

Approved 1/28/87

Minutes of the House Committee on Taxation. The meeting was called to order by E. C. Rolfs, Chairman, at 9:00 a.m. on January 27, in room 519-S of the Capitol of the State of Kansas.

All members of the Committee were present.

Committee Staff Present: Tom Severn, Legislative Research
Chris Courtright, Legislative Research
Don Hayward, Revisor of Statutes
Millie Foose, Committee Secretary

Chairman Rolfs recognized Chris Courtright to present some information on the taxation of foreign source dividends. Mr. Courtright discussed Executive Order 8791 and some items that might be excluded from taxable income. At present, Kansas is rated with states with the highest rate of foreign source dividends taxed as income. The Chairman requested the revisor draft a bill for committee introduction accomplishing the intent of the executive order. (Attachment 1)

Mr. Tom Bell, representing Kansas Hospital Association, discussed HB-2002 and said its passage would bring Kansas in line with the majority of the states concerning the taxation of hospital property; also that it would assist Kansas hospitals in using their facilities to create revenue without endangering their entire exemption, (Attachment 2) Mr. Phil Elwood explained further the benefits the hospitals would receive from the adoption of HB-2002.

Mr. Steve Harris, representing St. Francis Hospital, Wichita, testified as a proponent and said that certain facilities inside a hospital would cut costs for patients. As an illustration, he said that it would cost \$150.00 to transport a patient across the street if it was necessary in order to make tests.

Mr. Fred Weaver, representing Board of Tax Appeals, spoke as an opponent of HB-2002. (Attachment 3) He said he has no problem approving gift shops and snack bars in hospitals, but there are other services (a paging system, for example) which he said should not be a tax-free operation and would cause the hospital to lose its tax-free status. He said the present wording in HB-2002 leaves the field wide open for many different operations. He said it will be necessary to define what constitutes a hospital.

There was discussion concerning what could be considered a tax-free operation. There are several that have been included such as meetings for alcoholics, health groups, etc. The committee members questioned Mr. Weaver extensively about what his Board considered tax free and what must be taxed.

The minutes of the January 22 meeting were approved.

There being no further business to come before the Committee, the meeting was adjourned.



Ed C. Rolfs

MEMORANDUM

January 21, 1987

TO: House Taxation Committee
 FROM: Kansas Legislative Research Department
 RE: State Taxation of Foreign-Source Dividends

STATE TAX TREATMENT OF FOREIGN-SOURCE DIVIDENDS
 (As of January 1, 1986)

	<u>No Corporate Income Tax</u>	<u>Foreign- Source Dividends Wholly Exempt</u>	<u>Foreign- Source Dividends Par- tially Exempt</u>	<u>Foreign- Source Divi- dends Taxed As Income</u>
Alabama				
Alaska			X	
Arizona		X		X
Arkansas			X	
California				X
Colorado			X	
Connecticut		X		
Delaware		X		
Florida		X		
Georgia		X		
Hawaii			X	
Idaho				X
Illinois			X	
Indiana				X
Iowa				X
KANSAS				X
Kentucky		X		X
Louisiana				X
Maine				X
Maryland			X	
Massachusetts			X	
Michigan	X			
Minnesota		X		
Mississippi		X		
Missouri		X		
Montana				X
Nebraska		X		
Nevada	X			
New Hampshire				X
New Jersey			X	

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New Mexico				X
New York			X	
North Carolina			X	
North Dakota				X
Ohio		X		
Oklahoma				X
Oregon			X	
Pennsylvania		X		
Rhode Island			X	
South Carolina			X	
South Dakota	X			
Tennessee			X	
Texas	X			
Utah				X
Vermont				X
Virginia		X		
Washington	X			
West Virginia		X		
Wisconsin			X	
Wyoming				
TOTAL	6	14	15	15

Source: Tax Administrators News, January, 1986

Of the 30 states that included some of all foreign-source dividends in the tax base in 1986, four states (Louisiana, North Carolina, Oklahoma, and South Carolina) allocated all taxable foreign-source dividends to the payee's domicile. Ten states apportioned all taxable foreign-source dividends, in most cases using the same formula as they used for operating income: Alaska, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont, and Wisconsin. Sixteen states, including Kansas, allocated some foreign-source dividends and apportioned others, applying either the business/nonbusiness text of UDITPA or the unitary/nonunitary test of the ASARCO and WOOLWORTH cases to determine how to treat the dividends.

