

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman Richard Carlson at 9:00 a.m. on March 17, 2009, in Room 535-N of the Capitol.

All members were present.

Committee staff present:

Gordon Self, Office of the Revisor of Statutes
Scott Wells, Office of the Revisor of Statutes
Chris Courtwright, Kansas Legislative Research Department
Kathy Beavers, Committee Assistant

Conferees appearing before the Committee:

Allie Devine, Kansas Livestock Association
Jonathan Dilly, Slagle, Bernard, and Gorman, P.C.
Professor Martin Dickinson, Kansas University School of Law
Brad Harrelson, Kansas Farm Bureau
Jim Weisgerber, Tax Specialist, Kansas Department of Revenue

Others attending:

See attached list.

Chairman Carlson stated that House Taxation minutes for March 9, March 10, March 11 and March 12, 2009 were e-mailed to the committee members for approval and are accepted as written.

Bill introductions:

Representative Hayzlett made a motion to introduce a bill concerning a persons constitutional right to hunt and fish. Representative Powell seconded the motion. The motion carried.

HB 2379 - Valuation of land devoted to agricultural use under Kansas estate tax act.

The Chairman opened the hearing on **HB 2379**.

Chris Courtwright, Kansas Legislative Research Department, briefed the committee on **HB 2379**. He stood for questions.

Allie Devine, Kansas Livestock Association, testified in support of **HB 2379** (Attachment 1). Ms. Devine stated that Kansas Department of Revenue analyzes the law according to "who owns the property" and not "what is the use of the property" being valued. It is the Kansas Livestock Association's opinion that agricultural land is agricultural land and does not matter who owns the land. She stood for questions.

Jonathan Dilly, Slagle, Bernard, and Gorman, P.C., testified in support of **HB 2379** (Attachment 2). In his testimony he stated that **HB 2379** would put all Kansas farm families on an equal footing and not penalize those families who choose to utilize common estate planning vehicles to avoid the burden of probate, to provide centralized management after death, to involve successive generations in the family business, and allow interests to be gifted without fractionalized ownership.

Martin Dickinson, Kansas University School of Law, testified in support of **HB 2379** (Attachment 3). Professor Dickinson stated he was speaking as a citizen, not on behalf of Kansas University. Mr. Dickinson helped draft **HB 2379**. He believes that the Department of Revenues position that K.S.A. 79-15, 206 applies only to land directly owned by the decedent or by an entity of which the decedent is the sole owner. He explained the intent of the original bill and made suggestions for amendments that would help clarify that intent. The suggestions are:

- Delete "subchapter S" in line 16. There is no reason to limit the benefits of the bill to corporations that have made the subchapter S election, because the bill applies only to entities that are not publicly traded.
- Delete "but before January 1, 2010" in line 23.K.S.A. 79-15, 253, as amended, would repeal **HB 2379** along with the rest of the Estate Tax Law on January 1, 2010.

CONTINUATION SHEET

Minutes of the House Taxation Committee at 9:00 a.m. on March 17, 2009, in Room 535-N of the Capitol.

Brad Harrelson, Kansas Farm Bureau, testified in support of **HB 2379** (Attachment 4). **HB 2379** will clarify the inconsistencies in the Kansas Estate Tax . Kansas Department of Revenue interprets that only land owned directly by the decedent can be valued according to "use value" method.

Jim Weisgerber, Tax Specialist, Kansas Department of Revenue, testified in opposition to **HB 2379** (Attachment 5). Mr. Weisgerber explained that the Department of Revenue does not oppose the language of the bill but does oppose the retroactive clause in the bill. The Kansas Department of Revenue is concerned with the fiscal note attached to **HB 2379** which is \$.53 million in fiscal year 2010. Mr. Weisgerber stood for questions.

The Chairman closed the hearing on **HB 2379**.

Chairman Carlson introduced his niece, Katy Adams and her friend, Slayde Meyer, who are pages today at the capitol.

Representative Lukert introduced his wife, Linda and their daughter, Christy Bennett to the committee.

The next meeting is scheduled for March 17, 2009.

SB 228 - Providing a property tax exemption for certain leased vehicles.

Representative Siegfroid made a motion to move SB 228 favorably for passage. Representative Dillmore seconded the motion. The motion carried.

The meeting was adjourned at 10:20 a.m.



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TESTIMONY

To: House Taxation Committee
Representative Richard Carlson, Chair

From: Allie Devine, Kansas Livestock Association

Date: March 17, 2009

Subject: **Support for HB 2379**

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing approximately 5,500 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf and stocker production, cattle feeding, dairy production, grazing land management and diversified farming operations.

