

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman John Edmonds at 9:00 a.m. on February 12, 2004 in Room 519-S of the Capitol.

All members were present except:

Representative John Faber- excused
Representative Lee Tafanelli- 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:

TC Anderson, Kansas Society of CPAs
Chris Morlan, Sedgwick City Appraisers
Marilyn Nichols, Kansas Registrar of Deeds
Ann Hull, President of Heartstrings Community Foundation
Barb Hinton, Legislative Post Auditor
Joan Wagnon, Secretary of Revenue
Bon McNeely, President Kansas Automobile Dealer's Association

Others attending:

See Attached List

Chairman Edmonds called the meeting to order requesting any bill introductions.

T.C. Anderson, Kansas Society of CPAs requested the introduction of two bills. The first bill would amend KSA 79-32,101 (a) (1) by increasing from \$200 to \$500 the amount of tax expected to be owed before estimated tax payments would be due the state.

The second bill request would add a provision to 79-32,206, the credit for property tax paid on commercial and industrial machinery and equipment status. This language would read, "*The secretary of revenue shall adopt rules and regulations regarding the filing of documents that support the amount of credit being claimed in KSA 79-32,206.*"

Hearing no objections, the Chairman accepted these two bills for introduction.

Chairman Edmonds opened the meeting for public hearing on **HB 2559** recognizing Chris Morlan of the Kansas County Appraiser's Association testifying in support. They are requesting that KSA 79-412 be changed to require that the words "*building on leased ground*" appear on the first page of the lease if the lease filed with the Registrar of Deeds indicates that the land and improvement value should not be listed on the assessment roll as a single aggregate.

By including the words "*building on leased ground*" on the first page of the filed lease, less time will be spent by county employees researching leases as well as correcting appraisal records. Less time will be spent by county employees revising assessment rolls and sending new tax bills. (Attachment 1)

Appearing also in support of **HB 2559**, was Marilyn L. Nichols on behalf of the office of Shawnee County Register of Deeds. They also support the change to "*building on leased ground*" appear on the first page of a lease. This would clearly define the intent of the instrument recorded and would greatly assist the taxing entities of the county as well as the proper indexing of the document in that office. (Attachment 2)

Written testimony was submitted by Judy Moler, General Counsel/Legislative Services Director. (Attachment 3)

CONTINUATION SHEET

MINUTES OF THE HOUSE TAXATION COMMITTEE at 9:00 a.m. on February 12, 2004 in Room 519-S of the Capitol.

With no further proponents and no opponents, The Chairman closed the public hearing on **HB 2559**.

Public hearing on **HB 2650** was opened with Ann Hull, President of Heartstrings Community Foundation being recognized in support of the bill. Ms. Hull explained that the mission of Heartstrings Community Foundation is to assist adults with developmental disabilities to live meaningful, productive and more independent lives through interactions with the community. The organization is requesting a tax exempt status for Heartstrings Community Foundation with the savings allowing them to assist more individuals become independent citizens and become tax payers. (Attachment 4) Ms. Hull also included a copy of the Foundation's profit and loss statement for review. (Attachment 5)

With no one further wishing to address the bill, either proponent or opponent, Chairman Edmonds closed the public hearing on **HB 2650**.

Public hearing on **HB 2648** was next on the agenda with the Chairman acknowledging Barb Hinton, Legislative Post Auditor as a proponent of the bill. In her testimony Ms. Hinton stated that the bill addresses *Taxation on Motor Vehicle Sales: Reviewing the Department of Revenue's Procedures for Ensuring That Correct Amounts of Sales and Compensating Use Taxes Are Paid*. During an audit they found several cases in which vehicle dealers were allowed to continue operating even though they had a long history of not remitting the sales taxes they collected. (Attachment 6)

Don McKneely, President of KADA (Kansas Automobile Dealers Association), stood before the committee to testify in the association's behalf in support of **HB 2648**. Mr. McKneely thanked Secretary Wagon and her staff for the opportunity to work with them to ensure that all sales taxes that are collected by the license motor vehicle dealers in the State of Kansas, are in fact, remitted to the Kansas Department of Revenue. (Attachment 7)

Secretary of Revenue, Joan Wagon, presented testimony in support of **HB 2648**. Secretary Wagon explained that the bill would amend K.S.A.8-2411 to provide for mandatory suspension or revocation of a vehicle dealer's license by the Director of Motor Vehicles if a dealer has failed to file sales tax returns or remit sales tax for a period of three consecutive months. The Department of Revenue strongly supports this proposal as an effective tax compliance tool. (Attachment 8)

With no one further wishing to testify, the Chairman closed the hearing on **HB 2648**.

