Property Taxation in the Kansas Territory

by Glenn W. Fisher

The task of establishing a revenue system to finance government in Kansas Territory was fraught with difficulties. Some of these difficulties were related to the struggle over slavery. The first legislature, elected with the help of illegal voters from Missouri, was reluctantly recognized by the first territorial governor. Not surprisingly, it encountered difficulty in collecting taxes in the areas dominated by free-state sentiment. Another difficulty related to land titles. When the territory was opened, not an acre of land was open to legal settlement by white settlers, and confusion over Indian claims persisted for many years.

In addition to these special difficulties, there were the normal problems of establishing and administering a revenue system in a thinly populated, economically undeveloped area. Communication and transportation were difficult, population was mobile, and few of the settlers were experienced tax administrators. No effort was made to design a tax system for these circumstances. Instead, the territorial legislature followed the established practice of copying the laws from areas which had already achieved statehood.

The history of the beginnings of the revenue system in Kansas is of interest in its own right, and, because the tax laws were borrowed from other states, it provides insight into the nature of state and local tax systems on the eve of the Civil War. At that time, state and local taxation were powerfully affected by the idea that a uniform ad valorem (according to value) tax upon all property was the ideal tax. This concept grew up in reaction to a Colonial tax system that favored the rich and powerful, especially the landed classes. Uniformity was consistent with the ideas and practices of frontier democracy and provisions requiring uniformity spread from constitution to constitution and statute to statute. Unfortunately, time was to prove it a very difficult concept to implement.

Territorial Tax Laws

The organic act establishing the Kansas and Nebraska territories was passed by the U.S. Congress in 1854. It was a highly controversial measure because it abrogated the Missouri Compromise and provided that the residents of the territories should decide whether the states were to be created slave or free.

The act provided that the officers of the executive and judicial branches would be appointed by the President of the United States and confirmed by the U.S. Senate. The legislative branch was to consist of a council and a house of representatives, chosen at an election to be called by the territorial governor. The legislature was empowered to make laws and to establish local governments as it saw fit. The governor had a veto power over the acts of the legislature, but it could be overridden by a vote of two-thirds of each house.

The organic act provided that the federal government would pay the salaries of the executive and judicial officers. The federal government also paid the salaries of the legislators and specified employees of the legislative branch, certain incidental expenses of the legisla-


2. The movement was not brought about or accompanied by any significant amount of analytical or philosophical writing on the subject. Late in the nineteenth century and early in the twentieth century, an extensive literature, written largely by economists, condemned the property tax as unsound in theory and practice. See the proceedings of the National Tax Association Conferences beginning in 1907.


4. Ibid., Sec. 22, Sec. 24.

185
tured such as library and printing expenses, and there was an appropriation for the costs of buildings at the seat of government. The only provisions dealing with territorial taxation were that no tax could be imposed on the property of the United States, and that lands or other property of non-residents could not be taxed higher than the property of residents. Additionally, sections sixteen and thirty-six of each township were set aside to be used for school purposes.

The first of the ten territorial governors to serve during Kansas' territorial years arrived in 1854. Gov. Andrew H. Reeder was from Pennsylvania and was antislavery in his sentiments. He called an election in November to elect a delegate to Congress and one in March 1855 to choose members of the legislature. In both cases large numbers of Missourians crossed into Kansas to elect proslavery candidates. The governor was unhappy about the results but recognized the elections as valid.

The governor chose the town of Pawnee on the Fort Riley military reservation as the state capital. The legislature met there for four days and, defying the governor, adjourned to Shawnee Methodist Mission which was closer to Missouri, where many of the legislators had interests. There the legislature passed what came to be known as the "bogus laws." These were based upon Missouri laws and included the Missouri slave code and a provision decreeing the death penalty for anyone aiding a slave escape or promoting a slave rebellion. Also incorporated were the Missouri statutes that prescribed imprisonment for anyone speaking out against slavery or trying to have it abolished in the state. It was further provided that no one conscientiously opposed to holding slaves should sit in a jury trying anyone for violating these provisions.

The free-staters were outraged and in the fall of 1855 organized a separate government. A convention was held at Topeka, a constitution was adopted, and state officers were elected. This created two governments, the "bogus" government recognized by the fed-

5. Ibid., Sec. 30.
6. Ibid., Sec. 24, Sec. 34.
8. Statutes of the Territory of Kansas, (Public Printer, 1855), Ch. 151.
eral government and the free-state government headed by Gov. Charles Robinson. In July 1856, the Topeka government came to an end as federal troops dispersed the legislature.9

Laws of 1855

Chapters 137 and 138 of the laws enacted by the 1855 “bogus” legislature dealt with revenue. Many sections were copied word-for-word from the Missouri statutes.10

Other sections were changed only to substitute the word “territory” for “state” or to reflect the difference between Kansas and Missouri local government. For example, the provisions in the Missouri statutes applying only to St. Louis County were left out and references to the county governing bodies as “courts” were changed to “county tribunals” in the Kansas statutes. Some mistakes were made. For example, one section carried over into the Kansas laws dealt with the sale of lands for the payment of taxes for the years 1843, 1844, or earlier:11

The tax statutes did not follow the common practice of making the property tax universal by stating that all

10. Statutes of the Territory of Kansas (1855), Ch. 157, 138. The comparison is with the Revised Statutes of Missouri (St. Louis: A. Fisher, 1845), Ch. 147. This was the latest compilation of Missouri laws at the time, but there may have been changes in the Missouri law not reflected in that edition.
11. Statutes of the Territory of Kansas (1855), Ch. 137, Art. 5, Sec. 21.

