



**KANSAS BAR  
ASSOCIATION**

**TO:**            **The Honorable Les Donovan, Chair**  
                  And Members of the Senate Committee on Assessment and Taxation

**FROM:**       **Joseph N. Molina**  
                  On behalf of the Kansas Bar Association

**RE:**           **HB 376, removing the sales tax exemption for professional services**

**DATE:**       **March 7, 2012**

Good morning, Chairman Donovan and Members of the Senate Committee on Assessment and Taxation. I am Joseph Molina, and I submit this written testimony on behalf of the Kansas Bar Association in opposition to SB 376 that eliminates the sales tax exemption on professional services, including legal services.

The Kansas Bar Association opposes a sales tax on professional services for several reasons. First, a legal services tax would fall disproportionately on those least able to afford legal representation, thereby limiting their ability to access the judicial system. Access to justice is a fundamental right of every citizen and installing a tax barrier will infringe on this right. Individual Kansas citizens would bear the entire burden of the tax while government entities and corporations who litigate against them would be entirely free from the tax. This would create an uneven playing field in favor of corporate and governmental litigants and against individual Kansans.

Second, a sales tax would compromise the attorney-client relationship by requiring an attorney to transmit sensitive client information to the Department of Revenue. A fundamental principle in the attorney-client relationship, found in Kansas Rule of Professional Conduct Rule 1.6, is that the lawyer maintains confidentiality of information relating to the representation. The client is thereby encouraged to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging issues. While disclosure of this information would not run afoul of Rule 1.6, it would most certainly damage this relationship. The public is better served if full and open communication by the client is encouraged than if it is inhibited. The ability of the state to force disclosure and investigate tax issues will compromise the attorney-client relationship.

Third, the majority of Kansas lawyers practice in small or solo law firms. A sales tax will put them at a significant disadvantage, as large corporations will hire in-house counsel to deal with legal issues. Clients, rather than law firms, will absorb this new cost and corporations will evolve to avoid paying the sales tax. In addition, most legal fees in Kansas come from the small business community, so the tax on lawyers is primarily a business tax collected by lawyers.

Fourth, a tax on legal services would encourage sophisticated clients, and those in border communities, to use untaxed legal services outside Kansas. It would also create an incentive for

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Kansas law firms to perform more services outside Kansas, and to shift investment in facilities, staff and support services to other states. Given the ease of gaining admission in many other states by reciprocity, even the smallest firms might find it advantageous to do so. Determining which services are taxable in Kansas would be an administrative nightmare.

Fifth, the sales tax on legal services would amount to a "misery tax" levied on Kansas families at their most vulnerable. It is necessity rather than choice that leads Kansans to seek legal assistance in cases involving death, divorce, domestic abuse, end-of-life decisions, injury, accusation of criminal offenses, or bankruptcy. To tax them in a time of anxiety, uncertainty, and fear places an undue burden on these families.

Finally, the KBA has several questions as to the constitutionality of the proposed tax on legal services, which the State of Kansas might well have to litigate should SB 376 become law, including but not limited to the following:

- A) Would the proposed tax on legal services impermissibly burden access to and use of the federal courts in violation of Article III of the U.S. Constitution and the 5th, 6th and 14th Amendments to the U.S. Constitution?
- B) Would the proposed tax on legal services, in connection with litigation before the federal courts, violate the Supremacy Clause contained in Article VI of the U.S. Constitution?
- C) Would unequal treatment of individuals and corporations, whereby a tax would be imposed on an individual's party's access to the courts but no tax would be imposed upon a corporate party in the same litigation, be a violation of the 14th Amendment to the U.S. Constitution?

The Kansas Bar Association appreciates the opportunity to provide testimony concerning SB 376 and we encourage the committee to consider the possible unintended consequences of imposing a sales tax on professional services, including legal services.

*About the Kansas Bar Association:*

The Kansas Bar Association (KBA) was founded in 1882 as a voluntary association for dedicated legal professionals and has more than 7,300 members, including lawyers, judges, law students, and paralegals. [www.ksbar.org](http://www.ksbar.org)