

## MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman Kenny Wilk at 9:00 A.M. on January 25, 2007 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, Office of Revisor of Statutes  
Richard Cram, Department of Revenue  
Rose Marie Glatt, Committee Secretary

## Conferees appearing before the committee:

Dan Morgan - The Builder's Association  
Denny S. Koch, Private Citizen  
Representative Terrie Huntington  
Randall Allen, KS Association of Counties  
Joleen Rankin, County Appraiser of Dickinson County  
Stuart Little, presented written testimony for Paul Welcome, Johnson County Appraiser  
Richard Rodewald, Citizen (no written testimony)  
Marlee Carpenter, KS Chamber of Commerce  
Rebecca Crotty, SBOTA Chairperson

## Others attending:

See attached list.

The Chairman called for bill introductions:

Dan Morgan, representing the Builder's Association, requested a proposed amendment be introduced that would eliminate sales tax on labor services involved in commercial remodeling construction. Representative Owens moved the introduction, seconded by Representative Carlson. The motion carried.

Denny S. Koch, requested the introduction of a bill that would change the computation of excise taxes on moist smokeless tobacco to a weight based method. Representative Wilk moved the introduction, seconded by Representative Owen. The motion carried.

Representative Huntington requested a bill introduction regarding the occasional sale of car tax. Representative Wilk moved the introduction, seconded by Representative Owen. The motion carried.

**HB 2018 - The State Board of Tax Appeal (SBOTA); relating to membership; amending and repealing the existing section.**

Martha Dorsey briefed the Committee on the history of the bill. The bill increases the membership of the State Board of Tax Appeals from three to five members, with no more than one member appointed from each congressional district and the rest from the state at large.

The Chairman opened the public hearing.

Randall Allen, KS Association of Counties, appeared in support of **HB 2018**. While stating that the association is respectful of the diligent work of the current Board of Tax Appeal, they are still concerned about the long-term ability of BOTTA to keep pace with case filings, especially commercial cases. They support no additional, extraordinary qualifications to appointment than already exist in the statute (Attachment 1). He introduced Joleen Rankin, who is the President of the KS County Appraiser Association, stating that she could field more technical questions on behalf of Kansas County Appraisers.

Joleen Rankin, County Appraiser of Dickinson County, said that the majority of County Appraisers support increasing BOTTA from three members to five. She said that the larger counties strongly believe this

## CONTINUATION SHEET

MINUTES OF THE House Taxation Committee at 9:00 A.M. on January 25, 2007 in Room 519-S of the Capitol.

is necessary, while the issue is not as great for the smaller counties. When case resolution is delayed, the county's financial burden increases, by their obligation to pay interest on refunds (No written testimony).

Stuart Little presented testimony for Paul Welcome, Johnson County Appraiser, which reflected Johnson County's support for an increase of BOTA members (Attachment 2). Mr. Little made note of Committee questions: 1) Explanation of the numbers of Commercial BOTA cases in Johnson County; 2) The reason for significant increase of caseloads in 2005 and 2006; and 3) Which taxing entities pay the interest payments. Mr. Stuart agreed to return with answers for the Committee.

Richard Rodewald, Private Citizen, appeared before the Committee in support of **HB 2018**. He reviewed his history with BOTA and said that three members are not enough. He recommended that there always be a fourth member, in training, due to the complexity of the subject (No written testimony). In response to a committee question, he would support the addition of two new members also.

Marlee Carpenter, KS Chamber of Commerce, appeared neutral on **HB 2018**. She said having qualified members serve on BOTA is essential. If the size of the Board is increased, they would encourage that strict qualification requirements remain intact. She offered an alternative approach of replacing the current BOTA with a Kansas tax court for tax related matters (Attachment 3). In response to a request from the Chairman, she agreed to provide a white paper or summary on the concept of a new Kansas tax court.

Rebecca Crotty, BOTA Chairperson, appeared to provide input about the potential impact of the proposed HB 2018 (Attachment 4). She gave an overview on how the Board of Tax Appeals and their small claim division operate, and possible reasons that large cases are delayed for years.