The Kansas Livestock Association supports HB 2379.

Background: In 2006 the legislature debated and passed what is now known as the Kansas Estate Tax. The purpose of the 2006 amendments was to “decouple” Kansas death taxes from federal law. There were a number of inconsistencies between Kansas law and federal law that made administration of the Kansas law cumbersome and difficult. KLA and other farm and business groups sought the total repeal of the law. As a compromise, KLA and other farm organizations agreed that the Kansas Estate tax be decoupled from federal law, but should expire in 2010 AND that agricultural land would be valued for estate tax purposes as it is under property tax at “use value”.

Issue today: In the past few weeks, we have been notified by tax practitioners and KLA members that the Department has interpreted the valuation provisions to only apply to agricultural land held directly by the decedent. This means that agricultural land held in any other legal entity, such as a limited liability company, is not valued at use value but market value. The effect of the Department’s interpretation is to gut many of the estate planning tools agricultural operations use to pass land from one generation to another. The department is analyzing the law according to “**who owns** the property” and not “**what is the use** of the property” being valued. In our opinion, agricultural land is agricultural land, regardless of “who” owns it. It’s the **use** of the property for agriculture that justifies the use value valuation. The department’s interpretation is inconsistent with our discussions in 2006 and HB 2379 reiterates what was intended in 2006. KLA strongly supports HB 2379 and encourages the committee to pass the bill.

House Taxation Committee

3-17-09

Attachment 1

Regarding other funding issues, KLA continues to oppose the continuation of the estate tax beyond 2010. (See KLA opposition to HB 2047 Jan. 27, 2009) If the legislature elects to continue the estate tax as a revenue source, we encourage you to incorporate the language of HB 2379 and adjust the language (by deleting "but before January 1, 2010" line 23, HB 2379) to assure agricultural land is valued at its use value into the future.

We appreciate the committee's time and attention to this issue and look forward to working with the committee to address this issue. Thank you.

Date: March 13, 2009
Committee Name: House Taxation Committee
Testimony: Jonathan Dilly
Re: HB 2379
Position: Support

Ladies and Gentlemen:

My name is Jonathan Dilly and as a Kansas licensed attorney, I would like to offer my support for HB 2379. I work for the law firm of Slagle, Bernard, & Gorman, P.C., which currently represents clients that would benefit from the enactment of HB 2379.


Effective January 1, 2007, K.S.A. § 79-15, 206 permits agricultural land to be valued at its most recent property tax valuation rather than its fair market value when determining a Kansas decedent's estate tax liability. The statute softens the impact on Kansas farm families who may have substantial agricultural property but modest liquid assets and who might be forced to sell their land and destroy their family business in order to pay the decedent's estate tax liability.

The current statute is clear that this beneficial valuation is only applicable to land located in Kansas and treated as land devoted to agricultural use. However, the statute is silent regarding how the land can be owned in order to qualify for the beneficial valuation. Many Kansas families utilize common estate planning vehicles such as family limited partnerships and limited liability companies to effectively manage and transfer their estates to their decedents. Unfortunately, the statute's silence has been used to deny the beneficial valuation to those Kansas farm families who have utilized such common estate planning vehicles.

HB 2379 would clarify K.S.A. § 79-15, 206 and expressly permit Kansas decedents whose property is held through a legal entity that is not publicly traded to qualify for the beneficial valuation. This Bill would effectively put all Kansas farm families on equal footing and not penalize those families who choose to utilize common estate planning vehicles to avoid the burden of probate, to provide centralized management after death, to involve successive generations in the family business, and allow interests to be gifted without fractionalized ownership.

Following the enactment of K.S.A. § 79-15, 206 in 2006, Kansas farm families relied on the statute's focus on the land's agricultural use, and not ownership, to permit the beneficial valuation to land owned through commonly recognized estate planning entities. Assuming this was the initial intent of the Legislature, HB 2379 provides the necessary clarification and its retroactive language justly permits those families, whom the statute was originally drafted to benefit, to qualify for its application.

Sincerely,


Jonathan Dilly

HOUSE TAXATION COMMITTEE

Testimony of Martin Dickinson supporting House Bill 2379
(Kansas Estate Tax treatment of farmland owned by certain entities)

I was one of the drafters of the current Kansas Estate Tax law. We included KSA 79-15,206 because we believed the Legislature would wish to lessen the impact the Estate Tax could have on farm families that may have limited cash available for payment of estate taxes. KSA 79-15,206 permits farm land to be valued for Estate Tax purposes at its value for real property tax purposes.

