

Approved _____

4-5-90
Date

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

The meeting was called to order by Sen. Bill Morris at _____
Chairperson

9:02 a.m./~~pm~~ on March 28, 1990 in room 254-E of the Capitol.

All members were present ~~except~~.

Committee staff present:

Ben Barrett, Legislative Research Department
Hank Avila, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Louise Cunningham, Committee Secretary

Conferees appearing before the committee:

Rep. Marvin Smith
Pam Somerville, Department of Transportation
Steve Graham, Budget Rent-A-Car, Wichita
Vance Herring, National Car Rental, Wichita
John Torbert, Kansas Association of Counties
Bruce Krunegel, Enterprise Rent-A-Car, Overland Park
Steven A. Stotts, Acting Director of Taxation, Department of Revenue
Steve Montgomery, Attorney, representing Avis Rent-A-Car.
John Smith, Division of Motor Vehicles, Department of Revenue

Hearing on H.B. 3083 - Highway signs, rural business and farm or ranch directional signals.

Rep. Marvin Smith spoke of difficulties farms and businesses were having with the Department of Transportation when erecting directional signs to their farms. He said passage of this bill would aid economic development. A copy of his statement is attached. (Attachment 1).

Pam Somerville said passage of this bill would put Kansas out of compliance with federal regulations and could cause a loss of \$13 million in federal highway assistance. A copy of her statement is attached. (Attachment 2).

The Chairman said since passage of the bill could lead to loss of funds it might be possible to put a proviso in the bill and had a suggested amendment. A copy of the proposed amendment is attached. (Attachment 3).

There was discussion on this and the Committee did not want to risk loss of funds.

A motion was made by Sen. Sallee to recommend H.B. 3083 favorably for passage. Motion did not receive a second.

Hearing on S.B. 749 - Taxation of rental motor vehicles.

Steve Graham said there were serious problems regarding property taxes in the car rental business. Some cars are licensed out of state and this makes competition unfair. A copy of his statement is attached. (Attachment 4). He also submitted a copy of June, 1984 audit report on Vehicle Rental Agencies. (Attachment 5).

Vance Herring said his business was in a ruinous competitive disadvantage because some companies were evading property tax requirements. A copy of his statement is attached. (Attachment 6).

John Torbert said when a car is supposed to be registered in Kansas

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES,
room 254-E, Statehouse, at 9:02 a.m./~~p.m.~~ on March 28, 1990

and is registered in another state, Kansas local governments receive none of the revenue. They support S.B. 749. A copy of his statement is attached. (Attachment 7).

Steve Montgomery said they would not be opposed to the proposed sales tax increase. These taxes are always passed on to the consumer. He did have two proposed amendments which would assist in collecting and remitting the tax. A copy of his statement is attached. (Attachment 8).

Steven A. Stotts said the fiscal impact of this bill was unknown due to lack of data. A copy of his statement is attached. (Attachment 9).

The Committee discussed this and felt tax money was being lost but there might be a simpler way of accomplishing collection such as a payment in lieu of taxes. The Chairman said he would try to recommend this subject for interim study.

Action on H.B. 2658 - Motor vehicles, suspension or revocation of driver's license.

John Smith said the Department had no objections to a proposed amendment on page 14, line 35 dealing with a commercial driver who refuses to submit to a test. This is a clarifying amendment. A motion was made by Sen. Hayden to adopt the proposed amendment. Motion was seconded by Sen. Thiessen. Motion carried.

There was an error on line 9, page 14. The word "an" should be "any". A motion was made by Sen. F. Kerr to correct the error. Motion was seconded by Sen. Sallee. Motion carried.

A motion was made by Sen. F. Kerr to recommend H.B. 2658 as amended, favorably for passage. Motion was seconded by Sen. Thiessen. Motion carried. Sen. Morris will carry the bill.

Meeting was adjourned at 10:00 a.m.

SENATE TRANSPORTATION AND UTILITIES COMMITTEE

Date 3-28-90 Place 254-E Time 9:02

GUEST LIST

NAME	ADDRESS	ORGANIZATION
Steve Graham	Wichita, Ks	Budget Rent a Car
Bruce Kewenegel	Overland Park, Ks	Enterprise Rent a Car
Vance Herring	Wichita, Ks	National Car Rental
Marvin E. Smith	173 NE 82nd	Representation
Tom Whitaker	Topeka	Ks Motor Carriers Assn.
John W. Smith	Topeka	Dept of Revenue
James G. Keller	Topeka	Department of Revenue
Steve Stotts	"	"
Gary Griffiths	TOPEKA	KDOT
Pam Somerville	TOPEKA	KDOT
Pill Monson	Topeka	KDOT
Joe Krahn	Topeka	KDOT
John Torbert	"	KAC
John Peters	"	Budget/Enterprise/ National
Rick McKee	"	KLA
Steve Montgomery	"	AVIS

M. Hauer

Towels

Capital Services



1000 2020 1

01/20

1000 2020 1

MARVIN E. SMITH
REPRESENTATIVE, FIFTIETH DISTRICT
SHAWNEE AND JACKSON COUNTIES
123 N.E. 82ND STREET
TOPEKA, KANSAS 66617-2209



TOPEKA

HOUSE OF
REPRESENTATIVES

March 28, 1990

COMMITTEE ASSIGNMENTS
VICE-CHAIRMAN: TAXATION
MEMBER: EDUCATION
TRANSPORTATION

Senate Transportation Committee

HB 3083

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify in support of HB 3083. For a number of years constituents in the 50th District who have farms and businesses off the main highway have erected directional signs to their farms. Some of them have encountered visits from KDOT employees wanting the signs taken down because they are on agriculturally zoned land.

If economic development is as important to Kansas economy and jobs, what is wrong with directional signs to farms and businesses off the highways?

HB 3083 to increase the size of signs to 32 sq.ft., would be an economic plus for Kansas. If directional signs erected on agriculturally zoned land could be increased in size, this would be good news for rural Kansas.

The Kansas Department of Transportation has created some real bad public relations with the dialogue and confrontation between state employees and private landowners. KDOT would have an improved image with many people if this proposal is adopted.

Attached is an example of a sign erected in 1988 that was declared illegal. This farmer was appalled that his neat sign was a violation!

Your favorable consideration would be a boost for the rural areas of our state.

ATT. 1
T&U
3/28/90



31" x 55"

STATE OF KANSAS



KANSAS DEPARTMENT OF TRANSPORTATION

*Docking State Office Building
Topeka 66612-1568
(913) 296-3566*

Horace B. Edwards
Secretary of Transportation

Mike Hayden
Governor of Kansas

March 28, 1990

MEMORANDUM TO: SENATE TRANSPORTATION COMMITTEE
REGARDING: HOUSE BILL 3083

Mr. Chairman and members of the Committee. The Department of Transportation has recognized the need for rural business and farm or ranch directional signs, and several years ago implemented an informal, unofficial policy to accommodate the need for basic directional information in rural areas. We believe that the present approach being followed by KDOT is about as far as we can go without provoking the Federal Highway Administration, which monitors compliance with the Federal Highway Beautification Act. We have been advised by FHWA that enactment of HB 3083 would violate federal law and regulations. This violation could subject the State of Kansas to a penalty which is 10 percent of funds appropriated under 23 USC 104. We estimate that the penalty would be in excess of 13 million dollars. KDOT is, therefore, opposed to enactment of this legislation.

