Approved: 3-31-95
Date

MINUTES OF THE HOUSE COMMITTEE ON TAXATION.

The meeting was called to order by Chairperson Phill Kline at 9:00 a.m. on March 14, 1995 in Room 519-S of the Capitol.

All members were present except : All present.

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 heard.

Others attending: See attached list

Chair called for report from Subcommittee Chair Hayzlett: (Attachment 1)

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

HB 2328 - Property tax appraisal process to be investigated by special assistant attorney

HB 2417 - Acquisition of automated tax systems by Department of Revenue

Chair Hayzlett reported subcommittee consensus :

HB 2176 be recommended favorably to the full committee;
HB 2328 be recommended favorably to full committee;
HB 2147 recommended back to the full committee for indepth hearings.

Chair opened hearing on:

SB 132 - Taxation of the business of banking; prohibiting.

Proponents and opponents were unable to be present due to the short notice. Rescheduled hearing for March 15. Closed hearing.

Chair opened hearing on:

SB 194 - Motor fuel taxation, exempt sales

Proponents:
Senator Don Sallee

Senator Sallee urged favorable passage of **SB 194** which would allow collection of sales tax on motor fuel sold on Indian reservations to non Indian consumers. Fiscal note projects loss of about $1.5 million in revenue per year on sales of motor fuel on Indian reservations to non-Indian consumers.

Marvin Smith, Holton (Attachment 2)

Chair closed hearing on **SB 194.**

Chair opened hearing on

SB 324 - Taxation of motor fuels

Proponents:
Debra Platt, Department of Revenue (Attachment 3)

Reed Davis, Department of Transportation (Attachment 4)

MINUTES OF THE HOUSE COMMITTEE ON TAXATION, Room 519-S Statehouse, at 9:00 a.m. on March 14, 1995.

Steve Kearney, Kansas Oil Marketers Association
Kearney indicated the Board of KOMA had endorsed **SB 324.**

Written testimony provided by:
Ken Peterson, Kansas Petroleum Council (Attachment 5)

Chair closed hearing on **SB 324**.

Adjournment.

The next meeting is scheduled for March 15, 1995.

TAXATION COMMITTEE GUEST LIST

DATE: March 14, 1995

NAME	REPRESENTING
Reed W Davis	KDOT
Dedra Plath	KDOR
Mickie Schultz	KDOR
STEVE KEARNEY	KOMA
Ken Peterson	Ks. Petroleum Council
Jamie Clover Adams	KS Fert. & Chem. Assn.
Rich McKee	KS Livestock Assoc
BEV BRADLEY	KS Assoc of Counties
JANET STUBBS	Ks Bldg. IND. ASSN.
Mary Jane Stattelman	KS Farm Bureau
RICHARD RODEWALD	TAXPAYERS
Cindy Crawley	Sedgwick County
Harold Pitts	KCOA

MEMORANDUM 3/13/1995

TO: Rep Gary Hayzlett
FROM: Chris W. Courtwright, Principal Analyst
RE: Subcommittee Report on HB 2176, HB 2328, and HB 2417

This memo is in response to your request for a brief subcommittee report on HB 2176, HB 2328, and HB 2417. I have attached a copy of my complete memo to the subcommittee on all three bills.

As you know, the subcommittee has recommended to the full committee that HB 2176 and HB 2328 be passed as introduced. The subcommittee has recommended that HB 2417 be relayed back to the full committee for additional hearings and discussion.

HB 2176 -- Appraisal Directives

HB 2176, introduced by the Joint Committee on Administrative Rules and Regulations, would require the PVD Director to hold a public hearing on all directives and publish notice in the Kansas Register at least 30 days prior to the hearing. The Director would be required to file all directives adopted in triplicate with the Secretary of State and to number such directives. The Secretary of State would then be required to publish all directives adopted in such a manner in the annual supplement to the KAR.

Unless revoked at a sooner time, all directives adopted prior to December 31, 1995 would cease to be effective on that date. Finally, the Rules and Regulations Filing Act would be amended to require all appraisal directives filed with the Secretary of State to be reviewed by the JCARR.

"Appraisal Directive" would be defined to mean a "standard, statement of policy, procedure or practice or general order, including amendments or revocations thereof, of general application which is adopted" by the Director pursuant to KSA 1994 Supp. 79-505 and 79-506.

HB 2328 -- Investigation of Appraisal Process

HB 2328 would require the Attorney General to appoint a Special Assistant Attorney General to conduct an inquiry and investigation into property tax appraisal and maintenance of the appraisal process, the performance and/or failure to perform and execute required statutory duties associated therewith, the Kansas Real Estate Appraisal Board, the State Board of Tax Appeals, and all county officials involved in the assessment and valuation of property.

The inquiry and investigation would be required to include possible deficiencies in:

1) the manner in which the appraisal process has been implemented and overseen;
2) computer hardware;
3) computer software;
4) specifications, guidelines, directives, manuals, and studies; and
5) sales ratio studies and related methodologies.

The Special Assistant Attorney General would have authority, at the direction of the Attorney General, to commence actions in the name of the state or to act as the Special Attorney for the state in civil or criminal cases resulting from the investigation.

B 2417 -- Automated Collections Systems

HB 2417 would eliminate the authority of the Secretary of Revenue to contract for the acquisition of automated tax systems for use in the registration of taxpayers and the processing of remittances and returns. The bill also would require than any automated collection system acquired be operated only by employees of the Department of Revenue. The bill further would eliminate the authority of the Secretary to contract for the payment of fees for the automated systems on a fixed-fee basis. Finally, new language would provide that any contract entered into prior to the effective date of the act could not be renewed unless it is in conformance with the provisions of KSA 1994 Supp 75-5147 as amended by the bill.

MEMORANDUM

Kansas Legislative Research Department

300 S.W. 10th Avenue
Room 545-N -- Statehouse
Topeka, Kansas 66612-1504
Telephone (913) 296-3181 FAX (913) 296-3824

March 7, 1995

To: House Tax Subcommittee on H.B. 2176, H.B. 2328, and H.B. 2417

From: Chris W. Courtwright, Principal Analyst

Re: Brief Description of Bills

This memo is in response to a request from subcommittee chair Hayzlett for a brief description of the three bills assigned to the subcommittee on March 7.

