

Approved Wednesday, May 15, 1991  
Date

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION

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

11:00 a.m./~~pm~~ on Thursday, April 4, 1991 in room 519-s of the Capitol.

All members were present except:

Senator Don Montgomery (Excused)

Committee staff present:

Don Hayward, Assistant Revisor

Bill Edds, Assistant Revisor

Tom Severn, Research Department

Chris Courtwright, Research Department

Judy Kruse (tape recording) for Marion Anzek, Committee Secretary (in absentia)

Conferees appearing before the committee:

Gary Smith, Shawnee County Appraiser

David Cunningham, Director of Property Valuation Dept. KS Dept. of Revenue

Eric Rucker, Shawnee County Commissioner

Jonathan Small, KS Automatic Merchandising Association

Chairman Dan Thiessen called the meeting to order at 11:20 a.m. and said the agenda today is SB305 and he said, we also have a conferee from Shawnee County to speak regarding a request for an amendment for an extension of time for informal hearings on appeals of valuations of real property, before we go to the scheduled agenda. He recognized Gary Smith, Shawnee County Appraiser.

Gary Smith said he was in a meeting this morning with the Shawnee County Commissioners, and at the present time Shawnee County is looking at appeals through June and into July of 1990. He said the statute requires that we be finished with this process by May 1st, and he said there is no way that we can do this.

He said they would like to request that the committee find some method or rule or bill to allow the Director of Property Valuation to extend those hearings. He said, at the present time P.V.D. does not have the authority and will not extend our hearings for us, and this is causing a great deal of problems for the taxpayers. (NO WRITTEN TESTIMONY)

Chairman Thiessen said he thought in the past that they had given extensions like that.

Gary Smith said that is true, and he said, that is what he was relying on when he requested the extension. He said, the Director said, in this case he has already issued an extension and in this particular Opinion he cannot add an extension for mailing of notices.

Mr. Smith said they felt maybe that particular Opinion would also extend to the hearings.

Mr. Smith said, he hoped the committee could understand why they should have until June or July to send out 100% notices.

Senator Jack Steineger asked Mr. Smith why they were not able to schedule the hearings?

Gary Smith said they sent out notices prior to April 1st, as the law requires, and at the present time, he said they have over 3,000 appeals and they are working their entire staff of about 10 appraisers, every 15 minutes and there is just no way they can do it.

Senator Phil Martin said he does not know how many counties have sent out 100% notices but he does not believe there would be very many, and he said, he thought the term was "to send notices where there were changes in market value".

Senator Karr asked Gary Smith if he was asking for some kind of emergency law, or what is it he is asking for and The Senator said it was not clear to him what, he is asking for? Gary Smith said basically they are asking for this committee to give the Director of Property Valuation some latitude to grant extensions in appeals if the situation warrants it. Senator Karr said in regards to all of these notices, he asked "are the people that are filing or asking, do they have that minute or significant change?" Gary Smith said he did not know but assumed, they do. He said, one gentleman told him he had a 40% increase from last year, but admits that is probably what should have happened in the 1st place and where it should have been the 1st time we appraised it.

Eric Rucker, Shawnee County Commissioner said the statute sets out a due process procedure that the taxpayers can go through if they are going to appeal their property taxes. He

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room 519-S, Statehouse, at 11:00 a.m./~~p.m.~~ on Thursday, April 4, 1991.

said, the short way of saying what Mr. Smith is attempting to get across to you is, if time limits are not extended then a portion of that due process is eliminated, and we would in fact be circumventing a portion of the state statute that was envisioned to be circumvented, and the taxpayers can rightfully come back to the county commission and indicate we did not get our initial hearing, and why not? He said then they have to say in return, it's that same state law promulgated, Rules and Regulations interpreted by the Director of Property Valuation Department, who is rightfully trying to abide by State Law and we don't have enough time to hear all of the appeals guaranteed by that same State piece of State Extension.

