

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman John Edmonds at 9:00 a.m. on January 21, 2004 in Room 519-S of the Capitol.

All members were present except:

Representative Lana Gordon- excused
Representative Tom Sawyer- excused

Committee staff present:

Chris Courtwright, Legislative Research Department
Martha Dorsey, Legislative Research Department
Gordon Self, Revisors of Statutes
Carol Doel, Committee Secretary

Conferees appearing before the committee:

Mark Beck, Director of Property Valuation
Laura Johnson, Attorney Department of Revenue

Others attending:

See Attached List.

Chairman Edmonds recognized Secretary of Revenue Joan Wagon for a bill introduction. Secretary Wagon explained that the Department of Revenue in following the amnesty program, is making a large effort to try to shore up the tax collection processes and make sure they have the tools they need to collect on outstanding debts and make sure that people don't become delinquent.

The Department of Revenues are submitting three proposals which are to:

1. (Expand Tax Information Disclosure) Enable the department to share taxpayer information relevant to pending legislative proposals with the Governor, Commerce and state legislators.
2. (Enhance Enforcement) Provide that state agencies issuing professional licenses shall regularly share their licensee lists with the department of revenue, and shall not renew a professional license if the licensee has delinquent tax liability owed to the state.
3. (Enhance Administrative Efficiency) Amend the motor fuel tax refund statute, K.S.A. 79-3458 (2) to delete certain obsolete language and provide that claims for refund of fuel taxes must be supported by original or electronic automated invoices that have been approved by the Director of Taxation. (Attachment 1)

Chairman accepted all of the proposals submitted by the Department of Revenue, however, he recommended that Richard Cram, Secretary Wagon and the revisor, Gordon Self get together and decide how many bills were actually being proposed.

Representative Ruby Gilbert wished a bill introduced related to listing and valuation of buildings and improvements for property tax purposes.

This will be accepted for introduction.

Representative Huntington asked for the introduction of a bill regarding property tax for seniors.

This will also be accepted for introduction.

Representative Paul Davis requested a bill to provide for a sales tax exemption for certain non-profit organizations that provide services for at-risk youth.

Chairman Edmonds accepted the requested introduction.

CONTINUATION SHEET

MINUTES OF THE HOUSE TAXATION COMMITTEE at 9:00 a.m. on January 21, 2004 in Room 519-S of the Capitol.

Chairman Edmonds requested introduction of a bill to allow the county treasurer more time in writing off bad debts.

There were no objections and this will be accepted for introduction.

Secondly, Chairman Edmonds requested introduction of a bill dealing with the manner in which the Department of Revenue collects sales taxes from auto dealers.

Again, with no objection, this is accepted for introduction.

With no further bill introductions, Chairman Edmonds recognized Mark Beck, Director of Property Valuation for continuation of briefing on property tax and appraisal related issues.

At the meeting on January 20th, Chairman Edmonds requested a property tax calendar to help sort through some of the important dates that need to be considered. This was prepared by the Division of Property Valuation and supplied to the committee. (Attachment 2)

Mr. Beck started his briefing with a review as well as continuation of information from Attachment 7 which was distributed at the January 20th committee meeting. He again reviewed county tax bases in a variety of manners, an example of a county tax base built for a particular subdivision, the budget process and how the budget process should, in theory, work as well as walking through a calculation of a mill levy.

Further information distributed to the committee was a chart showing the change in real and personal property valuation as well as tax dollar distribution before and after the possibility of a disaster. (Attachment 3)

Having concluded his briefing for this meeting, Mr. Beck introduced Laura Johnson, Attorney who continued the briefing with information regarding property tax exemptions and Kansas courts and property tax exemptions as well as the Kansas Legislature and property tax exemptions. (Attachment 4) Mrs. Johnson also submitted for committee review a list of tax exemptions. (Attachment 5)

Mr. Beck returned to the floor with the issue of concerns of uniformity and how uniformity is measured. He introduced Mr. Pete Davis who is a racial study expert. However with time being of essence, this subject will be continued on January 22nd.

Chairman Edmonds adjourned the meeting at 10:20 a.m.

GUEST LIST *Taxation*

DATE Jan 21, 2004

George Peterson	Ks Taxpayers Network
Berrie Koch	Wichita Area Chamber
Ed Cross	KIOGA
Richard Cron	KDOR
Stem Seawall	A&R
Doug CRAIG	DORA A&R
Scott Schuetten	UIBBA
Mike Dinkus	DOB
Ron Seebor	Hein Law Firm
Deann Williams	KMCA
Karl Peterjohn	Ks Taxpayers Network
Ashley Sherard	Lenexa Chamber
Michelle Peterson	Kansas Governmental Consulting
Mike Lewand	Pittsburg Chamber of Commerce
Bud Burke	Issues Mgmt. Group
XXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXXXXXXXX
John Long	AQUILA, INC.
Bill Brady	Ks Gov't Council
Lawrence Holman	KFC
Jesse McClure	Comerced
Carole Jordan	Ag
Amy Campbell	Midwest Energy
Larry Berg	Midwest Energy
Jim Davis	Ks. Livestock Association
Dave Price	Curb

Danika Ne

Johnson County



K A N S A S

JOAN WAGNON, SECRETARY

DEPARTMENT OF REVENUE
OFFICE OF THE SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

January 21, 2004

To: Representative John Edmonds
Chair, House Taxation Committee

From: Joan Wagnon

Re: Summary of Department of Revenue Legislative Proposals for Introduction

Expand Tax Information Disclosure

Enable the department to share taxpayer information relevant to pending legislative proposals with the Governor, Commerce and state legislators. Those persons receiving the information would be subject to the same confidentiality restrictions that the department is under. Enable the department to share taxpayer information with Department of Commerce relevant to the administration of any tax incentive programs that Commerce is involved in. Further, provide for the publication of the names of businesses registered for sales tax, to facilitate identification of those operating businesses that are not registered and not reporting or remitting sales tax. Expand necessary tax information sharing with local governments and other state agencies concerning dry cleaning tax, clean drinking water fees, water excise tax, transient guest tax, and liquor excise tax.

