LINEHAN: Welcome to the Revenue Committee hearing. My name is Lou Ann Linehan. I'm from Elkhorn, Nebraska, and represent the 39th Legislative District. I serve as the Chair of this committee. The committee will take up the bills in the order posted. I'm sorry. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. I'm not sure this is reading exactly like it's supposed to. If you are unable to attend the public hearing, would like your position stated for the record, you must submit your written testimony by 5:00 p.m. the day prior to the hearing. Letters received after the cutoff will not be read into the record, no exceptions. The-- to better facilitate today's proceedings, I ask that you abide by the following procedures. Please turn off your cell phones and other electronic devices. Move to the chairs at the front of the room. Well, we don't do that anymore because of social distancing, so all stay far part. 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. Do we have a page today?

NOAH BOGER: Yes.

LINEHAN: Two. Can you stand up and introduce yourselves?

NOA SNYDER: Hi, I'm Noa.

NOAH BOGER: Hi, I'm also Noah.

[LAUGHTER]

LINEHAN: Two Noahs, all right. We need 11 copies for all committee members. When you begin to testify, please state and spell your name for the record. Please be concise. How many people are actually going to testify here? OK, so we usually go, like, five minutes and then we'll-- if you have questions, we'll keep going. I'm going to introduce committee staff. We have Grant. Raise your hand, Grant. He's trying to get the phones working. We have Kay and then I've already said who I am. We've got several members that we're trying to get here on the phone from the committee and I'll let the senators who are present introduce themselves.

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

McCOLLISTER: John McCollister, District 20.

CRAWFORD: Good morning. Sue Crawford, District 45, which is eastern Bellevue, Sarpy County.

LINEHAN: And we've already had two senators tell me that they might have to leave at some point here, so-- where is Chuck? Linda, do you know?

LINDA SCHMIDT: I don't know.

LINEHAN: We only have one person in the whole Capitol that can do this? Bad planning.

LINDA SCHMIDT: See if he's in his office.

LINEHAN: Yeah.

LINDA SCHMIDT: [INAUDIBLE]

GRANT LATIMER: He's speaking with the new senators right now, so they're trying to locate [INAUDIBLE] to help us.

LINEHAN: Well, do we know where that is?

CRAWFORD: 1510, I think.

LINEHAN: It's right across the hall.

____________: Is he here?

CRAWFORD: No, it's down the hall, 1510 is down the hall.

LINEHAN: OK, well he-- guys we can--

LINDA SCHMIDT: [INAUDIBLE]

LINEHAN: They're bringing him?

LINDA SCHMIDT: Yeah, he's in with the new senators.

LINEHAN: Good morning, Chuck.

CHUCK HUBKA: Good morning. What are we trying to accomplish?

GRANT LATIMER: Get the conference to go on-- for the senators to go on.

CHUCK HUBKA: Do you have the--

GRANT LATIMER: Yeah.

CHUCK HUBKA: OK.

COMPUTER-GENERATED VOICE: Has joined the conference.

CHUCK HUBKA: You're, you're connected now.

LINEHAN: I am? Good morning. Could those on the-- Senator Briese, are you present? Senator Lindstrom? Senator Groene? Senator Kolterman? Who am I missing?

McCOLLISTER: Do we require a quorum to hold this hearing?

KAY STILWELL BERGQUIST: Um-hum, I think so.

McCOLLISTER: And those-- the phone attendees would count?

KAY STILWELL BERGQUIST: Um-hum.

LINEHAN: Can you text Briese and ask if he's on the phone?

COMPUTER-GENERATED VOICE: [INAUDIBLE]

LINEHAN: Hello? Are there any senators--

BRIESE: This is Briese here.

LINEHAN: Thank you, Thomas. You've given us a quorum.

BRIESE: Yeah, this--

LINEHAN: Brett? Senator Kolterman? Go ahead and start. We've got Senator Bri-- Senator Briese, please stay on here. Good morning. Senator Briese, we already did the formal introduction of the hearing, so I'm just going to start with the opening on LR477. Good morning, Vice Chairman Friesen and members of the Revenue Committee. For the record, my name is Lou Ann Linehan, L-o-u A-n-n L-i-n-e-h-a-n, and I'm here to introduce, introduce LR477. The purpose of LR477 is to resolve the consequences of the Legislature passing LB397 in 2019. At the Attorney General's request, Senator Briese introduced LB397 to ensure Nebraska is following the Master Settlement Agreement, or MSA. The MSA is an agreement that Nebraska and 45 other states entered in 1998 with the four largest tobacco companies. The MSA settled lawsuits from the states in exchange for the tobacco companies, companies to limit marketing practices and make sure annual payments to the states for the medical costs of smoking-related illnesses. In Nebraska, these funds are used to support the Health Care Cash Fund.

COMPUTER-GENERATED VOICE: The caller--

LINDSTROM: Brett Lindstrom.

COMPUTER-GENERATED VOICE: --has joined the conference.

LINEHAN: Thank you, Senator Lindstrom. The passage of LB397 has a large impact on a product called Little Cigars. LB397 changed the definition of--

COMPUTER-GENERATED VOICE: The caller--

LINDSTROM: Brett Lindstrom.

LINDSTROM: --cigarettes in Chapter 77.

COMPUTER-GENERATED VOICE: --has left the conference.

LINEHAN: The Department of Revenue interpreted this change to increase the taxation of Little Cigars from a cigar to a cigarette, but most importantly placed the product under the provisions of a cigarette for the purposes of the MSA. As a result of this change, from 2019 to 2020, Nebraska has seen a 99.99 percent, basically 100 percent, drop in Little Cigar sales. This is a decrease in revenue of $200,000 to $600,000, depending on if the product is taxed as a cigar or a cigarette. So again, the state is losing revenue of between $200,000 and $600,000 per year. Nebraska is the only state, the only state that requires this [INAUDIBLE] to fall under the MSA.

COMPUTER-GENERATED VOICE: The caller--

LINDSTROM: Brett Lindstrom.

COMPUTER-GENERATED VOICE: --has joined the conference.

LINEHAN: Sixteen states tax Little Cigars at a higher rate than a regular cigar. This differs among states. Some use the same rate as cigarettes and some use weight of the product to determine the rate. Five other states have contemplated placing Little Cigars under the MSA, but ultimately relented because the products that do not pay a federal excise tax as a cigarette are not covered by the MSA. So let me repeat: products that do not pay a federal excise tax as a cigarette are not to be covered by the MSA. So the question for the Revenue Committee and the Legislature is why is this change necessary? The state is losing revenue and we have effectively removed a product from the market. Most importantly, treating these products the same as the federal government does, does not jeopardize the MSA. We will hear from interested parties today to clarify this issue and give us guidance on how best to fix the issue. So with that, I'll-- that's my-- end of my closing. If you have any questions, I'm happy to try to answer them, but we have experts who know more about this than I do.

FRIESEN: Thank you, Chairwoman Linehan. Any questions from the committee? Seeing none--

LINEHAN: OK, thank you. Good morning.

TONY FULTON: Good morning. Thank you, Chairwoman Linehan and honorable members of the Revenue Committee. My name is Tony Fulton, T-o-n-y F-u-l-t-o-n, and I'm the Tax Commissioner for Nebraska. Thank you for the opportunity to come before you this morning. I'm appearing on behalf of the department where my testimony reflects our responsibilities as an enforcement agency and not as an advocate of tax policy. I will be deferring to the Attorney General's Office for statements to this committee following my testimony regarding specific LR477 items. The 2019 enactment of LB397 introduced a new definition of cigarette into the cigarette tax statutes. The department published guidance documents which clarify the department's understanding of the new stat-- new statutory definition. The department published multiple guidance documents to clarify Nebraska Revised Statute 77-2601(5). The department provided objective criteria to define products that would and would not meet the definition of cigarette in Nebraska Revised Statute 77-2601(5). The department determined that this statute means any tobacco product which satisfies two or more of the criteria included in the department's notice titled, "Criteria for Tobacco Products Labeled as Anything Other Than a Cigarette." Such products-- such a product is a cigarette for purposes of the Nebraska cigarette tax statutes. As guidance documents, the documents published by the department do not create new legal obligations or penalties for taxpayers that do not otherwise exist in statute. Guidance documents are only binding on the agency that issued them and are not binding on affected people or businesses. The definition of cigarettes that applies to affected people or businesses continues to be as stated in Nebraska Revised Statute 77-2601(5). The Nebraska Administrative Procedure Act allows any person to request in writing that an agency revise or repeal a guidance document or convert a guidance document into a rule or regulation. The department has not received such a request with respect to the, to the guidance documents. This concludes my statement. As we are currently party to litigation in the District Court of Lancaster County regarding the guidance documents, I would respectfully defer any questions to the Attorney General's Office who is representing our department in the current lit-- litigation. I have been advised that I not discuss the deliberative process that led to the publication of these documents or any other information on this subject matter that is not already publicly available. Thank you for the opportunity to come before you this morning.

LINEHAN: Thank you, Commissioner. Are there questions from the committee? Senator Friesen.

FRIESEN: Thank you, Chairwoman Linehan. Commissioner Fulton, when I look through here, the definition is-- why would the state have a different definition of a cigar than what the Feds use when we're-- especially when we're talking about the Master Settlement Agreement and everything else, to come up with something that is different seems like it, it sets a precedent again. Do you know we're the only one in the country doing this or are we one of a couple of states or-- to set a different, different definition, I guess, of a cigar versus a cigarette?

TONY FULTON: Well, Senator, much of this I'm going to have to defer to the Attorney General's Office, but I can, I can say that the Legislature- you guys know this, but this is what's happening for the Department of Revenue. The Legislature--

COMPUTER-GENERATED VOICE: The caller--

KOLTERMAN: Mark Kolterman.

COMPUTER-GENERATED VOICE: --has joined the conference.

TONY FULTON: The Legislature passes bills, they become a statute, and then it becomes our responsibility to enforce the statutes as written and so we did that. We entered a deliberative process to put forward guidance documents to communicate this publicly-- in, in a public fashion for the sake of transparency. That's what we've done, so beyond that, I can't--

FRIESEN: OK.

TONY FULTON: --can't comment.

FRIESEN: Thank you.

LINEHAN: Thank you, Senator Friesen. Other questions from the committee? Have you had any discussions about this with other tax commissioners across the country?

TONY FULTON: Well, I have not, but that's not to say that the department has not. I-- the department did a great deal of research before putting forward our documents. Like we said, there was a deliberative process, so it wasn't just-- it wasn't us just saying here, here you go.

LINEHAN: So--

TONY FULTON: I did not talk to tax commissioners other--

LINEHAN: So when you do that, and this is just my ignorance, but hopefully-- I might be the only one that doesn't know this. When you do that deliberative process, does that include talking to members of the Legislature about their intent?

TONY FULTON: I don't recall whether we did that, but it could-- intent can be gleaned from the record, however.

LINEHAN: So could you check if anybody in the Legislature was involved in figuring out what the Legislature meant to be done?

TONY FULTON: Yeah, we can find that out.

LINEHAN: OK, thank you very much. Any other questions? Anyone on the phone have a question? Thank you very much for being here. Actually, the pages can do that if you want to go ahead and get started.

DANIEL MUELLEMAN: Good morning--

LINEHAN: Good morning.

DANIEL MUELLEMAN: --Chairwoman Linehan and members of the Revenue Committee. My name is Daniel Muelleman, D-a-n-i-e-l M-u-e-l-l-e-m-a-n. I am an Assistant Attorney General at the Nebraska Attorneys General Office and I work in the tobacco enforcement unit of the Consumer Protection Bureau. I'm here today to testify on behalf of the Attorneys General Office. I plan-- I'm planning to provide as concise of coverage as possible on--

COMPUTER-GENERATED VOICE: The caller--

LINDSTROM: Brett Lindstrom.

COMPUTER-GENERATED VOICE: --has left the conference.

DANIEL MUELLEMAN: --various topics at hand with the intention of being able to more fully discuss the matters and discuss-- with follow-up questions and responses. Before I begin, I would just like to state that there are a couple of natural limitations on my testimony on these matters. The first, as Commissioner Fulton mentioned, is that we have ongoing litigation between the Tax Commissioner and the Attorney General and other tobacco product manufacturers regarding the guidance documents and what happened with the tax definition. And then the second natural limitation is that because the Master Settlement Agreement is a settlement contract between multiple states and multiple manufacturers, there are certain confidentiality provisions and binding arbitration provisions within that contract that prevent us from discussing matters in, in public forums such as this. And so as those things come up, I will just highlight where they are. And so to begin, I would just like to provide a little bit of a framing device. The first photo on the packet, this is an array--

COMPUTER-GENERATED VOICE: The caller--

LINDSTROM: Brett Lindstrom.

COMPUTER-GENERATED VOICE: --has joined the conference.

DANIEL MUELLEMAN: --is an array of products that manufacturers have defined as cigars. You can see on the far left of the photo array, you're looking at at least three products that-- that's what we're discussing here today as what you would consider as filtered cigars. We're not discussing what you would think of on the other-- on the right-hand side, you know, premium cigars. That's not what's at-- with that subject with the filtered cigar discussion. So with, with that kind of product framing in mind, I'd like to tell a couple of stories about what got us here. And Senator Friesen, this is a complete coincidence that it starts in your district, so I hope you don't hold it against us. In 2017, the Nebraska Attorneys General Office became aware of certain filtered cigars that were being sold to nursing home residents at the LifeQuest facility in Palmer, Nebraska. The facility manager was purchasing filtered cigars online in bulk and reselling the product to facility residents at a markup while allowing smoking of the product indoors. Consistent throughout law enforcement interviews, these filtered cigars were referred to as cigarettes by the facility manager purchasing them--

COMPUTER-GENERATED VOICE: We're sorry--

DANIEL MUELLEMAN: --in bulk--

COMPUTER-GENERATED VOICE: --your call did not go through.

DANIEL MUELLEMAN: --and by the facility residents--

COMPUTER-GENERATED VOICE: Will you please hang up and try your call again?

DANIEL MUELLEMAN: --purchasing them individually and consuming them.

COMPUTER-GENERATED VOICE: This is a recording.

DANIEL MUELLEMAN: This incident exposed a method of regulatory avoidance that directly threatens--

COMPUTER-GENERATED VOICE: We're sorry. Your call did not go through.

DANIEL MUELLEMAN: --the public and Nebraska's ability to--

COMPUTER-GENERATED VOICE: Will you please hang up and call again?

DANIEL MUELLEMAN: --fulfill its contractual obligations under the Master Settlement Agreement.

COMPUTER-GENERATED VOICE: This is a recording.

DANIEL MUELLEMAN: Next is a brief story about--

COMPUTER-GENERATED VOICE: We're sorry. Your call did not go through.

DANIEL MUELLEMAN: --Double Diamond brand. In the early days after signing the Master Settlement Agreement and passage of the cigarette escrow statutes, certain companies engaged in escrow evasion loophole behaviors where a company that was domestically located in the United States would import and distribute cigarettes manufactured by foreign manufacturers, sometimes in an Asian country or an Eastern European country, South American. One of these situations, a company was importing cigarettes manufactured by a company called GTC over in Asia and this, this brand of cigarettes was called Double Diamond. And the GTC manufacturer was not paying the escrow as required on the cigarette sales and so Nebraska could get judgments against them. And we did get judgments and penalties for over $2 million for multiple years' worth of these escrow evasion cigarettes, these Double Diamonds. But because of a persistent loophole in the escrow and directory statutes, we were not able to go after the wholesaler. Subsequent to that happening in multiple states across the nation in the early 2000s, the states passed a law that closed the loophole and allowed states to go after the manufacturers for shared liability. And so we had judgments and it prevented the Double Diamond cigarettes from getting into Nebraska and-- but then in 2018, we found out that the Double Diamond filtered cigar brands were being sold in Nebraska. And what we discovered, with records request, is essentially, the filtered cigar brand was still being made by the same company over in Asia and it was coming through the same wholesaler and it was being sold to similar retail environments as the cigarettes that were escrow [INAUDIBLE]. And so they just shifted their profile to something that could exploit another loophole and then they were selling the filtered cigars, a Double Diamond brand, into the states. What we found out is that this was just this one brand, evading, evading regulation through this one loophole, became the third-largest nonparticipating manufacturer in the state and that has meaning within the MSA contract obligations that Nebraska has for enforcement. And so we're looking at another brand of loophole evasion. So when we're talking about contract obligations under the Master Settlement Agreement, there's a foundational contract obligation that's at play here and has been in existence for 20 years, which is that Nebraska must diligently enforce the cigarette escrow statute. Based on arbitration and litigation history surrounding the diligent enforcement standard, we know that this contractual obligation triggers stricter enforcement of the involved state law than may otherwise be considered when you're looking at law enforcement. And so with the history of the evasion that we were seeing with the filtered cigar product in mind, we went to the Legislature and Senator Briese put that into a comprehensive bill in LB397. And so that had four different parts. Part of it was revamping retail licensing and then also retooling some of the escrow release provisions and the escrow bond requirements for certain manufacturers. Then it also included a cigarette tax definition change. And if you'll look at the committee statement, page 2, it's in the packet. The second full paragraph, there's the sentence that said, "LB397--" where does it start-- "changes Nebraska law to classify cigarettes for tax and stamp purposes in much the same way as the consumer market views and purchases their tobacco products. Included in the new definition of cigarette is the entire class of mass produced, high consumable, affordable priced, tobacco-based nicotine delivery systems available such as small, filtered cigars sold in packs of 20 and cartons of 200 for half the price of the cheapest cigarette." With that information in mind, the tax definition was designed to look at and legislatively contemplated to look at enforcing and allowing the state to enforce the MSA contract obligations against manufacturers within the state.

