

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairman Barbara Allen at 10:40 A.M. on January 31, 2005 in Room 519-S of the Capitol.

All members were present. Senator Schmidt - excused
Senator Jordan - excused

Committee staff present:

Chris Courtwright, Kansas Legislative Research
Martha Dorsey, Kansas Legislative Research
Gordon Self, Revisor of Statutes Office
Nancy Kirkwood, Secretary

Conferees appearing before the committee:

Paul Welcome, Johnson County Appraiser
Kenneth Daniel, Midway Wholesale, Topeka
Marlee Carpenter, Kansas Chamber of Commerce (KCCI)
Natalie Bright, Wichita Independent Business Association (WIBA)
Tony Folsom, Deputy Director, Kansas Department of Revenue (KDOR)
Bill Waters, Attorney, Kansas Department of Revenue (KDOR)

Others attending:

See attached list.

SB 126 - Amendment of tax rolls by county appraiser in certain circumstances and payment of tax under protest

Chairperson Allen called the Committee's attention to the hearing of **SB 126**.

Paul Welcome, Johnson County Appraiser, appeared before the Committee in support of **SB 126** (Attachment 1) and explained the flow-chart (Attachment 2). Mr. Welcome presented an amendment to **SB 126** (Attachment 3).

Written testimony in support was submitted by the Kansas County Appraiser's Association (Attachment 4).

Tony Folsom, KDOR, presented a handout explaining **SB 126**, asking the Committee to consider the amendment (Attachment 5).

SB 127 - Component parts of certain personal property

The Chair welcomed Paul Welcome back to Committee. Mr. Welcome appeared as a proponent of **SB 127**, and presented testimony to that effect (Attachment 6).

Chairperson Allen requested that Mr. Welcome furnish the Committee the Allen, Gibbs & Houlik, L. D., court decision to which he referred during his testimony.

Tony Folsom, KDOR, presented to members of the Committee a response to Department of Revenue, Division of Policy and Research, as to the fiscal impact of **SB 127** (Attachment 7). Mr. Folsom stated PVD does agree with the testimony of Johnson County, and supports the adoption of **SB 127**. The Department believes **SB 127** restores legislative intent, clarifying for taxpayers and county appraisers what an "item" is.

Mark Beck, Director PVD, stated **SB 127** would amend K.S.A. 79-201w, the statute that provides a property tax exemption for all commercial and industrial machinery, equipment, materials and supplies with an original retail cost when new of \$400 or less. Mr. Beck stated PVD supports **SB 127**, and believes passage of the bill will restore legislative intent, and clarify the issue for both taxpayers and county appraisers (Attachment 8).

There being no others wishing to testify as a proponent, the Chair moved to the opponents on **SB 127**.

CONTINUATION SHEET

MINUTES OF THE Senate Assessment and Taxation Committee at 10:40 A.M. on January 31, 2005 in Room 423-S of the Capitol.

Kenneth Daniel, Jr., appeared as an opponent to **SB 127**, and submitted testimony to the Committee (Attachment 9).

Testimony in opposition to **SB 127** was presented by Marlee Carpenter, KCCI. Ms. Carpenter stated the bill would reverse a Kansas Court of Appeals case that clarifies the definition of an item for property tax purposes (Attachment 10).

Natalie Bright appeared before the Committee on behalf of the members of WIBA, and presented testimony in opposition to **SB 127** (Attachment 11).

Chairperson Allen asked for any others wishing to testify on **SB 127**. There being none, the Chair closed the hearing on **SB 127**.

The Legislative Research Department furnished the Committee a comparison chart of State and Local Retail Sales Taxes, requested by the Committee at the January 27th meeting (Attachment 12).

Approval of minutes

Minutes for the January 13th meeting were presented for approval. Senator Donovan made a motion to approve the minutes as written, seconded by Senator Jordan, and the motion carried

The meeting adjourned at 11:30 a.m. The next meeting is scheduled for February 1, 2005.

SENATE
ASSESSMENT & TAXATION COMMITTEE

GUEST LIST

DATE: Monday, Jan 31

NAME	REPRESENTING
Ann Dinkes	Div. of the Budget
Tony Folsom	KDOR - PVD
Paul Welcome	Johnson County KS
Amber Shaverdi	IMCA of KS
Bill Waters	KDOR - PVD
Roger Hamm	KDOR - PVD
David Corbin	KDOR
Steve Johnson	Ks. Gas Service
MIKE REECHT	Gaches Broker
Marlee Carpenter	Kansas Chamber
Natalie Bugles	W. Club Independent Business Assoc.
Patrick Walker	
Brent Haden	KS Livestock Assoc.
Shuler Keahm	KACCT
LARRY R BAER	LKM
Rob Mealy	HEIN Law Firm
Judy Shaw	Kearney & Associates
Wendy Adams	KAPA

