

SURVEY OF KANSAS LAW: TAXATION

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I. INTRODUCTION

This survey period¹ brought changes and amendments to all areas of state tax law. Many of these changes, following a nationwide trend, represented legislative attempts to use tax concessions to spur a sagging state economy.² The National Conference of State Legislatures noted in a 1982 publication that "tax concessions to business have become the most widely used device in state and local government efforts to create jobs and stimulate economic growth."³

The legislature has encouraged business and industrial growth in a variety of ways, including industrial revenue bonds, enterprise zones, and various other tax credits and exemptions. Perhaps the most interesting development in this area has been the legislature's persistent effort to help Kansas agriculture by lowering or eliminating the property tax on farm machinery and equipment.

II. AD VALOREM PROPERTY TAX

The 1982 legislature successfully gave farming and ranching operations relief from the *ad valorem* tax on personal property,⁴ concluding a difficult five-year search for constitutionally valid means of providing encouragement to Kansas agriculture. The quest began in 1978 with the enactment of Kansas Statutes Annotated sections 79-341 and 79-342,⁵ which directed the county appraiser to reduce values that he obtained from the farm machinery appraisal guide by twenty percent. Upon challenge by the Attorney General, the legislation was held to be unconstitutional.⁶

In *State ex rel. Stephan v. Martin (Martin I)*⁷ the Kansas Supreme Court

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¹ This article begins where the last survey of Kansas tax law left off in mid-1980. It covers cases from volume 228 of the Kansas Supreme Court reports through the April 1984 advance sheets and corresponding volumes of the Kansas Court of Appeals cases. The survey also covers legislative developments from the 1981 through the 1984 sessions.

² See, e.g., REPORT ON KANSAS LEGISLATIVE INTERIM STUDIES TO THE 1983 LEGISLATURE 78 (1982).

³ REPORT ON KANSAS LEGISLATIVE INTERIM STUDIES TO THE 1983 LEGISLATURE 78 (1982) (citing *State Legislatures*, Sept. 1982).

⁴ Act of May 13, 1982, ch. 390, §§ 2-3, 1982 Kan. Sess. Laws 1653, 1654 (codified at KAN. STAT. ANN. §§ 79-201i, 79-201j (Supp. 1982)).

⁵ KAN. STAT. ANN. §§ 79-341 and 79-342 were enacted in 1978, amended in 1979, and repealed in 1981. See Act of May 4, 1978, ch. 394, 1978 Kan. Sess. Laws 1549; Act of May 11, 1979, ch. 311, § 1, 1979 Kan. Sess. Laws 1249; Act of May 14, 1981, ch. 373, § 2, 1981 Kan. Sess. Laws 1399, 1401.

⁶ *State ex rel. Stephan v. Martin*, 227 Kan. 456, 608 P.2d 880 (1980) [hereinafter cited as *Martin I*].

⁷ *Martin I*, *id.*, was discussed in the previous Kansas tax survey. See *Survey on Kansas Law*:

held that section 79-342 was in violation of Article 11, Section 1 of the Kansas Constitution, which requires a "uniform and equal rate of assessment and taxation."⁸ Section 79-342 unconstitutionally carved out a subclass of farm machinery by directing a reduction in appraised value⁹ only for farm machinery and equipment used in farming or ranching operations.

The legislature responded to *Martin I*¹⁰ by passing Senate Bill Number 26,¹¹ which was codified as section 79-343 of the Kansas Statutes Annotated. The property tax statutes require appraisal of personal property at fair market value.¹² Section 79-343 represented a different approach from the section struck down in *Martin I*, redefining the fair market value of powered and nonpowered farm machinery and equipment as its cost in its year of manufacture. Section 79-343 then authorized a percentage reduction in value over a period of years, down to a minimum of twenty percent of fair market value. Unlike the section considered in *Martin I*, this version applied to all farm machinery and equipment, whether used in farming operations or not. Further, section 79-343 avoided the arbitrary twenty percent reduction discussed in *Martin I* by linking depreciation to the decline in value of machinery due to age.¹³

Despite these differences between the two bills, the Kansas Supreme Court in *State ex rel. Stephan v. Martin (Martin II)*¹⁴ found that section 79-343 also violated the "uniform and equal rate of assessment and taxation" requirement, stating that the "legislature has attempted by Section 343 to grant tax relief by fixing a different, reduced, and discriminatory basis of assessment for certain property."¹⁵

Martin I and *Martin II* sent a clear message that the legislature could not use reductions in the appraised valuation of farm machinery and equipment to provide tax relief for agriculture. The legislature responded in 1982 with Kansas Statutes Annotated section 79-201j, exempting farm machinery and equip-

Taxation, 29 KAN. L. REV. 571, 578 (1981).

⁸ KAN. CONST. art. XI, § 1, states:

§ 1. System of taxation; classification; exemption. The legislature shall provide for a uniform and equal rate of assessment and taxation, except that the legislature may provide for the classification and the taxation uniformly as to class of motor vehicles, mineral products, money, mortgages, notes and other evidence of debt or may exempt any of such classes of property from property taxation and impose taxes upon another basis in lieu thereof. All property used exclusively for state, county, municipal, literary, educational, scientific, religious, benevolent and charitable purposes, and all household goods and personal effects not used for the production of income, shall be exempted from property taxation.

⁹ *Id.* Concerning the mechanics of the Kansas property tax, see Note, *The Kansas Property Tax: Mischievous, Misunderstood and Mishandled*, 22 WASHBURN L.J. 318 (1983).

¹⁰ 227 Kan. at 456.

¹¹ Act of May 14, 1981, ch. 373, 1981 Kan. Sess. Laws 1399.

¹² KAN. STAT. ANN. § 79-501 (1977).

¹³ *State ex rel. Stephan v. Martin*, 230 Kan. 759, 772-73, 641 P.2d 1020, 1030 (Schroeder, J., dissenting) [hereinafter cited as *Martin II*].

¹⁴ 230 Kan. 759, 641 P.2d 1020 (1982); see also *Martin II*, 230 Kan. 559, 641 P.2d 1011 (1982) (interim opinion).

¹⁵ 230 Kan. at 769, 641 P.2d at 1028.

ment from the property tax altogether.¹⁶ Consistent with the legislature's apparent original intent in 1978, the exemption applies only to machinery and equipment "actually and regularly used exclusively in farming or ranching operations."¹⁷ The legislature balanced the benefit to agriculture, which is inherently rural, with additional legislation exempting business aircraft from the property tax.¹⁸

These new exemptions for farm machinery and equipment and business aircraft join a number of established property tax exemptions.¹⁹ Article 11, Section 1 of the Kansas Constitution specifically exempts certain classes of property from taxation: "All property used exclusively for state, county, municipal, literary, educational, scientific, religious, benevolent and charitable purposes, and all household goods and personal effects not used for the production of income, shall be exempted from property taxation."²⁰ Kansas courts have construed this provision to allow the legislature to create other exemptions, provided "such exemptions have a public purpose and promote the general welfare."²¹ Section 79-201i states the public purpose perceived by the legislature in exempting farm machinery and equipment from *ad valorem* taxation.²² A

¹⁶ Act of May 13, 1982, ch. 390, § 3, 1982 Kan. Sess. Laws 1653, 1654 (codified at KAN. STAT. ANN. § 79-201j (Supp. 1983)).

¹⁷ KAN. STAT. ANN. § 79-201j (Supp. 1983); see also *supra* text accompanying footnotes 7-9.

¹⁸ Act of May 13, 1982, ch. 390, § 4, 1982 Kan. Sess. Laws 1653, 1654-55 (codified at KAN. STAT. ANN. § 79-201k (Supp. 1983)).

¹⁹ See, e.g., KAN. STAT. ANN. § 79-201a (Supp. 1983) (exempting property of federal or state governments, agencies, and their political subdivisions); *id.* § 79-201h (exempting solar energy systems); *id.* § 79-201, as amended by Act of Feb. 16, 1984, ch. 349, § 1, 1984 Kan. Sess. Laws 1692 (exempting buildings used for public worship and buildings used exclusively by school districts).

²⁰ KAN. CONST. art. XI, § 1.

²¹ *Von Ruden v. Miller*, 231 Kan. 1, 14, 642 P.2d 91, 101 (1982); *State ex rel. Tomasic v. Port Auth.*, 230 Kan. 404, 412, 636 P.2d 760, 768 (1981).

²² 79-201i. Purpose for farm machinery and equipment property tax exemption. It is the purpose of K.S.A. 1982 Supp. 79-201j of this act to promote, stimulate and develop the general welfare, economic development and prosperity of the state of Kansas by fostering the growth and development of agricultural endeavors within the state. Agriculture, as conducted in farming and ranching operations throughout the state, is the primary basis of the Kansas economy. Communities, regions, and the state as a whole are materially dependent upon agricultural endeavors and derive substantial financial benefit from the success of Kansas agriculture. Farming and ranching operations require the investment of large sums of capital for the purpose of providing the land on which the operations are conducted, and the farm machinery and equipment necessary to satisfactorily carry out such endeavors. Because of agriculture's unique requirements of substantial capital investment, the property tax burden becomes a deterrent to such investment and, in some instances, an encouragement to farm and ranch abandonment. Kansas, and all its citizens, will benefit from any improvement in the economic environment of Kansas agriculture. The exemption from the *ad valorem* property tax of farm machinery and equipment actually and regularly used in farming and ranching operations will constitute an incentive to agriculture and will improve the general economy of the state. Considering this state's heavy reliance on agriculture, the enhancement of agricultural endeavors is deemed to be a public purpose which will promote the general welfare of the state and be for the benefit of the people of the state.

KAN. STAT. ANN. § 79-201j (Supp. 1983).

similar purpose is stated in 79-201k(a) for the exemption of business aircraft.²³ These exemptions appear constitutionally sound, and the Attorney General has not challenged them.