Ms. Crotty reviewed the fiscal and operational impact of adding two new board members positions. She stated that as a member of BOTA she could not take a actual policy position, but explained the ramifications of adding two new board members. She pointed out that in FY 2006, the Board's operations with three members were more efficient than in any of the preceding four fiscal years.

She reviewed BOTA performance highlights for 2006 and output measures. She said they had caught up the backlog, approved efficiency and accessibility, established better practices and pre-trial procedures on large cases and encouraged settlement or mediation in all cases. They are publishing their opinions, which are predictable and follow established precedent.

She described a new case management system that will be implemented within the next year, funded by a KTEC grant of \$325,000. She described a bench-bar system and a new survey being used to determine satisfaction levels.

Chairman Wilk said that since the Legislature writes many of the tax exemptions and given the tremendous number of tax exemption cases before BOTA, he questioned whether the Legislature's specific language is unclear? She responded that due to the tremendous number of different exemptions, the process has become very complicated. She suggested that it might be prudent for the Taxation Committees to review all tax exemptions periodically.

Ms. Crotty concluded with the following recommendation: "*At this point in BOTA's history, the path to a solid, comprehensive solution to reform issues would be to appoint a panel of experts from ALL interested areas of the tax appeals community to explore possibilities of further reforming and improving this area. This panel would ideally include representatives from the tax bar, the business community, the judiciary, the Governor's office, the Department of Revenue, BOTA and the legislature's Committee on Assessment on Taxation.*"

Being no other conferrees the Chairman closed the public hearing. The meeting was adjourned at 10:20 a.m. The next meeting is January 30, 2007.

# TAXATION COMMITTEE

DATE: January 25, 2007

NAME	REPRESENTING
RICHARD PRODEWALD	TAXPAYERS
STAN FROWNFELEK	31 <sup>ST</sup> DIST Ks House
Randall Amen	Ks. Assoc. of Counties
DAN BOLGAN	Builders' Assn.
Ron Beeber	Hein Law Firm
Ed May	LGA
Jim Casper	A T E T
Dr. Shelly Martin	Hadley Middle School - <sup>USD</sup> #259
Robert Coarner	Brooks Technology / Arts Magnet #259
Miguel A Carrero	Panama
Soleen Rankin	Dickinson County Appraiser
TONY A. SCOTT	KSCPA
McCarpenter	K8 Chamber
Stuart Little	Johnson Co. Govt.
Gody Allen	Board of Tax Appeal
Bruce Jenkins	KDOR
David R. Lubin	KDOR
Jay VanBlancum	BOTA
Paul Kubik	BOTA

# TAXATION COMMITTEE

DATE: 1-25-07

NAME	REPRESENTING
Rebecca Croth	BOTA
Karen Bøtcher	Wichita Public School
Richard Wirtz	Wichita Public Schools
Matt Boyert	Carter Group



**TESTIMONY**  
concerning House Bill No. 2018  
**Composition of the Board of Tax Appeals**  
House Taxation Committee

Presented by Randall Allen, Executive Director  
Kansas Association of Counties  
January 25, 2007

Chairman Wilk and members of the committee, my name is Randall Allen, Executive Director of the Kansas Association of Counties. I am here today to express the support of the Association and our 99 member counties for HB 2018, which restores the Board of Tax Appeals (BOTA) to five members (currently three).

We understand that a primary motivation in downsizing the Board of Tax Appeals a few years ago from five to three members was the severe budgetary constraints of the State of Kansas. Extreme situations often call for extreme measures, and we understand that. However, the downsizing has not occurred without some degradation in the clearing of cases filed with and considered by the BOTA. While we appreciate and respect the diligent work of Chairman Crotty and the other members of the BOTA and Executive Director Wohlford in addressing the backlog of cases over the past 12-18 months, we are concerned about the long-term ability of the BOTA to keep pace with case filings, and particularly commercial cases. It may be in the best interest of Kansas, for example, for more than one member to hear high value commercial cases, which in some cases comprise a significant percentage of an individual county's property valuation. It would seem that having two or more members hear cases involving larger valuations would enhance the ability of the full Board to discern the salient points of cases and thereby improve the Board's ability to turn around these cases more quickly. Yet, with the current three members, it is much more difficult to assign two BOTA members to hear any one case, when the members are spread much thinner over the entire caseload.

