

MINUTES OF THE Senate COMMITTEE ON Assessment and Taxation

The meeting was called to order by Senator Fred A. Kerr at
Chairperson

11:00 a.m./~~pm~~ on Thursday, March 28, 1985 in room 519-S of the Capitol.

All members were present ~~except~~

Committee staff present:

Tom Severn, Research Department
Melinda Hanson, Research Department
Don Hayward, Revisor's Office
LaVonne Mumert, Secretary to the Committee

Conferees appearing before the committee:

Representative Marvin Smith
Thelma Hagen, Soldier Township Trustee
Patsy M. McDonald, Shawnee County Clerk
Marvin D. Perkins, Topeka Township Trustee
Linda Terrill, Board of Tax Appeals
Bradley J. Smoot, University of Kansas Alumni Association
John Blythe, Farm Bureau
Representative Jeff Freeman
Ernie Mosher, League of Kansas Municipalities
Keith Farrar, Board of Tax Appeals

H.B. 2347 - Townships; transfer of monies from general fund; exempt from aggregate tax levy limitation

Representative Marvin Smith read his testimony in support of the bill (Attachment 1). He explained that the amount raised from the last year of the intangibles tax would be used as the basis to determine the amount of levy needed to make up the lost revenues. The bill would apply to townships that have already repealed the intangibles tax as well as to townships that repeal the tax in the future.

Thelma Hagen read her statement in support of H.B. 2347 (Attachment 2). She explained that they are prohibited from transferring levied funds from the general fund to another fund.

Patsy McDonald read her statement in support of the bill (Attachment 3).

Marvin Perkins read his statement in support of the bill (Attachment 4).

H.B. 2434 - Administration of property tax law by various authorities

Linda Terrill read her testimony in support of the bill (Attachment 5). The bill would make several clean-up amendments and delete references to repealed statutes. It would require notification from county boards of equalization to PVD of all changes in valuation of property. It would also permit the Board to require that counties be represented by counsel in hearings before the Board and require that county treasurers notify affected districts of adjustments ordered by the Board.

Bradley J. Smoot summarized his testimony (Attachment 6). The building occupied by the University of Kansas Alumni Association has been assessed property taxes on its personal property for 1984. It has never paid property taxes before. Mr. Smoot said that the Alumni Association is a charitable organization and any taxes paid by them would be to the detriment of the educational institution. He noted that the subject property was not on the taxroll before the structure was built. He mentioned that other institutions have similar problems. Mr. Smoot explained that his suggested amendment (Attachment 7) would provide tax exempt status for alumni associations.

H.B. 2432 - Correction of clerical errors relating to property taxation

Linda Terrill read her statement explaining H.B. 2432 (Attachment 8). She

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Assessment and Taxation,
room 519-S, Statehouse, at 11:00 a.m. ~~xxx~~ on Thursday, March 28, 1985.

provided copies of the court opinion in the Midland Industries case (Attachment 9). H.B. 2432 would allow correction of clerical errors in cases of understatement but no penalties or interest would be assessed. She explained that the court ruled that the property was not escaped because it had been assessed.

John Blythe told the Committee of a situation where property was sold, the deeds were properly recorded but improvements on the land were assessed with the wrong property. He provided a letter from David and Connie Kunkel (Attachment 10) to the Board of Tax Appeals. Mr. Blythe distributed a suggested amendment to H.B. 2432 (Attachment 11) which would allow the county commissioners to correct a clerical error in 1985 only.

Representative Jeff Freeman testified in favor of the bill and suggested amendment.

H.B. 2431 - Revenue bond and no-fund warrant authority of taxing districts

Linda Terrill read her testimony explaining the purpose of the bill (Attachment 12). The bill would provide that the Board can authorize emergency no-fund warrants.

Ernie Mosher testified in support of the bill and suggested that "or tax levy" be added to line 142 after the word "budgeting".

Chairman Kerr announced that Keith Farrar was present to answer questions about the recent order of the Board concerning inventories.

Keith Farrar stated that the order requests appraisers to verify whether the depreciation schedules, which show inventories, are accurate. He said that implement dealers were not singled out by the order. Mr. Farrar pointed out that not only are honest taxpayers being penalized when others pay less than their fair share, but they are also hurt by having to compete with those same merchants. There was discussion about the Board's authority to initiate action of this type in all 105 counties. It was discussed that the Board's order was not reappraisal because they are not adjusting valuations but are only ordering county appraisers to verify the accuracy of renditions. Mr. Farrar mentioned that already there are cases of voluntary reporting and amended returns as a result of the Board's order.

Senator Karr moved that the minutes of the March 27, 1985 meeting be approved. Senator Hayden seconded the motion, and the motion carried.

Meeting adjourned.

MARVIN E. SMITH
REPRESENTATIVE, FIFTIETH DISTRICT
SHAWNEE AND JACKSON COUNTIES
123 N E 82ND STREET
TOPEKA, KANSAS 66617



TOPEKA

HOUSE OF
REPRESENTATIVES

February 28, 1985

COMMITTEE ASSIGNMENTS
VICE-CHAIRMAN GOVERNMENTAL ORGANIZATION
MEMBER EDUCATION
FEDERAL AND STATE AFFAIRS

TO: Mr. Chairman and Members
RE: HB 2347
FROM: Representative Marvin E. Smith

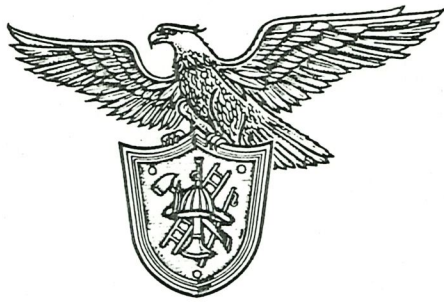
Last year the voters of some of the townships exercised the petition and election process to repeal the intangible tax.

