

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairperson David Corbin at 10:45 a.m. on March 12, 2003, in Room 519-S of the Capitol.

All members were present except:

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

Conferees appearing before the committee: Tim O'Sullivan, Kansas Bar Association
Keith Daniel, Jr., Midway Wholesale and National Federation
of Independent Business (NFIB)
Richard Cram, Kansas Department of Revenue

Others attending: See attached list.

Reopened hearing on: SB 148—Enacting the Kansas Estate Tax Act

Senator Corbin recalled that the Committee chose to recommend SB 94 instead of a similar bill, SB 148, because it appeared to be the simplest version. However, it was discovered later that SB 94 has no enforcement rules for the Department of Revenue. Although an amendment was drafted to correct that problem, leadership chose not to run SB 94 the Senate floor because of the fiscal note. He noted that SB 148 would have the same fiscal note. He commented that it was suggested that the clean up of the new succession tax be addressed now and that the overall picture of the estate tax issue be addressed in an interim study.

Tim O'Sullivan, attorney at law, testified on behalf of the Kansas Bar Association in support of SB 148, which would create a stand alone state estate tax. At the outset, he commented that, when the succession tax bill passed in the final days of the 2002 legislative session, he immediately knew that the revenue estimates were grossly exaggerated. He also pointed out that, in addition to being unenforceable, the bill did not address what types of property would be taxed, when the tax was due, or who is responsible for paying. Because of its ambiguities, it became unduly complex. The Bar Association supports repealing the unworkable succession tax and enacting a workable estate tax in lieu of the current "gap" tax tied to 1997 law. Mr. O'Sullivan explained that the federal estate tax provision was not included in SB 148 for the following reasons: (1) Its excessive complexity, which means the taxpayer incurs additional costs in planning that may not be realized in overall tax savings, and (2) The additional cost required for the Department of Revenue to administer the provision. (Attachment 1)

Mr. O'Sullivan responded to questions from Senator Pugh regarding the 1997 federal estate tax law, which was incorporated in Kansas estate tax law, and the effect of the subsequent changes in the federal law.

Kenneth Daniel, Jr., founder of Midway Wholesale and Chairman of NFIB/Kansas, testified in opposition to SB 148. He noted that current Kansas death taxes make business continuity planning and estate planning a nightmare. He contended that, although SB 148 would clean up much of the "mess," it would also create a new "mess" and continue the pattern of churning laws which has frustrated the efforts of many Kansas businesses to plan for survival. He urged the Committee to "recouple" to the federal law instead of saddling businesses with a complicated and expensive new Kansas estate tax. (Attachment 2)

Richard Cram, Kansas Department of Revenue, distributed a table with data on revenue collected from the current succession tax, the current estate "pick up" tax, HB 2097 (conforming to federal filing thresholds), SB 148 estate tax as introduced, the proposed amendment to SB 148, and the Class C inheritance tax. (Attachment 3) He went on to say that the amended version of SB 148 would replace the revenue the state

CONTINUATION SHEET

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE at 10:45 a.m. on March 12, 2003, in Room 519-S of the Capitol.

currently collects annually from the "pick up" tax. He noted that the Department projects a 3 percent growth rate with the amended version of the bill because it is enforceable as opposed to the current "pick up" tax which lacks the enforcement tools needed to administer it down the road. Staff distributed copies of the amended version of the bill.

Senator Corbin commented that the first issue to be addressed is solving the problems experienced by practitioners, and the second issue is a policy decision either to keep the revenue the same, to accept a revenue loss, or to piggy back on federal law. He noted that the proposed amendments would be discussed at the next meeting and that a conferee scheduled for today's meeting, Marlee Carpenter, Kansas Chamber of Commerce and Industry, would present testimony in opposition to **SB 148**.

The meeting was adjourned at 11:35 a.m.

The next meeting is scheduled for March 13, 2003.