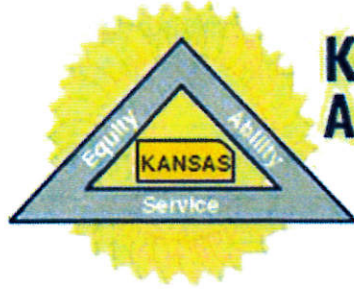
Chairman Edmonds advised the committee members that due to the expected large hearing on **HB 2599** and **HB 2700** next week that he would have to limit the members to one question per conferee and any other questions would have to be addressed through the Vice-Chairman or the Ranking Member.

With no further business before the committee, the meeting was adjourned at 10:20 a.m.

GUEST LIST

DATE Feb 12

Maria She Hon	KCAA
CHRIS MORLAN	KCAA
CARMEN ALBERT	KDOR
Diane Albert	"
Walter Lee Smith	KOMU
Anne Null	Heartlung Com Found
Deann Williams	Kmca
Whitney Tamra	Ks Automobile Dealers Assn
Don McNelly	Ks Automobile Dealers Assn
T. O. Anderson	KSCPA
Donna	
George Kusan	Ks Taxpayers Network
Marilyn Nichols	Shannon Co. Register of Deeds
Don Ann	Kans Farm Bureau
Cindy Egan	Kansas Farm Bureau
Angeli Drake	Kansas FB
Dale Weishaar	Kansas FB Bureau
Sheelyns Don Perkins	Ks Farm Bureau
Mick Begett	AT&T
Brook Hinton	Post Audit
Warrell Monfort	KFB - Allen Co
Michelle Peterson	Ks Gov Consulting
Ken Ray	Ks Bulb Prod. Assn
Jan	
Anna McDaniel	and Co 7160



Kansas County Appraiser's Association

TO: HOUSE TAXATION COMMITTEE
FROM: KANSAS COUNTY APPRAISER'S ASSOCIATION
RE: HOUSE BILL 2559
DATE: FEBRUARY 12, 2004

Chairman Edmonds and Committee Members, I am Chris Morlan speaking on behalf of the Kansas County Appraiser's Association. I hold a Registered Mass Appraiser designation from the State of Kansas and an Assessment Administration Specialist designation from the International Association of Assessing Officers.

Kansas Statute 79-412 requires that the County Appraiser value both land and improvements and place a total of these values on the assessment roll – with one exception. If the improvements are owned by an entity other than the land owner, and a lease agreement has been recorded or filed in the office of the Register of Deeds, the improvements will be assessed to the owner of the improvements. The land owner will be assessed for the land and any buildings not covered in the filed lease agreement. Filing the lease creates a “building on leased ground” record.

There are thousands of leases filed in Kansas' Register of Deeds Offices every year for a myriad of reasons. Typically, there is no way to identify a “building on leased ground” lease from any other lease filed without reading through each and every lease. Most County Appraiser's and Register of Deeds Offices do not have the resources to completely read each lease that is filed to determine if it is a lease for a “building on leased ground” or a lease for some other purpose. Many of these leases are brought to the County Appraiser's attention after the value notice or tax bill has been mailed to the property owner. After realizing the value notice or tax bill includes the leased property, the property owner requests the leased property's value be separated from the rest of their property and the value notice and tax bill be sent to the owner of the leased property. This creates more work for the Appraiser, requiring research of the lease. In addition, corrections then have to be made to the appraisal roll, creating more work for the County Clerk and Treasurer if the roll has been certified and tax bills have been mailed.

