

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION

The meeting was called to order by Senator Audrey Langworthy, Vice Chairperson at
Chairperson

11:00 a.m. ~~pm~~ on Wednesday, February 22, 1989 in room 519-S of the Capitol.

All members were present except:

Senator Dan Thiessen, Chairman (excused)
Senator Don Montgomery (excused)

Committee staff present:

Don Hayward, Revisor's Office
Chris Courtwright, Research Department
Tom Servern, Research Department
Marion Anzek, Committee Secretary

Conferees appearing before the committee:

Gerhard Metz, J.D., Director of Taxation, representing the Kansas Chamber of Commerce and Industry.
Bob Wannamaker, representing the Kansas Rental Dealers Association
Vance Hubbell, owner of a Video Rental business
Bob Richardson, co-owner of Triple A Rentals of Wichita
Beverly Bradley, Legislative Coordinator, Kansas Association of Counties
Terry D. Hamblin, Director-Property Valuation Division

Senator Audrey Langworthy, Vice Chairperson called the meeting to order and said today we will review SB144. She recognized Gerhard Metz, Director of Taxation, KS Chamber of Commerce and Industry.

SB144:AN ACT relating to property taxation; concerning the exemption of merchants' inventories.

The following conferees were proponents of SB144.

Gerhard Metz thanked Madam Chairperson for the opportunity to address the concept of equality in tax treatment for similarly placed businesses.

He said SB144 would treat firms in the rental business, which are required to collect sales tax under the Kansas Retailers' Sales Tax Act, and would exempt items on shelves of these businesses as inventory, and also would treat them as "merchants" and place them equally with others, covered under the same laws for sales tax purposes.

KCCI urges this committee to give favorable support to SB144. (ATTACHMENT 1)

Mr. Metz introduced Bob Wannamaker, representing the Kansas Rental Dealers Association.

Bob Wannamaker recognized a group of 34 retail rental business merchants attending the meeting today, and said they come from all areas of the State.

Mr. Wannamaker said K.S.A. 79-201m defines inventory to be anything held for resale that is not being currently depreciated by the merchant, or when an item is not being depreciated, but did have an "intervening use".

The rental dealers inventory held for lease is no different than inventory held for resale. The Kansas Sales Tax Act defines a lease to be a sale and requires them to collect state and local sales tax on the lease.

This issue is of grave economic importance to their members, and they urge your support for favorable consideration to SB144. (ATTACHMENT 2)

Madam Chairperson recognized Vance Hubbell, Hubbell Rental.

Vance Hubbell said personal property method of taxation has long been considered one of the most inequitable and unfair methods of taxation. Rental merchants are offering the same merchandise for consumption as retail merchants, only in a different manner, and they should not be singled out and subject to personal property tax inequities.

He asked the committee for favorable consideration on SB144. (ATTACHMENT 3)

Madam Chairperson recognized Bob Richardson, co-owner of Triple A-Rentals, Wichita.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION,
room 519-S, Statehouse, at 11:00 a.m./~~p.m.~~ on Wednesday, February 22, 1989.

Bob Richardson said besides being co-owner of Triple A-Rentals, he is also a member of the Board of Directors, American Rental Association.

Mr. Richardson said the people in the rental business were surprised when they heard there was legislation to exempt inventory taxes. Basically the legislature exempted inventory from sales taxes, but when they changed the definition of inventory to exclude things on a depreciation schedule, that basically ruled out the rental industry. They think that is wrong. They collect sales tax on everything they rent. Most rental equipment brings in 80% to 90% of it's original cost every year. They urged the committee to give favorable support to SB144.

The following conferees were opponents of SB144.

Madam Chairperson recognized Beverly Bradley, Legislative Coordinator, KS Association of Counties, an opponent of SB144. Beverly Bradley said the KS Association of Counties is opposed to the tax exemption. With reappraisal underway, they don't know what the numbers are going to be; and a lot of county officers are very nervous awaiting the results of reappraisal, as well as a lot of taxpayers.

