

Approved

May 7, 1992

Minutes of the House Committee on Taxation. The meeting was called to order by Joan Wagnon, Chairperson, at 9:10 a.m. on Tuesday, March 24, 1992 in room 519-S of the Capitol.

All members were present except:

Rep. Ken Grotewiel, excused; Rep. Rex Crowell, excused.

Committee staff present:

Tom Severn & Chris Courtwright, Legislative Research; Don Hayward, Revisor; Linda Frey, Committee Secretary; Douglas E. Johnston, Committee Assistant.

Conferees appearing before the committee:

David Cunningham, Director of Property Valuation, testified in regard to HB 3037, registration and regulation of personal property tax rendition form preparers (Attachment 1). He said he does not favor registration of tax preparers and that more enforcement of current law is necessary. Counties lack the incentive and tools for strong enforcement.

In response to a question from Rep. Gwen Welshimer, Cunningham said he is not convinced there are a large number of preparers doing poor jobs. The problem is a lack of prosecution of those that are not doing good jobs, he said. The barriers to greater enforcement are weak penalties that do not motivate prosecutors to action.

Rep. Bob Vancrum said he favored giving counties more tools for prosecution and that one such tool could be requiring filing of returns under penalty of perjury. He said such a change would only require a statement on the return forms that would indicate penalty of perjury.

In response to a question from Rep. Jo Ann Pottorff, Cunningham said it would be difficult to require the signature of both the tax preparer and the principal business owner. Many business owners filing Kansas returns live in other states.

Rep. Welshimer and Rep. Pottorff agreed to work with Cunningham on developing new language for the bill.

The public hearing on HB 3037 was closed and the hearing on SB 9 was opened.

Mark A. Burghart, General Counsel for the Department of Revenue, testified with regard to Supreme Court decisions affecting taxation of motor vehicles (Attachment 2). As a

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Taxation, room 519-S, State-house, at 9:10 a.m. on Tuesday, March 24, 1992.

result of a current court case regarding the use of two year old mill levies for the computation of current automobile taxes, Burghart suggested an amendment clarifying which levies the Legislature intended using instead of the current statutory language of "next preceding year".

Steve Neske, Department of Revenue, said in response to a question it is feasible to use the previous year mill levies for automobile taxes.

Bev Bradley, representing the Kansas Association of Counties, spoke in regard to vehicle taxes (Attachment 3).

Nancy Hempen, Douglas County Treasurer, said she favors SB 9.

Rep. Vancrum said certifying mill levies in January may be difficult in counties with ballot questions in November.

In response to a question from Rep. Betty Jo Charlton, Hempen said the method for solving the "alphabet problem", which is the subject of a court case against the state, is in the bill.

Tom Severn, Legislative Research Analyst, discussed a spreadsheet he distributed to the committee regarding motor vehicle taxes showing the impact if HB 2892 became law (Attachment 4). He said the spreadsheet simulated tax changes in 1994.

Rep. Jess Harder said he favored waiting to address vehicle tax issues until after HB 2892 becomes law.

Chris Courtwright, Legislative Research Analyst, said amending the motor vehicle statutes as suggested by the Department of Revenue remove \$77 million from the school finance formula.

The public hearing on SB 9 was closed. After further committee discussion, the meeting adjourned at 10:15 a.m. The next meeting will be March 25 at 9:00 a.m.

GUEST LIST

COMMITTEE: House of Representatives

DATE: 3/24/92

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Alan Steppat	Topeka	Pete McGill & Associates
Dave Cunningham	Topeka	PVD
BEV BRADLEY	TOPEKA	KS Assoc of Counties
Glen Freel	Topeka	John Hoffer
HAROLD PITTS	TOPEKA	AAKP-CCTF
Nancy Kinsley	Topeka	LWV of KS
Ruth Wilkin	Topeka	LWV of KS
Judy Smith-Crawford	Topeka	Sm Co. Treasurers
Cleta Chene	Topeka	Sm Co. Treasurer
Mark Tallman	Topeka	KASIS
Don Siefert	Olathe	City of Olathe
Ann Somerville	TOPEKA	KS Motor Car Dealers Assn
Michelle Lister	Topeka	K. Soc. Consulting
Chris McKenzi	Topeka	League of Ks. Municipalities
Mary Ellen Conley	Wichita	Ks. Assoc. for Small Business
Doug G. Bach	Kansas City, KS	City of KCK
Janet Stubbbs	Topeka	#BA of Kansas
MARY E TURKINGTON	Topeka	Ks. Motor Carriers Assn.
Sagee Oakes	TOPEKA	KIADA
Faye Kresynian	Columbus K	Chester Co Treas
JOANN HAMILTON	LYNDON	OSAGE CO. TREAS
Bill Ervin	Topeka	Dept of Admin
WALT DARLING	TOPEKA	Ks Division of Budget
Barbara Brutt	Topeka	Dept of Admin

