

MINUTES OF THE HOUSE COMMITTEE ON TAXATION

The meeting was called to order by Chairman Edmonds at 8:30 a.m. on February 13, 2002 in Room 519-S of the Capitol.

All members were present except: Representative Findley, excused  
Representative Flora, excused  
Representative Kirk, excused  
Representative Wilson, excused

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

Conferrees appearing before Committee:  
Secretary Stephen Richards, Department of Revenue  
T. C. Anderson, Executive Director, Kansas Society of Certified Public Accountants  
Curt Sittenauer, Chair, Kansas Society of Certified Public Accountants Tax Cabinet  
Randy Carlson, President, Public Accountants Association of Kansas  
Rick Ball, CPA, Great Bend  
Mike Swisher, CPA, Lenexa  
Scott McBeth, Attorney, Wichita

Written Testimony Presented:  
Kathy Mitchell, Vice Pres Kansas Society of Certified Public Accountants

Others Attending: See attached list.

By unanimous consent bill will be introduced presented by Representative Huff at the request of the Kansas Highway Patrol, Department of Transportation and Kansas State Child Safety Passenger Assistance.  
[HB 2886 - Child passenger safety act]

**Hearing opened on**  
**HB 2706 - Taxpayer Fairness Act of 2002.**

Testimony on behalf of the Kansas Society of Certified Public Accountants was presented by T. C. Anderson, Executive Director (Attachment #1). Mr. Anderson outlined the purpose and content of amendments sought K.S.A. 79-3225, 79-3226 and 79-3607 and repeal of existing sections of K.S.A. 2001 Supp. 60-2310.

Mr. Anderson suggested further changes:

In New Section 1 (a) adding "If the correspondence relates to a return filed by the taxpayer, the changes, if any, proposed to taxpayer's filing shall be specifically identified."

In New Section 1 (b) adding "and the name and contact telephone number of the employee performing such review shall appear on such correspondence."

Deletion of "only" in line 28, New Section 2.

Mr. Anderson referred specifically to problems of collection letters that have been unclear as to why they were generated; letters later determined to have been sent in error, and failure to send zero balance letters to the taxpayer. He supplied examples which had been discussed at meetings of Society members.

Curt Sittenauer, Chair of the Tax Cabinet of the Kansas Society of Certified Public Accountants, testified in support of **HB 2706** (Attachment #2). He presented two examples of letters that had been sent in error.

## CONTINUATION SHEET

Randall Carlson, President of the Public Accountants Association of Kansas, testified in support of **HB 2706** (Attachment #3). Mr. Carlson said he believes these are serious problems that need to be addressed and that no progress has been made through routine liaison meetings with the Department of Revenue. He presented an example of a client who had been served with tax warrants six months after an individual at KDOR told him on the phone the matter had been abated. No letter of resolution was received in response to his request for one. Mr. Carlson described the process the Association followed in a Survey Regarding Client Correspondence from the Kansas Department of Revenue and provided a copy of the questionnaire used and documentation of responses received.

Richard Ball, Certified Public Accountant, testified in support of **HB 2706** (Attachment #4). He suggested that any time there is a mass distribution of notices to a particular industrial class of taxpayers there should be some type of oversight approval before release of notices. He believes that at worst the bill is revenue neutral and is probably a revenue enhancement for KDOR.

Michael Swisher, Certified Public Accountant, testified in support of **HB 2706** (Attachment #5). Mr. Swisher presented samples of correspondence he had with the Department of Revenue illustrating the problems which exist.

Scott McBeth, Attorney, Wichita, testified in support (Attachment #6) and identified problems encountered with the Department of Revenue in his firm's practice to which solution is sought with **HB 2706**: Notices of Tax Due, Notice and Opportunity to be Heard with respect to Warrants and Levies, and Exemption Amounts for Levees.

Written testimony in support of **HB 2706** was submitted by Kathy Mitchell, Vice President of the Society of Certified Public Accountants (Attachment #7).

Representative Edmonds called attention to the Fiscal Note.

Testimony in opposition to **HB 2706** was presented by Stephen Richards, Secretary of the Department of Revenue (Attachment #8).

The Committee was running over time and questions to Mr. Richards were deferred to a later meeting.

Hearing on HB 2706 was continued. [Continued hearing was held.]

Meeting adjourned at 10:32 a.m.

Next meeting is scheduled for February 14. [**Meeting on February 14 was cancelled.**]

## GUEST LIST

DATE Feb 13, 2002

NAME	REPRESENTING
Scott MacBeth	Hinkle Elkouri Law Firm
Cheryl Hayward	KS Society of CPA's
Mike Swisher	KS SOCIETY OF CPA'S
TC Welton	KS SOCIETY OF CPA'S
Jacob Swisher	<del>Michael R.</del> KS Society of CPA'S
John Bay	KS Soc of CPAs
George Peterson	KS Taxpayers Notebook
Joyce Schwartz	Public Accts Assn of KS
Robby Krier	Citizen
Rick Ball	KS Soc. OF CPA'S
Randy Carlson	Public Accts Assn of KS
Mike Olivier	PUBLIC ACCOUNTANTS ASSOC. OF KANSAS
Kevin Bruce	Herr Law Firm
Cheryl Donaldson	Accounting, Consulting & Tax <sup>July Practitioner</sup>
Art Att	KSCPA
Sandy Buchner	KSCPA
Jack Graves	Dubi-PFA & Kinder-Morgan
Michael Marsh	Marsh & Company, P.A. (CPA)
Sharon Sexton	Page Committee - Assessment & Taxation
Ravi Peterson	KS Taxpayers Notebook



# Kansas Society of Certified Public Accountants

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## Testimony on H.B. 2706

Presented to the

House Taxation Committee

By

T.C. Anderson  
Executive Director

February 13, 2002

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HOUSE BILL No. 2706

By Committee on Taxation

1-25

AN ACT relating to taxation; enacting the Taxpayer Fairness Act of 2002; amending K.S.A. 79-3225, 79-3226 and 79-3607 and K.S.A. 2001 Supp. 60-2310 and repealing the existing sections.

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

New Section 1. (a) Any correspondence issued by the department of revenue to a taxpayer or the taxpayer's representative demanding payment of an assessment of any tax the imposition and collection of which is administered by the department shall consist of a detailed, clear and accurate explanation of the assessment demand including, but not limited to, the specific tax and tax year to which such assessment applies and penalties and interest which apply thereto.

If the correspondence relates to a return filed by the taxpayer, the changes, if any, proposed to taxpayer's filing shall be specifically identified.

(b) Any such correspondence demanding the payment of an assessment of tax, penalties and interest in an amount in excess of \$500 shall be reviewed prior to issuance for accuracy by an employee of the department.

and the name and contact telephone number of the employee performing such review shall appear on such correspondence.

New Sec. 2. In the event a taxpayer has designated a third party or other representative to discuss an income tax return upon the taxpayer's federal or state return form, the department shall adhere and comply with such designation, and shall only correspond with such designee or representative regarding matters concerning the return.

Delete.

New Sec. 3. In addition to the authority to waive any civil penalty imposed by law for the violation of any law pertaining to any tax administered by the department of revenue, the secretary or the secretary's designee shall waive any such penalty upon the finding of any circumstance allowing waiver of civil penalties pursuant to the federal internal revenue code, as in effect on January 1, 2002.