Nine states, including Kansas, ultimately treated foreign-source dividends differently than domestic dividends in 1986. These states permitted the federal exclusion for dividends paid to the taxpayer by a related or wholly-owned domestic company, but did not permit a similar exclusion for dividends paid by a corporation organized outside the United States. In other words, these states did not allow a foreign tax credit, unlike federal law: Alaska, Colorado, Iowa, KANSAS, Maine, New Mexico, Oklahoma, Rhode Island, and Vermont.

On January 8, 1987, Governor Carlin issued Executive Order 87-91, directing the Department of Revenue to exclude all foreign-source dividends from the state corporate tax base for all taxable years commencing after December 31, 1986.



Memorandum

Donald A. Wilson
President

HOUSE BILL 2002

- I. KHA supports H.B. 2002.
- II. Presently, K.S.A. 79-201b First states all property "actually and regularly used exclusively for hospital purposes" is exempt from property tax. Kansas courts have interpreted this phrase strictly so that if even a square foot of the property is used for non-exempt purposes, the entire tax exemption will be lost.
- III. During the 1986 session, the Legislature amended K.S.A. 79-201b Second, dealing with literary, educational, scientific, religious, benevolent or other charitable purposes, to state that the exemption will not be lost if the property is used for a non-exempt purpose that is minimal in scope and insubstantial in nature. H.B. 2002 clarifies K.S.A. 79-201b First to make the statute consistent with what the Legislature did last session.
- IV. H.B. 2002 brings Kansas into line with the majority of the states concerning taxation of hospital property. Only a handful of states require the loss of the entire exemption, for minimal non-exempt use of the property.
- V. H.B. 2002 will assist Kansas hospitals, many of which are struggling financially, in using their facilities to create revenue without endangering their entire exemption.
- VI. Proposed Amendment. Many Kansas hospitals are owned by cities, counties or hospital districts. Most of these hospitals are small or rural. The amendment simply clarifies that H.B. 2002 applies to those hospitals.

PROPOSED AMENDMENT TO
K.S.A. 79-201b

First. All real property, and tangible personal property, actually and regularly used exclusively for hospital purposes by a hospital as the same is defined by K.S.A. 65-425, and amendments thereto, or a psychiatric hospital as the same was defined by K.S.A. 59-2902, and amendments thereto, as in effect on January 1, 1976, which hospital or psychiatric hospital is owned or operated by a corporation organized not for profit under the laws of the state of Kansas; or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign, not for profit corporation; or by a municipality or political subdivision of the state; and all intangible property including moneys, notes and other evidences of debt, and the income therefrom, belonging exclusively to such a corporation, municipality or political subdivision, which property is and used exclusively for hospital or psychiatric hospital purposes. The use of real and tangible personal property by a hospital or a psychiatric hospital for non-exempt purposes, which are minimal in scope and insubstantial in nature, shall not result in the loss of exemption if such use is incidental to the hospital purposes of a not-for-profit corporation, municipality or political subdivision operating such hospital or psychiatric hospital. As used in this clause, "hospital purposes" means the conduct of direct or indirect activities dedicated to the improvement of the physical and mental welfare of others. The real and tangible personal property of the not-for-profit corporation, municipality or political subdivision operating the hospital or psychiatric hospital may be used for hospital purposes or for purposes deemed exempt under the provisions of K.S.A. 79-201 by more than one agency or organization for one or more such exempt purposes. The exemption under this clause shall apply to property which would otherwise be exempt where a not-for-profit corporation, municipality or political subdivision operating a hospital or psychiatric hospital is reimbursed for the actual expense for the use of such property by another organization for purposes enumerated in this clause or in K.S.A. 79-201.

