

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairman Barbara Allen at 10:30 A.M. on January 17, 2008, in Room 519-S of the Capitol.

All members were present.

Committee staff present:

Gordon Self, Office of Revisor of Statutes
Chris Courtwright, Kansas Legislative Research Department
Scott Wells, Office of Revisor of Statutes
Ryan Hoffman, Kansas Legislative Research Department
Judy Swanson, Committee Assistant

Conferees appearing before the committee:

Richard Cram, Kansas Department of Revenue
David Corbin, Kansas Department of Revenue

Others attending:

See attached list.

Chairman Allen welcomed Committee members to the first Committee meeting of 2008. She introduced new Committee member Senator Anthony Hensley, new Research Assistant Ryan Hoffman, and new Revisor of Statutes Scott Wells. She expressed appreciation to former member Senator Goodwin, Researcher Martha Dorsey, and Revisor Jason Thompson,

Chairman Allen distributed 2008 Conferee Guidelines. (Attachment 1)

Senator Schmidt said it was found there was very little help available to businesses that were damaged during the 2007 State disasters. He made a motion to introduce a disaster relief package bill that would create an Authority in a properly-declared disaster area that would create a three-year 10% investment tax credit. Senator Jordan seconded the motion, and the motion carried.

Richard Cram, Kansas Department of Revenue, (KDOR) presented two bill requests from KDOR (Attachment 2):

1. Comprehensive electronic filing/payment initiative and
2. Sales Tax Exemption for Research and Development

Senator Lee moved to introduce the two bills requested by KDOR. Senator Hensley seconded the motion, and the motion passed.

Chris Courtwright, Legislative Research Department, reviewed the 2008 Special Committee on Assessment & Taxation Report. (Attachment 3) There were nine topics studied, and legislation recommended on the two following topics.

The Interim Committee recommended the introduction of legislation that would clarify the definition of business income to add the functional test; clarify the definition of gross receipts to prevent churning; and reduce the surtax such that the overall corporation income tax remains revenue neutral. The second recommendation was for the introduction of new property tax deferral that will contain a number of amendments relative to the original proposal in **HB 2298**. Both of these recommendations will be introduced in the House of Representatives.

Attorney General Opinion No. 2007-38 concerning property exempt from taxation on newly constructed residential property which has never been occupied was distributed to Committee members. (Attachment 4)

Richard Cram, KDOR, explained the sales tax imposition on the gross receipts derived from the participation in guided and non-guided hunts. (Attachment 5) Senator Vratil requested this issue be reviewed. KDOR's Audit Bureau has initiated several sales tax self-audit programs in various industries during recent

CONTINUATION SHEET

MINUTES OF THE Senate Assessment and Taxation Committee at 10:30 A.M. on in Room 519-S of the Capitol.

years. In implementing a self-audit initiative, Audit Bureau identifies retail businesses involved in a particular area and sends self-audit notices. In the fall of 2007, KDOR initiated a self-audit program for businesses involved in providing hunting. After receiving many complaints that KDOR had provided inconsistent guidance on the tax treatment of gross receipts, KDOR sent a notice that it would not assess any business receiving the self-audit notice for sales tax not collected before January 1, 2008 on gross receipts from guided or unguided hunts.

During discussion, Mr. Cram said it is KDOR's view that fees fall under this sales tax imposition. He introduced Mike Boekhaus, Director of KDOR Audit Bureau, Carol Moore and Herman Levitt. Groups or businesses who offer hunting packages will pay this tax. Mr. Cram said landowners who allow hunting on their land should also pay this sales tax. Senators Lee and Bruce expressed concerns on this issue, especially on how land use would be used for sales tax collection. In response to Chairman Allen, Mr. Cram said KDOR is working on the amount of fees that were expected to be collected. In response to Senator Schmidt, he said prior to the KDOR notice in December, they were collecting some tax from hunting groups, but not from all hunting groups. Senator Schmidt expressed hope the fiscal note would be figured on new collections, not previous collections.

David Corbin, KDOR, stated the issue is that there is a group of people providing a service that should have sales tax collected on it. KDOR had caused the confusion because the tax was not collected properly. The leasing of land for hunting is included. In response to Senator Allen, Mr. Corbin said the tax that should have been collected, but was not collected in the past will be forgiven. Senator Donovan said this issue may be better left alone. Senator Bruce commented it appeared conceptually the term "recreation" was being used for hunting as opposed to "natural resources". He thought perhaps hunting should be classified under natural resources. In response to Senator Lee, Mr. Cram said individual personal trainers were not taxed. Senator Lee said she thought there was no difference between a hunting guide and a physical exercise guide. A list from KDOR on what is taxed under this statute would be beneficial to the Committee.

Senator Apple moved to introduce legislation that would rescind this policy per Senator Vratil's request. Senator Schmidt seconded the motion, and the motion passed.

Being no further business, the meeting adjourned at 11:28 a.m. Next meeting is scheduled for January 24.

SENATE
ASSESSMENT & TAXATION COMMITTEE

GUEST LIST

DATE: 01-17-08

NAME	REPRESENTING
Whitney Damron	Flint Oak, LLC
April Holman	Kansas Action for Children
Brandon York	Budget
Melvin Austin Hayden	Hein Law Firm
TK Shireh	KS Legal Services
Shahira Stafford	KS Grain & Feed Assn.
Karl Peterjohn	KS Taxpayers Network
John Frederick	The Boeing Company
Michelle Peterson	Capitol Strategies
Brenda Koops	KDWP
Jacquelyn Keebler	Kansas, Inc.
Dan Karber	Kansas Inc
DICK CARTER	Travel Industry Assoc. of KS
Carol Moore	KDOR
Ernest Lovetto	KDOR
Michael Beckhaus	KDOR
David R. Coburn	KDOR
Richard Cunn	KDOR

Tony A. Scott

KSCBA

**GUIDELINES FOR CONFEREES APPEARING BEFORE THE
SENATE ASSESSMENT & TAXATION COMMITTEE
2008**

1. Cellular phone and pagers with audible tones must be turned off or disabled while in the committee room.
2. Individuals wishing to appear and provide verbal testimony before the committee should **notify** the committee secretary at least **24 hours** in advance of the hearing.
3. Testimony should be in **written form** with 25 copies made available to the committee assistant. **Please try to have the testimony in by 5:00 p.m. the day before testifying, or make arrangements with the committee assistant.**
4. Conferees should not read their testimony. Rather, testimony should be presented in summary fashion. Conferees should introduce themselves, identify on whose behalf they appear, identify whether they appear as a proponent, opponent, or interested neutral party and should, as briefly as possible, stat the reason(s) for their position.
5. If suggestions for amendments(s) are to be offered, a proposed draft of the amendments(s) must be provided to staff.
6. When the conferee is, or represents, the sponsor of the measure under consideration, the conferee should be prepared to brief the committee on the specific provisions of the legislation.
7. Conferees should address their remarks during testimony to committee members and staff only.
8. When the number of hearings and/or conferees scheduled warrant time limitations, the Chairman may limit testimony to a specific number of minutes.
9. Testimony shall relate to the subject matter of the measure under consideration.
10. The Chairman reserves the right to take such action as may be necessary to prevent disruptive behavior in the committee room during hearings and deliberations.
11. There shall be no recording, audibly, photographically or otherwise, of committee deliberations and/or voting except by the committee assistant.

January 16, 2008

Assessment & Taxation
Date 1-17-08
Attachment # 1

January 17, 2008

To: Senator Barbara Allen
Chair, Senate Committee on Assessment and Taxation

From: Joan Wagnon

Re: Summary of Department of Revenue 2008 Legislative Proposals Requested for Introduction

Comprehensive Electronic Filing/Payment Initiative

Amend K.S.A. 2007 Supp. 79-3220(a) to require that individual income tax returns prepared by a paid preparer filing above a certain number returns per calendar year be filed electronically. Currently, there is no electronic filing requirement.

Propose new statute in Chapter 75 giving the Secretary discretionary authority to require excise tax returns or reports to be filed electronically, including sales and use tax, motor fuel tax, mineral tax, cigarette tax, tobacco tax, liquor gallonage tax, liquor excise tax, and liquor enforcement tax. Currently, there is no electronic filing requirement for these taxes.

Amend K.S.A. 2007 Supp. 75-5151 to authorize the Secretary to require a taxpayer with total annual sales tax or withholding tax liability exceeding \$32,000 to remit such tax payment by electronic funds transfer. Currently, a taxpayer must have total annual sales tax or withholding tax liability exceeding \$100,000 before the Secretary can require payment by electronic funds transfer.

Sales Tax Exemption for Research and Development

Amend 2007 Supp. K.S.A. 79-3606(kk)(4)(A) to exempt from sales tax Kansas manufacturers' purchases of machinery, equipment and materials utilized for engineering of the finished product or for research and development of product design. Currently, only computers and related peripheral equipment purchased by the Kansas manufacturers for the above purposes are exempt.

Report of the Special Committee on Assessment and Taxation to the 2008 Kansas Legislature

CHAIRPERSON: Senator Barbara Allen

VICE-CHAIRPERSON: Representative Kenny Wilk

RANKING MINORITY MEMBER: Senator Janis Lee

OTHER MEMBERS: Senators Karin Brownlee, Les Donovan, and Derek Schmidt; and Representatives Elaine Bowers, Stan Frownfelter, Tom Holland, Jeff King, Steve Lukert, Virgil Peck, and Jeff Whitham

STUDY TOPICS

- Corporate Income Tax Shelters
- Sales Tax Exemptions
- Property Tax Payment Date
- Property Tax Deferral
- Income Tax Withholding
- Local Sales Tax Authority
- Tax Relief for Storm-Damaged Property
- Corporation Income Tax Credits
- Property Taxes on Newly Constructed Residential Property

Special Committee on Assessment and Taxation

CORPORATION INCOME TAX SHELTERS

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends the introduction of legislation that would clarify the definition of business income to add the functional test; clarify the definition of gross receipts to prevent churning; and reduce the surtax such that the overall corporation income tax remains revenue neutral.

