

Approved: February 9, 1995
Date

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION.

The meeting was called to order by Chairperson Audrey Langworthy at 11:00 a.m. on February 8, 1995 in Room 519--S of the Capitol.

Members present: Senator Langworthy, Senator Corbin, Senator Martin, Senator Bond, Senator Clark, Senator Feleciano, Jr., Senator Hardenburger, Senator Lee, Senator Ranson, Senator Sallee and Senator Wisdom.

Committee staff present: Tom Severn, Legislative Research Department
Chris Courtwright, Legislative Research Department
Don Hayward, Revisor of Statutes
Elizabeth Carlson, Secretary to the Committee

Conferees appearing before the committee: Greg Musil, Attorney, Metmor Financial
Mike Gulinson, Chief Financial Officer Corinthian Mortgage Corporation
Roy Browning, Metmor Financial Inc.
Mary Birch, Overland Park Chamber of Commerce

Others attending: See attached list

APPROVAL OF MINUTES

Senator Clark made a motion to approve the minutes of February 7, 1995. The motion was seconded by Senator Martin. The motion carried.

SB 132--TAXATION OF THE BUSINESS OF BANKING; PROHIBITING

Greg Musil, Attorney, Metmor Financial, explained **SB 132**. (Attachment 1) He said KSA 79-1103 and 79-1105a impose a tax on the capital of any person or entity engaged in the "business of banking." The "business of banking" is defined to include anyone who tries to make a profit by lending money or buying or selling bills of exchange, notes, bonds, stocks or other evidence of debt. A tax amount of 5 mills is applied against the total capital of the business. Although originally targeted toward "banking," today, banks, savings and loans, and trust companies do not pay this tax. **SB 132** repeals these two statutes. He went on to tell of the history of KSA 79-1103 and 79-1105a. Since 1963, until 1993, there has been no purpose for these statutes and no record of any County enforcing them.

In 1993, Johnson County began to enforce this old tax. As of 1994, approximately 80 Johnson County businesses have been required to pay this tax. They are already subject to Kansas income, sales, and real property tax. **SB 132** would place these businesses in the same position to receive equal treatment with other Kansas taxpayers. The repeal of these statutes will result in sensible tax policy and a productive economic developmental climate for Kansas.

Mike Gulinson, Chief Financial Officer, Corinthian Mortgage Corporation, spoke in support of **SB 132**. (Attachment 2) Mr. Gulinson spoke of their reason to locate in Overland Park and he said they expected to pay state income taxes, personal property taxes and real property taxes. In 1993, the Johnson County appraiser deemed they should be taxed under KSA 79-1105a in lieu of personal property taxes. Mr. Gulinson spoke of the reasons why these statutes should be repealed. He said the language is vague and creates unfairness. Is this statute to be enforced in Johnson County only? What about the automobile and consumer finance companies? What about retailers who provide credit? He also said their resources and revenues outside the state and county and other than lending operations are being taxed. He said they have a disproportionate tax burden. He asked that they have an even playing field as they compete with their fellow bankers, savings and loans, credit unions and others.

There were questions from the committee to the staff if these statutes are being used across the state. Greg Musil said about \$800 thousand was collected in Johnson County and \$1.8 million was collected statewide in

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION, Room 519-S
Statehouse, at 11:00 a.m. on February 8, 1995.

1994. The committee commented they needed some one from Property Valuation Division to assist in answering some of the questions. Senator Lee asked what are they being taxed on? They are being taxed on their capital. This is in lieu of the personal property tax. Mr. Musil said the intangibles tax was repealed in 1982 and he thought these statutes should have been repealed at that time.