SENATE ASSESSMENT AND TAXATION COMMITTEE
GUEST LIST

DATE: March 12, 2003

NAME	REPRESENTING
J. P. Small	KOCH INDUSTRIES
Karl Peterjohn	KS Taxpayers Network
M. Bean	Ks. Forth. Ann.
Jodd Johnson	KLA
Jack Graves	Wabash Energy - K.M. & P. 24
Bernie Koch	Wichita Area Chamber of Commerce
Christy A Caldwell	Topeka Chamber of Comm.
Diane Sturmer	KS Coop Council
Leslie Kaufman	KS Farm Bureau
Bill Brady	KS Food Consulting
Kathy Olsen	Ks Bankers Assn.
Deann Williams	KS MOTOR CARRIERS ASSOC.
Michael Harper	Sen. Lee
Bria Tattiken	Sen. Tattiken
Ron Seiber	Hein Law Firm
Terry Leatherman	KCCI
Hal Hudson	NFIB/KS
KENNETH DANIEL	MIDWAY WHOLESALE/NFIB
Trista Curzydlo	KS Bar Assn.

SENATE ASSESSMENT AND TAXATION COMMITTEE
GUEST LIST

DATE: March 12, 2005

NAME	REPRESENTING
Jim Weisgerber	KDOR
Joan Wagner	KDOR
Richard Crum	KDOR

KANSAS ESTATE TAX ACT
Senate Bill No. 148
2003 Legislative Session

RESPONSE TO SENATE COMMITTEE ON TAXATION

Prepared by
Nancy Roush, Martin Dickinson, Jim Weisgerber, Tim O'Sullivan and Terry Fry

February 19, 2003

We are following up on the information requested at the hearing on February 13, 2003, as follows:

**SUBSTANTIAL DIFFERENCES BETWEEN
PROPOSED KANSAS ESTATE TAX AND FEDERAL ESTATE TAX**

Listed below are the substantial differences between the Kansas Estate Tax proposed in SB 148 and the federal estate tax. In each case the reason for the difference is stated briefly. The numbers in the left column are sections of the Internal Revenue Code.

In most cases, the reasons the federal estate tax provision has not been included in SB 148 are two: (1) excessive complexity, which means the taxpayer incurs additional costs in planning that may not be realized in overall tax savings; and (2) the additional cost that would be required for the Department of Revenue to administer the provision. If it is concluded that the benefits of any of these provisions outweigh the cost in terms of complexity and administration, those provisions could be added.

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|---------|--|
| 2013 | This provision gives a credit for part or all of the tax paid by the estate of a person who died within ten years prior to the death of the decedent. For example, assume that a father dies in 1999, bequeathing his property to his son. The son dies in 2000. The son's estate is entitled to a credit for the tax paid on the father's property, thereby preventing double taxation within a short period. This provision was omitted because of its complexity. |
| 2014 | This provision gives a credit for certain death taxes paid to a foreign country. This provision was omitted because of its complexity and difficulty of administration, as well as its rare application in Kansas. |
| 2031(c) | This provision permits exclusion from taxation of a percentage of real property that is subjected to a "qualified conservation easement." This provision was omitted because of its complexity and difficulty of administration. |
| 2032 | This provision permits the executor to value the estate assets six months after death rather than at death. We have included this provision in the Proposed Changes given below. |

2032A This "special use valuation" provision permits real estate (such as family farms) to be valued by reference to rental value rather than comparable sales. This provision was omitted because it is very complex and would be especially difficult for the Department of Revenue to administer. Also, it can be very expensive to plan for and to make the election on an estate tax return, and that expense will generally outweigh any savings in the proposed Kansas Estate Tax. Further, making a special use valuation usually guarantees a federal estate tax audit, which further adds to the taxpayer's cost. A significant percentage of estates with "family farms" do not qualify for special use valuation. In addition, if the farm does not continue to qualify for 10 years after the date of death, the tax savings is recaptured and the heirs are personally obligated to pay this recapture tax. As the federal credit has increased, fewer estates elect special use valuation at the federal level. The current Kansas succession tax does not allow for special use valuation. The Proposed Changes include a compromise provision, which would allow special use valuation to be used on the Kansas Estate Tax Return if it is used on the federal estate tax return. If a federal estate tax return is not being filed, then the Kansas rate schedule probably would not justify the expense to make such an election at the Kansas level.

