

Approved: April 29, 1999  
Date

MINUTES OF THE HOUSE COMMITTEE ON TAXATION.

The meeting was called to order by Chairperson David Adkins at 9:00 a.m. on March 18, 1999 in Room 519-S of the Capitol.

All members were present except: All present

Committee staff present: Chris Courtwright, Legislative Research Department  
April Holman, Legislative Research Department  
Don Hayward, Revisor of Statutes  
Shirley Sicilian, Department of Revenue  
Mary Shaw, Committee Secretary

Conferees appearing before the committee: None

Others attending: See attached list

The Chairman recognized Representative Aurand, Chairman of the Property Tax Subcommittee, who gave a report from the subcommittee (Attachment 1). Questions and discussion followed.

The Chairman recognized Dale Dennis, Department of Education, explained that he felt that the committee is down to two issues on **SB 226**, and one is, on a statewide basis, do you want the mill levy to decline as the valuation goes up and you make it up with state general funds, or do you want to exempt it and determine what the mill levy will be every two years.

Questions and discussion followed.

The Chairman called the committee's attention to discussion of:

**SB 45 - Income tax credit for adoption expenses**

Questions and discussion followed.

The Chairman recognized Representative Vickrey who made a motion, and seconded by Representative Wilk, to pass **HB 45** as favorable.

The Chairman recognized Representative Sharp who made a substitute motion, and seconded by Representative Johnston, to repeal the enhancements in subsection "a" from the bill and the enhancements of subsection "b" would remain which would increase special needs to \$3,000 and the other would still be 25% and not boost up to 50% on the state level. Motion carried.

The Chairman recognized Representative Johnston who made a motion, and seconded by Representative Kirk, to report **HB 45** favorably as amended. Questions and discussion followed. Motion carried.

The Chairman called the committee's attention to discussion of:

**HB 2530 - Kansas community service program; tax credits; definitions**

The Chairman recognized Representative Campbell who made a motion, and seconded by Representative Tomlinson, to approve **HB 2530** as favorable for passage.

The Chairman recognized Representative Campbell who made a substitute motion, and seconded by Representative Tomlinson, to amend the bill on page 3, line 30, to take the 50% to 70% so it is the same throughout the state. Questions and discussion followed. Motion failed.

Representative Adkins made a substitute motion, and seconded by Representative Tomlinson, to clarify the provisions on page 3, lines 24 through 27, which will be conceptual in nature regarding the non cash contributions and the extent to which that would open this program for some abuse, if there were not some

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON TAXATION, Room 519-S Statehouse, at 9:00 a.m. on March 18, 1999.

restrictions placed on that. He noted most specifically, that services that are contributed would be valued at the standard billing rate for not for profit clients so that a law firm or an accounting firm could not charge their standard rate, it would be their rate that they would apply to a non for profit client. He mentioned that items that are donated that are not cash would be valued at the lesser of the fair market value, or the cost to the donor, but could include reasonable overhead costs incurred by the donor in making the contribution such as transportation or shipping. In no case would a non cash item donation be valued to include sales tax so that, if you were to give an item, you would not also be able to qualify for any sales tax to be included in it. These qualifications are based on some restrictions in Missouri and he clarified that the value be placed on non cash items and exclude from the credit any donation of used clothing. Only new items donated by clothing manufacturers, distributors or retailers would be eligible for credit. Any securities donated would be valued at the stock market price on the date of transfer, they would not qualify for the credit until the not for profit organization has actually sold the security involved. Finally, Representative Adkins explained that donation of real estate would only be available when title is held free and clear by the donor. Questions and discussion followed. Motion carried.

Representative Adkins made a substitute motion, and seconded by Representative Wilk, to allow credits to transferred, be brokered, but not allow them to be sold other than whole and only transferred to an ultimate holder once. Motion carried.

The Chairman recognized Representative Johnston who made a motion, and seconded by Representative Gilbert, to report **HB 2530** favorable as amended.

The Chairman recognized Representative Krehbiel who made a substitute motion, and seconded by Representative Osborne, regarding on page 1, line 35, to strike "in an impoverished area," from the definition of crime prevention because crime needs to be fought on a statewide basis and offered the example of the bust of the meth lab in McPherson county. The motion carried.

The Chairman recognized Representative Johnston who renewed his motion, and seconded by Representative Gilbert, to report **HB 2530** favorable as amended. Motion carried.

The Chairman called the committee's attention to discussion of:

**SB 124 - Adult care home property tax exemptions; day care centers**

The Chairman recognized Representative Tomlinson who made a motion, and seconded by Representative Osborne, to pass **SB 124** as favorable.

The Chairman recognized Representative Tomlinson who made a substitute motion, and seconded by Representative Campbell, to adopt the balloon regarding the language as suggested in the testimony of the Kansas Association of Homes and Services for the Aging regarding "lowest feasible cost" and inserting language on page 8, line 38, to clear up inconsistencies. (Attachment 2) Motion carried.

The Chairman recognized Representative Wilk who made a motion, and seconded by Representative Campbell, to report **SB 124** favorable as amended. Motion carried.

