

Approved Feb. 9, 1988
Date

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT & TAXATION

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

11:00 a.m./p.m. on February 8, 1988 in room 519-S of the Capitol.

All members were present except:

Senator Don Montgomery

Committee staff present:

Tom Severn, Research
Chris Courtwright, Research
Don Hayward, Revisor's Office
Sue Pettet, Secretary to the Committee

Conferees appearing before the committee:

Terry Hamblin, Property Valuation Director
Keith Farrar, Board of Tax Appeals
David Cunningham, Chief Counsel, Board of Tax Appeals

Chairman Kerr called the meeting to order and announced that the agenda for the day was to have a hearing on S.B. 453. He also explained that this was one of the bills that was requested during the Interim but there had not been time to have a hearing. The Interim Tax Committee then introduced the bill without recommendation.

Terry Hamblin testified. (Att. 1) He stated that S.B. 453 contains amendments necessary to conform the statutes to the constitutional classification provisions and it eliminates conflicts.

He asked for amendments for the bill which would provide statutory definitions for "vacant lots" and "retail cost when new." (Att. 2)

He stated that Section 3 contains language which would legitimize current practice. In addition a policy issue exists as to whether or not owners of livestock and merchants and manufacturers' inventories should be required to file an initial request for exemption with the BOTA.

He said that sections 4, 5, 6 & 7 are necessary to eliminate conflicts between the statutes and the Constitution. Section 8 of the bill deals with the Homestead Property Tax Refund statutes. Without this resolution it would be impossible for the counties to determine what portion of taxes paid on their property was eligible for inclusion on the claim form.

Keith Farrar of the Board of Tax Appeals introduced Dave Cunningham, Chief Counsel of BOTA to testify. (Att. 3) Mr. Cunningham stated that the Board is concerned with the uniformity. He stated that the proposed change to S.B. 453, page 5, lines 163 through 165 would allow the county officials to exempt merchants and manufacturers inventory.

He stated that even though this would reduce the number of cases filed with the Board, there would be problems associated with the proposal. He stated that he feared that counties would not exempt uniformly across the state. Also, he felt that difficult legal issues could arise. He cited examples of past non-uniform application of exemptions including farm machinery, farm trailers, aircraft and bonded warehouses.

He felt that there would also be difficulty among the counties with the definitions of merchants and manufacturers inventory. Even the proposed legislation that includes definitions has gray areas that will require interpretation.

Mr. Cunningham asked that regardless what decisions are made, he felt that now is the time to establish a property tax audit team to not only insure uniformity, but to also insure compliance with all aspects of the ad valorem tax laws Legislature has passed.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION,
room 519-S, Statehouse, at 11:00 a.m./~~p.m.~~ on February 8, 19 88

SENATE BILL 451

John Torbert explained the amendment that is being requested if the bill is passed. (Att. 4)

Chairman Kerr explained that because of lack of time further discussion and action on SB. 451 would be at a later date.

Senator Burke asked for a slight change in the minutes regarding his testimony and made a motion to adopt the minutes of the Feb. 5 meeting. Senator Mulich seconded. Motion carried.


Meeting adjourned.



KANSAS DEPARTMENT OF REVENUE
Division of Property Valuation
Robert B. Docking State Office Building
Topeka, Kansas 66612-1585

M E M O R A N D U M

TO: Senator Fred Kerr, Chairman Senate Committee on
Assessment and Taxation; and Committee Members

FROM: Terry D. Hamblin, Director
Division of Property Valuation 

DATE: January 19, 1988

SUBJECT: Senate Bills 451, 452, and 453

Senate Bills 451, 452, and 453 are all bills introduced by the Interim Committee at the request of the Division. Most of the amendments contained in these bills are either "clean-up" provisions to clarify or eliminate conflicts in current language and eliminate conflict between current statutory language and the Constitution; or provide definitions necessary for the orderly and uniform implementation of the classification amendment.

First, Senate Bill 451 provides the director of property valuation authority to conduct an independent inquiry and eliminates the necessity of a hearing before such director at the request of an appraiser suspended or terminated by a board of county commissioners. This provides the director with considerable flexibility and discretion to determine the justification, or lack thereof, of such suspension or termination. Presently, the director is limited to the role of a hearing officer once a board of county commissioners suspends or terminates an appraiser. The bill recognizes the fact that the director exercises supervisory authority over appraisers and thus is an interested party who should not be limited to the role of hearing officer. The bill does not eliminate the possibility that the director may conduct a "hearing" as a part of the independent inquiry.

