

Approved: \_\_\_\_\_

*Phill Kline*  
Date

MINUTES OF THE HOUSE COMMITTEE ON TAXATION.

The meeting was called to order by Chairperson Phill Kline at 9:00 a.m. on February 9, 1995 in Room 519-S of the Capitol.

All members were present except: Rep. Clyde Graeber - excused  
Rep. Cindy Empson - excused  
Rep. Doug Mays - excused  
Rep. Tony Powell - excused  
Rep. Joe Shriver - excused

Committee staff present: Chris Courtwright, Legislative Research Department  
Tom Severn, Legislative Research Department  
Don Hayward, Revisor of Statutes  
Ann McMorris, Committee Secretary

Conferees appearing before the committee: Listed after each bill.

Others attending: see attached list

Chair opened hearing on:

<sup>95</sup> HB 2399 - Qualification for employment by division of property valuation or <sup>appointment</sup> ~~aptment~~ board of tax appeals member.

Proponents - Bev Bradley, Deputy Executive Director, Kansas Association of Counties 1  
(Attachment 1)

Opponents - Susan Duffy, acting director, Division of Property Valuation (Attachment 2)  
Ron Swisher, chief of county appraisers bureau  
Larry Reynolds, chief of compliance bureau

Questions and comments by the committee. Suggested **HB 2399** be amended to indicate time limit to include new employees.

Chair closed hearing on **HB 2399**.

Chair opened hearing on:

HB 2176 - Property valuation; appraisal directives; procedure to adopt

Chris Courtwright of Legislative Research, had prepared a memorandum regarding the Department of Revenue Rule and Regulation Authority - Division of Taxation and Division of Property Valuation which was reviewed. (Attachment 3)

Opponent - Susan Duffy, acting director of Division of Property Valuation

Chair closed hearing on **HB 2176** pending appearance of Rep. Neufeld, chairperson for Administrative Rules and Regulations.

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

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON TAXATION, Room 519-S Statehouse, at 9:00 a.m. on February 9, 1995.

Adjournment.

The next meeting is scheduled for February 10, 1995.





**KANSAS  
ASSOCIATION  
OF COUNTIES**

*"Service to County Government"*

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**Executive Director**

John T. Torbert, CAE

February 9, 1995

To: Phill Kline, Chairman  
Members House Taxation Committee

From: Bev Bradley, Deputy Executive Director  
Kansas Association of Counties

Re: HB 2399

The Kansas Association of Counties is in support of HB 2399.

Since 1985, when the reappraisal law was passed, we have heard from county officials that the staff employed by the Division of Property Valuation to assist or supervise county and district appraisers should have education and training, at the very least, equal to that required of county or district appraisers to be on the "approved appraiser list" published by PVD.

In addition, the Kansas Association of Counties has a delegate approved platform position which states that the Association urges the legislature to provide BOTAs all necessary assistance to allow the timely and expedient disposition of pending tax appeals, and the Association encourages criteria be put in place requiring the relevant training and background to serve on the State Board of Tax Appeals.

We believe this bill addresses both issues and urge your favorable consideration.

ts2399

House Taxation  
2-9-95  
Attachment 1

STATE OF KANSAS

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Department of Revenue  
*Division of Property Valuation*

MEMORANDUM

TO: Phill Kline, Chairperson  
House Taxation Committee  
FROM: Susan K. Duffy, Acting Director  
Division of Property Valuation  
DATE: February 9, 1995  
RE: Testimony on House Bill 2399

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Thank you for the opportunity to appear before you today to present testimony on House Bill 2399 which relates to the qualifications of certain employees of the Division of Property Valuation and members of the Board of Tax Appeals. I will only be addressing New Section 1 which relates to the qualifications of Property Valuation Staff.

House Bill 2399 amends K.S.A. 74-2433 to provide that future employees of the Division of Property Valuation who are hired to assist the Director of Property Valuation in the performance of statutorily prescribed duties relating to direct assistance or supervision of county personnel must meet the same qualifications as county or district appraisers prior to their employment.

In addition, current employees who provide direct assistance and supervision of the county and district appraisers would have to be qualified to be appointed as a county appraiser within one year of the effective date of this bill or they would be assigned to other duties within the Division.

K.S.A. 19-430 sets forth the requirements to be appointed as a county appraiser. As of July 1, 1997, no one shall be appointed to the office of county appraiser unless that person is a certified general appraiser. However, any person who holds the office of county appraiser upon the expiration of the term of office is eligible for reappointment regardless of whether or not they are certified or licensed.

House Taxation  
2-9-95  
Attachment 2-1

In order to become certified, Kansas Administrative Regulation (KAR) 117-3-2 states that each applicant for the general classification shall have the equivalent of two years of appraisal experience. 1000 hours equals one year of appraisal experience therefore each applicant must have 2000 hours before they can be certified. The regulation further states that an applicant can not receive credit for more than 1000 hours within a calendar year. The proposed bill provides that staff would have only 1 year to meet the experience requirements. This timeframe may be extremely difficult for staff to meet.

In addition, on January 26, 1995, the Kansas Real Estate Appraisal Board voted to amend regulation 117-3-2 to provide that no more than 500 hours of the 2000 hours of appraisal experience could be in the area of ad valorem tax appraisal. This change in regulation means that staff would have to perform 1,500 hours or 1.5 years of full time fee or non-governmental related appraisal work in order to meet the revised experience requirement. This could not be accomplished while the person was employed by the Division.

