

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairman Barbara Allen at 10:40 A.M. on February 1, 2005 in Room 519-S of the Capitol.

All members were present.

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:

Joan Wagon, Secretary, Kansas Department of Revenue (KDOR)

Others attending:

See attached list.

Introduction of bills

Chairperson Allen called for bill introductions. Senator Taddiken appeared before the Committee with a bill request. He explained that in Kansas there is a property tax exemption that helps farmers get their crops out of the field and into storage. This bill would clarify that new hay structures would be included in the exemption. The proposed bill would clarify that the current property tax exemption for farm storage and drying equipment can only be taken one time for 8 years. The same exemption would now be allowed for farm storage structures designed to store hay. Senator Lee made a motion to introduce the bill, seconded by Senator Pine. The motion carried.

Chairperson Allen welcomed Secretary Wagon, KDOR, to give the Committee a briefing on enhanced delinquent tax collection efforts. The Secretary gave the Committee background information and a new compliance initiative (Attachment 1), an accounts receivable recovery chart (Attachment 2), Amnesty I and II Program Results (Attachment 3) and a copy of the Performance Audit Report done by the Legislative Division of Post Audit (Attachment 4). The Secretary explained to the Committee that current Kansas Statutes allow KDOR to request any licensing authority to provide KDOR a list of all their applicants, along with their SSN and addresses (Attachment 5).

Chairperson Allen announced to the Committee it had four bills to discuss and possibly work either today or tomorrow. The Committee is waiting for more information on two of the bills (SB 12 and SB 37).

The Chair recognized Melissa Wangemann, Deputy Assistant, Secretary of State, who presented a proposed balloon to SB 37. The Chair mentioned to the Committee the balloon has several amendments. At the hearing, when KCCI presented testimony, Senator Donovan had concerns about the requirement to report to the Secretary of State on par value of stock and number of shares, and the Secretary of State's office wanted to include some clean-up provisions for the bill. The balloon had one change not discussed at the hearing, a later effective date of January 1, 2006 (Attachment 6). Chairperson Allen informed the Committee it would not be working the bill today. However, she asked the Committee to look at the information provided before tomorrow's meeting.

Final action on

SB 13 - relating to confidentiality of information; disclosure

Chairperson Allen called for discussion and final action on SB 13. Senator Lee made a motion to pass SB 13 favorably. Senator Apple seconded the motion. The motion carried.

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

CONTINUATION SHEET

MINUTES OF THE Senate Assessment and Taxation Committee at 10:40 A.M. on February 1, 2005 in Room 423-S of the Capitol.

The Chair called for final action on **SB 126**. Senator Lee made a motion to report **SB 126** favorably for passage as amended, seconded by Senator Jordan. The motion carried

Chairperson Allen announced the Committee would be taking final action on **SB 37**, and further discussion and possible action on **SB 12**, tomorrow.

The Chair reminded the Committee it had received the court decision related to issues addressed in **SB 127**, requested from yesterday's hearing on the bill (Attachment 7).

The meeting adjourned at 11:50 a.m.

SENATE
ASSESSMENT & TAXATION COMMITTEE

GUEST LIST

DATE: Tues Feb 1, 2005

NAME	REPRESENTING
Rob MEALY	HEIN Law Firm
Kevin BROWN	KTCA
Tom BRURO	Farm Credit
Melissa Wangemann	Sec of State
USA Hoops	Legislative Post Audit.
Bill Brady	KCC
Mike REEDER	Doehs Braden



K A N S A S

JOAN WAGNON, ACTING SECRETARY

DEPARTMENT OF REVENUE
POLICY AND RESEARCH

KATHLEEN SEBELIUS, GOVERNOR

February 1, 2005

Testimony to Senate Committee on Assessment and Taxation

Joan Wagnon

BRIEFING ON DEPARTMENT TAX COMPLIANCE PROGRAMS

Background

As technology advances and the need to more efficiently use staff resources increases, the Department of Revenue (along with other state revenue departments) has moved rapidly toward an electronic environment—not only for filing tax returns, but also in our tax compliance initiatives.

The more quickly and efficiently the Department identifies those who owe taxes, the better the chance to collect those taxes. The Department lacks the human resource power to manually determine every non-compliant taxpayer in the state. As the Department increases its capacity to electronically process data, we can use data matching discovery programs to identify non-filers and delinquent taxpayers. Once those parties are identified, following up to collect the revenues owed requires sufficient staff resources.

The 2001 legislature provided the Department funding for 75 additional FTE to enhance our tax collection efforts. The bar graph you see graphically shows dramatically increased Accounts Receivable (A/R) recoveries, comparing FY 2001 to FY 2002: over \$40 million.

In 2003, the Department conducted a two-phase amnesty program, the first phase to encourage accelerated settlement and payment of disputed taxes by the end of FY 2003. This phase brought in \$21 million in additional SGF revenue during FY 2003. The second phase, during the fall of 2003, authorized waiver of penalties and interest for payment in full of delinquent taxes by the end of the amnesty period. Phase 2 accelerated \$30.9 million in additional revenue in FY 2004, exceeding the \$19.5 million target by over 50%.

In addition, the Department set out to technologically utilize different data repositories already available to us to continue to “get our own house in order” before we set out to match outside data sources for the general population. I have bulleted some of these successful matching programs implemented over the past 3 years:

All of these programs are annual, or continual programs:

- KDOR employee payroll match.
- Overall State payroll match.
- KPERS contributions reported to Kansas for KDOR employees.
- KPERS contributions reported for all State employees.
- The Governor issued an Executive Order that all State of Kansas new hires will be submitted for a tax clearance. We now have a bi-weekly process running parallel with State payroll issuance.
- KPERS contributions reported to Kansas for all members of KPERS retirement programs.
- Kansas State vendors match. The first match resulted in 27% noncompliance; within 12 to 16 weeks, and with the collaboration with the Division of Purchases, the noncompliance is now under 4%. Current policy provides that the Director of the Division of Purchases will not contract with a noncompliant vendor. The vendors are now required to obtain a Tax Clearance to be submitted in the bid process.
- Ongoing Liquor Licensee matching project.
- Vehicle Dealers special matching project.
- Federal-State matching programs using IRS data for federal filers with Kansas addresses.

New Compliance Initiative

Recently, in keeping with the Governor's policy of ensuring that all that Kansas taxpayers pay their fair share of taxes, I directed strategic planning for more field presence in our compliance program. This funding request to fill 18 vacant revenue agent positions will implement that strategy.

A recent Legislative Post Audit (LPA) determined a strong need to decrease the time for identifying final taxpayer liabilities. LPA recommended additional staffing to accomplish that mission, especially in the area of identifying accelerated high dollar balances, or nonfilers.

Our own Internal Audit recommended additions to field staff to properly maintain accounts receivable (A/R) inventories, seek additional discovery of non-registered or non-filed taxpayers, effectively research accounts and complaints/tips on noncompliance, and enhance overall field investigations. Compliance Enforcement Division's strategic planning specifies addressing accounts earlier in the process to recover a higher percentage of outstanding A/R and take appropriate steps to mitigate risk of higher cost collection measures. We need additional staff to implement this plan.

Eighteen additional agents are needed to:

- Appropriately, and more effectively respond to collection, and civil action cases throughout the State;
- Handle increased caseloads, maintaining efficient response time;
- Work closely with local jurisdictions to better utilize the Tax Entity report to more efficiently identify businesses not registered and not filing and remitting taxes;
- Provide additional time to existing staff "seek out", discover, or thoroughly investigate new cases in designated territories; and

- Provide resources to address high dollar accounts within 120 days and all others within 180 days.

Enhancement of the nonfiler program will move past-due accounts to field agents for collection much more quickly, increasing the need for quick response, and requiring additional staff to properly follow up with collection efforts. Significant field presence can only be accomplished by locating agents closer to the population they represent. Zip code analysis of the current caseload inventory, and additional initiatives with border states will require more staff resources.

The following population centers have sufficient caseload inventory to support an additional 5 agents in the respective locations noted below:

- **Liberal** (have had requests from the city manager and constituents located there, This position is currently posted for hire. The Liberal City Manager has offered an office space to partner with the KDOR.
- **Great Bend** (will cover Dodge City area as well);
- **Manhattan** (this position is posted for hire also, and the Manhattan City Manager has offered an office space to partner with KDOR);
- **Pittsburg** (increase presence in SE KS, address border initiatives, and cover inventory loads) (office space has been located in a local SRS office);
- **Atchison** (increase presence in NE KS, address border initiatives, and cover inventory loads). We are working with a KDOC local staff member to help identify appropriate office space.