We would request that the committee consider one amendment to this bill as introduced. This proposal would retain the present provision requiring the director of property valuation to fix the time of the hearing before the Board of Tax Appeals, which shall be held in the county seat of the county where the appraiser serves or served. It is respectfully suggested that the Board of Tax Appeals be authorized to set its own hearing at its option in either Topeka or at the county seat. This can be accomplished by amending lines 0114 - 0119 as follows: "thereon, the board of tax appeals shall fix the time, not later than 10 days thereafter, when a hearing concerning the same shall be commenced before such board. At the."

Second, Senate Bill 452 amends statutes governing the operation and publication of the annual assessment/sales ratio study. Many of the amendments contained in this proposal are "clean-up" in nature; some legitimize current practice; however, many of the amendments are

necessary to conform the study to the provisions of H.C.R. 5018 and to cope with the year of implementation of reappraisal.

Additionally, this bill deletes some unnecessary language; adds some necessary definitions; and eliminates language which provided that the director could, under certain circumstances, change the official ratios after publication of the study.

The implementation of classification and reappraised values will have a significant impact on format and procedures employed for the development of the ratio study. For example, with different constitutional assessment rates, total urban, total rural and county total ratios will be nice information but basically of no significance. In addition, because the ratio study year and the assessment year do not coincide, an adjustment is necessary for the year the reappraised values first appear on the tax rolls.

These amendments are necessary to maintain the integrity of the study and assure the orderly transition required by the implementation of reappraised values.

Third, Senate Bill 453 contains amendments necessary to conform the statutes to the constitutional provisions and eliminate conflicts. The amendments contained in Sections 1 and 2 of this bill provide statutory definitions necessary for the uniform application of exemptions contained in the classification amendment. To every extent possible, it is incumbent upon all of us to assure that the constitutional exemptions are applied uniformly between and among all taxpayers. Specific definitions are necessary if this is to be accomplished.

Section 3 contains language which would, in part, legitimize current practice. In addition to that, however, a policy issue exists as to whether or not owners of livestock and merchants and manufacturers' inventories should be required to file an initial request for exemption with the Board of Tax Appeals. With the amendment contained in this bill they would not be required to file such request.

Sections 4, 5, 6 and 7 are necessary to eliminate conflicts between the statutes and the Constitution.

Section 8 resolves a conflict in definitions of home site between the Homestead Property Tax Refund statutes and the ad valorem tax provisions. Without this resolution it would be impossible for the counties to determine, for the claimant, what portion of taxes paid on their property was eligible for inclusion on the claim form.

The Division's request for this bill included the request that 79-315 be repealed. This statute deals with the tax situs of livestock. We assume that the omission of 79-315 was an oversight when the bill was drafted. We respectfully request that S.B. 453 be amended to provide for the repeal of 79-315.

TDH:bkh

VACANT LOT

A parcel of land which is unimproved except for utilities.

THE STATE OF KANSAS



BOARD OF TAX APPEALS

Keith Farrar, Chairman

Docking State Office Building, 10th Floor
 Topeka, Kansas 66612-1582
 AC-913 296-2388

Robert C. Henry, Member
 Fred L. Weaver, Member
 Victor M. Elliott, Member
 Conrad Miller, Jr., Member

M E M O R A N D U M

TO: Senator Fred Kerr, Chairman
 Senate Assessment and Taxation Committee

FROM: Keith Farrar, Chairman *KF*
 Board of Tax Appeals

DATE: January 20, 1988

RE: Senate Bill No. 453

The proposed change to Senate Bill 453, at page 5, lines 163 through 165, would allow the county officials to exempt merchants and manufacturers inventory. While this would substantially reduce the number of cases filed with the Board, you should be aware of the problems associated with the proposal.

The Board believes this will lead to substantial inequalities between taxpayers because the counties will not implement the exemption uniformly across the state. Furthermore, shifting the burden of reviewing those requests to local authorities presumes that county officials, or their appointees, are knowledgeable and equipped to make decisions which involve essentially legal issues. There may in fact be non-uniformity between taxpayers within the same county when the appraiser or county commissioners exempt property owned by one taxpayer and deny the exemption of property owned by a similarly situated taxpayer. The Board is aware of instances where county appraisers adopted dissimilar rulings for similar taxpayers in farm machinery and equipment (including farm trailers), aircraft and bonded warehouse/freeport exemptions.

