

Approved May 4, 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 April 4, 1988 in room 519-S of the Capitol.

All members were present except:  
Senator 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:

Senator Bond  
Wayne Byrd, City of Overland Park  
Philip B. Wolfe, City of Overland Park  
Marla Howard, Wichita's City Office  
Rep. Al Ramirez  
Dr. Steve Solomon, Wyandot Mental Health Center  
Rich Bailey, Department of Commerce  
John Luttjohan, Director of Taxation  
Roland Smith, Wichita Independent Business Assoc.  
Mark Burghart, Department of Revenue

Chairman Kerr called the meeting to order and announced that there would be a hearing on S.B. 730, H.B. 2959, H.B. 2625, H.B. 2948, H.B. 3011.

HOUSE BILL 2959

Senator Bond explained H.B. 2959 and said that he supported the bill. Wayne Byrd testified. (Att. 1) He said that he was appearing in support of H.B. 2959 on behalf of the Overland Park governing body. He said that in order for the city of Overland Park to further develop the city's tourism industry they are trying to acquire an existing exhibition hall and construct an adjoining convention center facility. He stated that the city intends to issue sales tax revenue bonds for the project, but K.S.A. 1987 supp. 12-195 currently prohibits any city or county to issue sales tax revenue bonds for any facility which is to be used for commercial or retail activity.

For this reason, City of Overland Park is asking for two changes in the law. This first change (lines 35 through 39) would allow the Overland Park Convention Center and Exhibition Hall to be excluded from that prohibition. The second change involves the exemption from the requirement of the statute, (lines 114 through 120) that bonds shall be payable solely and only from the revenues derived from the collection of such local sales taxes.

Philip B. Wolfe testified. (Att. 2) He stated that the suggested changes would allow Overland Park and other communities to issue sales tax revenue bonds to finance the project already mentioned. However, the change would not allow the city to issue such bonds to finance facilities to be used exclusively for commercial or retail purposes. He stated that the city wished to further amend to clarify the ability to issue revenue bonds secured by additional legally available revenues such as proceeds of its transient guest tax.

Marla Howard testified in opposition to H.B. 2959. (Att. 3) She stated that opposition stems from the House Committee of the Whole amendment to the bill. The amendment on line 56 would reduce the protest petition provisions in K.S.A. 12-195 down from 4% to two percent. She said that for the city of Wichita, that is significant. Otherwise, she expressed no opposition to the bill.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT & TAXATION

room 519, Statehouse, at 11:00 a.m./p.m. on April 4, 1988

Committee Discussion

Don Hayward, the revisor, advised that lines 55 through 62 were not a complete sentence and needed to be amended to add after the word "petition", the words "is filed with the county hearing officer".

Senator Mulich moved to adopt the amendment. Senator Burke seconded. Motion carried.

Senator Burke moved to reinsert the 4% provision on line 516. Senator Mulich seconded. Motion carried.

Senator Burke moved to recommend H.B. 2959 favorably for passage as amended. Senator Mulich seconded. Motion carried.

HOUSE BILL 3011

Rep. Al Ramirez testified in favor of H.B. 3011. He stated that he felt H.B. 3011 was a technical clean up bill and introduced Dr. Steve Solomon to explain the bill.

Dr. Steve Solomon testified. (Att 4) He stated that H.B. 3011 amends two statutes that relate to county funding of mental health centers (K.S.A. 65-212 and K.S.A. 1987 Supp. 79-1947) and in no way alters the state's role in funding or monitoring such mental health clinics. He stated that he felt the bill would clear up possible confusion and potential unintended omissions. It would also clarify the potential role of the Wyandotte county Board of Commissioners in supporting the licensed mental health center serving Wyandotte Co.

Paul Klotz stated that he supported the bill and said it only affects Wyandotte County.

Sen. Mulich moved to recommend HB 3011 favorably for passage. Sen. Frey seconded. Motion carried.

