

Approved: 1-31-00  
Date

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE.

The meeting was called to order by Chairperson Senator Audrey Langworthy at 11:08 a.m. on January 25, 2000, in Room 519-S of the Capitol.

All members were present except: Senator Sandy Praeger – Excused

Committee staff present: Chris Courtwright, Legislative Research Department  
April Holman, Legislative Research Department  
Don Hayward, Revisor of Statutes Office  
Shirley Higgins, Committee Secretary

Conferees appearing before the committee: Richard Jones, Kansas Association of Conservation Districts  
Senator Alicia Salisbury  
Paul Welcome, Kansas County Appraisers Association  
Senator Tim Emert  
Shirley Sicilian, Kansas Department of Revenue  
Tony Folsom, Kansas Board of Tax Appeals

Others attending: See attached list.

Richard Jones, Kansas Association of Conservation Districts, requested the introduction of a bill. At their annual convention held in November of 1999, the 105 conservation districts passed a resolution asking the Kansas Legislature to allow voters at the next general election to decide if the retailers' sales and compensating use tax should be increased by a quarter of a cent and the proceeds be placed in special funds and used only for the purpose of providing additional moneys to be used for soil and water conservation, for state parks and lakes, and for wildlife restoration habitat programs. (Attachment 1)

Senator Hardenburger moved to introduce the proposed resolution, seconded by Senator Corbin. The motion carried.

The minutes of the January 19 and 20, 2000, meetings were approved.

**SB 374–Property taxation; concerning aggrieved taxpayer appeals**

Senator Alicia Salisbury informed the Committee that she suggested the concept of **SB 374** to the 1999 interim Committee on Assessment and Taxation after a taxpayer called her attention to a problem he had after he appealed the valuation placed on his property. She pointed out that the essence of the bill is found on pages two and three in Section 2.

Senator Salisbury explained that the bill amends the portion of the statute which creates the Small Claims Division of the Board of Tax Appeals (BOTA), allowing counties over 10,000 to no longer have county hearing officers. In that case, a taxpayer can file a claim in the Small Claims Division of BOTA. In the particular instance that prompted her to request the bill, the taxpayer had a hearing in the Small Claims Division. The hearing officer settled on a valuation of the taxpayer's property that was under what the county appraiser had set it. The county appraiser, in turn, appealed the settlement order of the Small Claims Division hearing officer to BOTA. She explained that **SB 374** would limit an appeal to BOTA to a taxpayer in that type of situation by striking in Section 2 "A county or district appraiser may appeal to the state board of tax appeals from any order of the hearing officer or panel." Senator Salisbury suggested a further amendment, which had been drafted by the Revisor of Statutes office. The amendment would also strike the ability of the county appraiser to appeal further to the district court.

## CONTINUATION SHEET

### MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE Room 519-S, Statehouse, at 11:08 a.m. on January 25, 2000.

Senator Salisbury emphasized that **SB 374** is responsive to taxpayers with small property ownership and that it was not meant to judge the valuation put on the property by the county appraiser. She noted that she is well aware that the county appraisers and the Kansas Association of Counties do not support the bill and that she is sensitive to the concerns they voiced during the interim hearing. She further noted that the county appraisers feel that the bill allows one hearing officer with limited training too much power. She agreed with the interim committee that this issue deserves to be revisited as there are qualification requirements for members of BOTA, but there are no qualification requirements for hearing officers in the Small Claims Division.

Another issue raised by county appraisers is that there may be instances where a hearing officer makes a decision based on false information presented by the property owner or where the county could have incorrect information but would not be able to appeal as a matter of due process. In answer to these concerns, Senator Salisbury pointed out that testimony to the Small Claims Division may be informal, but it must be given under oath. She noted that, by law, it is the duty of the county appraiser to initiate production of evidence pertaining to the valuation he placed on the property. Thus, the county appraiser has a definite opportunity to provide evidence as to why a certain valuation amount was placed on the property.

Senator Salisbury noted that a concern raised by a member of the interim committee was that the bill could have an adverse effect on sales ratio studies. In addition, the Kansas Association of Counties expressed their concern that it would have an adverse affect on other taxpayers. In response to these concerns, she pointed out that the bill does not concern a practice that has run rampant. She noted that, since the time the Small Claims Division was created, there have been relatively few instances when a county appraiser has chosen to appeal from an order by the Small Claims Division.