It also presents the potential for a conflict of interest. The fee appraisals the staff perform could be used by taxpayers as evidence in an appeal hearing. This puts staff and the county appraiser on opposing sides. In addition, if the taxpayer appeals to a hearing officer or panel, Division staff may end up reviewing the hearing documentation to which they were a party.

The International Association of Assessing Officers "Code of Ethics and Standards of Professional Conduct" addresses this matter. The purpose of the Code and Standards are to establish ethical and professional guidelines for assessing officials and other members of the IAAO. The pertinent provision is as follows:

#### 8. Prohibited Activities

*Accept no appraisal or assessment-related assignment that could reasonably be construed as being in conflict with their responsibility to their jurisdiction, employer or client or which they have an unrevealed personal interest or bias or which they are not qualified to perform.*

# MEMORANDUM

## Kansas Legislative Research Department

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August 24, 1994

**To:** Joint Committee on Administrative Rules and Regulations  
**From:** Chris W. Courtwright, Principal Analyst  
**Re:** Department of Revenue Rule and Regulation Authority -- Division of Taxation  
and Division of Property Valuation

This memorandum provides general background on the statutory authority delegated to the Department of Revenue for the purposes of promulgating rules and regulations for the administration of property taxes by the Division of Property Valuation (PVD) and the administration of taxes collected by the Division of Taxation. The memo also discusses other methods and tools utilized by the Department to disseminate information to taxpayers and the general public. Included in this general overview of Kansas tax administration is a description of the "Taxpayer Bill of Rights" enacted in 1989.

The memo then provides several specific recommendations for the Committee's consideration regarding individual income tax rules and regulations. In addition, the memo makes more general recommendations the Department may wish to consider when adopting or amending other tax rules and regulations.

Finally, the memo outlines the property tax rules and regulations and "directives" currently in effect and discusses a district court order as it relates to the property tax system over the next several years.

For all taxes administered by the Division of Taxation and PVD, a table provides the statutory citation for general authority by the Department to issue rules and regulations; a list of other statutes authorizing the issuance of rules and regulations on specific subjects; and a list of statutes mandating the issuance of rules and regulations by the Department. Included as attachments are copies of all statutes referenced in the table relating to the rules and regulations of the two divisions and copies of all such rules and regulations currently in effect.

### **Departmental Reorganization – 1972**

The Kansas Department of Revenue currently contains five divisions – the Division of Alcoholic Beverage Control; the Division of Collections; the Division of Taxation; the Division of Property Valuation; and the Division of Vehicles (Attachment 1). The Department's organizational

structure was altered substantially by 1972 executive branch reorganization legislation. In that legislation, what had been the Kansas Department of Revenue was renamed as the Division of Taxation within the new Department of Revenue. The Department of Property Valuation, the Department of Motor Vehicles (which had been under the State Highway Commission), the Office of Alcoholic Beverage Control, and the State Board of Tax Appeals also were renamed and attached as divisions to the new Department of Revenue and placed under the jurisdiction of the Secretary. (Subsequent legislation enacted in 1975 transferred the State Board of Tax Appeals out of the Department of Revenue and established it as an independent agency within the executive branch -- see K.S.A. 74-2433a.)

### **1980s -- Sales Tax Controversy Leads to Reform in Dissemination of Taxpayer Information**

In the mid-1980s, the Department discovered that certain regional offices had been disseminating taxpayer advice over the telephone. This practice became the focus of some controversy after the Department began audits with respect to the application of the sales tax to certain advertising and graphic arts services, especially in the Wichita area. Individuals being audited claimed that they had been told over the phone by the regional office that they did not have to be registered to collect the sales tax or that the tax did not apply to their services, only to discover later that the information they had been given apparently was not correct.

The 1987 Special Committee on Assessment and Taxation studied the issue as part of Proposal No. 6 -- Sales Tax. The Secretary of Revenue told the Committee at a meeting in Wichita that the Department's central administration in Topeka viewed the regional offices only as collection entities and took immediate steps at that time to assure that these offices would no longer disseminate advice or opinions to taxpayers about the application of the sales tax or other taxes. Responses over the telephone were to be given to only the most general questions, and advice or assistance on specific tax questions was to be provided prospectively only from departmental staff in Topeka.

Under the new departmental policy, taxpayers were asked to put specific questions in writing and provide as many details as possible about the nature of the inquiry. The Department then would issue a response letter in writing (a "private letter ruling") based on the facts as described in the request letter. The Department then was to consider itself bound by the principle of estoppel from changing, except under certain circumstances, its written interpretation or advice given to a taxpayer who had provided accurate information in the initial request letter and was relying on information in the response letter.

The circumstances under which a private letter ruling cease to be valid include changes in statutes or regulations to which the ruling applies; changes in the interpretation of the statute or regulation pursuant to a court decision; changes in the interpretation pursuant to an amended regulation or "revenue ruling" by the Department; and issuance of a general bulletin or publication of a notice by the Department in the *Kansas Register* that outstanding opinions issued prior to a given date have been rescinded.

The revenue rulings were another tool developed at this time by the Department to disseminate information about certain sales tax interpretations to a large number of taxpayers. The revenue rulings were to be issued with general application only and not to address a specified set of facts or circumstances. Similar to the provisions relating to private letter rulings, revenue rulings cease to be valid upon subsequent changes in law or regulations; subsequent changes of interpretation of laws or regulations by a court; subsequent revenue rulings; and issuance of general bulletins or publication in the *Kansas Register* that the rulings have been rescinded.



