Approved Thursday, March 7, 1991
Date

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION.

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

11:00 a.m./~~p.m.~~ on Tuesday, February 26, 1991 in room 519-S of the Capitol.

All members were present except:

Committee staff present:
Don Hayward, Assistant Revisor
Bill Edds, Assistant Revisor
Tom Severn, Research Department
Chris Courtwright, Research Department
Marion Anzek, Committee Secretary
Conferees appearing before the committee:
Mark Beshears, Property Valuation, Director-Department of Revenue
Jay Kretzmeier, Public Accountant, Iola, KS
Dick Randall, Attorney-Wichita, KS
Lee Banks, KS Independent Oil & Gas Operator

Chairman Dan Thiessen called the meeting to order at 11:12 a. m. and told the members they have minutes before them, dated February 20, 1991 and he would call for a motion at the end of the meeting.

The Chairman turned attention to the agenda for today, and said we will hear SB212, SB213, SB214, SB215 and SB216 and he said, to accommodate a conferee we will hear SB215 first.

SB212:AN ACT concerning transient guest tax; relating to the due date of returns and penalties for the late filing thereof.

SB213:AN ACT relating to sales taxation; concerning duties of retailers.

SB214:AN ACT concerning the taxation of marijuana and controlled substances; requiring a hearing in accordance with the Kansas administrative procedure act.

SB215:AN ACT relating to withholding and estimated tax; altering the method by which penalties are computed; making certain individuals responsible for the payment of taxes.

SB216:AN ACT relating to the mineral severance tax; defining certain terms; providing a statute of limitations for refund claims; authorizing interest on certain delinquent taxes.

The Chairman asked Mark Beshears, Director of Property Valuation Department, if he would comment on SB215.

Mark Beshears said SB215 does (3) things, and he said (1) of those things is basically a technical change which changes from 80% to 90% the amount of tax to be paid to avoid an underpayment of estimated tax penalty. (2) The bill more clearly defines the liability of individuals who are responsible for the collection and remittance of the withholding tax. (3) The bill requires the purchaser of a business to withhold a sufficient amount of the purchase price to cover any withholding tax which may be due and owing from the seller. He said, the purchaser would be personally liable for the unpaid tax to the extent of the value of the property of the seller. (ATTACHMENT 1)

Chairman Thiessen asked Mr. Beshears, how the purchaser would know that the liability is there? Mr. Beshears said anyone who is purchasing a business, would determine exactly, as that is what part of the liabilities are.

Senator Don Montgomery told Mr. Beshears that if he really believed that, then he thought, it should be written in the bill.

Jay Kretzmeier, Public Accountant from Iola, KS said he was appearing today in opposition

to SB215. He said in 1984 the federal government in the Tax Reform Act of 1984 changed dramatically its law pertaining to underestimated tax penalties effective for calendar year taxpayers, beginning in the year 1985. He said, the federal law reduced the underestimation tax penalty exceptions to: (1)Payments equaling or exceeding the prior years income tax liability. (2) Having no income tax liability existing for the prior year. (3) Estimated tax below a de minimis amount ($500.00).

He said, the State of Kansas did not conform with these federal changes in 1985, and in 1989 Kansas enacted legislation, relating to estimated tax penalties which repealed (4) exceptions and replaced those (4) with (2) exceptions:(1) Estimated tax payments exceed the tax shown on the iondividual's state income tax return for the preceding year, but only if the return showed a liability for that preceding year. (2) A percentage of tax computed on an annualized basis.

Mr. Kretzmeier offered a proposed amendment with his handout. (ATTACHMENT 2)

Mark Burghart said the Department was going to offer basically the same amendment.

The Chairman concluded hearings on SB215 and turned attention to SB212.

Mark Burghart said SB212 is basically the same thing that was considered in this committee last year, which was SB496, which passed the Senate 39-0. He said, the bill provides two changes to the transient guest tax statutes. (1) the bill changes the filing date and (2) changes the failure-to-file period. (ATTACHMENT 3)

Senator Fred Kerr asked what happened to the bill in the House last year. Mark Burghart said it died in the House Committee.

