

Approved THURS. 2-27-92
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. on Tuesday, February 25, 1992 in room 519-S of the Capitol.

All members were present except:
Senator Marge Petty (Excused)

Committee staff present:
Bill Edds, Revisor's Office
Don Hayward, Revisor's Office
Chris Courtwright, Research Department
Tom Severn, Research Department
Marion Anzek, Committee Secretary

Conferees appearing before the committee:
Ernie Mosher, KS League of Municipalities
Sara Ullman, Legislative Chairperson, Register of Deeds Association
Jim Irish, representing Greater KS Chapter of the Appraiser Institute
James Maag, Senior Vice Pres., KS Bankers Association
William L. Ervin, Chief-Municipal Accounting Section, KS Dept. of Administration

Chairman Dan Thiessen called the meeting to order at 11:04 and recognized Ernie Mosher, League of Municipalities for testimony on HB2381.

Ernie Mosher said the League of Municipalities supports the portions of HB2381 which would reduce the interest penalty of delinquent taxes, and he said they are opposed to the provisions permitting the abatement of certain taxes as result of incidents which occur between January 1 and August 15.

He said, they are concerned about the future policy implications of changing the historical January 1 date for determining the date of assessment and liability for property taxes. (ATTACHMENT 1)

Chairman Thiessen said he would hear conferees on SB598 and then go to the agenda for today, hearing conferees on SB599, SB601 and SB602.

SB598: Real estate sales validation on questionnaires.

Sara Ullman, Legislative Chairperson, Register of Deeds Association said they have no objection to requiring the Real State Sales Validation Questionnaire to be signed by the Grantor or Grantee.

She said they would like to offer some changes on the added exemptions in the bill, and add to the exemptions (12) by way of a quit claim deed filed for the purpose of clearing title encumbrances and (13) by way of a transfer and/or sales of Right of Ways or Eminent Domain takings. She said they believe the word "forfeit" should be changed to "be fined". (ATTACHMENT 2)

Jim Irish, an Independent Appraiser, representing the Greater KS Chapter of the Appraiser Institute, said they support the bill and the amendments already in the bill and those that have just been proposed to the committee. He said regarding, the existing statute with the retention for (2) years, often times appraisals are made retrospectively, and in advalorem cases it can be sometime before social reactions run their course, and these documents are valid references that appraisers would want to refer to. He suggested a period longer than 2 years would be appropriate.

Chairman Thiessen concluded the hearing on SB598 and turned attention to SB599 recognizing James Maag, Senior Vice President, KS Bankers Association.

B599: Basis for computation of mortgage registration fees.

Jim Maag said SB599 would clarify the existing language in K.S.A. 79-3102 and correct a problem which has been detrimental to bank customers throughout the state.

He said the statute specifically requires a mortgage registration fee of 26¢ for each \$100 of the principal debt or obligation which is secured by the mortgage. He said, if a bank lends a debtor \$80,000 and secures part of that debt by a mortgage limited to \$20,000, the bank should pay the fee only on the \$20,000 and not on the entire \$80,000 loan.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION,

room 519-S, Statehouse, at 11:00 a.m. ~~p.m.~~ on Tuesday, February 25, 1992

He said there have been Attorney-General Opinions to the contrary in recent years (attached to his handout) which have held that the fee must be paid on the entire underlying obligation.

He said, they strongly believe the current Opinions do not reflect the legislative intent of this statute and that is why they have requested SB599 which would clarify the existing statutory language. He said passage of SB599 would clarify a presently confusing law and would assure borrowers of not being forced to pay an unreasonable fee. (ATTACHMENT 3)

Sara Ullmann said under the authority of Attorney General Opinion 90-61 the mortgage registration tax to be paid on the lesser amount if the document stipulates that when the lesser amount which has been apportioned to the mortgage is paid, that the mortgage is released.

She said the fiscal impact of this bill could result in extreme loss of revenue in all counties across the state, and she said personal property can be secured under the Uniform Commercial Code. (ATTACHMENT 4)

After committee discussion regarding clarifying the language in SB599, Chairman Dan Thiessen appointed a sub-committee, with Senator Don Montgomery, Senator Audrey Langworthy and Senator Janis Lee serving the sub-committee to work with the conferees to resolve the problems between them on SB599.

Chairman Dan Thiessen concluded the hearing on SB599 and turned attention to SB601 recognizing William L. Ervin, Chief-Municipal Accounting Section, KS Department of Administration.

SB601: Set off of delinquent taxes owed to other states.

William L. Ervin, said the Setoff Program is an office responsible for implementation of the State Debt Setoff Act (K.S.A. 75-6201 et seq.) and in doing so assists other state agencies in collecting their accounts receivable. He explained the process by which this is done (see page 1 of his handout)

He said they believe the benefits of this successful collection program should be extended to other units of government. He said they have prepared a bill that allows municipalities to participate in the program. He said, their proposal incorporates the Department of Revenue's initiative on reciprocal collection efforts, and asked the committee members to use their draft as a substitute for SB601. see (ATTACHMENT 5)

Ernie Mosher said when the Department enters into agreements with the Municipalities, there is a question in collection cost. He said, it is his understanding that this is administratively possible only if you have a social security number of the debtor, and the city would have to provide the proper administration the social security number of the individual in order to match in the computer. He said, generally cities do not have social security numbers.

After committee discussion Chairman Thiessen recognized Becky S. Burghart, Revenue Manager-KS Department of Revenue.