All provisions relating to sales tax revenue rulings and private letter rulings ultimately were embodied in K.A.R. 92-19-58 and 92-19-59, which became effective on May 1, 1988.

The 1987 Special Committee on Assessment and Taxation noted "with approval the Department's increased use of written opinions, revenue rulings, information circulars, and expanded and clarified rules and regulations to inform the business community of current sales and use tax policy and any proposed changes."

### **Regulations and Statutes Relating to Tax Hearings**

As part of the effort to improve administration, the Department also in 1988 amended and updated certain rules and regulations already in effect with respect to hearings conducted by the Director of Taxation for all taxes administered by the Division (K.A.R. 92-1-1 through 92-1-3). Among other provisions, the regulations allow taxpayers or their attorneys to request an informal conference with the Director prior to a formal hearing and allow the Director to grant continuances and extensions of time for good cause shown. K.S.A. 75-5103, which allows the Secretary of Revenue to adopt rules and regulations "governing the administration of functions" of the Division of Taxation is listed as the statutory authority for these regulations.

Two statutes enacted in 1988 within the Kansas Administrative Procedures Act (KAPA) also speak specifically to the authority of the Director of Taxation in conducting hearings. K.S.A. 77-548 establishes requirements for the Director and staff after an adjudicative hearing has been set with respect to a discussion of the merits of a case or the receipt of any *ex parte* communications. K.S.A. 77-549 provides that the determination of liability by the Division or the Audit Services Bureau for certain taxes prior to the opportunity for a hearing does not require adjudicative proceedings pursuant to KAPA. The Director also is deemed an "agency head" for purposes of KAPA, and final orders issued by the Director under KAPA are required by the statute to be rendered in writing and served within 120 days after conclusion of the hearing or submission of proposed findings, unless the period has been waived or extended with the written consent of all parties.

### **Taxpayer Bill of Rights**

The effort to reform and improve tax administration continued when the Department introduced and supported a measure enacted in 1989 known as the Taxpayer Bill of Rights and Privileges (TBOR). The TBOR, which is now K.S.A. 79-3268, was modeled after legislation already in effect in several other states, and similar measures have been adopted by a number of other states since the Kansas version was enacted in 1989.

Unless more specifically provided otherwise, the TBOR is effective for all taxes administered by the Director of Taxation. The rights and privileges "granted" by the law are as follows:

1. The Director is required to inform taxpayers subject to an assessment of additional tax of their right to appeal.
2. Taxpayers receiving written advice from the Department concerning the taxability of transactions are allowed to rely on that advice when filing tax returns, and the Department is prohibited from taking a position inconsistent with a prior written opinion issued to the same taxpayer which has not been rescinded. (This provision statutorily

extends to other taxes the estoppel protection granted under the private letter ruling sales tax regulation, K.A.R. 92-19-59.)

3. The Director is prohibited from basing employee evaluations on the total amount of assessments issued.
4. The Director is required to waive any interest assessed after a determination that negligence of an employee of the Department resulted in undue delay in assessing the tax or notifying the taxpayer of the assessment.
5. The Department is required within 30 days to release any liens placed upon the property of a taxpayer after payment of all tax, penalty, and interest due.
6. Attorney fees and related expenses may be awarded to a taxpayer if it can be proved that an assessment or claim made by the Department is "without a reasonable basis in law or fact."

### **Other Methods of Providing Tax Information**

In recent years, the Department also has taken steps to notify the public of changes in law with "Special Notices" and other mass mailings to large groups of taxpayers and affected businesses. Attachment 2, a 1991 mailing sent to all motor vehicle rental agencies, informed the industry of the implementation of the special 3.5 percent excise tax on vehicle rentals. Attachment 3 is a Special Notice sent to Kansas contractors in May of 1992 regarding the implementation of the 2.5 percent sales tax on original construction labor services. Attachment 4 is a broader mailing prepared at the same time discussing all 1992 changes in the sales tax rate and base and providing new sales tax rate tables for retailers.

Several statutes relating to the dissemination of information by all state agencies also are worthy of mention. K.S.A. 75-3048 authorizes each state agency to print reports, pamphlets, books, and other material that pertains to its activity and which are within the terms of a specific legislative authorization or appropriation. K.S.A. 75-3027a requires that every official letter, form, or other official written communication issued by a state agency to a Kansas citizen contain the name, address, and phone number of the agency. K.S.A. 75-3046 requires each state agency to prepare a report describing the various programs and functions and other pertinent information. (The Department of Revenue annually prepares a report full of tax and other data relative to the activities of all five divisions for the immediately preceding fiscal year. The FY 1993 report was issued in December.)

### **Analysis of Individual Income Tax Regulations**

The Kansas Income Tax Act (KITA), K.S.A. 79-3201 *et seq.*, was enacted in 1933 in the wake of a 1932 constitutional amendment authorizing imposition of the tax. The Kansas Withholding and Declaration of Estimated Tax Act (KWDETA), K.S.A. 79-3294 *et seq.*, was enacted in 1965 with the stipulation that all provisions of KITA would apply to the extent that they were not inconsistent. Language in K.S.A. 79-3294 also provides that all remedies available to the Secretary of Revenue for the administration, assessment, enforcement, and collection of tax under KITA also are available under KWDETA.

