

Approved February 20, 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 19, 1987 in room 519-S of the Capitol.

All members were present except:  
Senator Jim Allen

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:

Ron Smith, Kansas Bar Association  
Tim O'Sullivan, Kansas Bar Association  
Carol Bonebrake, Department of Revenue  
David Litwin, Kansas Chamber of Commerce Industries

Chairman Kerr called the meeting to order and said that the first item of business was to review the bill regarding the constitutional amendment on local tax abatements and to consider introduction of it.

Don Hayward of the Revisor's Office briefly explained the bill draft. (See Attachment 1) After committee discussion, it was decided to add "with the approval of the city," to sub-section 1(a).

Senator Burke made the motion to introduce the bill. Senator Mulich seconded. Motion carried.

SENATE BILL 164

Ron Smith of the Kansas Bar Association had requested introduction of S.B. 164. He said Tim O'Sullivan would testify on behalf of K.B.A.

Tim O'Sullivan testified in support of S.B. 164. (Attachment 2) He stated that S.B. 164 is a proposal to bring the sales tax liability provision of K.S.A. 1986 Supp. 79-3643 into conformity with the federal penalty for income tax withholding.

He stated that without conformity, Kansas will have confusion concerning personal liability provisions, and will have possible misinterpretation concerning the sales tax liability provision. He stressed the importance of having the words "willfully attempts" in this provision. He also discussed the problem of strict liability on officers and directors, and said that these persons may not be responsible for or even have knowledge of withholding payments.

He requested that the bill be supported with an amendment to either repeal or clarify K.S.A. 79-32,107(c).

Carol Bonebrake testified in oppositon to S.B. 164. She said that the section that would be repealed was enacted last year on a request by Post Audit. She said that if it is repealed the Department would have little opportunity to collect tax monies from companies that had already been paid by consumers. She stated that the sales tax is a different type of tax and should be left as it is as recommended by the Post Auditor.

David Litwin stated that he felt "willful" was a necessary word in this law in order to protect innocent employees.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Assessment and Taxation,  
room 519-S, Statehouse, at 11:00 a.m.~~a.m.~~<sup>p.m.</sup> on February 19, 1987

SENATE BILL 165

Tim O'Sullivan testified in favor of S.B. 165. (Attachment 3) He explained that S.B. 165 would expand the Secretary of Revenue's authority to settle assessed tax liability by compromise. He said that such authority is currently used by the Internal Revenue Service and that they have found it to be cost effective. He stated that passage of S.B. 165 would bring the state more into conformity with the federal government in settling these assessed tax liabilities.

Carol Bonebrake testified in opposition to S.B. 165. She felt that the Department already has the opportunity to compromise in K.S.A. 79-3233(a). She said that the bill is not needed and abuse could occur. She said that the Secretary of Revenue does not want expanded authority to compromise which is contained in the bill.

Senator Hayden made the motion to accept the minutes of February 18, 1987. Senator Mulich seconded. Motion carried.

Meeting adjourned.



## SENATE BILL NO. \_\_\_\_\_

By Committee on Assessment and Taxation

AN ACT relating to property taxation; prescribing limitations upon the authority of any city or county to grant exemptions therefrom for economic development purposes; amending K.S.A. 79-210 and K.S.A. 1986 Supp. 79-213 and repealing the existing sections.

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

New Section 1. (a) No board of county commissioners of any county, pursuant to the provisions of section 13 of article 11 of the Kansas constitution, shall grant any exemption from ad valorem taxation for any property located or to be located within the corporate limits of any city.

(b) Prior to the granting of an exemption for any property from ad valorem taxation pursuant to the provisions of section 13 of article 11 of the Kansas constitution, the board of county commissioners of any county or the governing body of any city, as the case requires, shall conduct a public hearing thereon. Notice of the hearing shall be published in the official city or county newspaper, as the case requires, and shall indicate the purpose, date and time thereof. In addition to such publication notice, the city or county clerk, as the case requires, shall notify the governing body of all taxing districts which may be affected by any such exemption of such hearing.

