

Approved February 11, 1992

Minutes of the House Committee on Taxation. The meeting was called to order by Joan Wagnon, Chairperson, at 9:20 a.m. on Thursday, JANUARY 30, 1992 in room 519-S of the Capitol.

All members were present except:

Rep. Joan Adam, excused; Rep. Steve Wiard, excused; Rep. J. C. Long, excused; Rep. Robert Krehbiel, excused.

Committee staff present:

Tom Severn & Chris Courtwright, Legislative Research; Bill Edds and Don Hayward, Revisors; Linda Frey, Committee Secretary; Douglas E. Johnston, Committee Assistant.

Conferees appearing before the committee:

Donald P. Schnacke, representing the Kansas Independent Oil & Gas Association; Mark Burghardt, General Counsel for the Dept. of Revenue; Randy Tongier, Legislative Division of Post Audit; Steve Stotts, Dept. of Revenue; Ernie Mosher, Research Counsel for the League of Kansas Municipalities; Art Davis, Assistant Administrator for the City of Lenexa; Jean Barbee, Travel Industry Association of Kansas.

Hearings were opened on SB 216.

Donald P. Schnacke, representing the Kansas Independent Oil & Gas Association, requested an amendment to SB 216. He stated that with the amendment, KIOGA would support SB 216 (Attachment 1).

Mark Burghardt, General Counsel for the Dept. of Revenue, testified in favor of SB 216 (Attachment 2).

In response to a question, Burghardt said the Dept. of Revenue had no objection to the amendment proposed by Schnacke.

Hearings were closed on SB 216 and opened on SB 212.

Burghardt testified in favor of SB 212 (Attachment 3). He said the bill would conform transient guest tax filing dates to those for sales tax returns and that this could save the Dept. of Revenue a significant amount of money and time.

Randy Tongier, Legislative Division of Post Audit, explained a letter written by the Post Auditors noting discrepancies in the application of the transient guest tax statewide. The committee was encouraged to examine whether the rates should

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Taxation, room 519-S, State-house, at 9:10 a.m. on Thursday, January 30, 1992.

be made uniform statewide. Currently, counties or cities can charter out of the state statute using their home rule powers. (Attachment 4).

Tom Severn, Legislative Research, said there were two parallel statutes authorizing local option transient guest taxes. The lack of uniformity made it possible for cities and counties to utilize home rule authority to levy the taxes at rates above two percent and that many jurisdictions were taking advantage of that option.

Steve Stotts, Dept. of Revenue, said the top transient guest tax rate currently charged by a city or county was six percent. Fifty cities and 23 counties currently impose a transient guest tax. Thirty cities and five counties have the tax in excess of two percent.

Ernie Mosher, Research Counsel for the League of Kansas Municipalities, spoke in opposition to eliminating the ability of cities to utilize home rule authority to exceed the levy limits on transient guest taxes.

Art Davis, Administrative Assistant for the City of Lenexa, concurred with the comments of Mosher and recommended the committee consider a separate bill on this issue rather than an amendment to SB 212.

Jean Barbee, representing the Travel Industry Association of Kansas, testified in favor of making the statute uniform.

In response to a question, Barbee said there were numerous examples of cities and counties targeting transient guest tax revenues to fund airport authorities, weed cutting and others including direct financial transfers to hotel and motel operators.

The Chair said the committee could choose not to act on the Post Audit recommendations to make the tax uniform but that such an action would affirm the current practice.

Rep. Snowbarger suggested having a separate bill drafted that would address the uniformity issue so that public hearings could be held.

Rep. Roy moved to introduce a bill that would repeal the two statutes authorizing the transient guest tax and would replace them with a uniform local option transient guest tax at a rate not to exceed six percent. The motion carried.

MINUTES OF THE House COMMITTEE ON Taxation, room 519-S, State-house, at 9:10 a.m. on Thursday, January 30, 1992.

Hearings were closed on SB 212 and opened on SB 213.

Burghardt testified in favor of SB 213 (Attachment 5).

Hearings were closed on SB 213 and opened on SB 215.

