

MINUTES OF THE HOUSE COMMITTEE ON ASSESSMENT AND TAXATIONThe meeting was called to order by Representative Jim Braden at  
Chairperson9:00 a.m. ~~xxx~~ on February 2, 1984 in room 519S of the Capitol.All members were present ~~except~~.

## Committee staff present:

Tom Severn, Legislative Research Department  
Wayne Morris, Legislative Research Department  
Don Hayward, Revisor of Statutes' Office  
Nancy Wolff, Secretary to the Committee

## Conferees appearing before the committee:

T.C. Anderson, Kansas Society of Certified Public Accountants  
Rod Bieker, Office of the Attorney General

T. C. Anderson, representing the Kansas Society of Certified Public Accountants, requested that the committee introduce a bill to remove corporations from the language of K.S.A. 79-3222 so Kansas law regarding the filing of form K-99 would conform with the filing of form 1099. He distributed a copy of the current statute with the proposed amendments incorporated into it. (Exhibit I)

Representative Rolfs made a motion to introduce a committee bill incorporating the proposal of Mr. Anderson. Representative Roe seconded the motion. The motion carried.

The minutes of the meetings held on January 26, 1984 and January 27, 1984, were approved as printed.

Hearings were held on House Bill 2789 which amends the law pertaining to situs of intangibles tax to conform to a Kansas Supreme Court Opinion.

Rod Bieker of the Kansas Attorney General's office testified in support of the bill (Exhibit II) and presented an amendment to the bill. He felt the bill should be amended in line 28 by striking "are held and managed for" and inserting "of" in lieu thereof and following "individual" the words "have acquired a situs" should be inserted. The same should be done on lines 38 and 39 by striking "are held and managed for" and inserting "of" in lieu thereof and following "corporation" the words "have acquired a situs" should be inserted.

Representative Miller made a motion to amend House Bill 2789 by incorporating the proposed amendments presented by Mr. Bieker. Representative Wunsch seconded the motion. The motion carried.

Representative Frey made a motion that House Bill 2789 be reported favorable for passage as amended and Representative Avlward seconded the motion.

Representative Rolfs made a substitute motion to incorporate the contents of House Bill 2691 into House Bill 2789. Representative Frey seconded the motion. The motion failed, 6-9.

The Chairman then called for a vote on the original motion to report House Bill 2789 favorable for passage as amended. The motion carried.

Tom Severn, of staff, presented a table that the Chairman had requested which summarizes Federal and State Tax Liability for hypothetical high and low income tax payers with and without \$200 contribution and various state credits (Exhibit III). The Chairman requested the members to review this table to enable them to take action on House Bill 2329 at the next meeting. House Bill 2329 would authorize tax credits for contributions to community facilities for the mentally retarded and the united cerebral palsy research foundation in Kansas.

The meeting was adjourned.

**79-3222.** Report of moneys paid or payable during taxable year; who to make return; failure to report, penalties. Every individual, partnership, corporation, joint stock company or association whether or not exempt from taxation under this act, being a resident or having a place of business in this state, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, employers and all officers and employees of the state or of any political subdivision of the state, having the control, receipt, custody, disposal or payment, in the course of his, her or its trade or business, of interest (other than interest coupons payable to bearer), rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable annual or periodical gains, profits, and income paid or payable during any year to any resident person, partnership, ~~corporation~~, joint stock company, association, estate or trust, or to any person, partnership, ~~corporation~~, joint stock company, association, estate or trust which receives or to which is payable any such income if the same is subject to taxation under the Kansas income tax act, of \$600 or more, shall make return thereof under oath to the director of taxation in such form and manner and to such extent as may be prescribed by such director under rules and regulations of the secretary of revenue. Unless such income is so reported, the director may disallow the payments as deductions or credits in computing the tax of the payer or impose a penalty of not to exceed \$500.

History: L. 1933, ch. 320, § 22; L. 1953, ch. 437, § 2; L. 1972, ch. 342, § 95; L. 1973, ch. 396, § 1; July 1.

**79-3223.** Records and special returns. If, in the judgment of the director, any taxpayer has failed to make returns and comply with such rules and regulations, as may from time to time be prescribed, the director may require such taxpayer to make return or keep such records as the director may deem sufficient to show, whether or not, such person is liable to tax under this act.

History: L. 1933, ch. 320, § 23; March 29.

**79-3224.**

History: L. 1933, ch. 320, § 24; Repealed, L. 1967, ch. 497, § 42; Jan. 1, 1968.

Revisor's Note:

New act, see 79-32,114.

**79-3225.** Time for payment of tax; cancellation of tax less than one dollar; extension of time. (a) All taxes imposed under the provisions of "Kansas income tax act" shall be paid on the fifteenth day of the fourth month following the close of the taxable year. When the tax as shown to be due on a return is less than one dollar (\$1), such tax shall be canceled and no payment need be remitted by the taxpayer.