SENATE BILL 730

Rich Bailey testified. (Att. 5) He stated that S.B. 730 would disallow the tax credit where funds have been invested in a Kansas business in which such taxpayer has an actual or constructive ownership interest. This would eliminate the possibility of one or more individuals forming a seed capital pool and receiving tax credits for investment in their own projects. He stated that there would be no immediate fiscal impact on the Dept. of Commerce.

Senator Thiessen moved to amend a technical mistake on line 143, and on line 67. Senator Karr seconded.

Senator Frey moved to recommend SB 730 favorably for passage as amended. Sen. Thiessen seconded. Motion carried.

HOUSE BILL 2625

John Luttjohan testified. (Att. 6) He explained that H.B. 2625 would allow the Director of Taxation the authority to proceed against the consumer to collect the full amount of sales tax due under the Retailers Sales Tax Act when the full amount has not been paid to the retailer. The bill would be effective July 1, 1988. Senator Hayden moved to recommend HB 2625 favorably for passage. Senator Parrish seconded. Motion carried.

HOUSE BILL 2948

John Luttjohan testified. (Att. 7) He stated that H.B. 2948, as amended, proposes three changes to the Kansas Retailers' Sales Act.

1. The issuance of letter rulings to taxpayers would be clarified.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT & TAXATION

room 519, Statehouse, at 11:00 a.m./p.m. on April 4, 1988.

2. The Director of Taxation could request a bond from a retailer if there is a risk in the ability to collect.
3. Updated language is included.

Roland Smith testified. ( Att. 8 ) He stated that the provisions in this bill would help to further clarify areas that have caused problems for many businesses and extra work for the Tax Department staff. Sen. Karr moved to recommend H.B. 2948 favorably for passage. Sen. Parrish seconded. Motion carried.

HOUSE BILL 3101

Mark Burghart explained that H.B. 3103 is to allow the Department of Revenue to acquire an automated collection system for delinquent accounts. The accounts would be collected by a vendor, who would in return receive a percentage of the amount collected.

After the committee discussion, Chairman Kerr announced that there would be a hearing on H.B. 3103 on Wednesday, April 6.

Meeting adjourned.



REMARKS BY COUNCILMEMBER WAYNE BYRD  
BEFORE THE SENATE ASSESSMENT AND TAXATION COMMITTEE

APRIL 4, 1988

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MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

MY NAME IS WAYNE BYRD, AND I AM A COUNCILMEMBER FROM THE CITY OF OVERLAND PARK. I AM APPEARING BEFORE YOU TODAY ON BEHALF OF THE OVERLAND PARK GOVERNING BODY IN SUPPORT OF HOUSE BILL 2959.

TO FURTHER DEVELOP THE CITY'S TOURISM INDUSTRY, THE CITY OF OVERLAND PARK IS PRESENTLY NEGOTIATING TO ACQUIRE AN EXISTING EXHIBITION HALL AND TO CONSTRUCT AN ADJOINING CONVENTION CENTER FACILITY. IN ORDER FOR THIS TO OCCUR, THE CITY IS REQUESTING TWO AMENDMENTS BE MADE TO K.S.A. 1987 SUPP. 12-195 THAT WOULD BE APPLICABLE ONLY TO OVERLAND PARK.

AS YOU ARE PROBABLY WELL AWARE, THE TOURISM INDUSTRY HAS GROWN TREMENDOUSLY IN THE STATE OF KANSAS OVER THE PAST FEW YEARS. OVERLAND PARK HAS ALSO EXPERIENCED A SIGNIFICANT IMPACT ON ITS LOCAL ECONOMY. IN 1987, THE VISITORS' IMPACT TO OUR CITY HAS BEEN ESTIMATED TO BE ALMOST \$300 MILLION.

