



KANSAS AUTOMOBILE DEALERS ASSOCIATION

March 20, 2023

To: The Honorable Caryn Tyson, Chair
and Members of the Senate 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 morning, Madam Chair and Members of the Committee. 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 appear this morning as a neutral conferee on HB 2229 to provide some historical context about the issue before you. Over the last 20 plus years, we have seen this proposal introduced several times, besides the fiscal note, another issue has been how do you make the transaction auditable, as are the transactions that occur within a licensed dealership. 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 and the corresponding amount may be applied to compute the trade-in credit or in this case a 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..."

731 S. Kansas Ave. Topeka, KS 66603

Phone: (800) 279.8566 • Email: info@kansasdealers.org • Fax: 785-233-1462 • Web: www.kansasdealers.org

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. However, it was believed that in some cases the selling price field was left blank or a price significantly lower than the actual selling price was inserted by the purchaser in order to reduce their sales tax liability.

The 2004 Legislature attempted to address this by enacting legislation that assigned a valuation to the vehicle and thus a sales tax amount on isolated or casual sales motor vehicles. 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. 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 assessed, the law was immediately repealed in 2005 and enforcement of proper disclosure would fall to the Kansas Department of Revenue, who were to increase audits of such transactions and scrutinize questionable transactions that were flag by the County Treasurers.

HB 2229 attempts to address the auditability of the transaction with the completion and submission of the Kansas Department of Revenue form TR-312 (Bill of Sale) when the seller of the vehicle applies for the refund if they purchase a different vehicle within 180 days. However, if we read the bill correctly, the purchaser of the vehicle may use a copy of the TR-312 or a generic bill of sale with some specified information at the time of registration and the collection of sales at the County Treasurers Office.

To address the alleged fraud that has occurred, we would suggest the completed TR-312 and an associated copy should be used by both the buyers and the seller of the vehicle and the ability of the purchaser to use a generic bill of sale should be stricken from the bill. The TR-312 contains the language... "By our signatures, we swear and affirm the above stated purchase price is true and accurate under penalty of perjury. I am aware that the law provides severe penalties for making false statements under oath" and we believe that language is appropriate and important. The TR-312 is readily available online so the parties to the transaction do not have to contact KDOR or the County Treasurer to obtain the form.

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

BILL OF SALE

ksrevenue.gov

This Bill of Sale is an affidavit of the amount of money or value that was exchange between the seller(s) and buyer(s) for the vehicle listed herein. ONLY antique vehicles (vehicles 35 years old or older) can have the ownership transferred (sold) by bill of sales. All other vehicles sold by or purchased from a Kansas resident must have the ownership transferred (sold) by assigned title.

Seller Information

Printed Name _____

Address _____

City _____

State _____

ZIP _____

Buyer Information

Printed Name _____

Address _____

City _____

State _____

ZIP _____

Vehicle Information

Year _____ Make _____

VIN _____

Purchase Price: \$ _____

Date of Sale: _____

By our signatures, we swear and affirm the above stated purchase price is true and accurate under penalty of perjury. I am aware that the law provides severe penalties for making false statements under oath.

Signature of Seller _____

Date _____

Signature of Buyer _____

Date _____

Antique Vehicle Transfer of Ownership

Complete only if no title is available.

This section of the bill of sale is to be used to transfer ownership of an antique vehicle (vehicle that is 35 model years old or older) when there is no Kansas title for the vehicle in the name of the owner / seller. All information in the bill of sale above and the antique vehicle transfer of ownership below MUST be complete for this to be a valid assignment of ownership. If a non-Kansas resident owns the antique vehicle and the vehicle is not maintained / garaged in Kansas, the ownership of the vehicle must be transferred according to the laws of the seller's home state of residence.

I, the undersigned, certify that I am the owner of this antique vehicle, which is listed above, and on this day I have sold and am transferring ownership of this vehicle to _____ listed above as buyer. To the best of my knowledge, no title has been issued in my name for this vehicle in any titling jurisdiction.

I further certify that I will guarantee this vehicle to be free and clear from all defects, liens or encumbrances of any nature whatsoever and that I will indemnify any subsequent purchaser of same for any loss sustained should anyone prove ownership of said vehicle superior to my title.

Date vehicle was sold and delivered: _____

Signature of Seller: _____

Notice to Buyer:
Vehicle

All antique vehicles 60-years old or newer sold on a bill of sale must obtain an MVE-1, (Motor Examination) issued by the Kansas Highway Patrol or their designee and submit the MVE-1 with this bill of sale when applying for antique title. Application for title must be made within 60 days of the purchase date in the county treasurer's motor vehicle office in the county in which the vehicle will be located / garaged. Penalty will be assessed on and after the 61st day.