H.B. 2176 -- Appraiser Directives

H.B. 2176 was introduced by the Joint Committee on Administrative Rules and Regulations after an interim review of the Department of Revenue's rule and regulation authority. One segment of that review focused on property tax rules and regulations. In my memo to the Joint Committee on Administrative Rules and Regulations (JCARR) last summer, I noted that one of the reasons that there are relatively few property tax regulations in effect relates to the fact that the PVD Director has another administrative tool at his or her disposal -- appraiser directives.

K.S.A. 1994 Supp. 79-505 and 79-506 both require the Director to adopt rules and regulations OR APPRAISER DIRECTIVES prescribing standards for the performance of appraisals. K.S.A. 1994 Supp. 79-1460 also states that the valuation of real property is not be increased unless the record of the latest physical inspection has been reviewed by the appraiser and documentation exists to support the increase "in compliance with DIRECTIVES and specifications" of the Director. Attorney General Opinion No. 91-136 concluded that DIRECTIVES (and guidelines, manuals, and course instruction materials) promulgated by the Director to assist appraisers in determining fair market value and designed to achieve uniformity in appraisal and "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."

Given the authority of the PVD Director to issue directives under certain circumstances in lieu of rules and regulations, the JCARR requested an Attorney General's opinion as to whether the directives were subject to the provisions of the Rules and Regulation Filing Act, K.S.A. 77-415 *et seq*. Following the release of AGO 90-124, which opined that promulgation under the filing act was NOT necessary to give directives the force and effect of law when applied to county taxing officials, the JCARR introduced H.B. 2176.

H.B. 2176 would require the PVD Director to hold a public hearing on all directives and publish notice in the *Kansas Register* at least 30 days prior to the hearing. The Director would be required

to file all directives adopted in triplicate with the Secretary of State and to number such directives. The Secretary of State would then be required to publish all such adopted directives in the annual supplement to the K.A.R.

Unless revoked at a sooner time, all directives adopted prior to December 31, 1995 would cease to be effective on that date. Finally, the Rules and Regulations Filing Act would be amended to require that all appraisal directives filed with the Secretary of State be reviewed by the JCARR.

"Appraisal Directive" would be defined to mean a "standard, statement of policy, procedure or practice or general order, including amendments or revocations thereof, of general application which is adopted" by the director pursuant to K.S.A. 1994 Supp. 79-505 and 79-506.

H.B. 2328 -- Investigation of Appraisal Process

H.B. 2328 would require the Attorney General to appoint a Special Assistant Attorney General to conduct an inquiry and investigation into the property tax appraisal and maintenance of the appraisal process, the performance and/or failure to perform and execute required statutory duties associated therewith, the Kansas Real Estate Appraisal Board, the State Board of Tax Appeals, and all county officials involved in the assessment and valuation of property.

The inquiry and investigation would be required to include possible deficiencies in:

1. the manner in which the appraisal process has been implemented and overseen;

2. computer hardware;

3. computer software;

4. specifications, guidelines, directives, manuals, and studies; and

5. sales ratio studies and related methodologies.

The Special Assistant Attorney General would have authority, at the direction of the Attorney General, to commence actions in the name of the state or to act as the Special Attorney for the state in civil or criminal cases resulting from the investigation.

The subcommittee may wish to consider how H.B. 2328 would relate to Shawnee County District Court Order No. 92-CV-796.

The Kansas Attorney General currently is required by a court order to monitor a plan for "corrective action" imposed on PVD by the same court order.

The former 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.

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.

H.B. 2417 -- Automated Collections System

H.B. 2417 would eliminate the authority of the Secretary of Revenue to contract for the acquisition of automated tax systems for use in the registration of taxpayers and the processing of remittances and returns. The bill also would require that any automated collection system acquired be operated only by employees of the Department of Revenue. The bill further would eliminate the authority of the Secretary to contract for the payment of fees for the automated systems on a fixed-fee basis. Finally, new language would provide that any contract entered into prior to the effective date of the act could not be renewed unless it is in conformance with the provisions of K.S.A. 1994 Supp. 75-5147 as amended by the bill.

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

September 20, 1994

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 94-120

The Honorable Don Sallee
State Senator, First District
R.R. 2
Troy, Kansas 66087

Re: Statutes; Administrative Rules and Regulations and Procedure--Rules and Regulations; Definitions; Rule and Regulation; Appraisal Directives Issued by the Director of Property Valuation

Synopsis: While some directives adopted by the director of property valuation to prescribe appraisal standards meet the definition of rules and regulations under the filing act, K.S.A. 77-415 et seq., promulgation pursuant to the filing act is not necessary to give such directives the force and effect of law when applied to county taxing officials. Cited herein: K.S.A. 1993 Supp. 77-415; K.S.A. 77-425; K.S.A. 1993 Supp. 79-505; K.S.A. 79-1401; 79-1403; K.S.A. 1993 Supp. 79-1404; K.S.A. 79-1456.

* * *

Dear Senator Sallee:

As chairman of the joint committee on administrative rules and regulations, you request our opinion regarding the status under the rule and regulation filing act of appraisal directives adopted by the director of property valuation pursuant to K.S.A. 79-505. Specifically, you inquire whether the directives issued by the director of property valuation are to be filed as regulations (pursuant to K.S.A. 77-415 et seq.) in order to have the force and effect of law.

The filing act, K.S.A. 77-415 et seq., defines "rule and regulation" as:

> "[A] standard, statement of policy or general order, including amendments or revocations thereof, of general application and having the effect of law, issued or adopted by a state agency to implement or interpret legislation enforced or administered by such state agency or to govern the organization or procedure of such state agency. Every rule and regulation adopted by a state agency to govern its enforcement or administration of legislation shall be adopted by the state agency and filed as a rule and regulation as provided in this act. The fact that a statement of policy or an interpretation of a statute is made in the decision of a case or in a state agency decision upon or disposition of a particular matter as applied to a specific set of facts does not render the same a rule and regulation within the meaning of the foregoing definition, nor shall it constitute specific adoption thereof by the state agency so as to be required to be filed." K.S.A. 1993 Supp. 77-415(4).