IT IS THE CITY'S INTENTION TO ISSUE SALES TAX REVENUE BONDS FOR THIS PROJECT. HOWEVER, K.S.A. 1987 SUPP 12-195 CURRENTLY PROHIBITS ANY CITY OR COUNTY TO ISSUE SALES TAX REVENUE BONDS FOR ANY FACILITY WHICH IS TO BE USED FOR  
A & T 4/4/88

COMMERCIAL OR RETAIL ACTIVITY. THE FIRST AMENDMENT (LINES 35 THROUGH 39) WOULD ALLOW THE OVERLAND PARK CONVENTION CENTER AND EXHIBITION HALL TO BE EXCLUDED FROM THAT PROHIBITION. THE REASON FOR THIS REQUEST IS THAT MANY OF THE TRADE SHOWS CURRENTLY UTILIZING THE EXHIBITION HALL ENGAGE IN RETAIL ACTIVITY. IF THE CITY WERE TO ACQUIRE THE EXHIBITION HALL WITH SALES TAX REVENUE BONDS, THESE TRADE SHOWS WOULD BE PROHIBITED, WHICH WOULD RESULT IN A LOSS OF REVENUE TO THE CITY, COUNTY AND STATE.

SECOND, THE CITY WISHES TO PLEDGE A PORTION OF ITS TRANSIENT GUEST TAX TOWARD THE REPAYMENT OF THE BONDS. YET, THE CITY IS PROHIBITED FROM DOING SO BECAUSE THE STATUTE REQUIRES THAT THE BONDS SHALL BE PAYABLE SOLELY AND ONLY FROM THE REVENUES DERIVED FROM THE COLLECTION OF SUCH LOCAL SALES TAXES. THE CITY IS REQUESTING TO BE EXEMPTED FROM THAT REQUIREMENT (LINES 114 THROUGH 120).

WHILE THE CONVENTION CENTER AND EXHIBITION HALL PRESENTS A SIGNIFICANT ECONOMIC DEVELOPMENT OPPORTUNITY FOR THE CITY OF OVERLAND PARK, THE STATE OF KANSAS WOULD ALSO BENEFIT TREMENDOUSLY. FOR EXAMPLE, BASED UPON THE LAVENTHOL & HORWATH REPORT THAT WAS DONE FOR THE CITY, IT IS ESTIMATED

BYRD 4-4-88

-3-

THE ECONOMIC IMPACT DIRECTLY ATTRIBUTABLE TO THE CONVENTION CENTER IS AN ADDITIONAL \$122 MILLION IN RETAIL SALES OVER THE FIRST FIVE YEARS, WHICH REPRESENTS AN ADDITIONAL \$5 MILLION IN REVENUE TO THE STATE IN SALES TAX COLLECTIONS. IF ONE ASSUMES A ROLL-OVER RATE OF THREE TIMES, INDUSTRY STANDARDS RANGE FROM 5 TO 7 TIMES, THE AMOUNTS BECOME \$366 MILLION IN RETAIL SALES AND \$15 MILLION IN STATE SALES TAX COLLECTIONS. THESE FIGURES DO NOT TAKE INTO ACCOUNT THE ECONOMIC IMPACT OF ADDITIONAL EMPLOYMENT AND CAPITAL GOODS.

THANK YOU FOR THE OPPORTUNITY TO SPEAK TO YOU TODAY.

# # #

Philip B. Wolfe  
Testimony regarding  
House Bill No. 2959, as amended

April 4, 1988

Mr. Chairman, Ladies and Gentlemen, my name is Philip B. Wolfe, bond counsel to the City of Overland Park, Kansas, and I'm here to testify on House Bill No. 2959. As you know, House Bill No. 2959, if adopted into law, would make 2 principal technical amendments to K.S.A. 1987 Supp. 12-195. K.S.A. 1987 Supp. 12-195 provides that any city or county which is the recipient of funds derived from a local option sales tax pursuant to K.S.A. 12-187 et seq. is authorized to issue revenue bonds to finance the cost of "public facilities and improvements" for which such city or county is authorized to issue general obligation bonds, excluding any facilities or improvements to be used for commercial or retail purposes.

