

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman Kenny Wilk at 9:00 A.M. on February 21, 2008 in Room 519-S of the Capitol.

All members were present.

Committee staff present:

Chris Courtwright, Legislative Research Department  
Gordon Self, Office of Revisor of Statutes  
Ryan Hoffman, Legislative Research Department  
Scott Wells, Office of Revisor of Statutes  
Rose Marie Glatt, Committee Secretary

Conferees appearing before the committee:

Rebecca Crotty, Chairperson, BOTA  
Trevor Wohlford, Executive Director, BOTA  
Secretary Wagnon, KDOR

Others attending:

See attached list.

The Chairman announced there will be a Taxation meeting tomorrow, February 22. Barb Hinton, will review the Performance Audit Report - Economic Development; Determining the Amounts the State Has Spent on Economic Development Programs and the Economic Impacts on Kansas Counties, Part 1. It is not his intention to work any bills.

**Substitute for House Bill No 2018 - An act creating the state court of tax appeals and abolishing the state board of tax appeals, amending statute and repealing the existing sections.**

Copies of the **Substitute for HB 2018** were distributed (Attachment 1). The Chairman thanked members of the Sub-Committee for their work.

Representative Owens acknowledged Sub-committee members: Representatives Lukert, Menghini, Crum and Whitham and thanked them for their work. He also thanked Scott Wells, Office of the Revisors, Chris Courtwright, Legislative Research Department, Chairman Crotty and Trevor Wohlford, BOTA for their support and cooperation.

Key points of the Substitute Bill:

1. Name change - Abolish the name *State Board of Tax Appeals* (BOTA) and create *State Court of Tax Appeals* (COTA).
2. The current three members of BOTA will be renamed *tax law judges* (one lawyer, one CPA and one person with experience in the tax field). In addition the governor shall appoint a *chief hearing officer*, subject to confirmation by the senate as provided in statute, and who in addition to other duties prescribed by this act, shall serve as a judge pro tempore of the court.
3. Small claims division would be renamed to the *Small Claims and Expedited Hearing Division*.
4. New appeal fee of \$35 for cases that go beyond the Small Claims and Expedited Hearings Division.

Representative Owens moved for approval of Substitute for House Bill 2018. Representative Menghini seconded the motion. The motion carried.

Trevor Wohlford, BOTA, explained the process in the small claims division.

In response to a members question, Chair Crotty explained the process of an applicant through the entire appeal process.

The Chairman said it is his understanding that **Substitute for HB 2018** is a consensus bill and brought forth in unity. He invited Chair Crotty and Secretary Wagnon for their remarks on the process and changes that had occurred.

## CONTINUATION SHEET

MINUTES OF THE House Taxation Committee at 9:00 A.M. on February 21, 2008 in Room 519-S of the Capitol.

Chair Crotty said they had made good progress and worked hard to eliminate the backlog and implement streamlined procedures. The background on the Sub-committee activities and procedures is delineated in the Taxation Subcommittee of BOTA Status Report (Attachment 2), which was distributed. The report includes:

1. Original intent and charge of the subcommittee
2. Summary of BOTA findings
3. Regular division BOTA clearance rates - FY 2003-2007
4. Conclusions

She expressed her appreciation to Representative Owen, as the Chair, and Representatives Lukert, Menghini, Crum and Whitham for spending the considerable time necessary to learn the current process. They listened to concerns and served on the team that developed the changes contained in the Substitute bill. She thanked Secretary Wagnon for KDOR's cooperation and support. In conclusion she said with new improvements in technology and workflows on the horizon, she expects these positive trends to continue.

Secretary Wagnon said she had long advocated that Kansas have a tax court. These changes outlined in the bill reflect how they are operating. She agreed that the BOTA functions very well right now and the previous problems that precipitated the sub-committee, have been taken care of under Chair Crotty's leadership. There is a good relationship between the departments. Although the changes in the bill may cost a little more, it gives them an additional resource to serve on the hearing side. They stand in support.

The Chairman, on behalf of the Committee, thanked Chair Crotty for the fine work she and her staff had completed. He said there had been great progress made since last year's hearing and this experience is a good example of how government agencies work.

Representative Whitham moved the Tax Committee recommend **Substitute for House Bill No 2018** favorable for passage. Representative Rardin seconded the motion.

Chris Courtwright said the fiscal note, provided by BOTA staff, would require addition FY 09 spending of \$165,000. This is mainly for salary, benefits, reconfiguration of workspace and furniture. Another consideration is that additional savings may be realized by the elimination of one level of appeal process and the \$35 filing fee.

