

Approved April 13, 1991
Date

MINUTES OF THE HOUSE COMMITTEE ON TAXATION

The meeting was called to order by Joan Wagnon at
Chairperson

9:10 a.m. on Thursday, March 28, 1991 in room 519-S of the Capitol.

All members were present except:

Committee staff present:

- Tom Severn & Chris Courtwright, Legislative Research;
- Don Hayward & Bill Edds, Revisors;
- Linda Frey, Committee Secretary & Douglas E. Johnston, aide

Conferees appearing before the committee:

Chairman Wagnon called the committee to order at 9:10 a.m. for hearings on SB 14, SB 58, SB 213, SB 215.

The following people testified in favor of SB 14:

- Anne Smith, Director of Legislation for the Kansas Assoc. of Counties (attachment 1).
- John Peterson, representing Budget Rent A Car (attachments 2 and 3).
- Steve Graham, representing Budget Rent A Car (attachment 4).
- Gerry Ray, representing the Johnson County Board of Commissioners (attachment 5).

There were no opponents to SB 14. The public hearings were closed. Hearings were opened on SB 213 and SB 215.

Mark Burghart, General Counsel for the Dept. of Revenue, testified in favor of SB 213 and SB 215 (attachments 6 and 7).

Hearings were closed on SB 213 and SB 215. Hearings were resumed on HB 2593.

Rep. Bill Roy, Jr. testified in favor of HB 2593. He submitted to the committee a copy of Federal Internal Revenue Code section which HB 2593 was modeled after (attachment 8).

After questions from the committee, hearings were closed on HB 2593.

The committee adjourned at 10:15 a.m.

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

GUEST LIST

COMMITTEE: Separation

DATE: 3/28/91

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
R ANDERSON	OTTAWA	FRID CORP 06
HAROLD PITTS	Topoka	AARP-CATF
Alan Steppat	Topoka	Pete McMill & Associates
STEVE GRAHAM	WICHITA	BUDGET RENT A CAR
VANCE HERRING	Wichita	NATIONAL Car Rental
Dick Rollin	Topeka	State Doz A.
GERRY RAY	OLATHE	Johnson Co Commission
Bvo GRANT	TOPEKA	KCCI
Brian Junot	Topoka	Budget Rent a car
Bob Corkins	Topoka	KCCI
Ken Peterson	Topoka	Kansas Petroleum Council
KAREN FRANCE	TOPSKA	Ks Assoc. of REACTORS
Tom Shenda	Topoka	Revenue
al Zestros	Topoka	Revenue
Lueky Dofries	"	Marting Tractor Kan. Apt. Assn. Colgate
Jim Meriden	TOPEKA	Chickies
John Luttphann	Topoka	Faulstich & Siefkun
Don Schmitt	Topok	ICIOGN
Steve Stotts	"	Revenue
MARK A. BURSHART	TOPEKA	REVENUE
Terry Gay	Meriden	Revenue



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March 28, 1991

TESTIMONY

To: House Taxation Committee
Chairwoman Joan Wagnon

From: Anne Smith
Director of Legislation

Subject: SB 14 (Taxation of Rental Vehicles)

The Kansas Association of Counties supports SB 14. The decision to support the bill was made by the governing board of the association.

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."

HOUSE TAXATION
Attachment #1
03/28/91

(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.

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.

We urge your favorable consideration of this legislation

TSAVEHRG

TESTIMONY OF JOHN C. PETERSON
March 28, 1991
HOUSE COMMITTEE ON TAXATION
SENATE BILL 14

Mr. Chairman, members of the Committee, my name is John Peterson and I am appearing today on behalf of Budget Rent A Car, Enterprise Leasing, and Midwest Car Corporation, a licensee of National Car Rental.

Kansas clearly faces a problem in collecting its fair and appropriate share of property tax on rental vehicles. With higher property tax on vehicles than surrounding states, some rental companies "skew" their figures for a larger proportion of registrations in other states. When you're dealing with national companies as opposed to local companies who have all or virtually all of their business in Kansas, the complex records necessary to audit the proportional registration determinations by the national companies are often difficult to locate, as indicated by the 1984 Legislative Post Audit Study. Even if the state could be 100 percent successful in requiring rental companies to register the correct number of vehicles in Kansas, there is nothing to prevent multi-state companies from registering less expensive vehicles in Kansas and their more expensive vehicles in other states. We believe that all companies must comply with

Kansas law in order to be fair to the Kansas taxpayers and in order to have competition based on a level playing field.

