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Date

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION

The meeting was called to order by Senator Dan Thiessen at
Chairperson

8:00 a.m./~~2:22~~ on Wednesday, April 5, 19⁸⁹ in room 527-S of the Capitol.

All members were present except:

Committee staff present:

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

Conferees appearing before the committee:

Senator Eric Yost
Linton H. Bartlett, representing the City of Kansas City, Kansas
Arthur H. Griggs, Chief Attorney, Dept. of Administration
David Cunningham, Attorney-Department of Taxation
Rebecca Rice, representing Sovereign Group Inc.
Beverly Bradley, representing KS Association of Counties

Senator Dan Thiessen called the meeting to order and said the agenda today will be a hearing on SCR1622 and he called upon Senator Eric Yost.

SCR1622:A CONCURRENT RESOLUTION directing all county appraisers to reexamine each and every parcel of commercial property in which the valuation has been appealed by the owner of such property, and to adjust the appraisal for such property when appropriate to do so, in order to more accurately reflect fair market value.

Senator Eric Yost said we have heard a lot about the problems on classification and reappraisal, and I will speak about 4 of the WHEREAS'S in SCR1622 1. We are directing our county appraiser's to reconsider their practice of procedures of the way their laws are formed for property. 2. We are asking them to go out and take a look at their properties that have been appealed. 3. We are directing PVD and the Board of Equalization to correct any inaccurate appraisals that has come to their attention. 4. direct boards of county commissioners contracted with private firms or individuals to conduct all or part of those counties reappraisal efforts, to withhold final payment until the reappraisal has been done right.

Senator Martin told Senator Yost that he agreed with the 4 WHEREAS'S, but he has concerns about farm properties, he asked the Senator, if he would have a problem with adding to the bill. Senator Yost, said he had no objection to adding farm property.

Senator Francisco said in Sedgwick County, until the last few weeks, he hadn't heard anything from the farmers, and now they are saying, that they are pleased with the appraisal of the land, but the buildings have tripled.

Senator Montgomery moved to amend on line 16, by striking "for small business and commercial properties", seconded by Senator Petty. The motion carried.

After committee discussion The Chairman recognized Senator Montgomery.

Senator Montgomery moved to amend SCR1622 on line 4 by inserting after the word "efforts", "to be in compliance with K.S.A. 7914-36b, the legislature directs the Board of County Commissioners to carry through and review their contracts, seconded by Senator Martin. The motion carried.

Senator Martin moved to favorably pass SCR1622 as amended, seconded by Senator Montgomery. The motion carried.

The Chairman turned attention to SCR1621 and called upon Linton H. Bartlett, representing the City of K. C. KS.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION

room 527-S, Statehouse, at 8:00 a.m./~~pm~~ on Wednesday, April 5, 1989

SCR1621:A CONCURRENT RESOLUTION providing for a special committee to make a legislative study concerning the taxation of vehicles and motor carrier property.

Linton H. Bartlett said the city of K.C. KS feels that it is crucial that the formula for motor vehicle property tax receipts be modified because absent such modification the City stands to lose approximately \$2.5M in motor vehicle property tax receipts in 1991, based on preliminary reappraisal estimates. Because, of the negative impacts of reappraisal and classification, he said, they believe that SCR1621 is worthy of close study by an interim committee, and he urged favorable action of SCR1621. AH. I

The Chairman asked Don Hayward to review how SCR1621 effects the taxation of automobiles.

Don Hayward said the levy of automobiles, is based on an average mill levy, and he said, theoretically all the valuations statewide and locally, should go up, therefore the mill levy should go down, therefore there would be less property tax on vehicles.

Senator Langworthy moved to report SCR1621 favorable for passage, seconded by Senator Karr. The motion carried.

The Chairman turned attention to SB390 and HB2534. He said HB2534 was amended with the same provisions that are in SB390, and The Chairman said the conferee's could address both bills at the same time.

SB390:AN ACT relating to property taxation; concerning exemptions therefrom for governmental properties; amending K.S.A. 1988 Supp. 79-201a and repealing the existing section.