Proposed Legislation: The Committee recommends the introduction of one bill on this topic.

BACKGROUND

During the 2007 Legislative Session, a number of taxation Issues relating to corporations were considered and debated. At the outset of the Session, the Governor recommended corporation franchise tax relief; the restructure of certain income tax credits and incentives; and a reduction in the corporation income tax surtax. The Department of Revenue also indicated that an internal working group analyzing corporate tax reform during the fall of 2006 had developed a number of base-broadening strategies involving elimination of certain tax shelters. Because those proposals lacked “consensus” support, according to a February 20 memorandum from Secretary Wagon, they were not included as part of the Governor’s initial tax recommendations.

Following a presentation by a former revenue commissioner from New Zealand relating to base broadening, the Department subsequently presented the tax-shelter proposals to the House Taxation Committee. Secretary Wagon said that if the Committee were to consider the ideas, any additional revenue generated should be offset by providing additional rate reductions beyond that initially proposed by the Governor.

The current Kansas corporation income tax structure imposes a rate of 4.0 percent on taxable

income of \$50,000 or less; and of 7.35 percent on taxable income in excess of \$50,000.

HB 2495, which contains that part of the Governor’s 2007 initial recommendation relating to corporation income tax rate relief, would reduce the top corporation income tax rate from the current 7.35 percent to 6.95 percent in tax year 2008; and to 6.75 percent in tax year 2009 and thereafter.

The bill would be expected to reduce SGF receipts as follows:

(\$ in millions)	
FY 2008	(\$5.8)
FY 2009	(\$22.2)
FY 2010	(\$29.0)
FY 2011	(\$29.0)
FY 2012	(\$29.0)
5-year total	<u>(\$115.0)</u>

During Committee discussion on HB 2495, the bill was amended upon the motion of Representative Dillmore to include three of the base broadening/tax shelter elimination provisions presented by the Department; and to

provide an additional 0.5 percent of rate reduction in the surtax beginning in tax year 2009 (such that the top rate would have been 6.25 percent in lieu of 6.75 percent). The Department of Revenue indicated that all of these changes would have made the bill roughly revenue neutral relative to the fiscal note embodied in the Governor's original rate recommendation (but not revenue neutral relative to current law).

Under the Dillmore amendment, the three changes in the corporation income tax that would have allowed the extra relief in the top corporate rate were:

Greater Apportionment of Business Income. Language would have established the functional test as a second method for identifying such income in addition to the current transactional test that the state currently utilizes. Current Kansas case law has interpreted UDITPA as providing only the transactional test (*In re Tax Appeal of Chief Industries, Inc.*, 255 Kan. 640, 647, 875 P.2d 278 (1994)). In other states where the courts have found only a transactional test, legislatures have followed up by enacting statutes to clarify existence of the functional test.

Clarify Gross Receipts Definition to Avoid Income Churning. Additional language would have clarified the definition of gross receipts to prevent companies from inflating the denominator of the sales factor of the apportionment formula by including extraordinary items such as large sales of assets or "churning" of investments.

Eliminate Tax Sheltering Via Captive Insurance Companies. Another provision would have eliminated the ability of businesses to transfer assets to captive insurance companies (which are exempt from state income tax), pay royalties to such entities, and subsequently deduct the royalty payments as business income.

After these amendments (including the additional rate reduction) were adopted by the House Tax Committee, that body subsequently reconsidered its action and removed the Dillmore

provisions. The Committee then recommended HB 2495 as it had been originally introduced favorably for passage. The bill was never worked by the full House.

Representatives Dillmore, Huntington and Holland subsequently recommended the subject matter of corporation income tax reform and the Dillmore amendments for interim study.

The Legislative Coordinating Council agreed and charged the Special Committee with reviewing a number of corporation income tax shelters brought to the attention of the 2007 Legislature, including those addressed in the proposed Dillmore amendments to HB 2495.

COMMITTEE ACTIVITIES

At the September meeting, staff and the Department of Revenue went over the history of HB 2495 and the specifics of the Dillmore amendment. Representative Dillmore appeared and said that the base broadening provisions of his amendment relative to multi-state corporations could be used to help fund lower tax rates for all corporations, including those located exclusively in Kansas.

Shirley Sicilian, General Counsel, Multistate Tax Commission, provided some national context for the proposed expansion of the definition of "business income" and the clarification that the sales factor does not include returns of principal from short-term investments.

A conferee representing the Kansas Chamber declined to support the provisions of the Dillmore amendment relating to business income but did indicate a willingness to support corporation income tax rate reductions.

Senator Brownlee asked whether the proposed Dillmore amendment provisions should be used to fund a reduction in the base rate, rather than the surtax, so as to assure that

small Kansas businesses would get to participate in any proposed rate reduction.

At the November meeting, the Committee made its final policy decisions and directed staff to write the conclusions and recommendations.

CONCLUSIONS AND RECOMMENDATIONS

The Committee finds that changing the definition of business income to include both the functional and transactional tests would encourage additional corporations to locate in Kansas.

The Committee notes that the Secretary of Revenue appears to have reached an agreement with various interested parties on specific language regarding this provision.

The Committee also finds that the churning of investments represents a tax loophole that should be closed.

The Committee further notes that a reduction in the corporation income tax surtax would help reduce the top rate and also encourage corporations to locate in Kansas.

The Committee therefore recommends the introduction of legislation that would clarify the definition of business income to add the functional test; clarify the definition of gross receipts to prevent churning; and reduce the surtax such that the overall corporation income tax remains revenue neutral.

Special Committee on Assessment and Taxation

SALES TAX EXEMPTIONS

CONCLUSIONS AND RECOMMENDATIONS

The Committee strongly recommends the Legislature consider establishing objective standards for granting sales tax exemptions in the future. The Committee expresses its strong support for making this a high priority.

To assist the Legislature in its effort, the Committee recommends that the working group established by the Committee continue to meet and develop a scope statement for an in-depth review of the issue by the Legislative Division of Post Audit.

Proposed Legislation: None.

BACKGROUND

Frequently, over the past several years, Kansas legislative committees have examined the change in the state's tax base over time and the factors that are driving that change. The Special Committee on Assessment and Taxation and other committees have studied this very broad issue on several occasions, and the standing tax committees have examined it as well. The overarching question has been: How can the Legislature ensure a strong, fair and stable tax base that (a) provides adequate revenue to fund state government services and (b) encourages commerce and economic well-being?

One aspect of this review process has been to examine tax exemptions and their effect on the tax base. In particular, sales tax exemptions have captured the interest of the Legislature, the Kansas Department of Revenue (KDOR), and the community of nonprofit organizations.

In 1970, the Joint Committee on the State Tax Structure (also known as the Hodge Commission) completed an extensive review of the entire taxation structure. The committee adopted the

policy that "taxation is the rule; exemption is the exception." The committee also recommended elimination of all sales tax exemptions for purchases by religious, benevolent, and charitable institutions.

Since that time, organizations have continued to approach the Legislature individually to request sales tax exemptions. A result of the individual-request policy has been that the number of organizations receiving sales tax-related exemptions has become increasingly larger.

The greatest recent change in the number of exemptions occurred with the 1998 Legislature. In that year, exemptions were granted for religious organizations, nonprofit zoos, medically underserved organizations, parent-teacher associations or organizations, food distribution program organizations, and Habitat for Humanity. A significant number of specifically named organizations again received exemptions in 2006, and in that year a decision was first made to grant exemptions not only for certain organizations' purchases, but also for their sales. (For further discussion of this aspect, see below "What to Exempt: Purchases or Sales.")

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In response to the growing number of sales tax exemptions, the Legislature's most recent study of the issue occurred as part of the broad examination of state and local tax policy by the 2006 Special Committee on Assessment and Taxation. In its final report the Committee concluded the following:

"The Committee further expresses its concern about the erosion of all tax bases, especially the sales tax base. The Committee strongly recommends that certain specific questions relating to justification of any new exemptions be answered by all parties seeking sales tax exemption legislation. The Committee also strongly recommends that the leadership of the standing tax committees develop rules that would prohibit advancement of any sales tax exemption legislation until these questions have been answered satisfactorily by proponents."

A number of things happened during the 2007 Legislative Session. First, SB 289 was introduced, which would have expanded sales tax exemptions to include all organizations that have a tax exempt status under Section 501(c) (3) of the federal Internal Revenue Code. For Fiscal Year 2008, the fiscal effect on both the state and local governments was estimated to be \$31 million. The bill received a hearing early in February but proceeded no further.

Also during the 2007 Legislative Session, the Secretary of Revenue proposed a plan to change the way sales tax exemptions are considered. The Secretary indicated two issues prompted the proposal: first, that "the current trend is to approve every request, thus narrowing the tax base"; and second, that the current method of granting exemptions raises questions of fairness.

The KDOR proposal was that the Legislature adopt criteria for measuring the eligibility of each organization for exemptions, which the KDOR would use in determining whether an individual organization was eligible for a sales

tax exemption. (For further discussion of this proposal, see below "Whom to Exempt. . .")

Ultimately last session, the Legislature granted additional exemptions. One significant exemption added last year was for the International Lions Clubs. According to KDOR, this is the first time since 1998 that an exemption has been passed for a large community organization with hundreds of clubs.

The additional 2007 Session exemptions and the two proposals were followed by the Legislative Coordinating Council (LCC) charge to the 2007 Special Committee on Assessment and Taxation to study separately the issue of sales tax exemptions. The charge is to "study a proposal that would establish a uniform statewide policy with respect to sales tax exemptions for not-for-profit groups and entities."

