

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman Kenny Wilk at 9:00 A.M. on February 1, 2005 in Room 519-S of the Capitol.

All members were present except:

Representative Paul Davis- excused

Committee staff present:

Chris Courtwright, Legislative Research Department

Martha Dorsey, Legislative Research Department

Gordon Self, Revisor of Statutes

Richard Cram, Department of Revenue

Rose Marie Glatt, Committee Secretary

Conferees appearing before the committee:

Laurel Murdie, Post Audit

Representative Peck, Legislator

Representative Lane, Legislator

Eileen King, Riley County Treasurer & Representative of Kansas County Treasurer Association

Dave Corbin, Department of Revenue

Others attending:

See attached list.

The Chairman opened the floor for bill introductions

Representative Peck made a motion that a Committee bill be introduced regarding a time table on tax abatements. Representative Carlson seconded the motion. The motion carried.

Representative Peck made a motion that a Committee bill be introduced regarding an amendment on a tax exemption certification. Representative Carlson seconded the motion. The motion carried.

SB 23 - Sales tax calculation for isolated sale of motor vehicles - sales tax refunds

The Chairman called the Committee's attention to **SB 23**, stating that **HB 2003** and **HB 2101** would be included in the general discussion, as all the bills pertain to the same subject matter.

Mr. Courtwright stated that all the bills would repeal the 2004 law regarding the isolated or occasional sale of motor vehicles. He distributed copies of the 2004 Interim Committee report and the supplemental note on **SB 23** (Attachment 1). He reviewed: (a) background of the Legislative Post Audit, released in April 2003 that identified a concern over the dollar amount of transactions reported on sales between private individuals, (b) historic time line of Senate and House bills and (c) Committee activities and their recommendations. He stated that **SB 23** basically repealed the law and would make refunds available to taxpayers who paid sales taxes in FY 2004 based on the property tax valuation schedule. The fiscal note of \$5 million was reviewed.

Discussions followed regarding: the rationale behind deleting the Pennsylvania plan from **SB 23**, previous process of flagging specific tax collections when a county treasurer questioned the purchase price, rules and regulations, various scenarios in which extraordinary purchase price could be justified, and percent of fraudulent transactions.

Laurel Murdie, Legislative Post Audit, distributed a *portion* of the Performance Audit Report, April 2003 (Attachment 2) that related to privately sold motor vehicles. She provided the background on their findings and reviewed Table I-3 (page 18) of testimony stating that in their sampling of 80 private vehicle sales from calendar year 2002, nearly half were 59% below the lowest NADA value. If county treasurers were adhering to the Department's regulation, the State could receive several million dollars each year in additional sales taxes from private vehicle sales. She stated their conclusion (page 23, #4) would be to ensure that privately sold vehicles are taxed at fair market value, the Department should actively direct county treasurers to enforce the Department's regulation, and should provide them with clear, consistent guidance on how to determine fair market value of a vehicle. Alternatively, if Department officials think the regulation can't be effectively

CONTINUATION SHEET

MINUTES OF THE House Taxation Committee at 9:00 A.M. on February 1, 2005 in Room 519-S of the Capitol.

enforced, they should amend or revoke it. **SB 23** does not address the original problem stated in the audit report.

Discussion followed regarding the differences in the regulations in place prior to the 2004 law.

*The regulation before July 2004: The tax collected for privately sold vehicles would be based on the **actual selling price** that was shown on the back of the title, having been written in by the buyer or seller. If the amount was not known (blank), the county treasurers would base it on the fair market value of the vehicle. If the dollar amount written was questionable the county treasurer had the authority to assess the fair market value (average NADA value). That regulation was not being enforced.

*The new regulation after July 2004. The law amended the sales tax law to provide that in the case of isolated sales of motor vehicles, the tax was to have been charged on the **greater of the stated selling price or to valuation of the motor vehicles** (average NADA fair market value) pursuant to the motor vehicle tax law. An exception was provided for "damaged or wrecked" vehicles, for which the sales tax would be charged on the actual selling price.

Mr. Self explained the differences between the three bills before the Committee:

SB 23: Contains repeal language and a mechanism for refund with a filing limitation of six months and no refund would be made for less than \$10.

HB 2003: Contains only the repeal of the controversial language and returned the law to the way it was prior to the last session.

HB 2101: Repeals the controversial language and provides a refund mechanism.

In response to a question about the fiscal note, Mr. Courtwright responded that under current law the state will bring in approximately \$5 million FY 2005. If **SB 23** was enacted there will be a loss of some combination of \$5 million by foregone revenue and refunds.

The Chairman opened the Public Hearing on **SB 23 & HB 2003 & HB 2101**.

Representative Lane appeared in support of **HB 2003**, a bill that was pre-filed by Representatives Dillmore, Ward and Lane in response to the "Clunker Bill" (Attachment 3). He suggested that the Committee amend **HB 2003** into **SB 23** in order to expedite the passage of the bill. Refunds would be handled by another bill.

Eileen King appeared as a proponent of **SB 23** stating that the Kansas County Treasurer's Association (KCTA) strongly supports the bill in the repeal of the 2004 legislation (Attachment 4). She delineated the process used to title cars at the county level and suggested flagging questionable transactions for follow-up at the state level.

Mr. Corbin, Department of Revenue recalled the circumstances under which the Senate recommended the new regulation in 2003, while he served as the Chairman of Senate Taxation committee.

The Chairman requested that staff provide copies of the regulation before passage of the new regulation. Copies were distributed (Attachment 5).

The public hearing on **SB 23, HB 2003 & HB 2101** was closed. The meeting was adjourned at 10:25 a.m. The next meeting is February 2, 2005.

HOUSE TAXATION COMMITTEE GUEST LIST

DATE: Feb 1, 2005

NAME	REPRESENTING
Eileen King	KCTA & Riley Co.
LARRY R. B. CASER	LKM
George Petersen	Ks Taxpayers Network
Carmen Aldritt	KDOR - Vehicles
Diane Albert	" "
Richard Cram	KDOR
Roger Hamm	KDOR - PVD
Rep HAROLD LANE	
April Holman	Kansas Action for Children
Tim Gyles	(J)
SCOTT SEER	
David Dick	KS Credit Union Assn.
David Corbin	KDOR
Cheri Froetschner	Day of Budget +
Whitney Damm	KS Automobile Dealers Assn.
Janelle Nuassen	Hein Law CO Firm
Danielle Noe	Johnson County

Special Committee on Assessment and Taxation

TAX ON ISOLATED SALE OF MOTOR VEHICLES

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends the introduction of legislation that would repeal the 2004 law retroactive to July 1, 2004, regarding the isolated or occasional sale of motor vehicles; would provide for the payment of refunds under certain circumstances to taxpayers adversely affected by the law; would implement a new system wherein certain reported sales prices would be subject to verification by Department of Revenue audit and compliance staff; and would require that paperwork completed at the time of isolated or occasional vehicle sales advise sellers and buyers of the legal consequences of reporting false selling prices.

The Committee further strongly recommends that the 2005 Legislature analyze the motor vehicle property tax system and consider enacting changes that would reduce the over-stated valuations for many types of vehicles.

Proposed Legislation: The Committee recommends the introduction of one bill on this topic.

BACKGROUND

Legislative Post Audit (LPA) 03-09, released in April, 2003, reviewed sales tax collections on motor vehicles and the Department of Revenue's procedures for ensuring that correct amounts of sales and compensating use taxes are paid.

One issue identified in that audit related to a concern over the dollar amount of transactions reported on sales between private individuals. The report found that "nearly half the vehicles we reviewed that were sold privately were reported as being sold for significantly less than fair market value." (emphasis in the original)

The audit recommended that the Department direct county treasurers to enforce the then-existing regulation on determining the fair market value of privately sold vehicles. That regulation (KAR 92-19-30) generally required county treasurers to attempt to collect taxes based on the "fair market value" of the vehicles when the reported sales prices did not seem reasonable as compared with the average retail value for the vehicles published in the National

Automobile Dealers' Association (NADA) guidebook.