After committee discussion on the bill Chairman Thiessen concluded hearings on SB212 and turned attention to SB213.

Mark Burghart said SB213 contains several proposals advanced by the Department of Revenue in order to either, (1) clarify the law in certain problem areas; or (2) eliminate certain unnecessary procedures. This procedure just takes out a lot of duplications.

He said, retailers very seldom show up at these revocation hearings, and under SB213 the revocation procedure is eliminated and the director is accorded authority to proceed directly to district court to enjoin a deliquent vendor's retail business on the basis of a "violation of (the retailer's sales tax) act". (ATTACHMENT 4)

Tom Severn asked, if a taxpayer wanted an informal hearing, would the Department propose not to provide one? Mark Burghart said if the taxpayer wants to come in and explain why they are in arrears, certainly we are willing to listen. He said, it takes a lot of work and time to get them in, and most don't come in anyway.

Senator Lana Oleen asked Mark Burghart if they have a hearing officer that is assigned to this, and if he had 20 hearings how long would this take. Mark Burghart said yes, and he said they have been setting up about 50 hearings a week, and we might need about (2) or (3) people.

Mark Burghart introduced Tom Sheridan, Chief auditor with the Department of Revenue, who would like to comment.

Tom Sheridan said essentially the use of a waver is used by our auditors in order to give the taxpayers plenty of time to get the information together and to us. So about 90% plus of the time that we get a waiver is because of the taxpayer. (NO ATTACHMENT)

Chairman Thiessen concluded hearings on SB213 and turned attention to SB214. Mark Burghart said he did not have a handout, regarding SB214 and The Chairman asked him to speak on SB216.

Mark Burhart said SB216 makes several changes in the statutes relating to the administration of the mineral severance tax.

He said, (1) "Sale price" is defined to be the total cost to the first purchaser including tax reimbursement, transportation and gathering, dehydration, sweetening and compression costs. (2) "Disruption in production" is, in the case of oil, defined to be a continous 24-hour period in which a well is not producing. (3) The bill limits the exemption for gas and oil which is inadvertently lost by reason of leaks, blowouts or

other accidental losses to those losses which occur on a lease. (4) The statute of limitations for refunds is amended to provide that a refund claim must be filed within three years from the date the return was filed, or one year after the assessment is made. (5) We have a similar 48 months interest on the due date in the severance tax area.(ATT. 5)

Chairman Thiessen recognized Dick Randall, Attorney from Wichita, KS.

Dick Randall said, he did not believe that KIOGA was consulted by the Department of Revenue when this bill was drafted, and he said, they were made aware of it only last week. He said, a copy of his statement was passed out to the members of the committee, and he introduced Lee Banks, Chairman of the KIOGA Natural Gas Committee. (ATTACHMENT 6)

Lee Banks, an independent oil and gas operator in the state of KS, said he has no particular problem with amendments under SB216 as drafted except for the definition of "sale price" page 2, paragraph (m), lines 34-36, and those sections addressed by Mr. Randall in his handout. He said, this bill was apparently drafted at the request of the Mineral Tax Section of the KS Department of Revenue and to his knowledge, no oil or gas producer or operator offered any suggestions or input to the drafting.

He urged the committee members to oppose SB216. (ATTACHMENT 7)

Chairman Thiessen adjourned the meeting at 12:28 p.m.

GUEST LIST

COMMITTEE: SENATE ASSESSMENT & TAXATION DATE: Tues 2-26-81

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
R. D. Randall	Wichita, Ks	KIOGA
Lee Banks	" "	Self & KIOGA
Mark Crandall	Topeka	Revenue
Terry Guy	Meriden	Revenue
Tom Sheridan	Topeka	Revenue
Della Wray Blythe	Manhattan	Self
John Blythe	"	"
T. C. Anderson	Topeka	KSCPA
Jay Barber	Topeka	KS Hotel assn
Ken Peterson	" "	KS Petroleum Cncl
[illegible]	Salina	PAAK
Kristy Herman	Lenexa	Lenexa Convention & Visitors Bur.
Patty M Sloan	Lenexa	Lenexa Chamber
Joy Kretzmeier	Iola, Kansas	Self
[illegible] McBride	Topeka	Observer
R ANDERSON	OTTAWA	MID CONT
Wendell STROM	Topeka	AARP-CCTF