LINEHAN: You, you need to wrap up here and we'll have some questions for you.

DANIEL MUELLEMAN: OK. Just briefly, we also talked about tax losses and we obtained-- it's the last page in the packet-- we obtained information from the Nebraska Department of Revenue regarding cigarette and OTP taxes. OTP taxes is where the cigar taxes would be. If you look at the graph progressing over time, there's no substantial tax loss subsequent to the passage of LB397 and there's no major changes in cigarette or OTP trends over time. So the allegations of tax losses, on their face, don't seem to be supported by the revenue tax records.

LINEHAN: OK. I'm going to stop you there, there and we'll have questions. We have lot of questions. OK, does anybody else have any questions? Go ahead. Senator McCollister.

McCOLLISTER: Just so I understand correctly, Counselor, the so-called Double Diamond products are the, the three smaller cigars, the filtered cigars?

DANIEL MUELLEMAN: Yes, that's what they were looking like. There's a picture in the packet that has Double Diamond packages and so you can look at-- there are three packages on here and one of them is labeled as the cigarette package and then these other two are labeled as the cigars, as you can see there.

McCOLLISTER: So we're now taxing these particular products as cigarettes?

DANIEL MUELLEMAN: Yes.

McCOLLISTER: And I take it that cigars, you get a greater amount of tax under that classification?

DANIEL MUELLEMAN: At 64 cents a pack, it's, it's a slightly higher tax than what it used to be under the OTP tax rate.

McCOLLISTER: But you're currently receiving revenue from these products, are you not?

DANIEL MUELLEMAN: There's, there's only one of those products that's licensed for sale in the state. And so if we are receiving revenue, we didn't, we didn't look into that specific product and whether it was--

McCOLLISTER: So two of the products that you just named, you are not receiving any revenue, is that correct--

DANIEL MUELLEMAN: For--

McCOLLISTER: --or are you receiving cigarette revenue rather than cigar revenue?

DANIEL MUELLEMAN: I'm not aware of any Double Diamond product being sold in, in Nebraska in the past year, that's-- if that's what you're asking.

McCOLLISTER: So in ten words or less, why are we-- what is the purpose of, of your being here today?

DANIEL MUELLEMAN: Just to provide explanation and a little bit of history and context and clarifications for what's been going on.

McCOLLISTER: So you're currently having court action, are you not?

DANIEL MUELLEMAN: Yes.

McCOLLISTER: And so that's a desire to provide better definitions of the products in, in order to make those court actions-- resolve those court actions, is that the correct way to say that?

DANIEL MUELLEMAN: No, our preference is to allow it to play out in litigation and we would rather not be here testifying on further legislative actions while the litigation is pending.

McCOLLISTER: So you would, you would like this committee to bring a bill into the next session to help you resolve this issue, is that correct?

DANIEL MUELLEMAN: No, that's not our position. We would, we would rather allow the law to-- we rather the Legislature allow the law to stay as it is and allow the administrative and litigated process to play out.

McCOLLISTER: Thank you.

LINEHAN: Other questions from the committee? Senator Friesen.

FRIESEN: So if-- I'm going to ask, I guess, is why is our definition of a cigar than-- different than the federal definition of a cigar? I mean, it talks here, federal law, definition of cigars, you know, wrapped in tobacco leaf, a cigarette is wrapped in paper. Are we in

Nebraska having a different definition for these cigars or what is-- what changed?

DANIEL MUELLEMAN: So it-- there's a, there's a federal tax definition that shares similar language to-- for-- tax definition for cigarette that shares similar language to our state tax definition for cigarette that we have now. So we have very similar written laws for the definition of cigarette. And what the, what the federal definitions also have is an alternative definition for cigars that says there, there is such a thing as a cigar and whatever the cigar is, the-- first and foremost, it can only be a cigar if it's not a cigarette. So the primary definition is still a cigarette for certain products, you know? If it's in that gray area, federal law says if it's a cigarette, it's a cigarette first before you can think of it as a cigar. And there, there is a history of federal tax authorities trying to figure out, OK, if it's in that gray area, what is it? There's an ATF ruling that was out and it was a proposed ruling, it was never adopted into formalized law, trying to figure that out. And there's also-- there's, there's a federal regulation that talks a little bit about how to define what Little Cigars are based on weight class versus what premium cigars are, so you can figure out where these things are. And what that does is it works in conjunction with the federal tax changes in 2009 where it equalized the tax rate-- taxes, whatever these Little Cigars are, filtered cigars, it taxes them at the same rate as cigarettes under federal tax law. So for tax purposes, the Feds treat this product exactly the same. They just didn't-- they had no reason to figure out the difference between the product because they didn't have something like the MSA weighing down on them. And they don't have stamp obligations either, so you don't have to figure out if it needs to be stamped or not. And so for the Feds, it was we don't really care, we're getting the same amount of money either way. And so they punted on solving the issue and there's no actual resolution in formalized federal law. And so what we have is a cigarette tax definition that mirrors the federal tax definition, but because we have stamp requirements and the Master Settlement Agreement, we have to figure out that gray area question.

FRIESEN: So, I mean, I-- when I read the definition here of a cigar and a cigarette, it's obvious to me it's a cigar. But I know you're-- I know the courts will, I guess, decide those gray areas. But my, my, my thinking is, is every time we try to set some standards, businesses always look for changing and how they can change what their product is to meet a new definition or whatever. So we play these games all the time. So I, I look at this and, and I-- it seems to me like we just targeted something and then--

DANIEL MUELLEMAN: Yeah.

FRIESEN: That's my perception, so I guess-- is it because we did something a few years back, we changed the definition in our laws that triggered this?

DANIEL MUELLEMAN: I could try to clarify that and a couple of parts. So first is that the cigarette definition, under the Master Settlement Agreement, that separate contract, that's been the same as it always has been for, for 20 years. And that definition is now mirrored by the Nebraska state tax definition and so we--

FRIESEN: Are other states in that MSA, are they treating it the same as what we're doing here?

DANIEL MUELLEMAN: There are other states that use a similar state cigarette tax definition to require-- to, to look at the filtered cigars and say those are cigarettes for tax and stamp purposes. You know, by, by our count, there's over a dozen of those states that at least do it for tax purposes and then there's another handful that do it for stamping purposes.

FRIESEN: How many are members of this Master Settlement Agreement?

DANIEL MUELLEMAN: Let me look at the list real quick, all of them except for Minnesota. Minnesota is just one of the four states that's not part of the Master Settlement Agreement, so there's, there's, there's a lot of states that treat filtered cigars as cigarettes for tax and stamp purposes. And so we would, we would be doing the same as what they're doing,

FRIESEN: OK.

DANIEL MUELLEMAN: And so the, the difference is that there's, there's the tax and stamping laws and then there's the Master Settlement Agreement and then there's this other selection of laws called the escrow and directory statutes. And so these laws are what we're contractually obligated to diligently enforce per the terms of the Master Settlement Agreement. So we get about $40 million a year under the Master Settlement Agreement. If we don't diligently enforce the escrow and directory statutes, then we could lose that $40 million a year. And so what we're doing is we're saying the definitions match. We're trying to fulfill our contractual obligations and the, the, the definition of cigarette, under the Master Settlement Agreement, can be read to include filtered cigars. And because it can be read, we made the decision that we're not willing to risk the potential annual $40 million loss by not diligently enforcing that definition. That's just a--

FRIESEN: So you're saying all members of the Master Settlement Agreement are treating these filtered cigars the same?

DANIEL MUELLEMAN: No--

FRIESEN: OK.

DANIEL MUELLEMAN: --because we passed our laws after the execution of a, of a subsequent settlement agreement to the Master Settlement Agreement. In 2018, there was a-- it's not every state that's in the MSA, but it's pretty much all but six of them. We all executed a, a subsequent settlement agreement because we'd have been arguing about these multi-billion dollar years of payments for a decade and a half. And so what we did is we negotiated out a settlement agreement that clarified diligent enforcement standards and said these are the standards going forward that said whatever the states are doing now, fine. These are the standards going forward so that if there are any changes after that, then you're stuck with a very clear diligent enforcement standard. And when we-- so that was prior to the passage of LB397. So before we signed this settlement agreement in 2018, that's when we found these filtered cigars frustrating the market in the gray-area loopholes in Nebraska. So we said, well, we have a new diligent enforcement standard. There's a way to deal with this that gets rid of that gray area and that's pass a law that clarifies the cigarette tax definition and allows us to regulate the filtered cigars as cigarettes. If we do that, then we have to, we have to diligently enforce. It's not, well, it's in a gray area, so we're just going to not think about it. We didn't have the, we didn't have the ability to just say we had already talked about it with participating manufacturers prior to this second settlement. It was after that second settlement and we're the first state to have done that. We're the first state to have had any, any bill like that in legislation. We're not the first state to have-- require these products to be taxed and stamped like cigarettes, but we are the first state to do this. After that bill got passed and put into effect, then we were immediately in litigation. So there are a lot of other states that are very aware of what's going on in our ongoing litigation and that are waiting to get a result so they can figure out how they can move forward. But because it's a national scope and we're part of the agreement, everybody is just stuck waiting.

FRIESEN: So by, by doing this, though, are, are these small, filtered cigarettes subject to different taxes because of it? If the Feds are using one definition and the MSA is using another definition, are they being sort of double taxed or anything like that?

DANIEL MUELLEMAN: No, because the Feds have always taxed cigarettes and cigar products. So they take their first cut and then it passes down the line. And then the states have always had their own taxes as well.

FRIESEN: Are there different rates between cigars and cigarettes?

DANIEL MUELLEMAN: On, on the Fed's? For this product, cigarettes and cigars are taxed exactly the same. And then so you're looking down to the states and what we're doing in Nebraska is mimicking the tax equalization and just saying, fine, we got to tax equalize, but we have the added burden of trying to figure out whether or not they need to be stamped.

FRIESEN: OK, thank you.

LINEHAN: Senate, Senate-- thank you, Senator Friesen. Senator McCollister.

McCOLLISTER: Yeah, thank you, Chairwoman Linehan. I'm reading the LR477 and at the bottom, it says recommendation of whether the Department of Revenue should alter their current interpretation of cigarette. So is this just a, a squabble between the, the, the Department of Revenue and the AG, is that a fair characterization?

DANIEL MUELLEMAN: I, I don't think that that's a fair representation. I think that the Attorney General Office and the Department of Revenue are working together in the enforcement of this, of the cigarette tax definition.

McCOLLISTER: But you don't anticipate any legislation emanating from this, do you--

DANIEL MUELLEMAN: From, from--

McCOLLISTER: --from this, this LR477?

DANIEL MUELLEMAN: We would prefer no new legislation at--

McCOLLISTER: Can you repeat that?

DANIEL MUELLEMAN: We would prefer no new legislation from this LR. As Commissioner Fulton had said earlier, is that there are guidance documents out there by the Department of Revenue that the Department of Revenue promulgated after the passage of LB397 and that provides information to the public on how the Department of Revenue interprets the, the cigarette tax definition that's in the statute. There's a process that any taxpayer can avail itself of to work with the Department of Revenue on how that guidance document interpretation is, is playing out in public. Currently, nobody has availed themselves of that administrative process. And so our preference is really twofold, is one, we have a litigation challenge-- ongoing litigation on how the statute can be interpreted. We would, we would prefer to allow the litigation to play itself out so that we have an answer. But then also, we would prefer to allow the Attorneys General Office and the Department of Revenue to participate with anybody who wants to participate with us in the administrative process. After the passage of LB397, subsequent to its effective date, we participated in several conversations with taxpayers in the state and interested parties about how this new tax change would be implemented, provided a bunch of information to manufacturers on how they could remain in compliance with the law and keep their product on the market and nobody would get hurt. And then, you know, none of the, none of the Nebraska retailers would get hurt, none of the wholesalers would get hurt. All they had to do is just fill out some paperwork, submit it to the office, comply with the law, and they could still argue with us about it and have all their discussions and disagreements, but nobody has done that yet.

McCOLLISTER: Thank you, Counselor. One more question and I'll, I'll stand down. Who are the litigants in that, in that dispute?

DANIEL MUELLEMAN: There, there is three plaintiffs in that lawsuit. One of them is Cheyenne International and they're a, they're a cigarette and filtered cigar manufacturer out of the Carolinas. I can't remember if it's North or South Carolina. And then there's Swisher International and they make a lot of different types of cigar products. And then there's also the Cigar Association of America--

McCOLLISTER: Thank you.

DANIEL MUELLEMAN: --and they are just a trade organization.

McCOLLISTER: Thank you. Thank you, Chairwoman Linehan.

LINEHAN: Thank you, Senator McCollister. You've used the word mirror and match interchangeably here this morning in your testimony. Those are not-- they're not synonyms. I mean, they don't mean the same thing, right?

DANIEL MUELLEMAN: They're--

LINEHAN: When you say mirror, what do you mean? And when you say match, what do you mean?

DANIEL MUELLEMAN: In regards to what?

LINEHAN: Well, you said our cigarette laws mirror the federal laws and then you would say something matched. So when you say our cigarette definition mirrors the federal, it doesn't match it.

DANIEL MUELLEMAN: Yeah, I'd, I'd-- I mean, I'd have to look at the record, but--

LINEHAN: Well, you've used those terms--

DANIEL MUELLEMAN: What I think I was saying in those instances--

LINEHAN: --interchangeably several times this morning. You said mirror--

DANIEL MUELLEMAN: Um-hum.

LINEHAN: --and then you said match, so--

DANIEL MUELLEMAN: Um-hum.

LINEHAN: --does our, does our cigarette definition in Nebraska mirror the federal definition or match the federal definition?

DANIEL MUELLEMAN: In certain regards, the language of the statutes mirrors and/or matches.

LINEHAN: No, it can't mirror or match. Does it match or mirror? Is it the same or is it not the same?

DANIEL MUELLEMAN: I could, I could just read you what the, the definitional provisions that I'm saying are similar to and so--

LINEHAN: Well, you surely know whether our definition of a cigarette in the state of Nebraska matches the federal definition, does it?

DANIEL MUELLEMAN: In text, it does in certain regards. There are elements of the definitions that are in the state tax definition that are not in the federal tax definition for cigarette. But importantly to the dispute that we have right now, the two parts of the federal tax definition for cigarette are substantially similar to the two parts of the tax definition for cigarette.

LINEHAN: Substantially similar, not match. We have a different definition for cigarettes than the federal legislation-- federal law.

DANIEL MUELLEMAN: When you, when you read the text in the sentences, there are a couple of words that are different, yes.

LINEHAN: OK.

DANIEL MUELLEMAN: But there's a substantial similarity between the languages of the definitions.

LINEHAN: Does the MSA say that every state can define cigarettes?

DANIEL MUELLEMAN: For what purpose?

LINEHAN: For any purposes.

DANIEL MUELLEMAN: The MSA provides a Master Settlement Agreement-defined term of cigarette.

LINEHAN: Do we match that definition? Because my understanding is they are the only ones that can define a cigarette. I mean, surely we don't-- we can't have 50 states defining what a cigarette is. That wouldn't work.

DANIEL MUELLEMAN: There's, there's a number of different contexts in which terms are--

LINEHAN: I understand the difference of taxing.

DANIEL MUELLEMAN: Um-hum.

LINEHAN: We can tax them differently--

DANIEL MUELLEMAN: Yes,

LINEHAN: --but that's not defining them differently.

DANIEL MUELLEMAN: We have similar definitions in the multiple states, under the escrow and directory statutes, as the definition in the Master Settlement Agreement for cigarette. There are differences according to different state laws and forums, of course, but the, the

MSA-defined term of cigarette in that contract is substantially similar to the 46 states, D.C., and the territories that have the escrow and directory statutes.

LINEHAN: Substantially similar, not the same. Do you agree that the federal government decides what category a tobacco product is for federal excise tax purposes?

DANIEL MUELLEMAN: Yes.

LINEHAN: Do you agree the MSA payments are based on the sale of cigarettes as determined by the federal tax payments?