This tax revenue has amounted to as much as 10% of the total budget. In 1986, this loss of revenue will impact on the township budgets.

HB 2347, with respect for townships, would provide the increase in ad valorem tax levy necessary to raise such additional monies may be made in any fund of such township to offset the resulting loss in intangible tax revenue.

Some of our township boards are especially concerned about the impact in loss of revenue especially with the possibility of decrease in revenue sharing.

I would appreciate your favorable consideration for this needed legislation.



Soldier Township

600 N.W. 46th, Topeka, Kansas 66617
March 28, 1985

Senator Fred A. Kerr, Chairman
Senate Assessment and Taxation Committee
State Capitol Building
Topeka, Kansas 66612

Re: House Bill 2347

Senator Kerr:

In the case of Soldier Township, Shawnee County, Kansas, the intangibles tax levy was repealed by election in 1984.

The township stands to lose approximately \$100,000 due to the repeal of this tax levy.

The intangibles tax law, K.S.A. 12-1,101, authorizes the township

"....to offset the loss in revenue from the elimination of such tax by.....increasing its ad valorem tax levy for the general fund...." (Emphasis added)

Since the township cannot, under K.S.A. 80-1406b, transfer funds received from such an increase from the general fund into a fund where it is needed, it is now necessary to provide for making these moneys available to the township in its choice of funds.

Soldier Township has been transferring the revenues from the intangibles tax to the Road Fund for use.

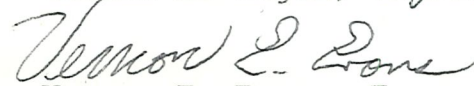
Soldier Township supports House Bill 2347 which provides that

"The governing body of any township.....is authorized to offset the resulting loss in revenue by the imposition and levying of any other taxes as may be authorized by law or by increasing its ad valorem tax levy for the general fund orany other fund...." (Emphasis added)

We ask that you pass this bill.

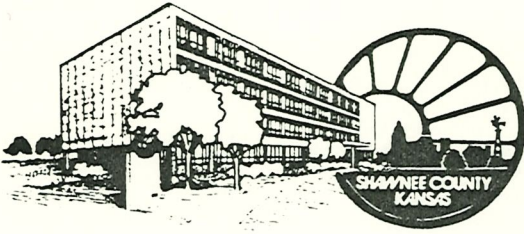
Sincerely,


Thelma L. Hagen, Trustee


Vernon E. Evans, Treasurer

Shawnee County
Office of County Clerk

PATSY A. "PAT" McDONALD



295-4155 Main
295-4159 Accounting

Courthouse - Room 107
Topeka, Kansas 66603

March 28, 1985

Senator Fred Kerr, Chairman
House Assessment & Taxation Committee
Kansas House of Representatives
State Capitol Building - Room 143-N
Topeka, Kansas 66612

Re: House Bill 2347

Senator Kerr:

I support House Bill 2347, as amended. The counties and cities want their "loss of intangible" to be made up in the general fund. However, the townships need their "loss of intangible" to be made up in the general fund--road fund, fire fund, etc.

In the past, the intangible revenue has been placed in the general fund of the township and most of it transferred to the road or fire fund. (See attached example). This is a problem now, because K.S.A. 80-1406b says:

"any township which did not make a tax levy for the township general fund.....may transfer all or any part of such surplus..."

If the townships make up the loss of intangible in the general fund, K.S.A. 1406b prohibits transferring money to road or fire, because now they are making an ad valorem tax levy and the statute prohibits transfers of levied money.

I also seems unrealistic to pay thousands of dollars for road repairs out of general fund. Therefore, we urge support of House Bill 2347, which will allow townships to make up the loss of intangible money in any fund, such as the road fund where the revenue is needed.

Sincerely,

A handwritten signature in cursive script that reads "Patsy A. McDonald".

Patsy A. McDonald
Shawnee County Clerk

PAM/llh

Attachments

Financial Statement and Adopted Budget
GENERAL FUND

	Code	1983 Actual	1984 Budget or Estimate	BUDGET 1985
Unreserved Fund Balance, January 1		67,983	94,670	61,231
Ad Valorem Tax				xxxxxxxxxxxxxx
Delinquent Tax				
Local Intangibles Tax		107,517	93,996	80,000
Motor Vehicle Stamp Tax				
Motor Vehicle Tax				
Local Ad Valorem Tax Reduction				
In Lieu of Taxes (I.R.B.)				
Feedlot Cattle Tax				
Tax Interest		5,030	5,000	5,000
Interest on idle funds		23,613	20,000	20,000
RESOURCES AVAILABLE		204,143	213,666	166,231
Expenditures:				
Per Diem		3,079	3,600	3,600
Salaries and Wages		6,213	8,500	9,500
Publication Expense		1,423	900	1,000
Surety Bonds and Insurance		14,452	15,000	16,000
Office Supplies and Expense		3,639	2,000	4,000
Township Hall Expense				
Legal and Audit Fees		2,840	6,000	6,000
Out-District Tuition		7,827		
Transfers to Other Funds		70,000	116,435	126,131
TOTAL EXPENDITURES		109,473	152,435	166,231
Unreserved Fund Balance, December 31,		94,670	61,231	xxxxxxxxxxxxxx
			TAX REQUIRED	-0-
			Delinquency Computation (See Instructions)	
			Amount of 84 Tax to be Levied	-0-

