

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 March 18, 1985 in room 519 South at the Capitol of the State of Kansas.

The following members were absent (excused):

Representatives Crowell

Committee staff present:

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

Mr. Vic Miller, testified that the Property Valuation Division of the Department of Revenue supports the passage of SB-31 and recommended the inclusion of an amnesty provision in the bill. He explained the bill and answered questions from the committee. (Attachment 1)

Mr. Gary Smith, Shawnee County Appraiser, spoke as a proponent for SB-31 and said that the Appraisers Association requests that the bill be approved. (Attachment 2)

Mr. David Litwin, Director of Taxation for Kansas Chamber of Commerce and Industry, appeared as a proponent for SB-31, but he believes the 100% penalty is excessive and that the appraiser should have some discretion in the matter of waiving penalties. (Attachment 3)

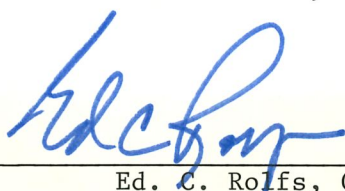
Mr. Don Schnacke testified that he does not believe the cross references are clear and that the bill needs some clean-up to avoid future misunderstandings.

Ms. Linda Terrill explained the Board's intention to handle objection to penalty assessments as a tax grievance rather than a payment under protest. This concluded the public hearing on SB-31.

AKC b. 4 Mr. Harley Duncan spoke as a proponent for SB-84, which concerns local retailers' sales taxes; relating to the situs of the service of furnishing telephone service. Mr. Duncan, Mr. Edds, Mr. Hayward, and Dr. Severn explained the law and how it applies to sales of equipment in state and out of state.

The minutes of March 8 were distributed. There being no changes, they were approved as presented.

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



Ed. C. Rolfs, Chairman



Kansas
DEPARTMENT OF REVENUE

State Office Building
TOPEKA, KANSAS 66625

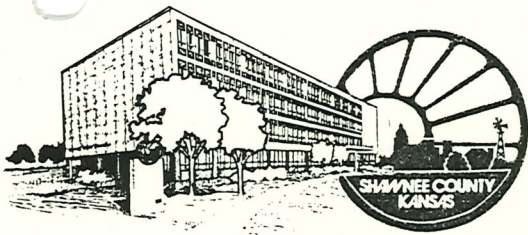
Mr. Chairman, members of the committee, the Property Valuation Division of the Department of Revenue supports the passage of SB 31. We believe that those who have heretofore come forward to voluntarily report taxable property should not be treated unfairly by allowing those who have not to escape taxation.

Likewise, the Division supports restoration of the law to include the penalty provisions of the bill. We would, however, suggest the committee create a "window of opportunity" for a short period of time after enactment of the bill for taxpayers to come forward to avoid penalty. Otherwise, no incentive exists for those who have escaped appraisal to rectify the situation. Under the bill, as presently drafted, a 100% penalty would be imposed regardless of how the escaped property was discovered.

Respectfully submitted,

Victor W. Miller

Victor W. Miller, Director
Division of Property Valuation



Shawnee County
Office of County Appraiser

GARY M. SMITH ASA, CKA
APPRAISER

ROOM 102
295-4100

COURTHOUSE
TOPEKA, KANSAS 66603

March 18, 1985

Ed Rolfs, Chairman
House Assessment and Taxation Committee
State Capitol Building
Topeka, KS 66612

Representative Rolfs,

The inadvertent repeal of 79-1427 during the 1982 legislation session has created a problem for the honest, hardworking tax payer who reports his accurate inventory and personal property lists each year. They can no longer be assured that as any error in listing or lack of reporting by less ardent taxpayers will be eventually placed on the tax roll for proper taxation.

The problem with Payless Cashways under reporting is but one example of what can and does happen as the County officers try to administer the tax laws in the State of Kansas.

The following is a list of problems which are created without an escaped property law.

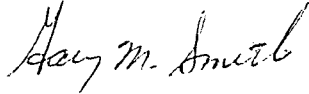
1. If a tax payer does not file at all they would not pay tax for the year they do not report.
2. Taxpayers who under report could not be corrected.
3. Vehicals which were left off taxroll could not tag properly.