Representative Whitham withdrew his motion to recommend **Substitute for House Bill No 2018** favorable for passage. Representative Rardin, who seconded the motion, agreed to withdraw his motion as well.

Representative Owens moved to amend **Substitute for HB 2018** to include all cross references that have reference to BOTA to CODA. Representative Menghini seconded the motion. The motion carried.

Representative Whitham moved the Tax Committee recommend **Substitute for House Bill No 2018** favorable for passage. Representative Rardin seconded the motion.

Representative Lukert commended Representative Owens for the extensive work he had done on this subject, saying they have a good work product as the result. He added he was proud to have served on the sub-committee.

Representative Peck made a substitute motion to amend the language back into the bill (page 3-4) regarding no more than one judge from any one of the congressional districts of Kansas. Representative Schroeder seconded the motion. The motion failed.

Representative Whitham closed his motion that the Tax Committee recommend **Substitute for House Bill No 2018** favorable for passage. The motion carried.

The meeting was adjourned at 10:15 a.m. The next meeting is February 22, 2008.



## Substitute for HOUSE BILL NO. 2018

By

AN ACT creating the state court of tax appeals and abolishing the state board of tax appeals; amending K.S.A. 74-2426, 74-2433a, 74-2433b, 74-2433c, 74-2433d, 74-2433e, 74-2433f, 74-2433g, 74-2434, 74-2435, 74-2436, 74-2437, 74-2437a, 74-2437b, 74-2438, 74-2439 and 74-2442 and K.S.A. 2007 Supp. 74-2433 and 74-2438a and repealing the existing sections.

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

Section 1. K.S.A. 74-2426 is hereby amended to read as follows: 74-2426. (a) Orders of the board state court of tax appeals on any appeal, in any proceeding under the tax protest, tax grievance or tax exemption statutes or in any other original proceeding before the board court shall be rendered and served in accordance with the provisions of the Kansas administrative procedure act. Notwithstanding the provisions of subsection (g) of K.S.A. 77-526, and amendments thereto, a final order of the board court shall be rendered in writing and served within 120 days after the matter was fully submitted to the board court unless this period is waived or extended with the written consent of all parties or for good cause shown.

(b) No final order of the board court shall be subject to review pursuant to subsection (c) unless the aggrieved party first files a petition for reconsideration of that order with the board court in accordance with the provisions of K.S.A. 77-529, and amendments thereto.

(c) Any action of the board court pursuant to this section is subject to review in accordance with the act for judicial review and civil enforcement of agency actions, except that:

(1) The parties to the action for judicial review shall be the same parties as appeared before the board court in the administrative proceedings before the board court. The board court shall not be a party to any action for judicial review of an action of the board court.

(2) There is no right to review of any order issued by the board court in a no-fund warrant proceeding pursuant to K.S.A. 12-110a, 12-1662 et seq., 19-2752a, 79-2938, 79-2939 and 79-2951, and amendments thereto, and statutes of a similar character. The

court of appeals has jurisdiction for review of all final orders in all other cases.

~~(3)--The court of appeals has jurisdiction of any action for review pertaining to property appraised and assessed by the director of property valuation, excise, income or inheritance taxes assessed by the director of taxation and the exemption of any property from property taxation. The district court of the proper county has jurisdiction in all other cases.~~

~~(4)--Review of orders issued by the of tax appeals relating to the valuation or assessment of property for ad valorem tax purposes or relating to the tax protest shall be conducted by the district court of the county in which the property is located or, if located in more than one county, the district court of any county in which any portion of the property is located.~~

(5) (3) In addition to the cost of the preparation of the transcript, the appellant shall pay to the board state court of tax appeals the other costs of certifying the record to the reviewing court. Such payment shall be made prior to the transmission of the agency record to the reviewing court.

(d) If review of an order of the board state court of tax appeals relating to excise, income or inheritance taxes, is sought by a person other than the director of taxation, such person shall give bond for costs at the time the petition is filed. The bond shall be in the amount of 125% of the amount of taxes assessed or a lesser amount approved by the court of appeals and shall be conditioned on the petitioner's prosecution of the review without delay and payment of all costs assessed against the petitioner.

(e) If review of an order is sought by a party other than the director of property valuation or a taxing subdivision and the order determines, approves, modifies or equalizes the amount of valuation which is assessable and for which the tax has not been paid, a bond shall be given in the amount of 125% of the amount of the taxes assessed or a lesser amount approved by the reviewing court. The bond shall be conditioned on the

petitioner's prosecution of the review without delay and payment of all costs assessed against the petitioner.