Enhance Enforcement

Provide that state agencies issuing professional licenses shall regularly share their licensee lists with the department of revenue, and shall not renew a professional license if the licensee has delinquent tax liability owed to the state.

Require that a liquor license applicant be current in sales tax and withholding tax liability before the license can be issued or renewed. Further require liquor licensees to operate as one entity, for both liquor and sales tax purposes. This will enable the department to determine whether licensees are current on sales and withholding tax liability. (Currently, licensees are allowed to have one entity for their Liquor account and another entity for their sales tax account. If two entities are allowed with different FEINs, it is impossible to ensure that the other tax types are paid before issuing a license or renewing a license.)

Require organizations that have entity-based sales tax exemptions to register with the department of revenue, in order to obtain a registration number that must be shown on any exemption certificate given to a retailer when the exempt organization claims a sales tax exemption on its purchases. This will enable the department to track more easily these types of exemption claims

HOUSE TAXATION

Attachment 1

Date 1-21-04

DOCKING STATE OFFICE BUILDING, 915 SW HARRISON ST., TOP
Voice 785-296-3041 Fax 785-296-7928 <http://www.ksr>

and determine if they are proper. The Streamlined Sales and Use Tax Agreement allows states to require that exempt organizations use registration numbers on their sales tax exemption claims.

Amend K.S.A. 79-34,122 to make it unlawful to alter an interstate motor fuel user's license. Add text to 79-34,122 to add license alteration to the list of existing unlawful acts in the statute, for which a fine can be imposed. Fines/penalties are currently in place for other unlawful acts. Law enforcement has stopped carriers and have identified license alterations, resulting in this statutory change request. This would allow law enforcement the statutory authority to issue a fine should an interstate motor fuel users (IFTA) license be altered in any way.

Provide a procedure for prompt issuance of a restraining order by the Shawnee County district court, upon request by the department, against a business in the state sufficiently delinquent in reporting or remitting sales or employer withholding tax.

Amend the tax warrant statutes regarding sales, withholding, income, liquor enforcement, liquor excise, cigarette and tobacco, and transient guest tax statutes to provide for the filing of tax liens that will attach to the real property of the debtor, as well as personal property, without the necessity of seizure of that personal property.

Enhance Administrative Efficiency

Amend the motor fuel tax refund statute, K.S.A. 79-3458(2), to delete certain obsolete language and provide that claims for refund of motor fuel taxes must be supported by original or electronic automated invoices that have been approved by the Director of Taxation. This proposal responds to a Legislative Post Audit finding.

Require a utility customer to renew with the utilities provider its sales tax exemption for consumed utilities (such as the exemption for electricity "consumed in production") every 3 years. (Kansas law currently does not impose any requirement for a utility customer to renew its sales tax exemption with the utility provider for any time period.) Provide that no refund for exempt utilities purchases will be approved unless the meter qualifies for 50% or more of exempt use. (This would decrease the number of erroneous refunds/exemptions on utilities purchases.) Refunds of amounts under \$5 per period should not require payment, due to the administrative expense involved in cutting the check. (Under current law, only if the refund is under \$5 for the total account will the refund not be paid. This should be changed to be \$5.00 or less per filing period on the taxpayer's account.) These changes would save significant refund processing time for Customer Relations staff.

Increase from one year to two years the period for renewing certification of the mineral severance tax minimum production exemption on oil wells and leases.

Replace the formal K.A.P.A. appeal process for drug tax assessments with an informal process essentially identical to that currently used for income and sales taxes. The proposal amends KSA 79-5205 to delete the K.A.P.A. appeal hearing with the director and replace it with an informal conference.

Property Tax Calendar

Prepared by the Division of Property Valuation - January 2004

Real Property Deadlines

<u>Last day for:</u>	<u>Day</u>	<u>Statute</u>
- County to mail valuation notices	March 1	79-1460
-Taxpayers to file Equalization Appeal (30 days from date county mailed notice)	30 days	79-1448
- Informal meeting with County Appraiser	May 15	79-1448
- County Appraiser to provide final determination	May 20	79-1448
- County Appraiser to certify values to County Clerk	June 15	79-1466
- Hearing Officer/Panel to hold hearings	July 1	79-1606
- Hearing Officer/Panel to issue order/decision	July 5	79-1606
- Taxpayer to file with Small Claims Division (30 days from date of informal decision or HOP decision)	---	79-1606
- County Clerk to certify valuation abstract to Director of Property Valuation	July 15	79-1604

Personal Property Deadlines

<u>Last Day for:</u>	<u>Day</u>	<u>Statute</u>
- Taxpayers to file personal property rendition	March 15	79-306
- Taxpayers to file oil and gas property rendition	April 1	79-332a
- County to mail valuation notices	May 1	79-1460
- Taxpayers to file Equalization Appeal	May 15	79-1448
- Informal meeting with County Appraiser	---	79-1448
- County Appraiser to provide final determination	---	79-1448
- County Appraiser to certify values to County Clerk	June 15	79-1467
- Hearing Officer/Panel to hold hearings	July 1	79-1606
- Hearing Officer/Panel to issue order/decision	July 5	79-1606
- Taxpayer to file with Small Claims Division (30 days from date of informal decision or HOP decision)	---	79-1606
- County Clerk to certify abstract to Director	July 15	79-1604