KANSAS DEPARTMENT OF REVENUE
Office of the Secretary
Robert B Docking State Office Building
915 SW Harrison St
Topeka Kansas 66612-1588

MEMORANDUM

To: The Honorable Dan Thiessen, Chairman
Senate Committee on Assessment and Taxation

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

Date: S.B. 215

Subject: February 26, 1991

Thank you for the opportunity to appear in support of S.B. 215. The bill makes one technical and two substantive changes in the statutes relating to the collection of withholding and estimated tax. The changes are detailed below:

1. The bill increases from 80% to 90% the amount of tax to be paid to avoid an underpayment of estimated tax penalty. This is a technical change which should have been made in 1989 when related statutes were amended.

2. The bill more clearly defines the liability of individuals who are responsible for the collection and remittance of the withholding tax. Any person who has control, receipt or custody of funds due and owing the state and who fails to pay the amounts over shall be personally liable for the unpaid tax. The language is substantially similar to that contained in the sales tax act. This additional language will assist the Division of Collection in its efforts to collect taxes due and owing the state.

3. The bill requires the purchaser of a business to withhold a sufficient amount of the purchase price to cover any withholding tax which may be due and owing from the seller. The purchaser would be personally liable for the unpaid tax to the extent of the value of the property of the seller. If the seller does not show proof of payment of the taxes within 20 days from the date of sale of the business, the purchaser shall remit the amount of the unpaid taxes to the Director of Taxation. Again this provision is similar to one which exists for sales tax. Absent this provision, there is no statutory authority to transfer the liability for unpaid taxes to the purchaser of a business.

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

2-26-91
Att. 1

ORVILLE L. KRETZMEIER (1920-1978)
C. DUANE McCAMMON
JAY D. KRETZMEIER

KRETZMEIER & McCAMMON
PUBLIC ACCOUNTANTS
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Area Code 316
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February 25, 1991

State of Kansas
Senate Committee on Assessment and Taxation
State Capitol
Topeka, Kansas 66612

Dear Committee Members,

I am a practicing public accountant and enrolled agent residing in Iola, Kansas. In the course of my accounting practice I have become aware of a relatively recent change in Kansas Statutes Annotated that places many Kansas taxpayers in undue hardship and in a position of statutory penalty assessment in circumstances for which the taxpayer may have absolutely no control. I have brought this to the attention of my legislative representative in January of this year. He has made me aware of the hearing today on Senate Bill No. 215 and has encouraged me to bring forth my testimony.

Please bear with me if I misquote a citation of Kansas law, I am not an attorney and do not pretend to have total knowledge about our Kansas statutes. I believe I will be able to get close enough to the problem to describe it so that you can understand the nature of this inequity.

SUBJECT & HISTORY

INDIVIDUAL ESTIMATED TAX PENALTIES

In the year 1984 our federal Internal Revenue Code and our Kansas individual income tax law contained provisions requiring the payment of estimated income taxes. Included in these laws were penalties for failure to pay estimated taxes at prescribed times. Additionally, to avoid hardship both federal and state law contained four (4) exceptions to the underestimated tax penalties.

The federal government in the Tax Reform Act of 1984 changed dramatically its law pertaining to underestimated tax penalties effective for calendar year taxpayers beginning in the year 1985. At that time the federal law reduced the underestimation tax penalty exceptions to:

2-26-91
ATT. 2

1) Payments equaling or exceeding the prior years income tax liability.

2) Having no income tax liability existing for the prior year (and the prior year consisted of a full 12 month period).

3) Estimated tax below a de minimis amount ($ 500.00).

The state of Kansas did not conform with these federal changes in 1985 and continued to provide four (4) exceptions to the underestimated tax penalty under its tax law. Those four exceptions were:

1) Estimated tax payments which exceeded the prior years tax.

2) Tax using prior year's income using current year's rates and exemptions.

3) Tax on annualized Income.

4) Tax on current year's income over 3, 5, and 8 month periods.

These provisions provided "safe harbor" in most instances and avoided hardship in many cases.

