

Approved: 4-10-98
Date

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION.

The meeting was called to order by Chairperson Audrey Langworthy at 11:10 a.m. on March 30, 1998, in Room 519--S of the Capitol.

Members present: Senator Langworthy, Senator Corbin, Senator Lee, Senator Bond, Senator Donovan, Senator Goodwin, Senator Hardenburger, Senator Karr, Senator Praeger, Senator Steffes 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: Shirley Sicilian, Kansas Department of Revenue
Natalie Regier, Kansas Chamber of Commerce & Industry
Charley Vogt, Shawnee Area Chamber of Commerce
John Engelmann, S.W. Johnson Co. Economic Development
Eric Melgren, Kansas Bar Association

Others attending: See attached list

Shirley Sicilian, Kansas Department of Revenue, presented the Department's recommendations on a previously heard bill, **HB 3016** concerning the treatment of prepaid telephone calling cards. The Department does not support the bill but recommends two amendments. The first would add "prepaid" before "authorization numbers" for the purpose of clarification. The second would add language to deem prepaid calling cards and prepaid authorization numbers to be tangible personal property which would allow the Department some authority to tax authorization numbers as a sale and, therefore, consider the sale taxable on the basis of where the purchase was made.

Ms. Sicilian reiterated that the Department has problems with the taxation approach in **HB 3016**. The Department believes that the true object of the purchase is telecommunication service, not a card or an authorization number. Taxation at the point of purchase may offer administrative gains for the taxpayers; however, it shifts the concept of taxing telecommunication services to fit the method of payment. Moving the point of taxation to the place of purchase could open many questions regarding the authority of the state of Kansas to tax when there has been no delivery of a product and there has been no use of the service in the state. Ms. Sicilian expressed a further concern that the point of taxation could also be moved for several other items if the same principle was expanded to apply to the purchase of prepaid cards for other things.

Senator Praeger recalled that the committee heard testimony indicating that there is a national effort to adopt similar legislation. She reasoned that perhaps there would not be any objections to this new taxation methodology for prepaid cards if a majority of the states adopt the change. Ms. Sicilian acknowledged this trend, but she noted that it opens a potential for double taxation.

Upon the request of Senator Langworthy, Ms. Sicilian will present written copies of her testimony at a later date (Attachment 6, submitted April 2, 1998) and will report further on **HB 3016** at a future meeting.

Continued hearing on **HB 2602, establishment of the Kansas Tax Appeals Commission** to replace the Board of Tax Appeals (BOTA).

Senator Langworthy called attention to written testimony in opposition to **HB 2602** submitted by Michelle Miller, Johnson County Board of County Commissioners, who contended that providing a county option to either retain or eliminate its local informal property tax appeals hearing process creates additional complications of the system, considerable confusion for the taxpayer, and untenable administrative burden and cost for both state and local government. (Attachment 1)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION, Room 519-S
Statehouse, at 11:00 a.m. on March 30, 1998.

Natalie Regier, Kansas Chamber of Commerce and Industry, testified in support of **HB 2602** which she believes presents meaningful reform for all Kansas taxpayers. In the interest of brevity, she called the committee's attention to copies of testimony, addressing four areas of concern, given before the BOTA reform subcommittee in the House Taxation Committee. (Attachment 2)

Charley Vogt, Shawnee Area Chamber of Commerce and John Engelmann, Southwest Johnson County Economic Development Council, testified as a team in support of **HB 2602**. They addressed the improvements to the Industrial Revenue Bond (IRB) and Economic Development Exemptions (EDX) process from the point of view of practitioners. They feel these specific changes will help existing expanding Kansas businesses and also will keep Kansas competitive in recruiting new businesses. (Attachment 3) In conclusion, Mr. Vogt stated that he agreed with all provisions in the bill, but he strongly supports the economic development issues.

Eric Melgren testified in support of **HB 2602** as an attorney who specializes in contested tax disputes and tax litigation and on behalf of the Kansas Bar Association. Mr. Melgren said **HB 2602** seeks to remedy a loss of public confidence in Kansas' tax appeal system, and it should be viewed as such, not merely as structural or procedural changes in BOTA. He feels the bill addresses a number of concerns voiced by Kansas citizens who have brought disputes to BOTA and who do not finish the process feeling that they have been treated fairly and equitably. He proposed four amendments in the following areas: the consistency of decisions, the number of Commissioners hearing and deciding cases, the small claims division, and the requirements for Commissioners. (Attachment 4) Mr. Melgren acknowledged that consistency of decisions could be accomplished without a reorganization of BOTA.