In reaction to the “bogus” legislature, free-staters held their own constitutional convention and formed their own state government. Not recognized by the federal government, this “Topeka legislature” was dispersed in 1856.
property not exempted was taxable. Instead, the following types of taxable property were specifically listed:

1. All free male persons over twenty-one and under fifty-five years of age.
2. Lands and lots of ground, including the houses and improvements thereon.
3. Leasehold interest in land for a term of ten years or more, as lands.
4. All slaves.
5. Household furniture, to include silver and gold plate, kept for use or ornament, and by any one family, above the value of two hundred dollars.
6. Pleasure carriages kept for the use of the owner or his family.
8. Watches, with their chains, seals and other appendages, and clocks, kept to be worn or used by the owner or his family.
9. Shares of stock in banks and other incorporated companies, except hospitals, literary institutions and library associations.
10. Bills of exchange, bonds, notes and other securities, and all money on hand taken, negotiated and kept by brokers and exchange dealers, in their business as such, other than such as may be the property of citizens of the territory, except themselves.
11. All money loaned at interest to citizens of this territory, whether the same be secured by a bill of exchange, bond, note or otherwise; all money in hand, and all territorial warrants.
12. The property of all corporations, over and above their capital stock, and all money held by such companies in trust for persons or corporations, other than citizens or corporations of this territory, and used in trade for the benefit of such persons or corporations.
13. Shares of stock or interest in any steamboat.
14. All licenses taxable by law.¹²

This list is a comprehensive one that clearly reflects a desire for a very broad tax base. The specific mention of various kinds of intangible property such as leaseholds over ten years, shares of stock, bills of exchange, and money loaned at interest indicates recognition that intangible property constitutes wealth that should be taxed. There is evidence the authors were aware of the possibility that taxation of intangible property could constitute double taxation. To avoid this, corporate stock was taxed, but the value of the capital was deducted from the value of property owned by corporations. It is not at all clear, however, that the items listed in nine through twelve would have resulted in the taxation of all wealth without double taxation, especially when the property was owned by residents of other places. For example, item ten appears to allow securities held for non-residents by brokers or dealers to be taxed, but exempts securities belonging to residents. Apparently, it is assumed that residents would be taxed under item eleven. However, under the legal doctrine, mobilia sequuntur personam, it is likely that non-residents would have been liable for taxation on similar property at their place of residence.

Even though the list of taxable property is broad, it is not difficult to think of property that was not included. There appears to have been no attempt to tax machinery; carriages are the only kind of vehicle mentioned. Not all possible kinds of livestock are listed, and the provision exempting two hundred dollars of household goods must have eliminated the tax on these items for all but the very wealthy.

Article 1, Section 2 of the 1855 tax law is a list of exemptions. On the exempt list were a number of governmental, educational, religious, and charitable properties. Also exempt was the property of widows and minor orphans not worth more than one thousand dollars. This exemption is of a different character than the others. It provided relief for individuals in need rather than to charitable or other institutions which provided services deemed meritorious.¹³

The territorial taxes were established by rate in the statutes. The tax on free male persons between twenty-one and fifty-five years of age was fifty cents. Although included in the property tax statute, this was a capitation or poll tax.¹⁴ All property subject to taxation was taxed at a rate of one-sixth part of one percent (1 2/3 mills) of assessed value. This meant that a farm worth $1,000 would be subject to a territorial tax of $1.67. This rate was considerably lower than the rate in the Missouri statute.

The "bogus" legislature created the office of county assessor to be appointed by the county tribunal, rather

¹² Ibid., Ch. 137, Art. 1, Sec. 1.
¹³ Ibid., Ch. 137, Art. 1, Sec. 2.
¹⁴ Ibid., Ch. 137, Art. 1, Sec. 3. Capitation or poll taxes are levied at a flat rate per capita. They were common in the American colonies and have continued in some states until recent times. Poll taxes may or may not be related to qualifications for voting. Kansas cities of the second and third class had the authority to levy a poll tax until 1963. See State of Kansas, Session Laws, 1963 (Topeka: State Printer, 1963), Ch. 105, Ch. 124.
This portion of a territorial record of personal property valuations shows the categories of slaves (James Kuykendall had five valued at $2,500); horses (William Morgan had one valued at $25); mules (John Kolp had two valued at $200); and cattle (Samuel Lockhart had five valued at $125). The first column, “Polls,” indicates that the people, all men, listed on this page of the valuation were liable for the capitation tax. The exceptions were James Kuykendall and Samuel Lockhart—probably because they were over fifty-five or under twenty-one years of age.
than elected as in Missouri. On or before the first of January, the assessor was to post, in the four most public places in each township, a notice giving the place and date on which he would appear in that township to receive lists of taxable property. It was the duty of each person liable to taxation to appear at that place and deliver a list of all property, except merchandise which he owned or had charge of, within the county, with the fair cash value as of the first day of February. The assessor was to administer an oath of affirmation. Property in other counties but not listed for taxation in that county was to be listed in the county in which the owner lived.15

If a person failed to appear and provide a list of property, the assessor was required to go to the residence of the person, make an actual examination and assess a penalty of one dollar. When the list was not given by the owner, the assessor had the power to prepare a list from the best information available, to enter lands and houses, and to examine owners or any other person under oath regarding the property. The assessor was to prepare separate statements of property listed in other counties and to transmit that list by mail to the assessor of the proper county. Taxpayers who submitted false or fraudulent lists were subject to a tripling of the tax and a fine not to exceed five hundred dollars.