They believe we should maintain a stable situation, until we know what the results are. They would like to see no more exemptions granted. (ATTACHMENT 4)

After committee discussion Madam Chairperson recognized Senator Martin.

Senator Martin asked Beverly Bradley if the KS Association of Counties would oppose repealing the language, let it go back to what the original amendment was, and let the court decision dictate what is exempt and what is not exempt.

Beverly Bradley said she could not answer that question without some review, and she would get the information for the Senator.

Madam Chairperson recognized Terry Hamblin, Director-Property Valuation-Department of Revenue.

Terry Hamblin said the Department has some concerns with SB144. The provisions are very similar to those in SB42, but broader in scope. The definitions in the bill are so broad that the courts will ultimately have to determine whether or not any personal property will be taxable in 1989, and thereafter.

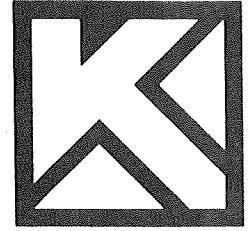
His handout included language which was repealed by last year's legislation. (ATTACHMENT 5) The division has consistently interpreted this language to preclude the inclusion of leased equipment in merchants inventory.

After committee discussion, Mr. Hamblin said the key to this bill is the intent to resell, and he believed the bill exempts all personal property. If this is what the legislature wants to do, then he thinks they should just write a bill to exempt all personal property.

Madam Chairperson closed the hearings on SB144 and reminded the members they have a revised agenda and will meet on Friday.

The meeting adjourned at 11:45 a.m.

LEGISLATIVE TESTIMONY



Kansas Chamber of Commerce and Industry

500 First National Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321

A consolidation of the
Kansas State Chamber
of Commerce,
Associated Industries
of Kansas,
Kansas Retail Council

SB 144

February 22, 1989

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

Senate Committee on Assessment and Taxation

by

Gerhard Metz, J.D.
Director of Taxation

Good morning, Mr. Chairman and members of the committee,

I am Gerhard Metz, representing the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to testify on Senate Bill 144 and to address the concept of equality in tax treatment for similarly-placed businesses.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

The bill before you this morning would treat firms in the rental business, which are required to collect sales tax under the Kansas Retailers' Sales Tax Act, in the same way that other businesses covered under that act are, as regards the exemption from personal property taxes on inventories.

Exempting items on the shelves of these businesses as inventory, and treating them as "merchants" under the statute would place these firms on a more equal footing with others who are covered under the same laws for sales tax purposes.

KCCI urges the committee to give this bill your serious consideration, and supports the efforts of its members to obtain comparable treatment under the tax laws for these businesses.

Before I introduce Mr. Wanamaker, I would be happy to stand for questions from the committee. Thank you once again.

RENTAL DEALERS OF KANSAS

926 NORTH TOPEKA AVE.

TOPEKA, KANSAS 66608

(913) 233-2222

February 22, 1989

Mr. Chairman, Members of the Committee, I am here representing the Kansas Rental Dealers Association and as a proponent of Senate Bill 144.

The Kansas Rental Dealers Association is a group of 34 rental businesses located all across Kansas.

In 1986, a constitutional amendment was adopted by the voters of this state which exempted merchants' and manufacturers' inventory for personal property tax beginning in 1989.

K.S.A. 79-201m defines inventory to be anything held for resale that is not being currently depreciated by the merchant, or where an item is not being depreciated but did have an intervening use.

This definition will cause all items held by a rental dealer for lease to be subject to personal property taxation.

Under reappraisal and classification, the major shift in property taxes will be on commercial property. The exemption for merchants' inventory was passed in order to cushion the blow for commercial property owners. Rental dealers, because of the definition of inventory, will get hit double by an increase in taxes for their building and on their property held for lease.

The rental dealers' inventory held for lease is no different than inventory held for resale. The rental dealer leases his property to the end consumer just the same as the hardware store owner or any other retail business. In fact, the Kansas Sales Tax Act defines a lease to be a sale and requires us to collect state and local sales tax on the lease payments.

