

Approved: 3/15/94  
Date

## MINUTES OF THE HOUSE COMMITTEE ON TAXATION.

The meeting was called to order by Vice Chairperson Kent Glasscock at 9:00 a.m. on March 14, 1994 in Room 519-S of the Capitol.

### All members were present except:

Representative Brown, excused  
Representative Grotewiel, excused  
Representative Roe, excused

Representative Crowell, excused  
Representative Lahti, excused  
Representative Wilk, excused

Committee staff present: Chris Courtwright, Legislative Research Department  
Don Hayward, Revisor of Statutes Office  
Bill Edds, Revisor of Statutes Office  
Lenore Olson, Committee Secretary

### Conferees appearing before the committee:

Senator Robert Vancrum  
Jerry Reece - American Cancer Society  
Frank Thompson - Overland Park automobile dealer  
Nelson Mann - American Cancer Society; attorney for auto auction  
Rick Scheibe - Kansas Division of Vehicles  
Mark Burghart - General Counsel, Kansas Department of Revenue

Others attending: See attached list

Vice Chairperson Glasscock opened the hearing on SB 589.

SB 589 - exempts motor vehicles donated to charity for auctions from car tax and registration fees.

Senator Robert Vancrum testified in support of SB 589. He said this bill would eliminate any requirements that the charity register as a dealer, pay any fees and any requirement that it had to pay sales tax on the immediate transfer. Senator Vancrum also said it is not the intent of this legislation to eliminate sales tax on the ultimate purchaser or change the fact that they will have to re-register the car (Attachment 1).

Jerry Reece American Cancer Society of the State of Kansas introduced several people from the Overland Park area who are involved in the automobile auction. Mr. Reece testified that he supports SB 589. Their auto auction brought in \$12,000 in their first year (1990) and grew to \$62,000 in 1993. This growth, according to Mr. Reece, has brought with it title challenges.

Frank Thompson, Overland Park auto dealer, testified in support of SB 589. He requested that at the time of the donation the vehicles donated to the auto auction be titled to the American Cancer Society. At the time of purchase at the auction, title will be transferred to the buyer who will pay the sales tax (Attachment 2).

Nelson Mann, attorney for the American Cancer Society auto auction, testified in support of SB 589. Mr. Mann said in order to continue the success and growth of their auto auction, it is necessary to provide a more effective means by which title to vehicles may be transferred by donors to the American Cancer Society and to purchasers at the auction (Attachment 3).

Rick Scheibe, Kansas Division of Vehicles, commented on SB 589. Mr. Scheibe said that the Division feels that, since this is a once a year auction, current procedures are adequate (Attachment 4).

Vice Chairperson Glasscock closed the hearing on SB 589.

The Vice Chair opened the hearing on HB 2987.

## CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON TAXATION, Room 519-S Statehouse, at 9:00 a.m. on March 14, 1994.

The Vice Chair opened the hearing on HB 2987.

HB 2987 - definition of resident trust for state income tax.

Mark Burghart, General Counsel, Department of Revenue, testified in support of HB 2987. Mr. Burghart said the Department of Revenue has recently learned that the existing definition of resident trust allows certain trust income to avoid taxation by the State of Kansas. He also said the further development of interstate banking is expected to increase the number of Kansas residents creating trusts which are administered in Missouri or other states (Attachment 5).

Vice Chairperson Glasscock closed the hearing on HB 2987.

A motion was made by Representative Wagnon, seconded by Representative Lowther, to amend HB 2987 to clarify that it would apply to income earned from all trusts starting in tax year 1994. The motion carried.

A motion was made by Representative Larkin, seconded by Representative Wagnon, to pass HB 2987 favorably as amended. The motion carried.

The minutes of March 9 and March 10, 1994, were approved as read.

The meeting adjourned at 9:45 a.m.

The next meeting is scheduled for March 15, 1994.