With respect to farm machinery and equipment, the Board has had cases brought on appeal where the taxpayer appearing before the Board was denied an exemption while similarly situated taxpayers were granted exemptions by the same county appraiser. It should also be pointed out that various county appraisers interpret what qualifies for exemption differently. You therefore have one county granting exemptions for a specific type of equipment while another county is denying exemptions. For example, the Board has seen cases where various county

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appraisers each interpreted lease versus lease-purchase agreements differently. Some county appraisers have recommended non-profit community centers with cafes be exempted while others have not. The majority of county recommendations are to exempt; however, if a county is unsure or does not wish to take a position, the appraiser leaves the decision to the discretion of the Board.

With respect to aircraft and farm trailers, a similar situation developed even though taxpayers are required to seek an initial exemption from the Board of Tax Appeals. Some county appraisers simply did not place aircraft or trailers on the tax rolls and thus the taxpayer never filed for the exemption. That action amounts to an exemption and thus you have non-uniformity among the various counties when some taxpayers are required to file and others are not.

With respect to bonded warehouse/freeport exemptions, it became readily apparent in late 1986 that this exemption law was being applied in a rather discriminatory fashion. Some taxpayers that did not qualify for exemption were granted exemptions by counties while other similarly situated taxpayers were denied. It was not until the Board directed all counties to return all bonded warehouse/freeport property to the tax rolls that all taxpayers were treated in a uniform and equal manner.

There will also be difficulty among the various counties with the definitions of merchants and manufacturers inventory. While the proposed legislation does include definitions, there are still many gray areas that will require interpretation. Unless the exemption applications are filed with the Board of Tax Appeals, you will not have a consistent application in the questionable cases. For example, is an electrician who has an inventory of materials utilized in his business a merchant? Is his inventory considered supplies in the performance of his service? Clearly the materials were purchased with a view to resale at an advanced price; however, the electrician may or may not be in the business of selling these items "over-the-counter." A similar situation exists for the plumber or contractor. Another example is the car dealer or car repair shop. Is the

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inventory held as supplies consumed in the process of doing business, i.e., repairing cars, or is it held as merchant's inventory. If county appraisers or county commissioners are allowed to make decisions such as this, taxpayers will not receive uniform treatment.

Finally, with any new exemption, taxpayers, their agents or attorneys, will be very creative and attempt to extend the exemption to include all their property. This results in many "gray" areas that should be addressed in a uniform manner, not with 105 different interpretations. Uniformity is crucial. I would also respectfully suggest that regardless of what decision is made, with reappraisal to be implemented soon, now is the time to establish a property tax audit team to not only assure uniformity, but to also insure compliance with all aspects of the ad valorem tax laws the Legislature has passed. Millions of dollars spent on obtaining uniform values should not be wasted.

If you have any additional questions, please contact me.

0120 county appraiser's recommendation related thereto, the board
 0121 may fix a time and place for hearing, and shall notify the appli-
 0122 cant and the county appraiser of the time and place so fixed. In
 0123 any case where a party to such request for exemption requests a
 0124 hearing thereon, the same shall be granted. In all instances
 0125 where the board sets a request for exemption for hearing, the
 0126 county shall be represented by its county attorney or county
 0127 counselor.

0128 (h) In the event of a hearing, the same shall be originally set
 0129 not later than 90 days after the filing of the request for exemption
 0130 with the board.

0131 (i) When a determination is made as to the merits of the
 0132 request for exemption, the board shall enter its order thereon and
 0133 give notice of the same to the applicant, the county attorney and
 0134 the county appraiser by sending to each a certified copy of its
 0135 order.

0136 (j) The date of the order, for purposes of filing an appeal to
 0137 the district court, shall be the date that a certified copy of the
 0138 order is mailed to the party seeking to appeal.

0139 ~~(k) During the pendency of a request for exemption, and in
 0140 the event that taxes have been assessed against the subject
 0141 property, no interest shall accrue on any unpaid tax for the year
 0142 or years in question from the date the request is filed with the
 0143 county appraiser until the expiration of 30 days after the board
 0144 issued its order thereon.~~

0145 (l) In the event the board grants the initial request for ex-
 0146 emption, the same shall be effective beginning with the date of
 0147 first exempt use.

