAWFORD: So I wonder if you would respond to that comment. Do you see these provisions, especially the net operating loss provisions, as being a protection for small businesses?

ADAM THIMMESCH: You know, so I, I struggle with the definition of small business. There, there are many, many different ways that the term "small business" is used, both in the tax code and in tax advocacy.

CRAWFORD: Um-hum.

ADAM THIMMESCH: And so it really depends what you mean by small business. Sometimes people use small business to refer to pass-through entities.

CRAWFORD: Um-hum.

ADAM THIMMESCH: And that doesn't necessarily mean that they don't have a lot of income. Some of the country's biggest entities are pass-through business entities. And so if you use small business to refer to LLCs, S corps, things of that nature, broadly, it, it speaks a little bit differently. If you mean small business to mean people with low levels of income, smaller mom-and-pop shops, many of these provisions, as enacted in the CARES Act, don't-- aren't as directed at them, right? So if, if you were under the $500,000 of wage income anyway, you're taking your losses already. It's just people let it go up above that level. The net operating loss rules apply to corporate entities and apply to individuals in various ways, but you still get to take those and carry them forward. The, the net interest limitation rules that are a part of this that we haven't talked about exempt people with average annual receipts that are some-- like, the $25 million of annual receipts on a three-year rolling period. So a number of these provisions already impacted small businesses if you generate it by revenue differently. And so decoupling here-- you know, these provisions, again, I-- aren't really targeted at that small business relief. Again, if you define small business relief as any flow through, then sure, right? The excess business loss provision only applies to individuals, but it's any individual who has invested in flow-through entities and those could be very, very profitable entities as well. So not a real tie, right? There's not a tie between saying it's individual income tax, it's flow through, it's S corp and LLC and small business. It's just, just not how it works.

CRAWFORD: Thank you.

LINEHAN: Other questions from the committee? Seeing none, thank you very much for being here.

ADAM THIMMESCH: Thank you very much.

LINEHAN: Next proponent.

TIFFANY FRIESEN MILONE: Good afternoon, Chairperson Linehan, members of the Revenue Committee. My name is Tiffany Friesen Milone T-i-f-f-a-n-y F-r-i-e-s-e-n M-i-l-o-n-e, and I'm policy director at OpenSky Policy Institute. We are here in support of AM3093 because we don't believe a tax cut that primarily benefits a small subset of wealthy Nebraskans is the best policy for the state at this particular time. I thought I was going to be able to keep that on the whole time, but I can hear myself [INAUDIBLE].

LINEHAN: You're six feet away anyways.

TIFFANY FRIESEN MILONE: So the most expensive change for the state, accounting for roughly 75 percent of the three-year total revenue loss, as Professor Thimmesch said, is $100-- about $187 million, is a provision temporarily allowing pass-through business owners to use business losses to offset their nonbusiness income above the previous limit of $250,000 for single filers and $500,000 for those married, filing jointly. The suspension won't benefit taxpayers with incomes below those thresholds and the tax breaks increase as incomes increase. As you can see from the handout, it's just a rough example of a hypothetical taxpayer and kind of the impact on their taxable income. But as you can see, the provision has the potential to allow wealthy people to significantly reduce their taxable income. This change also isn't targeted to those businesses that have been most affected by the pandemic and current economic downturn. Again, as Professor Thimmesch said, many of these changes are retroactive to 2018 and 2019, which means taxpayers could receive refunds based on the losses incurred long before the crisis hit, even if they are able to make a profit this year. Those losses also are often based on asset depreciation and other only-on-paper accounting measures and so don't act-- necessarily reflect actual monetary losses. Decoupling also wouldn't be unprecedented, as we have deviated from federal tax changes multiple times in the past, including in 2018 when we decoupled from parts of the Tax Cuts and Jobs Act to avoid a tax increase. Furthermore, as Professor Thimmesch said, other states, including North Carolina and Georgia, which share Nebraska's reputation for being business friendly, have also decoupled from some provisions of the CARES Act to avoid budget shortfalls, as has our neighbor, Colorado. Like those other states, Nebraska doesn't have to decouple from the tax cuts in their entirety. For example, we can decouple from the provision, provision that provides the $187 million tax break for some wealthy Nebraskans, while maintaining other provisions, such as ensuring that forgiven PPP loans aren't included in taxable income. It's important to note as well that decoupling won't affect taxpayers' ability to benefit from these cuts at the federal level, only at the state level. It also wouldn't constitute tax increase because it's simply restoring this date code to what it was prior to the CARES Act. Some of Nebraska's businesses have undoubtedly been hit hard by the pandemic. However, the CARES Act tax cuts aren't going to help the vast majority of them, nor are they going to help the vast majority of Nebraskans in general. Instead, they're going to cut taxes for a few of the wealthiest among us and likely contribute to reduced investments in services that are essential to helping our state recover and thrive as we move forward. With that, I'm happy to answer any questions. I won't answer nearly as well he was, so I'm sorry.

LINEHAN: Thank you very much. Are there questions from the committee? Looks like they're not going to talk to you. Thank you very much for being here.

TIFFANY FRIESEN MILONE: Thank you.

LINEHAN: Next proponent. I thought there was another proponent. No other proponents? OK, we'll go to opponents.

BRYAN SLONE: Good afternoon and, and thank you, Chairman Linehan and the members of the committee for allowing me to testify today. My name is Bryan Slone, B-r-y-a-n S-l-o-n-e, and I'm the president of the Nebraska Chamber and I'm here on behalf of both the Nebraska Chamber and the Nebraska Bankers Association. In the interest of time, you have my written testimony, but I'll, I'll cover the key points. The reality that is faced by all Nebraskans right now is the COVID-19 crisis is the biggest economic and most sudden economic downturn in any of our lifetimes. And we all know it in the communities that we live in, that the biggest issue when all of small businesses were surveyed by university and the chamber and others this year is liquidity and financial stability, the ability to survive this. And it becomes an issue for employers right now to determine how they are going to continue to keep their payrolls going, keep their businesses going. And so when Congress enacted the CARES Act, the CARES Act was absolutely essential to keeping people employed and keeping our economy moving. Essentially what the CARES Act did was provide historic relief with a number of provisions and direct payments, but also loans to businesses, which required them to keep their payrolls active and to keep people employed. The CARES Act overall, and it was much bigger than the provisions we're talking about, much, much bigger, was absolutely essential to the economic results we've, we've incurred here. Nebraska was probably the biggest benefactor of the CARES Act per capita because our banks did a terrific job of processing PPP loans across a number of industries. While we, I think, are all hopeful in terms of the revenues and we, we appreciate that, that our revenue declines so far have not been what they've been in other states, I would argue that the CARES Act has a big piece of that. I would argue that the CARES Act was actually a huge net revenue increase for the state and without the CARES Act, I think our revenue forecasts would look very differently right now. So to characterize the CARES Act as, as a net decrease to the state is, is unfair to, to what Congress did accomplish there. In terms of the businesses involved, and there's been a lot of discussion already as to whether this is just a few wealthy people or whether the businesses are involved, I will turn you to the second page of my testimony. I put in a chart, but we don't have exact data from the Department of Revenue. But I pulled the, the closest thing I could find in the publicly available data, which is this is sub-S organization and partnership returns from the year 2016. And so it's, it's directionally correct in what industries there are. As I think most of you know, I, I practiced law before I took this job. I would say 90 percent of small businesses and medium-sized businesses anymore, and it's closing in on 100, that are established in Nebraska are set up as sub-S corporations and LLCs. Almost every new business is set up in this form, so to say this is one small group of wealthy businesses is incorrect. This gives you a sense of it. To increase taxes on these particular industries right now in the tune of $180 or $220 million in the middle of this crisis is-- makes no sense in terms of what we're trying to do to maintain jobs in the economy. And I'd be happy to answer any questions. Thank you.