The Chairman called the committee's attention to discussion of:

**SB 59 - Sales tax exemption for church contractors**

The Chairman recognized Representative Johnston who made a motion, and seconded by Representative Minor, to report **SB 59** favorably.

The Chairman recognized Representative Tomlinson who made a substitute motion, and seconded by Representative Campbell, to make **SB 59** retroactive to July 1, 1998. Questions and discussion followed. Motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON TAXATION, Room 519-S Statehouse, at 9:00 a.m. on March 18, 1999.

The Chairman recognized Representative Johnston who made a motion, and seconded by Representative Osborne, to pass **SB 59** favorably as amended. Motion carried.

The Chairman called the committee's attention to discussion of:

**SB 43 - Procedure for residential property refunds**

The Chairman recognized Representative Minor who made a motion, and seconded by Representative Sharp, to report **SB 43** favorable for passage. Motion carried.

The Chairman called the committee's attention to discussion of:

**SB 47 - Tax collection procedures of the department of revenue**

The Chairman introduced Shirley Sicilian, Director of Policy and Research, Kansas Department of Revenue, who presented a memorandum regarding **SB 47** and defining "responsible individual". She indicated language in an effort to improve the bill and make it acceptable to the committee and proposed adding that requirement. (Attachment 3)

The Chairman recognized Representative Gatewood who made a motion, and seconded by Representative Minor, to pass **SB 47** as favorable.

The Chairman recognized Representative Johnston who made a substitute motion, and seconded by Representative Sharp, to adopt the amendments made by the Kansas Department of Revenue. Motion carried.

The Chairman recognized Representative Gatewood who made a motion, and seconded by Representative Minor, to pass **SB 47** favorably as amended. Motion carried.

The Chairman called the committee's attention to discussion of:

**SB 12 - Sales information contained on appraised value notice**

The Chairman recognized Representative Campbell who made a motion, and seconded by Representative Johnston, to approve **SB 12**.

The Chairman recognized Representative Campbell who made a substitute motion, and seconded by Representative Will, that on page 2, line 22, to insert "and/or address". Motion carried.

The Chairman recognized Representative Vickrey who made a substitute motion, and seconded by Representative Flora, to amend the bill so that the County Commission, in addition to the Appraiser, shall require this information be provided. Motion carried.

The Chairman recognized Representative Palmer who made a substitute motion, and seconded by Representative Osborne, regarding the balloon distributed (Attachment 4) to create consistency for taxpayers and appraisers with the state regarding the appeals process and to add language, part (b) in the balloon. A copy of A Guide to the Appeal Process in Kansas was distributed (Attachment 5). In addition, Representative Palmer distributed a memorandum sent to her from Kirby L. Stegman, Office of Policy & Research, Kansas Department of Revenue, regarding Property Tax Appeals (Attachment 6). Upon request of Representative Vickrey, the Chairman was willing to divide the motion. In regard to the provision that would require counties to provide this information, being the first part of the Palmer balloon, the vote was taken and motion failed. In regard to the balance of the Palmer balloon, the vote was taken. Motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON TAXATION, Room 519-S Statehouse, at 9:00 a.m. on March 18, 1999.

The Chairman recognized Representative Gregory who made a substitute motion, and seconded by Representative Palmer, which would place in there as a percentage of increase or decrease from the previous year's assessed value.

The Chairman held the motion at bay and it will be taken immediately upon convening the next morning, the next regularly scheduled meeting of March 19, 1999, and the committee stood in recess at 11:10 a.m.



HOUSE TAXATION COMMITTEE  
GUEST LIST

DATE: March 18, 1999

Don Seifert	City of Olathe
Kelly Kuetala	City of Overland Park
Judith Melen	Ks. Assoc of Counties
Monte Bank	KDOR
Larry Klemman	League of KS Municipalities
Ralph Woodlight	City of Leola, Ks
Erik Sartorius	Johnson Co. Board of Realtors
Shelvia Mephuson	Donald P. Schnacke, P.A.
Jason Fison	Rep. Clay Award
SCOTT SCHNEIDER	MGA
Tom Bruno	Alend Assoc.
Harland E. Pridell	Pridell & Associates
Christy Caldwell	Topeka Chamber of Commerce
Wendy Ann Smith	KMHA
Nancy Lee	Sedgwick County
Hope Traudie	KCC
Natalie Bright	KCCI
Ashley Sherard	Overland Park Chamber
Bernie Koch	Wichita Area Chamber

HOUSE TAXATION COMMITTEE  
GUEST LIST

DATE: March 18, 1999

Mark Tallman	KASB
Karl Peterjohn	KS Taxpayers Network
Russell Clark	KS Taxpayers Network
Sen. Donovan	
Agnes Featon	Johnson County
George Welch	Barbee & Assoc
Ann Dinkus	DAB
Judy Moler	Ks. Assn of Counties
S. Sicilian	KDOR
Chris McKenzi	League of Ks. Municipalities
Barbara Ruth	Dept of Admin
Walter Williams	KS D.P.
Bob Vaneman	Blue Valley USD 229
Les Brown	Mid-Missouri
Karen France	Ks. Assn of REALTORS
Caroline Wroczynski	
Steve Richard	Yellow Corporation
Doyle K. Kelly	

