

Approved: 3-9-00  
Date

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE.

The meeting was called to order by Chairperson Senator Audrey Langworthy at 11:15 a.m. on March 7, 2000, in Room 519-S of the Capitol.

All members were present except: Senator Hardenburger – 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: Harry Huff, Huff's Gardens, Inc.  
Ben Miller, Stutzman Greenhouse, Inc.  
Deborah Hooper, Kansas Greenhouse Growers Association  
Mark Beck, Property Valuation Department

Others attending: See attached list.

The minutes of the February 29, 2000, meeting were approved.

**Substitute for HB 2702–Property taxation; exempting nursery and greenhouse machinery and equipment**

Harry Huff, Huff's Gardens, Inc., testified in support of **Sub. for HB 2702**. He noted that greenhouse growers have been treated as an agricultural business for several years by various governmental agencies. State law allows a property tax exemption for machinery and equipment for farmers (agriculture), but greenhouse growers have been denied the exemption because "greenhouse crops" is not included in the statutory definition of agriculture. After greenhouse growers hired an attorney and applied for a hearing before the State Board of Tax Appeals (SBOTA), they were designated as agriculture. The bill would amend Kansas statutes to include "greenhouses and ornamental crops" within the definition of agriculture. In Mr. Huff's opinion, passage of the bill will result in greenhouse growers being treated consistently and fairly in all counties. (Attachment 1)

Ben Miller, Stutzman Greenhouse, Inc., followed with further testimony in support of **Sub. for 2702**. He read written testimony in support submitted by Loren Bloomgren of Grigsby Greenhouse in Salina and Eric Moots of Eureka Greenhouses, Inc., who were unable to attend the meeting. Mr. Bloomgren states that he has been in business more than 63 years and has always been classified as agriculture. With changes in personnel in the county appraiser's office, the definition of "agriculture" has been inconsistently interpreted, and it became necessary to file an appeal with SBOTA many times. (Attachment 2) Mr. Moots states that he has been in discussion with the Greenwood County Appraiser for the past one and one-half years regarding the taxation status of his commercial greenhouse equipment. He believes that legislative action should be taken to clarify the status of commercial greenhouse equipment statewide. (Attachment 3)

Mr. Miller informed the Committee that Stutzman Greenhouse is located in Reno County. Repeated efforts have been made during the past ten years to prove Stutzman's agricultural status in Reno County. The efforts were recognized but were eventually denied by the county appraiser. Finally, through a long legal process involving considerable expense, it was concluded that Stutzman Greenhouse is an agricultural business. Mr. Miller contended that the clarifying language in the bill would ensure that greenhouses are not left with the burden of proving their agricultural status in the county in which they are located. (Attachment 4)

CONTINUATION SHEET

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE  
Room 519-S, Statehouse, at 11:15 a.m. on March 7, 2000.

Deborah Hooper, appearing on behalf of the Kansas Greenhouse Growers Association, testified in support of **Sub. for 2702**. She believes the statutory definition of "agriculture" should be amended to include "greenhouses and greenhouse ornamental crops." She emphasized that the exclusion of such wording has caused and continues to cause Kansas greenhouse companies undo harm in the form of legal fees, wasted managerial time, and unfair disadvantage in the marketplace. She noted that her Association is not asking for any change in taxation or a new definition of agriculture—it simply requests that the law be clarified. She believes the amendment is necessary to prevent the continued local misinterpretation of state statutes, resulting in unfair treatment of Kansas greenhouse companies. (Attachment 5)

Copies of written testimony submitted by Representative Galen Weiland in support of **Sub. for 2702** was distributed to the Committee. Representative Weiland states, "The concern is that the statutes are not being interpreted uniformly across the state. This bill is to clarify and put into statute what had always been the legal interpretation of the intent of the law." (Attachment 6) With this, the hearing on **Sub. for 2702** was closed.

In response to Committee questions, Mark Beck, Property Valuation Department, commented that the confusion regards the interpretation of what exactly is a piece of equipment as opposed to what is a structure. He noted that SBOTA's interpretation of "equipment" and "structure" in the statutes has "flip flopped" over the years. He feels that the bill is necessary to make legislative intent clear and that it will help county appraisers.

Senator Langworthy informed the Committee that Mr. Beck had come to request that **Sub. for 2702** be amended with regard to a different issue. She explained that, should the Committee decide to recommend the bill favorably, it could be amended to include some clarifying language on legislation passed in 1999 dealing with exemptions for windmills and solar power.