Where We Are Now. KSA 79-3606 contains the various individual sales tax exemptions for a number of organizations or functions, or both. Itemized by alphabetically listed paragraphs, the list is now up to "(aaaa)," or more than three times through the alphabet. Also, as mentioned previously, some of the itemized exemptions are for groups of organizations, as opposed to single entities.

As of July 2007, the statutory list of sales tax exemptions applies to a total of 10,000 nonprofit organizations. Note that this number does not account for the government and public school organizations for which exemptions have also been granted.

What to Exempt: Purchases or Sales? Which Purchases or Sales? The current set of statutory sales tax exemptions represents a mix of sales and purchase exemptions. Some organizations have an exemption for direct purchases, while others' sales are exempt, and still others have received an exemption for purchases made "on behalf of" the organization. To further complicate the matter, a distinction can

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and, some recommend, should be made between isolated fund-raising sales and sales made on a more regular and ongoing basis.

Purchases. Most organizations with sales tax exemptions on their purchases are granted the exemption only on purchases made directly by the organization. This means the organization representative pays for the purchase with a check or credit card belonging to the organization.

However, a recent trend has been to grant exemptions for purchases made by *or on behalf of* an organization. According to the KDOR, this allows an individual to make purchases and pay for them by a means other than the organization's check or credit card under certain circumstances. Concern has arisen that allowing exemptions for purchases made on behalf of an organization reduces control over the relation of the purchase to the organization's purpose and may lead to abuses.

Sales. Another recent trend is to grant organizations an exemption on items they sell to the general public, regardless of the amount or frequency of their sales events. According to the KDOR, this broad exemption provides such organizations with a selling advantage over Kansas retailers. KDOR recommends alternatively that a distinction should be made between true fund-raising sales (*i.e.*, isolated and occasional) and sales made on a regular, ongoing basis. An example of the former, *i.e.*, fund-raising sales, might be a charitable organization that holds an annual dinner and a silent auction. The latter category might be represented by an organization that regularly maintains a concession stand or food cart at all fairs.

Whom to Exempt: All Nonprofits? Charitable Nonprofits? Other Criteria?¹

Under the federal tax code, various nonprofit organizations are treated differently. The nonprofit organizations qualifying under section 501(c)(3) of the federal code are charitable, educational, literary, child cruelty prevention, animal cruelty prevention, public safety testing, religious, and scientific organizations.

The federal code, however, also defines other nonprofit organizations. Those include civic leagues, chambers of commerce, fraternal societies or associations, war veterans' organizations, labor and employees' associations, and social clubs.

The KDOR estimates there are approximately 20,000 organizations in Kansas with the 501(c)(3) designation. A total of 24,000 nonprofit organizations of all kinds currently exist in the state.

As stated previously, the current statutory scheme does not contemplate a distinction between nonprofit organizations qualifying under federal Section 501(c)(3) and other nonprofit entities. As a result, any of the organizations could seek legislation granting an exemption from sales tax under the current framework.

The KDOR has reported that two of Kansas' four neighboring states—Nebraska and Oklahoma—provide for sales tax exemptions in a manner somewhat similar to that of Kansas. Their resultant lists of exempt organizations vary. On the other hand, Colorado and Missouri have chosen to exempt most 501(c)(3) organizations.

As stated previously, the Secretary of Revenue has proposed an alternative policy. Under this proposal, a selected group of 501(c)(3) organizations would be exempted from sales

¹ It is important to note that political subdivisions, schools, and educational institutions are also sales tax exempt. This memorandum does not address these institutions, because the LCC charge was to address exemption of nonprofit organizations.

tax (for direct purchases and fund-raising sales only) based on the type of services provided. The Legislature would exempt organizations that perform specified services—for example, “Organizations addressing low-income housing needs” instead of “Habitat for Humanity.” The KDOR then would be responsible for determining which organizations qualify for an exemption under the broad service categories.

Fiscal Matters. The number and type of organizations allowed a sales tax exemption, coupled with the decision whether to exempt purchases or sales, will largely determine the ultimate effect on the sales tax base for the state and local units of government. The current Kansas policy has the greatest potential effect on the sales tax base, because (1) it does not distinguish between types of nonprofit organizations; and (2) it does not address consistently the issue of exempting purchases *versus* sales. On the other hand, this policy results in a more gradual reduction of sales tax revenue to the state and local entities, because exemptions are allowed on an individual, as-requested basis. Other policy options would have a smaller ultimate effect on the tax base, but would result in a bigger fiscal effect when implemented.

COMMITTEE ACTIVITIES

At the October meeting, the Committee held a public hearing on the issue. In addition to receiving a briefing by staff, the Committee heard a presentation by KDOR officials detailing the Secretary of Revenue’s proposal to allow exemptions for a selected group of 501(c)(3) organizations. Also testifying were representatives of Kansas Action for Children, the Kansas Association of School Boards, the Nonprofit Chamber of Service, the Girl Scouts, YMCA

of Greater Wichita, the Topeka YMCA, and the Kansas Health and Fitness Association. The Committee Chairperson appointed a working group to examine the issue further and report to the full Committee at the November meeting. The working group met in November and concluded its work immediately prior to the full Committee’s November meeting.

At the November meeting the Committee received a proposal from the working group, which would have (1) limited sales tax exemptions to 501(c)(3) organizations for purchases only if the organizations received at least 50 percent of their funding from state or federal government sources, and fundraising sales; and (2) required organizations currently with exemptions to adhere to the new standards upon expiration of their current sales tax exemption certificates. Several members expressed concern with the new proposal; suggestions to revise the proposal were offered and rejected. Discussion ensued focusing on the issues of fairness, fiscal effect, and the elimination of exemptions that already had been granted.

CONCLUSIONS AND RECOMMENDATIONS

The Committee strongly recommends the Legislature consider establishing objective standards for granting sales tax exemptions in the future. The Committee expresses its strong support for making this a high priority.

To assist the Legislature in its effort, the Committee recommends that the working group established by the Committee continue to meet and develop a scope statement for an in-depth review of the issue by the Legislative Division of Post Audit.

Special Committee on Assessment and Taxation

PROPERTY TAX PAYMENT DATE

CONCLUSIONS AND RECOMMENDATIONS

The Committee makes no recommendations regarding this proposal.

Proposed Legislation: None.

BACKGROUND

Income Tax Law—Itemized vs. Standard Deductions

Current federal income tax law generally authorizes itemized individual income tax deductions for:

- State and local property taxes;
- Either state and local income or sales taxes;
- Mortgage and investment interest;
- Charitable contributions;
- Medical expenses in excess of 7.5 percent of income;
- Casualty and theft losses in excess of 10 percent of income; and
- Certain job and miscellaneous expenses.

Federal standard deduction amounts, which may be claimed as an alternative to itemized deductions, are set at the following amounts for tax year 2007:

- \$10,700 for married couples filing joint returns;
- \$5,350 for single filers and married-separate filers;
- \$7,850 for heads of household;
- \$1,300 “additional” amount for single/heads of household who are 65 or older, or blind; and

- \$1,050 “additional” amount for married filers who are 65 or older, or blind.

Federal law further provides for indexation of standard deduction amounts. By way of example, consider that the standard deductions for tax year 2006 were:

- \$10,300 for married couples filing joint returns;
- \$5,150 for single filers and married-separate filers;
- \$7,550 for heads of household;
- \$1,250 “additional” amount for single/heads of household who are 65 or older, or blind; and
- \$1,000 “additional” amount for married filers who are 65 or older, or blind.

Current Kansas law requires taxpayers who take the standard deduction at the federal level to also take the standard deduction at the state level (see KSA 79-32,120). The federal indexation of the standard deduction amounts has resulted in a smaller percentage of taxpayers who are able to itemize at both the federal and state level.

The Department of Revenue currently estimates that 33.5 percent of all Kansas filers itemize; while 66.5 percent take the standard

deduction. (For joint filers, 46.5 percent of all taxpayers itemize.)

Itemized Deduction for Property Taxes

As noted previously, one itemized deduction is available for property taxes paid during a given tax (calendar) year. Kansas conforms its state income tax to a number of federal income tax law provisions, including itemized deductions. (So property taxes paid within a calendar year are available as an itemized deduction at both the federal and state level for those taxpayers able to itemize.)

Current Kansas property tax law allows taxpayers the option of paying the first half of their liability by December 20 and the second half by May 10 of the next year. Taxpayers also may remit the entire liability on December 20. One tax planning strategy that sometimes has been utilized relates to "bunching" the property tax payments in a given calendar year so as to maximize the itemized deductions for both federal and state income tax purposes. For example, a taxpayer with annual property tax liability of \$2,000 could effectively get a \$3,000 deduction in a given tax year for remitting the second half of his prior year's property tax liability on May 10; and the entire amount of his current year's liability on December 20.

The Department reports that for tax year 2005, the most recent year from which data are available, the average itemized deduction for property taxes by Kansas taxpayers was \$2,468.

Late in 2006, a retired certified public accountant contacted the Governor and Senator Allen to request a study of a statutory change that would allow taxpayers the option of paying their entire property tax liability in January of the following year (as an alternative to splitting the payments relative to the current December 20 and May 10 dates). Given the previous example, this would effectively allow an additional

"bunching" option wherein a full \$4,000 of property tax liability could be claimed as an itemized deduction for a given calendar year (paying the prior year's liability in January and the current year's liability in December).

Senator Allen submitted the study request to the Legislative Coordinating Council, which subsequently charged the Special Committee on Assessment and Taxation to consider legislation that would allow taxpayers the option of paying their entire property tax bill in January of the following year so as to authorize an additional bunching option for income tax planning purposes.

COMMITTEE ACTIVITIES

At the October meeting, the staff briefed the Committee on the issue. During the public hearing, Floyd Pendleton, retired CPA, appeared as the principal proponent for allowing the additional bunching option. He said that local units would benefit relative to interest earnings and the time value of money because those taxpayers who opted for the January payment would be required to pay the entire annual property tax liability (in lieu of only paying half on December 20 of the previous year).