ATT. 2
T&U
3/28/90



U.S. Department
of Transportation
Federal Highway
Administration

Region 7
Iowa, Kansas
Missouri, Nebraska

444 S.E. Quincy, Room 240
Topeka, Kansas 66683

February 15, 1990

Proposed Outdoor Advertising
Legislation - HB 2863

Mr. W. M. Lackey
State Transportation Engineer
Kansas Department of Transportation
Topeka, Kansas 66612

Dear Mr. Lackey:

The proposed legislation contained in House Bill 2863 has been reviewed for compliance with Federal regulations associated with the control of outdoor advertising. The addition of subsection (f) and Section 2 would allow for the installation of the prescribed signs in non-commercial rural areas, thus the State of Kansas would not be in compliance with the provisions of 23 CFR 750.

Sincerely yours,

For Robert J. Deatruck
Division Administrator

PROPOSED AMENDMENT TO H.B. NO. 3083

New Sec. 3. The provisions of subsection (f) of K.S.A. 68-2233, and amendments thereto, and section 2 of this act, shall expire if the secretary of the United States department of transportation determines that such provisions are not in compliance with the provisions of 23 U.S.C. § 131 and the secretary makes a final determination to withhold funds under the provisions of subsection (1) of 23 U.S.C. § 131.

ATT. 3
T&U
3/28/90

MY NAME IS STEVE GRAHAM. I'M A SECOND GENERATION NATIVE KANSAN LIVING IN WICHITA. MY PARENTS AND I HAVE OWNED AND OPERATED THE BUDGET RENT A CAR FRANCHISE THERE FOR 28 YEARS AND WE EMPLOY APPROXIMATELY 50 PEOPLE IN OUR OPERATION.

IN MY OPINION, TWO SERIOUS PROBLEMS PRESENTLY EXIST WITH REGARD TO PROPERTY TAXATION OF RENTAL VEHICLES IN KANSAS. I THINK BOTH OF THESE PROBLEMS ARE RESOLVED BY SENATE BILL 749.

THE 1984 LEGISLATIVE POST AUDIT REPORT, OF WHICH YOU'VE BEEN GIVEN A COPY, POINTS TO A PROBLEM OF WHICH WE'RE ALL AWARE. BECAUSE KANSAS PROPERTY TAXES ARE SO HIGH RELATIVE TO OTHER STATES, SOME CAR RENTAL COMPANIES ARE LICENSING TOO FEW CARS WITHIN THE STATE. SOME ARE LICENSING VIRTUALLY NONE OF THEIR CARS IN KANSAS. CONSEQUENTLY, THE VARIOUS COUNTIES ARE NOT RECEIVING THE APPROPRIATE PROPERTY TAX REVENUE AND THE STATE DOESN'T COLLECT ITS' REGISTRATION FEES. THIS IS BECAUSE THE PRESENT STATUTE, EVEN AS MODIFIED BY H.B. 2598, IS VIRTUALLY IMPOSSIBLE TO ENFORCE WITH REGARD TO CAR RENTAL COMPANIES. I'LL DISCUSS THE ENFORCEMENT ISSUE IN MORE DETAIL IN A MOMENT.

THE SECOND PROBLEM IS THAT KANSAS OWNED CAR RENTAL BUSINESSES ARE AT A REAL COMPETITIVE DISADVANTAGE AS COMPARED WITH THE LARGE CORPORATE STORE OPERATIONS. HERE'S WHY! THERE ARE ESSENTIALLY TWO TYPES OF CAR RENTAL OPERATIONS DOING BUSINESS IN KANSAS. ONE IS THE FRANCHISE TYPE OF OPERATION. TYPICALLY, THESE FRANCHISES ARE OWNED AND OPERATED BY SOMEONE WHO LIVES HERE IN KANSAS, KEEPS THEIR ACCOUNTING RECORDS HERE, IS PART OF THE LOCAL BUSINESS COMMUNITY, A "MA AND PA" TYPE OPERATION LIKE OURS. THE OTHER IS SIMPLY A RENTAL OFFICE OF A LARGE NATIONWIDE OPERATION. THEY EMPLOY A RELATIVELY SMALL NUMBER OF PEOPLE HERE. THEY RENT CARS HERE AND LITTLE ELSE. THEIR CARS ARE OWNED BY A NEW YORK BASED CORPORATION, OR THE EQUIVALENT THEREOF, AND MAY BE REGISTERED PRACTICALLY ANYWHERE. THESE ARE WHAT I REFERRED TO AS "CORPORATE STORES".

THE PRESENT STATUTES REQUIRE THESE CAR RENTAL OPERATIONS TO REGISTER A CERTAIN PERCENTAGE OF THEIR CARS IN KANSAS. IT PROVIDES THAT A COMPANY DETERMINE THE PERCENTAGE OF ITS GROSS REVENUE GENERATED IN KANSAS AND THEN REGISTER THAT SAME PERCENTAGE OF ITS TOTAL FLEET IN KANSAS. THIS SOUNDS FAIRLY SIMPLE ON THE SURFACE BUT IN REALITY IT'S NOT, AND IN THE CASE OF THE CORPORATE STORE OPERATIONS, IT'S VIRTUALLY IMPOSSIBLE TO AUDIT OR ENFORCE. THEIR RECORDS ARE MAINTAINED AT REGIONAL OFFICES AROUND THE COUNTRY MAKING ACCESS TO NATIONWIDE NUMBERS DIFFICULT. THEIR FLEET SIZES VARY TREMENDOUSLY FROM SEASON TO SEASON AND EVEN MONTH TO MONTH IN CERTAIN PARTS OF THE COUNTRY. THEY CAN SO EASILY MASSAGE THEIR FLEET SIZE NUMBERS AND REVENUE FIGURES, TO REFLECT WHAT THEY WANT TO REFLECT, THAT A WHOLE TEAM OF ACCOUNTANTS COULDN'T PIN THEM DOWN.

ATT. 4
T&U
3/28/90

THIS ABILITY ON THE PART OF THE CORPORATE STORES TO REGISTER RELATIVELY FEW VEHICLES IN KANSAS GIVES THEM A SUBSTANTIAL COMPETITIVE ADVANTAGE OVER A LOCAL FRANCHISE OPERATOR. AND, TO MAKE MATTERS WORSE, IF STRICT ENFORCEMENT WERE UNDERTAKEN, THE CORPORATE STORES WOULD HAVE LITTLE TROUBLE SIDESTEPPING THE PROBLEM, WHERE THE KANSAS BUSINESSMAN WOULD BE MUCH EASIER TO PIN DOWN.

THE POINT IS THIS. THE PLAYING FIELD ISN'T LEVEL FROM A COMPETITIVE STANDPOINT AND IT CAN'T BE LEVELED THROUGH ENFORCEMENT OR MINOR MODIFICATION OF EXISTING LAWS.

SENATE BILL 749 WOULD SOLVE BOTH PROBLEMS. ALL THESE RENTAL COMPANIES, CORPORATE STORE OR FRANCHISE, ARE PRESENTLY COLLECTING SALES TAX ON ALL RENTALS THAT ORIGINATE IN KANSAS. TO INCREASE THE SALES TAX PERCENTAGE ON CAR RENTALS, WITH THE ADDITIONAL SALES TAX MONEY THEN BEING RETURNED TO THE COUNTIES, PROVIDES A WORKABLE SOLUTION TO THE COUNTIES NOT GETTING THEIR PROPERTY TAXES.