ROAD FUND

	Code	1983 Actual	1984 Budget or Estimate	BUDGET 1985
Unreserved Fund Balance, January 1		16,654	9,088	10,384
Ad Valorem Tax		241,479	305,870	xxxxxxxxxxxxxx
Delinquent Tax		5,361		
Gasoline Tax		21,320	19,850	20,114
Motor Vehicle Stamp Tax		541	340	348
Motor Vehicle Tax		65,760	64,870	65,421
Local Ad Valorem Tax Reduction		13,791	20,188	19,932
In Lieu of Taxes (I.R.B.)				
Reimbursement		420		
Transfer from General Fund		70,000	116,435	126,131
Interest on idle funds				
RESOURCES AVAILABLE		435,326	536,641	242,330
Expenditures:				
Per Diem		1,343	1,440	1,440
Salaries and Wages		95,241	117,000	125,000
Machinery Expense (Maint & Operation)		42,405	58,000	74,000
Road Surfacing Materials & Culverts		237,669	290,817	322,429
Contractual Expense (Machine Hire, etc.)				
Culverts				
Purchase of Machinery		43,387	45,000	60,000
Insurance		1,994	8,000	2,500
Supplies		799		
Utilities and Guard Dog		3,400	6,000	5,000
Transfer to				
TOTAL EXPENDITURES		426,238	526,257	590,369
Unreserved Fund Balance, December 31,		9,088	10,384	xxxxxxxxxxxxxx
			TAX REQUIRED	348,039
			Delinquency Computation (See Instructions)	
			Amount of 84 Tax to be Levied	348,039

TOPEKA TOWNSHIP

SHAWNEE COUNTY, KANSAS

March 28, 1985

TO: Chairman Senator Kerr
Members of Taxation and Assessment

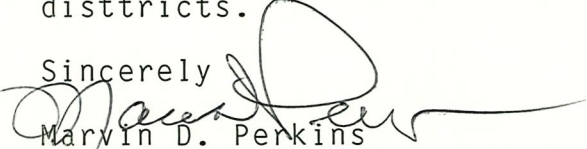
RE: HB 2347
Elimination of Intangible tax
and use of money levied for other
sections.

We are in support of this bill due to the possibility that in the future we will have the intangibles tax repealed by an election and if so we need to levy money to replace the amount taken away but at the present time the levied money would only go into the General fund and is needed to assist in the Road Fund.

Intangibles estimated for 1985 budget is \$16,000 and if this was eliminated we would have to replace it with a mill levy of 2.12 based on a valuation of 7,545,885. for our township.

We ask for your support of this much needed bill to assist the townships in continuing their services to their respective districts.

Sincerely



Marvin D. Perkins
Trustee,
Topeka Township.
272-8401



BOARD OF TAX APPEALS

1030-S, STATE OFFICE BUILDING

Telephone 296-2388 AC—913

TOPEKA, KANSAS 66612

Fred L. Weaver, *Chairman*
Dallas E. Crable, *Member*
John P. Bennett, *Member*
Robert C. Henry, *Member*
Keith Farrar, *Member*

HB 2434

SENATE ASSESSMENT AND TAXATION COMMITTEE

HB 2434 makes several changes in current law. The bill was requested by the Board of Tax Appeals as a result of problems which arose.

1. The changes that were made between lines 23 through 92 are merely clean-up amendments to delete references to K.S.A. 79-503 which was repealed in 1982. The correct cites have been substituted.
2. K.S.A. 79-1467 was amended to eliminate the requirement of the County Appraiser to list farm machinery and equipment on the exempt personal property roll. Kansans are no longer required to file for an initial exemption with the Board of Tax Appeals or the annual filing with the County. Therefore, the County Appraiser cannot list farm machinery and equipment on the exempt personal property roll because he/she has no record of the equipment.
3. K.S.A. 79-1619 was amended to require the County Boards of Equalization to file with the Property Valuation Director **all changes in valuation, including the justification for such change.** Current law requires them to report changes in the assessment of a class or classes of property, however they may illegally, or in a void manner, adjust an individual's assessment and report to no one.
4. K.S.A. 79-2005 was amended to:
 - (a) Allow the Board of Tax Appeals discretion to require the county to be represented by counsel, and

- (b) to eliminate the requirement of the Board to mail copies of their orders to all affected taxing jurisdictions. The County Treasurer will notify the jurisdictions if their tax base was adjusted.

PETEFISH, CURRAN & IMMEL, LAWYERS

PETEFISH, CURRAN & IMMEL BUILDING

842 LOUISIANA STREET
P.O. BOX 485
PHONE 913-843-0450

LAWRENCE, KS 66044

OLIN K. PETEFISH
PETER K. CURRAN
JOHN J. IMMEL
BRADLEY J. SMOOT

March 28, 1985

The Honorable Fred A. Kerr
Chairman, Senate Assessment and
Taxation Committee
Capitol
Topeka, Kansas 66612

Dear Mr. Chairman and Members:

The University of Kansas Alumni Association appears today to encourage the 1985 Kansas Legislature to clarify the status of properties used by college and university alumni associations under the ad valorem property tax laws. The following information will be useful to the Committee in considering this request.

