

Approved February 17, 1987
Date

MINUTES OF THE Senate COMMITTEE ON Ways and Means

The meeting was called to order by Senator August "Gus" Bogina at
Chairperson

11:00 a.m. ~~p.m.~~ on February 5, 1987 in room 123-S of the Capitol.

All members were present except:

Committee staff present:

Research Department: Richard Ryan, Ed Ahrens, Laura Howard
Revisor's Office: Norman Furse
Committee Office: Judy Bromich, Pam Parker

Conferees appearing before the committee:

Mr. Robert Coldsnow, Legislative Counsel

SB 47 - An act relating to the state legislature; concerning compensation and expense allowances of members of the legislature.

Mr. Coldsnow reviewed concerns surrounding SB 47 and interpretations of the Tax Reform Act of 1986. He presented a background to the question of whether or not legislators are employees in the sense of the normal employer-employee relationships and said that the NCSL is currently working with the treasury and IRS. He noted that on January 26th the treasury filed notice of withdrawing all rule making proposals with respect to legislators' tax on expense deductions and per diem expense deductions and that, to date, no interpretation of this last action is available. (Attachment 1)

Mr. Coldsnow reviewed his suggested amendments contained in a balloon draft of SB 47 which he felt would clarify the fact that Kansas statute is not intended to adopt the two tier, federal per diem system but to use it as a means of calculating the total allowed amount and not violate anything which has been done in the past. (Attachment 2)

Following discussion, Senator Werts made a motion, and Senator Harder seconded the motion, to adopt the technical amendments in the balloon draft submitted by Mr. Coldsnow. The motion carried on a voice vote.

Senator Feleciano moved, and Senator Werts seconded, to adopt amendments to hold retirement basis harmless, because of a reduction in salaries. The motion carried on a voice vote.

A motion was made by Senator Talkington, and seconded by Senator Harder, to delete Section 1(g) and change Section 1(f) to read, in line 0080, \$48 rather than \$51 as presently stated in order to take the full reductions from salaries. The motion carried on a voice vote.

Senator Talkington offered a motion to rephrase language in the escalator clause on page two of SB 47 to provide for situations in which pay plan changes on a date other than July 1. The motion carried by a voice vote.

The Chairman announced that SB 47 would be held until Tuesday, February 10th, at which time it would be considered with SB 82. Subcommittee schedules were distributed and discussed. The meeting was adjourned by the Chairman at 11:40 a.m.

[¶ 7132] Act Sec. 132. Law at ¶ 3033 and 3035. CCH Explanation at ¶ 155, 166 and 169.

[House Committee Report]

Explanation of Provision

The bill provides that employee business expenses (including those, other than expenses reimbursed by the employer, that are presently allowable above-the-line) and other miscellaneous itemized deductions are deductible only to the extent that, in the aggregate, they exceed one percent of the taxpayer's adjusted gross income (AGI). The amount of these deductions that exceeds one percent of the taxpayer's AGI is allowable only as an itemized deduction. A special rule applies to determine AGI in the case of trusts or estates.

Other provisions in the bill affect the availability of particular miscellaneous deductions.² To the extent that any limitation is placed on the amount of a miscellaneous deduction, either under

present law or under the bill, that limitation applies prior to the application of the one-percent floor. For example, if an employee incurs deductible expenses relating to business meals away from home, and these expenses are not reimbursed by the employer, the employee must first reduce the amount of the expenses by 20 percent (pursuant to section 142 of the bill) and then add the remaining portion of the expenses to the other miscellaneous deductions that he or she has incurred during the year for purposes of applying the one-percent floor. Similarly, the deductibility of expenses relating to a hobby or a home office must first be determined pursuant to the applicable rules before application of the one-percent floor.

[Conference Committee Report]

Conference Agreement

Under the conference agreement, employee business expenses, other than reimbursed expenses described in section 62(2)(A)³, are to be allowed only as itemized deductions and are subject to a floor as described below. Moving expenses of an employee or self-employed individual are to be

allowed (subject to the present-law limitations in sec. 217) only as an itemized deduction; this deduction is not subject to the new floor.

The miscellaneous itemized deductions, including the employee business expenses described above, generally are subject to a floor of two percent of the taxpayer's adjusted gross income.

² See section 134 of the bill (concerning qualified adoption expenses), section 142 of the bill (travel and entertainment expenses), and section 143 of the bill (home office deductions and hobby losses).

³ The conference agreement does not modify the above-the-line deduction under sec. 62(2)(A) for certain reimbursed expenses of an employee (allowable under part VI of the Code) under a reimbursement or other expenses allowance with his or her employer. (The Treasury may prescribe regulations under which expenses of an employee reimbursed by a third party are to be treated as expense described in sec. 62(2)(A).) If the employee has a reimbursement or other expense allowance arrangement with his or her employer, but under the arrangement the employer does not reimburse the full amount of such expenses, the unreimbursed portion paid by the employee is allowable only to the extent (if any) otherwise allowable as an itemized deduction (e.g., after taking into account the percent-

age reduction rule, if applicable to the expense), and subject to the floor provided under the conference agreement.

