

Approved On: _____

Minutes of the House Committee on Taxation. The meeting was called to order by E. C. Rolfs, Chairman, at 9:00 a.m. on February 8, 1988 in room 519 South at the Capitol of the State of Kansas.

The following members were absent (excused):

Representatives Roe

Committee staff present:

Tom Severn, Legislative Research
Chris Courtright, Legislative Research
Don Hayward, Reviser of Statutes
Millie Foose, Committee Secretary

Representative Spaniol moved, second by Representative Smith, to introduce a bill concerning personal property taxes. The motion carried.

Secretary Harley Duncan explained HB-2740 - AN ACT relating to penalties for failing to make certain tax returns, concerning the date upon which such penalties may be imposed. He then answered questions from committee members. He submitted copies of a proposed amendment that would adopt language comparable to that in the income tax penalty provisions and clarified that the 25% penalty would be imposed 30 days after the return or tax was due. (Attachment 1) This concluded the public hearing on HB-2740.

Secretary Duncan then discussed HB-2741 - AN ACT relating to sales tax; concerning the duty of vendors to collect tax under certain circumstances. He explained that HB-2741 is requested by the Department of Revenue to correct a flaw in KSA 79-3604. (Attachment 2)

Secretary Duncan then discussed HB-2742 - AN ACT relating to the transient guest tax; providing for the effective date of such levies. This legislation amends the transient guest law by providing when a transient guest tax may become effective. (Attachment 3)

Secretary Duncan explained HB-2743 - AN ACT concerning the apportionment of countywide local sales tax. (Attachment 4) He explained the purpose of the bill and answered questions from committee members. This concluded the public hearing.

Secretary Duncan then presented the Department of Revenue's position on HB-2744 - AN ACT relating to taxation; concerning certain powers of the Department of Revenue; authorizing establishment of pay plans. (Attachment 5) He explained the purpose of the bill and answered questions from committee members.

Don Hayward discussed HB-2742 and explained a proposed amendment.

Representative Leach moved, second by Representative Smith, that HB-2741 be passed favorably. The motion carried.

Chairman Rolfs then explained HB-2702 - AN ACT relating to property taxation; concerning the appeals process for taxpayer grievances resulting from the appraisal and valuation of

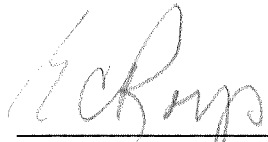
property. A taxpayer with a grievance would first go to the Equalization and, if necessary, to the Board of Tax Appeals. There was considerable discussion concerning who could serve on these boards and it was agreed that no one could serve on two panels and that would disqualify a county commissioner from serving on the Hearing Panel.

There was considerable discussion about time required for the appeals process. It was agreed that the date for billing should be November 20 and all dates for the appeals process should be extended by 30 days. It is believed that most taxpayers who have a grievance will pay the tax under protest and then appeal. Representative Wagnon believes that this change of dates should apply for one year only -- 1989. Representative Reardon suggested that the wording "or his designee" be added to lines 29 and 30 in HB-2702. It was also suggested that "certification of members by P.V.D." be deleted. Representative Snowbarger said that panel members should be certified, but should not have to take a test, as county commissioners cannot be required to take a test.

The amount of time allowed to appeal was discussed. It was decided that 15 days after the notice is mailed, 15 days to file for a formal meeting, and 15 days to appeal to the Board of Tax Appeals if that is necessary. Protests should be made at the local level instead of to the Board of Tax Appeals. Large corporations must also go through the process if there is a protest. Tom Severn and Don Hayward agreed to work together on an amended bill that would incorporate these suggestions.

The minutes of the February 5 meeting were approved.

There being no further business, the meeting was adjourned.



E. C. Rolfs, Chairman



KANSAS DEPARTMENT OF REVENUE
Office of the Secretary
Robert B. Docking State Office Building
Topeka, Kansas 66612-1588

M E M O R A N D U M

To: The Honorable Ed C. Rolfs, Chairman
House Committee on Taxation

From: Harley T. Duncan, Secretary
Kansas Department of Revenue

Re: House Bill No. 2740

Date: February 8, 1988

K.S.A. 79-3615(c), 79-3706(d) and 79-41a03(c) impose a 25 percent penalty on delinquent sales, compensating use and liquor excise taxes 30 days after the taxpayer has received notice from the Director of Taxation. The statutes do not prescribe the type of notice required. There have been questions raised whether a non-filer notice is sufficient or whether the taxpayer must be notified of the precise amount of the delinquent tax.

The proposed amendment adopts language comparable to that in the income tax penalty provisions and clarifies that the 25% penalty would be imposed 30 days after the return or tax was due. This amendment would establish a date certain after which the penalty would be imposed. It should enhance voluntary compliance by taxpayers as well as insure that all delinquent taxpayers are treated uniformly.



