Approved 3/28/89
Date

MINUTES OF THE House COMMITTEE ON Taxation.

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

9:00 a.m./p.m. on March 24, 1989 in room 519-S of the Capitol.

All members were present except:

Representative Spaniol, excused

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

Conferees appearing before the committee:
Mark Burghart - General Counsel, Kansas Dept. of Revenue
Donald Schnacke - Kansas Indepentent Oil & Gas Association
Charles Warren - President, Kansas Inc.
Bud Grant - KCCI
S. Lucky DeFries - Attorney, Martin Tractor Company, Inc.
Alan Alderson - Attorney, Western Retail Implement & Hardware Association

Mark Burghart testified in support of SB 4, stating that in addition to the negative image that the AMT projects, it also would impose significant administrative burdens on both corporate taxpayers and the Department. (Attachment 1)

Donald Schnacke testified in support of SB 4, stating that allowing the AMT to be implemented means that his industry will bear the brunt of yet another Kansas tax at a time when the industry needs to be helped, not hurt with a new tax. (Attachment 2)

Charles Warren testified in support of SB 4, stating that they did not see any advantage to their business competitiveness by adding AMT to their tax structure, and, in fact, implementation of AMT would hurt their competitiveness. (Attachment 3)

Bud Grant testified in support of SB 4, stating that he hopes it passes.

Chairman Roe concluded the hearing on SB 4.

A motion was made by Representative Shore; seconded by Representative Crowell to report SB 4 favorable. The motion carried with a vote count of 11 yes and 9 no.

A motion was made by Representative Lowther; seconded by Representative Pottorff to amend HB 2535 in line 24 by striking 30 and by inserting 21 days; in line 25 by striking the words "or March 31, whichever date is later."; in line 32 by striking "April 1" and inserting "May 1"; in line 33 by striking "April 15" and inserting "May 15." The motion carried.

A motion was made by Representative Smith; seconded by Representative Pottorff to report HB 2535 favorable as amended. The motion carried.

MINUTES OF THE House COMMITTEE ON Taxation,

room 519-S, Statehouse, at 9:00 a.m./~~p.m.~~ on March 24, 1989

S. Lucky DeFries testified in support of SB 42, stating that in their opinion, this bill is not expanding the scope of the merchants' and manufacturers' inventory exemption voted on by the poeple of Kansas in 1986, but in fact is only codifying what the people of Kansas and the Board of Tax Appeals believed the situation to be in 1986 at the time the constitutional amendment was passed. (Attachment 4)

Alan Alderson testified in support of SB 42, stating 79-201m, in its present form, presents a serious constitutional question inasmuch as terms used in a constitutional amendment are construed to mean what they did at the time the people voted on the amendment. (Attachment 5)

Chairman Roe concluded the hearing on SB 42.

The minutes of March 23, 1989, were approved.

The meeting adjourned.

HOUSE COMMITTEE ON TAXATION

DATE 3/24/89

NAME	ADDRESS	REPRESENTING
Charles Warren	Topeka	Kansas Inc.
ALAN ALDERSON	"	WESTERN RETAIL IMPLEMENT & HARDWARE ASSN.
GEORGE DONATELLO	"	PVD
[illegible]		KAC
FRANCES KASTNER	"	Ks Food Dealers Assn
[illegible]	Topeka	Observer
NORMAN REYNOLDS	TOPEKA	KASB
KEVIN [illegible]	TOPEKA	ENRON CORP.
ROSS MARTIN	"	KS PETROLEUM COUNCIL
Woody Woodman	KCMo	KCPL
[illegible]	TOPEKA	KOCI
Alissa J. Rubin	Topeka	Eagle Beacon

MEMORANDUM

TO: The Honorable Keith Roe, Chairman
House Committee on Taxation

FROM: Mark A. Burghart, General Counsel
Kansas Department of Revenue

RE: SENATE BILL NO. 4

DATE: March 24, 1989

Thank you for the opportunity to appear and express the Department of Revenue's strong support for Senate Bill No. 4. This bill would repeal the alternative minimum tax (AMT) on corporations which was enacted by the 1988 Legislature.

BACKGROUND:

The AMT was a component of the plan developed by the Governor's Task Force on Tax Reform. The purpose of the AMT was to ensure that no taxpayer who had substantial economic income could avoid significant tax liability by using exclusions, deductions and credits. The AMT works by disallowing the benefits provided by these various tax deductions and allowances.