Becky S. Burghart said SB601 would enable the KS Department of Revenue to enter into a reciprocal agreement with other states to allow the setoff of tax liabilities of other states, and would allow the Department to further utilize the setoff program to collect pass due accounts and also adopt one of the newest innovative concepts in State Government Collections. She said, this concept was introduced to the KS Department of Revenue by the MO Department of Revenue in the fall of 1991. She said, MO passed legislation in 1984 enabling them to setoff against another state's debt but have not been able to take advantage of this legislation due to lack of supporting legislation from other states. To date, no two states have entered into such an agreement, therefore it is unknown at this time just how lucrative this concept might be. (ATTACHMENT 6)

Chairman Thiessen concluded the hearing on SB601 and said we have run out of time and could the conferees come back tomorrow for the hearing on SB602.

Senator Gerald Karr moved to adopt the minutes of February 24, 1992, 2nd by Senator Audrey Langworthy. The motion carried.

Chairman Thiessen adjourned the meeting at 12:04 p.m.



**THE LEAGUE
OF KANSAS
MUNICIPALITIES**

**Municipal
Legislative
Testimony**

AN INSTRUMENTALITY OF KANSAS CITIES 112 W. 7TH TOPEKA, KS 66603 (913) 354-9565 FAX (913) 354-4186

TO: Senate Committee on Assessment and Taxation
FROM: E.A. Mosher, Research Counsel, League of Kansas Municipalities
RE: HB 2381--Delinquent Tax Rate; Abatement of Certain Property Taxes
DATE: February 24, 1992

The League supports those portions of HB 2381 which would reduce the interest penalty on delinquent taxes. We oppose the provisions permitting the abatement of certain taxes as result of incidents which occur between January 1 and August 15.

We are concerned about the future policy implications of changing the historical January 1 date for determining the date of assessment and liability for property taxes. If we are going to make this very fundamental change as to the dates of tax liability, it seems equally rational to do such things as the following:

(1) Credit the assessed valuation of all property annexed between January 1 and August 15 to the city which has annexed the territory.

(2) Provide that property assessed for commercial purposes be reassessed as residential property if its use changes to residential between January 1 and August 15, and vice versa.

(3) Provide that tax exempt property on January 1 that is later sold for a taxable purpose during this period be put on the assessment roll, and vice versa.

(4) Provide for the addition to the assessment rolls any new or partially completed home or other improvement based on its valuation as of August 15, not the previous January 1.

In conclusion, we suggest that there are some important historical, rational and practical reasons why we use a fixed date (January 1) to determine the assessed valuation and the tax liability of property. To provide a tax abatement (effectively an exemption) to certain property as a result of some calamity opens up "pandora's box", leading to equally justified abatements, exemptions or other changes in the future.

SENATE ASSES & TAX
2-25-92
ATT 1

KANSAS

ASSOCIATION

PRESIDENT Mary Ann Holsapple, Nemaha Co.
 VICE-PRESIDENT Charlotte Shawver, Riley Co.

Janice Gillispie, Thomas Co. SECRETARY
 Rose Ann Rupp, Ellis Co. TREASURER

Mr. Chairman and members of the committee, I am Sara Ullmann, Legislative Chairman of the Register of Deeds Association. The Kansas Register of Deeds Association appears today in support of S.B. 598 with certain exceptions.

K.S.A. 79-1437c

We have no objection to requiring the Real State Sales Validation Questionnaire to be signed by the Grantor or Grantee.

K.S.A. 79-1437e

We would like to offer the following changes on the added exemptions: Exemption (7) should read "grantor trust". Real sales are made by trusts and these sales should be included in the data collected for the comparable sales data bank. A grantor trust is used for an individual to put their real estate into a trust and these would not be considered an arms length transaction. It is unnecessary to require a Real Estate Questionnaire for a "grantor trust".

We would request that the following exemption also be added:

(12) by way of a quit claim deed filed for the purpose of clearing title encumbrances.

(13) by way of a transfer and/or sales of Right of Ways or Eminent Domain takings.

We would suggest that the exemption by which a Real Estate Questionnaire is not provided be stated on the face of the deed. For Example: No Real Estate Sales Validation Questionnaire provided per exemption number 8, K.S.A. 79-1437E.

K.S.A. 79-1437g

We believe that the word "forfeit" should be changed to "be fined". Forfeit indicates that someone is holding something that can be returned. Fine indicates that there is a penalty for providing false information.

Thank you for allowing us to appear in Support of S.B. 598, we would be happy to answer any questions.

SENATE ASSES. & TAX
 2-25-92
 ATT. 2



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

February 25, 1992

TO: Senate Committee on Assessment and Taxation
RE: **SB 599** - Mortgage Registration Fees

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the committee in support of **SB 599**. This bill would clarify the existing language in K.S.A. 79-3102 and correct a problem which has been detrimental to bank customers throughout the state.

This statute specifically requires a mortgage registration fee of \$.26 for each \$100 of the principal debt or obligation which is secured by such mortgage. A logical reading of this statute would indicate that the fee must be paid on that portion of the debt which is actually secured by the mortgage. Thus, if a bank lends a debtor \$80,000 and secures part of that debt by a mortgage limited to \$20,000, the bank should pay the fee only on the \$20,000 and not on the entire \$80,000 loan. However, there have been Attorney-General Opinions to the contrary in recent years (see attached) which have held that the fee must be paid on the entire underlying obligation.

These opinions have created a real problem for banks and their customers, particularly in situations where the banks use cross-collateral on lines of credit (see attached letter). It obviously increases the cost of borrowing for the customer as this is a cost which is passed on directly in a loan closing. It also creates some potential legal dilemmas for the banks such as: Is the bank required to contact the Register of Deeds and pay additional fees when it advances funds under a future advance clause? What happens if the bank does not take that action?

We strongly believe the current Opinions do not reflect the legislative intent of this statute and that is why we have requested **SB 599** which would clarify the existing statutory language. It would require that mortgage registration fees be paid on the lesser of: (1) the amount of the debt which is secured by the mortgage; or (2) the portion of the debt which the mortgage is actually securing.