The additional positions will be divided between the Wichita office and the Shawnee office, each located in one of the two major population centers, where the most concentrated portion of our current and incoming inventory resides. Experience demonstrates that collection cases with the highest return are located in the metropolitan centers. We need additional staff to cover these areas, and efficiently resolve inventory, discovery, or investigation. Historically, staff resources for executing warrants have been very limited. Field agents will be cross-trained to assist in executing warrants more efficiently. Training for newly hired agents will take approximately one year.

Our anticipated costs for hiring new revenue agents and our projected revenue increases from the program are shown on the attached spreadsheet. We anticipate one-time start-up costs of \$122,225 in FY 2005 and 2006, and annual on-going salary and other operating costs of \$989,000. We project \$5.7 million in additional SGF revenue in FY 2006, \$8.5 million in additional SGF revenue in each of FY 2007 and 2008, for a total of \$22.7 million over 3 fiscal years.

KDOR Tax Compliance
Field Staff Expansion

Annual Costs FY 06/On-going

Proposed reclass - current staff	\$154,000
Fill 18 vacant FTE @ new class levels	\$798,500
Salary Subtotal	\$952,500
OOE for 18 additional FTE	\$37,460
Annual Cost Total	\$989,960

Start-up Costs FY 05/06

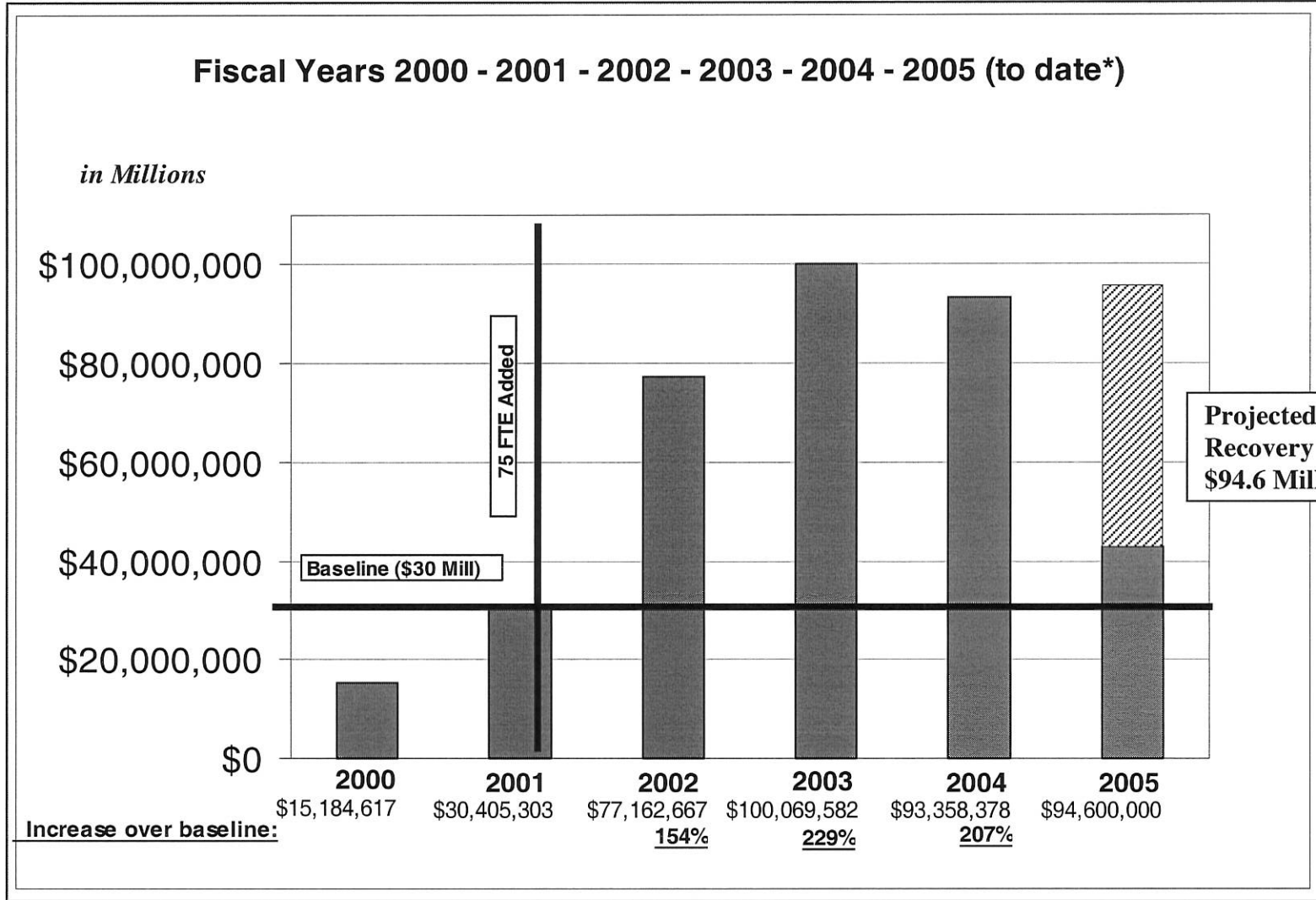
Office equipment & installation (FY 05)	\$67,725
Five Vehicles (FY 06)	\$54,500
One-time Cost Total	\$122,225

Projected Revenue Increase

	FY 06	FY 07	FY 08	3 Year Total
13 CFA FTE	\$4,118,725	\$6,175,000	\$6,175,000	\$16,468,725
3 CTE FTE	<u>\$3,000,000</u>	<u>\$4,500,000</u>	<u>\$4,500,000</u>	<u>\$12,000,000</u>
	\$7,118,725	\$10,675,000	\$10,675,000	\$28,468,725
80% to SGF	\$5,694,980	\$8,540,000	\$8,540,000	\$22,774,980
20% Local, misc.	\$1,423,745	\$2,135,000	\$2,135,000	\$5,693,745

Kansas Department of Revenue - Accounts Receivable Recovery

Fiscal Years 2000 through 2005



* January 28, 2005

Kansas Department of Revenue
Amnesty I and II Program Results

AMNESTY PHASE I RESULTS	
	06/30/2003
Corporate Audit Result	\$8,207,831
Sales/Use Audit Result	\$2,503,406
Administrative Appeals / BOTA Result	\$12,846,041
Amnesty I Total Result	\$23,557,278
AMNESTY PHASE II - RESULTS	
October 1 2003 to November 31, 2003	12/31/2005
APPROVED AMNESTY TAX IN BANK >	\$30,892,149
Original Amnesty Phase II GOAL	\$19,500,000
Amount Exceeding Phase II GOAL	\$11,392,149
% Exceeding Amnesty Phase II Goal	58.42
Amnesty I and II Combined Totals	\$54,449,427



PERFORMANCE AUDIT REPORT

**Tax Enforcement: A K-GOAL Audit Determining
Whether the Department of Revenue Is Collecting
Delinquent Trust Taxes Owed the State**

Executive Summary *with Conclusions and Recommendations*

A Report to the Legislative Post Audit Committee
By the Legislative Division of Post Audit
State of Kansas
October 2004

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 \$10 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.

We conduct our audit work in accordance with applicable government auditing standards set forth by the U.S. Government Accountability Office. These standards pertain to the auditor's professional qualifications, the quality of the audit work, and the characteristics of professional and meaningful reports. The standards also have been endorsed by the American Institute of Certified Public Accountants and adopted by the Legislative Post Audit Committee.

The Legislative Post Audit Committee is a bipartisan committee comprising five senators and five representatives. Of the Senate members, three are appointed by the President of the Senate and two are appointed by the Senate Minority Leader. Of the Representatives, three are appointed by the Speaker of the House and two are appointed by the Minority Leader.

Audits are performed at the direction of the Legislative Post Audit Committee. Legisla-

tors or committees should make their requests for performance audits through the Chairman or any other member of the Committee. Copies of all completed performance audits are available from the Division's office.