Mr. Beck reminded the Committee that **HB 2438** was introduced by Western Resources during the 1999 Legislative Session to address the issue of allowing a property tax exemption for renewable energy resources. The original bill was limited to state assessed property. The House expanded it to include all renewable energy resources without regard to being state assessed property. In doing so, some of the language needed to be corrected. However, there was not enough time to do so before the 1999 session concluded. Mr. Beck explained the need to clarify a property tax exemption that appears in K.S.A. 79-201 Eleventh and to clarify K.S.A. 79-5a01, a public utility valuation statute. The language for the proposed amendments is included in his written testimony. In conclusion, Mr. Beck pointed out that the proposed amendments do not change the intent of the legislation. (Attachment 7)

Senator Donovan moved to amend **Sub. for 2702** as suggested by Mr. Beck, seconded by Senator Corbin. The motion carried.

The meeting was adjourned at 11:45 a.m.

The next meeting is scheduled for March 8, 2000.



Huff's Gardens, Inc.  
617 Juniatta Street  
Burlington, Ks 66839  
March 07, 2000

Assessment & Taxation Committee  
House of Senators  
State of Kansas

Honorable Senators:

Huff's Gardens respectfully requests that any and all Kansas State Statutes wherein agriculture is defined, be amended to include the wording "greenhouses and greenhouse ornamental crops" within the definition of agriculture.

We had considered ourselves as agriculture for several years and treated as such by various governmental agencies, (USDA, US Census, IRS, County Treasurer-allowed farm tags). When we heard there was a statute that allowed property tax exemption for farmers (agriculture), we applied for exemption. We were denied because the statute did not specify greenhouses as agriculture. After hiring an attorney and applying for a hearing before the State Board of Tax Appeals (Docket Nos. 1998-7343-TX & 1998-7344-TX), we were again designated agriculture.

We do not expect a change in status or taxation. We ask respectfully that you clarify Kansas State Statutes to be amended to include "greenhouses and greenhouse ornamental crops" as part of the definition of agriculture. It will allow the greenhouse growers to be treated consistently and fairly in all counties. Thank you for your consideration.

Respectfully yours,

Harry E. Huff  
President, Huff's Gardens, Inc.

*Senate Assessment & Taxation  
3-7-00  
Attachment 1*

My name is Loren Bloomgren, owner and operator of Grigsby Greenhouse in Salina. Grigsby Greenhouse is in the business of growing Hot House tomatoes and in the production of bedding plants. Grigsby's have been in business for more than 63 years and have always been classified as agriculture.

Often with changes in personnel in the Appraiser's office, they have interpreted the definition of agriculture differently or inconsistently. This has caused a lot of headaches and taken considerable time and expense to appeal. Numerous times we have had to protest the change of classification of the business by the County Appraiser's office. The different Boards' of Appeal have made judgements that we are in the definition of agriculture.

I am aware of other greenhouses in the state to be having the same problem that I have encountered, I strongly believe that it is time that the Kansas State Statutes include the wording Greenhouses and Greenhouse ornamental crops in the definition of agriculture. With this wording included in the definition of agriculture, it would eliminate confusion and make it consistent state wide.

Thank you for your consideration on this very important classification.

Yours truly,

Loren Bloomgren

*Loren Bloomgren*

*Senate Assessment & Taxation  
3-7-00  
Attachment 2*

**EUREKA GREENHOUSES, INC.**

420 N. Pine

Eureka, Kansas 67045

316-583-6252

**Keith Moots\*Eric Moots/Owners**

**DATE:** March 7, 2000  
**TO:** Senate Assessment & Taxation Committee  
**FROM:** Eric Moots  
Eureka Greenhouses, Inc.  
Eureka, Ks  
**RE:** Agriculture Taxation

For the past year and a half we have been in discussion with the Greenwood County Appraiser regarding the taxation status of our commercial greenhouse equipment. I am pleased to tell you that for the most part we have successfully had the disputed equipment reclassified as non-taxable agricultural equipment. Discussions are, however, continuing.

It is our belief that action should be taken to clarify the status of commercial greenhouse equipment on a state-wide basis. The battles being fought county-by-county waste the time of greenhouse owners as well as county employees.

Turnover at our county appraiser's office has caused us to revisit this issue each time a new appraiser is hired. Please take steps to clarify the regulations so that we can get back to the business of growing.