One final comment. We appreciate the construction of the proposed legislation, which adds no additional, extraordinary qualifications to appointment (in terms of professional background) than already exist in the statute. We believe that the Governor and the Senate (through the confirmation process) are fully capable of ensuring that the Board is comprised of the most capable, talented persons possible.

This legislation received the unanimous approval of our membership which adopted our legislative policy statement at our annual conference on November 20, 2006. We respectfully urge the committee to recommend HB 2018 favorably for passage.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to Randall Allen or Judy Moler by calling (785) 272-2585.

300 SW 8th Avenue  
3rd Floor  
Topeka, KS 66603-3912  
785•272•2585  
Fax 785•272•3585

**HS TAXATION COMMITTEE**  
**1-25-2007**  
**ATTACHMENT 1**

presented by Stuart Little



**MEMORANDUM**

Office of the County Appraiser Johnson County, KS

**Named "Distinguished Assessment Jurisdiction" for 2000**

**TO:** House Taxation Committee

**FROM:** Paul Welcome, CAE, ASA, RMA Johnson County Appraiser

**RE:** **HB 2018**

**DATE:** January 25, 2007

My name is Paul Welcome, Johnson County Appraiser and I am expressing the Johnson County Board of County Commissioner's legislative position for this proposed legislation.

Johnson County supports increasing of the State Board of Tax Appeals (BOTA) from three to five members. We currently have over 50 residential BOTA cases left to be heard from the 2006 hearing process.

The table below shows the Johnson County commercial caseload status:

**Commercial BOTA cases  
Johnson County only**

<b>Year</b>	<b>Total # of Cases</b>	<b>Not Heard</b>	<b>BOTA Hearing Held</b>	<b>Pending Decision</b>
2002	2	0	2	2
2003	10	5	5	5
2004	29	21	6	6
*2005	111	105	6	6
2006	308	308	0	0
<b>TOTAL</b>	<b>460</b>	<b>439</b>	<b>19</b>	<b>19</b>

We have excluded from the total shown above a recent case that was decided and removed 60 cases from the 2005 total.

The total number of cases is the number of parcels filed with BOTA. When a case is heard it may involve several parcels.

The original reason for reducing 5 to 3 members was due to a state budget crisis. However, we feel the property owner is entitled to a hearing as soon as possible.

Recently we had a very complex case heard by only one member. The legislators may wish to consider that a majority of the board should hear cases of high value or those cases that involve a certain percentage level of the county tax roll.

**HS TAXATION COMMITTEE**  
**1-25-2007**  
**ATTACHMENT 2**



In addition, we have some property owners that have waited over 15 months for a decision and they are still waiting.

This information confirms our position that additional members are needed to handle the backlog of cases. The county commissioners feel the original size of five members would allow the board to handle the backlog of cases and become current with BOTA cases being heard in the original tax calendar. Our citizens deserve to have their cases heard in a timely fashion.

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# Legislative Testimony

HB 2018

January 25, 2007

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

Representative Wilk and members of the committee;

The Kansas Chamber of Commerce represents over 10,000 small, medium and large businesses from all corners of the state. Our members appear before the Board of Tax Appeals on numerous issues relating to all types of business taxes.

Over the years, the business community has worked to ensure that there are qualification requirements for Board of Tax Appeals members. We were instrumental in enacting the qualification requirements when there were five members serving on the Board and worked to ensure that those qualification requirements were continued when the Board was reduced to three members.