As the Mayor of the City of Overland Park has testified, the City wishes to have authority to issue its sales tax revenue bonds to finance the costs of constructing a public convention center (the "Project") to serve the City and its citizens and patrons. The City has the authority to issue its general obligation bonds to finance the Project. Because of the nature of the Project, the City firmly believes that it will be conducive to the continued growth and development of the City. Unfortunately, at least in terms of K.S.A. 1987 Supp. 12-195, because private persons would likely hold conventions and other public gatherings in the center, at which food concessions and other commercial and retail activities would be conducted, the



City finds itself unable to issue its sales tax revenue bonds to finance the Project. Accordingly, the amendments offered on lines 0035 through 0045 of H.B. No. 2959 would allow Overland Park and other communities and other communities to issue its sales tax revenue bonds to finance the Project. However, the amendment would not allow the City to issue such bonds pursuant to the act to finance facilities to be used exclusively for commercial or retail purposes.

In addition, the City wishes to amend K.S.A. 1987 Supp. 12-195 to clarify its ability to issue its revenue bonds secured by not only its sales tax revenues but other legally available revenues such as the proceeds of its transient guest tax to finance the Project. Because of the nature of the Project (i.e., a convention center), the City wants to be able to pledge transient guest tax proceeds to the payment of its revenue bonds issued to finance the Project. Depending on the size of the final Project and the condition of financial markets at the time of the sale and issuance of the bonds, the City feels, based upon the advice of its financial advisor, that a double-barreled pledge (i.e., both sales tax and transient guest tax revenues) might well enhance the marketability of the City's bonds.

The Attorney General in his Opinion No. 87-185 dated December 29, 1987, concluded that such a pledge would be permissible under K.S.A. 1987 Supp. 12-195. In fact, the Attorney General found that the statute might be argued to contemplate the use of other revenues to secure such revenue

bonds. (Please see Section 1.(b)(1) of K.S.A. 1987 Supp. 12-195.) Unfortunately, Section 1.(b)(4) provides that it "shall be plainly stated on the face of each bond" that it is "payable solely and only from the revenues derived from the collection of such local sales taxes. . . ."

As the Attorney General pointed out in the aforementioned opinion, the City's ability to pledge revenues other than sales tax revenues to the payment of its bonds issued under the authority of K.S.A. 1987 Supp. 12-195 is inconsistent with the requirement contained in Section 1.(b)(4) of the statute that such bonds must state that they are payable "solely and only" from sales tax revenues. Given this inconsistency, the Attorney General found the intent of the statute, at least as to this point, obscure. The amendment offered at lines 0119 through 0126 would correct this ambiguity by requiring that it be plainly stated on the face of each revenue bond issued that such bonds are payable solely and only from the revenues pledged to the payment of the bonds.

Thank you for your kind attention. If you have any questions of me I'd be happy to attempt to answer them.



OFFICE OF THE CITY MANAGER  
CITY HALL — THIRTEENTH FLOOR  
455 NORTH MAIN STREET  
WICHITA, KANSAS 67202  
(316) 268-4351

TO: CHAIRMAN FRED KERR AND MEMBERS OF  
THE SENATE ASSESSMENT AND TAXATION COMMITTEE

FROM: MARLA J. HOWARD, PUBLIC AFFAIRS OFFICER

DATE: APRIL 4, 1988

RE: HB 2959, USE OF LOCAL SALES TAX PROCEEDS

Mr. Chairman and Members of the Committee:

I am Marla Howard and, on behalf of the City of Wichita, I appreciate this opportunity to appear before you today in opposition to House Bill 2959, as amended, concerning the use of local sales tax proceeds.

Originally supportive of this legislation, our opposition stems from the House Committee of the Whole amendment to the bill.