Senator Langworthy closed the hearing on **HB 2602** and called attention to copies of the fiscal note for FY 1999 (six months, \$699,560) and FY 2000 (\$1,084,420) which had been distributed to committee members. She announced that the bill may be placed in a subcommittee for further study.

Written testimony in support of **HB 2602** was submitted by Roland Smith, Wichita Independent Business Association. (Attachment 5)

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

The next meeting is to be announced.

SENATE ASSESSMENT AND TAXATION COMMITTEE GUEST LIST

DATE: March 30, 1998

NAME	REPRESENTING
Eric Melgren	Ks Bar Assoc
Charley Vogt	Shawnee Econ. Dev. Council
JOHN ENBERMANN	SW Jo Co EDC
MARK BECIC	KDOR
Jaura Johnson	KDOR
Walt Peltan	Ks Tappage Network
Mike Beam	Ks. LVSTK. Assn.
Bruce Lawrence	BOEING
Judy Molen	Ks. Assn of Counties
Bred Smoot	Kccc
Tom Bruno	CPAK
Walter Hollman	Western Resources
Jamie Shwert	SPRINT
Don Cowby	DOB
MARK A. BURGHART	WESTERN ASSN.



TESTIMONY IN OPPOSITION TO HB 2602
BEFORE THE SENATE ASSESSMENT AND TAXATION COMMITTEE
On Behalf of the Johnson County Board of County Commissioners
Presented by Michelle Miller, Johnson County Intergovernmental Relations Coordinator
March 27, 1998

Johnson County appreciates the efforts of the Governor, the Kansas Tax Coalition, and the House Taxation Committee, and others, to improve the property tax appeal process through HB 2602. However, Johnson County believes that this bill, as written, providing a county-option to either retain or eliminate its local informal property tax appeals hearing process, creates additional complications of the system, considerable confusion for the taxpayer and untenable administrative burden and cost for both state and local government. Therefore, Johnson County respectfully opposes this bill and requests that it be further refined in order to truly create a more efficient, fair, and user-friendly property tax appeal system.

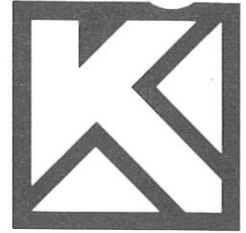
Specifically, Johnson County opposes the county-option provision that would potentially provide for two informal property tax appeals hearing procedures to run concurrently, one state and one local. Given the fact that the bill currently affords the taxpayer three choices of appeals venues, either to: (1) the local appeals hearing process, (2) the Small Claims Division appeals hearing process, or (3) the full Tax Appeals Commission, the county-option becomes poor policy resulting in costly duplication of service, too many confusing choices for the taxpayer to make, and uncertainty for both the state and the county in determining program capacity needs.

In the House Tax Sub-Committee, Johnson County testified that the preferable route would be to either: (1) remove the informal appeals hearing process wholly to the state, or (2) to leave it as it is -- wholly local. It is no good solution to leave the decision to individual counties. To opt-in would be to double-dip into the taxpayer's pocket, using both state and local tax funds to operate duplicate programs, as well as increasing costs to the county in order to meet the increased staffing demands inherent in the dual system. To opt-out and allow the state to take over the program would result in an abdication of local home rule authority to decide property tax matters that are rightly of local concern.

The county-option in HB 2602 is, then, really no option at all. It does, however, create alternate avenues of appeal, with differing oversight authorities presumably resulting in the application of differing standards of operation, as well as the costly duplication of services, too many avenues of appeal for the taxpayer to consider, and certain staffing difficulties at the local level. Therefore, with regard to this provision, HB 2602 fails to serve the worthy goal of achieving a more effective property tax appeals system. Johnson County, then, respectfully requests that the legislative body, in its wisdom, make the necessary choice in this bill of either leaving the property tax appeals hearing process with counties or completely removing it to the state's jurisdiction.