*Eric Moots*

*Senate Assessment & Taxation*

*3-7-00*

*Attachment 3*

# Stutzman Greenhouse Inc.

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6709 W. Hwy 61  
Hutchinson, KS 67501  
316-662-0559  
316-332-4211 Fax

Testimony to: Senate Assessment and Taxation Committee  
Date: March 6, 2000

Stutzman Greenhouse Inc. is located in Reno County. During the past ten years, repeated efforts have been made on our part to prove our agricultural status to Reno County. Our efforts would be recognized, taken into consideration, and eventually denied by the County Appraiser. Several years ago, a county employee was sent out to our greenhouse facility to evaluate our business. After a thorough investigation, the county agreed that we had proven our case, and they sent out corrected paperwork. Months later the county reversed the findings of their representative, with little explanation.

In the meantime, Kansas greenhouses were proving their agriculture status, through the legal process and rulings were made in this process. These rulings could be obtained and used to prove our case. In 1998, it became apparent that the only way to successfully prove our agriculture status was to engage the legal system. We hired a lawyer and together presented these findings to our County Appraiser. The County Appraiser promised full cooperation, but stated that he did not understand the rulings and would have to enlist the help of the County Attorney. After many meetings, lost paperwork and delays on the part of the county, time, and considerable expense, the conclusion was made that Stutzman Greenhouse Inc. was indeed and agricultural business.

We are here today asking for clarifying language that would include the terms greenhouse and greenhouse ornamental crops, so that each greenhouse is not left with the burden of proving their agricultural status to their county.

Senate Assessment & Taxation  
3-7-00  
Attachment 4



## Kansas Greenhouse Growers Association

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March 7, 2000

Assessment and Taxation Committee  
Senate  
State of Kansas

Ref. : House Bill 2702

The Kansas Greenhouse Growers Association respectfully requests that any and all Kansas State Statutes wherein agriculture is defined be amended to include the wording **greenhouses and greenhouse ornamental crops** within the definition of agriculture. The exclusion of such specific wording has and continues to cause Kansas greenhouse companies undo harm in the form of legal fees, wasted managerial time, and unfair disadvantage in the marketplace.

Various local and county governing entities are interpreting Kansas statutes differentially as they relate to the wholesale greenhouse industry being included within the statutory definition of agriculture. They point to a Kansas statute defining agriculture and note the definition specifically includes everything from farming and ranching to aquiculture and Christmas trees but nowhere does the word greenhouse appear. Therefore greenhouse production of floral crops must not be agriculture. A similar governmental agency in an adjacent county says, well, of course greenhouses are agriculture and applies the statutes appropriately. One company then has an unfair advantage over another company. The playing field should be level.

Greenhouses in Kansas are being required to spend considerable amounts of time, energy and large legal fees to receive what they have always been entitled to. To overcome the erroneous application of a Kansas Statute by a local governmental agency, greenhouse companies are repeatedly being required to hire lawyers and work the problem through the appellate process.

The decision of No. 73,330 in the Court of Appeals of the State of Kansas, in the Matter of the Appeal of Alex R. Masson, Inc. clearly defined the growing, cultivation, and selling of ornamental plants by a commercial greenhouse as an agricultural pursuit.

We are not asking for a change in status. We are not asking for any change in taxation. We are not asking for a new definition of agriculture. We only are asking for clarity. We request that any and all Kansas State Statutes wherein agriculture is defined be amended to include the wording **greenhouses and greenhouse ornamental crops**. This amendment is necessary to prevent the continued local misinterpretation of State Statutes and unfair, inconsistent treatment of Kansas greenhouse companies.

Sincerely,

Alan Stevens  
Executive Secretary, Kansas Greenhouse Growers Association.

Senate Assessment & Taxation

3-7-00

Attachment 5



STATE OF KANSAS

GALEN WEILAND  
REPRESENTATIVE, FORTY-NINTH DISTRICT  
DONIPHAN AND BROWN COUNTIES  
P.O. BOX 146  
BENDENA, KS 66008  
RM. 284-W  
PHONE—(785) 296-7688  
HOME—(785) 988-4425  
HOT LINE 1-800-432-3924



TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
RANKING MINORITY MEMBER:  
AGRICULTURE  
JOINT COMMITTEE ON STATE &  
TRIBAL RELATIONS  
MEMBER: FEDERAL & STATE AFFAIRS  
ECONOMIC DEVELOPMENT

March 7, 2000

MADAM CHAIR AND MEMBERS OF THE COMMITTEE

I am sorry that I cannot be here to testify today, but I want to thank you for this hearing.