Two states have taken an innovative approach to this problem. In 1981 Virginia imposed a two and one-half percent retail tax on rental vehicles in lieu of property taxes. The tax has proven effective, flexible, and easy to administer.

In 1988 Colorado passed an alternative gross receipts tax of two percent in lieu of payment of property taxes for rental vehicles. The tax is mandatory for vehicles registered out of state but is optional for in-state vehicles. They can either pay property tax or the two percent excise tax.

Last year Senate Bill 749 introduced a similar concept, although the tax was at a higher rate of three and one-half percent. The Interim Committee on Assessment and Taxation studied this issue as proposal No. 10 and ultimately recommended and introduced Senate Bill 14. The three and one-half percent was designed to be essentially revenue neutral for a rental car company that is complying with the current Kansas law. However, passage of this bill will create increased revenues because of:

- 1) increased collections from companies not currently complying,
- 2) the three and one-half percent rate will stay constant even though through reclassification the property tax on vehicles will

be declining, and 3) there will be a one-half year windfall with this law taking effect on July 1st.

We believe that this proposal represents an effective mechanism to bring accountability, fairness, and enforceability to the collection of appropriate taxes on rental cars.

We thank you for your time and consideration of SB-14.

VVP032710K1/2



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

HOUSE TAXATION
Attachment #3
03/28/91

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.

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PERFORMANCE AUDIT REPORT

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

1

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11

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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.

**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.

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.

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>	1985 Taxes		
	<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

Budget Rent a Car of Kansas, Inc.
1895 Midfield Road
Mid-Continent Airport
Wichita, Kansas 67209
(316) 946-4890

"An Independent Budget System Licensee"

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My name is Steve Graham. I'm a second generation native Kansan living in Wichita. My parents and I have operated the Budget Rent A Car franchise there for 29 years and we employ approximately 40 people in the operation. By way of explanation of my personal background, I'm a C.P.A. and practiced as an accountant and financial consultant for about 15 years in Wichita before becoming involved in the rental car business full time in 1984. I'd like to take this opportunity to address the economic impact of Senate Bill 14 on the car rental industry in Kansas and its effect on the consumer.

On the surface, it might look like exempting car rental companies from property tax on their autos would create a savings to them that would simply go in their pockets. Unfortunately for me, that's not the case. A step by step overview of the economic sequence of events following enactment of S.B. 14 would look like this:

First, companies presently complying with the law and paying property taxes will have that expense removed from their overhead structure. These firms will then be on a level playing field with those not paying taxes. Then, since property taxes are removed from our expenses, we would be able to compete from a price standpoint with those not presently paying taxes. When I lower my prices to compete, the consumer benefits. The excise tax I would charge then negates the benefit to the consumer and leaves him where he was before the legislation. The only difference

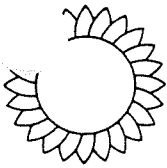
HOUSE TAXATION
Attachment #4
03/28/91

is, I'm now on a level playing field with my competitors and the counties are getting their taxes from all the firms in the industry, not just some of us.

My market share in the Wichita airport is approximately one-half that of the market share leader. This is not a "normal" market share spread based on industry statistics for the United States. The reason this market share leader in Wichita enjoys such a position is that nearly all their vehicles are registered out of state and when I have to pay property taxes and they don't, I can't match them from a price standpoint.

The car rental business is extremely competitive. Any savings afforded Budget by S.B. 14 will be passed along to the consumer by competitive necessity. I can't put this money in my pocket and hope to not lose more market share.

The bottom line is that S.B. 14 is not anti-consumer nor is it a windfall to the car rental industry. It's simply a workable method to resolve the problem of some rental car companies registering their vehicles out of state. I hope you will give it your blessing.



MARCH 28, 1991

HOUSE TAXATION COMMITTEE

HEARING ON SENATE BILL NO. 14

TESTIMONY OF GERRY RAY, INTERGOVERNMENTAL OFFICER
JOHNSON COUNTY BOARD OF COMMISSIONERS

Madam Chairman, members of the Committee, my name is Gerry Ray representing the Johnson County Board of Commissioners. On behalf of the Board I would like to express support for Senate Bill 14 that will offer an alternative to property tax on rental vehicles.

For many years the administration of taxing rental vehicles has presented a variety of problems to both the Appraiser and the Treasurer. Due to the nature of the rental car business and the mobility of the stock, it is very difficult to determine which vehicles should be taxed. We believe that the concept in the Senate Bill 14 is an excellent approach to solving these problems in a fair and equitable manner.

