

Approved February 19, 1987
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./~~p.m.~~ on February 18, 1987 in room 519-S of the Capitol.

All members were present except:

Committee staff present:

Tom Severn, Research
Chris Courtwright, Research
Don Hayward, Revisor's Office
Sue Pettet, Secretary to the Committee

Conferees appearing before the committee:

Mark Burghart, Department of Revenue Legal Services

Chairman Kerr called the meeting to order and said that the agenda for the day was to finish the discussion from the previous day on a bill introduction on local property tax abatement constitutional amendment issue. He said there would then be possible action on previously heard bills.

COMMITTEE DISCUSSION

The issues of transfer of ownership, abatements for farm corporations and the effects of school district wealth were discussed. Concerns about all three issues were expressed but the committee decided not to include these items in the bill introduction. Therefore, the bill to be brought back to the committee for introduction will include the three items agreed to on February 17, namely, the public hearing issue, the jurisdiction question and the Board of Tax Appeals role.

SENATE BILL 76

Senate Bill 76 requested for introduction by Senator Thiessen, pertains to the interest rate charged on late tax payments. As introduced, the bill would lower the rate from 18% to 12% rate.

Mark Burghart of the Department of Revenue gave explanation of three amendments suggested by the Department. (See Attachment 1)

He explained that the amendments would provide that the secretary determine the average prime interest rate for the three month period ending November 30 of the preceding year, and that three percentage points would then be added to the prime rate to determine the interest rate in the bill. He said that if such a provision were in effect now that the interest rate for 1987 would be 10%. The suggested amendment further would provide that the rate that the state pays on rebates, currently 12%, would become the rate that the state makes on idle funds each year. If such an amendment were in effect now, the 1987 rate would be 6%. Finally, the Department's suggestions would be that the penalty section of KSA 79-32,107 would continue to be 18%.

Senator Karr moved to adopt the amendments offered by the Department (in attachment 1) plus a similar amendment for inheritance tax collections. Senator Thiessen seconded the motion. The motion carried.

Senator Thiessen moved that S.B. 76 be recommended favorably for passage as amended. Senator Karr seconded. Motion carried.

SENATE BILL 48

Senate Bill 48 is designed to require that non-residents who own mineral interests in Kansas pay Kansas income taxes.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Assessment and Taxation,
room 519-S, Statehouse, at 11:00 a.m./~~pm~~ on February 18, 1987

Mark Burghart explained amendments suggested by the Department of Revenue, (See Attachment 2). Senator Thiessen moved that the first amendment, of Attachment 2, pertaining to the notification procedure, be adopted. Senator Allen seconded. The motion carried.

Senator Karr moved to adopt the second amendment of Attachment 2. pertaining to the 15 day limit that a taxpayer has to request a hearing of the director after receiving notification of delinquent income tax, or failure to file an income tax return as required by law. Senator Burke seconded. Motion carried.

There was committee discussion found on the penalty provision found on page 3 of the bill. Senator Allen moved to change the penalty rate from \$100 to \$50. Senator Thiessen seconded. The motion carried.

Senator Burke moved that S.B. 48 be recommended favorably for passage as amended. Senator Montgomery seconded. The motion carried.

Senator Burke made a motion to introduce a bill that will exempt from Kansas income tax, interest income received from bonds issued by the state or political subdivisions thereof. Senator Hayden seconded. The motion carried.

Senator Karr made the motion to accept the minutes of February 17, 1987 meeting. Senator Salisbury seconded. Motion carried.

Meeting adjourned.

ASSESSMENT AND TAXATION

OBSERVERS
(PLEASE PRINT)

DATE	NAME	ADDRESS	REPRESENTING
2/18/87	Kevin Arnel	wichita	KS Assn For Small Business
✓	WALTER DUNN	Topeka	EKOQA
2-14-87	Leroy Jones	Overland Park	B. L. E.
✓	Ron Calbert	NEWTON	U.J.U.
	Ken Peterson	Topeka	KS Petroleum Cnd
	Shirley Sincian	Lawrence	FPPBR - KU
	Jim Clark	Topeka	Newark
	Ed De Saegni	Topeka	KCDAA KBOT

SENATE BILL No. 76

By Committee on Assessment and Taxation

1-23

0017 AN ACT relating to taxation; concerning the rate of interest upon
0018 delinquent or unpaid taxes; amending K.S.A. 79-2968 and
0019 repealing the existing section.