(b) The director of taxation may extend the time for payment of the tax, or any installment thereof, for a reasonable period of time not to exceed six (6) months from the date fixed for payment thereof. Such extension may exceed six months in the case of a taxpayer who is abroad. Interest shall be charged at the rate of one-half of one percent per month for the period of such extension.

History: L. 1933, ch. 320, § 25; L. 1945, ch. 364, § 4; L. 1951, ch. 493, § 3; L. 1958, ch. 65, § 1 (Budget Session); L. 1965, ch. 525, § 15; L. 1968, ch. 107, § 1; July 1.

Research and Practice Aids:

Taxation—1096.

C.J.S. Taxation § 1106.

Income taxes, Kansas Probate Law and Practice § 893.

**79-3226.** Examination of returns; notice of additional tax or rejection of refund; hearing, when; final decision, notice; taxes and interest payable, when. As soon as practicable after the return is filed the director of taxation shall examine it, and shall determine the correct amount of the tax. If the tax found due shall be greater than the amount theretofore paid, or if a claim for a refund is denied notice shall be mailed to the taxpayer by registered or certified mail. Within thirty (30) days after the mailing of said notice the taxpayer may request a hearing of the director relating to his or her tax liability by filing a written request with the director. Based on the evidence presented at such hearing, the director shall make a final determination within a reasonable time, and shall notify the taxpayer by registered or certified mail of its decision, accompanied by a notice and demand for payment. The tax shall be paid within twenty (20) days thereafter, together with interest on the additional tax from the date the tax was due unless an appeal is taken in the manner provided by law: *Provided*, That no additional tax shall be assessed for less than one dollar (\$1).

such tax by the imposition and levying of any other taxes as may be authorized by law or by increasing its ad valorem tax levy for the general fund for any year in which revenue is not received from the tax on gross earnings derived from money, notes and other evidence of debt in an amount not to exceed the amount of such tax received in the year prior to elimination of such tax. The increase in the amount of such ad valorem tax authorized herein shall be in addition to any aggregate levy amount which may be fixed by any existing state law or any law which may hereafter be enacted:

(f) On or after January 1, 1983, upon submission of a petition signed by not less than 5% of the qualified electors of a county, city or township not levying a tax under the provisions of this act requesting the same, the governing body of such taxing subdivision shall be required to submit to the electors of such taxing subdivision at the next primary or general election held in such taxing subdivision a proposition to impose a tax pursuant to this act in an amount not exceeding the limitations prescribed in this section. Such proposition shall be in substantially the following form: "Shall \_\_\_\_\_ (county)(city)(township)

impose a tax on gross earnings derived from money, notes and other evidence of debt at a rate of \_\_\_\_\_ pursuant to 1982 H.B. No. 3142 to reduce property taxes?" Any such election shall be noticed, called and conducted in the manner prescribed by the general bond law. If a majority of the electors voting thereon at such election vote in favor of the proposition the board of county commissioners or the township board shall provide by resolution or the governing body of any city shall provide by ordinance for the imposition of such taxes in the manner prescribed by this act. Such taxes shall be effective for all taxable years commencing after December 31 of the year in which such proposition is approved by the electors of the taxing subdivision.

History: L. 1982, ch. 63, § 1; May 13.

**12-1,102.** Same; definitions. When used in this act the following terms shall have the meanings ascribed to them in this section:

(a) "Money" means gold and silver coin, United States treasury notes, and other forms of currency in common use;

(b) "notes and other evidence of debt" means certificates evidencing shares of stock otherwise taxable to the owner or holder, notes, bonds, debentures, claims secured by deed, liquidated claims and demands for money, accounts receivable, and all written instruments, contracts or other writings evidencing, calling for, fixing or showing a fixed obligation, determined or determinable, at present or in the future, in favor of the holder thereof. Notes and other evidence of debt shall not mean oil or gas leases or any interests created thereby or arising therefrom or any royalty interests in oil or gas.

History: L. 1982, ch. 63, § 2; May 13.

**12-1,103.** Same; tax situs of gross earnings. The tax situs of gross earnings derived from money, notes and other evidence of debt which is received or receivable by persons, firms and corporations or subsidiaries or parent corporations of such firms or corporations, arising out of, or acquired in the conduct of, business transacted by such person, firm or corporation or subsidiary or parent corporation thereof in the state of Kansas, shall be at the principal office of such person, firm or corporation or subsidiary or parent corporation of such firm or corporation located within the state, or if there is no such office within the state, at the place or places at which the business operations of such person, firm or corporation or subsidiary or parent corporation of such firm or corporation is carried on.

History: L. 1982, ch. 63, § 3; May 13.