New Sec. 4. In the event that the department of revenue agrees to settle any assessment of tax, penalties and interest of any tax the imposition and collection of which is administered by the department, a closing letter evidencing such settlement shall be issued to the affected taxpayer or the taxpayer's representative, as the case may require, within 30 days of the date upon which such settlement is agreed to. The taxpayer shall be entitled to rely on such closing letter, and the department shall not maintain a position against such taxpayer which is inconsistent with such

**CHAIRMAN EDMONDS AND MEMBERS OF THE HOUSE TAXATION COMMITTEE. MY NAME IS T.C. ANDERSON AND I AM EXECUTIVE DIRECTOR OF THE 2,600 MEMBER KANSAS SOCIETY OF CERTIFIED PUBLIC ACCOUNTANTS.**

**I APPEAR BEFORE YOU TODAY TO EXPRESS THE SUPPORT OF THE KANSAS SOCIETY FOR HB 2706, THE TAXPAYER FAIRNESS ACT OF 2002.**

**FOR THE PAST THREE YEARS, THE KANSAS SOCIETY HAS RECEIVED NUMEROUS COMPLAINTS FROM TAX PREPARERS ACROSS THIS STATE ABOUT COLLECTION LETTERS SENT TO THEIR CLIENTS BY THE DEPARTMENT OF REVENUE.**

**COLLECTION LETTERS THAT HAVE BEEN UNCLEAR AS TO WHY THEY WERE GENERATED IN THE FIRST PLACE; COLLECTION LETTERS THAT LATER WERE DETERMINED TO BE WITHOUT MERIT AFTER LENGTHY RESEARCH AND TIME CONSUMING COMMUNICATION WITH THE DEPARTMENT; AND ONCE THESE COLLECTION LETTERS WERE ACKNOWLEDGED BY THE DEPARTMENT TO HAVE BEEN SENT IN ERROR, ZERO BALANCE LETTERS WERE NEVER SENT TO THE TAXPAYER.**

**WHILE WE HAVE HELD MANY PRACTITIONER MEETINGS WITH THE DEPARTMENT OF REVENUE OVER THE PAST SEVERAL YEARS, THE PROBLEM WITH BOGUS COLLECTION LETTERS HAS NOT IMPROVED. AT THESE MEETINGS WE WOULD RECEIVE REPEATED PROMISES THAT THE SITUATION WOULD IMPROVE THROUGH BETTER SCREENING OF LETTERS AND BETTER MANAGEMENT OF THE COMPUTER'S LETTER GENERATING SYSTEM, BETTER EMPLOYEE TRAINING AND UPDATING OF SCANNING SOFTWARE.**

**HOW BAD IS THE PROBLEM? WE'RE NOT EXACTLY SURE. BUT TO GET A HANDLE ON THE BOGUS COLLECTION LETTER SITUATION, THE KANSAS SOCIETY CONDUCTED A NON-SCIENTIFIC SURVEY OF ITS MEMBERS LAST SUMMER.**

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MEMBERS RESPONDING TO OUR SURVEY REPORTED THEIR CLIENTS HAD SOUGHT HELP IN RESOLVING OVER 1,500 COLLECTION LETTERS DURING MAY, JUNE AND JULY OF 2001. THE VAST MAJORITY OF THE NOTICES, 1,341, DEALT WITH INDIVIDUAL INCOME TAX AND COVERED PRIMARILY TAX YEARS 1997-2000.

THE RESULTS OF OUR SURVEY WERE AT BEST TROUBLING. OF THE COLLECTION LETTERS REVIEW BY OUR MEMBERS, 1,291, OR 85 PERCENT, WERE DEEMED TO BE INCORRECT AND NO BALANCE WAS DUE THE STATE OF KANSAS.

A COPY OF THE SURVEY RESULTS IS ATTACHED TO THIS TESTIMONY. I HAVE GIVEN CHAIRMAN EDMONDS A COPY OF ALL THE RESPONSES FROM OUR MEMBERS TO THE SURVEY IN CASE ANY OF YOU WOULD LIKE TO SEE THEM.

MANY OF YOU WILL RECALL THE PROBLEMS OUR FARM COMMUNITY HAD WITH THEIR 1998 KANSAS TAX RETURNS. WHILE MOST FARMERS HAD FILED AND PAID TAXES DUE BY THE FEBURARY 28, 1999, FARMER DEADLINE, THESE TAXPAYERS SOON BEGAN RECEIVING COLLECTION LETTERS FROM THE DEPARTMENT. THE LETTERS INDICATED THEY HAD NOT PAID THEIR TAXES BY THE DEADLINE AND THUS WERE SUBJECT TO PENALTY AND INTEREST FOR NOT MAKING QUARTERLY ESTIMATED PAYMENTS. AS YOU KNOW, FARMERS WHO PAY THEIR TAXES BY THE LAST DAY IN FEBRUARY ARE NOT SUBJECT TO MAKING ESTIMATED PAYMENTS.

WHEN THE DEPARTMENT'S SWITCHBOARD LIT UP WITH CALLS FROM FARMERS AND PREPARERS ALIKE, THEIR INITIAL RESPONSE WAS THAT THE BOX ON THE TAX RETURN INDICATING THE TAXPAYER WAS A FARMER WAS NOT CHECKED, OR THE PREPARERS' TAX SOFTWARE WAS NOT RECORDING THE TAXPAYER AS A FARMER.

IT WAS NOT UNTIL EARLY FALL OF 1999 THAT THE SECRETARY OF REVENUE ADMITTED THAT THE

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DEPARTMENT'S COMPUTER HAD BEEN PROGRAMMED TO RECORD ALL INDIVIDUAL INCOME TAX PAYMENTS AS BEING PAID ON APRIL 15...EVEN FOR FARMERS.

TO EASE THE PROBLEM OF MASS COLLECTION LETTERS BEING SENT TO TAXPAYERS IN ERROR, THE SECRETARY OF REVENUE IMPLEMENTED A PLAN CALLING FOR A DAILY REVIEW OF DEFICIENCY LETTERS TO INSURE THAT AN UNUSUALLY LARGE NUMBER OF ONE TYPE OF LETTER WAS NOT GENERATED BY THE COMPUTER SYSTEM.

WELL, TO THIS DAY, WE'RE STILL BEING TOLD THE FARMER'S BOX IS NOT BEING CHECKED OR THE TAX PREPARER'S SOFTWARE IS NOT RECORDING THE TAXPAYER AS A FARMER.

AND JUST THIS PAST TAX SEASON, COUNTLESS FARMERS RECEIVED THE SAME PENTALTY AND INTEREST LETTERS FROM THE DEPARTMENT WHEN FARMER TAX PAYMENTS OF FEBRUARY 28 WERE RECORDED OR POSTED ON THE COMPUTER AS BEING RECEIVED IN MARCH.

NOT MUCH HAS CHANGED SINCE 1999. THE DEPARTMENT HAS ADVISED US THAT APPROXIMATELY 40,000 TAXPAYERS ANNUALLY RECEIVE COLLECTION LETTERS. MOST PAY THE AMOUNT DUE WITHOUT QUESTION, HOWEVER, THE DEPARTMENT ALSO ACKNOWLEDGES THAT 4,000 OF THE LETTERS HAVE ERRORS. OUR SURVEY WOULD INDICATE THAT NUMBER COULD BE MUCH HIGHER.

WE HAVE DISCUSSED THE RESULTS OF OUR RECENT SURVEY WITH THE DEPARTMENT ON TWO OCCASIONS. THE RESPONSES TO OUR CONCERNS RANGE FROM EVERYONE SHOULD E-FILE, TO PREPARERS OR THE TAXPAYERS ARE USING OLD OR DAMAGED FORMS, TO TAXPAYERS CHANGE THE NUMBERS ON THE RETURNS ONCE THEY LEAVE THE PREPARERS OFFICE, TO YOUR PREPARERS OR THE TAXPAYERS ARE USING WRONG SOCIAL SECURITY NUMBERS OR THE HAND WRITTEN NUMBERS ARE ILLEGIBLE TO THE DEPARTMENT'S SCANNERS.



I FIND IT HARD TO BELIEVE THAT TAX PROFESSIONALS AND 85 PERCENT OF THEIR CLIENTS WHO BROUGHT THEM COLLECTION LETTERS DURING A THREE MONTH PERIOD LAST YEAR ALL USE OUTDATED FORMS, ENTER WRONG SOCIAL SECURITY NUMBERS AND THE LIKE.

