

Approved: Jan 23, 1995
Date

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION.

The meeting was called to order by Chairperson Audrey Langworthy at 11:00 a.m. on January 19, 1995 in Room 519--S of the Capitol.

Members present: Senator Langworthy, Senator Corbin, Senator Martin, Senator Bond, Senator Clark, Senator Hardenburger, Senator Lee, Senator Sallee and Senator Wisdom.

Committee staff present: Tom Severn, Legislative Research Department
Chris Courtwright, Legislative Research Department
Don Hayward, Revisor of Statutes
Elizabeth Carlson, Secretary to the Committee

Conferees appearing before the committee: Linda Terrill, Kansas Bar Association
T. C. Anderson, Kansas Society of CPAs
Bob Corkins, KCCI
Karen France, Kansas Realtors Association
Jack Shriver, Chairman, Board of Tax Appeals
Myra Gross

Others attending: See attached list

SB 40--ESTABLISHMENT OF KANSAS TAX COURT AND PROPERTY TAX APPEALS BOARD

Proponents

Linda Terrill, Kansas Bar Association, appeared before the committee to explain the work of the Task Force of the Kansas Bar Association on **SB 40** and to explain the bill itself. (Attachment 1) She explained the reasons for the need for restructuring of the Board of Tax Appeals. She enumerated the jump in the number of cases before BOTA since 1989. **SB 40** would create a Property Tax Appeals Board whose members will hear property tax appeals in a much less formal manner. The bill would also allow for the creation of the Tax Court for the purpose of providing a more formal "court of record" for all tax appeals. She listed the goals to be accomplished by the structural changes and said the restructuring of BOTA is long overdue.

The committee asked questions concerning how the cases would be processed. Ms. Terrill said the need to recognize there is a difference between large and small cases. The Property Tax Appeals Board would allow for a decision within 48 hours while the larger and more difficult case would go before the Tax Court. She also said where there is a need to use appraisers, the appraisers would be used, and where there is a need to use attorneys, attorneys would be used. It is a bifurcated system.

T. C. Anderson, Executive Director, Kansas Society of CPAs, said his society has worked with the Kansas Bar Association on **SB 40**, but because of time constraints, the amendments he is proposing were not included in the bill. (Attachment 2) However, the amendments have been discussed with the Bar representatives. He explained the proposed amendments which are included in the balloon in Attachment 2.

Members of the committee asked if private individuals who own property can represent themselves before the Tax Court. Ms. Terrill responded that individuals can appear pro se, which means without being represented by attorney.

Senator Langworthy announced she intended to put the bill into a subcommittee chaired by Senator David Corbin.

Bob Corkins, KCCI, expressed his members' support for **SB 40**, and said this has been a standing position of KCCI for more than 10 years. (Attachment 3) He said they agree that a state tax court would expedite the resolution of tax disputes, would assure that tax matters are adjudicated competently, and would create better records and case holdings which would serve an important role as precedent. He expressed concern, however, about the cost of creating such a court system. It could be simplified and be less expensive.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION, Room 519-S
Statehouse, at 11:00 a.m. on January 19, 1995.

He thinks the small claims division would duplicate the county level and its review. He said KCCI recommends the deletion of Sections 16, 17, and 18 from this bill which relates to the creation of the Property Tax Appeals Board.

Karen France, Kansas Association of Realtors, said this bill addresses many of their concerns of a similar bill in the 1994 Legislative Session; however, she has some suggestions that she asked the committee to consider. (Attachment 4) In Section 16, the suggestion was to consider spreading the membership of the Property Tax Appeals Board over the congressional districts. She also asked the committee to consider making the appointments happen in the same way as classified appointments are made which would mean the Tax Court would be responsible for hiring and firing these individuals. Another suggestion was to spell out more clearly the designation of a Kansas certified appraiser. Ms. France said **SB 40** does attempt to expedite the appeals process; however, if the 48 hour deadline is not met the bill does not provide any remedy. She thought this problem should be addressed.

Opponents

Jack Shriver, Chairman, Board of Tax Appeals, stated there are problems in the Kansas tax laws, in the county appraisal system, in the property valuation division of the Department of Revenue, in the Board of Tax Appeals and in the judicial review of tax cases, but he did not feel this bill would solve the problems. (Attachment 5) He listed his concerns with **SB 40**. He said his experience on the Board has taught him there could easily be instances where the Tax Court could have three different opinions concerning the same issue. He also mentioned the selection of Tax Court judges or member of the Property Tax Appeals Board should be from different areas of the state. He stated that 73.1% of the cases come from the four largest counties. He expressed concern about the budget which he said has increased dramatically since 1991 and would increase with this bill.

Myra Gross appeared as an opponent to **SB 40**. (Attachment 6) She is a member of the Board of Tax Appeals but she said she was representing herself. She said she attended a Judicial Conference a few years ago and after exploring how other states' tax appeals systems were set up, she came to the conclusion that the Kansas system was better. She did say a study should be made and she would be happy to volunteer her services and experience. She spoke of a booklet which she had coauthored on how the appeals system works and a schedule of hearing times. She encouraged the committee to study the bill and to seek input from professionals outside of the field of law.

Senator Corbin asked Ms. Gross if she would resubmit the booklet of which she spoke.

