

Approved March 5, 1986
Date

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. ~~XXX~~ on Monday, March 3, 1986 in room 519-S of the Capitol.

All members were present except:
Senator Jerry Karr (Excused)

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
Darold Main, Shawnee County
Bev Bradley, Kansas Association of Counties
Willie Martin, Sedgwick County

S.B. 689 - Sales tax liability for corporate officers

Harley Duncan explained that the bill would hold the appropriate officers of a corporation individually liable for the payment of delinquent sales taxes (Attachment 1). Secretary Duncan pointed out that the bill would extend the current liability provisions for sole proprietorships and partnerships to corporations. Currently, corporate officers are held individually liable for withholding taxes. Secretary Duncan advised that the Department filed sales tax warrants in excess of \$6 million against corporations from July, 1982 to July, 1985. Chairman Kerr asked whether this legislation had been proposed before. Secretary Duncan said a similar bill passed the Senate in 1983 but it was used as a vehicle for the severance tax in the House and the original intent was lost. Secretary Duncan provided suggested amendments to the bill (Attachment 2).

S.B. 699 - County inheritance tax fund abolished

Secretary Duncan said that the bill would eliminate the inheritance tax fund which provides that 5% of inheritances taxes are rebated back to the county where the tax originated (Attachment 3). He said that until 1978 the counties were involved in the administration of the tax and the 5% was to cover this administrative cost. The Department now handles the administration of the tax. Answering questions from Committee members, Secretary Duncan said that both of the Governor's proposed budgets assume passage of this bill. He feels that if the Legislature desires to assist the counties, funneling the funds through one of the aid programs for local units of government is preferable. He observed that aid payments under the two programs for local units would increase by roughly \$16 million if the 1¢ sales tax increase passes.

Darold Main testified in opposition to the bill. He said that local units of government are struggling to meet their budgets and that they are very limited in what they can do to raise funds. Answering a question from Chairman Kerr, Mr. Main said he thought the 5% was the county's share of the inheritance tax, not just to cover the administrative costs.

Bev Bradley spoke in opposition to the bill (Attachment 4).

Willie Martin testified in opposition to S.B. 699.

S.B. 689 - Sales tax liability for corporate officers

Senator Frey moved that S.B. 689 be amended as suggested by the Department of Revenue (see Attachment 2). Senator Allen seconded the motion, and the

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CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Assessment and Taxation,
room 519-S, Statehouse, at 11:00 a.m./~~p.m.~~ on March 3, 1986

motion carried. Senator Allen moved that the bill, as amended, be recommended favorably for passage. Senator Mulich seconded the motion, and the motion carried.

Senator Mulich moved that the minutes of the February 27, 1986 meeting be approved. Senator Burke seconded the motion, and the motion carried.

Meeting adjourned.

MEMORANDUM

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

FROM: Harley T. Duncan
Secretary of Revenue



RE: Senate Bill 689

DATE: March 3, 1986

Thank you for the opportunity to appear before you today on Senate Bill 689. The Department of Revenue supports this measure.

Senate Bill 689 provides that any individual who is responsible for the collection of the retail sales tax and who willfully fails to collect or pay the tax can be held individually liable for the tax and any associated penalty and interest. It also provides that such liability exists regardless of the form of organization used by the retailer. The purpose of the bill is to allow the Department to hold the appropriate officers of a corporation individually liable for the payment of delinquent sales taxes.

Senate Bill 689 will be a very important addition to the tools available to the Department to collect delinquent taxes. Under current law, no corporate officer or employee can be held individually liable for the payment of sales tax. This makes it extremely difficult to collect delinquent taxes, particularly if the business is closed. About all we can do is to file a tax warrant attaching a lien to any real estate owned by the corporation and collect our tax at the time the property is sold. Very often, however, the corporation will own no real estate and our tax warrant is effectively worthless. In these cases, the Department's only recourse for collection is to go against any bond the retailer would have on file. These are often of an insufficient amount, particularly if the retailer has been a problem account.

With Senate Bill 689, we would be able to attach a lien to the appropriate individual's property and be in a position to collect our tax at such time as he/she attempts to transfer the property. Also, we could levy on an individual's bank accounts, wages or other assets with the bill. In short, the bill gives us the ability to collect from the individual who was responsible for collecting the tax in the first place, rather than having us chase a defunct corporation with no assets where the State all too often gets left holding the bag.

In considering this legislation, the Committee should keep in mind several points.

