

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman John Edmonds at 9:00 a.m. on March 24, 2004 in Room 519-S of the Capitol.

All members were present.

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:  
Harriet Lang, Kansas Association of Broadcasters  
Terry Atherton, General Manager of KSGI Radio  
Robert O'Connor, Stinson, Morrison & Hecker, LLP  
Kathy Damron, PIXIUS

Others attending:

See Attached List

Chairman Edmonds called the meeting together asking if there were any bill introductions. Hearing none, he opened the meeting for public hearing on **SB 478**.

Harriet Lange with the Kansas Association of Broadcasters was recognized in support of **SB 478** stating that their member radio and television stations in Wichita have been impacted by the Sedgwick County Appraiser's unilateral decision to appraise all towers as "real" property rather than "personal" property. Her argument is that radio and television broadcast towers are not "permanent" fixtures, but rather movable or "removable". ([Attachment 1](#))

Agape Communication in Wichita was represented by Terry Atherton, General Manager who presented testimony in favor of **SB 478**. Mr. Atherton related that they were notified last year by the appraiser's office that the classification of their towers would be changed from personal property to real property. Since they own seven towers the classification change would result in a dramatic change in their evaluation and consequently in their tax bill. He further stated that this change in classification has placed them in a serious position and could mean the difference in whether they stay in business or not. ([Attachment 2](#))

Next to bring testimony in support of **SB 478** was Robert O'Connor of Stinson, Morrison and Hecker, Wichita, Kansas. Mr. O'Connor is counsel for and represents Brad Murray Rentals, M&P Rentals, Verizon Wireless and American Tower Corporation. They now have a case pending before BOTA (Board of Tax Appeals) regarding the classification of cell towers from personal property to real property. It is their opinion that cell towers are properly classified as personal property under the "three prong" test of In re Equalization Appeals of Total Petroleum, Inc., 28 Kan. App. 2d, 16P.3d981 (2000). ([Attachment 3](#))

Kathy Damron appeared before the committee to testify in support of **SB 478** representing Pixius Communications, LLC. Ms. Damron submitted the testimony which they had submitted before the Senate Committee Assessment and Taxation Committee on February 19, 2004. This testimony related that the classification of wireless communication towers, antennas and relay sites have a critical role in the cost structure of Pixius' business. Any tax increase to the landowner or tower owner would be passed through to the tenants of the towers. This increase would have a negative financial impact on Pixius' ability to provide broadband data communications services to underserved areas in Kansas. ([Attachment 4](#))

Written testimony was submitted on behalf of the Office of the County Counselor Sedgwick County, Kansas in support of **SB 478**. ([Attachment 5](#))

The Chairman closed the public hearing on **SB 478** and asked the revisor to prepare a balloon to be labeled substitute for **SB 478** which would make it clear that such towers as enumerated, regardless of use, are real property.

Chairman Edmonds directed the committee's attention to **HB 2897** relating that this bill deals with gas storage issues as they have arisen in Meade County and elsewhere.

CONTINUATION SHEET

MINUTES OF THE HOUSE TAXATION COMMITTEE at 9:00 a.m. on March 24, 2004 in Room 519-S of the Capitol.

Representative Powers made a motion to move **HB 2897** out favorable for passage. The motion was seconded by Representative Faber.

Representative Kirk had a note that this bill might need clarifying language having to do with trucks and railroads.

Gordon Self from the Revisor's Office explained that the language that is stricken on Page 1, Lines 18 and 19 was because there was a conferee or two who was concerned about that. Bill was drafted according to what was requested.

Representative Goering will be opposing this bill because he thinks the practical effect will be that those companies who simply store natural gas in Kansas are going to be classified as utilities whether they simply store their gas here or whether they have gas moving through pipelines here. He stated that he didn't think that was what they wanted to do. He thinks that is a bad move.

Representative Brunk concurs with Representative Goering.

Representative Siegfried also opposes the bill. However, if the bill passes out, he wonders if it would be possible to add language to the bill as applying to interstate trucks, railroads or aircraft commerce. The Chairman answered with a positive response.

Representative Schwas concurs with Representative Goering.

Vote was taken. Division was requested with a count of 11 to 10. Motion was adopted.

