

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 16, 1997, in Room 519--S of the Capitol.

Members present: Senator Langworthy, Senator Corbin, Senator Bond, Senator Goodwin, Senator Hardenburger, Senator Karr, Senator Lee, Senator Praeger, Senator Sallee and Senator Steineger.

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

Conferees appearing before the committee: Dan Hermes, Director Governmental Affairs
Arlin Meats, Commercial Property Association of Kansas
Randy Allen, Kansas Association of Counties
Willie Martin, Sedgwick County
Bob Corkins, Kansas Chamber of Commerce and Industry
Paul Welcome, Johnson County appraiser
Shelby Smith

Others attending: See attached list

The minutes of the January 15 meeting were approved.

Dan Hermes, Director of Governmental Affairs from the Governor's office, requested the introduction of seven bills to implement the Governor's tax package.

The first bill related to income taxation. It would provide a \$2,500 tax credit for adoption expenses.

Senator Bond moved to introduce the bill, seconded by Senator Lee. The motion carried.

The second bill also related to income taxation. It would equalize the rates for single income tax filers with the rates for joint filers over a three-year period.

Senator Prager moved to introduce the bill, seconded by Senator Goodwin. The motion carried.

The final income taxation bill requested for introduction related to property taxes levied against commercial and industrial machinery and equipment. It would allow a ten percent refundable tax credit for taxes paid the prior year.

Senator Bond moved to introduce the bill, seconded by Senator Sallee. The motion carried.

The fourth bill requested for introduction would expand the homestead property tax refund program to income levels of \$25,000 and would allow larger refunds for participants in the program.

Senator Lee moved to introduce the bill, seconded by Senator Steineger. The motion carried.

The fifth bill requested for introduction would reduce the uniform school finance property tax levy from the current level of 33 mills to 29 mills in the 1997-98 school year and to 25 mills for the following school year.

Senator Corbin moved to introduce the bill, seconded by Senator Steineger. The motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION, Room 519-S
Statehouse, at 11:00 a.m. on January 16, 1997.

The sixth request for introduction would expand the current sales tax refund program for sales of food to income levels of \$25,000 from the current \$13,000 level and would also enhance the level of refund for both the head of the household and additional residents of the household.

Senator Lee moved to introduce the bill, seconded by Senator Corbin. The motion carried.

The final bill requested for introduction would exempt from sales taxation the labor services associated with remodeling, reconstruction and repair of certain structures.

Senator Lee moved to introduce the bill, seconded by Senator Corbin. The motion carried.

SB 6--Relating to property taxation; concerning interest rates on refunds and delinquent payments of property tax.

Arlin Meats, Commercial Property Association of Kansas, testified in support of **SB 6**. Mr. Meats noted that when a property owner disagrees with an assessed valuation and files an appeal, it takes months or even years before a final decision is reached. However, the property owner is required to pay the tax even though there is a protest or an appeal in process. He believed that, in fairness to property owners, any refunds should include interest from the date the taxpayer paid to the date of the final decision. (Attachment 1)

Randy Allen, Kansas Association of Counties, followed with further testimony in support of **SB 6**. In addition, Mr. Allen urged that two flaws in the bill be corrected prior to final consideration to protect counties from unlimited financial exposure to pay interest on property tax refunds and to redefine the method of calculation of interest due on property tax refunds. (Attachment 2)

Senator Bond began a discussion regarding Mr. Allen's suggestion to improve the bill by limiting payment of interest by counties after a one-year period. Senator Bond felt the limitation would substantially thwart making the taxpayer whole. He suggested that counties be given the ability to set aside disputed funds in a separate account, drawing interest. The account would be reserved for appeal cases won by taxpayers.

Senator Lee agreed that the taxpayers should be paid interest on refunds awarded on appeal, however, stressed that system which is set up be one that does not encourage taxpayers not to come to a negotiated settlement with the Board of Tax Appeals.