In 1984 the legislature considered the mechanics of claiming property tax exemptions.²⁴ Prior to 1984, Kansas Statutes Annotated sections 79-210 and 79-213 established a system that required taxpayers in most instances to file a claim of exemption²⁵ and to refile the claim annually.²⁶ The law did not require owners of certain exempt property including household goods, cemetery lots, and certain government property to reassert such exemption after initial approval.²⁷

Amendments made in 1984 to sections 79-210 and 79-213 relaxed the refiling requirement, so that taxpayers now must annually renew their claim of exemption only for "property which is exempt from the payment of property taxes under the laws of the state of Kansas for a specified period of years."²⁸ The annual refiling requirement should now apply only in connection with exemptions such as the ten-year exemption for property financed by industrial revenue bonds.²⁹

The 1984 legislature also amended Kansas Statutes Annotated section 79-213, which requires taxpayers claiming an exemption to file a claim for such exemption. Section 79-213(n), added in 1984, states, "The provisions of this section shall not apply to farm machinery and equipment exempted from ad valorem taxation by K.S.A. 1983 Supp. 79-201j, and amendments thereto."³⁰ This exemption extends the tax break given to farmers by eliminating their need to file a claim for the property tax exemption enacted in 1982.

The saga of legislative efforts to aid agriculture illustrates the difference between the exemption of property from taxation, which section 79-201j did in 1982, and the classification of certain property, which was the effect of sections 79-342 and 79-343 (the 1978 and 1981 legislation pertaining to farm machinery

²³ 79-201k. Property exempt from taxation; purpose; business aircraft. (a) It is the purpose of this section to promote, stimulate and develop the general welfare, economic development and prosperity of the state of Kansas by fostering the growth of commerce within the state; to encourage the location of new business and industry in this state and the expansion, relocation or retention of existing business and industry when so doing will help maintain or increase the level of commerce within the state; and to promote the economic stability of the state by maintaining and providing employment opportunities, thus promoting the general welfare of the citizens of this state, by exempting aircraft used in business and industry, from imposition of the property tax or other ad valorem tax imposed by this state or its taxing subdivisions. Kansas has long been a leader in the manufacture and use of aircraft and the use of aircraft in business and industry is vital to the continued economic growth of the state.

Id. § 79-201k(a).

²⁴ Act of Feb. 16, 1984, ch. 349, §§ 2-3, 1984 Kan. Sess. Laws 1692, 1693-95.

²⁵ KAN. STAT. ANN. §§ 79-210, -213 (Supp. 1983).

²⁶ KAN. STAT. ANN. §§ 79-210, -213(1) (Supp. 1983); see also Landeck, *Kansas Ad Valorem Property Tax Relief—A Current Review*, 49 J.B.A.K. 269, 273 (1980).

²⁷ KAN. STAT. ANN. § 79-210 (Supp. 1983).

²⁸ Act of Feb. 16, 1984, ch. 349, § 2, 1984 Kan. Sess. Laws 1692, 1693.

²⁹ KAN. STAT. ANN. § 79-201a *Second* (Supp. 1983).

³⁰ Act of Feb. 16, 1984, ch. 349, § 3, 1984 Kan. Sess. Laws 1692, 1695.

valuation).³¹ This distinction came up again in *Kansas ex rel. Stephan v. Martin (Martin III)*³² in the context of *ad valorem* taxation of oil and gas wells. Like *Martin I* and *Martin II*, *Martin III* involved the “uniform and equal” requirement of Article 11, Section 1 of the Kansas Constitution.

In 1979 the Kansas legislature amended Kansas Statutes Annotated section 79-331 in an effort to take into account the excessive (“flush”) production associated with new wells, which will normally taper off after the first few months.³³ The law formerly would appraise a well completed late in the year at an inflated value, since it would still be experiencing “flush production.” Section 79-331(b) allows a forty percent adjustment in appraised valuation for wells appraised in the first six months of production to take account for the drop in production following the “flush production” period.³⁴ Upon challenge by the Attorney General, the court in *Martin III* contrasted the legislature’s first two attempts to reduce the appraised value of farm machinery and found that 79-331(b) simply provided criteria for determining the fair market value of certain wells, which the statute required, so that it did not violate the “uniform and equal” clause.³⁵

It is interesting to note that Justice Schroeder, dissenting in *Martin II*, made the same argument on behalf of the 1981 farm machinery legislation.³⁶ Indeed, in that instance the legislature was careful to phrase the statute (section 79-343) in terms of fair market value, as was done in section 79-331. The forty percent reduction applied by section 79-331 to new wells appears no more or less arbitrary than the schedule of reductions struck down in *Martin II*.³⁷

Other cases during the survey period decided procedural questions relating to collection of the personal property tax. Kansas Statutes Annotated section 79-306 requires taxpayers to file lists of tangible personal property with the appropriate county assessor.³⁸ Section 79-1422 imposes penalties for the late filing of such lists.³⁹ But as the court noted in *National Cooperative Refinery Association v. Board of County Commissioners*,⁴⁰ the language of the statute existing in 1978 and 1979 did not contain a penalty for lists filed more than forty-five days late. Thus, although there were clear penalties for filing up to fifteen days late, fifteen to thirty days late, and thirty to forty-five days late, National Cooperative Refinery Association (NCRA) owed no penalty for filing approximately one hundred days late. The legislature corrected this oversight in 1981.⁴¹ The result was a windfall for NCRA, and a reminder to both lawyer

³¹ See Note, *supra* note 9, at 335-38.

³² 230 Kan. 747, 641 P.2d 1011 (1982).

³³ Act of Apr. 13, 1979, ch. 310, § 1, 1979 Kan. Sess. Laws 1248, 1248-49 (codified at KAN. STAT. ANN. § 79-331 (Supp. 1983)).

³⁴ 230 Kan. at 749, 641 P.2d at 1014.

³⁵ *Id.* at 758, 641 P.2d at 1020.

³⁶ *Martin II*, 230 Kan. at 769-79, 641 P.2d at 1028-34 (Schroeder, J., dissenting).

³⁷ See 230 Kan. at 750, 641 P.2d at 1014 (stipulation no. 15).

³⁸ KAN. STAT. ANN. § 79-306 (1977).

³⁹ KAN. STAT. ANN. § 79-1422 (Supp. 1983).

⁴⁰ 228 Kan. 595, 598, 618 P.2d 1176, 1179 (1980).

⁴¹ Act of Apr. 2, 1981, ch. 378, § 1, 1981 Kan. Sess. Laws 1413 (codified at KAN. STAT. ANN. § 79-1422(a)(4)-(5) (Supp. 1983)).

and legislator of the need for careful attention to what may seem to be obvious details. While the graduated penalties of the original section 79-1422 might sufficiently indicate the legislature's intent to impose some penalty on NCRA, the amount of the penalty remained undetermined.

The facts in *Robbins-Leavenworth Floor Covering, Inc. v. Leavenworth National Bank and Trust Co.*⁴² concerned the 1978 personal property tax liability for three motor vehicles. The owner of the vehicles had pledged them as security for a loan from Leavenworth National Bank. The owner defaulted on the loan, and the bank repossessed the vehicles in August 1978 and sold them to Robbins-Leavenworth Floor Covering (RLF) in September of that year. The Leavenworth County Treasurer sought to collect the tax either from RLF, by operation of sections 79-2109 or 79-2110, or by asserting a lien upon the bank's sale proceeds, under Kansas Statutes Annotated section 79-2111. The court found none of the statutes applicable.

The bank was not liable for the tax because it had obtained the vehicles upon voluntary surrender of the defaulting owner/debtor. Section 79-2111 applies to property which the secured party seizes by legal process. The court held that repossession by voluntary surrender was not a "legal process."⁴³ RLF was not liable because the court found that neither section 79-2109 nor section 79-2110 created a lien on the vehicles themselves. Section 79-2110 applies only to bulk sales, which was not the case here, and 79-2109 did not establish a tax lien "because under the statute, the sale must be made by one who is the owner of the property at the time of the assessment."⁴⁴ The debtor was the owner in this case, and the bank was the seller. The holding illustrates the slippery nature of personal property, which as the court noted, causes difficulties in collecting taxes assessed against such property.⁴⁵

Although the court may have been literally correct in its reading of the statutes, the result is that the taxes due will not be paid. The transactions involved were uncomplicated, common occurrences. Logic dictates that if the taxes in question are going to be collected, the money will come from the sale proceeds. And, indeed it would have if the debtor had not voluntarily surrendered the vehicles, but forced the bank to repossess through legal processes. As voluntary surrender is a substitute for repossession, section 79-2111 should apply to allow collection of taxes out of the sale proceeds.

Reappraisal and reclassification is probably the most volatile property tax issue.⁴⁶ The survey period shows some activity in this area, but no results. In 1978 the legislature enacted Kansas Statutes Annotated section 79-1451, which prohibited any county from applying reappraised values prior to the completion of reappraisal in all 105 counties.⁴⁷ In 1979 and 1980 the standing tax

⁴² 229 Kan. 511, 625 P.2d 494 (1981).

⁴³ *Id.* at 515-16, 625 P.2d at 498.

⁴⁴ *Id.* at 514, 625 P.2d at 497.

⁴⁵ *Id.* at 513, 625 P.2d at 496.

⁴⁶ See Note, *supra* note 9 at 329-39.

⁴⁷ The statute reads as follows:

79-1451. Utilization of valuations established in countywide reappraisals by counties, when. Inasmuch as the complex structure of the ad valorem taxation system is a subject matter to which the legislature should devote comprehensive study prior to en-

committees introduced and considered plans and resolutions for developing reappraised values and proposing classification, but rejected all of them.⁴⁸ During the 1981 interim the Assessment and Taxation Committee recommended bills providing for a statewide reappraisal of property⁴⁹ and an amendment to the Kansas Constitution providing for classification of the property tax system.⁵⁰ All of these proposals failed in the 1982 legislature. The 1983 and 1984 sessions saw more unsuccessful property tax reform bills, including mandatory reappraisal of property and the use of trending factors in valuation of personal property.⁵¹ Although the issue has stayed alive, the legislature has not been able to arrive at a solution.