The hearing on **SB 40** was closed.

Senator Langworthy introduced Secretary of Revenue John LaFaver to the members of the committee and to the audience.

The meeting adjourned at 12:10 p.m.

The next meeting is scheduled for January 20, 1995.

SENATE ASSESSMENT AND TAXATION COMMITTEE GUEST LIST

DATE: Jan 19, 1995

NAME	REPRESENTING
LINDA TERRILL	KBA TASK FORCE
Christy Young	Topeka Chamber of Com
Wendy Port	KC Inc
Jon Newman	KS Governmental Consulting
Ann Weisgerber	KS Dept of Rev
Barbara Butts	Dept of Admin
Chidi Nwora	
Shannon Peterson	KBA
Myra Shum	BOTA
Jack Shriver	BOTA
WALT DARLING	KS DIVISION OF BUDGET
WELBY SMITH	RKTA
KAREN McCHAM	KAR
MATTHEW MARTIN	VAR
Rita March	BOTA
Jim Jess	BOTA
Stephanie Jones	BOTA
Becky Senner	BOTA
Lynne Purdie	KS Assn. of Wheat Growers -

TO: SENATE ASSESSMENT AND TAXATION COMMITTEE
FROM: LINDA TERRILL
KANSAS BAR ASSOCIATION TASK FORCE MEMBER
DATE: JANUARY 19, 1995
SUBJECT: SENATE BILL 40

Thank you for this opportunity to address you today. My name is Linda Terrill and I am a member of the Kansas Bar Association Task Force that has met a number of times over the last two years for the purpose of tackling the issue of what mechanism would best provide an avenue for resolving tax appeals.

Hopefully, you have had time to review the memorandum from KBA President Linda Trigg and the attached synopsis of our proposal to restructure the Kansas Board of Tax Appeals. Also, we hope you have had a chance to read S.B. 40.

Rather than review the various provisions of S.B. 40, I would like to discuss with you the reasons the Task Force felt that restructuring is necessary and how our proposal addresses those needs. Simply put, we do not believe the current structure of BOTA is capable of handling the volume of tax appeals in a timely and efficient manner. Please do not interpret that observation as a criticism of the BOTA or staff. It is merely a recognition that the current structure was not designed to accommodate the current volume of appeals or the sophistication of today's tax appeals.

Since the implementation of reappraisal and classification in 1989, the number of cases filed with BOTA jumped to some 30,000 cases per year. Although that number has vacillated some from year to year, the number of appeals to BOTA has remained fairly constant

*Senate Assessment & Tax
Jan 19, 1995
Attach 1-1*

since 1989 and I suspect will remain at that level for the foreseeable future. Although we do not have precise statistics, it is apparent that the bulk of those appeals are property tax valuation cases. The balance of the appeals are income tax cases, sales tax cases, property tax exemption cases, no fund warrants, IRB's, etc.

Although there has been some question as to whether the BOTA can hear cases with fewer than a quorum, the BOTA has historically heard cases as a panel of two or more. Part of the reason this is done is because the current law requires at least 3 of the 5 BOTA members to decide the case. (See, K.S.A. 74-2433.) The BOTA has made considerable effort to accommodate the taxpayers by scheduling several days of hearings at different locations around the state. Unfortunately, in their effort to accommodate, the BOTA normally only allows 15 minutes for the hearing. Obviously, even the least sophisticated cases would require more than 15 minutes. Even with the abbreviated hearings and split panels, the number of pending cases yet to be decided or heard has consistently totaled 7,500 to 10,000 cases.

The current BOTA hearing process requires substantial formality even for the most basic valuation appeals. Each hearing requires several highly compensated BOTA members, staff counsel and a court reporter. In most instances, unless the taxpayer appears pro se, both the taxpayer and the county are represented by

counsel. The hearing is somewhat formal in that the rules of evidence and the administrative procedures act are generally applied. More importantly a decision on even the most basic property valuation appeal requires specific findings of fact and conclusions of law and a written Order stating those.

The basic structural change provided by S.B. 40 is to create a Property Tax Appeals Board (PTAB) who's members will hear property tax appeals in a much less formal manner. The goal is to have the bulk of the property tax appeals heard by someone knowledgeable in appraisal and valuation in a timely informal manner. Of course, a de novo appeal, or the chance to represent the case, to the Tax Court is available if either party is dissatisfied with the PTAB decision.

The creation of the Tax Court is for the purpose of providing a more formal "court of record" for all tax appeals. As the court of record, it naturally follows that the Tax Court Judges be trained as attorneys. Not only would they hear property tax appeals from the PTAB, but, would also hear all other matters currently heard by the BOTA. They would be deciding the cases based on their assessment of the evidence presented and would not act as appraisers, injecting a personal opinion of value in property tax valuation matters. In other words, the Tax Court would hear evidence, weigh it and rule on it. Significantly, S.B. 40 also creates a small claims division for the tax appeals arising

from the Director of Taxation which will also be handled by the Tax Court.