LINEHAN: Thank you, thank you. Are there questions from the committee? Senator Crawford.

CRAWFORD: Thank you, Chairwoman Linehan, and thank you, Mr. Slone, for being here--

BRYAN SLONE: [INAUDIBLE]

CRAWFORD: --I appreciate you being here. So I appreciate your recognition of the aid that businesses have received so far. That includes $3.4 billion in PPP loans and federal tax cuts that are around four times what we could provide and about $330 million of our CARES Act dollars going to businesses. So we have all of that support for businesses, which is great and I think has really helped our state. So the question is, is this really the best way to help those businesses who are struggling? As you note, hospitality industry is a key industry and the service industry and educational services. When I look at the chart, I'm not sure those are really the industries that we're seeing would benefit from this.

BRYAN SLONE: Well, the, the hospitality industry and the educational services businesses are in the services category, which is one of the largest. And I would argue that, that yes, it, it does affect these most because it only goes to companies who had losses, current losses and losses in the prior couple years. These are our most distressed businesses. These are our most vulnerable businesses. So let me give you an example of how losses work and my thoughts on carryforwards and carrybacks generally. So if, if I'm a farmer or rancher and my farm or ranch has a $100,000 loss and my wi-- my spouse is a, is a teacher and they make 50 or $60,000, net, net-- we had a net loss of $40,000, OK, 40 or $50,000. What happens in this instance is if I'm not allowed to carry back losses, I'm required to pay taxes on the full amount of income I've had over a period of years. What it does is boost the effective tax rate for our most troubled businesses to very, very high rates because I'm paying-- now I will get it two or three years later. But in the current liquidity crisis, two or three years later, for most of our downtown businesses, is too late. The other group that, that is typically-- you will find has losses in early years of LLCs and sub-S's is startups. And so that's-- that would be typical when you start up a business, you're going to, you're going to create some losses. So yeah, I would argue, Senator, that it is our, our most vulnerable businesses right now. And this liquidity is absolutely essential to them getting through this year.

CRAWFORD: So it would be, though-- there, there is an ability to deduct losses up to half a million?

BRYAN SLONE: Um-hum.

CRAWFORD: That's still true-- current. So this would really apply in those instances where the individual has nonbusiness incomes of over $500,000 if they file jointly.

BRYAN SLONE: Yeah, let me, let me give--

CRAWFORD: --so that doesn't strike me as much in terms of somebody that's struggling.

BRYAN SLONE: Well, there's two different provisions; one is the excess loss and one is the loss carry bit. But let me give you an example in these numbers because they sound like big numbers. Remember, this is gross revenue numbers. So even in my chamber, OK, we have 11 employees. We're not a large organization and I'm facing somewhere around $200,000 of issues related to COVID in terms of the effect on my business. I'm-- I work as a board member of a nonprofit that's not a big nonprofit. That number is going to be 300, $350,000. Think about the bars and restaurants at a gross number that had to close and are still closed and have for-sale signs; $250,000 is not a, a large number in terms of a gross potential loss. We have lots and lots and lots of companies and, and small and medium-sized businesses in this state where $250,000 is-- and more is, is a likely consequence of the, the pandemic. It's a very unusual year. This was an-- very unusual act. This goes away, this sunsets, but for this, this one period of time, it's an appropriate policy in order to create liquidity, just as the PPP loans were. It was added to the PPP loans. Both were directed at creating enough liquidity to get through this year. We've run the course of the PPP loans and so judging from what we're seeing, the pandemic's going to be with us for a while. Our businesses are going to need enough liquidity to get through the calendar year at least.

CRAWFORD: Thank you. One follow-- one final follow-up.

LINEHAN: OK.

CRAWFORD: The, the losses that we're talking about, though, are from 2017 and 2018 so they're not truly COVID losses themselves.

BRYAN SLONE: But you take-- those business was-- were the most vulnerable going into the pandemic and so they will have the highest liquidity needs during the pandemic. I mean, it was structured to target those businesses, not the businesses that were doing well, but the businesses that were most vulnerable coming into the pandemic.

LINEHAN: Thank you, Senator Crawford. Senator McCollister then Senator Groene.

McCOLLISTER: Yeah. Thank you, Madam Chair, and welcome, Mr. Slone.

BRYAN SLONE: Senator.

McCOLLISTER: It's, it's crunch time on the budget here in the state of Nebraska. We're faced with-- if we're faced with financing property tax reform and LB720 and maintaining the coupling, how would, how would you respond to that?

BRYAN SLONE: What I would say is-- and we are proponents of property tax reform, as you know, and we support the, the Chairman's bill on-- in this regard. We should do property-- we-- the chamber's position is, is we would hope the Legislature would succeed in property tax to the extent that their revenue is available this year and we will work to, to support that. That said, should we tax businesses that are the lifeblood of, of our revenue stream and are suffering, all of our downtown businesses, should we tax them another $200 million this year? I think that answer is clearly no.

LINEHAN: Thank you, Senator McCollister. Senator Groene.

GROENE: The old 80-20 rule works out pretty much in every instance.

BRYAN SLONE: Um-hum.

GROENE: Is that the case here; 20 percent of them are going to get 80 percent of the benefit?

BRYAN SLONE: I don't know that because I don't have the data from the Department of Revenue.

GROENE: Let's say a--

BRYAN SLONE: I'd love to see it.

GROENE: Let's say-- Cargill, I would assume, is an S corp or a, a-- the Hunt brothers or-- and also the Koch brothers, I'm assuming they are the privately owned.

BRYAN SLONE: They would have had to have losses. And I, I don't know where the Cargill and the Koch brothers had losses, Senator.