**MEMORANDUM**

Office of the County Appraiser Johnson County, KS

Named "Distinguished Assessment Jurisdiction" for 2000

TO: Senate Assessment and Tax

FROM: Paul Welcome, CAE, County Appraiser

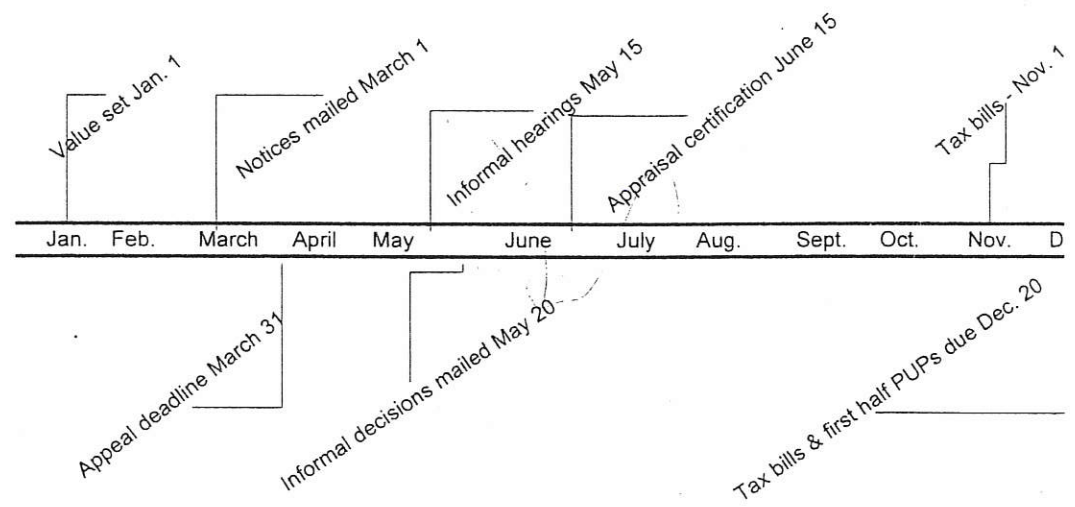
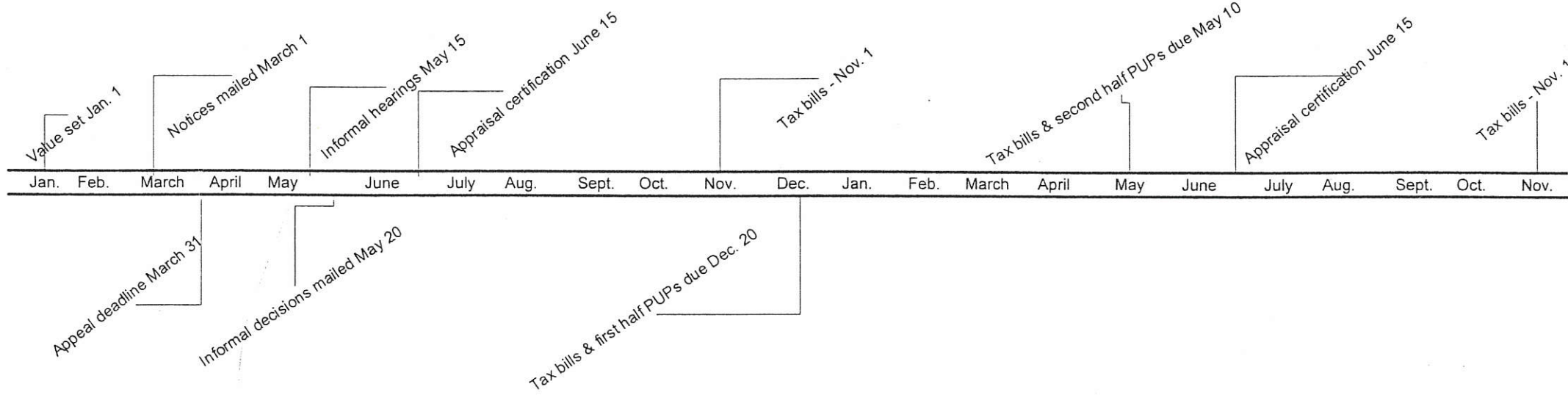
RE: SB 126 Proposed Statute Changes to 79-1460 & 79-2005

DATE: January 31, 2005

The change in KSA 79-1460 would allow the county appraiser to change the tax roll after the certification date of June 15 but before November 1st. The second half payment protest hearing for the prior year occurs after June 15th certification deadline for the current year. The county appraiser is not allowed to change the following year's tax roll and the property owner has to file a payment under protest for the current year to receive the adjustment when they pay their taxes by December 20th. The intent of 79-1460 was to allow for the value change to be carried forward to the following year. This cannot occur with the 2nd half payment under protest due to timing for the following year's tax roll. We believe allowing the county appraiser to change the roll would be advantageous for the property owner and the county. The county could correct the roll prior to final millage rates being finalized and the county would not have to pay for additional interest because of the delay to implement 79-1460.