LEGISLATIVE POST AUDIT COMMITTEE

Senator Derek Schmidt, Chair
Senator Bill Buntin
Senator Anthony Hensley
Senator Dave Kerr
Senator Chris Steineger

Representative John Edmonds, Vice-Chair
Representative Tom Burroughs
Representative Bill McCreary
Representative Frank Miller
Representative Dan Thimesch

LEGISLATIVE DIVISION OF POST AUDIT

800 SW Jackson
Suite 1200
Topeka, Kansas 66612-2212
Telephone (785) 296-3792
FAX (785) 296-4482
E-mail: LPA@lpa.state.ks.us
Website:
<http://kslegislature.org/postaudit>
Barbara J. Hinton, Legislative Post Auditor

The Legislative Division of Post Audit supports full access to the services of State government for all citizens. Upon request, Legislative Post Audit can provide its audit reports in large print, audio, or other appropriate alternative format to accommodate persons with visual impairments. Persons with hearing or speech disabilities may reach us through the Kansas Relay Center at 1-800-766-3777. Our office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday.

vehicle field agent we spoke with said that hasn't happened. Apparently, a satisfactory process for sharing information between the Divisions of Motor Vehicles and Taxation has not been implemented.

Kansas is similar to other states in the ways it identifies unregistered and delinquent businesses. Like Kansas, Missouri sends tax-entity reports to its cities and counties. All three states we reviewed—California, Georgia, and Missouri—also have an automated system for identifying businesses that don't file returns when they are due, or that don't pay the full amount shown on the returns they do file. Some additional things the Department could do include establishing a hot line for receiving tips from the public, and making use of the "Dodge Report" to identify transient employers.

..... page 14

Question 1 Conclusion. Businesses that don't remit the trust taxes they owe should be of particular concern to State administrators and policy-makers. Besides increasing the tax burden on others, these businesses may be misappropriating the moneys they collected or withheld from their customers or employees for their own use. In such situations, businesses are in essence stealing money from the State and its citizens.

..... page 14

The Department's computer systems provide it with timely notification when registered businesses stop paying the trust taxes they owe. However, challenges remain in systematically identifying business that haven't registered for the trust taxes they are—or should be—collecting, as well as businesses that likely aren't remitting all the taxes they collect. The Department has taken a number of important steps through its attempts to involve local governments in identifying possible tax evaders, its use of tax clearances for entities it licenses, and internal cross-checking between taxes, but it can do more in each area. For its part, the Legislature can help by directing State agencies to participate in data matching efforts with the Department, and supporting broader use of tax clearance requirements for trust taxes.

Question 1 Recommendations. To help identify when registered or unregistered businesses are paying the trust taxes they owe, we recommended that the Department :

..... page 15

- do more to promote cities' and counties' use its "tax entity" report
- seek the authority to access licensing databases of other State agencies to match against its records
- establish a hot line phone number or web site for receiving tips about businesses suspected of tax evasion
- use the information it already collects to determine whether vehicle dealers are significantly under-reporting the sales tax they remit

We also recommended that the House or Senate Taxation Committees amend State law to give State agencies the authority to deny, suspend, or revoke a license if a business is not registered for all appropriate taxes or is delinquent on taxes owed.

3
4-3

taxes they have collected from their customers or withheld from their employees within a reasonable period of time. The current process—which allows very lengthy times before the Department moves to involuntary collection efforts—provides little incentive for businesses intent on evading taxes to do otherwise. It also contributes to the estimated delinquent tax balance owed being greatly overstated. The Department may need additional staff resources to be able to respond more quickly to tax non-compliance

Question 2 Recommendations. To provide more complete and accurate information about the amount of delinquent taxes owed the State, we recommended that the Department write-off old debt that is not likely to be collected. To increase its chances of collecting delinquent taxes, we recommended that the Department reduce the amount of time it can take for a delinquent account to be referred to collections, more quickly determine whether businesses that don't file a return are still operating, make more timely assessments of final tax liability for delinquent businesses, issue tax warrants more quickly so that the Department can take other legal actions at a time when they are most likely to produce revenue, and determine what additional staff resources may be needed to accomplish these recommendations. page 27

APPENDIX A: Scope Statement page 29

**APPENDIX B: Department of Revenue
Collection Activity – Fiscal Year 2004** page 30

**APPENDIX C: Collection Process for
Difference Risk Scores** page 31

APPENDIX D: Agency Response page 32

This audit was conducted by Lisa Hoopes, John Curran and Amy Thompson. Cindy Lash was the audit manager. If you need any additional information about the audit's findings, please contact Ms, Hoopes at the Division's offices. Our address is: Legislative Division of Post Audit, 800 SW Jackson Street, Suite 1200, Topeka, Kansas 66612. You also may call us at (785) 296-3792, or contact us via the Internet at LPA@lpa.state.ks.us.

4
4-4

businesses that are operating in their jurisdictions but aren't on that list. Despite the Department's promotion efforts, only 27% of the counties and 39% of the cities in Kansas that levy sales taxes have accessed that list. Increasing their use of that list could be a cost-effective way of identifying more tax evaders.

In addition, because many State agencies license, permit, inspect, or otherwise regulate some aspect of a variety of businesses, the Department should try to match its list registered businesses the lists those agencies maintain. To make this happen, agencies would need to collect the same identifying numbers for a businesses (such as an FEIN number) as the Department.

The Department also should develop a more systematic process for handling the tips it receives from the public or other sources. Such tips generally are directed to field agents, but aren't logged in centrally within the Department, and aren't tracked or documented so that management knows whether they were followed-up on, what the field agents found, and whether those findings might be applicable to other businesses or situations.

The Department can do more automated cross-checking to identify businesses that aren't registered for all applicable taxes. The Department performs "tax clearance" checks to help ensure that the businesses it licenses—motor vehicle dealers and businesses that sell liquor—are registered for all applicable taxes and are current on all the taxes they owe before they can be licensed or allowed to operate in Kansas. It also performs these tax clearance checks for two other agencies: the Department of Administration for vendors wanting to do business with the State, and the Kansas Lottery for retailers wanting to sell lottery tickets. Expanding the number of businesses required to get a tax clearance check before they can receive a license or permit to operate would provide a greater incentive for delinquent businesses to pay off their tax debt.

..... page 10

The Department needs to improve its procedures for determining whether registered businesses are remitting the trust taxes they owe. The Department has to rely on audits to definitively say how much an individual or business actually owes in taxes, but it has access to some internal information for motor vehicle dealers and liquor retailers that could help it gauge whether those businesses have significantly under-reported the taxes they owe. For example, the Department requires motor vehicle dealers to submit monthly reports showing the amounts of individual sales they made and taxes they collected. However, it isn't matching that information against the amount of sales taxes those dealers actually remit to the State.

..... page 12

Officials within the Division of Motor Vehicles told us the Department agreed motor vehicle field agents should compare sales tax returns to the sales reports received from dealers. However, a motor

545



PERFORMANCE AUDIT REPORT

**Tax Enforcement: A K-GOAL Audit Determining
Whether the Department of Revenue Is Collecting the
Delinquent Trust Taxes Owed the State**

**A Report to the Legislative Post Audit Committee
By the Legislative Division of Post Audit
State of Kansas
October 2004**

- **The Department issued tax warrants for only 20 of the 40 cases in our sample.** Filing a tax warrant is the essential first step for pursuing other legal actions. For three cases in our sample that we could tell were closed, warrants weren't issued until after businesses had been closed for up to six months. For two other cases, a tax warrant has yet to be filed, and the Department was aware the businesses had closed five months and 1½ years ago.
- **The Department initiated legal enforcement actions in only 12 of our 40 sample cases.** In 10 cases, the Department performed bank levies and till taps that netted a total of \$60,000. Other actions taken included referring accounts to an outside collection agency, making a demand on an escrow bond, and filing a claim to secure the State's interest in a bankruptcy case.

Department officials told us enforcement actions often are difficult to execute because of a lack of financial information, or the fact that a business has no assets or has closed. If the Department's collection efforts in these cases had been more timely, however, it may be able to minimize these problems.

Profile II-5

A Business That Breaks a Payment Plan Can Continue in the Automated Collection System For Years Without More Aggressive Enforcement Action Being Taken

An amusement company became delinquent in September 1999 when it sent in a tax return but didn't send in the full amount of taxes it owed. The Department referred this amusement company to its automated collections system in January 2001, which over the next nine months sent four tax bills and three letters. The Department finally was able to contact the business in September 2001, and the business agreed to a payment plan for the remaining \$32 it owed. Prior to the plan, the company had made a \$288 payment. Under the plan, the business was required to remit all future returns and taxes owed. The following month, the amusement company didn't file its tax return, and broke the payment plan. Under Department policy, a business can break three payment plans before it is moved forward for legal action.

