

Approved on: _____

Minutes of the House Committee on Assessment and Taxation. The meeting was called to order by E. C. Rolfs, Chairman, at 9:00 a.m. on January 23, 1985 in room 519 South at the Capitol of the State of Kansas.

All members of the Committee were present.

Committee staff present:

Tom Severn, Legislative Research
Melinda Hanson, Legislative Research
Don Hayward, Reviser of Statutes
Millie Foose, Committee Secretary

Richard Ryan brought in an additional memo showing the Percentage Increase in CPI-U. (attachment 1)

Mr. Bill Edds, General Counsel with Legal Services Division of Department of Revenue, made a presentation on several subjects. His first request was for introduction of a bill relating to the Mineral Severance Tax (attachment 1). Representative Schmidt moved, second by Representative Jarchow, that a bill regarding the Mineral Severance Tax be introduced and returned to the committee. Motion passed.

Mr. Bill Edds requested the committee introduce legislation regarding the Collection of the consumer compensating use tax. Representative Wunsch moved, second by Representative Patterson, that the requested bill be drafted and introduced. The motion carried.

Mr. Bill Edds requested the committee introduce legislation regarding the Effective date for implementation of local option taxes. Representative Lowther moved, second by Representative Aylward, that the requested bill be drafted and introduced. The motion carried.

Mr. Bill Edds requested the committee introduce legislation regarding the effective date for proof of payment of personal property taxes. Representative Fry moved, second by Representative Reardon, that the requested bill be drafted and introduced. The motion carried.

Mr. Bill Edds requested the committee introduce legislation regarding Sales Tax - Janitorial Services. Representative Lowther moved, second by Representative Adam, that the requested bill be drafted and introduced. The motion carried.

Mr. Vic Miller presented additional information concerning Trending Factors and Melinda Hanson presented a memo outlining the fiscal effect of various sales tax exemptions.

The minutes of the meeting of January 22 were reviewed, and, there being no corrections, the chairman declared them approved as written.

There being no further business, the chairman adjourned the meeting.



PERCENTAGE INCREASE IN CPI-U

(U.S. Average — All Urban Consumers)

<u>Year</u>	<u>Calendar Year*</u>	<u>Fiscal Year*</u>	<u>December to December**</u>
1975	9.1%	11.1%	7.0%
1976	5.8	7.1	4.8
1977	6.5	5.8	6.8
1978	7.7	6.7	9.0
1979	11.3	9.4	13.3
1980	13.5	13.4	12.4
1981	10.3	11.5	8.9
1982	6.2	8.7	3.9
1983	3.2	4.3	3.8
1984	4.3	3.7	4.0

* Increase in the 12-month average of the CPI-U over the average for the preceding year. Fiscal year is from July 1-June 30.

** Increase from December of one year to December of the next year, e.g., from December 1983 to December 1984.

Kansas Legislative Research Department
January 23, 1985

A85-14/RR

M E M O R A N D U M

To: Members of the House
Committee on Assessment
and Taxation

Date: January 23, 1985

From: Kansas Department of Revenue Re: Mineral Severance Tax

During the 1984 session the Kansas Department of Revenue requested the House Committee on Assessment and Taxation to sponsor legislation which would impose strict confidentiality standards governing disclosure of information from tax returns or reports received by the Department. House Bill 3051 was introduced and subsequently enacted to effectuate the Department's recommendation. This legislation was generic in nature in that its provisions encompassed all of the tax acts administered by the Department other than those which already had confidentiality provisions. H. B. 3051 authorized inspection of returns by the Attorney General and access by the Post Auditor; other provisions of Kansas law would allow disclosure of information to Internal Revenue Service officials. Further disclosure was prohibited, and violations were made class B misdemeanors and subjected the violating employee to dismissal from state employment.

