

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 February 4, 1986 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

Mr. Bill Edds, representing the Kansas Department of Revenue, discussed HB-2767, an act concerning sales taxation, imposing the sales tax on janitorial services. He explained that the proposal arose out of a decision of the State Supreme Court. He also explained that some types of service would be subject to tax if they added to a structure, whereas routine clean-up would not be taxed. (Attachment 1)

A representative of Cardinal Cleaning Service, of Topeka, explained how his firm decides which services are taxable and which are not. Routine cleaning is not taxable but services that require the use of taxable products and are of a more permanent nature are taxable. He was questioned by members of the committee. (Attachment 2)

Frances Kastner, Director of Governmental Affairs for the Kansas Food Dealers Association, explained the problems and extra work that would be required and suggested that Kansas businesses be allowed to keep 3% of the amount collected (up to a maximum of \$100.00 per month) to partially compensate them for the extra work. She said that all our neighboring states have already made provision for this. (Attachment 3)

Paul Johnson, representing the Public Assistance Coalition of Kansas, appeared before the committee and responded to questions.

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



Ed C. Rolfs, Chairman

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.

The Sales Tax on Janitor Service

Introduction

Janitor services are professional services requiring the supervision of an individual well versed in the art of cleaning.

Correlation To Other Professions

The janitor service business can be correlated to other professional services such as attorneys and accountants. Often an attorney will be given a retainer to perform necessary services as needed, at some future date.

Repetitive On-Going Work

Contracts at Cardinal are entered into with the understanding that Cardinal will be responsible for service work in the future. In the performance of our contract, an ongoing intrinsic value occurs at the customer location. This is in part due to the quality of our work, but also in the fact that the work is repetitive; day-to-day, week-to-week; month-to-month.

This in fact is a difference that allows the janitor service business to stand apart from exterminators, welders, wallpaper hangers and others. Our service is continuous and a change in fact does not occur, as would if light bulbs were changed or a floor was waxed.

Additionally, janitor service is similar to security. The fact that no value is added allows security services to remain tax exempt.

Taxable Services

When a change does occur, or an addition is made, such as waxing a floor, a sales tax should be charged.

The Sales Tax on Janitor Service

Cost of Hiring Professionals

Because of the nature of the janitor service business, a sales tax on service work would be discriminatory to our business.

Because janitor service is repetitive, many customers will be forced to hire their own professionals, due to the added burden of the sales tax. Many firms now hire their own accountants and attorneys. I doubt many firms can afford to retain wallpaper hangers, exterminators or welders and find sufficient work to justify the ongoing day-to-day payroll that would occur. And yet, to leave janitor service exempt from sales tax still allows for collection of sales tax from our professionals as they spend their money in Topeka.

Lost Revenue For All Of Us

If service work is determined to be taxable, I can predict that small "mom and pop" janitor services will crop up, willing to give cut-rate service, by not charging or paying sales tax. This will not accomplish your desired results, as has been proven in the past with several legal cases.

Results

Because the janitor service business takes a professional attitude and is a continuous and necessary function, please determine that this work should continue to be exempt from sales tax.

There can only be added frustration and revenue loss for all of us if the sales tax on janitor service is approved.

The Sales Tax on Janitor Service

Introduction

- Janitor service is a profession.

Body

- Correlation to other professional services.
- Repetitive, on-going work.
- Taxable services.
- The cost of hiring professionals.
- Lost revenue for all of us.

Results

- A professional, continuous service should be exempted from the sales tax, just as security is.



Kansas Food Dealers' Association, Inc.

2809 WEST 47th STREET SHAWNEE MISSION, KANSAS 66205

PHONE: (913) 384-3838

February 4, 1986

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DIRECTOR OF GOVERNMENTAL AFFAIRS

FRANCES KASTNER

HOUSE ASSESSMENT & TAX COMM.

RE: HB 2767

EXECUTIVE DIRECTOR
JIM SHEEHAN
Shawnee Mission

I am Frances Kastner, Director of Governmental Affairs for the Kansas Food Dealers Association. Our membership consists of retailers, wholesalers and distributors of food products through the state.

We have been aware of the federal mandate to exempt purchases made with food stamps from the state and local sales tax for over a month.

We were asked if this could be done. We of course have always complied with the letter of the law. This does NOT mean that it will be an easy accomplishment, or that it will be done without an additional cost to our grocers.

As you have heard me say before, ALL cost of doing business has to be paid by the customer or the person or company goes OUT OF BUSINESS. This is not a cost that our members will be able to absorb, and you can expect to see a rise in grocery prices that will be passed on to ALL CUSTOMERS.

For years we have collected the sales tax for the state, have even complied with the accelerated remittance provisions passed in 1983, without ANY COMPENSATION for this important service to the state.

We have been hearing a lot about economic development the past several weeks, and offering enticements to out of state businesses to come to Kansas. I would like to ask you for that SAME consideration of those who are already located in Kansas.

We are asking YOU to help our KANSAS businesses who collect the sales tax for the state by permitting them to keep 3% of the sales tax they collect EACH MONTH, UP TO A MAXIMUM OF \$100.00 per month.

Several years ago when we asked for this meager compensation, we found that ALL our neighboring states ALREADY have this provision in their sales tax law.

Colorado allows 3 1/3%

Oklahoma allows 3%

Nebraska allows 3%

Missouri allows 2%

By placing the \$100 cap on the maximum amount any retailer can keep in ONE MONTH, you eliminate losing a lot of tax money to big-ticket retailers who do very little administrative paper work for transmitting sales tax on high priced items.

Yet those small retailers who DO most of their own work, or have to pay an accountant outside their business to figure and transmit the sales tax each month would be PARTIALLY COMPENSATED for the important function they perform for the State.

I am certain that THEIR COST will increase AGAIN as they have to eliminate collection of sales tax on purchases made with food stamps, and fill out the necessary forms for justification of the amount of food sold reflecting that NO LOCAL OR STATE SALES TAX HAS BEEN COLLECTED.

I am certain that many hours are spent in doing paperwork FREE for some level of government. And, usually the SMALLER the business, the MORE EXPENSIVE IT IS to keep up with the paperwork.

The 3% administrative allowance will NOT pick up the extra cost that is involved. Most of our members will probably come up to the \$100 a month maximum -- and you all can easily figure how many hours of bookkeeping you can purchase with \$100 a month.

While that amount will NOT pay for their increased cost, the in-state businessperson will see it as an indication that legislators view them as being just as important to our state's economy as the new industries you are trying to lure into Kansas.

We ask you to AMEND HB 2767 to reflect the 3% Administrative Allowance for collection of sales tax, and we will even be content with your putting a cap of \$100 a month in the bill.

Thank you for the opportunity of appearing before you today, and I will be happy to answer any questions you may have.