HOUSE TAXATION
Attachment 1
Date 2-12-04

We respectfully request that KSA 79-412 be changed to require that the words "building on leased ground" appear on the first page of the lease if the lease filed with the Register of Deeds indicates that the land and improvement value should not be listed on the assessment roll as a single aggregate.

By including the words "building on leased ground" on the first page of the filed lease, less time will be spent by county employees researching leases as well as correcting appraisal records. Less time will be spent by county employees revising assessment rolls and sending new tax bills.

We ask that you favorably recommend House Bill 2559.

I will be happy to respond to questions you may have.

KANSAS REGISTER OF DEEDS ASSOCIATION

Marilyn L. Nichols
Shawnee County Register of Deeds
700 SE 7th Street, Room 108
Topeka, Kansas 66603-3932

TESTIMONY OF THE KANSAS REGISTER OF DEEDS ASSOCIATION
TO THE HOUSE TAXATION COMMITTEE

HB 2559

February 12, 2004

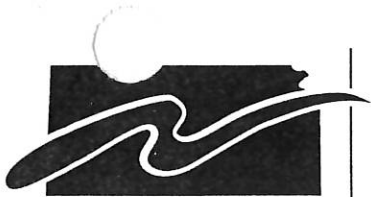
Representative Edmonds, Chairman and Members of the Committee:

I am here today on behalf of the Kansas Register of Deeds Association. We thank you for the opportunity to allow us to provide some input during your decision-making process.

Our understanding of the intent of this bill is require the words " building on leased ground" to appear on the first page of the Lease Agreement that is filed in the Register of Deeds office. Further that the responsibility is placed on the filer to be sure said words are included on the face of the document.

As you know the Register of Deeds Office is responsible for the recording of documents concerning real estate transactions in each county and the preservation of those records as "public records". We record various types of documents and from time to time the purpose and intent of the instrument is difficult to ascertain. The words "building on leased ground" would clearly define the intent of the instrument recorded and would greatly assist the taxing entities of the county as well as the proper indexing of the document in my office. I understand that Missouri Law requires *all documents* to be clearly titled and we as the Kansas Register of Deeds Association have discussed the possibility of beginning such a change in recording statutes in Kansas. Identification of documents would not seem that difficult at first thought but indeed it can be, as the legal language is not easily interpreted. This seems to be a step in the right direction that would help us in the interpretation of the intent of said agreement. The Kansas Register of Deeds Association urges the favorable passage of HB 2559.

HOUSE TAXATION
Attachment 2
Date 2-12-04



KANSAS
ASSOCIATION OF
COUNTIES

Written Testimony on HB 2559
Before the House Taxation Committee
By Judy A. Moler
General Counsel/Legislative Services Director
February 12, 2004

Chairman Edmonds and Committee members, thank you for allowing the Kansas Association of Counties to submit written testimony on HB 2559.

The Kansas Association of Counties supports this legislation that would amend K.S.A. 79-412 to include the words "building on leased ground". This which would be affixed to the first page of a lease filed with the County Register of Deeds Office.

By this simple amendment, much time and aggravation will be saved for county employees researching leases as well as affording more prompt and effective service for taxpayers.

The Kansas Association of Counties urges you to act favorably on HB 2559.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to Randy Allen or Judy Moler by calling (785) 272-2585.

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Topeka, KS 66615
785•272•2585
Fax 785•272•3585
email kac@ink.org

HOUSE TAXATION
Attachment 3
Date 2-12-04



*Heartstrings
Community
Foundation*

*7044 W. 105th St.
Overland Park, KS
66212*

*Pb# 913-649-5700
Toll Free: 866-649-5700
Fax# 913-649-5702
Email:
heartstringscf@sbcglobal.net
Website:
www.heartstringscf.com*

*Executive
Board of Directors
President: Anne Hull
Vice-President: Pat Colloton
Sec/Treas: Phyllis Young*

*Board of Directors
Liz Bartow
Dr. Wynne Begun
Kathleen Degen
Raleigh Lang
Doug Leibbrandt
Jennie Perdiou
Gail Williams*

*Business Advisory Council
Pat Colloton
Richard Farnan
Dean Oskvig
Cyndy Price
Mary Anne Simons
Brad Stratton
R. David Wentz*

Testimony for House Bill 2650
Tax Exempt Status for Heartstrings Community Foundation

Mr. Chair and members of the Tax Committee, thank you for the opportunity to speak in support of House Bill 2650.