Representative Goico wished to be recorded as voting no.

Chairman Edmonds turned the committee's attention to **SB 390** which has not been heard by the committee.

Representative Larkin made a motion to put language into **SB 390** which would add the definition of resident trust and close the loop hole in the law.

It was explained that this carries a positive \$5.9 million fiscal note.

Vote taken. Division requested. Bill amended with a count of 12 to 11.

Representative Faber wished to be recorded as voting yes.

Representative Kirk made a motion to changing Page 1 of **SB 390** from \$3,000 to \$6,000 annual income amount. Representative Sawyer made a second to the motion.

Vote taken. Bill amended.

Representative Larkin made a motion that **SB 390** be moved out as amended favorable for passage. Representative Davis made a second to the motion. Vote was taken. Motion adopted.

The Chairman turned attention to **HB 2891** and asked the pleasure of the committee.

Representative O'Malley made a motion that **HB 2891** be moved out favorable for passage. Representative Owens made a second to the motion. Vote was taken. Motion adopted.

Chairman Edmonds directed committee attention to **HB 2591**, however, with the lack of time he withdrew and announced that the committee would reconvene after session.

Meeting adjourned at 10:30 a.m.





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Testimony before House Committee on Taxation  
Regarding SB 478  
March 24, 2004  
Harriet Lange  
President/Executive Director

Mr. Chairman, Members of the Committee, I am Harriet Lange with the Kansas Association of Broadcasters. KAB serves a membership of radio and television broadcast stations in Kansas. We appreciate the opportunity to appear before you today in support of SB 478.

Our member radio and television stations in Wichita have been impacted by the Sedgwick County Appraiser's unilateral decision to appraise all towers as "real" property rather than "personal" property. Along with the change from "personal" to "real", property tax bills increased dramatically.

My focus will be on why broadcast towers should continue to be appraised as tangible personal property. One of our members – Terry Atherton of KSGI AM and KMYR AM, Wichita - will testify to the practical impact on his stations of the Sedgwick County Appraiser's action.

Radio and television broadcast towers are not "permanent" fixtures, but rather are movable or "removable". Broadcast towers are correctly defined as tangible personal property. Consider these facts:

- The Federal Communications Commission or the FAA may require that a broadcast tower be moved to comply with its regulations.
- Lease agreements for land on which towers are placed many times require that the tower be removed at the end of the lease. The tower is of no value to anyone other than the license holder for the radio or television station.
- Broadcast towers do not generate revenue for stations, but rather are the "distribution" method in the production process.

HOUSE TAXATION  
Attachment 1  
Date 3-24-04

- And finally, the Kansas Department of Revenue's Personal Property Valuation Guide suggests that radio and television towers should be appraised as personal property.

The fact that an unelected government bureaucrat can significantly change the definition of property for tax purposes, with impunity and without regard to the facts, is troubling. To rectify the situation in Sedgwick County, we urge you to pass SB 478.

Thank you for your consideration.



Good morning. I'm Terry Atherton with Agape Communications in Wichita. I manage two AM radio stations for our family owned business- KSGL and KMYR. KSGL is a Christian format, and on KMYR we play an oldies format of the old standards by folks like Frank Sinatra, Nat "King" Cole, and Doris Day.

Thank you for this opportunity to share with you my concerns and personal experience about the tower taxation situation in Sedgwick County.

We were notified early last year by the appraiser's office that the classification of our towers would be changed from personal property to real property. Since we have seven towers for our two AM radio stations this resulted in a dramatic change in our evaluations, and consequently our tax bill. Property valuations went from \$2,000.00 to over \$50,000.00 for a single tower and the dramatic rise on our KMYR property assessment from \$50,000.00 to over \$600,000. This resulted in a tax bill for the first half that was more than double our whole year's payment last year.

The county seems to believe that we make our money from our towers. Nothing could be further from the truth. We make our money from advertising revenue. No one leases space on our towers. Our towers are another piece of the broadcasting puzzle that helps us produce a signal that you hear through your radio. You receive that signal free of charge, I might add. We have two stations that produce directional signal patterns. KSGL uses two towers in an east-west directional pattern. Two towers for one signal. KMYR has a more complex pattern, and requires five towers to make our directional pattern that protect broadcasters in other parts of the state. We don't make five times the revenue because we require five towers. Quite the contrary. It takes just that much more upkeep to keep us operational.