It came to the Department's attention subsequent to enactment of H.B. 3051 that in the area of the mineral severance tax the confidentiality measures were too rigid. The mineral severance tax law accords exemptions to certain wells or leases whose production is minimal. Properties whose production is taxable under the mineral severance tax are entitled to an offset in the amount of the severance taxes in the formula utilized for valuing the properties for ad valorem tax purposes. Exempt properties do not receive such an offset. Therefore, it is critical that the local appraiser be aware whether a particular property is taxable or exempt when valuing the same for ad valorem tax. The Department requests legislation that would alter the law to allow it to furnish this information to the counties for this purpose. In addition the Department would request that it be given the ability to share production information with the Kansas Corporation Commission in that the Commission is also charged with the responsibility of administering and collecting conservation fees on Kansas production.

Another area of the mineral severance tax law that needs clarification is whether the Department has authority to require informational reporting of exempt production. This authority is necessary to insure and reconcile collection on taxable production in the state. It likewise is necessary to furnish statistical information to the Legislature on exempt production. The Department urges favorable action by the Committee to provide this authorization.

M E M O R A N D U M

To: Members of the House
Committee on Assessment
and Taxation

Date: January 23, 1985

From: Kansas Department of Revenue

Re: Collection of Consumer
Compensating Use Tax

K.S.A. 79-3705a provides that the compensating use tax shall be paid by the consumer or user to the retailer and that it is the duty of every retailer to collect the same from the consumer or user. This section contains a proviso that if the tax is not collected or collectible by the retailer, then the person using, consuming or storing tangible personal property in this state shall file a return and pay the tax.

In the case of J. G. Masonry, Inc., v. Department of Revenue, the Kansas Supreme Court was faced with facts where the taxpayer was assessed compensating tax for property it brought into the state. In its decision the Court intimated that had the out-of-state retailer from whom the property was purchased been registered to collect the Kansas compensating tax, the taxpayer would not have been liable for the same due to the wording "or collectible" in K.S.A. 79-3705a. The Department recommends legislation that would delete the words "or collectible" to maintain the ability to assess the tax against the consumer or user regardless of the out-of-state retailer's status.

M E M O R A N D U M

To: Members of the House
Committee on Assessment
and Taxation

Date: January 23, 1985

From: Kansas Department of Revenue

Re: Effective date for
implementation of local option
taxes

K.S.A. 1984 Supp. 12-191 presently provides that the collection of any local sales tax shall commence on the first day of the month, except that in no case shall collection thereof begin prior to the first day of the month next following the 60th day after the date of the election authorizing the levy of such tax. Municipalities currently seek to implement the tax or a change in the percentage of the tax as quickly as possible following a special election on the proposition. Immediate implementation often dictates adjusting the percentage in the middle of a calendar quarter. Mistakes are made which are directly attributable to this adjustment. Those errors, due to the miscalculation in the various percentages, lead to errors in the calculation of the state and local gross. These mistakes create extensive delays in data entry, data processing and the sales tax bureau. Errors must be corrected and notices mailed, and this process delays eventual payment to the local units.

To avoid such problems in the future the Department recommends legislation providing that any local option sales tax or increase in rate of an existing tax approved at a special election shall become effective at the beginning of the next calendar quarter commencing not sooner than 60 days following the special election. In the case of approval of any such tax or increase therein at a regularly scheduled municipal election, the same should become effective at the beginning of the next calendar quarter commencing not sooner than 30 days following such regularly scheduled election.

M E M O R A N D U M

To: Members of House
Committee on Assessment
and Taxation

Date: January 23, 1985

From: Kansas Department of Revenue Re: Proof of payment of personal
property taxes

K.S.A. 8-173 provides that a county treasurer shall not accept an application for registration of a vehicle unless the person making such application shall exhibit to such county treasurer either: (1) a receipt showing that all personal property taxes levied against such person for the preceding year, including taxes upon the vehicle, have been paid (1/2 of such taxes if application is made before June 21); or (2) evidence that the vehicle was assessed for taxation purposes by a state agency, or was assessed as stock in trade of a merchant or manufacturer, or was otherwise assessed and taxed, or was exempt from taxation under the laws of this state.

