

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION

The meeting was called to order by Chairman Paul "Bud" Burke at  
Chairperson

11:00 a.m. ~~4:00~~ on FEBRUARY 28, 1983 in room 526-S of the Capitol.

All members were present ~~except~~: Senator Kerr (excused)

Committee staff present: Wayne Morris, Research Dept.  
Tom Severn, Research Dept.  
Don Hayward, Revisor's Office

Conferees appearing before the committee: Mark Beshears, Director of Taxation  
Al Alderson, Department of Revenue  
Bill Edds, Department of Revenue  
T. C. Anderson, Kansas Society of CPA'S  
Harvey Sorensen, Attorney  
Tom Sheridan, Chief of Audit Bureau, Dept. of Revenue

The chairman recognized Mark Beshears, Director of Taxation, to explain the bills requested by the Department of Revenue.

SB 382 and SB 384 are two pieces of legislation to help the Department collect some accounts receivable which they are unable to collect now. (See Attachment #1)

SB 383 would help the Department to assure that tax protestors and other individuals who have failed to file a return or refused to comply with the notice requirement to file a proper return pay their fair share of taxes. (See Attachment #2)

In response to an inquiry by the chairman, Mr. Beshears said there were 20 to 25 tax protestors per year. They will track by cross matching, like personalized license plates, program for nonresident land owners, FFA on who has bought airplanes, professional organizations, Kansas Bar Association, etc.

T. C. Anderson, Kansas Society of CPA'S, said SB 383 could possibly cause some problems for people who for perfectly legitimate reasons have unintentionally failed to file a return or comply with the 20 day notice due to illness, change in bookkeepers, etc., have erred or overlooked filing the return. He doesn't think they should have to go to district court. Al Alderson said one suggestion might be that court costs shall be assessed against the non-prevailing party. In response to a question as to whether there were any problems with collecting sales taxes, Bill Edds replied no significant amount, only a few itinerants and not enough money involved to track them down.

In discussion of SB 384, Senator Angell questioned lines 162-165 and Al Alderson of the Revenue Dept. said he believed lines 173 through 177 took care of the disclosure of information problem. He said perhaps that needs to be amended to make it clear and the Dept. will draw up an amendment; however, information given out would never be more than a bottom line total.

Bill Edds, Dept. of Revenue, suggested that lines 28 and 30 of SB 382 be amended by striking the term "registered"; to strike the period and insert following the period, language making this act specifically a part of the Kansas Retail and Sales Tax Act.

The committee considered SB 386, a bill which deals with the taxation of gain from corporate liquidations. Mr. Charles Wurth, Fox and Co. Accounting, Wichita, introduced Harvey Sorensen, Attorney and tax lawyer, who explained a proposed amendment to the Kansas income tax statute regarding the taxation of 337 gains. He discussed the problem, described the existing tax structure, and explained an amendment which he said would time the payment of Kansas tax with the recognition of the gain to be taxed and prevent non-payment of tax by non-residents who do not file Kansas income tax returns. (Attachment #3)

Tom Sheridan, Chief of Audit Bureau, Dept. of Revenue, said he was apprehensive about the bill because of the possibility that the equal protection clause of the Constitution may come into play on this, and Kansas residents can defer, non-residents cannot. He referred to line 38 of the bill which states stockholders are not subject to Kansas income tax on the gains realized by the stockholders on liquidation of a corporation. He said he doesn't believe the language is clear in line 40.

The Dept. of Revenue and Revisor's Office are to come back at a 2:30 meeting today with amendments on these bills. The chairman adjourned the meeting at 12:00 noon.

ASSESSMENT AND TAXATION

11 a.m.  
meeting

OBSERVERS  
(PLEASE PRINT)

DATE NAME ADDRESS REPRESENTING

Feb. 28

DATE	NAME	ADDRESS	REPRESENTING
	Kristina Henkoff	Dodge City, KS.	Angell
	Delra Klassen	" " "	"
	David R Collins	Lawrence	Kansas Geol. Survey
	Carol Gaudy	Lawrence	✓
	Ron Gaches	TOPEKA	KACI
	Pat Hubbell	Topeka	KS. Railroad Assoc.
	John Meier	Topeka	K. L. A.
	Chip Wheeler	Topeka	Leg. Policy Group
	Robert Watkins	Box 604, KCMO 64111	Head Hk. Plan. & Mid. Am.
	John Blythe	Manhattan	K. F. B.
	Don Schuck	Topeka	ICIO 602
	Phil Mart	Topeka	PVD
	Jim Ferguson	Topeka	T.P.G.
	HARVEY SORENSEN	Wichita	SELF
	Charles W. Wirth	Wichita	MIO American
	Cate M. Rice	Topeka	Pat. & Lic. & Ass.
	Gowen Trewar	Kansas City, Mo	HBA-K.C.
	Janet Stubbs	Topeka	HBAK
	T.P. Anderson	Topeka	KSCPA
	ALAN ANDERSON	"	REVENUE
	Tom Sheridan	"	"
	BILL EDDS	"	"
	Pat Russell	"	Budget



