Approved Feb. 23, 1988
Date

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT & TAXATION.

The meeting was called to order by Senator Fred A. Kerr at
Chairperson

11:00 a.m./p~~m~~ on February 22, 19 88 in room 519-S of the Capitol.

All members were present except:

Senator Dan Thiessen

Committee staff present:

Tom Severn
Chris Courtwright
Don Hayward
Sue Pettet, Secretary to the Committee

Conferees appearing before the committee:

John Luttjohan, Department of Revenue
Mark Burghart, Department of Revenue

Chairman Kerr called the meeting to order. Sen. Hoferer requested that the committee introduce a bill stating that personal property used in private licensed and registered home day care centers be tax exempt. (Att. 1 & 2)

Sen. Allen made a motion to introduce the bill. Sen. Parrish seconded. Motion carried.

Sen. Hayden made a motion to introduce a bill that would put control on the cost of natural gas prices for use for irrigation purposes. Sen. Mulich seconded. Motion carried.

SENATE BILL 553

John Luttjohan testified. (Att. 3) He stated that S.B. 553 would add a new provision to the Kansas withholding and declaration of estimated tax act which would require any person making application for a withholding tax certificate to be current on all outstanding withholding taxes, including interest and penalties, before the new certificate could be issued. Mr. Luttjohan asked for an amendment that would deny the withholding tax certificate to any person making application who has other tax delinquencies. Sen. Allen made a motion to adopt the amendment. Sen. Mulich seconded. Motion carried. Sen. Frey made a motion to amend the bill by adding after the words, "any person," the words, "any responsible person or party." Sen. Karr seconded. Motion carried.

Sen. Allen amde the motion that S.B. 553 be recommended favorably for passage as amended. Sen. Mulich seconded. Motion carried.

SENATE BILL 554

Mark Burghart testified. (Att. 4) He went through his attachment and outlined section by section the proposals by the Dept. of Revenue that would clarify the law in certain problem areas or would promote increased federal conformity in certain areas. (Each section is explained in detail in Att. 4) Mr. Burghart requested an amendment regarding section 5. He stated that the Dept. would prefer not to have a taxpayers remedies cut off by the assessment date, but rather have such remedies tied to an event for which the taxpayer would have actual notice. Sen. Montgomery made a motion to make theis section effective after TY 1987. Sen. Parrish seconded. Motion carried.

In Sect. 9 of Att. 4 the Department requested an amendment that the language be clarified regarding the deduction for dividends included in federal taxable income.

Sen. Burke made a motion to adopt the proposed amendment. Sen. Karr seconded. Motion carried.

Meeting adjourned.

ASSESSMENT AND TAXATION

OBSERVERS
(PLEASE PRINT)

DATE	NAME	ADDRESS	REPRESENTING
2/3	MARK A. BURGHART	TOPEKA	REVENUE
"	Tom Sheridan	"	"
	John Lutjohann	"	"

The Topeka Capital-Journal

Ill-advised tax bite

Shawnee County's appraiser has struck again. This time, Gary Smith's target is the 484 day-care providers in the county. He says they should pay taxes on any personal property that is used for day-care.

Smith defends his action by saying he is just enforcing the letter of the law.

Technically, he is correct. But Smith seems to find more technicalities than other county appraisers. And, if the law is at fault, there are other ways to get it changed than to hit unsuspecting people between the eyes with a new tax bill. He would better serve the public by going after intentional tax cheaters such as those who register their vehicles in other counties.

Many of the day care providers say the added tax burden will force them to go out of business.

Aside from the absurdity of paying business taxes on family furniture, stoves, refrigerators and kids' toys that often belong to the children of the house or were garage-sale bargains, the tax is counterproductive. The service these people are providing is worth well more than the little bit of revenue that will be produced for the county.

The alternative, if these women go out of business, is that more children will be left home alone or be sent to unlicensed, less reliable sitters. If day-care rates increase, some women may have to quit their jobs, and that also would have a financial impact on the community.

Shawnee County Commissioner Eric Rucker has asked local legislators to make the necessary legislative changes. They should be quick to respond.

At a time when cities, counties and state government are looking at tax breaks for others, officials should have no qualm in granting this small break for women who help out working mothers by taking care of their children in their homes. Big commercial day-care operations are another matter; they are businesses and should be taxed.

Day care is becoming a major political issue, even on the national level. More and more, government officials are realizing that it is an area that needs to be encouraged rather than penalized. Kansas legislators can begin by correcting this glitch in state tax law.