Sec. 2. K.S.A. 2007 Supp. 74-2433 is hereby amended to read as follows: 74-2433. (a) There is hereby created a state board court of tax appeals, referred to in this act as the board court. The board court shall be composed of three members tax law judges who shall be appointed by the governor, subject to confirmation by the senate as provided in K.S.A. 75-4315b, and amendments thereto. After the effective date of this act, one of such members judges shall have been regularly admitted to practice law in the state of Kansas and for a period of at least five years, have engaged in the active practice of law as a lawyer, judge of a court of record or any other court in this state; and one of such members judges shall have engaged in active practice as a certified public accountant for a period of at least five years. In addition, the governor shall also appoint a chief hearing officer, subject to confirmation by the senate as provided in K.S.A. 75-4315b, and amendments thereto, who, in addition to other duties prescribed by this act, shall serve as a judge pro tempore of the court. No successor shall be appointed for ~~the two members of the board whose terms of office expired on January 15, 2003, and if any such appointment is made prior to the effective date of this act, any such member's term of office shall expire on the effective date of this act~~ any member of the board of tax appeals appointed before July 1, 2008. Such persons shall continue to serve as judges on the court of tax appeals until their terms expire. Except as provided by K.S.A. 46-2601, and amendments thereto, no person appointed to the board court, including the chief hearing officer, shall exercise any power, duty or function as a member judge of the board court until confirmed by the senate. Not more than two members judges of the board court shall be of the same political party. Members Judges of the board court, including the chief hearing officer, shall be residents of the state. ~~Subject to the provisions of K.S.A. 75-4315c, and amendments thereto, no more than one shall be~~

~~appointed--from-any-one-of-the-congressional-districts-of-Kansas.~~  
The members judges of the board court, including the chief hearing officer, shall be selected with special reference to training and experience for duties imposed by this act and shall be individuals with legal, tax, accounting or appraisal training and experience. Members State court of tax appeals judges shall be subject to the supreme court rules of judicial conduct applicable to all judges of the district court. The board court shall be bound by the doctrine of stare decisis limited to published decisions of an appellate court other than a district court. Members Judges of the court, including the chief hearing officer, shall hold office for terms of four years and until their successors are appointed and confirmed. Except as otherwise provided, such terms of office shall expire on January 15 of the last year of such term. If a vacancy occurs on the board court, or in the position for chief hearing officer, the governor shall appoint a successor to fill the vacancy for the unexpired term. Nothing in this section shall be construed to prohibit the governor from reappointing any judge of the court, including the chief hearing officer, for additional four-year terms. The governor shall select one of its members judges to serve as chairperson chief judge. The votes of two members judges shall be required for any action final order to be taken issued by the board court. Meetings may be called by the chairperson chief judge and shall be called on request of a majority of the members judges of the board court and when otherwise prescribed by statute.

(b) Any ~~member--of~~ judge appointed to the state board court of tax appeals and the chief hearing officer may be removed by the governor for cause, after public hearing conducted in accordance with the provisions of the Kansas administrative procedure act.

(c) The state board court of tax appeals shall appoint, subject to approval by the governor, an executive director of the board court, to serve at the pleasure of the board court. The

executive director shall: (1) Be in the unclassified service under the Kansas civil service act; (2) devote full time to the executive director's assigned duties; (3) receive such compensation as determined by the board court, subject to the limitations of appropriations thereof; and (4) have familiarity with the tax appeals process sufficient to fulfill the duties of the office of executive director. The executive director shall perform such duties as directed by the board court.

(d) Appeals decided by the state board court of tax appeals which are deemed of sufficient importance to be published shall be published by the board court.

(e) After appointment, members judges of the state board court of tax appeals shall complete the following course requirements: (1) A tested appraisal course of not less than 30 clock hours of instruction consisting of the fundamentals of real property appraisal with an emphasis on the cost and sales approaches to value; (2) a tested appraisal course of not less than 30 clock hours of instruction consisting of the fundamentals of real property appraisal with an emphasis on the income approach to value; (3) a tested appraisal course of not less than 30 clock hours of instruction with an emphasis on mass appraisal; (4) an appraisal course with an emphasis on Kansas property tax laws and; (5) an appraisal course on the techniques and procedures for the valuation of state assessed properties with an emphasis on unit valuation; and (6) a tested appraisal course on the techniques and procedures for the valuation of land devoted to agricultural use pursuant to K.S.A. 79-1476, and amendments thereto. The executive director shall adopt rules and regulations prescribing a timetable for the completion of the course requirements and prescribing continued education requirements for members judges of the board court.

(f) The state board court of tax appeals shall have no capacity or power to sue or be sued.

Sec. 3. K.S.A. 74-2433a is hereby amended to read as follows: 74-2433a. The state board court of tax appeals created



by K.S.A. 74-2433, and amendments thereto, is hereby transferred out of the department of revenue and established as an independent agency and administrative law court within the executive branch of state government.

