

MINUTES OF THE HOUSE COMMITTEE ON TAXATION

The meeting was called to order by Chairman Edmonds at 9:00 a.m. on February 12, 2002 in Room 519-S of the Capitol.

All members were present except: Representative Kirk, excused
Representative T. Powell, 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: Tony Folsom, Kansas Board of Tax Appeals

Others Attending: See attached list.

Tony Folsom, Executive Director/General Counsel of the Kansas Board of Tax Appeals, presented the following testimony concerning the appeals process:

Attachment #1 - Explanation of the Equalization and Payment Under Protest Appeal Processes
Attachment #2 - Outlines of Equalization Appeals
Attachment #3 - History of Small Claims Legislation
Attachment #4 - Costs Associated with Small Claims Division
Attachment #5 - Current Small Claims Hearing Officers' Backgrounds
Attachment #6 - Small Claims Complete Filings by Counties
Attachment #7 - Appeals of Small Claims to BOTA
Attachment #8 - Appeals of Small Claims to BOTA by County Breakout
Attachment #9 - Appeals of Small Claims to BOTA by Taxpayer Breakout
Attachment #10 - Appeals of Small Claims to BOTA by Other Breakout
Attachment #11 - Decisions Rendered with Definitions
Attachment #12 - Caseload Reports

Mr. Folsom testified the Small Claims process was put into effect in January, 1999. There is a difference in process between counties; seventy counties have Hearing Officer Panels, the others do not. Sedgwick is the largest county with a Hearing Officer Panel.

He explained Attachment #2 consisting of flowcharts and outlines of Equalization Appeals both with and without Hearing Officer Panel (pages 1-3); Payment of Ad Valorem Taxes Under Protest (page 4); Request for Exemption from Taxation (page 5); Industrial Revenue Bond Exemption or Economic Development Bond Exemption (page 6); Tax Grievances (page 7); and Appeals from the Decision of the Department of Revenue, Division of Taxation (page 8).

If not satisfied with the decision of the Hearing Officer Panel, the taxpayer can choose to go to Small Claims or to the regular Division. Small Claims does not have jurisdiction over agricultural property. If it is determined Small Claims does not have jurisdiction over a claim, it is transferred to the regular Division. In a typical year of cases regarding equalization 2400-2700 are handled by Small Claims; 1500-1700 by the regular Division; and 350-450 cases of Payment of Ad Valorem Taxes under Protest are handled by Small Claims and about 1,000 by the regular Division.

Page 8 of Attachment #2 provides flow chart for Appeals from the Decision of the Department of Revenue.

Statutory provisions for Small Claims Division are set out on pages 2 and 3 of Attachment #3. Although no qualifications for the Hearing Officer are set forth in the Statute, the Board does require that they must pass Appraiser courses 1 and 2 and a session on property tax law sponsored by Property Valuation or by the Board.

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K.S.A. 1999 Supp. 74-2433 f, Subsection (f) provides that the Small Claims hearing is to be informal and that no transcript of the hearing is to be kept. Subsection (g) provides that decisions rendered in equalization and payment under protest appeals shall include a written explanation of the reasoning upon which the decision is based, that all documents provided by the parties are to be returned and are not a permanent part of the Board's permanent record, and that documents provided to hearing officers are confidential and may not be disclosed except as otherwise provided. If it is an open meeting, it is difficult for them to submit their documents and keep them confidential. When the matter goes to the regular Division they must start over.

Mr. Folsom testified that there are problems getting Hearing Officers to specifically explain in writing what the decision is based upon, making it hard to know how they arrived at the decision. There is no presumption in favor of the county appraiser with respect to the validity and correctness of the county's valuation of the property.

Initially there were some problems with the appointment of Hearing Officers and determination of their compensation (Section c, page 4 of Attachment #3). Pay was \$25 per hour until it was increased to \$35 a year ago. Some individuals contacted have said they would need \$100 an hour to serve as hearing officer.