For the next 1½ years, the company didn't file any returns. The Department sent monthly bills and had some additional phone contact with the company owner during this time. In April 2003, more than two years after the company had entered collections, the Department issued a final tax liability assessment of almost \$12,000 for all returns not filed. It hasn't yet filed a tax warrant against this company, and nothing in the case file indicates the business has closed.

Increasing the Resources Devoted to Delinquent Tax Collection Efforts Would Be Cost-Effective

Based on Department records for fiscal year 2004, we calculated that almost \$627,000 was collected for every full-time employee involved in collecting delinquent accounts for all types of taxes (not just trust taxes), and almost \$15 for every dollar spent by the collections unit as a whole. We used the total expenditures and staffing associated with the Compliance Management and Civil Tax Enforcement unit to calculate these dollar figures.

During this audit, Department staff repeatedly pointed to a lack of resources as the reason why it took so long to do things like issuing final assessments, or matching vehicle sales information with vehicle dealers'

tax returns. Because quick action can often make the difference between collecting money and not being about to collect, it is important that this function be adequately staffed to handle the workload it has.

A report presented to the Legislative Budget Committee in September 2004 showed that the Department had underspent its State General Fund appropriation for fiscal year 2004 by \$2.5 million, of which \$1.5 million was for salaries and wages. The Department's budget director indicated these funds were left over because there had been no internal request to increase the number of collections field staff, and the Department was being very conservative with its funds because it didn't want to have to lay off staff if there were additional budget cuts

The budget director also said salary moneys were underspent mostly from holding open vacant positions in the Division of Motor Vehicles, as well as clerical positions that processed paper tax returns. He said collections was one of three areas—along with audit and electronic filing—that had high priority for filling vacancies when they occurred.

Conclusion

Although most businesses remit the trust taxes they owe to the Department on time, the amount of delinquent trust taxes that remains unpaid continues to grow. The longer delinquent taxes remain uncollected, the less likely the Department will be able to collect them. That's why it's essential for the Department to take timely and vigorous actions against businesses that don't voluntarily pay the trust taxes they have collected from their customers or withheld from their employees within a reasonable period of time. The current process—which allows very lengthy times before the Department moves to involuntary collection efforts—provides little incentive for businesses intent on evading taxes to do otherwise. It also contributes to the estimated delinquent tax balance owed being greatly overstated. The Department may need additional staff resources to be able to respond more quickly to tax non-compliance.

Recommendations

1. To provide the Legislature and itself with more complete and accurate information about delinquent taxes owed to the State, the Department of Revenue should do the following:
 - a. take an aggressive stance on writing off old debt that is not likely to be collected. Writing off does not preclude the State from collecting those moneys should they become available at a later date; it simply removes uncollectible debt from the Department's accounting records.

8
4-8

- b. extend its detailed reconciliations of delinquent taxes to all tax types, so that interested parties can see in detail what is happening with delinquent taxes.
2. Because the Department stands a better chance of collecting delinquent taxes the more quickly it acts, the Department should take a number of steps to speed up its processes, as follows:
- a. reduce the amount of time an account waits to enter collections after it is identified as delinquent. Excluding accounts that have appeal rights, the Department should attempt to reduce this period to a maximum of 30 days for both accounts that have a balance due and accounts for which no return was filed.
 - b. quickly determining whether businesses that didn't file a return are still in operation and, regardless of whether the business is open or closed, make a timely assessment of final liability (the Department has indicated an ideal would be within 3 - 4 months of failure to file). Doing so would avoid inflating the accounts receivable balance with unrealistic estimates for closed businesses, and would allow the Department to take more timely legal actions against the owners of those businesses.
 - c. reduce the amount of time allowed for strictly voluntary compliance. Businesses that continue to operate with a balance due on trust taxes, or who don't file returns for those taxes, should be subject to a tax warrant much sooner than they are under the current system (for example, within 6 - 8 months), so the Department can take its other legal actions, such as till taps, bank levies, and garnishments, at a time when they are most likely to produce revenue.
 - * d. determine the additional staff resources needed to process delinquent taxes in an active and timely manner, and make a request to the 2005 Legislature for those resources.



LEGISLATURE OF KANSAS
LEGISLATIVE DIVISION OF POST AUDIT

800 SOUTHWEST JACKSON STREET, SUITE 1200
TOPEKA, KANSAS 66612-2212
TELEPHONE (785) 296-3792
FAX (785) 296-4482
E-MAIL: lpa@lpa.state.ks.us
www.kslegislature.org/postaudit

Testimony before the Senate Assessment & Taxation Committee on SB 15
Cindy Lash, Audit Manager, Legislative Post Audit
January 20, 2005

Thank you Madam Chair for allowing me to speak to the Committee today.

Last October we released an audit that looked at the Department of Revenue's collection of delinquent trust taxes. Our conclusion and one of our recommendations spoke directly to the need to expand the use of tax clearance as a tool for enhancing the collection of delinquent taxes. As a result, I am here to speak in support of the broadened use of tax clearance contained in SB 15. Our office has no position on the method that would be use to implement the clearances, because that is not something we looked at in our recent audit.

As we noted in our audit, businesses and individuals that don't pay the taxes they owe increase the tax burden on everyone else. In particular, businesses that don't remit trust taxes--the sales tax they collected from customers, or the withholding tax they collected from employees, are in essence stealing money from the State and its citizens.

By expanding the use of tax clearance to virtually all individuals and businesses licensed by the State, this bill provides the Department of Revenue with an efficient front-end mechanism for collecting delinquent taxes, which should result in greater fairness to taxpayers and increased revenue for the State.

- **Current Kansas Statutes:**

- **K.S.A. 74-139** specifically states that "[u]pon request of the director of taxation, each such [licensing] authority shall provide to the director of taxation a listing of all such applicants, along with such applicant's social security number and address."
 - K.S.A. 74-139 gives the director of taxation the authority to request the applicants' social security numbers.
- **K.S.A. 74-148** also requires that the licensing agency shall request the applicant's social security number.
 - The *Federal Privacy Law* provides that any state agency "which requests an individual to disclose a social security account number shall inform that individual what uses will be made of it."
 - Kansas law allows a licensing agency to request the applicant provide a social security number. KSA 74-148, 74-139. The federal law requires the agency to "advise" the applicant of the statute, *and advise regarding how the SSN will be used*. And disclosure is mandatory for these purposes.

- **Process KDOR can lawfully employ:**

1. In accordance with KSA 74-148, 74-139, the Director of Taxation will lawfully request all regulatory agencies to submit their licensee lists complete with current social security numbers, and all demographic information.
2. KDOR will load, and run the lists through the batch matching process for a compliance match.
3. All noncompliant licensees will be identified and notified by KDOR.
4. Taxpayer has the right to appeal the information. They may enter into a payment plan, or satisfy the debt in full.
5. If no response to 60 day appeal notification, the Director of Taxation will issue a warrant.
6. Kansas statute allows the Director of Taxation to issue a warrant on any debt delinquent over 60 days past the due date.
7. Warrants will be issued to all non-compliant matches meeting this criterion. (Due process will always be provided).
8. Once a warrant is issued to the District Court of Domicile, the warrant for lien becomes public record and may be published in the local newspaper.
9. The "big three", and local credit agencies all obtain the information of a tax lien and that information is recorded on the credit report of the warrantee. Which stays on the person's credit report no less than 7 years.
10. In addition, those licensees identified as non-compliant and warranted will be published on the KDOR Website.
11. At this stage of legal action, the only method to reflect a satisfied judgment is to satisfy the debt in full.
12. A Satisfaction of Judgement (SOJ) will be issued to the taxpayer once all the debt is satisfied.
13. The SOJ must be filed with the District Court, and all court cost paid by the taxpayer.
14. Payment plans are acceptable, however the warrant cannot be released until the debt is completely satisfied.

AMENDMENTS TO SB 37

Section 3, 17-2036(c): ~~When any business trust that is required to file an annual report with the secretary of state, applies for an extension of time for filing its annual income tax return with the internal revenue service, the time for filing the annual report with the secretary of state shall be extended, correspondingly, upon filing a copy of the application to income tax authorities with the secretary of state, prior to the due date of its annual report. All such copies of applications for extension of the time for filing income tax returns shall be maintained by the secretary of state in a confidential file and shall not be disclosed to any person except as authorized pursuant to the provisions of K.S.A. 79-3234 and amendments thereto, a proper judicial order and subsection (d). [Rest of statute remains]~~

Comments: Repeals statute that requires SOS to keep business trust extensions confidential, as SB 37 eliminates extensions. Remaining language would protect as confidential those extensions currently on record with SOS.

