

Approved 4-29-84  
Date

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION

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

11:00 a.m./~~XXX~~ p.m. on February 20, 1984 in room 526-S of the Capitol.

All members were present ~~XXXX~~: Senator Mulich (Excused)

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

Conferees appearing before the committee:

Bill Edds, Department of Revenue  
Don Schnacke, Kansas Independent Oil and Gas Association  
Rod Bieker, Office of Attorney General

The committee held a hearing on HB 2613 which makes several administrative and technical changes in the Kansas severance tax law.

The chairman recognized Bill Edds, Revenue Dept., who told the committee the bill was a result of testimony before the 1983 interim committee. He explained that the act: 1) provides for averaging of gas production for exemption purposes; 2) attempts to clarify that exemptions for certain low-production oil wells are determined on average production per producing well; 3) makes clear the State Corporation Commission's role in defining and certifying production from a new pool of oil or gas; and 4) requires that coal and salt operators, rather than first purchasers, remit the tax on those minerals. He presented a Kansas map showing the number of exempt leases and wells in Kansas by county and region.  
(Attachment #1)

Don Schnacke, KIOGA, said HB 2613 is a clarification measure which they support. He reported to the committee on the impact of imposition of the severance tax on the industry. He said a number of people are no longer in the industry doing business in Kansas and some had gone out of existence. He said some of these are not entirely related to the severance tax, but it has had a negative impact on the industry. He said the Revenue Department had been extremely cooperative in getting this tax under way and this bill is a product of that cooperation between the industry and the Revenue Department. He is concerned about oil production dropping off. He said the impact of this tax on the intra-state gas producers will be most severe because they are in the position of being in the highest bracket of any producer in the United States and there is no way to pass on these taxes.

Senator Thiessen moved and Senator Johnston seconded a motion to report HB 2613 favorable for passage. The motion passed.

The committee held a hearing on HB 2789 which relates to the determination of situs of earnings from money, notes, and other evidence of debt for purposes of the local intangibles tax.

The chairman recognized Rod Bieker who explained the reasons for requesting the introduction of this bill. He described a case in Wichita where there was a question as to whether the tax situs would be in Eastboro, the person's residence, or his place of business in downtown Wichita.

The Attorney General's office requested HB 2789 to clarify the situs rules and conform the statutes to the Kansas Supreme Court's opinion in Humpage v. Robards (Attachment #2) which held that the situs of intangibles may be at a location other than the domicile of the owner only when the owner relinquishes control over the intangibles and the intangibles have been localized and integrated with the economic structure of another area.

Senator Allen moved and Senator Thiessen seconded a motion that HB 2789 be reported favorable for passage. The motion passed.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION,  
room 526-S, Statehouse, at 11:00 a.m. on February 20, 1984

Senator Angell reported there was a problem with the marginal tax rate brackets because of the federal deduction legislation passed last year.

Senator Angell made a conceptual motion to introduce a bill which would make adjustments in the tax rate bracket structure, and to put indexing in the proposed legislation, and have the bill referred back to the committee. Senator Johnston seconded the motion and the motion passed.

Senator Montgomery reported that when the annexation of Fort Riley was accomplished, Geary County offered to let Junction City count the people for two years, and then the bill would sunset; however, the sunset provision was removed and Junction City is still collecting money on the basis of the population of Fort Riley. He doesn't believe that was the intent of the legislation.

Senator Montgomery made a conceptual motion to introduce a bill to re-insert the sunset provision in this legislation and have the bill referred back to the committee. Senator Ehrlich seconded the motion and the motion passed.

Senator Ehrlich requested legislation relating to personalized license tags which denote a position held by the vehicle owner. He wants legislation to require proof that the driver actually holds that position.

Senator Ehrlich made a conceptual motion to introduce such a bill. Senator Johnston seconded the motion and the motion passed.

Senator Thiessen moved and Senator Montgomery seconded a motion to report SB 200 adversely. The motion carried.

Senator Thiessen moved and Senator Kerr seconded a motion to report SB 201 adversely. The motion passed.

Senator Thiessen moved and Senator Kerr seconded a motion to report SB 202 adversely. The motion carried.

The chairman adjourned the meeting at 11:45 a.m. The committee will meet on Tuesday, February 21, 11:00 a.m.





## GENERAL PROVISIONS

12-1,104

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. Siehndel, 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:

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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."

Issue:

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 domicil 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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"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. Lockett 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.