On a side note to all this. Last May we had a fire that destroyed the building that housed our KMYR transmitter and all the other equipment (phasors, processors, remote control, ect.). Since then we have been operating with reduced power, and using only one tower, the other four sitting idle. We're trying to rebuild, but we have had to use some of our insurance money to pay the county's tax bill, and will have to use another nine thousand plus dollars to pay the second half in May if something isn't done to resolve this before then.

It was interesting to see the arbitrary valuation the county placed on these fifty-year-old towers. The KSGL towers we valued a little lower than the KMYR towers, and the KMYR towers actually had a higher valuation than the KFDI towers to the north of us.

The predicament the county has placed us in is a serious one. It could mean the difference in whether we stay in business or not, and our ability to restore our fire damaged facility.

Thank you for your concern in this matter, and it is my hope that this situation will be corrected.

Terry Atherton

  
General Manager  
KSGL/KMYR

HOUSE TAXATION

Attachment 2

Date 3-24-04



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March 24, 2004

Chairman John Edmonds  
Capitol Building  
300 S.W. 10<sup>th</sup> St., Rm. 171 West  
Topeka, Kansas 66612

Re: Senate Bill 478

Dear Chairman Edmonds:

This letter supports passage of S.B. 478.

I am counsel for several cell tower owners in cases arising out of Sedgwick County and now pending before the Kansas Board of Tax Appeals.

For 2003, Sedgwick County re-classified all cell towers from personal property to real property, and valued them as commercial real property. The result was to increase cell tower valuations from three-fold to 12-fold compared to 2002. Prior to 2003, Sedgwick County had classified and valued cell towers as personal property, and for 2003 and all prior years, all other Kansas counties have classified and valued cell towers as personal property.

Cell towers are structurally identical to radio station, television, citizens band and cable tv towers. Since the 1989 state-wide reappraisal through the April, 2003 revision, the Property Valuation Department's Personal Property Guide has specifically classified radio station, television, citizens band and cable tv towers as personal property. Cell towers have never been classified specifically in that Guide. I am advised that PVD does not intend either to change the classification of those towers nor to make a specific classification provision of cell towers, pending the current BOTTA proceedings.

Cell towers are properly classified as personal property under the "three

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HOUSE TAXATION

Attachment 3

Date 3-24-04

Chairman John Edmonds  
March 24, 2004  
Page 2

600 Commerce Bank Center  
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prong" test of In re Equalization Appeals of Total Petroleum, Inc., 28 Kan. App. 2d, 16 P.3d 981 (2000).

The January 1, 2002 effective date of S.B. 478 would terminate all pending Sedgwick County BOTA cases which raise these cell tower issues.

Present K.S.A. 79-430 will remain necessary, whether or not S.B. 478 is enacted. It is/will be necessary to do two things: (1) to require the "split out" of the interests of the landowner-tower site lessor and the interests of the tower owner-lessee, and (2) to provide the classification status of the tower site leased land.

Thank you for considering this letter.

Sincerely,

STINSON MORRISON HECKER LLP

Robert J. O'Connor

KANSAS CITY  
OVERLAND PARK  
WICHITA  
WASHINGTON, D.C.  
PHOENIX  
ST. LOUIS  
OMAHA  
JEFFERSON CITY

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Presentation by  
Jay S. Maxwell, Managing Member  
Pixius Communications, LLC

Before the Senate  
Assessment and Taxation Committee  
February 19, 2004

Chairman Corbin and Members of the Committee:

Thank you for the opportunity to appear before you today on behalf of Pixius Communications, LLC about the personal property classification of wireless communication towers, antennas and relay sites. My name is Jay Maxwell. I am the Managing Member for Pixius.

At Pixius our mission is to provide broadband data communications services to underserved areas in Kansas. Primarily, these areas are located in rural Kansas. However, there are additional underserved pockets within metropolitan areas that do not have access to broadband services.