HB2534:AN ACT relating to property taxation; concerning exemptions therefrom; excluding grain from the procedural requirements of requesting a property tax exemption; amending K.S.A. 1988 Supp. 79-201, 79-201a and 79-213 and repealing the existing sections; also repealing K.S.A. 1987 Supp. 79-2113, as amended by section 313 of chapter 356 of the laws of 1988.

Chairman Thiessen called upon Arthur H. Griggs, Chief Attorney, Department of Administration.

Arthur H. Griggs said last week the Department received a letter from the Board of Tax Appeals, re: continued payment on order of the Tax Appeals in effect the ruling say's, where an entire building is leased by the State, that can be rendered a tax exemption for property tax. He said, he had always considered if we owned it, it was exempt from taxes, and if we leased it, the owner would be paying taxes on it. The district court referred to a case, handed down in 1982, and just reported this leased property was exempt from property taxation. He also pointed out, the exemption for property being leased, when the entire building is being leased by the State, that the wording should also be to local units of government. He said, the last page of his handout, shows what they have been able to find out on the impacts. Chart 1 lists, the only exemptions that have been granted, and this includes 5 buildings, with estimated 1989 taxes at \$213,971. Chart 2 shows 9 buildings, with estimated 1989 taxes at \$202,341 solely occupied by state agencies, which no exemption has been requested. Attachment 2

Mr. Griggs, recommended that SB390 be amended to provide that hereafter no retroactive tax refund or abatement be authorized for property being leased by a governmental unit unless the board determines that the abatement or refund amount accrues to the benefit of the leasing governmental unit. Mr. Griggs also suggested, to the committee an amendment to grandfather leases entered into before May 15, 1989, and he said, we also, recommended that the bill have a KS Register effective date.

Chairman Thiessen said if we grandfathered anything under lease right now, it would mean that that all could come in and get the exemption, that haven't already done so, wouldn't it?

Mr. Griggs said that is correct Mr. Chairman, that is why we recommended the retroactivity issue. After committee discussion The Chairman said we needed more

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time for discussion on the bills and, he felt we should recess and come back later to finish the meeting at 11:00 a.m.

David Cunningham, Department of Taxation, said the Department has not taken a position on the issue. He said he would simply like to point out, on page 10 and 11, lines 356 to 374 of HB2534, regarding grain exemption and the payment of taxes, which would help the board of appeals. He said, he would be glad to answer any questions regarding this section.

Senator Montgomery moved to adopt the minutes of March 23, 27, 28 and 29, seconded by Senator Karr. The motion carried.

Chairman Thiessen recessed the meeting at 8:55 a.m. until 11:00 a.m.

The meeting re-convened at 11:00 a.m.

Chairman Thiessen said we are still hearing HB2534 and called upon Rebecca Rice, representing Sovereign Group Inc.

Rebecca Rice said she had appeared before the committee before in opposition of the bill, and she said, they are still in opposition of HB2534 and she said, she does not have anything new in her testimony of today, but was pleased that more hearings have been held on the bill. Ms. Rice said, she would like to comment on a few things said by the conferees, before her. She said, as the committee is aware, if the committee adopts the policy position, that you will make your decisions of property exemptions, based on ownership, and not use, then you will have to expect to pay for the cost of that change. The commercial property owner's are concerned about what happened with the reappraisal, and the additional tax burden they will be picking up. She said, if her client had previously paid \$9,000, and looking at \$50,000 for this year, it would certainly get my attention, and if my client had this type of property tax jump, and had 2 more years on their lease, and I was told that I couldn't file for the exemption, I would certainly make the argument, that you had breached the contract, by changing the circumstances of that contract, I would certainly want to void that contract, and re-negotiate. (ATTACHMENT 3)

Chairman Thiessen asked Ms. Rice, if a lease that has been there for 5 years, and the lease was negotiated, was there any thought at that time, that it would be exempt from property tax?