## Authorizing Statutes

The general authority for the Secretary of Revenue to issue rules and regulations necessary for administration of KITA (and KWDETA) is found in K.S.A. 79-3236. That statute provides that the Secretary "shall adopt rules and regulations not inconsistent with the provisions of this act, as necessary." Originally enacted in 1933 with substantially similar language, the statute was last amended in 1972 as part of the executive branch reorganization legislation transferring the powers and duties of the former "Director of Revenue" to the Secretary of Revenue. All 20 rules and regulations under K.A.R. 92-11 currently in effect relating to KWDETA and 62 of the 63 rules and regulations under K.A.R. 92-12 currently in effect relating to KITA cite K.S.A. 79-3236 as the authorizing statute. Many of the withholding and estimated tax rules and regulations under K.A.R. 92-11 also cite as an authorizing statute K.S.A. 79-3294, the law that clarifies that the withholding and estimated tax provisions are considered part of the broader income tax act for purposes of administration and enforcement.

## Other Income Tax Statutory Rule and Regulation Requirements

K.S.A. 79-3233a authorizes a taxpayer, a taxpayer's legal representative, or taxpayer's heirs to petition the Department in cases of "insolvency" to compromise delinquent income taxes, including penalties and interest thereon. The statute provides that taxpayers are insolvent when their assets at fair market value are not sufficient to pay liabilities. The Secretary is then mandated to adopt rules and regulations to provide for qualifications or tests to determine insolvency, with the requirement that the qualifications or tests be consistent with the statutory definition of "insolvent." The Department has complied with this statute by issuing K.A.R. 92-16-66, last amended in 1982, which further defines both "assets" and "liabilities."

K.S.A. 79-3297a gives the Secretary of Revenue authority to adjust state withholding rates (from the 10 percent of federal withholding rate set in K.S.A. 79-3296) because of changes in federal withholding rates, Kansas income tax rates, and changes in the state tax base. The statute provides that the same withholding rate may apply to all adjusted gross income classes, or variable rates may be established for different income classes. Changes in the rate are required to be adopted as a rule and regulation and do not become effective until filed as such with the Secretary of State. Though no withholding rate tables currently appear in a regulation, K.A.R. 92-11-4 (which lists K.S.A. 79-3297a as the statute being implemented) says that withholding is to be determined "in accordance with a method" prescribed by the Director of Taxation which takes into account wages, deductions, number of exemptions claimed, and the tax rate. (Recommendation: The Department could consider adopting a new regulation providing the current withholding tables or at least offering additional details regarding the method used by the Director in determining the tables.)

K.S.A. 79-32,101 (c) exempts "under rules and regulations of the Secretary of Revenue" taxpayers other than farmers and fishermen from filing estimated tax declarations on January 15 if a return for the prior tax year is filed on or before January 31 and the prior year's tax is paid in full. (Farmers and fishermen earning at least two-thirds of their estimated gross income from farming or fishing may ignore the estimated tax payment schedule applicable to other individuals and file declarations at any time prior to January 15 of the following year -- see K.S.A. 79-32,102.) No regulations specifically relating to this exemption from the January 15 filing date are in effect at the present time.

The issuance of K.A.R. 92-11-24 complies with the statutory requirement in K.S.A. 79-32,102 and K.S.A. 79-32,103 that the Secretary prescribe regulations relating to declarations of estimated tax

payments in "short taxable years." The reference in the regulation, however, is only to the second of the two statutes. (Recommendation: If the Department agrees that the reference to K.S.A. 79-32,102 as a statute also being implemented should be added, the reference could be changed the next time the regulation is substantively amended. In the alternative, the Secretary of State could amend the reference pursuant to the editorial authority contained in K.S.A. 77-435.)

K.S.A. 79-32,106, which relates to employers' and fiduciaries' liability for tax required to be withheld, in subsection (c) authorizes the Director of Taxation, under rules and regulations of the Secretary of Revenue, to require fiduciaries, agents, or others responsible for paying wages to employees to perform the acts required of employers under KWDETA and any other acts prescribed by the Director. No regulations currently in effect reference this statute.

Though K.A.R. 92-11-15 and 92-11-16 do not specifically reference K.S.A. 79-32,106, they also deal with employers' liability and the designation of "agents" as employers and were issued in 1965 as part of the broad effort to implement the provisions of KWDETA. (Recommendation: If the Department agrees that K.A.R. 92-11-15 and 92-11-16 were issued in part to implement K.S.A. 79-32,106, the references could be added either by the Secretary of State pursuant to K.S.A. 77-435 or by the Department the next time the regulations are substantively amended.)

K.A.R. 92-11-16 also appears to restate several of the provisions of K.S.A. 1993 Supp. 79-32,107 as amended by section 2 of 1994 S.B. 503 (Chapter 95, *1994 Session Laws*). The regulation and statute both provide that:

1. employers failing to withhold taxes as required may be released from liability once the tax has been paid (but not from penalties or interest resulting from the failure to withhold); and
2. persons willfully attempting to evade or defeat the tax or otherwise failing to collect or truthfully account for the tax are subject to a penalty equal to the total amount of the tax evaded, in addition to all other penalties prescribed by law.

But one of the references at the conclusion of K.A.R. 92-11-16 is to K.S.A. 79-32,104(c). This statute, which allows estimated tax declarations to be credited against a taxpayer's income tax liability, appears to deal with a different subject matter and never has contained a subsection (c) since its enactment in 1965. (Recommendation: If the Department agrees that K.A.R. 92-11-16 should more appropriately reference the latest version of K.S.A. 79-32,107 and not K.S.A. 79-32,104(c), the reference could be amended either by the Secretary of State pursuant to K.S.A. 77-435 or by the Department the next time the regulation is substantively amended.)