0148 (m) In conjunction with its authority to grant exemptions, the
 0149 board shall have the authority to abate all unpaid taxes that have
 0150 accrued from and since the date of first exempt use. In the event
 0151 that taxes have been paid during the period where the subject
 0152 property has been determined to be exempt, the board shall have
 0153 the authority to order a refund of taxes for a period not to exceed
 0154 three years.

0155 (n) ~~The provisions of this section shall not apply to (a) Rail
 0156 machinery and equipment exempted from ad valorem taxation~~

During the pendency of a request for exemption, and in the event that taxes have been charged against the subject property pursuant to K.S.A. 79-2004 and 79-2004a which remain unpaid for the year or years in question, said taxes shall not be considered delinquent until the expiration of 30 days after the Board issues its order thereon. In the event the Board determines the applicant has presented no reasonable evidence in support of the request for exemption, the taxes charged shall be considered delinquent as of the day the taxes were originally due.

SENATE BILL No. 451

By Special Committee on Assessment and Taxation

Re Proposal No. 7

12-16

18 AN ACT relating to county appraisers; concerning duties of the
19 director of property valuation relating to the suspension or
20 termination thereof; amending K.S.A. 19-431 and repealing
21 the existing section.

22 *Be it enacted by the Legislature of the State of Kansas:*

23 Section 1. K.S.A. 19-431 is hereby amended to read as fol-
24 lows: 19-431. Whenever it shall be made to appear to the board of
25 county commissioners of any county or the district board of an
26 appraisal district by evidence satisfactory to ~~said~~ *such* board that
27 the appraiser of such county or district has failed or neglected to
28 properly perform the duties of ~~his~~ *such appraiser's* office, by
29 reasons of incompetency or for any other cause, the board shall
30 enter upon its journal an order suspending or terminating the
31 county or district appraiser from ~~his~~ office, which order shall
32 state the reasons for such suspension or termination; and. Upon
33 the service of any such order upon the appraiser so suspended or
34 terminated ~~he~~ *such appraiser* shall at once be divested of all
35 power as county or district appraiser and shall immediately
36 deliver to the person appointed to discharge the duties of the
37 office ~~in his stead~~, all books, records and papers pertaining to the
38 office. The board of county commissioners or district board shall
39 appoint a temporary appraiser to discharge the duties of the
40 office until the suspension is removed or the vacancy filled, and
41 the person so appointed shall take the oath of office required by
42 law and thereupon such person shall be invested with all of the
43 ~~rights~~ *powers and duties of the office.*

44 *if at the time of the suspension or termination of any appraiser*
45 *hereinbefore provided such appraiser requests a hearing*

to determine the basis of the suspension or termination.

suspension or termination was arbitrary or capricious, the director shall make findings of fact and conclusions of law and thereafter the

and |

0046 thereon; the board of county commissioners or district board
 0047 making such suspension or termination shall fix the time, not
 0048 later than ten (10) days thereafter, when a hearing concerning the
 0049 same shall be had by the director of property valuation at the
 0050 county seat of such county or if such appraiser is a district
 0051 appraiser at the county seat of the county within the district
 0052 having the greater population. At the hearing the director of
 0053 property valuation shall make inquiry as to all facts connected
 0054 with such suspension or termination; and Any appraiser sus-
 0055 pended or terminated as provided in this section may within 10
 0056 days thereafter request an independent inquiry by the director
 0057 of property valuation into such suspension or termination
 0058 Thereupon, the director shall conduct an independent inquiry
 0059 If after said the inquiry is made, the director of property valua-
 0060 tion shall determine that the appraiser so suspended should be
 0061 removed permanently and his the office declared vacated and
 0062 should be terminated; then, the director of property valuation
 0063 shall make and enter upon the record of his official proceeding
 0064 an order removing said the appraiser. A copy of which such
 0065 order, duly certified and under the seal of the director of prop-
 0066 erty valuation, shall be sent to the board of county commission-
 0067 ers or district board employing such appraiser who shall cause
 0068 the same to be recorded in full upon the journal of the board.
 0069 Immediately upon the making of such order by the director of
 0070 property valuation said the office of appraiser shall be vacant
 0071 and the board of county commissioners or district board shall
 0072 appoint a certified Kansas appraiser as appraiser to fill such
 0073 vacancy, who shall qualify as provided by law in such cases.
 0074 Should the person so appointed be other than the person ap-
 0075 pointed to discharge the duties of the office temporarily, the
 0076 person so discharging the duties of the office temporarily shall
 0077 immediately transfer to the person appointed to fill the vacant
 0078 all the books, records, and files of the office. If after the inquiry
 0079 the director of property valuation determines that the sus-
 0080 pended or terminated appraiser should be reinstated the direc-
 0081 tor shall make and enter upon the record of official proceeding
 0082 an order reinstating the appraiser. A copy of such order duly

subject to appeal to the district court
of the county within such appraiser's
district.