THE KANSAS SOCIETY BELIEVES THE DEPARTMENT SHOULD TAKE IMMEDIATE AND AGGRESSIVE STEPS TO IMPROVE THE ACCURACY OF ITS COLLECTION LETTERS AND HB 2706 IS A STEP IN THE RIGHT DIRECTION.

WHILE THE DEPARTMENT HAS PROMISED TO ENHANCE THE CONTENT OF ITS COLLECTION LETTERS SO THAT THEY ACCURATELY EXPLAIN WHAT INFORMATION OR ACTIONS ARE NECESSARY AND PROVIDE CLEAR INFORMATION AND REFERENCES NEEDED BY TAX PREPARERS, WE BELIEVE THE STATUTORY LANGUAGE IN HB 2706 WILL EXPEDITE THIS MUCH NEEDED PROJECT.

WHILE THE DEPARTMENT SAYS IT REVIEWS EACH COLLECTION LETTER FOR MORE THAN \$1,000, WE BELIEVE THE THRESHOLD SHOULD BE LOWERED TO \$500 AND THE NAME OF THE INDIVIDUAL CONDUCTING THE REVIEW SHOULD BE IDENTIFIED IN THE LETTER TO THE TAXPAYER. SUCH A PROVISION IS CONTAINED IN HB 2706.

WHILE THE DEPARTMENT SAYS IT WILL SEND ZERO BALANCE LETTERS WHEN ASKED, PRACTITIONERS TELL ME, TO THIS DAY, IT TAKES AN ACT OF CONGRESS TO GET ONE SENT TO THE TAXPAYER. YOU'LL HEAR LATER AS TO WHY IT IS IMPORTANT THAT EACH AND EVERY TAXPAYER WHO PAYS THE OBLIGATION SOUGHT BY THE DEPARTMENT OR WHOSE ACCOUNT IS DETERMINED TO HAVE A ZERO BALANCE AFTER INVESTIGATION BY THE DEPARTMENT, RECEIVES A CLOSING LETTER. HB 2706 WILL MAKE THE SENDING OF A CLOSING LETTER A STATUTORY REQUIREMENT.

THE PROCESS OF TAXPAYER REPRESENTATION BEFORE THE DEPARTMENT OF REVENUE ON MATTERS RELATED TO A TAX RETURN BY HIS OR HER OWN TAX PREPARER WOULD BE CLARIFIED BY HB 2706. FOR SOME REASON THE DEPARTMENT IS MAKING IT MORE AND MORE DIFFICULT FOR THE TAX PREPARER TO DISCUSS RESOLUTION OF MATTERS INVOLVING AN INDIVIDUAL TAX RETURN EVEN THOUGH THE TAXPAYER HAS AUTHORIZED SUCH REPRESENTATION BY CHECKING A BOX ON THE KANSAS K-40 FORM.

LET ME CALL TO YOUR ATTENTION THE WRITTEN TESTIMONY OFFERED BY KANSAS SOCIETY VICE PRESIDENT KATHY MITCHELL OF HAYS. IT IS ATTACHED TO MY COMMENTS ALONG WITH WRITTEN TESTIMONY FROM MIKE MARSH, CPA, LEAWOOD.

THANK YOU MR. CHAIRMAN AND I'D BE HAPPY TO STAND FOR QUESTIONS. WE ARE FORTUNATE TO HAVE A NUMBER OF TAX PREPARERS WITH US THIS MORNING, SO IF ANY QUESTION IS TECHNICAL IN NATURE, I MIGHT ASK ONE OF THEM TO RESPOND.

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**Example 1:**

On July 14, 2001, the Kansas Department of Revenue issued a Consolidated Tax Bill (see attached) to my Optimist Club related to Retailers' Sales Tax for the month ended December 31, 2000. This return, which was filed by Telefile on January 25, 2001, reported taxable gross receipts of \$191.95 and the computed sales tax was \$13.05. The Consolidated Tax Bill indicated that there was a balance due of \$15.02 which included tax of \$13.05, interest of \$.66 and penalties of \$1.31. Several days after receiving the Consolidated Tax Bill, I contacted the Department of Revenue and was informed that the computer system of the Department of Revenue was undergoing a data conversion. The representative with whom I spoke indicated that once the conversion was completed she would contact me and we could discuss my concern. After not hearing from her, I contacted the Department of Revenue on August 3, 2001, and was informed that the matter had been cleared up and that there was no balance due.

**Example 2:**

On January 3, 2002, the taxpayer received a Consolidated Tax Bill, which indicated that balances were due related to individual income tax for the years ended December 31, 1998 and 2000. The amount for 2000 was related to the failure of the taxpayer to pay the balance due reflected on the 2000 Form K-40 (the taxpayer is currently searching for a cancelled check to determine the validity of the amount being assessed for 2000). The balance due per the Consolidated Tax Bill for the 1998 tax year was \$42.56, which consisted of tax of \$28.80, interest of \$6.56 and penalties of \$7.20. The Kansas Department of Revenue representative that I spoke to indicated that the tax amount due of \$28.80 was related to a refund check that was issued April 15, 1999, in the amount of \$28.80. I informed the representative that we did not have anything in our file related to such refund and the amount seemed strange since the tax return had been dollar rounded. The representative then indicated that he was going to contact the Federal Reserve to find out if the refund check of \$28.80 had cleared. He also asked for the phone number of the taxpayer. After several hours, the KDOR representative called to inform me that according to the Federal Reserve the check had never cleared. He also said that he had contacted the taxpayer and was informed by her that she did not remember receiving such a refund. I was then informed that adjustments were going to be made by the Kansas Department of Revenue which would zero out the tax, interest and penalties due reflected on the Consolidated Tax Bill for the year ended December 31, 1998.

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Compliance-Management  
915 SW Harrison St.  
Topeka, KS 66612-2007  
Internet Address: www.ink.org/public/kdor



PHONE: 1-800-815-3563  
FAX: 1-785-291-3616  
Hearing Impaired TTY: 1-785-296-6117

0002805 02 AT \*\*AUTO T5 0 0796 66614-438308 0020881 2332 EI



SITTENAUER, CURT  
3108 SW STAFFORDSHIRE RD  
C/O CURT SITTENAUER  
TOPEKA KS 66614-4383

*Estrella*  
*Per Darlene @ KDOR*  
*Amount was cleared*  
*up on 8/3/2001.*  
*CS*

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NOTICE DATE: 07/14/2001  
ACCOUNT NUMBER: 010103560212  
ACCOUNT NAME: SITTENAUER, CURT

Document Number: CTBIB071403563601754  
FE01

**CONSOLIDATED TAX BILL**

The Kansas Department of Revenue understands that taxpayers sometimes find it difficult to meet their tax obligations despite their best intentions. For your convenience, the Department has provided you with a breakdown of your account which is shown on the following page(s). To remain in good standing with the Kansas Department of Revenue, please remit the following:

TOTAL TAX	TOTAL INTEREST	TOTAL PENALTY & FEES	TOTAL BALANCE DUE	TOTAL RETURNS DUE
13.05	0.66	1.31	15.02	0

It is important that you pay your account in full today. In addition, file any tax returns noted in the attachment(s), with payment of tax, penalty and interest, or contact our office immediately to resolve this matter.

Partial payment will not stop collection action. **Penalty and/or interest will continue to accrue until the total balance due is paid in full.** Please make the check or money order payable to the Kansas Department of Revenue. Write the account number on the check to ensure proper credit to your account.

This amount due reflects all payments and credits processed through 07/14/2001. If you paid the full amount prior to this date, contact us immediately with proof of payment. You will need to provide your canceled check with the validation number stamped on the back of the check in a series of numbers. The validation number is the first seven numbers on the first line. You will need to provide your cash receipt as proof of payment if you did not pay by check. If you write to us, please provide your name, account number and daytime phone number.