Heartstrings Community Foundation's mission is to assist adults with developmental disabilities to live meaningful, productive and more independent lives through interactions with the community.

Seventeen individuals in Johnson County have chosen Heartstrings as their provider of Day Service. These people have various labels in their files, including Autism, Downs Syndrome and Fragile X Syndrome and more. But the labels they claim are valued team member, employee, volunteer and friend.

Because of Heartstrings Community Foundation these adults have jobs that are interactive, they have business relationships and friendships, and they are needed.

The Goody Delivery Business and the On My Own Home Accessories Store are the two businesses run by Heartstrings participants.

- Goody Delivery sales teams provide premium snack items each week in business offices.
- The On My Own Store acquires home decorating items and gift items through donations, auctions and market purchases and sells them in a store located in the Metcalf 103 Shopping Center in Overland Park. Custom designed gift baskets are created and delivered or shipped.

The employees have their own business cards, are paid wages according to the percentage of the tasks they complete independently - and a commission for sales completed.

Several individuals are successful in supported employment in other businesses in the community, such as Osco, Hallbrook Country Club, Babies R Us, Gordmans, HyVee, Toys R. Us and Bodyworks. Heartstrings assists in finding and developing jobs and maintaining them by offering ongoing support for the employee and employer.

Other aspects of HCF's Day Service are volunteerism in nursing homes and Meals on Wheels, individual fitness goals and workouts at the Jewish Community Center, and social outings planned by the individuals.

The results of HCF's day service are dramatic but this model of service is expensive. It requires a low staff to person served ratio due to the many transitions in the community during the day, and a vehicle for each team.

Our seven staff members are very experienced with other models of service and prefer this model mainly because they witness such growth in the skill levels of the people they assist. Our customers are convinced that our service is desirable and valuable.
2003

Cost of goods sold (through Goody Delivery and On My Own Store) was \$25,669.

Income from Goody Del. and On My Own Store was \$51,540.

Automobile Expenses \$7500 but with an aging fleet will be more this year.

Becoming tax exempt would allow us to assist more individuals become more independent citizens and become tax payers. I have attached a copy of our profit loss statement and informational brochures about Heartstrings. Thank you for considering assisting us make Kansas a more inclusive community.

HOUSE TAXATION

Attachment 4

Date 2-12-04

HCF
Profit & Loss
January through December 2003

	Jan - Dec 03
Income	
Contributions	
Fundraiser	46,994.00
Unrestricted	30,252.67
Total Contributions	77,246.67
Goody Delivery	22,403.14
Grants	5,600.00
Interest Income	23.69
Miscellaneous Income	620.23
On My Own Store	29,128.62
Program Fees	
Case Management	40,005.93
Day Service	177,207.69
Vocational Rehabilitation	2,797.67
Total Program Fees	220,011.29
Training	200.00
Total Income	355,233.64
Cost of Goods Sold	
Costs of Goods Sold	
Candy	12,565.46
Supplies	13,104.19
Total Costs of Goods Sold	25,669.65
Total COGS	25,669.65
Gross Profit	329,563.99
Expense	
Advertising/Promotions	3,628.24
Automobile Expense	
Gas	2,203.98
Repairs/Maintenance	3,968.05
Tags	1,327.72
Total Automobile Expense	7,499.75
Bank Service Charges	328.70
Contract Labor	180.00
Credit Card Fees	435.06
Dues & Subscriptions	185.00
Employee Gift	1,400.00
Fundraiser Expenses	14,929.09
Insurance	
Health	4,406.83
Liability Insurance	4,346.60
Vehicle	11,309.04
Work Comp	750.00
Total Insurance	20,812.47
Interest Expense	
Finance Charges	33.23
Loan	-25.36
Total Interest Expense	7.87
Internet Services	222.40
Jewish Com Cen	1,763.30
Licenses and Permits	1,605.13
Membership Fees	2,541.33
Mileage	6.40
Miscellaneous Expense	1,086.64
Office Supplies	2,036.10