## DATE \_\_\_\_\_

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ADDRESS

REPRESENTING

[illegible]



BOB VANCURUM  
 SENATOR, ELEVENTH DISTRICT  
 OVERLAND PARK, LEAWOOD,  
 STANLEY, STILWELL, IN  
 JOHNSON COUNTY  
 9004 W. 104TH STREET  
 OVERLAND PARK, KANSAS 66212  
 (913) 341-2609



TOPEKA

SENATE CHAMBER  
 STATE CAPITOL  
 TOPEKA, KANSAS 66612-1504  
 (913) 296-7361

## COMMITTEE ASSIGNMENTS

VICE-CHAIRMAN: ENERGY AND NATURAL RESOURCES  
 MEMBER: WAYS AND MEANS  
 JUDICIARY  
 MEMBER: COMMERCE, LABOR AND REGULATIONS  
 COMMITTEE, NATIONAL CONFERENCE ON  
 STATE LEGISLATURES  
 MEMBER: ENVIRONMENTAL TASK FORCE,  
 COUNCIL ON STATE GOVERNMENTS

## TESTIMONY FROM SENATOR BOB VANCURUM

TO THE

HOUSE TAXATION COMMITTEE

ON

SENATE BILL 589

RE: CHARITABLE AUTO AUCTIONS

I had this bill introduced at the request of several people who have been very active in the automobile auction conducted every year by the American Cancer Society, Kansas Division in Johnson County. Joyce and I have been active in the ACS for over 10 years, primarily working on a general auction that raises over \$500,000 a year and approximately half the budget of American Cancer Society, Kansas Division. More recently, other volunteers including Frank Thompson and Nelson Mann have developed and expanded an annual auto auction which now raises an additional \$60,000. This charity is a major source of cancer research dollars at the Kansas University Medical Center among other things.

Mr. Frank Thompson is an automobile dealer in Overland Park and he and his staff have given tirelessly of their time as volunteers in making the auto auction work. However, Kansas has some fairly restrictive requirements which have made it difficult at times to transfer title in an automobile by means of an auction where is impractical to have the previous owner of the automobile directly transfer title to the buyer.

Everyone involved tells me that the Department of Revenue and the Attorney General have done everything they can do to try to cooperate with this charity, short of changing the statute, including allowing them to transfer titles by means of a power of attorney and sending out notices to County officials in Kansas telling them it is OK to accept this power of attorney. Unfortunately as the auction has grown, they are an increasing number of buyers who want to register automobiles in Kansas Counties far removed from the metropolitan area and in Missouri Counties as well. Even if we could eventually get the message out to all County officials in Kansas, we cannot rely upon officials in Missouri, who continue to insist that there is "skip" or gap in title in these automobiles which prevents them from being registered without a lot of time consuming documentation. We have reached the point where only a change in statutes allowing cars to be retitled in the name of the charity and transferred in its name will allow Mr. Thompson to go forward. This bill would eliminate any requirements that the charity register as a dealer, pay any fees and any requirement that it had to pay sales tax on the

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 Attachment 1

intermediate transfer. It is not our intent to eliminate sales tax on the ultimate purchaser or change the fact that it they will have to re-register the car.

Since we cannot make laws applicable only to one charity, this law is broad enough to allow any charity conducting an auto auction to similarly register. It is, however, unlikely that many charities will have enough at stake to actually work through the process to do this, so I doubt there will be much administrative cost attached to this bill.

I hope you will promptly pass this legislation and send it over to the House. I have not had any discussion with the Department of Revenue about the bill recently, but I want to repeat that the Department has been very cooperative in trying to assist the cancer auction in the past and I am confident they will try to make it work through this bill as well.



American Cancer Society  
Auto Auction

SENATE BILL 589

The American Cancer Society has held an annual charity auto auction for the last four years in Overland Park, Kansas. Each year, there has been steady growth and with the growth have come problems. In the early years, the majority of vehicles were sold to local wholesale dealers. However, as the auction became more popular, the vehicles were sold to individuals from both Kansas and Missouri. This has increased the burden of assuring transfer of title in accordance with all legal requirements.