DANIEL MUELLEMAN: I don't think that's what the MSA says.

LINEHAN: So do-- is there any other attorney general that says they don't agree that's what it says?

DANIEL MUELLEMAN: I think we can look at the Master Settlement Agreement and see what it says, but as regards--

LINEHAN: But you don't agree that, you don't agree that the Master Settlement Agreement determines-- is determined by the federal excise tax payments? I mean, I remember when they did the, the agreement, which surely, we weren't going to do a master agreement and then have 46 or 50 different states decide what it meant. Doesn't the federal government decide what it means?

DANIEL MUELLEMAN: The, the federal government has no more power over this contract provision than the state governments do. It's a, it's a settlement contract. It's, it's a contract entered into by two different parties. Its terms are as defined in the contract. They're-- and, and there are parol evidence provisions within the settlement contract that says any subsequent modification has to be in writing and that anybody else's understanding of those written definitions just don't apply. The set-- the definition of cigarette, under the Master Settlement Agreement, is what it is as written.

LINEHAN: OK, I think I agree with that, as it's written. Does any other state treat these cigars, Little Cigars, like we treated them?

DANIEL MUELLEMAN: For tax purposes?

LINEHAN: For the consume-- no, not for tax purposes--

DANIEL MUELLEMAN: For the escrow and directory statute purposes?

LINEHAN: --for the MSA.

DANIEL MUELLEMAN: There are other states that have tried to.

LINEHAN: Right, but none of them have, right?

DANIEL MUELLEMAN: All of them have been-- that have tried to were sued and then they settled out.

LINEHAN: So why-- OK, how many, how many tried and were sued and settled?

DANIEL MUELLEMAN: I can tell you for sure right now, New Hampshire tried and was sued and settled.

LINEHAN: No other state has done it?

DANIEL MUELLEMAN: I don't have any other state offhand.

LINEHAN: So we're the only state that's doing this?

DANIEL MUELLEMAN: We're the only state that's doing it right now, but we're not the only state that has tried this.

LINEHAN: OK, well, which is it? New Hampshire tried and failed or we're the only state that's done it besides New Hampshire or there's other states?

DANIEL MUELLEMAN: We're, we're the one state right now that is doing this.

LINEHAN: And when you talk-- back to your chart here, where you say we're not losing any revenue, how could we-- how could this be accurate? Because it ends in 2019, the last year here on your bottom is 2019. We didn't pass the law until 2019, so where, where is the revenue that doesn't show up between '19 and '20?

DANIEL MUELLEMAN: You're looking at this chart? There are--

LINEHAN: I'm looking at the one you talked about, this one.

DANIEL MUELLEMAN: That's the federal excise tax chart. I didn't refer to that yet in my testimony.

LINEHAN: OK, what are you referring to then?

DANIEL MUELLEMAN: It's-- it was at the back of the packet, just before the federal excise tax chart. And it's a month-by-month summary of tax collections for state cigarette tax and state OTP tax for 2018, '19 and '20. The orange line is the OTP tax and that's where the cigars are. And the blue line is the cigarette tax.

LINEHAN: But that's all cigars, right?

DANIEL MUELLEMAN: OTP taxes--

LINEHAN: Is that just the Little Cigars?

DANIEL MUELLEMAN: That would be all cigars.

LINEHAN: Where's just the Little Cigars? They're not on here because we couldn't sell them.

DANIEL MUELLEMAN: No, the Little Cigars in 2018 would be included in the tax rolls for OTP--

LINEHAN: OK, but--

DANIEL MUELLEMAN: --and for half of 2019.

LINEHAN: --but you don't have on this chart what happened to the Little Cigars, just stand-alone Little Cigar sales. That's not in this chart.

DANIEL MUELLEMAN: We don't have any information at the ready disposal of the Tax Commissioner to separate out different types of product within the OTP tax returns.

LINEHAN: Well-- so then you just said we were-- it was my testimony that you just said was not accurate. But you don't, you don't prove that here because you don't-- you can't separate it out.

DANIEL MUELLEMAN: Well, you said we lost a couple of hundred thousand in taxes.

LINEHAN: $200,000 to $600,000 to be exact.

DANIEL MUELLEMAN: Right and so when you look at the OTP taxes for halfway through 2009-- for all of 2019, you look at-- for a substantial amount of those months--

LINEHAN: But these aren't-- I'm sorry. This isn't just those cigarette-- cigars. This is all cigars.

DANIEL MUELLEMAN: Yeah, I'm just trying to explain why there's no tax loss, as you were saying, in the multi-hundred thousands.

LINEHAN: But you can't explain that because you don't have the information. You don't know-- can we sell those Little Cigars in the state of Nebraska right now? Are they being sold?

DANIEL MUELLEMAN: At the beginning of 2019 and up until September 1 of 2019, Little Cigars could be sold in Nebraska.

LINEHAN: And then they could not be sold.

DANIEL MUELLEMAN: And then after September 1, 2019, there was one Little Cigar product that remained eligible for sale.

LINEHAN: So are the, the Little Cigar-- you don't have a separate line for just the cigars that took off the market.

DANIEL MUELLEMAN: They're-- they would be included in the OTP tax rolls.

LINEHAN: I know, but that's not my question. Once again, do you have a separate line for the cigars that were took off the market?

DANIEL MUELLEMAN: No, there is no separate line--

LINEHAN: OK, thank you.

DANIEL MUELLEMAN: --for the cigars that were taken off the market.

LINEHAN: Thank you. Are there other questions from the committee? All right, thank you for being here.

DANIEL MUELLEMAN: Thank you for having me.

LINEHAN: I'm sorry, is there anybody on the phone with a question? All right, thank you. You can come in and join us. We're kind of short on senators--

BRANDT: I would, except I'm busy across the hall.

LINEHAN: OK. Good morning.

RALPH BROWN: Good morning. Thank you for letting me be here today.

LINEHAN: Absolutely.

RALPH BROWN: I appreciate this very much. I want to first say I want to-- I have an opening statement just to read off to you. I first want to say thank you for allowing me to speak today regarding this matter of filtered cigars--

LINEHAN: I need your name, I'm sorry.

RALPH BROWN: I am sorry.

LINEHAN: That's OK.

RALPH BROWN: My name is Ralph Brown and it's spelled R-a-l-p-h B-r-o-w-n. Anyway, I want to say thank you for allowing me to be here today to speak on the matter of the filtered cigars and interpretation of them for the taxation of cigarettes in the MSA. Again, my name is Ralph Brown. I am the vice president of governmental affairs for Cheyenne International of Grover, North Carolina. Cheyenne is a small tobacco manufacturer of cigarettes, filtered cigars, and smokeless tobacco. I have been with Cheyenne for over ten years and I've worked in the tobacco industry for over 45 years and I'm also a board member of the Cigar Association of America. Cheyenne spends an enormous amount of resources financially and employee capital to be compliant with the many federal and state regulations that are required of a tobacco manufacturer. Cheyenne has been a compliant NPM, which is a nonparticipating manufacturer of MSA, in multiple states for cigarette sales since the inception of the company and maintains a very good relationship with the states' AG offices for cigarette sales and the TTB. The issue of cigarette tax being applicable to the sale of filtered cigars in the state of Nebraska is not why I have traveled to appear at this hearing. But I drove here to testify because the AG has designated filtered cigars for the intent of the Master Settlement Agreement. We in the cigar industry disagree with this notion that the filtered cigars should be compliant to the state of Nebraska's MSA statutes and our points are follows: (1) cigars and cigarettes are very different products. Cigars are made from a very different tobacco wrapper, thus creating a much harsher smoke. The wrapper of the cigar is made of tobacco. Cigarettes, on the other hand, have a smoother smoke and are wrapped in paper. Nebraska state excise tax definition of a cigarette is virtually identical to the federal tax definition of a cigarette. Cheyenne, being a highly compliant tax-- compliant tobacco product manufacturer, obtained a written ruling from TTB, which is the Tobacco Tax and Trade Bureau, that cigar products are cigars, under this definition, before introducing them into the market. In my many years in the tobacco business, I've never seen any attorney general's office taking the position that the Nebraska

Attorney General is, is taking and none of these states have experienced reduced MSA dollars. Several other states have taxed filtered cigars at the same rate as cigarettes, but do not subject the products to the MSA. The state of Nebraska will not lose MSA dollars if it is-- taxes filtered cigars the same as cigarettes and does not subject them to the Nebraska MSA laws. Again, thank you for your time today and I'm happy to answer any questions you have.

LINEHAN: Thank you for being here. Are there questions from the committee? Senator Friesen.

FRIESEN: Thank you, Mr. Brown, for coming here. Hopefully you can clarify some.

RALPH BROWN: I hope I can too, thank you, sir.

FRIESEN: So when it comes to the federal definition, again, and the state definition of what is a cigarette and what is a cigar, are we the same?

RALPH BROWN: You are not the same. As, as I think was previously said, there are various differences between the definitions. That is correct. The federal law defines a cigar, being any roll of wrapper-- of tobacco wrapped in a leaf tobacco. Any substance containing tobacco other than a roll of tobacco, which is a cigarette, within the meaning of subsection (b)(2). A cigarette means any roll of tobacco wrapped in a paper or any substance not containing tobacco and any roll of tobacco wrapped in any substance containing tobacco because of its appearance. The type of tobacco used in the filler or its packaging is likely to be offered to purchase by consumers as a cigarette described in paragraph-- these are very hard and distinct definitions as applied by the federal government. You go into adding additional elements to the definition of what these products are.

FRIESEN: So from a tax standpoint, you're not-- and you pay the federal excise tax, you don't have problems with what they're doing. This all boils down to our MSA agreement, is that what we're-- you're treated differently than other states are treating you?

RALPH BROWN: Absolutely, Senator. That is absolutely correct. We have multiple other states, which I believe it's already been declared here, 16 states tax filtered cigars the same as cigarettes, but they do not imply the MSA on those products sold in that state.

FRIESEN: Because they meet the definition of a cigar?

RALPH BROWN: They will meet the definition-- in their, in their tax laws, they meet the definition and interpretation of, of cigar, that is correct. So they're defining as cigar, but tax them as a cigarette in the definition under the tax codes. Does that make sense? I hope I'm-- apologize, I'm sometimes not the most ex-- I'm not a, I'm not an attorney, so I try to be careful in how I describe the things. I do more layman's terms than anything a lot of times.

FRIESEN: OK, so I guess how long have you been selling-- how long have these products been around? Are they just new or are they something--

RALPH BROWN: OK, this is funny. Sean Kelly asked me this this morning, talked about this. I've been in this business-- as I said, I started in this business in 1975. I started over in east Tennessee as a sales rep working for a company called Lorillard Tobacco. And guess what was on my company car in 1975? Filtered cigars. I had filtered cigars: Omega, [INAUDIBLE] that were manufactured by Lorillard Tobacco in Greensboro, North Carolina, and I was selling filtered cigars back then. So filtered cigars are not new to the marketplace. It's not a new phenomenon that grew up all of a sudden. It's the fact that the products have been around for a long time, sold in multiple different types of packaging, sometimes by products-- even back then, were sold in 20s packs and sold in some other packaging, so they've been around a long, long time.

FRIESEN: So it's, it's LB397 that changed how we view filtered cigars? Is that our-- the Attorney General's Office is saying what we did in LB397, that that's what changed their definition now--

RALPH BROWN: Yes.

FRIESEN: -- and subject to the MSA versus--

RALPH BROWN: Right, they, they-- what they tried to do here is, is they're trying to say what-- they're taking another step that other states have never done, in my interpretation. They've come in here and they've said, OK, we want to tax these products as cigarettes. Fair. OK, good. Go for it. If that's what you need to do for revenue, sure. But, but then to take the next step and say all of a sudden, because we're now taxing them as cigarettes with a tax-- same tax rate, we're going to apply them to the MSA. It's where it got-- I call it weird on my end-- I'm sorry, that's the way I'll just call it-- because that was where I couldn't understand that part for myself. I couldn't understand why all of a sudden is a state saying, OK, we want to tax them as cigarettes and we know we do this across the country in multiple states. We have these products sold every day with the cigarette tax applied. But why would we all of a sudden need to put them in the Master Settlement because we didn't have any other evidence that this needed to be done in any other state. I mean, if there was evidential proof out there that said, hey, we need to put these in the Master Settlement because, one, they're becoming a big problem of the sales, then we begun to say, wow, OK, that, that becomes understandable. But what Nebraska did was-- there's no reason to do it. One, the products aren't even comparable. I mean, they're not the same. They're not interchangeable products, usually by the consumer, because cigars are different. They're harsher smoking, they have different tobaccos and, and all of this. So it's like, well, so obviously, there must be some other underlying issue here that we're not sure of. Why did Nebraska decide to do this?

FRIESEN: So what are the tax consequences to you, then, by putting them in the Master Settlement Agreement?

RALPH BROWN: For us, it means stoppage of sales. We've literally had to stop sales in the state. The data that I have demonstrates that. I use a data source called the Management Science Associates. They're reporting data that your retail stores, not all but a vast majority of them in this state, report through their scan data. You know, when you go to a register, everything is scanned. This data is accumulated and sent into this data-reporting house. And the industry, such as us at Cheyenne and others, use this data as analysis of how our business models are working in the individual states around the country. In the study that I have, which was a data-reporting period ending as of-- in May of this year, which is the last report I have available to me, showed that you had traditionally lost, in the filtered cigar category doing the scan data, over 99.9-- as you've said, Senator. That's almost 100 percent of your total volume has been depleted in this state. Yes, there's one exception. It's a little product called Phillies Cigar. It is a product, according-- through your statute, allows it to be sold because it's owned by a company who is a participating manufacturer through the MSA. And they're in the market selling, but they're selling at a, at a nominal count of just a very few cartons. I mean, it's not even-- hardly even putting on the market. I mean, don't even make a blip on what's going on, so, yes, sir.

FRIESEN: OK, thank you.

LINEHAN: Thank you, Senator Friesen. Senator McCollister.

McCOLLISTER: Thank you, Chairwoman Linehan. Mr. Brown, thanks for coming again.

RALPH BROWN: You're welcome.

McCOLLISTER: Would you say that LB397 is, is a little imprecise and that's what the issue is with the AG and your, your association?

RALPH BROWN: I think so. I think, I think it's a fair statement. And to talk about it in an imprecise manner-- again, thinking that through, yes. I think the language of the law could be cleaned up a little bit and then-- and help identify what is the proper products for the state of the-- to apply the Master Settlement to, I guess, is a way to put it. Again, not being a true attorney in all the legislative laws and how-- written and everything. But yeah, LB397, you know, needs to be modified just to give the proper definitions of the products that you're trying to accomplish here, right?

McCOLLISTER: Would it help end the lit-- litigation, would it not?

RALPH BROWN: It would, it would, yeah.

McCOLLISTER: So it would be your recommendation that we would perhaps create a bill that would, would change some of those definitions to everybody's satisfaction, correct?

RALPH BROWN: That would be the best fix, right. That would, that would definitely resolve the issue so that the, that the legislation creates the fix, that's right. And, and, and again, clears up all this confusion that is out in the marketplace. I mean, retailers, everybody is confused. What do I do in the state of Nebraska? I certainly can't sell these products anymore. Nobody is selling it. One of my-- a large distributor in this state declared in an opening-- you know, in a statement, you know, that they're not selling anything here anymore. You know, they can't in the filtered cigar category.

McCOLLISTER: Thank you, sounds like a good idea to me.

RALPH BROWN: Right, yeah.

LINEHAN: Thank you, Senator McCollister. Thank you, Mr. Brown, for being here. I have a couple of questions.

RALPH BROWN: Yes, ma'am.

LINEHAN: According to the information I've received, the state took-- in 2006, the State Attorneys General petitioned the Alcohol and Tobacco Tax Trade Bureau, TTB, to reclassify Little Cigars as cigarettes so Little Cigars would be subject to the MSA. The TTB declined to change the Little Cigar definition, is that correct?

RALPH BROWN: That is correct.

LINEHAN: So the, the states have asked-- together, have asked to do what we're doing here--

RALPH BROWN: Right.

LINEHAN: --and TTB said no.

RALPH BROWN: No, no, that's correct.

LINEHAN: OK, and then in 2009, and this is where it gets muddy-- or some confusion, Congress enacts legislation increasing taxes on tobacco taxes. That was to pay for CHIP--

RALPH BROWN: That's correct, right.

LINEHAN: --with children's insurance. The legislation includes taxing Little Cigars weighing less than 3 pounds per 1,000 sticks to be taxed as cigarettes.

RALPH BROWN: That's correct.

LINEHAN: But even though they did that, they still never put them in the MSA--

RALPH BROWN: That's correct.

LINEHAN: --because the MSA was an agreement between the four largest tobacco companies about cigarettes, right--

RALPH BROWN: That's correct.

LINEHAN: --not about cigars--

RALPH BROWN: That's correct.