Sec. 4. K.S.A. 74-2433b is hereby amended to read as follows: 74-2433b. All budgeting, purchasing and related management functions of the state board court of tax appeals shall be administered under the direction and supervision of the state board court of tax appeals.

Sec. 5. K.S.A. 74-2433c is hereby amended to read as follows: 74-2433c. All vouchers for expenditures from appropriations to or for the state board court of tax appeals shall be approved by the chairman chief judge of the state board court of tax appeals or a person or persons designated by the chairman chief judge for such purpose.

Sec. 6. K.S.A. 74-2433d is hereby amended to read as follows: 74-2433d. All records of and appropriations for the state board court of tax appeals shall be transferred to the state board court of tax appeals on the effective date of this order.

Sec. 7. K.S.A. 74-2433e is hereby amended to read as follows: 74-2433e. The state board court of tax appeals created by K.S.A. 74-2433, and amendments thereto, is hereby specifically continued in existence, and it shall have the same powers, functions and duties as were vested by law in it immediately prior to the effective date of this order, except as is herein otherwise specifically provided.

Sec. 8. K.S.A. 74-2433f is hereby amended to read as follows: 74-2433f. ~~On and after January 17, 1999,~~ (a) There shall be a division of the state board court of tax appeals known as the small claims and expedited hearings division. Hearing officers appointed by the ~~executive--director~~ chief hearing officer shall have authority to hear and decide cases heard in the small claims and expedited hearings division.

(b) The small claims and expedited hearings division shall

have jurisdiction over hearing and deciding applications for the refund of protested taxes under the provisions of K.S.A. 79-2005, and amendments thereto, and hearing and deciding appeals from decisions rendered pursuant to the provisions of K.S.A. 79-1448, and amendments thereto, and of article 16 of chapter 79 of the Kansas Statutes Annotated, and acts amendatory thereof or supplemental thereto, with regard to single-family residential property. The filing of an appeal with the small claims and expedited hearings division shall be a prerequisite for filing an appeal with the state board court of tax appeals for appeals involving single-family residential property.

(c) At the election of the taxpayer, the small claims and expedited hearings division shall have jurisdiction over: (1) Any appeal of a decision, finding, order or ruling of the director of taxation, except an appeal, finding, order or ruling relating to an assessment issued pursuant to K.S.A. 79-5201 et seq., and amendments thereto, in which the amount of tax in controversy does not exceed \$15,000; (2) hearing and deciding applications for the refund of protested taxes under the provisions of K.S.A. 79-2005, and amendments thereto, where the value of the property, other than property devoted to agricultural use, is less than \$2,000,000 as reflected on the valuation notice; ~~or~~ (3) hearing and deciding appeals from decisions rendered pursuant to the provisions of K.S.A. 79-1448, and amendments thereto, and of article 16 of chapter 79 of the Kansas Statutes Annotated, and acts amendatory thereof or supplemental thereto, other than those relating to land devoted to agricultural use, wherein the value of the property is less than \$2,000,000 as reflected on the valuation notice.

(d) In accordance with the provisions of K.S.A. 74-2438, and amendments thereto, any party may elect to appeal any application or decision referenced in subsection (b) to the state board court of tax appeals. Except as provided in subsection (b) regarding single-family residential property, the filing of an appeal with the small claims and expedited hearings division shall not be a

prerequisite for filing an appeal with the state board court of tax appeals under this section. Final decisions of the small claims and expedited hearings division may be appealed to the state board court of tax appeals. An appeal of a decision of the small claims and expedited hearings division to the state board court of tax appeals shall be de novo.

(e) A taxpayer shall commence a proceeding in the small claims and expedited hearings division by filing a notice of appeal in the form prescribed by the rules of the state board court of tax appeals which shall state the nature of the taxpayer's claim. Notice of appeal shall be provided to the appropriate unit of government named in the notice of appeal by the taxpayer. In any valuation appeal or tax protest commenced pursuant to articles 14 and 20 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, the hearing shall be conducted in the county where the property is located or a county adjacent thereto. In any appeal from a final determination by the secretary of revenue, the hearing shall be conducted in the county in which the taxpayer resides or a county adjacent thereto.

(f) The hearing in the small claims and expedited hearings division shall be informal. The hearing officer may hear any testimony and receive any evidence the hearing officer deems necessary or desirable for a just determination of the case. A hearing officer shall have the authority to administer oaths in all matters before the hearing officer. All testimony shall be given under oath. A party may appear personally or may be represented by an attorney, a certified public accountant, a certified general appraiser, a tax representative or agent, a member of the taxpayer's immediate family or an authorized employee of the taxpayer. A county or unified government may be represented by the county appraiser, designee of the county appraiser, county attorney or counselor or other representatives so designated. No transcript of the proceedings shall be kept.