**12-1,104.** Same; filing of returns; persons required to file and pay tax. (a) Every taxpayer receiving earnings which are taxable under the provisions of this act shall file a return on or before August 1 in the year 1982, and on or before July 1 of each year thereafter with the county clerk of the county in which the gross earnings has acquired situs. Such return shall contain such information and be made upon forms prescribed and provided by the state director of taxation. The director of taxation shall include forms for the making of such return with each state income tax return distributed by the state department of revenue.

(b) A return listing the gross earnings of every resident conservatee which are taxable pursuant to this act shall be filed by the conservator of such conservatee. The return

## Humpage v. Robards

No. 51,664

JOHN C. HUMPAGE and ELOISE M. HUMPAGE, *Appellants*, v. MARJORIE M. ROBARDS, County Treasurer of Shawnee County, *et al.*, *Appellees*.

(625 P.2d 469)

## SYLLABUS BY THE COURT

TAXATION—*Intangibles Tax—Intangibles Located Outside State—Burden of Proof to Show Business Situs.* In an action to enjoin the collection of intangibles taxes in Kansas on intangibles held in Missouri under a brokerage agreement, the record is examined and it is *held*: The plaintiff did not sustain the burden of proof to show a business situs in Missouri, making the intangibles taxable in Kansas.

Appeal from Shawnee district court, division No. 3, E. NEWTON VICKERS, judge. Opinion filed March 25, 1981. Affirmed.

Donald R. Hoffman, of Humpage, Berger and Hoffman, of Topeka, argued the cause and was on the brief for the appellants.

Ray D. Stehndel, of Topeka, argued the cause and was on the brief for the appellees.

The opinion of the court was delivered by

HERD, J.: John C. and Eloise M. Humpage appeal from a trial court's order annulling and setting aside a restraining order previously granted by the court. The court also denied the issuance of a permanent injunction against the collection of appellants' intangibles taxes in Shawnee County.

This case is submitted on an agreed statement of facts. John C. Humpage and Eloise M. Humpage have for many years, including 1977, maintained a margin account agreement with the brokerage firm of B. C. Christopher and Company of Kansas City, Missouri. The company held corporate securities, which were owned by appellants, in its name pursuant to the agreement. The securities generated \$29,656.86 in income for 1977. The income was properly reported to the Department of Revenue on the intangibles tax report form. On February 20, 1979, appellants filed this action seeking a declaratory judgment with injunctive relief against the appellee in her official capacity from collection of the 1977 intangibles taxes in the amount of \$889.71. Appellants acknowledge they are residents of Shawnee County but allege the intangibles have attained a business situs in the State of Missouri by virtue of appellants' contract with B. C. Christopher and Company. On March 7, 1979, the trial court issued a restraining order against collection of the taxes but on September 26, 1979,

Facts:

the court dissolved the restraining order and denied appellants' prayer for the permanent injunction, finding K.S.A. 79-3109 provides for a general tax on intangibles without regard to the situs of such intangibles. The court further found the situs of the intangibles became relevant only when the county assessed its intangibles taxes under K.S.A. 79-3109(b), stating:

"The Court is of the opinion that the plaintiff's argument regarding 'situs' of the assets is moot in that there is no elective or county tax as provided in K.S.A. 79-3109(b) at issue here."

Issues:

There is only one issue in this case: May intangibles acquire a business situs for tax purposes outside the State of Kansas when the owner is domiciled in Kansas?

Answer:

"While the maxim 'mobilia sequuntur personam' [movables follow the person] embodies the fundamental principle in respect of the taxable situs of intangible personal property, it is generally recognized that there may be a 'business situs' in a state other than the domicile of the owner or creditor in the case of intangibles used in such other state in the local business of their nonresident owner, which will enable that state to exact a property tax measured by the value of the intangibles used there." 71 Am. Jur. 2d, State and Local Taxation § 671, p. 917.

See Annot., 59 A.L.R.3d 837, 838.

The concept of business situs was discussed at length in *Kentucky Department of Revenue v. Bomar*, 486 S.W.2d 532 (Ky. 1972). In that case, Bomar delivered intangibles to a Georgia bank which was acting as trustee pursuant to a trust agreement between the parties. The Kentucky Department of Revenue attempted to assess an intangibles tax on the trust corpus and the court held the property was subject to such tax because the trust had not acquired a business situs in Georgia. The court noted several definitions of business situs taken from various jurisdictions and applied the following definition from *Holly Sugar Corp. v. Johnson*, 18 Cal. 2d 218, 223-224, 115 P.2d 8 (1941):

"As an exception to the general rule embodied in the legal maxim *mobilia sequuntur personam*, it is equally well settled that intangible property may acquire a situs for taxation other than at the domicile of the owner if it has become an integral part of some local business. [Citations omitted.] Business situs arises from the act of the owner of the intangibles in employing the wealth represented thereby, as an integral portion of the business activity of the particular place, so that it becomes identified with the economic structure of that place and loses its identity with the domicile of the owner."