BECAUSE THE RENTAL COMPANIES WOULD BE EXEMPTED FROM PROPERTY TAX ON THEIR VEHICLES REGISTERED IN KANSAS, THEY WOULD THEN HAVE AN INCENTIVE TO REGISTER CARS HERE INSTEAD OF A DISINCENTIVE. THIS WOULD, OF COURSE, RESULT IN MORE KANSAS REGISTRATIONS AND MORE REGISTRATION FEES FOR THE STATE. THESE ADDITIONAL REGISTRATION FEES SHOULD MORE THAN OFFSET ANY COST INCURRED BY THE DEPARTMENT OF REVENUE TO ADMINISTER THE PROGRAM.

IT'S MY UNDERSTANDING THAT LEGISLATION SIMILAR TO THIS IS PRESENTLY IN PLACE AND WORKING WELL IN VIRGINIA AND COLORADO (WHICH HAS A 2% RATE OF TAX) AND IS UNDER CONSIDERATION IN SEVERAL OTHER STATES.



PERFORMANCE AUDIT REPORT

Vehicle Rental Agencies

**Reviewing Compliance with Vehicle
Registration and Insurance Laws**

A Report to the Legislative Post Audit Committee

By the Legislative Division of Post Audit

State of Kansas

June 1984

Legislative Post Audit Committee

Legislative Division of Post Audit

THE LEGISLATIVE POST Audit Committee and its audit agency, the Legislative Division of Post Audit, are the audit arm of Kansas government. The programs and activities of state government now cost about \$3 billion a year. As legislators and administrators try increasingly to allocate tax dollars effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by Legislative Post Audit helps provide that information.

As a guide to all their work, the auditors use the audit standards set forth by the U.S. General Accounting Office and endorsed by the American Institute of Certified Public Accountants. These standards were also adopted by the Legislative Post Audit Committee.

The Legislative Post Audit Committee is a bipartisan committee comprising five senators and five representatives. Of the Senate members, three are appointed by the President of the Senate and two are appointed by the Senate Minority Leader. Of the Representatives, three are appointed by the Speaker of the House and two are appointed by the Minority Leader.

Audits are performed at the direction of the Legislative Post Audit Committee.

Legislators or committees should make their requests for performance audits through the Chairman or any other member of the Committee.

LEGISLATIVE POST AUDIT COMMITTEE

Senator Paul Hess, Chairman
Senator Neil H. Arasmith
Senator Ross O. Doyen
Senator Tom Rehorn
Senator Joe Warren

Representative Robert H. Miller,
Vice-Chairman
Representative William W. Burten
Representative Joseph Hoagland
Representative Rich Luzzari
Representative Bill Wisdom

LEGISLATIVE DIVISION OF POST AUDIT

Suite 301, Mills Building
Topeka, Kansas 66612
(913) 296-3792

ATTN:
T+V
3/20/90

PERFORMANCE AUDIT REPORT

Vehicle Rental Agencies: Reviewing Compliance With Vehicle Registration and Insurance Laws

OBTAINING AUDIT INFORMATION

This audit was conducted by Leo Hafner, senior auditor; and Curt Winegarner, auditor, of the Division's staff. Mr. Hafner was the project leader. If you need any additional information about the audit's findings, please contact Mr. Hafner at the Division's offices.

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**VEHICLE RENTAL AGENCIES:
REVIEWING COMPLIANCE WITH VEHICLE REGISTRATION
AND INSURANCE LAWS**

Summary of Legislative Post Audit's Findings

Are Rental Vehicles Being Properly Registered as Required by Law?

All motor vehicles intended for use on Kansas highways are required to be registered in Kansas unless specifically exempted by law or by an interstate agreement executed by the Director of Vehicles. These interstate agreements allow vehicle rental companies operating on an interstate basis to register their cars proportionally in each state in which they do business.

The auditors visited 20 rental agencies in Kansas City, Salina, Topeka, and Wichita to determine if statutory registration requirements were being met. They found that several companies which operate on an interstate basis do not appear to have the appropriate number of vehicles registered in Kansas. Two of the companies they checked had no vehicles registered in Kansas.

No one in the State currently audits vehicle rental companies for compliance with registration laws. To do so would require traveling to corporate offices of the larger interstate companies. Such audits could possibly be conducted by auditors within the Department of Revenue, but further study would be needed to determine if the additional taxes and registration fees which might be generated would be sufficient to cover the costs of the audits.

Are Appropriate Property Taxes Being Paid on Rental Vehicles?

Kansas law does not allow a motor vehicle to be registered in the State unless the appropriate property taxes have been paid. Therefore, to the extent that rental vehicles are being registered in Kansas, the property taxes are being paid. However, companies that do not have the proper number of vehicles registered in Kansas also are not paying the appropriate amount of property taxes in the State.

The auditors also noted that several companies have rental locations in more than one county but register all of their vehicles in one county. The law is not specific regarding where cars should be registered and taxes paid when rental offices are in more than one county. The legislature may wish to clarify the law in this regard.

Is The Insurance Coverage Required By State Law Being Maintained on Rental Vehicles?

All vehicles operated on Kansas highways must be covered by liability insurance that meets minimum levels of coverage set by statute unless the owner qualifies as a self-insuror. Kansas enforces this mandate by requiring all owners to provide the name of their insurance company and the policy number

when registering their vehicles. This information is subject to verification by the Department of Revenue. The auditors noted that other states do not necessarily require insurance as a prerequisite for registering vehicles. As a result, it may not be possible to know that a rental vehicle registered in another state and operated in Kansas is uninsured, until that vehicle is involved in an accident. The best control over this appears to be making sure that all rental companies register some of their vehicles in Kansas, thereby subjecting them to the insurance verification procedures involved when a vehicle is registered.

The auditors requested the Department of Revenue to verify that insurance coverage was maintained for the rental vehicles owned by the companies included in this audit. Many of the insurance companies have been slow in responding to the verification request. However, based on the responses received prior to publication of this report, no significant problems exist.

VEHICLE RENTAL AGENCIES:

REVIEWING COMPLIANCE WITH VEHICLE REGISTRATION AND INSURANCE LAWS

This performance audit of firms engaged in the business of leasing and renting motor vehicles was requested by the Senate Transportation and Utilities Committee. Many of these companies do business in a number of states, and the Committee wanted to know whether vehicles were being appropriately licensed, taxed, and covered by insurance. At its March 15, 1984 meeting, the Legislative Post Audit Committee directed its staff to conduct the audit. The audit addressed three main questions.

- Are rental vehicles being properly registered and licensed?
- Are the appropriate property taxes being paid on rental vehicles?
- Is the insurance coverage required by State law being maintained on rental vehicles?

To answer these questions the auditors reviewed rental transactions and vehicle registrations for a total of 20 rental agencies in Kansas City, Salina, Topeka, and Wichita. The agencies visited by the auditors included corporate branch offices of national chains, local licensees of large national firms, smaller interstate firms, and single-location Kansas agencies. The agencies visited are all listed in Appendix A of this report. The auditors also mailed questionnaires about vehicle registrations and insurance to some of the larger firms covered by this audit. Finally, insurance coverage was verified for rental agencies with cars registered in Kansas. The auditors' findings are discussed in the sections that follow.