The 1994 amendment in S.B. 503 also enacted a new provision authorizing the Secretary or Secretary's designee to waive or reduce the penalty for persons willfully attempting to evade the tax or failing to collect or truthfully account for the tax when it has been determined that the evasion or failure was due to "reasonable" causes. The penalty language in K.A.R. 92-11-16 (b) does not yet reflect the fact that the Secretary now has such discretion. (Recommendation: Though the new statutory language is controlling, K.A.R. 92-11-16 could be amended at some point to reflect the fact that the Secretary now has discretion to waive the penalty.)

The only income tax regulation currently in effect that does not cite K.S.A. 79-3236 as the authorizing statute is K.A.R. 92-12-105, which defines "contribution to income" for the purposes of



disaggregating the income of a debtor of the state from income of the debtor's spouse. Set-off legislation (K.S.A. 75-6203) authorizes the Secretary to adopt rules and regulations defining this term.

### **Solar Energy Income Tax Credits**

Statutes that allowed taxpayers to claim income tax credits for the installation of solar energy systems were repealed in 1988. (Recommendation: All 23 regulations under K.A.R. 92-12a relating to the solar energy system credits could be repealed by the Department.)

## **Other Taxes -- Statutes Authorizing Rules and Regulations**

### **Inheritance Tax**

The authority for the Department to promulgate regulations for the administration of the inheritance tax is found in K.S.A. 79-1583, which states that the Secretary "shall adopt such rules and regulations as may be deemed necessary to carry out the provisions of this act." Thirty inheritance tax regulations under K.A.R. 92-2 are currently in effect. Many of these regulations have been in effect since 1986. A specific review of the regulations would be necessary to determine whether some of the provisions are obsolete or need to be updated in light of 1993 and 1994 amendments to the Kansas Inheritance Tax Act.

### **Motor Fuel Tax and Transportation of Liquid Fuel**

K.S.A. 1993 Supp. 79-3419 provides that the Secretary "shall adopt rules and regulations for the administration" of the Motor Fuel Tax Law, K.S.A. 79-3401 *et seq.* Twelve regulations currently are in effect under K.A.R. 92-3 relating to the motor fuel tax and transportation of liquid fuel.

### **Cigarette Tax**

K.S.A. 79-3326 states that the Secretary "shall adopt rules and regulations for the administration" of K.S.A. 79-3300 *et seq.*, relating to the taxation of cigarettes. Fourteen regulations currently are in effect under K.A.R. 92-5 relating to the cigarette tax.

### **Minerals and Natural Products Leases on Navigable Stream Beds**

K.S.A. 70a-103 authorizes the Secretary "to make and publish in the *Kansas Register* all needful rules, terms and conditions for the taking, purchasing or selling of the articles and products mentioned" in the act. The articles and products mentioned include sand, gravel, oil, gas, or other minerals taken from state-owned rivers and hay, timber, or other products taken from lands lying in state-owned river beds. Eight regulations under K.A.R. 92-9 currently are in effect with respect to minerals and natural products leases on navigable stream beds. A number of these regulations have been in effect since 1966 and refer to K.S.A. 71-103 as the authorizing statute, but that statute apparently was renumbered as K.S.A. 70a-103 in the early 1980s.

K.S.A. 70a-102 (formerly K.S.A. 71-102) also states that the Secretary "shall determine, by rule and regulation, the amount of compensation to be paid on materials removed from a river or from any land in such river." This sentence was added to the statute in 1990, at the same time specific language was added stating that "with respect to river sand, such compensation shall be computed at the rate of \$.08 per ton taken." K.A.R. 92-9-6a, which was last amended in 1989, set the sand royalty rate at 15 cents per ton for all river sand sold during the preceding month and appears to have been superseded by the 1990 enactment.

### **Interstate Motor Fuel Use Tax**

K.S.A. 79-34,115 prohibits interstate motor fuel users from operating in Kansas without first having secured licenses, which are to be "issued under rules and regulations adopted" by the Secretary. K.S.A. 79-34,123 also provides that the Secretary "shall adopt rules and regulations for the administration of this act." Twelve regulations currently are in effect under K.A.R. 92-13 relating to interstate motor fuel use tax.

### **Liquefied Petroleum (LP) Motor Fuel Tax**

K.S.A. 79-43,102 states that the Secretary "shall adopt rules and regulations for the administration of the Liquefied Petroleum Motor Fuel Tax Law," K.S.A. 79-3490 *et seq.* Six regulations currently are in effect under K.A.R. 92-14 relating to the LP fuel tax.

### **Nonresident Contractors**

K.S.A. 79-1014 requires the Secretary to "adopt rules and regulations for the administration" of the act establishing registration and bond requirements for nonresident contractors. Four regulations currently are in effect under K.A.R. 92-15 relating to such requirements.

### **Tobacco Products Tax**

K.S.A. 79-3385 provides that the Secretary "shall have the power to make and enforce such rules and regulations as may be necessary to administer and enforce" the provisions of the act relating to the taxation of tobacco products. Six regulations currently are in effect under K.A.R. 92-17 relating to the tobacco products tax.

### **Special Fuel Tax**

K.S.A. 79-3483 directs the Secretary to "adopt rules and regulations for the administration" of the Special Fuels Tax Law, K.S.A. 79-3474 *et seq.* Seven regulations currently are in effect under K.A.R. 92-18 regarding the special fuels tax.

## **Sales Tax**

K.S.A. 79-3618 requires the Secretary "to adopt rules and regulations for the administration" of the Kansas Retailers' Sales Tax Act. Seventy-six sales tax regulations currently are in effect under K.A.R. 92-19.