LINEHAN: --not about chewing tobacco--

RALPH BROWN: That's correct.

LINEHAN: --about cigarettes.

RALPH BROWN: About cigarettes.

LINEHAN: And they said you couldn't advertise cigarettes on TV anymore.

RALPH BROWN: Right.

LINEHAN: There were all these agreements that they wouldn't market the way they had marketed in the past--

RALPH BROWN: Absolutely.

LINEHAN: -- so I don't have my Virginia Slims in all-- all the women's magazines--

RALPH BROWN: Right. Yes, ma'am.

LINEHAN: --right? But in any of those discussions, the MSA-- did we-- did they ever talk about cigars?

RALPH BROWN: No, not at all, not that I'm aware of. I mean, I wasn't sitting at the, at the table when everything negotiated but, yeah, that's correct. No, there's nothing.

LINEHAN: And no other state does this but Nebraska?

RALPH BROWN: That is correct. Yes, ma'am.

LINEHAN: So why aren't the other states concerned about-- I mean, they all get healthcare funds.

RALPH BROWN: Correct. They all are participating in the--

LINEHAN: But they're not concerned?

RALPH BROWN: No. I mean, you have 46 states, settling states in the Master Settlement and as I've said, there's 16 states that are currently taxing filtered cigars as cigarettes, but are not putting this liability of the MSA onto the filtered cigar product, right.

LINEHAN: OK, thank you. Are there any other questions? Thank you very much for being here, Mr. Brown.

RALPH BROWN: You're welcome, ma'am.

LINEHAN: I appreciate it.

RALPH BROWN: Thank you.

LINEHAN: Hello.

ANSLEY FELLERS: Hi, good morning. Members of the Revenue Committee, thank you for having us here today. Thank you, Chairman-- Chairwoman Linehan. My name is Ansley Fellers, A-n-s-l-e-y F-e-l-l-e-r-s, and I'm here on behalf of the Nebraska Grocery Industry Association. NGIA represents 85 percent of the industry selling tobacco products in the state of Nebraska and we appreciate Senator Linehan bringing this issue before the committee. While 15 other states tax Little Cigars at the same rate as cigarettes, Nebraska is the only state to bring Little Cigars under the Master Settlement Agreement. As you've heard, this interpretation is problematic and costly for manufacturers. But others in the industry, including distributors, are facing regulatory uncertainty and costs as well. The interpretation of LB397 made it illegal to sell Little Cigars in Nebraska if they aren't wrapped in fire-safe paper, a requirement which would substantially change the product and for all intents and purposes, make them cigarettes. So to recap, in order to sell these Little Cigars in Nebraska, they have to be wrapped in a product that makes them not cigars. The bill also requires Little Cigars to have an excise stamp, the one intended for cigarettes. Unlike cigarettes, however, these products aren't uniform and in many cases, require hand stamping. I'm happy to describe that process if you're interested. Well, as the AG said, there are states that require a stamp on small cigars. Some of these states, for example, California and New Mexico, have exempted Little Cigars from the stamping obligation, even though they're taxing them at the same rate as cigarettes. We are also happy to provide more information on how they accomplish that if the committee is interested, here or as a follow-up. I would also mention had regulators come to our industry with proof of contraband, our stamping agents would have stopped selling them. We're happy to work with the Attorney General to keep illegal products off the shelves. Instead, in an effort to target potentially illegal products, LB397 and its interpretation penalize legitimate, legitimate manufacturers and products. Our distributors have described some changes in the industry, like filters on cigars, as efforts by legitimate manufacturers to reach different consumers, as you can imagine. When regulations were promulgated on LB397, it became clear the requirements were far more impactful than expected and the changes amounted to a significant tax increase. Because of the increased costs, both direct and indirect, and uncertainties, uncertainties surrounding enforcement, our distributors have lost products, consumers face-- have fewer choices, and the state of Nebraska has forgone hundreds of thousands of dollars in revenue. While we oppose taxing genuine filtered cigars as cigarettes altogether, we would ask the committee at minimum, clarify these cigars are not subject to the MSA and are exempt from the requirements I described above, exclusively-- intended exclusively for cigarettes. Thanks for your time. I'm happy to answer questions.

LINEHAN: Thank you. Senator McCollister.

McCOLLISTER: Yeah, thank you, Chairwoman Linehan, and thank you for being here. So if I understand, you would like for us to rework LB397 and make it-- provide greater definitions. And you've expressed a willingness to work with the AG for that legislation, is that correct?

ANSLEY FELLERS: Correct. Yeah, we're definitely willing to work with whoever is interested in fixing this issue.

McCOLLISTER: Are you a party to some of the litigation that's currently occurring?

ANSLEY FELLERS: We are not.

McCOLLISTER: OK, thank you for being here.

ANSLEY FELLERS: Thank you.

McCOLLISTER: Thank you.

LINEHAN: Thank you, Senator McCollister. One of my concerns about this, from the-- as soon as I was brought to my attention is the Legislature wasn't fully aware of what they were doing or what it--what was the consequences of what they were doing because I've got Kathy Siefken here, and this was provided by the Attorney General's Office, that she came in as a proponent. So do you think the grocers would have been a proponent if they knew that it was going to end up taking a product off the market?

ANSLEY FELLERS: No, I think there would have been more opposition last year had everyone been aware of how this was going to be interpreted.

LINEHAN: Probably Tim-- the convenience stores wouldn't have been for it either, would have they?

ANSLEY FELLERS: No.

LINEHAN: So it seems like maybe we did something that we weren't fully aware of what we were doing, which is-- happens.

ANSLEY FELLERS: I think, I think-- I'm sorry, is it OK if I expand on that just quickly?

LINEHAN: Certainly.

ANSLEY FELLERS: I think that's-- I think folks-- I think maybe the interpretation was a little broader than anticipated. And also, what Mr. Brown mentioned that other states are doing is-- it's not uncommon for states to be taxing these Little Cigars at the same rate as cigarettes and I think everyone was sort of prepared for that. I think changing the definition to make these products cigarettes virtually-- I mean, it just-- they are not-- now we can't even sell them in the state. It just-- yeah, it was burdensome.

LINEHAN: And what I keep going back to is the federal government decided to do that in 2009 so they could pay for CHIP, but they didn't include them in the MSA. So it seems if they were going to-- if they, if they wanted them in the MSA and they were tax-- going to tax them as a cigarettes, why wouldn't they put them in the MSA then?

ANSLEY FELLERS: Right.

LINEHAN: OK.

ANSLEY FELLERS: And states like New Mexico, I mentioned that they exempt them from the, the stamp requirement. So if the question is, well, if you're going to tax them at the same rate, how do you, how do you tax them? You know, how do you tell the difference if you're not labeling them as cigarettes? And the answer in New Mexico, I believe, is, well, these manufacturers-- again, if, if there's a problem federally with TTB not catching illegitimate products or contraband products, that's a federal problem, right? That is a problem that we're having at TTB. But all of these companies, as Mr. Brown stated, they go through this federal process. The federal government says you are manufacturing cigars or Little Cigars or cigarettes. And so in places like New Mexico, those manufacturers can provide to the state, prove that TTB says they're manufacturing cigars and that's-- and then they're taxed that-- at that rate.

LINEHAN: OK, thank you very much for being here, I appreciate it.

ANSLEY FELLERS: Thank you.

LINEHAN: Any other questions? Thank you. Are there any other test-- anyone else wishing to testify? No. Oh, that's right, it's invited only, how could I forget? Kay is reminding me here. OK, we do have letters for the record. Proponents: Ted Stessman, Core-Mark Midcontinent, Inc. Opponents: Annette Dubas, Nebraska Association of Behavioral Health Organizations; Amy Behnke, Health Center Association of Nebraska; Amanda McGill Johnson, Nebraskans for Lifesaving Cures; Dr. David Crouse, Nebraska Research, Inc.; Aubrey Mancuso, Voices for Children; Patti Jurjevich, Nebraska Association of Regional Administrators; Pat Lopez, Friends of Public Health in Nebraska; David Holmquist, AARP. There were no neutral, so this is for this afternoon. So with that-- closes the hearing. Thank you all for being here. Sorry that the weather was what it was. It will be nicer tomorrow. Thank you.

LINEHAN: [RECORDER MALFUNCTION] directly into the microphone so the--

_________________: The caller--

LINDSTROM: Brett Lindstrom.

_________________: --has joined the conference.

LINEHAN: --transcribers are able to hear your testimony clearly. To my immediate left is research analyst Kay Bergquist. At the end of the table to my right is committee clerk Grant Latimer. Now I would like the senators on the phone to introduce themselves, starting with Tom Briese.

BRIESE: I'm Senator Tom Briese, I represent Legislative District 41.

LINDSTROM: Brett Lindstrom, District 18.

LINEHAN: And then here on the dais is.

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

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

LINEHAN: And today we have two interns-- excuse me, pages. We have Noah-- is it Boger,--

_________________: The caller--

McCOLLISTER: John McCollister.

LINEHAN: --who is from Valley, Nebraska,--

________________: --has joined the conference.

LINEHAN: --political science major at UNL. And Noa Snyder, who is from Central City. Where is she? Already is running around. She is-- she will be back. She has a-- like a fall color sweater on. And she's from Central City and she's a political science major at Doane. Please remember that senators can come and go during our hearing as they may have bills to introduce in other committees. Already said we have to speak directly into the microphones. Please excuse our sound system today with the guys on the phone. We had problems this morning. I don't know what's going on, but they may come in and out as they're trying to stay on, they keep getting knocked off. So we encourage you to hang in there, guys.

CRAWFORD: Sounds like an old game, game of pong.

LINEHAN: What?

GRANT LATIMER: [INAUDIBLE]

LINEHAN: Oh, you might need to mute yourselves if you're not talking, gentlemen.

GRANT LATIMER: Star 6 is [INAUDIBLE].

LINEHAN: Star 6. OK with that, we will start today with Senator Clements.

CLEMENTS: I heard Senator McCollister call in.

LINEHAN: Oh. Hi, John. Would you like to introduce yourself, please? Star 6 to unmute, too.

McCOLLISTER: John McCollister. John McCollister, District 20, central Omaha. Hello, Robert.

LINEHAN: Thank you, John.

CLEMENTS: Thank you, Madam Chair and members of the Revenue Committee. I'm Senator Rob Clements, R-o-b C-l-e-m-e-n-t-s. I represent Legislative District 2, and I'm here to open for the interim study LR415. First, I'd like to thank Senator Linehan and the members of the Revenue Committee for prioritizing LR415 and accommodating me with a public hearing. It is appreciated. The purpose of this study-- resolution is to examine the inheritance tax, its current structure, and recommendations on whether it should be amended, replaced, or repealed. As we seek to improve Nebraska's tax structure to encourage economic growth, simplification, fairness, and to reduce outmigration to other states, I thought it necessary to look at our inheritance tax system. Being a tax preparer and banker for the last 40 years, I've become aware of many instances where our inheritance tax seems arbitrary and excessive. Not only are people usually grieving the loss of family or a loved one, they may have to sell the real estate they just inherited to pay the tax they owe. For example, one of my customers died a few years ago with no federal estate tax due, but his heirs owed over $600,000 dollars of Nebraska inheritance tax. I think we can do better as a state. Nebraska is currently one of only six states with an inheritance tax, which makes us an outlier. Out of the five other states, only one is a neighbor, Iowa, and our rates are higher overall. If you would look at handout, page 1, titled Inheritance Tax Rates by State, there are three categories of tax for children or direct relatives. You'll see Pennsylvania is 4.5 percent, Nebraska 1 percent, and the other four states are zero. And of course, 44 others have no inheritance tax. So we're only one of two states that would tax children. Then the next column is nephews and indirect relatives. Nebraska is in the middle, Iowa is at 15 percent, we're at 13 percent, down to 10 percent for Maryland, and zero for all other states. Then the third column, nonrelatives, Nebraska at 18 percent. We're the highest in the nation. And you can see Iowa is down at 15, Maryland at 10. And so that is showing that we're among the top of taxed states who do tax. And the Nebraska inheritance tax rates and exemptions were changed back in 2007 with LB502. If you change-- turn to page 2, it shows Nebraska Inheritance Tax - 2000 Changes-- 2007 Changes. The prior law for children, 1 percent tax above $10,000, that was increased-- the exemption increased to $40,000 for children stayed at 1 percent. But indirect relatives, nieces and nephews, were 9 percent once they got over $60,000. That was changed to 13 percent over $15,000. And the 9 percent didn't start right away. It was graded up. But the 13 percent starts immediately after $15,000. Then nonrelatives were at 18 percent after $50,000 estate and it stayed at 18 percent. But they only have a $10,000 exemption. So there was-- in 2008, tax rates did increase for indirect relatives and nonrelatives. And at the same time, real estate values began to increase greatly. I'd like to thank NACO for providing the committee with historical inheritance tax revenue by county. It has been very helpful. I was able to utilize this data and create a graph that I believe will help you see the volatility and growth of the inheritance tax revenue over time. And I didn't give you one of these, but this is, this is the spreadsheet that I received from NACO. It's all 93 counties and the inheritance tax collections from 1993 every year through 2020. So it's about 2,500 numbers on here. And it would be fun to go over them all. But some of us would like it, some of us wouldn't. So if you switch to handout page 3, it shows the actual state total in 1993 was $18.8 million. And it goes down to 2018, '19 and '20 were $70.4, $73.7 million, and $63 million. The center column, I decided to see what kind of an inflation rate that has been and 5 percent compounded inflation for the last 27 years matches pretty well what the collections have been. Then I decided what if it was 2.5 percent? Just thinking, well, maybe taxpayers would be willing to see a 2.5 percent increase. And if you look at the bottom 2020 number would have been $36 million had it been held to 2.5 percent. So if you switch to page 4, page 4 is the graph that-- the graph of those 2,500 numbers, which just using the totals for all 93 counties, you can see the blue line is the actual receipts that was in that data starting at the $18 million figure. And it goes up and it goes-- jumps up and down. And starting in 2010, you can see how it really starts skyrocketing and hits almost $75 million a year ago and now it's $63 million, the latest one. And I think I could hear-- as I saw this, I could hear the counties saying they didn't raise taxes because they left the levy the same. We hear that sometimes, but we know that increased valuation do raise property taxes. And the same way with their inheritance taxes, works that way. The rates have stayed the same and the values have increased greatly. But in the case of farmland, inheritance taxes paid on 100 percent of the market value, whereas property taxes paid on 75 percent of land value on agriculture, which has-- my opinion-- hurt agriculture even more. And so I just wanted to show that the red line on the graph is the 5 percent inflation. You can see that it's pretty much been 5 percent compounded increase in tax collections. And then the green line that's lower is my 2.5 percent that I just wanted to see what would happen if it was only had been 2.5 percent, which sometimes taxpayers are willing to accept that tax receipts-- expenditures do need to grow up-- increase. And that's where it comes out at about $35 million instead of the-- around $70 million that we have currently. So the data shows that inheritance tax is volatile and not a reliable revenue source for budgeting. Recent significant increases in real estate values have caused dollar amounts to increase greatly. I believe we can do better as a state in this area. We need to continue to give people more reasons to stay in our state and not leave. This is why I am planning to bring a bill next session to move us forward in our inheritance tax system. I believe this is an antiquated tax system that puts Nebraska at a disadvantage to most all other states. That is why it should be amended, replaced, or repealed. In addition, I found it difficult to obtain inheritance tax information. I'd like to see reporting standards improved to give the public increased transparency in this area. But thank you for your willingness to hear LR415, and I'll try to answer any questions at this time.

LINEHAN: Thank you very much, Senator Clements. Do we have questions from the committee? Senator Friesen.

FRIESEN: So Senator Clements, I, I know you love numbers and I've, you know, recently been going through an inheritance issue, too. And so I, I look at this and I've, I've talked to numerous ag guys about inheritance tax at the county level. And I get quite a varied opinion. I get quite a few of them saying, don't touch it. It's a one-time deal. Counties, if they don't get that revenue, they're going to raise my property taxes and then I'll pay every year. But they're going to keep getting the same amount of money. So it's where the money comes from. Now have you tracked at all how much of this revenue is coming from ag land? How much is coming from stocks and bonds and checking accounts? Because that is the first time we tax all real property instead of just land or physical property. We used to collect property tax on all real property like stocks, bonds, everything. And so this real-- or this inheritance tax is taxing those accounts also, correct?

CLEMENTS: Yes, it is. But those accounts already paid income tax--

FRIESEN: I get that.

CLEMENTS: --before, before they got to put it in the savings account.

FRIESEN: Yep. I, I get that. But I mean, it's a-- if we're going to tax anything-- I mean, are you saying it's a very broad tax that covers everything?

CLEMENTS: Inheritance tax does tax the entire estate. Yes.

FRIESEN: Whatever the dollar value it is?