2035 This provision causes certain types of property to be taxed if transferred by the decedent as gifts within three years prior to death. SB 148 replaces this with a provision (Section 9) causing all transfers within one year of death to be taxed. Kansas does not have a gift tax. Without this broad one year provision, decedents would routinely avoid the Kansas estate tax by making deathbed gifts.

2037 This provision includes in the estate certain property transferred by the decedent in which the decedent retained a future interest. It is very little used and was omitted because of its complexity and rare application.

No provision Section 21 of SB 148 exempts from taxation property that is elsewhere specifically exempted from tax by United States or Kansas law.

No provision Section 22 of SB 148 provides a deduction in the amount of the United States Estate tax imposed on the estate, with certain modifications. This provision was included to prevent imposing a "tax on a tax." The Proposed Changes would delete this provision for the following reasons. First, beginning in 2005 the United States will allow a deduction for state estate taxes. As a result, inclusion of Section 22 will require that the executor undertake a difficult circular, interrelated computation to determine both the United States and Kansas taxes. Second, the deduction for federal estate tax was not included in the original rate schedule, and so the rates would have to increase further if it was included.

- 2056 SB 148, like IRC §2056 provides a marital deduction for property that is transferred outright to a surviving spouse, and for "QTIP property," i.e., the entirety of property that is placed in trust for the benefit of a surviving spouse. QTIP property is not taxed until the death of the surviving spouse. SB 148 expands the marital deduction over federal law by permitting the executor to elect to have the surviving spouse's interest in a trust taxed at the death of the first spouse to die, thereby eliminating tax on the trust property at the death of the surviving spouse.
- 2057 This provision allows a special deduction (generally not exceeding \$300,000) for certain family businesses, including farms. IRC §2057 will be repealed effective January 1, 2004, because the Internal Revenue Service found it to be unworkable and an astronomical administrative burden.
- 2205-
2207B These sections direct allocation of the burden of federal estate taxes among recipients of the decedent's property; all these provisions can be overridden by the decedent by will or trust. These sections were not included because allocation of the burden of estate taxes (both federal and Kansas) is amply provided for in the new Kansas Estate Tax Apportionment Act (KSA 79-15,126 et seq.).
- 2701-
2704 These provisions impose special rules that can increase the valuation of certain property for tax purposes. These provisions were not included because of their complexity and difficulty of administration.
- 6166 This provision permits deferred payment of estate tax, subject to interest at a statutorily determined rate. This provision was omitted because of its complexity and the difficulty of administration, because very few taxpayers use this provision at the federal level, and because there has never been a similar concept for any Kansas death tax.

The Internal Revenue Code also contains a gift tax and a generation-skipping tax. Kansas has never had either tax, and so those have not been included in the proposed Kansas Estate Tax.

PROPOSED CHANGES TO SENATE BILL 148

The following changes are proposed to SB 148:

Section 3(a): Revise the last part to read "who owned real or personal property with a tax situs in Kansas."

Section 3(b): The Department of Revenue is suggesting a revised revenue-neutral rate schedule in the form attached for the Committee's consideration.

Section 6: Replace the words "which is within the jurisdiction of the state of Kansas" with the words "with a tax situs in Kansas"

Section 9(b): Delete "and (b)" in the first line.

Section 22: This section, which allows a deduction for the federal estate tax, should be deleted.

Section 26(a): The reference to \$750,000 should be changed to \$700,000 to conform with the change in rate schedule under Section 3(b).

Valuation: The attached new valuation provision could be added, which allows special use valuation if elected at the federal level and alternate valuation.

[Insert - New Valuation Language]

Sec. 8. (a) Whenever reference is made to the value of property at the time of the decedent's death, such reference shall be deemed to refer to the value of such property in determining the value of the gross estate.

(b) The value of the gross estate of a decedent shall be determined by valuing the property included in the gross estate at its fair market value as of the time of the decedent's death, unless an election is made under section B, and amendments thereto. However, if the estate is required to file a federal estate tax return, and an election is made to value property under the provisions of section 2032A of the internal revenue code for federal estate tax purposes, the value of the property determined for federal estate tax purposes shall be used in determining the value of the gross estate for Kansas estate tax purposes.