Sec. 2. K.S.A. 79-210 is hereby amended to read as follows:  
79-210. (a) The owner or owners of all property which is exempt from the payment of property taxes under the laws of the state of Kansas for a specified period of years shall in each year after approval thereof by the board of tax appeals claim such exemption on or before March 1 of each year in which such exemption is claimed in the manner hereinafter provided. All claims for

exemption from the payment of property taxes shall be made upon forms prescribed by the director of property valuation and shall identify the property sought to be exempt, state the basis for the exemption claimed and shall be filed in the office of the assessing officer of the county in which such property is located. The assessing officers of the several counties shall list and value for assessment, all property located within the county for which no claim for exemption has been filed in the manner hereinbefore provided. The secretary of revenue shall adopt rules and regulations necessary to administer the provisions of this section.

(b) The provisions of this section shall apply to property exempted pursuant to the provisions of section 13 of article 11 of the Kansas constitution.

Sec. 3. K.S.A. 1986 Supp. 79-213 is hereby amended to read as follows: 79-213. (a) Any property owner requesting an exemption from the payment of ad valorem property taxes assessed, or to be assessed, against their property shall be required to file an initial request for exemption, on forms approved by the board of tax appeals and provided by the county appraiser.

(b) The initial exemption request shall identify the property for which the exemption is requested and state, in detail, the legal and factual basis for the exemption claimed.

(c) The request for exemption shall be filed with the county appraiser of the county where such property is principally located.

(d) After a review of the exemption request, and after a preliminary examination of the facts as alleged, the county appraiser shall recommend that the exemption request either be granted or denied, and, if necessary, that a hearing be held. If a denial is recommended, a statement of the controlling facts and law relied upon shall be included on the form.

(e) The county appraiser, after making such written recommendation, shall file the request for exemption and the recommendations of the county appraiser with the board of tax

appeals.

(f) Upon receipt of the request for exemption, the board shall docket the same and notify the applicant and the county appraiser of such fact.

(g) After examination of the request for exemption, and the county appraiser's recommendation related thereto, the board may fix a time and place for hearing, and shall notify the applicant and the county appraiser of the time and place so fixed. In any case where a party to such request for exemption requests a hearing thereon, the same shall be granted. In all instances where the board sets a request for exemption for hearing, the county shall be represented by its county attorney or county counselor.

(h) In the event of a hearing, the same shall be originally set not later than 90 days after the filing of the request for exemption with the board.

(i) When a determination is made as to the merits of the request for exemption, the board shall enter its order thereon and give notice of the same to the applicant, the county attorney and the county appraiser by sending to each a certified copy of its order.

(j) The date of the order, for purposes of filing an appeal to the district court, shall be the date that a certified copy of the order is mailed to the party seeking to appeal.

(k) During the pendency of a request for exemption, and in the event that taxes have been assessed against the subject property, no interest shall accrue on any unpaid tax for the year or years in question from the date the request is filed with the county appraiser until the expiration of 30 days after the board issued its order thereon.

(l) In the event the board grants the initial request for exemption, the same shall be effective beginning with the date of first exempt use.

(m) In conjunction with its authority to grant exemptions, the board shall have the authority to abate all unpaid taxes that

have accrued from and since the date of first exempt use. In the event that taxes have been paid during the period where the subject property has been determined to be exempt, the board shall have the authority to order a refund of taxes for a period not to exceed three years.

(n) The provisions of this section shall not apply to farm machinery and equipment exempted from ad valorem taxation by K.S.A. 79-201j, and amendments thereto, or to personal property exempted from ad valorem taxation by K.S.A. 1986 Supp. 79-215, and amendments thereto.

(o) The provisions of this section shall apply to property exempted pursuant to the provisions of section 13 of article 11 of the Kansas constitution.