III. RETAIL SALES TAX

Legislative response to supreme court rulings highlighted developments concerning the retail sales tax during the survey period. Kansas imposed a state sales tax (Kansas Retailer's Sales Tax Act),⁵² and cities and counties have the option of imposing an additional local sales tax.⁵³ The statewide tax and any local taxes are imposed on certain sales of services.⁵⁴ In *Capital Electric Line Builders, Inc. v. Lennen*,⁵⁵ the court considered whether the local sales tax on services applied at the place where services were performed or at the location

acting any change in the law relating thereto, and inasmuch as the legislature has only recently enacted changes in state law to upgrade the local appraisal process and sufficient time has not transpired to monitor the results of such change, and inasmuch as isolated cases of counties conducting countywide reappraisals without a coordinated approach by all counties may tend to frustrate rather than effectuate the intent of section 1 of article 11 of the state constitution requiring a uniform and equal rate of assessment and taxation of property, and inasmuch as it is the desire of the legislature to make a comprehensive study of the entire structure of the ad valorem taxation system and a countywide reappraisal of all the tangible property within any county in the near future prior to such study would be of questionable merit, no county shall apply valuations established for property by countywide reappraisals of real property within the county carried out by any private reappraisal firm or officers or employees of the county as a basis for the levy of taxes thereon prior to the certification by the director of property valuation that the countywide reappraisal of property in all counties of the state have [sic] been completed and are [sic] ready for utilization as a basis for the levy of such taxes. Nothing in this act shall be construed to conflict with any other provision of law relating to the appraisal of tangible property for taxation purposes of the county and state boards of equalization.

KAN. STAT. ANN. § 79-1451 (Supp. 1983).

⁴⁸ REPORT ON KANSAS LEGISLATIVE INTERIM STUDIES TO THE 1982 LEGISLATURE 35 (1981).

⁴⁹ *Id.*

⁵⁰ *Id.* at 52-53.

⁵¹ Senate Bill 275 and House Bill 2115, introduced in the 1982 session and proposing reappraisal, were held over into the 1984 session and subsequently defeated.

The 1983 Interim Committee on Assessment and Taxation considered the use of trending factors in valuation of personal property. REPORT ON KANSAS LEGISLATIVE INTERIM STUDIES TO THE 1984 LEGISLATURE 924 (1983). Legislation proposed on this topic did not survive the session. See S. 467, 1984 Sess.; H.R. 2644, 1984 Sess.

⁵² KAN. STAT. ANN. §§ 79-3601 to -3641 (Supp. 1983).

⁵³ KAN. STAT. ANN. §§ 12-187 to -195 (Supp. 1983).

⁵⁴ KAN. STAT. ANN. §§ 79-3603(p)-(r) (Supp. 1983).

⁵⁵ 232 Kan. 379, 654 P.2d 464 (1982), *modified*, 232 Kan. 652, 658 P.2d 365 (1983).

of the main office of the service provider. A statute deeming that sales occur at the retailer's place of business⁵⁶ had been augmented by an administrative regulation defining "place of business."⁵⁷ The administrative definition of "place of business" required a business whose headquarters were located in a jurisdiction with a local sales tax to pay tax on all services, regardless of where the business furnished the services. The opposite was true for businesses located in a jurisdiction that had not imposed a local sales tax. Businesses without clear headquarters and out-of-state businesses were subject to sales tax only on services they performed in a jurisdiction having a local tax.⁵⁸

The taxpayers in *Capital Electric* claimed that Kansas Administrative Regulation 92-21-18 both denied equal protection to retailers of services and allowed local government units to tax beyond their boundaries, and thus beyond their taxing authority. The trial court upheld the regulation, but the supreme court reversed, noting that the statutes levy the sales tax on the consumer, not on the retailer.⁵⁹ The court upheld Kansas Statutes Annotated section 12-191, which deems that retail sales occur at the retailer's place of business, by defining "place of business" as the "place where the services are performed."⁶⁰ This allowed each local taxing authority to tax only services performed within its jurisdiction, thus treating all providers of services alike. The court declared Kansas Administrative Regulation 92-21-18 void.⁶¹

In 1983 the legislature responded to the *Capital Electric* decision by making three changes in the Local Retailer's Sales Tax Act. First, it gave local taxing authorities specific authority to collect taxes outside their territorial boundaries.⁶² Second, the legislature amended Kansas Statutes Annotated section 12-191 to reflect *Capital Electric's* holding that sales of services are taxed where the services are performed, but to limit this rule to sales for a sum greater than \$10,000.⁶³ Third, a new statute attempted to resurrect the scheme in Kansas Administrative Regulation 92-21-18 for those sales of services taking place at the retailer's main office. For out-of-state retailers and retailers with undeterminable main offices, the sales are deemed to take place (and are thus taxable) where the services are performed.⁶⁴ The result is that in-state retailers, on sales over \$10,000, and out-of-state retailers operate on an equal footing. Under the *Capital Electric* rule the sales tax applies, if at all, at the place where services are performed. For smaller sales, a retailer's tax is based on the location of his

⁵⁶ KAN. STAT. ANN. § 12-191 (1977). After *Lennen*, this section was amended. Act of May 6, 1983, ch. 57, § 2, 1983 Kan. Sess. Laws 449, 451-52; Act of Apr. 11, 1983, ch. 59, 1983 Kan. Sess. Laws 455. The current version is codified at KAN. STAT. ANN. § 12-191 (Supp. 1983).

⁵⁷ KAN. ADMIN. REGS. § 92-21-18 (1978).

⁵⁸ 232 Kan. at 381-82, 654 P.2d at 467 (citing KAN. ADMIN. REGS. § 92-21-18 (1978)).

⁵⁹ 232 Kan. at 382, 654 P.2d at 468 (citing KAN. STAT. ANN. § 79-3604 (1977)).

⁶⁰ 232 Kan. at 386, 654 P.2d at 470.

⁶¹ *Id.*

⁶² Act of Apr. 22, 1983, ch. 58, § 1, 1983 Kan. Sess. Laws 453, 453 (codified at KAN. STAT. ANN. § 12-187a (Supp. 1983)). The issue of local government powers also prompted the modification of the original opinion of the court. 232 Kan. at 652, 658 P.2d at 365 (1983).

⁶³ Act of May 6, 1983, ch. 57, § 2, 1983 Kan. Sess. Laws 449, 451-52 (codified at KAN. STAT. ANN. § 12-191 (Supp. 1983)).

⁶⁴ Act of Apr. 22, 1983, ch. 58, § 2, 1983 Kan. Sess. Laws 453, 453 (codified at KAN. STAT. ANN. § 12-191a (Supp. 1983)).

business headquarters. The legislature has established two different classes of retailers, to whom different rules apply.

These changes represented a legislative attempt to override the decision in *Capital Electric* at the request of small businesses. The *Capital Electric* rule caused great administrative burdens for small retailers doing business in a number of different taxing jurisdictions by substantially increasing paperwork and reporting requirements. Legislation was introduced to restore the simplicity of reporting all sales at the place of business.⁶⁵ This attempt met with opposition from the various contractors' associations.⁶⁶ A contractor located in a jurisdiction with a local sales tax would be at a disadvantage in competing for a job with a contractor located in a jurisdiction without a local sales tax. The contractors favored the *Capital Electric* rule taxing services at the place of performance. The resulting legislation was an attempt to address both concerns. The contractors' associations suggested a \$10,000 cut-off point although the Department of Revenue favored a \$25,000 cut-off.⁶⁷

The compromise and the resulting distinction between large and small retailers may bring this issue back to the courts.⁶⁸ The supreme court's interpretation of the statute in *Capital Electric* rendered the equal protection claims of the taxpayers irrelevant. Sections 12-191 and 12-191a now distinguish between retailers on the basis of the size of a particular sale. The \$10,000 cut-off point, in its treatment of the two groups of retailers, may violate the equal protection clause unless a court finds rational basis for the disparate treatment.⁶⁹

The decision in *Personal Thrift Plan, Inc. v. State*,⁷⁰ like that in *Capital Electric*, resulted in immediate legislative action to overrule the court.⁷¹ *Personal Thrift Plan* presented a question concerning collection of the retail sales tax on sales of repossessed automobiles. Personal Thrift Plan, Inc. (PTP), a finance company, disposed of some of its repossessed automobiles by reselling them to consumers. The applicability of the retail sales tax to these sales was not at issue. The Division of Taxation took the position that these sales were retail in nature and that PTP, as a retailer, was responsible for collecting the retail sales tax.⁷² PTP argued that these sales were isolated or occasional and not an integral part of its business as a finance company. While most isolated sales are exempt from the retail sales tax, the purchaser must remit the retail

⁶⁵ Minutes of the House Committee on Assessment and Taxation (Feb. 3, 1983; Mar. 25, 1983) (discussing House Bill 2154).

⁶⁶ Minutes of the House Committee on Assessment and Taxation (Feb. 3, 1983; Feb. 11, 1983; Mar. 28, 1983).

⁶⁷ Minutes of the House Committee on Assessment and Taxation (Feb. 11, 1983); Memorandum from Alan Alderson, General Counsel for Department of Revenue, to House Committee on Assessment and Taxation (Feb. 11, 1983) [hereinafter cited as Memorandum].

⁶⁸ Memorandum, *supra* note 67; Minutes of the House Committee on Assessment and Taxation (Mar. 31, 1983).

⁶⁹ See *Baker v. List and Clark Construction Co.*, 222 Kan. 127, 563 P.2d 431 (1977); *Henry v. Bauder*, 213 Kan. 751, 518 P.2d 362 (1974).

⁷⁰ 229 Kan. 622, 629 P.2d 184 (1981).

⁷¹ Act of Apr. 21, 1982, ch. 418, 1982 Kan. Sess. Laws 1730 (codified at KAN. STAT. ANN. § 79-3602(j) (Supp. 1983)).