CLEMENTS: All the assets--

FRIESEN: One hundred percent of value, correct?

CLEMENTS: Cash and real estate.

FRIESEN: So have you-- is there any data that breaks it down into how much of the inheritance tax comes from stocks and bonds? How much comes from ag land? How much comes from residential homes?

CLEMENTS: No, I--

FRIESEN: Don't know if that's available but--

CLEMENTS: I didn't find that myself. I've got a testifier, my brother who's been in the estate business over 40 years, he might give an idea of how his estates, if he has a feel for that, what the mix of land to cash and other would be.

FRIESEN: Because I assume each county is kind of different, too. You get the real ag-heavy counties. We have high ag land value. But Douglas County, there's probably more people own stocks and bonds.

CLEMENTS: Right.

FRIESEN: Are, are retirement accounts taxed, too, or 401(k)s, if there's money left?

CLEMENTS: They, they--

FRIESEN: You know if those are included?

CLEMENTS: Yes.

FRIESEN: Everything?

CLEMENTS: Yes, unless they donate them to a charity.

FRIESEN: OK. Thank you.

LINEHAN: I'm sorry. I was doing math in my head and I was missing my partner that sits next to me on the floor, so I'm just going to ask you publicly. So 1 percent of a million is 10,000?

CLEMENTS: One percent of a million is 10,000. Yes.

LINEHAN: OK. OK. So on your exceptions here-- that was on page 2?

CLEMENTS: Yes.

LINEHAN: So you don't, you don't have to have a very big estate to end of paying estate taxes if you're indirect relative or nonrelative do you?

CLEMENTS: No, not very much at all. The, the parents' house, average house is going to be $150, $200,000 anywhere. And that's way above--

LINEHAN: And any savings they have, any property they have is taxed, right, inheritance?

CLEMENTS: Yes.

LINEHAN: So you--

CLEMENTS: The only thing would be if there's-- if there are five children each getting $40,000 exemption, that would exempt $200,000. Each person inheriting gets that exemption. But if there's two kids, for example, two, two-- you know, two nieces, only $15,000 each would be $30,000 exempt with the rest taxable.

LINEHAN: I'm sorry, I jumped ahead. Senator Crawford, did you have questions?

CRAWFORD: No.

LINEHAN: So where we really kind of-- where we jump off the page here compared to-- well, compared to nothing, which is where most states are, but even compared to those that do tax, it's, it's the indirect relatives, nieces, nephews or nonrelatives where they really get hammered.

CLEMENTS: Yes.

LINEHAN: So for instance, if I'm, you know, the nonrelative that's lived next door and taken care of me for the last 30 years, so I leave them a farm and the farm is worth $1 million, how much would they have to pay in taxes?

CLEMENTS: Well, let's see is that $180,000? Yeah, 18 percent after you take off--

LINEHAN: Ten.

CLEMENTS: --$10,000.

LINEHAN: So they have to pay $180,000 in taxes?

CLEMENTS: Yes.

LINEHAN: OK. All right. I don't have any other questions. Thank you very much for bringing this to our attention.

CLEMENTS: Thank you. And I would like to stay to close.

LINEHAN: OK, well, we'd like to have you.

BRIESE: Hello.

CRAWFORD: Did you want-- somebody on the phone, a phone call [INAUDIBLE]?

LINEHAN: I'm sorry. Oh, I'm sorry. Does somebody have a question-- I'm sorry-- on the phone?

BRIESE: Yeah, it's Senator--

LINEHAN: Go ahead.

BRIESE: Briese here, can you hear me now?

LINEHAN: Go ahead, Senator Briese.

BRIESE: Thank you. Senator Clements, thanks for bringing this for [INAUDIBLE]. We're talking about a lot of--

LINEHAN: Can you just get him on your cell phone? Senator Briese, we're going to try and get you on the cell phone.

BRIESE: OK, can you hear me?

LINEHAN: Yes.

BRIESE: Can you hear me OK?

LINEHAN: Yes.

BRIESE: Oh, OK. Yeah, and Senator Clements, thanks for bringing this for discussion. We're talking a lot about a lot of revenue here that the counties are going to tell us they rely on to a considerable degree. Are you contemplating in the legislation that you're thinking about-- are you contemplating, contemplating any method to replace that revenue for the counties?

CLEMENTS: No, I haven't looked at that side of it. I think it would be fair to gradually reduce this, not go cold turkey. But I think it has been inflated quite a bit and it has room to be decreased but gradually over a period of years. But I do not have a proposal for replacing the revenue.

BRIESE: Is it fair to assume that if we don't find replacement revenue, this revenue will be replaced by an increase in property taxes?

CLEMENTS: That's probably one other outlet that the counties have, about the only other outlet. But the money that's coming into the county is being paid by people that are not using the services. The property tax the counties would receive would be a benefit to those paying the tax as opposed to this system where it's not a benefit to those paying, nearly as much.

BRIESE: OK. Well, thank you again for bringing it for discussion. And-- well, that's all I have. Thank you.

CLEMENTS: Thank you, Senator Briese.

LINEHAN: Thank you, Senator Briese. Are there anyone else on, on the calls who would like to ask a question? OK. Senator Clements is going to be here to close so if you have other questions, we'll ask at closing.

CLEMENTS: Thank you.

LINEHAN: Thank you. Go ahead.

RICHARD CLEMENTS: I'm Richard Clements, Richard, R-i-c-h-a-r-d, Clements, C-l-e-m-e-n-t-s. I'm one minute younger than my twin brother, Robert Clements. But I'm an attorney in Elmwood, Nebraska, have practiced law since 1976 there in handling estate and inheritance tax issues. I wanted to point out in, in Nebraska, the 2007 Nebraska Legislature passed LB502, which was effective in 2008. And my, my first presentation is to, to show the increase in inheritance tax that has occurred because of the inflation increased in valuation of land that's being taxed by the Nebraska inheritance tax system. But this has resulted in a large and really unanticipated increase in the Nebraska inheritance tax paid by individuals inheriting farmland and also other assets. But the farmland has been the one that has had a significant valuation increase. The 2020 UNL farm real estate market report shows average dryland farm values in my Elmwood east district of Nebraska rose from $2,608 an acre in 2007 to $6,120 in 2020. This has caused the inheritance tax rate of 1 percent on land inherited to increase from an average of $26 an acre in '07 to over $61 per acre in 2020, a 135 percent increase in 13 years, which is over a 10 percent increase annually. In contrast, the Nebraska income tax only increases as incomes increase. The maximum rate in Nebraska on, on income tax is

6.84 percent. That's been static since, I think, 1987. So the income, a person's wage, a wage earner earning an income that increases by inflation of 1-- of 2 to 3 percent would not have-- does not have near the significant increase as the inheritance tax does, based on values. To illustrate the large increase in Nebraska inheritance tax since 2007, I have an example, one, on my handout showing the average tax on a 160-acre farm in eastern Nebraska. The 2020 tax on nieces and nephews is two and a half times the 2007 tax amount, which is a 19.4 percent increase per year. That would be my set-- the middle assumption of numbers in, in that page of my handout. Children and other beneficiaries face a tax, tax increase of over 10 percent per year for those 13 years. So as you can see on the niece and nephew rate, it's 252 percent of what it would have been in 2007 just because of value increases on land. Then my example two, my second page of my handout, shows an actual estate in Cass County for a decedent who died in 2013. The decedent's niece and nephew paid a whopping $642,000 in Nebraska inheritance tax, but paid no federal estate tax due to the allowable federal estate, estate tax exemption amounts, which have increased over time. The 2000 tax rate increase for nieces and nephews from the 2007 maximum rate of 9 percent to the current rate of 13 percent cost this family $197,000, or 44 percent more than the tax under the old law. I know the old law was intended to increase some exemptions and reduce the tax, but it actually ended up raising rates and raising taxes on beneficiaries. So in summary, my-- LB502 of 2007 increased the rates substantially. On top of this, the increase in property values has caused this inheritance tax to be a significant burden for beneficiaries, especially those who wish to keep the farm in the family for future generations. In contrast, the federal estate tax exemption has been increased to avoid creating excessive debt tax due to inflation. I urge you to consider, consider lowering the Nebraska inheritance tax rates to eliminate the excessive taxes being imposed on Nebraska families. I would respond to Senator Friesen briefly. This one, this one estate that I had looked at with 60 percent land, 40 percent stocks and bonds. If that gentleman had moved to South Dakota or Florida or any other state to avoid Nebraska inheritance tax, the tax would have been zero on all but the Nebraska land. So I know there are some, some people-- Nebraska residents who are considering making Florida their home and avoiding the inheritance tax in Nebraska on all but their land. So that is one disadvantage Nebraska has on keeping residents here. Thank you.

LINEHAN: Thank you very much, Mr. Clements. Do we have questions from the committee? Senator Friesen.

FRIESEN: Thank you. So if, if somebody-- let's say that you have a landowner that moves to Florida now and dies in Florida and the kids inherit the land here in Nebraska, do they pay the inheritance tax here?

RICHARD CLEMENTS: Yes. The Nebraska inheritance tax is only on assets located in Nebraska. Assets are defined as being located where the individual resides with their personal property, but they're located in the, in the--

FRIESEN: So their stocks,--

RICHARD CLEMENTS: --state and what they're located-- the real estate is located in Nebraska and nothing else.

FRIESEN: --their stocks and bonds would be located in Florida so--

RICHARD CLEMENTS: Right.

FRIESEN: --that would not be taxed on that but the land would be.

RICHARD CLEMENTS: That's correct.

FRIESEN: So there's numerous reasons for us ag guys to leave the state except we can't take our land with us.

RICHARD CLEMENTS: I have a neighbor who last year spent more than six months in Florida, and I'm quite sure that he's probably a Florida resident. And one of the reasons is the Nebraska tax.

FRIESEN: And you can't get out of our Nebraska property taxes or the inheritance tax. Thank you.

RICHARD CLEMENTS: Yeah, sure.

LINEHAN: Thank you, Senator Friesen. Are there any questions from those joining us on the telephone?

BRIESE: I have one.

LINEHAN: Go ahead.

BRIESE: Senator Briese here and thank you, Mr. Clements, for your testimony. Pleased to have you here. Just a comment I heard earlier about stocks and bonds, things like that. Folks have already paid the income tax on that money. Just to clarify the land that Senator

Friesen bought over the years, the bare farm ground itself, that was, that was paid after tax dollars. Correct?

RICHARD CLEMENTS: The, the, the income from land would also have been taxed, an income tax on the, on the land as well as the interest on bonds. So you're, you're right.

BRIESE: The price of that farm, the farm itself was paid for with after-tax dollars. Correct?

RICHARD CLEMENTS: Yes, the farm-- the farmland is paid for-- by-- with after-tax dollars because the, the land is not a depreciable asset. So cost of land is not able to be deducted, as is machinery and equipment, from income tax.

BRIESE: Thank you.

RICHARD CLEMENTS: Yes, you're welcome.

LINEHAN: So I have a question. So what if you own a commercial building-- let's say, $1 million commercial building, you buy that with after-tax dollars. But then you depreciate it out over the life of the building.

RICHARD CLEMENTS: Correct.

LINEHAN: So let's say you had it for 20 years, you die, the inheritance tax on that is the market value of the building?

RICHARD CLEMENTS: Market-- fair market value.

LINEHAN: Fair market value. Then they get stepped-up basis because they don't have to pay capital gains, but they have to pay inheritance taxes on a fair market value.

RICHARD CLEMENTS: Correct. Yes.

LINEHAN: OK. Other questions? Seeing none, thank you very much for being here. This is helpful.

RICHARD CLEMENTS: You're welcome.

LINEHAN: Others wishing to testify? Oh, yes, we do.

DEB SCHORR: Good afternoon, Senator Linehan and members of the Revenue Committee, both here and virtually. My name is Deb Schorr, D-e-b S-c-h-o-r-r. I'm appearing before the committee in my capacity as a member of the Lancaster County Board and as past president of the Nebraska Association of County Officials. Both entities strongly oppose any action to repeal or reduce the inheritance tax. I hope to give you an overview of the importance of these funds to local county governments across the state. Several other elected and appointed officials will follow me to provide specific examples from their counties. County governments are facing tough times from the flooding of 2018 and 2019, falling agricultural prices, to the coronavirus pandemic. Budgets are tight. Property tax is our primary source of revenue. And I don't need to tell you how sensitive our constituents are about property tax rates, not to mention many counties are currently at their levy limit. All this underscores how important inheritance tax funds are to county budgets. Inheritance tax revenues provide greatly from $350 in Sherman County to nearly $12 million in Douglas County. In addition to the varying rates and amounts, it also varies greatly year to year. Here in Lancaster County, we budget an estimated $5 million a year, but it has varied in recent years from $3.5 to $8 million. We utilize these funds 100 percent every year for direct property tax relief. In my work with counties across the state, I've learned each county uses inheritance tax funds differently, partly because the amount each year is so difficult to predict. Most counties set these side-- set these funds aside in a sinking fund to purchase an important piece of expensive, heavy equipment, most often a motor grader. This is something that's difficult, to nearly impossible, to fund in a single budget year. Others set aside these dollars to fund a significant road project or major bridge repair. The point is each county has the flexibility to use inheritance tax dollars to best serve the needs of their constituents. Most estate transfers are made to close relatives where the rates are significantly lower and often avoided with careful estate planning. Fewer transactions affect distant relatives and nonrelatives, but the rates here are higher and the funds substantial. Replacing inheritance tax dollars with property tax will impact every hardworking real property owner in the state. Inheritance tax revenues, this very small percentage of the total estate, stays here in Nebraska improving our communities. As you know, counties are an arm of state government and legislative mandates are ever increasing. We have very limited revenue sources, so increasing pressure on property tax is the most likely outcome should inheritance tax be reduced or eliminated. Counties value our partnership with the state and ask you to allow counties to retain this important source of revenue to best serve all Nebraskans. Thank you for the opportunity to testify and I'd be happy to answer any questions.

LINEHAN: Thank you. Do we have questions from the committee? Is there any questions on the phone call? OK. Would you-- just one-- in your second to last paragraph or third to last, it's a small percentage of the state. That's true if it's-- you could argue 1 percent is small if it's the children. But if it's, if it's a nonrelative, it's 18 percent. Right?

DEB SCHORR: And I'm, I'm definitely not an estate planning attorney, but I know that there are estate planning programs that help mitigate those large percentages for those third-- the distant relatives and nonrelatives.

LINEHAN: Well, I think-- well, I don't know, we get somebody up here, but I think the only way you mitigate them is if you give it to a nonprofit, not to, not to the person who you want to give it to. It, it doesn't-- you can't mitigate it if you're going to give it to a nonrelative. You can mitigate not paying them if you give it to a church or some other nonprofit. But I don't think there's any mitigation of the 18 percent for a nonrelative.

DEB SCHORR: I will defer that question to an estate planning professional.

LINEHAN: OK. All right. All right. No other questions? Thank you very much for being here.

DEB SCHORR: Thank you.

LINEHAN: We can-- you can hand out, Noah, when she's wiping down.

JOE LORENZ: Yeah, there's a handout. Sorry.

LINEHAN: Good afternoon.

JOE LORENZ: Good afternoon, Senators. I'm Joe Lorenz. I'm a Douglas County finance director, and so I'll take the five minutes and tell you a little bit about Douglas County's perspective on inheritance tax.

LINEHAN: Could you spell your name? I'm sorry.

JOE LORENZ: Oh, I'm sorry. Joe, J-o-e, Lorenz, L-o-r-e-n-z.

LINEHAN: Thank you.