Rebecca Rice said, as she understood it, most of the State has 5 year leases, and most of those leases are going to expire this year, and if you go back 3 years, on a lease that has 2 more years, the case passed a year ago, and that is what these extensions are based on, that case wasn't filed a year ago, it was filed at least a year in advance, so it becomes a question of fact, whether that property owner anticipating, that the Buchele case would be successful and he would get a property tax rebate, and then it is going to be the property owner, saying I very sincerely anticipated a property tax rebate, and the administration saying, we don't think that you did, and that is going to be very difficult to determine. It will leave the bench to decide if the state had changed the circumstances, since that lease was signed.

Senator Francisco asked Ms. Rice, if the court case was back in 1982, why did it take this long to surface?

Rebecca Rice said she didn't think the Buchele case was in 1982, which was the one that they relied upon. She said, when we purchased the property, the lease was standing, and at that time, the individual that we purchased the property from, said the case in court is going to pass and you will be able to get back \$160,000 worth of property taxes, and that sure made a difference on the purchase price of that property. So when the Buchele case went through, we filed our case before the tax appeals, and I assume there are many other's getting their cases ready before the board of tax appeals.

After committee discussion The Chairman recognized David Cunningham, Attorney for Board of Tax Appeals.

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Mr. Cunningham said the original case came out of Sedgwick County, by the Health Department on an Animal Shelter property, and that was back in 1982, and once that case was judicated by the court to be exempt, he said, the City of Wichita, in Sedgwick has subsequently requested that additional properties of similar nature, be exempted. They have applications pending. He said, the next significant case, is the Buchele case, and that is the one that dealt specifically with state use properties, and that wasn't an issue until about June of 1988, and that intended to trigger some of the other properties as well. The Buchele case did not go to district court, it was the original Wichita Animal Shelter case, that went to district court.

Chairman Thiessen recognized Beverly Bradley, KS Association of Counties.

Beverly Bradley said The Association of Counties does not have an official position, but they do have some concerns, that if the property owner is exempt from paying property taxes, so the leasing unit of government would be paying fewer dollars to have the lease, then what does that do to the other entities?

After committee discussion The Chairman recognized Senator Francisco.

Senator Francisco said he thought, the committee should recommend sending HB2534 to interim study to see how many properties would be effected and take a look at all leases the state has. The Senator, said he had a book showing state leased properties.

Senator Fred Kerr said, if we do an interim study on this, we won't need the bill, because then everybody would re-negotiate their leases, while they are still exempt under this case, because everything would be exempt. The Senator, felt we needed the amendment that Senator Petty had before us.

Senator Fred Kerr moved to adopt the proposed amendment to SB390 into HB2534, by inserting, "except that the provisions of this sentence shall not apply to any such property subject to lease on April 1, 1989, until the term of such lease expires", seconded by Senator Langworthy. The motion carried.

The proposed amend in the above motion is (ATTACHMENT 4)

Senator Francisco moved to amend on line 5 page 186 after the "period" by inserting "until term that such lease expires, but property prior to the 1989 tax year, shall not be abated or refunded", seconded by Senator Petty. The motion carried.

Senator Lee moved to pass HB2534 favorably for passage as amended, seconded by Senator Petty. The motion carried.

The Chairman adjourned the meeting at 11:53 a.m.

**TESTIMONY OF LINTON H. BARTLETT
REPRESENTING THE CITY OF KANSAS CITY, KANSAS
SCR NO. 1621**

The City of Kansas City, Kansas supports Senate Concurrent Resolution 1621 calling for an interim study on the effects of reappraisal and classification on motor vehicle property taxes.

The City of Kansas City, Kansas feels that it is crucial that the formula for motor vehicle property tax receipts be modified because absent such modification the City stands to lose approximately \$2.5 million in motor vehicle property tax receipts in 1991 (based on preliminary reappraisal estimates). This \$2.5 million represents approximately 3.5% of the City's current general purpose operating budget. The loss of this \$2.5 million would be the equivalent of losing funding for the City's Emergency Medical Service and municipal golf course operations.

Because of these significant negative impacts of reappraisal and classification on motor vehicle property tax revenues, not only for Kansas City, but for other cities in Kansas, the City of Kansas City, Kansas believes that this issue is worthy of close study by an interim committee and respectfully urges favorable action on SCR 1621.