The Legislative Coordinating Council (LCC) in 2003 asked that the private-sales issue be reviewed as part of a broader interim study topic relating to motor vehicle sales tax collections that focused more extensively on compliance by vehicle dealers. During that interim study in 2003, staff from Post Audit went over the findings of LPA 03-09. With respect to the private-sales issue, Secretary Wagnon said that she believed that the aforementioned regulation put too much responsibility on county treasurers and their staffs and said the regulation should be changed, preferably based upon some sort of statutory guidance.

The 2003 Special Committee subsequently wrote in its final report:

"The Committee also wishes to express its concern about the apparent widespread fraud which may be occurring in private transactions involving vehicle sales to the extent that the amount of such sales is intentionally under-reported.

The Committee therefore recommends that the Department of Revenue prepare legislation for introduction in January that would . . . “provide clear statutory guidance with respect to when the amounts reported for certain private sales are deemed to be questionable and should be replaced by a proxy estimate of the vehicle’s value.”

The legislation that ultimately was introduced to address the issue was SB 372. The bill sought to amend the sales tax law to provide that in the case of isolated sales of motor vehicles or trailers, the tax was to have been charged on the greater of the stated selling price or to valuation of the motor vehicles or trailers pursuant to the motor vehicle (property) tax law (KSA 79-5105 *et seq.*). An exception was provided for “damaged or wrecked” vehicles, for which the sales tax would be charged on the actual selling price. Also excluded from the proposed new sales tax requirement were certain kinds of vehicles which were not valued pursuant to the motor vehicle tax law in the first place (trucks over 16,000 pounds; recreational vehicles; manufactured homes; buses; electric; specialty; assembled; antique; homemade; vehicles 15 years and older; and certain military vehicles), which were to continue to be taxed on the stated selling price. The estimated fiscal impact for the proposed change in law was an increase in State General Fund receipts of \$2.0 million.

SB 372 was approved by the Senate on a 25-15 vote on February 27. The provisions of SB 372 also were later inserted as a Senate floor amendment into HB 2745. That bill was approved by the Senate by a vote of 39-0 on March 18.

At the conclusion of the 2004 Session, the taxation conference committee reviewed all extant tax legislation (including SB 372 and HB 2745) which had been approved by either the Senate or the House and had not yet been approved by the full Legislature. Conferees agreed to insert the private-sale provisions into the conference committee report on H Sub SB 147. The conference committee report was approved by the Senate

40-0; and by the House 109-11 on May 5. The Governor on May 20 signed the measure, which included among its other provisions a repeal of the sales tax on computer software customization services; enactment of a new exemption for aircraft repair and replacement parts; and an extension to January 1, 2005, of the mandate that retailers comply with destination sourcing for purposes of the multistate Streamlined Sales Tax Agreement. The fiscal impact of the entire conference committee report for FY 2005 was estimated to be revenue neutral. Generally, the amount of new revenues produced from changes in the franchise tax law and from the new motor vehicle sales tax provisions were offset by the estimated loss in revenues attributable to several new sales tax exemptions.

In response to a number of complaints about the new law relating to private vehicle sales, which became effective July 1, the LCC in August added a charge to the 2004 Special Committee to “review the law enacted in 2004 that sets the price for sales tax purposes of the isolated or occasional (private) sale of most motor vehicles at the higher of the reported selling price or the value of the vehicles for property tax purposes.” The Committee also further is required to “consider whether the new law should be amended or repealed altogether and make any recommendations deemed appropriate to the 2005 Legislature.”

COMMITTEE ACTIVITIES

At its September meeting, the Committee reviewed the 2003 Post Audit that had identified the private vehicle sales issue as a potential problem. Secretary Wagnon said that if the Legislature were to consider other alternatives to using the property tax value as a proxy for fair market value for the private sales, it had become increasingly clear that the NADA guidebook was not necessarily the best source to use. She cited one recent example wherein a 1999 Aurora V-8 four door sedan had sold for \$6,500. The NADA guidebook suggested that the vehicle’s value was \$8,925; and the current law requiring

that the motor vehicle (property) tax valuation be used for sales tax purposes required that tax be paid on a transaction of \$13,755. She noted that one of the biggest problems in using the motor vehicle tax valuation relates to the fact that all vehicles are depreciated at exactly 15 percent per year, regardless of mileage or certain kinds of damage or needed repairs. Finally, she said that a survey of 70 counties had revealed that 84 percent of all private vehicle sales since July 1 had generated complaints.

Dennis Wilson, Johnson County Treasurer, also addressed the Committee about the controversy over the new law and said that several members of his staff had been threatened with physical harm by irate taxpayers. He suggested repealing the 2004 law and making more prominent the language on the back of the motor vehicle titles with respect to perjury.

Several committee members observed that taxpayer angst over using the motor vehicle valuation for sales tax purposes should highlight the fact that many vehicles are over-valued for property tax purposes in the first place.

In response to a request, the Department determined that if all isolated and occasional sales of vehicles were totally exempt from sales tax, the state would see a reduction of about \$22.8 million in sales and use tax receipts; and that local units of government would see a reduction of about \$5.6 million.

At the November meeting, the Committee held public hearings and reviewed its charge and the policy options. The Department of Revenue also presented information about how Pennsylvania handles verification of private car sales transactions. The Department officials also presented information indicating that the 2004 law was on pace to raise an additional \$5.0 million by the end of FY 2005 (as opposed to the \$2.0

million fiscal note used during the 2004 session).

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends the introduction of legislation that would repeal retroactive to July 1, 2004, the new law relative to isolated sale of motor vehicles. The Committee recommends that the same legislation replace this system with one similar to that used in Pennsylvania wherein purchasers who report sales that fall below a certain threshold percentage under a proxy valuation system are subject to justifying the purchase price to Department of Revenue audit and compliance staff.

The Committee also recommends that refunds be made available to taxpayers who paid sales taxes in FY 2004 based on the property tax valuation schedule, provided those refunds have been cleared for payment after being screened under the new Pennsylvania system utilized by the Department of Revenue.

The Committee further recommends that the legislation contain a requirement that paperwork completed by taxpayers at the time of private vehicle transactions more prominently advise sellers, as well as buyers, about the legal consequences of falsifying reported selling prices.

Finally, the Committee finds that taxpayer concern over using the property tax values for sales tax purposes has highlighted the fact that the property tax values are far too high in many cases. The Committee therefore strongly encourages the 2005 Legislature to review the vehicle valuation schedules used for property tax purposes and enact whatever recommendations are deemed appropriate to provide for a more equitable tax system.

SESSION OF 2005

SUPPLEMENTAL NOTE ON SENATE BILL NO. 23

As Amended by Senate Committee on
Assessment and Taxation

Brief*

SB 23, as amended, would repeal a sales tax provision enacted in 2004 that requires that in the case of the isolated or occasional (private) sale of certain vehicles, tax is to be computed based on the greater of the stated selling price or their valuation under the motor vehicle (property) tax law.

A refund procedure would be established for certain excess state and local sales tax amounts collected since July 1, 2004, the effective date of the aforementioned 2004 law. Subject to verification by the Director of Taxation, taxpayers would be entitled to receive refunds of the amount of additional state and local sales taxes collected under the 2004 law relative to the amount that would have been collected under the law in effect prior to July 1, 2004. Refund claims would be required to be submitted within six months of the effective date of the bill (publication in the *Kansas Register*). No refunds would be paid for amounts of less than \$10.

Background

The Department of Revenue stated that the 2004 law has been increasing state sales tax receipts such that about \$5.0 million in additional revenue will be produced by the end of FY 2005. The Department also noted that most refunds could be paid by the end of FY 2005 if the Legislature were to approve SB 23 prior to March 1.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

The bill would therefore be expected to reduce receipts as follows:

(\$ in millions)

	All Funds	State General Fund	State Highway Fund
FY 2005	\$(5.000)	\$(4.764)	\$(0.236)
FY 2006	(5.175)	(4.931)	(0.244)
FY 2007	(5.356)	(4.972)	(0.384)
FY 2008	(5.544)	(4.864)	(0.680)
FY 2009	(5.738)	(5.034)	(0.704)
FY 2010	(5.938)	(5.210)	(0.728)
Through FY 2010	\$(32.751)	\$(29.775)	\$(2.976)

Local sales tax collections also would be expected to be reduced by about \$0.580 million annually.