HOUSE TAXATION

Attachment 5

Date 2-12-04

HCF
Profit & Loss
 January through December 2003

	Jan - Dec 03
Payroll Expenses	
Holiday	3,103.04
PTO	8,190.17
Wages - Administrative	36,417.35
Wages - Clients	4,127.13
Wages - Trainers	139,169.53
Total Payroll Expenses	191,007.22
Payroll Taxes	
FICA	13,795.93
FUTA	-47.34
SUTA	0.00
Total Payroll Taxes	13,748.59
Postage & Delivery	2,362.35
Printing & Reproduction	9,219.50
Professional Fees	
Accounting	1,862.81
Consulting	20.00
Total Professional Fees	1,882.81
Program Expense	
Day Services	131.40
Program Expense - Other	70.00
Total Program Expense	201.40
Rent	
CAM	3,954.42
Rent - Other	6,476.09
Total Rent	10,430.51
Repairs/Maintenance	
Building	317.02
Computer	470.64
Total Repairs/Maintenance	787.66
Supplies	877.85
Telephone	
Cell Phone	1,316.62
Telephone - Other	3,111.81
Total Telephone	4,428.43
Training Expense	
Mandt	870.00
Staff	1,377.60
Total Training Expense	2,247.60
Travel & Entertainment	
Entertainment	10.00
Travel	336.06
Total Travel & Entertainment	346.06
Uniforms	628.00
Utilities	
Gas & Electric	1,917.43
Total Utilities	1,917.43
Total Expense	298,752.89
Net Income	30,811.10

5-2



LEGISLATURE OF KANSAS
LEGISLATIVE DIVISION OF POST AUDIT

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Information for the House Taxation Committee on HB 2648

Barb Hinton, Legislative Post Auditor
February 12, 2004

Mr. Chairman and members of the Committee, thank you for allowing me to appear before you to provide background information on HB2648. This bill addresses an issue raised in our performance audit, *Taxes on Motor Vehicle Sales: Reviewing the Department of Revenue's Procedures for Ensuring That Correct Amounts of Sales and Compensating Use Taxes Are Paid*. During the audit, we found several cases in which vehicle dealers were allowed to continue operating even though they had a long history of not remitting the sales taxes they collected.

We looked at 7 of the 50 smaller used vehicle dealers Department field staff suspected weren't sending in all the sales tax they collected. We found fairly significant problems at 4 of those dealers, and observed that 3 of the 4 had long histories of avoiding the Department's collection efforts. The attached pages provide details of these cases.

In addition, at the time of the audit, the Division of Taxation's records showed accounts receivable of about \$7 million for approximately 500 vehicle dealers. Out of a sample of 11 dealerships with some of the largest accounts receivable, we found that 7 were continuing to sell cars—anywhere from 1-900 vehicles during 2002. These dealers owed from \$22,000 to \$436,000 each to the Department.

What we found led us to recommend that the Department take more timely action to revoke the licenses of vehicle dealers who repeatedly fail to remit sales tax they've collected. Records for 2001 and 2002 show that only 1 vehicle dealer's license was revoked for failure to pay retail sales tax during that time. This bill would make it mandatory for the Department to suspend or revoke a vehicle dealer's license after 3 consecutive months of failure to file returns and remit sales tax.

HOUSE TAXATION

Attachment 6

Date 2-12-04

- **Dealer #1 sold 12 vehicles in August 2002, but he didn't file a tax return or remit the \$2,016 in sales taxes he'd collected from customers for those vehicles.** In addition, the dealer volunteered that he hadn't remitted any sales tax at all in 2001 or 2002, and said he needed to "negotiate" with the Department.
- **Dealer #2 sold 21 vehicles in August 2002, but he didn't file a tax return or remit the \$11,053 in sales taxes he'd collected from customers for those vehicles.** In addition, our testwork showed this dealer failed to report and remit about \$1,400 of the nearly \$13,700 he'd collected in July, and he didn't file any returns or remit any taxes for the remainder of 2002. He had collected about \$13,500 in sales taxes in September and October; complete tax records for November and December weren't available at the time of our visit.
- **Dealer #3 sold 3 vehicles in August 2002 and remitted the \$113 in taxes he had collected from customers.** However, while tracing sales that had been entered into VIPS from other months, we discovered that in July the dealer sent in a return showing he owed \$940, but didn't send in any money. In September 2002, he also didn't file a return or remit the sales taxes he'd collected on the 5 vehicles he sold that month.
- **Dealer #4 sold 14 vehicles in August 2002 and remitted the \$2,283 in sales tax collected from customers.** However, while we were there the dealer told us that he had paid 2 of his sales tax remittances with worthless checks.