Roy Browning, Metmor Financial Inc., supports the passage of **SB 132**. (Attachment 3) He said he believes the tax is unfair and will discourage companies like Metmor from staying in or moving to Kansas. He also said Metmor's lawyers believe the tax is unconstitutional and illegal. Metmor is in the business of servicing and originating mortgage loans. He explained what this business does. Metmor pays income taxes, tangible personal property taxes and real property taxes on any property it owns. Because of the enforcement of two obscure provisions in the statutes, KSA 79-1103 and KSA 79-1105a, Metmor paid in additional tax payments approximately \$262,900 over and above what would have been paid in tangible personal property tax. The statute threatens to tax every business which offers credit terms to customers. He said it is difficult to explain to their parent organization, Metropolitan Life Insurance Company, that the county has discovered a new tax which is costing Metmor several hundred thousand dollars. This tax has a damaging impact on the economic development in Kansas.

Senator Bond asked what the 5 mills is levied against? Mr. Browning said it is against the capital that is employed in their business. It would include common stock and retained earnings. Senator Ranson asked why this tax was implemented during 1993?

Paul Welcome, Johnson County Appraiser, who was in the audience, said when he started work in Johnson County, a CPA was hired to go over the statues to determine how they were being interpreted. That was why it was started in 1993. He also said they had contacted the Property Valuation Division to be sure they were interpreting the law correctly.

It was mentioned that they are taxing about 80 businesses, and Mr. Welcome said some of the automobile credit companies are now being taxed. He said they are in the process of going through the businesses that this tax would apply to. Senator Bond asked about Dillards and Sears and some of those large retail companies that have credit. Mr. Welcome said they are looking at them but he was not prepared to speak about that. He did not come to testify but would get any information the committee would like.

Senator Martin asked if there was any information from or if it was discussed at a meeting with the Property Valuation Division and Mr. Welcome said it was not but it was discussed at the Kansas County Appraisers Association. He said they have been trying to be sure they are interpreting the statutes correctly so they have been in contact with Property Valuation Division but they have had no directive from the Director. They have also been in contact with Sedgwick County about this.

Senator Langworthy asked why it was brought up at the January Kansas County Appraisers Association meeting and Mr. Welcome said it was to alert the other counties that these statutes were on the books. Senator Bond said this is a source of higher income.

Mary Birch, Overland Park Chamber of Commerce, spoke in support of **SB 132**. (Attachment 4) She said after businesses are taxed with income tax, property tax and other taxes, this tax may be the tax to break the camel's back. She pointed out the reasons for support of this bill. She spoke of the impact to existing and future mortgage banking companies which are located or may be thinking of locating in Overland Park. She said in essence this is a new and different tax. Also, it is not charged in Missouri, which would make it a disadvantage for Overland Park and Kansas. She said 5 mills tax is significant and since classification, local governments are sensitive to even .1 mill increase.

Senator Ranson asked if this tax would have any impact on the state portion of the school finance. Staff said it would not but they did think it would effect the state building fund which would get 1.5 mills.

Senator Corbin said if this is left to grow, it will become a very big factor across the state.

Greg Musil said he had a couple of amendments he would like to present to the revisor.

The hearing was closed on **SB 132**.

The meeting adjourned at 12:00 noon.

The next meeting is scheduled for February 9, 1995.

SENATE ASSESSMENT AND TAXATION COMMITTEE GUEST LIST

DATE: Feb 8, 1995

NAME	REPRESENTING
Greg Musil	Metmor Financial
JOHN HOLTSMANN	METMOR FINANCIAL
ROY BROWNING	METMOR FINANCIAL
Mike Galinson	CORINTHIAN MORTGAGE CORP.
RICHARD BODWALD	TAXPAYERS
Robert Kelly	SELF
Joseph Kronawitter	Student page of
MARY CORDULLO	KDOR
Martha Lee	KIHA
Mary Birch	O. P. Chamber
George Barber	KAFS
KEITH DAVIS	KDOT
Christy Bailey	Senate Leadership
Alan Steppat	PETE MCGILL + Assoc.
Danielle Nye	KCUA
FAM SOMERVILLE	KS AUTO DEALERS