Attachment 1
Senate Assessment and Taxation
April 5, 1987

ATT 2
4-5-

MEMORANDUM

TO: Shelby Smith, Secretary of Administration
FROM: Arthur H. Griggs, Chief Attorney *AG*
DATE: April 5, 1989
RE: Effect of SB 390 on State Leased Space

SB 390 eliminates a property tax exemption for facilities and personal property leased in their entirety by the state or by local subdivisions. Due to the short response time, detailed information regarding the effect of SB 390 on state agencies was not available. Hopefully, the following information will provide some indication of the scope of this issue.

BACKGROUND

In 1982, a district court found that real or personal property leased in its entirety by the state or any local subdivision was exempt from property tax liability under K.S.A. 79-201a Second. However, it appears that the availability of the exemption was not widely recognized for a number of years following the 1982 case. To the best of our knowledge, the Board of Tax Appeals granted only five exemptions to date involving state property, all of which were in the last 10 months.

REAL PROPERTY

Gary Smith, Shawnee County Appraiser, indicated in a telephone conversation that an exemption has been granted or requested for five properties leased by the state in Shawnee County. Attachment A contains a chart for those locations granted an exemption (Chart I), and a chart for other locations in Shawnee County which appear to be eligible (Chart II). The total property taxes associated with locations granted or requesting an exemption equal \$76,217. Taxes paid in 1988 for the remaining eligible locations in Shawnee County totalled \$61,762. Reappraisal will obviously change these amounts.

The state has not realized lower rental expenses in those instances in which an exemption has been granted. Some of the state's multi-year leases contain provisions for increasing rental charges in later years of the lease if property taxes increase. The leases do not address decreases in property tax. However, the state might be able to negotiate lower rental charges in the future if such exemptions become commonplace. Conversely, higher property taxes resulting from reappraisal would be passed through to the state if SB 390 is enacted.

PERSONAL PROPERTY

Although most of the exemptions granted to date have applied to real property, exemptions for personal property could also have a significant impact. I am aware of only two personal property tax exemptions which have been granted and another pending case before the Board of Tax Appeals. Both exemptions were granted to IBM; one was for computer hardware leased by the Wilson County Courthouse, and the other was for licensed software programs leased by Department of Administration, K.B.I. and Department of Health and Environment. The exemption for state-leased software was granted in June, 1988, retroactive to 1984. In 1983, the taxes assessed against the software were \$8,824.

Note that the state's purchasing practices generally include bid specifications which stipulate that successful bidders are responsible for any taxes due. Therefore, passage of SB 390 should not result in immediate pass-through of personal property tax expenses to the state .

RETROACTIVITY ISSUE

Under K.S.A. 79-213(m), the Board of Tax Appeals has the authority to abate all unpaid taxes from the beginning of the exempt use. If the taxes have been paid, the board has the authority to order a refund for a period not to exceed three years. As noted earlier, the state has not realized lower rents as a result of the exemptions that have been granted. For this reason, it is recommended that SB 390 be amended to provide that hereafter no retroactive tax refund or abatement be authorized for property being leased by a governmental unit unless the board determines that the abatement or refund amount accrues to the benefit of the leasing governmental unit. It is difficult to find any rational basis for a retroactive exemption that does not benefit the governmental unit.

RECOMMENDATION

Whether or not SB 390 is passed, it appears advisable for the Legislature to further study the topic of property tax exemptions for property leased by governmental units. Clearly, shifts in tax burdens that arise from reappraisal will impact state and local units of government. Except for tax shifts that arise from reappraisal, passage of SB 390 more closely retains the status quo because relative few exemptions have been granted to date for property leased by governmental and taxing subdivisions.

It is recommended that SB 390 be amended to address the retroactivity issue raised above. Also, because of pending negotiations on a major lease in Topeka, it is recommended that the bill be amended to grandfather leases entered into before May 15, 1989. Lastly, it is recommended that the bill have a Kansas Register effective date.