At the November meeting, the Committee made its final policy decisions.

CONCLUSIONS AND RECOMMENDATIONS

The Committee notes that under current law, taxpayers may pay their December 20 liability two weeks late and face only a modest interest penalty.

The Committee, therefore, makes no recommendations regarding this proposal.

Special Committee on Assessment and Taxation

PROPERTY TAX DEFERRAL

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends the introduction of new property tax deferral legislation in 2008 that will contain a number of amendments developed by a working group relative to the original proposal.

Proposed Legislation: The Committee recommends the introduction of one bill on this topic.

BACKGROUND

The Kansas Legislature, in recent years, has studied a number of mechanisms designed to provide property tax relief to certain classes of property or targeted at selected groups of taxpayers. Other forms of property tax relief discussed include increased state aid to local units of government (restoration of demand transfers); expansion of Homestead Property Tax Refund Program (expanded in both the 2006 and 2007 sessions); whether some form of the tax lid law should be reimposed on local units of government (subject of a 2006 interim study); whether the \$20,000 "homestead" exemption from the mandatory school district general fund property tax levy should be expanded or extended to all property taxes; and property tax deferral programs.

The National Conference of State Legislatures (NCSL) reports that 24 states and the District of Columbia have property tax deferral programs, with many of them targeted specifically to benefit elderly taxpayers. Generally, the programs are structured such that all or a portion of property taxes are deferred for as long as the eligible taxpayers live in their homes. The deferred taxes, often with interest, subsequently become a lien against the property or the estate.

Legislation was approved by the Kansas House, but not the Kansas Senate, in 1990 that would have established a Kansas deferral program for certain low income taxpayers who were age 65 and above. The issue subsequently was studied by the 1990 Special Committee on Assessment and Taxation, which made no recommendations on the proposal to the 1991 Legislature.

Legislation introduced in 2007, HB 2298, also would establish a deferral program. That bill, which remains in the House Taxation Committee, was the subject of an interim request by Representative Holland. The Legislative Coordinating Council subsequently approved the request for the Special Committee to study the implications of allowing certain taxpayers to enter into a property tax deferral program, such as the one proposed in HB 2298, and to make recommendations as to whether any such proposal should be an alternative to, or supplemental to, the current Homestead program.

Provisions of HB 2298

HB 2298 would create the Senior Citizen Property Tax Deferral Act, a program which would allow certain taxpayers at least 65 years of age by December 1, to defer the real property taxes on their homestead property. County clerks

would be required to provide the claim forms, which would be filed with the county treasurer upon completion. Claims would have to be filed by December 20 of each year in which a deferral is claimed.

Once a deferral becomes valid, it would defer payment of the real property taxes for the year in which the claim is filed, and would create a lien against the homestead property for the taxes deferred. A lien established for deferred taxes and accrued interest (of not more than 5 percent) would be filed in a qualifying taxpayer's county of residence. These liens would be subordinate to any mortgage or deed of trust recorded prior to the date on the deferral certificate. The liens would have priority over any other liens that attach after the date on the certificate.

The bill would allow the deferral to be claimed by the taxpayer, his or her guardian, the conservator, or the attorney-in-fact. Qualifications for the deferral would include:

- The property must be the homestead of the taxpayer claiming the deferral;
- The taxpayer must have resided in the homestead prior to July 1, 2007;
- The taxpayer must own or jointly own the property;
- The property's fair market value is at or below the median home value for the county where the property is located;
- The property cannot be income-producing;
- The property may not be subject to the lien of a mortgage or deed of trust which has been on record for less than five years prior to the date on which the claim is filed;
- All real property taxes for years prior to the year for which the deferral is filed must be paid;

- The cumulative value of the deferral plus interest may not exceed the market value of the property less the value of all mortgages which constitute liens upon the property; and
- The property may not be subject to a mortgage or deed of trust in which the lender has required an escrow account.

The program would require that interest accrue on the deferred taxes at a rate established by rules and regulations to be adopted by the State Treasurer. The rate would be based on market conditions and other relevant factors, but would not be allowed to exceed 5.0 percent per year, compounded annually. Upon receiving the certificate of deferral, the State Treasurer would pay to the appropriate county treasurer the amount that was certified as deferred. This amount would be distributed to the local governments in the same manner as all property tax was distributed. Once the payment is made to the county treasurer, the right to receive payment for the deferred taxes and accrued interest and to enforce the lien created by the deferral would be vested in the State Treasurer.

If the payment of deferred taxes and interest is paid to the county treasurer, the county treasurer would be required to accept the payment and remit the money to the State Treasurer. All payments would be deposited in the State General Fund and transferred into the newly created Senior Citizen Property Tax Relief Fund.

Upon receipt of payment, the State Treasurer would be required to issue "promptly" a release of the lien. All deferred taxes and accrued interest would become payable when:

- The taxpayer claiming the deferral dies;
- The property for which the taxes have been deferred is sold or becomes subject to a contract for sale or title transfers to someone else;

- The property is no longer the homestead of the taxpayer, except in cases where the taxpayer for reasons of ill health is not able to live in the property; and
- The property no longer meets the nine aforementioned qualifying requirements for deferral.

COMMITTEE ACTIVITIES

At the October meeting, staffed briefed the Committee on the status of property tax deferral programs in other states and on the provisions of HB 2298. During the public hearing, Representative Holland and proponents representing AARP Kansas renewed their support for the concept, telling the Committee that a deferral program could help supplement other property tax relief programs aimed at fixed-income seniors, including the Homestead program. A conferee representing the Heartland Community Bankers Association raised a number of issues that he thought should be addressed if the legislation were to be worked in 2008.

The Committee appointed a working group of Representative Holland, Representative Frownfelter, and Senator Brownlee to analyze many of the questions raised during discussion and to report back to the full Committee in November.

At the November meeting, the Committee made its final policy decisions and gave staff direction relative to drafting the final committee report.

CONCLUSIONS AND RECOMMENDATIONS

The Committee applauds the effort of the member of the working group, who developed

a number of proposed amendments to HB 2298 between the October and November meetings. The Committee notes that those provisions have removed any objections of the Heartland Community Bankers Association to the legislation.

The Committee therefore recommends the introduction of new property tax deferral legislation in 2008 that will contain a number of the following amendments relative to the original proposal in HB 2298, including:

- The deferral program would initially be effective only for tax years 2009 - 2013.
- A cap would limit the amount of property taxes that could be deferred in any one year to \$2,500.
- Claims would have to be filed on or before April 15 of each year.
- Taxpayers with Kansas adjusted gross income in excess of \$60,000 would be ineligible.
- The property for which the deferral is being claimed must have been the homestead of the taxpayer for at least 10 years.
- The cumulative value of the deferral could not exceed 80 percent of the market value of the property, less value of mortgages and other liens.
- The Secretary of Revenue would be required to set, based on market conditions, the interest rate to be charged on deferred property taxes.

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Special Committee on Assessment and Taxation

INCOME TAX WITHHOLDING

CONCLUSIONS AND RECOMMENDATIONS

The Committee strongly encourages the Department of Revenue to publicize the information that taxpayers have the option of adjusting their state income tax withholding amount to better approximate final liability.

Proposed Legislation: None.

BACKGROUND

The original Kansas Withholding Tax Act was enacted in 1965. Although the state income tax had been enacted in 1933, compliance was a significant problem, and many states by the late 1950s to mid 1960s were moving towards imposing state withholding requirements that mirrored many of the federal income tax withholding provisions.

The Kansas law was enacted at the urging of former Governor Avery to help improve compliance and to boost state revenues during a fiscal shortfall. The Topeka Capital Journal in 2005 reported that the 1965 law helped identify more than 10,000 tax evaders. Governor Avery told the newspaper that even though the new law helped contribute to his defeat in 1966, getting the withholding tax on the books was one of his “crowning” achievements.¹

“If I had to do it over again, I would do the same thing except we wouldn’t have the withholding tax until after the election,” he told the newspaper in 2002.²

Under the original 1965 law, the state withholding rates were established at 15 percent of the federal tax withheld. This rate was reduced to 10 percent in 1967; and subsequently increased to 13 percent in 1976. A provision enacted in 1977 gave the Secretary of Revenue authority to adopt variable rates, based on adjusted gross income class.

Current withholding tax law (see especially KSA 2007 Supp. 79-32,100d) still grants the Secretary a good deal of discretion in establishing the state withholding tables, requiring withholding in “an amount which will approximate the employee’s or payee’s annual tax liability on a calendar year basis . . . based on the wages, payments other than wages, or adjusted gross income of the taxpayer.”

Additional language requires the state withholding rate to correspond “to the employee’s or payee’s expected income tax liability. Such rate may be fixed for all adjusted gross income classes, or variable rates may be established, based upon adjusted gross income class, to insure proper withholding consistent with the taxpayer’s expected tax liability.”

¹ Topeka Capital-Journal, May 19, 2005

² Topeka Capital-Journal, October 18, 2002

In recent years, a number of taxpayers have raised questions about the extent to which the Kansas withholding tables dovetail with federal law; and accurately reflect the state income tax burden of Kansans, given the increased number of areas of non-conformity between state and federal income tax law. Senator Lee therefore requested a study of the topic. The Legislative Coordinating Council subsequently asked the Special Committee to review the current individual income tax withholding tables and requirements utilized by the Department of Revenue and determine whether the tables adequately reflect the appropriate amounts that should be withheld from most taxpayers.

COMMITTEE ACTIVITIES

At the October meeting, staff briefed the Committee on the history of withholding in Kansas. The Department of Revenue subsequently explained the way the current withholding system is administered and answered questions.

The Department explained that taxpayers have the option of adjusting their state withholding by increasing it a certain amount per paycheck above the amount that otherwise would be withheld pursuant to exactly following federal rules regarding the number of deductions claimed.