In conclusion, Senator Salisbury quoted a portion of the concerned taxpayer's letter to her as follows: "If the creation of the Small Claims Division was to relieve the state Board of Tax Appeals from some of their case load and to expedite the appeals process, then this process might be counter productive." Furthermore, he states, "The taxpayers who go through this process feel that perhaps they are going to be singled out by the county appraiser and will have to enter a cycle of continuous appeals." He concludes by saying, "Your simple amendment will go a long way to improve the public's confidence and the ability of individuals to make their case at the appropriate level without fear of becoming entangled in a morass of further appeals in the event they gain a favorable decision from the hearing officer."

In response to committee questions, Mr. Hayward clarified that **SB 374** with the proposed amendment simply prevents the county appraiser from appealing to BOTA and the district court. Senator Salisbury noted that the concerns raised by counties and county appraisers with regard to due process are policy issues. She feels that if the legislative intent of creating the Small Claims Division was out of a sensitivity to the individual taxpayer and the small business owner, the question before the Committee is, "How sensitive do you want to be about the burden that a property tax is placing on individuals?" In her opinion, it is preferable to encourage individual property owners and small business owners to make any appeal on their property valuation to the Small Claims Division rather than going directly to BOTA, placing further burdens on BOTA.

Senator Langworthy confirmed that Senator Salisbury agrees that the Legislature should consider increasing the qualifications for hearing officers in the Small Claims Division if it is felt that the county appraisers have raised a legitimate issue about the responsibility given to hearing officers in the Small Claims Division. Senator Langworthy noted that interim Assessment and Taxation Committee discussed this issue but took no action on this bill.

Senator Langworthy called attention to written testimony in opposition to **SB 374** submitted by Keyta D. Kelly, County Counselor at Large, County of Leavenworth. Ms. Kelly notes that the state constitution grants all taxpayers equal protection of the law, not just the discontented, and contends that the bill would violate appraisers' right to equal protection of the law. (Attachment 2)

Paul Welcome, Kansas County Appraisers Association, testified in opposition to **SB 374**. By eliminating the county's ability to appeal a decision of the Small Claims Division, he contended that the bill will remove checks and balances currently in the system. Without the checks currently in place, he maintained that the integrity of the appeals process will be in doubt. (Attachment 3) Mr. Welcome informed the Committee that of 2,420 small claims cases heard, only 41 appeals were appealed to BOTA by county appraisers. He

CONTINUATION SHEET

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE  
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explained that some of those appeals were to define where the value is to be placed in order to determine the proper assessment.

**SB 417—Amending the homestead property tax refund act; concerning the filing date**

Senator Tim Emert explained that currently, in order to obtain a homestead property tax refund, one must file a request by April 15. The April 15 deadline creates problems for persons who cannot get their income tax return filed by that date. He noted that those persons can get an extension for filing their income tax return, but that extension does not apply to the homestead property tax refund. The bill moves the filing deadline for the homestead refund from April 15 back to the prior date, October 15, which was recently changed to April 15 to conform with other deadlines. Senator Emert noted that the Department of Revenue supports the amendment.

Shirley Sicilian, Kansas Department of Revenue, confirmed that the Department supports **SB 417**. She commented that although the current April 15 deadline has some simplification benefits in that it coincides with the deadline for income tax returns and food sales refund credits, the Department believes that moving the date to October 15 will reduce the number of late filings and requests for extension. In addition, she suggested an additional amendment which would allow appeals from a denial of a homestead refund claim to go through an informal process with the Secretary of Revenue. (Attachment 4)

**SB 411—Property taxation; concerning appeals procedures for certain valuation controversies**

Tony Folsom, general counsel for BOTA, testified in support of **SB 411**. He discussed the proposed amendments which concern the publication of board orders, single-family residential appeals, tax grievances, clarification of who can appear on behalf of taxpayers and counties, and a waiver of the sixty-day period to conduct small claims hearings. (Attachment 5)

The meeting was adjourned at 12:00 p.m.

The next meeting is scheduled for January 26, 2000.