Budget, Levy, and Tax Deadlines

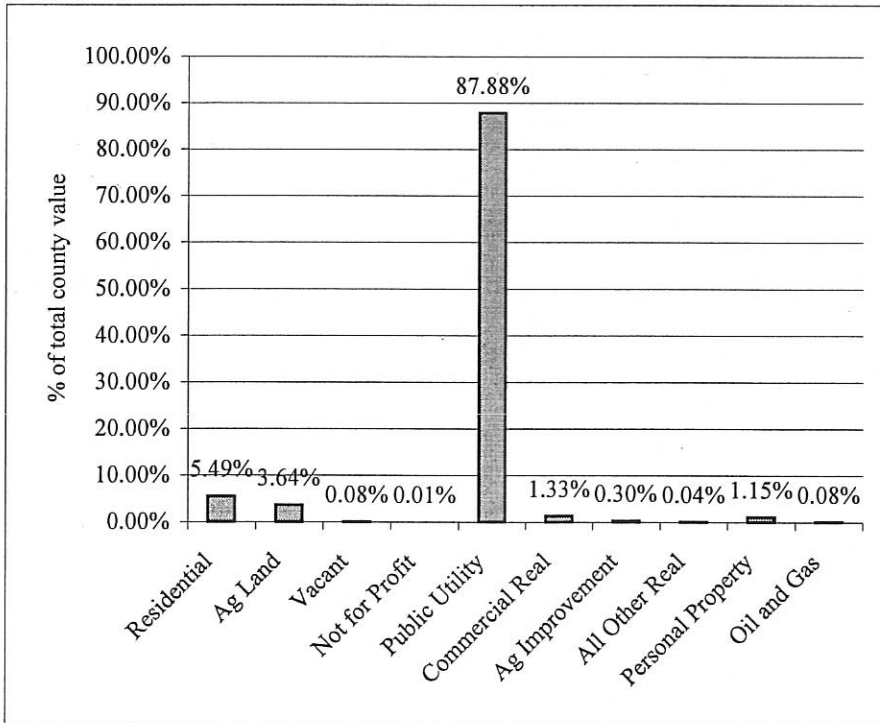
<u>Last Day for</u>	<u>Day</u>	<u>Statute</u>
- Governing bodies certify budget to county clerk	August 25	79-1801
- County Clerk certifies tax roll to County Treasurer	November 1	79-1803
- County Clerk certifies abstract of value, levy, and tax to Director of Property Valuation	November 15	79-1806a
- Tax Statements sent by County Treasurer	December 15	79-2001
- Tax Payments Due - Full or first half	December 20	79-2004 Real 79-2004a Personal
- Tax Payment Due - Second half	May 10	79-2004 Real 79-2004a Personal

2002 Real and Personal Property Value and Tax Summary

County Name Coffey
 County Number 16

Total Taxable Value	\$427,462,177	Tax Per Capita	\$3,310
Value Per Capita	\$48,219	Mill Levy	0.0686
Total Ad Valorem Tax	\$29,340,116	2000 Population	8,865

Property Type/Class	2002 Value	% of County
Residential	23,487,163	5.49%
Ag Land	15,567,413	3.64%
Vacant	324,229	0.08%
Not for Profit	26,700	0.01%
Public Utility	375,640,611	87.88%
Commercial Real	5,698,961	1.33%
Ag Improvement	1,285,087	0.30%
All Other Real	165,822	0.04%
Personal Property	4,929,370	1.15%
Oil and Gas	336,821	0.08%
Total	427,462,177	100.00%

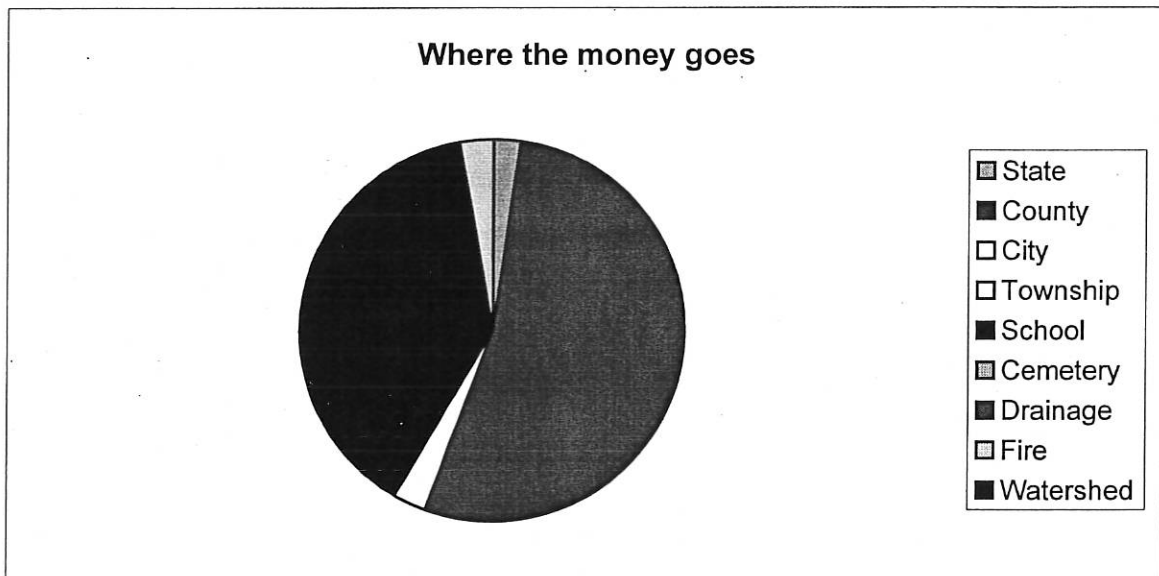


HOUSE TAXATION
 Attachment 3
 Date 1-21-04

County Name
Coffey

How the tax dollars are distributed.