Sec. 4. K.S.A. 79-210 and K.S.A. 1986 Supp. 79-213 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

PRESENTATION BEFORE THE SENATE ASSESSMENT AND TAXATION COMMITTEE

Re: Senate Bill 164

By: Timothy P. O'Sullivan of Fleeson, Goong, Coulson & Kitch, Wichita  
on behalf of the Kansas Bar Association

Senate Bill No. 164 is a proposal to bring the sales tax liability provision of K.S.A. 1986 Supp. 79-3643 into conformity with the 100% penalty for income tax withholding under K.S.A. 79-32,107(e), attached as Exhibit A. K.S.A. 79-32,107(e), enacted in 1965, follows the wording of Internal Revenue Code Section 6672, which is the federal withholding 100% penalty provision.

In conforming the wording of the sales tax liability provision with the withholding provision, several benefits are obtained:

- (a) Uniform treatment will be accorded those responsible for income and sales tax withholding;
- \*(b) The interpretation of the sales tax provision will achieve reasonable certainty, as there is 30 years of federal case law interpreting identical wording, as opposed to none at the state level; and
- (c) By utilizing penalty language, the payments thereof should be non-deductible by the payor under present or future income tax law, thus resulting in possible additional revenue to the State of Kansas.

Without internal conformity with the withholding liability provision and with the federal provision, Kansas will have a veritable patchwork of personal liability provisions. This will leave the taxpayer and the State of Kansas in doubt as to the interpretation to be given the sales tax liability provision, thus causing needless and expensive litigation to resolve the issue. We believe that the relatively well-settled judicial interpretation of the federal provision is reasonable. Imposition of the federal penalty requires that the person against whom liability is to be imposed be responsible for withholding, that is, entrusted with such responsibility by virtue of the articles or by-laws of the corporation, or internally charged with such responsibility, and such person willfully preferred creditors when money was available to pay withholding to the government. Such willfulness of necessity would require that the person held responsible have knowledge that federal withholding requirements were not being met.

The existing sales tax provision, in deleting the "willful" requirement found in state and federal withholding provisions, and including wording that liability may be imposed irrespective of a person's relationship with the employer, could conceivably impose liability on an underling employee or corporate director who in no manner was even aware sales tax was not being remitted. In short, the law is unreasonably broad and departs unjustifiably from language found in existing state and federal withholding provisions.

There is yet another problem in bringing the state into conformity with the federal 100% penalty provision. That problem is found in K.S.A. 79-32,106(c), enacted in 1965, which relates



to the responsibility for withholding taxes. This statutory provision, as well as K.A.R. 92-11-16, promulgated that same year, are attached as Exhibit B. Although this law, in making fiduciaries and agents for withholding, was apparently intended to address those persons or entities acting as agents of who were otherwise "standing in the shoes" of the employer, such as a creditor taking over an employer-debtor's business, the Kansas Department of Revenue is using this provision and the long-ago issued regulation interpreting it to impose liability on directors, officers and employees. You will note the language in K.A.R. 92-11-16 which places strict liability on officers and directors, devoid of any consideration as to whether such "responsible" persons knew withholding taxes were not being paid and irrespective of whether such persons even had authority over such payments. It accomplishes this by denoting such persons as "employers," thus making them liable as employers for making withholding payments. Officers and directors have enough liability problems in this age of litigation without being strictly liable for withholding taxes.

K.A.R. 92-11-16 should be statutorily restricted in one of two ways. One method would be simply to repeal it. Federal case law has imposed a penalty on agents and fiduciaries under Code Section 6672 as responsible persons, provided the failure to withhold was willful, and no doubt K.S.A. 79-32,107(e), containing identical language, already furnishes relief in like circumstances. Alternatively, language could be added to K.S.A. 79-32,106(c) providing that liability for failure to withhold by employees of an employer, or officers and directors of a corporate employer, shall not be imposed unless pursuant to the provisions of K.S.A. 79-32,107(e).