GROENE: Cargill might, Koch, I doubt it, but they're some big players. And then also, you've got agriculture. I would think-- there's some farmers doing very well, but I would think that if you asked them if they wanted property tax or, or this, they would tell you they want property tax. I-- wouldn't you think they'd--

BRYAN SLONE: I think it would--

GROENE: --benefit a lot more?

BRYAN SLONE: It would depend on the farmers. So let's say that a, that a farmer had two or $300,000 of losses in the last two years that would apply here and they were single. That, you know, at, at our 6.84 percent rate, even $200,000 is 12 to $15,000 of tax that this would cost him. So I-- it would depend on the situation.

GROENE: That's if he's made-- already made over $250,000?

BRYAN SLONE: If there were other income from other sources--

GROENE: Over and above $250,000?

BRYAN SLONE: --from prior years. Remember, there's a refund from prior years. So it's a-- it's, it's $200,000 over a period of years that he could apply it against.

GROENE: Thank you.

LINEHAN: Thank you, Senator Groene. Other questions from the committee?

McCOLLISTER: One more.

LINEHAN: Senator McCollister.

McCOLLISTER: Yeah, thank you. How far back could a business go back to reclaim that income that, that they lost, in '17-'18?

BRYAN SLONE: Generally, generally-- the statute of limitations is three years generally, but Congress and state legislatures have played the carrybacks and carryforwards for a long time. And, and it's always exactly what we're doing here today, which is trying to make revenues match some budgets. Again, I would say from a policy standpoint, generally, people should be taxed on the income that they actually make, the net income over a period of years. So if I have two years of income and one years of loss, I should only actually be taxed on the net number. What, what eliminating carrybacks does is, is it makes you be taxed without the benefit of that loss so you pay a very high effective rate. So if I'm a farmer, I'm paying a higher effective rate than my neighbors. If I've got a downtown retail store and I can't carry back my loss, I'm paying a higher effective tax rate than my neighbors.

McCOLLISTER: But they can offset future income with that COVID loss, correct?

BRYAN SLONE: They can. However, December's going to be too late for a lot of these businesses and particularly the hospitality area, as an example. I would say the hotels, the restaurants, the bars, all the service industries that service the entertainment and arts, these businesses may go out of business this year without sufficient liquidity. And my-- I would argue personally, that I, I would like to see the federal government do some more just specifically in that area.

McCOLLISTER: Thank you.

LINEHAN: Thank you, Senator McCollister. Are there other questions from the committee? Mr. Slone, did you-- OK, thank you very much.

BRYAN SLONE: Thank you very much.

LINEHAN: Next proponent [SIC].

SARAH CURRY: My name is Sarah Curry, S-a-r-a-h C-u-r-r-y, and I'm the policy director for the Platte Institute. While we encourage the state to make wise spending and budgeting decisions during this uncertain time, we believe the tax provisions in the CARES Act are necessary for our state's economy to rebound from this crisis. The CARES Act is an emergency economic relief and its tax provisions are targeted to help those most impacted by COVID-19. If the state decouples, the more than 42,000 Nebraska employers who required federal relief because of the pandemic will be the very same taxpayers who end up paying higher income taxes to the state. Included with my testimony, I have given you a copy of my most recent report where I took the PPP data and broke it out and that was because of requests that were here at the Department of Revenue hearing earlier in the month. There's been some confusion publicized about what this body did regarding tax conformity after the Tax Cuts and Jobs Act and whether this situation is the same. And I just want to say that Tax Cuts and Jobs Act was a structural reform law, so it broadened the base and it lowered federal tax rates. But with all those federal tax changes, the state had to create provisions like a personal exemption to mitigate the possibility of base broadening, causing a net state tax income increase. And in the case of the CARES Act, conformity is a net income tax reduction for all Nebraskans so they're, they're different situations. The measures in the CARES Act are intended to help businesses and jobs survive this pandemic. The amendment, in effect, is a tax increase on businesses that are trying to survive. Under this measure, a business would have a higher tax liability to the state than they would otherwise and we view that as a tax increase. Without a strong recovery, there will be less tax revenue to pay for property tax reforms in the future. According to the Nebraska Department of Labor's figures, in 2020 alone, the state has already seen 43 businesses close and another 19 issue layoffs. A tax increase makes it harder to employ people. And I'm afraid if this amendment is enacted, we'll see more closures and layoffs this year. So the Platte Institute has been leading a coalition to provide flexibility for use of the CARES Act funds to make up for lost revenues. We've been asking Congress to do this. I have good reason to believe that flexibility will be included in the new federal relief plan that's being debated and released today. And I expect that to permit states to use the CARES Act funds to replenish their general revenues, which would include any losses from conformity. If the committee is unable to conform to the CARES Act in its entirety, I would ask for you to con-- reconsider some of the provisions that promote a strong economic economy; net operating losses, the IRC 163(j) provision for deductibility and business interests, and then also just include clarifying language in there that PPP loans will not be taxed. I know from the way the bill is written, it doesn't intend to do that, but a majority of the states that have decoupled from a piece of it have clarified that in their language just so that way, there's no confusion. And I didn't go into any details on stuff because I want to be respectful of your time. But Senator McCollister, to your question, there's been--

LINEHAN: Sorry.

SARAH CURRY: --11, sorry. There's 11 that haven't-- that have decoupled from a piece of it. Only eight of them decoupled from--

LINEHAN: You're light's red.

SARAH CURRY: --163(j).

LINEHAN: You're right-- so you have to wait for the senator to ask you a question.

SARAH CURRY: Oh, sorry.

LINEHAN: OK. Thank you very much. Are there questions from the committee? Senator Crawford.

CRAWFORD: Thank you, Chairwoman Linehan, and thank you for being here. I appreciate it. I just want to ask you about one comment that you just made, which was that this would impact businesses that are most impacted by COVID-19. Now we're talking about former losses--

SARAH CURRY: Um-hum.

CRAWFORD: --not COVID losses and, and only, again, for, for entities where the, the personal income of the-- nonbusiness income is-- it is over $500,000. So how can we make the argument that this impacts those businesses most impacted by COVID-19?

SARAH CURRY: So I'm going to tell you, Bryan was a-- is an accountant so he has a different perspective. I'm more finance economic. So cash is king, right? We know that from an economic perspective. So if I'm a business and I've been closed down and I'm hurt, I need cash. I don't need assets that are hard to access or something that's going to take time. So the tax changes in the CARES Act where, you know, it does affect past years, the cash, the cash is king and the liquidity is what they need. The liquidity is what they need to maintain payroll, pay rent, and handle those types of things. And if anyone needs to, say, refit their restaurant so they can abide by social distancing, that's also going to take cash. And so that's, that's the fl-- the key thing here is that these businesses need the cash and these tax provisions are targeted to help businesses that would need cash the most. If you weren't negatively affected and you don't need the cash and you don't have the losses, you're not going to get it, but you probably don't need it, which is why this is a really good tax change for this situation. Does that help?