STATE OF KANSAS



David C. Cunningham, Director
Robert B. Docking State Office Building
915 S.W. Harrison St.
Topeka, Kansas 66612-1585

(913) 296-2365
FAX (913) 296-2320

Department of Revenue
Division of Property Valuation

-REMARKS-
ON
HOUSE BILL 3037
TO
HOUSE ASSESSMENT AND TAXATION COMMITTEE
BY
DAVID C. CUNNINGHAM, DIRECTOR OF PROPERTY VALUATION
MARCH 24, 1992

I believe in the concept of regulating personal property renditions. I however oppose House Bill 3037. I oppose this bill because I believe that the local level is the proper place to enforce the personal property reporting statutes. It would be difficult if not impossible for the Division to register, test, monitor, and generally regulate property tax consultants. I have seen television advertisements for home study courses on how to become a property tax expert. I do not want to be placed in the position of indicating that a particular tax consultant is doing or will do a good job of reporting only to have a county complain about my authorization if the consultant underreports for a given tax year. The county appraiser and the county/district attorney are in the best position to review and/or audit renditions and prosecute anyone who is not properly reporting personal property.

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STATE OF KANSAS



Mark A. Burghart, General Counsel
Robert B. Docking State Office Building
915 S.W. Harrison St.
Topeka, Kansas 66612-1588

(913) 296-2381
FAX (913) 296-7928

Department of Revenue
Legal Services Bureau

MEMORANDUM

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

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

Date: March 24, 1992

Subject: Supreme Court Decisions Affecting
Taxation of Motor Vehicles

On February 28, 1992, the Kansas Supreme Court issued two opinions regarding the Kansas Motor Vehicle Tax. This memorandum will briefly review these decisions and explain how they affect the computation of the motor vehicle tax in the future.

Zarda et al. v. State of Kansas, et al.

On August 27, 1990 a class action suit was filed in Shawnee County District Court challenging the current system of staggered registration of motor vehicles. The suit was based upon an Attorney General's Opinion (No. 90-100) which held the staggered registration system for vehicles was unconstitutional because owners with surnames at the end of the alphabet paid more than those at the beginning of the alphabet. Staggered registration under this type of system failed to allow the same depreciation deduction for those at the end of the alphabet that was enjoyed by those at the beginning of the alphabet.

The Department of Revenue filed a motion to dismiss for failure to exhaust administrative remedies. The suit was dismissed by the district court and an appeal taken to the Kansas Supreme Court. On appeal the sole issue was whether the district court lacked subject matter jurisdiction on the ground that plaintiffs had failed to exhaust administrative remedies.

The Supreme Court affirmed the trial court. The Court pointed out that K.S.A. 1991 Supp. 79-2005 and K.S.A. 1991 Supp. 74-2426 set forth the procedure for protesting the payment of taxes and for the recovery of taxes. Since the taxpayers failed to adhere to the statutory protest procedures, they could not proceed to district court to seek their refunds. Perhaps equally notable are comments the Court made regarding the staggered registration system itself. The Court noted

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that a permanent regulation promulgated by the Department (K.A.R. 92-55-2a), effective January 1, 1991, eliminated any discrepancies in taxes based upon letters in a surname. The regulation simply accelerated depreciation to January 1 when the period for which an owner is seeking to register a motor vehicle covers a portion of two calendar years.

In light of the Court's decision in Zarda, there is some question whether S.B. 9 is still needed. The bill merely codifies the curative regulation and also prorates mill levies when a registration year extends over two calendar years. The proration feature was recommended by several counties and ostensibly was designed to further insure equitable treatment among vehicle registrants. It also would lessen the fiscal impact of the curative regulation.