SENATE ASSESSMENT AND TAXATION COMMITTEE GUEST LIST

DATE: February 8, 1995

NAME	REPRESENTING
ALISON REDFERN	LDRSHIP SU Co.
MATTHEW MARTIN	KAR
Marc Farrar	City of Overland Park
BEV BRADLEY	KS Assoc of Counties
Stu Olson	Hillcrest Covenant Ch ^{ch}
Paul White	self
Judy Racine	KDOT
SHELBY SMITH	RK7A
Judy Perkins	CPAK
Gordon T. Garrett	CPAK
MARK CARLUCCI	KDOR
Bob Vanaman	Senods
Christy Bealey	Senate Staff
Pam Somerville	KS AUTO DEALERS ASSN
Chris Wilson	KS bootal Consulting
Gerry Ruz	Johnson Co Overland Park

SENATE BILL NO. 132

Senate Bill No. 132 repeals K.S.A. 79-1103 and 79-1105a. These two sections impose a tax on the capital of any person or entity engaged in the "business of banking." The "business of banking" is defined to include anyone who tries to make a profit by lending money or buying or selling bills of exchange, notes, bonds, stocks or other evidence of debt. The tax amount of 5 mills is applied against the total capital of the business. Although originally targeted toward "banking", today banks, savings and loans, and trust companies do not pay this tax.

K.S.A. 79-1103 was adopted in 1930. In 1973, the Legislature separated the taxation of residents from nonresidents by enacting K.S.A. 79-1105a. K.S.A. 79-1103 now applies only to residents. K.S.A. 79-1105a applies only to nonresidents. Although not identical in language, the two sections are being enforced in the same manner.

The history of 79-1103 and 79-1105a reaches back to the 1860s, when Congress allowed the states to tax national banks on the value of the shares in the hands of the bank's shareholders. At the same time, Congress prohibited states from discriminating in their tax policies against nationally chartered banks and in favor of state chartered banks. Each and every bank, savings and loan, trust company or other individual competing with national banks had to be taxed by the state in the same manner as the state taxed national banks. Kansas reacted by passing the predecessors to K.S.A. 79-1103. Versions of what would eventually become K.S.A. 79-1103 appear in the General Statutes of Kansas in 1876 and 1891. See First National Bank of Junction City v. Geary County, 102 Kan. 334, 339-341 (1918).

In a law passed in 1926, Congress allowed the states the option of taxing national banks on their income instead of taxing their capital. In 1963, Kansas adopted this congressionally authorized alternative method to tax banks by enacting K.S.A. 79-1107. Because banks were now taxed on their income, the historical reasons supporting 79-1103 and 79-1105 were effectively eliminated. Since 1963 banks in Kansas, whether nationally or state chartered, have been taxed based on a percentage of their net income, a calculation similar to an income tax. However, unlike Metmor, banks are not subject to Kansas income tax.

Although the Legislature carved out a new taxation system for the traditional lenders who had originally been affected by K.S.A. 79-1103, it failed to repeal those sections. However, between 1963 and 1993, there is no record of any County enforcing these statutes or collecting any tax under them. Since 1963, there is no record of any substantive discussion regarding the validity of, need for, or purpose of these statutes.

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attach 1-1

For at least twenty years, these sections lay in hibernation. In 1993, Johnson County dusted off these statutes and began to enforce this old tax. Without any legislative mandate or history, and with no guidelines or instructions from the Kansas Property Valuation Division, the Johnson County Appraiser began requiring certain businesses which arguably fit within the definitions of the sections to pay the tax in lieu of a tangible personal property tax. As of 1994, approximately 80 Johnson County businesses have been required to pay this tax.

The individuals and businesses subject to this tax are already subject to Kansas income, sales, and real property tax. In addition, but for the application of 79-1103 or 79-1105a beginning in 1993, they would pay Kansas tangible personal property tax. Passage of Senate Bill 132 will not provide any special benefits to these individuals and businesses. It simply places them in the same position they were in in 1993 and ensures they receive the equal treatment with others Kansas taxpayers.

The taxes imposed by K.S.A. 79-1103 and 79-110a are antiquated, ambiguous, unequally enforced and discriminatory. They discourage economic development in Kansas by imposing a unique and higher tax on businesses who locate in Kansas than those businesses would pay in other surrounding states. Passage of Senate Bill 132, and repeal of these relics from the past, will result in sensible tax policy and a productive economic development climate for Kansas.