CTBIB

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# Account Summary

KEEP this portion for your records

**ACCOUNT NUMBER: 010103560212**

Document Number: CTBIB071403563601754

TAX TYPE	FILING PERIODS	TAX	INTEREST	PENALTY & FEES	PAYMENT	BALANCE DUE	RETURNS TO BE FILED
RETAILERS' SALES	12/31/2000	13.05	0.66	1.31	0.00	15.02	
<b>TOTAL</b>		13.05	0.66	1.31	0.00	15.02	0
<b>LESS AMOUNT IN REVIEW</b>		0.00	0.00	0.00	0.00	0.00	0
<b>CURRENT BALANCE DUE</b>		13.05	0.66	1.31	0.00	15.02	0

If no liability is owed, a return must still be submitted if a "Y" is present in the "RETURNS TO BE FILED" column.  
 The issuance of this notice does not infringe upon your appellate rights under Kansas State law.

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# THE PUBLIC ACCOUNTANTS ASSOCIATION OF KANSAS, INC

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January 30, 2002

Testimony offered to the Kansas House Taxation Committee regarding House Bill # 2706, the Taxpayer Fairness Act of 2002.

The Public Accountants Association of Kansas, Inc. (PAAK) would like to thank the House Taxation Committee for their time and consideration of our comments related to this proposed legislation.

My name is Randall Carlson. I am a native of Clay Center and the sole owner of Carlson Company Public Accounting, LLC. I have been in the practice of public accounting for the past 20 years and I am the current President of PAAK. There are several other members of PAAK here today, including Michael Olivier, the Immediate Past President of PAAK, and Joyce Schartz, Administrative Secretary of PAAK.

PAAK has represented public accountants in the State of Kansas for over 50 years. We are an affiliated state organization of the National Society of Accountants. Our membership fluctuates between 300 and 400 members, which includes both CPA's and Public Accountant's from all across the State of Kansas. PAAK was organized for many reasons, of which one is to establish goodwill and understanding between the public accounting profession and the taxing authorities, including the Kansas Department of Revenue (KDOR). By developing and maintaining these relationships, we strengthen our ability to serve our clients in the most efficient manner.

We are not here looking for a standoff with KDOR. Today is February 13, and we certainly have more pressing things to do as many of us had to move tax appointments in order to be here today. But this is a serious problem and needs to be addressed. We have tried working with the KDOR through our routine liaison meetings, but have not had any progress toward better serving the Kansas taxpayers. And that is why we are here today.

Last summer, in response to the many concerns expressed by our members, PAAK and KSCPA participated in a joint survey, which is attached to this letter along with our results. This survey was an effort to measure the severity of the problems suffered by practitioners and their clients from the volumes of collection letters being sent taxpayers by the Kansas Department of Revenue. Our survey, which consisted of

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responses from 29 members on a total of 430 letters, indicated that approximately 90% of the letters sent were in error. In other words, our clients did **not** owe the tax being assessed by the KDOR. The problems addressed by these letters are numerous, but identify several broad reasons why we are in support of the Taxpayer Fairness Act of 2002. They are as follows:

- The initial letters sent by KDOR are not clear as to the period being assessed or the reasons for the adjustments.
- In most cases, KDOR will not send out a zero-balance letter (letter of final resolution of a tax matter). Taxpayers have received bills years after the resolution of a tax matter. Had there been a final resolution letter in KDOR's file, this would not happen.
- Many of the letters being sent today are for tax years 1996, 1997, 1998, 1999 and so on. It is very difficult to find all of the records needed to resolve these letters when they are four and five years old.
- Many taxpayers are simply paying these assessments when they are received without checking their accuracy.
- There are also a high number of assessments for minimal amounts of \$10, \$15 or \$20. It is more cost effective for taxpayers to just pay the bill vs. checking the validity of the amount assessed, especially when the assessment is several years old.
- Kansas taxpayers should not have to pay their tax return preparer for the inefficiencies of the KDOR. Many of the errors demonstrated by these letters could be and should be, resolved by KDOR before the letters are sent.

However, we do want to point out that KDOR employees are working with us to resolve these problems for our clients. They are courteous and willing to help us get to the resolution of the issues at hand. KDOR is paying these current employees to do this investigative work at the end of the process, **after** the letters have been sent. It seems that, if they were allowed to do this same investigative work on the front end, **before** the letters are mailed to the taxpayer, many of the problems would be resolved before any unnecessary and inaccurate correspondence is sent to the taxpayer. This would save Kansas taxpayers both the costs of producing and mailing unneeded letters and the costs incurred by their tax return preparer, public accountant or CPA.

Before closing, I would like to interject a true story that I personally dealt with this past year. A client had received a \$240 assessment from the

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KDOR on the 1997 tax year. After unsuccessful written attempts with KDOR, I finally was able to get the matter resolved personally on the phone with an individual at KDOR. In March of 2001, we were told on the phone that the matter had been abated and I asked for a letter of resolution. We never received a letter of resolution, but I didn't worry about it. I always ask for that letter, but seldom receive one.

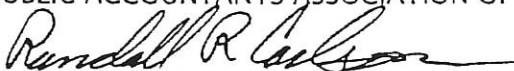
Six months later, my clients were served with tax warrants by the Sheriff's department in our small town. This tax warrant had been issued in District Court by KDOR. Because my clients filed a joint return, tax warrants were issued to each spouse separately. These papers were served to the wife on a Sunday morning while the husband was taking their two boys to Sunday school. I remind you that this was for a \$240 assessment and six months earlier I told the clients that this matter was all cleared up.

On Monday morning, I contacted the same person at KDOR that I'd talked to six months earlier. She was very upset to hear what had happened because, as she pulled it up in her computer, she said everything was noted in the taxpayer's account exactly as they are supposed to do on these matters. She immediately contacted the District Court and let them know that a dismissal would be coming within the week and she was nice enough to fax me a copy. I then spent the rest of the day working damage control in our small community. My clients are young professional people and their business credibility was at risk. The local newspaper chooses to print District Court filings, but not dismissals, so that was the next problem to address. This should never have happened, but it's another very serious example that the system at KDOR has major flaws in their policies and procedures. This is just one of the many horror stories that happen each day to Kansas taxpayers.

We would again like to thank you for your consideration of House Bill # 2706. Our association supports and recommends passage of the Taxpayer Fairness Act of 2002. Remember, this proposed legislation has the Kansas taxpayer at its heart.

Sincerely,

PUBLIC ACCOUNTANTS ASSOCIATION OF KANSAS, INC.



Randall R. Carlson, President

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**SURVEY REGARDING CLIENT CORRESPONDENCE FROM THE  
KANSAS DEPARTMENT OF REVENUE**

In response to the many concerns expressed by members, the leadership of the Public Accountants Association of Kansas (PAAK) and the Kansas Society of Certified Public Accountants (KSCPA) are seeking your help in an effort to get a handle on the severity of the problem being caused practitioners by the volumes of collection letters being sent taxpayers by the Kansas Department of Revenue.

Efforts will be made to discuss the results of this informal survey with Stephen Richards, Kansas Secretary of Revenue, in hopes we can stem the tide of what appears to be a rash of "bogus" collection letters being sent to your clients.

**We must have your help if this informal survey is to carry any weight with the Secretary. Please take a moment now and share the following information with us so your voice can be heard at the State Office Building in Topeka.**

1. In the past two months (June & July), approximately how many clients have asked you to review a collection letter from the Kansas Department of Revenue? \_\_\_\_\_
2. Of the letters you have reviewed, how many have you found where the taxpayer did not owe the tax sought? \_\_\_\_\_
3. Of the letters you have reviewed, how many have you found where the taxpayer owed the tax? \_\_\_\_\_
4. Briefly detail the types of errors contained in the letters and the number of occurrences:  
\_\_\_\_\_  
\_\_\_\_\_
5. What were the tax years in question in the letters? \_\_\_\_\_

**Do not send us confidential information on your clients.**

Please complete your responses by **August 24** and send or fax them to:

Public Accountants Association of Kansas, Inc.  
P.O. Box 2732  
Salina, Kansas 67402-2732  
785-827-0283 (Fax number)

**Thank you** for your time and effort in completing this survey. We need each member to respond in order to build our case. If you have any questions, please contact Mike Olivier at 785-537-0190.