Having qualified members serve on the Board of Tax Appeals is essential. The current statutory requirements call for an attorney, a CPA and a third member. The statute also states that members of the Board shall be individuals with legal, accounting or appraisal training and experience. We believe that these requirements are essential for Board members to have the expertise to make decision on these types of tax related matters. If the size of the Board is increased, we would encourage that strict qualification requirements remain intact.

An alternative approach that should be explored is to replace the current Board of Tax Appeals with a Kansas tax court for tax related matters. This would ensure that the judges have the background and qualifications to render judgment on these very complex tax and legal matters. The business community supports a tax court concept and would like to work with the legislature either this session or in the interim to explore the merits of this issue.

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



The Force for Business

835 SW Topeka Blvd.

Topeka, KS 66612-1671

785-357-6321

Fax: 785-357-4732

E-mail: [info@kansaschamber.org](mailto:info@kansaschamber.org)

[www.kansaschamber.org](http://www.kansaschamber.org)



**PRESENTATION TO THE HOUSE COMMITTEE ON TAXATION**

**BY**

**THE KANSAS STATE BOARD OF TAX APPEALS**

**Rebecca W. Crotty, Chairperson**

**January 25, 2007**

The purpose of this testimony is to provide input about the potential impact of the proposed House Bill 2018.

House Bill No. 2018 would amend K.S.A. 2005 Supp. § 74-2433 to add two new board member positions to the Board of Tax Appeals (BOTA). The bill would require that no more than three members could be of the same political party and that one member must be appointed from each of the congressional districts of Kansas, with the fifth member appointed at large.

*Fiscal Impact*

House Bill 2018 would have a significant impact on BOTA's budgetary requirements. The bill would increase the agency's budgetary requirements by approximately \$560,000 in the first year after implementation and approximately \$410,000 in each subsequent year. The budgetary breakdown is as follows:

- Board Member Compensation – Approximately \$280,000 in salaries and benefits for two new board member positions would be required.
- Support Staff Compensation – Approximately \$100,000 in salaries and benefits for additional staff to support the two new members would be required.
- Moving Expenses and Rent – When the Board's membership was reduced from five to three members in 2003, the agency eliminated approximately 1,800 square feet of office space. That space has since been filled by the Department of Revenue, Property Valuation Division, and likely would not be available should the Board's membership again be increased to five. The agency would incur at least \$150,000 in moving expenses and approximately \$30,000 per year in additional rents.

*Operational Impact*

Before BOTA instituted new discovery and pre-hearing policies and procedures about seven years ago, its hearing calendar was significantly busier than it is today, which necessitated a five-member board. With new procedures in place, it became apparent that a five-member board no longer was necessary to handle the agency's hearing calendar.

Recognizing this reality, the Legislature reduced the Board's membership to three in 2003.

In theory, the only area in which additional board members are helpful is in the hearing process. Yet, as the agency continues to refine its pre-hearing and discovery policies and procedures and improves its technology, the number of BOTA hearings will steadily decline as increasingly more cases are settled or otherwise disposed of prior to hearing. There are now fewer hearings and thus less of a need for Board member coverage than ever before.

Adding two new board members would not be helpful in the decision-making process either. Under HB 2018, three board members would be required to come to agreement in all decisions, instead of the two-member majority now required. If anything, a five-member board would slow the decision-making process. The net result likely would be an overall decrease in operational efficiency.

Notably, in FY 2006, the Board's operations with three members were more efficient than in any of the preceding four fiscal years. Following are performance highlights from FY 2006:

- In FY 2006, BOTA closed 2,762 more cases than it closed in FY 2005, which amounts to a 32 percent increase in closed cases.
- BOTA closed 44 percent more tax exemption cases and 120 percent more tax grievance cases in FY 2006 than in FY 2005.
- BOTA's clearance rate for FY 2006 was 20 percent higher than in FY 2005 and was greater than the clearance rate in each of the preceding four fiscal years.
- BOTA's small claims division consistently maintains a 100 percent annual clearance rate.
- The average number of days between filing and docketing a case fell from 43 days in FY 2005 to 25 days in FY 2006. Further, because of personnel realignments, BOTA was able to docket the last 40 percent of its FY 2006 caseload in an average of 6 days from the date of filing. In FY 2008, after the new case management technology is fully operational, docketing will be instantaneous.
- In FY 2006, the average number of days to close a case was 145 days, which is a 20-day improvement from FY 2005. With new technology and operational changes, BOTA expects this measure to improve significantly in the coming years.
- In FY 2006, the small claims division was able to close 99 percent of its cases within 30 days after the hearing was held.