Are Rental Vehicles Being Properly Registered as Required by Law?

Requirements for the registration and licensure of motor vehicles are generally contained in Chapter 8, Article One of the Kansas Statutes. The law requires every motor vehicle owner to apply for and obtain registration in Kansas for all vehicles intended to be operated in the State. This requirement applies even if the owner is not a Kansas resident and even though the vehicle may be based in a state other than Kansas.

There are three basic conditions under which the requirement to register all vehicles intended to be operated in Kansas need not be met. The first of those conditions is if a vehicle is specifically exempted under K.S.A. 8-128. Exempted vehicles include farm machinery, road construction equipment, fire trucks, school buses, and the like. This exemption does not include rental vehicles.

The second exception is provided in K.S.A. 8-138a. This statute allows out-of-state owners to operate their vehicles in Kansas without obtaining a Kansas registration provided that the vehicle is used primarily for the transpor-

tation of the driver and one or more non-paying passengers. This privilege is granted only to residents of states granting the same privilege to Kansas residents. This appears to provide a blanket reciprocity for non-commercial vehicles and would not affect the need for car rental firms to register their vehicles in the State.

The third exception applies to those who are allowed to operate vehicles in Kansas without registering them in this State under an interstate agreement authorized by K.S.A. 8-127 and K.S.A. 74-4302. Such interstate agreements do apply directly to car rental agencies and are explained in more detail below.

Interstate Rental Agencies May Operate Cars in Kansas With Out-of-State Registrations, But They Must Register a Portion of their Fleet in Kansas

Although the law contains no specific provision that directly exempts rental vehicles from the requirement to be registered in Kansas, it does grant authority to the Director of Vehicles under K.S.A. 8-127 and K.S.A. 74-4302 to enter into agreements or contracts with other states to allow for reciprocal registration of vehicles. The Director of Vehicles has entered into such reciprocity agreements. As a result, rental companies that operate on an interstate basis may operate vehicles in Kansas that are registered in another state if they meet the requirements of the interstate agreements.

Although several agreements exist, the one that applies to the largest number of states is called the International Registration Plan. The Plan includes Kansas, 28 other states and one Canadian province. Under the Plan, companies that rent passenger cars must register vehicles in each state in which they have rental locations. The number of cars registered in each state in the current year should be representative of the portion of gross rental revenues derived from business in that state during the previous year.

Some Interstate Firms Appear to Have an Insufficient Number of Vehicles Registered in Kansas

To verify with certainty that interstate rental firms are registering the proper number of vehicles in Kansas, the auditors would have to travel to the corporate headquarters for each company and verify the number of vehicles in the rental fleet, the revenues generated in each state, and the number of vehicles registered in each state. Such a verification was not possible within the scope of this audit.

Instead, the auditors used two methods to obtain information about the level of compliance with Kansas' vehicle registration laws. The primary method involved visiting 20 rental locations for agencies operating in Kansas and reviewing rental contracts to determine how many of the cars rented in Kansas were actually registered in Kansas. Then, for some of the larger companies which appeared to have few rental vehicles registered in Kansas, the auditors mailed a questionnaire to the company to obtain information about the size of their rental fleet, the level of rental revenues generated in Kansas, and the number of cars they had registered in Kansas. The auditors' findings indicate that some firms appear to be in compliance with the law while others are not registering the proper number of vehicles in Kansas.

The table below shows the results of the auditors' field visits for the 14 rental locations having less than 100 percent of their rental fleet registered in Kansas. The companies are grouped into three categories. The first group shows large national chains with local operations that are owned by Kansas companies or individuals. The second group includes corporate branch offices of large national rental agencies (these branches are owned by the corporation, not by a Kansas operator). The third group includes smaller firms that have Kansas locations as well as locations in other states.

<u>Kansas-Owned Licensees of Large National Firms</u>	<u>Transactions Reviewed</u>	<u>Transactions With Kansas Registrations</u>	<u>Percent</u>
National Car Rental			
Salina	76	44	57.9%
Wichita	128	112	87.5
Avis Rent-A-Car			
Salina	25	21	84.0
Hertz Rent-A-Car			
Salina	63	52	82.5
Topeka	241	228	94.6
 <u>Corporate Branch Office of Large National Firms</u>			
National Car Rental			
Overland Park	224	0	0.0%
Avis Rent-A-Car			
Overland Park	160	4	2.5
Topeka	167	7	4.2
Wichita	254	16	6.3
Hertz Rent-A-Car			
Wichita	256	231	90.2
Agency Rent-A-Car			
Overland Park	59	38	64.4
Wichita	48	13	27.1
 <u>Other Interstate Firms</u>			
Kwik Auto Rental			
Overland Park	79	0	0.0%
All American Auto Rental			
Wichita	28	6	21.4

Kansas-owned licensees of large national firms appear to be in compliance with the law. Based on the auditors' review of rental agreements, Kansas-owned licensees of large national rental firms appeared to be operating within the law. As seen in the top portion of the table above, the rental transactions for most of these companies involved a Kansas-registered vehicle approximately 80 to 90 percent of the time. The 10 to 20 percent of rentals that do not bear Kansas registration appear to be one-way rentals of vehicles owned by the parent corporation or by an out-of-state licensee of the same rental company.

The only exception was the National Car Rental Office in Salina, at which only 57.8 percent of the transactions involved Kansas registered vehicles. Because all vehicles that belong to the Salina location were verified to be registered in Kansas, the auditors can only speculate that the National Car Rental office in Salina is a terminal point for a large number of corporately-owned, own-way rentals which are subsequently routed back to the owning city.

Some agencies with out of State ownership appear to have few cars registered in Kansas. Several rental agencies may be in violation of Kansas Vehicle Registration laws. These agencies are found primarily within the bottom two groups shown in the table on page 3. As the table shows, out of 224 rental transactions reviewed for National Car Rental's Overland Park Office, none of the cars were registered in Kansas. Likewise, the auditors reviewed 581 separate rental transactions at the three Kansas offices owned by Avis Rent-A-Car and found that only 27 of those transactions (4.6 percent) involved cars that were registered in Kansas. These two agencies were in direct contrast with the Hertz Rent-A-Car Corporation, where the auditors found that over 90 percent of the 256 rental transactions reviewed involved a vehicle registered in Kansas.

For the smaller interstate agencies shown in the bottom third of the table, the auditors found what appeared to be a similar problem. At Kwik Auto Rental in Overland Park, the auditors reviewed 79 rental transactions and found that all of them involved cars registered in Missouri. The Department of Revenue's files contain no record of any vehicles registered in Kansas under the name of Kwik Auto Rental. A low percentage of Kansas registered vehicles was also noted during the auditors' review of transactions of All American Auto Rental in Wichita. However, the Department of Revenue's records show a number of vehicles registered under the name of this company or its parent corporation.