CRAWFORD: But, but you don't have to show any loss by COVID to get the cash. The cash goes to anybody who qualifies, correct?

SARAH CURRY: If they have losses, so--

CRAWFORD: Former losses.

SARAH CURRY: Right, so if I'm a business and I'm doing great and I don't have losses, then likely, I have a good savings account and a good buffer going into this. But if I'm a startup and I have a lot of rent and a lot of expenses and then I hit this-- or the flood hit me last year and I had a bunch of losses from the flood or the blizzard and then I'm going into this year, it's going to be harder for me to recover from this than if I had good years in the past if that makes sense.

CRAWFORD: OK. Thank you.

LINEHAN: Thank you, Senator Crawford. Other questions? Senator Groene then Senator Friesen.

GROENE: You mentioned 42,000 businesses. Now the guy that owns a cafe in Main Street, Wallace, Nebraska, and he's closing it up; we're not talking about that guy, are we?

SARAH CURRY: No, so that's-- well, if he took a PPP loan, I have that data included in the report, so--

GROENE: But I mean, he's not anywhere close to $250,000. That-- is that an adjusted income, $250,000, or regular income?

SARAH CURRY: So that I don't know. On the, on the 43,000 or 42,000 businesses that I'm talking about, those are the ones that took the PPP loans. And I can tell you that the loans-- there was one guy in Blair that took it for $80. I don't know what you do with an $80 loan, but--

GROENE: Is he going to get anything back from this on an $80 loan or do you think his income is over $250,000?

SARAH CURRY: No, I, no, I would assume it's not. I don't know why you would take a loan for $80, but I think it shows the point that, like, small businesses were negatively affected by this to the point that that person felt the need to take out a PPP loan for such a small amount. It means they don't have a lot of money and so any little bit you can do helps them, but--

GROENE: So that-- you could pretty much assume that person never made $250,000 or $500,000 in the last couple of years.

SARAH CURRY: I would assume so; 90 percent of the--

GROENE: So this-- they wouldn't be affected by this--

SARAH CURRY: Again, I don't--

GROENE: --decoupling.

SARAH CURRY: --know the tax situation. I know there's some sit-- like if they have a business-- like, I know my father was a veterinarian and, and he had a lot of expenses. And so it might have affected that; where they look rich, but they're not. But 90 percent of the PPP loans for-- were for $150,000 or less. So I think it's, it's affecting these small businesses the most.

GROENE: But we're not talking business losses or we're not talking asset, asset rich like a farmer. We're talking about dollars. You made $250,000 or you made $500-- $500,000 cash. There's no, there's no hidden-- in, in assets, it's money. We're talking about people who made a lot of money.

SARAH CURRY: Well, we're also talking about people that lost a lot of money too. Someone before me said it wasn't a monetary loss and I don't understand that because it's, it's-- they lost money, right? Like, 18 percent of the PPP loans went to agriculture. So all the industries in Nebraska have been affected, all 93 counties received loans. I'm just assuming that if you took a loan, you had a negative impact from this pandemic and, and you need assistance. And if this tax provision helps them, I think that we should do that.

GROENE: That's a big if. If it's just going to help those individuals that they had to make a lot of money-- all right, somebody else looks like they can explain it later so we'll wait for them. All right, thank you.

SARAH CURRY: Yeah.

LINEHAN: Thank you, Senator Groene. Senator Friesen.

FRIESEN: Thank you, Chairwoman Linehan. So we keep talking about losses that could have occurred a few years back. What if you had good income? How far back does this go to? Two years, '18-'19?

SARAH CURRY: No, it went-- 2017, I believe.

FRIESEN: '17. So say you had good income back then, but you have some losses going forward. Can you take those losses going forward and go back and offset that income that you paid taxes on?

SARAH CURRY: I'm going to defer to an accountant that's coming after me to answer that question.

FRIESEN: OK. So the, the PPP loans that we've talked about too-- and there's some confusion there on whether or not it's taxable. But the way I understand it, the PPP loans, the things that you paid off with those loans, you are not allowed to deduct.

SARAH CURRY: That's correct.

FRIESEN: So would you call this a wash, taxwise, because otherwise, you were going to deduct them, now you are--

SARAH CURRY: So again, I am not an accountant. I am, I'm more economics focused, but I would just say from the analysis that I've been able to done-- to do, I think that there could be, in some situations, a tax increase. I know the accountants have been telling people that took PPP loans, keep some of this money aside, you-- your tax liability could go up in the future. We don't know what the, what the impact is going to be, so just be-- you know, do it on the safe side. So I take that to believe that there's some situations where the tax incre-- or the net taxable income will go up. They'll have a higher tax liability than they would otherwise. But again, I think the accountants coming after me can better address that point.

FRIESEN: Thank you.

LINEHAN: Thank you, Senator Friesen. Are there other questions from the committee? Senator McCollister and then Senator Crawford.

McCOLLISTER: Just one more and thank you for being here. Many companies, I think, will have suffered a revenue loss, correct?

SARAH CURRY: I would assume, yes.

McCOLLISTER: But in order for it to be a tax loss, doesn't it have to, have to be a negative number at the time that business calculates tax owed to the government?

SARAH CURRY: OK. So again, I'm going to come at this from an economic perspective. If, if you have a loss, it's affecting the way you do business. So if I was going to invest and I was going to make my restaurant bigger or I was going to buy a new piece of machinery or I was going to hire new employees, I'm not going to do that now. And that's going to affect our economy. And that's going to affect our economy into future years. So I can't answer the specific on, like, their tax situation this year because of COVID and what's going on. But I can tell you, if they furlough ten employees, they might only bring five back or if they were going to buy that piece of machinery, they might decide not to this year. And so I do think that any bit of help that we can give these businesses to mitigate those negative economic repercussions is necessary for our state to recover and be better on the other side of this.

McCOLLISTER: But my point is you have to incur a tax loss, not just a loss of revenue.

SARAH CURRY: But there's, there's more than just tax losses. There's economic losses, there's other things that are losses that we have to consider when we're looking at the economy as a whole and that's, that's, that's the perspective that we're taking.

McCOLLISTER: But I don't think the CARES Act or these provisions we're talking about today relate to that.

SARAH CURRY: We would say that these provisions allow liquidity measures to these businesses so that way, we can mitigate those other economic loss impacts.

McCOLLISTER: Thank you.

SARAH CURRY: You're welcome.

LINEHAN: Thank you, Senator McCollister. Senator Crawford.