1. KU Alumni are an integral part of the University and have been a cornerstone in the development, growth, and promotion of KU for over one hundred years. Since the incorporation of the KU Alumni Association in 1908, and until 1923, the operations of the Association were housed in old Fraser Hall on the Lawrence campus. For the next forty-five years the Association was housed in Strong Hall, the University's administration building. In 1968 and 1969 the operations were moved to Sudlor House, also state-owned property, and then to the Kansas Memorial Union. Until 1984, the Association never paid property taxes even on its personal property. At all times prior to last year's assessments, the property of the Association has been viewed as being used for exclusively educational purposes. Regardless of the legality of the 1984 assessments against the Adams Alumni Center, its furnishings and equipment, the assessments of 1984 represent a significant, even drastic, change from the past.

2. The Alumni Association provides a wide range of services for the University, including a massive record keeping function which is now computerized and located on the third floor of the Adams Center. The Association sponsors gatherings of alumni, faculty, and staff, both on and off campus, and actively promotes private fund raising efforts to support the University. In short, the Association is a highly visible and productive arm of the University. It is, indeed, hard to imagine how KU could successfully continue its educational mission without the efforts of its alumni and their organization.

The Honorable Fred A. Kerr
March 28, 1985
Page Two

3. The alumni organizations at other state schools are also affected by the confusion surrounding the taxation of their property. Both Wichita State University and Pittsburg State University have alumni associations which are housed on off-campus property. WSU pays property taxes on its Alumni House. By contrast, Pittsburg State does not pay property taxes on its alumni facility which is owned by the Pittsburg State University Alumni Foundation, a private non-profit corporation. While neither school provides the range of services now available at KU, the essential mission and function of such alumni groups are very similar and there is little to justify the wide disparity of treatment for taxing purposes.

4. The alumni organization at Kansas State University, as well as those at PSU and WSU, have expressed support for clarification of the property tax issue. The Kansas State University Alumni Association is particularly anxious to move off campus into a private facility and would benefit from a specific provision exempting such facilities from the payment of property taxes. Clearly, the trend is for such associations to move off state-owned property and to provide a wider range of services to their respective schools, their faculty, staff, and alumni.

5. At KU, the Alumni Association receives considerable support from the KU Endowment Association. As you know, the Endowment Association also provides direct support to the University through gifts for capital improvements, equipment, teaching, and other programs. The increase in budgeted expenses for the Alumni Association caused by the new property tax burden will probably require increased financial support from the Endowment Association. Correspondingly, KUEA's ability to directly fund University activities and facilities will be reduced accordingly. The drain on the resources of the KUEA will continue indefinitely and will no doubt have a negative impact on the University itself. As many of you may know, the KU Endowment Association is the Big 8 leader in providing student financial aid and faculty grants. In short, the annual \$65,000 payment to the Douglas County Treasurer must be derived from a reduction in the financial resources otherwise available to the University. In which case, either the State Legislature will provide the increased revenues or the funded activities will cease.

6. As previously noted, the Alumni Association has not paid property tax in the past. Moreover, the real estate on which the new Adams Center sits was previously owned by KUEA and was used as a parking lot for the University. Consequently, the county derived

The Honorable Fred A. Kerr
March 28, 1985
Page Three

no income off the real estate in the years immediately preceding the construction of the Alumni Center. In sum, the County is not being "robbed" of tax revenues by any legislative exemptions for the alumni facility. It is, instead, being denied a windfall.

7. Similar tax exemptions have been written into the law for facilities primarily serving students (dormitories, and student union facilities). While students may be the focus of a university's educational mission, faculty and alumni are also essential ingredients. The Adams Alumni Center is designed primarily to serve the needs of faculty and alumni as well as KU students. The comparisons between the student unions and the faculty and alumni buildings, both as to function and objectives, are natural and favorable.

We believe the reasons favoring a specific property tax exemption for college and university alumni facilities are compelling and will receive widespread support among members of the public, the higher education field, and the legislature. Finally, I would add that the legislature is the only entity which can clarify the situation and remedy the problem.

We appreciate your interest and willingness to review our point of view. Naturally, we would also appreciate favorable action on our proposed amendment.

Sincerely,



Bradley J. Smoot
of Petefish, Curran & Immel
for the University of Kansas
Alumni Association

BJS:ku

Proposed amendment to Title to HB# 2434

AN ACT relating to property taxation; the administration thereof by certain authorities; exempting certain property from taxation; amending K.S.A. 79-201, 79-1436a, 79-1437, 79-1445, 79-1467, 79-1610 and 79-2005 and repealing the existing sections.

Proposed amendment to HB# 2434

Section 8. Sixth. All real and tangible personal property used by an alumni association associated, by its articles of incorporation, with any public or non-profit Kansas college or university approved by the Kansas board of regents to confer academic degrees and which is actually and regularly used exclusively to provide accommodations and services to such college or university or to the alumni, staff, or faculty thereof.

Section 9. This act shall take effect and be in force from and after its publication in the state register and shall apply to the 1984 tax year and all subsequent years.