CONCLUSIONS AND RECOMMENDATIONS

The Committee finds that attempting to adjust the entire state withholding tax system to help address issues faced by a scattered few taxpayers would not be appropriate.

The Committee does, however, strongly encourage the Department of Revenue to continue to publicize the information that taxpayers have the option of adjusting their state income tax withholding amount to better approximate their final liability.

Special Committee on Assessment and Taxation

LOCAL SALES TAX AUTHORITY

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends no action be taken.

Proposed Legislation: None.

BACKGROUND

In 2006, the Special Committee on Assessment and Taxation was charged with reviewing the role local sales taxes play in financing county governments and making any recommendations deemed appropriate. As part of this task, the Committee considered the issue of distribution of countywide sales taxes.

The Committee made no recommendation at that time. However, in 2007 HB 2532 was introduced, which would have granted counties sales taxation authority similar to what cities now have. The bill also would have revised the distribution formula for county sales taxes. A hearing was held in the House Taxation Committee, but the bill advanced no further.

The 2007 Committee's charge is explicitly to review the current formulas for distributing countywide sales tax revenues. The Committee also is asked to recommend whether counties should be granted additional local sales tax authority similar to that granted to cities in 2006.

County Tax Rates. In 1970, the Legislature granted local sales tax authority to cities and counties. Since that time, and prior to 1996, cities and counties maintained the same general level of taxing authority. Cities and counties were authorized to levy a tax up to a normal maximum of 2.0 percent, subject to several exceptions.

Sales taxes of up to 1.0 percent were to be used for general purposes, but the additional special taxing authority (up to 1.0 percent) normally was required to be used only for the financing of "health care services." A city could impose a special tax earmarked for health care only if the county had no such tax. Moreover, any such special city tax expired immediately upon the imposition of a county health care sales tax. In addition to the special health care tax, some counties were authorized individually to impose a special sales tax for roads or jails or other county facilities or specific purposes such as economic development.

The change in 1996 was not a statutory one. During that year, the Kansas Court of Appeals ruled, in *Home Builders Association v. City of Overland Park*,¹ that the local retailers' sales tax (KSA 12-187 *et seq.*) was a nonuniform enactment. In so doing, the Court rendered the entire local sales tax act nonuniform for cities. Since cities' constitutional home rule authority allows them to opt out of statutory requirements that are not uniform,² several cities chose to

¹ Home Builders Association of Greater Kansas City, et al., v. City of Overland Park, Kansas, 22 Kan. App. 2d 649, 921 P.2d234.

² A constitutional amendment adopted in 1960 (Article 12, Section 5) explicitly granted the Legislature the power to uniformly limit or prohibit taxation by cities and to establish up to four classes of cities for that purpose. As indicated in the text, local sales taxes subsequently were not authorized by the Legislature until the early 1970s.

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impose additional sales taxes. Counties do not possess the same constitutional home rule authority; therefore, they remained subject to existing statutory requirements.

Because of the 1996 Court of Appeals ruling and the subsequent decisions of several cities to opt out of statutory sales tax limits, the 2006 Legislature passed SB 55. The 2006 bill was designed to restore uniformity to local sales tax provisions relating to cities by reducing the number of classes of cities to one. In response to the cities that had enacted sales tax provisions in excess of those allowed statutorily, city sales tax limitations also were increased and made applicable to all cities. All cities in the new, single class were granted authority to levy sales taxes of up to 2 percent for general purposes and up to 1 percent for special purposes (for a maximum rate of 3 percent). Any special purpose taxes levied must sunset after 10 years.

During the SB 55 debate and discussion, the issue of county local sales taxes was raised. Ultimately, however, the county issue was not addressed in the bill.

As mentioned previously, the 2006 Special Committee on Assessment and Taxation studied the issue but made no recommendation. The 2007 bill (HB 2532), which was introduced on behalf of the Kansas Association of Counties, would have granted counties similar sales tax authority to that granted to cities by SB 55 in 2006. HB 2532 would have allowed for a general-purpose countywide sales tax rate of up to 2 percent and a special rate of up to 1 percent.

The following table provides summary information regarding county sales tax rates for all purposes—including general as well as special or dedicated purposes, such as health care—among the 85 Kansas counties that impose a tax. Twenty counties do not impose a sales tax.

Total County Tax Rates in Effect as of October 1, 2007	
Total County Rate	Number of Counties
2.25	1*
2.00	6
1.75	1
1.65	1
1.5	4
1.4	1
1.25	6
1.15	4
1.1	1
1.0	52
.75	1
.5	6
.25	1**
Total Number of Counties	85

* Sherman County has the highest tax rate.

** Graham County has the lowest tax rate.

Tax Distribution. Absent passage of 2007 HB 2532, the Legislative Coordinating Council's charge to the Committee is to study whether counties should be granted greater latitude with respect to distributing their sales tax revenues. Current law generally requires counties to share countywide sales tax revenues with the cities located within their boundaries, if these revenues derive from a general countywide tax.

KSA 12-192 provides for the distribution of countywide retailers' sales tax. The regular distribution formula for general sales tax is proportional, based on population and actual tax dollars levied by the county and its cities. Several exceptions to this formula exist within the same statute, including one that authorizes specific counties to retain all the revenues (and not share with cities) when the tax is a special one earmarked for the construction of county roads or jails or other county facilities or for specific programs or services. A countywide health care

tax may be used for city health care facilities as well as county ones.

The issue of distribution can generate controversy. In 2006, the Legislature considered HB 2983, which would have allowed Johnson County to impose an additional one-half-cent special countywide tax for public infrastructure. As a special tax, all revenues would have stayed with the county. The proposed tax would have been permanent. The bill passed the House Committee on Taxation with technical amendments but was stricken from the House Calendar, thus receiving no further action. A separate public hearing on the matter in the Senate Assessment and Taxation Committee resulted in no resolution of continuing differences of opinion with respect to how an alternative distribution formula might be crafted.

The 2007 legislation, HB 2532, would have left the distribution formula the same for general-purpose taxes levied up to the new 2.0 percent maximum. It would have allowed counties to share special-purpose tax revenues.

COMMITTEE ACTIVITIES

At the September meeting, the Committee held a public hearing. A representative of the Kansas Association of Counties testified regarding the issue. Also testifying was a representative of the Kansas Association of Community College Trustees, requesting review and consideration of a sales tax option to offset property taxes to fund community colleges.

At the November meeting, the Committee discussed the potential consequences of its options. Concern was expressed regarding the total sales tax rate that would be possible if county maximum rates were increased.

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends no action be taken.

Special Committee on Assessment and Taxation

RELIEF FOR STORM-DAMAGED PROPERTY

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends referring the White Paper received from the local government working group to the Chairman and members of the Disaster Relief and Recovery Special Committee. The Committee believes consideration needs to be given in 2008 regarding legislation that would provide for residential property tax relief for storm-damaged property. Any such legislation should be in the form of refundable income tax credits or some other form of rebate so as to address possible constitutional concerns related to the re-valuation of property. The Legislature also should consider increasing revenue sharing to assist local units of government when property and sales tax bases are reduced as a result of a storm disaster.

Proposed Legislation: None.

BACKGROUND

This spring, severe storms ravaged areas of Kansas. Nearly all of Greensburg (Kiowa County) was destroyed by a tornado on May 4. According to the Kansas Insurance Department, the Greensburg tornado resulted in the highest estimated property damage total for one specific tornado since at least 1990. The Insurance Department indicated that estimated insured storm losses for May 2007 will total \$230 million. This amount is the highest one-month storm loss total since at least 1990, when the Department began keeping such records.

Other areas of the state suffered extensive damage due to flooding in the spring. The Insurance Department noted its records do not include losses from flood damage, but other reports confirmed the floods were devastating to areas in the southeastern portion of the state.

The Greensburg tornado occurred while the Legislature was still in session. In response to this storm damage, the 2007 Legislature enacted Senate Substitute for HB 2540. The bill did four things:

- It provided for a sales tax exemption related to certain purchases made to restore or reconstruct business facilities located in Kiowa County that were damaged by severe weather. The project exemption certificates must be obtained prior to June 30, 2008.
- It enacted a new business restoration assistance grant program for counties with at least 25 percent of their tax base destroyed as a result of a natural disaster on May 4, 2007 (further limited to counties in which the natural disaster also caused damage to governmental buildings and facilities severe enough to have disrupted governmental services). Businesses may qualify for investment grants of up to 10 percent of qualifying investments made to rebuild or replace buildings or equipment, and they also may qualify for grants of up to \$3,500 per full-time equivalent job for employees hired back in the affected area. The grant program has a cap of \$5.0 million.
- It granted the State Finance Council new authority to approve, upon unanimous vote, the transfer of up to an additional

\$25.0 million from the State General Fund (SGF) or any special revenue fund to the State Emergency Fund to finance expenditures attributable to severe weather-related emergencies declared by the Governor. This authority terminates on January 14, 2008.

- It granted the State Finance Council authority to extend, by unanimous vote, the disaster declaration related to Kiowa County beyond October 31, 2007 up to January 14, 2008.

Several legislators felt additional tasks remained to be completed beyond those addressed in 2007 HB 2540. As a result, the Legislative Coordinating Council (LCC) charged the Special Committee on Assessment and Taxation to do the following:

- Study potential legislation that would authorize the Director of Property Valuation, upon a declaration of a weather-related disaster by the Governor and President that has destroyed more than 50 percent of any taxing subdivision's assessed valuation prior to June 1, to authorize a valuation adjustment for all affected real estate;
- Study a potential provision that would authorize special payments from the Statewide Maintenance and Disaster Relief Fund to hold harmless all affected taxing units for the given tax year, plus an additional year to prevent mill levies from being driven up during the rebuilding process;
- Review whether such property tax relief might be administered more easily as a form of refundable income tax credits or some other method; and
- Consider whether any such legislation should be made retroactive to tax year 2007 to help the citizens of Greensburg and surrounding areas.