## REPORT OF SUBCOMMITTEE ON PROPERTY TAXATION

March 18, 1999

SB 226

The subcommittee:

- Finds that SB 226 is the preferred method of addressing the myriad of issues associated with property taxes and local accountability.
- Recommends that the provisions of SB 226 apply to the Legislature with respect to the mandatory USD general fund levy established pursuant to KSA 1998 Supp. 72-6431 but recognizes that the matter will be considered by the full Committee.
- Recommends that a technical amendment be provided which would clarify that repayment of principal and interest on temporary notes and no-fund warrants also be excluded from the provisions of the bill (as is repayment of principal and interest on other bonded indebtedness).
- Discussed whether adoption of the resolutions or ordinances (necessary to approve budgets funded from property tax increases) should require "supermajority" votes but did not come to a consensus on this issue.

*House Taxation  
3-18-99  
Attachment 1*

SB 252

The subcommittee:

- Recommends that the current tax lid (aggregate levy limitation) be allowed to sunset as scheduled on July 1 and that most individual fund levy limits (which have been suspended since 1989) be repealed in anticipation of that occurrence. SB 252 would implement these recommendations.
- Discussed the issue of whether individual fund levy limits with respect to library districts should also be repealed. New Section 11 of SB 252 would provide for retention of such limits. The subcommittee notes that the issue is complicated by the appointed-versus-elected status of most library boards compared to other local officials. The subcommittee refers the matter to the full Committee for further discussion.

Constitutional Amendments

- The subcommittee makes no recommendations regarding any of the constitutional amendments under consideration (HCR 5031, HCR 5035, and HCR 5036) and refers the issue(s) to the full Committee for further discussion.

Subcommittee Resources:

Mark Beck, Property Valuation Director

Barbara Butts, Municipal Accounting

Dale Dennis, Department of Education



House Taxation  
3-18-99  
Attachment 2

1 K.S.A. 79-201, and amendments thereto, by more than one agency or  
2 organization for one or more of such purposes.

3 *Second.* All real property, and tangible personal property, actually and  
4 regularly used exclusively for adult care home purposes by an adult care  
5 home as the same is defined by K.S.A. 39-923, and amendments thereto,  
6 which is operated by a corporation organized not for profit under the laws  
7 of the state of Kansas or by a corporation organized not for profit under  
8 the laws of another state and duly admitted to engage in business in this  
9 state as a foreign, not-for-profit corporation, charges to residents for serv-  
10 ices of which produce an amount which in the aggregate is less than the  
11 actual cost of operation of the home or the services of which are provided  
12 to residents at the lowest feasible cost, taking into consideration such  
13 items as reasonable depreciation, interest on indebtedness, acquisition  
14 costs, interest and other expenses of financing acquisition costs, lease  
15 expenses and costs of services provided by a parent corporation at its  
16 costs; and contributions to which are deductible under the Kansas income  
17 tax act; and all intangible property including moneys, notes and other  
18 evidences of debt, and the income therefrom, belonging exclusively to  
19 such corporation and used exclusively for adult care home purposes. ~~The~~  
20 ~~fact that real property or real or tangible personal property may be leased~~  
21 ~~from a not-for-profit corporation, which is exempt from federal income~~  
22 ~~taxation pursuant to section 501(c)(3) of the internal revenue code of~~  
23 ~~1986, and amendments thereto, and which is the parent corporation to~~  
24 ~~the not-for-profit operator of an adult care home, shall not be grounds to~~  
25 ~~deny exemption or deny that such property is actually and regularly used~~  
26 ~~exclusively for adult care home purposes by an adult care home, nor shall~~  
27 ~~the terms of any such lease be grounds for any such denial. For all taxable~~  
28 ~~years commencing after December 31, 1997 1995, such property shall be~~  
29 ~~deemed to be used exclusively for adult care home purposes when used~~  
30 ~~as a not-for-profit day care center for children which is licensed pursuant~~  
31 ~~to K.S.A. 65-501 et seq., and amendments thereto.~~

32 *Third.* All real property, and tangible personal property, actually and  
33 regularly used exclusively for private children's home purposes by a pri-  
34 vate children's home as the same is defined by K.S.A. 75-3329, and  
35 amendments thereto, which is operated by a corporation organized not  
36 for profit under the laws of the state of Kansas or by a corporation or-  
37 ganized not for profit under the laws of another state and duly admitted  
38 to engage in business in this state as a foreign, not-for-profit corporation,  
charges to residents for services of which produce an amount which in  
the aggregate is less than the actual cost of operation of the home or the  
services of which are provided to residents at the lowest feasible cost,  
taking into consideration such items as reasonable depreciation and in-  
terest on indebtedness, and contributions to which are deductible under

and for all tax years  
commencing after  
July 1, 1977,

For purposes of this subsection, an adult care home which uses  
its property in a manner which is consistent with federal  
Internal Revenue Service Revenue Ruling 72-124, issued under and  
pursuant to federal Internal Revenue Code Section 501(c)(3),  
shall be deemed to be operating at "lowest feasible cost". ~~The~~  
~~preceding amendment is a declaration and clarification of the~~  
~~meaning of such term as originally added to this section by~~  
~~amendments adopted effective July 1, 1977, and therefore shall~~  
~~be deemed effective for all purposes for all taxable years~~  
~~commencing after July 1, 1977.~~

1 the Kansas income tax act; and all intangible property including moneys,  
2 notes and other evidences of debt, and the income therefrom, belonging  
3 exclusively to such a corporation and used exclusively for children's home  
4 purposes.

