

Approved 3/14/89
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 March 3, 1989 in room 519-S of the Capitol.

All members were present except:
Representative Aylward, excused
Representative Long, excused

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

Conferees appearing before the committee:
Pat Barnes - Kansas Motor Car Dealers Association
Jim Maag - Kansas Bankers Association
Jerel Wright - Kansas Credit Union League
Steve Wiechman - Attorney, Kansas Association of Counties
Stan Lind - Kansas Association of Financial Services

Pat Barnes testified in support of HB 2486, stating that if the government is allowed to seize property to the exclusion of the retailer holding security in the property, a property right is essentially being seized. (Attachment 1)

Jim Maag testified in support of HB 2486, stating that the statute in its present form is extremely confusing and unfair and should be amended. (Attachment 2)

Jerel Wright testified in support of HB 2486, stating that this bill seems logical since even the I.R.S. gives priority to a perfected purchase money security interest over the federal tax lien. (Attachment 3)

Steve Wiechman testified in opposition to HB 2486, stating that this bill indirectly creates a protected class to the detriment of other taxpayers. (Attachment 4)

Stan Lind testified on HB 2486, and suggested the Taxation Committee introduce an amendment to repeal the sections of the statute which give the State of Kansas this priority.

Chairman Roe concluded the hearing on HB 2486.

The meeting adjourned.

Statement of the
KANSAS MOTOR CAR DEALERS ASSOCIATION

Before the
HOUSE COMMITTEE ON TAXATION

Friday, March 3, 1989

Re: House Bill 2486 allowing retailer priority over seizure of property to satisfy delinquent taxes where the retailer holds a purchase money security interest in the property in question.

MR. CHAIRMAN, Members of the Committee, I am Pat Barnes, legislative counsel for the Kansas Motor Car Dealers Association. We appear before you in support of HB 2486.

This bill would allow a retailer, such as a car dealer, or a lender to be protected from the loss of their security on a loan or purchase acquisition of a piece of personal property when that property is seized by the government to satisfy delinquent taxes owed. This protection, or priority over taxes, would only be allowed in the case of a purchase money security interest.¹

It is important that this protection be insured for Kansas businesses. Most retailers of large items, particularly car dealers, cannot operate without credit sales. If the security for those sales is lost the retailer also loses in the event of nonpayment (which is usually what happens next). Without some form of financial security for payment for goods sold, Kansas loses some security in its retail economy and renders its economy more volatile and subject to downturn.

Our dealers have experienced a problem with losing cars they have sold on credit to "the tax collector." The most recent example was Joe Self Chevrolet of Wichita. That dealership lost a car seized to satisfy taxes.

¹A purchase money security interest is one where the buyer of a piece of property, such as a car, is given the property for the promise to pay for it, or is given the money to buy the property by another. The parties agree the creditor may take the property if the buyer does not pay for the item or defaults on the loan used to acquire it.

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To look at this another way, a buyer of something on credit really doesn't own it until the debt against it is paid off. The creditor is, in fairness, actually an equitable owner of the property. His interest is foremost since without the security of that investment he cannot continue to profitably operate and obtain the return on total investment needed to justify staying in business.

If you allow the government to seize property to the exclusion of the retailer holding security in the property, you are essentially seizing a property right, without due process, from that retailer. This is property which would not have been available to satisfy taxes or any other purpose, but for the retailer's contribution to the local economy by making products available through credit. Many times that retailer will also have given security in that property to his creditors, indirectly, so that he could acquire inventory to offer for sale.

Please do the right thing and vote favorably for this bill. By doing so you can show Kansas business that you care to support their efforts and value their contribution to society.



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

March 3, 1989

TO: House Committee on Taxation
FROM: James S. Maag, Kansas Bankers Association
RE: HB 2486 - Sale of personal property for taxes

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to present our views on the provisions of HB 2486. This bill amends K.S.A. 79-2111 which was originally enacted in 1943 and which provides that personal property upon which the taxes have not been paid and has been "seized by legal process" will have the taxes fall due "at once" and shall be paid from the sale of the property "in preference to all other claims against it".

The statute allows the county treasurer to issue a tax warrant against the delinquent taxpayer and the sheriff can then execute the warrant against the personal property. A problem arises, however, if a creditor has a perfected security interest on that personal property or other personal property of the taxpayer. Without so much as a notice from the county, the creditor who has performed every function required by law can suddenly find himself in a secondary position and without any means of recovery once the personal property has been sold at a sheriff's sale.