JOE LORENZ: So I just want to take you through these bullet points on, on the page that I have handed out. Annual inheritance tax proceeds in Douglas County have averaged about $12.7 million over the past 5 years. So it sounds like, in terms of the state, the lion's share is occurring within Douglas County. And with us we have on average about 1,200 estates per, per year are subject to the inheritance tax, which represents 0.2 percent of the Douglas County population. But our inheritance tax proceeds are surprisingly consistent. They all seem to be within about a, a million each way of each other, so that when we do put our budget together, we do factor these in because they've been pretty consistent. There's not-- they're not that volatile. It's kind of, I think, with Douglas County, with its 575,000 residents, the kind of law of large numbers takes over. A point we want to make to you all is that the inheritance tax proceeds are used by Douglas County primarily to fund essential and mandated social services. No inheritance tax proceeds are transferred to the General Fund. We can-- I can take you through how we use the inheritance tax in the last two budgets. So you can see the largest component goes to our health center, which is-- provides care, long-term care primarily to the indigent. Community Mental Health Center also gets over $2 million a year. You know, Douglas County has a serious problem with mental health. It's often said that the Douglas County Jail is the largest mental health facility in the state. And so our Community Mental Health Center is out there working with the, you know, generally poor people who are having mental health problems and trying to keep them off the street. General assistance gets close to $2 million a year, too. General assistance provides assistance to the poor for rent, room, board, utilities, and clothing. Also, we give a-- seven figures to the Health Department, which is run by Dr. Adi Pour, who tries to keep Douglas County as healthy as possible through disease control and prevention and really has-- she's played a leading role in the recent pandemic. So they get a significant amount of money. The Veterans Department, which is-- helps veterans who have issues and also are applying for aid or education benefits or things like that. We give, we give them money. State institutions gets $450,000, and that goes to pay the county share of cost for patient care at, at Lincoln, Beatrice, and Norfolk regional centers. You know, we, we put $500,000 a year into the escrow liability account is what we used to pay significant claims and insurance claims and lawsuits that would go against the county. We also put some of the money into the three bond funds for Correction, public safety, and debt service. And this provides for the payment of principal and interest for long-term bonds used to fund projects for our Corrections, public safety, and other Douglas County capital projects. And then the final thing, we give

$500,000 a year to the University of Nebraska Medical Center out of inheritance tax proceeds. And that was-- we entered into an agreement about 7 years ago where we promised to give $500,000 a year for 10 years to the Cancer Center. And that's what we do. But it's also the state of Nebraska and the city of Omaha participated in similar funding agreements for the UNMC Cancer Center. So that's really where our money goes. And so you really see it's going towards these essential and mandated social services and not into the General Fund. So I, I ran some calculations, and if our average $12.7 million of inheritance tax proceeds were eliminated, property taxes would have to increase by 8.5 percent if the current level of social services was to be maintained. And the other alternative, if we wanted to maintain these, would require new enabling legislation from the state for fee increases or alternatively having increased state funding--

LINEHAN: You know, I'm going to have to-- I'm sorry, I wasn't watching. Can you wrap up and I'll ask you-- I'm sure we'll have questions.

JOE LORENZ: Yep, this is the last sentence, last sentence, please. Increased state funding for criminal justice services, courts, detention, and probation. Thank you.

LINEHAN: Thank you.

JOE LORENZ: I'll be glad to take any questions.

LINEHAN: Thank you, Mr. Lorenz. Do we have any questions from the committee? Anyone on the phone? Walk me through, you-- because I wasn't watching the lights close enough, about two or three sentences back, you said-- I can't remember what the numbers were. In your last testimony, can you just go back like a paragraph?

JOE LORENZ: Give me a hint what, what part I was talking about.

LINEHAN: Well, how much-- 8.5 percent increase in property taxes. Where do you get that?

JOE LORENZ: Yeah, here it is. That if we eliminate it-- on average we receive $12.7 million of inheritance tax proceeds. If we would eliminate that-- the inheritance tax amount in that amount and we wanted to maintain the same level of social services, we would have to increase property taxes 8.5 percent. That would raise the $12.7 million, essentially.

LINEHAN: What is your-- what do you get in property taxes in Douglas County now? What's your total take in property taxes for Douglas County?

JOE LORENZ: Oh, it's about $120 million.

LINEHAN: So $12.7 is-- again, I missed--

JOE LORENZ: I, I don't have all the math. When I, when I calculated this at my desk--

LINEHAN: You can't raise them 8.5 percent, though, can you, because you're up against the levy?

JOE LORENZ: No, we're not. Douglas County is one of the few-- we-- our-- we're at 29.5 cents.

LINEHAN: And what is the max?

JOE LORENZ: I think it's 45 cents.

LINEHAN: So do you have an idea of how much of this $12.7 million is from the people who have to pay at 18 percent versus people who pay at 13 percent--

JOE LORENZ: No, I, I can tell--

LINEHAN: --versus the people that pay at 1 percent?

JOE LORENZ: --you what they tell me in our county attorney's office is a significant amount of this money actually is paid by people who don't live in Nebraska in Douglas County. A lot of these people live, you know, in California or Colorado or things like that. And, and a bigger portion would be for the more distant relatives or friends. And, you know, one of the reasons it's interesting that the Douglas County portion is so high is there's a lot of original Berkshire shareholders who live in Douglas County. And when they tend to pass, they have very large estates and they leave a lot of money to a lot of people.

LINEHAN: Yes, I'm aware of that fact. Were you here in 2007 when they changed the law?

JOE LORENZ: No, I started in 2010.

LINEHAN: OK, I would be very interested, and maybe this is a question for our research. When we passed these laws, when the Legislature that was here at that time, was this passed as a tax increase or a tax decrease? You will-- we can figure that out.

KAY BERGQUIST: We can try.

LINEHAN: We'll try. Because I, I doubt that anybody passed a tax increase.

JOE LORENZ: Yeah, like I say, I wasn't here.

LINEHAN: So is one of the reasons you've been able to keep the levy at 29.5 is because values, home values, and land values in Douglas County have gone up significantly over the last 10 years?

JOE LORENZ: I, I-- the last-- I don't know, the last 10 years, but certainly the last 3 or 4 years, our average property tax appreciation has been up in the 5 to 7 percent range. I can tell you when I started 10 years ago, when property values were increasing 1 to 2 percent and our expenses were increasing 3 percent, we were in kind of a, you know, we used to call it a structural deficit.

LINEHAN: Well, because it was the great recession.

JOE LORENZ: Yeah, and that really hurt us. So the past couple-- three years, it's been opposite where we've actually had, had thing-- more money that we've been able to fund, to fund things with, but it's been offset. And I've, and I've talked about this before, too, is the criminal justice system in Douglas County, its costs are increasing significantly. So a lot of the money that we're getting because of the property tax increases are going to fund increased county attorneys, the jail, all sorts of things. And it's really the criminal justice system that is causing the largest budget increases within Douglas County.

LINEHAN: So your property tax revenue has been going up 5 to 7 percent a year?

JOE LORENZ: The last three years, yeah.

LINEHAN: And your-- how much has your budget gone up the last three years?

JOE LORENZ: Last year it went up 3 percent.

LINEHAN: Didn't you raise the levy last year?

JOE LORENZ: No, we, we raised the levy two years ago when we-- to fund the new courthouse and that we set up a-- we haven't raised the general fund levy for seven years, but we did raise it a penny and a half to fund the new courthouse and juvenile justice center that we're building across the street, which is a $125 million capital project.

LINEHAN: So you did raise the levy, plus valuations have gone up 5 to 7 percent--

JOE LORENZ: Yep.

LINEHAN: --in the last 3 to 5 years.

JOE LORENZ: Yeah, like I say, although--

LINEHAN: So how much was your budget three years ago versus what it is today?

JOE LORENZ: Today, it would be like $410 million. And so it would probably have been $370, $375. I mean, when we budget--

LINEHAN: I thought you said your budget was $120 million. That's what you get in property taxes?

JOE LORENZ: Yeah, that's what we get in property tax.

LINEHAN: So where do you get the other $410 million?

JOE LORENZ: Well, that includes roads, so we're getting money from the federal government for roads, we're getting fees, we're--

LINEHAN: So your real budget is $410 million?

JOE LORENZ: Yes.

LINEHAN: So what percentage of $12.7 million?

JOE LORENZ: Oh, I should have brought my calculator.

LINEHAN: Yeah, well, I bet Rob Clements can figure it out for us, but $12.7-- so really, you have a budget of $410 million and then inheritance tax is 12.7 percent [SIC].

JOE LORENZ: Yes.

LINEHAN: So I had to plug my phone in, but it's, it's 2.5 percent, maybe.

CLEMENTS: Three point one.

LINEHAN: Thank you.

JOE LORENZ: Three point one. Thank you.

LINEHAN: Three point one percent of your budget. OK, thank you. Are there any other questions? Thank you for being here.

JOE LORENZ: OK, thank you.

LINEHAN: Hello.

SARAH CURRY: Hey, sorry, they jumped ahead of me. I've got a little different perspective for you. Sarah Curry, S-a-r-a-h C-u-r-r-y, and I'm the policy director with the Platte Institute. There's been broad agreement among this committee that Nebraska needs tax modernization. So I want to start today with a bit of legislative history. Nebraska's inheritance tax law was adopted in 1901, and that was before any income tax existed at the state or federal level. And it was actually based on the law from Illinois. And this is very noteworthy because Illinois' inheritance tax was the very first to introduce a progressive rate structure. And as a result, that was actually challenged in court and went to the U.S. Supreme Court. What's interesting is Nebraska has a big difference from almost every other state that had an inheritance tax because it did not allow a high exemption for immediate relatives. When the law was written, direct heirs had to pay 1 percent on everything above $10,000 received, which is the same way it was prior to 2007. Today, the law remains mostly the same, except for that threshold has been risen, which really is negligible when we look at the time that's elapsed. For context, if-- a $10,000 exemption in 1901 is the equivalent to more than $300,000 of an exemption today, and that's because there's been a 3,000 percent increase in CPI inflation since 1901. Another noticeable difference in the Nebraska law from all other states is that the proceeds went into a special fund in each county for the permanent improvement of roads. Most of the other states levied it as a form of state tax revenue since this tax predates all the income and sales taxes that we have today. Today, it still goes into a special fund. However, they're used for more than just road improvement, which you've heard from people before me. So knowing this history is really important because that's one criticism of the law, is the structure of it. A lot of people confuse an inheritance tax with an estate tax, but the big difference is that estate taxes are paid by the estate before the assets are distributed to the heirs, where inheritance taxes are paid by the recipients and they're distributed by each beneficiary. So it's really a tax on the individual, not the estate as a whole. And that's, that's the difference there. And because these taxes are remitted by the recipient, the determination of the inheritance tax is a court process in Nebraska. And that means that to determine the tax, heirs generally need to hire a lawyer to assist them. And according to a retired estate attorney that I consulted with, many lawyers in Nebraska charge 1 to 2 percent of the value of the property. And it's not unusual for attorneys to be paid more than the amount of the inheritance tax. One solution would be to turn the determination over to the Department of Revenue or to the local county treasurer, where forms could be filed by the taxpayers or their accountants. Removing the judicial system would eliminate excessive legal costs by way of simplification and an increased competition for tax compliance work. Now the historical and current basis for the inheritance tax is owning real estate. Unless the deceased owned real estate, they can completely bypass, bypass the tax rather easily because Nebraska has virtually no policing or enforcement mechanism. Current law provides the potential inheritance taxes constitute a lean against any real property sold, which means if the decedent owns property, everything gets taxed to clear the title to the real estate. Therefore, those most impacted by inheritance tax are farmers, ranchers, or small businesses because it makes it difficult to pass the property from one generation to a next. This liability means that small or medium-sized farmers have to sell land or equipment, and small business owners face the same challenge. The income-- their income is heavy on assets which are not available cash, and sometimes they have to sell that to pay the tax. This is why the Tax Foundation includes inheritance tax as one of the reasons why we're ranked so poorly for property taxes. In 1907, 36 states had an inheritance tax. Today, there's only six states. It's likely to drop to five because Iowa has a greater Republican majority in their House, and there's already been a number of bills filed in both chambers to repeal the inheritance tax there. All that said, I understand the perspective of the counties who use this money for local important government functions. One option that I would suggest-- and one suggestion that was suggested to the Platte Institute by a county supervisor is that they would support losing an inheritance tax if the counties were given the option to ask voters for a countywide sales tax. I think this is a good compromise and something that we'd be willing to work with the Revenue Committees to draft if they felt it was a worthwhile replacement for the inheritance tax while keeping county budgets whole. Another would be to take note of Tennessee and Indiana laws in 2012, which phased out their inheritance tax by gradually raising the exemption until the tax was eliminated. I have like three more sentences. Is that OK?

LINEHAN: OK. Yes.

SARAH CURRY: All right.

LINEHAN: Please tell me where your three more sentences are.

SARAH CURRY: One benefit of the tactic of gradually raising the exemption is it allows counties time to find an alternative revenue source or eliminate items from their budget before the decrease in revenue. The last page I've included gives you some scenarios of how the inheritance tax works regarding decedents living in and out of Nebraska, as well, as well as the most recent Tax Foundation map on the remaining six states with the inheritance tax. Thank you.

LINEHAN: Thank you, Sarah. Are there questions from the committee? Senator Friesen.

FRIESEN: You, you made a comment that inheritance taxes are paid by the recipient, but couldn't wills be structured so that the estate pays the tax?

SARAH CURRY: So I'm going to tell you what the state attorney told me that I consulted with. He said a lot of people get around it because if-- say they have a joint account and they don't own land, the money just automatically goes to the other person on the joint account. So they don't pay inheritance tax. So--

FRIESEN: Transfer on, transfer on death.

SARAH CURRY: Right. And so if you don't own real land in Nebraska, it doesn't trigger the inheritance tax unless the estate goes to probate. But estate tax is paid by the estate-- and a great example is my babysitter. Her great uncle died, and so she's inherited some annuities. Well, she can't sell the annuities because they're in an annuity. So now she's having to take out a loan to pay the inheritance tax because she legally can't sell the asset to pay the tax. And she said if we would have known this, he would have just, you know, signed it over to me before he died. And then we could have bypassed the whole thing because he was living in an assisted living home. He didn't own real property. So that's how-- before I think, Senator Linehan, you were talking about, how do they bypass it? There are some ways to bypass it. The unfortunate side is people like my babysitter, she didn't inherit very much and her great uncle wasn't very wealthy, so he didn't have an estate planner. He just died and thought he was doing the right thing by putting her on the beneficiary list. So the people that are wealthy enough to hire estate planners, yes, I think they do some of that stuff. And you can speak more to that to bypass this tax. It's more of our low and middle income people that have saved and just try to pass something on to their family and they just don't know about it until it's too late.

FRIESEN: So the, the-- again, stocks and bonds are taxed. But if you do a transfer on death, you're saying that they're bypassing the state. Is that fraud by not filling out the estate--

SARAH CURRY: I'm telling you, the estate attorney that told me, he said that there's no mechanism for Nebraska to catch it. It's, it's taxpayer-- the burden of paying the tax and filing for the tax is on the taxpayer. So the real property triggers it. And so that's what brings it up. But, yeah, if I die and I don't own any property and I want to give it to my niece-- I mean, if my niece doesn't know about the tax, she's just going to take, take it and do whatever she wants with it.

FRIESEN: Right.

SARAH CURRY: So-- and I know a lot of people don't understand how this works, and so I'm sure that happens more times than not.

FRIESEN: So again, when counties only have access to basically property taxes, how do they replace the revenue? Because I think each county handles it differently of what they do with it. Some do spend it in their general fund. Some put it towards roads, big equipment purchases, others emergencies. Each county handles it differently. So how, how would we propose that we make them-- I guess, are they just supposed to cut spending?

SARAH CURRY: So I've actually talked to a county supervisor about this and the counties kind of got the bad end of the stick because in 1996, we cut their levies and then they got stuck with sort of all these unfunded mandates like landfills and that kind of stuff. So I understand where they're coming from. I also think the way Nebraska's sales tax law is structured is if there's a city within the county limits, they get the sales tax revenue. So-- and the gentleman from Douglas County can speak more to this, but Omaha has a sales tax. So all those services that are consumed by the residents of Omaha from Douglas County, they're not paying the sales tax in the county. They're paying it to the city. Well, why can't this-- the county have a sales tax of 1 percent or, or 1.5 percent on referendum? And I think that would be good because some of your rural counties out in western Nebraska might want the inheritance tax because they don't have enough retail in their county to make sense. But in more urban counties like Douglas County or Lancaster County, they would probably love a 1 percent sales tax to fund county operations because they have the, the, the retail operations there. And so I think that would be a fair swap. And that's what that county supervisor that called us suggested.

FRIESEN: Well, this, this would be like a 1 percent on top of the city's 1.5 percent.

SARAH CURRY: Right. Because, I mean, I'm just going to say hypothetically, right, there's a mall in the middle of Lincoln and the mall catches on fire and they used Lancaster County Fire Department to help put it out. Well, Lancaster County is not getting any of the sales tax revenue generated from that mall, they just have to, you know, they use their property tax to pay for it. So why not give them some sales tax authority since the city is included in the county and they should kind of have some skin in the game, kind of, if you will, like, they can collect the tax to pay for the services that are consumed by city and county residents. And that's done in a lot of other states. That's not unique. It's actually unique that Nebraska doesn't do that.

FRIESEN: Yeah, counties are very restrictive in how they [INAUDIBLE].

SARAH CURRY: Right. And so this happened a few years ago in Dakota County. So Dakota County did a sales tax to pay for a fire department. And then is it Dakota City? I can't remember. The city in the county then said, oh, instead of doing a property tax increase, we're going to levy a half cent sales tax to help finish up this fire department. And when they did that, they didn't know it and it triggered and it got rid of the county sales tax and only had the city sales tax. So they ended up having to bond-- I think they had to bond for the fire department. Where if they could have both had that sales tax, they're in communication with each other, they could have funded that fire department without having to do a bond or property tax increase or anything.

FRIESEN: OK. Thank you.