It's important to remember these 4 dealers weren't selected at random; they were among about 50 that were identified for us by Division of Vehicles staff as dealers who might not be remitting sales taxes. As a result, our findings shouldn't be considered representative of the practices of all small used car dealers.

In all, 3 of these 4 dealers have a long history of not remitting the sales taxes they had collected, yet the Department had allowed them to continue to operate. The problems we identified with the Department's enforcement actions related to each dealer are described below:

- **The Department has allowed at least 1 dealer to continue to operate without filing tax returns and without paying sales taxes for the past 5 years. He sold slightly more than 500 vehicles during that time.** Department records show that the last enforcement action on this account was taken in 1995, when the Department filed a successful tax levy against this dealer's bank account for nearly \$12,000 for taxes he hadn't remitted during 1992 and 1994. Although the Department's Taxation staff reviewed this account during March 1998 and made a decision to enforce collections, those efforts were never pursued.

In January 2003 (after a Department representative accompanied us on our visit to this dealer), the Department resumed collection efforts and mailed a tax statement for \$490,000 in taxes, interest, and penalties for sales taxes not remitted since 1997. Recently, the Department also attempted to file a tax levy against his bank account but it had been closed.

- **Dealer #2 hasn't filed returns and remitted sales taxes since August 2002, but the Department didn't send payment due notices until November.** The Department appears to be following its stated enforcement processes and timelines, which may not be enough to encourage this dealer to comply. The Department made telephone contact with the dealer in February 2003. In response, the dealer agreed to get his returns filed by February 21st. As of March 11th, this dealer hadn't filed the returns. During our fieldwork at this dealer, we determined that he failed to remit slightly more than \$30,500 in sales taxes that he collected from his customers from March to November 2002.
- **For dealer #3, the Department established 3 different payment plans during 2002.** Shortly after each payment plan was agreed-upon, the dealer failed to make a payment; thus breaking the terms of the agreement. Although the Department filed a tax warrant against the dealer after the second payment plan was broken, it didn't follow through with enforcing the warrant. Instead, the Department established a third payment plan which was just recently broken. Currently, this dealer owes the State about \$1,200 in vehicle sales tax.
- **More stringent enforcement actions aren't taken against dealers who've had a history of not remitting vehicles sales tax.** Dealer #4 has had a history of payment problems since at least 1996, and currently owes the Department at least \$300,000 in unpaid tax, penalties, and interest for vehicles sales taxes that should have been paid during calendar years 2000 and 2001, and other filing periods. During 2002 the dealer wrote 5 worthless checks to the Department for sales taxes owed. Over the years the Department has sent this dealer several demand letters, filed tax warrants against him, put levies on his bank account, and twice seized money from his cash register. This same dealer continued to sell vehicles and collect sales tax from buyers during this time, and was still in operation while this audit report was written.

The Department likely needs to review and revise its enforcement procedures to ensure that the enforcement actions it takes are appropriate and progressively more stringent.

This audit was never intended to assess the adequacy of the Department's tax enforcement efforts. However, the examples of the Department's enforcement efforts, listed above, suggest that there are likely problems in this area. In addition, during our audit, an internal Department task force found significant problems, including that the Department doesn't take enforcement action

against vehicle dealers who under-report sales tax owed, or who either don't remit or are late in remitting vehicle sales tax owed. **Profile 1-1**, on page 15 summarizes the main problems identified by the Department's internal task force, as well as the plan the Department has to ensure that dealers remit all the vehicle sales tax they collect.

