Approved: 2-9-00
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 February 7, 2000, in Room 519-S of the Capitol.

All members were present except:

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: Don Moler, League of Kansas Mucipalities
Anthony Fadale, Coordinator, American Disabilities Act

Others attending: See attached list.

The minutes of the February 2 and 3, 2000, minutes were approved.

Continued hearing on: **SB 474–Enacting the city and county development activity excise tax act**

Don Moler, League of Kansas Municipalities, testified in strong opposition to **SB 474**. He noted that, although the bill appears to grant cities and counties the ability to levy an excise tax, it is actually restrictive rather than permissive. He believes **SB 474** undermines local control and constitutional home rule and, in effect, it will essentially eliminate the ability of cities and counties to impose excise taxes on builders. Furthermore, Mr. Moler believes the bill is unnecessary because cities in Kansas currently have clear authority to impose an excise tax, and the current law works well. (Attachment 1)

Committee discussion followed. Senator Lee commented that **SB 474** is a new act and that it does not eliminate excise taxes but ensures that an appropriate amount is charged to do the necessary work. Senator Bond began a discussion regarding the extent of the Legislature's responsibility to "referee" local political issues which apparently can be worked out at the local level as was the case in Derby, Kansas. Senator Langworthy noted that a city which does charge an excise fee still has the ability to do a benefit district if it chooses. With this, the hearing on **SB 474** was closed.

Senator Langworthy called attention to a copies of an article entitled "Telecommunications and the Tangle of Taxes" written by Scott Mackey, chief economist for the National Conference of State Legislatures (NCSL). She explained that Senator Ranson felt the article would be of interest to the Committee and asked that copies be distributed to all members. (Attachment 2)

SB 428–Property taxation; exempting motor vehicles used for not-for-profit entities in coordinated transit districts

Anthony Fadale, Kansas coordinator of the American Disabilities Act, testified in support of **SB 428**. He reminded the Committee that the 1999 Legislature passed the Kansas Coordinated Public Transportation Assistance Act to deal with the issue of accessible public transportation for the disabled. Coordinated transit districts were directed to transport the elderly, the disabled, and the general public. Mr. Fadale explained that the Board of Tax Appeals (BOTA) informed him last summer that non-profit entities such at the Red Cross may be in danger of losing their state tax exempt status if they participate in a program that transports the general public. Thus, BOTA recommended that its statutes be amended to be consistent with the transportation bill passed in 1999. (Attachment 3) He noted that the Department of Transportation has no objection to **SB 428**.

Mr. Fadale distributed copies of a proposed clarifying amendment to **SB 428** suggested by BOTA's legal staff. The amendment clarifies that an entity must demonstrate to BOTA that it has been approved as a participant in the Kansas Coordinated Public Transportation Assistance Act. (Attachment 4) He defined "participant"as a non-profit entity which assists the coordinated transit district on a regular basis. With this, the hearing on **SB 428** was closed.

Senator Langworthy began a discussion of a previously heard bill, **SB 408** –confidentiality requirements concerning income tax returns. She reminded the Committee that, currently, the State Gaming Commission cannot access income tax returns when doing a background check. The bill would allow the State Gaming Commission to work with the Department of Revenue to look at income tax returns when conducting a background check.

Senator Lee moved to report **SB 408** as favorable for passage, seconded by Senator Bond. The motion carried.

Senator Langworthy opened consideration of another previously heard bill, **SB 411** which was introduced at the request of BOTA and which concerns the publication of Board orders. She recalled that BOTA would prefer to publish the orders rather than sending them to the Director of Printing because it would save money.

