

Approved: 3-5-97
Date

MINUTES OF THE HOUSE COMMITTEE ON TAXATION..

The meeting was called to order by Chairperson Phill Kline at 9:00 a.m. on February 5, 1997 in Room 519-S of the Capitol.

Committee staff present: Chris Courtwright, Legislative Research Department
Shirley Sicilian, Department of Revenue
Steve Stotts, Department of Revenue
Ann McMorris, Committee Secretary

Conferees appearing before the committee:
Dan Hermes, Director of Governmental Affairs
Eric Peden, attorney, Kansas City, MO.
Scott Merritt, Jr., Johnson County, Kansas

Others attending: See attached list

Chair opened hearing on:

HB 2032 - Single-individual income tax rates reduced

Proponents:

Dan Hermes, Director of Governmental Affairs (Attachment 1)
Eric Peden, attorney, Kansas City, MO. (Attachment 2)
Scott Merritt, Jr., Johnson County, Kansas (Attachment 3)

Written testimony only from:

Elizabeth M. Gerhardt, Overland Park, Kansas (Attachment 4)
Marie Walter, Overland Park, Kansas (Attachment 5)
Kathy Klassen, Derby, Kansas (Attachment 6)
Sharon Smith, Wyandotte County, Kansas (Attachment 7)

Chair closed hearing on **HB 2032**.

Shirley Sicilian provided the committee with copies of the booklet entitled "1996 Homestead & Food Sales Tax Claim Booklet" as requested.

The next meeting is scheduled for February 6, 1997.

Adjournment.

Attachments - 7

TAXATION COMMITTEE GUEST LIST

DATE: FEBRUARY 5, 1997

NAME	REPRESENTING
Jean Allen	Schleicher Katz
Dan Schmitt	KIDOP
Chris Hurley	KOPH
Bernie Koch	Wichita Area Chamber
Eric Peden	self
Steve Montgomery	Greater KC Chamber
Ed Spiess	Peterson Public Affairs
Harriet Lange	Ks Assn Broadcasters
Sabrina Wells	Budget Division

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OFFICE OF THE GOVERNOR

LEGISLATIVE TESTIMONY

TO: Chairman Phill Kline and Members of the House Committee on Taxation

FROM: ^{Dan} Dan Hermes, Director of Governmental Affairs

DATE: February 5, 1997

BILL: House Bill Number 2032

Reducing the Income Tax Rate for Single Taxpayers

Chairman Kline and members of the committee, thank you again for the opportunity to appear today in support of a portion of the Governor's tax reduction package. The bill would reduce the income tax rates for single filers to the rates currently in existence for married taxpayers filing joint returns over a three year period. There are three specific points I would like to make on behalf of the Governor related to this measure:

First, while the Kansas Supreme Court has found the disparate treatment constitutional, the ruling does not make it reasonable or right. As the Governor asked in his legislative message: "Is it fair that a struggling, single parent have more taken from his or her paycheck? Is it fair that the state adds to the burden of grief caused by the loss of a spouse by raising the survivor's income tax?" As the law now stands, our public policy is unjust for single Kansans and correcting this inequity should be a tax relief priority.

Second, as a group, single income tax filers certainly merit a fair tax policy. The average taxable income for the one-half million single taxpayers is only \$19,000. The Governor asked for fairness and balance in tax policy and single Kansans need and deserve this legislation.

Finally, it is important that this plan be phased in over three years and considered with an understanding of the other components of the Governor's budget and tax relief proposals. We cannot address this issue to the exclusion of the other inequities addressed in the package, or the need for across-the-board property tax relief.

I would be happy to respond to any questions that you may have related to this legislation.

House Taxation
2-5-97
Attachment 1

Hearing on HB 2032
House Committee on Taxation
Wednesday, February 5, 1997

Testimony of Eric C. Peden

I would like to thank this committee for the opportunity to appear before you today, and testify in regard to House Bill 2032 and Governor Graves' proposal to equalize the income rates between married and unmarried taxpayers.