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

0021 Section 1. K.S.A. 79-2968 is hereby amended to read as fol-
0022 lows: 79-2968. Except as otherwise specifically provided by law,
0023 whenever interest is charged under any law of this state upon
0024 any delinquent or unpaid taxes levied or imposed by the state of
0025 Kansas or any taxing subdivision thereof the rate thereof shall be
0026 ~~(a) One and one half percent per month if computed monthly;~~
0027 ~~and (b) eighteen *twelve* percent per annum if computed an-~~
0028 ~~nually.~~

0029 Sec. 2. K.S.A. 79-2968 is hereby repealed.

0030 Sec. 3. This act shall take effect and be in force from and
0031 after its publication in the statute book.

-----established by the secretary of revenue as provided in this section.

By January 1, 1988 and January 1, of each year thereafter, the secretary shall determine the average prime interest rate for the three month period ending November 30 of the preceding year. The interest rate imposed under this section shall be 3 percentage points greater than the average rate as determined by the secretary. Such interest rate shall become effective January 1 of the immediately succeeding calendar year, except for taxes payable under the Kansas income tax act in which case the interest rate shall become effective January 15 of the immediately succeeding calendar year. The interest rate determined under this section shall be rounded to the nearest full percent. The secretary shall cause to be published in the Kansas Register on or before January 1, 1988 and January 1 of each year thereafter, the interest rate to be imposed for such year.

Sen. A & T
2/18/87
Att. 1

79-32,105. Withholding tax; moneys paid to state treasurer; income tax refund fund; refunds, payment; interest, computation. (a) The director shall pay to the treasurer of the state daily the entire amount collected during the preceding day, under the provisions of this act and from the income tax imposed upon individuals, corporations, estates or trusts pursuant to the "Kansas income tax act" less amounts withheld as provided in subsection (b), which amounts shall be credited to the state general fund.

(b) A revolving fund, designated as "income tax refund fund" not to exceed \$4,000,000 shall be set apart and maintained by the director from income tax collections, withholding tax collections, and estimated tax collections and held by the state treasurer for prompt payment of all income tax refunds and for the payment of interest as provided in subsection (c). The fund shall be in such amount, within the limit set by this section, as the director determines is necessary to meet current refunding requirements under this act.

(c) If the director discovers from the examination of the return, or upon claim duly filed by the taxpayer or upon final judgment of the court that the income tax, withholding tax, declaration of estimated tax or any penalty or interest paid by or credited to any taxpayer is in excess of the amount legally due, the director shall certify to the director of accounts and reports the name of the taxpayer, the amount of refund and such other information as the director may require. Upon receipt of such certification the director of accounts and reports shall issue a warrant on the state treasurer for the payment to the taxpayer out of the fund provided in subsection (b), except that no refund shall be made for a sum less than \$5, but such amount may be claimed by the taxpayer as a credit against the taxpayer's tax liability in the taxpayer's next succeeding taxable year.

(d) When a resident taxpayer dies, and the director determines that a refund is due the claimant not in excess of \$100, the director shall certify to the director of accounts and reports the name and address of

the claimant entitled to the refund and the amount of the refund. A refund may be made upon a claim duly made on behalf of the estate of the deceased or in the absence of any such claim upon a claim by a surviving spouse and if none upon the claim by any heir at law. Upon receipt of such certification the director of accounts and reports shall issue a warrant on the state treasurer for the payment to the claimant out of the fund provided in subsection (b).

(e) Interest shall be allowed and paid ~~at the rate of 12% per annum~~ upon any overpayment of the income tax imposed upon individuals, corporations, estates or trusts pursuant to the Kansas income tax act.

For the purposes of this subsection:

(1) Any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day, determined without regard to any extension of time granted the taxpayer;

(2) any tax paid by the taxpayer before the last day prescribed for its payment, any income tax withheld from the taxpayer during any calendar year and any amount paid by the taxpayer as estimated income tax for a taxable year shall be deemed to have been paid on the last day prescribed for filing the return for the taxable year to which such amount constitutes a credit or payment, determined without regard to any extension of time granted the taxpayer;

(3) 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. For purposes of this paragraph, the return for the loss year shall not be deemed to be filed before claim for such overpayment is filed;

(4) in the case of a credit, interest shall be allowed and paid from the date of the overpayment to the due date of the amount against which the credit is taken, except that if any overpayment of income tax is claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the income tax for the succeeding taxable year, whether or not claimed as a credit in the return of estimated tax for such succeeding taxable year, and no interest shall be allowed or paid in such overpayment for the taxable year in which the overpayment arises;

-----at the rate established by the secretary of revenue in this section.