In 1989 Kansas enacted legislation Ch. 296 Laws 1989 changing K.S.A. 79-32,107 relating to estimated tax penalties and **effective July 1, 1989.** This repealed the four (4) exceptions above and replaced it with (2) exceptions. These exceptions are:

1) Estimated tax payments exceed the tax shown on the individual's state income tax return for the preceding year **(But only if the return showed a liability for that preceding year.)**

2) A percentage of tax computed on an annualized basis.

INEQUITY & UNDUE HARDSHIP

The sentence in bold type above is not in conformity with federal law and is responsible for inequity and undue hardship to many Kansas taxpayers.

An individual who had no Kansas income tax liability in a prior year and who receives substantial income from sources late in the tax year can not avoid a Kansas underestimated tax penalty under any circumstance, even if they tried to do so. The prior year's tax exception is not available. The recomputation of the penalty using the

annualized method still results in penalty since tax is annualized over the entire year and allocated to the estimated tax due dates early in the year.

EXAMPLES & CITATIONS

I am witnessing an elderly Kansas couple who are quite aged, and reside in nursing homes. Their income in recent years has been sufficiently low that no Kansas Income Tax liability has existed. In December of 1990, my client the Conservator, advises that the taxpayer's farm real estate must be sold to provide liquidity for the conservatee's personal care. We learn in December that there will be a taxable gain on the sale of the farm real estate in the amount of $ 76,000.00. There will be no federal underestimation tax penalty. There will be no way to avoid the Kansas underestimation tax penalty.

I witnessed a taxpayer who in 1988 was not classified a farmer for estimated tax purposes, who experienced a poor year and had no 1988 Kansas tax liability. This taxpayer then late in 1989 sold all of his equipment and land. His Kansas underestimation tax penalty for 1989 was $ 631.00.

There are many self-employed taxpayers who experience net operating losses, have no Kansas income tax liability and have no avenue for safe harbor under Kansas estimated tax law for the ensuing year.

The reason that I have come before you today is that you are considering in Senate Bill No. 215, making changes to K.S.A. 79-32,107 to further restrict estimated tax requirements from 80% to 90% of the tax shown on a taxpayer's income tax return. I am not opposed to that specific change. It brings Kansas into conformity with federal law. It does however, compound the inequity and hardship that I have brought before your attention today. Accordingly, I speak in opposition of the Senate Bill No. 215 as it is written. I urge you to consider including an amendment to this Bill to provide Kansas taxpayers with an avenue of safe harbor.

PROPOSED SOLUTION

I urge you to amend Kansas statutes to bring them into conformity with federal statutes on this matter. Code Section 6654(e) of the 1986 Internal Revenue Code sets out federal exceptions as follows:

(e) EXCEPTIONS-
(2) WHERE NO TAX LIABILITY FOR PRECEDING TAXABLE YEAR - No addition to tax shall be imposed under subsection (a) for any taxable year if-

(A) the preceding taxable year was a taxable year of 12 months,

(B) the individual did not have any liability for the preceding taxable year, and

(C) the individual was a citizen or resident of the United States throughout the preceding taxable year.

I would propose that this conformity may be accomplished in Kansas Law by including in the legislation that is before you today, an amendment to K.S.A. 79-32,107(b)(1) eliminating the strikeovers as follows: "The tax shown on the return of the individual for the preceding taxable year, ~~if a return showing a liability for tax was filed by the individual for the preceding taxable year~~ and such preceding year was a taxable year of 12 months;

I thank you for your time and consideration of this matter which at some time may affect all Kansas taxpayers and I urge you to effect legislative relief to resolve this hardship.

Very truly,

Jay Kretzmeier

KANSAS DEPARTMENT OF REVENUE
Office of the Secretary
Robert B Docking State Office Building
915 SW Harrison St
Topeka Kansas 66612-1588

To: The Honorable Dan Thiessen, Chairman
Senate Committee on Assessment and Taxation

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

Date: February 26, 1991

Subject: S. B. 212

Thank you for the opportunity to appear and express the Department of Revenue's support for S.B. 212. The bill is identical to 1990 S.B. 496 which passed the Senate 39-0. It provides for two changes to the transient guest tax statutes. First, the bill changes the filing date from on or before the last day of the month immediately succeeding the month in which the tax is collected to on or before the 25th day of the month immediately succeeding the month in which the tax is collected. The filing date would then be the same as for sales tax returns.