Substitute for HB 2702 would amend the definition of "farming and ranching operation" to include the planting, cultivating, and harvesting of nursery or greenhouse products, or both, for sale or resale. The bill also would amend the definition of the term "farm machinery and equipment" to include any green house which is not permanently affixed to real estate and which is used for a "farming or ranching operation".

The concern is that the statutes are not being interpreted uniformly across the state. This bill is to clarify and put into statute what had always been the legal interpretation of the intent of the law.

Thank you for hearing this bill.

A handwritten signature in cursive script, appearing to read "Galen Weiland". The signature is written in dark ink and is positioned above the printed name.

Representative Galen Weiland

Senate Assessment & Taxation  
3-7-00  
Attachment 6

STATE OF KANSAS

Bill Graves, Governor

DEPARTMENT OF REVENUE

Karla Pierce, Secretary

Mark S. Beck, Director  
Department of Revenue  
Division of Property Valuation  
915 SW Harrison St., Room 400  
Topeka, KS 66612-1585



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Division of Property Valuation

MEMORANDUM

**TO:** The Hon. Audrey Langworthy, Chairperson  
Senate Assessment and Taxation Committee

**FROM:** Mark S. Beck, Director  
Division of Property Valuation

**DATE:** March 7, 1999

**SUBJECT:** HB 2702 – Property Taxation

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Thank you for the opportunity to provide input. May I respectfully request that the Senate Assessment and Taxation Committee consider taking this opportunity to clarify: (1) another property tax exemption that also appears in the K.S.A. 79-201 series; and (2) a statute pertaining to the valuation of public utilities.

**Property tax exemption statute: K.S.A. 79-201 Eleventh**

K.S.A. 79-201 *Eleventh* provides an exemption for property used to produce electricity using alternate methods. This type of property is generally part of a state-assessed public utility valuation. The director of property valuation values public utilities for property tax purposes. (K.S.A. 79-5a04). I recommend that certain revisions be made to the exemption found in K.S.A. 79-201 *Eleventh* for three basic reasons.

First, I believe it would be helpful to the public as well as this division if the beginning exemption language was simplified and designed to mirror the language commonly found in other property tax exemptions.

Second, the current exemption indicates that it would apply only to real and “*tangible personal property*.” A public utility value includes “both real and personal, *tangible and intangible property*.” (K.S.A. 79-5a04). K.S.A. 79-201 *Eleventh* should be revised to apply to simply “*property*,” so that it can be interpreted consistently with other relevant statutes.

Senate Assessment & Taxation  
3-7-00  
Attachment 7

Third, the last sentence in the current exemption provides for how the exemption is to be determined. K.S.A. 79-201 *Eleventh* states that the exempt property should be removed from the unit value *prior* to apportionment. Actually, the division currently determines exempt values *after* “apportionment.”

“Apportionment” refers to determining the portion of the entire, interstate public utility valuation that is reasonably applicable to Kansas. Once the Kansas portion of the total valuation is determined, then the appropriate amount of exempt property that is actually in Kansas can be reasonably identified. This approach allows the state to accurately maintain its exempt property tax roll. I recommend that the last sentence of the current statute be stricken to reflect how the division actually addresses exempt public utility property.

I respectfully offer “Attachment A” as a suggestion for revising K.S.A. 79-201 *Eleventh*.

**Public utility valuation statute: K.S.A. 79-5a01**

In 1999, K.S.A. 79-5a01 (5) was amended to indicate that a public utility means every entity that operates a business of generating, conducting or distributing electric power, “*except for private use.*” The law already requires that an entity be “*in the business of*” generating, conducting or distributing electric power. It is unnecessary to have the additional words “except for private use.” The additional language may cause confusion in two ways.

First, a company that is in the business of generating electricity may consume some of its own electricity. In this situation, the same property is used to produce electricity for both private and business use. Arguably, under the language now in K.S.A. 79-5a01 (5), a portion of the property should be locally assessed rather than state assessed. It would be very difficult, if not impossible, to accurately carve out that portion of the interstate value that reflects the private use.

Second, a company that is not in the business of generating electricity (e.g., a manufacturer) may well generate some electricity for its own use. If such a company sells any surplus electricity, the current language would imply that the public portion of this property should be captured as a public utility. Attempting to accurately separate a small part of a business that is locally assessed in order to value it as a public utility would be difficult, if not impossible.

For these two reasons, I respectfully ask that the words “except for private use” be stricken from K.S.A. 79-5a01 (5).