JOHN CARLIN • Governor



BOARD OF TAX APPEALS

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TOPEKA, KANSAS 66612

Fred L. Weaver, *Chairman*Dallas E. Crable, *Member*John P. Bennett, *Member*Robert C. Henry, *Member*Keith Farrar, *Member*

HB 2432

SENATE ASSESSMENT AND TAXATION COMMITTEE

Mr. Chairman, members of the Senate Assessment and Taxation Committee, **HB 2432** amends K.S.A. 79-1701, 79-1701a and 79-1702. This series of statutes are referred to as the clerical error relief statutes.

This amendment was requested by the Board of Tax Appeals as a result of the Midland Industries opinion issued by the Kansas Supreme Court in December of 1984. I have attached a copy of that opinion for your perusal. Essentially, the Supreme Court stated that only those clerical errors committed by the county which favor the taxpayer may be corrected, or, in other words, those clerical errors which result in a refund and/or an abatement of taxes. Neither the county nor the Board of Tax Appeals can correct a clerical error which would require an increased assessment on the part of the property taxpayer.

This bill would allow for such a correction. No interest and penalties shall be assessed and no increase shall be ordered to correct such error for more than 2 years from the most recent tax year.

No. 56,697

IN THE MATTER OF AN ORDER OF
THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS
UPON THE APPLICATION OF
MIDLAND INDUSTRIES, INC. FOR
RELIEF FROM TAX GRIEVANCE IN
SEDGWICK COUNTY, KANSAS,

and

IN THE MATTER OF AN ORDER OF
THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS
UPON THE APPLICATION OF
ENERGY RESERVES GROUP INC. FOR
RELIEF FROM A TAX GRIEVANCE IN
SEDGWICK COUNTY, KANSAS,
Appellants.

SYLLABUS BY THE COURT

1.

On appeal, a district court may not substitute its judgment for that of an administrative tribunal, but is restricted to considering whether, as a matter of law, (1) the tribunal acted fraudulently, arbitrarily or capriciously, (2) the administrative order was substantially supported by evidence, and (3) the tribunal's action was within the scope of its authority.

2.

On appeal of a district court's judgment reviewing the action of an administrative tribunal, this court may conduct the same review of the administrative proceeding as did the district court.

3.

This court has long recognized that matters of assessment and taxation are administrative in character and the judiciary may not substitute its judgment for that of the administrative agency.

Construction of statutory language, however, is a proper judicial function which does not interfere with the administrative agency's expertise in taxation matters.

4.

The term "escaped taxation," as used in K.S.A. 1983 Supp. 79-417, means "got free, or got clear" of taxes. Thus, a reduction in taxes, which occurs as a result of a clerical error, is not an escape from taxation allowing the application of K.S.A. 1983 Supp. 79-417 for relief from the error.

5.

Tax laws are statutory and do not exist apart from the statute. As such, they must be strictly construed.

6.

K.S.A. 79-1701, K.S.A. 1983 Supp. 79-1701a and -1702, are taxpayer relief statutes, and therefore do not provide relief for a taxing district which has made a clerical error in the taxpayer's favor.

7.

Having considered the tax statutes which provide remedies from clerical errors it is held: The legislature has not provided a remedy for a taxing district's clerical error in favor of a taxpayer which is not detected prior to sending out tax notices, unless the error is a failure to assess the property for taxation or the property has escaped taxation through other error.

Appeal from Sedgwick district court; RAY HODGE, judge.
Opinion filed November 30, 1984. Reversed.

Robert J. O'Connor, of Hershberger, Patterson, Jones & Roth, of Wichita, argued the cause and was on the brief for the appellants.

C. Robert Bell, assistant county counselor, argued the cause and was on the brief for the appellee.

The opinion of the court was delivered by

HERD, J.: This is a consolidated appeal by Midland Industries, Inc., and Energy Reserves Group, Inc., from a ruling by the district court on appeal from the State Board of Tax Appeals (BOTA).

The facts presented at the hearing pertaining to Energy Reserves Group are that an improvement on its property was made in 1980 resulting in a larger assessed valuation. In the process of placing the valuation on the assessment roll (maintained by computer in Sedgwick County), the improvement appraisal value was entered correctly but the land appraisal value was incorrectly reduced from \$18,000 to \$8000 resulting in a reduction in the assessed valuation of the land from \$5400 to \$2400. The error was discovered by the county in August 1982. A corrected tax statement was issued the taxpayer for 1981. Prior to 1981, the taxpayer had paid tax on this land at the correct assessment of \$5400.

In the meantime, an error was also discovered on the assessment of property owned by Midland Industries. During 1967, the main building located on Midland's property was constructed with the use of industrial revenue bonds. This building was thus tax exempt until January 1, 1978. In 1978 the property was placed on the tax rolls with an assessed valuation of \$495,960. The resulting taxes were paid, not under protest. Officials of the company, however, stated they undertook discussions with the county officials concerning an "overassessment" of the property. No appeals were made to the county or state boards of equalization from the assessment. The following year the taxpayer paid taxes on an assessment of \$195,960, believing the lower amount was a result of the Sedgwick County Appraiser's correction of the "overassessment." During 1982 the Sedgwick County Appraiser, when checking property record cards (the official valuation source of property in that county) against the computer

assessment rolls, found the computer assessment rolls incorrectly reflected a value of \$195,960 and the property record card, the source material, reflected an assessment of \$495,960.

