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Board of Tax Appeals

Sam Brownback, Governor

January 21, 2015

Testimony of Arlen Siegfried

Thank you Chairman Kleeb, and the distinguished members of the Kansas House Tax Committee for the opportunity to appear before you today. I was requested to appear and discuss House Substitute for Senate Bill 231, passed last legislative session and signed into law by Governor Brownback, effective July 1, 2014. The Board of Tax Appeals (Board) has worked with the changes approved by the 2014 legislature for over six months and I am happy to report the results are generally positive.

The mission of the Board is to resolve disputes between tax payers and taxing authorities promptly and impartially and to help maintain public confidence in the state and local tax system.

I would like to submit some background and history pertaining to the Board. The Board is unique among the other boards and agencies. The Board is a creation of the state legislature and must function by the statutory oversight the legislature provides. The Board is also the highest administrative tribunal to hear appeals relating to valuation of property for purposes of property tax, income, sales, and compensating taxes, along with other matters involving taxation by state and local taxing authorities. As such it is charged with creating a record for use in the appellate process in the judicial system. The Board is bound by the doctrine of stare decisis, limited to published decisions of an Appellate Court. Therefore members of the Board are subject to Judicial Ethical Standards identical to a District Court Judge of an Article Three court, and at the same time, the Board is under the direct control of the Executive Branch with gubernatorial appointments, and State Senate confirmation of all its members.

H Sub SB 231 changes applicable to the Board are as follows:

- Switch the name from the Court of Tax Appeals to the current name. This was a cosmetic change and included changing letterhead, building signs, brochures, and etc.
- Added an additional appeal process which allows an aggrieved party to be heard de novo in a District Court, in lieu of appealing directly to the Court of Appeals. At this time, there have been nine appeals to the District Court.

With thousands of appeals on a yearly basis, this option has rarely been opted by a party.

- Further the legislation requires the Board to issue a summary decision within 14 days once the matter is fully submitted. All parties have 14 days from the date of the summary decision to request a full opinion from the Board. This was established to speed up the process of decisions issued by the Board and the Board consistently meets the 14 day deadline. However, the Board is seeing that parties are generally asking for a full opinion on a regular basis. Partly because this is somewhat confusing to taxpayers. So even when a ruling is granted in favor of the taxpayer, the taxpayer is still requesting a full opinion. The Board thinks it would be cost and time efficient to remove the 14 day summary decision and just require that decisions be rendered within ninety days. Ultimately this will save approximately thirty days in the appeal process.
- The legislation also requires that if a decision is not rendered timely, the filing fee be waived for the following year. The Board completely supports and is following this ruling. To date, no filing fee has waived due to the Board's untimeliness.
- The law now requires one of the three members of the Board to be a licensed certified general real property appraiser. At this time the Board still has this open position and is awaiting the first person qualified under this statute.
- The law also requires the publishing of all appeals decided, and undecided, by the Board on the agency website for public consumption. Further, those decisions were to be sent to each legislator in a monthly report. We initially felt this would require a twenty-five thousand dollar upgrade to the website. However, the agency is in compliance with this order without a technical upgrade, but with considerable staff elbow grease and creative initiative.
- The new law also contains a provision in Sec. 3 stating, "The chief hearing officer shall not appoint as a hearing officer any person employed by the board, including, but not limited to, any person employed by the board as an attorney". The history of the agency is to use its staff attorneys as supplemental small claims hearing officers from June through August. This represents personnel efficiency because this is a slow time for the Regular Division, but the busy time for the Small Claims/Expedited Hearing Division. This change will cost the agency a minimum \$115,000.00 to hire and train four additional contractual hearing officers. Without the additional funding,

or change in the new law allowing staff to hear small claims, the Board will be unable to meet its statutory requirement to expedite the small claim hearing process. The Board's understanding was that this was added in the new legislation because there was concern that the staff attorneys would conduct the small claims hearing and then sit in on the regular division appeal. However, the Board has well established procedures in place that do not allow this to occur. Staff is not involved with the regular division appeal if they were the hearing officer in small claims.

- Also the legislation clarified who may sign an appeal. The Board, after studying the change, does not question the signing of appeals, but docket all appeals allowing all taxpayers to pursue an appeal regardless of who signs the form.
- H sub for SB231 contained several mandates regarding the determination of who may represent taxpayers before the Board. The Board is specifically precluded from deciding what actions constitute the unauthorized practice of law, considering whether a contingent fee agreement is a violation of public policy, and taking any action that would impede a settlement or agreement between the county and the taxpayer. When the agency was considered a court there was some confusion about its legal responsibility in these areas. Properly classifying the agency as a board makes these provisions of the law entirely consistent with its role and simplifies its responsibilities.
- Per the law commercial properties valued \$3,000,000.00 or less may appeal to the Small Claims/Expedited Hearing Division. The qualifying number was \$2,000,000.00 previously, but the results of this change are minimal.
- The law contains several provisions that eliminate filing fees certain applicants. I want to be very specific in stating the Board supports the public policy of eliminating fees for single family residential, not for profit agencies if the valuation of the property does not exceed \$100,000.00, all municipal government agencies, and appeals not timely handled by the Board. However, this policy will result in about a 17% drop in fees. The Board is funded by fees over 50% so this is a substantial influence on our funding and will require additional appropriation in the 2016-17 budget cycle of about \$185,000.00 per year.
- In addition to the changes addressed above, there are other changes to the law affecting taxing jurisdictions more than BOTA so I will not take up more of your time with them.

In closing, the Board is asking the House Taxation Committee to consider several changes in H Sub for SB231. Those changes are as follows:

- Remove the language not allowing the Board's attorneys to act as hearing officers in the small claim division; and, *Save \$115,000*
- Remove the fourteen day summary decision and just require the Board to have decisions rendered within ninety days. *easier for taxpayer*

Also, because of this change in public policy the Board has submitted, not a spending increase, but a shift of funding from the BOTA filing fee fund to the General Fund in the amount of \$185,000.00. This, of course, is a matter to be considered in the Appropriations Committee, but it is a consequence of H Sub for SB231.

Thank you again for allowing me to speak before you today and I am pleased to stand for any questions.