She noted that another issue in the bill deals with single-family residential appeals. She explained that current law allows persons to bypass the Small Claims Division and appeal directly to BOTA. BOTA prefers that owners of single-family residential property appeal through the Small Claims Division prior to appealing to the regular division. In this regard she called attention to a letter of concern submitted for the Committee's consideration by Freda Culver, a private citizen who believes this provision would take away her right to go to BOTA. (Attachment 5) Senator Lee said she also had visited with Ms. Culver, and Ms. Culver raised the question whether counties are required by law to notify citizens in writing on their tax statement that they can appeal to the Small Claims Division. Ms. Culver does not believe that most people understand that they can appeal to the Small Claims Division. Staff was uncertain if written notification is required by law.

There being no further time, Senator Langworthy continued the discussion on **SB 411** to a future meeting.

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

The next meeting is scheduled for February 8, 2000.

SENATE ASSESSMENT AND TAXATION COMMITTEE
GUEST LIST

DATE: February 7, 2008

NAME	REPRESENTING
Anthony A. Fadale	AOA COOR/Admin.
Shirley Sicilian	KDO Revenue
Judith Han	DOB
Donn Vanneste	CTD #2
Tony Folsom	BOTA
Marlee Berthold	KCCI
Martha Lou Smith	KMHA
Tray Dietz	State Gaming Agency
George Petersen	Ks Taxpayers Network
	KDOR
Kelly Kultala	City of Overland Park
Bill Penny	Ks Governmental Consulting
Jake Heim	Hein & Weir Chtd.

LKM
League of Kansas Municipalities

300 SW 8th Avenue
Topeka, Kansas 66603-3912
Phone: (785) 354-9565
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To: Senate Assessment and Taxation Committee

From: Don Moler, Executive Director

Date: February 2, 2000

Re: Opposition to SB 474

First I would like to thank the Committee for allowing the League to appear today in opposition to SB 474. As I know you are all aware, one of the cornerstones of local government in Kansas is constitutional home rule for cities. This power is not taken lightly by cities and we believe it is a very important aspect of the intergovernmental structure in this state. As a result, the League appears regularly whenever we believe there is a piece of legislation which will adversely impact constitutional home rule. Today I appear in opposition to SB 474, a bill which clearly undermines local control and Constitutional Home Rule. On its face, SB 474 appears to grant cities the ability to levy an excise tax. Nothing could be further from the truth.

I would point out to the committee that the League believes this piece of legislation to be totally unnecessary. As a result of the case of *Home Builders Association of Greater Kansas City v. City of Overland Park* 22 Kan.App. 2d 649 (1996) it is clear that cities in Kansas have the ability to impose an excise tax on real estate developments in Kansas. Since the time of that case, cities have had the clear authority to impose an excise tax on development within their city boundaries. While SB 474 appears to be a grant of authority, it is the opinion of the League that it is in fact restricting the ability of cities to operate in this area. If adopted, it would create a "one size fits all statute" which would be very limiting in its nature. It is our belief that the underlying motive for this legislation is to make it virtually impossible for cities to levy excise taxes, in the nature of impact fees, on developers in this state. The old saying "if it isn't broken don't fix it" certainly applies today in the case of SB 474. We urge the Committee to reject SB 474 as unnecessary and an assault on the Constitutional Home Rule authority of cities in Kansas.

Senate Assessment & Taxation
2-7-00
Attachment 1

Telecommunications and the Tangle of Taxes

State and local tax policy mustn't get lost in the dizzying pace of change in the telecommunications industry.

By Scott Mackey

It is hailed as the key to economic freedom, prosperity and growth in the 21st century. It is the backbone of the digital revolution—without it, electronic commerce would not exist. Upstarts and Fortune 500 companies alike are in a knock-down-drag-out battle to control its future.

"It" is the nation's telecommunications network—the fiber optic cables, switches, routers, copper wires, satellites, and wireless communications towers and equipment. Wall Street has made hundreds of billions of dollars available to competing telecommunications companies to lay fiber, add switches and expand the cellular network. This expansion in the network—combined with new federal and state laws and regulations deregulating the industry—has led to an explosion of choices for many (but not all) consumers. And it has given the American electronic commerce industry an important head start over foreign competitors shackled with outdated telecommunications networks.

