

M I N U T E S

SPECIAL COMMITTEE ON ASSESSMENT AND TAXATION

September 17, 1976

The meeting was called to order by Chairman Gaar shortly after 9:30 a.m. Representative Frey and Representative Nesmith were absent. Staff present: Bill Edds, Revisor of Statutes Office; Richard Ryan, Kansas Legislative Research Department; Roy Johnson, Kansas Legislative Research Department; and Robert Taylor, Kansas Legislative Research Department.

Minutes of Previous Meeting

Staff called attention to two technical corrections in the minutes of the August 6 meeting. It was moved by Representative Thiessen and seconded by Representative Wilkin that the minutes as corrected be approved. Motion carried.

Proposal No. 4 - Merchants' Inventory Tax

The staff presented the results of a survey on the inventory component of the Kansas property tax. (A copy of this report is in the Committee notebooks.) Estimates were presented as to the relative impact of removing the merchants' inventory component, the manufacturers' inventory component, the livestock inventory component, and the total inventory component of the property tax base on various levels of state and local government.

Following this presentation the staff responded to Committee inquiries on certain details of the study. Staff also presented an oral estimate of the impact of eliminating the inventory component of the property tax base on school foundation payments to unified school districts.

Using data developed by the survey of the total inventory component of the property tax base; and (1) assuming the total inventory component had been removed from the tax base for the 1975 assessment year (affecting the 1976-77 school year); (2) assuming no changes in the school finance formula; and (3) assuming the tax base would have been reduced for only the 1975 assessment year (district wealth is computed using a four year average); the estimated increase in general state aid to unified school districts as the result of removing the total inventory component from the tax base would have been approximately \$2.0 million in the 1976-77 school year. If the tax base were reduced by eliminating all inventory valuations for all four years used to compute district wealth (assessment years 1972, 1973, 1974, and 1975) the estimated effect would have been an increase in general state aid of about \$6.0 million in school year 1976-77.

Assuming the legislature could eliminate the inventory component of the property tax base without a constitutional amendment, and assuming the impact of this reduction would be phased in over a four year period beginning in assessment year 1977, the first impact of the increased state aid would be felt in school year 1979-80 with the full impact being felt in school year 1982-83. If a constitutional amendment would be required, and if the reduction in valuation were phased in over a four year period, the earliest possible impact on increased general state aid would be in school year 1981-82 with the full impact being phased in by 1984-85, unless a self-executing amendment was approved which would cause the initial impact to be felt one year earlier.

The staff cautioned that changes in school district wealth, normal growth in assessed valuations, and any changes in the school finance law or related laws will have an impact on the actual amount by which general state aid to unified school districts would increase as the result of decreasing the property tax base. The estimates presented on the probable increase in state aid are intended only to give a "ballpark" view of this process, given the assumptions noted.

While the decrease in the property tax base would have the effect of increasing state aid, staff emphasized that revenues from certain special levies with statutory mill rate ceilings (special education, vocational education, and capital outlay funds, for instance) would be reduced if the taxing unit were at the statutory ceiling and the property tax base were reduced.

Staff reported if merchants' inventory only were removed from the property tax base, the increased cost would be approximately half of what was reported for eliminating all inventories, all other things remaining equal.

The Committee briefly discussed the possibility of an "in lieu of" tax on merchants inventory as an alternative to complete elimination of this type of property from the tax base.

Jack Quinlan, representing the Kansas Motor Car Dealers Association, commented in reply to a question from the Chairman concerning the "in lieu" tax in Missouri and Oklahoma that car dealers would prefer an "in lieu" tax, similar to the tax in Missouri or Oklahoma, compared to the current taxing method. The Chairman responded that should an "in lieu of" tax be considered, it would need to consider all inventories, not just inventories of car dealers.

The staff discussed the constitutional implications and possibilities of the proposal to eliminate all or a portion of the inventory component from the property tax base.