The goals to be accomplished by the structural changes contained in S.B. 40 are to:

- A. Provide an early consideration of all property tax appeals;
- B. Provide a less formal, less expensive hearing for all property tax appeals;
- C. Provide hearing officers for property tax appeals who are trained and experienced in real estate valuation and appraisal;
- D. Provide a Tax Court for the resolution of sophisticated property tax appeals;
- E. Provide a Tax Court and a small claims procedure for other types of tax appeals; and
- F. Provide legally trained tax court members to serve as the court of record for all tax appeals.

We would submit to you that none of the above goals can be accomplished without a restructuring of BOTA. Without significant changes, even the ability to hear and resolve the volume of appeals in a timely fashion is next to impossible. Without these significant changes, the formality and expenses of a routine valuation dispute will continue. Without these changes, tax appeals will continue to be heard by BOTA members who are not

required to have either appraisal or legal training or experience.

It seems clear that a restructuring of the BOTA to accommodate the volume and sophistication of today's tax appeals is long overdue. We also believe that a three member Tax Court and a 5 member PTAB best addresses the problem. Assuming you agree that this type of structure is appropriate, we should discuss the particulars of our proposal in creating a Tax Court and a PTAB. S.B. 40 contains our best recommendations as to how many members each body should have, what their qualifications should be, how they are to be chosen, how much should they be paid, etc. If anyone has a suggestion for improvement or an idea how to better accomplish our goals, we would be more than happy to hear them.

Aside from the proposed structural and qualification changes contained in S.B. 40, there are several other proposed changes that should be discussed. As for appeals emanating from the Director of Taxation, we have proposed the elimination of a formal Director's hearing and provided for a small claims procedure. Another proposed change is to eliminate the District Court judicial review of property tax cases. We believe there is ample justification for these proposed changes, but, again, would like to hear what ideas and suggestions you would have.



**Kansas Society of
Certified Public Accountants**

400 CROIX / P.O. BOX 5654 / TOPEKA, KANSAS 66605-0654 / 913-267-6460 / FAX 913-267-9278

Testimony on

Senate Bill 40

**Presented to the
Senate Committee on Assessment and Taxation**

by

**T.C. Anderson
Executive Director**

January 19, 1995

*Senate Assess + Tax
Jan 19, 1995
attach 5-1*



Kansas Society of Certified Public Accountants

400 CROIX / P.O. BOX 5654 / TOPEKA, KANSAS 66605-0654 / 913-267-6460 / FAX 913-267-9278

Chair Langworthy, members of the Senate Committee on Assessment and Taxation:

I am T.C. Anderson, Executive Director of the 2,300-member Kansas Society of Certified Public Accountants.

I appreciate the opportunity to appear before you this morning to discuss Senate Bill 40 that would establish a Kansas Tax Court. The Board of Directors of the Kansas Society went on record in November as supporting the concept of a Tax Court and referred to a Task Force the task of developing appropriate language. Our Task Force met with a representative of the Kansas Bar and offered suggestions for strengthening the concept. Senator Langworthy was sent a copy of those suggestions. Since then the concept has undergone additional refinement, but due to time constraints our Task Force was unable to get the following amendments to the KBA prior to the introduction of SB 40. This week, however, we have discussed our amendments with Bar representatives.

Our first amendment can be found on line 11 of page 3 of the balloon. It would permit a lawyer-CPA who chooses to practice as a certified public accountant to be nominated for a Tax Court judgeship.

Also on page 3 at line 30 we feel legislative consideration should be given as to whether the \$10,000 limit for the small claims division is high enough. In the city of Topeka a sales tax dispute over a \$164,000 piece of equipment would exceed the small claims limit. Likewise, a retailer with three years of disputed sales of \$54,000 would also exceed the limit.

On line 7 of page 4 we are suggesting that a taxpayer may appeal decisions from the small claims division to the Tax Court. We offer this concept because decisions from the property tax appeals board can be appealed to the Court. We feel there should be consistency here. On the other hand you may wish to set a dollar amount for the property tax appeals board and have those decisions not subject to appeal.

Language to permit the appeals from the small claims division and be found on page 5 of the balloon along with clarification that a taxpayer may bypass the property tax appeals board and go directly to the Tax Court.

Also on page 5 in line 28 of New Section 14 we have suggested language that would permit any person enrolled to practice before the United States Tax Court to represent taxpayers before the Kansas Tax Court. For non-attorneys the federal Tax Court offers a very rigorous examination on law that must be passed before a person can be enrolled to practice.

Page 2 of 2
SB 40

Our final amendment occurs on page 8, line 28. It merely reinforces that any matter before the property tax appeals board may be removed to the Kansas Tax Court.

Thank you for allowing me the opportunity to appear before you. I hope you will consider these amendments if and when you consider SB 40.

I will be happy to stand for questions.

1 six years and one shall be appointed for a term of eight years. Each judge
2 may be appointed to one additional eight-year term by the governor. If a
3 vacancy occurs on the Kansas tax court, the governor shall appoint a suc-
4 cessor to fill the vacancy for the unexpired term.