# SENATE ASSESSMENT AND TAXATION COMMITTEE GUEST LIST

DATE: January 25, 2000

NAME	REPRESENTING
Paul Welton	KCAA Opposed SB 374
Judith Ham	DOB
Bonnie Vosh	Wichita Area Chamber
Randy Allen	Kansas Association of Counties
George Petersen	Ks Taxpayers Network
Alex A. Kotovantz	Ks. Academy of Science
Orlyn	KACD
Richard G. Jones	KACD Salina, Ks
Jamie L. Krasak	Senate Minority Leadership Office
Robert J. Cole	Sen. Spohn - Intern
Kelly Kuitala	City of Overland Park
Adam Moore	Intern for Senator Praeger
Craig Cowd	HARVEY COUNTY
Dave Holtzhaus	Western Resources
Stacy Kramer	West Plains
Jana Johnson	KDWPAD
Tony Folsom	BOTA
Janet Rees	Emporia State Univ.
Sharon Dow	Emporia State University



## SENATE CONCURRENT RESOLUTION NO. \_\_\_\_\_

A PROPOSITION to amend article 11 of the constitution of the state of Kansas by adding a new section thereto relating to the imposition of certain retailers' sales and compensating use taxes for the use and benefit of soil and water conservation; for the development, maintenance and operation of state parks and lakes; and for wildlife restoration habitat programs.

Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected (or appointed) and qualified to the Senate and two-thirds of the members elected (or appointed) and qualified to the House of Representatives concurring therein:

Section 1. The following proposition to amend the constitution of the state of Kansas shall be submitted to the qualified electors of the state for their approval or rejection: Article 11 of the constitution of the state of Kansas is hereby amended by adding a new section thereto to read as follows:

"§ 14. (a) (1) From and after 12:01 a.m., January 1, 2001, for the privilege of engaging in the business of selling tangible personal property at retail in this state or rendering or furnishing any of the services taxable under the Kansas retailers' sales tax act, there is hereby imposed and there shall be collected and paid a tax at the rate of .25% upon the gross receipts paid therefor.

"(2) From and after 12:01 a.m. January 1, 2001, for the privilege of using, storing or consuming within this state any article of tangible personal property, there is hereby imposed and there shall be collected and paid a tax at the rate of .25% upon the gross receipts paid therefor.

"(b) Such taxes shall be in addition to all other taxes authorized by law, and shall be identical in their application, exemptions, administration, enforcement and collection as taxes imposed and collected pursuant to the Kansas retailers' sales tax and Kansas compensating tax acts and rules and regulations authorized thereby.

"(c) Of all moneys received by the state treasurer pursuant to this section, except that required for the payment of refunds,

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50% shall be credited to the soil and water sales tax fund, which is hereby created; 25% shall be credited to the state park and lakes sales tax fund, which is hereby created; and 25% shall be credited to the wildlife restoration sales tax fund, which is hereby created. Moneys credited to the soil and water sales tax fund shall be used only for the saving of the soil and water of Kansas and for the conservation of the productive power of Kansas agricultural land. Moneys credited to the state park and lakes sales tax fund shall be used only for the development, maintenance and operation of state parks and lakes. Moneys credited to the wildlife restoration sales tax fund shall be used only for wildlife restoration habitat programs which are privately maintained. Moneys credited to such funds shall be invested in the manner prescribed by law and all income derived therefrom shall be credited to such funds."

Sec. 2. The following statement shall be printed on the ballot with the amendment as a whole:

"Explanatory statement. The purpose of this proposition is to allow the voters to decide if the retailers' sales and compensating use tax should be increased by a quarter of a cent and the proceeds be placed in special funds and used only for the purpose of providing additional moneys for the use and benefit of soil and water conservation; for the development, maintenance and operation of state parks and lakes; and for wildlife restoration habitat programs.

"A vote for this proposition would provide for the imposition of such additional retailers' sales and compensating use taxes and require that the proceeds be used only for the use and benefit of soil and water conservation; for the development, maintenance and operation of state parks and lakes; and for wildlife restoration habitat programs.

"A vote against this proposition would provide no

constitutional requirement for the imposition of additional retailers' sales and compensating use taxes for the use and benefit of soil and water conservation; for the development, maintenance and operation of state parks and lakes; and for wildlife restoration habitat programs."