CRAWFORD: Thank you, Chairwoman Linehan, and thank you for being here and thank you for being here to testify from Platte Institute. So over the weekend, I was looking at some of the transcripts from LB1090, which was in 2018. And in 2018, the Platte Institute came to argue in favor--

SARAH CURRY: Um--hum.

CRAWFORD: --of decoupling at that time and argued that it was important to neutralize the impact of the federal policy. And Senator Friesen asked the person testifying at that time, would you come with the same position if it was in the other direction? And the response was, well, yes because neutrality is important to good tax reform. So I wondered if you would respond to that, that import-- the principle that was laid out in 2018 about decoupling to maintain neutrality and why you would be on the opposite position with this bill?

SARAH CURRY: Yeah, sure. So the Tax Cuts and Jobs Act was a base-broadening provision in order to lower the federal tax rates. And so when that carried through to this state, they also eliminated the personal exemption. In Nebraska, because we conform to the, to the federals, we lost our personal exemption. So what-- the Department of Revenue came in and said there was a lot of technical changes that Tax Cuts and Jobs Act did. And so to mitigate any tax-- state tax increase on citizens, we want to simplify our tax code. And so when you look at the priority of good tax reform, neutrality and simplification are things that you want to promote. And so the changes that Nebraska did helped simplify it. It also helped with neutrality in the fact that we weren't picking winners and losers. We were just kind of neutrally saying, we're going to give everybody the personal exemption. And so that's what I meant by neutrality, simplicity. Those are good provisions of tax reform. Being complex [INAUDIBLE] simplicity, if we decouple from the CARES Act, it makes everybody's Nebraska tax return that much more complicated. So we're going to see an increased cost to businesses because it's going to take their accountants more time to calculate out their state tax liability versus their federal tax liability. And that is a component of bad tax reform or a bad tax change.

CRAWFORD: So wouldn't that have been the case for LB1090? We were changing the state tax policy so it would have caused the complexity. It would have made the tax filing more complex because we did decouple in LB1090. So we did make things more complex and it was something that people came to argue in favor of, despite its complexity when it was applied to LB1090.

SARAH CURRY: So "decouple" was actually not used because I read that transcript as well, because we conformed to Tax Cuts and Jobs Act. The state change-- conformed and then changed its statute to adjust. So a great example is the federal government decided to change its usage from CPI, consumer price index, to chained consumer price index. And that's a small change, but the state decided to stick with CPI so we wouldn't see that tax increase. Some people-- technically, legally, that's a decouple; totally different from the CARES Act, right? We still-- we kept the indexing provision. We just went with CPI instead of CPI chained. Here we're just saying we're not going to accept it all and we're just wiping it off the books. And so it's different and that's why "decoupling" wasn't a term used back in 2018 when we debated LB1090. And that's why I say it's very, very different. I have an article on our website that goes into the specific details of Tax Cuts and Jobs Act and how they're different from here because I want to respect everyone's time.

LINEHAN: Thank you very much. Other questions for the committee? Seeing none, thank you for being here. Next proponent or opponent, I'm sorry. Good afternoon.

ERICA PARKS: Good afternoon. Good afternoon, Madam Chair and members of the Revenue Committee. My name is Erica Parks, E-r-i-c-a P-a-r-k-s, and I'm here to testify in opposition to AM3093 to LB1074. I'm a managing director in the tax practice in the Omaha office of BKD. I serve as the chairperson of the tax committee for the Nebraska State Society of CPAs and I also serve as a board member for the Nebraska State Society of TP-- CPAs. I've been practicing as a CPA for 26 years. Four months ago today, the CARES Act was passed into law. The CARES Act amended provisions of the federal tax code to provide economic relief to taxpayers. As mentioned before, Nebraska has rolling conformity with the federal tax code. So when changes are made to the federal tax code, the Nebraska tax code has the same exact changes unless there is specific legislation enacted that says otherwise. So this has been the existing law in the state of Nebraska for Nebraska taxpayers for the past four months. During those four months, we've had the tax-filing deadline for 2019 and people have already filed their 2019 tax returns based on the existing tax law that was in place at that time. The proposed amendment states that for tax years beginning before January 1, 2021, the Nebraska tax will be calculated as if certain provisions of the CARES Act had not gone into effect. Several of those provisions from the CARES Act impact the calculation of 2019 taxable income. This amendment would create a conflict between the law that was existing when the 2019 tax returns were filed and the new law. So the first example is the excess business interest expense limitation and that's from Section 2306 of the CARES Act. Before the enactment of the CARES Act, businesses could deduct interest expense up to 30 percent of adjusted taxable income and the CARES Act increased that from 30 percent to 50 percent. So the language in the amended-- in the amendment would retroactively reinstate the 30 percent limitation for 2019 for taxpayers who have already filed the 2019 tax return. Another example is the utilization of the net operating loss deduction. With the CARES Act, taxpayers were allowed to carry back their losses for a five-year period and that was for 2019-- 2018, 2019, and 2020 net operating losses. I'm sorry, I got off track, that was for losses that were utilized in 2019 and 2020. So taxpayers have already filed their 2019 tax returns with no limitation on the utilization of the net operating loss. So if we make this change now, they've now filed tax returns under existing law that's been changed on them. And then I'm going to skip to the excess business loss limitation because I'm-- I see I'm getting low on time and that--

LINEHAN: Maybe somebody can ask you a question.

ERICA PARKS: What?

LINEHAN: You are out of time, so somebody will ask you a question.

ERICA PARKS: OK. So I'm just done, then?

LINEHAN: Yeah.

ERICA PARKS: OK. Can I just-- can I wrap up just one quick-- my, my-- just my final point--

LINEHAN: Senator Kolterman is going to ask you a question.

ERICA PARKS: OK, go ahead.

LINEHAN: Senator Kolterman.

KOLTERMAN: Would you please complete your thoughts?