This office has previously interpreted the requirements of the definition:

> "Therefore, in order for a particular [policy statement] to be regarded as a 'regulation' and thereby subject to the filing act, it must be determined if such [policy statement] is:
>
> "1. a standard , statement of policy or general order;
>
> "2. of general application;
>
> "3. intended to have the force and effect of law; and
>
> "4. issued or adopted by a state agency either to implement or

> interpret legislation enforced or administered by such state agency or to govern the agency's organization or procedure.
>
> "The foregoing enumerates the criteria provided in K.S.A. 1981 Supp. 77-415(4) (as amended) to define 'regulation.' From a review of these criteria, it is apparent that a determination of whether a particular document of a state agency is to be regarded as a 'regulation' is a question of fact; it requires a comparison of such document with these criteria. It also is apparent that the denomination of the document by the agency or the statute authorizing its promulgation is not the significant consideration. Whether the document is styled as a policy manual or as a regulation is not determinative of its status under the filing act. It is to be regarded as a 'regulation' under that act only if it satisfies the definitional criteria set forth above." Attorney General Opinion No. 82-119. See also Bruns v. State Board of Technical Professions, 255 Kan. 728 (1994); Attorney General Opinions No. 94-12, 89-134, 89-70, 88-86.

We must therefore determine whether the appraiser directives adopted by the director of property valuation fit the criteria listed above.

On November 3, 1992, the director adopted directive no. 92-001 to rescind "all prior directives, memorandum and written or oral instructions issued by any Director of Property Valuation on appraisal processes . . . except for directives issued pursuant to a PVD audit since January 1, 1991." Subsequent to this rescission, the director has adopted a series of new directives numbered 92-002 through 92-026. Each directive sets forth a standard or statement of policy regarding property appraisal. See K.S.A. 1993 Supp. 79-505. Some of these directives were issued to all county appraisers, county commissioners and county clerks, some to different combinations of appraisers, commissioners, clerks, hearing officers and registers of deeds, and some to just the appraisers. Thus they are all of general application to the

specified county officials. They apparently are intended to have the force and effect of law. However, some of the directives are merely instructions regarding use of the KSCAMA system, many simply restate statutory provisions, while others actually interpret and administer legislation. Those that are merely instructional or that restate statutory provisions do not meet the fourth criterion for being considered a rule and regulation under the filing act. Conversely, the directives that interpret or implement legislation appear to meet all of the criteria. For this latter category, we must now determine whether any exceptions to the filing act apply.

K.S.A. 1993 Supp. 77-415(4) lists several exceptions to the definition of a rule and regulation. We do not believe any of these exceptions apply to the directives in question in part because these directives will affect the interests of private property owners, are directed to a general class of persons (county officials) are not supported by underlying properly filed rules and regulations or statutes, and are more than merely informational in nature. Other exceptions apply only to specific subjects not relevant here. This, however, does not conclude our analysis of whether the directives are excepted from the requirements of the filing act.

K.S.A. 1993 Supp. 79-505 directs the director of property valuation to adopt "rules and regulations or appraiser directives" to prescribe appropriate standards for the performance of appraisals. (Emphasis added). This language indicates legislative acknowledgement that rules and regulations are not the same as directives and the intent to give the director an option to use appraisal directives in lieu of rules and regulations when establishing appraisal standards. See Attorney General Opinions No. 81-115 and 8-234 for examples of other instances when the legislature conferred binding administrative authority outside the filing act requirements. Further, other statutes, Kansas case law and Attorney General Opinions emphasize "the depth, extent or breadth of the Director's powers." State, ex rel., Stephan v. Kansas Department of Revenue, 253 Kan. 412, 415 (1993). The trial court in this case went so far as to conclude that, "with regard to their taxation functions, [county commissioners and county appraisers] were 'ministerial agents of the state.'" Id. at 416. See, e.g. McManaman v. Board of County Comm'rs, 205 Kan. 118, 126, 127 (1970) ("the legislature saw fit to vest ultimate supervisory responsibility for the administration of the assessment and tax laws of the state squarely on the Director of Property Valuation with attending enforcement power and authority");

Garvey Grain, Inc. v. MacDonald, 203 Kan. 1, 12 (1969) ("[t]he 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"); K.S.A. 79-1401; 79-1403; 79-1404 First, Second, Third; 79-1456 (county appraisers "shall follow the policies, procedures, and guidelines of the director of property valuation in the performance of the duties of the office of county appraiser"); Attorney General Opinions No. 92-13, 91-136, 91-134. As interpreted by the Kansas Supreme Court and prior Attorney General Opinions, the above-cited statutes, and others not listed, clothe the director of property valuation with the power to enforce his directives, guidelines and policies against county taxing officials. There is no mention in the statutes or court decisions of the need to meet filing act requirements for this power to exist. Thus, it has not been deemed necessary to comply with the filing act in order to bestow on these directives the force and effect of law. (Generally "rules and regulations" as defined in the filing act have no force and effect unless promulgated pursuant to the provisions of the filing act. K.S.A. 77-425; Bruns, supra; Attorney General Opinions No. 94-12, 91-18, 89-114, 89-70, 82-119. However, the legislature may bestow the force and effect of law on "rules and regulations," "directives," "policies" or other administrative statements as desired, even absent filing act requirements, as long as no unlawful delegation of legislative authority is involved.) While a specific exemption from the filing act would added clarity, we believe the authorities, viewed together, demand the same result: While some directives adopted by the director of property valuation to prescribe appraisal standards meet the definition of rules and regulations under the filing act, promulgation pursuant to the filing act is not necessary to give such directives the force and effect of law when applied to county taxing officials.

Very truly yours,

Robert T. Stephan

ROBERT T. STEPHAN
Attorney General of Kansas

Julene L. Miller

Julene L. Miller
Deputy Attorney General

RTS:JLM:jm

1-11

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION VI

STATE OF KANSAS, *ex rel.*, ROBERT T. STEPHAN, Attorney General, Plaintiff, vs. Kansas Department of Revenue, MARK BESHEARS, Secretary, Kansas Department of Revenue, and DAVID C. CUNNINGHAM, Director, Division of Property Valuation, Kansas Department of Revenue, and the Honorable SALLY THOMPSON, State Treasurer, Defendants.	)	Case No. 92-CV-796

JOURNAL ENTRY

[1] The above-captioned matter was brought by plaintiff demanding that defendants insure to the fullest extent practical that all real property throughout the State of Kansas is valued on a uniform and equal basis in compliance with section 1 of article 11 of the Kansas Constitution.