The court also quoted the following from *Grieves v. State ex rel.*, 168 Okla. 642, 644, 35 P.2d 454 (1934):

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Humpage v. Robards

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"In order to constitute a business situs where intangible property is taxable other than the owner's domicile, it must be shown that possession and control of the property has been localized in some independent business or investment away from the owner's domicile so that its substantial use and value primarily attach to and become an asset of the outside business."

See *Commonwealth ex rel. Luckett v. Louisville & N. R. Co.*, 479 S.W.2d 15 (Ky. 1972).

These definitions embody the heart of the concept of localization and integration, that is, the "localization" of the intangibles and their 'integration' with local business in the state," (71 Am. Jur. 2d, State and Local Taxation § 673, p. 919), which are essential criteria in establishing a business situs.

Kansas courts have formulated rules governing the determination of a business situs for intangibles. The issue before this court in *Russell v. Cogswell*, 151 Kan. 14, 98 P.2d 179 (1940), was whether Kansas could impose inheritance taxes on a trust estate consisting primarily of intangibles where the trustee is a nonresident of Kansas with exclusive control over the trust. We held the trust had acquired a business situs in Missouri, citing the trustee's exclusive control and management over the trust. Additionally, we stressed the localization of trust assets in Missouri. The earnings were made in Missouri and the assets had become localized by investment and reinvestment of those earnings within the state.

The concept of localization and integration of intangibles with the economic structure of the area as well as the necessity of lack of control over the intangibles by the owner is present in other Kansas cases dealing with the concept of business situs. See *Honest v. Gann*, 120 Kan. 365, 244 Pac. 233 (1926); *Buck v. Miami County*, 103 Kan. 270, 173 Pac. 344 (1918); *Kimball Co. v. Shawnee County*, 99 Kan. 302, 161 Pac. 644 (1916); *Johnson County v. Hewitt*, 76 Kan. 816, 93 Pac. 181 (1907).

Applying the criteria for determining a business situs to the current situation, we find appellants have failed to meet either the control or localization and integration requirements of Kansas law. Although the intangibles in question are separate from the domicile of the owners and the agent invests and reinvests, pledges and repledges the assets, segregates collateral and manages the stocks without advising or consulting the Humpages, appellants nonetheless retain ultimate control over the future of the business relationship with B. C. Christopher and Company.

They are free to revoke the agent's power at any time, unlike the lack of control the trustor exhibited in *Russell v. Cogswell*. More important, however, is the lack of evidence showing localization and integration of assets with the alleged situs. Appellants fail to show the earnings and assets from the stock have become an integral part of the business activity of Kansas City, Missouri. This lack of permanent attachment to the foreign locality defeats appellants' claim of business situs and the intangibles retain their identity with the domicile of the owner.

We hold appellants' intangible property did not acquire a business situs in Kansas City, Missouri. The property is therefore subject to Kansas intangibles tax, pursuant to K.S.A. 79-3109(a).

The judgment of the trial court is affirmed.

SUMMARY OF FEDERAL AND STATE TAX LIABILITY FOR HYPOTHETICAL  
HIGH AND LOW INCOME TAXPAYERS WITH AND WITHOUT \$200  
CONTRIBUTION AND VARIOUS STATE CREDITS

	<u>No Credit and No Contribution</u>	<u>No Credit and \$200 Contribution</u>	<u>\$200 Contribution With 25% Credit</u>	<u>\$200 Contribution With 50% Credit</u>
<b>\$25,000 Taxpayer (Std. Deduction)</b>				
Federal	\$ 3,294	\$ 3,282*	\$ 3,282*	\$ 3,282*
State	702	702	652	602
Total	<u>\$ 3,996</u>	<u>\$ 3,984</u>	<u>\$ 3,934</u>	<u>\$ 3,884</u>
Difference		<u>\$ (12)</u>	<u>\$ (62)</u>	<u>\$ (112)</u>
<b>\$100,000 Taxpayer (Itemizes)</b>				
Federal	\$ 30,830	\$ 30,734	\$ 30,734	\$ 30,734
State	5,283	5,269	5,237	5,187
Total	<u>\$ 36,113</u>	<u>\$ 36,003</u>	<u>\$ 35,971</u>	<u>\$ 35,921</u>
Difference		<u>\$ (110)</u>	<u>\$ (142)</u>	<u>\$ (192)</u>

\* Assumes taxpayer has not previously used any of his charitable contributions deduction for taxpayers using standard deduction.

Kansas Legislative Research Department  
January 26, 1984

84-12/TS

EXHIBIT III

*Ex. III 2/2/84*