Willie Martin, representing the Sedgwick County Board of Commissioners, addressed the issue of interest payments on refunded taxes. She identified procedural changes which would improve the property tax system for both the taxpayer and the county. (Attachment 3)

Bob Corkins, Kansas Chamber of Commerce and Industry, expressed his qualified support of **SB 6**. He believed the bill was not fully consistent with the concept that interest in any tax matter is not a penalty but is merely a means of protecting the buying power of a given sum of money while that money is out of circulation by virtue of its status in dispute. (Attachment 4)

Paul Welcome, Johnson County Appraiser, stated that, basically, the Board of County Commissioners of Johnson County opposed **SB 6** but had an alternative to offer. He suggested that the taxpayer simply be required to pay the amount of taxes that are not in dispute. The amount in dispute would not become delinquent. When the disputed value was legally negotiated, the remaining amount would be paid at that point in time. He felt this system would be easier to explain to the taxpayer.

Senator Langworthy asked Mr. Welcome what the motivation for the taxpayer would be to resolve their issue quickly. On the commercial side, Mr. Welcome noted the incentive would be an early resolution of the tax liability. He also pointed out that the appeal may be punitive even though the process went on for a lengthy amount of time.

Shelby Smith of Wichita testified in opposition to **SB 6**. He emphasized the necessity to keep interest and penalties divided and to keep systemic reforms out of the bill. He noted that Mr. Welcome's suggestion was introduced in a House bill during the 1996 session, received virtually no support, and was thought of as user unfriendly. He urged that the bill be kept simple and on the subject of interest. He supported the uniform rate by reference to the revenue codes.

The meeting was adjourned at 12:05 p.m.

The next meeting is scheduled for January 21, 1997.

SENATE ASSESSMENT & TAXATION COMMITTEE
GUEST LIST

DATE: 1-16-97

NAME	REPRESENTING
Gary Moler	KAC
Kelli Martin	Sedgwick County
GERALD FRANTZ	SEDGWICK COUNTY
MARION JOHNSON	Douglas County
Alan Holmes	Division of Budget
Mark Holthaus	Western Resources
JASON PITSEMBERGER	BRAD SMOOT LAW OFFICE
PAUL WELCOME	JOHNSON COUNTY GOVNT
JOYCE COYER	JOHNSON COUNTY GOVNT
Randy Allen	KAC
Ar/lin Meats	West Ridge Mall
Tom Bruno	Allent Assoc.
Bob Corkins	KCCI
JANET STUBBS	KBIA
Mike Beam	KS. LUSTK. ASSN.
Jon Freed	Stan Clark
Suzan Davis	Girl Scout Councils of KS
Alan Steppat	PETE MCGILL ? Assoc.
MARK BECK	P/D

CPAK

Commercial Property Association of Kansas

820 SE Quincy, Suite 220 - C
Topeka, KS 66612
Phone: (913) 232-0486

To: Senate Committee on Assessment and Taxation
From: Arlin Meats, Mall Manager, West Ridge Mall
Re: Testimony for Interest on Property Tax Refunds
Date: 1-16-97

Madame Chair and members of the committee. My name is Arlin Meats. I am the manager of West Ridge Mall located here in Topeka. I came today to urge you to pass S.B. 6.

Due to the wide variation in county assessors' valuations of Kansas properties, more and more property owners are filing appeals through BOTA and district courts to dispute the high valuations. Property owners are forced to file these appeals because property taxes in Kansas have become one of the highest costs of conducting business in the state. In the retail trade, most retailers expect property taxes to be 1.0% to 1.5% of their total sales. Currently, my tenants at West Ridge Mall pay almost double the national standard. If my current appeals with BOTA are not successful, then my tenants will be paying almost TRIPLE the national average.

When a property owner disagrees with an assessed valuation, he has the right to file a protest and appeal. The problem of the appeal process is the length of time it takes to receive a final decision. This process takes months or even years. Even though there is a protest or an appeal in process, the property owner is required to pay the tax (under protest).