Section 4, 17-2037: Any business trust, domestic or foreign, which has obtained authority under this act to transact business in Kansas may surrender its authority at any time by filing in the office of the secretary of state a certified copy of a resolution duly adopted by its trustees declaring its intention to withdraw, accompanied by a withdrawal fee of \$20; and filing all annual report and paying all annual franchise-report fees required by K.S.A. 17-2036 and amendments thereto, and not previously filed and paid.

Comments: Changes reference to franchise fee to annual report fee.

Section 5, 17-2718(a)(1): The names and ~~residence~~ addresses of all officers, directors and shareholder of the professional corporation.

Comments: Eliminates reporting of residential address for officers and directors of professional corporations. KCCI requested that residential addresses not be reported on annual reports.

Section 6, 17-4634(a)(3): the names and addresses of the president, secretary and treasurer and the names of directors ~~with the residence address of each;~~

Comments: Eliminates reporting of residential address for officers and directors of electric cooperatives. KCCI requested that residential addresses not be reported on annual reports.

Section 8, 17-7503(a)(4): ~~the number of shares of capital stock issued and the amount of capital stock paid up and the par value per share of each class of capital stock having a par value and the number of shares of each class of stock without par value which the corporation is authorized to issue;~~

Comments: Eliminates reporting of par value of stock and number of authorized stock. Senator Donovan was concerned about financial disclosure of stock value.

Section 8, 17-7503(a)(7): ~~if the corporation is a parent corporation holding more than 50% equity ownership in any other business entity registered with the secretary of state, the name and identification number of any such subsidiary business entity.~~

Comments: Eliminates requirement that parent corporations report subsidiaries on the domestic corporation annual report. KCCI requested this amendment during the hearing.

Section 9, 17-7504(a)(4): the number of memberships or the number of shares of capital stock ~~authorized and issued~~

Comments: Similar stock amendment for nonprofits, to make stock reporting requirements consistent.

Section 9, 17-7504(a)(5): ~~if the corporation is a parent corporation holding more than 50% equity ownership in any other business entity registered with the secretary of state, the name and identification number of any such subsidiary business entity.~~

Comments: Eliminates requirement that parent corporations report subsidiaries on the nonprofit corporation annual report. KCCI requested this amendment during the hearing.

Section 10, 17-7505(a)(4): ~~the number of shares of capital stock issued and the amount of capital stock paid up and the par value per share of each class of capital stock having a par value and the number of shares of each class of stock without par value which the corporation is authorized to issue;~~

Comments: Eliminates reporting of par value of stock and number of authorized stock. Senator Donovan was concerned about financial disclosure of stock value.

Section 10, 17-7505(a)(7): ~~if the corporation is a parent corporation holding more than 50% equity ownership in any other business entity registered with the secretary of state, the name and identification number of any such subsidiary business entity.~~

Comments: Eliminates requirement that parent corporations report subsidiaries on the foreign corporation annual report. KCCI requested this amendment during the hearing.

Section 13, 17-7510(c): The secretary of state shall not issue a certificate of good standing for any corporation that has failed to file its annual report or pay its franchise taxes annual report fee.

Comments: Ties certificate of good standing from SOS with filing of annual report and annual report fee, instead of franchise tax, which is now paid to Dept of Revenue.

Section 16, 17-76,139(g): ~~When any limited liability company that is required to file an annual report with the secretary of state applies for an extension of time for filing its annual income tax return with the internal revenue service, the time for filing the annual report with the secretary of state shall be extended, correspondingly, upon filing a copy of the application to income tax authorities with the secretary of state, prior to the due date of its annual report. All such copies of applications for extension of the time for filing income tax returns filed shall be maintained by the secretary of state in a confidential file and shall not be disclosed to any person except as authorized pursuant to the provisions of K.S.A. 79-3234, and amendments thereto, a proper judicial order, or subsection (h). [Rest of statute remains]~~

Comments: Repeals statute that requires SOS to keep LLC extensions confidential, as SB 37 eliminates extensions. Remaining language would protect as confidential those extensions currently on record with SOS.

Section 17, 56-1a606(b)(2): a list of the partners owning at least 5% of the capital of the partnership, with the ~~post office~~ address of each.

Comments: Eliminates reference to "post office" to make address requirements consistent with other statutes.

Section 20, 56a-1201(b)(2): a list of the partners owning at least 5% of the capital of the partnership, with the ~~post office~~ address of each.

Comments: Eliminates reference to "post office" to make address requirements consistent with other statutes.

Add new sections to bill:

K.S.A. 17-6806. No corporation shall be dissolved under this act until all corporate fees and taxes due to or assessable by the state have been paid by the corporation.

Comments: Deletes reference to franchise tax, which is no longer paid to SOS.

17-6709. Merger or consolidation ineffective until fees and taxes paid; status, rights, privileges, powers, franchises, restrictions, debts, duties and liabilities of constituent and surviving or resulting corporations following merger or consolidation; merger of banks or trust companies. (a) No merger or consolidation shall become effective under this act until all corporate fees and taxes due to or assessable by the state have been paid by the constituent corporations.

Comments: Deletes reference to franchise tax, which is no longer paid to SOS.

K.S.A. 17-7002(f): Any corporation seeking to renew or revive its articles of incorporation under the provisions of this act shall file all annual reports and pay to the secretary of state an amount equal to all fees and taxes and any penalties thereon due. Nonprofit corporations shall file only the annual reports for the three most recent reporting periods, but shall pay all privilege fees due.

Comments: Deletes reference to franchise tax, which is no longer paid to SOS.

K.S.A. 17-7514. Annual reports; extension of time for filing; confidentiality. (a)

~~Whenever any corporation which is required to file an annual report with the secretary of state shall apply for an extension of time for filing its annual income tax return from the internal revenue service, the time for filing the annual report with the secretary of state shall be extended, correspondingly, upon filing with the secretary of state, prior to the due date of its annual report, a copy of the application to income tax authorities. All such copies of applications for extension of the time for filing income tax returns filed on or after December 31, 1978, shall be maintained by the secretary of state in a confidential file and shall not be disclosed to any person except as authorized pursuant to the provisions of K.S.A. 79-3234 and amendments thereto and subsection (c). All copies of such applications shall be preserved for one year and thereafter until the secretary of state orders that they be destroyed.~~

(b) Except in accordance with subsection (c) or a proper judicial order, it shall be unlawful for the secretary of state or any other officer, employee, former officer or former employee of this state to disclose any information contained in copies of federal extensions of time to file income tax returns. ~~Nothing in this section shall be deemed to prohibit the secretary of state or any officer or employee of the office of secretary of state from issuing any of the corporate documents described in K.S.A. 17-7506 and amendments thereto.~~

~~[Rest of statute remains]~~

Comments: Repeals statute that requires SOS to keep corporation extensions confidential, as SB 37 eliminates extensions. Remaining language would protect as confidential those extensions currently on record with SOS.

K.S.A. 56-1a610. (a) ~~When any limited partnership that is required to file an annual report with the secretary of state shall apply for an extension of time for filing its annual income tax return with the internal revenue service, the time for filing the annual report with the secretary of state shall be extended, correspondingly, upon filing a copy of the application to income tax authorities with the secretary of state, prior to the due date of its annual report. All such copies of applications for extensions of the time for filing income tax returns shall be maintained by the secretary of state in a confidential file and shall not be disclosed to any person except as authorized pursuant to the provisions of K.S.A. 79-3234 and amendments~~

thereto, a proper judicial order, and subsection (b). All copies of such applications shall be preserved for one year and thereafter until the secretary of state orders that they be destroyed. Nothing in this section shall be deemed to prohibit the secretary of state from issuing any document described in K.S.A. 56-1a605, and amendments thereto, concerning a limited partnership. [Rest of statute remains]

Comments: Repeals statute that requires SOS to keep LP extensions confidential, as SB 37 eliminates extensions. Remaining language would protect as confidential those extensions currently on record with SOS.