LINEHAN: Thank you, Senator Friesen. Other questions? Senator Briese, you're [INAUDIBLE].

BRIESE: [INAUDIBLE]

LINEHAN: I'm sorry.

BRIESE: Yeah, thank you for your testimony here today, Miss Curry. A question for you, the six or so other states that have an inheritance tax, where does that revenue go and what do they utilize it for? Any idea?

SARAH CURRY: So all-- the, the five other states that have an inheritance tax, the state itself collects the money. So it goes to general fund revenue within those states. And all those other states also have a zero percent. Nebraska is the only one that starts at 1 percent. So they have a generous exemption for that lower level of direct heirs.

BRIESE: Fair to say that [INAUDIBLE] that five other states would [INAUDIBLE] taxpayers to the extent that it would here in Nebraska.

LINEHAN: Tom, start over. We didn't hear you from the beginning of your question.

BRIESE: Oh. [INAUDIBLE] those five other states really as a burden of that if that elimination wouldn't really fall on the backs of the local taxpayers and property taxpayers to the extent that it would here in Nebraska.

SARAH CURRY: That's correct. Because, for example, in Iowa, it is a state collected revenue. So when the person dies in Iowa with real property, they remit their inheritance tax to the state of Iowa. So if they were to remove a sales tax exemption or raise the income tax, they could offset whatever inheritance tax revenue they're collecting. Where in Nebraska, because it's a local revenue source, it's totally different.

BRIESE: OK. Thank you.

SARAH CURRY: Did he say thank you?

LINEHAN: I think he said thank you. Did you say thank you, Senator Briese?

BRIESE: Yes, I did. Thank you.

LINEHAN: Thank you. Thank you, Senator Briese. Other questions? Comments? OK, thank you very much, Miss Curry.

SARAH CURRY: Thanks.

LINEHAN: Good afternoon.

DOUG KAGAN: Good afternoon. Doug Kagan, D-o-u-g K-a-g-a-n, 416 South 130th Street, Omaha, speaking on behalf of Nebraska Taxpayers for Freedom. Our members say, especially in the rural areas, don't be caught dead in Nebraska because they believe that this tax has a negative effect on willingness to accumulate wealth through their hard work, savings, and investment. Our inheritance tax appears a grim form of double taxation. We already pay tax on our income and property, so taxing assets bequeathed to our heirs levies an additional tax. The exemption amounts are paltry compared to other states. We believe this tax infringes on personal rights to our inherited property. It directly contradicts the intent of wills. Heirs should be free to use the accumulated family wealth as they choose. Parents should have the right to provide assets to their offspring or relatives with whom they have bonded. Those facing death should not suffer additional emotional distress and insecurity about whether the company or estate they have created will go to the children or be forced to close, sell, or shrink because of inheritance taxes. Heirs may find it impossible to continue a business or venture. Posthumous taxation is tantamount to grave robbery. Forbes magazine tagged Nebraska as a state in which not to die because of our high death taxes. Inheritance taxes present a disincentive to accumulate wealth and property. Sadly, many who suffer financially from this tax are those who have invigorated our economy. Individuals realizing that their assets will face taxation following their demise will consume more of their estate, a negative effect on future investment and capital accumulation. This tax, therefore, punishes wealth creation. Morally, this tax taxes virtue, living frugally. Fees paid to accountants and tax attorneys to complete paperwork further diminishes estates. As inflation, appreciation of property, and salaries increase, more Nebraskans find themselves snared by this tax. Yes, this tax infuses local budgets, but sometimes only minimally. Counties claim they use these funds to control property taxes, but sometimes spend the proceeds on extraneous expenditures. And one example I'll give is in Douglas County, the county board voted to give millions of dollars to the UNMC Cancer Center, and that's a worthy cause, but it's not mandated by the state or the federal government. Particularly because of our unstable economy during this pandemic, we urge senators to introduce a bill in January 2021 to repeal our state inheritance tax. Thank you.

LINEHAN: Thank you, Mr. Kagan. Are there questions from the committee? Senator Briese, Senator Lindstrom, do you have questions?

LINDSTROM: No questions.

BRIESE: No questions.

LINEHAN: OK. Thank you very much.

DOUG KAGAN: OK.

LINEHAN: Thank you very much for being here, Mr. Kagan. Anyone else--

McCOLLISTER: No questions from McCollister either.

LINEHAN: I'm sorry?

McCOLLISTER: No questions from McCollister either.

LINEHAN: OK. Good afternoon.

ROMA AMUNDSON: Yes, good afternoon, Senator Linehan and members of the Revenue Committee. My name is Roma Amundson, spelled R-o-m-a A-m-u-n-d-s-o-n. I am appearing before the committee in my capacity as a member of the Lancaster County Board of County Commissioners and a member of the Board of Directors of the National-- of the Nebraska Association of County Officials. I am here to express strong opposition of both Lancaster County and NACO to repealing or reducing the inheritance tax. My testimony will concentrate on the negative impact repealing or reducing the inheritance tax would have on Lancaster County. And you have already heard the testimony offered by NACO past president and fellow Lancaster County Commissioner Deb Schorr on the impact of the inheritance tax on other Nebraska counties. Changes to inheritance tax revenue would result in a large reduction in the amount of property tax relief provided in Lancaster County. Based on the current budget, repealing the inheritance tax could result in a $5 million annual loss of income to Lancaster County. Please consider the following facts in measuring the impact of this loss on our property taxpayers. In Lancaster County, the inheritance tax plays a key role in balancing our budget and keeping property taxes as low as possible. All inheritance tax revenue is deposited into the county's general fund to help cover operating expenses, thereby providing direct property tax relief. Five million dollars is equivalent to a property tax levy of 1.7 cents, or approximately 6 percent of our entire levy for the present fiscal year. While the Legislature has completed numerous mandated responsibilities for counties, our revenue tools are very limited. More pressure will be placed on the real property tax by taking away one of the few revenue sources available to counties. If the inheritance tax is repealed, there is no guarantee the additional money received by the beneficiaries, including out-of-state beneficiaries, will stay in our county, or for that matter, in the state of Nebraska. On the other hand, every cent of inheritance tax collected will be invested in our community. Finally, a $5 million funding reduction could severely undermine the county's ability to provide public safety services. Whether it's through the dismantling of our community's social safety net or cuts to the agencies which provide direct services to the public, at the end of the day the safety of the community would be negatively impacted. Thank you for the opportunity to testify, and I would be very happy to answer any questions.

LINEHAN: Thank you very much. Do we have questions from the committee? Anyone on the phone have a question? I'm going to ask, what is your total budget in Lancaster County?

ROMA AMUNDSON: This year it was $200 billion.

LINEHAN: Two hundred million?

ROMA AMUNDSON: Two hundred million.

LINEHAN: And what's your total property tax?

ROMA AMUNDSON: Usually is right around $5 million.

LINEHAN: OK, inheritance tax, but your property tax?

ROMA AMUNDSON: Oh, the property tax, $67 million.

LINEHAN: OK, so over and above your property tax revenue, it's roads money and what's the others?

ROMA AMUNDSON: Yeah, it's-- and grants that come in, services that-- some, some of the fees, too. We do collect--

LINEHAN: And your levy-- where is your levy?

ROMA AMUNDSON: Twenty-eight and a half cents.

LINEHAN: And what's the max?

ROMA AMUNDSON: It'd be 45.

LINEHAN: So you, like Douglas County, aren't anywhere close to your max?

ROMA AMUNDSON: No.

LINEHAN: OK. Do we have other questions? Anyone on the phone have a question? All right, thank you very much for being here.

ROMA AMUNDSON: Thank you so much.

LINEHAN: Appreciate it. Other testifiers?

LARRY TEMME: Larry Temme, L-a-r-r-y T-e-m-m-e. I'm here on behalf of the Boone County Commissioners in Boone County, Nebraska. Just a couple of quick things that we use our inheritance money for is basically for emergency situations: 2018, we decided to consolidate our 911 system with Nance County and moved it to Boone County. And we had to upgrade equipment at a cost of about $350,000 that we didn't have in our budget for-- in our sheriff's budget to do that. So we used inheritance money to make those required updates that we needed that were mandated by the state that we had no cost share with. The other thing we had was in 2019 when the flooding hit, we had widespread damage throughout the county. Saint Edward, as you were aware of, was one of the hardest hit communities in, in, in, in the state. And we had a lot of road damage, bridge damage, and we used a lot of that money or the inheritance money to repair and replace bridges. And, you know, we have applied for FEMA, NEMA for that, but we haven't received any of that yet. So that would have never been in our road budget either. So we're able to use the inheritance tax for, for emergency services, so. There's about 5,500 people in Boone County, and we have-- I mean, it's-- we're limited as to how much revenue we can generate. And this year we did have a decrease in our valuation of $102 million. So it is needed in our smaller rural counties that are typically all ag.

LINEHAN: Are there questions? I'm sorry. Are there questions from the committee? Senator Briese, any questions?

BRIESE: Yes. Thank you, Larry, for being, being here today [INAUDIBLE] talking about--

LINEHAN: Tom-- Senator Briese, we can't hear you.

BRIESE: Is that better?

LINEHAN: Yes.

BRIESE: OK. Larry, thanks for coming down and testifying today and telling us about this. So you're telling us here if we would eliminate any amount of the inheritance tax that we might eliminate is going to result in a property tax increase to make up that revenue?

LARRY TEMME: Absolutely. That's what we would have to do. And we're limited with only a 3 percent increase in our budget every year. So it would, it would restrict what we can, you know, do without it.

BRIESE: Yep. Yep. Yes, and it would create hardship on the taxpayers, and otherwise hardship on the county. Correct?

LARRY TEMME: That's correct.

BRIESE: OK, well, thanks again for coming down.

LARRY TEMME: Yep.

BRIESE: Thank you.

LINEHAN: Did you say you're limited to a 3 percent budget increase?

LARRY TEMME: Yeah, every budget year. Yes.

LINEHAN: Is that a law in your county or why are you limited to a 3 percent?

LARRY TEMME: I think it's in the state, isn't it?

LINEHAN: Nope.

LARRY TEMME: Oh, I was--

LINEHAN: The counties can only increase 3 percent?

KAY BERGQUIST: I thought it was 2.5.

LARRY TEMME: Maybe it is--

LINEHAN: Their budget?

KAY BERGQUIST: Yeah.

LINEHAN: And why would have they came in against the 3 percent lid?

LARRY TEMME: Maybe it is 2.5. I'm, I'm on my second year of being a county commissioner.

LINEHAN: You're doing fine. You're doing great.

LARRY TEMME: So I'm, I'm still learning the ropes.

LINEHAN: And you got here today in lousy weather. You're doing great. What-- do you know what your county overall budget is?

LARRY TEMME: It's about $13 million.

LINEHAN: And do you know where your levy is?

LARRY TEMME: Our levy is at-- actually in 2020, we went to 19 cents.

LINEHAN: OK. Any other questions? Thank you very much for being here.

LARRY TEMME: Thank you.

LINEHAN: Appreciate it very much. Other people wanting to testify? Good afternoon.

JON CANNON: Good afternoon, Chairwoman Linehan, distinguished members of the Revenue Committee, both here in the room and also speaking to me from the heavens, apparently. Thanks for letting me be here to testify. My name is Jon Cannon, J-o-n C-a-n-n-o-n. I am the deputy director of the Nebraska Association of County Officials, otherwise known as NACO. I'm here to provide a little bit of perspective on NACO's view of, perhaps more global view of, of how the inheritance tax is used in our counties. First, I'd like to thank Senator Clements for bringing this. It's always probably a good idea for us to have these conversations. Also, since I'm only in my second year at NACO, it's a really good opportunity for me to figure out what these, these things that Larry's been talking to me about for the last several years. So I, I do appreciate the crash course that I had to undertake in the last, the last several weeks. What I've handed out to the committee is testimony from Kevin Barta. He is the Knox County Highway Superintendent. He was here this morning. He was planning on testifying, but conditions up north are, are deteriorating pretty rapidly. So he hightailed it on out of here to get home. I also would like to thank Roma Amundson for having testified. She's my commissioner. And I had the privilege of, of having voted for her just a, just a few days ago. So I really appreciate that as well. As you-- as has, as has been described for you already, the inheritance tax really supplements the property tax in our counties. Most counties do not have reserves. Some of you are-- they're, they're lucky enough, they're in a position where they can build up a reserve. Most of them do not. And so the inheritance tax really, the inheritance tax fund really takes the place of a reserve for those counties. And as we had described for us, those are used primarily for emergency situations, the purchase of big ticket items. One thing I, I would like to point out is our levy limit is written into the constitution. There are no overrides available to us. We do receive a little bit of highway tax from, from, from that fund, but not a lot. And so really, when you talk about our revenue sources, they're-- after the property tax and the inheritance tax, there are no alternative revenue sources for us. And one of the other things I'd like to mention is the things that counties spend their money on, generally speaking, are going to be those things that are mandated or authorized by the, by the state. There aren't really things that we can eliminate in our budgets. So I'd, I'd like the community to take note of that. As creatures of the state, we only can raise revenue as is authorized through state statutes. We're, we're not selling ice cream. We're, we're not out there selling movie tickets or making feature films or anything like that. We're, we're only able to raise the revenues that we have been authorized to raise. And I'm, I'm sure everyone has, as has been described by the testimony so far, you may have noted there have been a couple of emergencies the last couple of years. We had a lot of flooding, significant flooding last year. We're in the midst of a global pandemic as, as you can tell by the, the constitution of this hearing room. And when it comes to those sorts of emergencies, the way the FEMA match works is that we are only able to have that work undertaken when we provide our, our share of the FEMA match. We have to put up 25 percent from locals, which would be state and local. Traditionally, it's been split 12.5 percent for the counties, 12.5 percent for the state. Sometimes it's all borne by the, by the counties, sometimes it's all borne by the state. But generally speaking, we know that 25 percent is what we have to come up with through the match. And as I said, when you don't have a reserve, coming up with that match is going to be darn near impossible. Frankly, if we had to, that's going to create a yo-yoing effect that I don't think we want as far-- as part of sound tax policy. You know, when you have the flooding, for instance, and Boone County gets hit pretty hard, they're going to have to raise a lot of money through the property tax the next year. So they're going to be-- not only are they going to be a day late or several days late, they're going to be several dollars short as well. And when you have an emergency, as you know, these things are fairly timely. And so it's not the sort of thing we, we want to be waiting on the next levy cycle to be able to provide. A few examples I, I wanted to use, in Antelope County last year, and the people that have said that finding these things out is difficult, I agree with them. I spent way more time than I wanted to, going over-- scouring county budgets and county audits. But just as a little bit of an example, in Antelope County last year, there were $2 million that was taken from the inheritance tax fund and put into their disaster fund. That was pretty significant. That would have been a pretty significant increase to their levy if they had not had that there. In Hamilton County last year, $50,000 went to personnel, just under $1 million went to their operating fund, $83 million [SIC] went to a capital outlay, and the $110,000 transfer-- was transferred from the inheritance tax fund to the General Fund. No matter what-- where these funds are going, this is dollar-for-dollar property tax relief. Or in the alternative, if that was not available, it would be, dollar-for-dollar, a property tax increase. Those were some of the examples I, I wanted to use. As you've also heard, I'm-- oh, I'm out of time, so I'll just stop right there.

LINEHAN: OK, we'll have questions for you. Senator Crawford.

CRAWFORD: Thank you, Chairman Linehan. And thank you, Mr. Cannon, for being here. I know you weren't in, in your current position in, in 2007, but I wonder if from your research or discussions with other county folks, you can help us understand the context of that change in 2007.

JON CANNON: My very rudimentary understanding is that there was-- the conversation was being held about what we do with the inheritance tax. And there were a number of things that were, that were brought forward. And what had originally been proposed was negotiated to the current structure that we have where we've got the tiering structure of, you know, 1 percent and then 13 and then 18 percent. And my understanding is that that was designed to be revenue neutral. And whether or not it was, I, I have absolutely no idea.

CRAWFORD: Thank you.

JON CANNON: Yes, ma'am.

LINEHAN: Well, it's, it's gone from $30 million to $77 million.

JON CANNON: Yes, ma'am.

LINEHAN: So I think we can guess it wasn't revenue neutral.

JON CANNON: I, I would not care to dispute you, ma'am.

LINEHAN: I should have asked the gentleman that was up here earlier from Boone County. I think he said-- and I'm sorry and I can catch you afterwards if you're still here-- they hadn't gotten any money from FEMA yet. There were nine or ten counties that were hit particularly hard that we, in the last budget that we passed here just a few months ago, put extra money in for counties that did not-- that were hit too hard to be able to come up with their 12.5 percent. Do you know what, what those counties are?

JON CANNON: I, I don't off the top of my head, ma'am, but I can get that information to you.