The Department of Revenue has taken the position that KSA 79-15,206 applies only to land directly owned by the decedent or by an entity of which the decedent is the sole owner.

To the best of my recollection, the drafters did not discuss the application of KSA 79-15,206 to entity ownership of farmland. Nor, to the best of my recollection, was this issue discussed at the Senate and House committee hearings I attended.

I believe KSA 79-15,206 was intended to benefit all qualifying estates in which Kansas farm land is present, whether owned directly or indirectly, and regardless of the pattern of ownership. I believe that interpretation is mandated by the Legislature's clear intent to alleviate the burden of the Estate Tax on farm families. For sound business reasons, many farmers own their land through partnerships, limited liability companies or other entities. Co-ownership with spouses and other family members is common as well. No farmer should be penalized for choosing one form of ownership over another.

HB 2379 would correct the Department's interpretation of KSA 79-15,206 and make its benefits available to all Kansas farm families, regardless of the business structure they have chosen. Because HB 2379 is limited to entities that are not publicly traded, the benefits of House HB 2379 will as a practical matter be available only to family-operated farms.

Because HB 2379 is consistent with original legislative intent, it should in fairness be made retroactive, as is provided in lines 21-23.

I suggest that the Committee consider two amendments:

1. In line 16, "subchapter S" should be deleted. Because the bill applies only to entities that are not publicly traded, there is no reason to limit the benefits of the bill to corporations that have made the Subchapter S election.
2. In line 23, "but before January 1, 2010" should be deleted. There is no need for this language. KSA 79-15,253 as amended would repeal HB 2379 along with the rest of the

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Estate Tax law on January 1, 2010. Further, if the Kansas Estate Tax should be continued after January 1, 2010, inclusion of this language would deprive farm families of the benefit of HB 2379 after that date.

I am a member of the faculty of the University of Kansas School of Law, specializing in taxation and estate planning. My testimony reflects only my own views and not those of the School of Law or the University.

Martin Dickinson
March 17, 2009

PUBLIC POLICY STATEMENT

HOUSE COMMITTEE ON TAXATION

RE: Support for HB 2379

March 17, 2009
Topeka, Kansas

Testimony provided by:
Brad Harrelson
State Policy Director
KFB Governmental Relations

Chairman Carlson and members of the House Committee on Taxation, thank you for the opportunity to appear in support of HB 2379. I am Brad Harrelson, State Policy Director—Governmental Relations for Kansas Farm Bureau. KFB is the state's largest general farm organization representing more than 40,000 farm and ranch families through our 105 county Farm Bureau Associations.

Many of you will recall action by the legislature in 2006 to "decouple" Kansas death taxes from federal law to address a number of inconsistencies and streamline administration of estates. Part of the compromise in that legislation was a phase out of the tax which will occur in 2010. The 2006 effort also clarified that agricultural land values for estate tax purposes would be determined as it is for property taxes at "use value."

Recently we have become aware of a dispute in interpretation of the 2006 law whereby the Kansas Department of Revenue has determined that only land directly by the decedent can be valued according to "use value" method. The result being that land held by any other entity is given a market value. This interpretation negates many of the business structures employed by farm families across the state to facilitate the timely and smooth transition of operations between generations and to coordinate the ongoing management of the operation between members who continue to farm and those who do not. The department is attempting to value land based upon ownership rather than by its use as agricultural land. HB 2379 clarifies this inconsistency – it is

parallel to the discussions and intent behind the 2006 changes. KFB strongly supports this effort.

Farm Bureau policy, on both the state and national levels, has long opposed any form of "death tax" and permanent repeal is a top priority. Aside from the issue of fundamental fairness, there are a host of economic and tax policy reasons why the Legislature should clarify the 2006 action and retain the elimination of the tax in 2010.

Kansas small businesses and family farms face the threat of a punitive death tax that could undo a lifetime of hard work and thrift. Farming and ranching is a very capital-intensive business. Farms and ranches are increasing in size by necessity, and a Kansas estate tax adversely affects those estates with decedents involved in farming and ranching. The future of agriculture in Kansas lies with the children and grandchildren of existing farmers and ranchers. Taxing inherited property is another impediment to the successful transfer of family farms to succeeding generations. When this occurs, the economic viability of the business can be severely damaged, even destroyed. This is particularly important in a time when fewer and fewer young producers are returning to the farm.

Kansas Farm Bureau respectfully urges your recommendation to pass favorably HB 2379. Thank you, once again, for the opportunity to appear before you and share the policy of our members. KFB stands ready to assist you as you consider this important measure. Thank you.