My name is Eric Peden. I am an attorney presently practicing law in Kansas City, Missouri. I am a former Kansas resident and taxpayer, and my ties to the State of Kansas remain strong. My entire family still resides in Kansas. I am a graduate of the University of Kansas, with degrees in business administration and accounting and also law. I have taught as an adjunct instructor at Kansas City Kansas Community College in the past.

In April of 1993, I initiated litigation to challenge the constitutionality of the Kansas income tax rate disparity between married and unmarried taxpayers that has existed in the Kansas tax code since 1988. At the end of last month, the Kansas Supreme Court ruled that the rate disparity does not violate the Equal Protection Clause. The Court found that the differences in tax rates between married and unmarried persons are rationally related to the state's interest in encouraging marriage.

However, the Court's ruling should not be viewed as bringing the issue to a rest. The Court was only able to consider the possible constitutional basis for the tax rate disparity - i.e., could the Court find a rational basis for charging different rates between married and unmarried taxpayers? The questions of (i) fairness of the disparity, and (ii) the wisdom of continuing the disparity, are questions that are going to have to be answered by this legislature. In light of our lawsuit, thousands of single taxpayers have filed refund claims with the Department of Revenue. One newspaper reported that number to be over 50,000. Even then, it represents only a fraction of the more-than 500,000 single filers in Kansas, who are now aware of this issue or are becoming aware of this issue, and they are going to be watching to see what the legislature does.

The tax rate disparity between married and unmarried persons was first created in 1988. At that time, Kansas began to impose one set of tax rates on married taxpayers filing joint returns and another set of less-favorable tax rates on all other taxpayers. This was unprecedented. Neither the federal government nor any other state has ever imposed higher tax rates on unmarried taxpayers. One of the great myths that has surrounded our lawsuit from day one is that all other states charge higher rates to singles like Kansas. This just simply isn't true. We even presented evidence in court where the former director of research for the Department of Revenue acknowledged before the House Taxation Committee in 1992 that Kansas is the only state that charges different rates between married and single filers.

Under the present tax structure, unmarried taxpayers are charged income tax rates that are **20% HIGHER** than the rates charged to married taxpayers, at all levels of taxable income. For example, the following rates apply:

Married Individuals Filing Joint Returns

<i>Over</i>	<i>But Not Over</i>		<i>Tax</i>
\$0	\$30,000		3.50% of taxable income
\$30,000	\$60,000	\$1,050 plus	6.25% of excess over \$30,000
\$60,000	-	\$2,925 plus	6.45% of excess over \$60,000

All Other Individuals

<i>Over</i>	<i>But Not Over</i>		<i>Tax</i>
\$0	\$20,000		4.40% of taxable income
\$20,000	\$30,000	\$ 880 plus	7.50% of excess over \$20,000
\$30,000	-	\$1,630 plus	7.75% of excess over \$30,000

This dual-rate structure has the effect of creating an excise tax on being single. All levels of taxable income earned by a married couple are taxed at lower rates than the taxable income earned by an unmarried individual. Married taxpayers with \$10,000, \$100,000, \$1,000,000 or \$10,000,000 of taxable income will never be subject to a rate higher than 6.45%. Unmarried taxpayers will pay tax at the rates of 7.5% and 7.75% on all amounts of taxable income in excess of \$20,000.

The rate disparity cannot be defended on the grounds that it is a pro-family measure. All married taxpayers - regardless of whether they have children or other dependents - receive the benefit of the lower rates. Conversely, all unmarried taxpayers - regardless of whether they have children or other dependents to support - are taxed at the higher rates. Thus, Kansas is the only state where a millionaire married couple with no children will be taxed at a lower marginal tax rate than a widowed taxpayer responsible for dependent children with just over \$20,000 in taxable income.

There is no evidence to suggest that the legislature ever intended to use the tax rates as a mechanism to entice people to get married, or any of the other reasons argued by the Department of Revenue in court [i.e., (1) favor and foster marriage, (2) alleviate financial burdens associated with marriage, (3) compensate for the marriage penalty of federal law, and (4) encourage joint-return filing to reduce the State's administrative costs].