LINEHAN: Yeah, because I'm concerned that we're-- what we-- at least we're trying to do here with those counties that were hit particularly hard and knew that they couldn't come up with the 12.5 that we were-- and I think there were like 10 of them or 12.

CRAWFORD: I don't remember.

LINEHAN: I don't remember. We need an appropriator here, but it was in the Governor's budget, too, to come up with extra money. And then you said that sometimes--

_________________: The caller--

McCOLLISTER: John McCollister.

_________________: --has left the conference.

LINEHAN: --the 12.5 isn't-- I mean, because of term limits-- I've only been here 4 years-- but this whole time that we're talking about disaster, it was always the state was going to pick up 12.5 and the county had to pick up 12.5.

JON CANNON: And generally speaking, that's, that's, that's correct. However, that's not a, a hard and fast rule. But my understanding is that's how it's been worked out generally between counties in the state. My understanding is that if for whatever reason, if, if the state said we're not going to pick it up, they don't have to. There's, there's nothing that, that forces them to.

LINEHAN: Has there been a time when the state hasn't?

JON CANNON: I don't believe there has, ma'am.

LINEHAN: OK. So historically back to whenever, the state has always picked up 12.5 percent?

JON CANNON: Yes, ma'am.

LINEHAN: So the counties are left with 12.5 percent?

JON CANNON: Yes, ma'am.

LINEHAN: How many of your counties are at their maximum?

JON CANNON: On the levy?

LINEHAN: Um-hum.

JON CANNON: I would-- I, I think it's Gage County as, as everyone--

LINEHAN: Yeah, I know.

JON CANNON: --knows, they're, they're at 50 cents. They had to. Deuel County is pretty darn close. There are a number of counties that are over 40 cents. But Gage and Deuel are the, are the two that, that really stand out for me. Scotts Bluff County is in, is in the 40s, so that's a-- kind of a larger county that-- that's getting pretty close to the levy limit.

LINEHAN: OK. Then you said on Hamilton County, and I can see that our friend here left, $83 million in capital outlay?

JON CANNON: Eighty-three thousand to the capital outlay.

LINEHAN: Eighty, OK.

JON CANNON: Yes, ma'am.

LINEHAN: OK, that makes more sense.

JON CANNON: Yeah, if, if they had $83 million--

LINEHAN: Yeah, I was like--

JON CANNON: --to the capital outlay, I would wonder what was going on in Hamilton County.

LINEHAN: Right, that's what I didn't think that was possible. OK, well, I would-- working with the other counties, I would like to know what's going on with the counties that we were supposed to be picking up more than the 12.5 percent. So in case there's some slip there that we don't know about 'cause that's what we funded. So basically, this is an argument being presented to us that if we, if we touch this inheritance tax, we're raising property taxes?

JON CANNON: Yes, ma'am. And frankly, it would-- as far as the last 30 years are concerned, it would probably be the most significant property tax increase the counties have undertaken. Now I'm not talking about schools or cities or anything like that, it would be the most significant one that as a whole that we have undertaken. And in fact, NACO would advise all those counties that do not have reserves currently, and that would be the majority of them, we would advise them that you have to start building a reserve right now and it has to be at a particular percentage. And that, that in of itself is going to raise the levy and any emergencies that come along are also going to raise the levy.

LINEHAN: So out of the 100 percent of the property taxes that most Nebraskans pay that own any property, what is the average amount of the county?

JON CANNON: The average amount?

LINEHAN: So we know the schools are 60 percent. On average--

JON CANNON: Oh, sure.

LINEHAN: --of your property tax bill. What's the county?

JON CANNON: I'd, I'd say the counties are probably close to 20 percent. And we're, we're at 50 cents, schools are at $1.05, cities are at 50 cents.

LINEHAN: Yeah, but yet we've discovered here today, a whole bunch of them aren't at 50 cents.

JON CANNON: Sure, sure.

LINEHAN: Most of them-- well, the two biggest are at what, 25 or 26 cents.

JON CANNON: Yeah, but again, I think--

LINEHAN: So that would tell you that they're, they're 20 percent of what the schools in their districts are.

JON CANNON: Yeah, I can, I can find that out with a little bit more accuracy. My guess is it's between 20, 25 percent of the total property tax in the state.

LINEHAN: So you all agree that-- well, I shouldn't say you all, but does anybody have concerns that-- my daughter only has to pay 1 percent if I give her money. But if I give my best friend's daughter some money, she has to pay 18 percent. How is that fair?

JON CANNON: Ma'am, I,m, I'm here to testify as to the effect it would have on the counties. As far as fairness is concerned, happy to have the conversations. Probably not in this context. I, I, I would want to do a lot more research as to how we, we got to that tiered structure that we do. Historically, there is a reason for it. I'd, I'd just like to have a little bit more understanding before I, I even venture to guess.

LINEHAN: Because it seems dramatically different.

JON CANNON: I, I would not care to dispute that either.

LINEHAN: It's not 1 or 2 or 3 percent, it's 1 and then, boom, 18.

JON CANNON: Yes, ma'am.

LINEHAN: And also, if you could provide this on a statewide basis, how much does that 18 percent for nonrelatives really generate in money?

JON CANNON: Yeah, I, I know that in general, the, the Class 1 folks, so the, the 1 percent that makes up a little over half of all the inheritance taxes that we're receiving.

LINEHAN: And then nieces and nephews probably make up--

JON CANNON: I'm not quite sure. It's, it's-- so Class 2 and Class 3 are going to be the remaining roughly half of the inheritance tax.

LINEHAN: It would be-- I would request or maybe that-- well, the Department of Revenue is not going to have it. Are they?

JON CANNON: They're, they're not going to have it.

LINEHAN: So I would appreciate if we could come up with what, what the tiers pay. What's at the 50 percent-- or the 1 percent? What's at the 13 percent? Is that what it is now, 13 percent for nieces and nephews?

CRAWFORD: Um-hum.

JON CANNON: If, if we have--

LINEHAN: And what's at 18 percent?

JON CANNON: If, if we have that information, ma'am, I will get it to you. What I can tell you is that when we do the deeper dive on what counties are receiving through the inheritance tax, we're, we're not doing all 93 because I can, I can tell you that we had two young ladies in our office that, that, that did the research for this. They, they did a survey of about, I think, 13 to 15 counties. And they were-- they combed through the, the probate records for about 650 estates in order to come up with the numbers that we had. And they spent a lot of time. And to do all 93, I, I, I think that would-- I've got other things that I need them to be doing. So they might appreciate that if, if I didn't volunteer them.

LINEHAN: So this will make the, the attorneys angry. So I'm having a good day of making everybody angry. So I'll just dive right here. Why do we have to go through probate?

JON CANNON: Well, it, it depends. If you--

LINEHAN: But we are-- are, are we different in that than other states?

JON CANNON: No, ma'am. Probate is pretty standard across the board.

LINEHAN: So everybody has to pay an attorney anywhere you live in the country to figure out what your taxes are?

JON CANNON: Well, it, it depends. For instance, in, in one of the things I was, I was going to testify earlier, so thank you for the, the opening, is there are plenty of estate planning tools that, that people can make use of. And it's either pay me now-- or pay an attorney now or pay an attorney later. You can put your-- you can put all of your assets into a trust. And, you know, as, as part of that trust, it's, it's not going to be included in the inheritance tax. You could use a transfer on death deed, which this committee had approved.

LINEHAN: It-- whoa, whoa, whoa. There's sometimes you pay the inheritance tax. I just went through this with a trust. There's inheritance tax.

JON CANNON: On, on a trust?

LINEHAN: Yeah.

JON CANNON: OK.

LINEHAN: Well, maybe there wasn't. I, I don't know. But that definitely we need some more research on, 'cause I did-- that question came up as to why we have to have an attorney, because we have to have an attorney--

JON CANNON: Yep.

LINEHAN: --because we have to have an attorney, even though there was a will and a trust and everything else.

JON CANNON: Right. In 2012, this committee advanced the transfer on death deed, the uniform transfer on death deed act, I believe. And one of the reasons that we did is we said, well, you know, it cost me $500 to go to an attorney to draw up a trust. Whereas, I can do this transfer on death deed and it's going to cost me 50 bucks. And oh, by the way, I'm able to, to transfer, you know, any real property that way and it's going to be immediately upon death. And I don't believe that it's included in the estate, but that's-- I mean, that's, that's something I, I think would be worth this committee's worthwhile to look into as to, you know, what, what effect has that transfer on death deed had on these nontestamentary transfers and how much that has affected the inheritance tax.

LINEHAN: OK. All right. That's good. Any other questions? Thank you very much for being here.

JON CANNON: Yes, yes ma'am. Thank you.

LINEHAN: I know you always have fun when you're here.

JON CANNON: It's always a blast, ma'am. I really appreciate it.

LINEHAN: It's always a blast.

JON CANNON: Thank you.

LINEHAN: Anybody else? Well, hello.

LAVON HEIDEMANN: Well, hello.

LINEHAN: It's hard to recognize people in here with these masks especially in the back row.

LAVON HEIDEMANN: It is-- it's beneficial for some of us.

LINEHAN: And you are--

LAVON HEIDEMANN: Good afternoon, Chairman Linehan and members of the Revenue Committee and Kay. My name is Lavon Heidemann, L-a-v-o-n, Heidemann, H-e-i-d-e-m-a-n-n, and I'm a current board member at Nebraska Cattlemen, and I'm here representing them today. Thank you for the opportunity to testify on LR415. Nebraska Cattlemen has longstanding policy that supports the continuation of the existing Nebraska inheritance tax. Our members feel strongly that its elimination would result in pressure on county governments to replace the lost revenue by increasing property taxes. As the committee is all too aware, the Nebraska Cattlemen have consistently advocated for the property tax relief and reform. Now I'm going to leave that what they had presented me and I'm just going to go off a little bit on my own very briefly. I mean, the bottom line is if the counties don't get property tax-- inheritance tax, it will be an increase in property taxes. And I, as myself and as a member of the Nebraska Cattlemen's, we want to thank this committee for what they did last year. I know it was a heavy lift and I know it was a lot of hard work. You accomplished and you did great things. We would ask, as an organization, not to go backwards and, and to do something with an inheritance tax and then force an increase in property taxes by the counties. I have been part of three estates, two of them were with aunts and uncles that didn't have kids. There were sixteen or seventeen of us nieces and nephews and we got the estate at that time. We didn't think about the 13 percent we didn't get. We thought about the 87 percent that we did. And we talked about it as nieces and nephews at that time, about the inheritance tax and we thought it was a neat way for our aunts and uncles to actually give back to the community that they had lived in all of their lives and benefited from the services from that community. You know, with my mom and dad's estate, it was 1 percent lifetime, 1 percent. Every year whether I make money or don't make money on my land, I pay 1 to 1.5 percent on my land every year in property taxes. So personally, that 1 percent that I would have to-- what I paid on inheritance tax on my mom and dad's land didn't bother me a whole lot. If you want to work on something in this committee, please work on the 1 and 1.5 percent that I pay in property taxes. A little bit-- I've talked to some people, county commissioners down in my area, they, they either put this, they put this money off to the side and use it for emergency purposes because they know that they come. The other thing that they use it for is to-- for match money for very large projects, road projects that they wouldn't be able to do if they didn't have this. If they didn't have inheritance tax to have federal-- match money for federal money, they would have to go to property taxes. And once again, it would be a, a tax increase. I was here in 2007. If I remember right, it was Senator Wightman. I believe it was not intended to be a tax increase by any means. I think the reason you see more money coming in inheritance tax because the valuations of the state have gone up and then more coming into the inheritance tax. If I remember the conversation, it was more about trying to be more fair to the sons and the daughters, the immediate family. There was more worry there how it was affecting them than the nieces and nephews and, and friends and other people, if I remember right. With that, I do, do want to thank you once again for everything you did last session. I myself, and we as an organization, appreciate it to no end. Thank you.

LINEHAN: Thank you. Do you have questions? What percentage of-- you're in Johnson County, right? Your land?

LAVON HEIDEMANN: I have some ground in Pawnee County and some ground in Johnson County. Most of it's in Johnson County.

LINEHAN: So what percentage of your property tax bill goes to county?

LAVON HEIDEMANN: Fairly small,--

LINEHAN: Right.

LAVON HEIDEMANN: --to be right truthful.

LINEHAN: I thought--

LAVON HEIDEMANN: We, we never hear people complain about the property taxes to counties because they get the services back. It's the K-12, and we understand we're educating our kids. It's, it's very important that we do that. We just-- we differ on where those funds should come from to educate those kids.

LINEHAN: All right, but that's a different conversation. This is pretty straightforward. What percentage of your property tax bill goes to the county, Johnson County, on the land you own in Johnson County?

LAVON HEIDEMANN: I couldn't-- I would have to go back home and figure that and I could do that and get, get that back. It's a lot smaller than K-12 education.

LINEHAN: It's probably, maybe 10 percent?

LAVON HEIDEMANN: I think, if I remember right, Pawnee County was at-- right at 30, 30 on their levy and we're at-- we're, we're at the $1.05 in both Pawnee County schools and Johnson County Centrals. So you can kind of do--

LINEHAN: That's just a general fund not your--

LAVON HEIDEMANN: General fund. Right.

LINEHAN: --bonding.

LAVON HEIDEMANN: They're not bonding a whole lot down there right now because-- yeah, they're, they're not.

LINEHAN: OK. Well, if you could get me that numbers and I would-- and NACO, if you can get us what percentage for each county is actually county taxes versus all the property taxes. Because I don't think counties necessarily-- been my experience, they are one of the lowest amounts of the levy on property tax bill.

LAVON HEIDEMANN: By the time you add your NRDs, and community colleges or another one, if you want to look into those, that would be great. But I mean, yeah, your counties aren't the biggest one. Fire districts, things like that.

LINEHAN: Library boards, there's 17 on my property tax bill.

LAVON HEIDEMANN: We, we don't have that so much in rural Nebraska that many, but we don't have pathways to walk. We don't have libraries. We don't-- if it snows, we get the tractors and loaders out and go do it ourselves. Usually--

LINEHAN: I know.

LAVON HEIDEMANN: --not always, but.

LINEHAN: OK.

LAVON HEIDEMANN: Is that it?

LINEHAN: I think that's it. Anybody else have any questions? Thank you.

LAVON HEIDEMANN: Thank you.

LINEHAN: You're welcome. Any other individuals which, which-- wishing to testify? Senator Clements, would you like to close?

CLEMENTS: Yeah, briefly.

LINEHAN: OK, you can close briefly.

CLEMENTS: Thank you, Senator Linehan. Thank you, committee, for hearing the testimonies. I have appreciated learning some things, also, that I didn't know before. One thing I wanted to talk about that's been talked about with proper estate planning whether you could avoid inheritance tax, for example, with a trust. My mother passed away in December and her assets are in a trust that I'm paying 1 percent on. And my brother was shaking his head that it's not really true that you can avoid the inheritance tax unless you completely give away your asset ahead of time. And there are, I think, some delays on how long the property you needed to be gifted. But if you give it away, then you may not have it to care for yourself. So I think that's not a good plan to do. I-- in looking at Lancaster County and Douglas County on the chart that I had, it looked like both of them roughly doubled from 2007 till now in the dollar amount they've received. And it may be that the valuations are the majority of that, but some of it certainly is the inheritance tax change in 2008. And I'm on the Appropriations Committee and I believe to help the counties that couldn't do their FEMA share, I think there were 12 counties, and the Governor's budget, I believe was $9 million that we allocated to help them pay that share. And that, that was included in this current budget. And so I believe that's all the comments I have and thank you very much.

LINEHAN: I'm, I'm going to say this for the record in case I didn't, because I didn't ask NACO or anybody else that testified, somebody needs to explain, I wish, and maybe research can, what the limits are on a county's budget. And is that the only limit we have on spending? Is it in the constitution? Is it in statute?

KAY BERGQUIST: It's in statute.

LINEHAN: It's in statute. So is it 2.5 percent or 3 percent?

KAY BERGQUIST: It's 2.5 percent and then they can vote an additional 1.

LINEHAN: So you have a limit on your budget, on your spending authority. Is any other?

KAY BERGQUIST: Everybody has.

CRAWFORD: Cities.

LINEHAN: Everybody has? Then why is there such a-- OK.

KAY BERGQUIST: Well, it's not everybody, but it's the bigger ones.

LINEHAN: OK. Well, it's-- yeah, we need to dig deeper into what that is. All right. Thank you very much, Senator Clements. Very informative.

CLEMENTS: Thank you.

LINEHAN: Very helpful. I have letters for the record. Thank you, Kay. Proponents: Ward Doering, Council Bluffs, financial adviser; John Kingsbury, Bank of Dixon; Michael Schuldt, Plattsmouth, financial advisor. Opponents: Steve Sill, Cuming County Board of Supervisors, chairman. Neutral: none. Thank you all for being here on a cold, icy day, supposably. Be safe going home.