



KANSAS AUTOMOBILE DEALERS ASSOCIATION

February 9, 2022

To: The Honorable Adam Smith, Chairman
and Members of the House Committee on Taxation

From: Don L. McNeely, KADA President

Re: HB 2229 - Providing a deduction from sales or compensating use tax when
selling and buying different motor vehicles within 180 days.

Good afternoon, Chairman Smith and Members of the House Committee on Taxation. My name is Don McNeely, and I serve as the President of the Kansas Automobile Dealers Association, which represents the franchised new motor vehicle industry in Kansas.

On behalf of KADA, I am pleased to provide testimony as a neutral conferee on HB 2229, in order to provide some historical context about the issue before you. As I stated in my testimony to HB 2571 last year, over the last 20 years, we have seen this proposal several times introduced and debated in this Committee, besides the fiscal note, it has also come down to the transaction being auditable, as are the transactions that occur within the dealerships. Meaning tying the selling price and the purchase price together so the appropriate amount of sales tax can be imposed upon the actual selling price, so that corresponding amount may also applied to compute the trade-in credit or refund.

One of the primary reasons for this was a 2003 Legislative Post Audit performance audit review of taxes on motor vehicles entitled, "Taxes on Motor Vehicle Sales: Reviewing the Department of Revenue's Procedures for Ensuring that Correct Amounts of Sales and Compensating Use Taxes are Paid". The report stated that "nearly half the vehicles we reviewed that were sold privately were reported as being sold for what appear to be significantly less than fair market value. For our random sample of 80 private vehicle sales transactions from calendar year 2002, 39 vehicles were sold for less than half the lowest NADA (National Automobile Dealers Association) value. If county treasurers were adhering to the Department's regulation, Kansas could receive several million dollars each year in additional sales taxes from private vehicle sales..."

At that time, as it is today, the buyer is required to obtain a notarized bill of sale stating the sales price from the seller. But it was believed that in some cases the selling price field was left blank or a price lower than the actually selling price was inserted by the purchaser in order to reduce their sales tax liability.

The 2004 Legislature attempted to address this by passing legislation that assigned a valuation and thus a sales tax amount on vehicles the subject of isolated or casual sales. Under the law, the purchaser would pay sales taxes on a casual or isolated sale based upon the assessed valuation of a vehicle or its actual sales price, whichever was higher.

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The law was projected to increase state revenues by at least \$5 million a year, but due to the public outcry from those who actually paid less for a vehicle than what they were taxed, the law was immediately repealed in 2005 and enforcement of proper disclosure would fall to the Kansas Department of Revenue, which intended to increase audits of such transactions and scrutinize questionable transactions that were flag by the County Treasurers.

HB 2229 appears to attempt to address the auditability of the transaction with the completion of the Kansas Department of Revenue form TR-312 (Bill of Sale) when the seller of the vehicle applies for the corresponding refund if they purchase a different vehicle within 180 days. However, we also believe a copy of the completed TR-312 should be the bill of sale provided to the County Treasurer at the time of registration and collection of sales tax, so as to close the loop on the auditable sales transaction.

On behalf of the Kansas Automobile Dealers Association, I thank the Members of the Committee for allowing me to appear before you this afternoon in order to provide some comments in regard to HB 2229.