Passage of **SB 599** would clarify a presently confusing law and would assure borrowers of not being forced to pay an unreasonable fee. Your support of **SB 599** would be greatly appreciated.


James S. Maag
Senior Vice President

Office of Executive Vice President • 1500 Merchants National Building
Eighth and Jackson • Topeka, Kansas 66612 • (913) 232-3444
FAX (913) 232-3484

SENATE ASSES. & TAX
2-25-92
ATT 3-1





FILE COPY

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

May 30, 1990

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 90- 61

Lewis A. Heaven, Jr.
Special Counsel for Johnson County
Register of Deeds.
6700 Antioch, Suite 420
P.O. Box 3867
Merriam, Kansas 66203-0867

Re: Taxation--Mortgage Registration and Intangibles;
Mortgage Registration--Amount of Fee Based on
Amount of Debt Secured

Synopsis: The mortgage registration fee to be collected upon the filing of a mortgage is based on the amount of principal debt or obligation secured by the mortgage, and is not affected by the value of the property constituting the security. Determination of the amount any given mortgage secures must be made on a case-by-case basis, construing the mortgage and underlying note to determine the intent of the parties. A mortgage given to secure repayment of a \$100,000 indebtedness and which will not be released until the entire \$100,000 is repaid and other conditions met, secures the entire \$100,000 even though it contains a statement to the contrary. Mortgage registration fees should therefore be assessed based on the \$100,000 debt. Cited herein: K.S.A. 79-3102.

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Dear Mr. Heaven:

As counsel for the Johnson county register of deeds, you request our opinion regarding the amount of mortgage registration fees to be collected upon the filing of a mortgage which has essentially the following characteristics: 1) The mortgage states that it is given to secure an indebtedness of \$100,000; 2) this indebtedness is evidenced by a specific note which is referenced in the mortgage; 3) the mortgage contains a statement to this effect: "The lien of this mortgage shall not exceed at any one time \$10,000."; 4) the mortgage provides for foreclosure on the property described therein upon the mortgagor's default in payment or other conditions of "the note" or "the indebtedness".

In a letter to the Seward county register of deeds dated November 8, 1989, this office took the position that the mortgage registration fee should be based on the amount of \$100,000 in these circumstances. Our position remains unchanged.

K.S.A. 79-3102 provides that the fee is to be based on "the principal debt or obligation which is secured by such mortgage, and upon which no prior mortgage registration fee has been paid," and that "[a]fter the payment of the registration fees . . . the mortgage and the note thereby secured shall not otherwise be taxable." (Emphasis added). The Kansas Supreme Court has held that the mortgage registration fee "is determined entirely by the sum secured, and is not at all affected by the value of the property constituting the security." Union Pacific Rld. Co. v. Stratemeyer, 119 Kan. 8, 9 (1925). "The legislature intended to impose the tax on the indebtedness and not on the security," id., at 10. See also Attorney General Opinions No. 85-23, 75-382; 61-115. Thus, the amount of the mortgage registration fee will depend on the amount of principal debt or obligation secured by the mortgage, and the fact that the real estate involved does not fully secure the debt is of no consequence.

The rules for construing mortgages are stated in Carpenter v. Riley, 234 Kan. 758, 763 (1984):

"Promissory notes and mortgages are contracts between the parties, and the rules of construction applicable to contracts apply to them. First Nat'l Bank & Trust Co. v. Lygrisse, 231

Kan. 595, 647 P.2d 1268 (1982). The primary rule is to obtain the intention of the parties. A mortgage and a note secured by it are to be deemed parts of one transaction and construed together as such; the provisions of both should be given effect, if possible. The intention of the parties is to be determined from an examination of both the mortgage and note, not from one separately, and that intention must prevail. Provisions of the mortgage relating to the indebtedness itself have the same effect as if incorporated into the note, where the note contains a provision making the mortgage a part thereof." See also, Home State Bank v. Johnson, 240 Kan. 417, 426 (1987); 55 Am.Jur.2d Mortgages §§ 155, 176 (West 1971).

Generally, "a mortgage must truly describe the debt intended to be secured." 55 Am.Jur.2d Mortgages § 152 (West 1971). "In this connection it has been said generally that the description of the obligation must be correct as far as it goes and not of a character to mislead or deceive. . . ." Id.

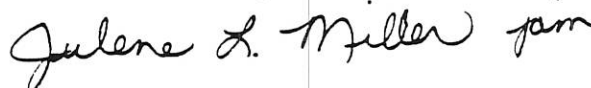
The mortgage in question states that the lien thereby created shall not exceed \$10,000 of the \$100,000 indebtedness. It does not, however, specify which \$10,000 it secures. We do not know from the terms of the mortgage instrument whether it is the first \$10,000 to be paid down which is supposed to be secured, the last \$10,000, or something in between. Further, even if we could determine the debt "secured," there is no provision for release of the mortgage after that \$10,000 is paid. The mortgage contemplates that the property is to be held as security until the entire \$100,000 debt is paid. These provisions, taken together and construed with the note evidencing the debt, lead us to conclude that, despite the one sentence in the mortgage attempting to limit the amount secured, the mortgage in reality secures the entire \$100,000 indebtedness. If the mortgage more specifically described a lesser amount to be secured and provided for its release upon repayment of that lesser amount, then mortgage registration fees would be collected only on that lesser amount. Exactly what amount any given mortgage secures must be determined on a

case-by-case basis, construing the documents involved to determine the intent of the parties.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm

Citizens State Bank



Waterville, Kansas 66548-0010
913 - 785-2521

March 14, 1991

Anne Lolley
Kansas Bankers Association
1500 Merchants National Bldg.
Topeka, KS 66612


Dear Anne:

I want to reiterate the value that I think you provide to rural banks throughout Kansas. I think you provide an invaluable service in collating and coalescing the vast divergence of information that comes out of a wide variety of regulators, institutions and legislators. Thanks again.