After more discussion, Senator Janssen moved and Representative Wilkin seconded a motion that the staff be directed to draft a letter to the Attorney General to request an opinion on the constitutionality of: (1) exempting inventories, in whole or in part, from the property tax; and (2) removing the inventory component from the property tax base and substituting an "in lieu" tax. The letter would further request the Attorney General to return his opinion prior to the next meeting on October 8, 1976. Motion carried.

The Chairman directed the staff to provide a copy of the letter draft to all Committee members for review prior to forwarding the request to the Attorney General.

Proposal No. 7 - Mineral Interests Taxation

Staff presented a report on laws of Colorado, Nebraska, and Utah providing for the withholding of property taxes on oil and gas royalty payments by the unit operator or first purchaser. (A copy of this report is in the Committee notebooks.)

Following Committee discussion, Representative Hineman moved, and Senator Janssen seconded, that staff be directed to prepare a bill draft on this withholding procedure similar to the three other states, particularly Colorado, for discussion and hearing at the October meeting. Motion carried.

The Chairman directed the staff to schedule a hearing on this bill draft for the morning of October 8, 1976. He further directed the staff to see that copies of the proposed draft be provided to the Committee members, representatives of firms that would be affected by such legislation, and appropriate county officials.

Committee discussion continued on other aspects of Proposal No. 7 concerning the matter of severed mineral interests and valuation procedures for mineral estates. Senator Simpson moved that the Committee: (1) report its efforts and its findings that there appear to be adequate procedures available under existing statutes for valuing mineral interests, collecting real property taxes, and handling delinquent taxes on severed mineral estates, if county officials follow existing statutes; and (2) recommend no changes in these areas. Senator Janssen seconded. Motion carried.

The Chairman directed the staff to prepare a report in accordance with the motion for review by the Committee at the October 8, 1976 meeting.

Staff Reports

Staff presented current statistics on the status of the state general fund. (A copy of the report is in the Committee notebooks.)

Staff presented information on local governmental units electing to exercise their option under L. 1976, Ch. 425 to reduce or eliminate their intangibles tax rate in tax year 1977. (A copy of the report is in the Committee notebooks.)

Staff presented an explanation of the implications of Attorney General's Opinion No. 76-287 concerning the authority to levy city sales taxes. (A copy of this opinion is in Committee notebooks.)

Proposal No. 5 - Sales Tax Revisions

House Bill No. 2734. A statement by Homer G. Nester, Vice President and Controller, Cessna Aircraft Company, supporting H.B. 2734, was presented to the Committee. (A copy of this statement is in Committee notebooks.)

Senate Bill No. 927. Senator Don Christy urged the Committee to report favorably on S.B. 927. He stated that, as the result of his studies, the passage of this bill would not result in a loss of tax revenue. Instead, he stated that it would increase the business of Kansas farm implement dealers, particularly along the Oklahoma border, and create new jobs and added tax revenue from the income tax. Senator Christy also reminded the Committee that the Senate Assessment and Taxation Committee favorably reported this bill during the 1976 Session. (It also was passed by the Senate but died in the House Committee.)

Presentation by Department of Revenue on Miscellaneous Sales Tax Matters

Use Tax "Freeport" Provision. Ben Neill, General Counsel, Department of Revenue, reported to the Committee that the Department had changed its position on this matter since the last meeting after consulting with tax administrators in other states. Mr. Neill reported that there were three alternatives in this area: (1) tax "storage" as a service in the first instance; (2) amend the statute to legalize the Department's past administrative position; or (3) reverse the Department's past administrative position and enforce the current law by collecting the sales tax on sales by Kansas firms if the product is to be warehoused in Kansas, regardless of ultimate use. Mr. Neill stated that the Department would enforce the current law after giving due notice to affected parties. If the Committee preferred a different result, Mr. Neill stated that a statutory change would be required. The Chairman informed Mr. Neill that the Committee was not in a position to make a recommendation on this matter at the present time and that the Department should enforce the current law.