(g) The hearing in the small claims and expedited hearings

division shall be conducted within 60 days after the appeal is filed in the small claims and expedited hearings division unless such time period is waived by the taxpayer. A decision shall be rendered by the hearing officer within 30 days after the hearing is concluded and, in cases arising from appeals described by subsections (b) and (c)(2) and (3), shall be accompanied by a written explanation of the reasoning upon which such decision is based. Documents provided by a taxpayer or county or district appraiser shall be returned to the taxpayer or the county or district appraiser by the hearing officer and shall not become a part of the ~~board's~~ court's permanent records. Documents provided to the hearing officer shall be confidential and may not be disclosed, except as otherwise specifically provided.

(h) With regard to any matter properly submitted to the division relating to the determination of valuation of property for taxation purposes, it shall be the duty of the county appraiser to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of such determination. No presumption shall exist in favor of the county appraiser with respect to the validity and correctness of such determination.

Sec. 9. K.S.A. 74-2433g is hereby amended to read as follows: ~~74-2433g. On-and-after-January-17-1999,~~ (a) The hearing officers of the small claims and expedited hearings division shall be appointed by the ~~executive--director~~ chief hearing officer of the state board court of tax appeals.

(b) Each hearing officer of the small claims and expedited hearings division shall receive compensation in an amount determined by the ~~executive-director~~ chief judge and approved by the board court.

Sec. 10. K.S.A. 74-2434 is hereby amended to read as follows: 74-2434. (a) Each member judge of the board court, including the chief hearing officer, shall receive an annual salary as provided in this section. Each of the members judges of the board court, including the chief hearing officer, shall

devote full time to the duties of such office.

(b) (1) The annual salary of the chairperson chief judge shall be an amount equal to the annual salary paid by the state to a district judge designated as chief judge; and

(2) the annual salary of each member judge other than the chairperson chief judge, including the chief hearing officer, shall be an amount which is \$2,465 less than the annual salary of the chairperson chief judge.

Sec. 11. K.S.A. 74-2435 is hereby amended to read as follows: 74-2435. Within amounts budgeted for it, the state board court of tax appeals may appoint such employees as may be necessary, which employees shall be in the classified service of the Kansas civil service act, and may appoint a secretary and attorneys, and such secretary and attorneys shall be in the unclassified service of the Kansas civil service act.

Sec. 12. K.S.A. 74-2436 is hereby amended to read as follows: 74-2436. The board court shall keep an accurate record of its official proceedings, and shall keep a common seal of such design as shall be determined by the board court. Copies of records of the board court, certified by the secretary and attested with the seal of the board court, shall be received in evidence with like effect as copies of other public records. The secretary of the board court shall be the custodian of the seal and records and be authorized to affix the seal in all proper cases. The secretary or any member judge of the board court shall have the power to administer oaths in all matters before the board court. Two ~~(2)~~--members judges of the board court shall constitute a quorum ~~for-the-transaction-of-the-business~~.

Sec. 13. K.S.A. 74-2437 is hereby amended to read as follows: 74-2437. The state board court of tax appeals shall have the following powers and duties:

(a) To hear appeals from the director of taxation and the director of property valuation on rulings and interpretations by said directors, except where different provision is made by law;

(b) to hear appeals from the director of property valuation

on the assessment of state assessed property;

(c) to adopt rules and regulations relating to the performance of its duties and particularly with reference to procedure before it on hearings and appeals; and

(d) such other powers as may be prescribed by law.

Sec. 14. K.S.A. 74-2437a is hereby amended to read as follows: 74-2437a. The state board court of tax appeals shall have the power to summon witnesses from any part of the state to appear and give testimony, and to compel said witnesses to produce records, books, papers and documents relating to any subject matter before the said board of tax appeals, subject to the restrictions of K.S.A. 79-1424. Summons, subpoenas and subpoenas duces tecum may be directed to the sheriff of any county and may be made returnable at such time as the board court of tax appeals shall determine. No fees shall be charged by the sheriff for service thereof. Witness fees and mileage shall be allowed and may be taxed as costs to either party in the discretion of the board court.

Sec. 15. K.S.A. 74-2437b is hereby amended to read as follows: 74-2437b. The state board court of tax appeals shall have power to issue an order directing depositions of witnesses residing within or without the state, to be taken, upon notice to the interested parties, if any, in like manner that depositions of witnesses are taken in civil actions pending in the district court, in any matter before the board court.