In 1982 the county appraiser's office made a correction of the computer records to reflect the correct valuation of \$495,960 and issued a corrected tax statement to the taxpayer for 1979, 1980 and 1981. In subsequent action, an assistant county counselor submitted an application for tax relief for the correction of a "clerical error" for tax years 1980 and 1981, believing the year 1979 was beyond relief.

The county then commenced proceedings before BOTA in the name of both appellants for relief from the prior incorrect assessments. BOTA held the county could collect the reassessed taxes from Midland for the years 1979, 1980 and 1981 and from Energy Reserves for 1981. Both parties then paid the additional taxes under protest and filed for refunds of those taxes. The companies also filed for a rehearing of the matters. BOTA denied the refund for the taxes paid under protest by Midland, failed to rule on the refund request by Energy Reserves, and denied appellant's consolidated motion for rehearing. Appellants then appealed to the district court pursuant to K.S.A. 1983 Supp. 74-2426.

The district court judge issued an order finding BOTA's order unreasonable and arbitrary as to Midland Industries as to the year 1979 only and ordered that part of the order of BOTA vacated. The court also found BOTA's decision correct, but for the wrong reasons, and thereby affirmed it. The taxpayers' consolidated motions to amend or make additional findings of fact and to alter or amend the judgment were subsequently denied.

Appellants first argue the district court acted improperly when it found BOTA was correct but for the wrong reason. BOTA found in its May 25, 1983, order that the taxpayers' properties had been

misassessed pursuant to K.S.A. 1983 Supp. 79-417. The board further held relief under K.S.A. 1983 Supp. 79-1702 was not proper since that statute "is for the redress of grievances concerning the abatement or refund of taxes when such actions are commenced within a statutory period of time."

The district court reversed BOTA's reliance on K.S.A. 1983 Supp. 79-417, stating the statute was intended for lands or improvements omitted from tax rolls, which was not applicable here. Instead the district court held:

"The evidence in this case reflects the clerks erred in the extension of values, as contemplated by K.S.A. 79-1701(b) by entering the wrong figures in the computers in both cases before the BTA. These 'Clerical Errors' were corrected by the Assessor's Office, which under the law above is clearly allowable."

Appellants argue the district court acted outside the scope of judicial review in finding the decision of BOTA correct, but for the wrong reason. The scope of judicial review from administrative proceedings has been articulated in many cases, as well as K.S.A. 1983 Supp. 74-2426, which is applicable here. K.S.A. 1983 Supp. 74-2426(e) states:

"No appeal may be taken from any order pertaining to the assessment of property for ad valorem tax purposes . . . unless the order is unreasonable, arbitrary or capricious."

We have further defined the district court's authority in administrative appeals in Kansas State Board of Healing Arts v. Foote, 200 Kan. 447, Syl. ¶ 1, 436 P.2d 828 (1968), wherein we stated:

"A district court may not, on appeal, substitute its judgment for that of an administrative tribunal, but is restricted to considering whether, as a matter of law, (1) the tribunal acted fraudulently, arbitrarily or capriciously, (2) the administrative order is substantially supported by evidence, and (3) the tribunal's action was within the scope of its authority."

It is important to note that in Foote we also discussed this court's duty in examining whether the district court acted within its proper scope of review:

"In reviewing a district court's judgment . . . this court will, in the first instance, for the purpose of determining whether the district court observed the requirements and restrictions placed upon it, make the same review of the administrative tribunal's action as does the district court." 200 Kan. 447, Syl. ¶ 2.

Thus, we are in the same position as the district court in determining whether BOTA acted arbitrarily or capriciously.

Appellants argue the district court did not limit its review to the three areas enumerated in Foote. It alleges the district court instead substituted its judgment for that of BOTA when it decided the board was right in its decision but for the wrong reason.

This court has long recognized that matters of assessment and taxation are administrative in character and the judiciary may not substitute its judgment for that of an administrative agency. In Symns v. Graves, 65 Kan. 628, 636, 70 Pac. 591 (1902), it was stated:

"Matters of assessment and taxation are administrative in their character and not judicial, and an interference by judges who are not elected for that purpose with the discharge of their duties by those officers who are invested with the sole authority to make and estimate value is unwarranted by the law. The district court could not substitute its judgment for that of the board of equalization, and this court cannot impose its notion of value on either. These are fundamental principles in the law of taxation and cannot be waved aside to meet the exigencies of any particular case."

Symns, as well as the other cases involving the substitution of judgment by the district court, deal with the court's determination of a completely new assessment rate than that found by the board. Those are clearly substitutions of judgment. Here, however, the district court merely determined an incorrect statute was applied. Construction of statutory language is a proper judicial function which does not interfere with the administrative agency's expertise in taxation matters. The district court has authority to construe a statute at variance with BOTA.

Appellants next attack the result reached by both BOTA and the district court. They maintain there is no remedial statute applicable to these facts.

As we previously noted, BOTA relied on K.S.A. 1983 Supp. 79-417 for its authority to correct the taxing district's clerical errors. That statute provides:

"The county clerk in all cases where any lands or improvements located within the county which for any reason have not been assessed for taxation or have escaped taxation for any former year or years when the same were liable for taxation, shall place the same upon the assessment and tax rolls, shall cause the same to be valued by the county appraiser, and shall charge against such lands or improvements taxes equal to and in accordance with the tax levies that would have been charged against such lands or improvements had they properly been listed and assessed at the time they should have been assessed under the provisions of the general laws governing the assessment and taxation of land. No lands or improvements shall be assessed under the provisions of this section to any person other than the present owner unless such property was acquired by will, inheritance or gift."