A general rental store stocks a large amount of seasonal and seldom rented equipment. If the taxes on commercial real estate and rental property increase, these marginal items will probably not be held for lease in the future. It will be hard to explain to a customer who, because of some exceptional circumstance or disaster, needs a water pump, water vacuum or generator, and can't rent one because the rental dealer could not afford to have those items in his inventory.

The increase in both commercial real estate tax and personal property tax may cause many marginal rental businesses and small town rental dealers to shut their doors. Surely this is not what was intended when reappraisal and classification was passed by the voters of this state.

Not only does this tax on our rental equipment put us in an unfair competitive situation with the retailer down the street, but it also makes it difficult to compete with a rental dealer located across the state line in Missouri. Missouri does not subject rental dealers' inventory to property tax. A competitor who owns a store in both Kansas and Missouri can easily move rental property to Missouri from his Kansas store prior to January 1 and thus avoid the property tax. A Missouri rental dealer can theoretically lease equipment at a lower cost than his Kansas counterpart. This cost differential can be the difference between a sale or no sale.

The public believes a rental dealer is a merchant and a retailer. The Kansas Sales Tax Act defines us to be a retailer. We would respectfully request this Committee to treat rental dealers as retailers and exempt rental property from property tax and report Senate Bill 144 favorable for passage.

Thank you, Mr. Chairman and Members of the Committee, for allowing me to testify this morning on an issue which is of grave economic importance to our members.

House Bill 144

My name is Vance Hubbell. I am in the video rental and the home furnishings rental business. I am here to speak in favor of House Bill 144 which would further amend the personal property tax statutes of Kansas to eliminate the personal property tax on rental inventory.

The personal property method of taxation has long been considered one of the most inequitable and unfair methods of taxation. The legislature clearly recognized its short-comings when they amended the statutes to remove the personal property tax on merchants' inventories.

One of the clearly remaining inequities in this method of taxation is the exclusion of the rental inventory. Today, renting and leasing are commonly accepted alternatives to buying. The merchant is only offering the same merchandise for consumption by the public in a different manner. For all the reasons the legislature has already exempted the merchants' inventory that is held exclusively for sale, you should exempt the merchandise held by the merchants who offer it to the public through renting and leasing.

The majority of rental merchandise is the same kind of merchandise that is exempt from personal property tax before the sale and also exempt from the individual's personal property tax after the sale. There is no reason to single out the merchants using a particular marketing method and continue to subject those merchants to the personal property tax inequities.

Thank you.



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TESTIMONY

February 22, 1989

TO: Senator Audrey Langworthy, Vice Chairman
Members Senate Assessment and Taxation Committee

FROM: Bev Bradley, Legislative Coordinator
Kansas Association of Counties

RE: Senate Bill 144 Exempting items purchased to lease

The Kansas Association of Counties has a convention approved policy which states: We support the preservation of the property tax base for local governments and strongly oppose further erosion of that base by the granting of additional constitutional or statutory exemptions or the elimination of other revenue sources for local governments.

You have heard many times this year that counties are under a two year tax freeze until reappraisal is completed and implemented. The numbers are not complete from the reappraisal project yet and local governments do not know the impact. We know that there are many concerned county officials out there as well as concerned tax payers throughout the state. We oppose further erosion of the tax base. Where do the exemptions end?

I do not have a fiscal note on this bill for counties, but the indication that I have from the Johnson County Treasurer's office, the Ellis County Treasurer's office and the Shawnee County Treasurer's Office that it would be significant in some areas.