# KANSAS STATE BOARD OF TAX APPEALS

## OUTPUT MEASURES

The case types listed in the first column of the following tables are as follows: Division of Taxation (DT), Economic Development Exemption (EDX), Equalization (EQ), Industrial Revenue Bond (IRB), Industrial Revenue Bond Exemption (IRBX), Mortgage Registration Protest (MRP), No Fund Warrant (NFW), Protest (PR), Property Valuation (PV), Tax Grievance (TG), Tax Exemption (TX).

**Regular Division Filings.** The table below shows the number of filings, broken down by type, docketed and processed by the regular division of BOTA since FY 2002 and provides projections for FY 2007 and FY 2008.

Case Type	FY 02	FY 03	FY 04	FY 05	FY 06	FY 07	FY 08
DT	256	487	512	112	100	120	120
EDX	67	63	51	65	65	70	75
EQ	1,670	1,066	1,831	1,499	1,748	2,100	2,300
IRB	77	70	79	84	92	100	100
IRBX	62	57	45	49	48	50	50
MRP	112	136	113	52	53	40	40
NFW	12	7	5	6	3	6	6
PR	355	294	394	521	837	850	900
PV	11	6	14	83	46	50	50
TG	1,134	1,079	896	477	474	550	580
TX	3,939	3,184	3,233	2,487	3,173	3,200	3,200
Other	10	12	10	41	55	50	50
<b>Total</b>	<b>7,705</b>	<b>6,461</b>	<b>7,183</b>	<b>5,476</b>	<b>6,995</b>	<b>7,186</b>	<b>7,471</b>

**Small Claims Filings.** The table below shows the number of filings, broken down by type, in the small claims division since FY 2002 and provides projections for FY 2007 and FY 2008.

Case Type	FY 02	FY 03	FY 04	FY 05	FY 06	FY 07	FY 08
DT	0	2	46	88	71	85	85
EQ	2,562	3,080	2,373	2,800	2,877	3,000	3,100
PR	496	504	807	523	678	650	700
<b>Total</b>	<b>3,058</b>	<b>3,586</b>	<b>3,226</b>	<b>3,411</b>	<b>3,626</b>	<b>3,785</b>	<b>3,885</b>

**Aggregate Filings.** The table below shows the aggregate number of filings in both the regular and small claims divisions since FY 2002 and provides projections for FY 2007 and FY 2008.

	FY 02	FY 03	FY 04	FY 05	FY 06	FY 07	FY 08
Small Claims	3,058	3,586	3,226	3,411	3,626	3,785	3,885
Regular Division	7,705	6,461	7,183	5,476	6,995	7,186	7,471
<b>Total Filings</b>	<b>10,763</b>	<b>10,047</b>	<b>10,409</b>	<b>8,887</b>	<b>10,621</b>	<b>10,971</b>	<b>11,356</b>

**Regular Division Cases Closed.** The table below shows the number of regular division cases, broken down by type, closed since FY 2002 and provides projections for FY 2007 and FY 2008.