Dean et al. v. State of Kansas, et al.

The second class action suit filed in Johnson County District Court concerned the manner in which the motor vehicle tax is computed. Plaintiffs contended that the Department and the counties were in error in computing the taxes because average county tax rates from two years prior to the year in which the tax was to be collected were utilized. For tax year 1990, plaintiffs argued that 1989 levies rather than 1988 levies should have been utilized to compute the taxes. The plaintiffs' case turned on the interpretation of "next preceding tax year" in K.S.A. 79-5105(c).

Once again the Department and the counties filed motions to dismiss which were granted by the district court. The issue on appeal to the Kansas Supreme Court was whether the district court lacked subject matter jurisdiction on the ground that plaintiffs had failed to exhaust administrative remedies. The Supreme Court again affirmed the district court decision. The reasoning of the court was virtually identical to that employed in the Zarda decision on the issue of exhaustion of administrative remedies.

Since the interpretation of "next preceding tax year" was not an issue on appeal, the Supreme Court did not specifically interpret the language. The current policy continues to require the use of two year old levies to compute the motor vehicle tax. However, with the possibility of a 29 mill statewide levy, there may be some need for legislative clarification. The statute should specifically provide that one year old average county levies should be utilized. If one year old levies are mandated, then legislation may also be necessary to insure that such levies are indeed provided by the counties to the Department in a timely fashion in order that tax charts and programming changes will be completed by January 1 of each year. Currently, such levy information is not received from some counties until February. The average county levies, therefore, cannot be certified by the Secretary as required by K.S.A. 79-5105(c) until after the January 1 date. The problem could be remedied if the county-wide average levy is required to be transmitted to the Department by November 1 and the requirement calling for the Secretary's certification is eliminated.

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



"Service to County Government"

To: Representative Joan Wagnon, Chairperson
Members House Taxation Committee

From: Bev Bradley, Deputy Director
Kansas Association of Counties

Re: SB 9

The Kansas Association of Counties has concern for Senate Bill 9 similar to those expressed on other motor vehicle tax bills that have been heard particularly in the Senate this year. Our association has a convention approved policy that states: The KAC recommends that any legislation which deals with motor vehicle registration and taxation should include the following criteria:

- a. Retain a staggered system of issuing the licenses and collecting the motor vehicle tax.
- b. Be fair and equitable to all taxpayers, no matter what month in which their vehicle is registered.
- c. Result in no revenue loss to local governments.

We appreciate your consideration of the above items when you work any bill dealing with motor vehicle taxation.

TSB9

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Motor Vehicle Tax--As if HB2892 had been in effect in 1991

KANSAS COUNTY NAME	Projected CY93 Taxes (current law)	29 Mill 1991 Levy	
		Projected CY93 Taxes (29 mills)	Decrease (Increase)
ALLEN	1,726,673	1,320,120	406,554
ANDERSON	900,045	737,408	162,637
ATCHISON	1,686,807	1,287,223	399,584
BARBER	646,439	531,438	115,001
BARTON	3,877,127	3,030,426	846,700
BOURBON	1,594,384	1,249,588	344,796
BROWN	1,202,899	929,957	272,942
BUTLER	6,589,144	4,870,016	1,719,128
CHASE	255,839	210,786	45,052
CHAUTAUQUA	473,980	424,393	49,587
CHEROKEE	1,754,360	1,445,444	308,916
CHEYENNE	382,720	288,498	94,223
CLARK	330,622	274,688	55,933
CLAY	1,002,737	839,337	163,400
CLOUD	1,498,172	1,197,786	300,386
COFFEY	449,881	622,585	(172,705)
COMANCHE	312,105	254,263	57,842
COWLEY	4,460,538	3,274,845	1,185,694
CRAWFORD	3,504,351	2,777,253	727,097
DECATUR	460,401	363,297	97,104
DICKINSON	2,057,302	1,493,643	563,659
DONIPHAN	787,662	678,252	109,410
DOUGLAS	8,876,228	6,166,437	2,709,791
EDWARDS	494,837	386,506	108,331
ELK	348,930	309,341	39,589
ELLIS	2,942,709	2,015,475	927,234
ELLSWORTH	770,555	535,162	235,394
FINNEY	3,155,412	2,576,790	578,622
FORD	3,462,472	2,550,328	912,144
FRANKLIN	2,450,372	1,966,614	483,759
GEARY	1,809,519	1,435,668	373,851
GOVE	413,905	297,411	116,494
GRAHAM	403,467	323,213	80,255
GRANT	570,086	555,561	14,525
GRAY	743,482	578,560	164,922
GREELEY	179,595	154,031	25,564
GREENWOOD	965,961	789,563	176,398
HAMILTON	260,533	231,975	28,558
HARPER	870,703	667,490	203,213
HARVEY	3,652,747	2,565,177	1,087,570
HASKELL	345,369	314,360	31,009
HODGEMAN	328,426	255,482	72,944
JACKSON	1,087,081	924,993	162,088
JEFFERSON	1,788,802	1,417,316	371,486
JEWELL	518,078	379,698	138,380
JOHNSON	59,174,040	46,679,528	12,494,512
KEARNY	295,639	291,737	3,902
KINGMAN	949,637	708,967	240,669
KIOWA	407,688	306,339	101,349
LABETTE	2,648,072	1,933,394	714,677
LANE	378,135	301,117	77,018
LEAVENWORTH	5,750,269	4,134,246	1,616,022
LINCOLN	424,552	345,353	79,199
LINN	571,662	496,214	75,448