Section d, page 4, Attachment #3 clarifies that taxpayers may appeal to Small Claims in lieu of appealing to the Hearing Officer Panel, subject to jurisdictional requirements. The statute was amended in 1999 to allow counties to decide whether or not they will have a Hearing Officer Panel (Attachment #3, page 4).

Small Claims does not have the authority to hear and decide appeals involving land devoted to agricultural use, but does have the authority with regard to appeals involving farmsteads, rural residential properties and agricultural buildings; so farmstead and agricultural use land are considered by the regular Division at the same time.

The Board of Tax Appeals organizational chart (page 5 of Attachment #3) lists four individuals for Small Claims. This is seasonal for about five months of the year and three of them are then transferred to the regular Division.

Mr. Folsom called attention to the fact that Attachment #4, Costs Associated with Small Claims Division, does not include costs when a staff attorney serves as a Hearing Officer, thus costs were less in FY 2001 because staff attorneys were utilized more than in FY 2000. It is difficult to accurately allocate what Small Claims actually costs because personnel are shifted back and forth.

Since January 1, 1999 the majority of the Small Claims (41%) are out of Johnson County with 44% from the counties of Butler, Douglas, Leavenworth, Reno, Saline, Sedgwick, Shawnee and Wyandotte.

Attachment #5 lists backgrounds of Hearing Officers. Three current county appraisers serve as Hearing Officers. They are used primarily in western Kansas where there has been difficulty getting Hearing Officers. Current or former Appraisers are not allowed to hear appeals in the county where they have served as an appraiser.

Small Claims Filings by County are shown on Attachment #6. Mr. Folsom noted that if Sedgwick County did not have a Hearing Officer Panel, the number of their Small Claims would probably be the same as Johnson County.

The report of Appeals to BOTA (Attachment #7) indicates 30% of Small Claims cases get appealed and that in calendar year 2000 there were 46. Attachment #8 indicates there were 380 appeals by counties in calendar year 2001. Of those, 250 parcels were appealed to Small Claims because they involved single family residential property, when parties met with the Hearing Officer agreements were made to pass it to Small Claims and is recorded as an appeal by a county, which is misleading. In Shawnee County there were twenty-one parcels relating to Lario Enterprises (Montara) and by agreement between the parties the actual appeal was by the County.

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Appeals shown on Attachment #10 were primarily those which had been filed in the wrong division and were transferred .

Attachment #11 provides a record of decisions by the regular division, including partial grants and agreements between parties. 43% were either denied or dismissed for lack of jurisdiction. 5% were dismissed by the taxpayer. The numbers have stayed about the same when taking out the cases removed for lack of jurisdiction. Taxpayers are being granted some relief about 40% of the time.

Mr. Folsom noted that information was prepared indicating percentages denied and percentages where some relief was granted for current County Appraisers, former appraisers, and all other Hearing Officers without using their names. The same information was provided for cases before the regular division. It is difficult to say what percentage of the time someone should or should not be winning. Unfortunately we can't do anything about it when someone complains that taxes are too high but has no evidence to support re-evaluation.

Most filings in Small Claims are March through June with hearings April through August. This short time frame is one of the problems finding Hearing Officers. A practicing attorney or CPS may not want to be Hearing Officer for only five months, so Hearing Officers are usually retired individuals. Forty percent of the caseload is in Johnson County where for a two-month period there may be three or four hearings simultaneously to get the hearing within the 60-day time period.

Mr. Folsom said the frequent question: "Is Small Claims working?" is difficult to answer. He believes it is a relatively quick and easy process for taxpayers with hearings held locally and that taxpayers are receiving relief. Since these are adversarial procedures, unless an agreement is reached there will always be a "winner" and a "loser". Counties have had twelve to fourteen years to perfect their appraisal studies and while there are still some problems, the county appraisers seem to be doing a fairly good job.

In response to a question, Mr. Folsom said a good Hearing Officer is one who is impartial, listens to evidence, and makes a determination based on that evidence. Some Hearing Officers with high school education do a good job.