The original bill, which was introduced by the Special Committee on Assessment and Taxation at the conclusion of an interim study, contained language requiring the Department to adopt rules and regulations that would have been similar to those in effect in Pennsylvania relating to certain threshold tests that compare stated selling prices to various proxy valuation estimates for used motor vehicles. The Committee removed this language from the bill.

The original bill also contained a provision that would have required certificates of title to contain statements advising sellers and buyers of the legal consequences of falsifying reported selling prices. The Committee struck that provision at the suggestion of the Department, whose representative testified that the agency planned instead to initiate a new administrative requirement that counties have buyers and sellers sign affidavits prior to the registration process. The amendments requiring refund claims to be submitted within six months and providing that refunds of less than \$10 not be paid also were suggested by the Department.



PERFORMANCE AUDIT REPORT

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

**A Report to the Legislative Post Audit Committee
By the Legislative Division of Post Audit
State of Kansas**

April 2003

Hs Taxation Committee
February 1, 2005
Attachment 2

Legislative Post Audit Committee

Legislative Division of Post Audit

THE LEGISLATIVE POST Audit Committee and its audit agency, the Legislative Division of Post Audit, are the audit arm of Kansas government. The programs and activities of State government now cost about \$9 billion a year. As legislators and administrators try increasingly to allocate tax dollars effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by Legislative Post Audit helps provide that information.

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FINDINGS RELATED TO SALES TAXES COLLECTED ON PRIVATELY SOLD VEHICLES

If Department Regulations Were Being Adhered To, Private Vehicle Sales Could Generate Several Million Dollars Each Year in Additional Sales Taxes

Generally, except for sales between family members, when a private citizen sells a vehicle to another private citizen, that transaction is taxable. The tax on that sale is paid to the county treasurer at the time the new owner transfers title to the vehicle and registers it in his or her home county.

Generally, the amount of sales tax owed is based on the actual selling price of the vehicle, but a regulation enacted by the Department requires county treasurers to collect vehicle sales taxes based on the fair market value of the vehicle if:

- the sale price isn't known, or
- the sale price doesn't bear a reasonable relationship to the fair market value of the vehicle or to the average retail value for that vehicle published in the National Automobile Dealers Association (NADA) guidebook

If followed, this regulation would help prevent the State from losing tax revenues if the sale price were intentionally understated to reduce the amount of sales tax the buyer owed.

Nearly half the vehicles we reviewed that were sold privately were reported as being sold for what appeared to be significantly less than fair market value. The NADA guidebook sets low, average, and high retail prices for the model, age, and mileage of vehicles. It's important to remember that all NADA values assume the vehicle to be in good condition.

We selected a random sample of 80 private vehicle sales from calendar year 2002 for vehicles that were model year 1984 or newer, and compared the reported sale price to the values in the NADA guidebook. **Table I-3** summarizes each of the 39 vehicles that were listed as being sold for less than half the lowest NADA value for those vehicles. None of these vehicles were sold for their salvage value. **Table I-3** also shows the additional amount of tax that would have been collected if county treasurers had taxed the vehicle at the NADA average retail value.

Table I-3
Sample of Vehicles Sold Privately and Reported as Being Sold For
What Appeared to Be Significantly Less Than Fair Market Value

Year/ Make/ Model/ Features	Mileage	Reported Sale Price	NADA Low Price	% Below NADA Low	State Tax Paid	Add'l Tax if Taxed at Avg NADA
1988 Chevrolet K2500 Cheyenne, reglr cab	151,124	\$1	\$2,950	-100%	\$0.04	\$218.59
1987 Chevrolet Suburban, 4WD	135,773	\$1	\$2,250	-100%	\$0.04	\$178.84
1989 Honda Accord LX, 4-door sedan	175,100	\$1	\$1,625	-100%	\$0.04	\$131.14
1990 Chrysler Fifth Ave., 4-door, base model	161,000	\$1	\$2,300	-100%	\$0.04	\$178.84
1996 Honda Accord EX, 4-door sedan	148,000	\$1	\$5,000 (a)	-100%	\$0.05	\$264.95
1997 Ford Taurus LX, 4-door sedan	119,891	\$50	\$4,020 (a)	-99%	\$2.45	\$210.61
1988 Isuzu Pickup, shortbed	97,050	\$50	\$1,275	-96%	\$2.45	\$103.55
1991 Pontiac Grand Am LE, 2-door coupe	194,970	\$50	\$1,275	-96%	\$2.45	\$107.53
1986 Dodge Caravan, base model	97,000	\$50	\$975	-95%	\$2.65	\$88.78
1993 Toyota Pickup, shortbed, standard	117,625	\$50	\$3,500	-99%	\$2.45	\$234.73
1984 Ford Bronco II	100,000	\$75	\$1,125	-93%	\$3.67	\$97.03
1992 Chevrolet G20 Cargo/Sport Van	136,875	\$100	\$4,082	-98%	\$4.90	\$277.70
1992 Chevrolet K2500 Cheyenne, reg cab	174,497	\$100	\$3,975	-97%	\$4.90	\$277.33
1992 Subaru Loyale, base model	200,333	\$100	\$1,325	-92%	\$5.30	\$107.33
1991 Pontiac Grand Prix, 2-door coupe, base	153,577	\$100	\$2,175	-95%	\$5.30	\$159.00
1985 Chevrolet K10 Custom DLX, reglr cab	15,649	\$100	\$2,050	-95%	\$4.90	\$156.75
1991 Ford Explorer, Eddie Bauer Ltd, 4-door	105,000	\$100	\$2,775	-96%	\$5.30	\$196.10
1986 Toyota MR2, 2-door coupe, base model	120,000	\$130	\$1,350	-90%	\$6.89	\$105.74
1993 Ford Probe, 2-door hatchback, base	99,589	\$200	\$2,275	-91%	\$9.80	\$159.80
1988 Olds 98 Brougham, 4-door sedan	161,449	\$200	\$1,050	-81%	\$10.60	\$94.08
1991 Plymouth Voyager, base model	159,537	\$200	\$1,725	-88%	\$10.60	\$127.20
1984 Chevrolet Caprice Classic, 4-door, base	166,000	\$200	\$575	-65%	\$10.60	\$59.63
1991 Chevrolet Astro CL wagon	100,500	\$300	\$2,850	-89%	\$14.70	\$190.68
1996 Chevrolet Metro LSI, 2-door hatchback	170,000	\$300	\$1,735 (a)	-83%	\$15.90	\$76.06
1988 Dodge Grand Caravan SE	146,000	\$300	\$1,175	-74%	\$14.70	\$89.98
1994 Ford Escort GLX, 2-door hatchback	89,495	\$300	\$1,800	-83%	\$14.70	\$123.10
1988 Honda Accord LX, 4-door sedan	152,422	\$400	\$1,350	-70%	\$19.60	\$94.35
1989 Chevrolet K2500 Cheyenne, extd cab	200,000	\$500	\$3,950	-87%	\$24.50	\$251.10
1992 Chevrolet S10 Blazer, 2-door, base	210,154	\$500	\$2,550	-80%	\$24.50	\$162.33
1989 Chevrolet, Cavalier, 4-door sedan, base	129,304	\$500	\$1,025	-51%	\$24.50	\$65.60
1994 Ford Tempo GL, 4-door sedan	34,633	\$800	\$1,800	-56%	\$42.40	\$95.40
1993 Olds Achieva SL, 2-door coupe	51,610	\$950	\$1,925	-51%	\$46.55	\$101.85
1991 Dodge Ram van, 2-door, base model	91,532	\$1,000	\$3,375	-70%	\$49.00	\$193.48
1993 Honda Prelude SI, 2-door coupe	217,592	\$1,500	\$4,400	-66%	\$73.50	\$228.60
1992 Ford F150 custom Lariat XLT, reglr cab	105,498	\$1,500	\$3,975	-62%	\$79.50	\$196.10
1997 Mercury Sable GS, 4-door wagon	94,785	\$2,000	\$5,250 (a)	-62%	\$106.00	\$172.25
1993 Chevrolet Blazer Cheyenne, utility	195,000	\$2,000	\$7,490	-73%	\$98.00	\$380.33
1994 Chevrolet K1500 Cheyenne, extd cab	230,170	\$2,350	\$5,050	-53%	\$115.15	\$235.98
1996 Dodge Intrepid ES, 4-door sedan	44,600	\$3,000	\$7,350 (a)	-59%	\$159.00	\$230.55