In summary, the Kansas Bar Association supports Senate Bill 164 and the recommended change or repeal of K.S.A. 79-32,107(c) in order that tax equity and conformity with federal provisions be achieved. What exists now are disparate provisions having no internal logic and which subject the taxpayers of this state to possible liability irrespective of their relationship with their employer, their authority to make decisions or their knowledge that withholding and sales taxes are not being paid to the State. In my experience in representing clients in 100% penalty cases, as well as hearing the experiences of my colleagues, it is clear that the foregoing problems are all too real, particularly with the rapidly increasing number of bankrupt employers who in recent years have not paid withholding taxes. If the State is to subject liability on others for such unpaid withholding and sales taxes, let it do so only against those truly "responsible." Current law represents a continuing invitation for the State to be arbitrary and overly aggressive in its pursuit of unpaid taxes. The fault lies with the existing statutory framework. We ask that you change it by enacting S.B. 164 and amending or repealing K.S.A. 79-32,106(c).

## 79-32,107a

## TAXATION

year, on the basis of the taxpayer's status with respect to personal exemptions under K.S.A. 79-32,121, and amendments thereto, for the taxable year, but otherwise on the basis of the facts shown on the return for, and the law applicable to, the preceding taxable year.

(c) No penalty or interest shall be imposed upon any corporation with respect to any underpayment of any installment of estimated tax 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 lesser:

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

(2) an amount equal to the tax computed at the rates applicable to the taxable year but otherwise on the basis of the facts shown on the return of the corporation for, and the law applicable to, the preceding taxable year; or

(3) (A) an amount equal to 80% of the tax for the taxable year computed by placing on an annualized basis the taxable income: (i) For the first three months of the taxable year, in the case of the installment required to be paid in the fourth month; (ii) for the first three months or for the first five months of the taxable year, in the case of the installment required to be paid in the sixth month; (iii) for the first six months or for the first eight months of the taxable year in the case of the installment required to be paid in the ninth month; and (iv) for the first nine months or for the first 11 months of the taxable year, in the case of the installment required to be paid in the 12th month of the taxable year.

(B) For purposes of this subsection (3), the taxable income shall be placed on an annualized basis by (i) multiplying by 12 the taxable income referred to in subsection (3)(A), and (ii) dividing the resulting amount by the number of months in the taxable year (three, five, six, eight, nine, or 11, as the case may be) referred to in subsection (3)(A).

(d) If the employer, in violation of the provisions of this act, fails to deduct and withhold under this chapter, and thereafter the tax against which such withholding may be credited is paid, the amount otherwise required to be deducted and withheld shall not be collected from the employer; but this subsection shall in no case relieve the employer from liability for any penalties or additions to the tax otherwise applicable in respect of such failure to deduct and withhold.

(e) Any person required to collect, truthfully account for, and pay over any tax imposed by this act, who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall in addition to the other penalties of this section be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over.

(f) In case of failure by any employer required by subsection (b) of K.S.A. 79-3298, and amendments thereto, to remit any amount of withheld taxes by the date prescribed therefor, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be imposed upon such person a penalty of 15% of the amount of the underpayment. For purposes of this subsection, the term "underpayment" means the excess of the amount of the tax required to be withheld and remitted over the amount, if any, remitted on or before the date prescribed therefor. The failure to remit for any withholding period shall be deemed not to continue beyond the last date prescribed for filing the annual return as required by subsection (d) of K.S.A. 79-3298, and amendments thereto. Penalty and interest as prescribed by K.S.A. 79-3228, and amendments thereto, shall not begin to accrue under subsection (a) of this section on the amount of any such underpayment until the due date of the annual return for the calendar year in which such failure to remit occurs.

**History:** L. 1965, ch. 525, § 14; L. 1977, ch. 343, § 1; L. 1979, ch. 320, § 1; L. 1980, ch. 316, § 9; L. 1981, ch. 385, § 4; L. 1983, ch. 326, § 2; L. 1984, ch. 351, § 16; July 1.

**79-32,107a.** Application of 79-32,107. The provisions of this act shall be applica-

credited to any amount legally to the director name of the fund and such director may re-certification the ts shall issue a er for the pay- the fund pro- pt that no re- less than \$5, aimed by the the taxpayer's next succeed-

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;

(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;

(5) in the case of a refund, interest shall be allowed and paid from the date of the overpayment to a date preceding the date of the refund check by not more than 30 days, as determined by the director, whether or not such refund check is accepted by the taxpayer after tender of such check to the taxpayer, but acceptance of such check shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon; and

(6) if any overpayment is refunded within two months after the last date prescribed, or permitted by extension of time, for filing the return of such tax, or within two months after the return was filed, whichever is later, no interest shall be allowed or paid. For the purposes of this section, an overpayment shall be deemed to have been refunded at the time the refund check in the amount of the overpayment, plus any interest due thereon, is deposited in the United States mail.