Some may view this as yet another tax being imposed on the consumer. However, it should be recognized that it matters not what form the taxation takes, it is the consumer that ultimately pays it. Charging a sales tax at the time the vehicle is rented is a form of user tax that will be paid by the party receiving the benefit.

Senate Bill 14 is a reasonable means to bring about a solution to a problem that exists for county governments and rental car agencies. Johnson County would urge the Committee to recommend the bill for passage.

HOUSE TAXATION
Attachment #5
03/28/91



KANSAS DEPARTMENT OF REVENUE

Office of the Secretary

Robert B Docking State Office Building

915 SW Harrison St

Topeka Kansas 66612-1588

MEMORANDUM

To: The Honorable Joan Wagnon, Chairperson
House Committee on Taxation

From: Mark A. Burghart, General Counsel
Kansas Department of Revenue

RE: Senate Bill No. 213

Date: March 28, 1991

Senate Bill 213 contains several proposals advanced by the Department of Revenue in order to either (1) clarify the law in certain problem areas; or (2) eliminate certain unnecessary procedures. Each of the proposed changes is identified and described below.

Elimination of Revocation Hearing

Under current law, the Director of Taxation is accorded authority to revoke a delinquent vendor's sales tax permit after notice and hearing. Once revocation is accomplished, the director may proceed to district court to enjoin the delinquent taxpayer from engaging in retail business. Very few retailers ever appear at the revocation hearings. The revocation procedure has had little success in correcting delinquent accounts, is not cost effective and is not constitutionally required.

Under S.B. 213, the revocation procedure is eliminated and the director is accorded authority to proceed directly to district court to enjoin a delinquent vendor's retail business on the basis of a "violation of [the retailer's sales tax] act." Several other states, including Arizona and West Virginia, provide for similar injunction proceedings based on violation of their sales tax statutes.

Exemption Certificates

During the course of business, a retailer may fail to obtain proof of a purchaser's exempt status, despite requirements that the retailer do so at the time of the sale. When this failure is discovered on audit, the auditor will allow the retailer a period of time to produce the required exemption certificates. All too frequently, however, the retailer is slow to comply with the auditor's request and the matter is delayed for an unreasonably long period of time. This bill would shorten the audit and appeal process by making retailers liable for sales tax on their untaxed sales unless they secure exemption certificates

General Information (913) 296-3909

Office of the Secretary (913) 296-3041 • Legal Services Bureau (913) 296-2381

Audit Services Bureau (913) 296-7719 • Planning & Research Services Bureau (913) 296-3081

Administrative Services Bureau (913) 296-2331 • Personnel Services Bureau (913) 296-3077

HOUSE TAXATION
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The Honorable Joal Vagnon
S.B. 213
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Page 2

from the purchasers within 60 days of receipt of notice from the Director of Taxation.

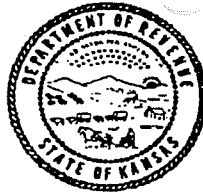
48 Month Interest Limitation

Under present law, interest is tolled after 48 months from the due date of the return if the taxpayer has by agreement extended the period for making an assessment or filing a claim for refund. This provision causes delays in processing appeals because after a certain point in time, a taxpayer has no incentive to move the appeal through the process. S.B. 213 would eliminate the 48 month interest limitation. The Legislature repealed a similar limitation for interest on income taxes in 1980.

Statement of Tax on Invoice

If an invoice which is audited does not separately identify the amount of sales tax collected, it is extremely difficult for an auditor to determine whether sales tax was collected on the sale or sales tax is included in the invoice total. S.B. 213 would require that sales tax be separately stated on the invoice or that the invoice contain a statement that "all applicable sales tax is included." If this information is not included on the invoice, then it would be presumed that the tax has not been collected.

I would be happy to respond to any questions you might have.