As you may recall, the issue of sales tax revenue bonds was discussed at great length in the 1987 session, with consideration of SB 407 and HB 2509. As passed into law, SB 407 amended K.S.A. 12-195 to allow cities and counties to pledge local option sales tax proceeds towards the issuance of revenue bonds for public facility or improvement costs, except for those facilities or improvements to be used for commercial or retail purposes.

Considerable debate occurred over the language concerning the protest petition provisions added to K.S.A. 12-195, with the House passing SB 407 with a protest petition of two percent of the voters in the last city or county election and the Senate version providing for five percent. The issue was discussed in conference committee and the House and Senate eventually adopted the conference committee report that established a protest petition of four percent of the electors

Page 2

of the city or county who voted for the office of secretary of state at the last preceding general election for such office.

HB 2959 has been amended on line 0056 by the House Committee of the Whole to reduce the protest petition provisions in K.S.A. 12-195 down to two percent.

For the City of Wichita, that equals a reduction from 3,586 signatures to 1,793 signatures. When our voters approved a local one cent sales tax, they did so with the understanding that half the proceeds would be used to reduce our mill levy and the other half would be used for road improvements, particularly on U. S. 54. We are using the sales tax proceeds as promised; however, without the use of sales tax revenue bonds, U. S. 54 will never be reconstructed as it should be for safety and traffic levels. The City of Wichita has a real concern that only 1,793 signatures out of approximately 127,000 registered voters would be required to force a special mail ballot election that will cost the citizens approximately \$90,000, when the majority of those citizens have already indicated their desire to use sales tax proceeds for certain road improvements. We are also firmly convinced that the proposed use of sales tax revenue bonds for any purpose other than these road improvements will result in overwhelming public outcry.

Therefore, the City of Wichita respectfully requests the committee's adoption of an amendment to HB 2959 to reinstate the protest petition at four percent, as passed into law in 1987.

Thank you.



# Wyandot Mental Health Center, Inc.

Eaton at 36th Avenue Kansas City, Kansas 66103

Phone: (913) 831-9500

STEVEN J. SOLOMON, PH.D.  
EXECUTIVE DIRECTOR

G. IBARRA, M.D.  
MEDICAL DIRECTOR

ROSEMARY CHILDERS  
PRESIDENT, BOARD OF DIRECTORS

Reply to:  Eaton at 36th Ave.  
 420 Park St. • Bonner Springs, KS 66012  
 3738 State Ave. • Kansas City, KS 66102 • (Tower Plaza)

**Presentation to the Senate  
Committee on Assessment and Taxation  
concerning H.B. 3011  
April 4, 1988  
Steven J. Solomon, Ph.D.**

The purpose of my presentation is to provide background information regarding H.B. 3011 and request your support for its adoption. H.B. 3011 amends two statutes that relate to county funding of mental health centers (K.S.A. 65-212 and K.S.A. 1987 Supp. 79-1947) and in no way alters the state's role in funding or monitoring such mental health clinics.

The impact of the proposed changes would be to clarify the existing relationship between a mental health clinic operating under K.S.A. 65-212 and the Board of County Commissioners in which it operates. Further, the changes would resolve potential confusion as to the Board of County Commissioners' prerogative in utilizing its taxing authority to support the functioning of a mental health clinic licensed by the state as a community mental health center.

H.B. 3011 is supported by the Association of Community Mental Health Centers of Kansas and the Board of County Commissioners of Wyandotte county.

### Background

The Wyandot Mental Health Center, Inc. is a community mental health center licensed by the Department of Social and Rehabilitation Services of Kansas since the inception of the state's licensing authority. The Center is a private-not-profit corporation which was first incorporated as a Child Guidance Clinic in 1953. The Center is incorporated as a mental health clinic as outlined in K.S.A. 65-211 through 65-215. The Center has contracted annually with the Kansas City/Wyandotte County Health Department since 1957 to provide mental health services to all residents of Wyandotte County regardless of ability to pay. The Health Department is the direct recipient of County funding and contracts with the Center with those funds.