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry



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HB 2602

March 30, 1998

KANSAS CHAMBER OF COMMERCE AND INDUSTRY
Testimony Before the

Senate Committee on Assessment and Taxation

by
Natalie Regier
Director of Taxation

Honorable Chair and members of the Senate Committee on Assessment and Taxation:

My name is Natalie Regier and I am the new director of taxation for the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to appear before you today. I am here to express the desires of the KCCI members to reform the structure and process of resolving tax disputes at the state Board of Tax Appeals (BOTA). It has been a long-standing position of the KCCI that such changes are clearly overdue.

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
3-30-98
Attachment 2*

Since there are several other conferees who will speak to this bill I will keep my testimony brief. I have attached a copy of the testimony given on the behalf of the KCCI before the BOTA Reform Subcommittee in the House Taxation Committee. In addition, I would like to draw your attention to a summary of the concerns raised by KCCI members and how HB 2602 addresses these concerns. I believe by reviewing this page, you will realize that HB 2602 is a tremendous movement towards simplifying and structuring the Kansas tax appeals process.

HB 2602 presents meaningful and healthy reform for all Kansas taxpayers and the members of KCCI strongly encourage you to support HB 2602. Again, thank you for the opportunity to appear before you today.

HB 2602
Kansas Tax Appeals Commission (KTAC)
to replace
Kansas Board of Tax Appeals (BOTA)

Area of concern: *consistency of BOTA rulings*

HB 2602 responses:

KTAC commissioners will be bound by the doctrine of legal precedent.

KTAC commissioners must give due deference to prior BOTA/KTAC decisions.

Denials of property tax exemptions requests must be published.

Secretary of Commerce & Housing will review tax exemptions for intra-state relocations.

Area of concern: *sensitivity to taxpayer convenience*

HB 2602 responses:

Creates KTAC Small Claims division, a purely optional stage of appeal.

KTAC Small Claims hearings are informal, to be held in vicinity of taxpayer.

Taxpayer choice maximized -- after informal county hearing, taxpayer may elect county hearing panel, or KTAC Small Claims, or KTAC Regular Division, or all three steps sequentially.

KTAC to assist correct preparation of exemption requests.

Taxpayers have 30 days to file for KTAC reconsideration of exemption rulings.

Area of concern: *ensuring qualified and judicious board members*

HB 2602 responses:

All KTAC commissioners will be required to complete educational course work appraisal and Kansas tax laws

3 of the 5 KTAC commissioners (except Small Claims) are to be an attorney with five years actual practice

KTAC commissioners subject to the Code of Judicial Conduct.

Appointments for commissioner must be confirmed by Senate.

Area of concern: *fostering prompt resolution of disputes*

HB 2602 responses:

Creates KTAC executive director -- office manager, docket scheduling, taxpayer assistance...etc.

Small Claims hearing conducted within 60 days of filing; decision within 30 days of hearing.

One month after they're filed, properly completed tax exemption requests are deemed approved unless a hearing date has been set.

Exemption hearings must be conducted, if at all, within 90 days from time exemption request is filed.

Appeals from KTAC Regular Division are all taken directly to Kansas Court of Appeals.

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry



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HB 2602

February 20, 1998

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

BOTA Reform Subcommittee
of the
House Committee on Taxation

by
Bob Corkins
Director of Taxation

Honorable Chair and members of the Subcommittee:

My name is Bob Corkins, director of taxation for the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to express our members' desire for reforming the structure and process for resolving tax disputes at the state Board of Tax Appeals (BOTA). We believe such changes are clearly 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 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.

Last year, in conjunction with the Kansas Tax Coalition, KCCI supported (in fact, played a role in drafting) SB 348, which is very similar to the bill before us today. Interim hearings were held on the subject, a related special task force was formed by Kansas Inc., and Governor Graves' attention was drawn to the problem. Our coalition has been closely involved in every phase of the issue's development. The high point of all this activity was the Governor's pronouncement last October of his support for a package of tax appeals reform that is today represented as HB 2602.

KCCI contends this legislation would mitigate the docket management problems of BOTA, would expedite the resolution of tax disputes, would better assure that tax matters are adjudicated fairly and competently, and would create a body of factual records and case holdings which serve an important role as precedent.