By January 1, 1988 and January 1 of each year thereafter, the secretary shall determine the average rate of return on state moneys available for inactive accounts deposited in time deposit, open accounts by the pooled money investment board for the three month period ending November 30 of the preceding year. The interest rate provided by this section shall be 100% of the average rate as determined by the secretary. Such interest rate shall become effective January 1 of the immediately succeeding calendar year. The interest rate determined under this section shall be rounded to the nearest full percent. The secretary shall cause to be published in the Kansas Register on or before January 1, 1988 and January 1 of each year thereafter, the interest rate on overpayments to be applied in such year.

or any agency or instrumentality thereof, the return of the amount deducted and withheld upon any wages may be made by any officer or employee of the United States or of such agency or instrumentality, as the case may be, having control of the payment of such wages, or appropriately designated for that purpose. Such withholding shall, in accordance with 5 U.S.C. 84c, be exempt from penalties otherwise provided by law for noncompliance with this act.

(c) In case a fiduciary, agent, or other person has the control, receipt, custody or disposal of, or pays the wages of an employee or group of employees, employed by one or more employers, the director, under rules and regulations of the secretary of revenue, is authorized to designate such fiduciary, agent, or other person to perform such acts as are required of employers under this act and as the director may specify. Except as may be otherwise prescribed by the director, all provisions of law (including penalties) applicable in respect of any employer shall be applicable to a fiduciary, agent, or other person so designated, but, except as so provided, the employer for whom such fiduciary, agent, or other persons acts shall remain subject to the provisions of law (including penalties) applicable in respect of employers.

History: L. 1965, ch. 525, § 13; L. 1972, ch. 342, § 103; July 1.

79-32,107. Penalties and interest for noncompliance; when same not imposed for underpayments; failure of employer to deduct and withhold; failure to collect, account for and pay tax; attempts to evade or defeat tax. (a) All penalties and interest prescribed by K.S.A. 79-3228, and amendments thereto, for noncompliance with the income tax laws of Kansas shall be applicable for noncompliance with the provisions of the Kansas withholding and declaration of estimated tax act relating to withholding tax which shall be enforced in the same manner as the "Kansas income tax act." A rate of 18% per annum ~~penalty at the same rate per annum prescribed by subsection (b) of K.S.A. 79-2968, and amendments thereto, for interest upon delinquent or unpaid taxes~~ shall be applied and added to a taxpayer's amount of underpayment of estimated tax due from the date the estimated tax payment was due until the same is paid or until the 15th day of the

fourth month following the close of the taxable year for which such estimated tax is a credit, whichever date is earlier, but such penalty shall not be added if the total amount thereof does not exceed \$1. For purposes of this subsection, the amount of underpayment of estimated tax shall be the excess of the amount of the installment which would be required to be paid if the estimated tax were equal to 80% of the tax shown on the return for the taxable year or, if no return was filed, 80% of the tax for such year, over the amount, if any, of the installment paid on or before the last date prescribed for payment. Amounts due from any employer on account of withholding or from any taxpayer for estimated tax may be collected by the director in the manner provided for the collection of state income tax in K.S.A. 79-3235, and amendments thereto.

(b) No penalty or interest shall be imposed upon any individual with respect to any underpayment of any installment if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the least:

(1) The tax shown on the return of the individual for the preceding taxable year, if a return showing a liability for tax was filed by the individual for the preceding taxable year and such preceding year was a taxable year of 12 months;

(2) an amount equal to 66 $\frac{2}{3}$ %, in the case of individuals referred to in K.S.A. 79-32,102 (b), and amendments thereto, and 80%, in the case of all other individuals, of the tax for the taxable year computed by placing on an annualized basis, pursuant to rules and regulations adopted by the secretary of revenue, the taxable income for the months in the taxable year ending before the month in which the installment is required to be made;

(3) an amount equal to 90% of the tax computed, at the rates applicable to the taxable year, on the basis of the actual taxable income for the months in the taxable year ending before the month in which the installment is required to be paid as if such months constituted the taxable year; or

(4) an amount equal to the tax computed, at the rates applicable to the taxable

SENATE BILL No. 48

By Senator Ehrlich

1-15

0017 AN ACT relating to income taxation; requiring the submission of
0018 mineral production payment reports; requiring the withhold-
0019 ing of mineral production payments in certain cases and
0020 prescribing procedures therefor.