⁷² KAN. STAT. ANN. § 79-3604 (1977) requires retailers (as defined in KAN. STAT. ANN. § 79-3602(d) (Supp. 1983)) to collect the retail sales tax.

sales tax directly to the Division of Taxation on isolated sales of automobiles.⁷³ The issue was not imposition of the tax, but simply collection.⁷⁴

Statutorily the case turned on the definition of "retailer" in Kansas Statutes Annotated section 79-3602(d).⁷⁵ The supreme court examined PTP's business and found that the repossession and subsequent resale of personal property were indeed part of its business operations. The court held that a finance company selling repossessed items of tangible personal property to consumers was thus a retailer within the meaning of the Retailer's Sales Act, obligating it to collect the tax.⁷⁶

The Kansas legislature responded in 1982 by amending the statutory exemption for "isolated or occasional sale" to specifically include "any sale by a bank, savings and loan institution, credit union or any finance company licensed under the provisions of the Kansas uniform consumer credit code of tangible personal property which has been repossessed by any such entity."⁷⁷

With this change, PTP would no longer be responsible for collecting sales tax on sales of repossessed automobiles to consumers. The purchasers of these automobiles would still have to remit the sales tax directly.⁷⁸

The statutory exclusions from the retail sales tax were the subject of consid-

⁷³ KAN. STAT. ANN. § 79-3606(1) (Supp. 1983) provides that the retail sales tax does not apply to most isolated or occasional sales. But, KAN. STAT. ANN. § 79-3606(1) refers to KAN. STAT. ANN. § 79-3603(o) which requires the purchaser to remit the tax on an isolated sale of an automobile.

⁷⁴ The import of the special provisions relative to motor vehicles (K.S.A. 1980 Supp. 79-3606(1) and 79-3603(o)) is that no retail sale of motor vehicles is exempt from sales tax—the purchaser pays the tax to the retailer if purchased from a retailer, or the purchaser pays it directly to the taxing authorities if the transaction was an "occasional or isolated" sale.

229 Kan. at 625, 629 P.2d at 187.

⁷⁵ KAN. STAT. ANN. § 79-3602(d) (Supp. 1983). The 1982 legislative action did not change the definition of retailer: "Retailer" means a person regularly engaged in the business of selling tangible personal property at retail or furnishing electrical energy, gas, water, services or entertainment, and selling only to the user or consumer and not for resale." *Id.*

⁷⁶ 229 Kan. at 625, 629 P.2d at 187.

⁷⁷ Act of Apr. 21, 1982, ch. 418, § 1, 1982 Kan. Sess. Laws 1730, 1731 (codified at KAN. STAT. ANN. § 79-3602(j) (Supp. 1983)).

⁷⁸ KAN. STAT. ANN. §§ 79-3606(l), -3603(o) (Supp. 1983); see also KAN. ADMIN. REGS. § 92-19-10 (1978):

92-19-10. Repossessed property. When tangible personal property, which has been repossessed either by the original retailer or by a finance company, is resold to final users or consumers, the gross receipts from such sales are taxable.

When retailers sell tangible personal property on credit, and it becomes necessary for the retailers to repossess the tangible personal property so sold, the method of recording the transaction for tax purposes, shall depend upon the manner in which the original transaction was recorded and reported. If the retailer's records are kept on the accrual basis so that he has formerly included in his gross receipts the total selling price of the tangible personal property, he will be permitted to report the unpaid balance as a deduction from his gross receipts on his next monthly tax return.

If the retailer has included in his gross receipts only the amount of cash actually received from time sales of this nature, no credit for the return of the repossessed property to the retailer's stock will be allowed. (Authorized by K.S.A. 79-3607, 79-3618, K.S.A. 1971 Supp. 79-3602, 79-3603; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972.)

Id.

eration in *Sterling Drilling Co. v. Kansas Department of Revenue*.⁷⁹ Specifically at issue was the exclusion in Kansas Statutes Annotated section 79-3603(p) for services in connection with the original construction of a building or facility.⁸⁰ The statute defined "facility" as "a mill, plant, refinery, oil or gas well . . . including the land improvements immediately surrounding such facility."⁸¹

Taxpayer Sterling Drilling was in the business of drilling wells, using some for natural gas storage and some for salt water disposal. Sterling contended that its services in drilling such wells fell within the exclusion in section 79-3603(p), removing Sterling's responsibility to collect sales tax in connection with these services. In the words of the court,

The State's contention, simply put, is that, as used in this statute, a gas well is only a gas well and a water well is only a water well if the driller intends to take gas or water, respectively, *from* such wells. Wells *into* which the driller plans to pump gas or water, argues the State, are not gas and water wells at all.⁸²

The court felt that nothing in the sparse legislative history indicated an intent to limit the scope of the exclusion in this manner, and further found a clear legislative intent in enacting section 79-3603(p) to promote real estate and mineral development generally. Noting also that a test that required examination of the intent of the driller would be unworkable, the court held that *all* gas and water wells were within the scope of section 79-3603(p).⁸³

IV. INDUSTRIAL REVENUE BONDS AND PORT AUTHORITIES

The income tax relief afforded to taxpayers in connection with industrial revenue bonds is a traditional means of encouraging industrial development.⁸⁴ Industrial revenue bonds are bonds that a city issues for the purpose of purchasing land and constructing and equipping buildings for lease or sale to private businesses. The net effect is that the municipality is lending its borrowing power to private enterprise in exchange for economic growth and jobs for its citizens.

The Economic Development Revenue Bonds Act authorizes Kansas cities to issue these bonds.⁸⁵ In 1981 the legislature extended this Act to allow counties to issue industrial revenue bonds in the same manner as cities.⁸⁶ The purpose was to foster cooperation between cities and counties by placing counties on a more even footing.⁸⁷

⁷⁹ 9 Kan. App. 2d 108, 673 P.2d 456 (1983).

⁸⁰ KAN. STAT. ANN. § 79-3603(p) (Supp. 1983).

⁸¹ KAN. STAT. ANN. § 79-3603(p)(3) (Supp. 1983).

⁸² 9 Kan. App. 2d at 109, 673 P.2d at 458.

⁸³ *Id.* at 111, 673 P.2d at 459.

⁸⁴ See Bell and Hinkle, *A Guide to Industrial Revenue Bond Financing*, 9 WASHBURN L.J. 372 (1970).

⁸⁵ KAN. STAT. ANN. §§ 12-1740 to -1749 (1982) (originally enacted in 1961).

⁸⁶ Act of Apr. 15, 1981, ch. 74, § 5, 1981 Kan. Sess. Laws 364, 366 (codified at KAN. STAT. ANN. § 12-1741(b) (1982)).

⁸⁷ REPORT ON KANSAS LEGISLATIVE INTERIM STUDIES TO THE 1981 LEGISLATURE 23 (1980).

The 1981 legislature enacted two other amendments to the Act that extend the benefits of the bonds to include property tax relief and sales tax relief. Amendments to the Retailer's Sales Tax Act exempted sales of tangible personal property or services by a contractor for the construction or repair of buildings or other projects that are financed completely by industrial revenue bonds.⁸⁸ An accompanying section provided for a sales tax refund in cases in which only a portion of a project is financed by industrial revenue bonds.⁸⁹ Corresponding amendments to the property tax statute provide a ten-year exemption from property tax for property purchased or constructed with industrial revenue bond proceeds.⁹⁰

Similar to the benefits from the use of industrial revenue bonds are the tax benefits associated with the Port Authorities Act.⁹¹ Like the Economic Development Revenue Bonds Act, the legislature passed the Port Authorities Act to foster the growth of both interstate and intrastate commerce and to encourage and assist in the location of new business and industry within the state.⁹² In 1981 the legislature amended the Act to allow ports to establish industrial-use facilities in an area non-contiguous to the port.⁹³ In *Tomasic v. Kansas City, Kansas Port Authority*,⁹⁴ the Kansas Supreme Court considered a number of constitutional challenges to the Port Authorities Act (both to the pre- and post-1981 versions). Kansas City planned to acquire land and facilities with the proceeds of industrial revenue bonds and then lease the facilities to General Motors. The court upheld both the specific project and the statute.⁹⁵

V. INCOME TAX AND ENTERPRISE ZONES

The survey period saw a number of legislative changes in the Kansas income tax that, for the most part, continue the theme of encouraging economic growth through incentives to business and industry. The major development in this area was the 1982 passage of the Enterprise Zone Act, which is designed to promote growth in economically distressed areas.⁹⁶ Tax incentives for invest-

⁸⁸ Act of Apr. 15, 1981, ch. 391, § 1, 1981 Kan. Sess. Laws 1448, 1449-50 (codified at KAN. STAT. ANN. § 79-3606(d) (Supp. 1983)).

⁸⁹ Act of Apr. 15, 1981, ch. 391, § 2, 1981 Kan. Sess. Laws 1448, 1454 (repealed 1982).

⁹⁰ Act of Apr. 9, 1981, ch. 370, 1981 Kan. Sess. Laws 1394 (codified at KAN. STAT. ANN. § 79-201a (Supp. 1983)).

⁹¹ KAN. STAT. ANN. §§ 12-3401 to -3433 (1982).

⁹² KAN. STAT. ANN. § 12-3402 (1982).

⁹³ Act of Apr. 15, 1981, ch. 76, 1981 Kan. Sess. Laws 376 (codified at KAN. STAT. ANN. §§ 12-3401(f), 12-3406(e)-(f) (1982)).

⁹⁴ 230 Kan. 404, 636 P.2d 760 (1981).

⁹⁵ *Id.* at 438, 636 P.2d at 785. The timing of the 1981 amendments to the Port Authorities Act makes this case, which arose on a petition for writ of quo warranto, procedurally complex. Prior to the 1981 amendments, the Act did not authorize the kind of industrial-use facility contiguous to a port which was involved in the General Motors project. Thus, the supreme court initially granted the writ of quo warranto. 229 Kan. at 538, 626 P.2d at 209 (1981). The 1981 amendments addressed this problem and the writ was subsequently denied. 230 Kan. at 19, 630 P.2d at 692 (1981). In its full opinion, 230 Kan. at 404, 636 P.2d at 760, the court explained the effect of the amendments and rejected a number of constitutional challenges to both the original and amended versions of the Port Authorities Act.