Member



UNITED WAY

Wyandotte County Crisis Line, 24-Hour Ph \_\_\_\_\_

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Att. 4

The programs of the Mental Health Center are clearly dependent on and responsive to the Wyandotte County Commissioners. In addition, however, the Center is perceived as a health care/social service agency that coordinates with other such organizations in the community. The Center has since its inception been a participating agency of the United Way. These roots and traditions are valued highly.

The Board of Directors for the Center and its Advisory Councils are broadly representative of the community. The County Commissioners support the functioning of the Center in its current corporate status and excellent communication exists between the Commissioners and Center Board and administration.

The main facility occupied by the Mental Health Center is a County-owned building. By virtue of a contract with the federal government, Wyandotte County allows the Center to utilize the facility without charge. Moreover, the County has begun to review future facility needs and is considering funding approaches to deal with these facility needs.

One question giving rise to the development of H.B. 3011 was to what extent the County could continue to participate in supporting facility costs. The Passage of H.B. 3011 would clarify this uncertainty and clearly permit such County participation.

It is our belief that statutory references to licensed community mental health centers have in the past omitted cross reference to K.S.A. 65-212. We observed this last during the 1987 legislative session when K.S.A. 75-3307B, a statute exempting licensed community mental health centers from sales tax, was passed. The statute references centers licensed under K.S.A. 19-4001 et. seq., but failed to cross reference K.S.A. 65-211 et. seq. We brought this matter to the attention of the Kansas Department of Revenue. Subsequently, there was an administrative determination exempting the Center from sales tax based on the consideration that all licensed mental health centers should be exempt.

We believe the legislation before you would clean up these possible confusions and potential unintended omissions. Moreover, H.B. 3011 would clarify with better precision the potential role of the Wyandotte county Board of Commissioners in supporting the licensed mental health center serving Wyandotte County.

We urge your support and positive action on H.B. 3011.

TESTIMONY ON SENATE BILL NO. 730

to the Senate Committee on Assessment and Taxation

Presented by Rich Bailey, Department of Commerce

March 31, 1988

Thank you, Mr. Chairman, for allowing me to present testimony on Senate Bill 730.

### Background

The 1987 Kansas Local Seed Capital Pools Act is designed to stimulate the availability of risk capital for early stage investments in small Kansas businesses. Investments made by the local seed capital pools may be used for the following purposes:

1. development of a prototype product or process;
2. a marketing study to determine the feasibility of a new product or process; or
3. a business plan for the development and production of a new product or process.

In discussions with individuals interested in forming local seed capital pools, questions have been raised in several areas of the legislation. Senate Bill 730 attempts to clarify some of these questions and concerns.

### Legislative Issues for Clarification

1. Nothing in the local seed capital pool statutes prohibits an entity from forming a pool which could then in turn invest the seed capital funds solely in its own subsidiary or a related business.

Senate Bill 730 would disallow the tax credit where funds have been invested in a Kansas business in which such taxpayer has an actual or constructive ownership interest. Effectively, this would eliminate the



possibility of one or more individuals forming a seed capital pool and receiving tax credits for investment in their own projects.

Even though the Kansas Attorney General's office in Opinion No. 88-36 has partially addressed this issue, it was felt further clarification was needed. The Attorney General's opinion states that money "invested" by a fund in its own business or subsidiary is money "passed through" the fund and not money "invested" by the fund.

2. No investment time line is outlined in the statutes as done in the venture capital legislation which requires the original capitalization of the local seed capital pool to be invested within specific time frames.

Senate Bill 730 sets investment time lines for local seed capital pools to continue certification. At least 50% of the original capitalization of the pool must be invested at the end of three years and at least 75% invested at the end of five years. The time line proposed in the bill is similar to the venture capital legislation but reflects a lesser amount of capitalization required to form a seed capital pool.

This would effectively encourage the seed capital fund to more actively seek investments but still allow reasonable time to pursue quality investment possibilities.