Some firms confirm non-compliance. The auditors sent a brief questionnaire to each of four firms which appeared to have an insufficient number of vehicles registered in Kansas. Those questionnaires requested information about the number of vehicles in the company's rental fleet, the number of cars the company registered in Kansas, the method for determining the number of cars to be registered in each state, and the percent of gross rental revenue generated in Kansas. Three of those four agencies provided the information requested by the auditors. Avis Rent-A-Car did not respond. The responses to those questionnaires can be seen below.

<u>Company</u>	<u>Fleet Size</u>	<u>Number of Cars Registered in Kansas</u>	<u>Percent of Revenues Generated in Kansas</u>	<u>Proper Number of Registrations in Kansas</u>
All American Auto Rental	10,000	37	.37%	37
Agency Rent-A-Car	14,213	69	1.08%	154
National Car Rental	68,000	-0-	.1%	68

As can be seen, only one of the responding agencies (All American Auto Rental) indicated that it had the proper percentage of its fleet registered in Kansas. Agency Rent-A-Car's response indicates that it has 85 fewer cars registered in Kansas than the law requires. Likewise, National Car Rental's response indicates that it should have at least 68 cars registered in Kansas. At the current time, none of National's vehicles are registered in this State. These responses, although unaudited, tend to support the findings of the auditors' field visits.

To Verify Compliance with Registration Laws Would Require an Audit Involving Work at the Corporate Headquarters

To accurately determine whether interstate rental companies are registering the proper number of cars in Kansas would require a more extensive review than the Committee authorized. Auditors would need to travel to corporate offices of leasing companies to verify the size of each company's rental fleet, the number of vehicles registered in each state, and the gross rental revenues derived in each state.

The Department of Revenue has two groups of auditors that could potentially perform such an audit. There are two auditors within the Motor Carrier Inspection Bureau who audit prorated carriers--primarily trucking companies--having their fleet proportionally registered in Kansas. These companies must register vehicles in Kansas under requirements that are similar to the requirements for car rental agencies. The major difference is that trucks are prorated on miles traveled in Kansas, and rental cars are prorated on the basis of revenues generated.

The Department also has an Audit Services Bureau whose auditors travel to offices of major corporations to audit for sales tax, income tax, and the like. It appears that when auditing the revenues of a rental company to determine the income taxes and other taxes due, the auditors could also check to determine that the proper number of vehicles were registered based on the revenue generated in Kansas.

However, before assigning such additional duties to either of the Department's audit groups, careful analysis would need to be done to ensure that the benefits derived in the form of additional property taxes and registration fees for the State are not outweighed by the cost of performing the additional audit work. That cost would need to be measured both in terms of personnel costs and in terms of other audit work which may need to be foregone to allow time to check on vehicle registrations.

Recommendation

The Department of Revenue should study the issue of auditing vehicle registrations of rental companies to determine if such audits could be conducted on a cost effective basis by their Audit Services Bureau or by their auditors within the Motor Carrier Inspection Bureau.

If auditing rental companies for vehicle registrations is not feasible, the Department should request each interstate rental

company to annually submit a statement indicating the portion of gross rental revenues generated in Kansas. Using this information, the Department should send a statement to each of these companies explaining the percentage of their vehicles that should be registered in Kansas during the upcoming registration year.

Are Appropriate Property Taxes Being Paid on Rental Vehicles?

Provisions for property taxes on motor vehicles are contained in Chapter 79, Article 51, of the Kansas Statutes. The property taxes are determined by taking 30 percent of the value of the vehicle as determined by a classification schedule developed by the Department of Revenue, and multiplying that amount by the county average tax rate for the county in which the vehicle is registered. Taxes on motor vehicles are levied annually to coincide with the registration year for each vehicle.

The law provides that a county treasurer shall not accept an application for registration of a vehicle unless the person registering the vehicle pays the applicable property taxes. Therefore, to the extent that rental vehicles are being properly registered in Kansas, it follows that the property taxes are being paid.

In Some Cases, the Law is Not Specific Regarding Where Vehicles Should be Registered and Taxes Should be Paid

During their testwork, the auditors noted companies with multiple rental locations in Kansas that registered all of their vehicles in one county. Three of the companies the auditors reviewed fit into this category. National Car Rental in Liberal owns rental locations in Dodge City, Garden City, Hays, Manhattan, and Topeka in addition to the Liberal location. However, according to records at the Department of Revenue, it appears that the company registers all of its cars in Seward County, where Liberal is located. A similar situation was noted for Harries Motor Company in Wakeeney, which operates Avis rental locations in Salina and Hays. All cars for this company appear to be registered in Trego County, where Wakeeney is located. Finally, Salina Leasing and Rental Inc., which operates Hertz locations in Salina, Manhattan, Hays, Great Bend, and Hutchinson, appears to have all of its cars registered in Saline County.

To determine if this practice was contrary to statute, the auditors reviewed the registration laws. K.S.A. 8-129 states that application to register a vehicle shall be made in the office of the county treasurer of the county in which the owner resides or has a bonafide place of business. Because these agencies have a bonafide place of business in several counties, they appear to have an option as to where to register their vehicles. This option directly affects how much tax is paid and where it is paid. For example, National Car Rental of Liberal maintains rental locations in six counties. The auditors assembled the tax rates for the 1985 registration year for three different classes of vehicles in those six counties. Those taxes are shown in the table below.

<u>County</u>	<u>1985 Taxes</u>		
	<u>Class 7 Vehicle</u>	<u>Class 10 Vehicle</u>	<u>Class 11 Vehicle</u>
Ellis	\$ 99.57	\$153.18	\$173.60
Finney	107.66	165.63	187.71
Ford	159.84	245.90	278.69
Riley	147.10	226.31	256.48
Shawnee	203.02	312.34	353.98
Seward	126.81	195.10	221.11

As shown in the table, there are wide variations in the property taxes assessed against motor vehicles in different counties. For example, in Shawnee County, the personal property taxes are 60 percent higher than in Seward County, where the vehicles are registered. In this particular example, however, the cars are not registered in the least expensive county where the company maintains a rental location. Both Ellis and Finney counties have lower tax rates than Seward county. Similar situations were noted for each of the other two companies as well. Thus it appears to be a matter of convenience that the vehicles are registered in the county where the company maintains its corporate office, rather than an attempt at avoiding taxes.

The State does not lose money regardless of where the vehicles are registered. The primary impact of registering vehicles all in one county is that no taxes are paid in the counties where the actual revenues are generated. Another impact could be a slight competitive advantage over other local firms if a multi-county operation registers all of its vehicles in a county with a substantially lower tax rate.

Recommendation

If the legislature perceives the lack of specificity about where to register rental cars to be a problem, K.S.A. 8-129 could be amended to specify where vehicles should be registered when a car rental company operates in more than one county.

Is The Insurance Coverage Required By State Law Being Maintained on Rental Vehicles?

Kansas law requires every motor vehicle operated on Kansas highways to be covered by motor vehicle liability insurance. The minimum limits for this insurance are contained in K.S.A. 40-3107. The owner of a vehicle can provide liability insurance in one of two ways. He or she can purchase a liability insurance policy that meets the minimum requirements of law or become self-insured as provided in K.S.A. 40-3104(d). In order to become self-insured, a vehicle owner must demonstrate the ability to pay any judgment arising out of vehicle ownership or use, must have a minimum of 25 vehicles registered in his or her name, and must obtain a certificate of self-insurance which is subject to the approval of the Insurance Commissioner.