(c) When any property or interest therein, or income therefrom, to be included in the gross estate shall pass or be limited for the life of another, or for a term of years, or to terminate on the expiration of a certain period, the value of the said life estate, term of years, or period of limitation shall be fixed according to rules and regulations adopted by the secretary. The value of the remainder in said property so limited shall be ascertained by deducting the value of the life estate, term of years or period of limitation, from the actual value of the property as determined at the time of death.

[Insert - Compare to 2032.]

Sec. 9. (a) If the personal representative so elects, the value of the gross estate may be determined, by valuing all the property included in the gross estate as follows:

(1) In the case of property distributed, sold, exchanged, or otherwise disposed of within six months after the decedent's death, such property shall be valued as of the date of distribution, sale, exchange, or other disposition.

(2) In the case of property not distributed, sold, exchanged, or otherwise disposed of within six months after the decedent's death, such property shall be valued as of the date six months after the decedent's death.

(3) Any interest or estate that is affected by mere lapse of time shall be included at its value as of the time of death, instead of the later date, with adjustment for any difference in its value as of the later date not due to mere lapse of time.

(b) No deduction under this act shall be allowed for an item if allowance for such item is in effect given by the alternate valuation provided by this section. Wherever in any other section or subsection of this act reference is made to the value of property at the time of the decedent's death, such reference shall be deemed to refer to the value of such property used in determining the value of the gross estate. In case of an election made by the executor under this section, then

(1) for purposes of the charitable deduction under section 23, any bequest, legacy, devise, or transfer enumerated therein, and

(2) for the purpose of the marital deduction under section 24, any interest in property passing to the surviving spouse, shall be valued as of the date of the decedent's death with adjustment for any difference in value, not due to mere lapse of time or the occurrence or nonoccurrence of a contingency, of the property as of the date 6 months after the decedent's death, substituting, in the case of property distributed by the executor or trustee, or sold, exchanged, or otherwise disposed of, during such 6-month period, the date thereof.

(c) No election may be made under this section with respect to an estate unless such election will decrease (1) the value of the gross estate, and (2) the tax imposed by this act with respect to property includable in the decedent's gross estate.

(d)(1) The election provided for in this section shall be made by the personal representative on the return of tax imposed by this chapter. Such election, once made, shall be irrevocable.

(2) No election may be made under this section if such return is filed more than one year after the time prescribed by law, including extensions, for filing such return.

(e) The property of any estate for which a federal estate tax return is required to be filed shall be valued pursuant to subsection (a) upon the same date as is elected to value the property for federal estate tax purposes under the provisions of section 2032 of the internal revenue code.

Sec. 3. (a) A tax is hereby imposed on the taxable estate of every resident decedent, and every nonresident decedent who owned real, personal or intangible property with a tax situs in Kansas.

(b) For decedent's dying after December 31, 2002 and before January 1, 2004, the tax imposed by this section shall be computed in accordance with the following schedule:

If the taxable estate is:	The tax is:
Not over \$750,000	Zero
Over \$750,000 but not over \$1,000,000	2.5% of excess over \$750,000
Over \$1,000,000 but not over \$2,000,000	\$6,250 plus 3.25% of excess over \$1,000,000
Over \$2,000,000 but not over \$5,000,000	\$38,750 plus 5% of excess over \$2,000,000
Over \$5,000,000 but not over \$10,000,000	\$188,750 plus 7% of excess over \$5,000,000
Over \$10,000,000	\$538,750 plus 11.5% of excess over \$10,000,000