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**SURVEY REGARDING CLIENT CORRESPONDENCE FROM THE  
KANSAS DEPARTMENT OF REVENUE**

**RESPONSES -- PAAK MEMBERS:** *(29 PAAK members responded with 480 letters)*

1. In the past two months (June & July), approximately how many clients have asked you to review a collection letter from the Kansas Department of Revenue? 480
2. Of the letters you have reviewed, how many have you found where the taxpayer did **not** owe the tax sought? 433 (90% of total)
3. Of the letters you have reviewed, how many have you found where the taxpayer owed the tax? 47 (10% of total)
4. Briefly detail the types of errors contained in the letters and the number of occurrences:
  - Consolidated bill not owed – error in KDOR type of tax.
  - Consolidated bill followed by delinquency notice – KDOR error.
  - Taxpayer received refund that was supposed to be credited forward – error due to KDOR refund.
  - 90% of prior years tax for estimated tax penalty – credits on return not taken into consideration.
  - Wanted to verify estimated tax payments made – KDOR error.
  - Return was amended and paid – payment not credited.
  - Name wrong on return and asked for proof of death when no one had died.
  - Farmer met penalty requirements.
  - Lost money paid with extension of time to file.
  - Wrong name on refund checks.
  - Refunded a check that was paid with the tax return.
  - Refund sent to addresses over three years old.
  - Refund request took over seven months on a \$2,500 amount.
  - 1998 farmer returns were assessed penalty, supposedly corrected to no balance due, then in 2001 received letters on the same farmers for the same problem in 1998.
  - Consolidated bill for balance due that are from 1997 and 1998 where no other notification has been received.
  - Posting the returns filed on time, but the checks that are enclosed with the return are recorded as late, and penalty assessed.
  - Penalty and interest billed on an entire tax liability for the year of \$167 and was paid in full before the due date.
  - Problems are corrected on the phone with KDOR representatives, but then rebilled usually on the consolidated tax billings. There is seldom a zero balance letter sent on these at the time of settlement on the phone.
  - Overpayments credited to next year not recognized when following year return is filed.
  - Payments posted to wrong social security number.

- Estimated tax payments posted to wrong year. An overpayment exists on a prior return and an underpayment exists on the current year. Yet these cannot be matched up until taxpayer receives a letter and we call to correct them.
- Taxpayers returns marked by KDOR as single when there are two names in the heading of the return and the return is marked married filing jointly.

5. What were the tax years in question in the letters? 1997, 1998, 1999, 2000

(RICHARD BALL, CPA, GREAT BEND)

Points to Discuss with Committee on Taxation regarding HB 2607

Any time there is a mass distribution of notices to a particular industrial class of group of taxpayers there should be some type of oversight approval before release of notices.

KDOR working with tax preparers will save KDOR time and money and save taxpayers time and money.

I believe that the bill is at worst revenue neutral and actually it is probably a revenue enhancement for KDOR.

The bill is a revenue enhancer for the citizens of Kansas.

Passage of the bill and implementation of the relevant provisions will instill public confidence in KDOR.

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# Michael R. Swisher

Certified Public Accountant, P.A.

September 18, 2001

Kansas Department of Revenue  
Compliance Management  
915 SW Harrison St.  
Topeka, KS 66625-2001

RE: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Notice Date: 08/30/2001  
Account NO.: [REDACTED]  
Doc. NO.: FN0D11B083006014504190FE31

A "NOTICE OF DELINQUENCY" was received by taxpayer on Sept. 6, 2001. There seems to be a mistake in your accounting system. You show Retailers' Sales Tax, Interest, and Penalties due for 1982, 1983, 1989, 1990, and 1991. Below are the reasons why this is not accurate:

1. [REDACTED] **did not start business until July 24, 1984**, which would make it impossible for taxpayer to have any sales in 1982 and 1983. Therefore there is no Retailers' Sales Tax due for those periods.
2. 1990 Retailers' Sales Tax Return was filed on time showing no sales for that year, therefore nothing is due.
3. 1991 Retailers' Sales Tax Return was filed and paid on time. Enclosed is a copy of the return along with the canceled check showing payment.
4. A Retailers' Sales Tax Audit was conducted in 1992, which included all periods from 1985 through 1991. All sales taxes that was determined to be due or past due were paid in full out of the personal account of [REDACTED] as [REDACTED] had been sold and was no longer in business.

Documentation is attached to support each of the above statements. There are no sales taxes, interest, or penalties due by this Corporation. It is quite disturbing to see that you have waited 19 years to, not only address this issue, but to do so incorrectly. Taxpayer is expecting contact from you when you have corrected your records accordingly.

Sincerely,

*Michael R. Swisher*

Michael R. Swisher, CPA

Enclosures

1968 Shawnee Mission Pkwy  
Suite 100  
Mission Woods, KS 66205  
www.swishercpa.com



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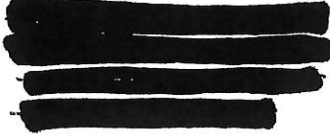
PHONE: 913.677.5353  
FAX: 913.677.7760



Compliance Management  
915 SW Harrison St.  
Topeka KS 66625-2001  
Internet Address: www.ink.org/public/kdor

PHONE: 1-800-815-3563  
FAX: 1-785-291-3616  
Hearing Impaired TTY: 1-785-296-6117

0005164 02 SP \*\*SGLP 0991 66206 0039845 2332 EI



NOTICE DATE: 08/30/2001

Document Number: FNOD1IB083006014504190

ACCOUNT NUMBER: [REDACTED]

FE31

### NOTICE OF DELINQUENCY

According to our records, your account shows a balance due and/or missing returns. A breakdown of your account is shown on the following page(s). In order to remain in good standing with the Kansas Department of Revenue, please remit the following:

TOTAL TAX	TOTAL INTEREST	TOTAL PENALTY & FEES	TOTAL BALANCE DUE	TOTAL RETURNS DUE
416.00	520.23	104.00	<b>1040.23</b>	0

It is important that you pay your account in full today. In addition, file any tax returns noted in the attachment(s), with payment of tax, penalty and interest, or contact our office immediately to resolve this matter. If you are unable to come into immediate compliance with the law, the Department strongly encourages you to contact us. We are committed to working with you to resolve your tax problems.

**Penalty and/or interest will continue to accrue until the total balance due is paid in full.** This amount due reflects all payments and credits processed through 08/30/2001. If you paid the full amount prior to this date, contact us immediately with proof of payment. You will need to provide your canceled check with the validation number stamped on the back of the check in a series of numbers. The validation number is the first seven numbers on the first line. You will need to provide your cash receipt as proof of payment if you did not pay by check. If you write to us, please provide your name, account number and daytime phone number.