## Attachment A

### Property tax exemption statute: K.S.A. 79-201 Eleventh

Suggested language:

*Eleventh.* For all taxable years commencing after December 31, 1998, all *real property actually and regularly used predominately to produce and generate electricity utilizing renewable energy resources or technologies.* ~~upon which is located facilities which utilize renewable energy resources or technologies for the purpose and as the primary means to produce and generate electricity and which is used predominantly for such purpose, to the extent necessary to accommodate such facilities, and all tangible personal property which comprises such facilities.~~ For purposes of this section, “renewable energy resources or technologies” shall include wind, solar, thermal, photovoltaic, biomass, hydropower, geothermal and landfill gas resources or technologies. ~~For purposes of valuation of property subject to exemption under K.S.A. 79-5a01 et seq., and amendments thereto, the value of the exempt property set forth in this clause shall be removed from the unit value prior to apportionment under K.S.A. 79-5a25, and amendments thereto.~~

programs. Notwithstanding any other provision of this clause, motor vehicles shall not be exempt hereunder unless such vehicles are exclusively used for the purposes described therein.

Tenth. For all taxable years commencing after December 31, 1986, any building, and the land upon which such building is located to the extent necessary for the accommodation of such building, owned by a church or nonprofit religious society or order which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, and actually and regularly occupied and used exclusively for residential and religious purposes by a community of persons who are bound by vows to a religious life and who conduct or assist in the conduct of religious services and actually and regularly engage in religious, benevolent, charitable or educational ministrations or the performance of health care services.

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Eleventh. For all taxable years commencing after December 31, 1998, all ~~real~~ property **actually and regularly used predominately to produce and generate electricity utilizing renewable energy resources or technologies** ~~upon which is located facilities which utilize renewable energy resources or technologies for the purpose and as the primary means to produce and generate electricity and which is used predominantly for such purpose, to the extent necessary to accommodate such facilities, and all tangible personal property which comprises such facilities.~~ For purposes of this section, "renewable energy resources or technologies" shall include wind, solar, thermal, photovoltaic, biomass, hydropower, geothermal and landfill gas resources or technologies. ~~For purposes of valuation of property subject to valuation under K.S.A. 79-5a01 et seq., and amendments thereto, the value of the exempt property set forth in this clause shall be removed from the unit value prior to apportionment under K.S.A. 79-5a25, and amendments thereto.~~

The provisions of this section, except as otherwise more specifically provided, shall apply to all taxable years commencing after December 31, 1995.

Sec. 2. K.S.A. 79-5a01 is hereby amended to read as follows: 79-5a01. (a) As used in this act, the terms "public utility" or "public utilities" shall mean every individual, company, corporation, association of persons, lessees or receivers that now or hereafter are in control, manage or operate a business of:

(1) A railroad or railroad corporation if such railroad or railroad corporation owns or holds, by deed or other instrument, an interest in right-of-way, track, franchise, roadbed or trackage in this state;

(2) transmitting to, from, through or in this state telegraphic messages;

(3) transmitting to, from, through or in this state telephonic messages;

(4) transporting or distributing to, from, through or in this state natural gas, oil or other commodities in pipes or pipelines, or engaging primarily in the business of storing natural gas in an underground formation;

(5) generating, conducting or distributing to, from, through or in this state electric power, ~~except for private use~~;

(6) transmitting to, from, through or in this state water if for profit or subject to regulation of the state corporation commission;

(7) transporting to, from, through or in this state cargo or passengers by means of any vessel or boat used in navigating any of the navigable watercourses within or bordering upon this state.

(b) The terms "public utility" or "public utilities" shall not include:

(1) Rural water districts established under the laws of the state of Kansas; or (2) any individual, company, corporation, association of persons, lessee or receiver owning or operating an oil or natural gas production gathering line which is situated within one county in this state and does not cross any state boundary line; or (3) any individual, company, corporation, association of persons, lessee or receiver owning any vessel or boat operated upon the surface of any manmade waterway located entirely within one county in the state; or (4) for all taxable years commencing after December 31, 1998, any natural gas distribution system which is owned and operated by a nonprofit public utility described by K.S.A. 66-104c, and amendments thereto, and which is operated predominantly for the purpose of providing fuel for the irrigation of land devoted to agricultural use.

Sec. 3. K.S.A. 79-210, as amended by L. 1999, ch. 154, §3, and 79-5a01, as amended by L. 1999, ch. 126, §3 and L. 1999, ch. 154, § 4 are hereby repealed.

Sec.4. This act shall take effect and be in force from and after its publication in the statute book.