5 (b) Each judge shall: (1) Have been regularly admitted to practice
6 law in the state of Kansas; (2) be a resident of Kansas at the time of taking
7 the oath of office and shall maintain residency in Kansas while holding
8 office; and (3) for a period of at least five years, have engaged either in
9 the active practice of law as a lawyer, judge of a court of record or any
10 other court in this state, ~~or as a full-time teacher of law in an accredited~~ or be a permit holding certified public
11 law school, ~~or any combination thereof.~~ accountant,

12 (c) There is hereby established the Kansas tax court nominating com-
13 mittee which shall be composed of five members appointed as follows:
14 One selected by the Kansas bar association, one selected by the Kansas
15 society of certified public accountants, one selected by the Kansas asso-
16 ciation of county appraisers, one selected by the Kansas chamber of com-
17 merce and industry and one selected by the Kansas association of realtors.
18 Upon being notified of a vacancy on the Kansas tax court, the nominating
19 committee shall consider all qualified applicants for the vacant position
20 and nominate three qualified applicants to the governor for the vacant
21 position.

22 (d) The Kansas tax court shall have no capacity to sue or be sued.

23 New Sec. 8. (a) There shall be a division of the Kansas tax court
24 known as the small claims division. The judges of the tax court shall sit
25 as judges of the small claims division. Each judge shall have authority to
26 hear and decide the cases heard as a small claims judge.

27 (b) At the election of the taxpayer, the small claims division shall have
28 jurisdiction over any appeal of a decision, finding, order or ruling of the
29 director of taxation in which the amount of tax in controversy does not
30 exceed \$10,000. ?

31 (c) A taxpayer may elect to appeal a decision, finding, order or ruling
32 of the director of taxation to the small claims division instead of appealing
33 to the regular division of the Kansas tax court. A taxpayer who elects to
34 appeal to the regular division shall not appeal to the small claims division
35 in the same matter. A taxpayer shall commence a proceeding in the small
36 claims division by filing a notice of appeal in the form prescribed by the
37 rules of the Kansas tax court which shall state the nature of the taxpayer's
38 claim. Notice of appeal shall be provided to the appropriate unit of gov-
39 ernment named in the notice of appeal. Upon the filing of a notice of
40 appeal in the small claims division, the division shall have exclusive juris-
41 diction over the case.

42 (d) The hearing in the small claims division shall be informal. The
43 judge may hear any testimony and receive any evidence the judge deems

1 necessary or desirable for a just determination of the case. All testimony
2 shall be given under oath. A party may appear personally or may be rep-
3 resented by an attorney or other representative. No transcript of the pro-
4 ceeding shall be kept.

5 (e) At any time prior to entry of judgment, a taxpayer may dismiss a
6 case in the small claims division. The dismissal shall be with prejudice.

7 (f) The judgment in the small claims division ~~shall be conclusive upon~~
8 ~~all parties and may not be appealed.~~ The judgment shall not be considered
9 as judicial precedent and shall have no force or effect in any other case,
10 hearing or proceeding and shall not be cited as such.

11 (g) The Kansas tax court may designate hearing officers to hear cases
12 appealed to the small claims division. Any determination made by a des-
13 igned hearing officer shall be binding and have the same force and
14 effect as if the determination had been made by a judge.

15 New Sec. 9. The Kansas tax court is established as an independent
16 agency within the executive branch of state government. All budgeting,
17 purchasing and related management functions shall be administered un-
18 der the direction of the chief judge of the Kansas tax court. All vouchers
19 for expenditures from appropriations to or for the Kansas tax court shall
20 be approved by the chief judge or a person or persons designated by the
21 chief judge for that purpose. All records of the state board of tax appeals
22 shall be transferred to the Kansas tax court on the effective date of this
23 act.

24 New Sec. 10. (a) Each judge of the Kansas tax court shall receive an
25 annual salary as provided in this section. Each of the judges of the Kansas
26 tax court shall devote full time to the duties of such position.

27 (b) (1) The annual salary of the chief judge shall be an amount equal
28 to the annual salary paid by the state to a district judge designated as
29 administrative judge.

30 (2) The annual salary of a judge other than the chief judge shall be
31 an amount equal to the annual salary paid by the state to a district judge.

32 New Sec. 11. The Kansas tax court, within amounts budgeted for it,
33 may appoint such employees as may be necessary, and such employees
34 shall be in the unclassified service of the Kansas civil service act.

35 New Sec. 12. The Kansas tax court shall keep an accurate record of
36 its official proceedings and shall keep a seal, engraved with the words,
37 "State of Kansas, Tax Court." Such seal may be used to authenticate the
38 official acts of the Kansas tax court or any judge thereof, but failure to
39 use the seal shall not invalidate any such act. The Kansas tax court ad-
40 ministrators shall be the custodian of the seal and records and be author-
41 ized to affix the seal in all proper cases.

42 New Sec. 13. The Kansas tax court shall have the following powers
43 and duties:

may be appealed as set forth
herein.