Taxing Districts	General	Penalty	Total	% of Total
01 State	640,929.62	266.57	641,196.19	2.19%
02 County	15,620,284.77	6,494.24	15,626,779.01	53.26%
03 City	879,249.93	3,234.50	882,484.43	3.01%
04 Township	39,818.37	65.50	39,883.87	0.14%
05 School	11,333,661.87	6,285.78	11,339,947.65	38.65%
06 Cemetery	23,239.30	65.42	23,304.72	0.08%
07 Drainage	974.91	0.01	974.92	0.00%
08 Fire	753,593.36	329.18	753,922.54	2.57%
15 Watershed	31,642.16	40.04	31,682.20	0.11%
26 Total	29,323,394.29	16,781.24	29,340,175.53	100.00%



What if no Wolf Creek in Coffey County?

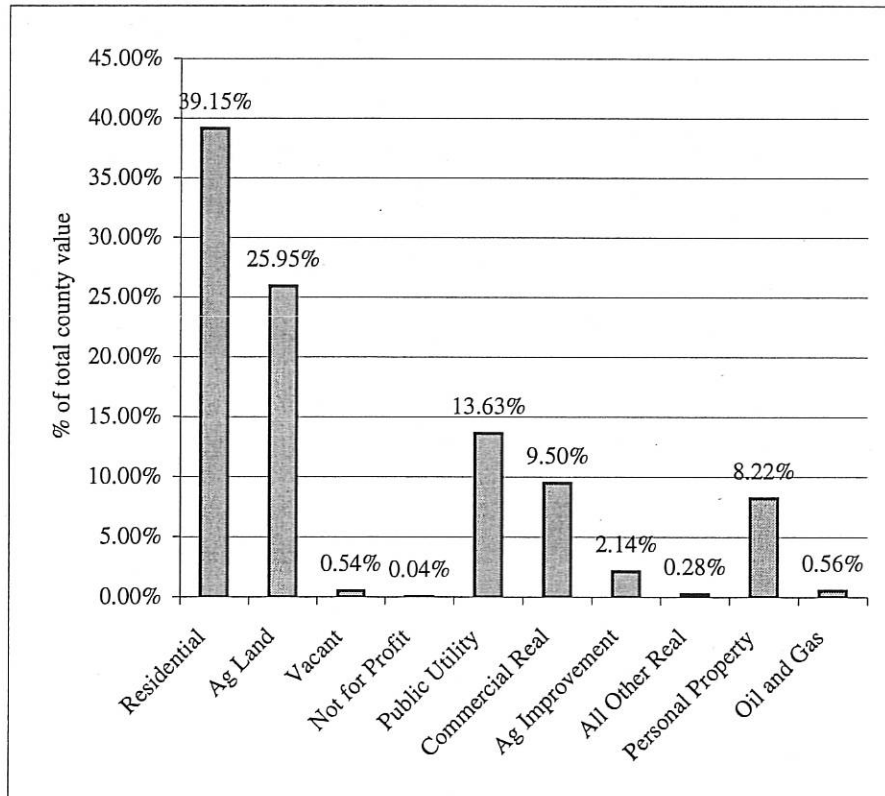
2002 Real and Personal Property Value and Tax Summary

County Name **Coffey**

County Number **16**

Total Taxable Value	\$59,997,496	Tax Per Capita	
Value Per Capita	\$6,767.91	Mill Levy	
Total Ad Valorem Tax		2000 Population	8,865
Total taxable value reduced	\$367,464,681		

Property Type/Class	2002 Value	% of State
Residential	23,487,163	39.15%
Ag Land	15,567,413	25.95%
Vacant	324,229	0.54%
Not for Profit	26,700	0.04%
Public Utility	8,175,930	13.63%
Commercial Real	5,698,961	9.50%
Ag Improvement	1,285,087	2.14%
All Other Real	165,822	0.28%
Personal Property	4,929,370	8.22%
Oil and Gas	336,821	0.56%
Total	59,997,496	100.00%



Coffey

	Total Value (including Wolf Creek)	Levy	Total tax generated.	New levy based on Value less Wolf Creek Value
County Only	427,462,177	0.03656	15,626,734.80	0.26046

Comparison

	Total Lost Value from Wolf Creek	Levy	Loss in Tax Dollars
State	367,464,681	0.00150	\$551,197
Schools	367,464,681	0.02000	\$7,349,294

Property Tax Exemptions

In the World of Property Tax, there is No Free Lunch.

When property is exempt from taxation, it still needs and enjoys the services provided by local governments, such as fire and police protection, and road maintenance. **The services enjoyed by exempt properties are not "cost-free." The cost does not vanish when property becomes exempt. Rather, the cost of protecting exempt property shifts to taxable property.**

To explain, the Kansas Legislature designed the property tax system to provide a stable revenue source to fund the cost of local government. Every year, the county appraiser appraises and assesses all taxable property and certifies these values to the clerk by June. Every year, local governing bodies and taxing subdivisions certify their budgetary needs for the upcoming year to the clerk by August. Every year, the clerk computes the mill levies by November. With the exception of the 20 mills for schools and 1.5 mills for state buildings, the mill levy is computed as follows:

Simplified Example

Amount needed to provide services per budget	\$ 1,000,000
Less: other revenue sources (e.g., sales tax)	<u>200,000</u>
Amount needed from property tax	\$ 800,000
Divided by: assessed value of all taxable property	\$ 8,000,000
Mill levy	<u>100 mills</u>

When the mill levy is applied to the assessed value of each individual piece of taxable property, the total tax produced should be no more and no less than what is needed to fund the budgetary needs of local government.

If additional property is exempted that has an assessed value of \$2,000,000, and all other facts remain the same, the mill levy will increase as follows:

Amount needed to provide services per budget	\$ 1,000,000
Less: other revenue sources (e.g., sales tax)	<u>200,000</u>
Amount needed from property tax	\$ 800,000
Divided by: assessed value of all taxable property	\$ 6,000,000
Mill levy	<u>133 mills</u>

As a result, each owner of the remaining taxable property will have to pay more taxes in order to pay for local services provided to their property and the exempt property.