The Department would request legislation to amend this statute in two respects. First, the Department would request that the statute be broadened to provide that application shall not be accepted regardless of to whom the same is made. The Department has taken the position that registration shall not issue unless the previous year's taxes are paid. Some companies have taken issue where registration is handled by the division of vehicles that K.S.A. 8-173 precludes the division from refusing registration by its specific reference to county treasurers.

The second request concerns the language underscored in the first paragraph of this memorandum. In the case of State of Kansas and City of Oberlin v. Russell Raulston, the Kansas Court of Appeals was faced with facts where the defendant refused to pay his previous year's taxes on his personal property and received several tickets for operating an unregistered vehicle. In attempting to defend himself, the defendant challenged the constitutionality of K.S.A. 8-173. The court sustained the constitutionality of the statute, but Judge Rees in dissent examined the statute in more detail than the majority. It was his conclusion that the wording "or was otherwise assessed and taxed" contemplates the tax and tag law's method of assessment and taxation and that the defendant should probably have been relieved of the burden of presenting evidence of payment of property taxes on his other property.

It is my opinion that the Legislature did not intend this result arrived at in the dissent. The Department has consistently advised that K.S.A. 8-173 is applicable to the registration of tax and tag vehicles. The procedure is a good enforcement tool for the counties in collecting delinquent property taxes. Certainly, the quoted wording existed in the law prior to the time of enactment of the tax and tag law. I must admit that I have no idea what was contemplated by the Legislature when it originally included this language in the statute, but I do not conceive of any serious problem should it be eliminated. Therefore, it is recommended that the wording "or was otherwise assessed and taxed" be deleted from the statute.

M E M O R A N D U M

To: Members of the House
Committee on Assessment
and Taxation

Date: January 23, 1985

From: Kansas Department of Revenue Re: Sales Tax - Janitorial Services

K.S.A. 79-3603(q) imposes the state sales tax on the service of repairing, servicing, altering or maintaining tangible personal property which when such services are rendered is not being held for sale in the regular course of business and whether or not any tangible personal property is transferred in connection therewith. In Revenue Ruling 19-78-4 the Department concluded that janitorial services were taxable within the meaning of this subsection. That ruling stated:

"Most services performed upon real property are subject to the sales tax under the above section. For example, the service of cleaning a floor is taxable because it constitutes the servicing or maintaining of tangible personal property (the flooring material) which has been fastened to, connected with, or built into real property."

The ruling enumerated further examples of taxable services under K.S.A. 79-3603(q) including window washing, tree trimming, welding, exterminator's services, sand blasting, snow removal, drain and septic tank cleaning services, painting, brick and fireplace cleaning, demolition and swimming pool cleaning.

Attorney General Opinion No. 79-201 and a March 1981 opinion of the Board of Tax Appeals adopted the Department of Revenue's position that janitorial services were taxable. Last year the Kansas Court of Appeals in the R & R Janitor Service case held that the Department's interpretation of K.S.A. 79-3603(q) was erroneous; that cleaning services do not constitute servicing or maintaining an item of tangible personal property which has been and is fastened to, connected with or built into real property within the meaning of the statute.

The taxpayer in this case performed various cleaning services including vacuuming, dusting, cleaning bathrooms, washing windows and emptying trash. It was emphasized in testimony before the Board that no maintenance or repair work, no alterations or remodeling, no appliance or equipment service and no light bulb changing was performed by the taxpayer.

The Department submits that the ruling of the Court of Appeals creates considerable ambiguity as to what is a taxable service under the statute. It is the position of the Department that there are numerous instances where cleaning type services clearly constitute maintenance such as where machinery must be cleaned in order to be maintained in a productive capacity. The Department recommends that the statute be amended to more clearly reflect the legislative intent and to eliminate the gray area that has arisen as a result of the opinion.

Although the amount of revenue associated with the taxation of janitorial services is unknown, the impact may be considerable particularly should it later be established that the Department's present position is erroneous.