[2] On June 30, 1992, the parties entered into an agreed order of the Court requiring defendants to develop and file with the Court a plan to correct existing problems with real property appraisals throughout the state.

[3] The Court orders that defendants' plan, as set forth herein, shall be adopted.

[4] The Court orders that the Director shall require, on or before January 1, 1998, that every county in the State of Kansas attain the following statistical standards[1] for all real property subclassified by section 1 of article 11 of the Kansas Constitution as residential and commercial and industrial:

MEDIAN RATIO[2]:	+/- 10% with a confidence interval of 95%[3]
C.O.D.[4]	≤ 20
REGRESSIVITY[5]	.98 to 1.03 (inclusive)

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1 These assessment standards represent a consensus in the assessing profession and have been adopted by the Executive Board of the International Association of Assessing Officers (IAAO), except that the IAAO recommends a C.O.D. of ≤ 20 in smaller, rural jurisdictions, and a C.O.D. of ≤ 10 to 15 in larger, urban jurisdictions, for residential and income producing properties. See Standard of Ratio Studies, IAAO, July, 1990.

2 The middle ratio found in a sample of ratios which have been arranged from highest to lowest to highest. This statistical measure is generally considered the most appropriate indicator of appraisal level. The ideal appraisal level is 100%.

3 The required degree of confidence in a statistical test. A 95% confidence interval would mean that one can be 95% confident that the population parameter (such as the median or mean ratio of appraiseed values to market values) falls in the indicated range.

4 C.O.D. is an acronym for coefficient of dispersion. It measures the average deviation of the group of ratios from the median ratio and describes how tight the sample of ratios are clustered around the median ratio. This statistical measure is generally considered the most appropriate measure of appraisal uniformity. The ideal level is 0.

5 An appraisal bias such that high-value properties are appraised below market value and low-value properties are appraised above market value. The ideal level is 1.

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or such statistical standards as may be subsequently enacted into law.[6]

[5] The Court orders that the determination of whether the foregoing standards have been met shall be measured by the official 1998 appraisal/sales ratio study required by K.S.A. 1992 Supp. 79-1485 *et seq.*, to be completed on or about March 1, 1999.

[6] The Court orders defendants to allocate primary resources to correcting existing problems with commercial and industrial real property appraisals. To that end, defendants shall (1) develop a capitalization rate study by specific commercial property types, (2) develop a statewide cost index study, (3) develop a statewide land valuation study, (4) define homogeneous commercial property regions throughout the state for purposes of analyzing specific cost, income, and sales information, (5) develop a statewide income and expense study, and (6) develop a statewide sales data base of commercial property sales by type.

[7] The Court orders the Director to pursue legislative funding for development of an expert commercial and industrial property appraisal staff, and/or legislative funding to contract with expert commercial and industrial property appraisers, to assist county appraisers in the valuation of commercial and industrial properties throughout the state.

[8] The Court finds that the legislature is required to provide for a uniform and equal basis of valuation and rate of taxation of all property subject to taxation in the state as to subclass. Kan. Const., art. 11, § 1.

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[6] Of the statistical standards being adopted herein, only the median ratio requirement is currently required by law. See K.S.A. 1992 Supp. 79-503a.

[9] The Court finds that the legislature has provided that all property subject to taxation shall be valued at fair market value, except where other valuation methods are expressly provided by the Kansas Constitution. K.S.A. 1992 Supp. 79-501; K.S.A. 1992 Supp. 79-503a; K.S.A. 1992 Supp. 79-1439.

[10] The Court finds that the legislature has placed on the Director of Property Valuation ("Director") ultimate supervisory responsibility with attending enforcement power and authority to see to it that the foregoing constitutional and statutory provisions are complied with and enforced throughout the state. K.S.A. 79-1401; 79-1402; 79-1403; K.S.A. 1992 Supp. 79-1404; 79-1405; State, *ex rel.* Stephan v. Kansas Department of Revenue, No. 68,703, No. 69,031, No. 69,291, slip. op., (Kan. July 9, 1993); McManaman v. Board of County Commissioners, 205 Kan. 118, 126-127, 468 P.2d 243 (1970); Garvey Grain, Inc. v. MacDonald, 203 Kan. 1, 11-12, 453 P.2d 59 (1969).

[11] The Court finds that the Director's authority extends over boards of county commissioners, county appraisers and all other officers whose duties pertain to the appraisal, assessment and collection of property taxes to the end that property shall be valued and assessed uniformly and equally as to subclass throughout the state. K.S.A. 79-1402; K.S.A. 1992 Supp. 79-1404.

[12] The Court finds that defendants have agreed that if, after the publication of the official 1998 appraisal/sales ratio study, the foregoing standards have not been met in any county, the Director shall file a complaint with the State Board of Tax Appeals ("BOTA") as provided in K.S.A. 1992 Supp. 79-1413a and K.S.A. 1992 Supp. 79-1479, requesting BOTA (1) to order a reappraisal in such county and/or (2) to order the

Director to assume control of the office of county appraiser of such county until such time as the foregoing criteria are met. The foregoing remedies shall be pursued, of course, pursuant to all statutory, administrative, judicial, appellate or other legal process.

[13] The Court finds that defendants have agreed to measure interim progress towards meeting the foregoing standards as follows: (1) substantial compliance pursuant to Directive #92-002[7], (2) mid-year and annual ratio studies, (3) continuous county monitoring by Property Valuation Division (PVD) staff, (4) development of a joint county/state Individualized Appraisal Plan (IAP), setting forth the steps that will be followed by each county to meet the criteria set forth herein, (5) county audits, (6) use of PVD Directives, as needed; (7) G.I.S.[8] applications, (8) direct edit of KSCAMA[9] (preferably, on-line or, in the alternative, by obtaining computer tapes from the counties), and (9) such other measures deemed appropriate by the Director or as mandated by the legislature.

[14] The Court finds that Director has agreed to impose the following penalties, if necessary, to insure continuous progress towards compliance with the foregoing standards: (1) suspension or termination of the employment of county appraisers for cause, as authorized by K.S.A. 1992 Supp. 19-431, (2) mandamus actions to require adherence

---

[7] Appraisal Directive #92-002 was issued by the Director of Property Valuation on November 30, 1992, pursuant to K.S.A. 1992 Supp. 79-505, prescribing criteria and standards to be met by counties to assure substantial compliance with the constitutional and statutory requirements to value and assess property uniformly and equally throughout the state.