Owners of stock of corporations were not required to report this property. Instead, the president of the corporation reported, paid the tax, and recovered from the holder of the stock or deducted it from the dividends.

Counties were permitted to add a county levy to the territorial levy. The county levy could not exceed the territorial tax by more than one hundred percentum (twice the territorial rate or 3 1/3 mills). Unlike the territorial tax, the county tax was not levied at a fixed rate. The law provided that after the tax books had been prepared county tribunals were to ascertain the amount necessary to defray the expenses of the respective county and to fix the rates of taxes necessary to raise that amount.16

Chapter 155 of the law of 1855 provided for the incorporation of towns and gave the trustees the power to appoint assessors and collectors. Apparently, it was contemplated that municipal taxes would be administered separately from the territorial and county taxes. The law authorized the town collector to sue for nonpayment of taxes and provided that the taxes of nonresidents might be collected from the tenants, who then were allowed to collect from the owner or to offset the taxes against amounts owed to the owner.17

The statute contained a complete set of procedures for administering the territorial and county tax. Instructions for preparing the tax book detailed how property was to be classified and listed. There were instructions for handling omitted property and it was required that a duplicate copy of each assessment be signed by the assessor and delivered to the head of the family or, in his absence, to another member of the family. There were provisions for appeal of assessments to the county tribunal and instructions for delivery of the completed book to the county clerk.18

The sheriff was the collector of revenue and there were detailed instructions as to how the tax book was to be delivered to him, how he was to demand payment, and procedures for seizing and selling goods for the non-payment of taxes. There were also instructions regarding the time and procedures for the collector to settle accounts with the county treasurer.19

The assessor was to be paid three dollars per day worked, but the collector was compensated by fees based upon the percentage collected. The fee ranged from two to seven percent depending upon the type of tax, the person or organization from which collected, and the amount collected.20

A separate chapter of the 1855 laws provided for a poll tax of one dollar upon every person entitled to vote in the territory.21 This was in addition to the permanent poll tax levied in Chapter 137. This was a one-time tax to be collected on or before the first Monday in October 1855 (election day). It was less a revenue measure than an attempt to facilitate voting by persons newly (or temporarily) from Missouri. The election laws allowed any free white male citizen and certain Indians who were residents of the territory and had paid a tax to vote.22 Anyone offering to vote was presumed eligible. If

15. Statutes of the Territory of Kansas (1855), Ch. 137, Art. 2, Sec. 1, Sec. 6, Sec. 8, Sec. 18. The provision requiring taxpayers to meet the assessor at a central place in the township was not derived from Missouri law. In that state the assessor was required to go throughout the county to assess property. Revised Statutes of Missouri, 1849, Ch. 147, Art. 2, Sec. 10.
16. Statutes of the Territory of Kansas (1855), Ch. 137, Art. 2, Sec. 10, Sec. 14, Sec. 18, Sec. 17, Sec. 19, Art. 4, Sec. 1, Sec. 2, Sec. 3.
17. Ibid., Ch. 155, Art. 1, Sec. 8, Sec. 11.
18. Ibid., Ch. 137, Art. 2.
19. Ibid., Ch. 137, Art. 3.
20. Ibid., Ch. 137, Art. 2, Sec. 40, Art. 3, Sec. 44.
21. Ibid., Ch. 136.
22. Ibid., Ch. 66, Sec. 11. The Indians allowed to vote were free Indians who were citizens by treaty or otherwise. All Indians who were inhabitants of the territory "who may have adopted the customs of the white man, and who are liable to pay taxes" were deemed citizens.
the election judges did challenge a voter and examined him under oath no evidence contradicting his testimony was received. The sheriff was required to have his tax books at the place of voting to receive taxes tendered.

These requirements were designed to make it easy for Missourians to vote in Kansas territorial elections and, of course, they enraged those who wanted Kansas to be a free-state. A convention of free-staters meeting in Lawrence when this bill was being considered denounced the "bogus" legislature as:

...having now before them a bill which they will probably enact into a law, making the right of suffrage in the Territory dependent upon the payment of the sum of $1, without reference to the matter of in habitation, thus attempting to give up the ballot-box by law for all future time to persons from foreign States; ..." The controversy engendered by this act is indicated by the fact that the Committee on Finance in the 1857 legislature, still controlled by proslavery advocates, considered a bill to repeal the 1855 poll tax law even though it was no longer in effect. The committee report rejected the idea of repeal on the ground that it would appear to the world like a "valorous attack on a dead lion." The report went on to point out that attacks on the law had come from the East and North, but that in Maine, New Hampshire, Vermont, and Massachusetts taxation was an elementary and fundamental principle in the basis of representation. Additionally, Rhode Island had an identical "dollar law" in its constitution. After citing other examples of poll taxes in northern states the committee report concluded: "the Committee deem it a waste of time to defend the policy of law that expired by its own limitation more than a year ago, nor are they disposed at this late date to enter the tomb and dissect its carcass."

Still another chapter of the laws of 1855 provided for the licensing and taxation of merchants. Merchants were to deliver to the assessor a statement listing the value of all goods, drugs, wares, or merchandise owned during the preceding twelve months to be taxed as other property in the territory. This meant that the February 1 assessment day did not apply to merchants' inventories, but that all merchandise handled during the year would be taxed. This represented a departure for the commonly accepted principle that property taxes are levied annually on the property owned on a specific tax day.