In the past the Hearing Officer was paid by the county and Small Claims was changed to provide that the state, not the county, paid the Hearing Officer. He was asked how the system might be changed, and responded that in the perfect world Hearing Officers would be on-staff state employees. This would be difficult because the activity is in only five months of the year.

There are twenty-one Hearing Officers now; there have been as many as thirty-seven. Hearing Officers have sometimes been pulled entirely in response to complaints. More staff attorneys are being utilized recently in part because of some of the complaints.

With reference to the difficulty of getting good people at the low hourly rate, Mr. Folsom was asked whether the Board had looked at raising the fee. He responded that an increase was requested last year from \$25 to \$35 an hour. He said most attorneys, CPAs, and fund appraisers would like \$100 an hour to be a Hearing Officer. Their contract is from January 1 to December 31.

One Hearing Officer is the only person in each hearing and no transcript is kept because it was the intent to have a quick and informal process. This is a problem only when there is a complaint about what is happening and no way to go back and check. Mr. Folsom said even if he had a transcript he would be careful not to dictate the decision because he believes Hearing Officers should be impartial.

A member of the Committee remarked that because nothing is recorded the documentation is not substantial which causes people to go on to the next appeal and asked if writing and documenting the report is part of the training. Mr. Folsom said while there is not a class on how to write a report, he meets with them every year and discusses what should be included in their reasoning and in the report. There have been appeals because the taxpayer did not understand how the Hearing Officer reached their conclusion and want an opportunity to tell it again.

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Information submitted is returned to the party. The Statute indicates at the conclusion of the hearing the evidence is returned. Some Hearing Officers keep the evidence until they reach their decision.

Mr. Folsom responded to a question that 30% of appraisals in Small Claims are appealed which includes cases where the parties reach resolution through stipulations of agreement. He said he would provide information on the number of instances where the Board is overturning Small Claims.

A member of the Committee commented the documentation indicates Johnson County has a high number of appeals and asked if that would be an indication that property valuation there is out of step. Mr. Folsom said Johnson County has more parcels than other counties, and does not have a Hearing Officer Panel and has an active real estate market. Sedgwick County has a Panel so many of the appeals go there and he would expect more appeals for that reason.

A Committee member commented that if there were a recorder of facts present at the hearing it might make writing the report easier since the Hearing Officer cannot write and listen at the same time. Mr. Folsom said that had been considered but the thought was that it was an informal process and the Hearing Officer was to hear the evidence and make the decision. It would increase costs to have a recorder present.

In response to questions about Hearing Officers who recommend appeal to the Board, Mr. Folsom said some of those individuals are no longer Hearing Officers.

In discussion of Counties with Hearing Officer Panels, Mr. Folsom noted that at one time Counties of 10,000 had to have a Panel. That was changed to allow counties to elect to have or not have a Panel. Responding to a question, he said having a Hearing Officer Panel would reduce the number of appeals from Johnson County in Small Claims. That determination is made by the County Commission. He said there would probably not be a need to have both a Hearing Officer Panel and Small Claims. There are costs associated with the Hearing Officer Panel.

Asked the average cost of a Small Claims hearing, Mr. Folsom said the transfer of staff between the two divisions to handle the workload makes it difficult to determine total cost. Hearing Officer salary and expenses cost between \$25 and \$35 per hearing. There is always one staff member for the regular Division and can be up to five. Board members are paid the same amount as judicial court judges, about \$98,000 per year per Board member.

Comment was made that since there is a cost saving if the case is handled at the Hearing Officer Panel level, it would be possible to have a steno there to help the officer take the data. Mr. Folsom said it would also be possible to tape record the hearing, but that idea has been rejected because it might give the impression that the hearing is not confidential. There are no figures available on what the Hearing Officer Panel process costs Sedgwick, Sumner and Butler Counties.

If the Hearing Officer Panels were eliminated Small Claims would increase substantially.

Meeting adjourned at 10:30 a.m. Next meeting scheduled for February 13.