This situation is analogous to five people having a lunch that costs \$10 apiece, when one person is a guest of honor. Simply because one person is considered a guest does not reduce the overall \$50 cost of the lunch. There is no free lunch. Rather, instead of each of the five people paying \$10 apiece for the lunch, four people will pay \$12.50 apiece for the lunch.

HOUSE TAXATION

Attachment 4

Date 1-21-04

The Kansas Courts and Property Tax Exemptions

The Kansas courts recognized the significance of property tax exemptions not long after Kansas first became a state. In *Washburn College v. Comm'rs of Shawnee County*, 8 Kan 344 (1871), the court stated:

All property receives protection from the state. Every man is secured in the enjoyments of his own, no matter to what use he devotes it. This security and protection carry with them the corresponding obligation to support. It is an obligation which rests equally upon all. It may require military service in time of war, or civil service in time of peace. It always requires pecuniary support. This is taxation. **The obligation to pay taxes is co-extensive with the protection received. An exemption from taxation is a release from this obligation. It is the receiving of protection without contributing to the support of the authority which protects. It is an exception to a rule, and is justified and upheld upon the theory of peculiar benefits received by the state from the property exempted.** (*Id.*, at 348, emphasis added).

In *Wheeler v. Weightman*, 96 Kan 50 (1915), the court considered cases pertaining to the property tax when Kansas was a fledgling state. The Wheeler case gleaned the following after reviewing several old property tax cases:

The essentials are that each man in city, county, and state is interested in maintaining the state and local governments. The protection they afford and the duty to maintain them are reciprocal. The burden of supporting them should be borne equally by all, and this equality consists in each one contributing in proportion to the amount of his property. (*Id.*, at 58, emphasis added).

In 1915, the court deciding the *Wheeler* case identified the core property tax issues that we still hold true today. The court placed a high value on a uniform and fair property tax system. The court recognized the adverse effect that the following may have upon a uniform and fair system of property taxation:

- (1) failing to list all taxable property (*Id.*, at 58);
- (2) failing to value all taxable property uniformly and accurately (*Id.*, at 58);
- (3) failing to assess all taxable property uniformly and accurately (*Id.*, at 58); and
- (4) granting an exemption based upon "favoritism or other arbitrary motive" without the "property benefiting the public in any way different from other property in the state." (*Id.*, 61).

To assure that property tax exemptions are applied in a fair manner, the courts have long construed in favor of taxation. This principle is often called “**strict construction.**” The courts have repeatedly analyzed property tax exemption cases utilizing the following rules:

- (1) Taxation is the rule; exemption is the exception. All doubts are to be resolved against taxation and in favor of taxation. *Manhattan Masonic Temple Ass’n v. Rhodes*, 132 Kan. 646, 649, 296 Pac. 734 (1931);
- (2) Constitutional and statutory provisions exempting property from taxation are to be strictly construed. *Lutheran Home, Inc. v. Board of County Comm’rs*, 211 Kan 270, 275, 505 P.2d 1118 (1973); *In re Board of Johnson County Comm’rs*, 225 Kan 517, 519, 592 P.2d 857 (1979);
- (3) The burden of establishing exemption from taxation is on the one claiming it. *Seventh Day Adventist v. Board of County Comm’rs*, 211 Kan 683, 690, 508 P.2d 911 (1973)

See, e.g., *T-Bone Feeders, Inc. v. Martin*, 236 Kan 641, 693 P.2d 1187 (1985), *Board of Wyandotte County Comm’rs v. Kansas Avenue Properties*, 246 Kan 161, 786 P.2d 1141 (1990) and *Famous Brands Distributors, Inc. v. Board of Shawnee Co. Comm’rs*, 21 K.A. 2d 67, 69-70, 894 P.2d 925 (1995).

However, the highest court in Kansas has further opined that the **strict construction of a property tax exemption does not warrant an unreasonable construction of the law.** *Trustees of the United Methodist Church v. Cogswell*, 205 Kan 847, 473 P.2d 1 (1970)(granting exemption of property used exclusively for a church’s administrative offices).

In addition, when considering whether a property tax exemption statute is constitutional, the court has held that the exemption:

- (1) Must have a **public purpose** and be designed to promote the public welfare; and
- (2) Must provide a **substantial, peculiar benefit**;
- (3) Must **not** allow for large accumulations of tax-exempt property; and
- (4) Must **not** create an improper or preferential classification of property.

See *State ex rel. Tomasic v. City of Kansas City*, 237 Kan 572, 701 P.2d 1314 (1985)(finding the industrial revenue bond exemption provided to property owned by a city or county but utilized by private business constitutional). This construction is consistent with the very early Kansas court’s view that property tax exemptions should be free from “favoritism or other arbitrary motive” in order for the property tax to be a uniform and fair tax. *Wheeler v. Weightman*, 96 Kan 50, 61 (1915).

Kansas is unique in that the legislature has considerable influence over defining property tax exemptions for **two basic reasons.** First, **the Kansas courts have construed the terms “used exclusively”¹ and “charitable”² quite strictly,** inviting legislative response.

¹ See, e.g., *Lawrence Business College v. Bussing*, 117 Kan. 436, 231 P. 1039 (1925)(a private business college was denied exemption because the operators reaped financial benefit from the use of the property in the school’s activities); *State ex rel. v. Security Benefit Ass’n*, 149 Kan

Second, the courts have held that legislature has the authority to adopt property tax exemptions *beyond those found in Kansas Constitution*, as long as the exemption has a public purpose and promotes the public welfare.³ As a general rule, other state courts have found that where the state constitution exempts certain property, the legislature has no power to add exemptions for other property, purposes or uses. 61 A.L.R.2d 1031, 1038.⁴

In Kansas, the court has given deference to the legislature on exemptions. When determining the constitutionality of the industrial revenue bond exemption, the Kansas Supreme Court opined that the legislature is the best judge of which exemptions are in the public interest. Accordingly, the court adopted a policy of judicial restraint, absent the legislature acting devoid of any rational basis. *State ex rel. Tomasic v. City of Kansas City*, 237 Kan 572, 701 P.2d 1314 (1985).

