

Approved March 26, 2001

Date

MINUTES OF THE HOUSE COMMITTEE ON TAXATION

The meeting was called to order by the Chairman Edmonds at 9:00 a.m. March 1 in Room 519-S of the Capitol.

All members were present except: Representative Gatewood, excused
Representative Powers, excused

Committee staff present: Chris Courtwright, Legislative Research Department
April Holman, Legislative Research Department
Don Hayward, Revisor
Winnie Crapson, Secretary

Conferees appearing before the committee: Representative Dahl
Sandra Jacquot, Kansas League of Municipalities
Matthew Hoy, Kansas Bar Association
Bob Alderson, Topeka

Others attending: See attached list.

Hearing was opened on:

HB 2160 - Judicial foreclosure and sale on property located within cities, powers and duties of cities

Representative Dahl presented testimony in support of HB 2160 (Attachment #1) and responded to questions from members of the Committee.

Representative Dahl said that Delores Delk, Mayor of Hillsboro, had intended to testify but was unable to be attend. He presented her written testimony in support of HB 2160 (Attachment #2).

Sandra Jacquot presented testimony in support of HB 2160 on behalf of the Kansas League of Municipalities (Attachment #3). She responded to questions from members of the Committee.

Hearing on HB 2160 was closed.

Hearing was opened on:

HB 2292 - Sales tax exemption for limited liability company motor vehicle transfers

Matthew Hoy, attorney practicing in Lawrence, presented testimony in support of HB 2292 on behalf of the Kansas Bar Association (Attachment #4) and responded to questions from members of the Committee.

Bob Alderson, attorney practicing in Topeka, presented testimony in support of HB 2292 (Attachment #5) and responded to questions from members of the Committee.

Hearing on HB 2292 was closed.

The meeting adjourned at 9:25 a.m. The next scheduled meeting is March 6.

GUEST LIST

DATE March 1

NAME	REPRESENTING
Larry Mabill	KAIK
Don Dahl	
Matt Hoy	KBA
Paul Davis	KBA
Sandy Jaquet	LKM
Mark Spitzer	KMHA
Paul Berner	Intern
John Hill	Hill & Wong
Karl Peterson	KS Taxpayers Abroad
Bill Bragg	KS Gov't Consulting

DONALD L. DAHL
REPRESENTATIVE, SEVENTIETH DISTRICT
CHASE, MARION AND PARTS OF
BUTLER, LYON AND MCPHERSON
COUNTIES



COMMITTEE ASSIGNMENTS
VICE-CHAIRMAN: SPECIAL CLAIMS
AGAINST THE STATE
VICE-CHAIRMAN: AGRICULTURE
MEMBER: FEDERAL & STATE
UTILITIES
LOCAL GOVERNMENT

TOPEKA
HOUSE OF
REPRESENTATIVES

Good morning, Mr. Chairman and fellow members. Thank you for giving me the opportunity to briefly introduce this bill, **HB 2160**, to you this morning. **HB 2160** is the same as last year's **SB 499**. Briefly, this bill allows cities to initiate foreclosure action on tax delinquent property if the counties fail to take action.

Property eligibility for sale depends upon:

- Homesteads - Three years or more delinquent
- Abandoned property - one year or more delinquent
- All other property - Two years or more delinquent

HB 2160 would allow cities to sell property within the city limits **three** years after it first becomes eligible for sale **if** the county has not initiated a foreclosure action. I will let the other conferees explain in more detail. **This bill does not cost any money nor take power away from anyone.**

This is such a non-controversial bill that it might even be considered as a candidate for the consent calendar.

City of Hillsboro

118 East Grand • P.O. Box N
Hillsboro, Kansas 67063
Phone: (316) 947-3162
Fax: (316) 947-3482

My name is Delores Dalke and I am currently serving as Mayor of Hillsboro. I am here to speak in favor of HB 2160.

First, let me say that we hope to never have to use this bill in our city; however, from past experience it could happen again.