Burghardt testified in favor of SB 215 (Attachment 6). He said a technical amendment would be needed. On page 2, line 10, "The provisions of this section shall be deemed to be supplemental to the Kansas withholding and declaration of estimated tax act." would have to be inserted at the end of section three.

Rep. Smith moved and Rep. Roe seconded amending SB 215 in accordance with the technical changes requested.

Rep. Vancrum asked how purchasers would receive notification of their tax liability as outlined in Burghardt's testimony (point 3). Burghardt replied that purchasers usually require sellers to get a tax clearance letter from the Dept. of Revenue. Such requests would have to come from the sellers, but it would ultimately be the responsibility of the purchasers to request the tax clearance letter from the sellers.

Rep Vancrum said that since this procedure was not used in many other states purchasers may not be aware of Kansas law and that would expose purchasers to serious liabilities.

Committee members had several questions regarding the tax liability of purchasers and how they would become aware of such liabilities.

The Chair suggested the Dept. of Revenue consider the possibility of notifying purchasers of tax liabilities. It was stated that that would not be possible under current law because of the confidentiality issue. Burghardt said he would come back to the committee with proposals regarding notification.

The motion carried. Hearings were closed.

The chair read a request for bill introduction from Larry Fischer, Kansans for Fair Taxation.

Rep Krehbiel moved and Rep. Smith seconded introduction of the bill requested by Fischer. The motion carried.

The meeting was adjourned at 10:30 a.m. The next meeting will be February 4.



KANSAS INDEPENDENT OIL & GAS ASSOCIATION

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January 30, 1992

TO: House Taxation Committee

RE: SB 216

SB 216 is left over from last session. We appeared before the Senate Committee and, I believe, convinced the Committee and the Senate that this bill represents an increase in taxation on natural gas production in Kansas.

The Senate struck out the new proposed term "sale price" on page 2, line 35. We support that action.

The balance of the amendments on pages 4, 5, and 7 are satisfactory to the affected producers and we have no objections.

We think the Department's definition of "sale price" goes beyond the intent of the original definition of taxing natural gas at the time of severance from the earth. It would result in an increase of taxes. Natural gas, with average ad valorem taxes of 12% and the severance tax at 7% which represents the highest production tax on natural gas in the United State, is already highly overtaxed today.

We indicated last year the language appearing on page 2, beginning on line 42, relating to the disruption of the production of gas needs clarification to reflect the real world faced by natural gas producers. We offer the following language:

"In the case of gas, a continuous one-hour period during which a well is not open to the pipeline shall be deemed to be a disruption of production. Missed production hours shall be considered production hours, if the operator can demonstrate that any lost production is subsequently recovered during later production hours."

Donald P. Schnacke

DPS:pp

House Taxation
Attachment 1
01-30-92



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 Joan Wagnon, Chairperson
House Committee on Taxation

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

Date: January 30, 1992

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 as originally introduced 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 off 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.

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House Taxation
Attachment 2
01-30-92

The Honorable Joan Wagnon

S.B. 216

January 30, 1992

Page 2

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.



KANSAS DEPARTMENT OF REVENUE

Office of the Secretary
Robert B Docking State Office Building
915 SW Harrison St
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To: The Honorable Joan Wagnon, Chairperson
House Committee on Taxation

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

Date: January 30, 1992

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.

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House Taxation
Attachment 3
01-30-92



TOPEKA

HOUSE OF
REPRESENTATIVES

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COMMITTEE ASSIGNMENTS

CHAIRMAN: RULES AND JOURNAL
CHAIRMAN: JOINT COMMITTEE ON LEGISLA-
TIVE POST-AUDIT
VICE CHAIRMAN: COMMERCIAL AND FINAN-
CIAL INSTITUTIONS
MEMBER: FEDERAL AND STATE AFFAIRS
TAXATION

November 26, 1991

Representative Joan Wagnon, Chair
House Taxation Committee
1606 Boswell
Topeka, Kansas 66604

Dear Representative Wagnon:

As you may know, each year a certified public accounting firm conducts a financial-compliance audit of the State, under contract with the Legislative Division of Post Audit. The Statewide audit for fiscal year 1990, conducted by Arthur Andersen & Co., has been reviewed by the Legislative Post Audit Committee. Based on its review, the Committee has directed me to refer an audit finding and recommendation for your Committee's consideration in the coming legislative session.