Senator Martin said when you couple with what you are asking, as there is another part of this and that is, you don't need to send out 100% of these notices every year. He said, there is a requirement that you put the ratio on there and he said, we are attempting to change that so you won't have to go through this every year. He said, the problem is, not only the hearings but the fact that you are making minor changes. He said, out of the 68,000 parcels in Shawnee County, there is a big percentage of those that have 1%, 2% and 3% of changes, and that should never have happened. Mr. Rucker said the anticipated legislation is secondary to where we are today, because any anticipated legislation is not going to affect the decisions that we had to make earlier on, and he said the 2nd point he would like to make, he said, his opinion is that those individuals whose values changed slightly are not appealing, and he said they still have the backlog of appeals that they are confronted with.

He said, if the Director of Property Valluation is not given the authority to extend the hearing deadline dates, the very legislative intent which establishes the appeals process will be circumvented, and he said, he is here today indicating as the majority of the commission to in fact, indicate to you that any sort of modification of the appeals process is probably not solid public policy.

Chairman Thiessen asked if they had an estimate of how many of those went to financial institutions where the actual owner does not know yet, what has happened? Gary Smith said they send notices to the property owner.

Senator Martin asked David Cunningham, given the fact that the Department has always extended, administratively the value, and he asked if this is a case law? David Cunningham said if he mis-interpreted he would stand corrected. He said, it is a case law, and he said he was aware that they were waived, and he said he was uncomfortable doing that, and he said if he were going to take the position and go to the counties and say, "you have to follow the letter of the law", he said he didn't want anybody to come in and say he was making exceptions, so he said he just took a strict approach to it, and said this is the date, and this is the calender that says they will be done by this date.

Don Hayward said April 1st, is the certificate of value notice date, and the mailing notice date and he thought they were still being mailed. David Cunningham said that is true.

Chairman Thiessen said we will have to get a bill before us, so we know where we are going to amend it, and he said, we have several vehicles that can be used. The Chairman turned attention to SB8.

SB8:AN ACT relating to property taxation; concerning dates of appeals of the valuation of real property.

Senator Martin moved conceptually to amend, the Director of Property Valuation have the statutory authority, to extend the deadline for the hearings in the appeals process, 2nd by Senator Karr. The motion to amend carried.

Senator Martin moved to favorably pass SB8 as amended, 2nd by Senator Karr. The motion carried.

Chairman Thiessen turned attention to SB305 and he recognized Jonathan Small, KS Automatic Merchandising Association.

SB305:AN ACT relating to coin-operated devices; prescribing fees for the operation thereof and providing authorities and duties for the department of revenue relating thereto, exempting sales of tangible personal property from coin-operated amusement and music devices.

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Jonathan Small said on Monday when the committee began working SB305 Ernie Mosher testified and expressed concerns about (2) provisions in the bill. He said (1) was section 8, which he felt was a limitation on the League of Municipalities authority to protect the interest which he said they have always had, and he said, he also felt like the way the bill was drafted that the Municipalities might suffer a lose from the coin-operated devices in terms of their receipts of sales tax.

He said, what they have done in working with him, is they provided a couple of adjustments on the 2nd page, which is an addition to New Section (2) and also on page (4) which is an amendment to K.S.A. 12-189a.

Mr. Small said that Ernie Mosher is not here today and he said, he explained to him that the committee may work the bill today, and he said, he examined these amendments, and he said Mr. Mosher told him, that he thought these would take care of their concerns, and he said, Mr. Mosher gave him the authority to represent to this committee that he is comfortable with these changes and no longer stands on the concerns that he requested, last Monday.

He said, the other amendments are the one's provided this committee last Wednesday, which they believe are fundamental to making this legislation accurate in doing what we would like it to do, and what we think is important.

He said, (1) more thing that this balloon would do is on the last page of his handout (ATTACHMENT 1) they moved the effective date to January 1992.

Senator Audrey Langworthy said in looking at Mr. Mosher's testimony, they propose (Number 1) that the bill be amended to continue the inclusion of the gross receipts from vending machines, within the state and local sales tax base, and she asked which amendment this is. Mr. Small said that is addressed in the amendment on page 2 and page 4, and he said what that effectively does is that it places those machines back upon the local sales tax base and allows them receive whatever the sales tax rate is, and is returned back to the cities. He said, it is not in addition to what they were receiving already. Senator Langworthy said it also says to remove Section 8 from the bill. Mr. Small said yes, and he addressed all the amendments that Mr. Mosher had requested.

