

Approved 2/7/89
Date

MINUTES OF THE HOUSE COMMITTEE ON Taxation x Keith Roe

The meeting was called to order by Representative Keith Roe at
Chairperson

9:00 a.m. ~~p.m.~~ on February 2, 1989 in room 519-S of the Capitol.

All members were present except:
Representative Charlton, absent
Representative Snowbarger, absent

Committee staff present:
Chris Courtwright, Research
Don Hayward, Revisor's Office
Lenore Olson, Committee Secretary

Conferees appearing before the committee:
Alan Alderson - Kansas Bar Ass'n
Ed Rolfs - Secretary of Revenue

A motion was made by Representative Fry and seconded by Representative Aylward to introduce a bill on severance tax credits. The motion passed.

Secretary of Revenue Ed Rolfs testified in opposition to HB-2054, stating that this bill would allow the Secretary of Revenue to compromise any civil liability, including tax, interest or penalty imposed by Chapter 79 of the Kansas Statutes Annotated. He also stated that the provision is overly broad, and not consistent with sound policies of tax administration. (Attachment 1)

Alan Alderson, Kansas Bar Association testified in support of HB-2054, stating that this bill is a proposal to bring Kansas tax provisions into conformity with federal law. (Attachment 2)

Chairman Roe concluded the hearing on HB-2054.

A motion was made by Representative Fuller and seconded by Representative Pottorff to pass HB-2033.

A substitute motion was made by Representative Vancrum and seconded by Representative Adam to strike the words "can be" in line 38 of HB-2033 and insert the word "is." The motion carried.

A motion was made by Representative Fuller and seconded by Representative Pottorff to pass HB-2033. The motion carried.

The minutes of February 1, 1989, were approved.

The meeting adjourned.



KANSAS DEPARTMENT OF REVENUE

Division of Taxation

Robert B. Docking State Office Building
Topeka, Kansas 66625-0001

MEMORANDUM

TO: THE HONORABLE KEITH ROE, CHAIRMAN
HOUSE COMMITTEE ON TAXATION

FROM: ED C. ROLFS, SECRETARY
DEPARTMENT OF REVENUE

RE: HOUSE BILL 2054

DATE: FEBRUARY 2, 1989

I appreciate the opportunity to appear before you today on House Bill 2054. The Department of Revenue opposes the provisions of this proposed change in our tax laws.

This bill would allow the Secretary of Revenue to compromise any civil liability, including tax, interest or penalty impose by Chapter 79 of the Kansas Statutes Annotated. This would include income tax, sales and use tax, mineral severance tax, most excise taxes, and ad valorem taxes which are assessed for the benefit of local units of government.

We believe the provision is overly broad, and not consistent with sound policies of tax administration. Our statutes currently provide limited authority for the Director of Taxation to compromise income taxes of insolvent taxpayers, as well as the authority to waive penalties on a showing of reasonable cause.

More importantly, we have an established, effective system of administrative appeal whereby any taxpayer who does not agree with a tax assessment has the right to an impartial hearing on the merits of his case. It is our opinion that increased settlement authority without the pursuit of an appeal will only serve to slow down the system and create an arena for argument based solely on dollar amounts and not whether or not the tax is truly due.

Another area of concern is a recent case decided by the Circuit Court in West Virginia. The West Virginia Department of Revenue is vested with settlement authority. The Circuit Court held that settlement documents outside of the administrative appeal process were public records and allowed a newspaper, the Daily Gazette, access to such records. The threat of otherwise confidential information becoming subject to public review would certainly have a chilling effect of any settlement negotiations, and on the administrative appeals process generally.

I would be happy to respond to any questions you may have.

2/2/89
Attachment 1

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TO : MEMBERS OF THE HOUSE TAXATION COMMITTEE
FROM : ALAN F. ALDERSON, on Behalf of the Kansas Bar Association
RE : House Bill No. 2054
DATE : February 2, 1989

House Bill No. 2054 is a 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.

House Bill No. 2054 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.

*2/2/89
Attachment 2*

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.

This prepared testimony basically paraphrases testimony presented by Tim O'Sullivan on behalf of the KBA two years ago on a similar bill. Discussions Mr. O'Sullivan had with representatives of the Internal Revenue Service have confirmed that the federal government considers offers in compromise to be an effective method of settling assessed tax liabilities. He was further informed 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.

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. 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 House Bill No. 2054 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.