

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./~~1:00~~ on Monday, February 18, 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:

Rick Enewold, AT&T
Harley Duncan, Department of Revenue

S.B. 74 - Sales tax; situs of telephone service

S.B. 84 - Local sales tax situs for leasing of telephone equipment

Rick Enewold illustrated the problem of defining what is telephonic equipment and what is not by showing some examples of the equipment his company leases. The amendment suggested by AT&T and supported by the Department of Revenue would insert the following on line 29 after the word "retailer": "However, transactions involving the leasing of communications and data processing equipment (and any related services) are to be considered as having been consummated at the situs of the leasee." The amendment would also delete lines 42-43. Mr. Enewold provided a memorandum regarding competitors comments with regard to such an amendment (Attachment 1).

Harley Duncan summarized his memorandum regarding the two bills (Attachment 2). He believes some action needs to be taken with regard to this problem because of the different situs rules being applied to different accounts as a result of the transfer from Southwestern Bell to AT&T. Secretary Duncan said it would be in the best interests of all for the situs to be the residence of the subscriber. He commented that this situation would most closely resemble the situation before divestiture. He suggested that the Committee might wish to consider a provision stating that those contracts entered into between January 1, 1983 and the effective date of a new law be exempted from the new provisions.

Senator Thiessen moved that S.B. 84 be amended as proposed by AT&T and the Department of Revenue. Senator Mulich seconded the motion, and the motion carried. After discussion about the existing contracts and the problems with conversion, Senator Burke moved that the bill be amended as follows: "The provisions of the preceding sentence (the amendment just adopted) shall not be applicable to any transaction consummated after December 31, 1982, and before the effective date of this act which transaction involves the leasing of such equipment to any party using the same in a commercial enterprise." Senator Mulich seconded the motion. After discussion concerning renewals or amendments of leases, Senator Thiessen made a substitute motion that S.B. 84, as amended, be recommended favorably for passage. Senator Allen seconded the motion, and the motion failed on a 4-6 vote. Senator Frey offered a substitute motion that the bill be amended conceptually as offered by Senator Burke but that the word "except that if any such lease agreement is renewed or amended, the provisions of the preceding sentence shall apply" be added. Senator Karr seconded the motion, and the motion carried. Senator Karr moved that S.B. 84, as amended, be recommended favorably for passage. Senator Salisbury seconded the motion, and the motion carried.

Senator Karr moved that the minutes of the February 14, 1985 meeting be approved. Senator Mulich seconded the motion, and the motion carried.

Meeting adjourned.

February 8, 1985

Regarding Kansas Senate Bills 74 and 84 and AT&T Information System's suggested modifications, the following companies were contacted regarding their position with the AT&T language. Results are as follows:

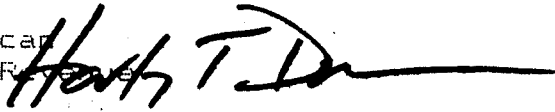
Company Name	Person Contacted	Comments
IBM	George Werner 201-930-5045	No problem, could comply with the law change
Digital (DEC)	David Leifer 617-493-8121	No problem, they currently tax everything at destination no Kansas locations
Hewlett Packard	Angelo Gori 415-857-4186	No Kansas offices, sees more compliance work, but prefers destination situs.
Honeywell	John Jantschik 612-870-2582	Could manage this way. They have separate divisions handling their product lines.
Northern Telecom	Laurine Cain 615-256-5900	Probably OK but would like to see the proposal in writing.
Control Data	James Keller 612-853-4652	Probably Ok, they do everything at destination. Concern about taxation of information services.
Xerox	Art Feuerstein 716-423-5310	Thinks it is a big mistake. Should be all or nothing. Classification too narrow. System problems
RCA	W. J. Ray 212-621-6321	Probably Ok, will check with Compliance Staff.

The name of the Senate Bills and the Committee Chairman was given to most of the individuals contacted should like want to take an active role. The closure date of February 15 was also discussed.

Mary Ann
Mary Ann Runaldue

MEMORANDUM

TO: The Honorable Fred A. Kerr, Chairman
Senate Committee on Assessment and Taxation

FROM: Harley T. Duncan
Secretary of Revenue 

RE: Senate Bill 74 and Senate Bill 84

DATE: February 18, 1985

This memorandum summarizes the position of the Department of Revenue on Senate Bills 74 and 84. These bills are 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.
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 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 would be required to make arbitrary decisions about the nature of the equipment covered in any particular lease.

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 should be considered so that the tax situs for these contracts would not need to be changed.

I hope this information is helpful. Please feel to contact if I can answer any questions.

cc. Committee members

HTD/htd/aw