Now the industry is rushing to deploy a critical upgrade in this network—called "broadband." Broadband will dramatically increase the capacity of the pipe, allowing huge volumes of data to flow in and out of homes and businesses at speeds 100 times greater than the current network. The deployment of broadband will greatly expand the speed and efficiency of the Internet. It will open up many new educational, medical and commercial opportunities on the World Wide Web.

AT&T and the cable industry want to provide broadband through cable TV wires; the regional bell telephone companies want to "turbocharge" existing phone lines; and wireless providers are trying to perfect the technology to provide broadband access without wires. Cable companies, established telecos and others have invested billions on developing these technologies—some of which may be obsolete in a few years.

With the dizzying pace of change in the telecommunications industry, there is one important piece of the puzzle that is mired in the bygone era of Ma Bell: state and local tax policy. Many state and local tax statutes refer to industry structures that have ceased to exist. The result is a complex and burdensome tax system that costs the industry billions in compliance costs.

And the problem is only going to get worse as companies develop new technologies and new ways to market them. For example, some industry analysts are predicting free long distance by the end of the year as traditional providers try to compete with "free" Internet telephone services. How will states impose transaction taxes on services that are free? And as companies roll out new calling plans and services that bundle cable TV, Internet access, wireless and traditional telephone plans into a single bill, how will states administer taxes that impose different rates on these services?

Clearly, changing technology will force states to reform their tax structures.

THE MORASS

A new study by a consortium of telecommunications companies found that almost 11,000 state and local jurisdictions have some type of tax or fee on telecommunications providers or customers. A hypothetical company that operated in all of these jurisdictions would have to file more than 55,000 tax returns each year, according to the study. This compares with only 7,200 returns from a company selling other types of goods and services in all of these taxing jurisdictions.

In addition to the administrative costs imposed by heavy filing requirements, telecommunications companies face the difficult task of making sure that they are applying the right tax. Tax boundaries do not always follow zip code boundaries. Firms that collect the city tax when they should have collected the county tax can face penalties from the county and must file for a refund from the city, a costly and time consuming procedure that is often not worth the cost. Furthermore, the company can face class action lawsuits by customers if they collect the wrong tax.