Source: Vehicle Information Processing System (VIPS); NADA guidebook
(a) NADA Low Price was unavailable, so we compared to the NADA Average Price

\$1,018 **\$6,596**

2-4

Without examining each vehicle, it's impossible to know what its true fair market value is. It could have dents, mechanical malfunctions, excessive damage to the interior, or other characteristics that would make its true fair market value far less than the NADA average retail value.

Nonetheless, the fact that 39 of the 80 vehicles in our random sample were reported as selling at less than half the lowest NADA price—and that 17 of those vehicles (21% of the total sample) were reported as selling for \$100 or less—suggests that people could be under reporting the selling price. We've heard anecdotally that's a common practice. However, this isn't something we could verify. At minimum, these vehicles aren't being taxed at their fair market value as the Department's current regulation requires.

If county treasurers were adhering to the Department's regulation, the State could receive several million dollars each year in additional sales taxes from private vehicle sales. If these 39 vehicles had been taxed on the average NADA guidebook value, they would have generated an additional \$6,000 in sales tax. Projecting these figures to the approximately 126,000 model year 1984 or newer vehicles sold privately in 2002 suggests that private vehicle sales could have generated an additional \$7.5 million to nearly \$13 million in sales taxes that year. However, those numbers may be unreasonably high, because it's not likely that the fair market value of every one of the 39 vehicles was equal to the NADA average retail price. We used the NADA average retail price to calculate the additional taxes that would have been collected, because we couldn't know the fair market value for each of those vehicles. Even so, the State likely is losing several million dollars each year in sales taxes on private vehicle sales.

The Department isn't doing anything to actively ensure that privately sold vehicles are taxed at fair market value, as required by its regulation. The Department's handbook for county treasurers covers the requirement to tax private sales at fair market value, but Department officials told us it's their understanding that if the price of a privately sold vehicle is in writing, the county treasurers don't question it. The Division of Taxation also doesn't do anything to evaluate whether private sales are being taxed at fair market value.

Officials we talked with in county treasurers' offices in Shawnee, Sedgwick, Johnson, and Wyandotte Counties said they were aware of the regulation but found it difficult to apply for the following reasons: they don't want to accuse vehicle buyers of being dishonest, they don't have any way of knowing the real fair market value of the vehicle, and the buyer simply may have gotten a "really good deal."

Oklahoma requires sales tax to be collected on a value that is within 20% of the NADA average retail price, regardless of the sales price reported by the vehicle buyer. The other neighboring states leave it up to county treasurers to decide when to question the reported sale price of a privately sold vehicle. Transactions that are "flagged" are forwarded to those states' departments of revenue for possible follow up.

FINDINGS RELATED TO COMPENSATING USE TAXES BEING COLLECTED ON REBATES FOR OUT-OF-STATE VEHICLE SALES

County Treasurers Didn't Charge Compensating Use Taxes On Manufacturers' Rebates for At Least 10% of the Out-of-State Vehicle Sales We Reviewed

Kansans who buy a vehicle from an out-of-State dealer pay compensating use tax to the county treasurer when they register that vehicle in their home county. Typically, the buyer presents the invoice prepared by the vehicle dealer for the sale, and the county treasurer uses information from the invoice to compute the amount of tax due.

Questions have arisen about whether manufacturers' rebates on these out-of-State sales are being taxed as called for by State law. Kansas requires the value of manufacturers' rebates to be taxed as part of the selling price, regardless of whether the rebate is taken in cash or used as a down payment on the vehicle. Missouri, Oklahoma, Nebraska, and Iowa do **not** require these rebates to be taxed; Colorado does.

There are 2 ways manufacturers' rebates from out-of-State dealers might not get taxed:

- **the rebate might be shown on the invoice as a subtraction from the sales price**, and the county treasurer neglects to add it back in for taxation purposes.
- **the rebate might not be identified at all on the invoice; that is, it might be subtracted out of the sale price before the invoice is prepared.** In this case, county treasurers would have no way of knowing a rebate was involved, and it wouldn't get taxed. We checked with 3 Missouri dealers whose cars came up in our testwork, but whose invoices didn't show a rebate. Two of the dealers said they always list the rebate value on the invoice, one said he doesn't.

The State could have received about \$209,000 more in compensating use tax in 2002 if county treasurers had taxed all manufacturers' rebates identified on invoices. We reviewed a sample of 147 vehicles purchased from out-of-State dealers.

Because rebates aren't required to be listed on invoices, we were limited to assessing whether county treasurers levied the correct tax when the rebate was listed.

Invoices for 31 of these transactions showed a manufacturer's rebate. Two-thirds of these vehicles were purchased in Missouri. We noted that county treasurers didn't charge compensating use tax on the manufacturer's rebate for 3 of the 31 vehicles, or about 10% of the total.

The additional tax due for the rebates on these 3 vehicles was \$433. If our findings are projected to the approximately 71,000 new vehicles Kansans bought out-of-State during 2002, we estimate that the amount of compensating use tax foregone is about \$209,000. *Table I-4* shows an example of how rebate values weren't taxed.

Table I-4 An Example of How Rebate Values for New Vehicles Aren't Taxed		
	What happens when the rebate isn't taxed...	How rebates values are supposed to be taxed...
Vehicle Sale Price	\$ 18,000	\$ 18,000
Rebate	-\$ 3,000	+\$ 3,000
Sales Price that was taxed	\$ 15,000	\$ 18,000 (rebate added in)
State compensating use tax collected at 4.9% (a)	\$ 735	\$ 882
Source: LPA example. (a) the state tax rate after July 1, 2002 was 5.3%		

We didn't see any geographic pattern to the failure to tax rebates—the 3 that weren't taxed happened in 3 different counties.

During our review, we also found additional errors in how the compensating use tax was calculated for these 3 vehicles and one other. For example:

- one county treasurer subtracted a rebate value twice
- one county treasurer subtracted a cash down payment
- one county treasurer didn't include documentation and other dealer fees in the sale price

Rebates, cash down payments, and dealer fees are all considered part of the sales price of a vehicle and are taxable. If these errors hadn't occurred, an additional \$282 in taxes would have been collected for 3 of these vehicles. In addition, one county treasurer collected nearly \$550 too much in compensating use tax by including the loan cost in the vehicle's sale price.

Conclusion The State has an effective system for ensuring that purchasers pay sales tax by requiring them to show proof of tax payment before being able to register their vehicle at the county treasurer's office. But the State doesn't have a good system for making sure that all the sales taxes collected by vehicle dealers make it into the State's coffers.

Although the Department of Revenue can do additional things to know whether dealers are remitting all the vehicle sales taxes they collect, these steps will require a fair amount of effort on the part of not only the Department, but also vehicle dealers and county treasurers. For example, the Department will need to take a more active role in enforcement, dealers will need to provide more detailed information to the Department, and county treasurers will need to enter more information into the automated Vehicle Information Processing System (VIPS) for all registered vehicles. Having county treasurers handle the vehicle sales tax collection system for all vehicle sales transactions could be both more effective and more efficient.