KANSAS DEPARTMENT OF REVENUE

Office of the Secretary
Robert B Docking State Office Building
915 SW Harrison St
Topeka Kansas 66612-1588

MEMORANDUM

To: The Honorable Joan Wagon, Chairperson
House Committee on Taxation

From: Mark A. Burghart, General Counsel
Kansas Department of Revenue

Date: S.B. 215

Subject: March 28, 1991

Thank you for the opportunity to appear in support of S.B. 215. The bill makes one technical and two substantive changes in the statutes relating to the collection of withholding and estimated tax. The changes are detailed below:

1. The bill increases from 80% to 90% the amount of tax to be paid to avoid an underpayment of estimated tax penalty. This is a technical change which should have been made in 1989 when related statutes were amended.
2. The bill more clearly defines the liability of individuals who are responsible for the collection and remittance of the withholding tax. Any person who has control, receipt or custody of funds due and owing the state and who fails to pay the amounts over shall be personally liable for the unpaid tax. The language is substantially similar to that contained in the sales tax act. This additional language will assist the Division of Collection in its efforts to collect taxes due and owing the state.
3. The bill requires the purchaser of a business to withhold a sufficient amount of the purchase price to cover any tax which may be due and owing from the seller under the Kansas withholding and declaration of estimated tax act. The purchaser would be personally liable for the unpaid tax to the extent of the value of the property of the seller. If the seller does not show proof of payment of the taxes within 20 days from the date of sale of the business, the purchaser shall remit the amount of the unpaid taxes to the Director of Taxation. Again this provision is similar to one which exists for sales tax. Absent this provision, there is no statutory authority to transfer the liability for unpaid taxes to the purchaser of a business.

I would be happy to respond to any questions you might have.

General Information (913) 296-3909
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Audit Services Bureau (913) 296-7719 • Planning & Research Services Bureau (913) 296-3081
Administrative Services Bureau (913) 296-2331 • Personnel Services Bureau (913) 296-3077

HOUSE TAXATION
Attachment #7
03/28/91

IN GENERAL**What Is an Excise Tax?**

Subjects of the tax . . . ¶ 18,001 Procedure . . . ¶ 18,002

¶ 18,001 **Subjects of the Tax.** An excise tax is a tax or duty levied upon the manufacture, sale, or consumption of commodities within the United States. An excise tax is also an occupational tax or license fee imposed upon the carrying out of a sport, trade, or occupation. These definitions reflect the meaning of an "excise tax" in the mercantile sense.

Broadly, however, an excise tax is a tax upon an activity. Thus, the federal estate and gift taxes (see ¶ 6201 and following) on the act of transferring property and the taxes on private foundations' activities (see ¶ 4525) are also excise taxes.

- **Table of rates**

A complete table of excise tax rates appears at ¶ 41.

¶ 18,002 **Procedure.** There are distinct differences in the procedure for the assessment, collection, and payment of the various excise taxes.

Some taxes are imposed on and collected from the same person, in which case, only one person is liable. Other taxes are levied on one person, but are collected and paid by another person. In some cases, the parties may agree among themselves on who should pay the taxes.

RETAIL TAXES**Luxury Items Tax**

Rates . . . ¶ 18,002A Applicability . . . ¶ 18,002C
Effective date . . . ¶ 18,002B

¶ 18,002A **Rates.**—Effective January 1, 1991, a new excise tax is imposed on the excess of the cost of certain luxury items over specified threshold amounts. The tax is imposed on high-cost cars, boats, aircraft, jewelry and furs. Exemptions from the tax are provided for special use items.

- **Passenger vehicles**

A tax is imposed on the first retail sale of any passenger vehicle. The tax is equal to 10 percent of the excess of the sales price over \$30,000 (.01). A passenger vehicle is any four-wheeled vehicle that is manufactured primarily for use on public streets, roads, and highways and which is rated at 6,000 pounds unloaded gross vehicle weight or less. For trucks and vans, the vehicle must be rated at 6,000 pounds gross vehicle weight or less. For limousines, there is no weight rating requirement.

This tax is not applicable to the sale of any passenger vehicle that will be used by the purchaser exclusively in the active conduct of a trade or business of transporting persons or property for compensation or hire (taxicabs, etc.).

- **Boats**

A tax is imposed on the first retail sale of any boat. The tax is equal to 10 percent of the excess of the sales price over \$100,000 (.05).

This tax does not apply to the sale of any boat that will be used by the purchaser exclusively in the active conduct of a trade or business of (1) commercial fishing, (2) transporting persons or property for compensation or hire, or (3) any other trade or business unless the boat is to be used predominantly for entertainment, amusement, or recreation.

Federal Tax Guide Reports

¶ 18,002A

● Aircraft

The first retail sale of any aircraft is subject to a tax equal to 10 percent of the excess of the sales price over \$250,000 (.10). The tax is imposed on any aircraft which is propelled by a motor and which is capable of carrying one or more individuals.