5 *Fourth.* All real property and tangible personal property, actually and  
6 regularly used exclusively for housing for elderly and handicapped per-  
7 sons having a limited or lower income, or used exclusively for cooperative  
8 housing for persons having a limited or low income, assistance for the  
9 financing of which was received under 12 U.S.C.A. 1701 *et seq.*, or under  
10 42 U.S.C.A. 1437 *et seq.*, which is operated by a corporation organized  
11 not for profit under the laws of the state of Kansas or by a corporation  
12 organized not for profit under the laws of another state and duly admitted  
13 to engage in business in this state as a foreign, not-for-profit corporation;  
14 and all intangible property including moneys, notes and other evidences  
15 of debt, and the income therefrom, belonging exclusively to such a cor-  
16 poration and used exclusively for the purposes of such housing. For the  
17 purposes of this subsection, cooperative housing shall mean those not-  
18 for-profit cooperative housing projects operating pursuant to sections 236  
19 or 221(d)(3), or both, of the national housing act and which have been  
20 approved as a cooperative housing project pursuant to applicable federal  
21 housing administration and U.S. Department of Housing and Urban De-  
22 velopment statutes, and rules and regulations; during such time as the  
23 use of such properties are restricted pursuant to such act, statutes or rules  
24 and regulations.

25 *Fifth.* All real property and tangible personal property, actually and  
26 regularly used exclusively for housing for elderly persons, which is oper-  
27 ated by a corporation organized not for profit under the laws of the state  
28 of Kansas or by a corporation organized not for profit under the laws of  
29 another state and duly admitted to engage in business in this state as a  
30 foreign, not-for-profit corporation, in which charges to residents produce  
31 an amount which in the aggregate is less than the actual cost of operation  
32 of the housing facility or the services of which are provided to residents  
33 at the lowest feasible cost, taking into consideration such items as rea-  
34 sonable depreciation and interest on indebtedness and contributions to  
35 which are deductible under the Kansas income tax act; and all intangible  
36 property including moneys, notes and other evidences of debt, and the  
37 income therefrom, belonging exclusively to such corporation and used  
38 exclusively for the purpose of such housing. *For all taxable years com-*  
39 *mencing after December 31, 1997 1995, such property shall be deemed*  
40 *to be used exclusively for housing for elderly persons purposes when used*  
41 *as a not-for-profit day care center for children which is licensed pursuant*  
42 *to K.S.A. 65-501 et seq., and amendments thereto.*

43 *Sixth.* All real property and tangible personal property actually and

and for all tax years  
commencing after July 1, 1977,

For purposes of this subsection, a corporation operating not-for-profit housing for elderly persons which uses its property in a manner which is consistent with federal Internal Revenue Service Revenue Ruling 72-124, issued under and pursuant to federal Internal Revenue Code Section 501(c)(3), shall be deemed to be operating at "lowest feasible cost". ~~The preceding amendment is a declaration and clarification of the meaning of such term as originally added to this section by amendments adopted effective July 1, 1977, and therefore shall be deemed effective for all taxable years commencing after July 1, 1977.~~



Office of Policy & Research  
Shirley K. Sicilian, Director  
915 SW Harrison St.  
Topeka, KS 66625

(785) 296-3081  
FAX (785) 296-7928  
Hearing Impaired TTY (785) 296-6461  
Internet Address: www.ink.org/public/kdor

Office of Policy & Research

MEMORANDUM

**To:** Chairman Adkins  
House Taxation Committee

**From:** Shirley Sicilian

**Re:** Senate Bill 47 - clarifying due process for "responsible individuals"

**Date:** March 18, 1999

Last Wednesday during Committee hearings on Senate Bill 47, a concern was raised regarding portions of current law defining a "responsible individual" who may be held liable for tax debts of a business. The concern was for individuals who are in a position of responsibility, but had no knowledge of the failure to comply. The department researched language in the federal and other state statutes and we found that the IRS and several other states require the failure to comply to be "willful." Kansas law does not currently require such a finding. In an effort to improve the bill and make it acceptable to the committee, we would propose adding that requirement.