The second bill 79-2005 would allow the property owner to make a payment under protest until January 31st if the mortgage company makes a partial or full payment. This bill was changed to allow for the property owner to file until January 31st the mortgage companies were making a full payment by December 20th. With federal law changes, the mortgage companies will make two payments if there is not incentive or discount for full payment at the first payment time. We feel this change would allow for the most expeditious remedy for proper changes to the tax roll if their evidence would warrant a change in value. The county would be able to make the change early and not have to wait until the second half payment is due.

Thank you for your consideration.



SENATE BILL No. 126

AN ACT concerning property taxation; relating to reduction of valuation of real property; amendment of ~~tax~~ appraisal rolls; payment of taxes under protest; amending K.S.A. 2004 Supp. 79-1460 and 79-2005 and repealing the existing sections.

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

Section 1. K.S.A. 2004 Supp. 79-1460 is hereby amended to read as follows: 79-1460. (a) The county appraiser shall notify each taxpayer in the county annually on or before March 1 for real property and May 1 for personal property, by mail directed to the taxpayer's last known address, of the classification and appraised valuation of the taxpayer's property, except that, the valuation for all real property shall not be increased unless: (1) The record of the latest physical inspection was reviewed by the county or district appraiser, and documentation exists to support such increase in valuation in compliance with the directives and specifications of the director of property valuation, and such record and documentation is available to the affected taxpayer; and (2) for the taxable year next following the taxable year that the valuation for real property has been reduced due to a final determination made pursuant to the valuation appeals process, documented substantial and compelling reasons exist therefor and are provided by the county appraiser. *When the valuation for real property has been reduced due to a final determination made pursuant to the valuation appeals process for the prior year, and the county appraiser has already certified the ~~tax~~ appraisal rolls for the current year to the county clerk pursuant to K.S.A. 79-1412a 79-1466, and amendments thereto, the county appraiser may amend the ~~tax~~ appraisal rolls and certify the changes to the county clerk to implement the provisions of this subsection and reduce the valuation of the real property to the prior year's final determination, except that ~~the county appraiser may not amend the tax rolls as provided in this subsection~~ such changes shall not be made after October 31 of the current year.* For the purposes of this section and in the case of real property, the term "taxpayer" shall be deemed to be the person in ownership of the property as indicated on the records of the office of register of deeds or county clerk and, in the case where the real property or improvement thereon is the subject of a lease agreement, such term shall also be deemed to include the lessee of such property if the lease agreement has been recorded or filed in the office of the register of deeds. Such notice shall specify separately both the previous and current appraised and assessed values for each property class identified on the parcel. Such notice shall also contain the uniform parcel identification number prescribed by the director of property valuation. Such notice shall also contain a statement of the taxpayer's right to appeal, the procedure to be followed in making such appeal and the availability without charge of the guide devised pursuant to subsection (b). Such notice may, and if the board of county commissioners so require, shall provide the parcel identification number, address and the sale date and amount of any or all sales utilized in the determination of appraised value of residential real property. In any year in which no change in appraised valuation of any real property from its appraised

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**Kansas County Appraiser's Association
P.O. Box 988
Meade, KS 67864**

TO: Senate Assessment and Taxation Committee

FROM: Kansas County Appraiser's Association

RE: Senate Bill 126
Senate Bill 127

DATE: January 31, 2005

The Kansas County Appraiser's Association supports Senate Bill 126 and Senate Bill 127.

Senate Bill 126 would allow appraisers to make changes to the tax roll after the certification date of June 15th and up to November 1st. If mortgage companies make a partial or full payment it would allow taxpayers to make a payment under protest until January 31st. These changes would allow taxpayers a longer amount of time to file a payment under protest. It would also allow for tax roll corrections prior to finalization of millage rates and would create a shorter window of time on the accrual of interest payable by counties.

Senate Bill 127 would provide a clear definition, and the original legislative intent, of an exempt personal property "item" as amended in KSA 79-201w in 2002. This definition will clarify the conflicting interpretations by PVD and BOTB and would provide consistent valuations of personal property within counties across the state. Without the definition, commercial personal property assessment rolls will continue to be eroded as equipment is rendered broken down to their smallest components.

If you have any questions please contact Paul Welcome, KCAA Lobbyist, 913-715-0001 or Marie Shelton, KCAA Lobbyist, 316-660-9278.