Controls Have Been Established To Aid In the Enforcement of Insurance Requirements

A number of controls are built into the State's systems for regulating vehicles and insurance companies to ensure that proper motor vehicle coverage is maintained. First of all, K.S.A. 40-3118 provides that no vehicle may be registered in Kansas unless the owner has proper liability coverage. To enforce this law, the State requires vehicle owners to provide the name of their insurance company and policy number at the time they register their vehicles. To ensure that the insurance information provided is accurate, the Department of Revenue verifies the coverage with the insurance company for a sample of vehicle registrations.

In order to ensure that the statutory minimum limits of liability coverage are being maintained, the Insurance Commissioner, under K.S.A. 40-3106(b) requires all insurance companies doing business in Kansas to file a declaration stating that their motor vehicle insurance policies, wherever issued, will be considered to provide the minimum coverage required by Kansas law. This means that if a company is certified to do business in Kansas, its policies written on any vehicle in any state automatically conform to the Kansas minimums when that vehicle is driven in Kansas. This is true even if the stated limits of the policy are less than the minimums required by Kansas law.

Insurance companies not doing business in Kansas may also file a declaration with the Insurance Commissioner so that their insured will be in full compliance with Kansas laws when operating their vehicles in this State.

Enforcing Insurance Requirements for Vehicles Registered Outside Kansas May Not Be Possible

Although Kansas has established controls to ensure that automobiles registered in the State have adequate liability insurance, other states do not necessarily maintain the same insurance requirements or controls that Kansas has established. In fact, officials in the Insurance Commissioner's Office indicated to the auditors that approximately 21 states do not have mandatory liability insurance requirements. The lack of insurance requirements in other states can impact the enforcement of insurance requirements for car rental agencies with non-Kansas vehicles, because there is little chance of knowing that such a vehicle is uninsured prior to involvement in an accident.

In reality, however, it appears that the risk from uninsured vehicles owned by car rental agencies may be small. Most car rental companies visited by the auditors appeared to provide a single blanket policy covering all of the vehicles they own. Therefore, to the extent that adequate coverage is provided for a company's cars registered in Kansas, it would appear that the same coverage is being provided for all cars owned by the company. The main risks appear to be from those companies which operate rental locations in Kansas but have no cars registered in this State, and from companies that may drop their insurance coverage after registering their vehicles.

The first of these groups, as mentioned earlier, already appears to be not in compliance with vehicle registration laws. Bringing these companies into

compliance with the registration laws would also provide some assurance that the insurance requirements are being met. To determine if dropping insurance coverage was a problem, the auditors enlisted the aid of the Department of Revenue to verify that the stated insurance coverage was being maintained.

Rental Companies With Kansas-Registered Vehicles Appear to Be Maintaining the Required Insurance Coverage

The auditors attempted to verify that current insurance coverage was being maintained for the rental agencies they visited. Two of the companies indicated that they were self-insured. The auditors contacted the Insurance Commissioner's Office to verify that both of these companies did have an approved certificate of self-insurance on file. Two other companies had no vehicles registered in Kansas. As a result, it was not possible to verify that insurance coverage was being maintained.

For the remaining agencies, the auditors requested the Department of Revenue's Driver Control Bureau to use its authority to verify that insurance coverage was being maintained. The Department mailed requests to the insurance companies to verify that coverage was in effect. Many of these companies were slow in responding. Those that responded indicated that the proper coverage was in effect. Rather than delay the report, Legislative Post Audit decided to issue it with the findings in this area still somewhat incomplete. Should the remaining responses reveal any particular problems in this area. The Post Audit Committee will be informed at a later date.

Appendix A

Summary of Rental Locations Audited

	Number of Rental Transactions Reviewed	Number of Transactions Involving Kansas-Registered Vehicles
<u>Kansas City</u>		
Agency	59	38
Avis	160	4
Kwik Auto Rental	79	0
National Car Rental	224	0
Rent-A-Relic	78	78
<u>Salina</u>		
Avis	25	21
Hertz	63	52
National Car Rental	76	44
Payless Car Rental	18	18
U-Save Rent-A-Car	15	15
<u>Wichita</u>		
A-Used Car Rental	25	25
Agency Rent-A-Car	48	13
All American Auto Rental	28	6
Avis	254	16
Hertz	256	231
National Car Rental	128	112
<u>Topeka</u>		
Avis	167	7
Budget	52	52
Dodge City U.S.A.	29	29
Hertz	241	228

APPENDIX B
Agency Response

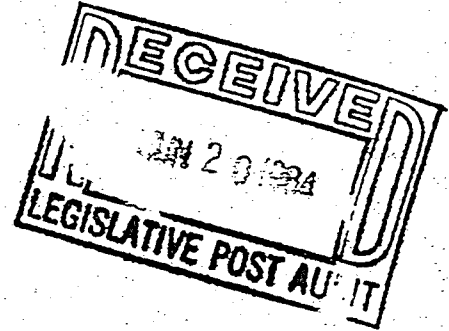


Kansas
DEPARTMENT OF REVENUE

June 20, 1984

State Office Building
TOPEKA, KANSAS 66625

Mr. Meredith Williams
Legislative Division of Post Audit
Suite 301
Mills Building
Topeka, KS 66612



Dear Mr. Williams:

The Department of Revenue has read the Post Audit report and offers the following response:

The Department will mail questionnaires to the vehicle rental agencies, as Post Audit has, to determine compliance with Kansas registration laws. Any discrepancies indicating non-compliance will be investigated.

The Post Audit report identified the Department's concern whether conducting a specific audit on rental agencies would be cost effective. The report (page 2) outlines the amount of work involved in verifying whether an agency has correctly registered their fleet of vehicles. The Department questions whether the revenue generated would justify the expenditure.

In order to employ perhaps the most cost effective of options, the Audit Services Bureau will include a review of registration practices whenever there is reason to audit a rental agency for corporate or sales tax reasons.

Please be assured that the Department of Revenue will do its best to comply with the wishes of the Post Audit Committee.

Sincerely,

A handwritten signature in cursive script that reads "Harley T. Duncan".
Harley T. Duncan
Secretary of Revenue

HTD:LDH:sc

Ladies and Gentlemen of the Committee,

My name is Vance Herring. I am a resident of Wichita, Kansas, where I have operated the National Car Rental franchise for over five years. I appreciate the opportunity to address the committee as an avid supporter of Senate Bill #749, not only as a small business operator, but as a concerned Kansan.

My facility in Wichita utilizes a Kansas registered fleet and we pay the accompanying property taxes and registration fees, while hundreds of out-of-state and corporately owned rental vehicles operate while evading any property tax requirements. Not only does this place my business in a ruinous competitive disadvantage, but it deprives our state and counties of significant income. Simply stated, there are far too few rental vehicles being registered in the State of Kansas. Car rental companies are ignoring property tax and registration requirements with impunity, because the present law allows it to occur.

It is my firm belief that the Senate Bill before you to create an additional tax to be included on all rental agreements generated by all car rental companies will greatly benefit our state and counties. The current formula of determining what percentage of a rental fleet operating in Kansas should be registered in Kansas, which is based upon vague, difficult to ascertain nationwide fleet sizes and gross revenues, is impossible to audit or enforce, and above all, unfair to all of us.

