Approved: March 31, 2006
Date

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman Kenny Wilk at 9:00 A.M. on March 20, 2006 in Room 519-S of the Capitol.

All members were present.

Committee staff present:
Chris Courtwright, Legislative Research Department
Martha Dorsey, Legislative Research Department
Gordon Self, Revisor of Statutes
Rose Marie Glatt, Committee Secretary

Conferees appearing before the committee:
Allie Devine, KS Livestock Association

Others attending:
See attached list.

The Chairman called attention to **HB 2685**.

HB 2685 - Income tax credit for taxpayer contributions to educational institutions to be used in programs designed to train and educate licensed medical professionals.

Representative George reviewed the details of the bill, which had a hearing on February 14, 2006. The bill deals with the shortage of teaching instructors in the medical field. The fiscal note is $10 million. Representative George suggested that this program would be a good pilot program.

The Chairman said that he wanted to pull the bill back to allow for further discussion.

SB 365 - Would create a stand-alone Kansas estate tax no longer tied directly to federal law.

The Chairman reviewed the status of the bill and said they would continue to work the bill until members of the Committee were comfortable to take action. When they left yesterday they had passed Representative Goico's amendment.

Chris Courtwright reviewed the fiscal note on the Senate bill. The fiscal note related to Representative Goico's amendment boosted the tax-exempt thresholds to the levels that exist in the federal laws over the next three years. Steve Stott quoted the fiscal impact for the following three years: FY 2008 - $7 million; FY 2009 - $4 million; and FY 2010 - $2 million. Chris Courtwright gave the dollar amounts that would apply under the Goico amendment, using the Senate supplemental note for reference: FY 2008 - $36 million; FY 2009 - $ 28 million; FY 2010 - $13 million.

Representative Carlin made a motion to adopt a conceptional amendment that would make the estate tax permanent beginning in FY 2008 and would apply to estates greater than $3.5 million in taxable estate value. It would generate $15 million per year. Representative Dillmore seconded the motion.

Discussion followed citing the pros and cons of the estate tax.

Representative Carlin closed her motion. The motion failed 8-13.

Gordon Self distributed copies of the current **SB 365**, that reflects the changes made by Representative Goico's amendment (Attachment 1).

The Chairman said the discussion on **SB 365** would continue tomorrow.

SB 444 - Net operating loss carry back or carry forward for income tax purposes.

Chris Courtwright explained that the bill would relax a limitation on income tax refunds resulting from farm net-operating-loss carry backs. Under current law, refund amounts in excess of $1,500 may be carried back or carried forward and applied against other tax years. The bill would authorize the excess refund amounts to be carried forward to any year or years after the losses, and be claimed as refundable income tax credits in amounts that could not exceed $1,500 per year. A fiscal note of $0.25 million is projected.

A Committee question on how this bill would affect bankruptcy issues was raised. Several scenarios were given to determine if people who have filed for bankruptcy could continue to claim a tax credit for previous losses. After lengthy discussion, at the Chairman's request, Allie Devine advised that she was checking with counsel and would advise the Committee soon.

Allie Devine responded to the Committee question and said:
"If the entity that files bankruptcy is a business, the tax consequences for the business stay with the business. If it continues, and reorganizes, the estate that is filed and becomes an entity within the bankruptcy court would have the same consequences as if it had never filed bankruptcy. If it goes out of business, the bankruptcy estate files its final tax return, and that is the end of the business, so the entity no longer exists, so it could not reap benefits of the tax codes."

"If the entity is an individual at the time of the bankruptcy filing, the bankruptcy estate is created and is separate from that person. The bankruptcy, once it is created, takes on all the attributes of the tax code, or the tax effects, as if it were a separate entity from the individual. The bankruptcy trustee then does the tax code filing, as would be done in any other bankruptcy. At the time that the bankruptcy trustee makes the final tax preparation for the estate, any remaining tax consequences revert back to the individual. For the period of time that it is in the bankruptcy estate, it is under the auspices of that separate estate." She gave several examples.

Representative Owens made a motion that they recommend **SB 444** favorable for passage. Representative Thull seconded the motion. The motion carried.

HCR 5027 - A constitutional amendment to limit appraised valuation increases of real property used for residential purposes to consumer price index for property tax purposes which would go on the ballot in November 2006.