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**Account Summary**

Page 2 of 2  
 Notice Date 08/30/2001

KEEP this portion for your records

ACCOUNT NUMBER: [REDACTED]

Document Number: FNOD1IB083006014504190

TAX TYPE	FILING PERIODS	TAX	INTEREST	PENALTY & FEES	PAYMENT	BALANCE DUE	RETURNS TO BE FILED
RETAILERS' SALES	** 12/31/1991	139.00	165.40	34.75	0.00	339.15	
RETAILERS' SALES	** 12/31/1990	7.00	9.59	1.75	0.00	18.34	
RETAILERS' SALES	** 12/31/1989	39.00	60.45	9.75	0.00	109.20	
RETAILERS' SALES	** 01/31/1983	49.00	58.31	12.25	0.00	119.56	
RETAILERS' SALES	** 12/31/1982	10.00	11.90	2.50	0.00	24.40	
RETAILERS' SALES	** 11/30/1982	6.00	7.14	1.50	0.00	14.64	
RETAILERS' SALES	** 10/31/1982	32.00	38.08	8.00	0.00	78.08	
RETAILERS' SALES	** 09/30/1982	13.00	15.47	3.25	0.00	31.72	
RETAILERS' SALES	** 08/31/1982	7.00	8.33	1.75	0.00	17.08	
RETAILERS' SALES	** 07/31/1982	33.00	39.27	8.25	0.00	80.52	
RETAILERS' SALES	** 06/30/1982	25.00	29.75	6.25	0.00	61.00	
RETAILERS' SALES	** 05/31/1982	6.00	7.14	1.50	0.00	14.64	
RETAILERS' SALES	** 04/30/1982	30.00	41.10	7.50	0.00	78.60	
RETAILERS' SALES	** 03/31/1982	4.00	5.49	1.00	0.00	10.49	
RETAILERS' SALES	** 02/28/1982	11.00	15.07	2.75	0.00	28.82	
RETAILERS' SALES	** 01/31/1982	5.00	7.74	1.25	0.00	13.99	

<b>TOTAL</b>	416.00	520.23	104.00	0.00	1040.23	0
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<b>LESS AMOUNT IN REVIEW</b>	0.00	0.00	0.00	0.00	0.00	0
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<b>CURRENT BALANCE DUE</b>	416.00	520.23	104.00	0.00	1040.23	0
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If no liability is owed, a return must still be submitted if a "Y" is present in the "RETURNS TO BE FILED" column. The issuance of this notice does not infringe upon your appellate rights under Kansas State law.

\*\*Effective November 1, 1999, your tax account balance has been converted to our new accounting system. If your balance includes Retailers' Sales, Consumers' Compensating Use or Retailers' Compensating Use tax liabilities, the "Balance Due" column includes payments credited before November 1, 1999. The "Payment" column will reflect only those payments made after November 1, 1999.

My name is Scott MacBeth and I am an attorney at the Hinkle Elkouri law firm in Wichita. Our firm represents taxpayers before both the Internal Revenue Service and the Kansas Department of Revenue and our tax litigation department has extensive experience working with both organizations. As I am sure you are aware, in 1998, as a result of Senate Finance Committee hearings, Congress substantially overhauled the IRS system, making it more taxpayer friendly. The provisions of the new law focused primarily on providing taxpayers with adequate notices and opportunities to be heard and simplifying such notices so that they could be understood by the average taxpayer. In our experience, we have found that the legislation has provided taxpayers with significant rights without sacrificing compliance. However, many of the problems that we used to encounter in our practice before the IRS, are continuously present in our practice before the Department of Revenue. Three of the more common problems that we continue to encounter, including our suggested solution to such problems as set forth in the proposed legislation, are as follows:

1. Notices of Tax Due. Most, if not all of the notices sent out by the Department are extremely confusing and often the attorneys in our tax litigation department cannot decipher them, let alone taxpayers without any history or experience in dealing with the Department. The notices rarely provide the basis for the assessment or a breakdown between the tax, interest, and penalties. In addition, we generally have difficulty obtaining any account histories that set forth the amount of the tax, interest, and penalties, as well as any payments, and the dates of the assessments and/or payments because, to our knowledge, the Department's computer systems are not equipped to readily provide this information. Without this information, it is impossible to verify the accuracy of the alleged liability. We are suggesting that every notice clearly state (i) the type of tax (*i.e.* income, sales, withholding, etc.); (ii) the tax period(s) at issue; (iii) the amount of the tax, interest and penalty, separately stated; and (iv) the basis for the assessment. In addition, we believe it would be helpful if the Department's computer systems allowed them to print out an account history identifying all activity on the account, including assessments, payments, abatements, filing of warrants, and levies.
2. Notice and Opportunity to be Heard with respect to Warrants and Levies. Currently, the Department is not required to provide taxpayers with prior notice of its intent to levy on the taxpayer's property. Thus, the taxpayer can wake up one day and have his or her wages levied upon with no prior notice or opportunity to reach a formal resolution of the matter. This can occur when a taxpayer is dealing with a customer service representative who does not have the authority to compromise liabilities, waive penalties or interest, or consider the legitimacy of an assessment. In addition, warrants are often filed against taxpayers without their knowledge and they do not learn of the warrant until they attempt to obtain a loan, sell property, etc. If the taxpayer had been properly notified of the filing of the warrant, a speedy resolution of the matter may have been accomplished meaning the Department may have recovered the liability at an earlier date and the taxpayer may have avoided additional interest and penalties. We believe that taxpayers should be provided with a notice of the filing of a warrant no less than 5 days after the same is filed and should be provided an opportunity for a hearing upon the filing of the warrant, as well as prior to having their property levied upon. This is consistent with the IRS system which requires a notice of lien to be provided within 5 days of filing. This notice provides the taxpayer with the chance to request a due process hearing, at which any procedural issues may be raised, as well as issues relating to the accuracy of the liability and payment options. In addition, under the Internal Revenue Code, the taxpayer is provided with notice of intent to levy and is given



30 days in which to file a request for a due process hearing prior to having its property levied upon. In addition to the issues we just identified with respect to filing of liens, the taxpayer can argue at these hearings that the filing of a levy is not the least intrusive means of efficiently collecting the tax liability.

3. Exemption Amounts for Levies. The Kansas statutes do not provide for any exemption allowance for living expenses when a levy is made on wages. Rather, the Department can, and does, levy one hundred percent of the taxpayer's wages, leaving them with no paycheck for the 30 days during which the levy is in effect. We have had clients who have had the entire check of the sole breadwinner levied upon, leaving them no income for a full month -- often these are taxpayers who live paycheck to paycheck and need that money for living expenses, including prescription medications. The statutes should be revised to provide an exemption allowance equal to that used by the IRS.

We appreciate your time and consideration of the foregoing issues and of the proposed legislation.

Comments by Kathryn J. Mitchell, CPA

Although I have experienced numerous problems with the Kansas Department of Revenue over the past few years, I will confine my comments today to the past three weeks. These are cases that I have handled personally and do not reflect the number of cases that other practitioners have told me about during the same three week period.

Case 1: A 75 year old widow with taxable income of less than \$2,200 received a notice for tax of \$65.00 for 1999 plus penalties and interest of \$27.08. The notice was dated 1-12-2002 and payment was due 1-12-2002. The notice was received 1-23-2002. In discussion with the Department, it was discovered that the tax due stemmed from the mishandling of a notice by the Department in April 1999 regarding her 1998 return. The April 1999 notice reflected the taxpayer's tax but did not have the homestead credit posted yet (please note that both amounts are on the same income tax return). A phone call to the Department in April 1999 corrected the misposting. However, on the original return, the taxpayer requested that her \$65 overpayment be credited forward to her 1999 estimated tax payments. In my phone call in April 1999, I was assured that the payment would indeed be credited forward. However, the \$65 was refunded to the taxpayer instead. The taxpayer assumed that she was entitled to the refund and did not contact me when it was received. When the 1999 tax return was prepared, I reflected the overpayment as estimated tax paid for 1999, unaware that it had been refunded instead. Three years later, the Department is now collecting the \$65 plus interest and penalty. If the Department had issued a closing letter to either me, as the taxpayer's representative, or to the taxpayer, I would have been made aware of the problem and I could have handled it properly in 1999. I told my client she owed the tax and she told me, "I don't like surprises."

Case 2: A corporate taxpayer with a June 30, 2001 year end timely filed its income tax return by September 15, 2001. In January 2002, the taxpayer had still not received the refund requested on the return. At the taxpayer's request, I called the Department to inquire about the status of the refund. I was told that the return had been "posted" September 15, 2001 but had never been "worked" and that "the refund would never have been issued if you had not inquired about it." The filing of the tax return is the taxpayer's request for refund. The taxpayer should not have to make subsequent inquiries in order to receive the tax overpayment.