As an example, I submit the situation with West Ridge Mall. For the tax year 1992, the county assessed valuation was about \$47 million. We appealed and thought it should be in the \$37 million range. In the BOTA hearing, the county came up with a new higher valuation of \$72 million. We filed an appeal through the district court and received a ruling that referred our case back to BOTA. The problem is that it took four years to receive a decision that may not be final if the county decides to appeal to a higher court. We also have property taxes for 1994, 1995 and 1996 under appeal.

*Senate Assessment + Taxation
1-16-97
Attachment 1*

In the mean time, the county has had our property tax payments for nearly four years. The county has had this money available to either spend or to draw interest for four years. To be fair to property owners, any refunds should include interest from the date the taxpayer paid to the date of the final decision by BOTA or the court system. The property owner is being penalized for an incorrect valuation by the county and property owners does not have access to their own money.

Interest on property tax refunds would be beneficial in two ways. One, it would force the county assessor to be more diligent in his assessed valuation process if he knew the county would be required to pay interest on all refunded property taxes. And two, it would help speed up the appeals process if the county had to pay interest for a long period of time.

Thank you for your time and consideration this morning. I would be happy to answer any questions.

TESTIMONY
concerning Senate Bill No. 6
Senate Assessment and Taxation Committee
Presented by Randy Allen
Executive Director, Kansas Association of Counties
January 16, 1997

Thank you for the opportunity to provide comments on Senate Bill No. 6 on behalf of the Kansas Association of Counties.

Over the past several years, the policy question of whether interest should be paid to taxpayers when property taxes are refunded has been a recurring one. Various proposals have been discussed, including the one under your immediate consideration as outlined in Senate Bill No. 6.

This past summer and fall, our Association participated in the discussions on this policy issue before the Special Committee on Property Taxation. We all desire a fair system to all parties, and I earlier indicated that the KAC would support legislation directing interest to be paid to property owners whose valuations are lowered after property taxes are levied and paid. As such, we applaud the spirit of SB 6, and believe it to be a good basis for an *ultimately* fair legislative solution.

Specifically, we support the following aspects of SB 6:

- 1) The incentive given to taxpayers who protest their valuations in the spring, immediately following the mailing of property value notification statements by county appraisers, vis-a-vis those taxpayers who choose to wait until the first one-half of property taxes are due on December 20. The incentive in SB 6 is that for taxpayers who participate in the equalization appeals process, interest on any eventual refunds is calculated from the date taxes are paid or required to be paid, whichever is later. As such, taxpayers who pay their first-half or entire property taxes on December 20 are entitled to interest from

Senate Assessment & Taxation
1-16-97
Attachment 2

that date forward if a refund should be eventually ordered. In contrast, taxpayers who pass up the equalization appeals process in the spring and then file an appeal concurrent with the payment of taxes on December 20 would be entitled to interest calculated from the following June 21 forward. This concept of providing an incentive for taxpayers to participate in the process *at the earliest possible step* is sound, and we commend the decision of the Special Committee on Property Taxation in recommending it for further consideration.

- 2) We also support the language in SB 6 which indicates that, although the appraiser is obligated to produce evidence to defend the correctness of his or her appraisal, the taxpayer is also obligated to "produce competent evidence demonstrating the invalidity and incorrectness of such appraisal." This new language would seem to require some diligence from a taxpayer in challenging an appraisal, and this seems to level the playing field.

Despite these significant improvements, there are two major flaws in the legislation for which we urge remedies prior to any final consideration. They are as follows:

- 1) SB 6 would assign counties a virtually unlimited financial exposure to pay interest on property tax refunds - for many months or even years after counties have completed the appeals process on the same properties. In the situation where a taxpayer protested his/her valuation in the spring, the interest calculation could begin as early as the following December 21 - nearly ten months after valuation notifications are mailed. In earlier testimony, I indicated that the KAC would accept exposure for up to one year for interest on property tax refunds. This one-year period would commence on or after December 21. For taxpayers who appealed their valuation concurrent with the payment of at least one-half of property taxes on December 20, the one-year period would commence on June 21 of the following year.