If there was a difference in property tax rates or sales tax rates based on marital status, everybody would clearly know it was wrong. If a person walked into a store and at the checkout stand is asked: "Married or single?" and charged a different sales tax rate, the public would not stand for it. The result should not be any different because the rate disparity is buried in the darkness of the Kansas income tax code.

The issue now facing the legislature is not one of marriage, but of fairness. Kansas taxpayers come in all shapes, sizes and situations, such as: (1) married couples with children, (2) married couples without children, (3) high-income married couples, (4) retired married

couples, (5) single persons with children, (6) single persons without children, (7) single persons living alone, (8) widows and widowers, (9) divorced persons with children, (10) divorced persons without children, (11) nonresident married couples, (12) nonresident single persons, and (13) minor children taxpayers. Should the Kansas tax rate structure discriminate across-the-board based on marital status alone, ignoring family status and all other characteristics of a taxpayer. The answer is clearly "No."

This committee has the opportunity to correct an injustice that has existed under Kansas income tax law since 1988. Equalizing the rates between married and unmarried taxpayers in Kansas is simply the right thing to do. While I would encourage this committee to consider equalizing the rates effective immediately, rather than wait the three years as proposed by Governor Graves, House Bill 2032 is a step in the right direction.

Thank you for your time and attention.

Hearing on HB 2032
House Committee on Taxation
Wednesday, February 5, 1997

TESTIMONY OF J. SCOTT MERRITT, JR.

My name is Scott Merritt. I have been a resident of Johnson County, Kansas since 1979, and have practiced law, principally in the area of taxation, since 1964. I believe I am familiar, by now, with the opinion of the Kansas Supreme Court in the case brought by Mr. Peden. Bear with me, but let's revisit the history of the structure of the income tax, and look at where you are, as legislators, today.

Until 1988, the Kansas income tax statutes merely provided one uniform and graduated rate schedule applicable to individuals. It was clear that the object of those statutes was to tax income on a progressive but uniform basis. The joint income tax of married couples electing to file a joint return was simply determined by (i) splitting their Kansas taxable income in half, then (ii) computing a tax on that amount by application of the uniform statutory rates, and then (iii) doubling the relevant amount of tax. The purpose of the joint return was to ameliorate the progressive effect of higher graduated rates imposed in the uniform tax statutory rate schedule, as to married couples. This system had an "income splitting" effect, and worked consistently to the advantage of a married couple where one person was the breadwinner and the other had modest income.

For the first time, in 1988 the Legislature abandoned the traditional Kansas uniform income tax structure and installed, in the statute itself, two separate and distinct graduated rate schedules. At all taxable income levels, that is to say in any

given brackets, the single rates exceed the married rates on commensurate amounts of Kansas taxable income. In substance, there is a surtax on taxable income of single people at all levels. This is wrong.

The installation of the Kansas 1988 income tax regime was not a pioneering or forward-looking development. It was not advanced tax technology. At one time in England there were apparently taxes which applied different rates based on religion. In 1988, I submit, with all respect, that that legislature took a 300 year step backwards.

As to 1997, and looking forward, the Legislature, as it budgets, and as it taxes, is always going to be afflicted with a battle of priorities. On the taxing side, you will always be pressured for relief from several quarters.

I would suggest to you that as a matter of legislative prudence, and of setting priorities, you would do well not to continue to levy a discriminatory excise or surtax against single people between now and 1999, to any degree. I do not think that Kansas is out of the woods yet as to the matter of awarding refunds with interest to single taxpayers across the state for past years. Whatever the dimensions of your potential refund exposure, which I suggest continues to exist, it seems to me that you make the matter worse rather than better if you continue to collect income tax on single people under the present type of statute. If you do pass this bill, I think you should escrow the excess amounts, and not release them for general state expenditures.

As to 1997, I really think you should end the disparity in the tax rates, and revert to the tried and true system which

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existed before 1988; that is, you should have one set of rates and brackets applicable to single persons (and trusts and estates), and you should provide that joint income tax liability is calculated simply by doubling the tax (under a uniform rate schedule) on half the joint Kansas taxable income reported on a joint return of a married couple.