1 (a) To hear appeals from the director of taxation and the director of
 2 property valuation on decisions, findings, orders, rulings and interpreta- or removals
 3 tions by such directors, and to hear appeals from the property tax appeals
 4 board; and to hear appeals from the small
 5 (b) to hear appeals from the director of property valuation on the
 6 assessment of state assessed property; claims division;

7 (c) to constitute, sit and act as the state board of equalization as pro-
 8 vided in K.S.A. 79-1409, and amendments thereto;

9 (d) to correct errors and irregularities under the provisions of article
 10 17 of chapter 79 of the Kansas Statutes Annotated, and amendments
 11 thereto;

12 (e) to authorize the issuance of emergency warrants by taxing dis-
 13 tricts, as provided in article 29 of chapter 79 of the Kansas Statutes An-
 14 notated, and acts amendatory thereof or supplemental thereto, and au-
 15 thORIZING the issuance of warrants by cities or counties under statutes of
 16 this state;

17 (f) to authorize increases in tax levies by taxing districts, as provided
 18 in article 19 of chapter 79 of the Kansas Statutes Annotated, and acts
 19 amendatory thereof or supplemental thereto;

20 (g) to review and decide applications for exemptions from property
 21 taxation submitted pursuant to K.S.A. 79-213, and amendments thereto;

22 (h) to adopt rules and regulations relating to the performance of its
 23 duties and particularly with reference to procedure before the court on
 24 hearings and appeals; and

25 (i) such other powers as may be prescribed.

26 New Sec. 14. Proceedings before the Kansas tax court shall be gov-
 27 erned by the provisions of the Kansas administrative procedure act except
 28 as otherwise specifically provided herein. Hearings shall be conducted by
 29 one judge, unless the chief judge determines that the case should be
 30 heard *en banc*. The hearing *en banc* may be allowed for the original
 31 hearing or a hearing on reconsideration.

Any person enrolled to practice before
 the United States tax court may represent
 a taxpayer before the Kansas tax court.

32 New Sec. 15. The Kansas tax court shall have the power to summon
 33 witnesses from any part of the state to appear and give testimony, and to
 34 compel the witnesses to produce records, books, papers and documents
 35 relating to any subject matter before the court. Summons, subpoenas and
 36 subpoenas duces tecum may be directed to the sheriff of any county and
 37 may be made returnable at such time as the Kansas tax court shall de-
 38 termine. No fees shall be charged by the sheriff for service thereof. Wit-
 39 ness fees and mileage shall be allowed and may be taxed as costs to either
 40 party in the discretion of the Kansas tax court.

41 The Kansas tax court shall have power to issue an order directing dep-
 42 ositions of witnesses residing within or without the state, to be taken,
 43 upon proper notice to interested parties, if any, in like manner that dep-

1 (c) A petition for review filed in accordance with the act for judicial
 2 review and civil enforcement of agency actions shall contain a brief state-
 3 ment of the pertinent facts, including the amount of tax assessed, and be
 4 accompanied by certified copies of the final order issued by the Kansas
 5 tax court.

6 (d) If review of an order final action of the board Kansas tax court
 7 relating to excise, income or inheritance taxes, is sought by a person other
 8 than the director of taxation, such person shall give bond for costs at the
 9 time the petition is filed. The bond shall be in the amount of 125% of
 10 the amount of taxes assessed or a lesser amount approved by the court
 11 of appeals and shall be conditioned on the petitioner's prosecution of the
 12 review without delay and payment of all costs assessed against the peti-
 13 tioner.

14 (e) If review of an order final action of the Kansas tax court is sought
 15 by a party other than the director of property valuation or a taxing sub-
 16 division and the order determines, approves, modifies or equalizes the
 17 amount of valuation which is assessable and for which the tax has not
 18 been paid, a bond shall be given in the amount of 125% of the amount
 19 of the taxes assessed or a lesser amount approved by the reviewing court.
 20 The bond shall be conditioned on the petitioner's prosecution of the re-
 21 view without delay and payment of all costs assessed against the peti-
 22 tioner.

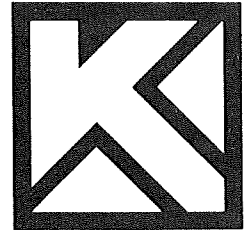
23 Sec. 20. K.S.A. 74-2438 is hereby amended to read as follows: 74-
 24 2438. An appeal may be taken to the state board of tax appeals Kansas
 25 tax court from any finding, ruling, order, decision, final determination or
 26 other final action on any case of the director of taxation or, director of
 27 property valuation or property tax appeals board by any person aggrieved
 28 thereby. Notice of such appeal shall be filed with the secretary of the
 29 board Kansas tax court within 30 days after such finding, ruling, order,
 30 decision, final determination or other action on a case, and a copy served
 31 upon the director concerned. Upon receipt of a timely appeal, the board
 32 Kansas tax court shall conduct a hearing in accordance with the provisions
 33 of the Kansas administrative procedure act. The hearing before the board
 34 Kansas tax court shall be a de novo hearing unless the parties agree to
 35 submit the case on the record made before the director. No interest shall
 36 accrue on the amount of the assessment of tax subject to any such appeal
 37 beyond 120 days after the date the matter was fully submitted, except
 38 that, if a final order is issued within such time period, interest shall con-
 39 tinue to accrue until such time as the tax liability is fully satisfied, and if
 40 a final order is issued beyond such time period, interest shall recommence
 41 to accrue from the date of such order until such time as the tax liability
 42 is fully satisfied.

43 Sec. 21. K.S.A. 1994 Supp. 79-213 is hereby amended to read as

Upon application of an affected taxpayer, any matter before the property tax appeals board may be removed to the Kansas tax court.