Clearly, it provides lands or improvements which have not been assessed or "have escaped taxation" for any reason shall be placed on the assessment and tax rolls by the county clerks without time limitation. The question then is whether transferring incorrectly the appraised value of lands and improvements from the permanent record to the computer is failing to assess or escaping taxation. Such an incorrect transfer of a figure could increase or decrease a taxpayer's assessment and resulting taxes. Here, it decreased appellants' taxes.

Appellants were assessed taxes; thus, the language of K.S.A. 1983 Supp. 79-417 referring to those who "have not been assessed" is not applicable here. We must next consider whether a reduction in taxes because of a mistake is escaping taxes. If it is, K.S.A. 1983 Supp. 79-417 is applicable. Webster's New World Dictionary 477 (2d ed. 1974), defines "escape" as "to get free; get away; get out" We hold the term "escaped taxation" means "got free, or got clear" of taxes. We conclude, therefore, a reduction in taxes is not an escape from taxation. The distinction the law makes between persons who escape taxes and those who merely by some means get a reduction in tax liability is a valid one. A person who escapes taxes is aware of his favored status and remains silent, while one who merely has a reduction of taxes has no awareness of his status. BOTA was in error; K.S.A. 1983 Supp. 79-417 is not applicable to this case.

We now turn to K.S.A. 79-1701, K.S.A. 1983 Supp. 79-1701a and -1702, utilized by the district court instead of K.S.A. 1983 Supp. 79-417 in arriving at the same conclusion as BOTA.

K.S.A. 79-1701 is in the statutory article entitled "Correction of Irregularities." This chapter is the legislative scheme for correcting clerical errors in assessment and tax rolls. It provides:

"The county clerk shall, prior to November 1, correct the following clerical errors in the assessment and tax rolls for the current year, which are discovered prior to such date:

- (a) Errors in the description or quantity of real estate listed;
- (b) Errors in extensions of values or taxes whereby a taxpayer is charged with unjust taxes;
- (c) Errors which have caused improvements to

be assessed upon real estate when no such improvements were in existence;

(d) Errors whereby improvements located upon one tract or lot of real estate have been assessed as being upon another tract or lot;

(e) Errors whereby taxes have been charged upon property which the state board of tax appeals has specifically declared to be exempt from taxation under the constitution or laws of the state;

(f) Errors whereby the taxpayer has been assessed twice in the same year for the same property in one or more taxing districts in the county; and

(g) Errors whereby the assessment of either real or personal property has been assigned to a taxing district in which the property did not have its taxable situs."

The clerical errors complained of in this case are not in description or quantity of real estate, and the error was not discovered before November 1 of the current year. It pertains to valuation only. Section (a) is, therefore, inapplicable. Section (b) applies to extensions of values or taxes charging a taxpayer with unjust taxes. The situation in this case excuses a taxpayer from taxes. Therefore, section (b) is irrelevant. The balance of K.S.A. 79-1701 pertains to taxpayer complaints. We have held that tax laws are statutory and do not exist apart from the statute. Phillips Petroleum Co. v. Moore, 179 Kan. 482, 491, 297 P.2d 183 (1956). As such, they must be strictly construed. Hence, we agree with appellants. This is a taxpayer relief statute, and therefore does not provide relief for a taxing district from its errors.

We turn next to K.S.A. 1983 Supp. 79-1701a which provides for the correction of clerical errors by the board of county commissioners. The errors which are correctable by the commissioners are those specified in K.S.A. 79-1701. Since we found K.S.A. 79-1701 inapplicable here, K.S.A. 1983 Supp. 79-1701a is also inapplicable in this case.

K.S.A. 1983 Supp. 79-1702 is also urged as a remedy for such errors as occurred here. It provides:

"If any taxpayer or any municipality or taxing district shall have a grievance not remediable under the provisions of K.S.A. 79-1701 or 79-1701a, or amendments thereto, or which was remediable thereunder and reported to the proper official or officials within the time prescribed but which has not been remedied by such official or officials, such grievance may be presented to the state board of tax appeals and if it shall be satisfied from competent evidence produced that there is a real grievance, it may direct that the same be remedied either by canceling the tax if uncollected together with all penalties charged thereon, or if the tax has been paid, by ordering a refund of the amount found to have been unlawfully charged and collected.

"In all cases where property has been acquired by the state, a political subdivision or an institution exempt from general property taxation, the general property tax for all the years prior to 1975 that are unpaid on the taking effect of this act shall be cancelled and abated upon proper application hereunder.

"In all cases where the identical property owned by any taxpayer has been assessed for the current tax year in more than one county in the state, said board is hereby given authority to determine which county is entitled to the assessment of the property and to charge legal taxes thereon, and if the taxes have been paid in a county not entitled thereto, said board is hereby empowered to direct the authorities of the county which has so unlawfully collected the taxes to refund the same to the taxpayer with all penalties charged thereon."