In the 1857 session of the legislature, meeting in Lecompton, there was an attempt to change this law so that merchandise, like other property, would be taxed as of February 1. This proposal was rejected by the Committee on Finance of the house of representatives. The report of the committee indicates that taxpayer behavior was not different from today and contains a homespun, but valid, comment on the nature of tax legislation. It also suggests that, as today, revenue needs may take precedence over tax equity:

Under existing legislation, the merchant, whose sales during the year amount to hundreds of thousands of dollars, pays taxes on the full amount sold during the whole year. Under the proposed law, he would pay tax only on the few thousand which he might purchase and have in his possession on the first day of February. This would greatly diminish the revenue. The financial condition of the Territory, in the opinion of your committee, will not justify such a diminution. By a change of ownership for twenty-four hours, the Territory might be deprived of even the trifling tax due under the modification proviso. It is not presumed that the millionaire merchant, or picayune huckster, would avail himself of so contemptible an artifice. But it is the perfection of human legislation to prevent the possibility of fraud. Divine wisdom added its sanction to this legal sentiment when it taught man to breathe the humble petition, "Lead us not into temptation." The bill was then referred to a select committee, but it did not become law.

Little revenue was collected under the laws enacted by the "bogus" legislature. Not only did free-staters refuse to recognize the legislature, but the population was only a few thousand people, fewer land titles were perfected, and cash to make payment was very scarce.

Laws of 1858

In the fall of 1857 territorial elections were held. It seemed that proslavery forces had again carried the legislature, but investigation revealed massive fraud. After Gov. Robert J. Walker rejected the fraudulent

29. Although the provisions dealing with merchants' inventories constituted non-uniform taxation, the committee's concern that merchants would obtain an advantage because of fortuitous or deliberate fluctuations in the inventories owned on assessment day was a real one. Kansas and other states later dealt with this problem by taxing inventories on average annual value.
ballots, the free-state forces were in control of the legislature. In 1858 this legislature replaced the revenue law enacted in 1855 with a completely new law. The new statute followed the Wisconsin statutes even more closely than the 1855 law had followed the Missouri statutes. The only substantive difference in the definition of taxable property was that the Kansas statute contained a provision, not found in Wisconsin, allowing debts to be deducted from the amount of personal property.

Section 1 stated that all property, real and personal, not specifically exempted, should be subject to taxation. The next two sections defined real and personal property, as follows:

Sec. 2. Real property shall, for the purposes of taxation, be construed to include the land itself, and all buildings, fixtures and other improvements thereon, and all mines, minerals, quarries and fossils in and under the same; and the terms land and real estate, when used in this chapter, shall be construed as having the same meaning as the term real property.

30. Territory of Kansas, Laws and Resolutions of the Fourth Session (1858), Ch. 66. Comparisons are with The Revised Statutes of the State of Wisconsin (1849).

Sec. 3. The terms personal property and personal estate, as used in this chapter, shall have the same meaning and shall, for the purpose of taxation, be construed to include all goods and chattels, moneys and effects, all boats and vessels, whether at home or abroad, and all capital invested therein, all debts due or to become due from solvent debtors, whether on account, contract, note, mortgage or otherwise, all public stock and stocks or shares in all incorporated companies, liable to taxation on their capital as shall not be invested in real estate.11

As in the 1855 law there was a list of exemptions. These were the customary exemptions of governmental, religious, charitable, and educational property. There was also a provision exempting from taxation personal property that was "exempt from execution" not exceeding two hundred dollars in value.12 Another provision exempted "the personal property of persons who, by reason of infirmity, age and poverty, may, in the opinion of the assessors, be unable to contribute towards the public charge." This provision is unusual in that it gave great discretion to the assessor and provided no guidance except his own opinion. The 1855 provision exempting property of widows and minor orphans worth less than one thousand dollars was no longer law.

Although Section 1 made all property not specifically exempt taxable, the definition of personal property in Section 3 explicitly named several types of intangible property. In addition, latter sections attempted to deal in more detail with specific types of intangible property.13

Section 5 provided that land contracts sold by the territory but not conveyed should be taxed as personal property, not as real estate. This was, of course, an attempt to tax those occupying land for which title had not been received. The land could not be sold for taxes, but title was not conveyed until the taxes had been paid. Section 6 was the provision, not found in the Wisconsin statutes, allowing the deduction of debts from the value of the personal property of the taxpayer. This was another attempt to tax intangible property while avoiding double taxation of the underlying wealth.14

Section 15 had a similar purpose. It read:

The owner or holder of stock in any incorporated company which is taxed on its capital, shall not be taxed as an individual for such stock.15

31. Territory of Kansas, Laws and Resolutions of the Fourth Session (1858), Ch. 66, Sec. 2, Sec. 3.
32. Ibid., Ch. 66, Sec. 4. The term "exempt from execution" refers to provisions elsewhere in the statutes which exempted certain amounts of property from claims of creditors.
33. Ibid., Ch. 66, Sec. 1.
34. Ibid., Ch. 66, Sec. 5.
35. Ibid., Ch. 66, Sec. 15.
The definition of personal property in Section 9 included all capital of corporations not invested in real estate. Section 9 provided for the taxation of real estate owned by corporations in the ward or town in which the real estate was located, and Section 14 provided that all stock and personal estate of incorporated companies should be assessed at the principal office of the company. It further provided for the seizure and sale of the property of any member of the corporation, if necessary, to collect the tax.\(^{36}\)