2005 Senate Bill 126a Response

Introduced as a Senate Bill

Team Leader: Yi Geng/Revenue/KDOR

Prepared By: Tony Folsom

Date: 01/31/2005

Brief of Bill

Section 1 of SB 126, would allow the county appraiser, under certain circumstances, to amend the tax roll before November 1st of the current year. This amendment would allow the county appraiser to amend the tax roll for the current year when a final determination on a property valuation had been made for the prior year and the county appraiser had already certified the appraisal roll for the current year. The county appraiser may then reduce the current year's valuation of the property to the prior year's final value determination. This is consistent with existing provisions in K.S.A. 79-1460 that provide that the valuation of real property in the current year cannot be increased over the final determination of value from the prior year, unless a county appraiser has documentation and substantial and compelling reasons to increase the valuation. Certain appeals from the prior year are not decided before the county appraiser certifies values to the county clerk on or before June 15 (K.S.A. 79-1466). As an example, a payment under protest that proceeds to the Board of Tax Appeals may not be decided until well into the following tax year. This bill would allow county appraisers to amend the appraisal roll for the current year when a final determination is received on the prior year's valuation after June 15th, but prior to November 1st, which would reduce the number of appeals filed at the county level.

In addition, Section 2 of SB 126 addresses the protesting of payment of taxes. The bill adds language that would allow a property owner whose tax escrow agent pays the first half taxes on or before December 20 to file a protest on or prior to January 31 of the next year. Currently, a property owner whose taxes are paid by an escrow agent may file a protest on or before January 31st of the next year only if their escrow agent pays the entire year's taxes on or before December 20th. Otherwise, a property owner may file a protest only if it is filed at the same time the escrow agent pays the first or second half taxes, which is almost an impossible task in terms of coordination between the taxpayer and the escrow agent. Many tax escrow agents now pay property taxes in halves (the first half on or before December 20th, and the second half on or before the following June 20th, pursuant to K.S.A. 79-2004). When K.S.A. 79-2005 was first adopted, it was more common for tax escrow agents to pay the entire year's taxes on or before December 20th.

Fiscal Impact

None.

Administrative Impact

None.

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Administrative Problems and Comments

None.

Taxpayer/Customer Impact

The bill makes it easier for property owners with tax escrow agents who pay their taxes to file protest. The bill also would have the affect of reducing the number of appeals filed at the county level that are filed in order for taxpayers to receive a reduction in the current year when the prior year's valuation is reduced.

Legal Impact

There is a concern with the reference to "tax rolls" in Section 1 of the bill. There are three rolls involved in the valuation, assessment and taxation of real property. The first is the real property appraisal roll created by the county appraiser, which is certified to the county clerk by June 15th of each year. See K.S.A. 79-1466 and 79-1412a. The second is the assessment roll, which is what the appraisal roll is called after it is certified to the county clerk. See K.S.A. 79-1604, 79-1605 and references to it in 79-1701 and 79-1701a. The third is the tax roll. See K.S.A. 79-1803.

The county appraiser certifies the appraisal roll to the clerk by June 15th. Once transferred to the clerk, the roll is called the assessment roll until such time as all amounts of ad valorem tax levies have been certified to the clerk, the clerk computes the final tax levy rate to be applied to each tract or lot of real property and the taxes are then determined. At that point, the roll becomes the tax roll and it is then certified by the clerk to the county treasurer on or before November 1st. See K.S.A. 79-1803. Therefore, the roll that would be changed by the county appraiser would be the "appraisal roll" and not the tax roll. The appraiser would then certify the changes to the county clerk so that the "assessment roll" could be updated.

It is our belief that on the first page of SB 126, line 32, the reference to "county appraiser has already certified the tax rolls" should be changed to "county appraiser has already certified the appraisal rolls." On page 1, line 33, the reference to K.S.A. 79-1412a would be more accurate if K.S.A. 79-1466 was referenced, which is the more specific statute dealing with certification of the appraisal roll. Then on page 1, line 34, the reference to "county appraiser may amend the tax rolls" should be changed to "county appraiser may amend the appraisal roll and certify the changes to the county clerk." Finally, delete the current language starting on line 36 after the comma through the end of the sentence on line 38 and insert "except that such changes shall not be made after October 31 of the current year."

The above changes would be as follows:

When the valuation for real property has been reduced due to a final determination, made pursuant to the valuation appeals process for the prior year, and the county appraiser has already certified the ~~tax~~ appraisal rolls for the current year to the county clerk pursuant to K.S.A. ~~79-1412a~~ 79-1466, and amendments thereto, the county appraiser may amend the ~~tax~~ appraisal rolls and certify the changes to the county clerk to implement the provisions of this subsection and reduce the valuation of the real property to the prior year's final determination, ~~except that the county appraiser may not amend the tax rolls as provided in this subsection~~ such changes shall not be made after October 31 of the current year

It is appropriate to terminate the county appraiser's authority to make adjustments on or before October 31st, prior to the lien date of November 1. See K.S.A. 79-1804.