[LAUGHTER]

ERICA PARKS: Thank you. OK. So another example is Section 2304 of the CARES Act, which is the excess business loss limitation. Before the

CARES Act, the excess business loss limitation applied to business losses of greater than $250,000 for single taxpayers or $500,000 for married taxpayers. And this does not mean that you have to have taxable income of more than $250,000 or $500,000, it just means you have to have had a loss of more than $250,000 or $500,000. And the excess business loss limitation, what that did is it said you can only use your excess business losses to offset other nonbusiness income. Wages are considered business income until the implementation of the CARES Act. So the CARES Act, going forward, if we're not implementing that part, the wages are part of your business income. So if you had the situation that came up before where you-- let's say you've got a husband who has a business loss of $600,000 and the wife has a salary of $700,000, you can still offset all of that even with the change, even if we decoupled there. So again, the CARES Act eliminated the excess business loss limitation for 2018, 2019, and 2020 and the proposed amendment retroactively reinstates that for 2019 and 2018. So Nebraska taxpayers have already filed their 2019 tax returns using the 50 percent increased interest expense limitation without the 80 percent limitation of net operating loss deductions and without the excess business loss limitation. All of these items are retroactively changed with the proposed amendment. Also, many taxpayers have already filed net operating loss carryback claims. The proposed amendment would retroactively disallow carryback claims that were already filed based on existing law. During the past four months, individuals and businesses have filed their 2019 tax returns based on the law that was existing at that time. The individual and corporate tax deadline passed on July 15, 2020. If the amendment is enacted, these taxpayers will either need to file amended returns or the Department of Revenue will need to send affected taxpayers notices telling them that they owe more money than what was due on their tax return with the law that was in place when they filed their tax returns--

LINEHAN: OK, I think--

ERICA PARKS: It's not fair or reasonable to move the goalpost and tell Nebraska taxpayers to pay more taxes by changing the rules after the game has already been played. Thank you for the opportunity to testify and I'm happy to answer any of your questions.

LINEHAN: Thank you. Are there other questions? Senator Crawford.

CRAWFORD: Thank you, Chairwoman Linehan, and thank you, Ms. Parks, for being here. I appreciate having your CPA expertise as we're having this discussion. So I think one of the confusions that we've had here is a bit about what's-- what would be a loss that would be carried back? And it's my understanding that a loss is not necessarily a monetary loss, but a loss could be depreciation or interest. That, that could be a loss for tax purposes that you-- we would be talking about, is that correct?

ERICA PARKS: It, it could be. So you-- the way you get the loss for depreciation is because you went out and you're invested in property. Maybe you started a new business and you had to-- you opened a new restaurant. You have to spend a lot of money to, to pay for all those retail improvements. You have to pay for wages. You have to pay for all of those things. And so you, you still incur the loss. There are other loss limitations in place so that if it's a passive activity loss, you don't get that anyway. So if it's just because I put money in, I'm, I'm a CPA, but I invested in a restaurant, I'm a passive owner in that restaurant. I can't use that loss because I'm a passive investor and that's not what I do. The other issue, as I think someone mentioned, mentioned, about not having actually-- not actually cost them money or-- you have to have basis. You have to have tax basis to be able to use the loss. So if, if you were an owner of an S corporation and the S corporation borrowed money and I didn't put anything in that S corporation, I can't deduct that loss having nothing to do with the excess business loss limitation because I don't have basis, because I'm not on the hook for that money. I haven't economically lost anything. So there are other rules in place that prevent that from happening. So this is just if it's something that you are actively involved in,

CRAWFORD: But it could include depreciation--

ERICA PARKS: It could.

CRAWFORD: --and interest payments?

ERICA PARKS: It, it could, but you still, you still-- I mean, the depreciation wasn't free. It's not because you bought the-- you know, you don't get the equipment for free. You got it because you bought it. You made an investment.

CRAWFORD: Thank you.

LINEHAN: Thank you, Senator Crawford. Other questions? Senator Groene.

GROENE: I don't want to get too far in the weeds, but I guess the example you gave, the $700,000 salary that the one spouse-- and the $600,000 loss, so they paid income tax on $100,000.

ERICA PARKS: Uh-huh.

GROENE: Tell me if I'm wrong, but the, the $250,000-- first $250,000 loss, they could take. The next $350,000, they could only take 80 percent of that-- at-- that $350,000 represents--

ERICA PARKS: The, the 80 percent is for a net operating loss carryforward. So if it was a loss that was incurred in a previous year or-- and, and you carry it forward because you didn't carry it back or maybe it was from a year--

GROENE: Well, let's switch the incomes. The husband had a $700,000 loss. The wife had a $600,000 salary. They carried 40-- 80,000-- 80 percent of the--

ERICA PARKS: They didn't have to do anything. And that-- and even if we have the excess--

GROENE: --existing law, what are they carrying?

ERICA PARKS: No matter what we do, whether we have this amendment or we don't, you can still offset those two.

GROENE: Then tell me an example of a person who is going to get-- the, the--

ERICA PARKS: Well, so--

GROENE: --wealth-- the person is going to actually gain from this. You gave an example of what doesn't change.

ERICA PARKS: Right. OK, so let's say the wife, let's say the wife has nothing. It doesn't, it doesn't really matter whether she has income or not. The husband has a business loss of $600,000. It might be a farming loss. It might be because he owns a restaurant. He incurred a loss of $600,000 this year. They're a married couple. They can only use-- if you have the excess business loss limitation, they can only get $500,000 of that right now. And they don't even have anything to offset that against, but what that gets them is it gets them a net operating loss. That $500,000 is a net operating loss that if we follow federal, they can carry that back and get money back. If we are not able to do the carrybacks, then they could carry it forward. The excess business loss limitation gets carried forward and it gets converted to a net operating loss.

GROENE: The CARES Act allows-- adds if they can carry it back?

ERICA PARKS: Yes.

GROENE: You can carry forward now?

ERICA PARKS: You, you have always been able to carry forward. The CARES Act says you are allowed to carry back for five years. So you can carry back the 2018 net operating loss for five years. You can carry back a 2019 net operating loss for five years and 2020 for five years. You also have the option of carrying forward. You could elect to forego the carryback, but right now, the law in Nebraska says that we follow the federal and it says that if you carried back your federal net operating loss, you are required to carry back your Nebraska net operating loss. So many taxpayers have already filed these, these carryback claims because that's the law that existed.

LINEHAN: Thank you, Senator Groene. Other questions from the committee? Senator Crawford.

CRAWFORD: Thank you, Chairwoman Linehan, and thank you again, Ms. Parks. I want to come back to one of the other points that you made that was helpful. You said that when we're talking about business losses or-- and actually, when we're talking about what you could car-- what you could balance those against--

ERICA PARKS: Um-hum.

CRAWFORD: --that actual income that someone might earn from their S corp or LLC, that's still a business cost.

ERICA PARKS: Um-hum.

CRAWFORD: So if we're talking about being able to carry this back and apply it against income, it would have to be income in addition or beyond what income they might make from that business or farm. It would have to be, like, capital gains income or investment income. It's income outside of or beyond their business that we're talking about when we're talking about the LLC or S corp.

ERICA PARKS: It may have been business income that they had in 2013. Maybe the business had a profit in 2013, '14, '15, so they're carrying back this net operating loss or the excess business loss that you don't have, but you carry it back for five years. Are we talking about the excess business loss limitation of the net operating loss?

CRAWFORD: So I was thinking about the net operating loss.

ERICA PARKS: OK.