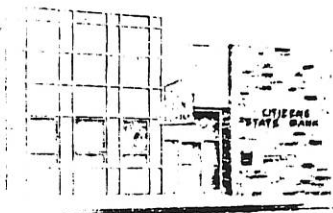
I do want to comment on the opinion given by Bob Stephan in regard to the filing fees of real estate mortgages and the effect of real estate mortgages on overall debt. Many banks, like ours, cross collateralize their debt lines. Thus, we will have relatively small mortgage cross collateralizing an entire debt line alone with machinery and livestock. Because of this, we would fall under the Attorney Generals opinion, of having maybe a 30 or 40 thousand dollar mortgage filed and have the filing fee paid on the 30 or 40 thousand dollar mortgage, but that 30 or 40 thousand dollar mortgage is tied to a perhaps \$200,000 debt line. For institutions that do cross collateralize, the Attorney Generals opinion is devastating, if in fact it is to be used by the register of deeds, and the courts as a guideline to how these mortgages should be registered and applied.

Anything that can be done to mitigate the effect of this opinion should be done. I think at a time when legislatures and regulators are in deed concerned about the viability of bank collateral, this kind of an opinion should be equally repugnant to such groups. Thanks again.

Sincerely,



T.A. Blaser
President



REGISTER OF DEEDS

KANSAS

ASSOCIATION

PRESIDENT Mary Ann Holsapple, Nemaha Co.
VICE-PRESIDENT Charlotte Shawver, Riley Co.

Janice Gillispie, Thomas Co.
Rose Ann Rupp, Ellis Co.

SECRETARY
TREASURER

Mr. Chairman and members of the Committee, I am Sara Ullmann, Legislative Co-Chairperson for the Register of Deeds Association. The Kansas Register of Deeds Association opposes S.B. 599. The added language is confusing and incomprehensible.

Under the authority of Attorney General Opinion 90-61 the mortgage registration tax to be paid on the lesser amount if the document stipulates that when the lesser amount which has been apportioned to the mortgage is paid, that the mortgage is released. This allows for the financing institution to place the correct value on the real estate which is being used as collateral, but it does not allow the financing institution to hold the real estate mortgage as collateral until all other debts are satisfied. If the real estate mortgage is used to secure the last portion of indebtedness, then in fact the real estate mortgage secures the entire indebtedness. Under those circumstances, it is completely appropriate that mortgage registration tax be collected on the full indebtedness because it is being fully secured by real estate.

The fiscal impact of this bill could result in extreme loss of revenue in all counties across the state.

Personal property can be secured under the Uniform Commercial Code.

We will be happy to answer any questions. Thank you for allowing us this time to appear before your committee.

SENATE ASSES. & TAX
2-25-92
ATT. 4



DEPARTMENT OF ADMINISTRATION
DIVISION OF ACCOUNTS AND REPORTS

JOAN FINNEY
Governor

HAROLD F. GIBBON
Director of Accounts and Reports

900 Jackson, Room 251
Landon State Office Building
Topeka, KS 66612-1220
(913) 296-2311
FAX (913) 296-6841

M E M O R A N D U M

TO: Senate Assessment and Taxation Committee

FROM: *WLE* William L. Ervin, Chief
Municipal Accounting Section

DATE: February 25, 1992

RE: Amendment of the State Debt Setoff Act

The Setoff Program is an office responsible for implementation of the State Debt Setoff Act (K.S.A. 75-6201 et seq.) and in doing so assists other state agencies in collecting their accounts receivable. The process by which this is done is as follows:

State agencies submit to the Setoff Program certain debtor information (name, social security number, debt amount and debt description) which information is then entered into the computer "debtor file." On a regular basis computer tapes of the debtor file are matched against payments in process of state "payor" agencies (e.g. tax refunds of Department of Revenue, unemployment compensation benefit payments by Department of Human Resources). When a match is made between a debtor and a payment from the state to that debtor, the payment is suspended and the debtor is sent a notice that the setoff program intends to apply the suspended money to the debt. The debtor is also advised that if he or she disputes the validity of the debt a due process hearing can be requested before a presiding officer appointed by the Secretary of Administration. If no hearing is requested the money is transferred to the creditor state agency. If a hearing is requested within 15 days the money is held until resolution by the presiding officer.

SENATE ASSES. & TAX
2-25-92
ATT. 5-1

February 25, 1992

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During FY 91 the Setoff Program had gross collections of \$4,955,124, representing a growth in collections of 20.7% over that collected in FY 90. For the first seven months of FY 92 the Setoff Program has gross collections of \$2,207,801, representing a 23.2% growth over gross collections of the first seven months of FY 91.

We believe the benefits of this successful collection program should be extended to other units of government. We have prepared a bill that allows municipalities to participate in the program.

We also support the initiative of the Department of Revenue as represented by SB 601. Our proposal incorporates the Department of Revenue's initiative on reciprocal collection efforts. We ask the Committee to use our draft as a substitute for SB 601. Department of Revenue supports this proposal.

Thank you very much.