Sections 7 through 14 dealt with the place of assessment and the name in which assessments should be made if the owner resided in another town or ward, was unknown or was a corporation, partnership, or estate. The concern with details regarding the name in which property was listed indicates that the current concept of property taxation in rem (against the thing) was not fully developed, but the provision for the assessment of real estate, even if the owner was not known, was a step in that direction.\(^{37}\)

The organization of local government provided for by the 1855 legislature reflected the southern practice of making the county the principal unit of local government. The laws enacted in 1858 reflected the New England influence, but the organization adopted was not the pure town government of New England. In the pure form of town government, counties have little or no governmental role. The form adopted in Kansas in 1858 was the hybrid that had grown up in many of the northern states and which is now referred to as township government. Town or townships (both terms are used in the statutes) were rural subdivisions of the county. Municipality corporations were designated as cities and were subdivided into wards. The law provided for town or ward assessors rather than county assessors. Town assessors were to be elected for one-year terms at the annual town meetings. As in the case of the 1855 law, the 1858 law provided detailed instructions for administering the tax. These included directions as to the headings to be placed on the assessment roll and dates on which the rolls were to be completed. The secretary of the territory was given the power to prescribe forms and issue instructions. The board of supervisors of each county was to adjust the aggregate value of real estate in any town or ward to produce a just relationship between the valuations of real estate in the various towns of the county.

An interesting feature of the 1858 laws was the strong self-assessment provision. Section 27 provided that an owner of personal property could, before the assessor had finished his work, file an affidavit stating the value of his personal property. An owner of real estate could file an affidavit signed by himself and a disinterested resident of the same ward or town, not a relative, stating the value of real estate owned. The assessor was required to accept the value specified in the affidavit. He also was required to sign an oath stating that all property not covered by an affidavit had been assessed at what he believed to be its true cash value.\(^{38}\)

The territorial tax was three mills on property and one dollar upon every person subject to the capitation tax. It was further provided that no revenue raised was to be used to pay appropriations previously made or to redeem warrants issued prior to January 1, 1858.\(^{39}\)

The county board of supervisors, at its annual meeting, was to determine and estimate the amount of money to be raised in each town and ward in the county for school purposes, in addition to any money that the town or ward may have voted for school purposes.\(^{40}\) They were also to determine the amount to be raised for county purposes and to apportion that amount, together with the territorial tax, among the several towns and wards in proportion to the valuation as equalized by the board of supervisors. Town taxes were to be levied at the annual town meeting.

The town clerk, after receiving notice of the territorial, county, and school tax apportioned to the town, calculated the taxes, plus five percent for expenses, to be charged against each property on the assessment rolls.

Chapter 57 provided for a Territorial Board of Equalization for the purpose of equalizing the amount of taxes to be raised for territorial purposes among the respective counties of the territory. The board consisted of the secretary of state, the treasurer, and auditor of the territory. The board was to make an abstract of the total amount of real estate in each county, the average value per acre, the amount of personal property, and the value of real estate lying in cities and villages in each county and the number and average value of lots. From this information the board was to ascertain whether the valuation in each county was a just proportion of the valuation of the territory and to apportion the territorial taxes in accord with the equalized value which the board had determined.\(^{41}\)

The 1858 law included elaborate instructions to both township and county officers regarding the collection of

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\(^{36}\) Ibid., Ch. 66, Sec. 3, Sec. 9, Sec. 14.

\(^{37}\) Ibid., Ch. 66, Sec. 7-14.

\(^{38}\) Ibid., Ch. 66, Sec. 27.

\(^{39}\) Ibid., Ch. 61.

\(^{40}\) Ibid., Ch. 66, Sec. 41.

\(^{41}\) Ibid., Ch. 67.
taxes. The clerk of the board of supervisors was to make out certificates of the amounts apportioned to each ward and town for territorial, county, and school purposes and to deliver one to the county clerk and one to the clerk of the town or city. These were to be delivered to the town treasurer. The town clerk was to calculate the taxes due and enter this on the corrected assessment roll and to deliver the roll, with the following warrant, to the town treasurer:

The Territory of Kansas to ___________, town treasurer of the town of ____________, in the county of ____________, you are hereby commanded to collect for each of the persons and corporations named in the annexed assessment roll, and of the owners of real estate described therein, the taxes set down in such roll opposite to their respective names, and to the several parcels of lands therein described; and in case any person or corporation, upon whom any such sum or tax is imposed, shall refuse or neglect to pay the same, you are to levy and collect the same by distress and sale of the goods and chattels of the person or corporation so taxed, and out of the moneys so to be collected, after deducting your fees, you are first to pay to the treasurer of said county, on or before the first Monday of January next, the sum of ____________, for Territorial taxes, and you are to retain and pay out, as town treasurer, the sum of ____________, and the balance of said money you are required to pay to said treasurer, for county purposes, on or before the day above specified, by which day you are further required to make returns to said treasurer of this warrant, with said roll annexed, together with your doings thereon, as provided by law. Given under my hand this __________ day of __________, in the year __________, __________, __________, clerk of said town.

Similar procedures were to be followed for taxes levied in wards of cities, with modification as required by the city charters.

Upon delivery of the warrant the town clerk was to make an entry on the books charging the treasurers with the amount of taxes on the rolls. There were detailed provisions in the law regarding procedures to be used in demanding payment and for seizing and selling personal property (goods and chattels) if payment was not made.