MEMORANDUM

Office of the County Appraiser Johnson County, KS

Named "Distinguished Assessment Jurisdiction" for 2000

TO: Senate Assessment and Taxation

FROM: Paul Welcome, CAE, Johnson County Appraiser

RE: SB 127

DATE: January 31, 2005

Enacted in 1995 and amended in 2002, K.S.A. 79-201w exempts all commercial and industrial machinery, equipment, materials and supplies with an original retail cost when new of \$400 or less. As originally written, this statute exempted original costs of \$250 or less. The statute does not define the term "item," which determines of what is exempt.

The statute was enacted to reduce the onerous burden on business owners of listing small-ticket items such as pencils, paper clips and supplies. It was never intended to "break apart" pieces of equipment in order to bring original costs below the exemption threshold.

Since the inception of the exemption, the definition of an "item" has been clear. PVD provided a definition for use that is straightforward and understood by counties. However, BOTA and the Court of Appeals now have provided a definition of item in the Allen, Gibbs & Houlik (AGH) decision that differs substantially from PVD's definition and undermines the legislative intent of the statute.

AGH appealed its assessment of replacement computer keyboards to BOTA in 2000. BOTA granted the exemption, stating, "[t]he Board finds that it is unnecessary to examine the legislative history of K.S.A. 79-201w..." BOTA also stated, "...the Board is not persuaded by PVD's assertion that taxpayers will begin to break down personal property down to nuts and bolts." The Court of Appeals affirmed BOTA's decision.

In 2001, Yellow Freight System, Inc., filed an exemption application in Johnson County that **did** break down equipment to nuts and bolts, by listing its workstations as separate component parts, such as cubicle walls, connecting pieces and drawers. Yellow Freight is attempting to exempt a large portion of its taxable personal property.

Of course, taxpayers **can and will** break down their personal property to whatever level they must in order to gain property tax exemption under this statute. The entire Kansas commercial personal property assessment roll can be whittled down to zero under this statute, as long as BOTA's "definition" of an item is applied.

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Johnson County estimates the potential loss through refunds and/or elimination of personal property from the tax rolls in the current year of up to 43%.

We request this statute be amended to fulfill the legislature's original intent.

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Date
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2005 Senate Bill 127a Response

Introduced as a Senate Bill

Team Leader: Yi Geng/Revenue/KDOR

Prepared By: Tony Folsom

Date: 01/31/2005

Brief of Bill

SB 127 would revise K.S.A. 79-201w, a property tax exemption statute that provides an exemption to items with a retail cost when new of \$400 or less, to define what constitutes an "item" for purposes of the exemption. Under the bill, an item of machinery, equipment, materials or supplies would not be exempt from property taxation if it is a component part of another item of machinery, equipment, materials or supplies and is necessary or integral to the functionality and use of that other item.

The bill would become effective upon publication in the statute book.

Fiscal Impact

We assume there would be property that is currently exempt from ad valorem taxation that would be placed back on the tax rolls if this bill is passed. As such, there would be a positive impact on state revenues. However, we do not have any way to accurately estimate the amount of property that would be placed back on the tax rolls, and consequently, cannot estimate the effect on state revenues.

Administrative Impact

None.

Administrative Problems and Comments

K.S.A. 79-201w was originally introduced in 1995 as House Bill 2108 and was enacted as Senate Bill 165 (L. 1995, ch. 254, § 1). Testimony at that time indicated that the goals of the bill were (1) to eliminate the need to report for property tax purposes items of nominal value such as pencils, paper clips, rubber bands, staplers, ash trays etc., and (2) to be revenue neutral. Testimony expressed the opinion that reporting items of nominal value was burdensome to businesses and unrealistic for county appraisers to track, value and assess. There was also testimony that expressed a fear that taxpayers might break down large items of equipment such as computers into component parts in order to qualify the component parts for the exemption. In fact, one supporter of the bill offered a definition of "item" that would have defined "item" as a "component part." This definition was not adopted by the legislature.

It was not long after Senate Bill 165 was adopted that taxpayers began breaking equipment into component parts in order to take advantage of the exemption. One case, *In re Tax Exemption Application of Allen, Gibbs & Houlik, L.C.*, 29 Kan. App.2d 537, 29 P.3d 431 (2001), reached the Court of Appeals. The Court of Appeals adopted

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the taxpayer's argument that "item" as the term is used in K.S.A. 79-201w includes "a distinct part of a whole." In other words, the Court adopted the "component part" argument, which we believe is contrary to the legislature's original intent.

We support adoption of Senate Bill 127, which we believe will restore legislative intent and clarify the issue for both taxpayers and county appraisers.