Recommendations

1. To help ensure that vehicle dealers remit all the sales taxes they collect, the Department of Revenue should strengthen its current review, collection, and enforcement procedures, and should ensure that the Divisions of Taxation and Motor Vehicles work cooperatively to help accomplish these goals. Specifically, the Department should:
 - a. at a minimum, use the information it already has available to it--including monthly sales reports within the Division of Motor Vehicles and dealer tax return information within the Division of Taxation--to identify dealers who are selling vehicles but not remitting tax.
 - b. collect and analyze additional information as described in the audit that would allow it, on a cost-effective basis, to have reasonable assurance that dealers are remitting the correct amount of the vehicle sales tax.
 - c. conduct more frequent vehicle sales tax audits, focusing at least for the near-term on dealers suspected of not remitting all the vehicle sales tax they've collected. The Department also should consider whether conducting some shorter, more narrowly-focused audits would be a cost-effective

way of identifying dealers who are under-reporting vehicle sales and under-remitting vehicle sales taxes.

- d. review and revise enforcement procedures to ensure that enforcement actions are appropriate and progressively more stringent for dealers who continue to not remit the taxes they've collected. These procedures should include steps to revoke the licenses of vehicle dealers who repeatedly fail to remit all the vehicle sales tax they owe, in accordance with K.S.A. 8-2410 (29).
2. To prevent vehicle dealers who have significant sales tax accounts receivable with the Department from continuing to collect and retain sales tax, the Department should take the following steps:
 - a. determine which of those dealers are still in the business of selling vehicles
 - b. take the steps necessary to revoke those dealers' licenses
 - c. take appropriate enforcement actions to collect the amounts owed, including tax warrants, bank levies, and the like.
 3. To ensure that sales tax exemptions are claimed and allowed appropriately, the Department should do the following:
 - a. control access to exemption certificates, by making them uniquely identifiable and not readily available to the general public.
 - b. provide written guidance to vehicle dealers so that they know how to recognize an invalid exemption certificate.
 - c. routinely test a sample of exempt vehicle sales identified in VIPS to see if they should have been taxed.
 4. To ensure that privately sold vehicles are taxed at fair market value, the Department should actively direct county treasurers to enforce the Department's regulation, and should provide them with clear, consistent guidance on how to determine fair market value of a vehicle. Alternatively, if Department officials think the regulation can't be effectively enforced, they should amend or revoke it.

5. To ensure that county treasurers collect the correct amount of compensating use tax on vehicles purchased out-of-State, the Department should do the following:
 - a. routinely test a sample of records for new vehicles purchased out-of-State to see if treasurers are calculating the tax correctly, which would include taxing manufacturer's rebates.
 - b. provide feedback and training to the county treasurers' offices where the testwork identifies problems.
6. To ensure that the State is collecting vehicle sales taxes in the most cost-effective manner, the Legislative Post Audit Committee should recommend that the Legislative Coordinating Council authorize an interim study on the issue of whether the collection of vehicle sales tax should be moved from vehicle dealers to county treasurers. As the audit noted, most of the states surrounding Kansas do not have vehicle dealers collect sales tax. In addition, the amount of staff resources the Department would need for collection and enforcement would be significantly reduced.

APPENDIX A

Scope Statement

This appendix contains the scope statement approved by the Legislative Post Audit Committee for this audit on November 20, 2002. The audit was requested by Senator Barnett.

REVISED SCOPE STATEMENT

Taxes on Motor Vehicle Sales: Reviewing the Department of Revenue's Procedures To Ensure That Correct Amounts of Sales and Compensating Use Taxes Are Paid

Currently, there are approximately 5,100 vehicle dealerships registered to do business in Kansas. The State imposes a sales tax of 5.3% on the sale of vehicles in the State and cities and counties may also impose local sales taxes. The State also imposes compensating use taxes on vehicles purchased outside Kansas.

According to Department of Revenue officials, sales taxes remitted by vehicle dealers account for about 12% of the total sales tax dollars collected. Department officials report having conducted only 10 audits of vehicle dealerships during the past five fiscal years. Those audits have found approximately \$68,000 in sales taxes that have been paid by customers but not remitted by vehicle dealers.

Recently, in response to declines in receipts from sales and compensating use taxes, legislators have expressed an interest in knowing whether the Department of Revenue has effective procedures in place to ensure that the State receives all the revenue it should from sales and compensating use taxes on vehicle purchases.

A performance audit of this topic would answer the following question.

- 1. Does the Department of Revenue have adequate procedures in place to ensure that all sales and compensating use taxes due on vehicle sales are being remitted to the State?** To answer this question, we would become familiar with the laws and requirements relating to sales and compensating use taxes on vehicle sales. Through interviews with Department officials and reviews of policies and procedures we would determine what steps the Department takes to ensure that vehicle dealers collect and remit the appropriate amount of sales tax and that individuals pay compensating use taxes when applicable. We would test the Department's procedures to determine whether they were working as intended. We would select a sample of vehicle dealerships and review vehicle sales records and other documentation to determine whether all sales taxes collected were remitted to the State. We would also select a sample of transactions for which compensating use tax was due to ensure the proper amount was being paid and that the procedures were working as described to us. For vehicle purchases that don't involve an auto dealer, we would determine what procedures are in place to ensure the appropriate amount of sales tax is being paid. For a sample of those private sales, we would compare the selling price attested to by the seller and purchaser to NADA, Kelley Blue Book, or values established by the Division of Property Valuation to assess whether the value declared for sales tax purposes is reasonable, and if not, whether county treasurers are questioning the purchase price before registering the vehicle. Based on our findings, we would assess whether the Department's procedures and audit efforts are adequate.

Estimated time to complete: 6-9 weeks (Total time depends on the number of vehicle dealerships reviewed)

Appendix B

Agency Response

On March 12, 2003 we provided copies of the draft audit report to the Department of Revenue. Their response is included in this appendix.



K A N S A S

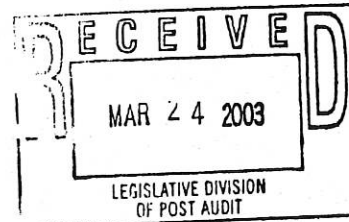
JOAN WAGNON, SECRETARY

DEPARTMENT OF REVENUE
OFFICE OF THE SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

March 19, 2003

Barbara Hinton,
800 SW Jackson, Suite 1300
Topeka, Kansas 66612



Dear Ms. Hinton,

On behalf of the Department of Revenue, I am happy to respond to the recommendations made in the audit, *Taxes on Motor Vehicle Sales: Reviewing the Department of Revenue's Procedures To Ensure That Correct Amounts of Sales and Compensating Use Taxes Are Paid*. We find the audit analysis to be instructive and we have already begun to adopt many of the recommendations contained in the report.

Your audit was not designed to make an informed judgement concerning the overall level of compliance in the vehicle sales industry. Your study supports our contention that the majority of the sales tax owed is being collected and remitted by dealers. Based on our experience, the reputable dealers that account for the vast majority of vehicle sales in Kansas remit the sales taxes collected from customers accurately and on a timely basis. Your random sample of large dealers noted they were calculating and remitting sales tax correctly. The collection and remittance problems that you have pointed out are concentrated among a small subset of the industry. The Department intends to focus greater collection and enforcement efforts on these non-complying businesses and appreciates the audit's guidance in this regard.

Since I assuming the duties of Secretary of Revenue, my first priority has been to reinvigorate our tax compliance-audit program. A previous legislative post audit of corporate income tax supports the need for the Department to make auditing a priority. The goal is to ensure that all Kansas taxpayers pay their fair share in accordance with Kansas tax laws. The analyses and recommendations contained in this report are very instructive and totally in concert with achieving our mission.

In seeking program improvements, we will be fair, efficient, and professional in our dealings with all Kansas taxpayers. I can assure you that all KDOR managers and associates are strongly committed to these principles. We are now beginning to identify process and organizational changes that will allow us to take prompt administrative action against businesses who don't

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comply with the law. We have no sympathy for those who would convert sales tax moneys collected from their customers for their personal use. Since the exit conference with the auditors, the Department has already taken many of the actions described in the report. For example, KDOR has revoked one dealer license, and others are in process; five new auditors for KDOR are being hired.

