

MINUTES OF THE HOUSE COMMITTEE ON TAXATION

The meeting was called to order by Chairman Edmonds at 9:00 a.m. on January 16, 2002 in Room 519-S of the Capitol.

All members were present except:	Representative Flora, excused
Committee staff present:	Chris Courtwright, Legislative Research Department April Holman, Legislative Research Department Don Hayward, Revisor Winnie Crapson, Secretary
Conferrees appearing before the Committee:	None
Others Attending:	See attached list.

Representative Edmonds introduced Representative Tim Owens, a new member of the committee.

By unanimous consent bill will be introduced at the request of Representative Bethell to provide sales tax exemption for Wheat Bowl, Inc. [HB 2654 Wheat Bowl, Inc. sales tax exemption]

By unanimous consent bill will be introduced at the request of the Department of Wildlife and Parks will be introduced to continue tax credits for expenditures relating to threatened and endangered species. [HB 2647 Extending the date of nongame and endangered species expenditures tax credits]

By unanimous consent bill will be introduced at the request of the Kansas Judicial Council to amend K.S.A. 79-15101, et seq. concerning estate taxes. [HB 2652 Estate tax conformity to federal law]

By unanimous consent bill will be introduced at the request of the Department of Revenue to amend K.S.A. 79-3226 to clarify and preserve interpretations of Board of Tax Appeals. [HB 2657 Business income defined for uniform division of income for tax purposes act]

By unanimous consent bill will be introduced at the request of the Department of Revenue to amend K.S.A. 79-3650 to broaden circumstances when a consumer could submit sales tax refund claim directly to Department of Revenue. [HB 2650 Timing of taxpayer appeals]

By unanimous consent bill will be introduced at the request of the Department of Revenue to amend K.S.A. 79-3650 providing authority to adopt regulations concerning any tax administered under Chs 41 and 79 of K.S.A. [HB 2649 Rule and regulation authority of secretary of revenue]

By unanimous consent bill will be introduced at the request of the Department of Revenue to amend K.S.A. 8-170 concerning certificate of title for antique vehicles. [HB 2653 Certificate of Title for Antique Vehicles]

Tony R. Folsom, Executive Director/General Counsel of the Kansas Board of Tax Appeals presented to the Committee a history of the Board of Tax Appeals' handling of requests for ad valorem exemption for bulldozers and other earth moving equipment pursuant to K.S.A. 79-201j (Attachment #1). Mr. Folsom reviewed the statutory provisions prior to 1997 and the 1997 amendment to remove the word "exclusively". Also presented for the information of the Committee were Board Order & Order on Reconsideration in Lietz Construction Case, Docket 2000-6480-TX (Attachment #2); Board Order & Order on Reconsideration in the Furney Case, Docket 2000-10075-TX (Attachment #3); and copy of Attorney General Opinion 96-11 dated January 30, 1997 (Attachment #4).

Mr. Folsom reviewed the two recent cases arising in Wabaunsee County. In Lietz Construction BOTA concluded that the equipment was exempt pursuant to K.S.A. 79-201j. This case is currently pending before the Court of Appeals (*In the matter of the application of Lietz Construction Co. For exemption from ad valorem taxation in Wabaunsee County, Kansas*, Case No. 01-86987-A). In the Furney case Wabaunsee County and Kansas Department of Revenue Division of Property Valuation appeared in opposition to the exemption. The majority of the Board adopted the arguments of the County and PVD and concluded that the equipment did not qualify for exemption. There were two dissenting members. It is anticipated that this case will be appealed to the Court of Appeals.

CONTINUATION SHEET

Furney argued that he considers himself a soil conservation contractor and that such activities are a necessary part of effective farm management practices in Kansas and that the earth moving equipment is his personal property used in performing farm work for hire and that there is no requirement that the equipment be "typical" farm equipment. The County argued that this type of earth moving equipment is not included in the exemption and contract work is not typically thought of as farming and ranching. Mr. Furney stated he had paid sales tax on all equipment for which he sought property tax exemption.

BOTA found that the statute consists of two parts and that both must be satisfied in order for an exemption to be granted: The property must be "farm machinery and equipment" or be one of the express exceptions enumerated in the statute and it must be actually and regularly used in a "farming or ranching operation." The Board found the property is not part of a farming and ranching operation. A dissenting opinion stated the belief that the machinery is used in farming operations to maximize the production of the land.

On reconsideration BOTA upheld and clarified its prior order.

The Attorney General Opinion No. 96-11 was rendered prior to the amendment in 1997.

In response to a question from Representative Edmonds to contrast the terms "agricultural endeavor" and "farming and ranching operation", Mr. Folsom said the Supreme Court had addressed that issue and found the term "farming and ranching" is not as broad a term as "agricultural endeavor". The opinion in Furney states that the term "farming and ranching" is more limited than the more comprehensive term "agricultural endeavors".

Representative Larkin said he had requested this informational hearing because he had been contacted by persons in his district who described a situation in which two contractors performing the same function are being treated differently. In most cases they say they don't care whether they are taxed or not taxed but just want to be treated the same. He asked if it was best for the Legislature to wait for the ruling of the Court of Appeals before attempting clarification. Mr. Folsom said since it is not known when the Court's opinion will be out. The Legislature may want to look at and clarify what is to be included and not included. There are three BOTA members now who have found this equipment is not exempted. They had approved other exceptions before when parties were arguing the other side.

At present KSA 79-213 allows the County Appraiser the exemption of certain property on their own without the question coming before the BOTA. Testimony in the cases from Wabaunsee County is that some County Appraisers are removing it if it is owned by the farmer or rancher but not if it is owned by a contractor.

In response to a question from Representative Larkin as to whether the Board of Tax Appeals would have any recommendations to the Legislature, Mr. Folsom said that the Board tries to stay out of policy making decisions but he believes they would like clarification as to what the Legislature intends to be exempt.

In response to a question from Representative Powers about the link between property tax and sales tax Mr. Richard Cram said the Department of Revenue tries to follow the interpretation of definition of farm machinery for property tax purposes and to use that for sales tax exemption as well. If it is not exempt for property tax, it is not exempt for sales tax.

In response to Representative Osborne's request Mr. Folsom said he would be willing to work with the Committee to provide suggestions about how this issue could be clarified to provide some consistency.

The Department of Revenue will provide information about sales tax on farm equipment.

The Chairman announced the next meeting will be January 23, 2002.

The meeting adjourned at 9:47 a.m. The next meeting will be January 23.