Taxpayer/Customer Impact

The bill provides clarification and guidance to taxpayers and county appraisers concerning what is an exempt item pursuant to K.S.A. 79-201 w.

Legal Impact

None. The bill will restore legislative intent and clarify the issue of what is an item for both taxpayers and county appraisers.



K A N S A S

JOAN WAGNON, SECRETARY

DEPARTMENT OF REVENUE
DIVISION OF PROPERTY VALUATION

KATHLEEN SEBELIUS, GOVERNOR

MEMORANDUM

TO: Honorable Barbara Allen, Chair
Senate Assessment and Taxation Committee

FROM: Mark S. Beck, Director

DATE: January 31, 2005

SUBJECT: Senate Bill 127

Senate Bill 127 would amend K.S.A. 79-201w, a property tax exemption statute that provides an exemption to items with a retail cost when new of \$400 or less. This bill will provide clarity and guidance to taxpayers and county appraisers.

K.S.A. 79-201w was originally introduced in 1995 as House Bill 2108 and was enacted as Senate Bill 165 (L. 1995, ch. 254, § 1). Testimony at that time indicated that the goals of the bill were (1) to eliminate the need to report for property tax purposes items of nominal value such as pencils, paper clips, rubber bands, staplers, ash trays etc., and (2) to be revenue neutral. Testimony expressed the opinion that reporting items of nominal value was burdensome to businesses and unrealistic for county appraisers to track, value and assess. There was also testimony that expressed a fear that taxpayers might break down large items of equipment such as computers into component parts in order to qualify the component parts for the exemption. In fact, one supporter of the bill offered a definition of "item" that would have defined "item" as a "component part." This definition was not adopted by the legislature.

It was not long after Senate Bill 165 was adopted that taxpayers began breaking equipment into component parts in order to take advantage of the exemption. One case, *In re Tax Exemption Application of Allen, Gibbs & Houlik, L.C.*, 29 Kan. App.2d 537, 29 P.3d 431 (2001), reached the Court of Appeals. The Court of Appeals adopted the taxpayer's argument that "item" as the term is used in K.S.A. 79-201w includes "a distinct part of a whole." In other words, the Court adopted the "component part" argument, which we believe is contrary to the legislature's original intent.

We support adoption of Senate Bill 127, which we believe will restore legislative intent and clarify the issue for both taxpayers and county appraisers.

Presentation to the Senate Assessment & Taxation Committee

January 31, 2005

Kenneth L. Daniel, Jr., Topeka
Chairman and C.E.O., Midway Sales & Distributing, Inc.
Publisher, KsSmallBiz.com

Madame Chairman and Members of the Committee:

My name is Ken Daniel. I am the Founder of Midway Wholesale, a building materials distributor headquartered in Topeka with branches in Salina, Manhattan, Lawrence, Elwood/St. Joseph, Overland Park, and Wichita.

I would like to speak in defeat of Senate Bill 127. This is nothing but a partial reinstatement of the "paper clip tax" that Kansas small business owners hated so much. The main issue here is not the tax. It is the burdensome and costly paperwork.

Even as we meet today there are small businesses in this state that have been bullied into doing record-keeping and paying property taxes on \$60 computer scanners and \$90 printers, even though the law says no tax is owned on items that cost less than \$400.

Furthermore, small businesses are being bullied into keeping records and reporting on minor items that are clearly not subject to property taxes.

Some county appraisers are making up their own laws about used equipment. The Shawnee County appraiser has been telling small businesses they have to track items they bought used if they paid \$80 or more for them.

Large companies have capitalization policies in which items under a certain value are treated as a current expense. Virtually none of them keep track of items under \$1000. This standard practice is accepted by the IRS and by the accounting profession.

It is not in the best interest of Kansas to load up its businesses with red tape. It is expensive for Kansas businesses and appraisers alike to keep track of minor items.

At Midway, we keep three different sets of records of our furniture, fixtures, and equipment:

- We have to keep tax depreciation schedules in order to file our state and federal income tax returns. We pay a C.P.A. firm a considerable sum each year to maintain our depreciation schedules from information our staff gathers and furnishes to them. We do not track items of less than \$1000 in value.
- As a sound business practice, we maintain a separate database of the furniture, fixtures, and equipment we have at each location. Each fixed asset item is marked with a sticker. An internal company auditor goes to each location once a year and

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does an inventory of the fixed assets. We do not have original purchase information on 90% of these items.

- Finally, we keep a third set of records so we can file reports to county appraisers for property tax purposes.

It is very time-consuming and expensive for us to maintain all of these records, and there is risk to every business of being fined or penalized even if you've done the very best job you can. For many small businesses, the cost of keeping these records is greater than the tax collected.