0083 certified and under the seal of the director of property valuation,
0084 shall be sent to the board of county commissioners or the
0085 district board employing such appraiser who shall cause the
0086 same to be recorded in full upon the journal of the board.
0087 Thereupon, such appraiser shall be reinstated by the employing
0088 board.

0089 Whenever the director of property valuation shall on ~~his~~ *the*
0090 director's own motion conclude, after inquiry, that the appraiser
0091 of any county or district has failed or neglected to discharge ~~his~~
0092 duties as required by law and that the interest of the public
0093 service will be promoted by the removal of such appraiser, the
0094 director of property valuation shall enter upon the record of
0095 proceeding in ~~his~~ *the* director's office an order suspending or
0096 terminating ~~said~~ the appraiser from ~~his~~ office, which order shall
0097 state the reason for such suspension or termination ~~and~~. From
0098 and after the date of service of such order upon such appraiser
0099 and the board of county commissioners or district board em-
0100 ploying such appraiser, the person so suspended or terminated
0101 shall be divested of all power as appraiser and shall immediately
0102 deliver to the person appointed to discharge the duties of the
0103 office ~~in his stead~~, all books, records and papers pertaining to the
0104 office. Upon receipt of an order by the director of property
0105 valuation suspending or terminating the appraiser of the county
0106 or district, the board of county commissioners or district board
0107 shall appoint a temporary appraiser to discharge the duties of the
0108 office until the suspension is removed or the vacancy filled, and
0109 the person so appointed shall take the oath of office required by
0110 law and thereupon such person shall be ~~invested~~ *vested* with all
0111 of the powers and duties of the office.

0112 If at the time of the suspension or termination of any appraiser
0113 as hereinbefore provided such appraiser requests a hearing
0114 thereon, the director of property valuation shall fix the time, not
0115 later than ~~ten~~ *(10)* 10 days thereafter, when a hearing concerning
0116 the same ~~shall be had~~ *is held* by the state board of tax appeals at
0117 the county seat of such county or if such appraiser is a district
0118 appraiser, such hearing shall be held at the county seat of the
0119 county within such district having the greatest population. At the

0120 hearing the board of tax appeals shall make inquiry as to all facts
0121 connected with such suspension or termination, and if after ~~said~~
0122 *the* inquiry is made the board of tax appeals shall determine that
0123 the appraiser so suspended should be removed permanently and
0124 ~~his~~ *the* office declared vacated ~~or should be terminated~~, then the
0125 board of tax appeals shall make and enter upon the record of its
0126 official proceedings an order removing ~~said the~~ appraiser, a copy
0127 of which order, duly certified by the secretary under the seal of
0128 the board, shall be sent to the board of county commissioners or
0129 district board, who shall cause the same to be recorded in full
0130 upon the journal of the board. Immediately upon the making of
0131 such order by the board of tax appeals ~~said the~~ office of county
0132 appraiser shall be vacant, and the board of county commissioners
0133 or district board shall appoint a certified Kansas appraiser as
0134 appraiser to fill such vacancy, who shall qualify as provided by
0135 law in such cases. Should the person so appointed be other than
0136 the person appointed to discharge the duties of the office tem-
0137 porarily, the person so discharging the duties of the office tem-
0138 porarily shall immediately transfer to the person appointed to fill
0139 the vacancy all the books, records, and files of the office. *If after*
0140 *the hearing the board of tax appeals determines that the sus-*
0141 *pended or terminated appraiser should be reinstated, the board*
0142 *shall make and enter upon the record of its official proceedings*
0143 *an order reinstating such appraiser. A copy of such order duly*
0144 *certified and under the seal of the board shall be sent to the*
0145 *board of county commissioners or the district board employing*
0146 *the appraiser who shall cause the same to be recorded in full*
0147 *upon the journal of the board. Thereupon, such appraiser shall*
0148 *be reinstated by the employing board.*

0149 Sec. 2. K.S.A. 19-431 is hereby repealed.

0150 Sec. 3. This act shall take effect and be in force from and
0151 after its publication in the statute book.