Section by Section Analysis

- Section 1:** Prohibits levy of taxes under K.S.A. 79-1103 and 79-1105a for tax years 1995 and beyond. Also prohibits any county appraiser from initiating any audits, investigations, or examinations of taxes under these sections for prior years. Also prohibits any county appraiser from adjusting or altering any taxes assessed for prior years. Finally, preserves the rights of those taxpayers who have properly filed protests of taxes assessed under these sections to proceed with their appeals.
- Section 2:** Technical amendment repealing subsection (m) of K.S.A. 12-1,109. Subsection (m) provided an exemption from any local intangibles tax for those persons and entities subject to taxation under 79-1103 or 79-1105a.
- Section 3:** Repeals K.S.A. 12-1,109, 79-1103, 79-1104, 79-1105, 79-1105a and 79-1105b.
- Section 4:** Act to take effect and be in force from and after its publication in the Kansas register.

Mike Gulinson
Chief Financial Officer
Corinthian Mortgage Corporation
Overland Park, Kansas

I. CORINTHIAN MORTGAGE CORPORATION

Corinthian Mortgage Corporation has been in existence and headquartered in Overland Park for nearly ten years. We employ approximately 190 people, of which 145 are located in Johnson County. We are strictly a lender, purchaser, and servicer of single family residential mortgages. As a servicer, we collect house payments from customers and insure that their insurance and property taxes are paid. We are an active participant as originator and servicer in affordable housing initiatives in the State of Kansas. We originate over one billion dollars in mortgages each year and service nearly two billion dollars for 28,000 customers. About ten percent of the mortgages we service are located in Kansas.

Approximately one half of our employees are engaged in servicing, and over sixty percent of our revenue is derived from that aspect of our operation.

II. TAXATION OF CORINTHIAN

When we organized and located in Overland Park, we considered a number of factors. We, like every business, depend greatly on our employees. We find the citizens of our area to be well educated and highly motivated. We have enjoyed our location and convenience of travel. We considered that we would be paying state income taxes, personal property taxes, and, through our rents, real property taxes. We did pay these taxes for eight years. Approximately two years ago, however, we were notified by the Johnson County Appraiser that he deemed that we should be taxed under Kansas Statute 79-1105a in lieu of personal property taxes. For the first year so computed, we would owe an additional \$25,000 in taxes. As our capitalization has grown through profits, that differential is now more like \$50,000 - \$60,000 annually.

III. REPEAL OF 79-1105a

We are joining in the effort to repeal 79-1103 and 79-1105a, primarily for three reasons.

A. Vague Language Creates Unfairness

To my knowledge, this statute has not been enforced for years. We were not considered under it until two years ago. Will it be enforced only in Johnson County? Only against mortgage companies? What about automobile and consumer finance companies? What about retailers who provide credit? If we cannot readily determine what types of business are covered by the statute, how can we have any assurance that it will be fairly and equitably applied?

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attach 2-1*

B. Resources and Revenues Outside the State and County, and Other Than Lending Operations, are Taxed

Apparently, it is the fact that we originate and purchase loans that has caused us to be brought under this statute. As I mentioned, however, only about 40% of our revenue is derived from this source, with the remainder coming from the servicing of loans. Only about ten percent of our loans are on property located in Kansas, and fewer than that in Johnson County. Nevertheless, the Johnson County Appraiser is seeking to tax our entire capital, and the vagueness of the statute allows him to take that position.

C. We Now Have a Disproportionate Tax Burden

As I mentioned, by falling under this statute, we will pay in the first year \$25,000 more in total taxes than if we were a "regular" service company. The disparity is even greater compared to entities against which we partially compete - those taxed as regular financial institutions. For that same year, we would pay \$50,000 more than these companies.

IV. CONCLUSION

We have been, and wish to continue to be, good corporate citizens of this state and county. We expect to pay our fair share of taxes, which last year included nearly \$400,000 in state income taxes. We must also, however, consider the best interests of our shareholders and be able to justify the tax burden where we are located as compared to moving just a few miles east.