Senate Bill #749 represents the best solution to this problem. It eliminates the obvious disincentive to register rental vehicles in our state. In fact, the passage of this bill will create an incentive to register all rental vehicles in Kansas, and pay more registration fees. An additional benefit to our state and counties will be represented by the monies collected through the additional tax revenues from every rental that originates in our state, regardless of the destination, and regardless of what franchise or corporate store owns the vehicle. In my company's case alone, these interstate rentals can amount to more than 15% of our gross revenue.

In conclusion, I urge the passage of Senate Bill # 749 as it represents an excellent and long overdue solution to a long-standing concern. For my small business it is both essential and fair. For the industry, it is also undeniably fair. As a tax-paying Kansan, it is the right thing to do.

Thank you,

Vance Herring
National Car Rental

ATT. 6
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"Service to County Government"

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Wabaunsee County Commissioner
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Executive Director

John T. Torbert

March 28, 1990

TESTIMONY

To: Senate Transportation and Utilities Committee

From: John T. Torbert
Executive Director

Subject: SB 749 (Taxation of Rental Vehicles)

The Kansas Association of Counties supports SB 749. The decision to support the bill was made by the governing board of the association at their last meeting on March 8.

County treasurers from counties that have car rental agencies tell me that car rental companies seem to have their smaller less expensive cars registered in Kansas and the bigger, more expensive cars registered in surrounding states. The obvious impact is that if the car is supposed to be registered in Kansas and is registered in another state, Kansas local governments receive none of the revenue.

Under reciprocity agreements in which Kansas participates, the number of cars registered in each state in the current year should be representative of the portion of gross rental revenues derived from business in the state during the previous year. For example, if a rental company had a fleet of 10,000 cars and received 2% of its revenues from Kansas rentals, 200 cars should be registered in Kansas.

The reports that I received from county treasurers are basically anecdotal in this area. They have no way of determining if the rental company is in compliance with the law or not. However, a post audit report done in 1984 confirmed that there were abuses to the current system. That report found that "several companies which operate on an interstate basis do not appear to have the appropriate number of vehicles registered in Kansas."

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(Two of the companies they audited had no Kansas registrations.) The report noted too that some rental companies with multiple Kansas locations registered all of their vehicles in one county. This appeared to be a matter of convenience rather than one of tax avoidance however.

This legislation replaces the current system of taxing rental vehicles with a personal property tax with a system that instead imposes a sales tax of 7.75%. The tax would be imposed at the time that payment for the rental is received. A tax imposed in this fashion will obviously be much more difficult to avoid. This sales tax would be collected in the same fashion as other sales taxes. Then, 45% of this tax would be remitted to the county treasurer from the county where the transaction occurred. The county treasurer would then distribute the proceeds of this revenue in the same fashion that personal property taxes are now distributed.

I don't know what financial impact this legislation will have because we do not know how much tax avoidance is currently taking place. It is my judgement however that this new system will at least be a break even proposition and will probably be one that shows a net revenue gain.

This is not an untried system. It has been put in effect elsewhere and it does work. I've also attached to this testimony an amendment. The bill, as it is currently written, allows exceptions and would permit some rental vehicles meeting certain requirements to be registered and taxed in the same fashion that they are now. We feel that the exceptions only keep the current loopholes open. We believe that this new sales tax system should be imposed and enforced uniformly. To allow exceptions only creates administrative problems for the Department of Revenue and the county treasurers. This suggested amendment would do away with the exemptions and keep the legislation uniform in its application.

We urge your favorable consideration of this legislation with the amendment as suggested.

tsjvehr

1 shall be applicable to the services of repairing, servicing, altering or
2 maintaining an item of tangible personal property which has been
3 and is fastened to, connected with or built into real property;

4 (r) the gross receipts from fees or charges made under service
5 or maintenance agreement contracts for services, charges for the
6 providing of which are taxable under the provisions of subsection
7 (p) or (q);

8 (s) the gross receipts received from the sale of computer software,
9 and the sale of the services of modifying, altering, updating or main-
10 taining computer software. As used in this subsection, "computer
11 software" means information and directions loaded into a computer
12 which dictate different functions to be performed by the computer.
13 Computer software includes any canned or prewritten program which
14 is held or existing for general or repeated sale, even if the program
15 was originally developed for a single end user as custom computer
16 software. The sale of computer software or services does not include:
17 (1) The initial sale of any custom computer program which is origi-
18 nally developed for the exclusive use of a single end user; or (2)
19 those services rendered in the modification of computer software
20 when the modification is developed exclusively for a single end user
21 only to the extent of the modification and only to the extent that
22 the actual amount charged for the modification is separately stated
23 on invoices, statements and other billing documents provided to the
24 end user. The services of modification, alteration, updating and main-
25 tenance of computer software shall only include the modification,
26 alteration, updating and maintenance of computer software taxable
27 under this subsection whether or not the services are actually pro-
28 vided; and

29 (t) the gross receipts received for telephone answering services,
30 including mobile phone services, beeper services and other similar
31 services; and

32 (u) a tax at the rate of 7.75% upon the gross receipts received
33 from the rental or lease for a period of time not exceeding 28 days
34 of motor vehicles which except for the operation of this subsection
35 would be subject to taxation pursuant to K.S.A. 79-5101 et seq.,
36 and amendments thereto, and which would be exempt from property
37 taxation pursuant to this section. Motor vehicles taxed pursuant to
38 this subsection shall be exempt from the tax imposed by K.S.A. 79-
39 5102, and amendments thereto, and any other property or ad va-
40 lorem taxes levied pursuant to law for all taxable years commencing
41 after the effective date of this act. ~~In order to qualify for exemption~~
42 ~~from property taxation hereunder, any new motor vehicle must be:~~
43 ~~(1) Owned by a car rental company having a minimum of 20 motor~~

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OBLERE

1 ~~vehicles registered in this state; (2) a bona fide rental or leasable~~
 2 ~~motor vehicle which was not purchased solely for resale; and (3)~~
 3 ~~owned for rental or lease purposes for a minimum of 120 days unless~~
 4 ~~such vehicle has been stolen or damaged to the extent that the future~~
 5 ~~lease or rental thereof is not possible, and if such vehicle is not~~
 6 ~~owned for such period of time, the owner shall be liable for the tax~~
 7 ~~imposed pursuant to K.S.A. 79-5102, and amendments thereto, in~~
 8 ~~the amount equal to 1/3 of the amount which would have been levied~~
 9 ~~annually upon such vehicle, regardless of the period of time such~~
 10 ~~vehicle is owned.~~

DELETE

11 Sec. 2. K.S.A. 79-3620 is hereby amended to read as follows:
 12 79-3620. (a) All revenue collected or received by the director of
 13 taxation from the taxes imposed by this act shall be deposited daily
 14 with the state treasurer. The state treasurer shall credit all revenue
 15 received from this act, less amounts withheld as provided in sub-
 16 section (b) and amounts credited as provided in ~~subsection~~ sub-
 17 sections (c) and (d), to the state general fund.