*Kansas*  
DEPARTMENT OF REVENUE

State Office Building  
TOPEKA, KANSAS 66625

## MEMORANDUM

TO: Senate Assessment & Taxation Committee      DATE: February 28, 1983  
FROM: Mark Beshears, Director of Taxation      RE: Senate Bill 384 & 382

Senate Bill 384 and 382 are the Department's response to the Legislative Post Auditor's sunset audit of the Department of Revenue. The Post Auditor as well as the Department are concerned about the problem of outstanding accounts receivable. We believe the passage of these two pieces of legislation will help the Department collect some accounts receivable which we are unable to do so now.

Senate Bill 384 would allow the secretary of revenue to contract with a debt collection agency for the collection of delinquent taxes from a taxpayer not residing or domiciled in this state. New Section 5 authorizes the secretary of revenue to enter into a reciprocal agreement with an agency of another state to perform the service of collecting delinquent taxes for Kansas in consideration of our department performing services for the other states in which we enter this agreement.

Of the top 50 individual income tax accounts receivable, 36% of them represent those accounts where the taxpayer is either not residing or is not domiciled in Kansas. This represents approximately \$121,000 that could be subject to collection if Senate Bill 384 is passed.

Senate Bill 382 imposes personal liability for the Kansas retailers' sales tax regardless of the form under which the retailer conducts business. Presently under the withholding tax laws individuals are personally liable for any withholding tax regardless of the form of business, be it a corporation, partnership or sole proprietorship.

Many businesses who are in corporate form own no assets. They usually lease their building and equipment. If a corporation goes out of business there is nothing the Department can collect if they owe any sales tax. If Senate Bill 382 is passed the Department would at least have the ability to attempt collection from any corporate officers.

In summation, the Department believes the passage of these two bills would give us additional tools to collect tax that is due the state which presently is now impossible to collect.

*Mark Beshears*

MARK BESHEARS  
DIRECTOR OF TAXATION



*Kansas*  
DEPARTMENT OF REVENUE

State Office Building  
TOPEKA, KANSAS 66625

## MEMORANDUM

TO: Senate Assessment & Taxation Committee      DATE: February 28, 1983  
FROM: Mark Beshears, Director of Taxation      RE: Senate Bill 383

The Kansas income tax system relies on taxpayers to voluntarily assess their tax liability, to file returns, and to pay taxes due. Without a high level of voluntary compliance, the Department of Revenue could not hope to administer the state's tax laws. There are people within this state who are not complying with the tax laws. These people are usually involved in some type of tax protestor movement. The Department does have the capability of detecting a significant number of nonfilers. However finding them does not necessarily solve the problem. In many cases, the individual refuses to file even after notification by the Department. Many of these individuals are involved in organized tax protest movements, and they openly brag about not filing returns or paying tax.

Presently the Department has several tools to use in assuring that people pay their fair share of taxes. One, we can make an assessment of the tax based upon the best information available, if the taxpayer has failed to file a return or has filed an incorrect or insufficient return, provided the taxpayer has refused to comply with the notice requirement to file a proper return. This assessment may be protested and a hearing demanded before the director of taxation. This method has had some success but our "secrecy" provisions kept us from publicizing this information as a deterrent to others.

Second, the director can assess a civil penalty equal to the tax due plus interest at 1% per month, if the taxpayer with fraudulent intent fails to pay any tax or to make any return.


Third, there are criminal remedies independent of the civil remedies just set forth. The Kansas income tax act provides that such a person shall be guilty of a misdemeanor and shall upon conviction, be fined not more than \$1,000 or be imprisoned in the county jail not less than 30 days nor more than one year, or both such fine and imprisonment.

Senate Bill 383 would give the Department a fourth tool to enforce tax payments and the filing of returns. The mandamus action provided in Senate Bill 383 provides that if any taxpayer fails to file a return and after notice refuses within 20 days to file a return, then the director can file an application for a writ of mandamus. The mandamus action is enforced by the courts through the use of contempt proceedings. It is important to note that the judgment shall include costs of the action against the taxpayer.