Previous Consideration of the Same Issue.

This is not the first time the Legislature has examined the possibility of providing property tax relief for those whose property was damaged or destroyed by natural disaster. In 2003, the Special Committee on Assessment and Taxation studied the issue when devastating tornados and thunderstorms caused extensive property damage in a number of counties, especially Wyandotte and Crawford. The study came after a number of legislators encouraged the introduction of legislation that would provide some form of property tax relief for certain residential property damaged by tornados and other natural disasters during the spring and summer. The Committee's final report to the Legislature, which indicated the issue also had been studied prior to 2003, made no recommendations.

During its deliberations the Committee received a draft report from Kansas Legislative Research Department (KLRD) staff, indicating a number of questions needed to be addressed. The questions, with some revisions, are as follows:

- Should valuation adjustments be allowed for certain property damaged by tornados or other severe storms after January 1 (tax day) of a given year?
- What kind of property would be eligible? Residential only? Other kinds of real estate? What about personal property?
- Under what circumstances should a valuation adjustment be made available? Presidential disaster declaration? Gubernatorial? What about individual properties in counties that are not widely damaged?
- Would property owners apply to county appraisers for the adjustments? Would county commissions have any role? What about a review process by the Kansas State Board of Tax Appeals (SBOTA) or the Kansas Department of Revenue (KDOR) Property Valuation Division (PVD) Director

of any adjustments authorized by appraisers? What appeal procedures would exist to address disputes over decisions regarding valuation abatement applications?

- What would be a cut-off date, if any, for the timing of the damage? (Storms occurring from January 1 through June 30, for example.)
- To what extent would an individual piece of property have to be damaged in order to qualify? (For example, a county has been declared a disaster area, but a given home has only modest hail damage. Conversely, a county might not be declared a disaster area, but a few homes or farms incur heavy damage.)
- Should provisions of a bill be retroactive?

Current State Requirements Related to Property Valuation. Under current law, tax bills sent out in the fall are based on the valuation of property as of the previous January 1. Property that is destroyed or damaged subsequently in a natural disaster is still subject to the January 1 valuation.

Other States' Efforts to Provide for Tax Relief. At least ten states provide for some type of tax relief for property damaged in storms or other natural disasters. Those states are Alaska, California, Florida, Hawaii, Maryland, Minnesota, Missouri, Oklahoma, Texas, and Utah.

COMMITTEE ACTIVITIES

The Committee held a public hearing at the September meeting. Testimony was received from various legislators including Senators Anthony Hensley, Janis Lee, and Derek Schmidt and Representative Dennis McKinney. Senator Schmidt indicated he had convened a working group that was considering a number of aspects

of the larger issue of storm-related damage, including property tax relief to residents. Representatives of the cities of Osawatimie and Independence and of the League of Kansas Municipalities also testified, as well as the Kansas Insurance Commissioner. At the conclusion of the testimony the Committee requested the League of Kansas Municipalities convene a working group of local government officials to develop a "white paper" with recommendations addressing the problems facing local governments in communities in which storm-related disasters occur. Progress of both working groups was to be reported at the October meeting.

At the meeting held in October, a report was provided from Senator Schmidt's working group indicating his group had decided to defer to the Special Committee on Assessment and Taxation regarding property tax relief for residents. The local government working group report indicated the group would present a white paper at the November meeting with recommendations attempting to address both immediate and long-term local government challenges in the wake of a disaster.

At the November meeting, the Committee discussed a number of issues related to providing relief, both to individual property owners and to local units of government.

The Committee also received a White Paper from the working group of local government officials, which was convened to develop recommendations to address the revenue problems faced by local governments when a natural disaster strikes. The paper summarized the following issues and related recommendations.

Issues:

- Reduction in tax base due to significant structural damage. Affected local units of government experience an increase in the need for their services but less money to provide the services.

- Loss of utility revenue by municipally operated utilities and those franchised by cities.
- Delay in receipt of Federal Emergency Management Agency funds while local government services needs continue, resulting in a cash flow problem.
- Lack of sufficient insurance coverage for some local government units, compared to the magnitude of the disaster and the need to replace government buildings.
- Statutory constraints and impediments to recovery, including problems with no-fund warrants, the Kansas Open Meetings Act, the insurance proceeds lien, the Fairness in Public Construction Act, and bonded indebtedness limitations.
- Temporary suspension of the operation of statutes. Further research is needed to determine the scope of this recommendation.
- Creating possibilities and incentives for consolidation and cooperation.
- Appointment of a blue ribbon panel to “study issues raised in the aftermath of the 2007 natural disasters and to look [toward] developing strategies for the future.”

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends referring the White Paper received from the local government working group to the Chairman and members of the Disaster Relief and Recovery Special Committee. The Committee believes consideration needs to be given in 2008 regarding legislation that would provide for residential property tax relief for storm-damaged property. Any such legislation should be in the form of refundable income tax credits or some other form of rebate so as to address possible constitutional concerns related to the re-valuation of property. The Legislature also should consider increasing revenue sharing to assist local units of government when property and sales tax bases are reduced as a result of a storm disaster.

Recommendations:

- State budgetary assistance to make local units of government “whole or nearly whole for some period of time to ensure recovery after a disaster.”
- Creation of a state revolving fund loan and grant program, funded by a surcharge on residential property insurance policies.
- Eminent domain in disaster areas.

Special Committee on Assessment and Taxation

CORPORATION INCOME TAX CREDITS

CONCLUSIONS AND RECOMMENDATIONS

The Committee makes no recommendation relative to legislation that would allow High Performance Incentive Program (HPIP) credits to be shared between and among companies in a unitary group.

The Committee recommends that the standing tax committees introduce legislation in 2008 specific to Huhtamaki that would authorize a portion of extant HPIP credits to be redeemed monetarily. The Committee further recommends that this legislation be heard and worked early in the 2008 Session.

Proposed Legislation: None.

BACKGROUND

Under current law, KSA 79-32,141 provides that the Kansas Director of Taxation may allocate credits between two or more businesses owned or controlled directly or indirectly by the same interests, if it is determined such allocation is necessary to clearly reflect income or to prevent tax evasion.

Senator Barbara Allen, after the conclusion of the 2007 Session, received communications from a company that stated that, with respect to High Performance Incentive Program (HPIP) income tax credits, under "current Kansas Department of Revenue policy, only the company generating the credit within the unitary group is allowed to claim the credit." The information also indicated that Nebraska allows similar credits to be utilized by all companies in a unitary group.

Senator Allen requested that the issue be the subject of an interim study. The Legislative Coordinating Council agreed and charged the Special Committee with studying whether certain HPIP income tax credits claimed pursuant to

KSA 79-32,160a should be transferable to other companies within a unitary group.

The Department of Revenue was asked to begin assembling the information necessary to provide a fiscal note relative to any proposed change in law that would authorize broader utilization of the HPIP credits.

COMMITTEE ACTIVITIES

At the September meeting, conferees representing the Kansas Chamber and certain business clients said that a significant number of HPIP credits were not being utilized to the extent that a number of corporations with no income tax liability were unable to transfer the credits to other members of their unitary groups.

Secretary Wagnon confirmed that over \$400 million in HPIP credits currently are being carried forward by corporations unable to use them in the current tax year. She said that legislation authorizing the transfer of the credits within a unitary family of corporations would have a fiscal note of about \$20 million.

The Committee asked staff of the Department of Revenue to prepare a written legal opinion as to why KSA 79-32,141 does not authorize the Director of Taxation to allow such credit transfers under current law.

Senator Julia Lynn and conferees representing the City of DeSoto, Huhtamaki, and the Kansas City Area Economic Development Council also brought another issue to the attention of the Committee with respect to HPIP credits. The conferees said that an expansion was being contemplated by Huhtumaki in several states, and that the Kansas facility would have a much better chance of being awarded the project if HPIP credits could be "monetized" by being made refundable.

CONCLUSIONS AND RECOMMENDATIONS

The Committee makes no recommendation at this time relative to potential legislation that would allow HPIP credits to be shared between and among companies in a unitary group.

The Committee recommends that the standing tax committees introduce legislation in 2008 specific to Huhtamaki that would authorize a portion (up to 50 percent) of extant HPIP credits to be redeemed pursuant to an application and approval process developed by the Secretary of Revenue. Because of the timing involved in Huhtamaki's expansion decision, the Committee further recommends that this legislation be heard and worked during the first month of the 2008 Session.

Special Committee on Assessment and Taxation

PROPERTY TAX ON NEW RESIDENTIAL PROPERTY

CONCLUSIONS AND RECOMMENDATIONS

The Committee embraces the concepts embodied in 2007 HB 2543 and encourages proponents to keep working on the legislation and reintroduce it in 2008 with any necessary amendments.

Proposed Legislation: None.

BACKGROUND

During the 2007 session, HB 2543 was introduced and referred to the House Taxation Committee. That bill would change the property tax assessment of certain residential real estate such that the valuation of the property on January 1 would no longer necessarily be a determining factor with respect to its level of taxation in the fall.

Under the provisions of the bill, newly constructed residential property which has never been occupied could not be assessed as improved real property (at 11.5 percent of its fair market value) until occupancy occurs or until January 1 of the second year following the year in which improvements were completed.

Additional language would provide that certain newly constructed single and multi-family (four units or less) residential property which is owner occupied be assessed for the balance of the tax year relative to a pro-rated valuation system.

County appraisers would be authorized to use occupancy permits, building permits, warranty deeds, and utility connection documents, including telephone connections or other official documents as may be necessary to discover the existence of newly constructed properties. Utility company would be prohibited from refusing to

provide monthly verification to county appraisers regarding utility connections to newly occupied single-family buildings or structures.