3. There are no guidelines in the statutes as to the structure of the investments by local seed capital pools.

Senate Bill 730 addresses this issue by defining "equity" investment with the same definition used in the venture capital legislation.

#### Fiscal Impact

If Senate Bill 730 were to be enacted, it would have no immediate fiscal impact on the Department of Commerce.

#### Recommendation

Based on our conversations with potential seed capital pool applicants, the Department of Commerce supports the intent of Senate Bill 730 for the clarification it will provide concerning the investment, certification, and operation of a pool.


Thank you for the opportunity to appear before this committee. We would be happy to answer any questions you might have.



**KANSAS DEPARTMENT OF REVENUE**  
*Division of Taxation*  
Robert B. Docking State Office Building  
Topeka, Kansas 66625-0001

**MEMORANDUM**

**TO :** THE HONORABLE FRED KERR  
SENATE COMMITTEE ON ASSESSMENT AND TAXATION

**FROM:** JOHN R. LUTTJOHANN   
DIRECTOR OF TAXATION

**DATE:** APRIL 4, 1988

**RE:** HOUSE BILL 2625

I appreciate the opportunity to appear before you today on House Bill 2625. This bill amends K.S.A. 79-3604 by providing the Director of Taxation with the authority to proceed directly against the consumer or user to collect the full amount of sales tax due under the Retailers' Sales Tax Act when the full amount of the sales tax has not been paid to the retailer. If passed, this change would be effective on July 1, 1988.


Often times on audit, the department discovers that taxable items have been purchased free from sales tax, and used by the taxpayer. Presently, our recourse is to contact the retailer from whom the purchase was made, and attempt to collect the tax from him. The retailer would then contact the taxpayer for payment of his tax obligation.

The situation at times involves a taxpayer who has a consumer's use tax account. The taxpayer advises the retailer not to charge tax, and provides the use tax number to the retailer. Unless a retailer is extremely familiar with the state's account numbering system, it is logical for him to assume that the number is a resale exemption number. This change would allow us to collect the **state and local tax** from the taxpayer directly. If the taxpayer does indeed pay the consumer's use tax, it is only the state tax that is paid, and the local tax is avoided. The bill permits the department to collect the tax from the taxpayer who owed it in the first instance.

I'd be happy to respond to any questions you may have.

MEMORANDUM

To: The Honorable Fred Kerr, Chairman  
Senate Committee on Assessment and Taxation

From: John R. Luttjohann   
Director of Taxation  
Department of Revenue

Date: April 4, 1988

Subject: House Bill No. 2948

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Thank you for the opportunity to appear before you today on House Bill No. 2948.

House Bill No. 2948, as amended by the House Taxation Committee, proposes three changes to the Kansas Retailers' Sales Act. The first change would be a new section which would require the Department of Revenue to issue letter rulings to taxpayers, upon request, setting out the taxpayer's duties and responsibilities under the Kansas Retailers' Sales Act "in difficult areas of sales tax liabilities". The letter ruling must be issued within 30 days from receipt of the request. A taxpayer would have to immediately comply with its terms on all "new sales".

The second change contained in House Bill No. 2948 is the amendment to K.S.A. 79-3616. Under the amended language, the director of taxation could request a bond from a retailer after documenting evidence relating to the risk in the retailer's ability to collect and remit sales taxes.

Finally, House Bill No. 2948 would amend K.S.A. 79-3608 by providing updated language.

The Department has no problem with the issuance of letter rulings and does not argue with the desirability of letter rulings. The Department readily recognizes that taxpayers and the State benefit if letter rulings are timely provided. We are, in fact, committed to increase the quantity and quality of taxpayer information we provide.

We strongly oppose the proposition that taxpayers have no obligation to follow the law until receipt of a letter ruling "in difficult areas of sale tax liabilities". First, there is no obligation on taxpayers to timely request a ruling. More importantly, the standard "difficult areas of sales tax liabilities" is impossible to define or administer. We believe such a standard would create rather than resolve confusion.

