

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 17, 1997, in Room 519--S of the Capitol.

Members present: Senator Langworthy, Senator Corbin, Senator Lee, Senator Bond, Senator Goodwin, Senator Hardenburger, Senator Harris, Senator Karr, Senator Praeger, and Senator Steineger.

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

Conferees appearing before the committee: Senator Jerry Karr
Gary Robbins, Kansas Optometric Association
Tom Bell, Kansas Hospital Association
Shirley Sicilian, Kansas Department of Revenue
Marvin Burris, Kansas Board of Regents
Ted Ayers, Wichita State University
Don Schnacke, Kansas Independent Oil & Gas Association

Others attending: See attached list

The minutes of the February 13, 1997, meeting were approved.

SB 239--Relating to property taxation; concerning political subdivision exemption therefrom.

Senator Jerry Karr, author of **SB 239**, testified in support. He commented that the bill is related to a more difficult problem concerning the definition of "exclusive" and "primary" use. This bill deals with a situation occurring in a municipality or a political subdivision wherein a medical facility is built adjacent to a county hospital under the presumption that medical services will be provided at the facility. Current law provides a tax exemption for office space necessary for the performance of medical services. The bill broadens the definition of space for medical services to persons licensed in the areas of optometry and podiatry.

Senator Langworthy commented that the original bill on this subject was introduced in 1995. The purpose of that bill was to attempt to draw physicians into medically underserved areas by providing space for them which would not cause the entity to lose its tax exemption.

Gary Robbins, Kansas Optometric Association, testified further in support of **SB 239**. He stated that many municipalities with hospitals find it essential to lease medical clinic office space to professionals in order to provide health care to their citizens. Current statutes place those medical office buildings on the tax rolls. He explained that current law exempts all property used exclusively by a municipality from taxation; however, the statutes do not define what constitutes exclusive use. The new language in this bill clearly defines that "used exclusively" includes real estate owned by a municipality and leased to health care providers, including medicine and surgery, optometry, and podiatry. (Attachment 1)

Tom Bell, Kansas Hospital Association, gave final testimony in support of **SB 239**. Mr. Bell supported broadening the statute as discussed. He said about one-half of the hospitals in Kansas are governmental hospitals which, for the most part, are small hospitals. This tax exemption would help small hospitals stay open because it would allow them to bring in health care services thought to be necessary.

Senator Langworthy noted that the fiscal note on **SB 239** was indeterminable. There being no further conferees, the hearing on **SB 239** was closed.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION, Room 519-S
Statehouse, at 11:00 a.m. on February 17, 1997.

SB 250--Relating to sales taxation; defining educational institution for such purposes.

Shirley Sicilian, Kansas Department of Revenue, testified in support of **SB 250**. The bill would add a definition of the term "educational institution" to the definitions section of the sales tax statutes. The bill defines "educational Institutions" to include: (1) post-secondary schools that are accredited by the North Central Association of Colleges and Schools and the State Board of Education, (2) a group of such educational institutions that operates exclusively for an educational purpose, (3) nonprofit endowment associations and foundations organized and operated exclusively to administer funds for the sole benefit of an educational institution, and (4) nonprofit athletic associations and foundations organized and operated exclusively to hold and own receipts from intercollegiate sporting events for the sole benefit of an educational institution. (Attachment 2) She said clean up language was necessary with regard to nonprofit athletic associations and foundations as not all athletic corporations are associations or foundations.