On Page 6 of the bill:

9 Sec. 9. K.S.A. 79-2971 is hereby amended to read as follows: 79-  
10 2971. (a) Any individual who is responsible for collection or payment of  
11 excise taxes imposed under the provisions of K.S.A. 12-1692 *et seq.*, 12-  
12 1696 *et seq.*, 41-501 *et seq.*, 79-3301 *et seq.*, 79-3370 *et seq.*, 79-3401 *et*  
13 *seq.*, 79-3490 *et seq.*, 79-34,108 *et seq.*, 79-3817 *et seq.*, 79-4101 *et seq.*  
14 or 79-41a01, and amendments thereto, or for control, receipt, custody or  
15 disposal of funds due and owing under such acts who **willfully** fails to collect such  
16 tax, or account for and pay over such tax, or attempts in any manner to  
17 evade or defeat such tax or the payment thereof shall be personally liable  
18 for the total amount of the tax evaded, or not collected, or not accounted  
19 for and paid over, together with any interest and penalty imposed thereon.

And on beginning on the last line of page 6 and continuing to page 7:

43 Sec. 10. K.S.A. 79-3643 is hereby amended to read as follows: 79-  
2 3643. (a) Any individual who is responsible for collection or payment of  
3 sales or compensating tax or control, receipt, custody or disposal of funds  
4 due and owing under the Kansas retailers' sales and compensating tax acts  
5 who **willfully** fails to collect such tax, or account for and pay over such tax, or  
6 attempts in any manner to evade or defeat such tax or the payment thereof  
7 shall be personally liable for the total amount of the tax evaded, or not  
8 collected, or not accounted for and paid over, together with any interest  
9 and penalty imposed thereon.

House Taxation  
3-18-99  
Attachment 3

SENATE BILL No. 12

By Special Committee on Assessment and Taxation

12-16

9 AN ACT relating to property taxation; concerning the contents of ap-  
10 praised valuation notices; amending K.S.A. 79-1437f and 79-1460 and  
11 repealing the existing sections.

12  
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 79-1437f is hereby amended to read as follows: 79-  
15 1437f. ~~The~~ *Except as otherwise provided by K.S.A. 79-1460, and amend-*  
16 *ments thereto*, contents of the real estate sales validation questionnaire  
17 shall be made available only to the following people for the purposes listed  
18 hereafter:

19 (a) County officials for cooperating with and assisting the director of  
20 property valuation in developing the information as provided for in K.S.A.  
21 79-1487, and amendments thereto;

22 (b) any property owner, or the owner's representative, for prosecut-  
23 ing an appeal of the valuation of such owner's property or for determining  
24 whether to make such an appeal, but access shall be limited to the con-  
25 tents of those questionnaires concerning the same constitutionally pre-  
26 scribed subclass of property as that of such owner's property;

27 (c) the county appraiser and appraisers employed by the county for  
28 the appraisal of property located within the county;

29 (d) appraisers licensed or certified pursuant to K.S.A. 58-4101 *et seq.*,  
30 and amendments thereto, for appraisal of property and preparation of  
31 appraisal reports;

32 (e) financial institutions for conducting appraisals as required by fed-  
33 eral and state regulators;

34 (f) the county appraiser or the appraiser's designee, hearing officers  
35 or panels appointed pursuant to K.S.A. 79-1602 or 79-1611, and amend-  
36 ments thereto, and the state board of tax appeals for conducting valuation  
37 appeal proceedings;

38 (g) the board of county commissioners for conducting any of the  
39 board's statutorily prescribed duties; and

40 (h) the director of property valuation for conducting any of the di-  
41 rector's statutorily prescribed duties.

42 Sec. 2. K.S.A. 79-1460 is hereby amended to read as follows: 79-  
43 1460. The county appraiser shall notify each taxpayer in the county an-

(a)

House Taxation  
3-18-99  
Attachment 4

H-2

1 nually on or before March 1 for real property and May 1 for personal  
2 property, by mail directed to the taxpayer's last known address, of the  
3 classification and appraised valuation of the taxpayer's property, except  
4 that, the valuation for all real property shall not be increased unless: (a)

(1)

5 The record of the latest physical inspection was reviewed by the county  
6 or district appraiser, and documentation exists to support such increase  
7 in valuation in compliance with the directives and specifications of the  
8 director of property valuation, and such record and documentation is  
9 available to the affected taxpayer; and (b) for the taxable year next follow-  
10 ing the taxable year that the valuation for real property has been reduced  
11 due to a final determination made pursuant to the valuation appeals pro-  
12 cess, documented substantial and compelling reasons exist therefor and  
13 are provided by the county appraiser. For the purposes of this section  
14 and in the case of real property, the term "taxpayer" shall be deemed to  
15 be the person in ownership of the property as indicated on the records  
16 of the office of register of deeds or county clerk. Such notice shall specify  
17 separately both the previous and current appraised and assessed values  
18 for each property class identified on the parcel. Such notice shall also  
19 contain the uniform parcel identification number prescribed by the di-  
20 rector of property valuation. Such notice shall also contain a statement of  
21 the taxpayer's right to appeal and the procedure to be followed in making  
22 such appeal. Such notice may provide the parcel identification number  
23 and the sale date and amount of any or all sales utilized in the deter-  
24 mination of appraised value of residential real property. In any year in

(2)

Such notice shall provide the parcel identification number, address, sale date and amount of any or all sales of residential real property utilized in the determination of the appraised value of the residential real property of the taxpayer. In addition every taxpayer shall be afforded the opportunity to review the data sheet of comparable sales utilized in the determination of the appraised valuation of the residential real property of such taxpayer

25 which no change in appraised valuation of any real property from its  
26 appraised valuation in the next preceding year is determined, an alter-  
27 native form of notification which has been approved by the director of  
28 property valuation may be utilized by a county. Failure to timely mail or  
29 receive such notice shall in no way invalidate the classification or ap-  
30 praised valuation as changed. The secretary of revenue shall adopt rules  
31 and regulations necessary to implement the provisions of this section.