RLB:db
4694L

SETOFF CLEARING FUND
ANALYSIS OF CHANGE IN UNENCUMBERED CASH BALANCE
AS OF JUNE 30, 1991

	<u>Current Month</u>	<u>Current Fiscal Year To Date</u>	<u>Prior Fiscal Year To Date</u>	<u>Net Change</u>
Beginning Unencumbered Cash Balance	\$ 1,216,042	\$ 768,854	\$ 685,870	\$ 82,984
Source of Funds				
Gross Receipts				
Payroll	18,887	109,893	110,368	<475>
Tax Refunds	285,830	1,796,104	1,930,641	<134,537>
Other State Payments	16,060	270,980	283,637	<12,657>
Direct Payments	13,997	128,405	114,559	13,846
Unemployment Insurance	166,859	2,459,479	1,478,852	980,627
Unclaimed Property	-0-	12,318	10,832	1,486
KPERS	1,776	37,095	-0-	37,095
Total Gross Receipts	<u>503,409</u>	<u>4,814,274</u>	<u>3,928,889</u>	<u>885,385</u>
Revenue Collections				
Assistance Fees	46,964	185,195	455,193	<269,998>
SRS Payroll Fees	-0-	-0-	3,439	<3,439>
Collection Fees Netted	<u>49,290</u>	<u>509,154</u>	<u>227,095</u>	<u>282,059</u>
Total Revenue Collected	96,254	694,349	685,727	8,622
Revenue Transfers to Accounting Services Recovery Fund				
	<141,000>	<1,052,071>	<802,773>	<249,298>
Total Additions	<u>458,663</u>	<u>4,456,552</u>	<u>3,811,843</u>	<u>644,709</u>
Total Available	<u>1,674,705</u>	<u>5,225,406</u>	<u>4,497,713</u>	<u>727,693</u>
Application of Funds				
Payment to Creditor Agencies	944,011	3,962,601	3,410,071	552,530
Collection Fees Netted	49,290	509,154	227,095	282,059
Refunds to Debtors	<u>9,873</u>	<u>82,120</u>	<u>91,693</u>	<u><9,573></u>
Total Disbursements	<u>1,003,174</u>	<u>4,553,875</u>	<u>3,728,859</u>	<u>825,016</u>
Ending Unencumbered Cash Balance	<u>\$ 671,531</u>	<u>\$ 671,531</u>	<u>\$ 768,854</u>	<u>\$ <97,323></u>

APPEAL STATISTICS

	<u>Current Month</u>	<u>Current Fiscal Year To Date</u>
Appeals Unresolved at Beginning of Period	280	411
Appeals Filed	<u>53</u>	<u>610</u>
Total Appeals	<u>333</u>	<u>1,021</u>
Appeals Resolved		
Informal Resolution	20	333
Formal Resolution	33	408
Court Resolution	<u>-0-</u>	<u>-0-</u>
Total Appeals Resolved	<u>53</u>	<u>741</u>
Appeals Unresolved at End of Period	<u>280</u>	<u>280</u>

SETOFF CLEARING FUND
ANALYSIS OF CHANGE IN UNENCUMBERED CASH BALANCE
AS OF JANUARY 31, 1992

	<u>Current Month</u>	<u>Current Fiscal Year To Date</u>	<u>Prior Fiscal Year To Date</u>	<u>Net Change</u>
Beginning Unencumbered Cash Balance	\$ 1,180,806	\$ 671,531	\$ 768,854	\$ <97,323>
Source of Funds				
Gross Receipts				
Payroll	12,289	62,082	58,918	3,164
Tax Refunds	11,984	177,832	260,833	<83,001>
Other State Payments	37,679	228,219	167,823	60,396
Direct Payments	12,532	71,685	52,795	18,890
Unemployment Insurance	461,603	1,633,426	1,212,527	420,899
Unclaimed Property	-0-	16,514	12,318	4,196
KPERS	3,183	18,043	26,507	<8,464>
Total Gross Receipts	<u>539,270</u>	<u>2,207,801</u>	<u>1,791,721</u>	<u>416,080</u>
Revenue Collections				
Assistance Fees	27,655	149,347	70,636	78,711
Collection Fees Netted	<u>71,595</u>	<u>301,022</u>	<u>231,537</u>	<u>69,485</u>
Total Revenue Collected	99,250	450,369	302,173	148,196
Revenue Transfers to Accounting Services Recovery Fund				
	<104,302>	<515,554>	<441,003>	<74,551>
Total Additions	<u>534,218</u>	<u>2,142,616</u>	<u>1,652,891</u>	<u>489,725</u>
Total Available	<u>1,715,024</u>	<u>2,814,147</u>	<u>2,421,745</u>	<u>392,402</u>
Application of Funds				
Payment to Creditor Agencies	924,420	1,767,167	1,547,387	219,780
Collection Fees Netted	71,595	301,022	231,537	69,485
Refunds to Debtors	992	27,941	26,838	1,103
Total Disbursements	<u>997,007</u>	<u>2,096,130</u>	<u>1,805,762</u>	<u>290,368</u>
Ending Unencumbered Cash Balance	<u>\$ 718,017</u>	<u>\$ 718,017</u>	<u>\$ 615,983</u>	<u>\$ 102,034</u>

APPEAL STATISTICS

	<u>Current Month</u>	<u>Current Fiscal Year To Date</u>
Appeals Unresolved at Beginning of Period	71	280
Appeals Filed	30	197
Total Appeals	<u>101</u>	<u>477</u>
Appeals Resolved		
Informal Resolution	14	75
Formal Resolution	19	334
Court Resolution	-0-	-0-
Total Appeals Resolved	<u>33</u>	<u>409</u>
Appeals Unresolved at End of Period	<u>68</u>	<u>68</u>

PROPOSED BILL NO. _____

By

AN ACT concerning setoff against debtors of the state and municipalities therein; authorizing reciprocal agreements with other states to allow the setoff of tax liabilities of other states; amending K.S.A. 75-6201, 75-6202, 75-6203, 75-6204, 75-6205, 75-6206, 75-6207, 75-6210, 75-6211, 75-6212 and 75-6214 and repealing the existing sections.