We have, in fact, recently contracted to lease 35,000 square feet of space in Johnson County. Our lease is a long term lease, but, because of the uncertainty of this legislation, we have reserved to ourselves the right to terminate the lease within a much shorter period of time, due to our concerns.

We ask only that the playing fields upon which we compete with our fellow bankers, savings and loans, credit unions and the like, be a relatively level playing field, and that we all contribute as equally as possible to meet our respective obligations to support state and local government.

**Testimony of Roy Browning
Metmor Financial Inc.
In Support of Senate Bill No. 132**

February 8, 1995

Madam Chairman, thank you for the opportunity to appear before this Committee today in support of Senate Bill No. 132. My name is Roy Browning and I am the Executive Vice-President of Metmor Financial Inc. I know your time is short and your plate is full, so I will outline as briefly as I can why this legislation is so important to Metmor and, I believe, to the State of Kansas.

Senate Bill 132 would repeal an antiquated, ambiguous, unequal, unfair, and almost totally unenforced tax on Metmor and other similarly situated companies. I believe the tax is unfair and, if not repealed, will discourage companies like Metmor from staying in or moving to Kansas. Additionally, Metmor's lawyers believe the tax is unconstitutional and illegal. Today I intend to focus on the practical and economic reasons for repealing K.S.A. 79-1103 and 79-1105a. I will leave the legalities to another time and place.

As an introduction, Metmor is in the business of servicing and, to a much smaller extent, originating mortgage loans. Servicing of a mortgage loan consists primarily of the collection of the monthly mortgage payments, payment of property taxes and insurance for the borrower, and payment of principal and interest to the mortgage loan to the owner of the note. At December 31, 1994, we serviced approximately \$9.3 billion in residential

mortgages and approximately \$3 billion of commercial mortgages. Currently, Metmor employs over 400 people in the state of Kansas.

Our servicing operations have not always been located in Kansas. In 1986, Metropolitan Life Insurance Company owned two large mortgage companies; one located in Oklahoma City, Oklahoma, and the other located in Los Angeles, California. In August of that year, it was decided to move the Oklahoma City operation in its entirety to Kansas. This decision was made after carefully evaluating eight different cities across the country and considering a variety of business and quality of life factors such as transportation availability, mail service, public schools, institutions of higher education, banking environment, and tax burdens. After careful consideration of all of these factors, the decision was made to relocate to Kansas. In connection with this relocation, 72 employees were transferred from Oklahoma City and 90 employees were hired from the Kansas City area to service these loans on the day we opened our business in Overland Park and additional hirings were made as the servicing operation continued to grow.

In 1989, after evaluating the success of our company's operations in Kansas, MetLife decided to consolidate all of its operations in Overland Park. This resulted in the creation of 350 additional jobs in Overland Park, thereby adding to the tax base of the state. We believed in 1989, as we believe now, that Kansas has a productive and progressive attitude towards businesses and people. We want to maintain our jobs and our homes in Kansas.

Since moving to Kansas, Metmor has been subject to Kansas income taxes, tangible personal property taxes, and real property taxes on any property it owns. Its employees pay Kansas income taxes on income earned in Kansas and sales taxes on purchases made in Kansas. The employees that live in Kansas pay personal and real property taxes. We like to think that we are a good corporate citizen which provides good jobs, a good tax base, and good people to Overland Park and to Kansas.

So why are we here today? In 1993, for the first time anyone can remember, the Johnson County Appraiser discovered and began enforcing two obscure provisions in the Kansas tax statutes--K.S.A. 79-1103 and 79-1105a. You have heard the history of these taxes. Let's talk about their impact on Metmor.

Before 1993, Metmor willingly paid Kansas property tax on all of its tangible personal property. In 1993, the County Appraiser demanded that Metmor pay its tax under 79-1105a, eventually resulting in additional tax payments by Metmor of approximately \$262,900 over and above what would have been paid in tangible personal property tax. In 1994, the County Appraiser again demanded Metmor pay its tax under 79-1105a, resulting in additional taxes of approximately \$217,400 over and above what would have been paid in tangible personal property tax.