1. The Department currently has this authority when dealing with sole proprietorships and partnerships. The bill will just give us the same tools for corporations.
2. Current law holds corporate officers individually liable for the collection and payment of withholding taxes. This bill will just do the same for the retail sales tax.
3. From July 1982 to July 1985, the Department filed sales tax warrants totalling more than \$6.0 million against corporations. Thus, it is a sizeable problem that we are attempting to address.
4. A recent Legislative Post Audit report on delinquent sales taxes identified over 10,000 businesses which had closed while still owing sales tax to the State. The total liability for these retailers exceeded \$11.0 million. That report recommended legislation such as SB 689 as a means of improving our collection of delinquent sales taxes.
5. While these sanctions may seem severe, it should be remembered that under current law, the Department can hold a person who buys a business responsible for the delinquent sales tax liability of his/her predecessor.

In summary, the collection of delinquent taxes is one of the most difficult and important functions performed by the Department. Experience has proven that our current tools simply are not as effective as they could be when we are attempting to collect sales taxes from corporations. SB 689 will go a long way toward improving our efforts in this area.

Thank you for the opportunity to appear. I would be glad to answer any questions.

SENATE BILL No. 689

By Committee on Assessment and Taxation

2-24

0017 AN ACT relating to the enforcement and collection of Kansas
 0018 retailers' sales tax; imposing personal liability for the tax on
 0019 individuals responsible for collection ~~and~~ payment thereof.

and
compensating

, custody, control or

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 Section 1. Any individual who is responsible for collection

or

0022 ~~and~~ payment of ~~the~~ tax ~~imposed~~ under the Kansas retailers' sales

sales or compensating

0023 tax ~~act~~ who ~~willfully~~ fails to collect such tax, or ~~truthfully~~ account

and compensating

0024 for and pay over such tax, or ~~willfully~~ attempts in any manner to

or control, receipt, custody or disposal of
funds due and owing

0025 evade or defeat such tax or the payment thereof shall be person-

0026 ally liable for the total amount of the tax evaded, or not collected,

acts

0027 or not accounted for and paid over, together with any interest and

0028 penalty imposed thereon. The provisions of this section shall

0029 apply regardless of the relationship with the retailer held by

0030 such individual and regardless of the form under which the

, whether a sole proprietorship, partnership
or corporation

0031 retailer conducts business. The provisions of this section shall be

0032 deemed to be supplemental to the Kansas retailers' sales tax ~~act~~.

and compensating

0033 Sec. 2. This act shall take effect and be in force from and

0034 after its publication in the statute book.

acts

MEMORANDUM

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

FROM: Harley T. Duncan 
Secretary of Revenue

RE: Senate Bill 699

DATE: March 3, 1986

Thank you for the opportunity to appear before you today on Senate Bill 699. The Administration supports enactment of this measure.

Under current law, five percent of the inheritance tax is rebated to the county in which the estate giving rise to the inheritance tax was domiciled. Senate Bill 699 repeals the distribution of inheritance tax revenues back to county governments effective July 1, 1986. SB 699 will decrease State General Fund expenditures by approximately \$1.2 million in FY 1987 and by roughly \$1.5 million annually thereafter. More accurately, failure to enact the bill will increase State General Fund expenditures by \$1.2 million above the Governor's recommended budget in FY 1987.

The rationale underlying SB 699 is straightforward. Prior to the recodification of the inheritance tax law in 1978, the counties were involved in the administration of the tax with the tax payments actually being made to the county treasurer. As payment for this service, the treasurers retained 5 percent of the tax. Under the recodification, all administration is handled by the Department of Revenue, and county governments are not involved. Yet, we continue to distribute a portion of the tax back to the counties. We are, in effect, paying for a service that is no longer provided. The inheritance tax rebate has become a general aid program without any sound criteria for its distribution.

Thank you for this opportunity. I would be glad to attempt to answer any questions.

Kansas Association of Counties

Serving Kansas Counties

Suite D, 112 West Seventh Street, Topeka, Kansas 66603

Phone 913 233-2271

March 3, 1986

To: Senator Fred Kerr, Chairman
Members Senate Assessment And Taxation Committee

From: Beverly Bradley, Legislative Coordinator
Kansas Association of Counties

Re: SB-699 County Inheritance Tax Fund

Good Morning, I am Beverly Bradley, Legislative Coordinator for the Kansas Association of Counties. I Appear before you today in opposition to SB-699.

Counties oppose the further erosion of the tax base.

Some counties can't afford to lose even a small amount of money from their budget. If in fact the 5% inheritance tax to counties is discontinued, it would have to be replaced by an increase in property tax which most people feel is overburdened. Particularly in small rural counties, this is important because we've already heard in this committee about the plight of the agriculture community.

It seems appropriate to leave a small amount, 5%, of the inheritance tax in the county in which it was earned eventhough the county is no longer collecting it.

I urge you to oppose SB-699. Thank you for your time and attention.