Pixius Communications, LLC provides broadband service to its customers over a wireless data communications network. The network operates similar to that of a cellular network in that Pixius leases space on cell towers to broadcast data to their customers. Please don't confuse the Pixius service with the data communications offerings from PCS carriers such as Sprint. The Pixius service provides data throughput at much higher rates than a PCS carrier and is fixed, not mobile service.

The classification of wireless communication towers, antennas and relay sites have a critical role in the cost structure of Pixius' business. Any tax increase to the landowner or tower owner would be passed through to the tenants of the towers. This increase would have a negative financial impact on Pixius' ability to provide broadband data communications services to underserved areas in Kansas. Since this legislation is crucial to Pixius' business, let's ask and answer a few questions.

*What happened to property taxes in Sedgwick County?*

Sedgwick County landowners having cell towers on their property have seen their tax values and tax bills increase from a modest 2-3 times to more than 20 times last year's amount. In conversations with owners that lease tower space to Pixius, we have heard instances of valuation increases as dramatic as:

- From \$14,269 to \$151,100 per year
- From \$7,000 to \$75,000 per year
- From \$15,025 to \$302,200 per year

HOUSE TAXATION

Attachment 4

Date 3-24-04

*Why did this increase occur?*

This dramatic increase occurred because in 2003 the Sedgwick County Appraiser's office reclassified cell towers from personal property to commercial real property. No other Kansas county reclassified except Sedgwick County. In fact, for as long as cell towers have been taxed in Kansas, Sedgwick County and all the other Kansas counties have classified cell towers as personal property.

*Why should cell towers be classified as personal property?*

The determination of whether property is real or personal must be made on a case-by-case basis. The three tests that comprise the fixture law test are:

- annexation
- adaptability
- intent

All three tests must be considered.<sup>1</sup> Let's look at each.

- *Annexation:* Towers rest on a concrete pad and sometimes are anchored by three sets of guyed wires. To restore the land to its original condition, the tower, concrete pad and guyed anchors must be removed. As a condition of obtaining a ground lease, landowners require that the tower equipment be removed and the land be returned to its original condition. TEST PASSED
- *Adaptability:* The basic function of a cell tower is to broadcast radio waves. Products sold to customers by carriers who lease space on these towers use radio waves. Since the tower is involved in the production of the product, it is personal property. TEST PASSED
- *Intent:* Lease agreements state that the tower owner will remove the tower and all associated facilities and return the land to its original condition at the termination of the ground lease. The intent of both parties is that the tower not become a permanent structure. TEST PASSED

*How will this taxation impact the wireless industry?*

Most land lease agreements have tax pass-through clauses, which allow the landowner to pass all the property tax on to the tower owner for payment. In one situation if the landowner took the initial steps at the County level to seek tax relief, but failed to follow through on the required later procedural steps at the

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<sup>1</sup> 2004 Personal Property Valuation Guide, Classification and Assessment, Real Property v. Personal Property – Revised 12/2003

County or State Board of Tax Appeals levels, his failure to proceed would terminate the tower owner's rights to seek tax relief. In another situation, the landowner may not have sought relief from 2003's increased tax and simply paid their bill. The landowner would then seek reimbursement from the tower owner for a share of those taxes under the "pass-through" clause in their ground lease.

This continues as the tower owner would then "pass-through" their tax increase to the tower lessee. This is Pixius.

*How will this impact the wireless customer?*

Wireless customers include cellular/PCS customers, paging customers and wireless data communications companies. Each of these customer types typically has fixed price contracts with their customers so the service provider cannot recover the tax increase from the current subscriber base. The result is the cost to future subscribers will be higher. Will the increase in cost hinder the growth of limited services? Probably. Will this have an adverse impact on economic growth, the delivery of health care service and education in Kansas? Definitely.

In conclusion, so that Pixius and other wireless service providers may continue to provide economical and reliable service to Kansas, I urge you to support the passage of SB 478. This service is essential to the continued economic development of Kansas.

Thank you.



OFFICE OF THE COUNTY COUNSELOR  
SEDGWICK COUNTY, KANSAS

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Assistant County Counselor

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TO: HOUSE ASSESSMENT AND TAXATION COMMITTEE

FROM: PATRICIA J. PARKER, ASSISTANT COUNTY COUNSELOR  
SEDGWICK COUNTY, KANSAS

RE: SENATE BILL 478

DATE: MARCH 24, 2004

*PJP*

Chairman Edmonds and Committee Members, I am Patricia Parker, A.A.S., writing on behalf of the Sedgwick County Appraisal Office.