K.S.A. 56a-1204. (a) ~~When any limited liability partnership that is required to file an annual report with the secretary of state, shall apply for an extension of time for filing its annual income tax return from the internal revenue service, the time for filing the annual report with the secretary of state shall be extended, correspondingly, upon filing a copy of the application to income tax authorities with the secretary of state, prior to the due date of its annual report. All such copies of applications for extension of the time for filing income tax returns shall be maintained by the secretary of state in a confidential file and shall not be disclosed to any person except as authorized pursuant to the provisions of K.S.A. 79-3234 and amendments thereto, a proper judicial order, and subsection (b). All copies of such applications shall be preserved for one year and thereafter until the secretary of state orders that they be destroyed. [Rest of statute remains]~~

Comments: Repeals statute that requires SOS to keep LLP extensions confidential, as SB 37 eliminates extensions. Remaining language would protect as confidential those extensions currently on record with SOS.

New Section: This act shall take effect and be in force from and after January 1, 2006.
Comments: Allows the SOS time to implement new extension policy, and educate public of change.

No. 85,126

29 Kan App2d 537
29 P3d 431 (2001)

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE APPLICATION OF

ALLEN, GIBBS & HOULIK, L.C.,

FOR EXEMPTION FROM AD VALOREM

TAXATION IN SEDGWICK COUNTY, KANSAS.

SYLLABUS BY THE COURT

1. The rules for consideration of a motion for summary judgment are discussed and applied.
2. The hearing requirement under K.S.A. 2000 Supp. 79-213(g) for a request for property tax exemption is considered.
3. The rules for interpretation of a statute are discussed and applied.
4. The Board of Tax Appeals is a specialized agency charged with the duty to decide taxation issues. Its decisions are ordinarily given great weight and deference when it is acting within the scope of its expertise. If there is a rational basis for the Board's interpretation, it should be upheld on judicial review.
5. The final construction of a statute rests with the judiciary.
6. "Item" as used in K.S.A. 2000 Supp. 79-201w in regard to property tax includes distinct property that may become part of a whole.

Appeal from Kansas Board of Tax Appeals. Opinion filed August 3, 2001. Affirmed.

William E. Waters, of Kansas Department of Revenue, for appellant Division of Property Valuation.

Patricia J. Parker, assistant county counselor, for appellant Board of Sedgwick County Commissioners.

G. N. (Jerry) Capps, of Wichita, for appellee Allen, Gibbs & Houlik, L.C.

Before GREEN, P.J., KNUDSON, J., and PHILIP C. VIEUX, District Judge, assigned.

KNUDSON, J.: The Kansas Department of Revenue's Division of Property Valuation (PVD) and the Board of County Commissioners of Sedgwick County, Kansas (County), appeal from the grant of summary judgment by the Kansas Board of Tax Appeals (BOTA) to Allen, Gibbs & Houlik, L.C. (taxpayer). BOTA concluded the taxpayer is entitled to a property tax exemption for 43 computer keyboards purchased to replace defective keyboards. We affirm BOTA's decision.

PVD and the County contend a replacement computer keyboard is a component part of a computer and not an "item" as that word is used in K.S.A. 2000 Supp. 79-201w. In a unanimous decision, BOTA disagreed and found a replacement computer keyboard is an "item" and the keyboards are exempt from taxation.

Two issues are raised on appeal: (1) whether summary judgment was proper, and (2) whether BOTA correctly interpreted K.S.A. 2000 Supp. 79-201w.

K.S.A. 2000 Supp. 79-201w states, in material part:

"The following described property, to the extent specified by this section, shall be exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

"(a) Any item of machinery, equipment, materials and supplies which, except for the operation of the provisions of this section, would be required to be listed for the purpose of taxation pursuant to K.S.A. 79-306, and amendments thereto, and which is used or to be used in the conduct of the owner's business, or in the conduct of activities by an entity not subject to Kansas income taxation pursuant to K.S.A. 79-32,113, and amendments thereto, whose original retail cost when new is \$250 or less."

PVD's contention that the keyboards are not exempt is based upon PVD Directive No. 95-030, which was issued for the benefit of county appraisers. See K.S.A. 79-505. The directive provides, in material part:

"The purpose of this directive is to define the term 'item' for purposes of the new exemption. The Director takes the position that an interpretation of an 'item' should begin with the Tangible Personal Property Ad Valorem Tax Return (Form PV-PP-2E, hereinafter referred to as a 'rendition'), which was an express concern of the legislature.

"The Director takes the position that *as a general rule*, a line-item on an acceptably filed rendition is the equivalent of an item for purposes of the new exemption. However, the Director recognizes that taxpayers vary in reporting practices due to differing purchasing procedures and styles.

"Consequently, some adjustments to this general rule must be made in order to place taxpayers on more equal footing."

The directive then provides rules and illustrations as to what is or is not an "item," including:

"*Second*, if a single line-item represents a good that must be used in conjunction with other goods in order to serve its purpose or function, the line-item is not an item. Rather, the line-item represents only part of an item. For example, if a taxpayer lists a 'computer keyboard' as a line-item on the rendition, the line-item does not constitute an entire item. The computer keyboard cannot serve its purpose or function without the remainder of the computer system; therefore, the keyboard is part of a computer system. The computer system is the item. The keyboard and its other components, even though they may be separately identified and listed on the rendition, are merely parts of an item."

The taxpayer takes issue with PVD's definition of "item." The taxpayer contends K.S.A. 2000 Supp. 79-201w is unambiguous and that the plain meaning of "item" includes distinct property that becomes part of a whole.

In granting the taxpayer's motion for summary judgment, BOTA stated:

"6. The applicant purchased the computer keyboards to replace defective keyboards in the applicant's

possession. The applicant purchased these keyboards separately from any computer system. The applicant listed these keyboards on the personal property rendition as exempt items. The retail cost when new of the keyboards is \$250 or less. The County, relying upon PVD Directive No. 95-030, informed the applicant that the keyboards were not exempt. Neither the County, nor PVD dispute these facts.

"7. There do not appear to be any facts in dispute as to the cost of the personal property. The only issue before the Board is whether or not the computer keyboards are 'items.' PVD Directive No. 95-030 attempts to define the term 'item.' The directive indicates that a piece of personal property is not an 'item' if it can not perform its function independently without use of another good. The directive provides the example of how a computer keyboard is not an item because the keyboard can not perform its function without the remainder of the computer system. The Board finds the parties have presented a question of law, so the applicant's motion for summary judgment is ripe.

"8. The applicant asserts that the computer keyboards are items. The applicant notes that the term 'item' is not defined in K.S.A. 79-201w, and amendments thereto. However, the applicant did cite to a definition of the term 'item' from *Webster's New International Dictionary, Unabridged*. All of the definitions provided by the applicant appear to indicate that an item is merely a part of the aggregate. The applicant asserts that statute is unambiguous. Therefore, the applicant asserts, the Board need not look at the legislative history, but rather the plain meaning of the words. The applicant requests that the Board look at the plain meaning of the term 'item.'

"9. The applicant asserts that PVD's directive is too broad and would have a disparate impact on the merchant's and manufacturer's inventory exemption granted pursuant to K.S.A. 79-201m, and amendments thereto. The applicant notes that K.S.A. 79-201m, and amendments thereto, grants an exemption for 'items' of personal property held as inventory. The applicant asserts that if the Board applies PVD's definition of the term 'item,' then merchants and manufacturers who sell computer keyboards must report those keyboards on their rendition.

"10. The applicant finally asserts that the Board has already rejected PVD Directive No. 95-030. See *In the Matter of the Application of TCI of Overland Park, Inc.*, Docket No. 1997-4756-TX; *In the Matter of the Application of Chronicle Broadcasting of Wichita*, Docket No. 1999-4377-TX. The applicant asserts that the facts in the *TCI* application are analogous to the current application. The applicant notes that *TCI* was requesting an exemption for converter boxes used to decode signals for cable television. The applicant notes that in *TCI* the Board rejected the County's argument that tangible personal property was not an 'item' if it was a component of a system.

"11. PVD asserts that when interpreting a statute, the parties must try to determine what the Legislature was thinking when the statute was drafted. PVD asserts that there were two reasons the Legislature passed K.S.A. 79-201w, and amendments thereto. First, the statute was to be taxpayer friendly. The statute would not require taxpayers to render such items as paper clips, tape dispensers, etc. The second reason was that the Legislature believed the statute would be revenue neutral. The belief was that if taxpayers were not required to render paper clips and tape dispensers, the counties would have to perform few audits.

"12. PVD asserts the legislative history of the statute indicates an amendment was proposed that would define 'item' as the applicant has proposed to define the term. PVD notes the amendment was not passed. PVD asserts there is an inference that if the amendment was not passed, then the Legislature did not intend to [define] 'item' in the manner suggested by the applicant. PVD asserts that if the Legislature does not define the term, then the parties who enforce the statute are expected to define the term.