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

New Section 1. The secretary of revenue and the director of accounts and reports are hereby authorized to enter into reciprocal agreements with other states to allow the setoff of delinquent taxes owed to such other states pursuant to K.S.A. 75-6201 et seq., and amendments thereto.

Sec. 2. K.S.A. 75-6201 is hereby amended to read as follows: 75-6201. The purpose of this act is to establish as policy that state agencies shall cooperate in identifying debtors who owe money to the state, a foreign state agency and any municipality and that procedures be established for setting off against debtors the sum of any debt owed to the state, a foreign state agency or any municipality.

Sec. 3. K.S.A. 75-6202 is hereby amended to read as follows: 75-6202. As used in this act:

(a) "Debtor" means any person who:

(1) Owes a debt to the state of Kansas or any state agency or any municipality; or

(2) owes support to an individual, or an agency of another state, who is receiving assistance in collecting that support under K.S.A. 39-756 and amendments thereto or under part D of title IV of the federal social security act (42 U.S.C. § 651 et seq.), as amended; or

(3) owes unpaid taxes to any state which has entered into a reciprocal agreement pursuant to section 1.

(b) "Debt" means:

(1) Any liquidated sum due and owing to the state of Kansas or any state agency or municipality which has accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for that sum; ~~or~~

(2) any amount of support due and owing an individual, or an agency of another state, who is receiving assistance in collecting that support under K.S.A. 39-756 and amendments thereto or under part D of title IV of the federal social security act (42 U.S.C. § 651 et seq.), as amended, which amount shall be considered a debt due and owing the department of social and rehabilitation services for the purposes of this act; or

(c) any amount of unpaid taxes owed to any state which has entered into a reciprocal agreement pursuant to section 1.

(c) "Refund" means any amount of Kansas income tax refund due to any person as a result of an overpayment of tax, and for this purpose, a refund due to a husband and wife resulting from a joint return shall be considered to be separately owned by each individual in the proportion of each such spouse's contribution to income, as the term "contribution to income" is defined by rules and regulations of the secretary of revenue.

(d) "Net proceeds collected" means gross proceeds collected through final setoff against a debtor's earnings, refund or other payment due from the state or any state agency minus any collection assistance fee charged by the director of accounts and reports of the department of administration.

(e) "State agency" means any state office, officer, department, board, commission, institution, bureau, agency or authority or any division or unit thereof.

(f) "Person" means an individual, proprietorship, partnership, limited partnership, association, trust, estate,

business trust, corporation, other entity or a governmental agency, unit or subdivision.

(g) "Director" means the director of accounts and reports of the department of administration.

(h) "Municipality" means any municipality as defined by K.S.A. 75-1117, and amendments thereto.

(i) "Payor agency" means any state agency which holds money for, or owes money to, a debtor.

(j) "Foreign state agency" means any state or agency of a state which has entered into a reciprocal agreement pursuant to section 1.

Sec. 4. K.S.A. 75-6203 is hereby amended to read as follows:
75-6203. (a) The collection remedy under this act is in addition to and not in substitution for any other remedy available by law.

(b) Each state agency ~~shall~~, foreign state agency and municipality, whenever possible, shall obtain the full name, social security number, address and any other information required by the director of accounts and reports from any person for whom the state agency, foreign state agency or municipality provides any service or with whom the state agency, foreign state agency or municipality transacts any business and who may become a debtor under this act.

(c) Except for debts for which a voluntary agreement for payment has been entered into and is being complied with or debts for which garnishment or other judicial proceedings are pending and except as otherwise directed by the secretary of administration, the director may require any state agency to certify all debts owed to the state agency or to certify all such debts in specified categories of debts, for setoff under K.S.A. 75-6204, and amendments thereto. Any state agency required to certify debts under this subsection shall give the director all information relating to such debts as may be requested by the director.

(d) The secretary of administration as provided in K.S.A.

75-3706 and amendments thereto may adopt rules and regulations necessary to carry out the provisions of this act.

(e) The secretary of revenue may adopt rules and regulations defining the term "contribution of income" for the purposes of this act.

Sec. 5. K.S.A. 75-6204 is hereby amended to read as follows:
75-6204. (a) Subject to the limitations provided in this act, if a debtor fails to pay to the state of Kansas or any state agency, foreign state agency or a municipality an amount owed, the director may setoff such amount against any money held for, or any money owed to, such debtor by the state or any state agency.

(b) The director may enter into agreements with a municipality for participation in the setoff program under such terms and conditions as may be agreed to by the parties.

Sec. 6. K.S.A. 75-6205 is hereby amended to read as follows:
75-6205. (a) The director shall not effect final setoff and collect debts through use of the remedy established under this act unless the debt is equal to or greater than \$25.

(b) The use of setoff against earnings of a debtor shall be subject to the same dollar limitations and dollar restrictions as are provided by law for wage garnishment. The maximum amount of the disposable earnings of an individual which will be subject to setoff to enforce any order for the support of any person shall not exceed 50% of the debtor's disposable earnings unless satisfactory information is submitted to the director indicating that a greater percentage is applicable and authorized by law.