Chairman Thiessen said he may be missing something, and asked if this would broaden the local sales tax? Mr. Small said no, it does not broaden it at all. He said, they only included in (ATTACHMENT 1) the pages that they made an amendment to.

Senator Marge Petty moved to adopt the amendments on the proposed balloon, 2nd by Senator Lee.

During committee discussion, a member of the committee asked Don Hayward if he had reviewed these amendments, and if he was satisfied with them, and to make sure we are not creating any loop-holes.

Don Hayward said he had reviewed them, and he asked Mr. Small "you are not exempting the music or amusement devices from taxation, are you? Mr. Small said no. Don Hayward said then he does not think we need the amendment 189a, because the base would be the same.

Don Hayward suggested to Mr. Small that they would want to say "the existing language, all sales, tangible and personal property verses the re-sale to the coin-operated, music or music device and all sales intangible and personal property sold through a coin-operated vending device". Mr. Small said that would be fine.

Senator Petty moved a conceptual motion to follow the direction of Don Hayward in wording the amendment, 2nd by Senator Lee.

After committee discussion, The motion to amend SB3905 carried.

Senator Lee moved to favorably pass SB305 as amended, 2nd by Senator Petty.

Senator Fred Kerr moved a conceptual motion to change the \$3.00 fee to \$5.00, 2nd by Senator Martin. The motion carried.

Senator Lee moved to pass SB305, 2nd by Senator Oleen. The motion carried.

Chairman Thiessen adjourned the meeting at 11:54 a.m.



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ATT. 1

SENATE BILL No. 305

By Committee on Assessment and Taxation

2-25

8 AN ACT relating to coin-operated devices; prescribing fees for the  
9 operation thereof and providing authorities and duties for the  
10 department of revenue relating thereto; exempting sales of tan-  
11 gible personal property from coin-operated amusement and music  
12 devices; amending K.S.A. 79-3603 and 79-3606 and repealing the  
13 existing sections.

14 *Be it enacted by the Legislature of the State of Kansas:*

15 New Section 1. As used in this act:

16 (a) "Coin-operated amusement device" means any and all non-  
17 gambling mechanical or electronic machines which, upon the pay-  
18 ment or insertion of a coin, token or similar object, provide music,  
19 amusement or entertainment, including, but not limited to, such  
20 games as pool, phonographs, video television, shooting galleries,  
21 pinball, foosball, bowling, shuffleboard or any other amusement de-  
22 vice with or without a replay feature which can be legally shipped  
23 interstate according to federal law;

24 (b) "coin-operated music device" means any music device which  
25 is operated, motivated, released or played by or upon the payment  
26 or insertion of a coin, token or similar object, whether there is one  
27 or more devices on the premises for the reception of such coin,  
28 token or similar object. Coin-operated radio or television receiving  
29 sets in hotels, motels or tourist cabins for the use and benefit of  
30 the guests and visitors of such hotels, motels or tourist rooms or  
31 cabins shall be deemed a coin-operated music device;

32 (c) "coin-operated device" means coin-operated music devices,  
33 coin-operated amusement devices or coin-operated vending devices;

34 (d) "coin-operated vending device" means any and all machines  
35 or devices other than coin-operated amusement devices or coin-  
36 operated music devices which upon the payment or insertion of a  
37 coin, token or similar object, dispenses tangible personal property,  
38 and

39 (e) "music device" means any and all mechanical devices which  
40 render, cause to sound or release music where the same may be  
41 heard by one or more public patrons. Each separate loudspeaker,  
42 phonograph, juke box or outlet from which such music emits shall  
43

without making the entire inventory within the device  
accessible to the purchaser by the payment of the  
purchase price for a single item

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ATT. 1-1

1 be construed to be a separate music device, except in the case where  
2 the music emits from more than one speaker transmitting from the  
3 same music-producing mechanism, in which case the several outlets  
4 or speakers in each place of business shall be collectively considered  
5 one music device.

6 (f) "Vendor" means the person who purchases tangible personal  
7 property for resale in a coin-operated vending device, without regard  
8 to whether such person operates the coin-operated vending device  
9 or permits the operation of the device on such person's premises.