(1) Adjusted taxable estate equal to or more than:	(2) Adjusted taxable estate less than:	(3) Tax on amount in column (1)	(4) Rate of tax on excess over amount in column (1)
700,000	840,000	20,880	4.8
840,000	1,040,000	27,600	5.6
1,040,000	1,540,000	38,800	6.4
1,540,000	2,040,000	70,800	7.2
2,040,000	2,540,000	106,800	8.0
2,540,000	3,040,000	146,800	8.8
3,040,000	3,540,000	190,800	9.6
3,540,000	4,040,000	238,800	10.4
4,040,000	5,040,000	290,800	11.2
5,040,000	6,040,000	402,800	12.0
6,040,000	7,040,000	522,800	12.8
7,040,000	8,040,000	650,800	13.6
8,040,000	9,040,000	786,800	14.4
9,040,000	10,040,000	930,800	15.2
10,040,000	-----	1,082,800	16.0

(c) For decedent's dying after December 31, 2003 and before January 1, 2005, the tax imposed by this section shall be computed in accordance with the following schedule:

(1) Adjusted taxable estate equal to or more than:	(2) Adjusted taxable estate less than:	(3) Tax on amount in column (1)	(4) Rate of tax on excess over amount in column (1)
850,000	1,040,000	28,160	5.6
1,040,000	1,540,000	38,800	6.4
1,540,000	2,040,000	70,800	7.2
2,040,000	2,540,000	106,800	8.0
2,540,000	3,040,000	146,800	8.8
3,040,000	3,540,000	190,800	9.6
3,540,000	4,040,000	238,800	10.4
4,040,000	5,040,000	290,800	11.2

5,040,000	6,040,000	402,800	12.0
6,040,000	7,040,000	522,800	12.8
7,040,000	8,040,000	650,800	13.6
8,040,000	9,040,000	786,800	14.4
9,040,000	10,040,000	930,800	15.2
10,040,000	-----	1,082,800	16.0

(d) For decedent's dying after December 31, 2004 and before January 1, 2006, the tax imposed by this section shall be computed in accordance with the following schedule:

(1) Adjusted taxable estate equal to or more than:	(2) Adjusted taxable estate less than:	(3) Tax on amount in column (1)	(4) Rate of tax on excess over amount in column (1)
950,000	1,040,000	33,760	5.6
1,040,000	1,540,000	38,800	6.4
1,540,000	2,040,000	70,800	7.2
2,040,000	2,540,000	106,800	8.0
2,540,000	3,040,000	146,800	8.8
3,040,000	3,540,000	190,800	9.6
3,540,000	4,040,000	238,800	10.4
4,040,000	5,040,000	290,800	11.2
5,040,000	6,040,000	402,800	12.0
6,040,000	7,040,000	522,800	12.8
7,040,000	8,040,000	650,800	13.6
8,040,000	9,040,000	786,800	14.4
9,040,000	10,040,000	930,800	15.2
10,040,000	-----	1,082,800	16.0

(e) For decedent's dying after December 31, 2005, the tax imposed by this section shall be computed in accordance with the following schedule:

(1) Adjusted taxable estate equal to or more than:	(2) Adjusted taxable estate less than:	(3) Tax on amount in column (1)	(4) Rate of tax on excess over amount in column (1)
1,000,000	1,040,000	36,560	5.6
1,040,000	1,540,000	38,800	6.4
1,540,000	2,040,000	70,800	7.2
2,040,000	2,540,000	106,800	8.0
2,540,000	3,040,000	146,800	8.8
3,040,000	3,540,000	190,800	9.6
3,540,000	4,040,000	238,800	10.4
4,040,000	5,040,000	290,800	11.2
5,040,000	6,040,000	402,800	12.0
6,040,000	7,040,000	522,800	12.8
7,040,000	8,040,000	650,800	13.6
8,040,000	9,040,000	786,800	14.4

9,040,000	10,040,000	930,800	15.2
10,040,000	-----	1,082,800	16.0

(f) For purposes of this section, the term "adjusted taxable estate" means the taxable estate reduced by \$60,000.