The Sedgwick County Appraisal Office has classified and valued wireless communication towers as commercial real property for tax years 2003 and 2004. That classification and valuation has been appealed by tower owners to the State Board of Tax Appeals. There are currently 29 tower related cases pending at the Board. 22 of them are set for trial before BOTA in August, 2004. The issue is the same in all the cases, i.e. whether the wireless communication towers are real property and valued at fair market value or personal property and valued at retail cost when new, less depreciation.

The Sedgwick County Appraisal Office maintains that these towers are real property. **First, they are real property because they are fixtures.** The fixture test was recently reiterated by the Kansas Court of Appeals in In re Equalization Appeals of Total Petroleum, Inc., 28 Kan.App. 2d 295, 16 P.3d 981 (2000). The Court noted that the test in Kansas for determining whether personal property becomes a fixture is: 1) annexation to the realty; 2) adaptation to the use of that part of the realty to which it is attached; and 3) the intention of the party making the annexation. The property in dispute were oil refinery tanks and towers. The Court applied the fixture test to the property and held that they were indeed fixtures, thus should be classified and valued as real property. The facts of each case will differ and must be weighed in light of the fixture test. **Secondly, they are real property because K.S.A. 79-430 defines them as real property.** K.S.A. 79-430 states:

"79-430. Listing and taxation of certain leased portions of real property. For all purposes associated with property taxation, the provisions of K.S.A. 79-412 notwithstanding, that portion

HOUSE TAXATION

Attachment 5

Date 3-24-04

of the fair market value of real property attributable to the leasing of real property, or the creation of any other interest of less than fee simple in real property, for the purpose of the placement of a wireless communication tower, antenna or relay site upon the real property, shall be entered on the assessment roll separate from the remaining fair market value. Such portion of the fair market value shall be separately taxed to the owner of such wireless communication tower, antenna or relay site as real property at the same classification and same tax rate as the real property upon which the wireless communications tower, antenna or relay site is located except that, in the event the real property upon which the wireless communications tower, antenna or relay site is located is exempt from property taxation, such real property shall continue to be exempt from property taxation, except that portion of the fair market value of such tax-exempt real property attributable to the leasing of such tax-exempt real property, or the creation of any other interest of less than fee simple in such tax-exempt real property, for the purpose of the placement of a wireless communications tower, antenna or relay site upon such tax-exempt real property, shall be taxable and shall be assessed to the owner of such wireless communications tower, antenna or relay site as real property at 25% of value. Such tax shall be a lien on the interest in the real property of such owner of the wireless communications tower, antenna or relay site and shall be collected in the same manner as the collection of other taxes on real property.

1. **History:** L. 1997, ch. 126, § 37; July 1.”

Another statute that must be noted when looking at K.S.A. 79-430 is K.S.A. 79-102. That statute defines certain terms used within the taxation act. K.S.A. 79-102 provides in pertinent part:

**“79-102. Words and phrases.** That the terms "real property," "real estate," and "land," when used in this act, except as otherwise specifically provided, shall include not only the land itself, but all buildings, fixtures, improvements, mines, minerals, quarries, mineral springs and wells, rights and privileges appertaining thereto...”

1. **History:** L. 1907, ch. 408, § 1; July 1; R.S. 1923, 79-102.”

A logical reading of these statutes would lead one to conclude that the legislature created a statute which specifically handles the issue of appraisal and assessment of land and the towers on the land apart from the more general statute found at K.S.A. 79-412 which provides for the separate assessment of buildings on leased ground if the lease is filed with the Register of Deeds Office. It appears the legislature has declared wireless communication towers to be valued and assessed as commercial real property at the same assessment rate at which the land supporting said towers are assessed. Furthermore, any delinquent taxes accruing on the property attributable to the tower owner shall be a lien on the interest of the real property of the tower owner and shall be collected in the same manner as the collection of other taxes on real property.

The Sedgwick County Appraisal Office requests that this committee not favorably recommend SB 478 and allow the pending litigation to run its course.

Thank you for your attention.