Sec. 3. This resolution, if approved by two-thirds of the members elected (or appointed) and qualified to the Senate, and two-thirds of the members elected (or appointed) and qualified to the House of Representatives shall be entered on the journals, together with the yeas and nays. The secretary of state shall cause this resolution to be published as provided by law and shall cause the proposed amendment to be submitted to the electors of the state at the general election to be held on November 7, 2000.



*from the desk of:*



**Keyta D. Kelly**  
**County Counselor at Large**

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**County of Leavenworth**  
**COURTHOUSE, 300 WALNUT, LEAVENWORTH, KANSAS 66048**  
**PHONE (913) 684-0441**

Monday, January 24, 2000

Senator Audrey Langworthy  
 Chair of the Senate Assessment and Taxation Committee  
 Room 143-N  
 Topeka State Capitol  
 Topeka, Kansas 66612

VIA FACSIMILE (785) 357-1207

*Re: Senate Bill 374, Hearing Tuesday January 25, Rm 519-S*

Dear Senator Langworthy:

It is my understanding that the Senate Assessment and Taxation Committee will be considering SB 374 on Tuesday, January 25. I understand the bill removes the county's right to appeal a ruling by the Kansas Board of Tax Appeals, Small Claims Division while leaving intact the taxpayer's right to appeal.

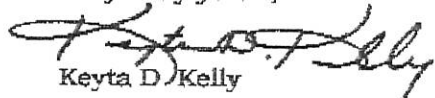
I urge you to not support this bill. It seems that all too often the Legislature forgets "the county" is not a being with a personality of its own. The county is the aggregate of all the taxpayers living within a geographical boundary. When one taxpayer separates himself from the others by appealing his property valuation, he is taking a stance against the remaining taxpayers. If his property valuation is lowered, the others will be called upon to pick up the burden he once carried. If his property valuation is lowered below what it should be, the others should have a right to have themselves heard through the County Appraiser.

I, as the County Counselor representing the Appraiser, but more importantly, as a taxpayer of Leavenworth County, do not want to see my rights taken away. If one taxpayer is successful in convincing one Small Claims Hearing Officer to unreasonably lower his valuation, I want to be assured that "the county" will be able to appeal that decision on to the full Board of Tax Appeals. I don't relish the thought of carrying someone else's tax burden.

Our state constitution grants all taxpayers equal protection of the law, not just the discontented. When the County Appraiser appeals a Small Claims Decision of the state Board of Tax Appeals, I am a member of the class she is representing. To allow the disgruntled taxpayer the right to appeal and not me would be a violation of my right to equal protection of the law.

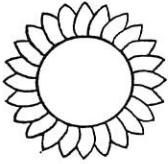
I urge you to consider these thoughts when choosing your position on this bill. Thank you for time in reading my letter and for your consideration.

Very truly yours;

  
 Keyta D. Kelly

TOTAL P.01

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 Attachment 2



To: Senate Assessment and Taxation Committee  
From: Paul Welcome, CAE, Johnson County Appraiser  
Subject: Opposed to SB 374  
Date: January 24, 2000

My name is Paul Welcome and I appear before you representing Kansas County Appraisers' Association today as an opponent to the passage of the bill to eliminate the county's right to appeal a small claim decision.

The purpose of this legislation is to deny the county the ability to appeal a decision of the State Board of Tax Appeals Small Claims Division. We believe this legislation should not be passed for the following reasons.

1. County appraiser is representing all taxing jurisdictions. (i.e. county, school district, city, junior college district, state, and other taxing jurisdictions)
2. No check and balance allowed in the appeals process ( Payment under Protest and informal hearings are reviewed by PVD staff on a random basis) .
3. Allows one hearing officer too much power with limited training.
4. A Hearing officer could make a decision with incorrect information and the county would not be able to appeal to correct the situation.
5. The hearing officer can make a mistake and there is no avenue to correct the honest mistake. Transpose numbers, not indicating the classification.
6. The integrity of the appeals process is in doubt without the checks currently in place.