Kansas law allows the Director of Motor Vehicles to deny, suspend, revoke, or refuse to renew a dealer's license if the dealer fails to remit vehicle sales tax. However, Department records for 2001 and 2002 show that only one vehicle dealer's license was revoked for failure to pay retail sales tax. We weren't able to tell whether any other dealers' licenses had been revoked before 2001; Department officials told us the information wasn't tracked before that year.

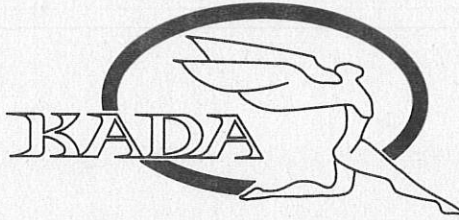
Division of Taxation records show there's currently about \$7 million in accounts receivable for about 500 vehicle dealers. The Department has determined that about \$230,000 of that amount is uncollectible; generally because the statute of limitations has run out. The remaining amount is somewhere in the Division's collections process, which might include phone calls reminding the dealer that the money is owed, or the Department issuing tax warrants or bank levies. We looked at a sample of 11 dealerships with some of the largest accounts receivable—and found that 7 of them had reported selling anywhere from 1 to slightly more than 900 vehicles during 2002. Each of these 7 dealers owe from \$22,000 to \$436,000 to the Department.

We Identified Some Instances Where Sales Tax Exemptions Were Claimed and Allowed Inappropriately

Certain entities or vehicles sales are exempt from retail sales tax, including vehicles purchased by nonprofit hospitals, educational institutions, or public or private K-12 schools; vehicles purchased for rental or lease (because taxes are paid as a part of the lease payments); and vehicles purchased and used in another state.

When a vehicle buyer presents a sales tax exemption certificate to a dealer, State law presumes the dealer took the certificate in good faith if 3 things happen: the dealer identifies the person presenting the certificate, the dealer keeps a copy of the certificate, and there's no evidence the exemption is improper. When presenting a sales tax exemption certificate to a county treasurer, the buyer has the burden of showing that the vehicle sale shouldn't be taxable. If there's any doubt about whether the vehicle is taxable, the county treasurer is supposed to collect sales tax.

Our testwork didn't identify any inappropriate exemption certificates for vehicles sales processed through county



KANSAS AUTOMOBILE DEALERS ASSOCIATION

February 12, 2004

To: The Honorable John Edmonds, Chairman
and Members of the House Taxation Committee

From: Don McNeely, KADA President

Re: HB 2648 – Suspension or Revocation of Vehicle Dealer’s License for failure to Remit
Sales Tax

Good morning Chairman Edmonds, and Members of the House Taxation Committee. My name is Don McNeely, President of the Kansas Automobile Dealers Association (KADA), a state trade association representing the retail franchised new car and truck industry in the state of Kansas.

On behalf of the franchised new car and truck dealers in Kansas, I would like to thank the Committee for the opportunity to offer a few comments in support of HB 2648. For the Committee’s information, since the release of the report by Legislative Post Audit regarding “Taxes on Motor Vehicles” last April, KADA has had extensive dialogue with the Department of Revenue. I would like to thank Secretary Wagon and her staff for the opportunity to work with them to ensure that all sales taxes that are collected by licensed motor vehicle dealers in the State is in fact remitted to the Kansas Department of Revenue.

While the report by Legislative Post Audit found the new car dealerships they sampled to have been calculating, collecting and remitting sales tax correctly, over fifty percent of the used vehicle dealerships sampled were not. Needless to say, our membership was quite upset and disgusted with the fact that these licensed motor vehicle dealerships were allowed to continue to operate without remitting the trust taxes they had collected from their customers. In one case, one used car dealer had not remitted any sales tax for the past five years and one owed the State at least \$300,000.

I would like to compliment Secretary Wagon and her staff for immediately responding to this situation and implementing policies and procedures to ensure that sales taxes collected on the sales of motor vehicles are in fact remitted to the State, and that those bad actors, which give the entire industry a black eye, are dealt with appropriately.

On behalf of the Kansas Automobile Dealers Association, I thank the Members of the Committee for allowing me to appear before you this morning in support of HB 2648.