42. Ibid., Ch. 66, Sec. 49.
43. Ibid., Ch. 66, Sec. 51.
44. Ibid., Ch. 66, Sec. 50, Sec. 56, Sec. 57.

In this statement sworn by the Atchison County treasurer in 1861, it was noted that no revenues had been collected in cash; $785.75 had been collected in territorial warrants; and that he did not "recollect the amount" of the capitation tax but it was "included in the amount paid in the warrants."
The shortage of a circulating medium and the existence of a variety of governmental promises to pay is reflected in the provision regarding the "coin" acceptable for paying taxes. Town or county orders, which were informal bills of exchange or letters ordering the treasurer to pay, were often issued even though the treasurer did not have funds to make the payment. These orders, like state warrants, often circulated at a discount. The tax statute provided that town orders could not be accepted for the payment of taxes in amounts in excess of the town taxes due, county orders could not be accepted in excess of county taxes due, and the town treasurer was required to pay the county treasurer the amount of territorial taxes in gold or silver coin. There was also a provision forbidding the treasurer to purchase or receive any town or county order for less than its face value. This was an attempt to prevent the treasurer from profiting by buying town or county orders at less than face value and using them to settle accounts.

The town treasurer was to keep in his hands the money collected for town taxes and to pay other amounts to the county treasurer. There was specific provision that the territorial taxes were to be paid in full, even though the town funds were rendered deficient. By instructing the treasurer as to the order in which claims were to be paid, the statutes recognized the probability that funds would be deficient. Payment was to be made in the following order: 1) Money raised for common schools; 2) Money for support of the poor; 3) Money raised for highway and bridge purposes; 4) Other township purposes, in order in which claims were presented.

A list of delinquent taxes was to be returned to the county treasurer, with an affidavit that he had been unable to discover any goods or chattels (personal property) upon which he could levy. The amount of such delinquent taxes was credited to the town treasurer against the amount charged to him. The sheriff, within three years, seize and sell personal property to satisfy delinquencies returned by the town treasurer. The procedure for selling real estate was spelled out in great detail in the statutes.

It is apparent from the provisions for the collection of the tax that the property tax was regarded as a levy against the person (in persona) rather than, as was later true, being a claim against the property (in rem). The town collector could seize any goods and chattels of a person owing taxes and sell them to satisfy either personal or real estate taxes. If the town collector failed to collect the tax, the county treasurer could order the sheriff to sell "goods

and chattels, lands and tenements" to satisfy unpaid personal property taxes.

1860 Tax Laws

The 1860 legislature returned to the county assessor system and made several other changes in the tax law. The definition of taxable property was in the same general form as in 1858, but some changes were made. Among them was the addition of a definition of money as:

to mean and include gold and silver coin, and current bank notes in actual possession, and every deposit which the person owing [sic], holding in trust, or having the beneficial interest therein is entitled to withdraw, in money, on demand.

This provision was added to make it absolutely clear that money and bank deposits were intangible property that should be taxed.

An important change in the definition of real estate excluded growing crops and improvements, such as buildings and fences, on rural land. The exemption of two hundred dollars in personal property tax was eliminated and the provision giving the assessor the power to exempt the personal property of those who, in his opinion, were unable to pay was replaced by the exemption of five hundred dollars of the property of widows.

The 1860 law, for the first time, provided assessors some guidance as to the meaning of value. Section 11 stated:

Each parcel of real property, outside of any town, city or village, mentioned in section 10, shall be valued at its true value in money, excluding the value of the crops growing thereon and improvements; but the price for which such real property would sell at auction or at a forced sale shall not be taken as a criterion of such value. Personal property of every description shall be valued at the usual selling price of similar property at the time and place of listing; and, if there be no usual price, then at the price that is believed could be obtained thereof in money.

The new law eliminated self-assessment. Property owners were still required to swear to the list but it appears that this affirmation referred to the completeness of the list rather than to the value of the property.

Many of the differences between the laws of 1858 and 1860 were the result of the reduction in the role of towns
in the 1860 law. It appears likely that the town form of organization was too elaborate and required too many officials in a thinly populated frontier area. The return to county assessors and collectors in the 1860 law resulted in a much shorter and simpler procedure. The change eliminated the need for town assessors and collectors. This change and the elimination of the self-assessment provisions changed the functions of the county boards of supervisors acting as boards of equalization. Under the 1858 law the board had the responsibility of making aggregate adjustments to insure that each town was paying its share of county and territorial taxes. Because the oaths were to be accepted as the correct value, the board had little need to review individual assessments. With the return to county assessors in 1860 and the elimination of the self-assessment provisions, the county board again became a review board with responsibility for reviewing evaluations of individual properties, but, because the same assessor had assessed all towns and wards, there was less need for equalizing assessment among these units.\(^*\)

**Financial Conditions in the Territorial Period**

Although the territorial legislatures passed two lengthy revenue laws and extensively amended one of them, territorial tax collections were minimal. The territory was in a turmoil over the slavery question, land titles were not well established,\(^5\) circulating medium was scarce, and population was unstable as new settlers arrived and then moved on because of disputed claims or the appearance of better opportunities elsewhere. Reports of territorial officers indicate that reports from county officers were often not made and that only a small percentage of the territorial taxes were paid. Some of this delinquency resulted from the refusal by free-state supporters to recognize the 1855 legislature as legitimate.

The 1858 legislature, controlled by free-staters, received a report from the auditor, H. J. Strickler, dated December 31, 1857, in which Strickler reported that his predecessor had left the territory without making a settlement and that the governor had not complied with his request to appoint a committee to make a settlement. Strickler had, therefore, accepted his predecessor's books as correct.