I believe the majority of taxpayers of Kansas who file on time and pay their taxes as directed under other laws would want a statute such as Senate Bill #31 to prevent a few from being rewarded by using the tax law as they now exist.

The Appraisers Association would request that Senate Bill #31 be approved to assure proper taxation of Personal Property in Kansas.

Thank you for your time, I would answer any questions you may have at this time.

Sincerely,

A handwritten signature in cursive script that reads "Gary M. Smith".

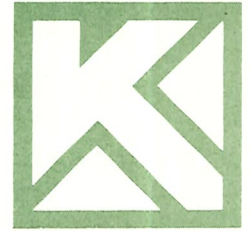
Gary M. Smith
Appraiser ASA, CKA

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LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry

500 First National Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321



A consolidation of the
Kansas State Chamber
of Commerce,
Associated Industries
of Kansas,
Kansas Retail Council

SB 31

March 18, 1985

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

HOUSE COMMITTEE ON ASSESSMENT AND TAXATION

by

David S. Litwin
Director of Taxation

Mr. Chairman, members of the committee, I am David Litwin, appearing on behalf of the Kansas Chamber of Commerce and Industry in connection with SB 31. Thank you for the opportunity to express our concerns.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

KCCI is not opposed to the overall concept of this bill. However, we do have some serious concerns with some of its terms.

This bill was introduced in the wake of the opinion of the Board of Tax Appeals in the Payless Cashways case. The Board held that the Legislature had repealed KSA 79-1427, which gave the county assessor the power to go back up to 5 years to correct any instances of nonreporting or under-reporting of personal property. This repeal was probably inadvertent, but the Board determined that it left the county appraiser with no power to open the closed appraisal rolls of prior tax years and thus without power to correct past errors or omissions, whether such errors or omissions were neglectful or deliberate. Assuming that the Board's research and conclusions were correct, which appears to be the case, the enactment of a bill along the general lines of SB 31 would be appropriate.

However, as presently written, the bill makes the assessment of a 100% penalty by the county assessor absolutely mandatory once he or she finds any escaped property, regardless of whether the omission or undervaluation of property was inadvertent or fraudulent. The appraiser would have absolutely no discretion in the matter -- only the Board of Tax Appeals would have the power to abate the 100% penalty.

I suggest that this provision is unnecessary and would be very unfair in situations of excusable neglect. First, the taxing subdivision would be made whole, and its revenues protected, by assessment of interest in addition to the tax determined to be due. The addition of a mandatory and severe penalty on top of principal and interest is harsh and excessive where the omission was unintentional. Indeed, so severe is the proposed scheme that it could well cause many taxpayers to overpay. That would not be fair and would constitute a backdoor kind of tax increase.

Second, why should the county appraiser not be vested with some discretion in application of the penalty? The insistence that only the Board of Tax Appeals could abate seems to reflect an excessively dim view of the ability of appraisers to enforce

the law justly and with common sense. I acknowledge that former statute KSA 79-1427, prior to its repeal, also seems to have required the automatic doubling of appraisal values, although the word "penalty" was not used. However, it does not follow that this scheme should be continued.

I do understand that county appraisers are often under local pressure not to enforce the tax laws too vigorously. This may well be true in some counties. However, to completely deny him or her any discretion seems excessive.

In this connection, if it is felt that the danger of caving in to local pressures is too severe, then perhaps the county board of equalization should be allowed to abate the penalty. Its members might be subject to local pressures too, but the pressures would likely be more diluted and less intense.

If the committee determines to stay with the present mandatory nature of the penalty and to require an appeal to the Board of Tax Appeals for abatement, then I suggest that a lower penalty, perhaps in the area of 50%, would be helpful. Or a party who appeals to the Board of Tax Appeals and wins abatement might be reimbursed for attorneys' fees, expenses and interest. This would not fundamentally change the bill, but it would soften its impact somewhat.

Next, the Senate committee amended the bill to state expressly that the 100% increase in appraised value is a "penalty." This change could well cause many taxpayers to suffer collateral income tax consequences which the Senate may not have been aware of when it approved the amended version of the bill. Generally, the Internal Revenue Code has been interpreted by the federal courts to deny deduction of a penalty where allowance would contravene a clearly expressed public policy of the state. There is authority holding that the courts and the I.R.S. can look behind an

assessment that is not expressly labeled as a penalty to determine whether it is in fact a penalty. However, this would not occur in many instances where the sanction is not so labeled. On the other hand, where the sanction is called a penalty, it is almost certain that deductibility will be disallowed. Incidentally, an attorney with the Kansas Department of Revenue informs me that his agency would follow the federal lead in cases such as this.