In the past, title to motor vehicles has been transferred to individuals under separate powers of attorney executed by each owner, authorizing us to actually sign the required documentation on their behalf. The use of power of attorney to transfer title was suggested by counsel and approved by the Office of the Attorney General and the Motor Vehicle Division. This had been a workable solution until recently. It appears the various county vehicle offices in both Missouri and Kansas do not fully understand the workings of the power of attorney. Consequently, we are confronted with repeated situations in which the county vehicle offices will not recognize the valid transfer of title in issuing new titles and licensing vehicles.

For that reason, we are requesting at the time of the donation the vehicles donated to the Auto Auction be titled to the American Cancer Society. At the time of purchase at the Auto Auction, title will be transferred to the buyer who will pay the sales tax. Because the American Cancer Society cannot satisfy the requirements to be permitted as a used car dealer and because the nature of the Auto Auction does not give rise to many of the issues that are resolved through the permitting process specified by statute, we request that the American Cancer Society and other designated 501(c)(3) philanthropic organizations be exempted from complying with the same requirements as used car dealers in the State of Kansas. This will require that title to vehicles be transferred to the American Cancer Society when vehicles are donated to the Auto Auction and transferred to individuals when they are sold at the Auction.

Frank & Evangeline Thompson  
Co-Chairpersons - Volunteers  
Auto Auction  
American Cancer Society

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Attachment 2

**MORRISON & HECKER**  
ATTORNEYS AT LAW

14 Corporate Woods, 8717 West 110th Street, Suite 520  
Overland Park, Kansas 66210-2192  
Telephone 816-691-2600  
Telefax 913-451-6352

T. Nelson Mann  
Direct Dial: 913-344-8034

To: Whom It May Concern  
Date: March 14, 1993  
Re: Exemption of Motor Vehicles

The American Cancer Society has sponsored an Auto Auction in Overland Park, Kansas the past four years to raise monies in support of cancer research, education, and personal assistance. A significant amount of these funds have been committed through the national office to research and programs located throughout the State of Kansas. In order to continue the success and growth of this event, it is necessary to provide a more effective means by which title to vehicles may be transferred by donors to American Cancer Society and to purchasers at the Auto Auction.

Because the ultimate purchaser is not know when a vehicle is donated, title to vehicles purchased at the Auto Auction has been transferred pursuant to a power of attorney executed by the donor. Although this process has been approved by the Office of the Attorney General and has been acceptable to the Division of Vehicles, the use of the power of attorney is unusual and not understood by many employees of the offices of the county treasurers. For this reason, confusion in the registration of title to vehicles purchased at the Auto Auction has resulted. Notwithstanding the cooperation of the Division of Vehicles, this problem cannot be resolved without a change in the law that permits American Cancer Society to take title to the vehicles and, thereby, transfer title directly to a purchaser without the use of a power of attorney.

American Cancer Society has requested that it and other not-for-profit 501(c)(3) organizations qualifying as Section 170(c) public charities under the Internal Revenue Code be exempted from the applicable requirements of the Kansas statutes that preclude them from accepting and transferring title to vehicles without paying and collecting property and ad valorem taxes or otherwise qualifying as used car dealers. To this end, it has been proposed that any motor vehicle donated to a Section 170(c) public charity for the purpose of being sold at an auction be exempted from the requirements of K.S.A §8-135 and all property and ad valorem taxes related to the transfer of vehicle titles. The purchasers of the vehicles would pay all taxes upon registration of title with the offices of the county treasurers.

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Attachment 3

Without an exemption such as this, American Cancer Society will not be able to continue one of the more significant and innovative fund raising events in the State of Kansas for the benefit of cancer patients and their families. To facilitate this endeavor, I encourage the adoption of the proposed legislation.

Very truly yours,

A handwritten signature in black ink, appearing to read 'T. Nelson Mann', is written over a horizontal line.