The bill also changes the failure-to-file period for imposition of a 25% negligence penalty from 30 days after notice of the delinquency to 60 days of the return's due date. This change would make the transient guest tax penalty and interest provisions identical to the sales tax penalty and interest provisions. The conformity measure should eliminate taxpayer confusion, thereby increasing compliance and efficiency.

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

2-26-91
AT-3

KANSAS DEPARTMENT OF REVENUE
Office of the Secretary
Robert B Docking State Office Building
915 SW Harrison St
Topeka Kansas 66612-1588

MEMORANDUM

To: The Honorable Dan Thiessen, Chairman
Senate Committee on Assessment and Taxation

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

RE: Senate Bill No. 213

Date: February 26, 1991

Senate Bill 213 contains several proposals advanced by the Department of Revenue in order to either (1) clarify the law in certain problem areas; or (2) eliminate certain unnecessary procedures. Each of the proposed changes is identified and described below.

Elimination of Revocation Hearing

Under current law, the Director of Taxation is accorded authority to revoke a delinquent vendor's sales tax permit after notice and hearing. Once revocation is accomplished, the director may proceed to district court to enjoin the delinquent taxpayer from engaging in retail business. Very few retailers ever appear at the revocation hearings. The revocation procedure has had little success in correcting delinquent accounts, is not cost effective and is not constitutionally required.

Under S.B. 213, the revocation procedure is eliminated and the director is accorded authority to proceed directly to district court to enjoin a delinquent vendor's retail business on the basis of a "violation of [the retailer's sales tax] act." Several other states, including Arizona and West Virginia, provide for similar injunction proceedings based on violation of their sales tax statutes.

Exemption Certificates

During the course of business, a retailer may fail to obtain proof of a purchaser's exempt status, despite requirements that the retailer do so at the time of the sale. When this failure is discovered on audit, the auditor will allow the retailer a period of time to produce the required exemption certificates. All too frequently, however, the retailer is slow to comply with the auditor's request and the matter is delayed for an unreasonably long period of time. This bill would shorten the audit and appeal process by making retailers liable for sales tax on their untaxed sales unless they secure exemption certificates

2-26-91
Att. 4-1

from the purchasers within 60 days of receipt of notice form the Director of Taxation.

48 Month Interest Limitation

Under present law, interest is tolled after 48 months from the due date of the return if the taxpayer has by agreement extended the period for making an assessment or filing a claim for refund. This provision causes delays in processing appeals because after a certain point in time, a taxpayer has no incentive to move the appeal through the process. S.B. 213 would eliminate the 48 month interest limitation. The Legislature repealed a similar limitation for interest on income taxes in 1980.

Statement of Tax on Invoice

If an invoice which is audited does not separately identify the amount of sales tax collected, it is extremely difficult for an auditor to determine whether sales tax was collected on the sale or sales tax is included in the invoice total. S.B. 213 would require that sales tax be separately stated on the invoice or that the invoice contain a statement that "all applicable sales tax is included." If this information is not included on the invoice, then it would be presumed that the tax has not been collected.

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

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Office of the Secretary
Robert B Docking State Office Building
915 SW Harrison St
Topeka Kansas 66612-1588

MEMORANDUM

To: The Honorable Dan Thiessen, Chairman
Senate Committee on Assessment and Taxation

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

Date: February 26, 1991

Subject: S.B. 216

Thank you for the opportunity to speak in support of S.B. 216. The bill was proposed by the Department of Revenue and makes several changes in the statutes relating to the administration of the mineral severance tax. The various provisions of the bill are detailed below.

1. "Sale price" is defined to be the total cost to the first purchaser including tax reimbursement, transportation and gathering, dehydration, sweetening and compression costs. Under existing law, the mineral tax is imposed on the gross value of the production when it is removed from the lease. Certain first purchasers deduct these various costs when determining the proper amount to be remitted to the state. The proposed language merely codifies what we believe the original intent of the mineral severance tax legislation to be in 1983.