Although the auditor's report is several pages long and includes several exhibits, it is not easy to interpret. According to one exhibit, the territory had an indebtedness of $7,102.97 as of March 1, 1857. The following summarizes that exhibit:

<table>
<thead>
<tr>
<th>Debits</th>
<th>Credits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance from old account</td>
<td>$4,039.73</td>
</tr>
<tr>
<td>Warrants drawn by previous auditor</td>
<td>3,372.59</td>
</tr>
<tr>
<td>Warrants drawn in Jan. and Feb.</td>
<td>2,635.02</td>
</tr>
<tr>
<td></td>
<td>10,102.97*</td>
</tr>
<tr>
<td>Assessment of 1856 taxes (assets)</td>
<td>2,952.08</td>
</tr>
<tr>
<td>(five counties)</td>
<td></td>
</tr>
<tr>
<td>Balance (indebtedness)</td>
<td>7,150.94</td>
</tr>
<tr>
<td></td>
<td>10,102.97</td>
</tr>
</tbody>
</table>

*Amount shown in report. The actual total of figures shown is $10,047.34.*\(^4\)

The methods of accounting differed from current practices. Taxes assessed were credited to the county and were shown as an asset to the state as soon as the tax abstract was received by the state even though many of these taxes would never be paid. Warrants were drawn by the auditor, and, on occasion, by other officers or committees, to be paid by the treasurer. If there was not enough money in the treasury to pay them, the holder could only wait until there was or sell them at a discount. In a territory without banks, the warrants, orders, and other governmental promises to pay often circulated as money. In fact, the auditor in one message to the legislature complained that he was often asked to reissue warrants in smaller, more convenient denominations. In addition to warrants outstanding, the auditor reported indebtedness for which warrants had not been issued and claims for which no appropriations had been made.

In commenting on the March 1857 report, Auditor Strickler noted that although the report showed an indebtedness of $7,150.94, the deduction of amounts credited to sundry counties but not paid into the treasury produced an actual indebtedness of the territory of $9,954.88.\(^5\)

The statements for the end of the year, 1857, show the whole amount paid into the treasury, from the beginning of the territory, to have been $5,051.36 and the number of warrants issued to have been $16,815.95, leaving warrants unpaid of $11,764.39. The balance due from counties was $11,915.60. Strickler reported that in some cases the taxes had been partially collected, but

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52. Equalization was the process of changing the total valuation within a town, county or other area to insure that property within that geographic area was paying its fair share of the tax. Revaluation was the process of changing values of individual properties to insure that property within the same area was assessed uniformly. Over time, these functions have become confused and today the terms are often used interchangeably.


55. Ibid., 444.
In 1859 the territorial legislature established a commission to investigate claims against the state, and money warrants were drawn by the auditor for those that were allowed. Among the claims found valid by the commission were those of Isaac Renfro for $10 and Shaler W. Eldridge for $49,772. (Eldridge's claim no doubt related to the destroyed Free State Hotel in Lawrence.)
held in the hands of the collectors. He also stated that boards of county commissioners had in nearly all counties failed to file tax books or abstracts, and had not kept the auditor informed of tax collections. Only nine of thirty-seven counties had reported assessments or had shown any disposition to support the territorial government. This was, he said, obviously caused by the "disturbed conditions of the Territory and the resistance, in many parts of the country, to the execution of the laws." 56

The 1858 legislature attempted to make a new start by providing that collections from taxes levied in the future would not go to pay obligations of the "bogus" legislature. The results were a little better. The report of the auditor to the last territorial legislature showed that the whole amount paid into the treasury up to January 1, 1861, amounted to $36,617.48, but the amount of warrants issued by the auditor was $124,962.28, leaving unpaid warrants of $89,344.80. Total indebtedness, including amounts for which warrants had not been issued, was $99,170.98. 57

In addition to the debt resulting from legislative appropriations, there was a much larger potential indebtedness resulting from claims against the territory. Claims arose as a result of the violence in the territory. The 1859 legislature established a commission to investigate the many claims that were being made against the territory. The commission held extensive hearings and the results, published by Congress in two large volumes, constitute a comprehensive picture of the troubles in Kansas. Claims were of two types. "Public" claims were for compensation for monies actually and necessarily expended in maintaining order and carrying out the laws. These were activities such as sustaining the militia, the sheriff, or a posse. "Private" claims were to compensate settlers for damage suffered as a result of disorder in the territory. The federal statute was ambiguous, implying that claimants were to be paid by Congress but allowing the territorial auditor to draw warrants for claims that were allowed. The auditor drew a total of $380,774.13 in warrants. The treasurer issued bonds for $95,700 of these warrants, but a $100,000 limit on territorial bonds prevented bonds from being issued for the rest. The last territorial legislature repudiated both debts and bonds and memorialized Congress to pay them, but Congress ignored the whole subject and the holders of the claims collected nothing. 58

Both the governor and the auditor made a number of suggestions to the last territorial legislature regarding tax matters. Both deplored the failure of counties to collect and pay territorial taxes. The auditor stated that he had been informed that the poorer classes paid their taxes to avoid penalties and that the speculator, the non-resident, and the capitalist delayed paying as long as possible and then sought relief from the legislature. He stated that this was not only unjust, but bad for the economy of the territory because payment by residents merely recirculated money in the territory while payment by non-residents brought new money into the territory. 59