MEMORANDUM TO TAXATION COMMITTEE

FROM: BOARD OF TAX APPEALS

DATE: JANUARY 27, 1987

ANALYSIS OF HOUSE BILL No. 2002

In order for real and/or tangible personal property to be exempted pursuant to K.S.A. 79-201b First, the real and/or tangible personal property must be:

1. Actually and regularly used exclusively,
2. For hospital purposes,
3. By a hospital as the same is defined by K.S.A. 65-425, and amendments thereto or a psychiatric hospital as the same was defined by K.S.A. 59-2902, and amendments thereto, as in effect on January 1, 1976,
4. Which hospital or psychiatric hospital is operated by a corporation organized not-for-profit.

The proposed changes to House Bill No. 2002 would broaden those that qualify for exemption because the new section states that the strict criteria enumerated in the statute will not apply if certain conditions are met. The exemption shall not be deemed inapplicable to property which would otherwise be exempt if:

- (a) Uses of such property for a non-exempt uses which is minimal in scope and insubstantial in nature if such use is incidental to the exempt purpose enumerated in this paragraph;

What is the meaning of "minimal in scope", "insubstantial in nature" and "incidental to the exempt purpose."

- (b) Is reimbursed for the actual expense of using such property for the exempt purposes enumerated in this paragraph or paragraph second of K.S.A. 1986 Supp. 79-201, and amendments thereto;

Is is not necessary to include language that would allow the hospital to be reimbursed for the actual expense of using its property for hospital purposes since that is the very reason the hospital statute was enacted. K.S.A. 79-201b was enacted following the Supreme Court's decision in Lutheran Home which held that if a fee was charged the exemption would not be granted under a charitable basis. The legislature therefore created the hospital exemption and based the exemption on the use for hospital purposes rather than a more general charitable purposes. This exception also allows for the hospital to be reimbursed for the actual expense of using its property for purposes enumerated in 79-201 as amended by the 1986 legislature. Since a hospital's property is exempted under 79-201b, I am not sure why it is necessary to propose an exemption under the charitable provisions and allow the charging of a

fee to recoup actual expense. At best, it is redundant, and at worst, it might open up the myriad of exemptions available under a broader charitable basis.

- (c) Permits the use of such property for the exempt purposes enumerated in this paragraph or paragraph second of 1986 Supp. K.S.A.79-201, and amendments thereto, by more than one agency or organization for one or more of such purposes.

I am not sure what this section actually does. It could be that it contemplates the use of a piece of property by more than one hospital in which case it is not necessary because I don't believe the Board has ever disallowed an application where more than one exempt entity was using the property. If, on the other hand, it is allowing the use of hospital property by an entity that would otherwise qualify under 79-201 then it has been expanded to include not only hospital uses but potentially charitable, religious, educational, etc. uses by other organizations in concert with the hospital.

As used in this paragraph, "hospital purposes" means the conduct of direct or indirect activities dedicated to the improvement of the physical and mental welfare of others.

K.S.A. 65421 defines hospital as either a general hospital or a special hospital. A general hospital is defined as an establishment with an organized medical staff of physicians; with permanent facilities that include inpatient beds; and with medical services including physician services and continuous registered professional nursing services for not less than 24 hours every day, to provide diagnosis and treatment for four or more nonrelated patients who have a variety of medical conditions. A special hospital is defined as an establishment with an organized medical staff of physicians; with permanent facilities that include inpatient beds; and with medical services including physician services and continuous registered nursing services for not less than 24 hours everyday to provide diagnosis and treatment for four or more nonrelated patients who specified medical conditions. K.S.A. 59-2902 in 1976 defined psychiatric hospital as a state hospital, a veterans hospital, or private or public hospital established, licensed, certified or accredited under state law as suitable for the detention "care or

treatment" of a patient. The term patient was defined as a person who is receiving treatment in a psychiatric hospital. The purposes of these hospitals as defined by the proposed amendment means the conduct of direct or indirect activities dedicated to the improvement of the physical and mental welfare of others. This definition seems very broad and provides no definitive guidelines as to which or what type of specific activities would constitute direct or indirect activities of these establishments. What particular activities in the health care area are not included when one says "improvements of the physical and mental welfare of others."? For example, a medical clinic, a doctor's office, a weight loss center, a health and fitness club or any pharmaceutical could conceivably be encompassed by this very broad definition.