Sec. 16. K.S.A. 74-2438 is hereby amended to read as follows: 74-2438. An appeal may be taken to the state board court of tax appeals from any finding, ruling, order, decision, final determination or other final action, including action relating to abatement or reduction of penalty and interest, on any case of the secretary of revenue or the secretary's designee by any person aggrieved thereby. Notice of such appeal shall be filed with the secretary of the board court within 30 days after such finding, ruling, order, decision, final determination or other action on a case, and a copy served upon the secretary of revenue

or the secretary's designee. An appeal may also be taken to the state board court of tax appeals at any time when no final determination has been made by the secretary of revenue or the secretary's designee after 270 days has passed since the date of the request for informal conference pursuant to K.S.A. 79-3226, and amendments thereto and no written agreement by the parties to further extend the time for making such final determination is in effect. Upon receipt of a timely appeal, the board court shall conduct a hearing in accordance with the provisions of the Kansas administrative procedure act. The hearing before the board court shall be a de novo hearing unless the parties agree to submit the case on the record made before the secretary of revenue or the secretary's designee. With regard to any matter properly submitted to the board court relating to the determination of valuation of residential property or real property used for commercial and industrial purposes for taxation purposes, it shall be the duty of the county or district appraiser to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of such determination, except that no such duty shall accrue with regard to leased commercial and industrial property unless the property owner has furnished to the county or district appraiser a complete income and expense statement for the property for the three years next preceding the year of appeal. No presumption shall exist in favor of the county or district appraiser with respect to the validity and correctness of such determination. No interest shall accrue on the amount of the assessment of tax subject to any such appeal beyond 120 days after the date the matter was fully submitted, except that, if a final order is issued within such time period, interest shall continue to accrue until such time as the tax liability is fully satisfied, and if a final order is issued beyond such time period, interest shall recommence to accrue from the date of such order until such time as the tax liability is fully satisfied.

Sec. 17. K.S.A. 2007 Supp. 74-2438a is hereby amended to

read as follows: 74-2438a. (a) The executive director of the state board court of tax appeals shall charge and collect a filing fee, established by rules and regulations adopted by the state board court of tax appeals, for any appeal in any proceeding under the tax protest, tax grievance or tax exemption statutes or in any other original proceeding for such board court to recover all or part of the costs of processing such actions incurred by the state board court of tax appeals. ~~No--filing--fee shall--be--imposed--on--applications--by--taxpayers--for--refunds--of--protested--taxes--under--the--provisions--of--K.S.A.--79-2005,--and--amendments--thereto,--or--for--appeals--from--decisions--rendered pursuant--to--K.S.A.--79-1448,--and--amendments--thereto,--with--regard to---single-family---residential---property.~~ With regard to single-family residential property, the filing fee charged for applications by taxpayers for refunds of protested taxes under the provisions of K.S.A. 79-2005, and amendments thereto, and appeals from decisions rendered pursuant to K.S.A. 79-1448, and amendments thereto, shall not exceed \$35; Provided, however, that no filing fee shall be imposed on any such application or appeal of residential property filed with the small claims and expedited hearings division. Not-for-profit organizations shall not be charged a filing fee exceeding \$10 for any appeal if the valuation of the property that is the subject of the controversy does not exceed \$100,000.

(b) ~~There-is-hereby-created-in-the-state-treasury~~ The BOTA filing fee fund is hereby renamed the COTA filing fee fund.

(c) The executive director of the board court of tax appeals shall remit to the state treasurer at least monthly all tax appeal filing fees received by the state board court of tax appeals. Upon receipt of any such remittance, the state treasurer shall deposit the amount in the state treasury to the credit of the BOTA COTA filing fee fund.

(d) All expenditures from the BOTA COTA filing fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to



vouchers approved by the executive director of the state board court of tax appeals or a person or persons designated by such executive director.

Sec. 18. K.S.A. 74-2439 is hereby amended to read as follows: 74-2439. Except as otherwise provided by law, the state board court of tax appeals shall have the following powers and duties:

(a) Constituting, sitting and acting as the state board of equalization as provided in K.S.A. 79-1409, and amendments thereto;

(b) authorizing the issuance of emergency warrants by taxing districts, as provided in article 29 of chapter 79 of Kansas Statutes Annotated, and acts amendatory thereof or supplemental thereto, and authorizing the issuance of warrants by cities or counties under statutes of this state;

(c) authorizing increases in tax levies by taxing districts, as provided in article 19 of chapter 79 of Kansas Statutes Annotated, and acts amendatory thereof or supplemental thereto;

(d) correcting errors and irregularities under the provisions of article 17 of chapter 79 of Kansas Statutes Annotated; and

(e) hearing and deciding applications for the refund of protested taxes under the provisions of K.S.A. 79-2005, and amendments thereto.