Sales Tax on Leases of Personal Property. Mr. Neill reported on two recent court cases where an inconsistency in the current sales tax law has allowed two firms to escape from payment of the sales tax on leases of personal property. Mr. Neill stated that if it was the intent of the legislature that the sales tax should apply in this instance, an amendment would be needed to K.S.A. 79-3602(c) to correct the apparent oversight discovered by the courts.

The Chairman requested Mr. Neill to prepare a more explicit position paper that would describe the mechanics of this problem in more detail, including a description of the number and kind of firms affected and an estimate of the probable revenue loss if no action were taken. The Department was also requested to recommend specific changes in the law necessary to rectify the apparent inconsistency.

Local Sales Tax. Mr. Neill stated that the Department had recently received several complaints (primarily from firms with sales representatives and no permanent place of business in Kansas) concerning the fact that the local sales tax was applicable at the point of sale rather than the point of delivery as is the case with the state sales tax. There was apparently some concern on the part of those making the complaints that this provision was acting as a restraint to trade. Mr. Neill suggested the Committee may want to consider this alleged inconsistency in the point at which state and local sales taxes are applied.

After some Committee discussion, the Chairman stated that this matter had been duly considered on several previous occasions since the implementation of the local sales tax and that these prior findings indicated levying the local sales tax at the point of sale, rather than point of delivery, resulted in much fewer jurisdictional and tax avoidance problems in collecting the tax.

Auctioneers as Retailers. Mr. Neill reported that the Department of Revenue was going to reverse a previous interpretation of K.A.R. 92-19-8 and K.A.R. 92-19-9 which held that auctioneers would be required to register as retailers and collect the sales tax on items they sold on a commission basis. These earlier positions are noted in a letter from the Department of Revenue dated May 28, 1976, and a letter from the Attorney General dated June 10, 1976. (A copy of these letters is in Committee notebooks.)

Mr. Neill stated that these earlier rulings were incorrect because the manner of the contract between the auctioneer and the owner of the property should not be the determining factor as to whether an auctioneer is a retailer or the transaction is an isolated or occasional sale.

The Department's new position, according to Mr. Neill, was that in those cases where the auctioneer actually took possession of the property, the sales tax would be applicable. However, in those cases where the auctioneer was acting only as an agent and did not hold or have possession of the property, the sale would be considered "isolated or occasional" and no tax would be due.

In the absence of further directives from the legislature, Mr. Neill stated that the Department will continue to hold this revised position.

Review of Sales Tax Bills Under Consideration

Staff called attention to a memorandum reviewing the basic provisions of seven sales tax bills under consideration by the Committee. (A copy of the staff memo is in Committee notebooks.) The Chairman requested that Committee members review these bills and be prepared to make a decision at the October 8, 1976 meeting on S.B. 927, S.B. 1019, H.B. 2526, and H.B. 2734. The Chairman also directed that further discussion of the remaining sales tax bills be scheduled for the October 8, 1976 meeting with a final decision on these matters scheduled for the November 12, 1976 meeting.

Proposal No. 6 - Classification of Soils

Staff presented a draft of a Committee report on Proposal No. 6. (A copy is in Committee notebooks.)

Representative Hineman made a motion that the report be approved as drafted. Representative Powell seconded. Motion carried unanimously.

Agenda for Next Meeting

1. Proposal No. 7 - Mineral Interests Taxation
 - a. Hearing on bill draft
 - b. Review of report draft on remainder of proposal

2. Proposal No. 4 - Merchants' Inventory Taxation
 - a. Review of Attorney General Opinion
 - b. Committee discussion

3. Proposal No. 5 - Sales Tax
 - a. Department of Revenue report on sales taxes on leases of personal property
 - b. Action on four bills
 - c. Further consideration of other bills

Prepared by Robert Taylor

Approved by Committee on:

(Date)