2. "Disruption in production" is, in the case of oil, defined to be a continuous 24-hour period in which a well is not producing. Days where there has been a disruption of production are not included in computing the average daily production for exemption purposes. This definition represents the policy which has evolved in this area over the past 8 years. In the case of gas, a continuous one-hour period in which a well is non-producing will be deemed to be a disruption of production.

3. The bill limits the exemption for gas and oil which is inadvertently lost by reason of leaks, blowouts or other accidental losses to those losses which occur on a lease. Several large taxpayers have reduced the gross volume of gas removed from a lease by significant amounts of line losses. Since the tax is to be imposed on the gross value of the production when it is removed from the lease, the deduction of losses which occur <u>off</u> the lease should be disallowed.

4. The statute of limitations for refunds is amended to provide that a refund claim must be filed within three years from the date the return was filed, or one year after the assessment is made, whichever is the later date.

2-26-91
ATT 5-1

5. Under present law, interest is tolled after 48 months from the due date of the return if the taxpayer has by agreement extended the period for making an assessment or filing a claim for refund. This provision causes delays in processing appeals because after a certain point in time, a taxpayer has no incentive to move the appeal through the process. S.B. 216 would eliminate the 48 month interest limitation. The Legislature repealed a similar limitation for interest on income taxes in 1980.

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

February 26, 1991

TO: Senate Assessment & Taxation Committee

RE: SB 216 (Opposed)

I am Dick Randall, an oil and gas attorney from Wichita, Kansas. I am Chairman of the Legislative Committee of the Kansas Independent Oil and Gas Association and am appearing in opposition to SB 216.

I believe KIOGA was not consulted by the Dept. of Revenue when this bill was drafted and we were made aware of it only last week. We have not had time to assess its full impact on our industry. It clearly is designed to change the original severance tax law and to increase severance tax collections on Kansas natural gas production.

Paragraph (m) on page 2 (lines 34-36) is an addition to KSA 79-4216 to define "Sale Price" used in calculation of the severance tax on oil and gas production. In practice it will impact only the tax on natural gas.

We oppose the definition of "Sale price" in paragraph (m) for the following reasons:

1. It goes beyond the severance tax concept of taxing oil and gas production at the time of severance from the earth, at the "sale price" paid to the working interest and royalty interest owners. (See Section 1, paragraph (d) "gross value"---page 2, lines 25 & 26.)

2. It goes beyond the legislative intent in 1983, which was that gross value was the price received by the producers before deduction of taxes and operating or other costs.

3. It goes beyond the current severance tax statute by re-defining "sale price" as the "total cost" to the first purchaser, including gathering transportation, compression and other costs, most of which are incurred off the lease or production unit.

4. It goes beyond the current severance tax concept of taxing the value of the minerals severed and adopts a "value added" tax concept by taxing a "pseudo or inflated" value by adding to the sale price expenses incurred by the first purchaser (beyond the lease or production unit) in its sale of the gas to the ultimate consumer.

5. It goes beyond the severance tax concept of taxing only the price received by the working and royalty interest owners which they control, and imposes an additional tax on them based on expenses incurred by the first purchaser which they do not receive and cannot control.

2-26-91
ATT. 6-1

6. It goes beyond the severance tax concepts of simplicity, equality, and certainty by imposing complicated expense calculations on the first purchaser which the working interest and royalty interest owners are legally responsible for the correctness of, and not the first purchaser.

7. Calculating the additional severance tax on the value added above the actual sale price would be an administrative nightmare and would condemn the natural gas industry to continual auditing by the State of Kansas. Overpayment of the tax could only be legally challenged by proof not known by, and not readily available to, the working and royalty interest owners.

KIOGA does not oppose the addition of paragraph (n) to Section 1, which is a more specific definition of "disruption of production" for the low production exemption calculations for both oil and gas leases. This draft includes some good clarification concepts, but should be improved for gas. KIOGA will have more specific suggestions for such improvements in later comments.

KIOGA can accept the additional wording on page 4, line 4, and on page 5, line 11. We can also accept the shortened deadline for perfecting our right to refunds of tax improperly assessed on page 7, lines 1 through 3.