Minimally, in the instance of cases appealed to the Board of Tax Appeals or the courts by the taxpayers, why should counties (and the balance of taxpayers in those counties absorb the financial burden of interest on refunds when an appealed valuation has been long since removed to another level and outside of the control of county decision-makers? Surely one year is long enough, especially since the one-year period follows a local appeals process during which time there are opportunities to resolve the disagreement.

- 2) Our second major concern is in the suggested definition for determining the rate used by counties for the calculation of interest paid 1) by a property owner whose property taxes are unpaid after the due date(s) and 2) by counties to property owners when property tax refunds are ordered. Under SB 6, the defined rate for a delinquent property taxpayer would be:

"paragraph (2) of subsection (a) of section 6621, without regard to subsection (c) thereof, of the federal internal revenue code, as in effect on September 15, 1996, and which rate is in effect thereunder on July 1 immediately preceding December 20 of the taxable year for which the rate is being annually fixed hereunder."

The defined rate in SB 6 for interest paid by counties in conjunction with property tax refunds would be the same rate as just defined, less 4%.

If we are interpreting this obscure section of referenced IRS code accurately, as of this year, delinquent taxpayers would pay interest on unpaid property taxes at a rate of 9% while counties would pay interest on property refunds at a rate of 5%.

In previous testimony, we suggested using the six-month Treasury bill rate as of December 20 as a basis to calculate the interest on property tax refunds. If the Legislature desired to index the interest calculation for delinquent property taxes to this figure, it could simply be defined as the six-month Treasury bill rate as of December 20 + 4%. Yesterday, the six-month Treasury Bond yield was 5.26%.

As such, the corresponding rate as of December 20 could become the basis for the calculation of interest on property tax refunds while the same rate + 4 points (or 9.26% under this example) could be the interest rate charged delinquent property taxpayers. Currently, delinquent property taxpayers pay interest at the statutory rate of 12%.

It is a goal of counties to work with the State as partners in making the property tax system fairer and more understandable to Kansans. I respectfully suggest that our earlier proposal to tie the interest rate calculations to the 6-month Treasury bill is infinitely simpler and more straight-forward than referencing a more obscure IRS rate.

It is our hope that some of these perceived flaws in SB 6 can be corrected so that we can support its eventual passage. I would be happy to address your questions.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to the KAC by calling (913) 233-2271.



SEDGWICK COUNTY, KANSAS

INTERGOVERNMENTAL RELATIONS

WILLIE MARTIN

COUNTY COURTHOUSE • 525 N. MAIN • SUITE 315 • WICHITA, KANSAS 67203 • TELEPHONE (316)383-7552

TO: Senate Assessment and Taxation
FROM: Willie Martin, Intergovernmental Relations
DATE: January 16, 1997
SUBJECT: Senate Bill No. 6

Madam Chair and members of the Committee, I am Willie Martin representing the Sedgwick County Board of Commissioners. We appreciate the opportunity to testify on Senate Bill No. 6 and the issue of Interest Payments on Refunded Taxes.

Early this summer the Sedgwick County Commission requested that I bring together all those within the County who are involved in the process of property tax appeals to review and make recommendations on the issue of interest payments on refunded taxes.

The Office of the County Treasurer (taxes), Clerk (mill levies), Appraiser (valuations), Finance and Intergovernmental Relations were all involved in this process. Our goal was to identify procedural changes which would improve the property tax system for both the taxpayer and the County.

We determined it was important to evaluate any proposed change within the context of the entire Kansas Property Tax System, and that our evaluation should begin with the earliest steps of the equalization appeals process.