Initially, this statute appears to be a catch-all remedy for all clerical errors not provided for elsewhere. However, a closer examination reveals it provides if BOTA finds from competent evidence that there is a real grievance, its actions are limited to either "canceling the tax if uncollected together with all penalties charged thereon" or "if the tax has been paid, by ordering a refund" of the unlawful tax. This statute was clearly not drafted to give relief to a taxing district which has made a clerical error in the taxpayers' favor.

We conclude the legislature has not provided a remedy for a taxing district's clerical error in favor of a taxpayer which is not detected prior to sending out tax notices unless the property has not been assessed or has escaped taxation.

We reverse the trial court and enter judgment for appellants.

Route 3
Waverly, Kansas 66871
May 24, 1984

State Board of Tax Appeals
Topeka, Kansas

Dear Board Members,

We feel we are entitled to a tax refund of \$764.67 due to the clerical error that was made by an employee of the Coffey Co. Courthouse. Mr. Fritz, Coffey County Appraiser, admitted that the error was an error of a 1975 county employee. *

We discovered the error in April 1984 as we were obtaining information from the appraisers office on our home and buildings. The County Appraiser's office told us we had a house and buildings on a 79.37 acre tract located at S $\frac{1}{2}$ of SW $\frac{1}{4}$ of section 18 township 20 and range 17 which is incorrect. The house and buildings we own and should and do pay taxes on are located on the N $\frac{1}{2}$ of SW $\frac{1}{4}$ section 18 township 20 and range 17 which is an 82.52 acre tract. We only have one set of improvements, but have been paying taxes on two sets of improvements.

The County Appraiser's office told us we would have to supply them with some proof that we only own one set of improvements. We took our Warranty Deed of the property of S $\frac{1}{2}$ of SW $\frac{1}{4}$ section 13 township 20 and range 17 (79.37 acre tract) in and showed them where we had filed the Warranty Deed August 8, 1975 with the Register of Deeds office. The Warranty Deed describes a tract of land as the S $\frac{1}{2}$ of SW $\frac{1}{4}$ section 18 township 20 and range 17 LESS a tract described as follows: Beginning at the Southeast corner of the South Half of the Southwest Quarter(S $\frac{1}{2}$ SW $\frac{1}{4}$), thence West Two Hundred Seventy(270)feet; thence North Four Hundred Thirteen (413) feet; thence East Two Hundred Seventy (270) feet; thence South Four Hundred Thirteen (413) feet to the place of beginning, all in Section Eighteen (18), Township Twenty (20), Range Seventeen (17).

The above tract of land which we deducted from our purchase (a tract of land 413 feet long and 270 feet wide) is the location of Mr. Harold Miller's dwelling and buildings, and therefore is not our property. The County Appraiser's office agreed at that moment there had been an error on their behalf. A copy of the Warranty Deed is attached for your inspection.

The reason we had not realized the error before is due to the fact that we get three(3) tax statements for two (2) tracts of land.

When adding two (2) tax statements (#7461 and #7462) together for the 82.52 acres our valuation (3395) and the tax dollar amount (\$313.67) are more than the 79.37 acres tract in question which has a valuation of 3140 and a total tax dollar amount of \$283.75. We have enclosed a copy of our 1983 tax statements so you may see how they compare.

We have also enclosed an aerial photo of the land and buildings of both tracts of land and have indicated in red our property lines.

Due to the facts and reasons we have listed in this letter we feel the taxes of the years 1975, 1976, 1977, 1978, 1979, and 1980 that we paid on property that was not ours should be refunded in the amount of \$764.67..

Sincerely,

David A. Kunkel
Connie K. Kunkel

David A. Kunkel and
Connie K. Kunkel

Enc. 3

P. S. We would like to request a hearing so that we will have a clearer understanding of your discession. Thank you.

* On Feb. 8, 1985 we received a check for \$131.41 from the Coffey Co. Treas as directed by the State Board of Tax Appeals for refund of 1980 taxes that were overpaid. The amount of the refund we are now seeking is \$633.26.

Proposed amendment to HB 2432

On page 2, in line 56, after the period by inserting "Notwithstanding the provisions of the preceding sentence, with respect to a clerical error specified in subsection (d) of K.S.A. 79-1701, and amendments thereto, which is requested to be corrected in 1985, the board of county commissioners, upon a unanimous vote, may order the correction thereof for the year such error was discovered and requested by the taxpayer to be corrected and the immediately preceding years to which such error applies."



BOARD OF TAX APPEALS

1030-S, STATE OFFICE BUILDING

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HB 2431

SENATE ASSESSMENT AND TAXATION COMMITTEE

Mr. Chairman, members of the Senate Assessment and Taxation Committee, HB 2431 was recommended by the State Board of Tax Appeals. This bill was adopted by the House Assessment and Taxation Committee and the House Committee of the Whole without amendment.

The bill contains 3 changes:

- (1) Amends K.S.A. 12-110a to allow the Board of Tax Appeals authority to grant the issuance of no-fund warrants to purchase, repair or replace equipment apparatus, machinery or capital improvements **when it is proven that an emergency exists and action is necessary to properly protect and service or insure and provide for the health and convenience of the public.**
- (2) Amends K.S.A. 12-1774a to require IRB filings to be filed with the Board of Tax Appeals 15 days before the issuance of the bonds.
- (3) Amends K.S.A. 79-2938 to allow the Board of Tax Appeals authority to grant the issuance of no-fund warrants when, because of unforeseen circumstances or clerical budgeting error, the local unit of government needs funds to pay for budgeted expenses.