"13. PVD asserts that if the Board adopts the applicant's definition of 'item,' then taxpayers will break down

the item as far as possible to report the 'item.' PVD notes taxpayers will not render a computer system, but rather will render a monitor, a keyboard, etc. PVD asserts that such an interpretation would not be revenue neutral, as the Legislature had intended the statute to be. PVD asserts that the Legislature feared taxpayers would break down 'items' in terms of component parts to the point of nuts and bolts. The end result would be taxpayers would have no personal property to render for taxation purposes.

....

"16. The Board notes that:

The law in Kansas is well settled that interpretation of statutes is a question of law and this court's review of questions of law is unlimited. The overriding principle of statutory construction is that the intent of the legislature governs if that intent can be ascertained from the plain language of the statute. When the statute is plain and unambiguous, the court must give effect to the intent of the legislature. If, however, the interpretation of one section of an act based on its plain meaning would contravene the purpose of the legislature, the entire act should be construed according to its spirit and reason. When an act is clear on its face, there is no need to consult legislature history or extrinsic materials. *Gehring v. State*, 20 K.A.2d 246, 248, 886 P.2d 370 (1994) (citations omitted) *review denied* (February 8, 1995).

"17. The Board finds that it is unnecessary to examine the Legislative history of K.S.A. 79-201w, and amendments thereto. The Board notes that it agrees with PVD's assertion that if the Legislature does not define a term, then the agency responsible for enforcing the statute would define the term. However, the Board, as the highest administrative tribunal in the State of Kansas, finds that it is the agency responsible for ultimately defining the term 'item' because the Board has jurisdiction over all tax exemption requests. See 79-213, and amendments thereto.

"18. The board also agrees with PVD that when defining a term in a statute, deference must be given to what the Legislature intended. As PVD noted, the statute was intended to be taxpayer friendly and revenue neutral. The Board disagrees, however, with PVD's assertion that defining the term 'item' in the manner proposed by the applicant is inconsistent with the Legislature's intent. Furthermore, the Board is not persuaded by PVD's assertion that taxpayers will begin to break down personal property down to nuts and bolts. First, the taxpayer would have no evidence to support such claims of cost. For example, a taxpayer would have a difficult time demonstrating the cost of each piece of his or her \$1,000 desk. Second, such a cost breakdown, if it could be demonstrated, would appear to be cumbersome and expensive.

"19. If the purpose of K.S.A. 79-201w, and amendments thereto, is to be taxpayer friendly and reduce the need for audits, the applicant's definition of 'item' appears to meet that goal. It would be difficult for taxpayers to report the component parts on the rendition or be able to determine if the county had correctly determined the value. Typically, an item of personal property is depreciated for a set number of years. After the item has been depreciated for the term of years, the item is left on the assessment rolls at 20 percent of its original value. However, if the Board were to adopt PVD's analysis, a taxpayer could be subject to double taxation. For example, a taxpayer with a complete computer system, including the CPU, monitor, and keyboard, would not be forced to report the newly purchased replacement keyboard. The retail cost when new of the keyboard would be added to the remaining value of the computer system. It would appear, though, that the cost of the original keyboard should be subtracted from the value of the computer system. If the computer system was purchased as a package deal, i.e. there was no price listed for each component part, then the taxpayer would not be able to provide that information to the County for the appropriate subtraction. In essence, the taxpayer would be taxed for two keyboards. If that were to occur, taxpayers may start underreporting the costs of certain component parts to compensate the possible double taxation.

20. The Board finds no support for PVD Directive 95-030 in this exemption request. The term 'item' is not an ambiguous term that requires an extensive research into the legislative history. Furthermore, the legislative history appears to support the applicant's request. The applicant's interpretation of K.S.A. 79-201w, and amendments thereto, is very taxpayer friendly and would remain revenue neutral. The Board is not persuaded that taxpayers would begin to break down tangible personal property into screws, nuts, and bolts. Such action could not be documented for reporting, nor would be cost-effective. Finally, the request by the applicant in this matter is not unreasonable. In this instance, the applicant can demonstrate that the retail cost when new of the keyboard is \$250 or less. The keyboard is a separately sold item with a defined cost."

Motions for reconsideration were considered and denied by the Board. Both PVD and the County have made a timely appeal. We have jurisdiction under K.S.A. 2000 Supp. K.S.A. 74-2426(c)(3).

Ripeness For Summary Judgment

The PVD and the County claim there are facts in dispute, they were denied a hearing that is required by statute, and the PVD claims it had not had an opportunity to commence discovery; therefore, summary judgment was not proper.

"Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. The trial court is required to resolve all facts and inferences which may reasonably be drawn from the evidence in favor of the party against whom the ruling is sought. When opposing a motion for summary judgment, an adverse party must come forward with evidence to establish a dispute as to a material fact. In order to preclude summary judgment, the facts subject to the dispute must be material to the conclusive issues in the case. On appeal, we apply the same rules and where we find reasonable minds could differ as to the conclusions drawn from the evidence, summary judgment must be denied. [Citation omitted.]" *Bergstrom v. Noah*, 266 Kan. 847, 871-72, 974 P.2d 531 (1999).

"Ordinarily, summary judgment should not be granted when discovery is incomplete." *Bank IV Wichita v. Arn, Mullins, Unruh, Kuhn & Wilson*, 250 Kan. 490, 498, 827 P.2d 758 (1992). However, if the facts pertinent to the material issues are not controverted, summary judgment may be appropriate even when discovery is unfinished. See *Parker v. Farmway Credit Union*, 11 Kan. App. 2d 223, 227, 718 P.2d 643, rev. denied 239 Kan. 694 (1986). A case is ripe for adjudication when the disagreement has taken a final shape and the court can see the legal issues it is deciding, including the impact of the decision upon the adversaries. *Department of Revenue v. Dow Chemical Co.*, 231 Kan. 37, 41, 642 P.2d 104 (1982).

The PVD and the County allege there is a material question of fact regarding the original cost of the keyboards. The County raised this concern in its response to Taxpayer's motion for summary judgment, but by the time oral arguments were held, the County agreed that the keyboards were subject to exemption, depending upon the legal interpretation of the word "item." The County stated:

"As far as whether this is ripe for summary judgment, Jerry did provide information that cleared up some of my issues. And my other concerns were that I could not match up--we could not match up some invoice numbers with--with the descriptions that he--he gave in his application. But I--I think if that is the only remaining issue then as long as we can match up the invoice to the item in the application, I'm not going to have a problem with that. We just--we will just have to apply and those--review those invoices and if we could not match--if after getting together we could not match them, we'll get an explanation or get clarification then I suppose we would have to come back to the Board on that. But I think most of my

concern has been addressed regarding the additional discovery."

Taxpayer added: "I've tried to resolve the factual differences. Although the factual issues do not preclude summary judgment on the legal issues that we presented. We can hammer out factual issues later. The legal issue is--is the one that's of paramount importance at this time."

There is no indication in the record that any further information was sought. "[I]n opposing a motion for summary judgment, the adverse party must come forward with some evidence to establish a material dispute of fact." *Schultz v. Schwartz*, 28 Kan. App. 2d 84, 87, 11 P.3d 530, rev. denied 270 Kan. ____ (2000).

In its reply to the motion for summary judgment, the PVD alleged controverted facts existed because it had not commenced pretrial discovery. It did not bring forth any conflicting evidence. BOTA set a telephone conference to discuss discovery, witnesses, and other matters. There is no record of that conference, but after the hearing, BOTA issued a memorandum clearly stating the parties had agreed "that only a legal issue remains for the application." At oral arguments, counsel for PVD stated: "I think the issue that's before the Board clearly is a question of law." Based on the record, there was no actual dispute between the parties that the keyboards were purchased for less than \$250, and this finding was reflected by BOTA's order. The PVD did not make any specific discovery requests on the record and agreed only a legal argument existed for the hearing. It must be precluded from claiming it was denied discovery. The County also abandoned its claim and is also precluded from raising the issue. See *Catholic Housing Services, Inc. v. State Dept. of SRS*, 256 Kan. 470, 476, 886 P.2d 835 (1994).