Licensed since 1982

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Diana Shirley
BSE/Early Childhood
MS/Special Education

February 20, 1988

The Honorable Ginger Barr
State Capitol
Topeka, Kansas 66612

RE:Commercial Property Tax on Home Day Care Providers

Dear Representative Barr;

It is inappropriate for home daycare providers to pay a tax based on equipment and materials. Materials, equipment and facilities add to the quality of our programs and aid the physical and mental growth of the children we care for. They do not necessarily aid our earning potential. It is unconscionable that a provider offering no more than babysitting with a maximum enrollment would taxed less than providers with quality environments. Providers face some bitter choices, including closing daycares, providing unlicensed (untaxed) care, raising fees, and refusing to offer a superior program. Providers who offer infant/toddler care already find it difficult to make it a financially successful venture due to the lower child-caregiver ratio. This law certainly discourages providers from offering infant/toddler care. Any of these choices made by providers will further limit the already strained recourses for parents desperate for excellent childcare. Many will simply be priced out of the childcare market and be forced to quit their jobs or allow young children to stay alone or minimally supervised.

In an age when the care of our children is a major issue, at a time when the need for quality care is a necessity all too often unattainable; this form of taxation by Shawnee county and the State is a deterrent to quality child care. Who will be motivated to buy or make materials to enhance children's growth when we not only have to pay initially to acquire them but pay yearly to keep them. Even gifts received from clients that become part of the environment would be subject to tax.

Perhaps the most ludicrous aspect of the law is the notion that we should pay to keep common household appliances and furniture. The children play on our carpets and lawns and look at our decorations, wallpaper and paint. Should we be taxed for those, too?

A & T 2/22/88

Att. 2

If allowed to remain on the books, the ramifications of this law will reach far beyond the simple collection of a tax from a business. It will affect the entire economy of the working class. We all say we want the best care for our children, but too many settle for too little. Let's put our money where our mouths are and support providers offering excellent environments rather than tax them more than those with no motivation to provide good materials and equipment.

Sincerely,

Diana Shirley

Diana Shirley
2819 Engler Ct.
Topeka, Ks. 66614

MEMORANDUM

TO: **Honorable Fred Kerr, Chairman**
Senate Committee on Assessment and Taxation

FROM: **John R. Luttjohann, Director of Taxation**
Department of Revenue

DATE: **February 22, 1988**

SUBJECT: **Senate Bill No. 553**

Thank you for the opportunity to appear before you today on Senate Bill No. 553.

This legislation would add a new provision to the Kansas withholding and declaration of estimated tax act which would require any person making application for a withholding tax certificate to be current on all outstanding withholding taxes, including interest and penalties, before the new certificate could be issued.

The Department supports this legislation as it would assist in the collection of delinquent withholding taxes. In addition, it simply makes sense to require an individual to pay his outstanding withholding tax liability before he can obtain a different withholding number. By the very nature of state withholding taxes, an outstanding tax liabiity means that the employer withheld money from an employee's wages yet did not remit it to the state. The Department estimates that between 780 and 1,200 applications are received per year wherein the applicant has an outstanding withholding tax liability.

The Kansas Retailers' Sales Tax Act presently has a similar provision in effect as does the Liquor by the Drink Act. The administration of taxes is certainly made easier when the various taxes have identical registration requirements.

I would be glad to answer any questions which you may have.

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 Fred Kerr, Chairman
Senate Committee on Assessment and Taxation

From: Mark A. Burghart, General Counsel
Department of Revenue

Re: Senate Bill No. 554

Date: February 22, 1988

Senate Bill No. 554 contains a number of proposals advanced by the Department of Revenue in order to either (1) clarify the law in certain problem areas or (2) promote increased federal conformity. Each proposed statutory change is described below.

Due Date for Income Tax Returns (Section 1)

K.S.A. 79-3221 presently provides that the due date for all income tax returns shall be the 15th day of the fourth month following the close of the taxable year. The due date for federal purposes depends upon the type of taxpayer involved. For corporations, a return is due by the 15th day of the third month following year-end. For certain coops, the due date is the 15th day of the 9th month following year-end. For tax exempt entities which have unrelated business income, returns are due by the 15th day of the fifth month following year-end.

S.B. 554 would amend K.S.A. 79-3221 to provide that the due date for state purposes would be the same as for federal purposes. This change would accelerate state corporate filings by one month. The change in filing dates should not impose a hardship on taxpayers. Most multi-state companies are accrual basis taxpayers and typically must have the state tax data prepared so they can accrue and deduct state income taxes when computing their federal liabilities.

Tentative Tax Returns (Section 1)

K.S.A. 79-3221 presently allows a taxpayer to file a tentative tax return. The provision is seldom used, and when it is used, such returns create processing difficulties. In view of other provisions allowing extensions of time to file and the administrative procedures which permit taxpayers to remit estimated balances due with extension requests, the Department believes that the tentative return provision is no longer needed.