The state AMT recommended by the Task Force conformed to and "piggybacked" onto the federal AMT to the greatest extent possible. The state AMT rate is 4% which is applied against a taxpayer's Kansas alternative minimum taxable income. The Kansas alternative tax base is the same as that at the federal level with certain adjustments which are the same as those required under the regular Kansas corporate tax system. Companies not required to compute a federal AMT also would not be required to file a state AMT. The state AMT was projected to generate $6 million annually.

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Attachment 1

RECOMMENDATION:

The Department strongly recommends repeal of the state AMT provisions. The state has made significant progress in enhancing its competitive position with surrounding states including the enactment of the sales tax exemption for manufacturing machinery and equipment in 1988. The AMT is viewed as an impediment by businesses making decisions to locate or expand in the State. The opportunity lost to the state by businesses deciding to locate or expand elsewhere could very well exceed the revenue expected to be generated by the AMT. Kansas would only be the 10th state to adopt an AMT.

In addition to the negative image that the AMT projects for those concerned with state economic development, the AMT also would impose significant administrative burdens on both corporate taxpayers and the Department. The AMT essentially represents a separate taxing system which requires considerable expertise to understand. The state AMT is even more complicated than the federal AMT because the taxpayer needs to be concerned with the proper apportionment of tax preference items between all of the states in which a corporation operates. Corporate taxpayers must maintain a separate accounting system and absorb the additional costs associated therewith.

For these reasons, the Department urges the House Committee to recommend Senate Bill No. 4 favorably for passage.

KIOGA

KANSAS INDEPENDENT OIL & GAS ASSOCIATION

105 SOUTH BROADWAY • SUITE 500 • WICHITA, KANSAS 67202 • (316) 263-7297

March 24, 1989

TO: House Committee on Taxation

RE: SB 4 - Corporate Income Tax
Alternative Minimum Tax for Kansas Corporations

Our Association opposed the alternative minimum tax for Kansas corporations during the 1988 session. We filed statements with both the Senate and House committees that conducted hearings.

We are certain that members of the legislature must know that the combination of the Kansas severance tax and the Kansas ad valorem tax on oil and gas average at least 10% on oil and, in some cases, in excess of 20% on natural gas, both being the highest in the nation. When you consider the Kansas rates with our neighboring energy states, Oklahoma at 7%, Arkansas at 5%, Texas at 5%, New Mexico at 4% and Nebraska at 3%, you can see that if you have money to spend on exploring and drilling for oil and gas, Kansas is not even close to competing. None of these energy producing states nearby have an alternative minimum tax as was passed in the 1988 Session.

Allowing the alternative minimum tax to be implemented means that our industry will bear the brunt of yet another Kansas tax at a time when the industry needs to be helped, not hurt with a new tax.

In order to strongly emphasize our opposition to this new tax, we asked our KIOGA Tax Committee Chairman, Will G. Price, III, managing partner of Peat Marwick Main and Company, Wichita, to file a statement during the interim study under Proposal No. 7. We attach his statement to ours which supports our position in opposing the Alternative Minimum Tax on Kansas Corporations and, therefore, we support the repeal of the tax as contained in SB 4.

Donald P. Schnacke

Attch.

3/24/89
attachment 2

Copy
Randall

KPMG Peat Marwick

Certified Public Accountants

Peat Marwick Main & Co.
600 Fourth Financial Center
Wichita, KS 67202

Telephone 316 267 8341

Telecopier 316 267 8341
Ext 230

January 19, 1988

Mr. Don Schnacke
KIOGA
500 Broadway Plaza
105 S. Broadway
Wichita, Kansas 67202

Dear Don:

Proposed Kansas Alternative Minimum Tax for Corporations

I have read with concern the information you provided regarding the proposed Kansas alternative minimum tax for corporations which would be equal to 20 percent of the federal alternative minimum tax. For your information, only four states presently have a separate state alternative minimum tax on so-called "preference items" (percentage shown is the approximate percentage of the state alternative minimum tax compared to the federal alternative minimum tax):

Alaska	18%
California	12.5%
Iowa	*
Maine	11%

*Iowa excludes excess depletion and tax exempt interest as preferences. Accordingly, the Iowa tax base is less than the federal tax base.