Sec. 7. K.S.A. 75-6206 is hereby amended to read as follows:
75-6206. (a) A state agency, foreign state agency or municipality which requests the director to assist in the collection of a debt due to the state agency, foreign state agency or municipality by the utilization of setoff procedures under this act or which is required to certify debts under K.S.A. 75-6203 and amendments thereto, shall certify to the director in writing the identity of the debtor, the amount of the debt subject to setoff and other

information as the director may require. The director shall cause such data to be matched to payroll, refund and other pending payment files to identify those instances where setoff procedures may be implemented. The director shall then make the following notification to the debtor in writing, either by personal delivery to the debtor or by mail. Such notification shall include:

(1) A demand for payment of the debt and a brief explanation of the legal basis of the debt;

(2) a statement of the ~~state-agency's~~ director's intention to setoff the debt due against the debtor's earnings, refund or other payment due to the debtor from the state of Kansas or any state agency;

(3) the right of the debtor to request in writing a hearing to contest the validity of the claim, if such request is made: (A) Within 15 days of the mailing of the notice, or (B) in cases where notice was not given by mail, within 15 days of personal delivery to the debtor;

(4) a statement that a hearing may be requested by making a written request therefor to the director of accounts and reports and the address of the director; and

(5) the fact that failure to request a hearing within the fifteen-day period will be deemed a waiver of the opportunity to contest the claim causing final setoff by default.

(b) A copy of the notice required by subsection (a) to be sent to the debtor shall be sent to each state agency involved, foreign state agency or municipality seeking collection through setoff from the debtor. Subject to the provisions of K.S.A. ~~75-6205, upon receipt of the copy of such notice--the--state~~ and amendments thereto and upon request of the director, the payor agency shall withhold from the named debtor an amount equal to that claimed as the debt owed, ~~and.~~ The state agency, foreign state agency or municipality shall notify immediately the director of accounts and reports of any payments thereafter

received from the named debtor or of any arrangements thereafter made for payment of the debt. Until the director of accounts and reports gives notice to ~~a-state~~ the payor agency as to the final determination to proceed or not proceed with the collection of a debt by setoff, the ~~state~~ payor agency shall continue to hold payments subject to setoff.

Sec. 8. K.S.A. 75-6207 is hereby amended to read as follows: 75-6207. (a) If the director receives a timely written request for a hearing under K.S.A. 75-6206 and amendments thereto, the director shall request the secretary of administration to appoint a presiding officer who shall hold a hearing in accordance with the provisions of the Kansas administrative procedure act to determine whether the debt claim is valid. Subject to the provisions of subsection (b), the presiding officer shall determine whether the claimed sum asserted as due and owing is correct, and if not, shall order an adjustment to the debt claim which shall be forwarded to the director and to the agency state agency, foreign state agency or municipality to which the debt is owed. No issue may be considered at the hearing which has been previously litigated and no collateral attack on any judgment shall be permitted at the hearing. The order of the presiding officer shall inform the debtor of the amount determined as due, if any, and that setoff procedures have been ordered to proceed in accordance with this act. If the setoff is to be made against earnings of the debtor, the order shall include a statement that the setoff may be postponed in accordance with K.S.A. 75-6208 and amendments thereto. Orders under this section shall not be subject to administrative review.

(b) In cases where there is only one known present or future payment due from the state to the alleged debtor, the presiding officer may limit the hearing issue to a determination of whether the debt owed the state agency, foreign state agency or municipality is at least equal to the amount of the payment owed to the debtor by the state.

(c) Pending final determination in the order of the presiding officer of the validity of the debt asserted by the state agency, foreign state agency or municipality, no action shall be taken in furtherance of collection through the setoff procedure allowed under this act.

(d) Judicial review of an order under this section shall be in accordance with the provisions of the act for judicial review and civil enforcement of agency actions. In any such review, except as provided in subsection (e), the department of administration and the secretary of administration shall not be named parties to the proceedings.

(e) Parties to an action for review of an order under this section shall be: (1) The debtor; (2) the state agency, foreign state agency or municipality which requested assistance in collecting the debt or which certified the debt; and (3) any party the district court permits to intervene in the action. Applications for a stay or other temporary remedies shall be to the ~~state-agency-described-in-subsection-(e)-(2)~~ district court.

Sec. 9. K.S.A. 75-6210 is hereby amended to read as follows: 75-6210. (a) Upon completion of a setoff transaction, the director shall transfer the net proceeds collected to the account or fund of the ~~officer-or--agency~~ state agency, foreign state agency or municipality to which the debt was owed.

(b) From the gross proceeds collected by the director through setoff, the director shall retain a reasonable collection assistance fee of not to exceed 15% for a state agency, except that in the case of transactions for collection of debts arising from the employment security law such fee shall not exceed \$300 for any transaction. The director shall retain a reasonable collection assistance fee from the gross proceeds of collections through setoff on behalf of a municipality in such amount as the municipality and the director shall agree. The director shall retain a reasonable collection assistance fee from the gross proceeds of collections through setoff on behalf of a foreign

state agency in such amount as specified in the reciprocal agreement entered into pursuant to section 1. The director may credit a portion of the collection assistance fee to the appropriate account or fund of any other state agency that has incurred expenses in assisting in the collection of the debt. The amount of the collection assistance fee retained by the director shall be deposited in the state treasury and credited to the accounting services recovery fund.

(c) Upon receipt by the agency state agency, foreign state agency or municipality of the net proceeds collected, the agency state agency, foreign state agency or municipality shall credit the debtor's obligation in the amount of the gross proceeds collected.

(d) Except as otherwise prescribed by the director or the secretary of administration, any state agency, foreign state agency or municipality which receives any payment from a debtor after notification to the debtor under K.S.A. 75-6206 and amendments thereto, other than payments collected pursuant to K.S.A. 44-718 and amendments thereto or collected through the federal government or judicial process, shall remit the collection assistance fee imposed under subsection (b) to the director which shall be credited to the accounting services recovery fund. If a state agency fails to remit the collection assistance fee as required by this subsection, the director may transfer an amount equal to such collection assistance fee from the appropriate account or fund of the state agency to the accounting services recovery fund. If a foreign state agency or municipality fails to remit the collection assistance fee as required by this subsection, the director may seek collection of such fee in such manner as may be allowed by law.

