

MINUTES OF THE Senate COMMITTEE ON Assessment and Taxation

The meeting was called to order by Senator Fred A. Kerr at  
Chairperson

11:00 a.m./~~p.m.~~ on Thursday, January 24, 1985 in room 526-S of the Capitol.

All members were present ~~XXXXX~~

Committee staff present:

Tom Severn, Research Department  
Melinda Hanson, Research Department  
Don Hayward, Revisor's Office  
LaVonne Mumert, Secretary to the Committee

Conferees appearing before the committee:

Harley Duncan, Department of Revenue  
Bill Edds, Department of Revenue

Senator Allen moved that the minutes of the January 23, 1985 meeting be approved. Senator Karr seconded the motion, and the motion carried.

S.B. 31 - taxation of escaped tangible personal property

Senator Burke moved that the bill be amended in accordance with the amendments drafted by the Revisor pertaining to the penalty provisions (see Attachment 1). Senator Mulich seconded the motion, and the motion carried. Senator Montgomery moved that S.B. 31 be reported favorably, as amended. Senator Allen seconded the motion, and the motion carried.

Harley Duncan introduced the following members of the Department: Vic Miller, Director of the Division of Property Valuation; Carol Bonebrake, Director of the Division of Taxation; Larry Humes, Special Assistant for the Department; and Bill Edds, General Counsel for the Department.

Chairman Kerr reminded the Committee that voting to introduce a bill does not indicate support for that bill, but rather approval that the bill be introduced for hearing purposes.

Bill Edds read his memorandum regarding legislative proposals (Attachment 2). Senator Thiessen moved that the Committee introduce the proposed bill conforming the filing date for annual withholding reconciliation returns to the last day of February filing deadline. Senator Mulich seconded the motion, and the motion carried. Senator Mulich moved that the Committee introduce the proposed bill providing that no interest on refunds resulting from loss carrybacks is to be allowed for any period before the date on which a return is filed. Senator Hayden seconded the motion, and the motion carried. Senator Mulich moved that the Committee introduce the proposed bill allowing the referral of an entire income tax refund due to married couples filing jointly when one of the individuals owes a debt to the state. Senator Karr seconded the motion, and the motion carried. Senator Burke moved that the Committee introduce the proposed bill authorizing counties to assess and collect additional amounts of tax owed by owners of vehicles who have paid the amount of tax indicated on the registration renewal application after the vehicle owners' regular registration due date and time for payment of motor vehicle tax has passed. Senator Mulich seconded the motion, and the motion carried.

Mr. Edds then read the portion of his memorandum relating to the Uniform Division of Income for Tax Purposes Act (UDITPA). Senator Burke moved that the Committee introduce the proposed bill providing a presumption in favor of the state that may only be overcome by clear and convincing evidence that all corporation income derives from the acquisition, management or disposition of tangible or intangible property as an integral part of the taxpayer's trade or business. Senator Mulich seconded the motion, and the motion carried.

Chairman Kerr advised that the first two or three of the above bills introduced by the Committee will be heard late next week.

Meeting adjourned.

ASSESSMENT AND TAXATION

OBSERVERS  
(PLEASE PRINT)