[8] Geographic Information System.

[9] Kansas Computer Assisted Mass Appraisal System.

to PVD Directives, (3) K.S.A. 1992 Supp. 79-1479 actions with BOTA for PVD to assume control of county appraisal operations, (4) withholding "reimbursement funds" appropriated by the Kansas legislature pursuant to K.S.A. 79-1478a, and/or (5) any other action deemed appropriate by the Director. The foregoing remedies shall be pursued, of course, pursuant to all statutory, administrative, judicial, appellate or other legal process.

[15] The parties have agreed that the time-frame to achieve the foregoing standards will be approximately 4.5 years. The Court finds that this time-frame is necessary for the following reasons: (1) the sheer complexity of this undertaking requires that a reasonable amount of time be allocated to successfully meet the foregoing standards, (2) budgeting requirements are such that funds are not immediately available to implement all facets of the plan, *i.e.*, the next KDOR[10] budget year is FY95 (requiring state appropriations during the 1994 legislative session), and the next county budget year is calendar year 1994 (requiring county budgeting in August, 1993); however, IAPs cannot be completed before the establishment of 1994 county budgets, thereby delaying additional resources until 1995 (requiring county budgeting in August, 1994), (3) additional staffing will be required at the county level requiring time to recruit, hire, train and assign such personnel, (4) additional staff, if necessary, requested and funded by the 1994 Kansas legislature, cannot be hired and trained to meet a shorter time-frame, and (5) the educational calendar cannot presently accommodate significant additional trainees.

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10 Kansas Department of Revenue

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[16] The parties have agreed that at the time this lawsuit was filed, the director of property valuation, as required by K.S.A. 79-1445, had determined and reported to the governor in September, 1991, that seven (7) Kansas counties were in substantial compliance with the requirements of law to appraise taxable property at fair market value[11]. Ninety eight (98) Kansas counties were determined by the director to be in "non-compliance." Since that time, the number of counties in or out of compliance has changed depending upon the criteria used to determine compliance. Without determining the validity of the criteria used to determine compliance in September, 1991, or at any time thereafter, the Court finds that the parties agree that significant problems continue to exist with real property appraisals in the State of Kansas.

[17] Excluding the real property subclass of vacant lots and examining only the subclasses of residential and other real property, when the median ratio and coefficient of deviation (COD) criteria set forth in paragraph 4 above are applied to the results of the 1992 preliminary ratio study filed with the Court on March 1, 1993, pursuant to the Court's June 30, 1992, **ORDER OF THE COURT FOR CORRECTIVE ACTION**, with respect to the residential subclass only 30/105 counties satisfy both the median ratio and COD criteria; 10/105 counties fail to satisfy both the median ratio and COD criteria; 64/105 counties fail to satisfy the COD criterion only; and 1/105 counties fails to meet the median ratio criterion only. With respect to the subclass of other real

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11 The Court recognizes that section 1 of article 11 of the Kansas Constitution requires land devoted to agricultural use to be valued at "use value." See also section 12 of article 11 of the Kansas Constitution.

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property 16/105 counties satisfy both the median ratio and COD criteria; 23/105 counties fail to satisfy both the median ratio and COD criteria; 64/105 counties fail to satisfy the COD criterion only; and 2/105 counties fail to meet the median ratio criterion only.

[18] Plaintiff has alleged that the existing problems with appraisals constitute a failure to meet the constitutional requirements of article 11 of the Kansas Constitution. Defendants admit that while problems do exist to varying degrees in various counties, defendants argue that such problems do not rise to the level of a constitutional violation.

[19] The Court makes no finding of a constitutional violation at this time. However, the Court notes that were it to find a violation of the constitutional requirement that all property be appraised at fair market value on a uniform and equal basis by subclass, then the Court would grant Plaintiff's demand to enjoin the collection and distribution of property taxes throughout the state.

[20] In order to avoid going forward with evidence on plaintiff's allegations and to avoid the possibility of an injunction and protracted and costly litigation, the Court finds that the parties have agreed to this order in the belief that taxpayer dollars would be better spent addressing those problems that both parties recognize exist.

[21] The Court finds that the Kansas legislature, boards of county commissioners throughout the state, and the parties involved, should cooperate to affect the timely completion of defendants' plan. The plaintiff, with the cooperation of defendants, shall monitor the

1-19

implementation of the plan to insure compliance with this order. The Court shall maintain continuing jurisdiction of this matter.

IT IS SO ORDERED this 19th day of July, 1993.

TERRY L. BULLOCK
JUDGE OF THE DISTRICT COURT

APPROVED:

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I-20

APPRAISAL LITIGATION
REMARKS FROM THE BENCH
JUDGE TERRY L. BULLOCK
July 19, 1993

At the outset, when this case was filed and assigned to me, three things became quickly apparent:

1. Our Constitution requires all real estate tax appraisals to be "uniform and equal" -- statewide, border to border.

2. Our statutes require these uniform appraisals to be based on "fair market value" -- defined as the price each property would bring at an arms-length sale.

3. Kansas consists of about 1.4 million parcels of land worth about $9.75 billion and raising real estate taxes, in 1992, of $1.15 billion. These parcels are located in 105 counties and are appraised at the present time by both local appraisers (many with assistants), and in some cases, by the State directly.

So, it was apparent that all we had to do in this litigation was hear enough evidence to figure out if each of these 1,400,000 parcels were properly appraised and, if not, fashion a remedy to correct the problem. My estimate of the time that would have taken is three to four years, at a cost of many hundreds of thousands of taxpayer dollars -- and that just to confirm there was a problem to correct!

The remedies apparent to the Court, assuming problems were found, included:

1. Enjoining the collection and spending of all real estate taxes until constitutional appraisals were in place -- having the effect of bringing city and county government and public schools to a standstill statewide; or

2. Ordering another statewide reappraisal -- at an estimated cost of $120,000,000 and placing government in limbo during the four to six additional years that process would probably take.