By listing these advantages, we also directly refer to the problems which have prompted the bill. The most often cited business complaints regarding BOTA include the burdensome investment of time and money necessary to pursue an appeal and the unpredictability of its decisions. This is the same rationale which led to substantial Department of Revenue reforms in the 1997 Kansas Tax Equity and Fairness Act. In fact, our coalition envisioned the new Tax Appeals Commission as an integral part of the big picture of needed procedural reforms. We hope that this missing piece of procedural evolution will complete the package soon.

The changes proposed by HB 2602 can actually be summarized with a few points. I've attached an outline that identifies our four general areas of concern and the specific HB 2602 provisions that address them.

In developing HB 2602, we were particularly sensitive to the financial cost of reform. We believe the changes we've suggested would redistribute BOTA resources in a manner that makes the net cost of the proposal inexpensive, perhaps even revenue neutral to the state. That would be accomplished by reducing the number of BOTA members and dedicating the

salary savings to the hiring of an executive director and small claims hearing officers (the hearing officers would be employed only on an "as needed" basis).

I want to emphasize our willingness to cooperate in building the best solution possible. In fact, recent discussions with administration officials have made us optimistic that good compromises can be struck. Another representative of our coalition will appear shortly to describe some amendments we recommend to HB 2602 which take into account the concerns expressed by current BOTA members in our discussions about the bill over the past few weeks.

While I'm on the subject of amendments, I'd like to mention a minor component of the bill which KCCI would like you to consider. Section 26, on page 18 of the bill, proposes a change beginning on line 3 that would require the addition of at least one full-time employee before an economic development abatement could be granted. Current law requires only that the abatement be deemed necessary to *retain* jobs in Kansas. This section of the bill was recommended by the Kansas Inc. Task Force, but, as written here, it does not reflect that group's intent that abatements be extended for *both* job retention *and* job creation purposes. KCCI recommends that this provision be amended to accurately reflect such intent.

The move toward efficient, professional and specialized tax appeal panels is a nationwide trend that holds great promise for Kansas. It would be a progressive reform that would address current tax administration problems and enhance the very positive climate already fostered by enactment of the Tax Fairness Act in 1997.

We've laid what we consider to be a very reasonable proposal on the table and strongly encourage your support for it. Again, thank you for the chance to appear today.

Testimony Before the Senate Taxation Committee,
Senator Audrey Langworthy, Chairperson
March 30, 1998

by

Charley Vogt, Executive Director
Shawnee Area Chamber of Commerce

and

John Engelmann, Executive Director
Southwest Johnson County Economic Development
Council
Board of Directors
Kansas Industrial Developer's Association

Honorable Chair and members of the Tax Committee:

We appreciate having the opportunity to meet with you to share our thoughts about HB2602. We believe the suggestions made by the House and forwarded on to you in this bill are clearly overdue and much appreciated from the economic development perspective.

In addition to the positive changes creating the new Tax Appeals Commission and certain clarified procedural provisions, we would like to address the improvements to the Industrial Revenue Bond (IRB) and Economic Development Exemptions (EDX) process from the point of view of practitioners.

Both John and I have had numerous experiences with the laws governing the authority to issue tax abatements under both IRB's and EDX's and have heard concerns from numerous practitioners around the State. What had become perfectly clear was the fact that the current process to grant EDX economic development property tax exemptions had become *too subjective*. There was no clear delineation of responsibility for the present Board of Tax Appeals nor the business and his or her agent. In addition, there was no easily accessible public record of previous case rulings to develop a precedent to advise future expanding Kansas businesses on the likelihood of getting an EDX property tax abatement.

Senate Assessment & Taxation
3-30-98
Attachment 3

Page Two
Senate Tax Committee Testimony
March 30, 1998

The changes you see before you in reference to the IRB and EDX are a giant step in the right direction to facilitate properly formatted IRB and EDX tax abatement applications for new and existing expanding businesses in the State of Kansas.