10 New Sec. 2. (a) Every person who operates and has available to  
11 any of the public for operation, or who permits to be operated in  
12 or on such person's place of business, coin-operated devices shall  
13 pay for such privilege an annual fee as follows: (1) For each coin-  
14 operated music device or coin-operated amusement device, \$50; and  
15 (2) for each coin-operated vending device, \$3.

16 (b) In any case where it is shown to the satisfaction of the de-  
17 partment of revenue that a coin-operated device, upon which an  
18 annual fee is imposed, will be placed available for use by the public  
19 for a definite limited period of time less than one year, such as  
20 where displayed in connection with fairs, carnivals and places of  
21 amusement that operate only during certain seasons of the year, the  
22 department of revenue may issue a special decal therefor which shall  
23 be affixed to the device. Such special decal may be issued for any  
24 number of thirty-day periods less than a full year, shall indicate that  
25 it is a special decal for one or more thirty-day periods, shall state  
26 the precise dates for which issued and shall not be transferred from  
27 one device to another. The fee shall be computed and paid on the  
28 basis of 1/10 of the annual rate for coin-operated amusement devices  
29 or coin-operated music devices and 1/2 of the annual rate for coin-  
30 operated vending devices for each thirty-day period for which such  
31 special decal is issued. In the event the device is made available to  
32 the public for a period beyond that for which the special decal is  
33 issued, then a full year's fee and penalty shall be due.

34 New Sec. 3. Any person operating a coin-operated device, or  
35 operating the premises where the same is to be operated or exposed  
36 to the public, shall apply to the department of revenue for a decal  
37 for such device and shall, at the same time, pay to the department  
38 of revenue the annual fee herein levied. The department of revenue  
39 shall, upon receipt of such payment and approval of such application,  
40 issue a decal for the type of coin-operated device covered by such  
41 application and payment. The decal and application provided for  
42 herein shall be prescribed by the department of revenue, and shall  
43 contain such information and description as shall be required by rule

Such person shall also make and file returns,  
as prescribed by K.S.A. 79-3607, and shall be  
deemed to be a retailer for that purpose, for  
the purpose of collecting and remitting tax  
under K.S.A. 12-189a, and for the enforcement  
of this act under the provisions of Article 36  
of Chapter 79 of the Kansas Statutes Annotated.

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1 and regulation of the department of revenue. Any number of coin-  
2 operated devices may be included in one application. Before any  
3 coin-operated device is put in operation or placed where the same  
4 may be operated by any of the public, and at all times when the  
5 same is being operated or available to any of the public for operation,  
6 a decal shall be firmly affixed to such device covered thereby, and  
7 plainly visible to and readable by the public.

8 New Sec. 4. For the purpose of the decal issued under sections  
9 2 and 3, the fee year shall begin on the first day of January and  
10 end on the last day of the following December and shall be divided  
11 into two halves. The department of revenue shall in each instance  
12 issue decals for the remainder of the fee year upon payment of the  
13 fee on the basis of the current and remaining half of such fee year.

14 New Sec. 5. Any operator of a coin-operated device who places  
15 such device in operation or in a place available to the public for  
16 operation, and any person who permits a coin-operated device to  
17 be in operation or accessible to the public for operation in such  
18 person's place of business, without the decal affixed as required by  
19 section 3 of this act, shall be liable for the fee on such device at  
20 the full annual rate as herein levied and shall be liable for a penalty,  
21 in addition to the amount of the fee, in the amount of \$100.

22 New Sec. 6. Where any coin-operated device is placed on lo-  
23 cation, or, after having been placed on location is without the decal  
24 affixed thereon, the device, including all cash in the receptacle  
25 thereof, shall be considered forfeited to the state of Kansas, and may  
26 be sealed until released by the department of revenue or seized by  
27 any authorized agent of the department of revenue, or any law  
28 enforcement office of this state, and upon being seized shall, together  
29 with the cash, if any, contained in the receptacle of such device,  
30 forthwith, be delivered to the department of revenue. The depart-  
31 ment of revenue shall then proceed to hear and determine the matter  
32 of whether or not such device and cash, if any, should, in fact, be  
33 forfeited to the department of revenue. The operator of the device  
34 shall be given at least 10 days' notice of the date of the hearing. In  
35 the event the department of revenue finds that such device, including  
36 the cash contents, if any, should be forfeited to the department, it  
37 shall make an order forfeiting the same to the department, and  
38 directing the sale of such device. Such device shall be sold in the  
39 county where seized after 10 days' notice, which notice shall be by  
40 posting five notices in conspicuous places in the county where the  
41 sale is to be made, one of which shall be posted on the bulletin  
42 board at the county courthouse. The sale shall be for cash, and the  
43 proceeds thereof shall be applied as follows: (a) To the payment of