Faced with these bleak prospects for the citizens of Kansas, the Court convened an early conference of all parties to determine if another way forward could be found. The Court first inquired whether, in all honesty, substantial appraisal problems existed. The refreshingly candid answer was "yes". The Court next inquired if the people of Kansas would be better served if we used the time and resources which would be required by this lawsuit instead to simply correct the problems. Again, the answer was "yes".

Accordingly, a consent decree was entered June 30, 1992, and the parties began work on a corrective plan for consideration by the Court. Many conferences have been held, much hard work has been done and by agreement of the parties the Court is pleased to announce that the Court today adopts that completed corrective plan by Court order.

1-22

Before summarizing the corrective plan, the Court wishes to compliment the parties and to express its gratitude for a job very well done in the best interests of all Kansas citizens. First, permit me to specifically recognize Attorney General Robert Stephan, Secretary Nancy Parrish and Director David Cunningham. Not once has partisan politics interfered in the conduct of these highly professional and effective deliberations and negotiations. The Secretary and Director, under the auspices of Governor Finney and the General, with his entire staff, have crafted a plan which will, if given proper legislative support, correct the appraisal problems which exist throughout the State and will thus avoid the drastic remedies of statewide re-appraisal and governmental shut-down. The savings to our people in avoided inconvenience through disrupted services and costs in the many millions of dollars are immense. To their great credit, the Secretary and Director have actually begun to implement many aspects of the new plan, not waiting for formal adoption. In the Court's humble opinion, we are seeing government at its very best carried out here today. The Court would also like to express its appreciation to the Kansas Supreme Court, which this month gave us an excellent opinion confirming the Director's authority to carry out the corrective steps contained in this plan. And, of course, we must not overlook the highly significant contributions of counsel, without whose untiring efforts none of this could have been accomplished today.

Turning finally to the plan itself, since the Court's Order is somewhat technical, a summary of a few highlights may be helpful.

1. The Plan requires the development of reliable statewide statistical data against which individual appraisals can be measured for accuracy and equity. Not all properties are susceptible to such benchmarking, but for those which are, an accurate and reliable data base is essential. The order then also mandates compliance with certain statistical ratios and tolerances as compared to that data.

2. The Plan requires the Director to primarily and initially address appraisal problems which exist in commercial and industrial properties -- conceded by all to present the most prevalent and pressing of all problems extant. In this connection, the Court has directed that:

   a. similar types of properties be indexed and studied statewide,

   b. a statewide land valuation study be conducted and that

   c. homogeneous commercial property, income and expense regions be established for comparative purposes.

3. The Plan requires the acquisition of legislative funding for a crack team of either staff or contract appraisers with specific expertise in commercial and industrial properties to assist in appraisal corrections.

4. The Plan also requires all other properties in turn

to be evaluated and appraisals adjusted where necessary.

5. The Plan mandates that the Director require suitable local support for the appraisal process from local county commissions and appraisers offices.

6. The Plan requires all local appraisal efforts to be under the supervision and control of the Director, with county-wide re-appraisal or state take-over of local offices mentioned as possible remedies for failure to act.

7. The Plan requires full constitutional compliance as to all properties within 4.5 years, with steady progress reported and monitored by the Court in the interim.

As is apparent from this Order, the Court will hold other state and local officials responsible for their contribution to the work that lies ahead. To those who may believe that the corrective costs are high, the Court can only remind them that the costs of a complete reappraisal or governmental shutdown would be far greater than any cost emanating from this order.

Attorney General Stephan is directed to watch this process closely and this Order presumes that he will contribute the weight and resources of his office to the strict enforcement of all laws that direct the administration of the property tax system in the several counties, as requested by the Director.

As for the Court's role, this case will remain in its jurisdiction for periodic review and if necessary for further action. If the Director and his department do their job, with the

support of the legislature as well as the support of other state and local officials, the Court does not anticipate further action. If they fail, the Court has reserved all its remedies as outlined above.

Unquestionably, the time frame contemplated by this Order is longer than all of us would prefer, but in such highly technical matters as this with such an enormous volume of property appraisal records and data to be gathered for nearly 1.4 million parcels of property, we will almost certainly exacerbate the problems if we act in undue haste.

History tells us that our last state-wide appraisal was carried out with unprecedented speed and, unfortunately, that tight timeframe also produced unintended side effects of wasted effort and technical error, despite the good intentions of the many who were involved in that process. Therefore, as we make repairs we will move steadily but not hastily to complete the considerable tasks before us.

Finally, every good appraisal process is always ongoing. Proper maintenance of the system then is the last ingredient of the Plan. Although such maintenance may be expensive, it is absolutely required and in any event a far less expensive endeavor than to start the process all over anew, which without today's Order would likely have been the necessary result.

March 14 1995

TO: House Assessment and Taxation Committee

RE: Senate Bill 194

Mr Chairman and members of the Committee I appreciate the opportunity to share my opinion on S.B 194.

I support SB 194 because the State of Kansas is loosing millions dollars annually due to the sale of motor vehicled fuels with No. state taf.

The present motor vehicle taf is 18¢ per gallon, millions of gallons of gasoline is sold on major highways in northeast Kansas to NON-Indians.

Just last week, I observed vehicles lined up to purchase gasoline that does not collect state taf.

I believe over 90% of the motor fuels sold on reservation stations is to NON-Indians.

I submit to you that motor vehicle fuel taf should be collected to be used to construct and maintain the roads and highways in our state.

The United State Supreme Court ruled on February 26, 1991 that taxes should be collected on sales conducted on Indian lands.

I would urge your favorable consideration of SB 194.

Marvin E [illegible]

House Taxation
3-14-95
Attachment 2

STATE OF KANSAS

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Department of Revenue
Office of the Secretary

TO: The Honorable Phill Kline, House Taxation Committee

FROM: Dedra Platt, Administrator, Department of Revenue

DATE: March 14, 1995

SUBJECT: Senate Bill 324

The Department was requested to thoroughly investigate options for improving controls over the collection of motor fuel taxes as a result of a legislative post audit. Over the past eight months the Department extensively studied the issue and through a joint effort with industry and other state agencies developed a comprehensive program aimed at reducing fuel tax evasion. An informal motor fuel advisory committee was established consisting of members of industry, representatives from the Department of Health and Environment, Department of Agriculture, Highway Patrol, Department of Transportation, Department of Revenue and a representative from the Internal Revenue Service. The Motor Fuel Advisory Committee met several times over past several months for the purpose of developing the best solution to the problem of fuel tax evasion in the state of Kansas. Senate Bill 324 is a result of those combined efforts.