⁹⁶ KAN. STAT. ANN. §§ 12-17,107 to -17,112 (1982 & Supp. 1983). Amendments to the Act in 1983

ment in designated enterprise zones include both income and sales tax relief.

In 1976 the Kansas legislature passed the Redevelopment of Central Business District Areas Act that authorized cities to issue special obligation bonds⁹⁷ to finance improvements in downtown areas.⁹⁸ The 1982 Enterprise Zone Act provides potential benefits to both central business districts and enterprise zones, which need not be located in a downtown area.⁹⁹ The 1984 legislature went even further in encouraging improvements in central business districts and enterprise zones by expanding cities' authority to finance improvements in these areas. Cities may now issue both special obligation bonds and full faith and credit tax increment bonds to finance approved projects.¹⁰⁰ Both types of bonds are exempt from all state taxes except inheritance taxes.¹⁰¹

Businesses located within enterprise zones can claim income tax credits for new business employees and for new business facilities.¹⁰² In addition, a sales tax refund is allowed for sales tax paid in connection with the establishment of a new business facility in an enterprise zone.¹⁰³

Other income tax changes included an increase in the exemption for military retirement benefits to serve as an incentive for retired military personnel to locate or remain in the state,¹⁰⁴ and an increase in the accelerated depreciation allowance for tertiary oil recovery projects to support efforts to increase domestic oil production.¹⁰⁵ The 1984 legislature made changes in the taxation of corporate liquidations which conform the state's taxation of gain on certain liquidations to the Internal Revenue Code.¹⁰⁶ The 1984 legislature also passed amendments to the Public Employees Retirement Systems Act, which will benefit employees subject to the system. The 1984 changes provide for the employer to "pick-up" contributions formerly made by the employee.¹⁰⁷ This

limited the size of an enterprise zone to an area not to exceed 25% of the population of the city nor 25% of the land area of the city. Act of Apr. 22, 1983, ch. 67, § 2, 1983 Kan. Sess. Laws 472, 473 (codified at KAN. STAT. ANN. § 12-17,110 (Supp. 1983)).

⁹⁷ Act of Apr. 13, 1976, ch. 69, 1976 Kan. Sess. Laws 290 (codified as amended at KAN. STAT. ANN. §§ 12-1770 to -1780 (1982)).

⁹⁸ Act of Apr. 13, 1976, ch. 69, § 2(b), 1976 Kan. Sess. Laws 290, 291.

⁹⁹ KAN. STAT. ANN. §§ 12-17,108 to -17,110 (1982 & Supp. 1983).

¹⁰⁰ Act of May 11, 1984, ch. 74, 1984 Kan. Sess. Laws 461.

¹⁰¹ KAN. STAT. ANN. § 12-1774 (1982); *id.* § 79-1407 (1977).

¹⁰² The legislature accomplished this result by amending the existing credits available under the Job Expansion and Investment Credit Act of 1976, KAN. STAT. ANN. §§ 79-32,153 to -32,160 (1977 & Supp. 1983). Specifically, KAN. STAT. ANN. § 79-32,153 provides for a maximum income tax credit of \$350 for each new business employee residing within the state, and a \$500 credit for each employee whose employment qualifies for a targeted jobs tax credit under I.R.C. § 44B (1982). A credit of \$350 per \$100,000 of investment in new business facilities is also provided.

¹⁰³ Act of Apr. 22, 1983, ch. 67, § 5, 1983 Kan. Sess. Laws 472, 476 (codified at KAN. STAT. ANN. § 79-3641 (Supp. 1983)); *see also* Act of May 11, 1984, ch. 362, § 2, 1984 Kan. Sess. Laws 1748, 1755.

¹⁰⁴ REPORT ON KANSAS LEGISLATIVE INTERIM STUDIES TO THE 1981 LEGISLATURE 64 (1980); Act of Apr. 21, 1982, ch. 409, § 2, 1982 Kan. Sess. Laws 1700, 1702 (codified at KAN. STAT. ANN. § 79-32,111b (Supp. 1983)).

¹⁰⁵ REPORT ON KANSAS LEGISLATIVE INTERIM STUDIES TO THE 1981 LEGISLATURE 65-66 (1980); Act of Apr. 13, 1981, ch. 387, § 1, 1981 Kan. Sess. Laws 1437 (codified at KAN. STAT. ANN. § 79-32,161 (Supp. 1983)).

¹⁰⁶ REPORT ON KANSAS LEGISLATIVE INTERIM STUDIES TO THE 1984 LEGISLATURE 11-12 (1983); Act of Apr. 20, 1984, ch. 351, §§ 19, 21, 1984 Kan. Sess. Laws 1698, 1717-20.

¹⁰⁷ Act of Apr. 23, 1984, ch. 289, §§ 1, 2, 8, 15, 1984 Kan. Sess. Laws 1392 (amending KAN. STAT.

change will allow the employee to defer income tax on the contributions until the employee actually begins to receive retirement distributions.¹⁰⁸

In addition to efforts to promote business and economic growth, the legislature extended two other policy-oriented income tax credits. The Solar Energy Systems Credit¹⁰⁹ provides an incentive for the installation or acquisition of solar energy systems.¹¹⁰ The legislature extended the sunset clause for this credit to January 1, 1986.¹¹¹ The definition of "active solar system" was also amended to require a certification by an independent national organization in accordance with criteria developed by the U.S. Bureau of Standards.¹¹² Changes also occurred in the tax credits available for making property accessible to handicapped persons.¹¹³

VI. INTANGIBLES TAX

Echoing the pattern established in other areas, legislative action with regard to the intangibles tax during the survey period directly resulted from two decisions of the Kansas Supreme Court. In the 1982 case of *Von Ruden v. Miller*,¹¹⁴ the Kansas Supreme Court declared the local option feature of the intangibles tax unconstitutional. A statewide tax on intangibles in Kansas had existed in some form since 1931.¹¹⁵ In 1976, the legislature had enacted a special local option provision that allowed cities, counties, and townships to reduce or eliminate their respective shares of the tax.¹¹⁶ A 1979 amendment allowed voters to petition for an election to reduce or eliminate the intangibles tax.¹¹⁷

In *Von Ruden v. Miller*, the court considered a host of constitutional challenges to the tax, including claims that the tax itself and various exemptions thereto violated Article 11, Section 1 of the Kansas Constitution.¹¹⁸ The court

ANN. § 12-5005 (1982); *id.* §§ 20-2603, 74-4919, and 74-4965 (Supp. 1983)). This "pick-up" of employee contributions is authorized by I.R.C. § 414(h)(2)(1982).

¹⁰⁸ Employer contributions to a qualified plan are not included in the employee's gross income at the time the contributions are made; thus, no income tax is paid at that time. See Damico, *Qualified Plans—Taxation of Distributions*, 370 TAX MGMT. PORTFOLIOS (BNA 1983).

¹⁰⁹ KAN. STAT. ANN. §§ 79-32,166 to -32,174c (Supp. 1983).

¹¹⁰ See *Survey of Kansas Law: Taxation*, 29 KAN. L. REV. 571, 571-73 (1981).

¹¹¹ Act of Apr. 15, 1983, ch. 316, 1983 Kan. Sess. Laws 1467 (codified at KAN. STAT. ANN. §§ 79-1118, 79-32,166 to -32,168 (Supp. 1983)).

¹¹² Act of Apr. 15, 1983, ch. 316, § 5, 1983 Kan. Sess. Laws 1467, 1470-71, (codified at KAN. STAT. ANN. § 79-32,169(b) (Supp. 1983)).

¹¹³ Act of May 11, 1981, ch. 388, 1981 Kan. Sess. Laws 1439 (codified at KAN. STAT. ANN. §§ 79-32,175 to -32,177 (Supp. 1983)).

¹¹⁴ 231 Kan. 1, 642 P.2d 91 (1982).

¹¹⁵ *Id.* at 6, 642 P.2d at 96.

¹¹⁶ See KAN. STAT. ANN. § 79-3109 (1977).

¹¹⁷ Act of Apr. 21, 1979, ch. 318, § 1, 1979 Kan. Sess. Laws 1284, 1284-88. Local governing bodies could also place the issue before the voters.

¹¹⁸ Discussed earlier, this provision sets out the "uniform and equal rate of assessment and taxation" requirement. KAN. CONST. art XI, § 1.

Where constitutional challenges have been made to tax exemption schemes as violative of Article 11, Section 1, of the Kansas Constitution, this court has consistently held that the uniform and equal rate of assessment and taxation provision is, in principle and effect, substantially identical to the principle of equality embodied in the

sustained the tax against all of these challenges, but found that the local option to reduce or eliminate the tax was an unconstitutional delegation of legislative authority. The court felt that the intangibles tax was a statewide specific property tax, which removed the tax from the home rule jurisdiction of cities.¹¹⁹ The effect of this decision was to reinstate the state intangibles tax at the three percent rate.

The legislature's response to *Von Ruden* was twofold. The first action repealed the statewide intangibles tax and exempted intangibles from *ad valorem* and other property taxes.¹²⁰ Second, in a separate bill, the legislature authorized cities, counties, and townships to levy a tax on gross earnings from intangibles at the maximum rates allowable under the former intangibles tax.¹²¹

Local units of government may impose a gross earnings tax by resolution or ordinance.¹²² Electors may petition for a referendum vote on whether to impose or eliminate the gross earnings tax.¹²³ When the voters eliminate the tax by referendum, the local unit has the power to raise the issue again and reimpose the tax.¹²⁴ Recognizing the difficulties encountered by local officials in identifying income from intangibles, the legislature provided for state processing of returns for the gross earnings tax.¹²⁵

Exemptions from the gross earnings tax follow those established for the intangibles tax.¹²⁶ The exemption for elderly or disabled taxpayers increased to \$5,000 of earnings from intangible property, reduced by household income in excess of \$15,000.¹²⁷ New exemptions include dividends from savings and loan association stock¹²⁸ and earnings from notes to the extent such earnings constitute reimbursement of interest paid on another note, the proceeds of which were a source of funds for the first note.¹²⁹

A second Kansas Supreme Court decision concerning the intangibles tax has also shaped the gross earnings tax which replaced it. In *Humpage v. Ro-*

Equal Protection Clause of the United States Constitution. *Associated Rly. Equipment Owners v. Wilson*, 167 Kan. 608, 617, 208 P.2d 604 (1949); and *Topeka Cemetery Ass'n v. Schnellbacher*, 218 Kan. 39, 43, 542 P.2d 278 (1975).