There are a number of reasons for Kansas businessmen in general and the oil and gas industry in particular to be concerned by the proposed Kansas alternative minimum tax, including the following:

1. Such a tax would put Kansas corporations at a competitive disadvantage with our neighbor states, none of which have such a tax. In fact, Kansas would become only one of a handful of states nationwide with such a tax and might be perceived as furthering an "anti-business" attitude.

2. A Kansas alternative minimum tax would add substantially to the complexity of the current taxation system and the burdens of taxpayers to comply therewith.

3. The State of Kansas already enjoys a substantial non-legislative tax increase ("windfall") as a result of retaining substantial Kansas tax revenue increases caused by the 1986 federal tax reform.

2.2

KPMG Peat Marwick

If Kansas adopts a state alternative minimum tax, the Kansas Legislature should consider following the lead of Iowa and exclude percentage depletion as a preference item. As you are painfully aware, the combination of Kansas severance taxes and ad valorem taxes places approximately an average 10 percent tax burden on Kansas production - which rate is in excess of any of our neighboring energy states (e.g., Oklahoma, 7%; Arkansas, 5%, Texas, 5%; New Mexico, 4%; and Nebraska, 3%).

Very truly yours,

PEAT MARWICK MAIN & CO.

Will G. Price, III, Partner

TESTIMONY on
Alternative Minimum Tax
House Committee on Taxation
March 24, 1989

by
Charles R. Warren
President, Kansas Inc.

In 1987, Kansas Inc. undertook an analysis of the business tax structure of Kansas. The purpose of our study was to evaluate the degree to which Kansas' tax structure is competitive in the context of business investment and location decisions.

Competitiveness is a relative term. The Kansas Inc. strategy for economic development does not strive to make Kansas a "low tax" state. The Kansas Inc. Board of Directors recognizes the need to balance economic development goals with the necessity of maintaining the state's fiscal integrity and ensuring that revenues are sufficient to provide quality public services.

The Kansas Inc. business tax study compared the tax structure of Kansas with five nearby states: Colorado, Iowa, Missouri, Nebraska, and Oklahoma. In making this comparison, profiles of representative firms for a number of manufacturing and service industries were constructed on a hypothetical basis and tax liabilities were calculated for these firms for each state. This analysis showed the relative rankings for Kansas and the neighboring states.

Based on this study, the Board of Directors of Kansas Inc. developed a "package" of reforms to make the state's business tax structure more competitive. This package included five proposed changes:

1) The sales/use tax exemption for manufacturing machinery and equipment.
2) The option of a two-factor formula for apportionment of corporate income taxation.
3) Establishment of an alternative minimum tax on corporations.
4) Elimination of the state's loss-carryback provision on corposrate taxes.
5) And, a one-half percent reduction in the corporate tax rate.

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Attachment 3

As you are well aware, this package of reforms was considered by the 1988 Legislature, and four of the five Kansas Inc. recommendations were enacted into law. The fifth recommendation, corporate tax rate reduction, was not adopted.

Because these reforms produced net gains and losses to the state treasury on both a one-time and annual basis, we felt that it was important that the package be kept together. However, it was not, and, as a consequence, business taxes are not now as competitive as was desired.

Kansas Inc. included AMT in its package of recommendations only at the last minute, and only as a result of negotiations that took place with other state officials. Including AMT was the "price" paid for acceptance of the other reforms, and, in particular, the corporate rate reduction. Ironically, we won on AMT and lost on corporate rate reduction.

We did not see any advantage to our business competitiveness by adding AMT to our tax structure. In fact, implementation of AMT would hurt our competitiveness. Only one state, Iowa, in our six state region (and study area) has adopted AMT.

On January 12, 1989, the Board of Directors of Kansas Inc. reviewed its earlier recommendations on Business Taxes. At that meeting the Board approved a motion to urge the Legislature to repeal the implementation of the Alternative Minimum Tax. It also reaffirmed its support for a corporate rate reduction. The Governor, who is Co-Chairman of Kansas Inc., has also endorsed repeal of the AMT. On behalf of the Board of Directors of Kansas Inc., I urge the Committee to report Senate Bill 5 with a favorable recommendation.