New definitions for bulk plant, exporter, refiner, retailer, terminal and terminal operator are added to the motor fuel tax law and the definitions for importer, liquid fuels, manufacturer, and motor-vehicle fuels are amended. The bill deletes fees for obtaining a license under the act and provisions for suspending a license, and repeals the provisions for a motor vehicle fuel and special fuel exemption permit. Provisions have been added that exempts distributors and importers from reporting exempt sales of dyed diesel fuel to the end user.

Language is included that makes special fuel containing dyes or markers, non-highway fuel only and any use otherwise, subject to tax and penalties. The director is given the authority to conduct inspections to determine compliance and the secretary is authorized to adopt rules and regulations for the enforcement of dyed fuel.

Provisions have been added that require retailers to become licensed and file informational reports. Through a phase in provision, bill of ladings will be required to include complete addresses or facility numbers (issued by the Department of Health and Environment) for all fuel deliveries. Also through a phase in period is the requirement that information be filed electronically or through magnetic-media by distributors receiving 50,000 gallons of fuel or more per month. Language is also included that stipulates licensing requirements and provides for background checks. Civil and criminal penalties are upgraded and provisions for corporate officer liability are included.

The transportation of motor fuel law, the liquefied petroleum motor fuel tax law and the interstate motor fuel use act are also amended to conform with the changes in the motor fuel tax law.

The consensus of the Motor Fuel Advisory Committee was that the key to resolving fuel tax evasion lies in implementation of a complete fuel tracking system, visible enforcement and sufficient penalties to deter fuel tax evasion. Licensing retailers and requiring informational reports as well as the requirement for complete addresses on the bill of ladings are two major provisions necessary to implement a fuel tracking system. These provisions will allow the Department to internally track fuel from the terminal to the ultimate destination. Use of this information along with totalizer readings from the Department of Agriculture, will allow the Department identify problem areas and target the necessary investigative resources appropriately. These provisions do place additional requirements on industry, however, every effort was made to simplify the process and reporting requirements.

Implementation of and enforcement of a dyed fuel program is a major factor in reducing fuel tax evasion. Penalties for illegal use, as well as on road enforcement, are key items of the program. Kansas's program will mirror the Federal's program with one major exception, clear diesel can not be sold tax free to end users. This is a current problem in the Federal dyed fuel program that has been acknowledged by everyone concerned. The dyed fuel enforcement program will be a joint effort between the Department of Revenue, Department of Agriculture and Kansas Highway Patrol. In addition, funding may be available from the IRS for Kansas to enforce portions of the Federal dyed fuel program in conjunction with Kansas's program.

The Senate Committee of the Whole amended the Senate Bill 324 to exempt school buses owned by school districts or non-public schools or privately owned and contracted for, leased or hired for a school district or a non-public school from the motor vehicle and special fuel tax. Under current statutes schools buses which are exempt from registration under the vehicle registration statutes are currently exempt from the motor fuel taxes. This amendment will also expand the exemption to include those school buses owned by charter or leasing companies which may lease for other than school functions. Because there would be no means of verifying the use of buses exempted from the fuel tax the result could be a loss of revenue. Due to the proposed dyed fuel provisions and for enforcement purposes the Department respectfully requests that this be a refund provision rather than an exemption. We would also recommend that school buses be defined.

To effectively implement the provision of Senate Bill 324, the Department has identified the following staffing requirements:

Three tax examiners will assist in auditing of the motor fuel distributor tax returns, retail reports, transporter reports and verify exempt fuel transactions. These positions will help assure that the current backlog will be eliminated and future returns and assessments for additional tax processed in a timely manner. Additional staff is necessary for successful implementation a complete fuel tracking system and aiding in collection of data for investigations that may evolve from dyed fuel violations, incorrect reporting or industry tips.

Two fuel inspectors will enforce the dyed diesel fuel program. These inspectors will work in cooperation with the Kansas Highway Patrol and the Department of Agriculture. Inspectors will routinely accompany highway patrol personnel on motor carrier safety inspections to sample highway vehicles for the testing of dye content, sulfur content and fuel quality. In addition, they will inspect other locations that may store, sell or use fuel and obtain samples for similar testing. They will be responsible for assessing state and federal dyed fuel penalties, proper handling of all samples and possible referral for audit or investigation.

One Public Service Administrator will be responsible for the coordination and administration of the state and federal dyed fuel programs. Duties will include coordinating information with fuel inspectors; assessing additional tax and/or penalties associated with violations; conducting all administrative actions; and coordination audit or investigation referrals associated with violations of the dyed fuel program. This position will also: coordinate any investigations that may evolve in the course of administering the motor fuel tax laws; develop tax structures for alternative fuels; and research other opportunities for fraud, such as, blending (cocktailing) of kerosene, motor oils, solvents, hazardous waste and other products, resale of "recycled" fuel from storage, and fraudulent labeling of home heating oil.

Two Liquor Control Investigators will investigate motor fuel tax violations. These violations can be a result of dyed fuel infractions; false or fraudulent reporting by the taxpayer; or industry tips. Duties will include all areas normally associated with a tax fraud investigation: the use of standard investigative

echniques, including interviewing, surveillance and financial analysis; work with auditors examining and analyzing records; coordination with the Administrative Officer on potential investigations, present cases for criminal prosecution and contact with the fuel inspectors concerning violations that may be under investigation.

The estimated administrative cost associated with the additional staffing is $423,200 for FY 1996. These costs and staffing requirements are identified and included in the Governor's recommendations. Attached is more detail on these administrative costs.

The Department also respectfully requests that the following changes be made to Senate Bill 324. These changes were inadvertently missed in the original draft. (first) that New Sec. 8, an amendment to K>S>A. 55-506 et seq. on transporting oils and liquid fuels, be deleted, because new Sec. 8 refers to K.S.A. 79-3423, a statute repealed by this bill; (second) a definition of "transporter" be added to Sec. 19, page 11, as: "Transporter means any person who is licensed as a liquid fuel carrier under K.S.A. 55-506 et seq., and amendments thereto." and (third) the definition of motor vehicles fuels be expanded to include the following language "1995 U.S. Department of Commerce, National Institute of Standards and Technology Handbook 130 issued in December, 1994, and as may be subsequently defined in regulations which the director may promulgate pursuant to . 79-3419."