As a result, in Kansas, we now have roughly 70 property tax exemptions, a significant increase from the dozen that existed in 1967.⁵ Many of our statutes also contain extensive modifying language, requiring that each exemption statute be read completely and carefully.

384, 87 P.2d 650 (1939), *Nuns of St. Dominic v. Younkin*, 118 Kan 665, 235 P. 869 (1925)(hospitals benefiting private interests denied exemption); *In re Application of Int'l Bd of Boilermakers*, 242 Kan 302, 747 P.2d 781 (1987), *Kansas State Teachers Ass'n v. Cushman*, 186 Kan 489, 351 P.2d 911 (1973)(administrative offices for professional organizations, trade associations and unions have been denied exemption because private benefits were derived by a select membership); *Seventh Day Adventist v. Board of County Comm'rs*, 211 Kan 683, 508 P.2d 911 (1973), *Griswold v. Quinn*, 97 Kan. 611, 156 P. 761 (1916), *Vail v. Beach*, 10 Kan. 214 (1872)(church parsonages were denied exemption prior to a special statute being enacted because extensive domestic activities conducted on the property were viewed as personal, non-exempt uses); *Stahl v. Kansas Educ. Assoc.*, 54 Kan 542, 38 P. 796 (1895)(a property being rented and held for sale was viewed as not exclusively used for exempt purposes); *In re Board of Johnson County Comm'rs*, 225 Kan 517, 592 P.2d 875 (1979); *Board of Wyandotte County Comm'rs v. Kansas Avenue Properties*, 246 Kan 161, 786 P.2d 1141 (1990)(exemption denied where property used for lease purposes and not exclusively for exempt purposes).

² *Lutheran Home, Inc. v. Board of County Comm'rs*, 211 Kan. 270, 505 P.2d 1118 (1973)(charitable means a gift from one who has from one who has not); *reversing Topeka Presbyterian Manor v. Board of County Comm'rs*, 195 Kan 90, 402 P.2d 802 (1965) and *Evangelical Village & Bible Conference v. Board of County Comm'rs*, 207 Kan 383, 485 P.2d 343 (1971)(charitable means general public good and assistance to the less fortunate).

Woman's Club of Topeka v. Shawnee County, 253 Kan 175, 187, 853 P.2d 1157 (1993), *The State ex rel., v. Joslin et al.*, 116 Kan 615 (1924), *Wheeler v. Weightman*, 96 Kan 50, 149 Pac. 977). Note: while the courts have held that the legislature has the authority to broaden exemptions found in the Kansas Constitution, the courts have also held that the legislature cannot restrict or curtail an exemption set forth in the constitution. *Colorado Interstate Gas Co. v. Board of Morton County Comm'rs*, 247 Kan 654, 802 P.2d 584 (1990), *Board of Trustees of Kansas East Conference of United Methodist Church v. Cogswell*, 205 Kan. 847, 473 P.2d 1.

³ *State ex rel. Tomasic v. City of Kansas City*, 237 Kan 572, 701 P.2d 1314 (1985).

⁴ Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Minnesota, Missouri, Montana, Nevada, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington and West Virginia cases are cited in support of the general rule. 61 A.L.R.2d 1031 at 1038-41.

⁵ The list of the Kansas property tax exemptions that existed in 1967 can be found in a law journal article written by Judge Buchele, entitled *Justifying Real Property Tax Exemptions in Kansas*, 27 Washburn Law Journal 252 (1988), on pages 265-66.

The Kansas Legislature and Property Tax Exemptions

Strict Construction: Definition of "Used Exclusively"

In Kansas, the court for many years has quite strictly construed the terms "used exclusively," which appear in most of the property tax exemptions. The court has held that "used exclusively" means used **only, solely and purely** for exempt purposes. See, e.g., *Seventh Day Adventist v. Board of County Comm'rs*, 211 Kan. 683, 690, 508 P.2d 911(1973); *Manhattan Masonic Temple Ass'n v. Rhodes*, 132 Kan. 646, 649, 296 Pac. 734 (1931).

For example, when property is leased in addition to being used for exempt purposes, the request for exemption is almost always denied. The courts view the lease as a simultaneous, non-exempt use that precludes property from otherwise meeting the requirement that the property be "used exclusively" for exempt purposes. See, e.g., *In re Board of Johnson County Comm'rs*, 225 Kan 517, 519, 592 P.2d 857 (1979), *Board of Wyandotte County Comm'rs v. Kansas Avenue Properties*, 246 Kan 161, 786 P.2d 1141 (1990).

At times, the legislature has added or modified language in existing statutes to allow some nonexempt use. For example, K.S.A. 79-201m was revised to allow an exemption of merchant and manufacturer's inventory even when leased, if the lease use is incidental and not an intervening use. In *Board of Sedgwick County Comm'rs v. Action Rent to Own, Inc.*, 266 Kan 293 (1998), property was held exempt even though it was intermittently leased and depreciated for federal income tax purposes, because it was primarily held for sale in the ordinary course of business.

Similarly, K.S.A. 79-201a *Second*, the governmental property exemption, was revised allow property to be leased under certain situations. Property can be leased for the purpose of providing office space for licensed individuals to practice medicine and surgery or osteopathic medicine; to provide dentistry services; to provide optometry services; or to provide podiatry services.