Sec. 19. K.S.A. 74-2442 is hereby amended to read as follows: 74-2442. There are hereby transferred to, vested in, and imposed upon, the director of property valuation to be executed and exercised by him, all the jurisdiction, rights, powers, duties and authority now vested in or imposed upon the state commission of revenue and taxation with respect to ad valorem tax administration and the assessment of state assessed property, except such as are specifically transferred to, vested in, and imposed upon, the state board court of tax appeals. The state commission of revenue and taxation is hereby abolished.

New Sec. 20. On July 1, 2008, there are hereby transferred

to, vested in, and imposed upon, the state court of tax appeals, all the jurisdiction, rights, powers, duties and authority now vested in or imposed upon the state board of tax appeals. The state board of tax appeals is hereby abolished.

Sec. 21. On and after July 1, 2008, K.S.A. 74-2426, 74-2433a, 74-2433b, 74-2433c, 74-2433d, 74-2433e, 74-2433f, 74-2433g, 74-2434, 74-2435, 74-2436, 74-2437, 74-2437a, 74-2437b, 74-2438, 74-2439 and 74-2442 and K.S.A. 2007 Supp. 74-2433 and 74-2438a are hereby repealed.

Sec. 22. This act shall take effect and be in force from and after its publication in the statute book.



# K A N S A S

REBECCA W. CROTTY, CHAIRPERSON  
BRUCE F. LARKIN, BOARDMEMBER  
J. FRED KUBIK, BOARDMEMBER

BOARD OF TAX APPEALS

KATHLEEN SEBELIUS, GOVERNOR

## **TAXATION SUBCOMMITTEE OF BOARD OF TAX APPEALS (BOTA) STATUS REPORT January 2008**

### *Background*

Last year, at the request of the Taxation Committee, a subcommittee was formed to study and make recommendations concerning the operation and structure of the Kansas Board of Tax Appeals (BOTA). Representative Tim Owens chaired the proceedings. The subcommittee's original charge was to study House Bill 2018, which would have increased BOTA membership from three members to five members. After convening the subcommittee, the chairman decided to broaden the focus to consider not only HB 2018 but also other possible ways to address perceived problems with the administration of tax appeals in Kansas.

The subcommittee's first task was to define the problem. According to the subcommittee's Interim Report, the problem was thus stated:

The problem, simply put, has more to do with the timely hearing of all matters before the board, done in a manner which avoids conflicts of interest and which allow more than one board member to hear major cases. Much of the board's time is spent in travel to different parts of the state to hear small cases primarily involving property appraisal matters while at the same time trying to address the larger corporate tax questions that are being appealed. The system of appeals from the outset of the process to the conclusion at the court of appeals level creates a process delay that does not allow for the expeditious handling of the larger cases and causes some cases to miss the November deadlines necessary for the various county appraisers to do their job on a timely basis.

The problem appears to be a policy question of how to restructure the process to facilitate more expeditious handling of tax appeals of all types while at the same time avoiding conflicts of interest by members of the board and allowing particularly the larger cases to be heard by multiple members of the board. The solution may or may not dictate the need for a change in the number of members or even the possibility of converting the board to a Court of Tax Appeals, which would mean a move from the Executive Branch to the Judicial Branch.

After identifying the "problem," the subcommittee held hearings and heard testimony from the Department of Revenue, various county appraiser offices, the BOTA chairperson, and attorneys who regularly practice before BOTA. Based on the hearings, the subcommittee unanimously concluded that radical changes in the structure of the Board might not be necessary. In its Interim Report the subcommittee stated:

The subcommittee believes that the current Chairperson should be given until some time in late November, or early December to make whatever changes she deems necessary to correct any issues concerning the timely handling of appeals. To date she has done a good job in reducing the backlog in many of the types of cases and should be given the opportunity to continue to make those efforts.

The subcommittee noted that there should be an effort to ensure that larger cases be heard by at least two members of the Board, and preferably the entire Board. In addition, the subcommittee reported that they unanimously supported a "fast-track" approach for valuation appeals in the BOTA regular division similar to the approach utilized by the BOTA small claims division.

#### *Summary of BOTA Findings*

In an effort to address the issues and recommendations of the subcommittee, we performed a comprehensive examination of our operation and performance measures.

While the problem as articulated by the subcommittee in its Interim Report was the timeliness of "all matters before the Board," the focus of the testimony and discussions was valuation appeals filed with the BOTA regular division involving county assessed properties. These types of appeals comprise approximately 25 percent of our annual docket.