The benefits to the Kansas economy in general (as well as single people) might surprise you.

Thanks very much.

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Testimony of Elizabeth M. Gerhardt

My name is Elizabeth M. Gerhardt, residing at 4810 W. 120th Place, Overland Park, Johnson County, Kansas. I am a 67-year old female whose husband died in 1988; single by fate, not by choice. When I relocated to Kansas from California in 1993, I had no idea that due to a disparity in income tax rates determined by marital status I would be "penalized" for being a widow.

Since marriage seems to be the only criterion to obtain tax relief and since only monogamous marriages are accepted, "supply and demand economics" can't rectify the situation for many of us. Socio-economic or demographic studies I have read posit that because males tend to die younger, most females will be single in their later years. These statistics are borne out in populations in retirement communities, activities at senior citizen centers, and in medical-assistance accommodations catering to our aging population.

But age is only one factor determining the reasons one is single. Younger people may have family responsibilities of parents or siblings, or other reasons not of their making, that make marriage non-viable. Some may be pursuing undergraduate or graduate degrees and working part or full time; others may be establishing themselves in careers and neither of these feel they have the real or emotional time necessary to nurture a marriage. Religious beliefs may dictate only one opportunity (e.g., remarriage following a divorce is usually prohibited) so one refuses to be coerced into marriage for tax benefits. Still others may be young widows/widowers or have attained single status through divorce.

It is interesting that this tax disparity applies only to income taxes. Is this because only income taxes mention or request marital status? Property taxes, personal property taxes, sales taxes, etc. are "blind".

I am respectfully requesting that this committee and Governor Graves promote repeal of the discriminatory laws affecting unmarried taxpayers, effective immediately.

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Testimony of Marie Walter

My name is Marie Walter, and I live in Overland Park, Kansas.

As a single taxpayer in the State of Kansas for 46 years, I feel very strongly that I have been discriminated against because I chose to remain unmarried and care for my elderly mother who lived until her death on a meager social security benefit.

As Governor Graves stated recently, it is equally unfair that a single parent, struggling to keep a family in tact, has more taken from his or her paycheck. Moreover, this inequity adds to the burden of grief caused by the loss of a spouse, raising the survivor's income tax.

In each of the foregoing situations, we are being penalized by our state with additional taxation for conditions out of our control. What right does the State of Kansas have to penalize or reward its citizens for their choice of marital status?

I respectfully request that you eliminate this indefensible form of discrimination by passing House Bill 2032 concerning the income tax rates of single individual taxpayers.

Thank you again for allowing me the opportunity to speak on behalf of all single taxpayers affected by this unjust tax structure.

Testimony of Kathy Klassen

My name is Kathy Klassen, and I reside at 1258 Briarwood Road, Derby, Kansas 67037.

A young divorced mother of 3 works at Kentucky Fried Chicken. She earns the minimal wage and lives with her parents because she cannot afford to live on her own. I wonder how many people, such as yourself, she has served.

A 33-year old widower, with tears streaming down his face, tells me how he lost his wife and only daughter in a car accident just before Christmas.

A single mother of 2 tells me in the grocery store that she is trying to figure out how to feed the family for the next 2 weeks with \$50 in her pocket.

The above situations are not new. They were there in 1988 when this higher taxation was "voted in" by our State Representatives and Governor, and for the next 8 years, the state appointed judges have allowed our government to get away with this crime by saying: "The State of Kansas encourages marriage, therefore, we can tax you single people a higher rate?" Ladies and Gentlemen, you could care less if we were married or not - this is the only way you can justify the \$55 million a year you receive from single taxpayers!

There are now, over 600,000 widows, widowers, and single citizens, such as myself, who are law abiding Kansas citizens. We work hard, pay our taxes and are proud of the fact that we do not discriminate against MARRIED COUPLES!

Governor Graves announced on TV that the higher tax rate was not fair to widows, widowers and single people. Now, Governor Graves is saying, "Give me another 3 years and I will equalize this taxation." ANOTHER 3 YEARS?? ISN'T THE LAST 8 YEARS ENOUGH?? LADIES AND GENTLEMEN, WHAT IS WRONG WITH THIS PICTURE?