Another example is K.S.A. 79-201 *Second*, an exemption for property used exclusively for literary, educational, scientific, religious benevolent or charitable purposes. In 1986, the statute was revised to allow non-exempt uses that are minimal in scope, insubstantial in nature and incidental to the exempt use. This amendment was adopted in response to *Kansas City Dist. Advisory Bd. v. Board of Johnson County Comm'rs*, 5 K.A.2d 538, 620 P.2d 344 (1980); (see discussion in *Midwest Presbytery v. Jefferson County Appraiser*, 17 K.A.2d 676, 678, 843 P.2d 277 (1992)). In the *Kansas City Advisory Bd.* case, the court held that a religious camp lost its exempt status when it allowed non-religious groups to use the camp facilities for a nominal fee. In a case subsequent to the legislative amendment to K.S.A. 79-201 *Second*, the court remanded a case involving a caretaker's home located in a church camp. The court noted that the 1986 amendment to the statute broadened the "exclusive use" test of K.S.A. 79-201 *Second*.

At times, the legislature has created new exemption statutes allowing some nonexempt use of property. For example, certain leased property that is integrally associated with property exempt under Article 11, Section 13 of the Kansas Constitution can be exempt under K.S.A. 79-221.⁶ This statute was adopted in response to *Board of Wyandotte County Comm'rs v. Kansas Avenue Properties*, 246 Kan 161, 786 P.2d 1141 (1990). In that case, the Kansas Supreme Court denied exemption of a building the owner planned to lease to tenants who would in turn use it for exempt, economic development purposes.

Similarly, the legislature adopted K.S.A. 79-254 in 1997. This statute protects property otherwise exempt from property taxation under K.S.A. 79-201 (charitable, educational, religious), 79-201a (governmental), 79-201b (hospitals, nursing homes, elderly housing, group homes) or 79-201g (dams). The statute allows such property to continue to be exempt when it is leased for the location of a wireless communications tower, antennae or relay site.

Another example is K.S.A. 79-201 *Ninth*, which was adopted in 1989. This statute allows exemption of property used "predominantly" by a 501(c)(3) corporation to provide humanitarian services. By requiring that the property be used "predominantly" rather than "exclusively" for exempt purposes, this statute tolerates some nonexempt use.

To illustrate, *In re Tax Appeal of Univ. of Kan. School of Medicine*, 266 Kan. 737, a not-for-profit 501(c)(3) organization leased property to another 501(c)(3) organization. The property was used as a medical office facility by professors at the K.U. Medical Center. Primarily, patients were needy. The rent charged was below market (actual rent was \$8; market rent was \$10-\$12 per square foot). Although 78% of the rent proceeds were above cost, the court held the property was still predominantly used for exempt purposes. The court noted that the proceeds above cost were: (1) placed in reserves; (2) used during periods of financial hardship; or (3) used in furtherance of the humanitarian services provided by the particular not-for-profit at issue.

This is a relatively new development in exemption law. In older cases involving the used exclusively test, property was denied exemption under similar circumstances. For example, in *St Marys College v. Crowl*, 10 Kan. 333 (1872 replacement volume), the court held that a farm owned by a college was taxable. The court acknowledged that the farm was used to teach students how to farm (an educational use) and to produce a harvest that was in part consumed by students. However, some of the harvest was sold. Even though the proceeds from these sales were returned for use in the college, the court denied exemption, finding that the property was not used exclusively for exempt purposes. Similarly, in *Sunday School Bd. v. McCue*, 179 Kan. 1, a religious organization sold religious literature and books. Even though the proceeds from these sales were devoted to religious purposes, the court denied exemption because the property was not used exclusively for exempt purposes.

⁶ The lessor must have 51% or more ownership in the lessee or *vice versa*, or the lessor must be a community based not-for-profit economic development corporation organized under 501(c) (4) or (6) of the Internal Revenue Code. K.S.A. 79-221.

Strict Construction: Definition of "Charitable"

In the 1970's, the Kansas Supreme Court held that a nursing home was not used exclusively for charitable purposes because **"charity" means a gift from one who has to one who has not.** (*Lutheran Home, Inc. v. Board of County Comm'rs*, 211 Kan 270, 505 P.2d 1118 (1973)). In 1975, the legislature adopted the K.S.A. 79-201b series of exemptions. These statutes provide exemption for property used by not-for-profit hospitals, nursing homes, elderly housing, low-income housing and certain group homes. The statutes allow property used for certain purposes to be exempt even when a fee is charged for services. The statutes impose other requirements that provide some assurance the property benefits the public, rather than serves private interests.

Reasonable Construction: Educational Use

K.S.A. 79-201 *Second* provides an exemption to property used exclusively for educational purposes. How broad is the term "educational?"

The court held that the N.C.A.A. facility was exempt by virtue of being used exclusively for educational purposes, since the N.C.A.A. serves a unique regulatory role for university sports. The court noted that physical education has long been recognized as part of an educational curriculum. *National Collegiate Realty Corp. v. Board of Johnson County Comm'rs*, 236 Kan. 394, 404 690 P.2d 1366 (1984).

The court held that a vacant piece of ground adjacent to a church was exempt by virtue of being used exclusively for education purposes. Although vacant, the land was used as a soccer field by various not-for-profit entities or schools. *Strecker v. Hixon*, 20 K.A. 2d 489, 892 P.2d 906 (1994).

Reasonable Construction: Governmental Use

K.S.A. 79-201a *Second* provides an exemption for property used exclusively for governmental purposes. How broad is the term "educational?"

In *Lario Enterprises Inc. v. State Bd. of Tax Appeals*, 22 K.A.2d 857, 860, 925 P.2d 440 (1996), the court held that a race track to be owned and operated by the city for a governmental function (recreational purposes) was exempt from taxation.

In *League of Kansas Municipalities v. Board of Shawnee County Comm'rs*, 24 K.A. 2d 294 (1997), the court held that property used by the League was exempt by virtue of being an instrumentality of government that in turn used the property exclusively for governmental purposes. The League is comprised of 543 of the 627 cities in Kansas.

Must Property be Used to be Exempt?