State *ex rel. Tomasic v. Kansas City, Kansas Port Auth.*, 230 Kan. 404, 426, 636 P.2d 760, 777 (1981).

¹¹⁹ 231 Kan. at 13, 642 P.2d at 100.

¹²⁰ Act of May 7, 1982, ch. 407, 1982 Kan. Sess. Laws 1697.

¹²¹ Act of May 7, 1982, ch. 63, 1982 Kan. Sess. Laws 344; Act of Apr. 8, 1983, ch. 61, 1983 Kan. Sess. Laws 458. Rep. David Heinemann identified the repeal of the intangibles tax as part of the legislative "horse trading" involved in the exemption of farm machinery and business aircraft from the property tax. Heinemann, *Legislation 1982*, 51 J.B.A.K. 101, 122 (1982).

¹²² KAN. STAT. ANN. § 12-1,101 (Supp. 1983); see generally LEAGUE OF KANSAS MUNICIPALITIES, *LEVYING A LOCAL INTANGIBLES TAX 1* (May 1, 1983).

¹²³ KAN. STAT. ANN. § 12-1,101(e) (Supp. 1983). Where a voter referendum repeals the gross earnings tax, local taxing authorities are empowered to exceed the tax lid if necessary to offset the revenue loss from repeal of the tax. *Id.*

¹²⁴ *Id.*

¹²⁵ See REPORT ON KANSAS LEGISLATIVE INTERIM STUDIES TO THE 1983 LEGISLATURE 89-90 (1982).

¹²⁶ See *Von Ruden*, 231 Kan. at 13-15, 642 P.2d at 100-02.

¹²⁷ KAN. STAT. ANN. § 12-1,109(c) (Supp. 1983).

¹²⁸ *Id.* § 12-1,109(1).

¹²⁹ *Id.* § 12-1,109(g).

bards,¹³⁰ residents of Shawnee County, Kansas, challenged the imposition of the intangibles tax on earnings from corporate securities owned by the taxpayers but held for them in an account with a Kansas City, Missouri, brokerage firm. The taxpayers argued that the securities had a "business situs" in Missouri and were outside the jurisdiction of the Kansas intangibles tax. The court held that the taxpayers failed to show that the securities had become localized in Missouri and had become an integral part of the Kansas City, Missouri, business community. Thus, the Kansas domicile of the taxpayers was controlling, and the intangibles tax was properly applicable.¹³¹

In 1984 the Kansas legislature amended Kansas Statutes Annotated section 12-1,103 to codify the test set out in *Humpage v. Robards*.¹³² Applied to the facts in *Humpage*, the new statute establishes a presumption that taxpayers receive earnings from their securities at the taxpayers' domicile.¹³³ The statute allows taxpayers to rebut that presumption with substantial evidence that they have relinquished control over the securities and that the securities have become localized at and integrated with the business of the place where the securities are held.¹³⁴

VII. ESTATE AND INHERITANCE TAX

Although the primary tax that Kansas imposes at the death of an individual is called an inheritance tax, that tax parallels in many respects the federal estate tax.¹³⁵ The Economic Recovery Tax Act of 1981 (ERTA)¹³⁶ extensively amended the federal estate tax, and the Kansas legislature responded with major changes in the inheritance tax law. Three of these changes occurred during the 1982 session. All property left to a surviving spouse is now exempt from the inheritance tax, echoing ERTA's unlimited marital deduction.¹³⁷ In the case of spousal joint property, the estate of the first spouse to die will include one-half of the value of the property regardless of which spouse furnished the consideration for the property.¹³⁸ The "pick-up" tax will apply only in cases in which a federal estate tax return is due, and tax is payable, and will apply even if an exemption from the Kansas inheritance tax is available.¹³⁹

During the 1983 session, the legislature amended the inheritance tax to conform more closely to the federal law in the area of special use valuation for

¹³⁰ 229 Kan. 461, 625 P.2d 469 (1981).

¹³¹ 229 Kan. at 464, 625 P.2d at 472.

¹³² Act of Mar. 21, 1984, ch. 64, 1984 Kan. Sess. Laws 432.

¹³³ See also Act of Mar. 21, 1984, ch. 64, § 1(b), 1984 Kan. Sess. Laws 432 (establishing a similar presumption for taxpayers other than individuals).

¹³⁴ Act of Mar. 21, 1984, ch. 64, § 1(c), 1984 Kan. Sess. Laws 432, 433.

¹³⁵ Taylor, *The 1978 Kansas Inheritance Tax Act*, 27 KAN. L. REV. 593 (1979).

¹³⁶ Pub. L. No. 97-34, 95 Stat. 172 (1981).

¹³⁷ Act of Apr. 14, 1982, ch. 398, § 2, 1982 Kan. Sess. Laws 1682, 1684 (codified at KAN. STAT. ANN. § 79-1537b (Supp. 1983)).

¹³⁸ Act of Apr. 14, 1982, ch. 400, 1982 Kan. Sess. Laws 1687 (codified at KAN. STAT. ANN. § 79-1554 (Supp. 1983)).

¹³⁹ Act of Apr. 14, 1982, ch. 399, 1982 Kan. Sess. Laws 1685 (codified at KAN. STAT. ANN. § 79-1539 to -1540 (Supp. 1983)).

farms and closely-held businesses.¹⁴⁰ After study by an interim legislative committee, the legislature did not follow ERTA provisions on transfers made within three years of death.¹⁴¹ Thus, Kansas retains its rule of including transfers made within one year of death in the decedent's gross estate.¹⁴² The legislature did modify this rule to add back to the decedent's estate gifts made within one year of death, but only to the extent such gifts do not exceed the \$10,000 annual per donee gift tax exclusion which ERTA established.¹⁴³

The Kansas Supreme Court, in *In re Estate of Saroff*, considered the application of the inheritance tax to a trust that the decedent, Sam Saroff, had established several years prior to his death.¹⁴⁴ The trust provided for distribution to Saroff's son when the son reached age thirty. The grantor retained a reversionary interest in the event his son died prior to age thirty without "heirs of his body."¹⁴⁵ The court held that the grantor's reversionary interest did not cause inclusion of the trust principal in his estate, since the relevant statute would include such an *inter vivos* transfer *only* if it were a transfer intended to take effect after the grantor's death.¹⁴⁶

VIII. MISCELLANEOUS TAXES

Other legislative action during the survey period included the passage of a severance tax¹⁴⁷ and the adoption of new regulations for bingo games.¹⁴⁸ The

¹⁴⁰ Act of Mar. 31, 1983, ch. 317, 1983 Kan. Sess. Laws 1471 (codified at KAN. STAT. ANN. §§ 79-1545, -1545b (Supp. 1983)).

¹⁴¹ See REPORT ON KANSAS LEGISLATIVE INTERIM STUDIES TO THE 1983 LEGISLATURE 61 (1982).

¹⁴² KAN. STAT. ANN. § 79-1549 (Supp. 1983). The general effect of I.R.C. § 2503(d)(1982), added by ERTA, was to repeal the inclusion in the taxable estate of transfers made within three years of death.

¹⁴³ KAN. STAT. ANN. § 79-1549(c)(1) (Supp. 1983). ERTA increased the annual per donee exclusion from the gift tax from \$3000 to \$10,000. I.R.C. § 2503(b) (1982).

¹⁴⁴ *In re Estate of Saroff*, 229 Kan. 446, 625 P.2d 458 (1981).

¹⁴⁵ The language of the trust seems to give the son a contingent remainder in fee tail. Since Kansas has abolished the fee tail under KAN. STAT. ANN. § 58-502 (1983), the son should have a contingent remainder for life, with a contingent remainder in fee simple in the heirs of his body, and a reversion in the grantor, which would take effect if the son left no heirs of his body.

¹⁴⁶ 229 Kan. at 449, 625 P.2d at 461 (construing KAN. STAT. ANN. § 79-1501 (1977)(repealed 1978)). The revised Kansas Inheritance Tax Act, adopted in 1978, follows the language in the Internal Revenue Code. Compare KAN. STAT. ANN. § 79-1551 (Supp. 1983) with I.R.C. § 2037 (1982).

¹⁴⁷ Act of Apr. 27, 1983, ch. 313, 1983 Kan. Sess. Laws 1450 (codified at KAN. STAT. ANN. §§ 79-4216 to -4229 (Supp. 1983)). The severance tax was amended in 1984, Act of Mar. 21, 1984, ch. 364, 1984 Kan. Sess. Laws 1756; see also REPORT ON KANSAS LEGISLATIVE INTERIM STUDIES TO THE 1984 LEGISLATURE 47 (1983).

¹⁴⁸ Act of Mar. 1, 1984, ch. 366, 1984 Kan. Sess. Laws 1765; Act of May 10, 1984, ch. 365, 1984 Kan. Sess. Laws 1762.

"Bingo" means a game in which each participant must pay a charge and a prize or prizes are awarded to the winner or winners in which each participant receives one or more cards or in which a card or cards are included in a paper game program booklet each of which is marked off into 25 squares arranged in five horizontal rows of five squares each and five vertical rows of five squares each, with each square being designated by number, letter or combination of numbers and letters, and only the center square designated with the word "free" with no two cards being identical, with the players covering squares as the operator of such game announces a number, letter or

1984 legislature also granted a three-month amnesty period in which to make amends to taxpayers who had failed to file returns or understated liability for any state excise tax, including the state income tax.¹⁴⁹ The amnesty period extended from July 1 through September 30, 1984, and applied to tax periods ending prior to January 1, 1983, for which the Department of Revenue had not assessed tax liability prior to July 1, 1984.