What will it take to tell this government that over 600,000 single Kansas citizens will not tolerate this unfair taxation anymore? We have called! We have written! We have talked to you in person! Are you not listening?

Thank you for listening.

Testimony of Sharon Smith

I would like to have been with you in person for this hearing; however, my work schedule does not permit me to be out of the office today.

My name is Sharon Smith. I am a lifelong resident of the State of Kansas, having been born in what I often lovingly refer to as a "little log cabin" at 81st and Leavenworth Road in what was then Bethel, Kansas, on August 31, 1942. Even now, I am a proud resident of Wyandotte County, Kansas.

I was educated in public schools and universities in Kansas. And I consider that that education was excellent and taught me judgment and values. It was those teachings that helped me to know that charging different tax rates between married and singles is unfair and downright discriminatory.

I was a little late to coming to this issue. I now work in Missouri and pay taxes in both states. When I first began my job in Missouri, the taxes were more or less equal, but through the years I noticed that Kansas taxes were gaining against the Missouri rates. I had missed the fact that the Kansas Legislature had deliberately raised the rates for singles and my taxes were reflecting those higher rates. When I did learn that I was paying more only because I had not found a husband, I was irritated, but assumed that the inequity would be corrected. I knew that a legal challenge to the inequity in tax rates had been filed and knew that logically there was no rational way to explain the disparity except that the state wanted the additional funds.

I knew I was right when the state in its filings with the court could only give lame excuses like we want to encourage less paperwork by having people file joint returns and the state is promoting marriage. In reality, the way a person files taxes in Kansas is dependent on how the person files at the Federal level and no other legislation in the state was really promoting marriage. In fact, persons have to pay to get a marriage license.

In June of 1995, I joined the legal action as one of the plaintiffs, asking for class action on behalf of single persons in Kansas, seeking to have the tax legislation as pertaining to rate differentials between married and singles declared unconstitutional and to have the state refund the excess taxes collected since 1988.

The judge at the District Court level ruled that the state was illegally charging singles at a higher rate and that he could order refunds. The state appealed that decision to the Kansas Supreme Court. There, the court agreed that the state could charge married persons at a lower rate than single Kansas taxpayers. I am not happy with that decision. I believe that the

arguments expressed by the state in its court briefs were incredible. That the state supreme court adopted them was even more so.

In 1996, I happily attended three marriages of close friends or relatives. None of the three couples married because of Kansas tax rates. They did it the old fashioned way: they fell in love.

If the state has such an interest in promoting marriage that it can discriminate in income tax rates, why is it not helping its single persons like me find spouses? How is the state addressing the issue of unequal numbers of men and women? That list of questions could get long and ludicrous.

In reality, the state needed money and charging singles more gave the state extra funds. One legislator I heard interviewed on radio while the case was being litigated, agreed that legislators thought that single persons never would be an organized body to challenge the issue. As a result of the litigation, more people are informed and as Governor Graves noted in his State of the State address, there are some 500,000 single taxpayers in this state. Most of them are now aware and many are "mad as hell".

One of my consciousness-raising experiences was understanding the information that while the tax rates were about a percentage point different, that translates into a single person paying a 20% higher rate for taxes than a married couple having the same income.

The Governor has come late to this issue. He now says that the difference in rates is not right--not fair, running from the cover given him by the Supreme Court to the position we have held all along. We welcome his proposal to equalize tax rates. The extra funds received from single taxpayers since 1988 have contributed to the state's healthy financial situation. It is those funds raised from single taxpayers that are helping to subsidize the tax cuts generously offered by the governor and certainly single persons should share in the benefits.

I would, however, recommend that the inequity that has existed since 1988 be corrected in one action, rather than over the three years promoted by the governor. Once a problem is recognized, why prolong fixing it.

Single persons have no problem with paying taxes and supporting their state. But we do have a problem with a state that has taken advantage of us and then has hidden behind a transparent explanation such as "we're promoting marriage".