Case 3: A notice was received last week by a taxpayer regarding the non-filing of their 1999 tax return. The notice indicated that Federal Form 1099's had indicated that the taxpayer had unreported income for 1999. First, the notice was unclear as to who the taxpayer in question was. It was addressed to the name of an individual who died more than 20 years ago. However, the taxpayer identification number was that of a tax exempt charitable trust set up by the decedent. We assumed that the Trust is the taxpayer in question. Since, the notice gave no details regarding the Form 1099's, we were not able to offer any assistance to the Department as to whether the income in question belonged to the Trust. It is very difficult to assist the Department when the notices are vague and/or incomplete.

I would like to also point out that Kansas does not require a fiduciary income tax return to be filed by a trust or estate if no tax is due. Because trusts and estates can pass the income through to the beneficiaries, many trusts do not have taxable income. By including fiduciary returns in the Federal Form 1099 matching program, numerous fiduciaries will be required to respond to unnecessary notices generated by the Department, wasting time and resources for both the taxpayers and the Department.

Thank you for the opportunity to inform the Committee with a few examples of the problems the taxpayers and practitioners are experiencing with the Kansas Department of Revenue.

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Office of the Secretary  
Kansas Department of Revenue  
915 SW Harrison St.  
Topeka, KS 66612-1588

(785) 296-3041  
FAX (785) 296-7928  
Hearing Impaired TTY (785) 296-3909  
Internet Address: [www.ksrevenue.org](http://www.ksrevenue.org)

Office of the Secretary

Testimony before  
House Tax Committee  
HB 2706  
February 13, 2002

Mr. Chairman and members of the Committee. I am Steve Richards, Secretary of Revenue and appear before you this morning in opposition to HB 2706, the Taxpayer Fairness Act of 2002.

The Department of Revenue's mission is to put the taxpayer first and treat him or her fairly and openly. While we strive to be fair and open consistently, we are here today in opposition to this bill because it would remove taxpayers' rights to their own tax information and give delinquent taxpayers preferential treatment.

This bill micro-manages the Department through legislation. It dictates that we should grant unlimited extensions to file tax returns. It dictates redundant hearing processes for appeals. It restricts our due diligence in collection efforts. It dictates that our Department not communicate directly with taxpayers. This bill will contribute to declining revenue while increasing our administrative costs, at a time when we face critical budget shortages.

Mr. Chairman, today, in consideration of the committee, I wish to present a summary of our perspective of the bill. A detailed Kansas Department of Revenue analysis of the entire bill is included in my written testimony for your individual review.

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- ◆ First, the bill's attempts to micro manage the department's correspondence are unnecessary and too vague to be helpful. I agree that taxpayers should be provided detailed and clear explanations of changes in their tax filings or when assessed penalties and interest. The Department currently mails taxpayers a detailed adjustment letter if there are any changes to his or her return or if penalties are imposed. In 2001 we mailed more than 86,000 adjustment letters. These notices are part of our procedures to notify taxpayers of changes before collection efforts begin.
- ◆ When accounts are referred into collection, taxpayers also receive consolidated tax bills. These notices provide taxpayers with balances for each tax period, tax type and breakdowns of tax, penalty and interest. On two separate occasions, taxpayers are provided written detailed information on their tax accounts. Taxpayers are provided with contact information and encouraged to call our customer service representatives at any time for additional assistance.
- ◆ The most egregious of all provisions is contained in section 2. This provision removes the rights of taxpayers to have access to their own tax information when using a designated paid preparer. It requires us to correspond only with the authorized representative, regardless if the taxpayers are individuals or businesses.
- ◆ I believe taxpayers should always have access to the status of their accounts or status of refunds; to do otherwise is very unfair to taxpayers. To communicate only with tax representatives would require us to significantly change our correspondence stream, leading to taxpayers not being advised of a tax debt until wages were garnished or assets taken in collection. We would be required to communicate with a preparer, no longer employed by the taxpayers. We would be required to maintain multiple mailing addresses for a single taxpayer. Furthermore, the department's efforts to provide taxpayer friendly electronic or automated services would have to be abandoned.
- ◆ Currently, when a taxpayer has authorized a third party to discuss his tax filings, we openly review these accounts with the representative. We consistently work with preparers to resolve accounts of their clients. Many times we provide written correspondence to the representative. However, the taxpayer is always notified of the status in tax filings, leaving the taxpayer the choice of whether to engage a practitioner. Under my watch, I do not want to tell a taxpayer, "We can not discuss your account, so go talk to your CPA".

- ◆ The bill also places critical restrictions on our ability to enforce tax statutes and may well put all collection cases in jeopardy. Placing statutory deadlines for returns or appeals at the discretion of the Secretary is highly unusual. Providing for duplicative and redundant hearing processes delays closure to tax disputes, requires the Board of Tax Appeals to determine “appropriate” collection methodology and grants taxpayers second and possibly third appeals of underlying tax. These hearing procedures would be contrary to established legal principles and compromise judicial efficiency.
- ◆ Restrictions on wage garnishment may violate federal law. Prohibiting warrant execution on residential real estate is inconsistent with the Kansas Constitution. Having Kansas abide by IRS standards for penalty waiver removes any state discretion, a concept rejected by the legislature in the past.

HB 2706 is more akin to a “Tax Practitioner Control Act”, not a taxpayer fairness act. The Kansas Society of CPA’s survey, which I suspect is being used to justify this legislation, may have served more as an avenue to vent frustration at the Department for past difficulties than an accurate portrayal of our current practices. At the time the survey was taken, we had begun an intense collection campaign and were working through a significant backlog of unanswered correspondence. We knew accounts needed to be corrected and we went the extra mile to review accounts before referring to collection. However, with several years of collection backlogs, we needed to clean out the file cabinet and need cooperation from taxpayers and tax practitioners, not unjustified criticism.

We asked Kansas Society of CPA's repeatedly for examples of specific concerns from their members. We eventually received 22 examples. Here’s what we found:

- ◆ Focus of errors was on 1998-1999 tax years when processing was difficult for the Department. New systems were being implemented. Data errors were more prevalent. New system installation prompted decisions to postpone mailing of adjustment letters until accuracy could be determined. This is not the situation today.
- ◆ Errors in balances from misposted payments. Contributing were taxpayer errors in the form of missing Social Security numbers, failing to indicate filing status, submitting incomplete payment vouchers and not properly marking farm returns.
- ◆ The human factor. When scanning and imaging systems do not capture returns accurately, temporary employees are necessary to provide data entry, creating a higher risk for errors.

Whenever taxpayers or practitioners contacted us, we corrected missing payments, waived penalties for reasonable cause, and resolved the problem.

As Secretary of Revenue, I have spoken about partnerships and our willingness to work with interested parties to resolve differences. During development of the Taxpayer Fairness Act of 1997, cooperation existed among the business community, practitioners and the Department to first identify what the real problems were and then develop workable legislative or procedural solutions.

To coin a phrase of the Governor, " Critics without value bring little to the debate." Criticism here is better served through cooperative attitudes, productive communication, and not finger pointing or managing the Department of Revenue through the Legislature.

Mr. Chairman and committee members thank you for your time. I encourage the committee to review our detailed analysis of the individual bill provisions.

I am happy to stand for questions.

HB 2706  
Kansas Department of Revenue Analysis

**New Section 1.** –Section (a) requires all correspondence be accompanied with detailed, clear and accurate explanation of the tax, penalty and interest. The Department supports providing taxpayers with this information and currently provides Customer Relations Adjustment Letters comparing line by line all changes to a filed return. In 2001, we mailed more than 86,000 Adjustment Letters. If a tax period remains unpaid, it is combined with others in a Consolidated Tax Bill detailing each tax type, tax years, assessment, penalty and interest due. We believe our current procedures provide taxpayers with the clear detailed accounting of their tax account through these two notices. To require further reporting of tax adjustments would duplicate current policy.

Section (b) provides that each account with a balance of \$500 be reviewed for accuracy by an employee of the Department. We currently utilize valid statistical sampling methods before an account is referred to collection. Individual accounts under \$1,000 and business accounts under \$5,000 are statistically sampled for errors. Accounts over these thresholds are reviewed in detail. We strive to ensure accounts are accurate before mailing any notice of tax due. However, we must balance the resources available. We believe the statistical sampling methodology is an effective tool in account management and consistent with state and federal practices. To require a review of all accounts over \$500, while maintaining current response times, would necessitate an additional 36 FTE at a cost of \$1.5 million.