18 (b) A refund fund, designated as "sales tax refund fund" not to
 19 exceed \$100,000 shall be set apart and maintained by the director
 20 from sales tax collections and estimated tax collections and held by
 21 the state treasurer for prompt payment of all sales tax refunds in-
 22 cluding refunds authorized under the provisions of K.S.A. 79-3635,
 23 and amendments thereto. Such fund shall be in such amount, within
 24 the limit set by this section, as the director shall determine is nec-
 25 essary to meet current refunding requirements under this act. In
 26 the event such fund as established by this section is, at any time,
 27 insufficient to provide for the payment of refunds due claimants
 28 thereof, the director shall certify the amount of additional funds
 29 required to the director of accounts and reports who shall promptly
 30 transfer the required amount from the state general fund to the sales
 31 tax refund fund, and notify the state treasurer, who shall make proper
 32 entry in the records.

33 (c) The state treasurer shall credit 1/17 of the revenue collected
 34 or received from the tax imposed by K.S.A. 79-3603, and amend-
 35 ments thereto, at the rate of 4.25%, and deposited as provided in
 36 subsection (a), in the state highway fund.

37 (d) *The state treasurer shall remit 45% of the revenue received*
 38 *from the tax imposed by subsection (u) of K.S.A. 79-3603, and*
 39 *amendments thereto, to the county treasurer of the county wherein*
 40 *the taxable transaction took place on June 30 and November 30 of*
 41 *each year. Upon receipt thereof, the county treasurer shall apportion*
 42 *and distribute the entire amount thereof to all tax levy units of the*
 43 *county in the same manner as provided by K.S.A. 79-5110 and 79-*

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ALDERSON, ALDERSON, MONTGOMERY & NEWBERY

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TELEPHONE:
(913) 232-0753
FAX:
(913) 232-1866

TO: Senate Transportation Committee
FROM: Steve Montgomery, On Behalf of AVIS
RE: Testimony on Senate Bill No. 749
DATE: March 28, 1990

Avis Rent A Car System, Inc., is not opposed to the proposed sales tax increase on motor vehicles which are rented/leased. The sales tax, regardless of the rate, is passed directly through to the consumer. Consequently, while Avis does not wish to raise the cost of renting or leasing motor vehicles, its primary concern is the competitive nature of such increases. Senate Bill 749 would apply equally to all similarly situated rental and leasing companies.

Avis is willing to assume its responsibility as the collecting agent of sales tax from consumers and remitting the same to the State of Kansas. Avis would propose the following two amendments to assist it in collecting and remitting the tax (see attached balloon):

1. At p. 4, line 33, replace the number "28" by the number "31." Avis and other rental car companies have leases for a period of not to exceed one month. Avis refers to these types of leases as "mini leases." In order to streamline the accounting for these types of leases, Avis proposes that the increased rate of tax apply to all leases of 31 days or less. This amendment will ease accounting procedures for rental car companies and should increase the revenue gain to the State of Kansas.

2. On p. 4, line 43, and p. 5, line 6, insert the language "or its nominee." It is a common practice for rental car companies, depending upon the tax structures in the various states, to establish subsidiary corporations which actually own rental vehicles. These subsidiary corporations then rent the vehicles back to the parent corporation. Avis is suggesting that the language in the current version of SB 749 be amended to make the higher tax rate applicable in such situations and to place the tax burden upon the car rental company, as apparently intended. Once again, accounting procedures for the rental companies and audit procedures for the Department of Revenue will be simplified if the rental car company is required to collect and remit the tax regardless of whether it owns or leases the vehicles.

In the event the Transportation Committee reports SB 749 favorably, Avis respectfully requests that the foregoing amendments be made.

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shall be applicable to the services of repairing, servicing, altering or maintaining an item of tangible personal property which has been and is fastened to, connected with or built into real property;

(r) the gross receipts from fees or charges made under service or maintenance agreement contracts for services, charges for the providing of which are taxable under the provisions of subsection (p) or (q);

(s) the gross receipts received from the sale of computer software, and the sale of the services of modifying, altering, updating or maintaining computer software. As used in this subsection, "computer software" means information and directions loaded into a computer which dictate different functions to be performed by the computer. Computer software includes any canned or prewritten program which is held or existing for general or repeated sale, even if the program was originally developed for a single end user as custom computer software. The sale of computer software or services does not include: (1) The initial sale of any custom computer program which is originally developed for the exclusive use of a single end user; or (2) those services rendered in the modification of computer software when the modification is developed exclusively for a single end user only to the extent of the modification and only to the extent that the actual amount charged for the modification is separately stated on invoices, statements and other billing documents provided to the end user. The services of modification, alteration, updating and maintenance of computer software shall only include the modification, alteration, updating and maintenance of computer software taxable under this subsection whether or not the services are actually provided; and

(t) the gross receipts received for telephone answering services, including mobile phone services, beeper services and other similar services; and

(u) a tax at the rate of 7.75% upon the gross receipts received from the rental or lease for a period of time not exceeding 28 days of motor vehicles which except for the operation of this subsection would be subject to taxation pursuant to K.S.A. 79-5101 et seq., and amendments thereto, and which would be exempt from property taxation pursuant to this section. Motor vehicles taxed pursuant to this subsection shall be exempt from the tax imposed by K.S.A. 79-5102, and amendments thereto, and any other property or ad valorem taxes levied pursuant to law for all taxable years commencing after the effective date of this act. In order to qualify for exemption from property taxation hereunder, any new motor vehicle must be:

(1) Owned by a car rental company having a minimum of 20 motor

31

or its nominee

vehicles registered in this state; (2) a bona fide rental or leasable motor vehicle which was not purchased solely for resale; and (3) owned for rental or lease purposes for a minimum of 120 days unless such vehicle has been stolen or damaged to the extent that the future lease or rental thereof is not possible, and if such vehicle is not owned for such period of time, the owner shall be liable for the tax imposed pursuant to K.S.A. 79-5102, and amendments thereto, in the amount equal to 1/3 of the amount which would have been levied annually upon such vehicle, regardless of the period of time such vehicle is owned. or its nominee

8-2



KANSAS DEPARTMENT OF REVENUE

Office of the Secretary

Robert B. Docking State Office Building
Topeka, Kansas 66612-1588

To: The Honorable Bill Morris, Chairman
Senate Committee on Transportation and Utilities

From: Steven A. Stotts
Acting Director of Taxation

Date: March 28, 1990

Subject: Senate Bill 749

Thank you for the opportunity to appear before you today on Senate Bill 749. The department respectively opposes Senate Bill 749 in its current form.

This bill increases the sales tax rate on motor vehicle rental companies in exchange for exempting them from paying property taxes on their vehicles. This is a fundamental change in the way Kansas imposes and administers its taxes. In the past, the state has established a new tax which is "in lieu" of the tax currently imposed on the taxpayer. A different sales tax rate on a select and small number of taxpayers creates significant administrative problems in the data processing area. All state and local sales tax programs would need to be modified to handle the small number of taxpayers.

Fiscal Impact. The fiscal impact of Senate Bill 749 is unknown due to a lack of data. The gross receipts generated by motor vehicle rental companies is unknown, as is the total amount of property tax paid on those rental vehicles. Without this data there is no way to determine if the 3.5% additional rate is adequate to offset the property taxes currently owed on the vehicles.

Administrative Impact. The administrative impact of modifying the current sales tax computer programs to handle a variable sales tax rate would be in excess of \$250,000. The ongoing annual costs of administering this bill would be about \$100,000.

I would be glad to answer any questions.

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