

**House Committee on Taxation
Neutral Testimony to House Bill 2385
Presented by Eric Stafford, Vice President of Government Affairs**



Monday, March 20, 2017

Mister Chairman and members of the committee, my name is Eric Stafford, Vice President of Government Affairs for the Kansas Chamber. The Kansas Chamber represents small, medium and large employers across the state. We appreciate the opportunity to provide testimony today as a neutral party to House Bill 2385.

When reviewing House Bill 2385, our tax professionals we consulted with expressed some concern over the bill. In most simple terms, new section (f) allows small businesses to deduct their business profit through the subtraction modification in (c)(xx) for “an entity that has at least one employee...”. We interpret this intent to preserve the small business tax cuts for entities with at least one W-2 wage employee. However, it’s not that simple of a fix as proposed under this bill. Under HB 2385 as introduced, sole proprietors and LLC’s with no employees would be subject to income taxes. However, they would not be able to deduct losses. Our first suggestion would be to modify the bill to reference the new (f) and reinstate loss deductions for entities who do not qualify for the exemption.

Second, focusing only on “one employee” would likely cut out other firms who arguably should qualify for the tax break. For example, if an LLC/partnership has 25 partners but no W-2 employees, the firm would be subject to income taxes under this proposal. Under IRS rules, if an owner/partner is paid to work, they should not issue W-2 wages. They instead receive guaranteed payments under partnership structures (guaranteed payments are already subject to income taxes following the 2015 tax plan) and the business profit would now be taxed as well. As a side note, even though partners are not supposed to claim W-2 wages, this sometime gets overlooked and missed by both employers and the government, and is very difficult to track. If the newly proposed language under (f) were to focus on non-owner employees (W-2 employees) versus “employees” that could help resolve some potential problems here. It would also address shifting of owners who are the only employee, and who classify themselves as employees to declare a W-2 wage, while also protecting some business income from taxation.

A few other suggested changes to HB 2385 are specific to the one employee or one non-owner employee would be to clarifying language to exclude firms counting owners as employees when that’s the only employee. Also, if HB 2385 were to increase the minimum number of employees from one to 3-5, that might help alleviate some of the one employee concerns that have been expressed in the past.

We appreciate the opportunity to provide feedback on House Bill 2385 and offer input on some potential unintended consequences from the language. I am happy to answer any questions the committee may have at the appropriate time.



The Kansas Chamber, with headquarters in Topeka, is the leading statewide pro-business advocacy group moving Kansas towards becoming the best state in America to do business. The Chamber represents small, medium and large employers all across Kansas.