HOUSE TAXATION

Attachment 7

800 S.W. Jackson, Suite 1110 • Topeka, KS 66611 Date 2-12-04

Telephone (785) 233-6456 • Fax (785) 233-1462



K A N S A S

JOAN WAGNON, SECRETARY

DEPARTMENT OF REVENUE
OFFICE OF THE SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony to House Taxation Committee Joan Wagon

February 12, 2004
House Bill 2648

Chairman Edmonds and Members of the Committee:

House Bill 2648 would amend K.S.A. 8-2411 to provide for mandatory suspension or revocation of a vehicle dealer's license by the Director of Motor Vehicles if a dealer has failed to file sales tax returns or remit sales tax for a period of three consecutive months. The Department strongly supports this proposal as an effective tax compliance tool.

Legislative Post Audit (LPA) noted a compliance problem area concerning used car dealers failing to remit the sales tax they collected. According to a LPA's report dated April 2003, there are approximately \$7 million in sales tax accounts receivable for about 500 vehicle dealers. The Department determined that \$230,000 of this is uncollectible, because the statute of limitations has expired. Passage of this bill should help to expedite recovery of the outstanding delinquent balance. LPA recommended that the Department use the dealer license revocation administrative process as a means of encouraging delinquent dealers to become current on their sales tax remittance and reporting obligations. The Department has followed that recommendation. In the past year, the Division of Motor Vehicles revoked 13 motor vehicle dealers' licenses, and placed 13 dealers on payment plans, pursuant to K.S.A. 8-2411(29), which provides authority to revoke or suspend for violations of the sales or withholding tax laws. As a result, we have collected was \$550,686.71 in sales tax from delinquent motor vehicle dealers.

The Director of Motor Vehicles has discretion to suspend or revoke a dealer's license for violations of the sales or withholding tax laws. However, statutorily mandating dealer license suspension or revocation for a 3-month sales tax delinquency will add teeth to K.S.A. 8-2411 and the dealer license revocation process. It establishes a clear standard of behavior and strong link between the privilege to do business and the obligation to timely report and remit the sales tax collected on motor vehicle sales.

This proposal is also consistent with other Department initiatives for a tax clearance process for renewal of professional licenses (Senate Bill 468; House Bill 2776), and for issuance or renewal of liquor licenses (Senate Bill 414; House Bill 2680).

The Department recommends that the bill be amended to require that employer withholding taxes be current as a condition for continuance of a dealer's license. A balloon amendment is attached.

HOUSE TAXATION

Attachment 8

Date 2-12-04

DOCKING STATE OFFICE BUILDING, 915 SW HARRISON ST., TOPEKA, KS 66612
Voice 785-296-3041 Fax 785-296-7928 <http://www.kansas.gov>

HOUSE BILL No. 2648

By Committee on Taxation

1-29

AN ACT concerning taxation; relating to suspension or revocation of vehicle dealer's license for failure to remit sales tax; amending K.S.A. 8-2411 and repealing the existing section.

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

Section 1. K.S.A. 8-2411 is hereby amended to read as follows: 8-2411. (a) When any licensee is found to be allegedly violating any of the applicable provisions of this act, or any order or rule and regulation adopted pursuant thereto, the director upon the director's own motion or upon complaint may commence a hearing against the licensee, which hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(b) Any person who is found to have violated any applicable provisions of this act, any rule and regulation adopted pursuant thereto or any applicable order of the director shall be subject to a civil penalty of not less than \$50 nor more than \$1,000 for each violation or such person's license may be suspended or revoked or both civil penalty and license suspension or revocation, *except that in addition to any civil penalty imposed pursuant to this subsection, the director shall suspend or revoke the license of any person who is found to have violated the provisions of K.S.A. 79-3601 et seq., and amendments thereto, by the failure to file returns and remit sales tax as required pursuant to K.S.A. 79-3607, and amendments thereto, for three consecutive months.*

(c) Any party aggrieved by the decision of the director may appeal the same to the district court in accordance with the provisions of the act for judicial review and civil enforcement of agency actions.

Sec. 2. K.S.A. 8-2411 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

K.S.A. 79-3294 et seq. or

employer withholding tax as required pursuant to K.S.A. 79-3298, and amendments thereto, or