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry



835 SW Topeka Blvd. Topeka, Kansas 66612-1671 (913) 357-6321 FAX (913) 357-4732

SB 40

January 19, 1995

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

Senate Committee on Assessment and Taxation

by

Bob Corkins
Director of Taxation

Madam Chair and members of the Committee:

My name is Bob Corkins, director of taxation for the Kansas Chamber of Commerce and Industry, and I appreciate the opportunity to express our members support for SB 40's proposed establishment of a Kansas tax court. We believe the change is long overdue, as this has been a standing position of KCCI for more than ten years.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

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attach 3-1*

Without going into detail which would duplicate the rationale expressed by the Kansas Bar Association, I will note the general reasons for KCCI's endorsement. The KBA has formally addressed our association and we have had several conversations with KBA representatives in which our mutual objectives were discussed. KCCI agrees that a state tax court would mitigate the docket management problems of the Board of Tax Appeals (BOTA), would expedite the resolution of tax disputes, would better assure that tax matters are adjudicated competently, and would create a body of factual records and case holdings which serve an important role as precedent.

A chief concern of our members, however, is the cost of creating such a court system. Much of that concern is removed by the proposed phase-out of BOTA. It is our understanding that BOTA resources can be diverted to the tax court, thus making this proposal revenue neutral. However, KCCI does question the desirability and fiscal prudence of creating the property tax appeals board set forth in this bill. It appears the appeals board would duplicate county-level tax reviews, would significantly add to the cost of implementing SB 40 (probably turning a revenue neutral proposal into a net state expenditure increase), and would handle cases which are better addressed through the tax court's small claims division. For these reasons, KCCI recommends the deletion of sections 16, 17 and 18 from this bill as well as other amendatory language in SB 40 which relates to the creation of the property tax appeals board.

I thank you for your time and consideration of our views and respectfully ask for your support of SB 40 with the changes I have indicated.



Executive Offices:
3644 S. W. Burlingame Road
Topeka, Kansas 66611-2098
Telephone 913/267-3610
Fax 913/267-1867

TO: SENATE ASSESSMENT AND TAXATION COMMITTEE
FROM: KAREN FRANCE, DIRECTOR, GOVERNMENTAL AFFAIRS
DATE: JANUARY 19, 1995
SUBJECT: SB 40 RESTRUCTURING OF BOTTA ; ESTABLISHMENT OF TAX COURT

Thank you for the opportunity to testify. On behalf of the Kansas Association of REALTORS®, I appear today to support the concepts of SB 40 and to offer some amendments.

Last year we testified against a bill on a similar subject, because of our concerns regarding the treatment of the average taxpayer in the property tax appeals process. As we pointed out last year, the Board of Tax Appeals has traditionally been the poor man's tax court. A taxpayer did not need an attorney to plead their case to the board, nor were they forced to make their appeals to a bank of attorneys who know little or nothing about the valuation of property.

Many of our concerns have been addressed in this bill. I have been in touch with Alan Alderson concerning previous drafts of the legislation and he has been kind enough to address many of them in this version. However, we do have some other suggestions that we ask you to consider.

First, I refer you to New Section 16 on page 6, dealing with the makeup of the Property Tax Appeals Board (PTAB). We ask you to consider spreading the membership of the board over the congressional districts, in order to avoid a clustering of board members from one part of the state. We feel this diversity would provide more confidence in the board, in terms of allaying any fear of parochialism.

Additionally we ask you to consider taking the "political" nature out of this board, by making the appointments happen in the same way as classified appointments are made. This would mean the Tax Court is responsible for hiring and firing these individuals. One of the most common complaints that we hear about the current BOTTA is that the members are political appointments and so don't have to be really responsible for the decisions that are made. Rather than having terms, these board members would be classified employees who are hired for their ability and can be fired for incompetence.

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Testimony, BOTA Restructure

At line 10 on page 6, the language indicates that not less than 2 board members shall satisfy all criteria for designation as a Kansas certified appraiser. Does that mean that they will be certified appraisers or not, i.e. will they be required to have passed the certified appraiser test? If that is the intent, it should be spelled out more clearly. Additionally, one of the ongoing criticisms of the current BOTA has been the lack of real estate valuation experience. While the language at line 8 seems to indicate some sort of interest at having members who have this experience, it would be much clearer to state, for example, that the individuals other than certified appraisers must have had a real estate salesperson or broker's license for at least 5 years or an appraiser license, or done appraisal work as a profession for five years. These are the kinds of individuals who will make valuation determinations based upon market valuation knowledge, rather than pure formulas learned from a book.

The bill does attempt to expedite the appeals process by requiring decisions within 48 hours of a hearing. This would be a great improvement over the existing system. However, the bill does not provide any remedy for a taxpayer if the deadline is not met. While this may relate back to the issue of whether the members of the board are political appointments or classified employees held accountable to the Tax Court, at a minimum, sort of redress should be placed in this legislation in the event the 48 hour rule is not carried out.

In general, we think this legislation is a great improvement over the proposal from last year. However, we ask that you fine tune some of its provisions so that we do not create another level of bureaucracy for the average property taxpayer to have to trip through.

Thank you again for the opportunity to testify. I will be happy to answer any questions you may have.