To help explain what I am referring to let's look at property taxes and mill levies. These levies are usually approximately 1/3 county, 1/3 schools and 1/3 city. In an ideal world each government entity has about the same stake in the property; however, lets talk about what happens if a special district is set up to fund improvements, etc. The City issues Special Assessment Bonds to pay these improvements, which means the City is obligated for these payments. Often annual payments for special assessment bonds are in excess of \$1100 per lot in a subdivision. If the lot does not have improvements added for a period of time and the taxes are not paid by the lot owner the City must pay the bond obligation without any money coming in to cover this. An example in our city a bare lot carries property taxes of approximately \$240.00 plus special assessments of \$1100. per year. The county share would be \$80, the city share is \$80, and the school district is \$80, but the city needs the \$1100 to pay the bonds. If the county attorney is busy it just makes sense that doing a tax foreclosure sale for \$80. x 3 years would not be much of a priority. The problem is the city needs the \$1100 X 3 plus the \$80 X 3 or \$3540. To make matters worse if the money is regained by foreclosure all of the interest that is charged goes to the county, including the interest on the special assessments. To calculate this farther in 3 years interest @ 12% on \$4020 per annum = \$1447.20 which is much more than the \$240 due the county for 3 years.

Believe me, we do not want to do tax foreclosures and we will do everything possible to get the county to do them, but if all else fails we need this bill to fall back on. We must keep our budgets in line, payments on bonds must be made.

Thank you for this opportunity to speak to you.

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League of Kansas Municipalities

TO: House Taxation Committee
FROM: Sandra Jacquot, Legal Counsel
DATE: March 1, 2001
RE: Support for HB 2160

Thank you for letting me appear before this committee in support of HB 2160. This bill proposes to add a new section to K.S.A. 79-2801 allowing cities to initiate judicial tax foreclosure actions in certain situations. Under the current law, the responsibility for selling properties with delinquent taxes lies with the board of county commissioners through its county attorney or county counselor. A property's eligibility for sale depends upon the type of property. Homesteads may be sold if three or more years delinquent, abandoned property if one or more years delinquent and all other property if two or more years delinquent. The proposed change would allow cities to sell property within the city limits under this act three years after it first becomes eligible for sale if the county has not initiated a foreclosure action. Thus, a property could be four, five or six years delinquent, depending on the type, before the city would be authorized to sell the property.

The reason for the proposed change is to allow cities to get property back on the tax roll when the county has not initiated a foreclosure action. In some smaller communities, the county may not have held a sale for ten or fifteen years. These particular sales are complicated and cumbersome and there may be a variety of reasons why the county has not conducted a sale. The proposed change does not punish counties for not selling the property, but merely allows cities so inclined to stand in the shoes of the county and conduct a judicial tax foreclosure. In counties that routinely hold tax sales, it is unlikely that any city will want to undertake the work and expense of conducting its own tax sale. Further, this addition does not place duties on any public official that was not already statutory. Finally, this amendment does not alter the distribution of taxes collected or proceeds from the sale in any way. In short, we believe that adding the option for cities to conduct a judicial tax foreclosure sale is good public policy.

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**KANSAS BAR
ASSOCIATION**

1200 SW Harrison St.
P.O. Box 1037
Topeka, Kansas 66601-1037
Telephone (785) 234-5696
FAX (785) 234-3813
Email: ksbar@ink.org

**LEGISLATIVE TESTIMONY
HOUSE BILL 2292**

MARCH 1, 2001

TO: CHAIRMAN JOHN EDMONDS AND MEMBERS OF THE
HOUSE TAXATION COMMITTEE

FROM: MATTHEW HOY

Chairman Edmonds and Committee Members:

My name is Matthew Hoy and I am an attorney practicing in Lawrence. I am before you today in support of House Bill 2292. House Bill 2292 addresses a minor, technical modification of K.S.A. 79-3603(o). Currently, K.S.A. 79-3603(o) exempts from sales tax the contribution of a motor vehicle to a corporation and the sale of a motor vehicle when a corporation sells its assets to another corporation. House Bill 2292 will equalize the treatment of corporations and limited liability companies when automobiles are contributed or sold as part of an asset sale.