Marvin Burris, Kansas Board of Regents, testified in support of **SB 250**. The Board of Regents supports the inclusion of endowment associations and athletic corporations and foundations because their activities are an integral part of the institution. Mr. Burris suggested that **SB 250** be amended to include student unions in the list of exemptions from sales tax. (Attachment 3)

Ted Ayers, General Counsel to Wichita State University, spoke on behalf of the university in support of **SB 250**. He expressed his appreciation to the Department of Revenue for introducing the clarifying language in the bill, especially with respect to athletic corporations. He felt the bill would not only benefit educational institutions but also the students who attend regents institutions and other colleges in the state which benefit from the athletic corporations and the endowment associations. He agreed with Mr. Burris that current language should be extended to include student union corporations which are not-for-profit management devices. He said the student unions at Wichita State University, the University of Kansas, Kansas State University, and Emporia State University operate their student unions through separate affiliated corporations. Senator Lee began a discussion regarding the effect on competition if student unions are included in the sales tax exclusion with regard to meal plans and book store sales. Mr. Ayers noted that not all regent institutions operate their student unions in the same format; four of them have a union corporation as a management structure, but two do not. Following this discussion, the hearing on **SB 250** was closed.

SB 252--Relating to severance taxation.

Shirley Sicilian, Kansas Department of Revenue, testified in support of **SB 252**. The bill would change the statutory determination of "gross value" for gas which is neither sold nor stored at the time of removal. She explained that the provisions regarding the sale of such gas as was originally drafted may not meet the legislative intent in its current application. If that language is stricken, the value of gas would be determined in the same manner as the statute requires for any other type of gas which is not sold at well-head. (Attachment 4)

Don Schnacke, Kansas Independent Oil and Gas Association (KIOGA) testified in support of the passage of **SB 252**. Mr. Schnacke expressed appreciation to the Department of Revenue for meeting with KIOGA to discuss the issue and a solution before the bill was drafted. (Attachment 5) Mr. Schnacke added that the Department of Revenue had assured them that there would be rules and regulations following the enactment of the bill to clarify and protect the contracts of existing producers. With this, the hearing on **SB 252** was closed.

The meeting was adjourned at 11:58 a.m.

The next meeting is scheduled for February 18, 1997.

SENATE ASSESSMENT & TAXATION COMMITTEE
GUEST LIST

DATE: February 17, 1997

NAME	REPRESENTING
MARK BECK	KDOR
Beccy Swanwick	League of KS Municipalities
Judy Nolan	
Gary Robbins	KS ^{KAC} Optometric Assn
David & Monica	Washburn University
Bob Kelly	KS Independent Colleges
Ed Sun	Peterson Public Admin
Tom Bruno	Allent Assoc
Dave Hachens	Western Resources
ERIC Sexton	WSCU
Marvin Burris	KBOR
Shirley Sicilian	KIDOR
Don Schnack	KIOGA
Ken Peterson	KS Petroleum Council
Alan Steppat	Pete McCall & Associates
Sonja Erickson	Senate Minority leader
Tom Bell	KS. Hosp - Assn.

Kansas Optometric Association

1266 SW Topeka Blvd., Topeka, KS 66612
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February 17, 1997

TO: SENATE ASSESSMENT AND TAXATION COMMITTEE
FROM: GARY L. ROBBINS, CAE, EXECUTIVE DIRECTOR
RE: SENATE BILL 239

Senate Bill No. 239 would have clarified that real estate owned by a municipality, which in turn leases the space to optometrists, podiatrists and dentists, will be deemed to be used exclusively for governmental functions, and exempt from ad valorem property taxes. Currently, many municipalities with hospitals find it essential that to provide health care to their citizens, they must lease medical clinic office space to these professionals; however, current statutes would place those buildings on the tax rolls. Essentially, the municipalities are in between a rock and a hard place. Do they provide health care to keep their hospital open or do they lose a tax exemption?

Currently, K.S.A. 79-201a, Second exempts all property used exclusively by any municipality from property taxation. However, the statute leaves unanswered the question, "what constitutes exclusive use?"

Generally, to be exempt the property must have a proper public purpose and must promote the general welfare. The mere fact that property owned by a municipality is leased to health care providers in a medical clinic, does not constitute "used exclusively" within K.S.A. 79-201a. Exclusive use means actual use of the property for a public purpose.