K.A.R. 92-19-1a is a sales tax bracket system promulgated for the use of retailers when the state rate was 4 percent (from 1986-1989).

## **Compensating (Use) Tax**

K.S.A. 79-3707 requires the Secretary "to adopt rules and regulations for the administration" of the Kansas Compensating Tax Act. Twenty regulations currently are in effect under K.A.R. 92-20 relating to the compensating (use) tax, including K.A.R. 92-20-3, which states that each compatible sales tax rule and regulation relating to enforcement, collection, and administration also applies to the use tax.

## **Local Sales Taxes**

K.S.A. 1993 Supp. 12-189 as amended by 1994 H.B. 2622 provides that with the exception of the local sales tax on certain residential utility services, "all laws and administrative rules and regulations . . . relating to the Kansas Retailers' Sales Tax shall apply" insofar as they may be made applicable. The statute goes on to grant the Director of Taxation the authority to "adopt such rules and regulations as may be necessary" for efficient and effective administration and enforcement. Nineteen regulations currently are in effect under K.A.R. 92-21 relating to the local sales tax.

K.A.R. 92-21-21 provides combined state and local sales tax bracket systems which have not been updated to reflect recent changes in the state sales tax rate or other changes in local sales tax statutes authorizing cities and counties to use quarter-percent increments.

## **Homestead Property Tax Refunds**

K.S.A. 79-4510 authorizes the Secretary "to adopt such rules and regulations as may be necessary for the administration" of the Homestead Property Tax Refund Act. Fourteen regulations currently are in effect under K.A.R. 92-22 relating to homestead property tax refunds.

K.A.R. 92-22-23 and 92-22-24 deal with the application of the Act when (1) claimants own and occupy a homestead for part of a year and rent and occupy for the remainder of the year; and (2) claimants own a homestead and rent the land upon which it is situated. Both of these regulations provide a formula for computing the refunds under these circumstances and state that "in no event shall such sum of property taxes accrued and rent constituting property taxes exceed \$400.00." These regulations both were effective in 1977, and the \$400 amount does not reflect subsequent amendments to K.S.A. 1993 Supp. 79-4509 which increased the maximum refund amount available under the Act to \$500 in 1989 and to \$600 in 1992.

## **Bingo**

K.S.A. 79-4708 requires the Secretary to “adopt and enforce rules and regulations to regulate, license, and tax the management, operation and conduct of games of bingo and participants therein and to properly administer and enforce” the bingo tax provisions. The statute further requires the Secretary to adopt rules and regulations relating to “the leasing of premises for the management, operation and conduct of games of bingo.” Thirteen regulations currently are in effect under K.A.R. 92-23 relating to bingo.

## **Liquor Drink Tax**

K.S.A. 1993 Supp. 79-41a03 authorizes the Secretary to “adopt such rules and regulations as may be necessary for the efficient and effective administration and enforcement of the collection” of the liquor drink tax. Fifteen regulations currently are in effect under K.A.R. 92-24 relating to this tax.

K.S.A. Chapter 79, Article 41a, formerly the “retail liquor excise tax,” was renamed as the “liquor drink tax” after the tax was extended to caterers and drinking establishments in 1987. The regulations under K.A.R. 92-24 still refer to the retail liquor excise tax.

## **Transient Guest Tax**

K.S.A. 1993 Supp. 12-1694 and K.S.A. 1993 Supp. 12-1698 both authorize the Secretary to “adopt such rules and regulations as may be necessary” for the administration and enforcement of transient guest taxes levied by cities and counties. Only one regulation is effective with respect to transient guest taxes, K.A.R. 92-25-1, which relates to the effective date for implementation, repeal, or changes in the tax rate.

## **Agricultural Ethyl Alcohol Producer Incentives**

K.S.A. 79-34,163 provides that the Secretary “may adopt such rules and regulations necessary” to administer the provisions of the agricultural ethyl alcohol producer incentive program. Seven regulations currently are effective regarding the program under K.A.R. 92-26.

## **Motor Vehicle Dealers Inventory Tax**

Seven regulations remain in place under K.A.R. 92-53 relating to the motor vehicle dealers inventory tax in spite of the fact that the tax was repealed by the 1988 Legislature.

## **Motor Vehicle Tax**

K.S.A. 79-5115 states that the Secretary “is hereby directed to adopt such rules and regulations as are necessary to administer and carry out the provisions of” the motor vehicle tax. Eleven regulations currently are effective relating to the motor vehicle tax under K.A.R. 92-55.



An additional regulation that applies to the motor vehicle tax is K.A.R. 92-51-21, which provides the alphabetical designation for monthly staggered motor vehicle registration. K.S.A. 79-5101 links motor vehicle tax payments to the same schedule provided in this regulation.

The only change in the motor vehicle tax regulations in recent years occurred when the Secretary adopted K.A.R. 92-55-2a, which changed the depreciation timetable for motor vehicles subject to the tax. Under the old system, vehicles effectively were depreciated 16 percent each year on January 1. The new system effectively provides for monthly depreciation by apportioning one-twelfth of the 16 percent depreciation into each month.

The Attorney General in the summer of 1990 issued Attorney General Opinion No. 90-100 which found the motor vehicle tax system to be unconstitutional because of the manner in which it discriminated against certain taxpayers based solely on their surnames. At the same time, the Attorney General filed a *quo warranto* motion in the Kansas Supreme Court challenging the tax as it was being administered. Attorney General Opinion No. 90-110 opined that the Department had the authority to correct the perceived alphabetical inequity in the tax by issuing a regulation changing the depreciation. Once the Department issued such a regulation, which became K.A.R. 92-55-2a, the Attorney General withdrew his *quo warranto* case from the Kansas Supreme Court. The new system has been applicable for all vehicles since 1991.