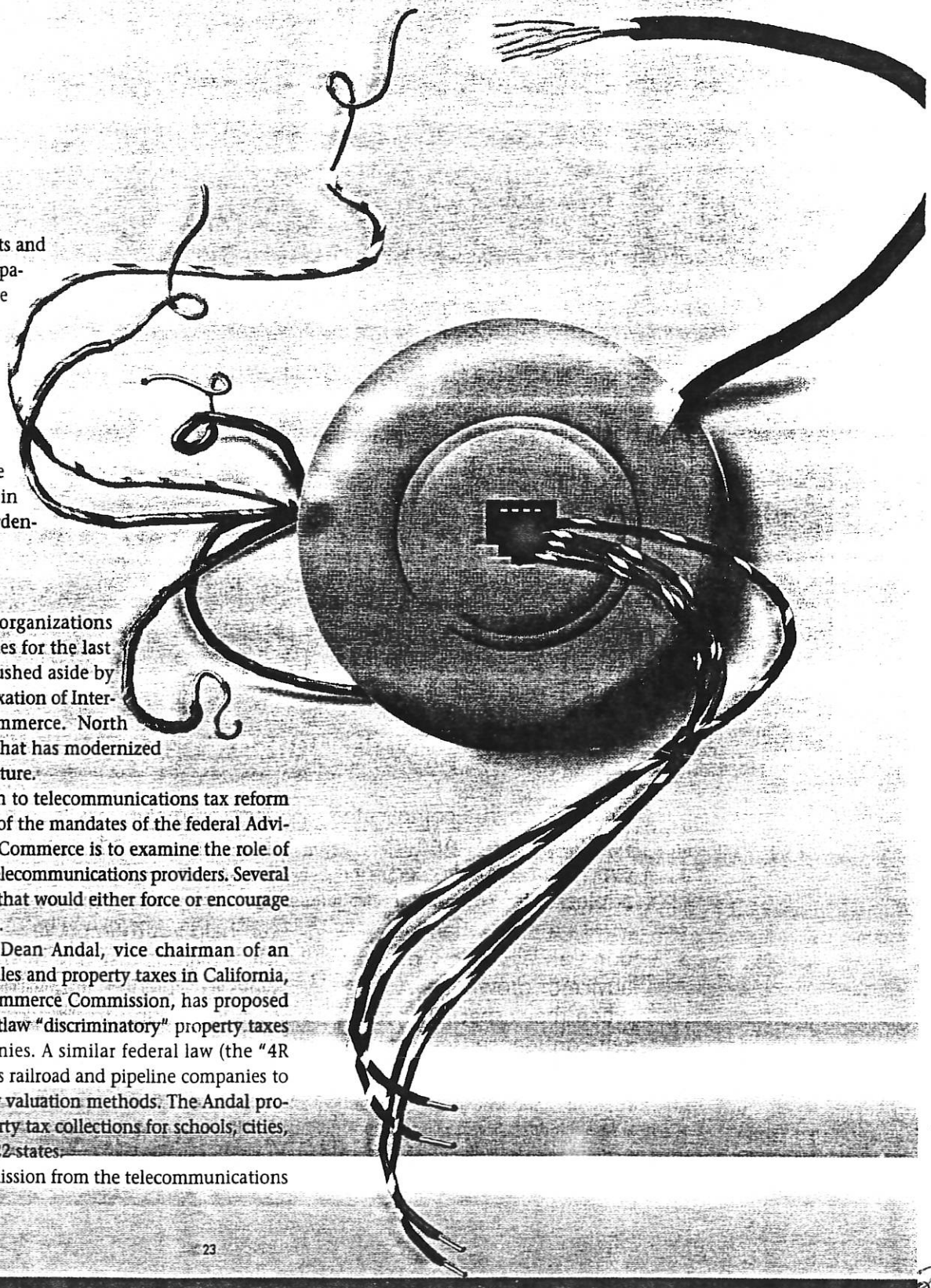
Although such horror stories are infrequent, they bolster the industry's claim that legislatures in some states need to reform state and local telecommunications taxes.

The industry complains, too, about the burden of property taxes and consumption taxes imposed by state and local governments. The industry study also found that telecommunications companies and their customers pay, on average, effective tax rates of about 18 percent of charges. This compares with an average sales and use tax rate of about 6 percent on other goods and services.

This type of tax burden does not seem to mesh with policymakers' desire to ensure

Scott Mackey is NCSL's chief economist.

Senate Assessment + Taxation
2-7-00
Attachment 2



access to the Internet for residents and to lure telecommunications companies and electronic commerce companies into the states for economic development. Many state and local policymakers recognize that a modern, efficient telecommunications network is vital to economic competitiveness in the 21st century. Yet state and local governments persist in maintaining outdated and burdensome tax structures.

FEDERAL INVOLVEMENT?

While NCSL and other state organizations have been examining these issues for the last several years, they have been pushed aside by the loud and raging debate on taxation of Internet access and electronic commerce. North Dakota is one of the few states that has modernized its telecommunications tax structure.

However, this lack of attention to telecommunications tax reform might be about to change. One of the mandates of the federal Advisory Commission on Electronic Commerce is to examine the role of federal, state and local taxes on telecommunications providers. Several proposals have already emerged that would either force or encourage states to reform their tax systems.