This Bill declares that "used exclusively" includes real estate owned or being acquired pursuant to a lease-purchase agreement by a municipality and leased to health care providers including medicine and surgery, osteopathy, dentistry, optometry and podiatry.

This bill is supported by the Kansas Hospital Association, Kansas Optometric Association, Kansas Dental Association and the Kansas Association of Podiatric Medicine.



Affiliated with
American Optometric Association

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2-17-97
Attachment 1

Shirley Sicilian, Director
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MEMORANDUM

TO: Senator Audrey Langworthy, Chair
Senate Committee on Assessment and Taxation
FROM: Shirley Klenda Sicilian
RE: Senate bill 250 - Definition of educational institution
DATE: February 17, 1997

Senator Langworthy and members of the Senate Committee on Assessment and Taxation, thank you for the opportunity to testify on Senate bill 250. Subsections (c) and (d) of K.S.A. 79-3606 exempt certain sales to elementary schools, secondary schools and educational institutions. This bill would add a definition of the term "educational institution" to K.S.A. 79-3602, which is the definitions section of the sales tax statutes.

The bill defines "educational institutions" to include:

1. post-secondary schools that are accredited by the North Central Association of Colleges and Schools, the State Board of Education, or otherwise qualify as "educational institutions" under K.S.A. 74-50,103. K.S.A. 74-50,103 is the "IMPACT" act and references "state educational institutions" (76-711) which are defined as the university of Kansas, Kansas state university, Wichita state university, Emporia state university, Pittsburgh state university, and Fort Hays state university. The IMPACT act goes on to also reference Washburn University (72-6501), area vocational schools or area vocational-technical schools (72-4412), and community colleges (71-701).
2. a group of such educational institutions that operates exclusively for an educational purpose. This provision codifies the findings of the Kansas Supreme Court in the NCAA case.¹
3. nonprofit endowment associations and foundations organized and operated exclusively to administer funds for the sole benefit of an educational institution. This portion of the bill would allow separately incorporated endowment associations to maintain the same sales tax exemption as those that are not separately incorporated.
4. nonprofit athletic associations and foundations organized and operated exclusively to hold and own receipts from intercollegiate sporting events for the sole benefit of an educational institution. The department recently assessed unpaid sales tax on uniforms and athletic equipment purchased by separately incorporated athletic associations. State universities that do not have separately incorporated athletic associations would not be assessed sales tax on the same type of purchases. This portion of the bill is intended to eliminate this discrepancy.

¹ NCAA v. Kansas Dept. of Revenue, 245 Kan. 553, 781 P.2d 726 (1989).

Senate Assessment + Taxation
2-17-97
Attachment 2

SENATE COMMITTEE ON ASSESSMENT AND TAXATION

TESTIMONY ON SENATE BILL 250

FEBRUARY 17, 1997

Presented by
Marvin Burris, Director of Governmental Affairs
Kansas Board of Regents

Good morning, Madam Chair and Members of the Committee. I am Marvin Burris, Director of Governmental Affairs for the Kansas Board of Regents. I am here to testify in support of Senate Bill 250. This legislation would provide for the exemption from state sales tax, educational institutions defined to include:

1. A group of educational institutions that operates exclusively for an educational purpose;
2. Nonprofit endowment associations and foundations organized for the support and sole benefit of an educational institution; and
3. Nonprofit entities, including but not limited to, trusts and foundations operating collegiate and intercollegiate athletic programs.

The Board of Regents supports the inclusion of endowment associations and athletic corporations and foundations because their activities are an integral part of the institution. Indeed, we believe the same can be said of other affiliated entities. The institutions are examining the bill in light of recent sales tax audits to see if there are additional affiliated entities which could appropriately be added to the definition of "educational institution." An example could be student unions. We hope the opportunity will be available for further discussions on this issue with the Committee and the Department of Revenue. There are representatives of Regents institutions present who are prepared to testify in more specific terms and/or answer questions.