Provisions we applaud are:

- 30 day reconsideration provision (more time for local government appeals, many Governing Bodies only meet once a month)
- procedural approval unless a hearing is scheduled within 30 days (application guidelines for business submittal are clear in both IRB and EDX; if followed, the application should be approved as submitted)
- inclusion of referenced definition of 'manufacturing' (term has been subject to interpretation in the past; new definition helps initial local Governing Body adhere to shared definition via clearer State statute definition). Eligibility of distribution of wholesale goods and research and development facilities stays as "other uses" under EDX.
- Secretary of Commerce and Housing approval if the project is relocating from elsewhere within the State of Kansas (Currently the Secretary approves Revenue Department sales tax exemptions before a relocating company moving from one Kansas city or county to another can use the provision. The proposed EDX approval process would 'mirror' the sales tax exemption process which has worked well within the State since enactment several years ago to eliminate the process known to some as 'pirating'.

In summary, we recommend you approve the latest version of HB2602 including the provisions relating to IRB's and EDX locally-granted property tax exemptions. The changes you make today will help existing expanding Kansas businesses as well as keep the State of Kansas competitive in recruiting new businesses for many years to come.

SENATE ASSESSMENT and TAXATION COMMITTEE
Testimony regarding H.B. 2602

Eric F. Melgren
Kansas Bar Association

My name is Eric Melgren. I am an attorney from Wichita, Kansas with the law firm of Foulston & Siefkin, L.L.P. I am a member of the Kansas Bar Association's Legislative Committee. My practice specializes in contested tax disputes and tax litigation, both state and federal. As a part of the practice, I have appeared regularly before the Kansas State Board of Tax Appeals over the past ten years. I testify to voice my support, and that of the Kansas Bar Association, for H.B. 2602.

This bill seeks to remedy a loss of public confidence in Kansas' tax appeal system. It should be viewed as such, and not merely as structural or procedural changes in the Board of Tax Appeals. You are all doubtlessly aware of the recent controversy surrounding the Internal Revenue Service and its treatment of federal taxpayers. As one who represents taxpayers before both the United States and the State of Kansas, I understand and agree with the concerns voiced there. But I must tell you frankly that dealing with Kansas tax issues and disputes has consistently been more frustrating than dealing with federal ones, not only for me, but more importantly, for my clients the taxpayers. The Legislature and the Governor are to be commended for steps begun last year to correct this problem. H.B. 2602 is another necessary remedial action to address this problem.

That is why I support, and the Kansas Bar Association supports, HB 2602. We believe that it will address a number of concerns voiced by Kansas citizens and taxpayers who have brought disputes to the Board of Tax Appeals. Currently, many Kansas citizens involved in a Kansas tax dispute do not finish the process feeling that they have been treated fairly and equitably. Attorneys representing both the taxpayers and the taxing authorities believe that a number of the changes proposed will improve the process, and will go a long way in persuading those with tax disputes that the process is fair and equitable. A number of the bill's provisions are needed and well designed. However, we believe that a few remaining changes are needed. I would focus on the following areas:

1. Consistency of decisions. First, we support the attempts in this bill to make tax appeal decisions more consistent. Kansas taxpayers have expressed frustration that prior tax appeal decisions are no indication of future decisions. This makes it difficult for them to structure their affairs to comply with the law, and to know whether they should pursue a tax dispute, or abandon it on the basis that the law is already decided. The requirements of HB 2602 that the Tax Appeal Commission 1) follow judicial precedent, which has not always been done in the past; 2) give "due deference" to its prior decisions, a concept which has not even had lip service paid to it in the past; and 3) publish its decisions of sufficient importance so that any Kansas taxpayer, and not just those with an inside track, may discover them; will go a long way in bringing consistency to the Kansas tax appeal process. *We would suggest adding to Section 15 the requirement that important decisions of the Tax Appeal Commission be published on INK (Information Network of Kansas) to aid access to the Commission's decisions.*

2. Number of Commissioners hearing and deciding cases. The bill as originally proposed appeared to contemplate that the commissioners would hear *and decide* the tax disputes presented to the tax appeal commission singly; and only on matters of particular importance would they hear and decide a case

Senate Assessment + Taxation
3-30-98
Attachment 4

as panel. The current form of the bill, however, provides in Section 7 that the votes of 3 commissioners is required for any action taken by the commission. This is a mistake.