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January 25, 2000 (8:11AM)

*Senate Assessment & Taxation  
1-25-00  
Attachment 3*

Office of Policy & Research  
Shirley K. Sicilian, Director  
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Office of Policy & Research

TESTIMONY

**To:** Senator Audrey Langworthy,  
Chair, Senate Assessment and Taxation Committee  
**From:** Shirley K. Sicilian  
**Re:** SB 417 – Homestead Refund Filing Deadline  
**Date:** January 25, 2000

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Senator Langworthy and members of the Committee, thank you very much for the opportunity to testify today regarding SB 417. SB 417 would amend the homestead refund act to move the filing deadline from April 15, back to October 15. The department supports this proposal.

The current April 15 deadline does have some simplification benefits in that it coincides with the deadline for income tax returns and food sales refund credits. However, we believe that moving the date to October 15th will reduce the number of late filings and requests for extension, and permit the Department to process some of these returns at a less busy time of year.

K.S.A. 79-4517 does currently allow the director to grant an extension to the filing deadline, but only "when good cause exists." Even if no extension has been granted, the same section allows the director to accept a claim filed after the deadline, but only "in the case of sickness, absence or disability of the claimant." Moving the deadline back would allow filings to be made between April 15 and October 15, without the claimant needing to meet these criteria. Further, K.A.G.I is one component of the homestead income calculation. Because the homestead refund is due April 15, claimants must have calculated K.A.G.I. by April 15. In many cases this is no problem. But in some cases the homestead refund filer has obtained an extension to file income tax until October 15, and therefore has not calculated their K.A.G.I. by mid-April. Extending the homestead refund filing would allow taxpayers with income tax filing extensions to wait until October to calculate K.A.G.I. and file for the homestead refund.

x The Department would respectfully request the committee consider one additional amendment to the Homestead Act. K.S.A. 79-4514 sets out that appeals from a denial of a homestead refund claim must be made to the BOTA. We believe claimants could be much better served if they were allowed to appeal through our informal process before they need to go through a formal BOTA proceeding.

We estimate the bill will have a one time positive fiscal impact of \$1.5 million in fiscal year 2001. This is because in the year the bill becomes effective, some refund requests which would have been filed by April 15, shortly before the end of the fiscal year, will instead not be filed until October 15, well into the next fiscal year.

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K.S.A. 79-4514

Any person aggrieved by the denial in whole or in part of relief claimed under this act (except when the denial is based upon late filing of claim for relief) ~~may appeal such denial to the board of tax appeals by filing a petition with the board within thirty (30) days after such denial~~ ***request an informal conference with the secretary of revenue or the secretary's designee within 60 days of such denial, and an informal conference thereon shall be conducted and the secretary of revenue or the secretary's designee shall make a final determination and give the taxpayer notice thereof.***

K.S.A. 79-4512

Whenever on the audit of any claim filed under this act the division determines the amount thereof to have been incorrectly determined, the division shall redetermine such claim and notify the claimant of such redetermination and the reasons therefore. Such redetermination shall be final unless ~~appealed to the board of tax appeals within thirty (30) days of notice thereof.~~ ***an informal conference with the secretary of revenue or the secretary's designee is requested within sixty (60) days.***

PRESENTATION TO  
SENATE COMMITTEE ON ASSESSMENT AND TAXATION  
January 25, 2000  
BY  
TONY R. FOLSOM  
EXECUTIVE DIRECTOR/GENERAL COUNSEL  
KANSAS BOARD OF TAX APPEALS

Madam Chair and Members of the Committee:

I welcome the opportunity to appear before you today to provide testimony relating to SB 411.

SB 411 basically contains four amendments. The first is to K.S.A. 1999 Supp. 74-2433(d) dealing with the Regular Division of the Board of Tax Appeals. The other three amendments are to K.S.A. 1999 Supp. 74-2433f dealing with the Small Claims Division.

1. PUBLICATION OF BOARD ORDERS

*pg. 2, lines 6-20*

Currently, K.S.A. 1999 Supp. 74-2433(d) provides that orders of the Regular Division of the Board that are deemed of sufficient importance to be published are to be delivered to the Director of Printing to be published. When this language was placed into law in 1998, Board staff met with personnel of the Division of Printing to determine how to "print and publish" the Board orders deemed to be of sufficient importance. Due to the fact that Board orders are subject to reconsideration under the Kansas Administrative Procedures Act, are subject to judicial review, and there could be several orders for each case, it was determined that some form of a loose-leaf publication would be best. A loose-leaf publication is what we currently have in place. It serves the purpose of providing notification to the public of recent important decisions by the Board.