**New Section 2.** This section would prohibit the department from corresponding with a taxpayer directly if the taxpayer indicates a preparer represents him on either his federal or state return. We have several concerns with this requirement.

- ♦ First, compliance would be difficult if not impossible. The department has no way of knowing whether the taxpayer has designated a representative on his federal, as opposed to state return. Where the preparer is known, if the taxpayer has different preparers for different years, the department could be required to correspond with multiple parties for one taxpayer, some no longer employed by the taxpayer.
- ♦ Second, taxpayers should have the right to information on their tax filings. Taxpayers will revolt when told we cannot provide them information regarding their account status, and that they will need to contact their preparers to receive this information. The Department's automated refund status lines or Web site applications would need to be blocked when a tax representative is authorized.
- ♦ Third, constitutional due process questions would arise where the department is prohibited from providing a taxpayer certain procedural information, such as notice of appeal rights, and instead that notice is provided only to the preparer.

When a taxpayer authorizes a representative on his or her Kansas return, we recognize that preparer and openly discuss matters and work to resolve problems. However, taxpayers currently are not restricted from this information.

**New Section 3** – The Department currently has the statutory authority to waive or reduce any penalty when it is determined that the taxpayer's failure was due to reasonable cause. This proposal adds an additional requirement and provides that the Secretary "Shall waive any such penalty upon the finding of any circumstance allowing waiver of civil penalties pursuant to federal internal revenue code". Kansas and IRS waive penalties for essentially the same reason: reasonable cause. The change removes any discretionary decision of the Secretary and argues that IRS waiver constitutes a Kansas waiver. IRS often treats factual situations differently than KDOR. We have established procedure for waiver of penalty under certain circumstances.



**New Section 4.** This section would require a "closing letter" issued by the department whenever a settlement is reached. Currently, we evidence the terms of settlement by entering into a "settlement agreement," signed by both parties. These agreements are negotiated, not issued by the department. Perhaps the drafters intended to address account adjustments, and not matters under appeal, which are subject to settlement. If that is the case, it is not clear the provision is necessary. In the case of account adjustments, our current practice is to offer the taxpayer a written confirmation of the adjustment to the tax period, when requested. In the past the Department sent zero balance letters for all transactions. At the request of taxpayers and tax practitioners, that practice was stopped due to high volume, especially for accounts with zero balances. If the intent of this provision is to document when a problem has been resolved, the current department policy addresses those issues. To mandate written correspondence, rather than rely on taxpayer's option, would increase our mailing by 100,000 pieces with related costs.

**New Section 5.** This section exempts from state tax collection certain property set out in the federal tax code. Although the Department seldom pursues residential foreclosures, we do collect outstanding debts on liens when property is transferred to another party. Excluding warrant execution on certain property would substantially hinder the Departments ability to collect outstanding Sales or Income Tax debts. We also believe this provision violates Article 15, Section 9 of the Kansas Constitution in exempting from state tax collection certain property set out in the federal tax code. This constitutional provision known as the "homestead exemption" exempts certain property from forced sale by creditors, providing an exception that no property is exempt from sale for taxes.

The language in Article 15 is broad: "no property shall be exempt from sale for taxes[,]" and the Kansas Supreme Court has interpreted the language broadly in two recent cases, *Homestead Land Title v. United States*, 819 P.2d 660, 249 Kan. 569 (1991) and *Bank of Kansas v. Davison, et al.*, 861 P.2d 806 \_\_\_ Kan. \_\_\_ (1993). In *Bank of Kansas*, the Supreme Court held that the Homestead Exemption does not limit the exception "sale for taxes" to taxes related to the homestead property.

**New Section 6.** This provision creates a process that is both duplicative and redundant. It is duplicative because it would require the Department's Office of Administrative Appeals to offer avenues for appeal that already exist in statute either through the district court or the petition for abatement process. It is redundant in that it would provide taxpayers a second, and possibly third appeal of the underlying tax liability. Taxpayers, who neglected to raise an issue in their first appeal, could be allowed to do so in a second appeal. Established legal principles generally disallow second and third bites at the apple to preserve judicial economy and promote efficiency. This language would allow another full hearing on issues previously raised.

It is unclear if the administrative hearing outlined here would be held pursuant to the provisions of the Kansas Administrative Procedures Act or if it would be an informal conference. It is also unclear where or with whom a taxpayer would file a request for hearing. In the event of a hearing, no specifications indicate how the Department is to provide verification that all applicable laws and procedures have been satisfied. Subsection (c) (1) also would require a new administrative hearing office, independent from our current process.

The hearing held pursuant to this section is an opportunity for the taxpayer to raise as an issue the "appropriateness of collection efforts." Certainly, there could be a wide difference of opinion between the taxpayer and the Department as to whether certain collection efforts are "appropriate". Similarly, the "appeals officer" or person conducting the hearing is charged with the responsibility to balance the need to collect taxes against a taxpayer's interest in being free from intrusive government action. This would require the exercise of subjective judgment and may well prompt appeals of the decision to Board of Tax Appeals.

Should the bill, in its current form, become law, the Department may need to consider all current collection cases in jeopardy. Advising taxpayers in advance of a lien and levy, such as a till tap for delinquent liquor taxes, could significantly hinder the ability to collect the tax. Furthermore, suspension of the collection process places all collections in jeopardy. This provision goes beyond the normal defenses, allowing a taxpayer to appeal the assessment, not only the amount, but also the terms. We have a procedure in place for taxpayers to question the validity of the Department action, a system that protects both the taxpayer and the state.

**New Section 7** – This section duplicates K.S.A. 79-3618, where Offers in Compromise are extended to sales and use taxes.

**Section 8** - Under current law, the restrictions that limit the recovery on a wage garnishment to twenty-five percent (25%) do not apply to garnishments for taxes. The current statute sets out the restrictions and then exempts from the restrictions "any debt due for any state or federal tax." Striking the exception to the restriction as it applies to state tax may violate Kansas Constitution for the Homestead exemptions. Curtailing the ability of the federal government to collect its taxes by limiting its recovery of garnished wages to twenty-five percent (25%) may be an unconstitutional attempt at legislating a matter pre-empted by federal law. Restricting garnishments to 25% would drastically impact our ability to enforce the collection of delinquent taxes.

**Section 9** – While increasing the minimum tax payable from \$5 to \$20 may appear to improve taxpayer fairness and provide relief to the Department for administration and collection of small balances, it carries fiscal impact and administrative cost considerations. Let's consider equality. If relieving taxpayers of liability under \$20 is fair; then the state should be relieved from paying refunds of \$20 or under. More than 57,000 taxpayers received refunds under \$20 the past year from Kansas.

**Section 10.** This provision would place the statutory deadline for appeal entirely at the discretion of the Secretary. This is extremely unusual. Most statutory schemes place a high priority on closure. Parties are typically required to move through a structured process in a detailed timely manner. By contrast, this provision would leave the possibility of appeal open indefinitely. The provision could also impede collection efforts. Typically, the department does not begin collection activity until appeal rights are exhausted and liability is final. However, with no structured time to determine a final liability, collection efforts could be delayed indefinitely. The provision provides no basis for allowing or denying an appeal. Any denial could be challenged as arbitrary and capricious, or as an abuse of discretion. Any attempt to restrict appeals through regulation could fail for lack of a statutory basis. The drafters have neglected to indicate whether the Secretary's determination is appealable to the Board of Tax Appeals. Presumably, it is appealable, yet BOTAs would have no clearer basis for determination than the department.

**Section 11.** This provision has no effect. It allows the Director of Taxation to accept or reject late filed returns. The Director currently does not reject late filed returns, but may charge penalty and interest.

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