T. Nelson Mann  
Executive Vice-President  
American Cancer Society  
Johnson County Unit

TNM1AS.CWD/ds



STATE OF KANSAS



Betty McBride, Director  
Robert B. Docking State Office Building  
915 S.W. Harrison St.  
Topeka, Kansas 66626-0001

(913) 296-3601  
FAX (913) 296-3852

Department of Revenue  
*Division of Vehicles*

To: The Honorable Keith Roe, Chairman  
House Taxation Committee

From: Rick Scheibe, Vehicle Services Administrator  
Kansas Division of Vehicles

Date: March 14, 1994

Mr. Chairman, Members of the Committee,

My name is Rick Scheibe, and I am the Vehicles Services Administrator. I appear before you on behalf of Betty McBride, Director of Vehicles, and the Kansas Department of Revenue, regarding Senate Bill 589.

This bill requires that the charitable organization is an eligible recipient of a charitable contribution pursuant to section 170 (c)(2)} of the federal internal revenue code.

This bill will allow the charitable organization to apply for a certificate of title, and exempts the payment of registration fees, personal property tax, and sales tax. Upon the sale of the vehicle, the charitable organization will have the authority to reassign the title to the new purchaser.

Currently, the Division has a procedure in place whereby a charitable organization can submit a power-of-attorney for reassignment of the title to the purchaser.

The Division feels that, since this is a once a year auction, current procedures are adequate.

Thank you for allowing me the opportunity to present my testimony. I would stand for any questions you might have.

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STATE OF KANSAS

Mark A. Burghart, General Counsel  
Robert B. Docking State Office Building  
915 S.W. Harrison St.  
Topeka, Kansas 66612-1588



(913) 296-2381  
FAX (913) 296-7928

Department of Revenue  
*Legal Services Bureau*

**MEMORANDUM**

To: The Honorable Keith Roe, Chairperson  
House Committee on Taxation

From: Mark A. Burghart, General Counsel  
Kansas Department of Revenue

Date: March 14, 1994

RE: H.B. 2987 - Definition of Resident Trust

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Thank you for the opportunity to appear in support of H.B. 2987. The bill amends the definition of resident trust which is utilized for state income tax purposes. The Department of Revenue has recently learned that the existing definition of resident trust allows certain trust income to avoid taxation by the State of Kansas. Under current law, a trust is considered a resident trust and subject to the state income tax only if the trust is administered in the state. H.B. 2987 would amend the definition to provide that a resident trust includes: (1) a trust created by will of a decedent who at the time of death was domiciled in this state; or (2) a trust created by, or consisting of property of, a person domiciled in this state on the date the trust or portion of the trust becomes irrevocable. Missouri and a number of other states have adopted the definition of resident trust proposed in H.B. 2987.

**KANSAS RATE STRUCTURE**

K.S.A. 1993 Supp. 79-32,110(d) imposes a tax on the taxable income of trusts. The Kansas taxable income of a trust is the federal taxable income with certain state adjustments. The state adjustments generally are those used to determine Kansas taxable income for individual taxpayers. The rates applicable to trusts are as follows:

<u>Taxable Income</u>	<u>Tax Rate</u>
Not over \$20,000	4.4%
\$20,000 - \$30,000	7.5%
over \$30,000	7.75%

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Under the existing statutory scheme, Kansas residents need only appoint a Missouri trustee to avoid income tax on the trust income in both Kansas and Missouri. This situation is allowed to occur simply because of the differing definitions of resident trust between Kansas and Missouri.

**EXAMPLE:**

**CURRENT LAW**

Kansas resident creates a trust the assets of which consist primarily of intangibles (stocks, bonds, CD's.) A Missouri trustee is appointed. The trust generates taxable income of \$40,000. Under these circumstances, no tax is paid in Kansas or Missouri on the trust income.

**H.B. 2987**

Same facts as above. Under H.B. 2987, the tax liability to the State of Kansas would be \$2,405. No tax would be paid to the State of Missouri on the trust income.

The further development of interstate banking is expected to increase the number of Kansas residents creating trusts which are administered in Missouri or other states. The revenue loss to Kansas resulting from the current statutory scheme cannot be determined because no data exists which identifies the precise number of trusts where a nonresident trustee has been appointed. It is apparent that the enactment of H.B. 2987 would have a positive fiscal impact on the state general fund.

The Department respectfully requests your favorable consideration of H.B. 2987. I would be happy to respond to any questions you might have.