## Property Tax Rules and Regulations

### Powers and Duties of PVD Director

The PVD Director statutorily has been granted broad powers and given a wide array of responsibilities in his role as the state's ranking administrator charged with upholding various constitutional and statutory mandates relating to property valuation and the entire property tax system.

K.S.A. 79-1401 states that the Director "shall have general supervision and direction of the county assessors in the performance of their duties, and shall regulate and supervise the due performance thereof." K.S.A. 1993 Supp. 79-1404 grants the Director the power and authority "to have and exercise general supervision over the administration of the assessment and tax laws of the state, over the county and district appraisers, boards of county commissioners, county boards of equalization, and all other boards of levy and assessment, to the end that all assessments of property, real, personal, and mixed be made relatively just and uniform and at its true and full cash market value; to require all county and district appraisers, county commissioners, and county boards of equalization, under penalty of forfeiture and removal from office as such appraisers or boards, to assess all property of every kind and character at its actual and full cash market value."

In *Garvey Grain, Inc. v. MacDonald*, 203 Kan. 1, 12 (1969), the Kansas Supreme Court stated:

"The director of property valuation is an administrative official and his decisions in all matters within the scope of his supervisory power, involving administrative judgment and discretion, are conclusive upon subordinate taxing officials. In the exercise of his powers, the director must of necessity interpret the tax laws and such interpretations are *prima facie* binding."

Attorney General Opinion No. 91-136 concluded that "directives, guidelines, manuals and course instruction materials promulgated by the director of property valuation to assist county and district appraisers in determining fair market or use value of property and designed to achieve uniformity in appraisal are mandatory in the sense that the director, prosecutors and the board of tax appeals may take actions . . . to penalize an appraiser for failure or refusal to comply with or follow such materials."

K.S.A. 79-1405 states that the Director "shall have the power and authority to prosecute any member of any board of county commissioners and any county, township or city assessor for a violation of any of the rules and regulations which may be prescribed, or the violation of any statute of this state relating to the assessment and valuation of property and the collection of taxes."

K.S.A. 79-1473 provides that any county appraiser or other employee acting in the name of the appraiser who willfully neglects or refuses in whole or part to perform the duties of office as required by law is deemed to be guilty of a misdemeanor and subject to a fine of up to \$500 and removal from office.

### **Property Tax Rules and Regulations**

Only ten PVD administrative regulations currently are in effect under K.A.R. 93, Articles 1-5. K.A.R. 93-1-1 through 93-1-4, which relate to hearings by the Director, have been in effect since 1972. These regulations all cite K.S.A. 1993 Supp. 79-1404, which prescribes broadly the powers and duties of the Director, as being an authorizing statute. Also cited as authorizing statutes are several which have been repealed, including K.S.A. 79-1412b and K.S.A. 79-1441.

K.A.R. 93-3-1 through 93-3-4 took effect in 1975 and deal with certificates of value. Since certificates of value statutorily have been replaced with "real estate sales validation questionnaires," these regulations probably could be repealed.

K.A.R. 93-4-1, in effect since 1985, states that for purposes of determining real estate sales ratios, "urban real estate" is comprised of all real estate located within the incorporated limits of any city, and "rural real estate" is comprised of all real estate not located within the incorporated limits of a city. Though this still may be the appropriate methodology for determining the urban and rural subclass ratios, the regulation refers to K.S.A. 79-1435 *et seq.*, which was the old ratio study act repealed in 1992. (The new Kansas Real Estate Ratio Study Act enacted at that time is found at K.S.A. 79-1485 *et seq.*) Both the authorizing statute for K.A.R. 93-4-1, K.S.A. 79-1441, and the statute being implemented, K.S.A. 79-1437 were repealed along with the rest of the old ratio study act in 1992.

Finally, K.A.R. 1993 Supp. 93-5-1, which defines "physical inspection" of property and discusses maintenance of the physical inspection records, was issued in 1992 after language was added to K.S.A. 1993 Supp. 79-1460 stating that the Secretary of Revenue "shall adopt rules and regulations necessary to implement the provisions of this section."

### **Property Tax Regulations vs "Appraiser Directives"**

One reason there are relatively few property tax regulations in effect relates to the fact that the Director has another administrative tool at his disposal -- appraiser directives. K.S.A. 1993 Supp. 79-505, enacted in 1992, requires the Director to "adopt rules and regulations or appraiser directives prescribing

appropriate standards for the performance of appraisals in connection with ad valorem taxation in this state." Though the Director has the option of issuing regulations or appraiser directives, the statute states that they are to require, at a minimum, "that all appraisals be performed in accordance with generally accepted appraisal standards" and "that all such appraisals shall be written appraisals." The statute also gives the Director authority to require compliance with additional standards if such standards are required to properly carry out statutory responsibilities.

Other statutes also refer to the authority of the Director to issue directives. K.S.A. 1993 Supp. 79-506 required the Director within a specified amount of time to adopt rules and regulations or appraiser directives promulgating appraisal standards. K.S.A. 1993 Supp. 79-1460 was amended by 1994 S.B. 542 to read that starting in tax year 1995, the valuation of real property shall not be increased unless the record of the latest physical inspection has been reviewed by the appraiser, and documentation exists to support such increase in valuation "in compliance with directives and specifications" of the Director.