Under the conference agreement, it is intended that the Treasury issue regulations coordinating the treatment of employee business expenses and the provisions in sec. 162(h), relating to travel expenses away from home of State legislators. Under the intended rules, any excess of the allowable amount as determined under sec. 162(h) over the amount actually reimbursed to the legislator would be allocated between meals and other travel expenses in accordance with the ratio of meals and other travel expenses under the Federal per diem reimbursement rules. The reimbursed amount would be deductible pursuant to sec. 62(2)(A), and 80 percent of the amount allocated to meals would be deductible by itemizers as an employee business expense (subject to the new floor under miscellaneous itemized deductions).

ATTACHMENT 1
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However, the floor does not apply to deductions otherwise allowable for impairment-related work expenses for handicapped employees (new Code sec. 67(d)); the estate tax in the case of income in respect to a decedent (sec. 691(c)); certain adjustments where a taxpayer restores amounts held under a claim of right (sec. 1341); amortizable bond premium (sec. 171); certain costs of cooperative housing corporations (sec. 216); deductions allowable in connection with personal property used in a short sale; certain terminated annuity payments (new Code sec. 72(b)(3)); and gambling losses to the extent of gambling winnings (sec. 165(d)).

Pursuant to Treasury regulations, the floor is to apply with respect to indirect deductions through pass-through entities (including mutual funds) other than estates, nongrantor trusts, cooperatives, and REITs. The floor also applies with respect to indirect deductions through grantor trusts, partnerships, and S corporations by virtue of present-law grantor trust and pass-through rules. In the case of an estate or trust, the conference agreement provides that the adjusted gross income is to be computed in the same manner as in the case of an individual, except that the deductions for costs that are paid or incurred in

connection with the administration of the estate or trust and that would not have been incurred if the property were not held in such trust or estate are treated as allowable in arriving at adjusted gross income and hence are not subject to the floor. The regulations to be prescribed by the Treasury relating to application of the floor with respect to indirect deductions through certain pass-through entities are to include such reporting requirements as may be necessary to effectuate this provision.

Under the conference agreement, an actor or other performing artist is allowed a new above-the-line deduction for his or her employee business expenses (allowable under sec. 162) during a year if the performing artist for that year (1) had more than one employer (excluding any nominal employer) in the performing arts, (2) incurred allowable section 162 expenses in connection with such services as an employee in an amount exceeding 10 percent of gross income from such services, and (3) did not have adjusted gross income, as determined before deducting such expenses, exceeding \$16,000.

These provisions are effective for taxable years beginning on or after January 1, 1987.

SENATE BILL No. 47

By Committee on Ways and Means

1-15

0017 AN ACT relating to the state legislature; concerning compensa-
0018 tion and expense allowances of members of the legislature;
0019 amending K.S.A. 46-137a and repealing the existing section.

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

0021 Section 1. K.S.A. 46-137a is hereby amended to read as fol-
0022 lows: 46-137a. In addition to the compensation provided for by
0023 K.S.A. 46-137b, 46-137e and 75-3212 and amendments thereto,
0024 each member of the legislature shall receive the following
0025 amounts:

0026 (a) The sum of ~~\$49~~ \$54 per calendar day for service at any
0027 regular or special session, except as otherwise provided in sub-
0028 ~~section~~ subsections (e) and (f);

0029 (b) *on and after July 1, 1987*, the sum of ~~\$50~~ \$65 per calendar
0030 day for subsistence allowance for any regular or special session
0031 of the legislature, except that if the ~~amount~~ amounts allowable for the
0032 capital city of Kansas under applicable federal law and regula-
0033 tions to employees of the executive branch of the federal gov-
0034 ernment for per diem expenses, while away from home but
0035 serving in the United States, ~~is an amount which is greater than~~ are amounts
0036 ~~\$50~~ \$65, then each member of the legislature shall receive such total
0037 greater ~~amount~~ per calendar day for subsistence allowance for total
0038 any regular or special session of the legislature;

0039 (c) an allowance of \$600 per calendar month, except for the
0040 months of January, February and March to defray expenses
0041 incurred between sessions of the legislature for postage, tele-
0042 phone, office and other incidental expenses; ~~and~~

0043 (d) an allowance for mileage in an amount equal to the rate
0044 per mile prescribed under the provisions of K.S.A. 75-3203a and
0045 amendments thereto multiplied by the number of miles traveled

ATTACHMENT 2
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