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M E M O R A N D U M

To: The Honorable Ed C. Rolfs, Chairman
House Committee on Taxation

From: Harley T. Duncan, Secretary
Kansas Department of Revenue

Re: House Bill No. 2741

Date: February 8, 1988

House Bill No. 2741 is requested by the Department of Revenue to correct a flaw in K.S.A. 79-3604. Under that statute the duty to collect and remit sales tax may be transferred from a retailer to the vendor of the retailer in certain situations. If there is a likelihood that the state will lose tax revenue because of (1) the turnover of independent contractors; (2) the lack of a fixed place of business; (3) the lack of adequate records, or (4) because the retailers are minors or transients, the Director of Taxation may refuse registration of the retailer and notify the vendor of the retailer that the vendor is responsible for collecting the tax.

The Kansas Court of Appeals has recently applied this provision in the context of a newspaper publisher and its carriers. In the case of News Publishing Company, the Court ruled that vendors would have the responsibility to collect the sales tax only if the vendor had in fact been notified by the Director that the Director had refused to issue registration certificates to the carriers. Therein lies the problem. It was impossible for the Director to refuse to issue registration certificates because no carrier had made application for a registration certificate. Since the Director had not refused registration, notice could not be given to the vendor as required by the statute. In light of the News Publishing decision, it is possible that multi-level distributor companies currently registered to collect and remit sales tax from sales made by in-state distributors could cease to collect the tax since the Director has not refused to issue a registration certificate.

H.B. 2741 corrects this problem by deleting the language which requires the Director to first refuse to issue a registration certificate before imposing the duty upon the vendor to collect the sales tax. The Department would still be required to provide notice to the vendor. We are confident that this change comports with the intent of the Legislature when it enacted the original language in 1970.

MEMORANDUM

TO: The Honorable Ed. C. Rolfs, Chairman
House Committee on Taxation

FROM: Harley T. Duncan, Secretary
Department of Revenue *HTD*

DATE: February 8, 1988

RE: House Bill No. 2742

Thank you for the opportunity to appear before you today on House Bill NO. 2742.

This legislation amends the transient guest tax act by providing when a transient guest tax may become effective. A transient guest tax which is authorized at a primary or general election would commence on the first day of the calendar quarter next following the 30th day after the date of the election. A transient guest tax authorized at any other election would commence on the first day of the calendar quarter next following the 60th day after the date of the election.

This is identical language to that found in the Local Retailers' Sales Tax Act at K.S.A. 12-191.

The Department supports this legislation as it would greatly ease administrative burdens which are encountered by the Department when a county or city enacts a transient guest tax to become effective any day other than the first day of a calendar quarter.

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

MEMORANDUM

TO: Ed C. Rolfs, Chairman
House Committee on Taxation

FROM: Harley T. Duncan, Secretary
Department of Revenue



DATE: February 8, 1988

RE: House Bill No. 2743

Thank you for the opportunity to appear before you today on House Bill No. 2743.

House Bill No. 2743 relates to the duties of apportioning the countywide retailers' sales tax among local units of government. It makes two changes.

First, it updates the statutory reference relating to the population figures used in apportioning such tax. The law will now read that KSA 11-201 is the appropriate reference, rather than the outdated KSA 11-101 board of agriculture census.

Second, the bill changes current law to provide that the Secretary of Revenue, rather than the Director of Taxation, will apportion the tax, receive information from the counties and provide the required notice to counties of their prior year receipts. This will reduce the number of steps necessary for the Department to produce local unit checks and will eliminate the possibility of unnecessary delays.

The Department supports this legislation.

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



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To: Representative Ed Rolfs
Chairperson, House Taxation Committee

From: Harley T. Duncan
Secretary, Department of Revenue

A handwritten signature in black ink, appearing to read "HTD", written over the printed name of Harley T. Duncan.

Date: February 8, 1988

RE: HB 2744 - Powers of the Secretary, Payment Plans.

House Bill 2744 is requested by the Department of Revenue in response to the reorganization of the Department and the creation of the Division of Collections. With the exception of New Section 4 of K.S.A 79-3235 (page 5), this legislation does not broaden the powers of the Department of Revenue.

New Section 4 will provide the Department a means of assisting taxpayers who may not have the ability to pay their delinquent taxes, penalty and interest in one payment. New Section 4 grants the Department the authority to work with taxpayers in paying delinquent taxes through arranged payment plans. The Department believes that the judicious use payment plans will benefit the taxpayer in satisfying their obligation to the state and will also assist the Department by providing a tool to collect those dollars.

The remainder of the amendments in HB2744 deal with authority currently granted to the Department of Revenue. These powers, the ability to "waive or reduce" penalties associated with delinquent taxes, the ability to effect a compromise in tax owed and the ability to issue tax warrants, are currently given only to the Director of Taxation. It is the request of the Department of Revenue that these statutes be amended to read that the powers are those of the "secretary or the secretary's designee". With the reorganization of the Department and the creation of the Division of Collections, it is the position of the Department that these powers should also be available to the Director of Collections. The administration of this authority, however, should be the responsibility of the Secretary of the agency. Therefore we request that the statutes be amended.

Thank you for the opportunity to present the Department of Revenue's position on HB2744.