CRAWFORD: It's my understanding that you said that the income that someone makes in an LLC or S corp, that they would pay themselves an income, but that would still be considered in the business bucket. And so if you're taking the business bucket and applying it to the nonbusiness bucket, it has to be above and beyond whatever money they might have made on the farm or in this small business because you only apply it to things in the nonbusiness bucket. And as I understand what you're saying, they're-- the income they would pay themselves does not belong in the nonbusiness bucket, does that make sense?

ERICA PARKS: Yeah, so I think, I think there's a little confusion about two different rules because there-- you've got one, the net operating loss, and two, the excess business loss limitation.

CRAWFORD: OK.

ERICA PARKS: So the excess business loss limitation says that you can only use up to $500,000 for married couples of business losses to offset nonbusiness income.

CRAWFORD: Um-hum, OK.

ERICA PARKS: Nonbusiness income is things like interest income, dividend income. So that, that is, that is a, a current year issue. Now if, if you pass that hurdle, if-- either we don't have the excess business loss limitation-- so let's say I had $600,000 of losses in 2019 and the excess business loss limitation doesn't apply. I can-- and, and I have nothing else going on, I can carry-- I can take that $600,000 and I can carry it back. If the excess business loss limitation applied, then I would only have $500,000 for that as a net operating loss. And depending on whether the piece that has to do with the, the net operating loss carryback gets separated out, it-- you know, it depends on whether-- if we decouple from both of those, then, you know, it doesn't really seem-- it, it won't really matter whether it was business or nonbusiness because you're going to carry it forward either way.

CRAWFORD: Thank you.

LINEHAN: Thank you, Senator Crawford. Questions from the committee? Seeing none, thank you for being here.

ERICA PARKS: Thank you.

LINEHAN: Next opponent? I'm going to-- the committee, we've got fifteen minutes left here. So, I mean, I will stay as long as there's people here, but I'm just thinking about questions.

BRIAN MORROW: Good afternoon, everybody. Chairman Linehan, members of the Revenue Committee, my name is Brian Morrow, B-r-i-a-n M-o-r-r-o-w. I'm chief risk officer at Pinnacle Bank Corp. I'm testifying today on behalf of the Nebraska Independent Community Bankers and appear in opposition to AM3093. We oppose any additional decompany-- decoupling of our state tax system from the federal system. We believe it is poor policy to create timing differences between state and federal returns. A timing difference of when revenue is collected or refunds are made is all decoupling achieves. It does not create any new revenue. In this specific case, it specifically defers the negative impact in Nebraska revenue for provisions included in the CARES Act. For small businesses and agricultural producers, pulling the use of these losses forward simply changes the timing when business losses can be claimed for-- be claimed, affecting when taxes are paid. It does not provide a tax cut. This timing difference would provide needed liquidity due to the negative economic impact from the COVID-19 pandemic. Nebraska has tried decoupling from the federal system in other areas before. If you recall, Nebraska decoupled from the bonus depreciation back in '01 and 2006. I've talked to the-- Pinnacle's chief financial officer and he discussed the complexities of multiple depreciation schedules and having different tax policy for state and federal purposes. Pinnacle Bank, and I believe most Nebraska banks, are concerned about customers and the direct impact on them. We simply believe that decoupling from the federal tax system is poor policy and do not want to see it as-- set as a precedent for future legislative sessions. We understand tough financial decisions are being forced to make this session due to COVID-19 and the desire to provide property tax relief. But again, we think decoupling is not the answer. I would be happy to answer any questions any of you may have.

LINEHAN: Thank you. Are there questions from the committee? Seeing none, thank you very much for being here.

BRIAN MORROW: Thank you.

STACY WATSON: Good afternoon, Chairperson Linehan and the rest of the committee. My name is Stacy Watson, S-t-a-c-y W-a-t-s-o-n, and I'm here on behalf of the Omaha and Lincoln Chambers to oppose the amendment, AM3093. I'll try and keep this brief. I think you've heard lots of opponents and I think they all make good arguments. I think one of the things I really want to say is I believe the first proponent said kick the can down the road. We don't want to do that and I completely agree. From a tax policy perspective, you want the income to match your expenses. So this year, receiving income from these PPP loans in withholding taxes, the leases in the utility companies were paid by those PPP loans. That's income to Nebraska businesses and individuals. So that's our income. We also have other income. These losses were incurred, you know, some in 2018, some in 2019, but if we put them off down the road, we're just stealing cash from future years. The expenses and the income should all be picked up in the same year. These are just timing differences. None of them are permanent. And so if they're happening in the current year, why would we kick that can down the road and leave those expenses for future people to figure out? There are expenses for businesses now. So I think we really want to keep those losses in the years that they belong, whether or not they're exactly COVID related or the businesses just had excess losses. My guess is most of them, in 2019, that they're carrying back are COVID related, but I don't think we want to kick these losses further down the road and decouple from those federal provisions. I'm not sure if anybody has any specific questions. I think Erica did a great job in trying to explain, you know, kind of how the tax policy works, but I think we want to keep them all in the same year.

LINEHAN: Thank you--

GROENE: Senator Linehan.

LINEHAN: --Ms. Watson.

GROENE: So if you paid taxes--

LINEHAN: Senator Groene.

GROENE: --in '18, did you-- did they not have the ability then to carry losses from '16-'17 forward?

STACY WATSON: '16 and '17 were-- I guess, pre this current tax law, they could carry them forward, yes. If they had--

GROENE: So when they paid--

STACY WATSON: But a lot of them carried them back, '16-'17 losses we are allowed to carry back. And so most people, if they had income in the prior years, they would have already carried '16 and '17 losses back.

GROENE: So they took losses off in '18 and now we're going to allow them to take some more off-- losses off from a different year. They took losses off from previous years and now we're going to allow them to take some losses off from future years, is that true?

STACY WATSON: Well, it, it depends on whether or not you're carrying forward or carrying back your losses. If you had a federal loss and you carried the federal loss back in '16 and '17 because Nebraska-- because we're-- we move with the federal, we already carried those losses back. We're not carrying them forward. If we had losses in '18, we were not allowed to carry them back so we could be carrying, carrying forward to the current year. And if we had a loss due to, you know, COVID or any other reason, we're not using that loss this year, it moves forward. But if we stay with the federal provisions, we'd be allowed to go back and take that loss back as we were in previous law. So just to-- everybody's tax situation is going to be different. So it just depends on when they're incurring those losses and whether or not they're taking them for federal purposes.

GROENE: This is a partisan-- not partisan question, but of the $168 million, how many-- how much of that would you think would end up in Omaha--

STACY WATSON: The--

GROENE: --with the, the big S corporations that are in Omaha--

STACY WATSON: S corps and LLCs for losses? Wow, you're--

GROENE: --of the $168 million that they're discussing here?