SENATE BILL 40

TESTIMONY BY
JACK SHRIVER, CHAIRMAN, BOARD OF TAX APPEALS
BEFORE SENATE ASSESSMENT AND TAXATION COMMITTEE

The board of tax appeals is an administrative panel that is established much like a populist court to allow taxpayers a fair hearing on grievances. However the board is also a court of record --- all court appeals from the board's decisions are made on the record certified from the hearing before the board. There is not a new hearing before the district or appellate courts. No new evidence or testimony is allowed.

My term on the board is up at the end of June. I have not applied, nor do I intend to apply, for re-appointment. So, unlike in last year's bar association proposal in Senate Bill 756, I have no personal agenda with regard to the results of Senate Bill 40, other than the same interest I have in the operation and success of the K.C.C. and the Kansas legislature, having served there as well.

There are problems in the Kansas tax laws, in the county appraisal system, in the property valuation division of the Department of Revenue, in the Board of Tax Appeals and in the judicial review of tax cases. This bill fixes none of these. It does attempt to create another level of hearings for the taxpayers to go through. The tax appeals process is too long and too complicated now. Do not make it worse.

SB 40 basically abolishes the state board of tax appeals and creates a Kansas tax court, a small claims division of the tax court, and a property tax appeals board. I would like to address some of the concerns I have and which are generally agreed to by the current members of the board of tax appeals.

-- Sections 1 through 6 of this bill address the transition. Our main area of concern is in Section 6 which indicates the governor shall resolve any conflicts arising with regard to any

power, duty or function, the disposition of necessary officers and employees, the unexpended balance of any appropriation and the proper disposition of any property or records, and that the decision of the governor shall be final. Does this take away any right of appeal by an employee who might be, in that employee's opinion, discharged without cause?

-- Section 7 creates the Kansas tax court of three judges appointed by the governor, from a list of nominees selected by a nominating commission, to eight year terms. Currently, board members serve four year terms and it is the board's position that four year terms are much more consistent with similar positions state-wide -- even judges. In addition, if the nominating commission is to be comprised of special interest groups as the bill reads, can you limit the participation to these groups? If the KCCI has a voice, should the AFL-CIO? If the valuation of farm ground is a concern in a farming state, should the KLA and/or Farm Bureau be included? Shouldn't utilities, and oil and gas be represented? Where should the line be drawn?

-- Section 8 creates a small claims division, comprised of one of the tax judges or a designated hearing officer, who would have jurisdiction over any appeal of a decision of the director of taxation, at the election of the taxpayer, only in cases in which the amount of tax in controversy does not exceed \$10,000. Any decision of the small claims division is final and there is no appeal. How do we achieve consistency when each of three judges, or any number of "hearing officers" whose qualifications are not indicated, makes a solitary decision in the matter before him or her? Also, if the taxpayers elects this process, the director of taxation has been given no choices but has lost any right to appeal the decision as well.

-- Section 9 establishes the Kansas tax court as an independent agency within the executive branch of government with all administrative functions under the direction of the chief judge.

-- Section 10 defines the judge positions as full time and provides for the salaries of the judges.

-- Section 11 authorizes the court to appoint such employees as may be necessary and directs that those employees be in the unclassified service. I know of no other agency in the executive branch of state government where 100% of the agency is in the unclassified service. We currently have 21 classified positions. Am I to assume those people will be placed in lay-off status and find themselves unemployed?

-- Section 12 indicates an accurate record of official proceedings will be kept and provides for an administrator who will be custodian of the seal and records. There is no indication of any other duties which would be performed by the administrator.

-- Section 13 enumerates the duties and powers of the Kansas tax court which, in essence, are those which are the statutory responsibilities of the current board of tax appeals.

-- Section 14 indicates the court shall be governed by provisions of the Kansas administrative procedures act unless otherwise provided, and that one judge will conduct hearings unless the chief judge determines the case should be heard en banc. Again, our concern is the total loss of consistency in decisions rendered by one individual rather than a majority of a board or court.

-- Section 15 empowers the tax court to summon witnesses for deposition testimony as well as appearance at hearings. However, witness fees and mileage would be allowed "in the discretion of the Kansas tax court". There is no indication of a maximum or minimum witness fee.

-- Section 16 creates a division of the Kansas tax court known as the property tax appeals board consisting of five members appointed by the governor, two of whom are certified appraisers. Hearings before this board shall be conducted by one member, there will be no record, and a summary disposition will be issued within 48 hours. We are concerned that one person will have total responsibility for making a decision with regard to cases such as

the Woodlands race track, West Ridge Mall, Bank IV, Corporate Woods and Total Petroleum Refinery, to name but a few, and that the decision must be rendered within 48 hours. Can a member of the property tax appeals board be held to criminal standards to find fair market value, which is current law, when a decision such as this must be rendered within 48 hours?

In addition, there is no provision for what happens to an appeal if, at the end of 48 hours, no decision has been made.

-- Section 17 enumerates the powers and duties of the board as basically questions of valuation (protests and equalization appeals).

-- Section 18 provides for the salary of the board members equal to that of district magistrate judges, however there is no indication that the positions will be full time.