**History:** L. 1965, ch. 525, § 12; L. 1968, ch. 302, § 1; L. 1974, ch. 440, § 1; L. 1980, ch. 316, § 8; L. 1984, ch. 351, § 15; Jan. 1, 1985.

**79-32,106.** Employers' and fiduciaries' liability for tax required to be withheld. (a) The employer shall be liable to the state for the payment of the amount required to be deducted and withheld under this act but shall not be otherwise liable for the amount of any such payments.

(b) If the employer is the United States

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 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

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of such tax whether or not it is collected from the employee by the employer. For purposes of assessment and collection, any amount required to be withheld and paid over to the department of revenue, and any additions to tax, penalties and interest with respect thereto, shall be considered the tax of the employer. (See K.S.A. 79-3228 as to additions to tax and civil penalties.)

(b) *Withheld wages trust fund.* Any amount of tax withheld shall constitute a special fund in trust for the department of revenue.

(c) No employee shall have any right of action against his employer in respect to any moneys deducted and withheld from his wages and paid over to the department of revenue in compliance or in intended compliance with the Kansas withholding tax act. (Authorized by K.S.A. 79-3236, K.S.A. 1965 Supp. 79-3294; effective Jan. 1, 1966.)

**92-11-16. Employer's failure to withhold.** (a) *General.* If an employer fails to deduct and withhold the tax as required under the Kansas withholding tax act, and thereafter, the income tax against which the tax may be credited is paid, the tax required to be deducted and withheld shall not be collected from the employer. Such payment does not, however, operate to relieve the employer from liability for penalties, interest or additions to the tax applicable in respect of such failure to deduct and withhold. The employer will not be relieved under this provision from his liability for payment of the tax required to be withheld unless he can show that the income tax against which the tax required to be withheld under the Kansas withholding tax act may be credited has been paid.

(b) Every agent or other person having control, receipt, custody or disposal of, or paying the wages of an employee or group of employees employed by one or more employers, is for the purpose of this act designated to be an employer. In the case of the corporation, the officers and board of directors are likewise considered employers. Employers of classes named in this section shall be subject to all the provisions of law including penalties as is their principal. Any employer, as defined in this subsection, or in any other section of these regulations, who willfully fails to collect the

tax imposed by the Kansas withholding tax act or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any tax or the payment thereof, shall be subject to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over in addition to other penalties provided by law. (Authorized by K.S.A. 79-3236, K.S.A. 1965 Supp. 79-3294, 79-32,104(c); effective Jan. 1, 1966.)

**92-11-17.** (Authorized by K.S.A. 79-3236, 79-32,101; effective Jan. 1, 1966; amended Jan. 1, 1970; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-11-18.** (Authorized by K.S.A. 79-3236, 79-3294; effective Jan. 1, 1966; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-11-19.** (Authorized by K.S.A. 79-3236, 79-32,103; effective Jan. 1, 1966; amended Jan. 1, 1970; amended, E-71-8, Jan. 1, 1971; amended Jan. 1, 1972; revoked, E-82-26, Dec. 16, 1981; revoked May 1, 1982.)

**92-11-20. Declaration of estimated tax forms.** (a) *Individuals.* Individuals shall file the declaration of estimated tax on form 40ES. All information requested on that form shall be supplied.

(b) *Corporations.* Corporations shall file the declaration of estimated tax on form 120ES. All information requested on that form shall be supplied.

(c) *Amendments.* In the case of an individual, the amendment is contained on the back of form 40ES, which is the notice of installment due received by the taxpayer from the department of revenue. In the case of a corporation, the amended declaration is contained on the back of form 120ES, which is the notice of installment due of estimated corporate tax. (Authorized by K.S.A. 79-3236; implementing K.S.A. 1981 Supp. 79-32,101, 79-32,102; effective Jan. 1, 1966; amended, E-82-26, Dec. 16, 1981; amended May 1, 1982.)