Business use requirement. This tax is not applicable if 80 percent of the use by the purchaser is in any trade or business. It is necessary that the taxpayer provide proof of business use of the aircraft for each of the first two tax years ending after the date the exempt aircraft was placed in service. The proof is provided on the taxpayer's income tax return. If the proof is not provided for either of the tax years, the taxpayer is responsible for the tax that would have been imposed plus interest during the period beginning on the date the tax would have been imposed. If the taxpayer fails to pay the tax, no depreciation deduction will be allowed for the aircraft.

This tax is not applicable to any aircraft used by the purchaser exclusively in the aerial application of fertilizers or other substances. It is not applicable to helicopters used by the purchaser exclusively for the transporting of individuals, equipment, or supplies in the exploration for, or the development or removal of, hard minerals, oil, or gas, or the planting, cultivation, cutting, or transportation of, or caring for, trees (including logging operations). The tax is also not applicable to any aircraft that is used by the purchaser exclusively in a trade or business of providing flight training or in the trade or business of transporting persons or property for compensation or hire.

● Law enforcement exemption

No tax listed above will be imposed on the sale of any article to the federal government, or a state or local government, for use exclusively in police, firefighting, search and rescue, or other law enforcement or public safety activities, or in public works activities. The tax is also not applicable to the sale of any article to any person for use exclusively in providing emergency medical services.

● Separate purchases

If the owner, lessee, or operator of any article subject to a tax listed above (determined without regard to price) installs, or causes to be installed, any part or accessory on the article, and the installation is not later than the date six months after the date the article was first placed in service, a tax is imposed equal to 10 percent of the price of the part or accessory and its installation.

The tax on separate purchases shall not exceed 10 percent of the excess (if any) of (1) the sum of the price of the part or accessory and its installation, the aggregate price of parts and accessories (and their installation) installed before the part or accessory, and the price for which the passenger vehicle, boat, or aircraft was sold, over (2) \$30,000 for a passenger vehicle, \$100,000 for a boat, and \$250,000 for an aircraft.

The separate purchases tax is not applicable if the part or accessory installed is a replacement part or accessory, or the aggregate price of the parts and accessories and their installation does not exceed \$200.

The owners of the trade or business installing the parts or accessories are subject to secondary liability for the separate purchases tax.

● Two-year limit

If no tax was imposed on the first retail sale of any article by reason of its exempt use and within two years after the date of the first retail sale the article is resold by the purchaser or the purchaser makes a substantial nonexempt use of the article, then the sale or use of the article by the purchaser shall be treated as the first retail sale of the article for a price equal to its fair market value at the time of the sale or use. An exempt use, for purposes of this two-year limit, is any use of an article if the first retail sale of the article is not taxable under the above provisions by reason of such use.

¶ 18,002A

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● **Jewelry**

A tax is imposed on the first retail sale of any jewelry. The tax is equal to 10 percent of the excess of the sales price over \$10,000 (.15). Jewelry includes all articles commonly or commercially known as jewelry, whether real or imitation, including watches.

Manufacture from customer's material. If a person, in the course of a trade or business, produces jewelry from material furnished directly or indirectly by a customer, and the jewelry is for the use of, and not for resale by, the customer, the delivery of the jewelry to the customer will be treated as the first retail sale of the jewelry for a price equal to its fair market value at the time of delivery.

● **Furs**

A tax equal to 10 percent of the excess of the sales price over \$10,000 is imposed on the first retail sale of furs (.20). This includes articles made of fur on the hide or pelt and articles of which such fur is a major component.

Manufacture from customer's material. If a person, in the course of a trade or business, produces a fur article listed above from fur on the hide or pelt furnished, directly or indirectly, by a customer, and the article is for the use of, and not for resale by, the customer, the delivery of the article to the customer will be treated as the first retail sale of the article for a price equal to its fair market value at the time of delivery.

¶ 18,002B **Effective date.**—The imposition of these taxes is effective on January 1, 1991. They are not applicable to any sale or use after December 31, 1999. In determining whether these taxes are applicable to any sale after December 31, 1990, the amount paid for any article (or any part of accessory thereof) is not considered if the purchaser held on September 30, 1990, a binding contract for the purchase of the article (or part or accessory).

.01 Code Sec. 4001.

.05 Code Sec. 4002.

.10 Code Sec. 4003.

.15 Code Sec. 4006.

.20 Code Sec. 4007.

¶ 18,002C **Rules of general applicability.**—The following are rules and definitions that apply to luxury taxes.

First retail sale. The term "first retail sale" means the first sale, for a purpose other than resale, after manufacture, production, or importation.