DATE	NAME	ADDRESS	REPRESENTING
1/24/85	CHARLES H. CLARK	OTTAWA	FRANKLIN COUNTY
"	WALTER DUNN	TOPEKA	EKOGA
"	Robert Gardner	Wyandotte Co.	WPC <sup>Co</sup> KCA <sup>+</sup>
"	GARY Smith	Shannon Co	State
"	Ann Eslick	Crete Co.	Appraiser
"	TREVA POTTER	TOPEKA	NORTHERN NAT. GAS
"	Jim McBride	Topeka	United Way
"	Tom Whitaker	Topeka	Ks. Motor Carriers Assn
"	Phil Wilhoite	Junction City	Farm Equip Dealer
"	Max Bedding	Salina Kan	" " "
"	Tom Evans	Salina, Ks.	" " "
1-24-85	Ron Shouse	Abilene - Kansas.	" " "
"	Hene Sages	Hays, Ks.	Western Retail Assn.
"	JEFF FLORA	KANSAS CITY	✓ ✓
1/24	BRAD MEARS		Governor's Office
1/24	Jon Jantz	McPherson, KS	farm equip dealers
1/24	Maynard Esten	Burling KS	farm Equip Dealers
"	T. P. Anderson	TOPEKA	KSCPA
1-24-85	Bill Budicky	Westmore, KS.	Farm Equip Dealer
1-24-85	Howard E. Thompson	Holtan, KS	" " "
"	Mike Cermann	Topeka, KS	Ks Railroad Association
"	Joe Miller	" "	PVD
"	Walt Bondke	" "	DOR
"	Henry D. Jones	" "	"
"	Harley Duncan	Topeka	DOR
"	Bill Edds	Topeka	DOR
"	DANA Ferrell	"	Budget
"	David Linton	"	KCCI

# SENATE BILL No. 31

By Committee on Assessment and Taxation

1-16

0018 AN ACT relating to property taxation; concerning the appraisal  
0019 of tangible personal property discovered to have escaped  
0020 taxation.

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 Section 1. (a) If, after one year from the date prescribed by  
0023 K.S.A. 79-306, and amendments thereto, for the listing of tangi-  
0024 ble personal property, the county appraiser discovers that any  
0025 tangible personal property which was subject to taxation in any  
0026 year or years within five years next preceding has not been listed  
0027 or has been undervalued for whatever reason, such property  
0028 shall be deemed to have escaped taxation. In the case of property  
0029 which has not been listed, it shall be the duty of the county  
0030 appraiser to list and appraise such property at twice its fair  
0031 market value for each such year during which such property was  
0032 not listed, and it shall be designated on the appraisal roll as  
0033 "escaped appraisal" for each such preceding year or years. In the  
0034 case of property which has been listed but undervalued, it shall  
0035 be the duty of the county appraiser to list and appraise the  
0036 undervalued portion of such property at twice its fair market  
0037 value for each such year during which such property was under-  
0038 valued, and it shall be designated on the appraisal roll as  
0039 "escaped appraisal" for each such preceding year or years. If the  
0040 owner of such property is deceased, taxes charged as herein  
0041 provided shall be levied against the estate of such deceased  
0042 person for only three years preceding death and shall be paid by  
0043 the legal representative or representatives of such estate. In the  
0044 event that such escaped appraisal is due to any willful or clerical  
0045 error of the county appraiser, such property shall be appraised at  
0046 its fair market value.

and add 100% thereto as a penalty for  
escaping taxation

and no penalty shall be added

M E M O R A N D U M

To: Members of the Senate  
Assessment and Taxation  
Committee

Date: January 24, 1985

From: Kansas Department of Revenue      Re:      Legislative Proposals

WITHHOLDING TAX

K.S.A. 79-3298(d) requires employers to file an annual withholding reconciliation return on or before January 31 of the year following a year in which remittances are made to the state. K.S.A. 79-3299 requires the employer to file copies of employees' W-2's with the Department by the last day of February of such following year. The discrepancy in dates of the two statutes requires employers to meet two deadlines in addition to their regular filing schedules.

The Department recommends that K.S.A. 79-3298(d) be amended to conform the filing date for the reconciliation return to the last day of February filing deadline. This will ease the filing burden to the taxpayer. It will also provide the Department a better audit tool because the information may be maintained in a one record format.

INCOME TAX - INTEREST ON REFUNDS RESULTING FROM LOSS CARRYBACKS

K.S.A. 79-32,105(e) provides for the payment of interest (12%/annum) on overpayments of income tax. Paragraph (3) of subsection (e) states that if any overpayment of tax results from a carryback of a net operating loss or net capital loss, such overpayment shall be deemed not to have been made prior to the close of the taxable year in which such net operating loss or net capital loss arises. Some taxpayers have utilized the literal wording of this provision in delaying the filing of a refund claim arising from a carryback to gain additional interest on such refunds. The Department does not believe that such a result was originally intended by the Legislature. Therefore, the Department recommends that this statute be amended to specifically provide that no interest is to be allowed or paid for any period before the date on which a return is filed.