The audit firm recommended that the Department of Revenue attempt to resolve the discrepancy between statutory requirements and actual practices for transient guest taxes. State statutes--K.S.A. 12-1693 and 12-1697--authorize cities and counties to collect a transient guest tax not to exceed two percent of gross receipts. However, based on Attorney General's Opinion No. 82-17, some cities have invoked the power of home rule to levy a transient guest tax in excess of two percent.

Copies of the applicable audit report and Legislative Post Audit Subcommittee report pages are included. If you have any questions about this issue, please contact me or the staff of the Division of Post Audit.

Sincerely,

Representative William R. Roy, Jr.
Chair, Legislative Post Audit Committee

cc: Members, House Taxation Committee
Barbara J. Hinton
Legislative Post Auditor

House Taxation
Attachment 4
01-30-92

STATE OF KANSAS

INTERNAL CONTROL AND OTHER RECOMMENDATIONSAUDIT - JUNE 30, 1989

State Agency	Observations and Findings	Recommendations	Management's Response	Reportable Condition? (Y/N)
Department of Revenue	<p>During the course of our audit work, we noted an inconsistency between the tax limits to be collected per the legislative statutes of the State of Kansas, and the actual taxes charged, concerning the Transient Guest Tax. Per K.S.A. 12-1693 and 12-1697, cities and counties in the State of Kansas are authorized to collect a transient guest tax not to exceed 2% of gross receipts derived from or paid by transient guests. Based upon the Attorney General's opinion letter, No. 82-17, certain cities have invoked the power of Home Rule to levy a Transient Guest Tax in excess of 2% of gross receipts. As an Attorney General's opinion is not considered State law, there lies an inconsistency between the State statutes and actual tax levies concerning the Transient Guest Tax.</p>	<p>We recommend that an amendment to the State statutes be presented for approval so that current practices regarding the Transient Guest Tax will be in accordance with the State statutes.</p>	<p>We have been aware of this inconsistency for some time. We plan to introduce legislation during the 1990 session which will amend the statutes, increasing or eliminating the statutory limit on transient guest tax. By doing so, local tax rates will not conflict with statutory law.</p>	Y

STATE OF KANSAS

INTERNAL CONTROL AND OTHER RECOMMENDATIONS

AUDIT - JUNE 30, 1990

<u>State Agency</u>	<u>Observations and Findings</u>	<u>Recommendations</u>	<u>Management's Response</u>	<u>Reportable Condition? (Y/N)</u>
Department of Revenue	<p>During the course of our 1989 audit, we noted an inconsistency between the tax limits to be collected per the legislative statutes of the State of Kansas and the actual taxes charged, concerning the Transient Guest Tax. Per KSA 12.1693 and 12.1697, cities and counties in the State of Kansas are authorized to collect a transient guest tax not to exceed 2% of gross receipts derived from or paid by transient guests. Based on the Attorney General's opinion letter, number 82-17, certain cities have invoked the power of Home Rule to levy a Transient Guest Tax in excess of 2% of gross receipts. As an Attorney General's opinion is not considered State law, there lies an inconsistency between the State statutes and actual tax levies concerning the Transient Guest Tax. We noted during the course of our 1990 audit that this finding has not yet been resolved.</p>	<p>We recommend that an amendment to the State statutes be presented for approval so that current practices regarding the Transient Guest Tax will be in accordance with the State statutes.</p>	<p>We proposed the suggested legislation in 1990. It failed. We plan to propose the necessary legislation again in the 1991 session.</p>	Y

statutory changes in this area. The subcommittee requested the Board to provide a status report on its efforts to obtain statutory changes.

The Board responded that statutory changes were not sought during the 1991 Legislative Session because of a variety of changes that are contemplated in the State Money Law. The Board thought that it would be better to make these changes at one time, rather than submitting them in different years.

It appears that this audit recommendation is being addressed, and that no further action is required at this time.