Former California legislator Dean Andal, vice chairman of an elected board that administers sales and property taxes in California, and member of the federal E-Commerce Commission, has proposed federal legislation that would outlaw "discriminatory" property taxes on telecommunications companies. A similar federal law (the "4R Act") has been used by numerous railroad and pipeline companies to overturn state and local property valuation methods. The Andal proposal could result in lower property tax collections for schools, cities, and other local governments in 22 states.

Another proposal to the commission from the telecommunications

industry stops short of calling for federal statutes to preempt state and local laws. However, it calls on states to reexamine their telecommunications tax policies with an eye toward reducing both the administrative burden and overall tax burden.

Whether the federal commission will recommend to Congress that it preempt state and local telecommunications taxes is far from certain. However, the additional scrutiny will put new pressure on states to reform telecommunications taxes.

OR STATE REFORM?

One state that is taking the lead on reform is Florida. Under the existing system, the industry faces as many as nine different state and local taxes imposed by 370 Florida jurisdictions. Providers must file as many as 4,700 tax returns each year.

In 1997, a government-industry task force recommended a dramatic reform that would replace those state and local taxes with a single, statewide "unified tax" with a single return filed with the state. Opposition from local governments and questions about implementation ultimately doomed that effort.

But in 1999, an industry coalition revived the debate with a scaled-back proposal that preserved the authority of localities to levy their own taxes. Companies, however, would be required to file a single statewide return instead of multiple local returns. The state would collect all taxes and forward funds to localities. Questions remain, but the industry is pushing its reform proposal in the current legislative session.

Florida's experience highlights some of the reasons why telecommunications tax reform is so difficult in the states. First of all, about one-third of the states tax telecommunications property at higher effective rates than other types of business property. Any effort to reduce this disparate tax treatment will reduce revenues for school districts and other local governments. Localities will put pressure on the legislature to make up these lost revenues.

Large cities are also concerned that they could be major losers in any reform efforts. Some cities interpreted a provision in the federal Telecommunications Reform Act of 1996 as allowing them to impose "right-of-way" fees of as much as 5 percent of gross receipts, and they rushed to impose such "fees." In some cities, taxes on telecommunications charges (not property taxes) are the second largest source of revenue, and any efforts to reduce these taxes will create fiscal headaches for them.

The potential for the Legislature to create winners and losers at the local level creates unease among some local government officials.

"In Florida, the key to success will be getting local governments to feel comfortable that they would be treated fairly under a new system," according to Florida Representative Luis Rojas, a key reform proponent.

Representative Luis Rojas Florida

Another obstacle to reform comes from the industry itself. In order to reform telecommunications taxes, businesses and governments need to agree on what telecommunications is. But the industry sometimes cannot agree. Internet service providers, who enjoy a federal moratorium on new state and local taxes, do not want to be considered telecommunications providers because they fear being subject to the morass of taxes described earlier. The cable television industry faces its own set of taxes and fees that are distinct from taxes on wireless and land-based communications services. Getting companies with disparate tax structures to agree to definitions—let alone reform—is a tough task.

In Florida, the industry was able to overcome this obstacle and agree on a set of reforms. "All of the disparate industry players had to accept tradeoffs. But the opportunity to achieve reform in a tax system as difficult as Florida's was an important incentive to cooperate," noted Susan Langston, executive director of the Florida Telecommunications Industry Association.

At the winter meeting of NCSL's Assembly on Federal Issues in December, delegates passed a resolution acknowledging the antiquated nature of state and local telecommunications taxes. The resolution asked NCSL's Executive Committee Task Force on State and Local Taxation of Telecommunications and Electronic Commerce to develop principles for state reform efforts and develop model legislation for states to consider next year.

NCSL's task force began working with industry and local governments on this task last month, in hopes of completing its work by the July annual meeting in Chicago. By then, the results of Florida's reform effort will be clear. Representative Rojas, himself a member of the NCSL task force, is hopeful that Florida's reform can serve as a model for successful reform in other states.