At the conclusion of the 2007, HB 2543 remained in the House Taxation Committee and was requested for interim study by Representative Wilk and by the Home Builders of Greater Kansas City.

The Legislative Coordinating Council agreed and charged the Special Committee on Assessment and Taxation with conducting a comprehensive review of the valuation process for newly constructed residential property, as well as the subject matter of HB 2543 regarding the proposed new valuation methodology for certain parcels. The Special Committee further is charged with making whatever recommendations are deemed appropriate on this topic to the 2008 Legislature.

COMMITTEE ACTIVITIES

At the September meeting, the Committee held a public hearing on the issue. Staff outlined the contents of HB 2543. Proponents, who included the Home Builders Association of Greater Kansas City, said that they were still working on potential amendments to the bill. Proponents also said that the proposed tax treatment of certain property that does not sell for

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an extended period of time would be conceptually similar to the property tax exemption provided for merchants and manufacturers' inventories. A legal analysis distributed by proponents argued that the legislation would succeed in passing the four-part test for exemptions outlined in *Tomasic v. City of Kansas City*, 237 Kan. 572 (1985). Another proponent representing the Argentine Neighborhood Development Association testified that the proposal would serve as a catalyst to help provide affordable housing throughout the state.

The Johnson County appraiser expressed concerns about the difficulties involved in determining occupancy; and in how a bifurcated classification system for certain parcels might affect the appeals process.

In response to a question, staff indicated that an additional constitutional concern could be raised relative to the uniform and equal requirement of Article 11, Section 1 of the *Kansas Constitution*.

At the October meeting, staff presented a chart indicating how the proposal would change current law relative to three hypothetical situations.

The Chairperson announced that she was asking for an Attorney General's opinion on the

constitutionality issues relative to the four-part test; and the uniform and equal concern.

The Committee also asked proponents to return in November with responses to administrative and implementation concerns raised by the Johnson County appraiser; and with data on when newly constructed properties are sold.

At the November meeting, the Committee made its final policy decisions and gave staff direction relative to drafting the final committee report.

CONCLUSIONS AND RECOMMENDATIONS

The Committee embraces the concepts embodied in HB 2543 and encourages proponents, pending the Attorney General's opinion on constitutionality, to keep working on the legislation and reintroduce it with any proposed amendments deemed necessary in 2008.

The Committee notes that one issue that may need further discussion is the applicability of the proposed new valuation system for "model" homes.

Homebuilders



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

PAUL J. MORRISON
ATTORNEY GENERAL

November 30, 2007

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ATTORNEY GENERAL OPINION NO. 2007- 38

The Honorable Barbara P. Allen
State Senator, 8th District
9851 Ash Drive
Overland Park, Kansas 66207

Re: Taxation--Property Exempt From Taxation--Newly Constructed Residential Property Which Has Never Been Occupied

Synopsis: A statute that provides for different rates of taxation, based upon a distinction between whether the real property is owned by a private resident versus a commercial home builder, violates the uniform and equal provisions in the Kansas Constitution, Article 11, Section 1. 2007 House Bill No. 2543, as currently written, makes such a distinction and is therefore unconstitutional. Cited herein: Kansas Constitution, Art. 11, §§ 1, 12; 2007 H.B. 2543.

* * *

Dear Senator Allen:

You ask for our opinion on 2007 House Bill No. 2543 (HB 2543) and whether we believe its terms are constitutional. Specifically, you ask us to consider whether it fails the four part test articulated by the Kansas Supreme Court in *State ex rel. Tomasic v. City of Kansas City*¹ or whether the provisions of the bill violate the uniform and equal provisions in the Kansas Constitution, Article 11, § 1.

HB 2543 essentially provides that new residential property built and owned by a home builder would be valued as vacant land on January 1 of each year, irrespective of any improvements (a new residence) that may be present on the land as of that date. Additionally, the bill would require a prorated tax to be assessed on the property to the purchaser and new homeowner based upon the market value of the property for the month first following purchase and occupancy. It thus appears that the bill creates an exemption from taxation for improvements to the property (a new residence) that would otherwise occur, dating from January 1 to the first day of the month after occupancy, for a period not

¹237 Kan. 572, 579 (1985).

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to exceed twenty-four months should the new residence not be occupied for an extended time frame.

The right to equal treatment in matters of taxation is protected under both the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and the uniform and equal rate of assessment and taxation provision found in Article 11, § 1 of the Kansas Constitution.² However, while the Kansas Constitution provides that certain property shall be exempt from taxation, it does not declare that other exemptions may not be made if like property is still taxed at a uniform and equal rate. Thus, although the constitutionally enumerated exemptions must be given, more exemptions can be adopted by the legislature as long as the constitutional requirement of equal treatment of the same types of property is followed.³

The *Tomasic* case creates a four-prong test used in determining if a tax exemption is constitutional: (1) Whether the exemption furthers the public welfare; (2) whether the exemption provides for substantial peculiar benefit; (3) whether the exemption provides for large accumulations of tax-exempt property; and (4) whether the exemption is an improper or preferential classification of property.⁴

Courts give great deference to legislative decisions concerning the first three prongs of the test stated in the *Tomasic* case.⁵ Thus, we will not address these three issues, leaving them for the legislature to determine. However, the fourth prong of this test establishes a legal standard and requires examination of whether the proposed tax exemption complies with the "uniform and equal valuation" rule set forth in the Kansas Constitution, Art. 11, § 1.

As stated in *State ex rel. Stephan v. Martin*⁶ the Kansas Constitution provides for a "uniform and equal basis of valuation" and requires that all taxable property be valued and taxed at its "fair market value." K.S.A. 79-503a defines "fair market value" and together with K.S.A. 79-1455 requires that all taxable property be appraised at its fair market value as of January 1.⁷

²*In re the Matter of Application of Central Illinois Public Services*, 276 Kan. 612, Syl. 3 (2003).

³*In re Lietz Construction for Exemption from Ad Valorem Taxation in Wabaunsee County, Kansas*, 273 Kan. 890 (2002).

⁴*Supra* at 579.

⁵*Lario Enterprises, Inc. v. Board of Tax Appeals*, 22 Kan.App.2d 856, 860 rev. denied 261 Kan. 1083 (1996) ("[t]he Legislature is the judge of what exemptions are in the public interest and will be conducive to public welfare.")

⁶227 Kan. 456 (1980).

⁷See K.S.A. 2006 Supp. 79-1439.

Under HB 2543, a new home would be valued and taxed at something other than its fair market value as of the January 1 date. Instead of using "fair market value," the rate of taxation would depend upon its status as new residential property that is still owned by the home builder. Thus, a distinction is to be made between the property's builder and/or its eventual occupant. Improvements to the land that are otherwise identical would be valued differently as of January 1, depending upon whether the property is owned by the home builder or a purchaser.

In *Stephen v. Parrish*,⁸ the Kansas Supreme Court reviewed the constitutionality of K.S.A. 79-1427c. This statute created a difference in the tax rates charged to property owners who listed their property and those who did not. Those individuals who had not listed their property would have been granted a tax amnesty under this statute. The Court found that this statutory attempt to treat owners of the same types of property differently, based solely upon the status or conduct of the owners, violated Art. 11, § 1 of the Kansas Constitution.⁹

Generally, a taxation distinction based upon who owns property has not been allowed by Kansas courts.¹⁰ Property of the same type is required to be valued using the same method and not be based upon who owns the property.¹¹ However, different types of uses of real property may lawfully be taxed at different rates if the Kansas Constitution so provides.¹²

One might argue that the distinctions in HB 2543 are not based upon ownership but rather upon differences in use; a vacancy implying non-use. However, the distinctions created in HB 2543 also clearly establish a different tax rate to be based upon the type of individual owning the exact same property, a home builder versus a home buyer.

Article 11, § 1 of the Kansas Constitution creates seven specific types of real property that are to be taxed at different rates.¹³ The seven separate types of real property listed therein distinguish between vacant lots and real property used for residential purposes. Unlike the agricultural use distinction made in Article 11, § 12, the Kansas Constitution does not

⁸257 Kan. 294, 302-322 (1995).

⁹See also Attorney General Opinion No. 94-79.

¹⁰See *Hixon v. Lario Enterprises*, 257 Kan. 377, Syl. ¶ 3 (1995); and *Topeka Cemetery Association v. Schnellbacher*, 218 Kan. 39, 42-43 (1975).

¹¹*Kroeger v. Board of Woodson County Commissioners*, 31 Kan.App.2d, 618 *aff'd* 277 Kan. 486 (2004). Each parcel in a given tract must be valued using the same method of valuation and the method of valuation should be tied to factors associated with each parcel of property, not the status of the owner of the property.

¹²See *Board of Douglas County Commissioners v. Cashatt*, 23 Kan.App.2d 532 (1997) (in Kansas, agricultural property is the only classification of property that is given a property tax value based on the "use value." Kan. Const., Art. 11, § 12).

¹³It also recognizes six types of tangible personal property.

create a special category or tax rate for residential properties that are occupied versus unoccupied.

"Constitutional and statutory provisions exempting property from taxation are to be strictly construed against the one claiming exemption, and all doubts are to be resolved against the exemption."¹⁴ It is difficult for us to understand how the nature of the owner – a builder versus a purchaser – is not the critical component of the proposed new law. Thus, unless the language in the bill is changed so that the property itself is somehow classified as an entirely different type of constitutionally distinguished property,¹⁵ it is our opinion that the bill as currently drafted creates an unconstitutional classification based primarily upon the status of the owner.

Sincerely,



Paul J. Morrison
Attorney General



Theresa Marcel Bush
Assistant Attorney General

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¹⁴*League of Kansas Municipalities v. Board of County Commissioners of Shawnee County*, 24 Kan.App.2d 294 (1997).