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AHG:FDL

Chart I
Exempt Property

<u>Address</u>	<u>Agency</u>	<u>1988 Taxes</u>	<u>Estimated 1989 Taxes</u>
2016 S.W. 37th	Agriculture (Weights & Measures)	\$ 3,299*	\$ 6,952
1620 Tyler	KBI	39,785	113,575
235 Kansas	SRS	4,645	48,322
107 S.W. 10th	Administration (Storage)	4,598	3,511
106 E. 10th	Education	23,890**	41,611
	TOTAL	\$76,217	\$213,971

*Have
these
gone
pending*

* Taxes last paid in 1987; exempted in 1988.

** Exemption request pending.

Chart II
Property Not Exempted *

<u>Address</u>	<u>Agency</u>	<u>1988 Taxes</u>	<u>Estimated 1989 Taxes</u>
1016 N. Kansas	Administration	\$ 1,397	\$ 1,547
512 W. 6th	Human Resources (ABC)	9,899	49,516
417 Jackson	Human Resources (Storage)	1,632	3,128
400 Van Buren	Central Motor Pool	5,004	6,829
1208 Kansas	Grain Inspection	1,811	1,882
122 S.W. 7th	Highway Patrol	2,409	13,094
420 W. 9th	Insurance Dept.	24,303	40,339
128 N. Kansas	Lottery & Racing Commission	6,095	69,657
625 Polk	Administration (Arch. Serv.)	9,212	16,349
	TOTAL:	\$61,762	\$202,341

*To be
50%
for
for*

* Property occupied solely by state agencies for which no exemption has been requested.

NOTE: 1989 estimated taxes as based on .124 mill levy.

TESTIMONY TO THE
SENATE ASSESSMENT & TAXATION COMMITTEE

ON

Wednesday, April 5, 1989

HOUSE BILL 2534

Mr. Chairman and Members of the Committee:

My name is Rebecca Rice and I represent Sovereign Group Inc. We appear in opposition of HB 2534 as amended by the House Committee of the Whole in Section 2.

1) The proposed legislation would eliminate the current ad valorem property tax exemption for all property leased to the State of Kansas by private individuals.

This would effect not only real property leased to the State but would also remove all personal property leased by the State from exempt status. Otherwise, there would definitely be unequal treatment of the owners based solely upon an unconstitutional classification.

2) The law as amended would create an unconstitutional classification of property based upon ownership and not on use of the property.

Because the statute later provides that any property financed by industrial revenue bonds is exempt, the classification would discriminate among private, commercial ventures with the exact same use, based upon the type of financing which the owners of that venture obtain.

This classification would violate the "uniform and equal assessment and taxation" requirement of Article II, Section 1 of the Kansas Constitution.

3) The realistic effect of the removal of the exemption by the State could definitely be argued to be action taken by the State to cause lessors increased costs associated with their leasing the property to the State. This state action could be argued to be a breach of the covenant of good faith dealing as read into each and every lease. If the leases become totally unprofitable to the lessor because of the State's action, the lessors could all bring suit to have a court of law set the leases aside or require that the State pay the increased cost that they caused.

If the lessors have an increased, unanticipated cost, they will definitely attempt to get out of the leases and create havoc with the State's leasing of private property.

4) Due to changes in the Federal Tax Laws, the landlords (who are private individuals and entities) do not lease their properties so that they can take a loss on them. If the properties are no longer tax exempt, the cost of paying those taxes will be absorbed by the State in higher lease payments.

5) The statute, as it is, applies only to properties where the sole tenant is the State. If any other tenants are present the exemption is not available. Therefore, the state will end up paying the taxes on property which is used solely for state purposes contrary to the intent of the legislation.

In Summary:

THE REALITY of this change is that the State will either:

1) end up paying the taxes in higher lease rates, thereby defeating the purpose of the statute to exempt State property; or

2) private individuals and entities will stop leasing to the State which would require the State to purchase buildings which defeats the budgetary reasons behind leasing property.

Thank you Mr. Chairman.

Proposed Amendment to SB 390

On page 1, in line 35, before the period by inserting "except that the provisions of this sentence shall not apply to any such property subject to lease on April 1, 1989, until the term of such lease expires"