It is my experience that no single area of the current system has generated as much taxpayer frustration, and even disgust, as the current rule that the votes of all five board of tax appeal members are required to decide a case. The reason this is so controversial is that seldom, if ever, do *all* five members sit through *all* of a hearing. Just this past fall, I tried a week long case to the board, and although all five members were present for parts of the case, no single member was present for the entire case. In fact, one member was conspicuously absent during almost the entire taxpayer's case; and was absent for the entire testimony of the taxpayer's expert witnesses. This same member was present for the entire case by the taxing authority, and for all of its expert testimony. Needless to say, this creates extreme distrust in the part of the taxpayer that its case has gotten a fair shake.

The current members of the board of tax appeals do not absent themselves out of a sense of prejudice or maliciousness, but out of a need to deal with the large docket load before the board. Indeed, the Board of Tax Appeals customarily has two hearing running simultaneously. Allowing tax appeal commissioners to hear *and decide* cases singly would permit the tax appeal commission to continue to "double-team" its docket backlog, without leaving taxpayers suspicious as to whether they had a fair hearing. No other judge or arbitrator would be permitted to be absent during part of a hearing, and neither should these here.

Permitting individual commissioners to hear and decide cases presented to the Tax Appeal Commission would have several benefits.

- a. It would obviously allow more cases to be heard. Two or three commissioners could be hearing cases while the others could be working on issuing decisions in the cases they have heard. The large docket which currently exists at the Board of Tax Appeals will not go away soon, and needs to be considered.
- b. It would speed the issuance of orders and decisions. Currently, a wait of 6 months from the time a case is tried until the time a decision is issued is typical, and longer periods of time are not unusual. A large part of the reason for this delay is that, following a hearing, a transcript must first be prepared of the proceeding (for review by those members of BOTA who were not present for the entire hearing); and then that transcript must be reviewed by the BOTA members. After they have meet and decided the case, then an opinion must be drafted and circulated among all of the members, and each of their comments incorporated and reviewed by the others. If one commissioner heard the case and decided it based on what he or she heard, none of this time consuming (and expensive) process would have to occur.
- c. It would eliminate the need for the awkward provision for the appointment of a pro tem commissioner which currently exists in Section 7. That provision exists to permit a full Commission panel notwithstanding that a conflict or other unavailability on the part of one commissioner prevents him or her from hearing a particular case. If individual commissioners could hear cases, such a conflict would not hinder the Commission from otherwise deciding the matter.

- d. It would convey to the citizen/taxpayer bringing a tax dispute that the dispute had been fairly heard and decided, in a way that currently does not exist with members absent for some or all of the hearing.
- e. It would result in greater deference to the decisions on appeal. Where the appellate court knows that the tax appeal commissioner based the decision on having heard the entire case, the court will be more reluctant to overturn those decisions. A higher affirmance rate over time will result in fewer appeals, and thus improve the system.

Currently, Section 17 provides that hearing may be conducted by one commissioner, and that only the commissioner hearing the case may make findings of fact, but it still requires a transcript of the hearing to be made and reviewed by the other commissioners, and provides that the entire commission shall rule on questions of law. *Section 17 should be restored to its original provisions that hearings "shall" be conducted by one commissioner unless the chairperson decides that they should be heard en banc, and should further provide that only the commissioner(s) hearing the case shall decide the factual and legal questions presented. The provision in Section 7 that the votes of 3 commissioners shall be required for any action taken by the Commission should be deleted [as currently drafted, this provision is inconsistent with Section 17 anyway].*

3. Small Claims Division. We applaud the creation of the small claims division. Previously, no formal procedure existed which permitted resolution of tax disputes which may not have involved large sums of money, but which were still important to the taxpayers bringing them. We think it is appropriate that a different mechanism exists for small dollar amount disputes from the larger, more complex disputes. We particularly applaud the informal procedure created which permits a taxpayer to choose to present his or her own dispute without the requirement of hiring an attorney or being subjected to the formal rules of procedure and evidence, without the individual taxpayer thereby waiving his or her right to pursue a more formal appeal later. We believe this will go a long way to providing docket relief to the tax appeal commission, and to convincing average Kansas taxpayers that they have had a fair shake. *We would suggest that the requirements of Sections 26 and 27 that force a taxpayer to choose between an appeal to the county hearing panel and an appeal to the small claims division be re-examined, and that an appeal from the hearing officer panel to the small claims division also be permitted.*