2-3

SENATE ASSESSMENT AND TAXATION
Testimony by: Anthony Fadale, State ADA Coordinator
Monday, February 7, 2000
11:00 a.m., Room 519-S

Chairwoman Langworthy and members of the committee, my name is Anthony Fadale and I am the Kansas ADA Coordinator. I would like to talk to you today about how this committee can take a step in helping coordinate transportation in Kansas. With your help, the Administration and Legislature passed a 10 year $110 million dollar plan to help deal with the issue accessible and useable public transportation for people with disabilities.

As part of the bill the Legislature directed that coordinated transit districts be able to transport the elderly, persons with disabilities, and the general public. Senate Bill 428 will help do just that, if passed by the Legislature.

Non-profit entities such as the Red Cross and Sheltered Living wish to and are starting to participate in the Kansas Department of Transportation program. The Board of Tax appeals has informed me that if the Red Cross or other non-profits participated in a program which transported the general public they may be in danger of losing their state tax exempt status. The scenario outlined above has not occurred; however the Board of Tax Appeals recommended amending their statute so that it is consistent with the transportation bill, passed last session.

There should be no fiscal impact since this amendment specifically exempts non-profits. This bill is a small but nevertheless essential part of the transportation program to ensure compliance with Federal and State law. It is my pledge to the members of this committee, Legislature and citizens of Kansas that we will continue to evaluate, develop and implement policies with goals and objectives that are realistic and obtainable to make Kansans with disabilities full partners as we move into the 21st century.

Senate Assessment & Taxation
2-7-00
Attachment 3

Senate Bill 428

Be it enacted by the Legislature of the State of Kansas:

Section 1. The following described property . . .

(a) All motor vehicles used by a not-for-profit . . .

(b) Prior to qualifying for the exemption, the entity must demonstrate that the secretary of transportation has approved the entity as a participant in the Kansas coordinated public transportation assistance act.

(c) The provisions of this section shall apply . . .

Section 2. This act shall take effect . . .

The only changes recommended are those changes in italics. If you have any questions, please contact me 296-2388. Jason Neal.

Senate Assessment & Taxation
2-7-00
Attachment 4

MEMO TO 3-3-2000

Senator Audrey langworthy Chairperson and
Senators of the Assessment and Taxation Committee.

I was not aware of Senate Bill 411 till last week. The Research Dept. has informed me this Bill is still before the Committee. I hope I am not to much "our of line" in approaching this committee with my concern for the new section pg. #3 sect. (b) lines 9-10-11. In 1999 K.S.A. Supp. 74-2433f sect. (c) reads " The filing of an Appeal with the Small Clames Division shall not be a prerequisit for filing an appeal with the State Board of Tax Appeals (BOTA). SN bill 411 if acted on as presented will force only the individual home owners into th Small Claims Divisi Although they can further appeal to BOTA, it would be like "whipping a dead horse" It would go no-where in a 3rd appeal.

I believe BOTA's expectation of a reduction in individual Home Owners appeals submitted to them can be accomplished at the County level without forcing this segment of taxpayers into the Small Claims Division for a Tax Appeal. A procedure already in place at the County level is; The Taxpayer after appealing his taxes paid or assessed value is notified by mail of the results of their local hearing, and informed of choices they have to initiate a 2nd appeals hearing.

If all Counties have replaced the old appeals options with the 1999 Supplyment of K.S.A. 74-2433f (c) is un-known at this time. I believe BOTA would see a large majority of independent Home Owners choosing the District Small Claims Division over appealing to the State Board Of Tax Appeals for their Tax hearings when learning of the new options offered them in 1999.

If my predictions prove correct or not I believe that all Taxpayers should benefit from the State Legislature decision last year that no prerequisite apply to the order in which all Taxpayers can appeal to BOTA for a Tax hearing after their County hearing.

Most appreciative of your time

Thank you
Freda Culver

Senate Assessment & Taxation
2-7-00
Attachment 5