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BARNEY J. HEENEY, JR., LL.M. (RET.)
HAROLD R. SCHROEDER, J.D. (1986)
LEONARD H. AXE, S.J.D. (1975)

MEMORANDUM

To: Members of the House Taxation Committee

From: S. Lucky DeFries, Attorney for Martin Tractor Company, Inc.

Re: Senate Bill No. 42

Date: March 24, 1989

I appear today on behalf of Martin Tractor Company, Inc., a Caterpillar dealer, that also markets agricultural machinery and equipment. Martin Tractor's corporate headquarters is here in Topeka, but they have additional branches in Colby, Concordia and Chanute. When the constitutional amendment providing for classification and the exemption for merchants' and manufacturers' inventories was passed by the people of Kansas, Martin Tractor Company and others similarly situated were very pleased that, as of January 1, 1989, the inventory tax, which represents a significant cost of doing business, would no longer be a factor. Unfortunately, everyone's understanding regarding the intended scope of the merchants' and manufacturers' inventory exemption was changed significantly with the passage of Senate Bill No. 453 during last year's session, which amended the definitions of "merchant" and "inventory" which are set forth at K.S.A. 1988 sub. 79-201(m).

After first becoming aware of the revisions included as part of Senate Bill No. 453 last year, I contacted the Property Valuation Department regarding their interpretation of the newly added language. I was informed that, with the addition of the language "without any intervening use", PVD believed that any piece of machinery or equipment that was out on lease as of January 1, or that had been previously out on lease and was now back in the inventory on January 1, would be excluded from the exemption from merchants' and manufacturers' inventory. Unfortunately, this interpretation represented a significant departure from what most individuals believed the status quo to be at the time the exemption for merchants' and manufacturers'

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Attachment 4

inventory was passed. Because of my concerns that the Legislature had exceeded its authority with the changes to the definitions of "merchant" and "inventory", through Senate Bill 453, I began inquiring regarding the understanding of the Legislature at the time this amendment had been passed last year. As part of those inquiries, it became very clear that the Legislature had not understood the significance of the changes to "merchant" and "inventory" and what impact the changes would have on the intended scope of the merchants' and manufacturers' inventory exemption. With the assistance of Rep. Wagnon and Sen. Thiessen, I was able to appear before the interim committee on assessment and taxation last summer to address these concerns. The interim committee appeared to be very concerned that something they had passed last year had limited the constitutional amendment passed by the people of the State of Kansas, and seemed open to the possible repeal of the language that had been added during the past session.

At that time, based on my communications with the Legislative Research Department and the Revisor's office, it appeared that my client's concerns could be resolved by simply repealing the language that had been added by the Legislature last year. However, based on certain information from various county appraisers received since that time, it became clear that there were some questions about what kinds of equipment qualified for the merchants' inventory exemption even under the prior language of the statute, and that in order to fully address our concerns, a further revision would be necessary.

Specifically, the two areas that we are attempting to address through Senate Bill 42 are as follows:

1. Machinery or equipment that is specifically acquired for the purpose of resale that is subsequently leased but is back in inventory for sale on January 1 of the tax year in question.
2. Machinery and equipment that is specifically acquired for the purpose of resale but is out on a short-term lease as of January 1 of the tax year in question.

4-2

The language added by the Legislature last year would specifically exclude both of these categories of machinery and equipment from the scope of the merchants' inventory exemption. In the past, my client and most other similarly situated have routinely rendered these categories of equipment as merchants' inventory and received 40% adjustment, which heretofore has been available for merchants' inventory. Consequently, if these categories of equipment are not now considered to be part of the merchants' inventory exemption, we will have significantly departed from the existing scheme of taxation with respect to this class of property and forced it to be taxed at full value with no reduction for obsolescence.

From a constitutional law standpoint, we believe it is clear that the Legislature has no authority to limit a constitutional amendment passed by the people of the State of Kansas. While the Legislature can expand upon a constitutional amendment, any limitations would have to be part of a subsequent constitutional amendment resubmitted to the people for a vote. Unfortunately, it appears that the Legislature had just not understood the significance of what had been submitted to them last year and had passed it without realizing the unintended impact. The Legislature now has the opportunity to rectify that situation and restore the vitality of the constitutional amendment previously passed, and to clarify this one additional element which we feel was contemplated by the people and represents what the state of the law actually was at the time the amendment was passed.