4. Requirements for Commissioners. The requirements which HB 2602 creates for commissioners, in Section 7(c) of the bill, have been the subject of much debate. To adequately determine what qualification commissioners should have, it is important to understand what the commission is, and what it is not. Neither the Board of Tax Appeals as it exists, nor the Tax Appeal Commission as it is proposed, is a "super appraisal board." That may have been its function at one time, but it has not been for years. Instead, it is the forum created to hear and resolve tax disputes. When this legislature, nearly 20 years ago, made the Board of Tax Appeals both the mandatory first forum to hear tax disputes, and made it the "agency of record" so that in subsequent appeals no additional evidence could be introduced, it clearly determined that the Board's character was to resolve disputes, not to provide professional appraisal expertise. That is why income, sales and inheritance taxes are also assigned to this body.

Therefore, the most important characteristic in the appointment of Commissioners should be insuring that the commissioners who are resolving the disputes are trained and competent both in the substantive area of law and in the formal process of dispute resolution under our common law system. Providing Tax Appeal Commissioners with these characteristic will, we believe, go a long way to resolving the frustrations of taxpayers who appear before the commission.

Tax appeal commissioners should have legal training for the same reason that judges should. Kansas taxpayers will receive fairer and more consistent resolutions of their disputes, and will acknowledge that they have had a fairer dispute resolution process, if the commissioners making the decisions have a demonstrated background in the area of law being interpreted.

We also think it important that these commissioners have training in the dispute resolution process which our American tradition has employed through the concepts of due process and through our system of trials. These concepts have been developed over hundreds of years to ensure a fair hearing for all sides, and are generally recognized by all citizens as the means by which a dispute is most fairly resolved. Non-adherence to these traditional concepts invariably results in a perception that the hearing was not fair and just, and leads to increased dissatisfaction by those bringing the disputes. It is this combination of training in substantive law and training in the legal process of resolving disputes that attorneys bring to the process.

This concept is not designed to add lawyers to the tax appeal process, nor to increase legal fees in the process. In fact, it will do just the opposite. Over the past several years, the board of tax appeals has developed a large legal staff. Legally trained commissioners may require less staff lawyer assistance, and may result in a decrease in the total number of lawyers employed. However, to support the concept of fairness in dispute resolution, we think it is important that the tax appeal commissioners, like judges, be themselves qualified in the substantive and procedure areas of the law. Such a process with such trained commissioners should result in both fairer decisions, and of equal importance, the perception by the citizens before it that the process has been fairer. This in turn should reduce the number of cases and court appeals filed by reducing the number of direct appeals and collateral disputes. I would expect that legal fees incurred in Kansas tax disputes will *decrease* under this procedure; not increase. That will make my clients happy, and I support it.

Recent amendments have implied that appraisal qualifications are more important than qualifications in tax law and dispute resolution. Recently, Sections 19 and 20 were added to require that Commissioners complete a variety of appraisal courses. These requirements not only miss the boat, but are dangerous. They imply that the Commissioners will be engaged in appraising the property themselves, and making their own determinations of value, when nothing could be further from the truth. The Commissioners are appointed to hear both sides of a tax dispute (some of which are not valuation disputes at all, but are income or sales taxes), and to decide the dispute presented.

Therefore, I would make the following suggestions: *A. Amend Section 7(c) to requiring that the commissioners be experienced both in the American common law system of dispute resolution as demonstrated by their regular practice of law; and further require that, as lawyers, they have special training and experience in Kansas tax disputes; and B. Delete Sections 19 and 20, which suggest that the Commissioners' training should be in appraisal.*



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March 27, 1998

STATEMENT TO THE SENATE TAXATION COMMITTEE SUBJECT: HOUSE BILL 2602

FROM: Roland Smith – Consulting Director for the Wichita
Independent Business Association

The Wichita Independent Business Association, an association of over 900 locally owned businesses in the Wichita area supports HB 2602 as it was amended by the House. It is needed reform that we believe will help many small businesses in Kansas. The Kansas tax appeals commission and the small claims division provision, we believe will improve the process many small businesses have to deal with under the current system.