There is a court case suggesting that property must be used in order to satisfy statutory language requiring property to be “actually and regularly” used for exempt purposes. In application, it is not always clear what constitutes an “actual” and “regular” use of property. These terms appear to mean different things in the context of different properties and the variety of exempt services provided by owners. However, in *In re Tax Exemption Application of City of Wichita*, 255 Kan. 838, 877 P.2d 437 (1994), the facts were fairly clear. The court held that properties seized through the drug forfeiture laws, which were subsequently left vacant or lying dormant awaiting sale, were not exempt by virtue of being used for governmental services.⁷ In response to this case, K.S.A. 79-201a *Second* was revised to include property lying vacant or dormant, when property is used **or to be used** for any governmental or proprietary purpose.

Exemptions That Do Not Require “Exclusive Use”

K.S.A. 79-201a *First*, an exemption for property owned exclusively by the U.S. Government that has not been declared subject to state and local taxation by congress.

K.S.A. 79-201x, exempting \$20,000 of the value of property used for residential purposes from the school mill levy.

K.S.A. 79-201w, providing an exemption for any item of machinery and equipment, materials and supplies with item a “retail cost when new” of \$400 or less.

K.S.A. 79-201j, providing an exemption for farm machinery and equipment used for farming or ranching purposes.

K.S.A. 79-201 *Eleventh*, providing an exemption for property used predominantly to produce and generate electricity using renewable energy resources or technologies. K.S.A. 79-256 and K.S.A. 79-258, exempting electric generation facilities and pollution control devices.

K.S.A. 79-201 *Ninth*, providing an exemption for property used predominantly for humanitarian services.

Many specific, governmental exemptions with typically unique types of property do not require “exclusive” use; for example, waterworks, rural water districts, groundwater and joint water districts, the Kansas Turnpike Authority, the Kansas Department of Transportation, and parks owned by the Kansas Department of Wildlife and Parks. (*See, e.g.*, K.S.A. 79-201a *Third – Twentieth*, K.S.A. 75-3686, K.S.A. 79-215, K.S.A. 19-26,111).

Certain airport property and port authorities do not require exclusive use. (*See, e.g.*, K.S.A. 79-201q, 79-201r, K.S.A. 79-201s, K.S.A. 12-3418, K.S.A. 12-5509).

⁷ Note that in terms of property foreclosed upon for property taxes, it is not necessary to seek exemption because of the last paragraph of K.S.A. 79-2804, which simply abates the taxes.

List Exemptions

#	#	Statute	Description
	1	12-1771(k)	auto race track
	2	12-5509	prvtzd public service
	3	12-3418	port authorities
	4	19-26,111	Wy Co Land Bank
	5	75-3668	State-owned property; leased
	6	79-101	intangible computer software
1	7	79-201 1st	public schools
		79-201 1st/2nd	religious
		79-201 1st/9th	day care/preschool
2	8	79-201 2d	educational
		79-201 2d	charitable
		79-201 2d	literary
		79-201 2d	scientific
3	9	79-201 3rd	university/college money
4	10	79-201 4th	reserve/emerg funds frat. bf.
	11	79-201 5th	private school
	12	79-201 6th	alumni association
	13	79-201 7th	parsonages
5	14	79-201 8th	veterans organization
	15	79-201 9th	humanitarian service
	16	79-201 10th	convent, monastery
	17	79-201 11th	renewable energy
6	18	79-201a 1st	US gov. property
7	19	79-201a 2nd	governmental-state, local
	20	79-201a 3rd	rural water
	21	79-201a 4th	fire fighting
	22	79-201a 5th	county fair
	23	79-201a 6th	municipal housing
	24	79-201a 7th	municipal urban renew
	25	79-201a 8th	Kansas armory
	26	79-201a 9th	KTA purposes
	27	79-201a 10th	Wildlife & Parks
	28	79-201a 11th	State Office Building
8	29	79-201a 12th	student union, dorms
9	30	79-201a 13th	Inst. Board of Regents
	31	79-201a 14th	KC Mo Waterworks
	32	79-201a 15th	groundwater district
	33	79-201a 16th	joint water district
	34	79-201a 17th	KDOT
	35	79-201a 18th	Industrial Training Cntr.
	36	79-201a 19th	vo-tech, comm. college
	37	79-201a 20th	dormitory personal property

HOUSE TAXATION

Attachment 5

Date 1-21-04

List Exemptions

10	38	79-201b 1st	hospitals
	39	79-201b 2nd	adult care nursing home
	40	79-201b 3rd	children's home
	41	79-201b 4th	low inc. handicap/elderly
	42	79-201b 5th	elderly housing
	43	79-201b 6th	mentally ill, retarded
11	44	79-201c 3rd	cemetery
	45	79-201d 1st	hay & silage
	46	79-201d 2nd	grain bins
	47	79-201e	reclaimed surface-mine
	48	79-201f	freeport exemption
12	49	79-201g	watershed/dam
	50	79-201h	solar energy system
	51	79-201j	farm machinery, equipment
	52	79-201k	business aircraft
	53	79-201m	inventory
	54	79-201n	grain
	55	79-201o	construction hand tools
	56	79-201p	motor vehicle inventory
	57	79-201q	airport authority
	58	79-201r	Strother Field
	59	79-201s	municipal airport, leased
	60	79-201t	oil leases prod. =/> 3 barrels
	61	79-201u	donated motor vehicles
	62	79-201x	residential-school levy
	63	79-201w	Items \$400 or less
	64	79-205	KC waterworks
	65	79-215	displays at fairs, expos, etc.
	66	79-219	mechanic's hand tools
	67	79-220	antique aircraft
	68	79-256	IPP electric generation fac.
	69	79-258	electric generation fac.
	70	79-259	electric transmission lines
	71	79-221	leased prop-eco develop
	72	Art. 11, Sec. 13	EDX economic develop
		79-201a 2nd	IRBX economic develop