Very few businesses of any size have the information required to report accurately. Most of the information is useful only to the appraiser, and businesses don't keep track.

POINTS TO CONSIDER:

- In Shawnee County, the tax on a 5-year-old scanner that cost \$60 new is 45 cents per year. There is no way to keep track of an item for 45 cents.
- Kansas already has extremely high property tax rates on business machinery and equipment.

According to a 2004 study of effective tax rates published by Kansas, Inc.:

Property taxes, business machinery and equipment—5-year asset life:

CO 2.25%, **KS 2.22%**, MO 1.87%, NE 1.87%, OK 1.24%, IA 0.00%

The Kansas figure is after the 15% business machinery and equipment income tax credit is deducted. Kansas is 53.5% above the average for the other five states in the region.

Property taxes, business machinery and equipment—10-year asset life:

CO 2.52%, **KS 1.94%**, NE 1.82%, MO 1.72%, OK 1.39%, IA 0.00%

The Kansas figure is after the 15% business machinery and equipment income tax credit is deducted. Kansas is 30.2% above the average for the other five states in the region.

- The property tax depreciation methods on business machinery and equipment overstate the value, so the effective tax rate is even higher. Computers and peripherals are the worst-case example.
- For the most part, small businesses don't file for the income tax credit because it is complicated and in many cases, the credit is less than the cost to file for it.
- Compliance with property tax on low-cost items is poor. Big businesses aren't going to do it, and officials aren't going to make them. Very small businesses aren't going to do it, and it is not worth it to try to make them. That leaves your middle-sized home-owned businesses as the targets of the appraisers.

- Three years ago, six of the biggest companies in Sedgwick County had the following number of under \$1000 items on their tax statement: 2, 3, 0, 0, 3, 60.

I would encourage the committee to defeat this bill. In fact, it would be in the best interest of the state to enact legislation that eases this burden on small businesses:

- Make it clear that items under \$400 are not to be taxed.
- Items not subject to tax do not have to be reported.
- The basis for used items is the amount paid for them.
- Raise the threshold to \$1000.

Thank you. If there is time, I would be happy to answer any questions.

Legislative Testimony

SB 127

January 31, 2005

**Testimony before the Kansas Senate Assessment and Taxation Committee
By Marlee Carpenter, Vice President of Government Affairs**

Chairman Allen and members of the Committee:

I am Marlee Carpenter with the Kansas Chamber of Commerce testifying in opposition to SB 127. This bill would reverse a Kansas Court of Appeals case that clarifies the definition of an item for property tax purposes. Currently, there is a property tax exemption in place that was increased in 2002 from \$250 to \$400. This property tax exemption was enacted because county appraisers were requiring businesses to report and pay property tax on their machinery, equipment, materials and supplies down to the last paperclip. That is why this is referred to as the "paperclip" exemption.

In the years following the exemption enactment, the Kansas Department of Revenue developed rules and regulations on how this exemption should be administered. The Department viewed this exemption in terms of units of a whole. A computer unit was viewed as one item under this exemption whether it was bought as a unit or with separate pieces. A 2001 Court of Appeals case determined the definition of an item to be different. The Court stated that "if a computer system is purchased as one piece and the individual components are not selected individually and the system is one complete package and invoiced as one price, then, unless the total cost of the entire system is less than \$250, the taxpayer is not entitled to an exemption." The Court goes on to say, "but, if the system is purchased as most systems are, by individually selecting a monitor, keyboard, mouse, etc. separately with itemized invoicing, then each item under \$250 would be exempt." *In re Tax Exemption application of Allen, Gibbs & Houlik, L.C.*, 29 P.3d 431, 437 (Kan. App. 2001).

SB 127 is in conflict to the definition of an item as determined by the Kansas Court of Appeals. If enacted, a property tax exemption would not be allowed for separately purchased component parts if they are necessary or integral to the functionality and use of that item. The computer components, even if they are purchased separately and invoiced separately, would be viewed as one item.

Thank you for your time and I will be happy to answer any questions.

The Kansas Chamber, with headquarters in Topeka, is the statewide business advocacy group moving Kansas towards becoming the best state in America to do business. The Kansas Chamber and its affiliate organization, The Kansas Chamber Federation, have more than 10,000 member businesses, including local and regional chambers of commerce and trade organizations. The Chamber represents small, medium and large employers all across Kansas.