**TESTIMONY REGARDING
HOUSE BILL 2379
Before the House Taxation Committee
March 16, 2009**

House Bill 2379 concerns the Kansas estate tax. It addresses a situation where a decedent owns an interest in a legal entity which is not publicly traded, such as a partnership, a subchapter S corporation, a limited liability company, or a limited liability partnership. The purposes of the Bill is to clarify how such interest should be valued when, at the time of the decedent's death, the entity owned land located in Kansas which is treated as "land devoted to agricultural use" for purposes of K.S.A. 79-1476.

As a general rule, for estate tax purposes the assets of a decedent's are to be valued at fair market value. The controlling statute, K.S.A. 79-15,205 states:

The value of the gross estate of a decedent shall be determined by valuing the property included in the gross estate at its fair market value as of the time of the decedent's death, except as provided in K.S.A. 2006 Supp. 79-15,206, and amendments thereto.

An exception is made in the case of land which is "devoted to agricultural purposes" as that phrase is used for property tax purposes. K.S.A. 79-15,206 states:

If the decedent was a resident of Kansas, land that is located in Kansas and treated as land devoted to agricultural use for purposes of K.S.A. 79-1476, and amendments thereto, at the time of the decedent's death shall be valued at its most recent valuation pursuant to K.S.A. 79-1476, and amendments thereto.

The question that has arisen concerns a situation where the decedent owns an interest in a legal entity which in turn owns land devoted to agricultural use. The Department has taken the position, which has been supported on appeal to the Small Claims Division of the Court of Tax Appeals, that because the decedent didn't own the land directly K.S.A. 79-15,206 does not apply. This results in the land being included in the decedent's estate at fair market value as required by K.S.A. 79-15,205.

To the best knowledge of the Department, this situation simply was not contemplated when the current Kansas estate tax act was enacted. The Bill provides clarification in this area.

The Department has no objection to the language in the Bill (the first sentence of New Section 1 – line 14 through 21) which provides that the value of an entity in which a decedent owns an interest is to be determined by valuing land owned by the entity at the lower value established by K.S.A. 79-1476 for devoted to agricultural use. This appears to be a clarification that was simply omitted in the original legislation.

The Department does, however, object to the retroactive provision in the Bill (the second sentence of New Section 1 – line 21 through 23). As indicated in the Department's fiscal note this change would have a negative fiscal impact on state revenues. In addition, because the Department is not able to identify those estates which would be affected, application of the law would be uneven at best, likely resulting in different treatment of similarly situation estates.

The Department also notes that under current Kansas law the estate tax applies only to the estates of decedents dying during 2007, 2008 and 2009 and is repealed for estates of all decedent's dying after December 31, 2009. As a result, the number of estates affected by this legislation is relatively small. Passage of this Bill would be much more important if the Legislature passes HB2047, a Bill which would undo the repeal of the Kansas estate tax act and continue the law indefinitely.

2009 House Bill 2379b Fiscal Note

Introduced as a House Bill

Brief of Bill

House Bill 2379, as introduced, provides that for Kansas estate tax purposes, the decedents interest in a legal entity, that is not publicly traded, that owns land in Kansas that is devoted to agricultural use for purposes of K.S.A. 79-1476, that land shall be valued for estate tax purposes at its most recent valuation pursuant to K.S.A. 79-1476.

The effective date of this bill is on publication in the statute book for the estates of decedents dying after December 31, 2006 and before January 1, 2010.

Fiscal Impact

Passage of this bill will reduce state general fund receipts by \$.53 million in fiscal year 2010.

Estate tax receipts for tax years 2007, 2008 and 2009 are estimated to be about \$55.0 million dollars. Estate tax collections for FY 2008 were \$44.2 million, the estimate for FY 2009 is \$32.0 million and the estimate for FY 2010 is \$15.0 million. It is estimated that about \$6.0 million from FY 2008, \$32.0 million from FY 2009 and \$15.0 million from FY 2010 are receipts from estates of decedents dying after December 31, 2006. Assuming 1% of estate tax receipts from tax years 2007, 2008 and 2009 are from Kansas lands that will be valued as land devoted to agricultural use rather than market value, the impact in fiscal year 2010 would be a reduction in state general fund revenue of about \$.53 million ($\$6.0 \text{ million} + \$32.0 \text{ million} + \$15.0 \text{ million} \times 1\%$).

Administrative Impact

None.

Administrative Problems and Comments

Taxpayer/Customer Impact

Legal Impact