Chris Courtwright explained how this is an exception to the fair market value in some cases, but not in all cases. This would have fiscal implications with respect to the state's fixed 21.5 mills.

Issues voiced by Committee members:

- This is an exception to the uniform and equal fair market value methodology currently employed.
- An option should be a possible amendment that would make this law apply to all real and personal property uniformly, in order to avoid tax shifts, etc.
- Problem needs to be studied to assure that retired people or military families can afford to stay in their homes, and not forced to move due to escalating taxes each year.
- Concern over the use of Consumer Price Index. There is a lack of relationship between the current CPI and what is happening to the housing market in the country.
- Discussion followed regarding the merits of **HB 2816** to achieve what many perceive the goal to be - Providing property tax deferrals on certain property owned by persons 65 years of age or older.
- Flaws in the current process when it comes to application in diverse and widely ranged valued neighborhoods and communities.
- Homes can be the major asset for many people and capping the valuation of the home could have negative effects for the elderly.
- Challenge is to revisit the appraisal methodology, to ascertain how to address the issues of wide fluctuations and evaluations, so that the value is more appropriate to the actual market value of the house.

The Chairman said that this was a weighty issue, and the Committee's concerns would be compiled into a request to LCC for a significant review of **HCR 5027.**

The Chairman adjourned the Committee at 10:30 A.M. The next meeting is March 21, 2006.

HOUSE TAXATION COMMITTEE GUEST LIST

DATE: March 20, 2006

NAME	REPRESENTING
Larry R Baer	LKM
Allie Devine	Ks. Livestock Assoc.
Marlee Carpenter	KS Chamber
Mike Murray	Sprint
Brad Harrelson	KFB
Andy Shaw	Kearney + Associates
Tony Scott	KSCPA
Ron Seeber	Heinhaw Firm
Derek Hein	Hein Law Firm
Chris Wilson	KBIA
Melissa Wangemann	Sec of State
John Donley	Ks Livestock Ass'n.

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As Amended by Senate Committee

Session of 2006

SENATE BILL No. 365

By Committee on Assessment and Taxation

1-13

Committee Amendment to
SENATE BILL No. 365

AN ACT enacting the Kansas estate tax act; repealing K.S.A. 2005 Supp. 79-15,100, 79-15,101, 79-15,102, 79-15,103, 79-15,105, 79-15,109, 79-15,111, 79-15,112, 79-15,113, 79-15,116, 79-15,117, 79-15,118, 79-15,119, 79-15,125, 79-15,128, 79-15,129, 79-15,130, 79-15,131, 79-15,132, 79-15,133, 79-15,134, 79-15,135, 79-15,136, 79-15,137, 79-15,138, 79-15,139, 79-15,140, 79-15,141, 79-15,142, 79-15,143, 79-15,144 and 79-15,145.

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

Section 1. The provisions of this act shall be known and may be cited as the Kansas estate tax act.

Sec. 2. As used in this act, unless the context otherwise requires: (a) Any term used in this act shall have the same meaning as when used in a comparable context in the internal revenue code. Any reference in this act to the "internal revenue code" shall mean the provisions of the United States internal revenue code of 1986, as such code exists on December 31, 2005, unless otherwise specified. Any reference in this act to a specific provision of the internal revenue code shall be to such provision as it exists on December 31, 2005.

(b) "Decedent" includes the testator, intestate, grantor, bargainer, vendor or donor.

(c) "Director" means the director of taxation of the Kansas department of revenue.

(d) "Distributee" means a beneficiary, legatee, devisee, heir, next of kin, grantee, donee, vendee, joint tenant or successor.

(e) "Domicile" refers to that place where a person resides, has an intention to remain and to which they intent to return following any absence.

(f) "Estate" and "property" mean the real, personal and mixed property or interest therein of the decedent which shall pass or be transferred to a distributee, and shall include all personal property within or without the state.

(g) "Executor" and "administrator" means the duly appointed, qualified and acting executor or administrator of the decedent in this state.

(h) "Intangible property" means evidence of value, such as certificates of stock, bonds and promissory notes and includes cash accounts such as certificates of deposit, savings accounts and checking accounts.

(i) "Nonresident decedent" means a decedent other than a resident decedent.