Penalty For Failure to File Information Return (Section 2)

K.S.A. 79-3222 allows the Director of Taxation to disallow a tax deduction or credit if proper information returns (1099 forms) reporting such payments are not filed. This is a rather severe penalty and the Department believes that it should be eliminated. The $50 penalty for each failure to report would be retained as the exclusive penalty.

Penalty on Delinquent Returns (Section 4)

The present law is unclear as to the computation of a late filing penalty when an extension of time has been granted and the taxpayer fails to file by the extended due date. K.S.A. 79-3228 provides that a taxpayer filing a late return but within 60 days of the due date shall be assessed a 10% penalty. If the taxpayer does not file within 60 days of the due date, a 25% penalty is imposed. The Department believes that if a taxpayer fails to abide by the terms of an extension agreement, the period of delinquency should relate back to the original due date of the return without regard to the extension. This would result in the imposition of a 25% penalty. Such a result is consistent with the manner in which such penalties are computed at the federal level.

Federal Adjustment Negligence Penalty (Section 4)

K.S.A. 79-3230(f) presently requires taxpayers to file an amended Kansas return within 180 days of being notified that their federal return has been adjusted by the Internal Revenue Service. Despite this statutory requirement, many taxpayers do not timely file amended returns reporting federal adjustments. The Department many times makes the necessary adjustments after receiving notice from the the IRS and then notifies the taxpayer of the adjusted liability. To further enhance the Department's compliance effort in this area, a negligence penalty of 10% would be imposed if amended returns reporting federal adjustments are not filed as required by statute. This penalty seems appropriate in light of the fact that the taxpayer has a full 6 months to file the amended return.

Statute of Limitations (Section 5)

K.S.A. 79-3230 provides for a four year statute of limitations for income tax assessments and refunds. This bill proposes to lower that to three years consistent with the federal statute of limitations. The three year statute of limitations is also being proposed by the Multistate Tax Commission as a uniformity measure among MTC states.

Statute of Limitations -- Delinquent Set-up Returns (Section 5)

K.S.A. 79-3230(c) presently provides that no refund or credit shall be allowed after four years from the date the return was filed or one year after an assessment is made, whichever is the later date. A problem arises for certain taxpayers when delinquent set-up returns are prepared by the Department. Since a "return" has technically not been filed by the taxpayer, the operative

portion of the statute would be that no refund can be made within one year of the assessment. The Department would prefer not to have a taxpayer's remedies cut off by our assessment date, but rather have such remedies tied to an event for which the taxpayer would have actual notice.

The proposed language is similar to that contained in the Internal Revenue Code. The language provides that if a return is filed after the due date, a refund claim must be filed not later than 3 years from the date the return was filed or two years from the date the tax was paid, whichever expires later.

Parimutuel Earnings As Kansas Source Income (Section 6)

S.B. 554 would amend K.S.A. 79-32,109(h) to provide that parimutuel winnings from such activities in Kansas shall be considered to be Kansas source income subject to state taxation. This treatment is comparable to that provided to lottery winnings.

Surtax Exemption (Section 7)

S.B. 554 would amend K.S.A. 79-32,110 to provided that any time a group of corporations required to divide multiple tax benefits pursuant to §1561 of the Internal Revenue Code, such corporations shall be required to divide the $25,000 surtax exemption among the companies of the group. Presently, if two commonly controlled corporations doing business solely within Kansas file a federal consolidated return, they must file on the consolidated basis in Kansas and are allowed a single surtax exemption. However, if two or more multistate businesses file a combined report as a unitary enterprise, each corporation of the unitary group filing a Kansas return would be entitled to a surtax exemption. This amendment would eliminate the disparate treatement.

Express Companies (Section 8)

Express companies were exempted from the income tax provisions because such companies were subject to a separate taxing scheme. However, since the tax pertaining to such companies was repealed, they should now be made subject to the state income tax.

Foreign Dividends (Section 9)

The current statutory terminology contained in K.S.A. 79-32,138(c)(vi) could be construed to allows double deduction for corporate taxpayers receiving foreign dividends. 1987 House Bill 2177 provided for the exclusion of 80 percent of the amount of dividends received from corporations incorporated outside of the United States or the District of Columbia. This particular language inadvertently allows a double deduction for certain types of dividends. A corporate taxpayer would obtain a deduction under §245 of the Internal Revenue Code as follows: (1) 85 percent of dividends from a foreign corporation if at least 50 percent of its gross income was effectively connected with the U.S. business, and (2) 100 percent of dividends if all of the foreign corporation's income is effectively connected with U.S.

business. These deductions are made to arrive at federal taxable income. Eighty percent of these same amounts would then be deducted from federal taxable income under the current statute because the dividends are in fact "received" by the corporate taxpayer. It is suggested that the language be amended to allow a deduction for dividends included in federal taxable income. Such a change would also allow a deduction for 80% of subpart F income.