When I appeared before the Senate Assessment and Taxation Committee with respect to S.B. 42, the Property Valuation Department raised certain concerns regarding whether the initial version of S.B. 42 would open the floodgates and permit certain businesses not originally intended to be covered by the exemption to fit within the bill's language. Although the Board of Tax Appeals did not appear in opposition to S.B. 42, they also had some concerns regarding whether the initial version of S.B. 42 might be too broad in some respects. Because of these concerns, and at the urging of Senator Kerr and others, I met with the Property Valuation Department and the Board of Tax Appeals on several occasions in an attempt to arrive at language that would satisfy the concerns of P.V.D. and the Board of Tax Appeals, as

well as address the concerns of my client. The version of S.B. 42 that you see before you is the result of those efforts between myself, the Property Valuation Department, and the Board of Tax Appeals. The actual language was worked out between myself and P.V.D. but was discussed at length with the Board of Tax Appeals to make certain that they had no significant problems with the approach being used.

We believe that S.B. 42, as it now reads, addresses the concerns raised by P.V.D. and the Board of Tax Appeals, and at the same time addresses most of the concerns which my client has, based on the changes to the definitions of "merchant" and "inventory" last year. It is important to note that, in our opinion, this bill is not expanding the scope of the merchants' and manufacturers' inventory exemption voted on by the people of Kansas in 1986, but in fact is only codifying what the people of Kansas and the Board of Tax Appeals believed the situation to be in 1986 at the time the constitutional amendment was passed. In fact, certain language was added to assist P.V.D. in making sure that certain businesses would definitely not be able to fit within the intended scope of the merchants' and manufacturers' inventory exemption.

For all of these reasons, we would respectfully ask that S.B. 42, as amended, be reported favorably.

SLD:mls

Enclosure

4-4

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OF COUNSEL
C. DAVID NEWBERY

MEMORANDUM

TO : MEMBERS OF HOUSE TAXATION COMMITTEE
FROM : ALAN F. ALDERSON, ATTORNEY FOR WESTERN RETAIL IMPLEMENT AND HARDWARE ASSOCIATION
RE : SENATE BILL NO. 42 (AS AMENDED BY SENATE COMMITTEE)
DATE : MARCH 24, 1989

The Western Retail Implement and Hardware Association believes the passage of K.S.A. 1988 Supp. 79-201m last session will impact adversely upon implement dealers and many other retailers having inventories of high cost items. In fact, we believe it amounted to redefining, after the fact, the terms "merchant" and "inventory" to the detriment of those retailers who had believed that all of their inventory would be exempt at the time of the passage of the classification amendment.

Implement dealer members of the Association have assumed, and have been told repeatedly, that all of their inventory would be exempt from property taxation effective January 1, 1989. K.S.A. 1988 Supp. 79-201m, as it now exists, could make a number of pieces of farm machinery and equipment not only subject to taxation, but at the full rate, without any reduction for obsolescence. I am certain many implement dealers are holding pieces of machinery and equipment previously subject to leases which have been returned or traded in to the dealer and are now being held for resale. The fact that this property had an "intervening use" as leased property does not alter the fact that it is being held with a view to sale when it sits on the dealer's lot at this time.

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attachment 5

We have been assured by the Director of Property Valuation that 79-201m was not intended to apply to implement dealers who have large pieces of equipment on their lots which may have been previously leased and are now being held for sale. However, the statute could easily be read to disqualify this equipment from exemption by some future administration. We believe the compromise reached through the Senate Committee amendments would not provide a new exemption to those businesses primarily engaged in leasing property, but would also protect from taxation those businesses who have truly acquired and held this property for resale.

I believe that 79-201m, in its present form, presents a serious constitutional question inasmuch as terms used in a constitutional amendment are construed to mean what they did at the time the people voted on the amendment. Clearly, farm machinery and equipment sitting on a dealer's lot which may have been leased at one point in time was considered to be inventory when the people of this state voted to exempt inventory. I do not believe it is permissible to redefine terms so that property which would otherwise be exempt now becomes taxable.

For the reasons stated herein, we would urge your support for the passage of Senate Bill No. 42, as amended by the Senate Committee. I would be glad to try to answer any questions you may have.