(e) In cases involving the collection of debts arising from the employment security law, the entire amount collected shall be credited to the employment security fund and the collection assistance fee shall be transferred from the special employment

security fund to the accounting services recovery fund.

Sec. 10. K.S.A. 75-6211 is hereby amended to read as follows: 75-6211. The priority in multiple claims by state agencies, foreign state agencies and municipalities for setoff under the provisions of this act shall be according to the time of ~~of----filing----with---the---director---under---K.S.A.---75-6208.~~ ~~Notwithstanding--the--priority--established--in---this---section,~~ ~~collection--of--taxes--shall--have--priority--over--other--claims--for~~ ~~collection--by--the--setoff--procedure.~~ following priority of claims:

(a) Collection of taxes owed to agencies of the state of Kansas;

(b) claims for collection of debts which have been written off by assignment to the director;

(c) other claims according to the time of filing with the director under K.S.A. 75-6208 and amendments thereto; and

(d) notwithstanding subparagraph (c), claims for collection of interstate child support debts and tax liabilities of other states shall have last priority according to the time of filing with the director under K.S.A. 75-6208, and amendments thereto.

Sec. 11. K.S.A. 75-6212 is hereby amended to read as follows: 75-6212. (a) Notwithstanding any provision of law prohibiting disclosure by the department of revenue of the contents of taxpayer records or information and notwithstanding any confidentiality statute of any state agency, foreign state agency or municipality, all information exchanged among the department of revenue, any other state agency, foreign state agency or municipality and the debtor necessary to accomplish and effectuate the intent of this act is lawful.

(b) The information obtained by any other state agency, foreign state agency or municipality from the department of revenue in accordance with the exemption authorized by subsection (a) shall only be used by such other state agency, foreign state agency or municipality in the pursuit of its debt collection duties and practices. Any person employed by, or formerly

employed by, a state agency other than the department of revenue, who is employed, or formerly employed by a foreign state agency or municipality, and who receives information subject to the provisions of K.S.A. 79-3234 and amendments thereto, or other information designated by law as confidential, shall be subject to the same duty of confidentiality with respect to such confidential information imposed by law on officers and employees of the state agency, foreign state agency or municipality from which such information was obtained and shall be subject to any civil or criminal penalties imposed by law for violations of such duty of confidentiality.

Sec. 12. K.S.A. 75-6214 is hereby amended to read as follows: 75-6214. (a) Upon written request to the director, any debtor against whom setoff has been effected may have a hearing thereon if: (1) The debtor alleges that either such debtor did not receive actual notice of the right to request a hearing thereon or that the debtor did not use the opportunity for a hearing;

(2) less than two years have elapsed since the setoff was effected; and

(3) the debtor alleges that the setoff was improper.

(b) Hearings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act. Orders resulting from hearings under this section shall not be subject to administrative review. If it is determined that the setoff was improper, the debtor shall be entitled to a refund of the sum improperly setoff. The director of accounts and reports shall cause such refund to be paid from the fund or funds of any state agency to which the amounts which were setoff were credited. In the case of a foreign state agency or municipality, the director shall direct a refund of the amount improperly setoff. The amount of any such refund shall be in addition to and shall not be included in computing expenditures credited against any expenditure limitation imposed on any such

fund.

Sec. 13. K.S.A. 75-6201, 75-6202, 75-6203, 75-6204, 75-6205, 75-6206, 75-6207, 75-6210, 75-6211, 75-6212 and 75-6214 are hereby repealed.

Sec. 14. This act shall take effect and be in force from and after its publication in the statute book.

STATE OF KANSAS

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Department of Revenue
Division of Collections

To: Senator Dan Thiessen

From: Becky S. Burghart
Kansas Department of Revenue

RE: S.B. 601 Authorizing reciprocal agreements
with other states to allow the setoff of tax liabilities
of other states

Date: February 25, 1992

Thank you for allowing me to testify before you in favor of S.B. 601 which would enable the Kansas Department of Revenue to enter into a reciprocal agreement with other states to allow the setoff of tax liabilities of other states.

The bill would allow the Department to further utilize the setoff program to collect pass due accounts and also adopt one of the newest innovative concepts in State Government Collections. This concept was introduced to the Kansas Department of Revenue by the Missouri Department of Revenue in the fall of 1991. Missouri passed legislation in 1984 enabling them to set off against another state's debt but have not been able to take advantage of this legislation due to lack of supporting legislation from other states. To date, no two states have entered into such an agreement therefore, it is unknown at this time just how lucrative this concept might be.

S.B. 601, as we envision it, would enable Kansas to setoff against all its own tax debts but, prior to issuing a tax refund back to the taxpayer, an additional step would be taken. The Kansas Department of Revenue would attempt to match a debt owed to another state against the tax refund. If a match occurred, the taxpayer would be informed of the intent to setoff and it is then up to the other state to set off against the refund. The same would hold true for Kansas debts.

If the debt was one for unpaid Kansas taxes, S.B. 601 would be used as one of two final collection tools. We would first attempt to collect the debt in-house through the use of telephone collections, written correspondence, personal visit and finally, we would refer the account to an out of state collector who then has the task of enticing the taxpayer to make a choice to pay our debt. S.B. 601 would allow the Department a second choice which removes the debtor from having to

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make any difficult choices. The debtor is informed of the intent to set off and it then up to the debtor and the State to determine the terms of the set off.

We feel S.B. 601 can offer a positive approach to collecting debts not only for the States but for the debtor too. We have found, many instances, where the debtors do not know what to do. So, they do nothing. S.B. 601 will offer an alternative to doing nothing.

I appreciate the opportunity to come before you in support of S.B. 601 and would be happy to address any questions you might have.