Use treated as sale. Any person who uses an article taxable under any provision listed in ¶ 525 before the first retail sale of the article is liable for tax in the same manner as if the article were sold at retail by the person.

This rule does not apply to: (1) the use of an article as material in the manufacture or production of, or as a component part of, another article taxable under these provisions to be manufactured or produced by the person; (2) any use of a passenger vehicle as a demonstrator for a potential customer while the potential customer is in the vehicle; and (3) any use of an article after importation if the user or importer establishes that the first use of the article occurred before January 1, 1991, outside the United States.

The tax under this rule is computed on the price at which similar articles are sold at retail in the ordinary course of trade.

Leases. The lease of an article (including any renewal or any extension of a lease or any subsequent lease of an article) by any person is considered a sale of the article at retail.

The sale of a passenger vehicle, boat, or aircraft to a person engaged in a leasing or rental trade or business of such an article for leasing by such person in a qualified lease will not be treated as the first retail sale of the article. A qualified lease is any lease in the case of a boat or an aircraft, and any lease of any passenger vehicle for one year or more.

If the qualified lease of an article is treated as the first retail sale of the article, the tax is computed on the lowest price for which the article is sold by retailers in the ordinary course of trade. Rules similar to the rules regarding leases of automobiles subject to the gas guzzler tax apply regarding the payment of the tax. No tax is imposed on any lease

payment under a qualified lease if the lessee's use of the article under the lease is an exempt use (as defined at ¶ 525).

Price. In determining price, any charge incident to placing the article in condition ready for use is included. The amount of the tax imposed by the provisions at ¶ 525 is excluded. Also excluded, if it is stated as a separate charge, is the amount of any retail sales tax imposed by any state or political subdivision thereof or the District of Columbia, whether the liability for the tax is imposed on the vendor or vendee. The value of any component of the article is excluded if the component is furnished by the first user of the article and the component has been used before the furnishing (this rule does not apply to the taxes imposed on jewelry and furs). Further, the price is determined without regard to any trade-in.

Rules similar to those under Code Sec. 4052(b) relating to arm's-length transactions and when the tax is paid by manufacturer, produce or importer apply.

Parts and accessories. Part and accessories sold on, in connection with, or with the sale of any article subject to the above taxes are treated as part of the article.

Partial payments. In the case of certain contracts, sales, or arrangements, rules similar to the rules for payment of tax relating the leases of automobiles subject to the gas guzzler tax are applicable.

Exports. These tax provisions do not apply to the first retail sale of an article for export, or for resale by the purchaser to a second purchaser for export.

Manufacturers. In the case of an article that is sold free of tax, if the manufacturer in good faith accepts a certification by the purchaser that the article will be used in accordance with the applicable provisions of law, no tax will thereafter be imposed on such sale by the manufacturer.

Diesel and Special Fuels Excise Taxes

Rates . . .	¶ 18,003	Credits or refunds . . .	¶ 18,003C
Alcohol mixtures . . .	¶ 18,003A	Diesel fuel differential amount . . .	
Exemptions . . .	¶ 18,003B	¶ 18,003D	

¶ 18,003 **Rates.** An excise tax is imposed on the sale or use of diesel fuel or special motor fuels in motor vehicles for use on the highway and, in the case of special motor fuels, in motorboats.

● **Diesel fuel**

A 20.1-cent-per-gallon excise tax (15.1 cents per gallon up to December 1, 1990) is imposed on:

- (1) the sale of any liquid (other than gasoline) to an owner, lessee, or other operator of a diesel-powered highway vehicle for use in such vehicle, or
- (2) the use of any liquid by a person as a fuel in a diesel-powered highway vehicle, if there is no taxable sale of such liquid.

In the case of diesel fuel, the 20.1-cent-per-gallon tax is payable on fuel sold for use or used in diesel-powered vehicles registered or required to be registered for highway use. If the fuel is sold or used for off-highway business uses, generally, there is no excise tax. See "Exemptions," ¶ 18,003B.

The 20.1-cent-per-gallon excise tax, which is currently collected at the retail level, may, at the election of the retailer, be imposed and collected by the wholesaler or the manufacturer for direct sales.

The excise tax on diesel fuel is scheduled to terminate on October 1, 1995.

● **Special motor fuels**

A 14.1-cent-per-gallon tax (9.1 cents per gallon up to December 1, 1990) is imposed on so-called special motor fuels. "Special motor fuels" include benzol, benzene, naphtha, liquefied petroleum gas, and other gasoline substitutes. The tax is imposed on:

¶ 18,003

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