KDOR is already implementing plans for stepped up enforcement efforts. We will effectively employ the legal and administrative means afforded by the law to identify tax cheats and collect the taxes owed, or revoke the dealer's license. Our Tax and Vehicle Divisions will work cooperatively to achieve this mandate. A Memorandum of Understanding has been drafted and signed which allows for the sharing of necessary information.

Here are the Department's specific responses to each recommendation.

Recommendation 1a.

Agreed. We have redesigned monthly sales reports to capture sales prices and totals that we can use in an electronic comparison to validate sales tax returns and help identify potential underpayment.

Recommendation 1b.

Agreed.

Recommendation 1c.

Agreed. Most of the compliance effort should address non-filers and non-remitters of tax, functions performed by the Division of Vehicles and by our tax collection group. However, more audits will be useful to examine the records of dealers who may have underreported their tax liability. In addition to hiring more tax auditors, as described above, the audit staff is evaluating how best to utilize shorter, more narrowly focused audits to identify underreporting dealers.

Recommendation 1d.

Agree. We intend to employ more stringent enforcement procedures on an accelerated schedule against dealers who have failed to remit taxes collected. Action has begun on revoking licenses. (This process follows the Kansas Administrative Procedures Act and must be taken within the prescribed timelines.

Recommendation 2a, 2b, and 2c.

Agreed. We intend to employ collection tools and administrative sanctions, as prescribed by law, to collect sales taxes owed from delinquent dealers.

Recommendation 3a.

The Department needs to conduct further study with regard to exemption certificates and their possible misuse.

Recommendation 3b.

KDOR has provided written guidance to vehicle dealers, but it is difficult to deter purchasers who would fraudulently use an exemption certificate to evade the tax. The written guidance will be reissued annually.

Recommendation 3c.

Again, exemption certificates have to be reviewed and challenged, if necessary, on a case by case basis. This review is a routine part of our sales tax audit process. However, it can be problematic, contentious, and time-consuming.

Recommendation 4.

The Department plans to review its current regulation and explore alternative direction and language to address this issue. Improving compliance in this area would likely require greater intervention by county treasurer personnel and likely will impose a greater burden of proof on the vehicle purchaser. One possibility is requiring purchasers to present sworn affidavits from sellers as to the exact sales price and basing the tax on that. In cases where the selling price is unknown or an affidavit isn't presented, then NADA values would be used.

Recommendation 5.

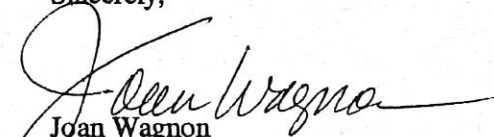
KDOR covers this issue in our training manuals provided to county treasurers and has offered guidance in two separate memoranda over the past year. We intend to review this issue to determine whether regular testing can be performed on a cost-effective basis and whether such testing would help increase overall compliance.

Recommendation 6.

KDOR will support and provide information for an interim study to address this issue.

Thank you for the opportunity to comment on your performance audit.

Sincerely,


Joan Wagnon
Secretary

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COMMITTEE ASSIGNMENTS
MEMBER: APPROPRIATIONS
GOVERNMENTAL ORGANIZATION
AND ELECTIONS
CHAIRMAN: SHAWNEE COUNTY DELEGATION

HOUSE OF
REPRESENTATIVES

Testimony on HB 2003
Taxation Committee - 9:00 a.m.
Tuesday, February 1, 2005

Thank you Chairman Wilk and the rest of the committee members for allowing me to testify before you today.

HB 2003 is a bill that was pre-filed in response to the Clunker Bill that took effect last July 1, 2004. I started getting calls and e-mails from constituents in a matter of weeks after this law went into effect. We all have heard the reasons this legislation was a huge mistake, and I do not want to go into any great detail on examples of how people are paying more sales tax than they should.

I would ask that the committee amend HB 2003 into Senate Bill 23 so we may expedite the passage of the bill and put an end to this injustice as quickly as possible.

Thank you again for allowing me to testify today and I will gladly stand for questions.

Rep. Harold Lane
District #58

Hs Taxation Committee
February 1, 2005
Attachment 3



TREASURER'S OFFICE

R. Eileen King, CFM, CFE
County Treasurer

110 Courthouse Plaza
Manhattan, Kansas 66502-0108
Phone: 785-537-6320
Fax: 785-537-6326
E-mail: eking@co.riley.ks.us
Website: www.co.riley.ks.us

TO: House Taxation Committee
FROM: Eileen King, Riley County Treasurer & Rep of KCTA
DATE: February 1, 2004
RE: Sales tax on Private sale of Vehicles

The Kansas County Treasurer's Association (KCTA) strongly supports SB 23 in the repeal of the 2004 legislation. The legislation that was passed last year has had some unintended consequences. The intent was to catch those who were less than honest about the price that was paid for a vehicle that was purchased from another individual. As I am sure you are aware of, it has made many people very unhappy. Many times individuals sell vehicles for less for numerous reasons. Some have a blown engine, high mileage or damage. I have even heard of people that would rather sell a vehicle to someone they know and needs a vehicle for less than what they could get for a trade-in. It's a good deed.

When we have to charge someone on an inflated value for sales tax, it sometimes puts the vehicle out of their price range. The ones that are being caught in this trap are some of the people who can least afford it. Someone who can only afford to buy a \$100 vehicle is not going to be able to pay sales tax on an artificially inflated value.

We agree that those who are not honest in regard to the price that was paid for a vehicle, need to pay on the correct selling price, but there is a better way to do that. The key is to have some type of enforcement or follow up on questionable situations. If Treasurer's office employees have the ability to "flag" questionable transactions, then those would be the only ones needing follow up. This was in place when I first took office 20 years ago, but it has since been eliminated. In the 20 years that I have been Treasurer, I have found that 90% of the people are honest. Therefore, it is only the other 10% that we need to look into.

KCTA feels that it is only fair to those that have been forced to pay sales taxes on an inflated value to get refunds. Those people that have talked to you and me about the unfairness of the law still have our phone numbers, if they don't get a refund. I realize it will cost the state to refund, but if the legislation wasn't passed last year, they won't have had the money in the first place.

Thank you for your consideration and I would be happy to answer any questions.

Hs Taxation Committee
February 1, 2005
Attachment 4

state commerce and intrastate commerce are immediately taxable. However, goods temporarily stored and immediately returned to common carrier for interstate commerce are exempt.

Replacement materials within the state are exempt. Interstate commerce and in-transit parts and materials are exempt.

Other motor vehicles as a public utility and intrastate interstate commerce are exempt. The gas tax is exempt. The gas tax is exempt. The gas tax is exempt.

State commerce. Goods sold within the state to a carrier to a point does not apply. A certificate of title and registration shall not be issued until the transferee pays the tax and applicable fee or proves to the satisfaction of the county treasurer or the director of taxation that the transfer is not taxable.

the United States postal department, or a post office department's receipt; or

(c) A trip sheet signed by the seller's delivery agent and showing the signature and address of the person outside the state who received the delivered goods.

However, where tangible personal property pursuant to a sale is delivered in this state to the buyer or his agent other than a common carrier, the sales tax applies, notwithstanding that the buyer may subsequently transport the property out of this state. (Authorized by K.S.A. 79-3618, K.S.A. 1971 Supp. 79-3602, 79-3606; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972.)

92-19-30. Motor vehicles or trailers; isolated or occasional sale. (a)(1) An isolated or occasional sale of motor vehicle or trailer is a sale made between private individuals or other entities who, at the time of the sale, are not retailers registered to collect and remit sales or use tax on the sale of such a vehicle or trailer.

(2) Kansas motor vehicle dealers and trailer dealers are retailers and cannot make isolated or occasional sales of vehicles or trailers. These dealers shall collect sales tax at the time of the sale on each taxable retail sale of a motor vehicle or trailer.