The Director has opted to use his authority to issue directives in lieu of regulations over the last several years, and 28 directives currently are in effect (Attachment 5). One of the directives which authorizes appraisers to use the developer's discount methodology for the appraisal of subdivision lots may need to be rescinded if a recent court decision is upheld which declared such methodology to be unconstitutional.

K.S.A. 1993 Supp. 79-1491 does require the Secretary to adopt rules and regulations providing for the administration of the new Kansas Real Estate Ratio Study Act, but it could be argued that K.A.R. 93-4-1 still remains in effect with regard to the new act.

Another statute enacted in 1985 as part of the reappraisal program that originally took effect in 1989, K.S.A. 79-1483, appears to mandate that the Secretary adopt "rules and regulations providing for the administration" of the act.

One policy issue the Committee may wish to consider is whether statutes should be conformed with respect to whether the Secretary of Revenue or the Director of Property Valuation should be charged with issuing property tax rules and regulations. K.S.A. 1993 Supp. 79-1460, K.S.A. 79-1483, and K.S.A. 1993 Supp. 79-1491 require the Secretary to adopt rules and regulations, but K.S.A. 1993 Supp. 79-505 and K.S.A. 1993 Supp. 79-506 require the Director to adopt rules and regulations or appraiser directives.

Another issue that could be revisited is whether the issuance of "directives" is appropriate as an alternative to rules and regulations. But before the Legislature considers eliminating this option, it should carefully consider the added flexibility that the directives have provided in helping the Department comply with the provisions of a district court order affecting the entire property tax system.

#### **Shawnee County District Court Order -- Case No. 92-CV-796**

The Attorney General filed a lawsuit in Shawnee County District Court in 1992, charging that constitutional requirements that most classes of property be appraised at fair market value on a uniform and equal basis had been violated. The lawsuit noted that data from PVD indicated that 98 of the 105 counties were deemed to be in "noncompliance" with various legal requirements.

PVD officials and the Attorney General entered into an agreed court order on June 30, 1992, under which PVD was required to develop and file with the district court a plan for corrective action. That

plan was developed under the court's supervision and was embodied in the final court order issued on July 19, 1993 (Attachment 6).

During this time, the Director issued a rescission of all prior directives, memoranda, and written or oral instructions issued by any PVD Director on appraisal processes, with the exception of directives issued pursuant to a PVD audit since January 1, 1991. (Directive No. 92-001, issued November 3, 1992.) The Director then issued 25 additional directives under the supervision of the court as part of the plan for corrective action.

Judge Bullock in the final court order declined to grant the motion filed by the Attorney General to enjoin the collection and distribution of property taxes statewide, deciding instead that the determination of the constitutionality of the system would be made when the 1998 appraisal-sales ratio study is completed on March 1, 1999.

For both the residential and commercial and industrial subclasses of real property, the new order sets specific tolerance level for median appraisal/sales ratios, coefficients of dispersion, and a regressivity index. The court also noted that the Director has a number of statutory powers at his disposal to ensure that county appraisers and other officials assist in bringing the system into compliance in all 105 counties. The Attorney General also is required by the court order to monitor the implementation of the plan.

The order further requires that state and local property tax officials concentrate in particular on improving the appraisal of the commercial and industrial subclass of real property. Specific mandates set by the court include:

1. development of a capitalization rate study by specific commercial property types;
2. development of a statewide land valuation study;
3. development of a statewide cost index study;
4. identification of "homogenous" commercial property regions throughout the state for purposes of analyzing cost, income, and sales information;
5. development of a statewide income and expense study; and
6. development of a statewide sales database of commercial property sales by type.

The court order made no finding of constitutional violations "at this time" but noted that were violations to be found, the court would enjoin the collection and distribution of property taxes.

The directives issued by PVD represent the substance of the plan for corrective action which has been given approval by the court and is being monitored on an ongoing basis by the court and the Attorney General.

According to PVD staff, notice was published in the *Kansas Register* and public hearings were held on all directives currently in effect prior to their issuance.



### Possible Committee Recommendations

- The Committee could recommend that the Department review all tax rules and regulations currently in effect with an eye toward repealing those provisions no longer applicable. An example is K.A.R. 92-19-1a, which is a sales tax bracket table published for the use of retailers when the state rate was 4 percent (from 1986 to 1989). Other examples include obsolete regulations referring to repealed tax laws like the motor vehicle dealers inventory tax (K.A.R. 92-53) and solar energy system income tax credits (K.A.R. 92-12a).
- The Committee could recommend that the Department review all tax rules and regulations currently in effect in an effort to update cross-references to authorizing statutes and statutes being implemented. At the completion of the project, the Department could submit the list to the Secretary of State for editorial amendments to the rules and regulations pursuant to K.S.A. 77-435.
- The Committee may wish to consider as a policy question whether the Director of Property Valuation should continue to administer the property tax system by issuing directives to the counties or should issue rules and regulations. Included within this discussion should be the implications over the next several years of the Shawnee County District Court order on the entire Kansas property tax system. If appraisal directives are to remain the administrative policy tool of choice by PVD, the Legislature may wish to codify as a statutory requirement the past practice of holding public hearings on proposed directives. The Committee also may wish to consider whether statutes requiring the Secretary to issue property tax rules and regulations should be amended to instead require the Director to perform the issuance. (Legislation enacted in 1994 did deem the Director to be an agency head for KAPA purposes.)