The Department respectfully asks for your support of Senate Bill 324. We believe and understand that fuel tax evasion in Kansas and all states is a major problem and that significant amounts of revenue are being lost.

Senate Bill 324 Cost Summary

Classification or Description	Sal Rng	Gross Sal. ea.	% Ben.	GHI	SubTot	Shrink	Net Cost each	Qty	Item Total	Subtotal
Subprogram 6463—Investigation and Inspection [ABC]										
Liquor Control Inv. II	23	26,442	3,435	2,542	32,419	(1,135)	31,284	**2**	62,568	
Travel & Subsistence							5,520	2	11,040	
Standard law enforcement equipment bundle							5,495	2	10,990	
PowerBook, case, printer & software							2,873	2	5,746	
Camera w/zoom lens							800	2	1,600	
Subtotal, Subprogram 6463										91,944
Subprogram 8511—Business Tax										
Administrative Officer II	23	26,442	3,435	2,542	32,419	(1,135)	31,284	**1**	31,284	
Dyed Diesel Fuel Inspector	21	23,976	3,114	2,542	29,632	(1,037)	28,595	**2**	57,190	
Tax Examiner II	19	21,750	2,825	2,542	27,117	(949)	26,168	**3**	78,504	
Travel/subsistence for fuel inspectors							10,000	2	20,000	
Travel, Admin. Officer							5,000	1	5,000	
Testing of fuel samples							86	1000	86,000	
Commodities (Fuel inspectors)							3,770	lot	3,770	
Forms and office supplies, office staff							200	4	800	
Telephones							35	4	140	
Herman Miller Workstations							1,150	6	6,900	
Chairs							250	6	1,500	
Calculators							80	6	480	
Pickup truck w/shell							10,800	2	21,600	
Fuel sampling kit							1,000	2	2,000	
Add-on unit for octane testing equipment							500	2	1,000	
Stainless steel cans for petroleum products (Gasoline,Kerosene)							150	4	600	
PowerBook, case, printer & software							2,873	2	5,746	
Mainframe computer terminals							1,020	3	3,060	
Desktop Macintosh computers w/software							2,841	2	5,682	
Subtotal, Subprogram 8511										331,256
Subprogram 8515—Audit Services										
State Auditor II	26	30,594	3,974	2,542	37,110	(1,299)	35,811	0	0	
Travel for auditor								0	0	
PowerBook, case, printer, modem & software								0	0	
Herman Miller Workstation								0	0	
Chair								0	0	
Briefcase								0	0	
Subtotal, Subprogram 8515										0
GRAND TOTAL										423,200

STATE OF KANSAS

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Bill Graves
Governor of Kansas

TESTIMONY BEFORE THE HOUSE TAXATION COMMITTEE REGARDING SENATE BILL 324 AS AMENDED CONCERNING THE TAXATION OF MOTOR FUEL AND THE REGULATION THEREOF

March 14, 1995

Mr. Chairman and members of the Committee:

My name is Reed W. Davis and I am the Assistant to the Director of Administration for the Kansas Department of Transportation. I appreciate the opportunity to appear before the Committee.

In recent years there has been significant concern expressed, both at the national and at the state level, about the problem of motor fuel tax evasion and the amount of federal and state tax which is being avoided. The federal government, in 1992, provided funding from the Federal Highway Administration to states and the Internal Revenue Service to establish cooperative reporting and investigative efforts. Kansas, through the Department of Revenue, participates in that program.

Last year, a performance audit performed by Legislative Post Audit, suggested that the Department of Revenue should increase its efforts to enforce the motor fuel statutes. The Department of Revenue in 1994 extensively studied the problem and utilized an

informal motor fuel advisory committee, which included KDOT, to assist them in responding to those concerns raised in the Legislative Post Audit report.

The Kansas Department of Transportation has, in the past, supported and continues to support the efforts of the Department of Revenue to administer and enforce the motor fuel statutes in an efficient and effective manner. Those who avoid paying their taxes place an unfair burden on the rest of the citizens of this state who strive to honestly pay their taxes.

The Legislative Post Audit report suggested that there are very significant unreported motor fuel taxes in the state. The Department of Transportation does not know the amount of taxes which are unreported and uncollected but the amount may be significant. We do know that to the extent the Department of Revenue is able to identify currently unreported taxes and collect them, the citizens of this state will benefit. Collecting additional revenues may enable the Department to provide greater services without increasing taxes. It may also mean that the year in which taxes will need to be increased to continue to provide needed services can be delayed.

This bill was amended by the Senate Committee of the whole to provide an exemption for leased school buses. The Department of Revenue is requesting that the exemption be changed to a refund provision for purposes of enforcement and control. The broad purpose of this bill is to provide for improved enforcement of the motor fuel tax laws. A refund would provide for more control and better enforcement.

The Department supports the amendment being recommended by the Department of Revenue and the passage of Senate Bill 324.

Kansas
Petroleum
Council

Testimony on Senate Bill 324
Submitted to the House Taxation Committee
By Ken Peterson, Executive Director
Kansas Petroleum Council
March 14, 1995

Thank you, Mr. Chairman and members of the Committee. I appreciate the opportunity to submit a statement on Senate Bill 324.

First, I wish to commend Revenue Department officials for their foresight in creating the industry-government advisory group that met throughout the summer to discuss the various proposals in this legislation. While participants were not always in agreement, the meetings did provide an opportunity for all sides to be heard. The Kansas Petroleum Council had two representatives on the committee, one from Phillips and the other from the Williams terminal in Kansas City.

The Petroleum Council supports the goals of this legislation: to ensure that motor fuel taxes are paid and that tax cheats are more vigorously prosecuted.

In an effort to better track fuel shipments, new reporting and licensing requirements will be imposed on various segments of the industry if this legislation is enacted. Whether the new paper trail created by House Bill 324 uncovers tax evasion is unknown. Time will tell. We would recommend that the committee monitor the results of Senate Bill 324 to determine if instances of tax fraud are found. If the intended benefits of this legislation fall below expectations, further changes may be necessary in the future.

Thank you.

House Taxation
3-14-95
Attachment 5

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