Our Board of Directors discussed the bill and was concerned about all the members of the Kansas tax appeals commission being lawyers. They understand the need for lawyers being on the commission, but felt it needs other professionals on it as well as regional representation. WIBA strongly supports the amendment increasing the commission to five members, allowing two to be other professionals and having representation from each congressional district and one at large.

We urge you to act on this bill by recommending it to the Senate for passage this session and not delaying it to next year.

I am sorry I am unable to be in Topeka to present the WIBA position in person.

"The MISSION of the Wichita Independent Business Association is to be the leading resource for the success and growth of independent business."

Senate Assessment & Taxation
3-30-98
Attachment 5

Shirley K. Sicilian, Director
Office of Policy & Research
Kansas Department of Revenue
915 SW Harrison St.
Topeka, KS 66612-1588



(785) 296-3081
FAX (785) 296-7928

Office of Policy & Research

MEMORANDUM

TO: Senator Langworthy
FROM: Shirley Klenda Sicilian
RE: House Bill 3016 - Prepaid telecommunications calling cards and prepaid authorization numbers
DATE: April 2, 1998

House bill 3016 would shift the point of taxation for pre-paid calling card calls from the use of the telephone service to the sale of the pre-paid card. Under current law, provision of telecommunications *service* is subject to tax. State sales tax applies to provision of a service only if the service is actually provided in that state. Thus, Kansas sales tax is collected if a *call* is made in Kansas, even if pre-payment for the service had been made in another state.

Under the proposal, calls made with pre-paid cards and pre-paid authorization numbers would be treated differently from other calls. Tax would be collected upon pre-payment. The purchase of the card would be taxed as though the true object of the sale were the *tangible personal property*, i.e. the card itself, rather than the purchase of telecommunications service. This would be something of a legal fiction because the true object of the purchase is not the card (unless it is a collector's purchase). The true object of the purchase is still the provision of telecommunication services. Under this legal fiction, sales tax will be collected if the card is purchased in Kansas, even if the calls are later made from another state. If the sale of the pre-paid card does not take place at the vendor's place of business it is deemed to take place at the customer's shipping address, and if there is no item shipped, then it is the customer's billing address.

The proposal treats the sale of pre-paid authorization numbers similarly to the sale of pre-paid calling cards. Because these authorization number sales will not take place at a vendor's place of business, and there is no item shipped, tax will apply if the customer's billing address is in Kansas, even if the calls are later made from another state. It is more difficult to view this type of transaction as the sale of tangible personal property because no tangible item is exchanged along with the sale of the service. It is likely the state

Senate Assessment & Taxation
3-30-97 (Submitted 4-2-98)
Attachment 6

would be challenged in trying to collect sales tax for provision of a service based on the billing location.

If the committee wishes to pass this legislation, the department recommends the following amendments:

p. 1, line 43 -

For the purposes of this ~~subsection~~ act, the term gross receipts does not include purchases of telephone, telegraph or telecommunications using a prepaid telephone calling card or pre-paid authorization number. As used in this act, a pre-paid telephone calling card or pre-paid authorization number means the right to exclusively make telephone calls, paid for in advance, that enables the origination of calls using an access number or authorization code or both, whether manually or electronically dialed.

p. 5, line 9 -

(u) the gross receipts received from the sale of prepaid telephone calling cards or pre-paid authorization numbers and the recharge of prepaid telephone calling cards or pre-paid authorization numbers. As used in this ~~subsection~~ act, a pre-paid telephone calling card or pre-paid authorization number means the right to exclusively make telephone calls, paid for in advance, that enables the origination of calls using an access number or authorization code or both, whether manually or electronically dialed. If the sale or recharge of a prepaid telephone calling card or pre-paid authorization number does not take place at the vendor's place of business, it shall be conclusively determined to take place at the customer's shipping address; if there is no item shipped then it shall be the customer's billing address. For purposes of this act, the sale of a prepaid telephone calling card or prepaid authorization number shall be deemed the sale of tangible personal property.

This legislation would require Kansas tax to be collected in cases where neither the provision of service nor the delivery of goods takes place in Kansas. Therefore, it produces a questionable taxing scheme and we could expect the law to be challenged if passed. For these reasons, we have problems with this approach and cannot advocate the bill for passage.