Both Oregon and North Dakota have a mandamus proceeding similar to the one contained in Senate Bill 383. Both states Supreme Courts have upheld the validity of this type of mandamus statute. In all five cases appealed to the North Dakota Supreme Court the taxpayers have filed tax returns. Oregon has reported similar results.

The advantages we see by using the mandamus action are as follows: (1) It avoids an administrative hearing, which may have the appearance of being unfair and provides a forum for the tax protestor. (2) It is speedy. If a taxpayer fails to file a return within 60 days after the time prescribed by law and refuses to file a return within 20 days after he has been notified by the director, the Department of Revenue may seek a writ of mandamus before the District Court of Shawnee County. North Dakota and Oregon's experience has indicated that speed is vital in these matters. (3) The mandamus action has proved very effective in getting tax protestors to file an income tax return. (4) The enforcement tool is contempt proceedings which involves the courts and provides a jail penalty which proves a very effective incentive for people to file their returns. (5) The use of the mandamus action also generates publicity which assists in the tax enforcement effort. It demonstrates that tax protestors do suffer a penalty for their failure to comply with the law.

In conclusion the Department feels that a mandamus statute as contemplated by Senate Bill 383 would be a very effective tool in assuring that all taxpayers file, and pay their fair share of the tax burden.

  
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MARK BESHEARS  
DIRECTOR OF TAXATION

SENATE BILL 386

PROPOSED AMENDMENT TO K.S.A.  
79-32,138 and 79-32,140

I. Identification of Problem

Under existing Kansas law a corporation is obligated to report and pay tax on gains which are otherwise unrecognized for federal income tax purposes. K.S.A. 79-32,138. A Kansas reporting shareholder is entitled to claim a credit to the extent of his proportionate share of any corporate tax paid. K.S.A. 79-32,140.

Since the amendment of the installment sales provisions of Section 453 of the Internal Revenue Code by the Installment Sales Revision Act of 1980, a corporation may sell its assets on the installment basis while electing to exclude recognition of the gain under Section 337. The distribution of the installment note will not trigger recognition of gain for federal income tax purposes. The Installment Sales Revision Act also eliminates any minimum down payment requirement.

As a result of the changes in federal law it is now common for corporations to sell assets on the installment basis and thereafter to liquidate. It is not unusual for cash downpayments to be a small percentage of the sale price. As a result of these factors, there can be a timing difference between payment of the corporate tax and utilization of the offsetting tax credit. These timing differences have been known to extend from ten to twenty-five (10-25) years. Furthermore, the impact of federal taxes on recapture items and Kansas income taxes may easily exceed the amount of any downpayment.

## II. Description of Existing Tax Structure

The current income tax act taxes corporations generally on a conformity basis. A corporation is taxed on its federal taxable income subject to certain modifications, including 337 gains and losses not recognized for federal income tax purposes. The gain taxed is the corporate gain (the difference between the sale price and the corporate basis).

Each common shareholder is entitled to claim a credit on his Kansas income tax return. The amount of the credit available to the shareholder bears the same proportion to the corporate tax paid as the amount of such shareholder's liquidating distributions bear to all common shareholders liquidating distributions - (i.e. in accordance with their common stock interest in the corporation).

The tax is assessed against corporate gains. The credits offset individual income tax. There is no direct correlation between the corporate taxes paid and the individual income taxes. It is possible to have corporate taxable gains and no individual subject to tax and no corporate taxable gains, but individual shareholder gains on liquidation.

### III. The Proposed Amendment

The proposed amendment seeks to achieve two objectives:

1. time the payment of Kansas tax with the recognition of the gain to be taxed
2. prevent non-payment of tax by non-residents who do not file Kansas income tax returns

The current law requires collection of the Kansas tax at the time of sale and provides Kansas taxpayers with a credit at the time funds are received in payment. For Kansas taxpayers, the amendment eliminates the tax at the time of sale and the offsetting credit. Thus for Kansas taxpayers, the tax is paid at the time gain is recognized for federal income tax purposes - generally the time of receipt of payment. In order to prevent non-Kansas taxpayers from escaping the payment of Kansas tax, the proposed amendment requires the corporation to pay a tax on that portion of the corporate gain which is allocable to the non-resident shareholder.

In discussions with the Department of Revenue, the Department expressed particular concern over the failure of non-residents to report and pay tax on gains not recognized at the corporate level. The proposed amendment taxes such shareholders gains and further requires the corporation to reduce distributions to such shareholders by the amount of the tax thus paid, so that Kansas shareholders do not pay any portion of the non-Kansan's tax.

The proposed bill containing the amendment makes necessary conforming changes to the statute.