In FY 2007, BOTA processed approximately 11,000 cases of various statutory types and levels of complexity, including over 4,000 appeals filed with the small claims division. In addition to county assessed valuation appeals, the BOTA regular division has jurisdiction over various other state and local tax matters, including appeals from KDOR's Division of Taxation; appeals from KDOR Property Valuation Division (state-assessed properties such as utilities); various types of tax exemption applications, including economic development and industrial revenue bond exemptions; tax grievances; and other miscellaneous matters involving taxation.

In the past three years this agency has implemented a number of fundamental changes, both internally and externally, to improve timeliness of disposition in all areas of the agency's operations. Most notably, last year we formed a Bench and Bar Committee, composed of attorneys who regularly practice before the Board. Based on input from that committee, the Board implemented new prehearing procedures and discovery deadlines for commercial valuation cases.

The agency used to set scheduling deadlines for each commercial case individually, which needlessly drew out the prehearing process and delayed final disposition. After implementing the new procedures, the Board now automatically issues an order when a commercial valuation appeal is docketed that sets out deadlines for completion of discovery and other prehearing

milestones. This kind of standardized and automated discovery is appropriate in the vast majority of commercial valuation cases because such cases generally involve similar questions of fact and law and call for discovery of similar types of information and appraisal evidence.

In addition to implementing new discovery procedures, the Board has streamlined and expedited the tax exemption application process, which has cut the average processing time for tax exemptions by more than 60 percent. The Board also has provided standardized forms for use by parties and counsel in routine actions before the agency where the Board's direct involvement is unnecessary. This allows the agency to spend much less time dealing with uncontested matters, which frees personnel up to handle matters involving genuine disputes.

All of these changes are designed to conserve administrative resources; restrict opportunities for misuse of process; and foster a cooperative, rather than adversarial, approach to discovery and prehearing proceedings. These changes also have forced the parties and their professional representatives to take an active role in case preparation, which promotes early settlement negotiations and discourages "trial by ambush".

Recent improvements in our operations are reflected in our outcome measures over the past two fiscal years. Particularly pertinent measures are set out below.

*Regular Division BOTA Clearance Rates*

The table below sets out clearance rates for the BOTA regular division for the past five fiscal years. Clearance rates measure how a tribunal such as 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 quasi-judicial administrative tribunal must strive to maintain clearance rates of at least 100 percent. Clearance rates below 100 percent create backlogs.

	<i>FY 2003</i>	<i>FY 2004</i>	<i>FY 2005</i>	<i>FY 2006</i>	<i>FY 2007</i>
Incoming cases	6461	7183	5476	<b>6695</b>	<b>7,186</b>
Outgoing cases	7200	6601	5287	<b>7835</b>	<b>7,856</b>
<b>Clearance rate</b>	111%	92%	97%	<b>117%</b>	<b>109%</b>

Clearance rates for the BOTA regular division dropped below 100 percent during the 2004 and 2005 fiscal years, which resulted in backlogs. In FY 2006 and FY 2007, the agency maintained clearance rates well above 100 percent, which eliminated those backlogs.

Specifically in regard to valuation appeals involving county assessed properties (which is the focus of the subcommittee's inquiry), BOTA has made considerable improvement in the timeliness of disposition. The following table sets out the average number of days it took the BOTA regular division to close county assessed valuation cases docketed in FY 2003 through FY 2007. The table is separated into residential appeals and commercial appeals.

Number of Days to Close Cases

	<i>FY 03</i>	<i>FY 04</i>	<i>FY 05</i>	<i>FY 06</i>	<i>FY 07</i>
Residential Appeals	338	364	329	<b>212</b>	<b>156</b>
Commercial Appeals	448	470	551	<b>314</b>	<b>208</b>

Recent progress has been significant; nevertheless, the Board believes there still is room for improvement. Next spring the agency will “go live” with a new web-based case management system which is being financed through Information Network of Kansas (INK) grant funding, not general funds. The system will significantly improve our scheduling functionality and will allow us to automate many of our workflows. In addition, the system will allow users to file online and access information contained in PVD property databases. The new system will enhance all aspects of BOTA’s operations.

*Conclusions*

Over the past two to three years, this agency has implemented a number of key management and operational changes and, as a result, has demonstrated marked improvement by nearly all objective measures. After falling behind in fiscal years 2004 and 2005, BOTA maintained positive case clearance rates in fiscal years 2006 and 2007, eliminating docket backlogs. We also have cut in half the disposition time for both residential and commercial valuation cases. With new improvements in technology and workflows on the horizon, we expect these positive trends to continue.