Motor Vehicle Tax--As if HB2892 had been in effect in 1991

KANSAS COUNTY NAME	Projected CY93 Taxes (current law)	29 Mill 1991 Levy	
		Projected CY93 Taxes (29 mills)	Decrease (Increase)
LOGAN	358,620	253,061	105,559
LYON	3,682,831	2,799,101	883,730
MARION	1,327,384	1,025,816	301,569
MARSHALL	1,349,958	1,084,535	265,423
McPHERSON	3,745,026	2,727,842	1,017,183
MEADE	491,646	395,593	96,053
MIAMI	3,100,284	2,308,431	791,853
MITCHELL	969,154	759,409	209,745
MONTGOMERY	4,361,778	3,511,259	850,519
MORRIS	739,197	603,640	135,557
MORTON	331,535	328,390	3,146
NEMAHA	1,175,754	965,276	210,477
NEOSHO	2,272,168	1,732,611	539,558
NESS	483,491	383,475	100,016
NORTON	695,262	536,757	158,505
OSAGE	1,540,486	1,230,261	310,225
OSBORNE	548,969	427,459	121,511
OTTAWA	619,644	528,829	90,815
PAWNEE	890,627	668,574	222,053
PHILLIPS	772,681	607,595	165,085
POTTAWATOMIE	1,259,197	1,193,287	65,910
PRATT	1,315,195	1,045,281	269,913
RAWLINS	407,755	303,230	104,525
RENO	8,070,061	5,911,910	2,158,151
REPUBLIC	775,334	576,014	199,320
RICE	1,138,938	885,022	253,916
RILEY	4,858,331	3,399,684	1,458,647
ROOKS	705,344	598,002	107,342
RUSH	407,940	342,780	65,160
RUSSELL	994,908	688,793	306,115
SALINE	5,831,355	3,975,690	1,855,665
SCOTT	700,595	536,140	164,455
SEDGWICK	53,404,582	33,752,978	19,651,604
SEWARD	1,858,376	1,453,835	404,541
SHAWNEE	22,539,180	16,258,525	6,280,655
SHERIDAN	393,365	308,781	84,584
SHERMAN	778,723	600,219	178,504
SMITH	645,220	461,158	184,062
STAFFORD	542,745	434,517	108,228
STANTON	299,364	277,665	21,699
STEVENS	291,456	369,663	(78,206)
SUMNER	2,881,044	2,107,006	774,038
THOMAS	993,869	799,006	194,863
TREGO	404,999	341,931	63,068
WABAUNSEE	676,965	502,275	174,690
WALLACE	231,568	164,085	67,483
WASHINGTON	697,727	554,097	143,630
WICHITA	355,259	249,771	105,488
WILSON	1,048,473	883,549	164,924
WOODSON	417,274	363,256	54,018
WYANDOTTE	16,181,058	13,221,713	2,959,345
State Totals	303,555,843	226,133,065	77,422,778