I would be happy to respond to any questions.



# WICHITA INDEPENDENT BUSINESS ASSOCIATION

Riverview Plaza • Bldg. 200 • Suite 5 • 2604 W. 9th St. at McLean Blvd. • Wichita, Kansas 67203  
(316) 943-2565

ROLAND E. SMITH, *Executive Director*

April 4, 1988

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*1st Vice President*  
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STATEMENT TO: SENATE COMMITTEE ON TAXATION  
FROM: THE WICHITA INDEPENDENT BUSINESS ASSOCIATION  
SUBJECT: HB2948

Chairman Kerr, members of the Committee and staff, I am Roland Smith, Executive Director for the Wichita Independent Business Association. I am appearing in support of HB 2948 as it addresses some of the problems discussed with the interim committee last summer. The proposed provisions in this bill should benefit both the Department of Revenue and many businesses who desire to comply with the laws of the state if only they were spelled out specifically for their business. The Department would be looked on more favorably as one desiring to assist a business not destroy it.

New Section 1: The Department of Revenue, in public statements before the Interim Committee and the House Taxation Committee, has committed the Department of Taxation to the private letter ruling concept where a business will be given a letter spelling out the areas in which the business is to collect the Kansas Retail Sales and Compensating Use Tax. These letters would not be issued unless requested by the business. This is a good concept and we believe it should be spelled out in the statutes with some additional provisions to make it more workable. In this bill, the Department of Taxation would be required to respond within 30 days after receiving the request and all the information needed to make the ruling from the business requesting the ruling. The Department stated before the House Committee they would respond within two to three weeks, however, this currently is not being done in the cases we are aware of. At the present time, when a business applies for a tax number, they are being told to start on the day they apply without the benefit of a private letter ruling that would tell them for sure where they need to collect the tax. This bill would require the business to start collecting tax in the questionable areas immediately on receipt of the private letter ruling on all new sales. In the over-the-counter sales and clear areas of taxation, they would begin when they apply for the tax number.

The Department of Taxation has revised their regulation 92-19-80 regarding the sales tax on certain services performed by advertising agencies, related advertising businesses and broadcasters into two documents; one on the advertising business and one on broadcasters. These have been troublesome areas and many of the problems have now been resolved in the advertising related business services. The provisions in this bill will help to further clarify in these and many other questionable areas that have caused problems for many businesses and extra work for the Tax Department staff. The Director of Taxation and his staff are to be complimented for their cooperation and efforts to solve these problems.

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WIBA is sponsoring a workshop in Wichita on May 17th for advertising related businesses explaining proper billing procedures in regard to the sales tax to be collected on services that involve tangible personal property.

Section 2: The judgement on who should post a sales tax bond would remain with the Director of Taxation, however, it would require documentation to justify the decision. Why penalize the vast majority of incorporated businesses requesting a sales tax registration number for a few who do not pay? There are statutes authorizing collection from the non-pay corporation officers. If adequate, home work is done with credit checks, etc., in the beginning, collections will improve. Insisting that all have to post a bond or CD is unreasonable. If the current practice continues, we will continue to lose small businesses to other states. The large chain stores and well-financed retailers have no problem with the current requirements, but the small independent with little working capital, finds it almost impossible to do business in Kansas. We continually hear about promoting economic development, but if the current practice was in effect when Pizza Hut started with \$500 and had incorporated, they would not have even gotten off the ground.

To foster economic development, government needs to take some risks just as the private sector does. The current policy is hard, fast, guaranteed payment policy that the business community is not entitled to or expects to ever be. The current policy is actually a stumbling block to creating new, small retail businesses in Kansas. We have lost some already because of it.

We urge this committee to recommend the passage of this bill by the Senate.

Thank you for giving us the time to hear out testimony. This bill is a result of many months of work and is sponsored by the Sedgwick County delegation and it passed the house with no descending votes. I'll be glad to answer any questions.