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the costs incident to the seizure and sale; (b) to the payment of any taxes, including penalties, that may have accrued against the device; and (c) the balance, if any, shall be remitted to the owner. The cash contained in any device and forfeited under the provisions of this section shall be forfeited as an additional tax penalty and shall be in addition to all other penalties provided for in this act. The order of the department of revenue, declaring a forfeiture of such device including the cash contents thereof, if any, and directing the sale of such device shall be a final order and may be appealed from as provided for in the Kansas ~~uniform~~ administrative procedure act. It shall be the duty of all law enforcement officers to cooperate with the department of revenue in the enforcement of the seizure and forfeiture provisions of this section.

New Sec. 7. Any person responsible for the operation of a coin-operated device accessible to the public for operation in such person's place of business, without attaching the decal herein provided for, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding \$200 or by imprisonment in the county jail for a period not exceeding 30 days or by both such fine and imprisonment.

~~[New Sec. 8. - The fee herein levied is the exclusive fee to be imposed by the state, and is in lieu of all taxes upon coin-operated music and amusement devices, except ad valorem taxes and municipal license fees. It is further provided that cities, municipalities and towns are authorized to levy a license or occupation tax upon coin-operated amusement and coin-operated music devices, or persons operating the same, or premises where the same are located, in an amount not in excess of 20% of the fee hereby imposed by section 2.]~~

New Sec. ~~8~~<sup>9</sup>. A vendor shall be deemed to be a "retailer" as such term is defined in K.S.A. 79-3602, and amendments thereto, for purposes of collection, and remittance of Kansas retailers' sales tax under article 36 of chapter 79 of the Kansas Statutes Annotated, and for the enforcement thereof. Such vendor shall be deemed to be the ultimate consumer for all sales of tangible personal property sold through a coin-operated vending device and such sales shall be deemed to occur at the time the tangible personal property is purchased for resale by a vendor.

Sec. 10. K.S.A. 79-3603 is hereby amended to read as follows: 79-3603. For the privilege of engaging in the business of selling tangible personal property at retail in this state or rendering or furnishing any of the services taxable under this act, there is hereby levied and there shall be collected and paid a tax at the rate of

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Sec. 9. K.S.A. 12-189a is hereby amended to read as follows: 12-189a. The following sales shall be subject to the taxes levied and collected by all cities and counties under the provisions of K.S.A. 12-187 et seq. and amendments thereto:  
(a) All sales of natural gas, electricity, heat and water delivered through mains, lines or pipes to residential premises for noncommercial use by the occupant of such premises and all sales of natural gas, electricity, heat and water delivered through mains, lines or pipes for agricultural use;  
(b) All sales of propane gas, LP-gas, coal, wood and other fuel sources for the production of heat or lighting for noncommercial use of an occupant of residential premises;  
(c) All sales of intrastate telephone and telegraph services for noncommercial use ~~];~~  
(d) All sales made from a coin-operated music device or a coin-operated amusement device.

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1 organization which is exempt from federal income taxation pursuant  
2 to section 501(c)(3) of the federal internal revenue code of 1986;  
3 and

4 (uu) all sales of tangible personal property ~~[purchased for resale]~~ vending  
5 through a coin-operated ~~[music or amusement device and all sales]~~  
6 of tangible personal property sold through such devices.

7 Sec. 12. K.S.A. 79-3603 and 79-3606 are hereby repealed.

8 Sec. 13. This act shall take effect and be in force from and after

9 ~~[its publication in the statute book]~~ January 1, 1992

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