KIOGA does oppose the deletion on lines 16, 17, and 18 on page 7 which prohibits the 48 month limitation on interest due in agreements made by the director.

In conclusion, it is KIOGA's contention that Kansas natural gas production is unfairly overtaxed now and it needs immediate relief. Natural gas is a competing fuel with oil and yet it pays a severance tax of 7% while oil pays only 4.3%. Both minerals are subject to ad valorem taxes, but gas also pays a higher ad valorem tax as a percent of gross income.

Kansas natural gas also pays higher total taxes (severance and ad valorem) than natural gas produced in any bordering state. At the same time, the average sale price of Kansas natural gas is lower than the average price of gas produced in any bordering state.

It would be a grave injustice to Kansas working interest and royalty interest owners of natural gas leases to artificially increase the severance taxes they now pay. All principles of tax equity and fairness show that the severance tax paid on Kansas natural gas should be reduced to 4.3%, as paid by oil production.

I urge you to vote against SB 216 for these reasons. Thank you.

Richard D. Randall, Chairman
KIOGA Legislative Committee

February 26, 1991

TO: Senate Assessment & Taxation Committee

RE: SB 216 (Opposed)

I am Lee Banks, an independent oil and gas operator in the state of Kansas for the past 31 years, d/b/a Banks Oil Company. I am also Chairman of the KIOGA Natural Gas Committee.

At the outset, let me state that I have no particular problem with the amendments under SB 216 as drafted except for the definition of "sale price", page 2, paragraph (m), lines 34-36, and those sections addressed by Mr. Randall in his comments.

It must be understood that this bill was apparently drafted at the request of the Mineral Tax Section of the Kansas Department of Revenue and, to my knowledge, no oil or gas producer or operator offered any suggestions or input to the drafting of same.

With that in mind, I oppose the inclusion of the "sale price" definition on the basis that there is no need for an additional definition or counter definition. KSA 79-4216 under Section 1 (d) sufficiently defines the legislative intent of "gross value" which means the sale price of oil or gas at the time of removal of the oil or gas from the production unit. This same "gross value" usage is also compatible with the assessment sections of KSA 79-4217, found in SB 216 on page 3, lines 9-13, which has not been amended.

It should be mentioned that should said "sale price" definition be accepted as now drafted as an amendment, it would only be applicable to gas and not oil. Gas is presently burdened with a 7% severance tax as compared to oil at 4.3%. Certainly there is no justification for this spread or difference, particularly when considering that gas no longer has any severance tax rebate from gas purchasers, a practice that prevailed at the time the severance tax law was enacted.

It is also an erroneous conclusion that gas wells operate at a lesser cost than oil wells, particularly when considering that gas wells in the stripper stage have pumping units installed in most instances, along with additional compressor charges. This being the case, operational costs for gas can well exceed the operational costs for oil.

In other words, today's gas producer is presently burdened with a far greater severance tax than oil and should the "sale price" amendment be approved, additional tax could be payable over and above the 7% the producer now pays as severance tax based on the "gross value" or sale price of gas at the well head.

It should also be understood that the "sale price" definition also imposes an additional expense or cost to the royalty owner. Let it again be stated that Kansas now has the highest total taxes in the nation (severance and ad valorem). Certainly, no additional add-ons can be accepted.

2-26-91
Att. 7-1

In consideration of the other amendments as proposed, I agree with the need for a definition for "disruption of production" as recited on page 2, line 37, of SB 216. Certainly, since the advent of gas spot marketing, much confusion and lack of clarity prevails when attempting to determine the intent of the legislature regarding the severance tax exemption for gas wells. KSA 79-4217, Sec. 2, (b), (1), (D), found in SB 216, page 3, lines 38-42, grants an exemption from tax when "severed from a well having an average daily production during a calendar month having a gross value of no more that $81.00 per day, which well had not been significantly curtailed by reason of mechanical failure or other disruption of production;"

The definition for "disruption of production" as proposed should suffice, although brief in its definition.

I urge you to vote against SB 216 in its present form.

Thank you.

Lee Banks, Chairman
KIOGA Natural Gas Committee