(b) For all taxable years commencing after December 31, 1999, there shall be provided to each taxpayer as an accompaniment to such valuation notice a guide to the property tax appeals process. The director of the division of property valuation shall devise and publish such guide, and shall provide sufficient copies thereof to all county appraisers. Such guide shall include but not limited to: (1) A restatement of the law which pertains to the process and practice of property appraisal methodology, including the contents of K.S.A. 79-503a and 79-1460, and amendments thereto; (2) the procedures of the appeals process, including the order and burden of proof of each party and time frames required by law; and (3) such other information deemed necessary to educate and enable a taxpayer to properly and competently pursue an appraisal appeal.

32 Sec. 3. K.S.A. 79-1437f and 79-1460 are hereby repealed.  
33 Sec. 4. This act shall take effect and be in force from and after its  
34 publication in the statute book.



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



(913) 296-3081  
FAX (913) 296-7928

Office of Policy & Research

MEMORANDUM

To: Representative Peggy Palmer  
From: Kirby L. Stegman *KLS*  
Date: April 30, 1998  
Subject: Property Tax Appeals

We have discussed several issues relative to appealing the valuation of a taxpayer's residence. In summary: 1. Who has the burden of proof when a valuation is appealed; 2. Does a standard exist that the homeowner could meet to overturn a residential valuation; 3. Should a real estate agent's sales commission be included in determining the value of a residence; and 4. Should a comparable sales analysis be conducted when property has sold recently.

1. **BURDEN OF PROOF:** The burden proving the valuation is correct is upon the county appraiser for appeals of residential property, whether the taxpayer is before a hearing officer or panel or the Kansas Board of Tax Appeals. (K.S.A. 79-1606 [appealing notice of value to hearing officer/panels], K.S.A. 79-1609 [appealing notice of value to Kansas Board of Tax Appeals] and K.S.A. 79-2005 [payments under protest]). Furthermore, the county appraiser has the duty to initiate the production of evidence to substantiate the valuation of the property when meeting with taxpayers as a result of their appeal. (K.S.A. 79-1448 [appeal of notice of value], K.S.A. 79-2005 [payment under protest]). When determining the fair market value of property, the county appraiser must follow K.S.A. 79-503a, which defines the market value as basically the price a willing, informed buyer is justified in paying and a willing, informed seller is justified in accepting for property in an arms-length transaction (no undue duress, family relationship, etc.) K.S.A. 79-503a and standard appraisal practices require that when determining the fair market value of property, all three approaches (the sales approach, cost approach and income approach) must be considered. The appraiser, applying appraisal judgment, will determine which of the three approaches best reflects the value of the property. For example, in terms of residential property in an urban area, there are typically many sales of comparable homes available to do a highly reliable sales approach to value. Therefore, typically, when it comes to residential property, a county appraiser, just like a private fee appraiser, will end up relying most heavily upon the sales approach to value. That generally means that when a taxpayer appeals the value of their residential property, the appraiser will likely supply sales data from comparable homes in the area to support their value. The county appraiser will also likely provide information as to why he or she believes the comparable sales (similar properties that have sold which were used to estimate the market value of the subject) are in fact like the subject. That will entail an explanation of the county appraiser's neighborhood analysis, his or her analysis of the characteristics of the subject and each comparable property that sold, and an explanation of any adjustments made to the sales of the comparable properties that sold in order to have the sale more accurately reflect the subject. The taxpayer should check the county appraiser's description of their property to make certain it is accurate. In addition, the taxpayer should check to make certain the comparable sales used by the county to value their home are in fact similar to their home. Furthermore, the taxpayer should see if they can find properties that have sold which are more similar to their property than what the county was able to identify using mass appraisal techniques. In other words, the county appraiser is not presumed to be correct. However, once the county appraiser presents the basis for their valuation, which they inevitably will, the taxpayer must show why their valuation is better. That may be done by many ways. It could be done by identifying and proving an error in the data characteristics the county has collected on the taxpayer's home; or by identifying and proving an error in the data characteristics the county has collected on the comparable sales that the county used to value the taxpayer's home; or by proving that the comparable properties used to value the taxpayer's home are not truly comparable and that another approach to value (i.e., the cost or income approach) is more reliable; or by providing information to the county appraiser about properties that have sold that the taxpayer believes are more like their home. A taxpayer may also present a fee appraisal of their property, or they may present proof of the price for which they recently purchased the property. If a taxpayer's purchase price is reflective of the "fair market value," i.e., willing, informed buyer and seller, arms-length transaction, etc., it will be given substantial weight as an indication of the home's fair market value.