¹⁵For example, inventory; K.S.A. 79-201m currently defines "inventory" as "tangible personal property" and thus statutory amendment would be required in order to reclassify an unoccupied residence as "inventory" of a home builder. Such a change would also impact how long the different rate of taxation would be in effect, because current tax laws (including the Kansas Constitution) provide for different tax rates for all "inventory" not just that which has remained unoccupied for two years or less. See *Kansas Enterprises Inc. v. Frantz*, 269 Kan. 436 (2000) (in order to qualify for the merchants' inventory exemption under K.S.A. 79-201m, a taxpayer must establish that it is a "merchant" and that its personal property qualifies as "inventory" under the provisions of that statute).

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Testimony to the Senate Committee on Assessment and Taxation

Richard Cram

January 17, 2008

Sales Tax Treatment of Hunting Fees

Senator Allen, Chair, and Members of the Committee:

Notice 07-08 (attached) explains the sales tax imposition on the gross receipts derived from the participation in guided and non-guided hunts.

The Department's Audit Bureau has initiated several sales tax self-audit programs in various industries during recent years. In implementing a self-audit initiative, Audit Bureau identifies retail businesses involved in a particular area and sends self-audit notices to each of those businesses, along with a fact sheet relevant to those types of businesses. The fact sheet lists typical types of purchase or sale transactions that are either taxable or exempt for those businesses. The business is required to review the fact sheet and its business records for the prior 3 years to determine if sales or use tax has been properly reported, collected and remitted. The business is then required to report to the Department any purchases or sales there were not taxed and remit the tax. If reported tax is not remitted, the business is assessed. Businesses that fail to respond to the self-audit notice are referred for a staff audit.

In the fall of 2007, the Department initiated a self-audit program for businesses involved in providing hunting. During November and December, the Department sent out self-audit notices to 148 of these businesses. After receiving complaints from several self-audit notice recipients that the Department had provided inconsistent guidance on the tax treatment of gross receipts for participation in hunts, Department staff met with representatives of the Kansas Sport Hunting Association and the Kansas Outfitters Association, as well as other interested individuals to address their concerns. As a result of this meeting, the Department published Notice 07-08, and notified all self-audit notice recipients that it would not assess any business receiving the self-audit notice for sales tax not collected before January 1, 2008 on gross receipts from guided or unguided hunts. The Department advised the recipients of the self-audit notices that they should thereafter begin collecting and remitting this sales tax (if they were not already doing so). The Department also provided copies of Notice 07-08 and a corrected fact sheet (attached).

Mike Boekhaus, Director of the Department's Audit Bureau, and members of his staff, are present to assist in answering any questions.

Notice

Notice Number: 07-08
Tax Type: Kansas Retailers' Sales Tax
Brief Description: Sales Tax Treatment of Charges for Participation in Guided vs. Non-guided hunting and Retail Sale of Game Birds
Keywords:
Approval Date: 12/20/2007

Body:

KANSAS DEPARTMENT OF REVENUE

December 20, 2007

Notice 07-08

Sales Tax Treatment of Charges for Participation in Guided vs. Non-guided Hunting and Retail Sale of Game Birds

This notice sets forth the Department's guidance on the sales tax treatment of charges for guided and non-guided hunts, and on the retail sale of game birds. To the extent this guidance is inconsistent with prior statements or interpretations issued by the Department, this guidance shall control.

Charges for Participation in Guided vs. Non-guided Hunting

The gross receipts derived from the participation in guided and non-guided hunts, as well as sporting clays are subject to Kansas retailers' sales tax. Kansas law imposes tax on the gross receipts received from the sale of tangible personal property, enumerated services and certain admissions. K.S.A 79-3603(m) imposes sales tax on the gross receipts received from fees and charges by public and private clubs, drinking establishments, organizations and businesses for participation in sports, games and other recreational activities. K.A.R 92-19-22b(a)(1) defines "sports, games, and other recreational activities" as follows:

diversions that restore or refresh strength and spirits by means of pastime, exercise, or similar activities that involve strength, speed, dexterity, stamina, or training. These activities shall include golf, pool, billiards, skating, bowling, swimming, skiing, baseball, softball, basketball, volleyball, racquetball, handball, squash, tennis, carnival rides, motor sports, batting practice, skeet, trap, target shooting, horse riding, pinball, darts, electronic games, physical fitness services, and all other similar activities.

Hunting falls within the category of "sports, games, and other recreational activities," and any fees or other charges for participation in hunting, whether a guide is or is not included, are subject to Kansas sales tax.

Gross receipts from non-guided hunts include any and all charges for access to property for the purpose of hunting.

Retail Sale of Game Birds

The retail sale of game birds within Kansas is subject to Kansas retailers' sales tax (the seller should collect sales tax on the selling price). Kansas sales tax is also due on the sale of game birds when sold as pets, when sold directly to the consumer who will use them as a food source, and when the purchaser cannot produce a valid Kansas Exemption Certificate.

The seller is not required to collect Kansas sales tax on sale of game birds shipped or delivered by common carrier to point outside of the State of Kansas. The seller should retain for audit purposes shipping documents, such as the bill of lading or invoice showing the shipping address indicating the out-of-state delivery.

If the buyer provides the seller with a Kansas Exemption Certificate indicating that the purchase of game birds is exempt for Kansas retailers' sales tax, then the seller is not required to collect sales tax. Some of the most common exemptions in the game bird industry are:

(1) Kansas Resale Exemption Certificate – This certificate indicates that the seller should not collect the sales tax because the buyer is going to resell the birds and collect sales tax. A prime example would be the purchase of birds by a sport hunting preserve. (See p. 43, Publication KS-1520).

(2) K.S.A. 79-3606(o) exempts all sales of fowl, the primary purpose of which is for use in the production of offspring or food production. A prime example would be the sale of birds to another producer who is going to use them to as breeding stock or, to a slaughter house that is going to process the birds for human consumption.

(3) Exempt Entity – No sales tax is due when birds are sold to an exempt entity such as a school, state of Kansas, federal government. Each of these exempt entities should have an Exemption Certificate issued to them similar to the one found on page 16 of Publication KS-1520.

Guided Hunts, Hunting Lodges and Clubs, Skeet and Trap Shooting Facilities

Purchases by Guided Hunts, Hunting Lodges and Clubs, Skeet and Trap Shooting Facilities

The taxability of purchases of tangible personal property and labor services by Guided Hunts, Hunting Lodges and Clubs, Skeet and Trap Shooting Facilities is summarized below. Sales tax should be paid to the vendor or accrued and paid directly to the State of Kansas. A properly completed exemption certificate should be provided to your vendor for all purchases made without tax.

Traps and Throwers.	Taxable
Clay Pigeons and Targets.	Exempt
Batteries to run throwers.	Taxable
Target release systems and extension cords.	Taxable
Tree stands and blinds.	Taxable
Furniture and fixtures, including but not limited to: desks, lamps, tables, chairs, shelving, plants, planters, artwork, signs.	Taxable
Purchase of trucks, four-wheelers, and all terrain vehicles used in hunts, or on facilities.	Taxable
Food Preparation equipment such as: popcorn machine, microwaves, hot plates, griddles	Taxable
Complimentary bottled water, soft drinks, coffee, creamer, sugar, cups and stir sticks, balloons stickers, pens and candy.	Taxable
Advertising in newspapers, radio, television, etc.	Exempt
Newspaper and magazine subscriptions.	Taxable
Trash removal, shredding services, cleaning services, plant watering and care.	Exempt
Utilities(electricity, gas, water and heat) used for lighting, air conditioning, heating and cleaning, etc.	Taxable
Utilities (electricity, gas) used for cooking; water served to customers as water, coffee, tea, soup, etc.	Exempt
Professional services such as legal or accounting services.	Exempt
Laptop and desktop computers, copiers, printers, fax machines, calculators and other similar equipment.	Taxable
Printed materials production and distribution (such as direct mail items).	Taxable
Software and software upgrades and labor services to modify, alter, update or maintain software.	Taxable
Customized software, software upgrades and labor services to modify, alter, update or maintain customized software - "customized" software = software developed for a single end user.	Taxable on and after July 1, 2002 through December 31, 2004 - Exempt all other periods
Lease or rental of any tangible personal property.	Taxable
Tangible property to be given away or donated.	Taxable Note: Donations to exempt entities are not taxable after April 2007
Promotional items including but not limited to: calendars, mugs and items of clothing.	Taxable
Plumbing and other repair services.	Taxable
Repair and remodeling labor services to existing real estate.	Taxable
Pest control materials and supplies.	Taxable
Janitorial supplies.	Taxable
Labor services on original construction of new building or facility.	Exempt
Parts and labor services of repairing, servicing, altering or maintaining tangible personal property, such as computers, printers, copiers, security equipment, etc.	Taxable
Warranty or service agreements for tangible personal property such as, computers, printers, copiers, security equipment, etc.	Taxable
Items for resale such as food, soda, etc.	Exempt
Telephone answering services.	Taxable

Sales by Guided Hunts, Hunting Lodges and Clubs, Skeet and Trap Shooting Facilities

The taxability of sales of tangible personal property and labor services by Guided Hunts, Hunting Lodges and Clubs, Skeet and Trap Shooting Facilities is summarized below. The applicable sales tax must be collected unless the purchaser provides a proper exemption certificate.

Gift certificates.	Exempt
Admission or cover charges to participate in events including charitable.	Taxable
Tips that are freely given by customers.	Exempt
Mandatory tips.	Taxable
Vending machine sales and other concessions.	Taxable
Guided tour package including but not limited to: meals and lodging.	Taxable
Sales of meals or drinks, including meals sold to employees at full or reduced prices.	Taxable
Hunting license.	Exempt
Permits such as: deer or turkey.	Exempt
Sales of tangible personal property such as T-shirts, mugs, souvenirs, etc.	Taxable
Hunting and Shooting supplies such as: eye and ear protection, vests, shells, guns, gun cleaning kits.	Taxable
Memberships to hunting clubs.	Taxable