Attachment 4
Assessment and Taxation (Senate)
Wednesday, February 22, 1989



KANSAS DEPARTMENT OF REVENUE
Division of Property Valuation
Robert B. Docking State Office Building
Topeka, Kansas 66612-1585

M E M O R A N D U M

TO: Senator Dan Thiessen, Chairman
Senate Committee on Assessment and Taxation
and Committee Members

FROM: Terry D. Hamblin, Director
Property Valuation Division

DATE: February 22, 1989

SUBJECT: Senate Bill 144

The provisions of this bill are very similar to those contained in Senate Bill 42. Like Senate Bill 42, this bill attempts to extract one small segment of commercial and industrial machinery and equipment -- which is valued, assessed and taxed pursuant to the provisions of the classification amendment to the state constitution -- and exempt it from taxation by broadening the definitions of "merchant" and "inventory". The end result is that the definitions in this bill are so broad that the courts will ultimately have to determine whether or not any personal property will be taxable in 1989 and thereafter.

Under the provisions of this bill, any person, company or corporation may purchase tangible personal property, use it for any purpose, modify or change it, even lease it, and if they contend that their intention is to eventually resell it, they may obtain an exemption of such property from all ad valorem taxes.

Attachment 5
Senate Assessment & Taxation
Wednesday, February 22, 1989

This bill goes further than Senate Bill 42 by specifically exempting motor vehicles held for lease by motor vehicle dealers.

We have been told that this proposal would nearly strike language passed last year which "limited" the constitutional exemption of merchants' and manufacturers' inventories and that enactment of this bill would put everything "back the way it was" and reflect what the voters thought they were voting for when the amendment was passed. This simply is not true. Language which was repealed by last year's legislation included the following definitions:

"The word "merchant" shall mean and include every person, company or corporation who shall own or hold, subject to his or her control, any personal property within this state, which shall have been purchased with a view of being sold at an advanced price or profit, or which shall have been consigned to him or her for the purpose of being so sold.

The word "inventory" shall mean and include all personal property owned or held, subject to the control of a merchant, which shall have been purchased by him or her with a view of being sold at an advanced price or profit, or which shall have been consigned to him or her for the purpose of being so sold."

The Division has consistently interpreted this language to preclude the inclusion of leased equipment in merchants' inventory. Property which is purchased for lease or is used to produce lease or rental income is not being exclusively used as merchants' inventory. To the best of our knowledge, this interpretation has never been successfully challenged before either the State Board of Tax Appeals or the courts.

The language contained in 1988 Senate Bill 453 as it was presented to this Committee, was simply a restatement of then existing and still current policy. It was our intention to clarify the definitions; however, the 1988 Senate Bill 453 did not contain any language which either broadened or limited the definitions of merchants' or manufacturers' inventory. Now, for taxpayers to come before this committee and insist that because they have not been reporting their machinery and equipment properly they are now entitled to an exemption seems somewhat unreasonable.

Section 2 of this bill also raises concerns for this Division. Surely no one will contend that the voters thought they were exempting motor vehicle dealer's inventories when they voted for the classification amendment. Nor did they think they were exempting leased vehicles. Under this provision, not only would vehicle owners have to pay the tax while identical vehicles which were leased would be exempt; but, vehicle owners would be further penalized by paying higher taxes as a result of the taxes shifted to other property because of this exemption.

Finally, even if Senate Bill No. 144 were narrowly interpreted to merely expand the present definitions of merchant and inventory to include lessors and leased machinery and equipment, and not to exempt all tangible personal property, the leased tangible personal property of companies like IBM, Xerox, AT&T, NCR, Hertz, Avis, etc., would clearly qualify for exemption under this bill. While we have no way to estimate with any precision the fiscal impact of this more limited exemption, we can say that millions of dollars of tax liability would be shifted to the remaining taxable property at the local level.

In addition, during tax year 1988 the State Appraisals Bureau levied \$12.7 million in taxes on interstate motor carriers. While we have no way to determine how much of this equipment is currently leased, leasing is a very common practice within the industry. If we assume one-third, then the state could expect a reduction of \$4.2 million for tax year 1989. As the knowledge spread that the way to get an exemption was to lease the equipment, we estimate that motor carrier tax collections would drop to near zero within no more than two years.

TDH/dpb