IX. PROCEDURE

The pattern of legislative action in response to judicial decision appears also in the area of procedure. The 1981 Survey recorded the decisions in *Board of County Commissioners v. Ameq, Inc.*,¹⁵⁰ and *In re Lakeview Gardens, Inc.*,¹⁵¹ which interpreted Kansas Statutes Annotated section 74-2426 as providing for an appeal to the district court only from appellate orders of the Board of Tax Appeals.¹⁵² Decisions of the Board in original proceedings were final. As that Survey noted, the 1980 legislature amended section 74-2426 to provide for appeals to the district court in both original and appellate proceedings before the Board.¹⁵³

This survey period saw more judicial and legislative action centering on section 74-2426. The 1980 amendments to 74-2426 contained a grandfather clause of sorts to cover the transition to the new rule.¹⁵⁴ Under the *Ameq* and *Lakeview* rule, district courts dismissed appeals from orders in original proceedings before the Board of Tax Appeals for lack of jurisdiction. The 1980 amendments to section 74-2426 established appellate jurisdiction for these orders, beginning on April 16, 1980 (the date of the statute). The grandfather clause in section 74-2426(f) granted appellate jurisdiction "retroactively" in cases in which the court had dismissed appeals for lack of jurisdiction (under *Lakeview*) between January 1, 1980, and April 16, 1980.¹⁵⁵ The constitutionality of

combination of numbers and letters appearing on an object selected by chance, either manually or mechanically from a receptacle in which have been placed objects bearing numbers, letters or combinations of numbers and letters corresponding to the system used for designating the squares, with the winner of each game being the player or players first properly covering a predetermined and announced pattern of squares upon the card or a card which is included in a paper game program booklet being used by such player or players.

KAN. STAT. ANN. § 79-4701(a) (Supp. 1983). Portions of this legislation were recently held to be unconstitutional by Shawnee County District Judge Terry Bullock.

¹⁴⁹ Act of Apr. 10, 1984, ch. 348, 1984 Kan. Sess. Laws 1692.

¹⁵⁰ 227 Kan. 93, 605 P.2d 119 (1980).

¹⁵¹ 227 Kan. 161, 605 P.2d 576 (1980).

¹⁵² See *Survey of Kansas Law: Taxation*, 29 KAN. L. REV. 571, 575-77 (1981).

¹⁵³ Act of Apr. 11, 1980, ch. 236, 1980 Kan. Sess. Laws 998. The Kansas Supreme Court noted in *In re K-Mart Corp.*, 232 Kan. 387, 390, 654 P.2d 470, 473, that "[i]t appears obvious that the April, 1980, amendments to K.S.A. 74-2426 were enacted in direct response to our opinion in *In re Lakeview Gardens, Inc.*"

¹⁵⁴ KAN. STAT. ANN. § 74-2426(f) (1980). The grandfather clause was later repealed. Act of Apr. 6, 1983, ch. 252, 1983 Kan. Sess. Laws 1266, 1268-69.

¹⁵⁵ The 1981 Survey pointed out that this action was a questionable attempt at retroactivity since a good lawyer, being aware of *Lakeview* and *Ameq*, would not have filed an appeal during that time. See *Survey of Kansas Law: Taxation*, 29 KAN. L. REV. 571, 577 (1981).

the grandfather clause was challenged and upheld in *Board of County Commissioners v. Nadel*.¹⁵⁶ Several other cases, brought by taxpayers taking advantage of the grandfather provision of section 74-2426(f), affirmed the *Nadel* holding.¹⁵⁷

In the 1982 opinion in *In re K-Mart Corp.*,¹⁵⁸ the Kansas Supreme Court reviewed an appeal brought under section 74-2426, after the amendments in response to *Lakeview*. The court on its own motion raised the question whether section 74-2426(b)(1)¹⁵⁹ made the filing of a motion for rehearing before the Board of Tax Appeals a jurisdictional prerequisite to an appeal to the courts. Although K-Mart pointed out ambiguities in the statute, the court concluded that filing a motion for rehearing was a jurisdictional prerequisite and dismissed K-Mart's appeal for failure to do so. Requiring parties to request a rehearing gives the Board of Tax Appeals the opportunity to reconsider its position and correct any errors, possibly avoiding some of the delay and expenses associated with an appeal through the court system.¹⁶⁰

Just three months after the opinion in *K-Mart*, the 1983 legislature acted to amend section 74-2426,¹⁶¹ leaving virtually intact section 74-2426(b)(1) and its requirement that taxpayers request a rehearing prior to an appeal from an order of the Board of Tax Appeals.¹⁶² The 1983 amendments also repealed the grandfather clause in section 74-2426(f)¹⁶³ and required that appeals in certain cases be taken to the court of appeals rather than to the district court.¹⁶⁴ While

¹⁵⁶ 228 Kan. 469, 618 P.2d 778 (1980).

¹⁵⁷ *In re K-Mart Corp.*, 232 Kan. 387, 654 P.2d 470 (1982); *Quivira Falls Community Ass'n v. Johnson County*, 230 Kan. 350, 634 P.2d 1115 (1981); *In re Rice*, 228 Kan. 600, 620 P.2d 312 (1980); *Kansas City Dist. Advisory Bd., Church of the Nazarene v. Board of County Comm'rs*, 5 Kan. App. 2d 538, 620 P.2d 344 (1980).

¹⁵⁸ 232 Kan. 387, 654 P.2d 470 (1982).

¹⁵⁹ As it appeared at the time, KAN. STAT. ANN. § 74-2426(b)(1) (1980) read:

No appeal shall be taken from a final order of the board unless the aggrieved party shall have first filed a motion for rehearing of that order with the board and the board shall have granted or denied the motion for rehearing, or thirty days shall have lapsed from the filing of that motion with the board, from which it shall be presumed that the board has denied the motion. Any order issued by the board following a rehearing shall become the final order of the board.

¹⁶⁰ 232 Kan. at 392, 654 P.2d at 474 (1982).

¹⁶¹ Act of Apr. 6, 1983, ch. 252, 1983 Kan. Sess. Laws 1266 (codified at KAN. STAT. ANN. § 74-2426 (Supp. 1983)).

¹⁶² The 1983 version of KAN. STAT. ANN. § 74-2426(b)(1) (Supp. 1983) reads:

No appeal shall be taken from a final order of the board unless the aggrieved party first files a motion for rehearing of that order with the board and the board has granted or denied the motion. If 30 days have lapsed from the date the motion was filed with the board, it shall be presumed that the board has denied the motion. Any order issued by the board following a rehearing shall become the final order of the board.

Compare with the 1980 version, *supra* note 159. Under the traditional doctrine of legislative reenactment, one can therefore assume that the legislature approved of the result in *K-Mart*.

But see Posner, *Statutory Interpretation—in the Classroom and in the Courtroom*, 50 U. CHI. L. REV. 800, 813-14 (1983).

¹⁶³ Act of Apr. 6, 1983, ch. 252, 1983 Kan. Sess. Laws 1266.

¹⁶⁴ KAN. STAT. ANN. § 74-2426(b)(2) (Supp. 1983) provides that:

Within 30 days following the certification of any final order of the board, on a motion

the legislature was surely aware, from the *K-Mart* opinion, that section 74-2426 failed to specify a time limit for requesting a rehearing, the 1983 amendments did not address this point. The court noted in *K-Mart* that administrative regulations provided a thirty-day limit for this motion.¹⁶⁵

Two other points concerning appeals from orders of the Board of Tax Appeals arose during the survey period. Section 74-2426 specifies that appeals must be filed within thirty days of certification of a final order of the board.¹⁶⁶ In *Quivira Falls Community Association v. Johnson County*,¹⁶⁷ the Kansas Supreme Court held that Kansas Statutes Annotated section 60-206(a)¹⁶⁸ governs computation of the thirty-day period.

The 1981 Survey commented on the addition in 1980 of subsection 74-2426(e)¹⁶⁹ which provides: "No appeal may be taken from any order pertaining to the assessment of property for ad valorem tax purposes or the assessment of excise taxes unless the order is unreasonable, arbitrary or capricious."¹⁷⁰ In *Wirt v. Esrey*,¹⁷¹ the Kansas Supreme Court indicated its intent not to "substitute its judgment for that of the assessing authority in the absence of fraud or conduct so oppressive, arbitrary, or capricious as to amount to fraud."¹⁷²

One other statute that has received both legislative and judicial attention during the survey period is Kansas Statutes Annotated section 79-2005,¹⁷³ which sets out the procedure for protesting taxes. In *In re Rice*,¹⁷⁴ the Kansas Supreme Court ruled that section 79-2005 does allow a taxpayer to protest taxes that he has paid delinquent. *Rice* overruled a 1976 Johnson County District Court case¹⁷⁵ that had read sections 79-2005, 79-2004, and 79-2004a to allow protests only for taxes that the taxpayer had paid on time.¹⁷⁶

for rehearing, any aggrieved party to the appeal or proceeding may appeal to: (A) The court of appeals, in cases pertaining to property appraised and assessed by the director of property valuation or excise, income or inheritance taxes assessed by the director of taxation and (B) the district court of the proper county, in all other cases.

¹⁶⁵ 232 Kan. at 392, 654 P.2d at 475 (citing KAN. ADMIN. REGS. 94-1-9 (1978); KAN. ADMIN. REGS. 94-2-11 (Supp. 1982)).

¹⁶⁶ KAN. STAT. ANN. §§ 74-2426(b)(2), (c)(1) (Supp. 1983).

¹⁶⁷ 230 Kan. 350, 634 P.2d 1115 (1981).

¹⁶⁸ KAN. STAT. ANN. § 60-206(a) (1983).

¹⁶⁹ *Survey of Kansas Law: Taxation*, 29 KAN. L. REV. 571, 577 (1981).