Case Type	FY 02	FY 03	FY 04	FY 05	FY 06	FY 07	FY 08
DT	73	141	1,234	42	105	110	120
EDX	70	70	48	67	68	70	72
EQ	1,921	1,455	1,035	1,371	1,914	2,150	2,432
IRB	77	70	79	84	92	96	100
IRBX	64	61	41	49	63	50	55
MRP	108	132	118	46	69	55	60
NFW	14	7	5	6	3	6	6
PR	760	460	243	401	614	600	650
PV	6	7	37	14	23	55	60
TG	1,214	1,214	819	376	828	600	600
TX	4,007	3,663	2,930	2,815	4,044	3,348	3,300
Other	16	10	12	16	12	60	45
<b>Total</b>	<b>8,330</b>	<b>7,200</b>	<b>6,601</b>	<b>5,287</b>	<b>7,835</b>	<b>7,200</b>	<b>7,500</b>

**Small Claims Cases Closed.** The table below shows the number of small claims cases, broken down by type, closed since FY 2002 and provides projections for FY 2007 and FY 2008.

Case Type	FY 02	FY 03	FY 04	FY 05	FY 06	FY 07	FY 08
DT	0	2	46	88	71	85	85
EQ	2562	3080	2373	2801	2877	3,000	3,100
PR	496	504	807	523	678	650	700
<b>Total</b>	<b>3,058</b>	<b>3,586</b>	<b>3,226</b>	<b>3,412</b>	<b>3,626</b>	<b>3,785</b>	<b>3,885</b>

**Aggregate Cases Closed.** The table below shows the aggregate number of cases closed in both the regular and small claims divisions since FY 2002 and provides projections for FY 2007 and FY 2008.

	FY 02	FY 03	FY 04	FY 05	FY 06	FY 07	FY 08
Small Claims	3,058	3,586	3,226	3,412	3,626	3,785	3,885
Regular Division	8,330	7,200	6,601	5,287	7,835	7,200	7,500
<b>Total Filings</b>	<b>11,388</b>	<b>10,786</b>	<b>9,827</b>	<b>8,699</b>	<b>11,461</b>	<b>10,985</b>	<b>11,385</b>

## OUTCOME MEASURES

### Clearance Rates

The effectiveness of case processing by any tribunal, including BOTa, can be measured by clearance rates. Clearance rates measure how BOTa is keeping up with its caseload. Clearance rates are expressed as percentages and are calculated by dividing the number of outgoing (or closed) cases by the number of incoming (or docketed) cases. A court or administrative tribunal should strive to maintain clearance rates of at least 100 percent. Clearance rates below 100 percent generate backlogs.

### Regular Division Clearance Rates

	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Incoming cases	7,705	6,461	7,183	5,476	6,695	7,186	7,471
Outgoing cases	8,330	7,200	6,601	5,287	7,835	7,200	7,500
<b>Clearance rate</b>	<b>108%</b>	<b>111%</b>	<b>92%</b>	<b>97%</b>	<b>117%</b>	<b>100%</b>	<b>100%</b>

### Small Claims Division Clearance Rates

	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Incoming cases	3,058	3,586	3,226	3,411	3,626	3,785	3,885
Outgoing cases	3,058	3,586	3,226	3,411	3,626	3,785	3,885
<b>Clearance rate</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

### Other Outcome Measures

Other outcome measures, for both the regular and small claims divisions, assess items such as docketing speed, overall size of the pending docket, and speed of processing and disposition. The small claims division outcome measures are expressed in different terms than the regular division outcome measures because of specific abbreviated statutory deadlines imposed on small claims processes.

#### Regular Division

	FY 02	FY 03	FY 04	FY 05	FY 06	FY 07	FY 08
Average days between filing and docketing	15	15	29	43	25	5	1
Average number of open cases	4,471	3,699	4,331	3,870	4,197	3,500	3,500
Average number of days to close cases	140	131	159	165	145	120	90

#### Small Claims Division

	FY 02	FY 03	FY 04	FY 05	FY 06	FY 07	FY 08
Average days between filing and hearing	48	49	48	55	54	45	40
Average number of days between hearing notice and hearing	17	19	15	13	16	10	10
Average number of days between hearing and decision	27	27	27	29	25	24	14
Number of cases where decision was certified more than 30 days after hearing	203	146	305	122	32	30	25