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

0022 Section 1. (a) In addition to the reporting requirement pre-
0023 scribed by K.S.A. 79-3222, and amendments thereto, complete
0024 reports shall be required to be filed with the director of taxation
0025 for all oil, gas or mining production payments paid or payable
0026 during any year to any person or entity subject to taxation under
0027 the Kansas income tax act. ~~The director may require any person~~
0028 or entity making such production payments to report the total
0029 production payments made to any person during any calendar
0030 year, in addition to any other information necessary to calculate
0031 Kansas income tax upon such production payments. The director
0032 may require such reports from any person or entity making
0033 production payments for any time period prior to the effective
0034 date of this act based on payment records that such person or
0035 entity is required to maintain by state or federal law. For pur-
0036 poses of this section, the term "production payment" means
0037 payments of proceeds generated from mineral interests in this
0038 state including, but not limited to, a lease bonus, delay rental,
0039 royalty and working interest payment and overriding royalty
0040 interest payment.

0041 (b) The director is authorized and empowered to issue orders
0042 to withhold all production payments to any person upon a de-
0043 termination that the person has failed to file a state income tax
0044 return as required by law reporting production payment income
0045 or has failed to pay state income tax. The order to withhold

Such reports shall be filed at or before the time
the information returns prescribed by K.S.A. 79-3222
are required to be filed with the director.

0046 production payments shall be directed to the person or entity
0047 making production payments and shall apply to all production
0048 payments that the person named within such order is entitled to
0049 until the return is filed and the income tax, penalty and interest
0050 are paid. Release of the order to withhold shall be mailed by the
0051 director to the person or entity withholding production payments
0052 upon the filing of the return and payment of the tax, penalty and
0053 interest by the person named within such order or upon payment
0054 of the tax, penalty and interest by the person or entity withhold-
0055 ing the production payment.

0056 (c) Upon receipt of the order of the director to withhold
0057 production payments, the person or entity making production
0058 payments, within 30 days of receiving such order, shall:

0059 (1) Withhold payments for all production of the person
0060 named within such order until such order is released by the
0061 director;

0062 (2) hold in suspense all production payments subject to such
0063 order to withhold; and

0064 (3) in the case of established delinquent income tax, upon
0065 receiving such order from the director of such established de-
0066 linquency, pay the tax, penalty and interest out of the withheld
0067 production payments and receipt such tax payment to the tax-
0068 payer in lieu of cash in settlement for such production.

0069 The order to withhold shall apply to production payments in
0070 any case where a successor person or entity is required to make
0071 production payments and to production payments of subsequent
0072 production of minerals in this state. Any person or corporation
0073 that withholds production payments or pays same to the director
0074 pursuant to such order is hereby relieved of all liability for such
0075 acts.

0076 (d) The director shall mail notice to each delinquent taxpayer
0077 at the last known address reported by the person or entity
0078 making production payments ~~at least 20 days~~ prior to issuance of
0079 an order to withhold production payments. The notice shall
0080 contain a statement that the taxpayer has failed to file an income
0081 tax return as required by law or has failed to pay delinquent
0082 income tax. An order to withhold production payments may be

Within 15 days after the mailing of such notice the taxpayer may request a hearing of the director relating to taxpayer's failure to file an income tax return as required by law or failure to pay delinquent income tax. Based on the evidence presented at such hearing, the director shall make a final determination and shall notify the taxpayer of such decision.

0083 issued by the director for collection of any delinquent income
0084 tax, penalty and interest owed by the taxpayer entitled to pro-
0085 duction payments.

0086 (e) Any person or entity making production payments who
0087 refuses or fails to file the reports required by this section, in the
0088 manner and at the time prescribed by the director, shall be
0089 subject to a penalty in the amount of ~~\$100~~ for each ~~day~~ such
0090 ~~report is delinquent~~. Any person or entity making production
0091 payments who refuses to withhold payments shall be subject to a
0092 penalty in the amount of \$100 for each payment made which was
0093 ordered to be withheld.

\$50
refusal or failure

0094 Sec. 2. This act shall take effect and be in force from and
0095 after its publication in the statute book.