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Attachment # 10



**THE KANSAS
CHAMBER**

The Force for Business

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Wichita Independent Business Association

THE VOICE OF INDEPENDENT BUSINESS

Testimony by Natalie Bright
in Opposition to SB 127
Senate Committee on Assessment and Taxation
January 31, 2005

Chair Allen and Honorable Committee Members,

I am Natalie Bright appearing on behalf of the members of Wichita Independent Business Association in opposition to SB 127. As proposed, SB 127 would reverse a Kansas Court of Appeals case that clarifies what constitutes "an item" for property tax purposes. Current law exempts any business machinery or equipment valued at less than \$400 from property tax. This exemption was originally enacted to allow business to avoid having to report and pay property tax on machinery, equipment, materials and supplies down to the last paperclip. Enactment of SB 127 would circumvent the legislative intent of the current exemption and place additional tax burden and reporting requirements on many of our members and therefore we ask that you oppose this measure before you.

In 2001, the Kansas Court of Appeals reversed a long standing interpretation by the Kansas Department of Revenue that viewed items as units of a whole if they were interdependent, such as a computer even though it may have been purchased in separate pieces. In 2001, the Court of Appeals stated that "if a computer system is purchased as one piece and the individual components are not selected individually and the system is one complete package and invoiced as one price, then, unless the total cost of the entire system is less than \$250, the taxpayer is not entitled to an exemption." The Court goes on to say, "but, if the system is purchased as most systems are, by individually selecting a monitor, keyboard, mouse, etc. separately with itemized invoicing, then each item under \$250 would be exempt." *In re Tax Exemption application of Allen, Gibbs & Houlik, L.C.*, 29 P.3d 431, 437 (Kan. App. 2001). SB 127 would reverse the decision reached by the Court of Appeals. If enacted, a property tax exemption would not be allowed for component parts if they are necessary or integral to the functionality and use of that item. The computer components, even if they are purchased separately and invoiced separately, would be viewed as one item. Forcing the business taxpayer to combine these items would be yet another unfriendly burden placed on Kansas businesses. We oppose the passage of SB 127.

Thank you for the opportunity to appear before to express WIBA's opposition to SB 127.

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Comparison of State and Local Retail Sales Taxes

January 2004

	Food Items [1] Taxable (T) Exempt (E)	State Rate	Maximum Local Rate [2]	Maximum State/Local Rate [2]
Alabama	T	4.00	7.00	11.00
Alaska	T	---	7.00 [3]	7.00
Arizona	E	5.60	4.50	10.10
Arkansas	T	5.125	5.50	10.625
California	E	6.00	2.75	8.75
Colorado	E	2.90	7.00	9.90
Connecticut	E	6.00	---	6.00
District of Columbia	E	5.75	---	5.75
Florida	E	6.00	1.50	7.50
Georgia	E [4]	4.00	3.00	7.00
Hawaii	T*	4.00	---	4.00
Idaho	T*	6.00	3.00	9.00
Illinois	T**	6.25	3.00	9.25
Indiana	E	6.00	---	6.00
Iowa	E	5.00	2.00	7.00
Kansas	T*	5.30	3.00	8.30
Kentucky	E	6.00	---	6.00
Louisiana	E [4]	4.00	6.25	10.25
Maine	E	5.00	---	5.00
Maryland	E	5.00	---	5.00
Massachusetts	E	5.00	---	5.00
Michigan	E	6.00	---	6.00
Minnesota	E	6.50	1.00	7.50
Mississippi	T	7.00	0.25	7.25
Missouri	T**	4.225	4.5	8.725
Nebraska	E	5.50	1.50	7.00
Nevada	E	6.50	1.00	7.50
New Jersey	E	6.00	---	6.00
New Mexico	T	5.00	2.25	7.25
New York	E	4.25	4.50	8.75
North Carolina	E [4]	4.50	3.00	7.50
North Dakota	E	5.00	2.50	7.50
Ohio	E	6.00	2.00	8.00
Oklahoma	T	4.50	6.00	10.50
Pennsylvania	E	6.00	1.00	7.00
Rhode Island	E	7.00	---	7.00

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South Carolina	T**	5.00	2.00	7.00
South Dakota	T*	4.00	2.00	6.00
Tennessee	T	7.00	2.75	9.75
Texas	E	6.25	2.00	8.25
Utah	T	4.75	2.25	7.00
Vermont	E	6.00	1.00	7.00
Virginia	T**	3.50	1.00	4.50
Washington	E	6.50	2.40	8.90
West Virginia	T	6.00	---	6.00
Wisconsin	E	5.00	0.60	5.60
Wyoming	T*	4.00	2.00	6.00

[1] Food purchased for consumption off-premises.

[2] Highest local rate known to be actually levied by at least one jurisdiction. Includes local taxes for general purposes and those earmarked for specific purposes (e.g. transit). Taxes applying only to specified sales (e.g. lodging or meals) are excluded.

[3] Alaskan cities and boroughs may levy local sales taxes from 1% to 6%.

[4] Food exempt from state tax, but subject to local taxes.

* Income tax credit allowed to offset sales tax on food.

** Food taxed at lower rate.

Source: Compiled by the Federation of Tax Administrators from various sources.

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