(b)(1) Unless a sale is one that is excepted from the imposition of sales tax by K.S.A. 79-3603(o) or exempted from tax under K.S.A. 79-3606, and amendments thereto, sales tax shall be levied on the isolated or occasional sale of a motor vehicle or trailer. Tax on the isolated or occasional sale of a motor vehicle or trailer shall be paid to the county treasurer when the purchaser or other transferee applies for a certificate of title or a certificate of title and registration or to the director of taxation, as provided in paragraph (c)(3).

(2) When a person who has acquired a vehicle in an isolated or occasional sales transaction applies for a certificate of title or certificate of title and registration, the county treasurer shall collect the sales tax that is due along with a service fee of 50 cents; and give the applicant a receipt for the tax and fee paid. A certificate of title or certificate of title and registration shall not be issued until the transferee pays the tax and applicable fee or proves to the satisfaction of the county treasurer or the director of taxation that the transfer is not taxable.

(c)(1) County treasurers shall be assisted by the

director of taxation or director of vehicles in determining whether or not a transaction is taxable or exempt. Refusal to issue a certificate of title or certificate of title and registration for a vehicle may be requested by the director of taxation or director of vehicles until sales tax is paid. Sales tax shall be collected by a county treasurer if any doubt exists as to an applicant's exemption claim. An applicant who pays sales tax may file a refund claim with the director of taxation if the applicant believes the tax has been erroneously collected by county treasurer or department of revenue.

(2) Each determination made by a county treasurer to exempt an isolated or occasional sale may be reviewed by the director of taxation. Following this review, a sales tax assessment may be issued to the vehicle registrant for any sales tax that is unpaid or underpaid because of clerical error, misinformation, or other cause.

(3) Any sales tax that is finally determined to be due under an assessment shall be paid to the director of taxation. Payment of sales or use tax on isolated or occasional sales of motor vehicles or trailers may be made to the director of taxation instead of the county treasurer, as provided in paragraph (b)(1), to correct any other underpayment or as an accommodation to the taxpayer.

(d) As a general rule, the base for computing the tax shall be the actual selling price of the vehicle. However, the tax shall be computed on the fair market value of the vehicle by the county treasurer or the director of taxation under either of the following circumstances:

(1) The selling price of the vehicle is unknown; or

(2) the stated selling price is not indicative of, and bears no reasonable relationship to, the fair market value of the vehicle or the average retail value as shown in the latest publication of the national automobile dealers' association official used car guide book.

(e) The actual selling price shall be the base for computing the tax on the sale of wrecked or damaged vehicles.

(f)(1) "Sale" or "sales" means the exchange of property, a sale for money, and every other transaction in which consideration is given, whether conditional or otherwise.

(2) "Vehicle" means motor vehicle or trailer.

(3) "Transferor" means the seller, donor, or other person who sells, gives away, or otherwise parts with the vehicle.

(4) "Transferee" means the purchaser, donee,

or other person who purchases, is given, or otherwise acquires ownership of the vehicle.

(g) K.S.A. 79-3603(o), and amendments thereto, which imposes sales tax on isolated or occasional sale of trailers and motor vehicles, excepts the following transfers or sales from the tax imposition on these isolated or occasional sales:

(1) Transfers by an individual to a corporation solely in exchange for stock in the corporation;

(2) transfers from one corporation to another corporation when done as part of the transfer of all the corporate assets; and

(3) sales of automobiles, light trucks, trailers or motorcycles between immediate family members.

(h) "Immediate family member" is any person in a class that is defined by statute to mean lineal ascendants and descendants and their spouses. Since a person may have lineal ascendants and descendants and may also be the spouse of someone who has lineal ascendants and descendants, this class includes the grandfather, grandmother, father, mother, son, daughter, and adopted child of the person; the spouses of these ascendants and descendants; the grandfather, grandmother, father, mother, son, daughter, and adopted child of the person's spouse; and any other ascendants and descendants that are further removed, including great-grandparents and great-grandchildren. The sale or transfer of an automobile, light truck, trailer or motorcycle between members of this class shall be exempt from sales tax.

(i) Certain transfers of motor vehicles or trailers are not sales, as defined in paragraph (f)(1), and shall not be taxed. These include name changes, transfers by gift, and certain transfers made by operation of law. The following rules shall apply to these transfers.

(1) A transfer shall be presumed to be a gift when the transferee is the spouse, mother, father, brother, sister, child, grandmother or grandfather, aunt, uncle, niece, or nephew of the transferor and money is not exchanged for the vehicle. A gift shall also be presumed when these relatives trade or exchange vehicles and money is not exchanged as part of the trade or exchange. However, if money is exchanged for the vehicle, the transfer shall be taxable, unless the sale is exempted as set forth in subsection (h).

(2) A vehicle transfer by gift is not a sale and shall not be taxed. To qualify as a gift, the vehicle shall be given without any consideration and with an intention on the part of the donor that the transfer is a gift. When the relationship of the par-

ties is not one of the relationships set forth above in paragraph (i)(1), the transferee claiming the transfer is a gift shall submit proof of this claim to the satisfaction of the county treasurer or director of taxation.

(3) The change of an owner's name on the title when there is no actual transfer of vehicle ownership to a different person or entity is not a sale and shall not be taxed. However, the transfer of a motor vehicle or trailer from a corporation to an individual shall be taxed since there is a change of ownership from one legal entity to another. The vehicle transfer shall be presumed to be the corporation's payment of a wage, dividend, bonus, or other benefit to the officer, employee, shareholder, or other transferee.

(4) A transfer to an heir or legatee by will or pursuant to the inheritance or intestacy laws of a state is not a sale and shall not be taxed. A certified copy of the probate court order making the distribution shall be filed with the county treasurer.

(5) The sale to a person who takes title to a vehicle with the intention of transferring to the winner of a drawing or raffle shall be taxed. The subsequent transfer of the vehicle to the winner of a drawing or raffle is a gift from the donor to the winner and shall not be taxed. When a donor pays a motor vehicle dealer for a vehicle and the vehicle is transferred from the dealer directly to the winner of a drawing or raffle, the gift is considered to be the payment made for the automobile rather than the automobile itself, and the winner shall be liable for the sales tax that is charged by the dealer on the vehicle sale. Whenever a vehicle is won as a prize and sales tax has not been paid by either the vehicle donor or vehicle winner to this state or another state, the winner shall pay Kansas sales or use tax when the vehicle is registered with the county treasurer.

(6) When the title to a vehicle is transferred to the holder of an encumbrance as a result of repossession under the terms of a written agreement entered into at the time of original purchase by the purchaser and encumbrance holder, the transfer is not a sale and shall not be taxed. However, any registration or subsequent sale of the vehicle by the encumbrance holder shall be taxed.

(7) When a lender grants a debtor permission to redeem a vehicle pursuant to K.S.A. 84-9-506, and amendments thereto, the redemption of the vehicle by the debtor is not a sale and shall not be taxed.

(8) When a lien holder acquires title to a ve-

hicle through a court-ordered foreclosure of a mechanic's lien, landlord's lien, storage lien, or other statutory lien, the transfer of title to the lien holder shall be exempt if the lien holder does not register the vehicle. However, any registration or subsequent sale of the vehicle by the lien holder shall be taxed. The redemption of a vehicle from a lien holder by a debtor who satisfies the underlying debt is not a sale and shall not be taxed.

(j) The following transfers shall be considered sales, and shall be subject to sales tax.

(1) K.S.A. 79-3602(h)(2), and amendments thereto, allows a credit or discount for a vehicle that is traded for another vehicle. When vehicles of different value are traded by private individuals, the person who pays cash or tenders some other consideration in addition to the vehicle being traded or exchanged shall pay sales tax on the amount of the cash payment or on the fair market value of the consideration. In this trade, sales tax shall not be due from the person who traded or exchanged a vehicle but did not pay any additional cash or provide any additional consideration. Each person claiming a sales tax credit or discount for a vehicle that is traded shall file an affidavit with the county treasurer on a form furnished by the department of revenue that contains information necessary to support the credit or discount being claimed.