The PVD also argues it was denied a hearing under K.S.A. 2000 Supp. 79-213(g). This statute provides:

"After examination of the request for exemption, and the county appraiser's recommendation related thereto, the board may fix a time and place for hearing, and shall notify the applicant and the county appraiser of the time and place so fixed. . . . In any case where a party to such request for exemption *requests* a hearing thereon, the same shall be granted. Hearings shall be conducted in accordance with the provisions of the Kansas administrative procedure act. In all instances where the board sets a request for exemption for hearing, the county shall be represented by its county attorney or county counselor." (Emphasis added.)

In the initial application, the county appraiser did not request a hearing on the exemption request. Taxpayer specifically stated it did not request a hearing on the matter. The PVD admits it did not request a hearing, yet it argues it did not waive a hearing. K.S.A. 2000 Supp. 79-213(g) clearly requires a party in an exemption proceeding to *request* a hearing. Neither PVD, Taxpayer, nor the County requested a hearing in any of their motions or responses contained in the record. Additionally, it is apparent to us that the parties were granted an appropriate hearing if summary judgment was a proper remedy. Because we believe that it was, PVD's claim of being denied a hearing rings hollow.

Interpretation of K.S.A. 2000 Supp. 79-201w

The resolution of this appeal involves the interpretation of K.S.A. 2000 Supp. 79-201w. An interpretation of a statute is a question of law, and this court's scope of review is unlimited. See *In re Tax Appeal of Boeing Co.*, 261 Kan. 508, Syl. ¶ 1, 930 P.2d 1366 (1997).

"It is a fundamental rule of statutory construction, to which all other rules are subordinate, that the intent of the legislature governs if that intent can be ascertained. [Citation omitted.] The legislature is presumed to have expressed its intent through the language of the statutory scheme it enacted. When a statute is plain and unambiguous, the court must give effect to the intention of the legislature as expressed, rather than determine what the law should or should not be. [Citation omitted.] Stated another way, when a statute is

plain and unambiguous, the appellate courts will not speculate as to the legislative intent behind it and will not read such a statute so as to add something not readily found in the statute. [Citation omitted.]" *In re Marriage of Killman*, 264 Kan. 33, 42-43, 955 P.2d 1228 (1998).

"The rule of strict construction means that ordinary words are to be given their ordinary meaning. Such a statute should not be so read as to add that which is not readily found therein or to read out what as a matter [of] ordinary English language is in it." *In re Tax Appeal of Alex R. Masson, Inc.*, 21 Kan. App. 2d 863, 868, 909 P.2d 673 (1995) (quoting *Director of Taxation v. Kansas Krude Oil Reclaiming Co.*, 236 Kan. 450, 455, 691 P.2d 1303 [1984]). Constitutional and statutory provisions exempting property are to be strictly construed. Taxation is the rule; exemption is the exception. All doubts are to be resolved against exemption and in favor of taxation. *In re Tax Appeal of Univ. of Kan. School of Medicine*, 266 Kan. 737, 751, 973 P.2d 176 (1999).

BOTA is a specialized agency that is charged with the duty to decide taxation issues. Its decisions are ordinarily given great weight and deference when it is acting within the scope of its expertise. See *In re Tax Appeal of Univ. of Kan. School of Medicine*, 266 Kan. at 749. If there is a rational basis for the Board's interpretation of a statute within its field of expertise, it should ordinarily be upheld on review. *McTaggart v. Liberty Mut. Ins.*, 267 Kan. 641, 645, 983 P.2d 853 (1999). However, here we have disagreement between two administrative agencies as to the interpretation of K.S.A. 2000 Supp. 79-201w. Under these circumstances, we respect the position of each agency but recognize the final construction of a statute rests with the judiciary. *In re Tax Appeal of Alsop Sand Co., Inc.*, 24 Kan. App. 2d 527, 530, 948 P.2d 667 (1997), *aff'd* 265 Kan. 510, 962 P.2d 435 (1998).

We have quoted at length from the Board's final order that supports the taxpayer's interpretation of "item." Essentially, the Board found that notwithstanding the lack of a statutory definition, "item" has an ordinary meaning that is readily understood. We agree. An "item" is defined as "one of the distinct parts of a whole." Webster's Ninth New Collegiate Dictionary 643 (1984). Likewise, in Black's Law Dictionary, "item" is defined as "[a] piece of a whole, not necessarily separated." Black's Law Dictionary 837 (7th ed. 1999). We adopt the Board's conclusion that a review of nebulous legislative history is not necessary to provide us with a common and readily understood definition of "item." We conclude the Board correctly interpreted K.S.A. 2000 Supp. 79-201w.

The PVD makes a rather tepid and confusing argument that the Board's interpretation of the statute results in partial tax exemptions, which are unconstitutional. See *State ex rel. Stephan v. Parrish*, 257 Kan. 294, 311, 891 P.2d 445 (1995). It claims that under BOTA's definition, some computers are partially exempt and others are fully taxable. This is not correct. BOTA's interpretation allows an exemption for *any* piece of personal property that may or may not constitute a whole mechanism. In other words, 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. 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. Further, in this particular case, the keyboards were replacement keyboards; they were purchased totally separate from the original system and were properly granted exempt status.

Finally, a review of legislative history is not persuasive evidence that the Board's interpretation of the statute is erroneous. As we have already suggested, the legislative history, such as it is, can be read to support nearly any interpretation one wishes to advance. Nevertheless, in the interests of completeness, we will briefly consider the statute's genesis.

K.S.A. 2000 Supp. 79-201w began as House Bill 2108. The bill was created as a result of reactions to a 1993 memorandum sent by the PVD to all the county appraisers suggesting they check personal property

tax renditions to ensure proper tax collection. As a result of the memo, counties realized taxes had not been collected properly and some taxpayers were found to be delinquent, resulting in significant penalties and interest. The delinquencies were traced to nonreporting of small, insignificant items, such as paper clips, rubber bands, and the like. The stated purpose of the bill was to greatly simplify operations for small businesses across the state by establishing a "de minimis amount or threshold" amount that would be subject to exemption. The bill was intended to alleviate "some of the reporting burden imposed upon taxpayers who must file a rendition for ad valorem tax purposes." Initially, the exemption threshold was set at \$2,500. This number was lowered because of the negative economic impact such a large exemption would have on the tax base.

Bob Corkins, representing the Kansas Chamber of Commerce and Industry, explained the administrative burden on small business is "unrealistic, overwhelming, and even counterproductive from a tax collection perspective when [small business owners] are forced to track items of negligible value." Corkins noted the bill did not define the term "item" and presented a proposed balloon amendment which included a definition. That definition reads:

"As used in this section, an 'item' of property shall, in the case of machinery and equipment, consist of any mechanism and those of its components which play a direct, integral, and essential part in the mechanism's operation in a commercially useful or productive application. In the case of materials and supplies, an 'item' of property as used in this section may consist of any collection of like materials or supplies in any such quantity that is ordinarily made available for sale."

This definition considers the mechanism *and* its parts to be an "item." The PVD incorrectly argues this definition is identical to the one suggested by Taxpayer and adopted by BOTA. The use of the conjunction "and" requires both the mechanism and the component parts to be considered as a whole, not as individual items. The legislature chose not to adopt this definition after hearing testimony that included a discussion of purchasing a computer system through several invoices in order to qualify for the exemption. Therefore, it can be inferred that the legislature envisioned the definition of "item" to be a distinct part of a whole, which is the plain meaning of the word. See *State Dept. of Administration v. Public Employees Relations Bd.*, 257 Kan. 275, 284-85, 894 P.2d 777 (1995).

Moreover, in written testimony to the Senate Assessment and Taxation Committee, the Director of PVD, in noting the fiscal note of the legislation, said, in part:


"Taxpayers that currently report items with component parts as a single item will have the incentive to break the item down as far as possible in order to take full advantage of the new exemption. For example, a computer may be broken down into a monitor, keyboard, etc. The impact of this occurrence cannot be quantified but is likely substantial." (Emphasis omitted.)

We confess our excerpts of legislative history have been selective; however, we have only wished to make the point that legislative history can be invoked to support the Board's interpretation as readily as the interpretation the PVD urges.

For the reasons stated, we are disinclined to overrule the Board's interpretation of K.S.A. 2000 Supp. 79-201w.

Affirmed.

END

 | [Keyword](#) | [Name »](#) [SupCt](#) - [CtApp](#) | [Docket](#) | [Date](#) |

Comments to: WebMaster, kscases@kscourts.org.

Updated: August 03, 2001.

URL: <http://www.kscourts.org/kscases/ctapp/2001/20010803/85126.htm>.