If more equalization appeals can be satisfactorily processed and resolved, before a taxpayer even receives his tax statement, the taxpayer will surely perceive the property tax system in a more favorable light and, in turn provide for a more efficient and effective process. In addition, the volume of appeals to the State Board of Tax Appeals could be further minimized.

*Senate Assessment + Taxation
1-16-97
Attachment 3*

The Sedgwick County Commission will consider adoption of a Resolution providing for interest payments on refunded taxes during their meeting next Wednesday.

As stated, we support the concept of interest payments but do have concerns about the proposed bill as drafted.

We believe the rate of interest should be simple, direct and understandable for both counties and the taxpayer. We do not believe interest based on selected pieces of the underpayment rate of the federal internal revenue code is direct or understandable for the average tax payer.

Attached to my testimony is a copy of the Resolution which will be considered by the Sedgwick County Commission. I would like to refer to this attachment and respectfully request your consideration for inclusion of the following:

1. Section B. - Require all evidence upon which an appeal is based to be provided to the appraiser 3 working days prior to any hearing.
2. Section C. - Establishes a time frame of responsibility and provides BOTTA seventeen months for hearing and determination.
3. Section D. - Defines specifically the calculation of interest.
4. Section E. - The Court has the power in hearing an appealed BOTTA order to require additional interest.
5. Section F. - If classification is the only issue in dispute counties should not be responsible for payment of interest.
6. Section G. - If a request for determination of "No Change," in value or similar request, is made and then the value is appealed to BOTTA, a county should not be responsible for the payment of interest.
7. Section I. - The payment of delinquent real property taxes under protest should not be entitled to interest.

We believe inclusion of these recommendations would not complicate but clarify the process for payment of interest on refunded taxes.

RESOLUTION**A RESOLUTION AUTHORIZING PAYMENT OF INTEREST ON CERTAIN REAL PROPERTY AD VALOREM TAX REFUNDS AND ESTABLISHING THE CRITERIA AND PROCEDURE THEREFORE.**

WHEREAS, the Board of County Commissioners desires to encourage full and timely utilization of real property ad valorem tax appeal process at the local level as proscribed by the laws of the State of Kansas;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS:

Section 1. Upon a taxpayer appealing the valuation of its real property and not receiving satisfactory resolution at either the Informal Hearing or the Hearing Officer/Panel (hereafter referred to as "HOP") hearing, thereafter appealing the decision of the HOP panel to the Board of Tax Appeals (hereafter referred to as "BOTA"), said appeal resulting in a BOTA order directing the County to refund taxes, the County shall pay simple, non-compounding interest, based on the six-month T-Bill rate plus three (3) percent, as of December 20th of the tax year being protested.

Upon a taxpayer paying its real property taxes under protest and the BOTA orders the County to refund taxes, the County shall pay simple, non-compounding interest based on the six-month T-Bill rate as of December 20th of the tax year being protested.

Interest will be paid on refunded tax only, and upon the following terms and conditions:

- A. The value found by the BOTA that is greater than the value certified by Sedgwick County shall be considered the amount for refunded tax.
- B. At least 10 days prior to any scheduled County, HOP, or BOTA hearing, the taxpayer has delivered to the county appraiser or his deputy, all evidence upon which the appeal is based and which the taxpayer intends to introduce into evidence at such hearing.

- C. The County shall pay said interest from December 20th of the tax year being protested until the appeal is resolved at the County level, the BOTA issues an order, or December 20th of the following tax year, whichever comes first.
- D. Payment of said interest shall be calculated on a monthly basis beginning December 20th of the tax year being protested. Payment of a tax refund authorized by the BOTA in an order issued on or after the 1st of any month, and prior to December 20th of the following year, shall include a payment of interest that includes that month.
- E. If a BOTA order is appealed by any party, the payment of interest shall be calculated to the date the order was certified and the County shall not be liable for the payment of any interest thereafter.
- F. The County shall not be responsible for payment of interest if classification is the only issue in dispute.
- G. The County shall not be liable for the payment of interest on any refunded tax if the taxpayer, or its representative, requests the county to issue a determination of "No Change," or other similar request, in the value of said property; thereafter appealing said value to the BOTA.
- H. The County shall not be liable for payment of interest on any refunded tax if the taxpayer or its representative, does not appear at a scheduled County or HOP hearing and fails to reschedule the hearing within 48 hours.
- I. A taxpayer paying delinquent real property taxes under protest shall not be entitled to any interest payment on any refunded taxes.