2. The audit report recommended that the Board ensure that the interest rate on inactive accounts is computed to five significant places. Implementation of this recommendation would achieve compliance with State legal requirements. The Board's written response indicated that it would seek statutory changes in this area. The subcommittee requested the Board to provide a status report on its efforts to obtain statutory changes.

The Board responded that statutory changes were not sought during the 1991 Legislative Session because of a variety of changes that are contemplated in the State Money Law. The Board thought that it would be better to make these changes at one time, rather than submitting them in different years.

It appears that this audit recommendation is being addressed, and that no further action is required at this time.

3. The audit report recommended that the Board resolve a \$23,000 amount of interest shown as due from Bank IV of Topeka. This was a repeated recommendation. In its written response, the Board took the position that resolution of the disputed amount is an audit function. Apparently, in looking into this situation, the Board's staff found that Bank IV claims old amounts due from the State in excess of \$23,000, and that the bank would be willing to waive those amounts due in return for the State waiving the \$23,000 due from the bank. The subcommittee requested the Board to indicate why it has not applied to the Director of Accounts and Reports to write off the amount due.

The Treasurer's Office responded that it would be applying to the Director of Accounts and Reports for authorization to write off the \$23,000 amount due from Bank IV.

It appears that this audit recommendation is being addressed, and that no further action is required at this time.

Department of Revenue

1. The audit report recommended that the Department of Revenue attempt to resolve the discrepancy between statutory requirements and actual practices for transient guest taxes. (State statutes--K.S.A. 12-1693 and 12-1697--authorize cities and counties to collect a transient guest tax not to exceed two

percent of gross receipts. However, based on Attorney General's Opinion No. 82-17, some cities have invoked the power of home rule to levy a transient guest tax in excess of two percent.) This was a repeated recommendation. The Department's written response indicated that it proposed statutory change to the 1990 Legislature, and that this proposal failed. It further indicated that it would attempt to obtain a statutory change during the 1991 Legislature. The subcommittee requested the Department to provide a status report on its attempts to obtain statutory change.

The Department responded that its attempts to obtain statutory change during the 1991 Legislative Session also failed. The Department still supports a change in the statutes.

The difference between statutory requirements and Department of Revenue procedures still exists. The Legislative Post Audit Committee may wish to review this situation.

2. The audit report recommended that the Department improve control over unidentified tax remittances. This was a repeated recommendation. The Department's written response indicated that it would take steps to implement this recommendation. The subcommittee requested the Department to provide a status report on the implementation.

The Department responded that it had changed its procedures to address the concern raised by the audit firm. While the change in procedures is not the one recommended by the audit firm, it would appear to address the basic concern. The regular follow-up done as part of the fiscal year 1991 audit should provide adequate attention to this matter.

It appears that this audit recommendation has been addressed, and that no further action is required at this time.

Attorney General's Office - Kansas Bureau of Investigation

1. The audit report recommended that the Kansas Bureau of Investigation review the monthly comparison of actual receipts and expenditures to budgeted amounts. The Bureau's written response implied that it intended to implement the recommendation, but did not specifically state this. The subcommittee requested the Bureau to provide a written response indicating the current status of implementation.

The Bureau responded that this recommendation was implemented in September 1990.

It appears that this audit recommendation has been addressed, and that no further action is required at this time.

2. The audit report recommended that the Kansas Bureau of Investigation compare each payroll period's warrants to the warrant register. The Bureau's written response implied that it intended to implement the recommendation,



KANSAS DEPARTMENT OF REVENUE

Office of the Secretary
Robert B Docking State Office Building
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Topeka Kansas 66612-1588

MEMORANDUM

To: The Honorable Joan Wagnon, Chairperson
House Committee on Taxation

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

RE: Senate Bill No. 213

Date: January 30, 1992

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

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House Taxation
Attachment 5
01-30-92

The Honorable Joan Wagnon
S.B. 213
January 30, 1992
Page 2

from the purchasers within 60 days of receipt of notice from 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.



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 Joan Wagnon, Chairperson
House Committee on Taxation

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

Date: January 30, 1992

Subject: S.B. 215

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 tax which may be due and owing from the seller under the Kansas withholding and declaration of estimated tax act. 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.

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House Taxation
Attachment 6
01-30-92