**92-11-21. Payment of estimated tax.** (a) *General.* The following rules govern the time for payment of the estimated tax for calendar years:

PRESENTATION BEFORE SENATE ASSESSMENT AND TAXATION COMMITTEE

Re: Senate Bill 165

By: Timothy P. O'Sullivan of Fleeson, Goings, Coulson & Kitch, Wichita  
on behalf of the Kansas Bar Association

Date: February 19, 1987

Senate Bill No. 165 is another proposal to bring Kansas tax provisions into conformity with federal law. Under current Kansas law, the only authority for the Kansas Department of Revenue to settle an assessed tax liability is under K.S.A. 79-3233a. This seldom used provision only relates to income tax liability and only allows a compromise of such tax liability based upon insolvency.

Senate Bill No. 165 expands the Department's authority to settle and essentially gives the Department the same authority to settle assessed tax liabilities that Congress has given the Internal Revenue Service under Code Section 7122. Such authority would extend to all taxes administered by the Department of Revenue and would allow a compromise based upon doubts either as to liability or collectibility.

For the legislature to understand the need for this legislation, it must understand the plight of a Kansas taxpayer faced with an assessed tax liability. Often such a taxpayer has also been assessed at the federal level as well, due to the information exchange between the state and federal governments. If the taxpayer compromises the liability at the federal level, the taxpayer is still faced with a Kansas tax liability. Allowing the taxpayer a means of settling at both the federal and state levels, upon similar equitable terms, will allow the taxpayer to get out from under an often onerous tax liability. It also should allow the state to get a share of the settlement, where otherwise the taxpayer might just settle with the federal government, leaving the state to expensive collection efforts, if in fact the liability is collectible at all.

Even if the taxpayer is not also faced with a simultaneous federal liability, an offer in compromise is an efficient method to save the taxpayer and the state substantial costs occasioned by alternative approaches. If there are doubts as to liability, it saves the taxpayer and the state the often substantial expense of having the taxpayer make a claim for refund and litigate the matter through the Department of Revenue, the Board of Tax Appeals and the courts of this state. If there are doubts as to collectibility, it saves the state the expense of continued and often futile collection efforts, or simply not collecting anything by considering the tax liability as uncollectible.

The offer in compromise would bring the State of Kansas to a level of commercial reality already recognized in business and by the Internal Revenue Service. It is a cost effective method of settling assessed tax liabilities based upon a reasonable settlement amount, normally on a basis that will yield more net revenue to the state than would be realized by costly litigation or collection efforts.

In reviewing this issue, I had the opportunity to converse with Ken Stapleton, who is in charge of offers in compromise for the Wichita district office of the Internal Revenue Service. Mr. Stapleton confirmed that the federal government considers offers in compromise to be an effective method of settling assessed tax liabilities. He further informed me that there is little potential for abuse either internally or by the taxpayer. Any taxpayer who would fraudulently represent his assets in order to secure an agreed compromise of tax liability based upon doubts as to collectibility would also be likely to conceal assets from collection agents as well. Mr. Stapleton noted that the types of internal decisions made with respect to doubts as to liability are the same decisions made by revenue officers and attorneys in cases which are appealed. In any event, the internal controls within the IRS, such as review by revenue agents or attorneys prior to submission to the District Director, prevent any possible abuses. Mr. Stapleton also stated that there has been a rapidly increasing usage of offers in compromise in recent years as attorneys and accountants have become increasingly aware of this mechanism to settle assessed tax liabilities.

The Kansas Bar Association feels there is little reason to suspect that the enactment of Senate Bill No. 165 will not prove as beneficial to the State of Kansas as similar provisions have occasioned at the federal level. Moreover, it makes sound economic sense, both to the taxpayer and the State of Kansas. Its effectiveness will only depend upon the willingness of the Kansas Department of Revenue to fully utilize its provisions. We urge its enactment.