DEBTOR SET-OFF OF INDIVIDUAL INCOME TAX RETURNS

In the 1981 Session the Legislature enacted a statutory procedure for setting off debts owed the state by a debtor against money held for, or any money owed to, such debtor by the state or any state agency. Included within the preceding were the amounts of Kansas income tax refunds due any such debtors. The troublesome area of this procedure for the Department occurs in joint return situations. K.S.A. 75-6202 provides in part that "a refund due to a husband and wife resulting from a joint return shall be considered to be separately owned by each individual in the proportion of each such spouse's contribution to income . . .". Prior to referral of refunds of married taxpayers filing jointly, the Department first must make a determination of

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what portion of the refund applies to the debtor spouse's income. In the interest of speeding up referral of such refunds and in achieving administrative efficiency the Department requests that this law be amended to allow the referral of the entire income tax refund due to married couples filing jointly when one of the individuals owes a debt to the state. Procedure could be worked out to allow the non-debtor spouse not wanting their portion of a refund to apply to the debt to claim that portion following contact by the Department of Administration.

#### TAX & TAG LAW

Recently the Department encountered a situation where an owner's vehicle had been classified improperly as indicated on the vehicle registration renewal application due to clerical error. As a result the owner paid less motor vehicle tax than was properly due upon registration. The Department was requested to recommend a remedy available to county officials to collect the additional motor vehicle tax owed. It was the Department's opinion that there is no such remedy in the law presently. Therefore, it is recommended that the committee consider legislation authorizing the county to assess and collect the additional amount of tax owed by the owner of a vehicle who has paid the amount of tax indicated on the registration renewal application after the vehicle owner's regular registration due date and time for payment of motor vehicle tax has passed.

M E M O R A N D U M

To: Members of the Senate  
Committee on Assessment  
and Taxation

Date: January 24, 1985

From: Kansas Department of Revenue

Re: UDITPA Business/Nonbusiness  
income

The Uniform Division of Income for Tax Purposes Act (UDITPA), K.S.A. 79-3271 et seq., distinguishes income as business income versus nonbusiness income. Business income is defined as income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations. Nonbusiness income is defined as all income other than business income.

Business income is attributed to taxing states by reference to the three-factor apportionment formula which employs the factors of property, payroll and sales. Nonbusiness income is specifically allocated to various sources. For instance, interest and dividends and capital gains and losses from the sale of intangible personal property are allocated to the state of the taxpayer's commercial domicile. Net rents and royalties and capital gains and losses from sales of real property are allocated to the state where the real property is located. Net rents and royalties from tangible personal property are allocated to the state where that property is used, or, if the taxpayer is neither organized under the laws of, nor taxable in the state in which the property is used, to the taxpayer's commercial domicile.

One of the most difficult questions under UDITPA is the determination of what income of a taxpayer constitutes business income. Most troublesome in this area is whether income from intangibles is subject to apportionment as business income or to specific allocation to the commercial domicile as nonbusiness income.

Conceptually it defies logic to accept that major portions of a large multijurisdictional corporation's resources are dedicated to the production of nonbusiness income. Notwithstanding, many such corporations contend that their entire net taxable incomes are comprised solely of nonbusiness income. Field audits and discovery proceedings may reveal the true facts in these situations. It must be remembered, however, the necessary facts are always in the control of the corporate taxpayer. Obviously, the state encounters numerous situations where the atmosphere is one not of total cooperativeness. The result can be one of complex and prolonged litigation to resolve such a dispute with a multijurisdictional taxpayer as to what constitutes business income.

For this reason the Department suggests that the committee sponsor legislation amending K.S.A. 79-3271 to provide a presumption in favor of the state that may only be overcome by clear and convincing evidence that all corporation income derives from the acquisition, management or disposition of tangible or intangible property as an integral part of the taxpayer's trade or business.