House Taxation  
3-18-99  
Attachment 5

2. **STANDARD FOR OVERTURNING THE VALUATION:** There is no exact, full-proof formula that can be followed in order to overturn the county appraiser's valuation of property. What happens on appeal is that the county appraiser is not presumed to be correct. However, once the county appraiser shows the basis for their valuation, then the burden shifts to the taxpayer to show that their value is a better reflection of the fair market value than the county appraiser's. Ways in which this can be done are discussed above. However, while there are certain duties/burdens imposed upon the county appraiser, a hearing officer/panel or Board of Tax Appeals member will virtually always be placed in the position of determining which party (the county or the taxpayer) has the information that best reflects the fair market value of the property at issue.
  
3. **SALES COMMISSIONS:** County appraisers must utilize K.S.A. 79-503a and U.S.P.A.P. standards (nationally recognized methods for valuing property) in order to determine the fair market value of property for property tax purposes. K.S.A. 79-503a defines "fair market value," in its pertinent part, as the price a willing, informed buyer is justified in paying and a willing, informed seller is justified in accepting. There is nothing in this statute stating that the real estate commission must typically be removed from the sales price that a willing, informed buyer is justified in paying or a willing, informed seller is justified in accepting. The value of the property is reflected by what buyers are willing to pay and sellers are willing to accept. The commission is provided due to a separate contract altogether from the agreement to sell the real estate. The commission is a separate fee for services that must be paid somehow, whether that is based upon a percentage of the sales price of the property, or by the hour, or just a flat amount. It is not contemplated in Kansas property tax statutes that the sales commission, whatever the basis, should be removed from the sales price of real estate.
  
4. **COMPARABLE SALES ANALYSIS:** All sales in a county are analyzed by the county appraiser. The county appraiser first reviews each sale to determine whether it is an indicator of the fair market value of the property that sold; that is, the county appraiser determines whether each sale was between a willing, informed buyer and seller was not made under undue duress, or between related parties, etc. Sales that are considered "valid," that is, sales that are reflective of the fair market value of the property, may be given substantial weight by the county appraiser when determining the fair market value of the property that sold. However, the sales price of a property alone, even if "valid," cannot be used to determine the fair market value of the property due to the express terms in K.S.A. 79-503a. Sales that are considered "valid" are also further analyzed so that they can be used to value similar properties in the sales approach, the cost approach and even the income approach. It is fairly obvious how comparable sales are used to value similar properties in the comparable sales approach. Analyzing the sales of properties that are similar but for age is one way that an appraiser can determine the appropriate amount of depreciation to deduct in the cost approach to value. Sales are also one way of determining the appropriate capitalization rate to use in the income approach to value. The counties and the state also use sales as a measure of how accurately the county is appraising property at its fair market value. In this regard, the state annually publishes the "Sales Ratio Study" required by law. Sales really are at the core of how all appraisers, whether county appraisers or fee appraisers, determine the fair market value of property.

Some of these questions and answers are contained in the Property Valuation guides that you have: A Homeowner's Guide to Property Tax in Kansas and A Guide to the Appeal Process in Kansas. The Division revises these guides routinely and would welcome your suggestions regarding any additional information that you feel should be included.

or has an appraised value that is less than 2 million and is not agricultural land; or directly to the Board of Tax Appeals (BOTA).

3. After a small claims appeal you may appeal to the Board of Tax Appeals (BOTA) by filing a written request with BOTA within 30 days after notification of results of the small claim hearing.

If the property owner or the county appraiser is dissatisfied with BOTA's decision, either party may request a rehearing or reconsideration within 15 days.

4. If the property owner or the county appraiser is dissatisfied with BOTA's decision on rehearing or reconsideration, either party may appeal to the district court where the property is located within 30 days.

**What should I expect during an informal meeting?** During the informal meeting, the appraiser will show how the appraised value was determined for your property. During or before the meeting, review the record on your property to be sure all the information such as age, style and size is correct. The county appraiser is interested in appraising property accurately, in an uniform and equal manner and should not be considered an adversary.

**What should I bring to an informal meeting or a hearing?** You will want to provide documentation that supports your request for a lower value. Owners who appeal successfully usually do so by finding comparable properties with lower market values or comparable properties that have recently sold for less than the value assigned to their property. Below are examples of documentation that may be used to support a change in market value.

- Recent sales information about property similar in condition, quality, style, age and location to the property at issue. The appraiser's office will furnish you with a comparable sales sheet for your property

upon request. Allow several days for processing and mail time.

- The sales contract for the property if it was purchased within the last three years.
- Photos and contract/engineering estimates of the cost to repair any structural damage if the damage was not fully considered.
- A recent appraisal report of the property at issue prepared by a professional appraiser.
- Rent income and expense information if the property at issue is an income-producing investment (example, apartment buildings).