(j) "Personal representative" means the executor, administrator appointed by a Kansas court to serve as such for the estate of the decedent and any other person in actual or constructive possession of any property of the decedent which has a Kansas tax situs.

(k) "Resident decedent" means a person who was domiciled in this state at the time of death. A person who spent in the aggregate more than six months of the calendar year immediately preceding their death within this state shall be presumed to have been a resident for purposes of this act, in the absence of proof to the contrary.

(l) "Secretary" means the secretary of revenue, or the secretary's designee.

(m) "Tax" includes tax, penalty and interest, unless the context of a particular section otherwise requires.

(n) "Tax situs" relates to location of property for the purpose of imposing tax. Real estate or tangible personal property reflected in the Kansas gross estate shall be considered to have a tax situs within Kansas if, at the time of the decedent's death, the property was physically located within the state of Kansas. Oil and gas leases on lands in this state and all interests created thereby, or arising therefrom, shall be considered as tangible personal property having an actual situs in this state. Intangible property reflected in the Kansas gross estate, including moneys on deposit with financial institutions, shall be presumed to have a tax situs within Kansas if the decedent was a resident decedent at the time of death.

(o) "Transfer" includes the passing of property or any interest therein in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift or appointment in the manner herein prescribed.

Sec. 3. (a) A tax is hereby imposed on the taxable estate of every resident decedent, and every nonresident decedent who owned real, personal or intangible property with a tax situs in Kansas.

(b) The tax imposed by this section shall be computed in accordance with the following schedule:

(A) For tax year 2007:

If the taxable estate is:	The tax is:
Not over ~~$1,000,000~~	Zero
~~Over $1,000,000 but not over $2,000,000~~	~~0.5%~~ ~~***3.0%***~~ ~~of excess over $1,000,000~~
Over $2,000,000 but not over $5,000,000	~~$65,000 plus 10%~~ ~~***$30,000 plus***~~ ***6.0%*** of excess over $2,000,000

$2,000,000

1-3

Over $5,000,000 but not over $10,000,000 ..	~~$365,000 plus 12.5%~~ ~~*$210,000*~~ *plus 8.0%* of excess over $5,000,000	$180,000
Over $10,000,000	~~$990,000 plus 15%~~ ~~*$610,000*~~ *plus 10.0%* of excess over $10,000,000	$580,000

(B) For tax year 2008:

If the taxable estate is:	*The tax is:*	
Not over ~~*$1,000,000*~~	*zero*	$2,000,000
~~*Over $1,000,000 but not over $2,000,000*~~	~~*1.0% of excess over $1,000,000*~~	
Over $2,000,000 but not over $5,000,000	~~*$10,000 plus*~~ *2.0% of excess over $2,000,000*	
Over $5,000,000 but not over $10,000,000	~~*$70,000*~~ *plus 5.0% of excess over $5,000,000*	$60,000
Over $10,000,000	~~*$320,000*~~ *plus 7.0% of excess over $10,000,000*	$310,000

(C) For tax year 2009:

If the taxable estate is:	*The tax is:*	
Not over ~~*$1,000,000*~~	*zero*	$3,500,000
~~*Over $1,000,000 but not over $2,000,000*~~	~~*0.5% of excess over $1,000,000*~~	
Over ~~*$2,000,000*~~ *but not over $5,000,000*	~~*$5,000 plus*~~ *1.0% of excess over* ~~*$2,000,000*~~	
Over $5,000,000 but not over $10,000,000	~~*$35,000*~~ *plus 2.0% of excess over $5,000,000*	$15,000
Over $10,000,000	~~*$135,000*~~ *plus 3.0% of excess over $10,000,000*	$115,000

Sec. 4. When the estate shall consist of property with a tax situs in Kansas and property with a tax situs outside Kansas, the tax imposed under sections 3, and amendments thereto, shall be multiplied by the percentage determined by dividing the value of all property included in the gross estate which is within the jurisdiction of the state of Kansas by the value of all property included in the gross estate.

Sec. 5. The value of the gross estate of a decedent shall be determined by valuing the property included in the gross estate at its fair market value as of the time of the decedent's death, except as provided in section 6, and amendments thereto.

Sec. 6. If the decedent was a resident of Kansas, land that is located in Kansas and treated as land devoted to agricultural use for purposes of K.S.A. 79-1476, and amendments thereto, at the time of the decedent's