The statute is also very vague as to whether personal property can be seized and sold to satisfy personal property taxes for more than one year. There is some indication that the statute has been used in some instances to satisfy personal property taxes which were delinquent for several years.

We believe the statute in its present form is extremely confusing and unfair and should be amended as set forth in HB 2486. One possible amendment to the bill which would make it more workable would be to give priority to purchase money security interests in excess of \$1,000 since K.S.A. 84-9-302 does not require the filing of a financing statement at any time on a purchase money security interest in a consumer good when the purchase price is \$1,000 or less.

We appreciate the Committee's willingness to review this problem and we strongly urge the Committee to report HB 2486 favorably.

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Attachment 2*

TESTIMONY ON H.B. 2486

AN ACT concerning the sale
of personal property for taxes

Presented to the
HOUSE COMMITTEE ON TAXATION

March 3, 1989
by the
KANSAS CREDIT UNION LEAGUE

Mr. Chairman, members of the Committee:

I am Jerel Wright, legislative representative for the Kansas Credit Union League (KCUL). Our association represents 98% of the 155 state-chartered and federally-chartered credit unions located in Kansas. KCUL member credit unions serve the personal financial needs of over 500,000 individual credit union members and have over \$1.5 billion in combined assets. Kansas credit unions range in asset size from \$29,000 to \$113 million and range in membership size from 59 to 41,000 members.

I appreciate having this opportunity to appear before the Committee to support HB 2486 which amends K.S.A. 79-2111 concerning the sale of personal property for taxes.

One interpretation of the statute allows a local tax lien to take priority over a purchase money security interest while bypassing all requirements of due process. This practice strikes at the heart of the protection which a credit union receives when the credit

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union perfects a purchase money security interest on property purchased by a member with funds loaned by the credit union.

HB 2486 proposes to amend the statute to preserve the protection a creditor receives once a purchase money security interest is perfected. The change seems logical since even the I.R.S. gives priority to a perfected purchase money security interest over the federal tax lien.

For these reasons, we support the passage of HB 2486 and encourage the Committee to report the bill favorable for passage.

Mr. Chairman, I will stand for questions at your direction.

Wiechman Law Office

ATTORNEYS AT LAW
1101 WEST 10TH STREET
TOPEKA, KANSAS 66604

(913) 233-8862

HOUSE TAXATION COMMITTEE

March 3, 1989

HOUSE BILL 2486

Mr. Chairman, Members of the Committee:

I am Steven Wiechman, an attorney from Topeka, Kansas, in private practice and retained by the Kansas Association of Counties as their General Counsel. On behalf of my client, I would like to express to you the Association's appreciation for the opportunity to testify on HB 2486.

K.A.C. opposes this bill. As you are aware, collection of taxes is of interest to everyone. The failure to collect taxes becomes a burden upon the taxpayers when the tax is not paid. As you know, counties do not get to pick their taxpayers, just as you do not pick your constituents, unless you move.

On the otherhand, lenders pick their borrowers; that is, to whom they decide to loan money for the purchase of personal property. Financial review of the overall status of the borrower is available to the lender. The lender has the ability for continual contact to monitor the loan and can easily require that a borrower, by lending contract, provide proof of payment of taxes. The lenders are in the

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best position to protect themselves. However, the taxpayers, represented by the counties have no authority until after the fact to protect themselves by the uniform collection of taxes.

The proposed amendment, we believe, indirectly creates a protected class to the detriment of other taxpayers. This bill does not affect the good borrower or the borrower that always pays on time, it governs those who do not pay their property taxes. A lender can take immediate action whenever it feels its loan is in jeopardy. Counties cannot take that action. To protect the taxpayers, the lien is created. To make that lien subordinate to a purchase money security interest could have a devastating affect on tax collection on delinquent personal property tax.

There are several statutes that would need to be changed to create the exception. For our perspective and from the perspective of a practicing attorney, I do not believe that it would be good public policy to take the proposed action set forth in HB 2486.

Obviously, this is a policy decision. The decision is do you protect the lending institution, who has the choice of whom they wish to do business with or do you protect the taxpayers in general to afford the collection of unpaid taxes.

Thank you for the opportunity to appear before you and present K.A.C.'s position. If you have questions, I will try to address them.

Respectfully submitted,

STEVEN R. WIECHMAN

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