~~Sec. 22. For purposes of the tax imposed by section 3, and amendments thereto, the value of the taxable estate shall be determined by deducting from the value of the gross estate the taxes imposed by the United States by reason of the decedent's death, except that for purposes of determining this amount the deduction allowed under section 2058 of the internal revenue code shall not be taken into account.~~

Sec. 26. (a) Except as otherwise provided, the personal representative of the estate of every decedent whose gross estate exceeds ~~\$750,000~~ \$700,000 for deaths occurring in 2003, \$850,000 for deaths occurring in 2004, \$950,000 for deaths occurring in 2005, and \$1,000,000 for deaths occurring in 2006 or thereafter, shall make and file in the office of the director a return on forms prepared and furnished by the secretary.

(b) In the event there is more than one personal representative, all personal representatives shall be jointly responsible for completing and filing one return reporting all of the assets of the estate except as hereinafter provided.

(c) If, after exercising due diligence, the personal representative making and filing such return is unable to make a complete return as to any part of the gross estate of the decedent, the personal representative shall make and file a return reporting all information as to the estate assets, including a description thereof and the name of any person holding a legal or beneficial interest in the assets, to the best of such personal representative's knowledge.



Midway Sales & Distributing, Inc. d/b/a

MIDWAY WHOLESALE

Topeka • Salina • Lawrence • Manhattan • St. Joseph • Kansas City

**Presentation to the Senate Assessment and Taxation Committee
March 12, 2003**

**By Kenneth L. Daniel, Jr.
Chairman and C.E.O., Midway Sales & Distributing, Inc. d/b/a Midway Wholesale
and
2003 Leadership Council Chairman, NFIB/Kansas**

Mr. Chairman and Members of the Committee:

My name is Kenneth Daniel. I am the Founder, Chairman and C.E.O. of Midway Wholesale, a building materials distributor headquartered in Topeka with five other Kansas branches and one Missouri branch. I am also the Chairman of NFIB/Kansas, a volunteer position.

I speak in opposition to Senate Bill 148. While we are highly in favor of the “recoupling” provisions of SB148, we hope that recoupling will be done without imposing yet another Kansas death tax.

We are also in favor of repealing last year’s “succession” tax, but that affects only a very few small businesses. We are far more interested in seeing the recoupling.

The present combination of Kansas death taxes makes both business continuity planning and estate planning a nightmare. For many Kansans, expensive estate plans have to be redone every year. Frequent changes in the past several years have made the problem much worse.

While Senate Bill 148 would clean up a lot of the mess, it also creates a new mess and continues the pattern of churning laws that have frustrated the efforts of many of your best tax-paying Kansas businesses to plan for survival.

Worse, this bill trumps NFIB's long-fought battle to get rid of death taxes for most small businesses, a battle that continues in Washington but will almost certainly be won for more than 99% of small businesses if the states will give us some time.

I will go out on a limb and boldly predict that the full phase-out of the federal death tax will never happen. At some point small business leaders are going to insist that the super-rich fend for themselves concerning death taxes instead of riding the coattails of small business.

One other point. Lost in all the arguments about "losing" income by being tied to the federal law is the fact that the "step-up in basis" is eliminated by the federal law. That will result in a huge income tax windfall to both the federal government and the states as we go forward. That step-up is eliminated for even the smallest of estates. States are not "decoupling" from this windfall—they are only "decoupling" from the death tax portion of the federal law.

We urge you to be patient. Stay coupled to the federal. Don't saddle us with this complicated and expensive new Kansas estate tax. 2011 is eight years off. If I'm wrong and Congress doesn't modify the current law, you will have plenty of time to deal with it.

I urge you to defeat Senate Bill 148 and recouple to the federal estate tax.

REVENUES (\$ Millions)						
Fiscal Year	Current Succession Tax	Current Estate Pick-Up Tax	HB 2097 (Conform to federal filing thresholds)	SB 148 Estate Tax (Introduced)	Proposed Amendment to SB 148	Class C Inheritance Tax
2002	0	48.1	0	0	0	0
2003	5	50	0	0	0	0
2004	10	50	45	25	50	15
2005	10	50	43.1	25	51.5	15
2006	10	50	0	25	53	15
2007	10	50	0	25	54.6	15
2008	10	50	0	25	56.3	15
2009	10	50	0	25	58	15
2010	10	50	0	25	59.7	15

Senate Assessment & Taxation
 3-12-03
 Attachment 3