Under current federal and state income tax laws, the contribution by a shareholder or member of a motor vehicle in exchange for stock or membership interests does not constitute a taxable event. Therefore, for income tax purposes neither party realizes taxable income when an automobile is contributed to either a corporation or limited liability company. I believe K.S.A. 79-3603(o) is drafted to be consistent with this income tax treatment, but simply has failed to include limited liability companies. I am aware of no justification for assessing sales tax on this transfer where no income tax is assessed. House Bill 2292 is consistent with our federal and state income tax laws and treats limited liability companies equally with corporations.

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Unfortunately, in my practice I have found that county treasurers interpret K.S.A. 79-3603(o) narrowly and, thus, assess sales tax upon the contribution of a vehicle to a limited liability company where no such tax is assessed if the vehicle is contributed to a corporation. Given the recent and significant revisions to our limited liability company laws which were intended to create a closer identity between limited liability companies and corporations, I believe it is appropriate to treat these entities equally upon the contribution of motor vehicles. Moreover, it is important that the sales tax be consistent with our federal and state income tax laws. House Bill 2292 accomplishes these goals.

I appreciate the opportunity to comment on House Bill 2292 and believe this minor revision merits enactment. Thank you.

g:\MHH\Misc\HB2292

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ALDERSON, ALDERSON, WEILER,
CONKLIN, BURGHART & CROW, L.L.C.
ATTORNEYS AT LAW

W. ROBERT ALDERSON, JR.
ALAN F. ALDERSON*
JOSEPH M. WEILER
DARIN M. CONKLIN
MARK A. BURGHART*
DANIEL W. CROW**
LESLIE M. MILLER
DEBORAH FRYE STERN

2101 S.W. 21ST STREET
TOPEKA, KANSAS 66604-3174
MAILING ADDRESS: P.O. BOX 237
TOPEKA, KANSAS 66601-0237

(785) 232-0753
FACSIMILE: (785) 232-1866
WEB SITE: www.aldersonlaw.com

OF COUNSEL:
BRIAN FROST
THOMAS C. HENDERSON
JOHN E. JANDERA (RETIRED)

LL.M., TAXATION
LICENSED TO PRACTICE IN
KANSAS AND MISSOURI

TESTIMONY OF BOB ALDERSON

BEFORE THE HOUSE COMMITTEE ON TAXATION

ON HOUSE BILL NO. 2292

March 1, 2001

Chairman Edmonds and Members of the Committee:

I am Bob Alderson, an attorney in private practice in Topeka, and I am appearing on my own behalf in support of House Bill No. 2292. My testimony will be brief, as I anticipate it will mirror the testimony of other proponents.

My practice emphasizes corporation and business law issues. Frequently, I have clients who, for a variety of reasons, desire to change the type of business form under which they operate. In many cases, my clients are general partnerships whose operations have grown to the point where they need a more structured organization and they also want the limited liability afforded by a corporation or limited liability company (LLC); yet, they want to preserve the status of being taxed as a partnership for income taxation purposes. That essentially narrows their choices to becoming a Subchapter S corporation or an LLC. As a general rule, the LLC provides more organizational flexibility than the Subchapter S corporation, which limits what entities may become shareholders and also limits the number of shareholders.

However, as is the case with a current client, where motor vehicles or trailers are involved, K.S.A. 2000 Supp. 79-3603(o) creates a chilling effect on selecting an LLC. This particular client is a family partnership which owns 12 motor vehicles and/or trailers. The partners would like to form an LLC, because of the membership flexibility it affords, and to transfer the partnership assets to the LLC. However, because 79-3603(o) does not exempt the transfer of motor vehicles and trailers to an LLC, the prospect of paying sales tax on the vehicles to be

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transferred to the new entity dictates that a Subchapter S corporation likely will be the new entity.

The transfer of motor vehicles to a corporation or an LLC is essentially the same type of transaction, and it appears that the applicable provisions of 79-3603(o) have simply not been updated to reflect the recent advent and popularity of limited liability companies. Moreover, it is my understanding that no loss of state revenue is projected by the passage of HB 2292, and the fiscal impact of this bill is otherwise negligible.

Accordingly, I would respectfully urge the House Committee on Taxation to give favorable consideration to HB 2292.

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