Section 3. Nothing in this resolution shall be construed to apply to any tax year prior to

tax year 1997.

Section 4. This resolution shall be published once in the official County newspaper and shall be come effective upon publication.

Commissioners present and voting were:

BETSY GWIN	_____
PAUL W. HANCOCK	_____
THOMAS G. WINTERS	_____
MELODY C. MILLER	_____
MARK F. SCHROEDER	_____

DATED this _____ day of _____, 1997.

BOARD OF COUNTY COMMISSIONERS
OF SEDGWICK COUNTY, KANSAS

ATTEST:

THOMAS G. WINTERS, Chairman

SUSAN E. CROCKETT-SPOON
County Clerk

MELODY C. MILLER, Chair Pro Tem

APPROVED AS TO FORM:

BETSY GWIN, Commissioner

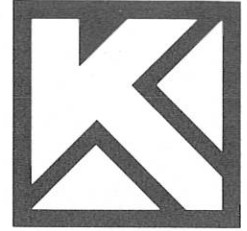
County Counselor

PAUL W. HANCOCK, Commissioner

MARK F. SCHROEDER, Commissioner

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry



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

SB 6

January 16, 1997

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. KCCI appreciates this opportunity to express our members' qualified support of SB 6 and its proposal to require payment of interest on property tax refunds. Many of you will recall our efforts in previous years to bring greater fairness to the appeal processes for all forms of tax disputes and we are pleased to add our voice to this initiative today.

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 46% of KCCI's members having less than 25 employees, and 77% 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.

*Senate Assessment & Taxation
1-14-97
Attachment 4*

he simple concept behind the awarding of interest in any tax matter is the fairness of recognizing the time value of money. Interest is not added to liabilities for either tax underpayments or overpayments as a penalty for tardiness. Everyone should be clear on this point: interest is not a penalty. Interest (in the tax appeal context) is merely a means for protecting the buying power or the reasonable investment potential of a given sum of money while that money is out of circulation by virtue of its status in dispute. SB 6 appropriately acknowledges this concept by establishing an annually modified IRS-determined rate since the value of money fluctuates with market conditions.

This principle is acknowledged by federal tax law and even other tax provisions in Kansas statutes. Appeals that result in a refund of state income tax provide interest to the taxpayer. Property tax, income tax and excise taxes should all be administered alike in this regard because the form of the tax does not change the underlying rationale for interest.

Unfortunately, SB 6 as written today is not fully consistent with this objective. It would provide an interest rate for overpayments which would always be four percentage points less than the rate charged to taxpayers for underpayments. This disparity is unfair and warps the logic of providing interest. Any disparity between rates adds an independent policy reason to the awarding of interest which should not be added.

Does the threat of liability for interest often effect negotiations in the tax appeals process? Of course it does, particularly if your arguments are losing. However, that is an unavoidable coincidence of an interest award and the threat of paying interest should be no different for government than it is for the taxpayer. Interest should favor neither side; it should be completely neutral on its face. It should regard money as having the same time value for government as it does for taxpayers. A disparate rate structure improperly changes the character of interest to that of a penalty for one side of the dispute or the other.

.CCI supports the effort behind SB 6 because at least it offers interest where none is currently provided. We hope you'll see fit to equalize the interest rates and we encourage you to recommend the bill favorably with that amendment.

Thank you for your time and consideration.