-- Section 19 amends K.S.A. 74-2426. The paragraph providing for reconsideration of an order has been removed and it appears that no provision for reconsideration has been included elsewhere, however under the Kansas administrative procedures act, reconsideration is required. This section also provides for judicial review of an action of the tax court, and while it gives the court of appeals jurisdiction of any action for review pertaining to property valuation director appeals and director of taxation appeals, it deletes the sentence in current law granting jurisdiction of any other case to the district court of the proper county. In which court would a petition for review be filed?

-- The remaining sections (20 - 30) are basically current law with minor amendments which, for the most part, do not seem to create great questions and concerns.

In summary, we see basically four major areas of concern in this proposed legislation:

- 1) There would be absolutely no consistency in court/board decisions, especially with 5 property tax board members, 3 tax court judges and any number of hearing officers making individual decisions;

- 2) We cannot see where this will move cases through the process any faster, but could easily slow the process. Counties complain regularly now because they cannot prepare cases for hearing at the rate demanded by the board. The greatest share of our caseload is from the four largest counties, Johnson, Wyandotte, Shawnee and Sedgwick. If we attempted to schedule eight individual dockets for three judges and five board members, none one of the counties could respond to the required caseload without adding additional staff;
- 3) The proposal creates severe economic problems. We would foresee the necessity of more hearing rooms, more travel expense, more office space, more postage and probably twice the clerical staff to adequately support eight dockets and an additional step added to the appeal process; and, the addition of people necessarily means the addition of equipment (desks, chairs, computers);
- 4) Finally, we find no provision in this proposal for Senate confirmation of anyone -- tax court judges, property tax appeals board members, hearing officers. If the intent of the proposal is that the tax court be judiciary in nature and action, where is the separation of power if it remains in the executive branch of government?

In conclusion, I have a few personal comments. First, my experiences on this board have taught me that there could easily be instances where the tax court could have three different opinions concerning the same issue. What if the case is remanded from the appeals court back to the agency? Does the same tax judge get the case back? Is one judge bound by another's decision?

Secondly, I see no provision in the bill for the selection of the tax court judges or the members of the property tax appeals board to be from different areas of the state. It is possible that all eight positions could be filled with people from the same county or district. Even with training and knowledge in appraisal and valuation, I believe it would be extremely difficult for eight

individuals from the greater Kansas City area to make decisions, especially in 48 hours, regarding the value of grain elevators or agricultural land.

Last year I had discussion with the chairman and some of the members of this Committee about the possibility of there being an interim committee appointed to work through some of the problem areas in the tax appeal process. I offered to make myself available to assist that interim committee in any way I could. To my knowledge, however, that did not occur. Even though I will no longer be a member of the board of tax appeals, I would like to renew that offer to this committee.

Finally, I have been impressed with Governor Graves' appointments to fill various key positions to date. If the intent is to have attorneys make decisions, Governor Graves can appoint two more attorneys in six months. I'm not opposed to having more attorneys on the board, although historically, governors have appointed only one, and none that I remember as Chairman. Let's give Governor Graves a chance -- perhaps the Senate may wish to start the confirmation process prior to the appointments instead of several months after.

SENATE BILL 40

TESTIMONY BY
MYRA GROSS, MEMBER, BOARD OF TAX APPEALS
BEFORE SENATE ASSESSMENT AND TAXATION COMMITTEE

I am a member of the Board of Tax Appeals, however I speak only for myself and not for the board. My term on the Board of Tax Appeals is up the end of June. I have not applied for reappointment so this bill has no affect on my future employment. I appear before you because of my concern for the taxpayers of Kansas. The people of Kansas are just now getting used to the tax appeals system. After five years they have learned how the process works -- and now we have a bill that wants to muddy what is becoming clear.

I do not disagree that some changes need to be made, but those changes must be made very carefully with much thought and planning.

It is clear from reading Senate Bill 40 that those who drafted the bill did so without fully understanding the appeals system and how it is or is not working; or perhaps it was drafted by those who would profit most -- at the expense of the taxpayers.

I attended a Judicial Conference a couple of years ago. Because I felt our present system needed some refining, I spent some time exploring how other states' tax appeals systems were set up. Most of them were different from ours. I came away thinking how much better our system is than the ones I'd learned about. I expressed to members of this committee that I felt a study should be done, reviewing pros and cons of the other states' systems to see what we could draw from their experiences and I volunteered my services. I again volunteer my services to do that study.

Last year I extended a written invitation, delivered personally to every office, inviting the Senators and House members to drop over to the offices of the Board of Tax Appeals, ask questions, investigate, talk with our attorneys, and sit in on some

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of the hearings. I included a booklet which I co-authored on how the appeals system works and a schedule of our hearing times. I wanted the legislative body to have the opportunity to see how this system actually works. Again, I extend that invitation.

All of us know our books are filled with hastily put together statutes that become monsters once they are unleashed upon the unsuspecting public. While that is not the intent, this sometimes happens.

Committee members -- don't let one segment of the population sway your thinking. Whether we're board members or legislators, whether we're appointed or elected, our taxpayers deserve better than this.

I encourage you to carefully study this bill, to seek input from professionals outside the field of law. Perhaps have town meetings where people will have the opportunity to audience the proposed bill so that we all, working together, can restore the taxpayers' faith that in Kansas their government works for them.

Thank you.