Metmor is not alone as a victim of this outdated tax. So far about 80 business in Johnson County have been deemed subject to 1103 or 1105a. The appraiser is, of course, looking for more. The

broad scope of the statutes threatens to tax every business, large or small, which offers credit terms to customers, which buys stocks, bonds, or promissory notes, or which participates in any way in documents evidencing debt. Without repeal, every mom and pop shop which gives its customers 30 days to pay is potentially "engaged in the business of banking" and subject to the tax.

I have no doubt that the counties relish this new source of untapped revenues. As local governments search for more money, why not dust off these old taxes? Metmor, and other taxpayers, however, see it as an unfair bolt out of the blue. No prior notice. No prior enforcement. No interpretation of the definitions other than what each individual county appraiser considers reasonable. And an additional, annual tax bill for Metmor in the hundreds of thousands of dollars.

This new enforcement of antiquated and ambiguous statutes arguably represents administrative taxation. No legislative action took place, but the administrators of our property tax system have decided now this tax must be collected.

No one can explain to me from a tax policy standpoint why this type of tax is necessary, how it can be interpreted uniformly, or how it can be enforced fairly. Nor can anyone explain how this tax on the people in the financial services industry benefits economic development in Kansas. Metmor's corporate parent, Metropolitan Life Insurance Company, has asked me hard questions about the unbudgeted payments Metmor has authorized to Kansas to satisfy this

"new" tax. How do I explain to them that the county has discovered a new tax, that it is being applied first to visible companies like Metmor, and that the benefits to Metmor of being located in Kansas are now significantly less than they were in 1992?

The economic and tax climate in Kansas is the subject of much discussion in this legislative session. As you hear the testimony this morning, I know you will recognize the damaging impact, on businesses large and small, of this "newly discovered" tax. You will also recognize the discouraging impact this tax can have on economic development prospects throughout Kansas.

Metmor and its employees, and 80 other businesses in Johnson County, have already felt the impact of this tax. Metmor is weighing right now its options to avoid these large taxes in the future. Obviously these options include relocating outside of Kansas. Pass Senate Bill 132, repeal these sections, and those negative effects on a large number of Kansas residents and business can be avoided.

Thank you for your time. If you have more detailed questions about the history or legal issues surrounding these sections, I will be happy to try and answer them. John Holtmann, Metmor's General Counsel, and Greg Musil, of Shughart, Thomson & Kilroy, are also here with me to try to provide any additional information the Committee may need.



S.B. 132

TESTIMONY

SENATE ASSESSMENT & TAXATION COMMITTEE

2/8/95

MARY BIRCH, CCE, PRESIDENT

Thank you madame chairman. My name is Mary Birch and I am President of the Overland Park Chamber of Commerce. I am here today to express the Chamber's support for SB 132.

Chamber's Mission:

- ◆ Positive and Competitive Business Climate.
- ◆ Continued Economic Development for Kansas.

Reasons for Support:

1. 25% of Johnson County economy is the business of growth.
2. Impact to existing and future mortgage banking companies.
 - ◆ Currently 53 firms in Johnson County employing over 1,000 people.
 - ◆ Many of these firms are basic because they export their services regionally/nationally and bring income into Kansas.
 - ◆ The 5 mills of property tax has been recently discovered. Not paid by others and is in essence a new and different tax.
 - ◆ Not charged in Missouri.
 - ◆ Real Estate cycles have small firms coming and going....future choice may be Missouri.

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attach 4-1*



3. Property Tax Sensitivity.

- ◆ Currently Johnson County commercial real estate taxes are \$3.50 to \$4.50/square foot....and according to the experts on their way to \$5.00.
- ◆ Since classification, local governments will attest to the fact that we are sensitive to even .1 of a mill. Therefore, 5 mills is significant.
- ◆ ~~Tax is kept local and therefore the state does not lose current revenues by the passage of this bill. However, the potential for loss is present should the bill not be passed.~~

Thank you for your time and consideration.