Again, thank you for the opportunity to speak in support of this bill. I would be pleased to respond to questions.

*Senate Assessment + Taxation
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Attachment 3*

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MEMORANDUM

TO: Senator Audrey Langworthy, Chair
Senate Committee on Assessment and Taxation

FROM: Shirley Klenda Sicilian

RE: Senate bill 252 - Definition of "gross value" for gas which is not sold at well-head

DATE: February 17, 1997

Senator Langworthy and members of the Senate Committee on Assessment and Taxation, thank you for the opportunity to testify on Senate bill 252. This bill would change the statutory determination of "gross value" in K.S.A. 79-4216(d) for gas which is neither sold nor stored at the time of removal.

K.S.A. 79-4217(a), states that a tax is imposed at the rate of "8% of the gross value...". K.S.A. 79-4216(d) defines "gross value" as "the sale price of...gas at the time of removal...from the lease or production unit...". If "...no sale occurs at the time of removal...then the director shall determine the value of the oil or gas subject to tax, based on the cash price paid to producers for like quality oil or gas in the vicinity of the lease or production unit ..." However, 79-4216(d) goes on to state that "notwithstanding the foregoing, if no sale of gas occurs at the time of removal and such gas is not stored, then the gross value of gas for the purpose of taxation under this act shall be the price for which such gas is sold at the time of sale...".

When this "notwithstanding" provision was originally drafted, the first sale price was certainly a reasonable proxy for the value of gas at well-head. Most first sales did occur at well-head and those that didn't would likely occur within a physically short distance. The market for sale of gas was a local market. But today's market is a national market. The first sale of gas by a producer can occur far from well-head and may be bundled with transportation charges. The department is concerned that this price, potentially laden with transportation charges and absent the value of unprocessed components, is no longer a good proxy for well-head value. Its current application may not meet the legislative intent of the statute. Therefore, we propose this language be stricken.

If this "notwithstanding" language is stricken, the value of such gas would be determined in the same manner as the statute requires for any other type of gas which is not sold at well-head. Currently, K.S.A. 79-4216(d) would require "...the director...determine the value...based on the cash price paid to producers for like quality oil or gas in the vicinity of the lease or production unit at the time of the removal of the oil or gas...". As fewer well-head sales occur, this "backup" provision of using an average field price also becomes less reliable. Therefore, the department proposes the statute allow for an additional alternative method "based on the cash price paid to one or more of the producers for the oil or gas." Importantly, this

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proposed language is neutral on the issue of whether components of natural gas are to be included in the valuation.

If these provisions are adopted, the department would need to draft regulations which specify in detail how the statute is to be applied. Our proposed statutory language would allow for regulations which would determine value based on the price paid to royalty holders.

The other recommended changes would reference mineral tax as one of those taxes which is appealed through the department appeals process.

We believe the proposal would bring the statute back in line with its original intent and do so in a way that is neutral on the issue of whether components of natural gas are to be included in the valuation.



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Statement of Donald P. Schnacke
Before the Senate Assessment and Taxation Committee
February 17, 1997

RE: SB 252 - Severance Tax Collection

KIOGA appears in support of the passage of SB 252. Shirley Sicillin, of the Department of Revenue, met with a group of producers in Wichita, January 17, 1997, at our request, to explain what the problem was and to explore solutions. We greatly appreciated having the opportunity to meet on this subject and be able to discuss the issue and a solution before a bill was drafted and submitted to the legislature. We appreciate this cooperation by the Department.

In addition to the proposed amendment, we have been assured by the Department that rules and regulations would follow that would protect existing producers and contracts. We furnished copies of contracts pointing out the relationship between producers and purchasers of natural gas.

As long as the severance tax is in existence, our industry undoubtedly will be plagued with continuing issues of administration and reporting. We look forward to the day when this very regressive tax is repealed, so that we can finally say that the effective tax rate on oil and gas production is equal to the effective tax rate on all other Kansas industries.

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Attachment 5*