This documentation is not appropriate for agricultural land and commercial personal property appraisals because, by law, such property is not appraised at market value.

**Can someone else attend hearings on my behalf?** Someone else may attend the informal meeting or HOP hearing. However, the owner must complete a "Declaration of Representation" form provided by the county appraiser. Contact your county appraiser for more information.

At a Small Claims hearing, the owner may appear personally or be represented by an attorney, CPA, certified appraiser, member of the owner's immediate family, or authorized employee by filing a "Declaration of Representation" form with BOTA.

Generally, BOTA requires that the actual property owner appear at its hearings, unless you are represented by an attorney.

**What is a Kansas Board of Tax Appeals (BOTA) hearing like?** BOTA members travel around the state. Both parties may present testimony and exhibits at the hearing. Generally, the property owner and the county appraiser must exchange exhibits and a list of witnesses 20 days prior to the hearing, so each side knows what to expect. BOTA will provide more specific instructions and may be contacted at (785) 296-2388.

## A Guide to the Appeal Process in Kansas

## What does my county appraiser do?

By law, your county appraiser figures the appropriate value of your property in an uniform and equal manner. The county appraiser does not control the amount of your property taxes and the county does not receive more money by simply raising property values. The value of property in the county is used as a means of spreading the cost of providing local services.

## How does the county's appraisal affect my taxes?

If your property value goes up, it does not necessarily mean you will pay more taxes. Likewise, if your property value goes down or does not change, it does not automatically mean you will pay less or the same amount of taxes.

The money needed for local services is set and budget hearings are held in August. Increases or decreases in property values do not change the amount of tax dollars needed for local public services. These services include roads, parks, fire protection, police protection, public health, and public schools among many others.

## When will I be notified of the value of my property?

The "notice of value" on your land and buildings should be mailed from the county appraiser by March 1, and by May 1 for personal property. If your county appraiser asks for an extension, it may be later than the above date before you get your notice of value.

## What can I do if I believe the value of my home is too high?

There are two ways to challenge the value of your property:

- you may appeal the "notice of value" of your property by contacting the county appraiser's office by phone or in writing within 30 days of the mailing date of the notice, or
- you may fill out a "payment under protest" form with the county treasurer at the time you pay your taxes. If you paid all your taxes

prior to December 20th then the protest can be made no later than December 20th (unless an escrow or tax service agent pays your property taxes in full, then no later than January 31st).

You cannot appeal using both methods for the same property in the same tax year. So, if you start to appeal your "notice of value," be sure that you follow through with the appeal. You will not be allowed to "pay under protest" later.

## What steps do I take to appeal the "notice of value?"

1. Contact the county appraiser's office by phone or in writing within 30 days of the mailing date of the notice for real property or by May 15th for personal property. The county will send confirmation of the time and date of the scheduled informal meeting at least ten days prior to the meeting.

The county appraiser will hold an informal meeting with the property owner by May 15th and notify the owner of the county's final value by May 20th for real property. Personal property informal meetings should be completed and final values determined by June 14th. These dates may be extended by order of the Director of Property Valuation.

2. If the property owner disagrees with the county's final value, the property owner may appeal to one of the following: Small Claims, if the property is classified as residential, or has an appraised value that is less than 2 million and is not agricultural land; or a Hearing Officer /Panel (HOP) if the county commissioners elect to appoint hearing officers to hold hearings and issue orders. HOP hearings should be completed by July 1st and orders issued by July 5th; or if the HOP is not available in your county, you may appeal directly to the Board of Tax Appeals (BOTA).

If the county has a HOP, you must appeal within 18 days from the county's final value to small claims by filing with BOTA or to the HOP by filing with the county clerk. If the county does

not have a HOP, you must appeal within 30 days from the county's final value to small claims or BOTA by filing with BOTA. Appeal forms are provided by the county clerk.

3. After a HOP hearing you may then appeal to small claims if the property is classified as residential, or has an appraised value that is less than 2 million and is not agricultural land, by filing a written request with BOTA within 30 days on a form provided by the county clerk.

If you or the county are dissatisfied with the results of the HOP or small claims you may appeal to the Board of Tax Appeals (BOTA) by filing a written request with BOTA within 30 days on a form provided by the county clerk.

If the property owner or the county appraiser is dissatisfied with BOTA's decision, either party may request a rehearing or reconsideration within 15 days.

4. If the property owner or the county appraiser is dissatisfied with BOTA's decision on rehearing or reconsideration, either party may appeal to the district court where the property is located within 30 days.

## What steps do I take to file a payment under protest?

1. Timely file a written payment under protest with the county treasurer on a form provided by the treasurer.

The county appraiser will schedule an informal meeting with the property owner within 15 days after receiving a copy of the protest. The meeting does not have to be held within this 15 day period, just scheduled within 15 days.

After the informal meeting, the county appraiser must notify the property owner of any change in value within 15 business days. A "no change" notice may be received later.

2. If you disagree with the county's final value, you may appeal to one of the following by filing a written request with the Board of Tax Appeals within 30 days of the county's final value: small claims if the property is classified as residential,