The concern is cost and time required to publish the orders. Basically, all the Division of Printing does is make copies of the Board orders we send to them. The copies are returned to the Board for Board staff to place in notebooks and distribute to the appropriate locations. It would be more cost effective and would take less time for orders to be published if the Board was allowed to copy the orders for placement in the notebooks. As such, it is proposed that K.S.A. 1999 Supp. 74-2433(d) be amended to indicate that it is the Board of Tax Appeals that publishes the orders and not the Director of Printing.

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2. SINGLE-FAMILY RESIDENTIAL APPEALS *pg. 3 line 2-11*

Currently, K.S.A. 1999 Supp. 74-2433f(b) provides that taxpayers may elect to appeal to the Small Claims Division or to the Regular Division of the Board of Tax Appeals the valuation or assessment of single-family residential property. The proposed legislation would amend K.S.A. 1999 Supp. 74-2433f to add a new subsection (b) that would require owners of single-family residential properties to appeal to the Small Claims Division as a prerequisite to appealing to the Regular Division of the Board.

3. TAX GRIEVANCES *pg 3, line 23*

Tax grievances typically involve a legal analysis for which most of the Small Claims hearing officers are not trained to handle. Further, tax grievances filed under K.S.A. 1999 Supp. 79-1702 are no longer filed with the county appraiser's office, but are filed directly with the Board of Tax Appeals. As such, the counties are not always prepared to fully address all of the issues being raised by the taxpayer at the Small Claims hearing.

In addition, the Regular Division of the Board has always addressed tax grievances without holding a hearing, except in cases where one of the parties requests a hearing or there is insufficient information to render a decision without a hearing. Under this process, tax grievances are filed with the county appraiser who then makes comments concerning the issues raised by the applicant. As such, when the Board receives the application from the county appraiser, there is information from both sides included in the application.

In the Small Claims Division, a hearing has to be scheduled for all tax grievances. An exception is where it is clear that Small Claims does not have jurisdiction. In such a case, a decision is sometimes rendered without a hearing.

The proposed amendment to K.S.A. 1999 Supp. 74-2433f(b) would remove the authority for Small Claims to hear tax grievance applications.

4. CLARIFICATION OF WHO CAN APPEAR ON BEHALF OF TAXPAYERS AND COUNTIES *pg. 4, line 12-16*

The proposed legislation would add language to K.S.A. 1999 Supp. 74-2433f(e) indicating that tax representatives and tax agents could appear at Small Claims hearings on behalf of taxpayers. Also, language is added indicating that a county may be represented by the county appraiser, designee of the county appraiser, or the county attorney or counselor. It has been pointed out by Senator Steineger that the proposed amendment does not appear to include counsel for the Unified Government of Wyandotte County/Kansas City. The omission was not

intentional and we would recommend that the language be amended to include counsel for the Unified Government of Wyandotte County/Kansas City.

5. WAIVER OF SIXY-DAY PERIOD TO CONDUCT SMALL CLAIMS HEARINGS

*pg. 4 items 18-19*

Pursuant to K.S.A. 1999 Supp. 74-2433f(f), Small Claims hearings are to be held within sixty-days of the date the appeal is filed with the Small Claims Division. There are instances where taxpayers for various reasons are not available to attend hearings during this sixty-day period. These taxpayers request that we hold their hearings past the sixty-day period. However, there is no provision in the law for going past sixty-days.

In such cases, we tell the taxpayers that the only other option is to transfer the appeal to the Regular Division of the Board. Since the Regular Division conducts hearings on residential and small commercial properties in various locations throughout the state, the taxpayers will still have hearings in locations close to the county where the property is located. The primary difference is that the hearings will be conducted by a Board Member and not by a Small Claims hearing officer.

There have been instances where a county appraiser requested that a Small Claims hearing be continued. If there was time within the sixty-day period to allow for continuance and the taxpayer agreed to the continuance, we continued the hearing. If there was not sufficient time, we told the county that the hearing had to be held and they would have to appear or waive their appearance at the hearing.

The proposed legislation would amend K.S.A. 1999 Supp. 74-2433f(g) to indicate that the requirement that Small Claims hearings be conducted within sixty-days after the appeal is filed with the Small Claims Division could be waived by the taxpayer.