STACY WATSON: I would love to be able to tell you, but I honestly don't know. We've, we've filed probably NOL carrybacks for at least five to ten clients. It's not a-- I mean, we haven't gotten through all of them, but we've already filed amended tax returns based on the law as it currently stands. And we probably have our central office that has filed another 10 or 12, so it's not like we've filed an excess number in our Omaha and Lincoln office and our central offices haven't filed any.

GROENE: But the $168 million or the 100 and whatever it is, 98 over the three years it's estimated, how much you think that would end up in large and, and-- large corporations; S corporations versus-- that are based out of Omaha and Lincoln versus in rural Nebraska?

STACY WATSON: I, I don't know the answer to that question. I think, I think a lot of the PPP money that you're going to end up taxing businesses on-- I mean, the farmers had, you know, 7,905 PPP loans. So you know, I know the income doesn't get taxed, but we're going to not be able to deduct those expenses. So now we're not deducting expenses and someone has to pay income tax on that. And now you're not going to give me my loss and I have to pay income tax on that, so I feel like you're taking businesses and saying we want your money on the PPP loan side, so thank you for that. And we want your money on the losses side, so we know you actually had a loss, economic money and otherwise, but we're not going to give that to you. So thank you very much for paying taxes. I mean, it just doesn't seem--

GROENE: Sadly, we're in a position-- it's either/or and we've got to decide where we're going get the biggest bang for our bunk-- buck--

STACY WATSON: Right.

GROENE: --with tax cuts.

STACY WATSON: Right, but I think, I think farmers will get a tax cut from carrying back these NOLs as well, because that's-- I mean, that's a 7 percent tax cut to them on 250, 500, 600-- I mean, that's a big number in one year and I don't know what their property tax cut would be.

GROENE: Thank you.

LINEHAN: Are there other questions from the committee? OK, I have one. I didn't think you're going to be able to answer, but I'm going to put it on the record so maybe with the Department of Revenue. So if CPAs have already filed these carryback losses because that was a law when they filed on July 19 and this was going to make a big dent in our budget, wouldn't we notice that in the revenues that came in?

STACY WATSON: Yeah, I don't, I don't know when they're going to get those revenues. We started filing them as soon as they were available because we had the 2018 numbers to do so, so-- and clearly, our clients currently need cash so we filed those returns as soon as possible. So I don't know when they're processing them or if they've put them in a pile to-- I mean, I don't know if they're putting-- giving the cash back or not on those yet.

LINEHAN: But they-- you would have filed their, their 2019 returns, which they filed July 15 if they were paying in.

STACY WATSON: Yeah.

LINEHAN: That would be-- the Department of Revenue ought to figure out-- be able to tell us whether that, in fact, had an effect on our revenues.

STACY WATSON: Yes and the 2018 loss carrybacks, we, we had the ability to file as soon as the law became effective so those were filed well before July 15.

LINEHAN: OK, that's helpful to know. Other questions? Well, you're a very organized, timely group here. Perfection. Five minutes to get back to the floor. Thank you very much for being here.

STACY WATSON: Thanks, have a great day.

LINEHAN: Appreciate it. Senator Briese. Oh, wait a minute, I'm sorry. Neutral? Oh, OK. I'm sorry. I didn't see you.

JESSICA SHELBURN: I will keep this incredibly brief. My name is Jessica Shelburn, J-e-s-s-i-c-a S-h-e-l-b-u-r-n, on behalf-- here on behalf of Americans for Prosperity-Nebraska. In the interest of time, I think a lot has been said and that I would just be echoing so I wanted to come up here to be on the record in opposition to the amendment. And with that, if you don't have any questions, I'll leave.

LINEHAN: Thank you, thank you. I really didn't see you, I'm sorry.

JESSICA SHELBURN: That's OK.

LINEHAN: Is there anybody else? Neutral? OK, Senator Briese.

BRIESE: Thank you, Chairman Linehan. I want to thank all the testifiers today. There was great testimony, both sides, very informative and appreciate everybody taking the time to come here and visit with us and give us their perspective on some of these things. But I want to make-- I do want to make clear, you know, we're not talking about PPE loans-- PPP loans here because of the inability to deduct the expenses for which those loans are used. And so that, you know, it's just a nonstarter. That's off the table. And numerous times here, I talked about-- folks talking about a tax increase and I could not disagree more. It's not a tax increase. This is simply maintaining our tax structure as it currently exists. And as far as business sustainability and liquidity, I would maintain-- submit to you that property tax relief, property tax reform is as critical to business sustainability and liquidity as anything in this environment. And we also need to remember that the beneficiaries of what we're talking about here are probably going to get federal income tax relief to the tune of close to $1 billion. You know, that number is flexible and fluid. We talked about that at the meeting last time, where they talked about a multiplier of four times what we're talking about here. So there's an enormous amount of federal tax relief going to these folks. And Senator Groene asked earlier, you know, would a farmer prefer-- and I shouldn't-- and I'd hate to say a farmer, but any property taxpayer, if they had to choose between a framework for lasting and substantial property tax relief or a one-time shot here, I think they would take the property tax relief. But anyway, just some brief comments and that's all I have and I thank everybody for their time and happy to answer any questions.

LINEHAN: Thank you, Senator Briese. Are there any questions from the committee? OK, thank you very much.

BRIESE: Thank you.

LINEHAN: With that-- I'm sorry.

KAY BERGQUIST: Letters?

LINEHAN: Oh, record-- I'm sorry. I have to leave-- read some things into the record, here. So proponents: Jenni Benson, Nebraska State Education Association; David Holmquist, AARP. Except for-- I think I read something he wrote, but not all of it. Opponents: Robert Hallstrom, Nebraska Federation of Independent Business; Associated General Contractors-Nebraska Building Chapter; Bison Inc.; Bruckman Rubber Company; CenturyLink; Consolidated Companies, Inc.; Dinkel Implement Company; Great Plains Communications LLC.; Greater Omaha Chamber of Commerce; Iowa Nebraska Equipment Dealers Association; Kawasaki Motors Manufacturing Corp., USA; Lincoln Chamber of Commerce; Nebraska Aviation Trades Association; Nebraska Bankers Association; Nebraska Chamber of Commerce and Industry; Nebraska Chapter of the American Institute of Architects; Nebraska Independent Auto Dealers Association; Nebraska Independent Community Bankers; Nebraska Land Improvement Contractors Association; Nebraska Petroleum Marketers and Convenience Store Association; Nebraska Propane Gas Association; Nebraska Society of Certified Public Accountants; Pinnacle Bank, Inc.; Western Sugar Cooperative. In neutral; Katherine Loughead, Tax Foundation. With that, I call the hearing to a close.