Believing that it was impossible to collect unpaid taxes levied by the "bogus" legislature for 1855, 1856, and 1857, the auditor recommended that counties be released from payment, but that unpaid 1858 taxes be added to the territorial tax for 1861 in those counties that had not paid. The counties would be permitted to retain any of the 1858 territorial taxes which they collected. 60

Auditor Strickler also pointed out that the laws of 1858 and 1860 required that territorial taxes apportioned to the counties be paid in full, but that some counties were submitting delinquency lists in purported payment of territorial taxes. He also suggested that the law be amended to require county treasurers to pay into the territorial treasury all silver or gold coins and all territorial warrants received in payment of taxes. This was to prevent the county treasurers from speculating in territorial warrants. He reported that some county treasurers were allowing interest of ten percent on warrants, although the statutes set the rate at eight percent. 61

Strickler's problems were not confined to disputes with the counties. He also had problems with the judicial branch. His report includes a number of letters and court orders issued against him as a result of a dispute with the judicial authorities of the territory over how payment of court expenses should be made. 62 This cannot be reported in detail here, but the main issue was whether the auditor was to issue warrants to the clerks of the courts for such expenses as juror and witness fees or whether the auditor was to audit each

56. Ibid., 445-46.
59. House Journal of the Kansas Territory, 1861, 52.
60. In 1860, the Kansas Supreme Court declared such an effort to increase a county's share of the state tax by the amount of past uncollected taxes unconstitutional. Such a policy would not result in collection of past taxes but would impose an unequal tax upon present taxpayers. State of Kansas ex rel. . . . v. Leavenworth County, Kansas Reports 2 (Leavenworth: Drake Brothers, 1861), 51.
61. House Journal of the Kansas Territory, 1861, 53-54.
62. Ibid., 54-60.
To the Territorial Auditor of Kansas Territory:

Sir, Your letters of enquiry in relation to the Territorial Taxes for the years 1856-57-58 have been received, in reply to which I would state that there are no records in this office relating to the collection of taxes in the year 1856-57. The officers who held office in those years have all left this county, therefore I have no means of obtaining information. In the year 1858, there was no assessment made in this County, there being no legal officers at the time such assessment should have been made. I think there is no promise of collecting any of the delinquent taxes of these years.

In the year 1859 there was no Territorial Tax placed on the Tax Roll for the reason, I believe, that the Territorial Board of Equalization did not report any tax to be placed on the Tax Roll of that year. Respectfully,

James Aiken
Treasurer of Bourbon Co.

During the territorial years, tax assessment and collection varied greatly in execution from county to county. This 1860 letter from Bourbon County treasurer, James Aiken, explains that in 1856 and 1857 no taxes were collected and “the officers who held office in these years have left this county”; in 1858 there was no county assessment since there were “no legal officers” in the county; and in 1859 there was no territorial tax placed on the rolls because the Territorial Board of Equalization did not report any tax for that year.
claim and issue warrants to the individuals involved. The court ruled that lump sum payments were to be made to the clerk, even though it was known that some of the jurors and witnesses had left the state and were unlikely to claim their fees. It is an interesting example of a financial problem raised by the separation of powers doctrine. 65

Summary

As the territorial days drew to a close, the financial situation was not bright. Indebtedness, excluding claims, was about 2.7 times the total amount of taxes that had been collected in the six years in which the territory had been organized. Some counties had paid little, if any, territorial taxes. Delinquent taxes had been charged to the territory in violation of the law. Tax payments were being made in warrants, and county treasurers were speculating in these warrants. Nevertheless, some progress had been made. By the end of the territorial period, thirty counties had made at least a partial report and the total assessed value, after equalization, totaled $21.7 million. The Territorial Board of Equalization had successfully asserted its right to change county assessments in order to prevent local assessors from shifting territorial taxes to other counties by deliberately under-

valuing property. Hope and speculative fever were high. The last Territorial Board of Equalization report shows that 135,238 town lots, more than two for every inhabitant, had been platted. 64 The governor commented that the value of lots was probably more than twice the value of farmlands actually under cultivation and suggested that if something was not done to stop the mania of town speculation there would soon be no land left for farms in the territory. 65

Despite its weaknesses, the territorial tax system laid the groundwork for financing the new state. Kansas was admitted to the Union on January 29, 1861, under the Wyandotte Constitution. The property tax law of 1860, with minor revisions, served as the basic revenue law of the State of Kansas until 1866 when major revisions were made. The heavy financial needs during the Civil War and the disruptions caused by the war contributed to continued financial stress during the first years of statehood. After the war, attention turned to providing the basic capital needs of state institutions, but within a few years these needs had been met and financial problems eased considerably. In 1872 the state auditor reported that with proper management and due economy the state would soon be out of debt. However, he complained, as did the territorial auditors, that assessors were undervaluing property and that there was too much tax delinquency. 66

63. Disputes between state auditors and state courts continue today. Despite a provision in the Illinois Constitution of 1970 requiring the auditor general to audit all “public funds” of the state (Article 8, Section 3), the Illinois Supreme Court has refused to allow such an audit of the two agencies of the court that regulate the admission of lawyers to the bar and the practice of law. The court, however, has ordered the auditor general to audit all the other aspects of the state supreme and appellate courts.

64. “Proceedings of the Territorial Board of Equalization for the Year, 1860,” House Journal of the Kansas Territory, 1861, 74-78.

65. “Governor’s Message,” House Journal of the Kansas Territory, 1861, 45.