It is arguable that in cases of willful misrepresentation, federal and state disallowance of a penalty would be appropriate. However, in excusable neglect cases, this compounding of the taxpayer's problems is excessive and unfair.

Finally, I would like to draw the Committee's attention to SB 198, which was passed by the Senate on March 12, 1985, since its terms may not be consistent with those of SB 31. As I read SB 198, it would amend K.S.A. 79-1422 to provide in section (b) that if a "full and complete" statement listing personal property hasn't been filed within a year of its due date, the appraiser must proceed to ascertain the value of the unlisted property and must assess a 50% penalty. The Board of Tax Appeals, in the Payless Cashways appeal, held that this statute applies only to the first year of delinquency. Fine -- but why should the penalty double 366 days after the principal was due? Please recall that the longer a delinquency, the larger the payments of interest. That increased interest would protect the public revenues. To double the penalty, especially in cases of excusable neglect, seems harsh and arbitrary.

Thank you once again. If there are questions, I'll be pleased to answer them.

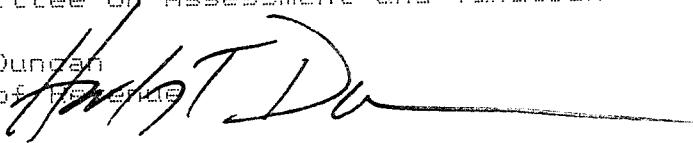
MEMORANDUM

TO: The Honorable Ed C. Rolfs, Chairman
House Committee on Assessment and Taxation

FROM: Harley T. Duncan
Secretary of Revenue

RE: Senate Bill 84

DATE: March 18, 1985



This memorandum summarizes the position of the Department of Revenue on Senate Bill 84. This bill is intended to change the situs for local sales tax purposes of leases of telephone equipment. Under the bills, situs would change from the point of contract acceptance to the point of installation or the address of the telephone subscriber. The position of the Department is as follows:

1. We believe some action must be taken in this area because at the present time different situs rules are being used for different classes of customers. Small business customers (from 2-11 phones) who entered into a contract with AT&T after January 1, 1983 are being taxed at the point of contract acceptance in Mission, Kansas. Nearly all other AT&T customers are being taxed at the point of installation. In large part, this is because the accounts were transferred from Southwestern Bell in this manner, and AT&T cannot, without an immense deal of work if at all, convert them to the point of contract of acceptance.
2. We believe it would be in the best interests of all to convert the situs of these transactions to the point of installation or the residence of the subscriber, rather than continue them at the point of contract acceptance as under current law. We believe this will preserve the even flow of local government revenues and will recognize the incapacity of AT&T to convert the accounts inherited from Southwestern Bell Co. to a point of contract acceptance.
3. The bills should be amended to specify that the situs of telephone equipment leasing is at the residence of the subscriber, rather than attempting to redefine the leasing of the equipment as part of the telephone service. This will serve to eliminate any doubt as to the taxability of the lease arrangement under the state retail sales tax. (This has been accomplished by amendments of the Senate Committee on Assessment and Taxation.)
4. We appreciate the difficulty AT&T would have in attempting to separate telephone equipment from its other products such as computers and other data processing equipment. It seems that

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their suggestion to expand the leasing arrangements covered to include communications and data processing equipment would be workable. Absent some change of this nature, AT&T and other vendors would be required to make arbitrary decisions about the nature of the equipment covered in any particular lease. (This, too, has been accomplished by amendment of the Senate Committee on Assessment and Taxation.)

5. Because the lease arrangements being taxed at the point of contract acceptance (i.e., small business contracts entered into after January 1, 1983) were entered into in good faith and in accordance with Kansas law, some transitional rules could be considered so that the tax situs for these contracts would not need to be changed. (The Senate Committee of the Whole deleted such language, and AT&T has indicated that they are willing to attempt to convert these accounts. Some statement regarding contracts made previously by other vendors should be made, however.)

I hope this information is helpful. I would be glad to attempt to answer any questions.

HTD/htd/aw