When the stated cash amount or stated value of the other consideration is not indicative of, and bears no reasonable relationship to, the difference between the fair market value of the vehicle traded and the fair market value of the vehicle received by the purchaser, the tax shall be computed by the county treasurer or the director of taxation on the difference between the fair market value of the vehicles or the difference between the average retail value of the vehicles as shown in the latest publication of the national automobile dealers' association official used car guide book.

(2) The purchase of a vehicle that the purchaser intends to give to someone else shall be taxed, even though tax is not due on the subsequent transfer from the purchaser to the donee.

(3) A transfer of a vehicle from a partner to the partnership or from a partnership to a partner shall be presumed to be a taxable transfer. A transfer from the partner to the partnership shall be presumed to be made in consideration of an increased partnership interest. A transfer from the partnership to the partner shall be presumed to be made for services rendered to the partnership

or for other value passing between the partner and the partnership.

(4) If a donor gives a donee a gift of cash or other property for the purpose of purchasing a vehicle, the donee shall be liable for the tax, if the vehicle is purchased.

(5) The transfer of a vehicle in exchange for the transferee's assumption of an obligation to pay all or part of an encumbrance on the vehicle is a sale and shall be taxed, unless the sale is between immediate family members or is exempt under K.S.A. 79-3606, and amendments thereto. When the transfer does not involve a gift and is not otherwise exempt, the tax base shall be the sum of any payment made by the buyer to the seller plus the amount of the encumbrance being assumed. Sales tax shall be computed as set forth in subsection (d) of this regulation if this amount is not indicative of, or bears no reasonable relationship to the fair market value of the vehicle. When the transfer represents a gift of part of the value of the vehicle that has been established in accordance with paragraphs (i)(1) or (i)(2) of this regulation and is not otherwise exempt, the tax base shall be the sum of any payments made by the buyer to the seller plus the amount of the encumbrance being assumed, regardless of the fair market value of the vehicle.

(6) When a vehicle is purchased to replace a vehicle that has been stolen or destroyed by accident, fire, or other adversity, the purchase of the replacement vehicle is not exempt and shall be taxed. Each purchase of a replacement vehicle shall be taxed whether the replacement vehicle is purchased by the owner of the vehicle that was stolen or destroyed or by an insurance company that is obligated to provide a replacement vehicle.

(7) A transfer of a vehicle from a corporation to an officer, shareholder, board member, or employee shall be presumed to be a taxable transfer and shall be presumed to be made in consideration for services rendered to the corporation or for other value passing between the corporation and transferee.

(k)(1) Each transferee claiming exemption shall complete an affidavit form furnished by the department of revenue and file it with the county treasurer when the vehicle is registered. The exemption affidavit shall be completed in its entirety and shall contain the names, addresses, and telephone numbers of the transferor and transferee; the make, year, model and body style of the motor vehicle or trailer; and any additional information

that is needed to support the exemption claim. The affidavit shall contain facts in detail sufficient to clearly bring the transferee within the exemption being claimed.

(2) Each transferee claiming a family relationship as the basis for the exemption of a vehicle sale or as the basis for the presumption of a gift may be required to file an additional affidavit that establishes the relationship.

(3) Exemption affidavits that are not correct in both substance and form shall not be accepted by the county treasurer, and the tax shall be collected if any doubt exists as to the validity of the exemption claim.

(4) Any taxpayer may file a refund claim with the director of taxation if the taxpayer believes the tax has been erroneously collected by the county treasurer or the director.

(1)(1) When a motor vehicle or trailer is purchased out of state in an isolated or occasional sale, the purchaser shall pay Kansas state and local use tax to the county treasurer upon application for a certificate of title or certificate of title and registration. When a motor vehicle or trailer is purchased from an out-of-state dealer who is not registered to collect and remit Kansas state and local retailers' use tax and has not collected sales tax on the sale for the state of purchase, the purchaser shall pay Kansas state and local use tax to the county treasurer upon application for a certificate of title or certificate of title and registration.

(2) When the purchaser has paid state and local sales tax to another state at a rate that is less than Kansas state and local use tax rates where the vehicle is registered, the purchaser shall pay Kansas state and local use tax to the county treasurer at a rate that is equal to the difference between the combined state and local tax rates for the Kansas location and the combined state and local tax rates that were used to determine the tax paid to the other state. (Authorized by K.S.A. 8-132, 79-3618; implementing K.S.A. 8-132, K.S.A. 79-3602, 79-3603, 79-3604; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1987; amended June 26, 1998.)

92-19-30a. Motor vehicles or trailers. Sales tax shall be imposed on the total selling price of each motor vehicle or trailer to the ultimate user or consumer. The total selling price includes all tangible personal property mounted, installed, applied or otherwise attached or affixed to the

motor vehicle or trailer. For sales tax purposes, tangible personal property is not separable from the motor vehicle or trailer to which it is mounted, installed, applied or otherwise attached or affixed.

When calculating sales tax on the retail sale of a motor vehicle or trailer, the retailer shall not exclude or deduct for the tangible personal property, regardless of how any contract, invoice or other evidence of the transaction is stated or computed, and whether separately charged or segregated on the same contract or invoice. Any charge attributed to the tangible personal property mounted, installed, applied or otherwise attached or affixed to a motor vehicle or trailer cannot be separately billed or segregated on an invoice or contract in order to qualify for an isolated or occasional sale exemption. (Authorized by K.S.A. 79-3618, implementing K.S.A. 1986 Supp. 79-3602; effective May 1, 1988.)

92-19-31. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1981 Supp. 79-3603, 79-3606; modified, L. 1979, Ch. 349, May 1, 1979; amended, E-82-26, Dec. 16, 1981; amended May 1, 1982; revoked May 1, 1988.)

92-19-32. (Authorized by K.S.A. 79-3618, K.S.A. 79-3606 as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1; effective, E-80-2, Jan. 18, 1979; effective May 1, 1979; amended May 1, 1988; revoked June 26, 1998.)

92-19-33. Permanent extensions of time to file sales and use tax returns. (a) A permanent extension of not more than 60 days, may be granted by the director of taxation, for good cause, for filing of sales or compensating use returns and for payment of the tax that is due. A request for an extension shall meet the following requirements:

- (1) Be submitted in writing;
- (2) explain why accurate returns cannot reasonably be filed by the normal due date; and
- (3) set forth any additional facts relied on to establish good cause for granting the extension.

(b) The taxpayer shall be notified in writing when the request is granted or denied. The grant of a permanent extension may be conditioned on the taxpayer's acceptance of and compliance with a payment plan for remitting any additional interest that may be due because of the extension. (Authorized by K.S.A. 2000 Supp. 79-3618, K.S.A. 79-3707; implementing K.S.A. 79-3607, K.S.A. 2000

Supp. 79-3618; effective May 1, 1998.)

92-19-34. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1981 Supp. 79-3603, 79-3606; modified, L. 1979, Ch. 349, May 1, 1979; amended, E-82-26, Dec. 16, 1981; amended May 1, 1982; revoked May 1, 1988.)

92-19-35. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1981 Supp. 79-3603, 79-3606; modified, L. 1979, Ch. 349, May 1, 1979; amended, E-82-26, Dec. 16, 1981; amended May 1, 1982; revoked May 1, 1988.)

92-19-36. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1981 Supp. 79-3603, 79-3606; modified, L. 1979, Ch. 349, May 1, 1979; amended, E-82-26, Dec. 16, 1981; amended May 1, 1982; revoked May 1, 1988.)

(b) If a certificate of title is issued for a vehicle or trailer, the purchaser shall pay Kansas state and local use tax to the county treasurer upon application for a certificate of title or certificate of title and registration.

(1) I

a person who is a party to a contract, either as a party or as an object of the contract, in writing, demand received, return, whether private or public, certificate of title, (2) I

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