¹⁷⁰ KAN. STAT. ANN. § 74-2426(e) (Supp. 1983). The section was amended in 1983 to include assessments of excise taxes as well as *ad valorem* property taxes. Act of Apr. 6, 1983, ch. 252, 1983 Kan. Sess. Laws 1266.

¹⁷¹ 233 Kan. 300, 662 P.2d 1238 (1983).

¹⁷² *Id.* at 320, 662 P.2d at 1252. This statement represents the standard of review that Kansas courts have traditionally applied to questions of assessment and valuation of property. *See* *Shields Oil Producers, Inc. v. County of Russell*, 229 Kan. 579, 583, 629 P.2d 152, 155 (1981); *see also* *Quivira Falls*, 230 Kan. at 350, 634 P.2d at 1115 (taxpayers were unsuccessful in arguing that an order of the Board was unreasonable, arbitrary and capricious); *In re Armed Forces Cooperative Insuring Ass'n*, 5 Kan. App. 2d 787, 625 P.2d 11 (1981) (the Board's action in finding AFCIA taxable as a corporation held to be unreasonable).

¹⁷³ KAN. STAT. ANN. § 79-2005 (Supp. 1983).

¹⁷⁴ 228 Kan. 600, 620 P.2d 312 (1980).

¹⁷⁵ *Capital Federal Savings and Loan Ass'n v. Western Lumber and Building Supply, Inc.*, Case No. 49941 (1976), *cited in* *Rice*, 228 Kan. at 601, 620 P.2d at 313.

¹⁷⁶ That argument, which was also espoused by Chief Justice Schroeder in a dissent, goes as follows: Section 79-2005 requires that a protest be filed "at the time of paying said taxes." Section

Approximately one year after *Rice*, the 1982 legislature re-enacted section 79-2005, retaining the language that was crucial to the holding in *Rice* and making only minor amendments to subsection (k) concerning payment of refunds in cases of successful protests.¹⁷⁷ This action appears to indicate legislative approval of the holding in *Rice*.

Extensive revisions of section 79-2005 during the 1980 session¹⁷⁸ provided that requests for a refund of protested taxes must begin with the Board of Tax Appeals. Prior to 1980, the section had offered taxpayers the option of filing with the Board or in the district court.¹⁷⁹ The opinion in *Lakeview Village, Inc. v. Board of Johnson County Commissioners*,¹⁸⁰ illustrates the dangers that await the unwary taxpayer (and his lawyer) entering this statutory thicket.

Lakeview filed a protest and request for refund of certain property taxes with the Board of Tax Appeals (under the pre-1980 procedure), which denied the request on July 25, 1975. Lakeview filed a motion for rehearing before the Board as provided in Kansas Administrative Regulations 94-1-9.¹⁸¹ The Board eventually denied a rehearing,¹⁸² and Lakeview filed an action in the district court on October 20, 1975, appealing the July 25 order of the Board.

The issue on appeal was whether the district court had jurisdiction to review the July 25, 1975, order of the Board. Under *Lakeview Gardens* and *Ameq*, section 74-2426 would not have allowed an appeal from an order of the Board issued in an original proceeding before the Board.¹⁸³ The action had to be brought under section 79-2005, which required the taxpayer to bring the action within thirty days.¹⁸⁴ The court held that this thirty-day period governed even

79-2004 provides for real property taxes to be paid either before the 20th of December, or half in December and half in June. If "time of paying" in section 79-2005 means only the times set out in section 79-2004 (and section 79-2004a for personal property), no protest could be filed upon payment of taxes at any later date. The court's interpretation in *Rice*, 228 Kan. at 600, 620 P.2d at 312, that section 79-2005 simply means taxes must be paid before filing a protest, is far more sensible.

¹⁷⁷ Act of Apr. 8, 1982, ch. 406, 1982 Kan. Sess. Laws 1695 (codified at KAN. STAT. ANN. § 79-2005 (Supp. 1983)).

¹⁷⁸ Act of Apr. 16, 1980, ch. 315, 1980 Kan. Sess. Laws 1264.

¹⁷⁹ KAN. STAT. ANN. § 79-2005 (1977).

¹⁸⁰ 232 Kan. 711, 659 P.2d 187 (1983).

¹⁸¹ KAN. ADMIN. REGS. § 94-1-9 (1978) (revoked 1981).

¹⁸² The taxpayer received an order that was certified on Sept. 19, 1975, denying its request for rehearing. On Sept. 24, 1974, taxpayer received notification of an October date for the rehearing. The taxpayer was understandably confused about whether a rehearing had been granted. 232 Kan. at 713, 659 P.2d at 190-91.

¹⁸³ See *supra* text accompanying notes 150-53.

¹⁸⁴ KAN. STAT. ANN. § 79-2005 (Supp. 1975) provided:

Every taxpayer protesting the payment of taxes, within thirty (30) days after filing his protest shall either commence an action for the recovery thereof in some court of competent jurisdiction, or file an application with the state board of tax appeals, on forms approved by the state board of tax appeals and provided by the county treasurer, for a hearing on the validity of such protest. . . .

No action shall be brought or maintainable in any court for the recovery of any taxes paid under protest unless the same is commenced within thirty (30) days after the filing of such protest with the county treasurer, or, in case application shall have been filed with the board as hereinbefore set out, unless the same is commenced within thirty (30) days after the date the board mailed its order on such protest to

though the taxpayer had requested a rehearing before the Board.¹⁸⁵ Although Lakeview's course of action would be correct under the current versions of sections 74-2426 and 79-2005, in that instance Lakeview was out of luck and out of court.

On a final note, three opinions dealt with foreclosure sales of real estate for unpaid taxes. Kansas Statutes Annotated section 79-2801 requires the county to join all persons having or claiming to have any interest in the property in a foreclosure suit.¹⁸⁶ In *Board of County Commissioners v. Cunningham*,¹⁸⁷ the court of appeals held that this requirement covered a purchaser who had not recorded the title or paid any property taxes, but where the county had actual notice of the purchase. In *Board of County Commissioners v. Roberts*,¹⁸⁸ the supreme court held that section 79-2801 required that notice be given to an individual who had asserted ownership of the subject property in an earlier proceeding. As in *Cunningham*, the county had actual notice of the earlier claim.¹⁸⁹ *Roberts* also extended the right to redeem property prior to a foreclosure sale to an individual claiming an interest in the property, if the individual asserted this interest in a proceeding pending at the time of redemption.¹⁹⁰

Kansas Statutes Annotated section 79-2804h¹⁹¹ requires the purchaser at a foreclosure sale to file an affidavit with the clerk of the court, stating that the purchaser is not acting for anyone having a statutory right to redeem the property. In *Board of County Commissioners v. Kearney*,¹⁹² the successful bidder at a foreclosure sale signed the appropriate affidavit, but the affidavit was not filed because of a clerical error. The supreme court affirmed the decision of the trial court in setting aside the sale, holding that section 79-2804h makes the filing of the affidavit mandatory for confirmation of the sale.¹⁹³

X. CONCLUSION

Tradition dictates that scholarly articles finish with a conclusion. While no particular opinion or piece of legislation seems to dominate the survey period, the reader cannot help but notice the interplay between courts and legislature in the shaping of Kansas tax law. At every session of the Kansas legislature,

such taxpayer.

¹⁸⁵ 232 Kan. at 716, 659 P.2d at 199. Compare *K-Mart*, 232 Kan. at 393, 654 P.2d at 475, where the court decided that requesting a rehearing was a jurisdictional prerequisite to an appeal. The court in *Lakeview* further held that the savings statute, KAN. STAT. ANN. § 60-518 (1983), could not be applied to toll the running of the 30-day period, following the rule that savings statutes apply only to actions which existed at common law. The common law did not recognize an action to recover taxes paid voluntarily, albeit under protest. 232 Kan. at 723, 659 P.2d at 197.

¹⁸⁶ KAN. STAT. ANN. § 79-2801 (1977).

¹⁸⁷ 5 Kan. App. 2d 508, 619 P.2d 525 (1980).

¹⁸⁸ 231 Kan. 135, 643 P.2d 138 (1982).

¹⁸⁹ The assistant county counselor in *Roberts* had knowledge of the claim. *Id.* at 136, 643 P.2d at 140.

¹⁹⁰ This conclusion was supported by reading together KAN. STAT. ANN. §§ 79-2801, 79-2803, 79-2901 and 79-2902 (1977 & Supp. 1983).

¹⁹¹ KAN. STAT. ANN. § 79-2804h (1977).

¹⁹² 8 Kan. App. 2d 534, 661 P.2d 823 (1983).

¹⁹³ Although the equities in *Kearney* were with the defaulting owner of the property, the result is harsh from the purchaser's standpoint as the error in failing to file the affidavit was not his.

legislators are asked to codify, overturn, or perhaps modify some decision of the Kansas courts. On the federal level, this penchant for legislative overruling has been cited as support for removing tax law and its interpretation from the courts.¹⁹⁴

This awareness of judicial action may also give importance to instances of legislative inaction. To compare again the federal system, it is difficult to impute awareness of judicial action throughout the federal court system to the Congress. The doctrine that re-enactment of a statute implies congressional approval of a particular judicial interpretation, although given lip service, cannot be taken seriously.¹⁹⁵ In Kansas, with a much smaller court system and an apparently alert legislature, the doctrine may have more substance. Failure to act, like re-enactment of a statute, may well imply consent to judicial construction.

Any importance ascribed to the legislature's action or inaction must also consider the realities of the political process. As illustrated in discussions of the property tax exemption for farm machinery, and the *Capital Electric* case, the legislature's voice is, in the end, reflective of the number of votes available on a given day.

¹⁹⁴ See Lowndes, *Federal Taxation and the Supreme Court*, 1960 SUP. CT. REV. 222, 226-27.

¹⁹⁵ See Craig, *Federal Income Tax and the Supreme Court: The Case Against a National Court of Tax Appeals*, 1983 UTAH L. REV. 679, 688 n.55.

